



October 2009

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# **Reported Effects of the Captive REIT & RIC Legislative Amendments**

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# Introduction

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Part F of Chapter 60 of the Laws of 2007 made certain changes to the New York State tax treatment of real estate investment trusts (REITs) and regulated investment companies (RICs). Part FF-1 of Chapter 57 of the Laws of 2008 made additional amendments to the tax treatment of these entities. The intent of the 2007 and 2008 legislative amendments was to eliminate provisions in the Tax Law that allowed taxpayers to use these entities for the purposes of sheltering income from taxation. This ability had been closed to taxpayers on the federal level, but not for New York.

The 2008 amendments require that a report be issued by the commissioner of taxation and finance regarding the effect of these provisions on taxpayers. The legislative language mandating the creation of the report is reproduced here:

The commissioner of taxation and finance shall prepare a report that will analyze the effect of the amendments made by this part on taxpayers in this state. Copies of such report shall be submitted by the commissioner to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee, and the chairman of the assembly ways and means committee immediately upon completion, but shall not be due until June 1, 2009. The report shall examine the effect of these provisions on the business entities subject to them and will include statistical information, to the extent practicable, regarding the total amount of taxes that were paid under these provisions, the amount that would have been paid but for these provisions, the number and types of entities subject to these provisions, and whatever other information the commissioner determines is relevant to such analysis. To enable the commissioner to prepare such report in a timely manner, the taxpayers affected by the amendments made by this act should provide the commissioner with sufficient information about their income, expenses and corporate structures in a format that the commissioner will be able to utilize and analyze. The

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commissioner shall develop the format to be used in consultation with taxpayers and will make that format available to taxpayers by December 31, 2008. Taxpayers shall file the information in that format, together with any other data or information the taxpayer determines to be relevant, with the commissioner by March 31, 2009. All information provided by taxpayers under this section shall be kept confidential by the commissioner, and shall not be used by the commissioner in auditing the taxpayers' tax liabilities under the tax law.

This report, prepared in accordance with this mandate, analyzes information provided to the Department by taxpayers affected by this legislation and provides an estimate of various effects of the legislation on these taxpayers. The report presents information on:

- legislative history regarding the tax treatment of REITs and RICs
- the captive REIT and RIC reporting process
- data considerations
- tax impact of 2008 legislative amendments
- tax impact of 2007 legislative amendments
- REITs and RICs affected by the legislative amendments

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# Legislative History Regarding the Tax Treatment of REITs and RICs

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## Background

The Internal Revenue Code provides preferential federal tax treatment to REITs and RICs. REITs and RICs are required to pay out at least 90 percent of their income as dividends to shareholders. However, they can then take the dividends paid amount as a deduction when calculating their federal tax liability. This treatment effectively makes REITs and RICs flow-through entities which are not subject to tax at the corporate level.

Most REITs and RICs are publicly traded corporations where the majority of shares are not owned by any one entity, and are used for legitimate purposes of economic development or investment. However, many corporations have also created closely-held REITs and RICs, where the majority of shares of the REIT or RIC are owned by the corporation or its affiliate.

Prior to 2007, provisions existed in the Tax Law that allowed corporate taxpayers to use closely-held REITs and RICs for purposes of tax avoidance. A corporation could create REIT or RIC subsidiaries and transfer income-producing assets to these entities. Income from these assets was distributed back to the parent in the form of dividends.

New York's tax treatment of dividends received allowed most of this income to escape taxation. Dividend income from subsidiaries is fully excludable from entire net income under the Article 9-A corporate franchise tax and the Article 33 franchise tax on insurance corporations, and partially excludable under Article 32 franchise tax on banking corporations. Dividends from non-subsidiaries are also partially excludable under Articles 9-A and 33. REIT and RICs were taxed under Article 9-A, but because the federal deduction for dividends paid flowed through to New York they typically paid only a fixed dollar minimum tax.

Similar provisions had been recognized at the federal level, which resulted in the elimination of the federal deduction for dividends received by corporations from closely-held REITs or RICs. However, no action had been taken by New York. The result was that significant amounts of income that were treated as ordinary income and fully taxable on the federal level were not being taxed in

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## Amendments to the Tax Law in 2007

New York. The Tax Department had seen a dramatic increase in taxpayers taking advantage of these provisions during the 1990s and the early part of this decade. Most of the taxpayers taking advantage of the law were banking corporations.

The 2007 amendments to the Tax Law partially addressed the tax avoidance due to the use of these provisions. The legislation required a REIT or RIC to file a combined return under Article 9-A with any corporation subject to tax or required to be included in a combined return under Article 9-A if that corporation owned substantially all of the stock of the REIT or RIC. The legislation provided that the deduction available to REITs and RICs on the federal level for dividends paid would not be allowed when computing combined entire net income.

The legislation took a different approach to REITs and RICs that were directly or indirectly owned by banking corporations taxable under Article 32. Distributions from these REIT or RIC subsidiaries directly to a banking corporation parent, or from a REIT or RIC holding company to a banking corporation parent, were considered “disallowed investment proceeds.” The ability of Article 32 taxpayers to include disallowed investment proceeds in the 60 percent deduction from entire net income for dividends from subsidiaries was phased out over five years starting in 2007.

Similarly, gains or losses realized from the disposition of a REIT or RIC subsidiary of a banking corporation were considered disallowed investment proceeds that were subject to a similar phase-out from the 60 percent deduction for net gains from subsidiaries. Banking corporations with assets of \$8 billion or less were exempt from these provisions.

The same concept of “disallowed investment proceeds” was applied to insurance corporations taxable under Article 33. The ability of Article 33 taxpayers to include disallowed investment proceeds in the deduction for income, gains, or losses from subsidiary capital or the deduction for half of dividends from subsidiary capital was phased out in the same manner as in Article 32.

The 2007 amendments were effective for taxable years beginning on or after January 1, 2007 and did not have an expiration date.

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## Amendments to the Tax Law in 2008

After the enactment of the 2007 amendments, it was recognized that the Tax Law still allowed taxpayers to use REITs and RICs as vehicles of tax avoidance by placing the REIT or RIC under the ownership of an out-of-state holding company which was not a New York taxpayer.

The 2008 amendments to the Tax Law identified the type of REIT or RIC used for purposes of tax avoidance as a “captive REIT” or “captive RIC”. The legislation essentially undid all the changes made in 2007 and instituted a new tax regime, which requires all captive REITs and captive RICs to file a combined report with the closest corporation that directly or indirectly owns or controls the captive.

For corporate franchise taxpayers under Article 9-A, the 2008 amendments provided more stringent combined reporting requirements than were present under the 2007 law changes. The legislation requires a captive REIT or captive RIC to file a combined return under Article 9-A with the corporation that directly owns or controls over 50 percent of the voting stock of the captive if that corporation is an Article 9-A taxpayer or a corporation required to file a combined return under Article 9-A. If the ownership threshold is not met, the captive must file a combined return with the closest controlling stockholder of the captive if the stockholder is subject to tax or required to be included in a combined return under Article 9-A, 32, or 33. As with the 2007 amendments, the deduction for dividends paid available to the REIT or RIC at the federal level is not allowed.

For banking corporations taxable under Article 32 and insurance corporations taxable under Article 33, the legislation replaced the concept of disallowed investment proceeds and instituted combined reporting requirements for captive REITs and captive RICs that parallel the amendments made to Article 9-A. However, for banking corporations the federal deduction for dividends paid by the REIT or RIC will be phased out over four years instead of being fully disallowed starting in 2008. Banking corporations with assets of \$8 billion or less are once again exempted from these requirements.

The 2008 amendments are effective for taxable years beginning on or after January 1, 2008, but are repealed for taxable years beginning on or after January 1, 2011. If these provisions are not renewed, the 2007 amendments will again become the law regarding the tax treatment of REITs and RICs.



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# The Captive REIT & RIC Reporting Process

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The legislation authorizing the creation of this report required the Department to analyze Tax Law changes taking effect for the 2008 tax year. However, it was recognized that the Department would not have the necessary data available from the tax returns of affected taxpayers in time to prepare the report. The due date for corporate tax returns filed for the 2008 tax year was March 15, 2009. However, it is customary for many corporate taxpayers to request at least one six-month extension of time to file, and many request a second six-month extension as well. In addition, once all returns are filed, further time would be necessary for the Department to organize and verify tax return data for the 2008 tax year and put it in a form useful for analysis.

Because of these considerations, the legislation required affected taxpayers to assist directly in the preparation of this report by providing information to the Department on the effects of the law changes. The legislation also stated that the information provided for the purposes of the report could not be used to audit taxpayers. In accordance with the report mandate, the Department, in consultation with taxpayer representative groups, developed a process by which affected taxpayers could provide the necessary information for the report.

Taxpayers were informed of the reporting requirement through two Department publications, Corporation Tax Memo TSB-M-09 (1)(C), *Tax Treatment of Real Estate Investment Trusts (REITs) and Regulated Investment Companies (RICs)*, and N-Notice N-09-3, *Reporting Requirements for Owners of Captive Real Estate Investment Trusts and Captive Regulated Investment Companies*. To begin the reporting process, taxpayers were referred to the Captive REIT & RIC Reporting Requirement web page on the Department's website, which was designed to provide reporting taxpayers with all the information they would need to complete the reporting process. The web page explained the reason for the reporting requirement as well as how to report and what information to report.

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To fully reflect the effects of the REIT & RIC legislative amendments as specified in the report mandate, it was necessary to know not only what affected taxpayers paid under 2008 law, but what they would have paid in 2008 if the 2006 or 2007 law had been in effect. Taxpayers were asked to report information for the 2008 tax year, as well as for 2007 and 2006. For the 2006 and 2007 tax years, taxpayers were instructed to use 2008 data but report according to the laws during 2006 and 2007.

The information taxpayers were requested to report was generally the same as that found on tax returns. Taxpayers were asked to provide selected state tax information for themselves for each of the three reporting years, as well as certain financial information not normally found on tax returns. For each REIT or RIC affected by the legislative amendments, taxpayers were asked to provide selected state tax information as well as selected information found on federal tax returns filed by REITs and RICs.

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# Data Considerations

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There are a number of issues that readers should take into consideration regarding the data presented in this report. Although the legislation mandating this report stipulated that taxpayers should provide data to the Tax Department to assist in the preparation of the report, taxpayers were not subject to penalties or any other sanction if they chose not to comply. The legislation also provided that any information reported by taxpayers would not be subject to audit. In addition, the Department did not contact any taxpayers on an individual basis to inform them of the reporting requirement.

As a result, the taxpayers that followed the reporting requirement are those that chose to do so. Therefore, the taxpayers that reported information are in effect a self-selected sample that does not necessarily represent all taxpayers that were affected by this legislation, and the tax impact reported by these taxpayers does not necessarily represent the total tax impact of the legislation. The likelihood is that there are additional taxpayers that have been affected by the legislation, and that would have added to the total tax impact, that did not report.

There was also a great deal of variation in the nature of the data submitted by taxpayers. Some reporting taxpayers were able to report using 2008 data, while others did not have 2008 data in a usable form and reported using 2007 data. Some taxpayers reported all data requested by the Department, while others did not report certain data, or reported only a portion of the data requested. In addition, some taxpayers did not report using the same data for all three years, but instead used actual data for 2007 and 2006. This variation was due mainly to the fact that many of these taxpayers will not file their 2008 tax return for some time, and were understandably not fully prepared as yet to gauge the effects of 2008 law changes.

There were also several taxpayers that reported clearly anomalous results that required additional analysis and manipulation before they could be put into a usable form for the report. Despite this, the data used for the report generally represents the effects of the

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legislation as estimated by the reporting taxpayers, without significant alteration by the Department. The data has not undergone any verification procedures to determine its validity by the Department's Office of Tax Policy Analysis.

One other issue of note is that taxpayers were asked to provide tax liability data for all three years, but were also separately asked to provide numbers for the overall tax effect of the 2007 and 2008 legislation. For most taxpayers, the data reported for tax liability was able to be reconciled with the answers given to the questions on overall tax effect. For a few, the data could not be reconciled. In these cases, the answers given to the questions on overall tax effect were taken at face value to be correct. Due to these factors, the difference in total tax liability between the tax law years will not equal the reported tax impact in the report tables.

Because of all these considerations, readers should take great care in drawing any conclusions about the effectiveness of the 2007 and 2008 legislation based on the data presented in this report.

# Analysis of Data from Reporting Taxpayers

## Number of Reporting Taxpayers and Total Tax Impact by Tax Type

Table 1 shows the number of taxpayers that reported information to the Department by tax type. There were twenty-nine taxpayers that contacted the Department about reporting information. Of these, there were twenty-two taxpayers that sent in a submission and reported a tax impact. Half of these were banks, while the other half were general business corporations subject to the corporate franchise tax. Of those reporting taxpayers subject to the corporate franchise tax, five were financial services companies and six were other types of businesses.

Table 1 also shows the total reported tax impact and share of total tax impact by tax type. The total tax impact is the impact reported by taxpayers of the 2008 legislative amendments compared to what these taxpayers would have paid in 2008 if the laws regarding the taxation of REITs and RICs in 2006 had been in effect. The total reported tax impact was \$31.6 million, nearly two-thirds of which was due to the bank franchise tax.

**Table 1: Number of Reporting Taxpayers and Total Tax Impact by Tax Type**

Tax Type	Number of Reporting Taxpayers	Total Tax Impact	Share of Total Tax Impact
Corporate Franchise Tax - Financial Services	5	\$4,114,405	13.0%
Corporate Franchise Tax - Other	6	6,801,656	21.5%
Bank Franchise Tax	11	20,708,086	65.5%
<b>Total</b>	<b>22</b>	<b>\$31,624,147</b>	<b>100.0%</b>

Total Tax Impact of 2007 Amendments by Tax Type

Table 2 presents data by tax type for those taxpayers who reported a tax impact due to the 2007 legislative amendments. Although these taxpayers were also affected to some degree by the 2008 amendments, their tax status was first affected by the legislation enacted in 2007. There were eleven of these taxpayers: one financial services company under the corporate franchise tax, six other companies under the corporate franchise tax, and four companies under the bank franchise tax.

Table 2 also shows the total reported tax impact of the 2007 amendments, as well as the reported tax liability under 2007 law and the law before 2007. The total tax impact is the impact reported by taxpayers of the 2007 legislative amendments compared to what these taxpayers would have paid in 2007 if the laws regarding the taxation of REITs and RICs in 2006 had been in effect. The total reported tax impact was \$8.2 million, the vast majority of which came from the corporate franchise tax.

Total reported tax liability went up from \$22.2 million under the law before 2007 to \$30.8 million under 2007 law. Due to data and reporting considerations, the amount of increase does not exactly match the total reported tax impact for these taxpayers. See the section of the report on data considerations for further details.

Table 2: Total Tax Impact of 2007 Amendments by Tax Type

Tax Type	Number of Affected Reporting Taxpayers	Total Tax Liability		Total Tax Impact of 2007 Amendments
		Under Law Before 2007	Total Tax Liability Under 2007 Law	
Corporate Franchise Tax - Financial Services	1	\$1,074,808	\$1,015,859	\$8
Corporate Franchise Tax - Other	6	5,619,936	12,881,886	6,813,018
Bank Franchise Tax	4	15,526,037	16,870,455	1,344,418
<b>Total</b>	<b>11</b>	<b>\$22,220,781</b>	<b>\$30,768,200</b>	<b>\$8,157,444</b>

Total Tax Impact of  
2008 Amendments by  
Tax Type

Table 3 displays in more detail the reported total tax impact of the 2008 legislative amendments by tax type. It shows the reported tax liability under the law before 2007, reported tax liability under the 2008 law, and total tax impact. There was a \$10 million increase in reported tax liability. Due to data and reporting considerations, the amount of increase in reported tax liability does not exactly match the total reported tax impact for these taxpayers. This is especially evident in the bank franchise tax, where the nature of the data reported by one bank taxpayer skews the amount of total tax impact. See the section of the report on data considerations for further details.

This table includes data for all reporting taxpayers, including those first affected by the 2007 legislative amendments. The table shows in the last column the additional reported tax impact of the 2008 legislative amendments as compared to the tax impact of the 2007 amendments. This is essentially the difference in reported tax impact of 2007 and 2008 law. Out of the approximately \$32 million in reported tax impact, \$23 million was due to the 2008 legislative amendments.

Table 3: Total Tax Impact of 2008 Amendments by Tax Type

Tax Type	Number of Reporting Taxpayers	Total Tax Liability Under Law Before 2007	Total Tax Liability Under 2008 Law	Total Tax Impact	Additional Tax Impact of 2008 Amendments as Compared to 2007 Law
Corporate Franchise Tax - Financial Services	5	\$3,734,902	\$6,413,112	\$4,114,405	\$4,114,397
Corporate Franchise Tax - Other	6	5,619,936	12,870,524	6,801,656	(11,362)
Bank Franchise Tax	11	91,772,300	92,505,394	20,708,086	19,363,668
<b>Total</b>	<b>22</b>	<b>\$101,127,138</b>	<b>\$111,789,030</b>	<b>\$31,624,147</b>	<b>\$23,465,708</b>

Number of Reporting Taxpayers and Total Tax Liability by Basis of Tax

Table 4 displays the number of reporting taxpayers and total reported tax liability by basis of tax under the Tax Law before 2007, 2007 law, and 2008 law. The three categories of basis of tax are entire net income (ENI), capital (for corporate franchise taxpayers) or taxable assets (for banks), and alternative bases. Alternative bases includes the alternative minimum tax base for corporate franchise taxpayers, the alternative ENI base for banks, and the fixed dollar minimum tax base.

Most reporting taxpayers paid tax on the ENI base under any of the three Tax Law years, with the percentage of the population paying on this base going up under 2008 law. The share of total reported tax liability due to taxpayers on the ENI base also went up under 2008 law, although taxpayers paying on alternative bases accounted for about half of total reported tax liability in the three Tax Law years.

Table 4: Number of Reporting Taxpayers and Total Tax Liability by Basis of Tax

Basis of Tax	Number of Reporting Taxpayers					
	Tax Law Before 2007	Share by Basis of Tax under Tax Law Before 2007	2007 Tax Law	Share by Basis of Tax under 2007 Tax Law	2008 Tax Law	Share by Basis of Tax under 2008 Tax Law
	Entire Net Income	13	59.1%	12	54.6%	16
Capital or Taxable Assets	5	22.7%	8	36.4%	4	18.2%
Alternative Bases	4	18.2%	2	9.1%	2	9.1%
<b>Total</b>	<b>22</b>	<b>100.0%</b>	<b>22</b>	<b>100.0%</b>	<b>22</b>	<b>100.0%</b>

Basis of Tax	Total Tax Liability					
	Tax Law Before 2007	Share by Basis of Tax under Tax Law Before 2007	2007 Tax Law	Share by Basis of Tax under 2007 Tax Law	2008 Tax Law	Share by Basis of Tax under 2008 Tax Law
	Entire Net Income	\$28,619,415	28.3%	\$30,430,261	29.3%	\$42,835,657
Capital or Taxable Assets	21,356,710	21.1%	22,591,558	21.7%	17,364,059	15.5%
Alternative Bases	51,151,013	50.6%	50,987,700	49.0%	51,589,314	46.2%
<b>Total</b>	<b>\$101,127,138</b>	<b>100.0%</b>	<b>\$104,009,519</b>	<b>100.0%</b>	<b>\$111,789,030</b>	<b>100.0%</b>

Tax Attributes of REITs and  
RICs Owned by Reporting  
Taxpayers

Table 5 shows data for the REITs and RICs owned by reporting taxpayers for each Tax Law year. This data includes the number of REITs and RICs for which data was reported, various items of data reported for federal tax purposes, and federal taxable income and entire net income reported for New York State tax purposes. There were close to forty REITs and RICs for which data was reported in each Tax Law year. For all but one of the items of data shown in the table, the amounts reported were over \$1 billion.

**Table 5: Tax Attributes of REITs and RICs Owned by Reporting Taxpayers**

Amounts in (\$ millions)	Tax Law Year		
	Before 2007	2007	2008
Number of REITs and RICs	37	39	37
Total income	\$6,939	\$7,091	\$6,024
Total assets	\$84,354	\$81,104	\$81,714
Total liabilities	\$7,052	\$7,600	\$7,147
Total federal deduction for dividends paid	\$5,498	\$5,583	\$4,303
Dividends paid by the REIT or RIC to its closest controlling stockholder	\$5,095	\$5,324	\$4,654
Dividends received by the taxpayer attributable to the REIT or RIC	\$1,502	\$1,026	\$1,247
Federal Taxable Income	\$1,849	\$2,346	\$1,837
Entire Net Income	\$58	\$1,047	\$1,719

Tax Attributes of REITs and RICs by Tax Type of Parent Under 2008 Law

Table 6 shows the same items of data as Table 5 broken out by tax type of the parent of the REIT or RIC for the 2008 Tax Law year. There were 11 REITs or RICs owned by financial services companies under the corporate franchise tax. There were only 4 RICs reported by all taxpayers, and they were owned by these companies. There were 7 REITs owned by other companies under the corporate franchise tax, and 19 REITs owned by banks. For many of the items of data shown in the table, such as total income and total assets, the majority of the total reported was attributable to REITs owned by banks.

Table 6: Tax Attributes of REITs and RICs by Tax Type of Parent Under 2008 Law

Amounts in (\$ millions)	Tax Type of Parent			Total
	Corporate Franchise Tax - Financial Services	Corporate Franchise Tax - Other	Bank Franchise Tax	
Number of REITs and RICs	11	7	19	37
Total income	\$85	\$2,125	\$3,814	\$6,024
Total assets	\$5,226	\$10,397	\$66,091	\$81,714
Total liabilities	\$4,412	\$1,141	\$1,594	\$7,147
Total federal deduction for dividends paid	\$94	\$1,202	\$3,007	\$4,303
Dividends paid by the REIT or RIC to its closest controlling stockholder	\$63	\$1,361	\$3,230	\$4,654
Dividends received by the taxpayer attributable to the REIT or RIC	\$63	\$239	\$944	\$1,247
Federal Taxable Income	(\$110)	\$1,126	\$821	\$1,837
Entire Net Income	(\$3)	\$1,023	\$699	\$1,719

REITs and RICs Owned by Reporting Taxpayers by State or Province

Table 7 shows the location of the REITs and RICs owned by reporting taxpayers. The jurisdiction where the REIT or RIC was incorporated was used when this information was reported. When it was not reported, the reported address of the REIT or RIC was used. The table also shows how many REITs and RICs were located outside New York. All REITs and RICs reported for any of the three Tax Law years are included in the table. This is the reason the total number of REITs and RICs is greater than the number shown in previous tables.

There were 14 different states or provinces reported. The jurisdiction with the highest number of reported REITs and RICs was Delaware, followed by Maryland, New York State, and Nevada and Washington State. The only foreign jurisdiction reported was the Province of Quebec. The vast majority of the REITs and RICs were reported to be located outside New York State.

**Table 7: REITs and RICs Owned by Reporting Taxpayers by State or Province**

State or Province	Number of REITs and RICs
California	2
Connecticut	3
Delaware	7
Florida	1
Illinois	1
Maine	1
Maryland	6
Nevada	4
New Jersey	1
New York	5
Ohio	1
Pennsylvania	2
Quebec	2
Washington State	4
<b>Total number of REITs and RICs</b>	<b>40</b>
<b>Total number located outside New York State</b>	<b>35</b>
<b>Total number of RICs</b>	<b>4</b>
<b>Total number of RICs located outside New York State</b>	<b>4</b>



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# Appendix A: Legislative Amendments to the Tax Treatment of REITs and RICs

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Appendix A presents the text of the legislative amendments to the Tax Law in 2007 and 2008 regarding the tax treatment of REITs and RICs.

## Legislative Amendments Enacted in 2008

The 2008 amendments were contained in Part FF-1 of Chapter 57 of the Laws of 2008. Section 17 of the legislation authorizes the creation of this report.

Section 1. Section 2 of the tax law is amended by adding four new subdivisions 7, 8, 9 and 10 to read as follows:

7. "REIT" means a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code.

8. "RIC" means a regulated investment company as defined in section eight hundred fifty-one of the internal revenue code.

9. "Captive REIT" means a REIT (a) that is not regularly traded on an established securities market, and (b) more than fifty percent of the voting stock of which is owned or controlled, directly or indirectly, by a single corporation that is not exempt from federal income tax and is not a REIT. Any voting stock in a REIT that is held in a segregated asset account of a life insurance corporation (as described in section 817 of the internal revenue code) shall not be taken into account for purposes of determining whether a REIT is a captive REIT.

10. "Captive RIC" means a RIC (a) that is not regularly traded on an established securities market, and (b) more than fifty percent of the voting stock of which is owned or controlled, directly or indirectly, by a single corporation that is not exempt from federal income tax and is not a RIC. Any voting stock in a RIC that is held in a segregated asset account of a life insurance corporation (as described in section 817 of the internal revenue code) shall not be taken into account for purposes of determining whether a RIC is a captive RIC.

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Section 2. Subdivisions 4, 5 and 7 of section 209 of the tax law, subdivision 4 as amended by section 11 of part Y of chapter 63 of the laws of 2000 and subdivisions 5 and 7 as separately amended by chapters 93 and 94 of the laws of 2007, are amended to read as follows:

4. Corporations liable to tax under sections one hundred eighty-three to one hundred eighty-five, inclusive, corporations taxable under articles thirty-two and thirty-three of this chapter, any trust company organized under a law of this state all of the stock of which is owned by not less than twenty savings banks organized under a law of this state, bank holding companies filing a combined return in accordance with subdivision (f) of section fourteen hundred sixty-two of this chapter, a captive REIT or a captive RIC filing a combined return under either subdivision (f) of section fourteen hundred sixty-two or subdivision (f) of section fifteen hundred fifteen of this chapter, and housing companies organized and operating pursuant to the provisions of article two or article five of the private housing finance law and housing development fund companies organized pursuant to the provisions of article eleven of the private housing finance law shall not be subject to tax under this article.

5. For any taxable year of a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code in which such trust is subject to federal income taxation under section eight hundred fifty-seven of such code, such trust shall be subject to a tax computed under either paragraph (a), (c) or (d) of subdivision one of section two hundred ten of this chapter, whichever is greatest, and shall not be subject to any tax under article thirty-two or article thirty-three of this chapter except for a captive REIT required to file a combined return under subdivision (f) of section fourteen hundred sixty-two or subdivision (f) of section fifteen hundred fifteen of this chapter. In the case of such a trust real estate investment trust, including a captive REIT as defined in section two of this chapter, the term "entire net income" means "real estate investment trust taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-seven of such code, subject to the modification required by subdivision nine of section two hundred eight of this article (other than the modification required by subparagraph two of paragraph (a) thereof)

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including the modifications required by paragraphs (d) and (e) of subdivision three of section two hundred ten of this article. Such a trust substantially all of the capital stock of which is owned or controlled directly or indirectly by one or more other corporations which are not real estate investment trusts and are either (a) subject to tax under this article, or (b) included in a combined report with a corporation that is subject to tax under this article, shall be required to make a report on a combined basis covering any such other corporations unless all such other corporations are also real estate investment trusts in which case no combined report shall be required. In the case of a trust required under this subdivision to make a report on a combined basis, entire net income shall be computed as required under the preceding sentences of this subdivision except that the deduction for dividends paid pursuant to paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code shall not be allowed. A combined report required under this subdivision shall include a computation of the combined capital of all the corporations, including any such trust, that are included in the report, as provided in paragraph (b) of subdivision four of section two hundred eleven of this article. Notwithstanding any provision of law in this paragraph, a real estate investment trust shall not be required to be included in a combined report pursuant to this section if over fifty percent of the capital stock of such real estate investment trust is owned directly or indirectly by a bank holding company as defined in paragraph one of subsection (f) of section fourteen hundred sixty-two of this chapter or a banking corporation subject to taxation pursuant to section fourteen hundred fifty-one of this chapter.

7. For any taxable year, beginning on or after January first, nineteen hundred eighty of a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, in which such company is subject to federal income taxation under section eight hundred fifty-two of such code, such company shall be subject to a tax computed under either paragraph (a), (c) or (d) of subdivision one of section two hundred ten of this chapter, whichever is greatest, and shall not be subject to any tax under article thirty-two or article thirty-three of this chapter except for a captive RIC required to file a combined return under subdivision (f) of section fourteen hundred sixty-two or

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subdivision (f) of section fifteen hundred fifteen of this chapter . In the case of such a regulated investment company, including a captive RIC as defined in section two of this chapter, the term "entire net income" means "investment company taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-two, as modified by section eight hundred fifty-five, of the internal revenue code plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of such code subject to the modification required by subdivision nine of section two hundred eight of this chapter, other than the modification required by subparagraph two of paragraph (a) and by paragraph (f) thereof, including the modification required by paragraphs (d) and (e) of subdivision three of section two hundred ten of this chapter. Such a company substantially all of the capital stock of which is owned or controlled directly or indirectly by one or more other corporations which are not regulated investment companies and are either (a) subject to tax under this article, or (b) included in a combined report with a corporation that is subject to tax under this article, shall be required to make a report on a combined basis covering any such other corporations unless all such other corporations are also regulated investment companies in which no combined report shall be required. In the case of a company required under this subdivision to make a report on a combined basis, entire net income shall be computed as required under the preceding sentences of this subdivision except that the deduction for dividends paid pursuant to paragraph two of subdivision (b) of section eight hundred fifty-two (as modified by section eight hundred fifty-five) of the internal revenue code shall not be allowed. A combined report required under this subdivision shall include a computation of the combined capital of all the corporations, including any such company, that are included in the report, as provided in paragraph (b) of subdivision four of section two hundred eleven of this article. Notwithstanding any provision of law in this paragraph, a regulated investment company shall not be required to be included in a combined report pursuant to this section if over fifty percent of the capital stock of such regulated investment company is owned directly or indirectly by a bank holding company

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as defined in paragraph one of subsection (f) of section fourteen hundred sixty-two of this chapter or a banking corporation subject to taxation under section fourteen hundred fifty-one of this chapter.

Section 3. Paragraph (a) of subdivision 4 of section 211 of the tax law is amended by adding a new subparagraph 6 to read as follows:

(6) (i) For purposes of this subparagraph, the term "closest controlling stockholder" means the corporation that indirectly owns or controls over fifty percent of the voting stock of a captive REIT or captive RIC, is subject to tax under this article, article thirty-two or thirty-three of this chapter or otherwise required to be included in a combined return or report under this article, article thirty-two or thirty-three of this chapter, and is the fewest tiers of corporations away in the ownership structure from the captive REIT or captive RIC. The commissioner is authorized to prescribe by regulation or published guidance the criteria for determining the closest controlling stockholder.

(ii) A captive REIT or a captive RIC must be included in a combined report with the corporation that directly owns or controls over fifty percent of the voting stock of the captive REIT or captive RIC if that corporation is subject to tax or required to be included in a combined report under this article.

(iii) If over fifty percent of the voting stock of a captive REIT or captive RIC is not directly owned or controlled by a corporation that is subject to tax or required to be included in a combined report under this article, then the captive REIT or captive RIC must be included in a combined return or report with the corporation that is the closest controlling stockholder of the captive REIT or captive RIC. If the closest controlling stockholder of the captive REIT or captive RIC is subject to tax or otherwise required to be included in a combined report under this article, then the captive REIT or captive RIC must be included in a combined report under this article.

(iv) If the corporation that directly owns or controls the voting stock of the captive REIT or captive RIC is described in subparagraph two, three or five of this paragraph as a corporation not permitted to make a

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combined report, then the provisions in clause (iii) of this subparagraph must be applied to determine the corporation in whose combined return or report the captive REIT or captive RIC should be included. If, under clause (iii) of this subparagraph, the corporation that is the closest controlling stockholder of the captive REIT or captive RIC is described in subparagraph two, three or five of this paragraph as a corporation not permitted to make a combined return, then that corporation is deemed to not be in the ownership structure of the captive REIT or captive RIC, and the closest controlling stockholder will be determined without regard to that corporation.

(v) If a captive REIT owns the stock of a qualified REIT subsidiary (as defined in paragraph two of subsection (i) of section eight hundred fifty-six of the internal revenue code), then the qualified REIT subsidiary must be included in a combined report with the captive REIT.

(vi) If a captive REIT or a captive RIC is required under this subparagraph to be included in a combined report with another corporation, and that other corporation is also required to be included in a combined report with another related corporation or corporations under this paragraph, then the captive REIT or the captive RIC must be included in that combined report with those corporations.

(vii) If a captive REIT or a captive RIC is not required to be included in a combined report with another corporation under clause (ii) or (iii) of this subparagraph, or in a combined return under the provisions of either subparagraph (v) of paragraph two of subsection (f) of section fourteen hundred sixty-two or paragraph four of subdivision (f) of section fifteen hundred fifteen of this chapter, then the captive REIT or captive RIC is subject to the opening provisions of this paragraph and the provisions of subparagraph four of this paragraph. The captive REIT or captive RIC must be included in a combined report under this article with another corporation if either the substantial intercorporate transactions requirement in the opening provisions of this paragraph or the inter-company transactions or agreement, understanding, arrangement or transaction requirement of subparagraph four of this paragraph is satisfied and more than fifty percent of

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the voting stock of the captive REIT or the captive RIC and substantially all of the capital stock of that other corporation are owned and controlled, directly or indirectly, by the same corporation.

Section 4. Subparagraph 1 of paragraph (b) of subdivision 4 of section 211 of the tax law, as amended by section 2 of part T of chapter 407 of the laws of 1999, is amended to read as follows:

(1) Tax. (i) In the case of a combined report the tax shall be measured by the combined entire net income, combined minimum taxable income, combined pre-nineteen hundred ninety minimum taxable income or combined capital, of all the corporations included in the report, including any captive REIT or captive RIC; provided, however, in no event shall the tax measured by combined capital exceed the limitation provided for in paragraph (b) of subdivision one of section two hundred ten of this article.

(ii) In the case of a captive REIT or captive RIC required under this subdivision to be included in a combined report, entire net income must be computed as required under subdivision five (in the case of a captive REIT) or subdivision seven (in the case of a captive RIC) of section two hundred nine of this article.

However, the deduction under the internal revenue code for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over fifty percent of the voting stock of the captive REIT or captive RIC shall not be allowed for taxable years beginning on or after January first, two thousand eight. The term "affiliated group" means "affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of that section.

Section 5. Subsection (d) of section 1452 of the tax law, as amended by chapter 298 of the laws of 1985, is amended to read as follows:

(d) Corporations taxable under article nine-a nine-A .

Notwithstanding the provisions of this article, all corporations of classes now or heretofore taxable under article nine-a nine-A of this chapter shall continue to be taxable under article nine-a nine-A, except: (1)

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corporations organized under article five-a five-A of the banking law; (2) corporations subject to article three-A of the banking law, or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, or registered as a savings and loan holding company (but excluding a diversified savings and loan holding company) under the federal national housing act, as amended, which make a combined return under the provisions of subsection (f) of section fourteen hundred sixty-two; and (3) banking corporations described in paragraph nine of subsection (a) of this section fourteen hundred fifty-two ; and (4) any captive REIT or captive RIC that is required to be included in a combined return under the provisions of subsection (f) of section fourteen hundred sixty-two of this article .

Provided, however, that a corporation described in paragraph three of this subsection which was subject to the tax imposed by article nine-A of this chapter for its taxable year ending during nineteen hundred eighty-four may, on or before the due date for filing its return (determined with regard to extensions) for its taxable year ending during nineteen hundred eighty-five, make a one time election to continue to be taxable under such article nine-A. Such election shall continue to be in effect until revoked by the taxpayer. In no event shall such election or revocation be for a part of a taxable year.

Section 6. Subsection (m) of section 1452 of the tax law is amended by adding a new paragraph 4 to read as follows:

(4) The provisions of this subsection shall not apply to a captive REIT or a captive RIC.

Section 7. Subparagraphs (ii) and (iii) of paragraph 11 of subsection (e) of section 1453 of the tax law, as amended by section 2 of part F of chapter 60 of the laws of 2007, are amended to read as follows:

(ii) sixty percent of dividend income from subsidiary capital which does not include fifty percent of disallowed investment proceeds as described in subsection (u) of this section for taxable years beginning on or after January first, two thousand seven and before January first, two thousand nine, and seventy-five percent of such disallowed investment proceeds for

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taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven, and one hundred percent of such disallowed investment proceeds for taxable years beginning on or after January first, two thousand eleven except as provided in paragraph eighteen of this subsection, and (iii) sixty percent of the amount by which gains from subsidiary capital exceed losses from subsidiary capital, to the extent such gains and losses were taken into account in determining the entire taxable income referred to in subsection (a) of this section, except that fifty percent of gains or losses from disallowed investment proceeds as described in subsection (u) of this section for taxable years beginning on or after January first, two thousand seven and before January first, two thousand nine, and seventy-five percent of gains or losses from such disallowed investment proceeds for taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven, and one hundred percent of gains or losses from such disallowed investment proceeds for taxable years beginning on or after January first, two thousand eleven shall not be considered in determining such amount,

Section 8. Subsection (e) of section 1453 of the tax law is amended by adding a new paragraph 18 to read as follows:

(18) one hundred percent of dividend income from subsidiary capital received during the taxable year if that dividend income is directly attributable to a dividend from a captive REIT or captive RIC for which the captive REIT or captive RIC claimed a federal dividends paid deduction and that captive REIT or captive RIC is included in a combined report or return under article nine-a, article thirty-two or article thirty-three of this chapter.

Section 9. Subsection (u) of section 1453 of the tax law is REPEALED.

Section 10. Paragraph 2 of subsection (f) of section 1462 of the tax law is amended by adding a new subparagraph (v) to read as follows:

(v)(A) For purposes of this subparagraph, the term

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"closest controlling stockholder" means the corporation that indirectly owns or controls over fifty percent of the voting stock of a captive REIT or captive RIC, is subject to tax under this article, article nine-a or article thirty-three of this chapter or otherwise required to be included in a combined return under this article, article nine-a or article thirty-three of this chapter, and is the fewest tiers of corporations away in the ownership structure from the captive REIT or captive RIC. The commissioner is authorized to prescribe by regulation or published guidance the criteria for determining the closest controlling stockholder.

(B) A captive REIT or a captive RIC must be included in a combined return with the banking corporation or bank holding company that directly owns or controls over fifty percent of the voting stock of the captive REIT or captive RIC if that banking corporation or bank holding company is subject to tax or required to be included in a combined return under this article.

(C) If over fifty percent of the voting stock of a captive REIT or captive RIC is not directly owned or controlled by a banking corporation or bank holding company that is subject to tax or required to be included in a combined return under this article, then the captive REIT or captive RIC must be included in a combined return or report with the corporation that is the closest controlling stockholder of the captive REIT or captive RIC. If the closest controlling stockholder of the captive REIT or captive RIC is a banking corporation or bank holding company that is subject to tax or otherwise required to be included in a combined return under this article, then the captive REIT or captive RIC must be included in a combined return under this article.

(D) If the corporation which directly owns or controls the voting stock of the captive REIT or captive RIC is described in subparagraph (ii) or (iv) of paragraph four of this subsection as a corporation not permitted to make a combined return, then the provisions in clause (c) of this subparagraph must be applied to determine the corporation in whose combined return or report the captive REIT or captive RIC should be included. If, under clause (c) of this subparagraph, the corporation that is the closest controlling stockholder of the

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captive REIT or captive RIC is described in subparagraph (ii) or (iv) of paragraph four of this subsection as a corporation not permitted to make a combined return, then that corporation is deemed to not be in the ownership structure of the captive REIT or captive RIC, and the closest controlling stockholder will be determined without regard to that corporation.

(E) If a captive REIT owns the stock of a qualified REIT subsidiary (as defined in paragraph two of subsection (i) of section eight hundred fifty-six of the internal revenue code), then the qualified REIT subsidiary must be included in any combined return required to be made by the captive REIT that owns its stock.

(F) If a captive REIT or a captive RIC is required under this subparagraph to be included in a combined return with another corporation, and that other corporation is required to be included in a combined return with another corporation under other provisions of this subsection, the captive REIT or captive RIC must be included in that combined return with those corporations.

(G) If the banking corporation or bank holding company that directly or indirectly owns or controls over fifty percent of the voting stock of the captive REIT or captive RIC and is the closest controlling stockholder of the captive REIT or captive RIC is a member of an affiliated group (1) that does not include any corporation that is engaged in a business that a subsidiary of a bank holding company would not be permitted to engage in, unless such business is de minimus, and (2) whose members own assets the combined average value of which does not exceed eight billion dollars, then the captive REIT or captive RIC must not be included in a combined return under this article or article nine-a or article thirty-three of this chapter. In that instance, the captive REIT or captive RIC is subject to the provisions of subdivision five or seven of section two hundred nine of this chapter. The term "affiliated group" means "affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of that section.

Section 11. Paragraph 3 of subsection (f) of section 1462 of the tax law, as added by chapter 298 of the laws of 1985, is amended to read as follows:

(3) (i) In the case of a combined return, the tax shall be measured by the combined entire net income, combined

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alternative entire net income or combined assets of all the corporations included in the return , including any captive REIT or captive RIC . The allocation percentage shall be computed based on the combined factors with respect to all the corporations included in the combined return. In computing combined entire net income and combined alternative entire net income intercorporate dividends and all other intercorporate transactions shall be eliminated and in computing combined assets intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated.

(ii) In the case of a captive REIT required under this subsection to be included in a combined return, "entire net income" means "real estate investment trust taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-seven of that code, subject to the modifications required by section fourteen hundred fifty-three of this article. In the case of a captive RIC required under this subsection to be included in a combined return, "entire net income" means "investment company taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-two (as modified by section eight hundred fifty-five) of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of that code, subject to the modifications required by section fourteen hundred fifty-three of this article. However, the deduction under the internal revenue code for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over fifty percent of the voting stock of the captive REIT or captive RIC will be limited to the following percentages: (A) fifty percent for taxable years beginning on or after January first, two thousand eight and before January first, two thousand nine; (B) twenty-five percent for taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven; and (C) zero percent for taxable years beginning on or after January first, two thousand eleven. The term "affiliated

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group" means "affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of section fifteen hundred four.

Section 12. Subparagraphs (A) and (B) of paragraph 1 of subdivision (b) of section 1503 of the tax law, as amended by section 4 of part F of chapter 60 of the laws of 2007, are amended to read as follows:

(A) income, gains and losses from subsidiary capital which do not include (i) the amount of a recovery in respect of any war loss , and (ii) fifty percent of disallowed investment proceeds as described in paragraph seventeen of this subdivision for taxable years beginning on or after January first, two thousand seven and before January first, two thousand nine, and seventy-five percent of such disallowed investment proceeds for taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven, and one hundred percent of such disallowed investment proceeds for taxable years beginning on or after January first, two thousand eleven ;

(B) fifty percent of dividends (i) other than from subsidiaries , except subsidiaries whose dividends are described in subparagraph (E) of paragraph seventeen of this subdivision, and (ii) other than fifty percent of disallowed investment proceeds as described in paragraph seventeen of this subdivision for taxable years beginning on or after January first, two thousand seven and before January first, two thousand nine, and seventy-five percent of such disallowed investment proceeds for taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven, and one hundred percent of such disallowed investment proceeds for taxable years beginning on or after January first, two thousand eleven, except that in the case of a life insurance company, such modification shall apply only with respect to the company's share of such dividends, which share means the percentage determined under paragraph one of subsection (a) of section eight hundred twelve of the internal revenue code;

Section 13. Subparagraph (H) of paragraph 2 of subdivision (b) of section 1503 of the tax law, as amended by section 5 of part F of chapter 60 of the laws of 2007, is amended to read as follows:

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(H) in the discretion of the commissioner, any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital, except to the extent that such amounts are directly or indirectly attributable to (i) subsidiary capital, the income, gains or losses from which are not excluded from entire net income pursuant to subparagraph (A) of paragraph one of this subdivision, or (ii) income, gains or losses from subsidiary capital that are not excluded from entire net income pursuant to such subparagraph (A) ;

Section 14. Paragraph 17 of subdivision (b) of section 1503 of the tax law is REPEALED.

Section 15. Paragraph 2 of subdivision (c) of section 1504 of the tax law, as amended by section 7 of part F of chapter 60 of the laws of 2007, is amended to read as follows:

(2) Subsidiary capital. The portion of the taxpayer's subsidiary capital to be allocated within the state shall be determined by multiplying the amount of subsidiary capital invested in each subsidiary during the period covered by its return (or, in the case of any such capital so invested during only a portion of such period, such portion of such capital) by the percentage, if any, of the entire capital, or the issued capital stock, or the net income, as the case may be, of such subsidiary required to be allocated within the state on the return or returns, if any, required of such subsidiary under this chapter for the preceding year, and adding the sums so obtained ; except that, for purposes of this paragraph, the amount of such subsidiary capital, prior to allocation, shall be reduced by one hundred percent of the investments in the stock of, and any indebtedness from, subsidiaries the income, gains or losses from which are not excluded from entire net income pursuant to subparagraph (A) of paragraph one of subdivision (b) of section fifteen hundred three of this article, but only to the extent such investments or indebtedness are directly or indirectly attributable to income, gains or losses that are not so excluded .

Section 16. Subdivision (f) of section 1515 of the tax

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law, as amended by section 7 of part J of chapter 60 of the laws of 2007, is amended to read as follows:

(f) (1) Any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations or by interests which own or control either directly or indirectly substantially all the capital stock of one or more other corporations, (hereinafter referred to in this paragraph as "related corporations"), shall make a combined return with any related corporations if there are substantial intercorporate transactions among the related corporations, regardless of the transfer price for such intercorporate transactions. It is not necessary that there be substantial intercorporate transactions between any one corporation and every other related corporation. It is necessary, however, that there be substantial intercorporate transactions between the taxpayer and a related corporation or collectively, a group of such related corporations. The return shall set forth such information as the commissioner may require.

(2) In determining whether there are substantial intercorporate transactions, the commissioner shall consider and evaluate all activities and transactions of the taxpayer and its related corporations. Activities and transactions that will be considered include, but are not limited to: (i) manufacturing, acquiring goods or property, or performing services, for related corporations; (ii) selling goods acquired from related corporations; (iii) financing sales of related corporations; (iv) performing related customer services using common facilities and employees for related corporations; (v) selling policies or contracts of insurance for related corporations; (vi) reinsuring risks for related corporations; (vii) collecting premiums or other consideration for any policy or contract of insurance for related corporations; (viii) incurring expenses that benefit, directly or indirectly, one or more related corporations and (ix) transferring assets, including such assets as accounts receivable, patents or trademarks from one or more related corporations.

(3) Except as provided in paragraph one of this subdivision, no combined return covering any corporation shall be required unless the commissioner deems such return necessary because of intercompany transactions or

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some agreement, understanding, arrangement or transaction referred to in subdivision (g) of this section, in order properly to reflect the tax liability under this article.

(4)(i) For purposes of this paragraph, the term "closest controlling stockholder" means the corporation that indirectly owns or controls over fifty percent of the voting stock of a captive REIT or captive RIC, is subject to tax under section fifteen hundred one of this article, article nine-a or article thirty-two of this chapter or required to be included in a combined return or report under this article, article nine-a or article thirty-two of this chapter, and is the fewest tiers of corporations away in the ownership structure from the captive REIT or captive RIC. The commissioner is authorized to prescribe by regulation or published guidance the criteria for determining the closest controlling stockholder.

(ii) A captive REIT or a captive RIC must be included in a combined return with the corporation that directly owns or controls over fifty percent of the voting stock of the captive REIT or captive RIC if that corporation is a life insurance corporation and is subject to tax or required to be included in a combined return under this article.

(iii) If over fifty percent of the voting stock of a captive REIT or captive RIC is not directly owned or controlled by a life insurance corporation that is subject to tax or required to be included in a combined return under this article, then the captive REIT or captive RIC must be included in a combined report or return with the corporation that is the closest controlling stockholder of the captive REIT or captive RIC. If the closest controlling stockholder of the captive REIT or captive RIC is a life insurance corporation that is subject to tax or required to be included in a combined return under this article, then the captive REIT or captive RIC must be included in a combined return under this article.

(iv) If a captive REIT owns the stock of a qualified REIT subsidiary (as defined in paragraph two of subsection (i) of section eight hundred fifty-six of the internal revenue code), then the qualified REIT subsidiary must be included in any combined return required to be made by the captive REIT that owns the stock of the qualified REIT subsidiary.

(v) If a captive REIT or a captive RIC is required under this paragraph to be included in a combined return with another corporation, and that other corporation is required

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to be included in a combined return with another related corporation under this subdivision, then the captive REIT or the captive RIC must be included in that combined return with the other related corporation.

(5) (i) In the case of a combined return, the tax shall be measured by the combined entire net income or combined capital of all the corporations included in the return, including any captive REIT or captive RIC. In computing combined entire net income intercorporate dividends shall be eliminated, in computing combined business and investment capital intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated and in computing combined subsidiary capital intercorporate stockholdings shall be eliminated. No taxpayer subject to the tax imposed by section fifteen hundred two-a or section fifteen hundred two-b of this article may be required or permitted to be included in a combined return.

(ii) In the case of a captive REIT required under this subdivision to be included in a combined return, "entire net income" means "real estate investment trust taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-seven of that code, subject to the modifications required by section fifteen hundred three of this article. In the case of a captive RIC required under this subdivision to be included in a combined return, "entire net income" means "investment company taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-two (as modified by section eight hundred fifty-five) of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of that code, subject to the modifications required by section fifteen hundred three of this article. However, the deduction under the internal revenue code for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over fifty percent of the voting stock of the captive REIT or captive RIC shall not be allowed. The term "affiliated group" means "affiliated group" as defined in section

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fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of that section.

Section 17. The commissioner of taxation and finance shall prepare a report that will analyze the effect of the amendments made by this part on taxpayers in this state. Copies of such report shall be submitted by the commissioner to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee, and the chairman of the assembly ways and means committee immediately upon completion, but shall not be due until June 1, 2009. The report shall examine the effect of these provisions on the business entities subject to them and will include statistical information, to the extent practicable, regarding the total amount of taxes that were paid under these provisions, the amount that would have been paid but for these provisions, the number and types of entities subject to these provisions, and whatever other information the commissioner determines is relevant to such analysis. To enable the commissioner to prepare such report in a timely manner, the taxpayers affected by the amendments made by this act should provide the commissioner with sufficient information about their income, expenses and corporate structures in a format that the commissioner will be able to utilize and analyze. The commissioner shall develop the format to be used in consultation with taxpayers and will make that format available to taxpayers by December 31, 2008. Taxpayers shall file the information in that format, together with any other data or information the taxpayer determines to be relevant, with the commissioner by March 31, 2009. All information provided by taxpayers under this section shall be kept confidential by the commissioner, and shall not be used by the commissioner in auditing the taxpayers' tax liabilities under the tax law.

Section 18. This act shall take effect immediately and shall apply to taxable years beginning after 2007 and before 2011; provided however the provisions of this act shall be deemed repealed January 1, 2011 for taxable years beginning on or after January 1, 2011.

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Legislative Amendments  
Enacted in 2007

The 2007 amendments were contained in Part F of Chapter 60 of the Laws of 2007.

Section 1. Subdivisions 5 and 7 of section 209 of the tax law, subdivision 5 as separately amended by chapters 267 and 817 of the laws of 1987 and subdivision 7 as amended by chapter 817 of the laws of 1987, are amended to read as follows:

5. For any taxable year of a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code in which such trust is subject to federal income taxation under section eight hundred fifty-seven of such code, such trust shall be subject to a tax computed under either paragraph (a), (c) or (d) of subdivision one of section two hundred ten of this chapter, whichever is greatest, and shall not be subject to any tax under article thirty-two of this chapter. In the case of such a trust the term "entire net income" means "real estate investment trust taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-seven of such code, subject to the modification required by subdivision nine of section two hundred eight of this article (other than the modification required by subparagraph two of paragraph (a) thereof) including the modifications required by paragraphs (d) and (e) of subdivision three of section two hundred ten of this article. Such a trust substantially all of the capital stock of which is owned or controlled directly or indirectly by one or more other corporations which are (a) subject to tax under this article, or (b) included in a combined report with a corporation that is subject to tax under this article, shall be required to make a report on a combined basis covering any such other corporations. In the case of a trust required under this subdivision to make a report on a combined basis, entire net income shall be computed as required under the preceding sentences of this subdivision except that the deduction for dividends paid pursuant to paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code shall not be allowed. A combined report required under this subdivision shall include a computation of the

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combined capital of all the corporations, including any such trust, that are included in the report, as provided in paragraph (b) of subdivision four of section two hundred eleven of this article.

7. For any taxable year, beginning on or after January first, nineteen hundred eighty of a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, in which such company is subject to federal income taxation under section eight hundred fifty-two of such code, such company shall be subject to a tax computed under either paragraph (a), (c) or (d) of subdivision one of section two hundred ten of this chapter, whichever is greatest, and shall not be subject to any tax under article thirty-two of this chapter. In the case of such a company the term "entire net income" means "investment company taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-two, as modified by section eight hundred fifty-five, of the internal revenue code plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of such code subject to the modification required by subdivision nine of section two hundred eight of this chapter, other than the modification required by subparagraph two of paragraph (a) and by paragraph (f) thereof, including the modification required by paragraphs (d) and (e) of subdivision three of section two hundred ten of this chapter. Such a company substantially all of the capital stock of which is owned or controlled directly or indirectly by one or more other corporations which are (a) subject to tax under this article, or (b) included in a combined report with a corporation that is subject to tax under this article, shall be required to make a report on a combined basis covering any such other corporations. In the case of a company required under this subdivision to make a report on a combined basis, entire net income shall be computed as required under the preceding sentences of this subdivision except that the deduction for dividends paid pursuant to paragraph two of subdivision (b) of section eight hundred fifty-two (as modified by section eight hundred fifty-five) of the internal revenue code shall not be allowed. A combined report required under this subdivision shall include a computation of the combined capital of all the corporations, including any such company, that are included in the report, as provided in paragraph (b) of subdivision four of section two hundred eleven of this article.

Section 2. Paragraph 11 of subsection (e) of section 1453 of

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the tax law, as added by chapter 298 of the laws of 1985, subparagraph (ii) as amended and subparagraph (iii) as added by chapter 170 of the laws of 1994, is amended to read as follows:

(11) (i) seventeen percent of interest income from subsidiary capital, and

(ii) sixty percent of dividend income from subsidiary capital which does not include fifty percent of disallowed investment proceeds as described in subsection (u) of this section for taxable years beginning on or after January first, two thousand seven and before January first, two thousand nine, and seventy-five percent of such disallowed investment proceeds for taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven, and one hundred percent of such disallowed investment proceeds for taxable years beginning on or after January first, two thousand eleven, and

(iii) sixty percent of the amount by which gains from subsidiary capital exceed losses from subsidiary capital, to the extent such gains and losses were taken into account in determining the entire taxable income referred to in subsection (a) of this section, except that fifty percent of gains or losses from disallowed investment proceeds as described in subsection (u) of this section for taxable years beginning on or after January first, two thousand seven and before January first, two thousand nine, and seventy-five percent of gains or losses from such disallowed investment proceeds for taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven, and one hundred percent of gains or losses from such disallowed investment proceeds for taxable years beginning on or after January first, two thousand eleven shall not be considered in determining such amount,

Section 3. Section 1453 of the tax law is amended by adding a new subsection (u) to read as follows:

(u) Disallowed investment proceeds from a REIT or RIC. (1)

(A) as used in this subsection, the term "REIT" means a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code.

(B) As used in this subsection, the term "RIC" means a regulated investment company as defined in section eight hundred fifty-one of the internal revenue code.

(C) As used in this subsection, the term "REIT holding company" means a corporation that (i) owns, directly or indirectly, over fifty percent of the capital stock of a REIT, or

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(ii) in connection with one or more other corporations in its affiliated group (as such term is defined in section fifteen hundred four of the internal revenue code without regard to the exclusions provided for in subsection (b) of such section fifteen hundred four), owns over fifty percent of the capital stock of a REIT.

(D) As used in this subsection, the term "RIC holding company" means a corporation that (i) owns, directly or indirectly, over fifty percent of the capital stock of a RIC, or (ii) in connection with one or more other corporations in its affiliated group (as such term is defined in section fifteen hundred four of the internal revenue code without regard to the exclusions provided for in subsection (b) of such section fifteen hundred four), owns over fifty percent of the capital stock of a RIC.

(2) For purposes of computing entire net income or other applicable taxable base, there shall be no deduction for disallowed investment proceeds as defined in paragraphs three and four of this subsection.

(3) For purposes of the deduction of gains in excess of losses under subparagraph (iii) of paragraph eleven of subsection (e) of this section, disallowed investment proceeds means (A) gain or loss from the disposition of an ownership interest in a REIT, (B) gain or loss from the disposition of an ownership interest in a RIC, and (C) gain or loss from the disposition of an ownership interest in a REIT holding company or a RIC holding company to the extent the gain or loss is attributable to such holding company's ownership interest in a REIT or a RIC.

(4) For purposes of the deduction of dividend income from subsidiary capital under subparagraph (ii) of paragraph eleven of subsection (e) of this section, disallowed investment proceeds means (A) dividends from a REIT, and (B) dividends from a RIC, (C) dividends from a REIT holding company or a RIC holding company to the extent the dividends are attributable to such holding company's ownership interest in a REIT or a RIC.

(5) Notwithstanding paragraphs (3) and (4) of this subsection, (A) disallowed investment proceeds shall not include any dividends from, or attributable to, a REIT or a RIC required to be included in a combined report pursuant to subdivisions five or seven of section two hundred nine of this chapter to the extent such dividends were included in the computation of combined entire net income; and

(B) a banking corporation, or a group of banking corporations properly included in a combined return, with taxable assets (or

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combined taxable assets in the case of a combined return) for the taxable year of eight billion dollars or less shall not have any disallowed investment proceeds.

Section 4. Subparagraphs (A) and (B) of paragraph 1 of subdivision (b) of section 1503 of the tax law, subparagraph (A) as amended by chapter 55 of the laws of 1982 and subparagraph (B) as amended by chapter 817 of the laws of 1987, are amended to read as follows:

(A) income, gains and losses from subsidiary capital which do not include (i) the amount of a recovery in respect of any war loss, and (ii) fifty percent of disallowed investment proceeds as described in paragraph seventeen of this subdivision for taxable years beginning on or after January first, two thousand seven and before January first, two thousand nine, and seventy-five percent of such disallowed investment proceeds for taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven, and one hundred percent of such disallowed investment proceeds for taxable years beginning on or after January first, two thousand eleven;

(B) fifty percent of dividends (i) other than from subsidiaries, except subsidiaries whose dividends are described in subparagraph (e) of paragraph seventeen of this subdivision, and (ii) other than fifty percent of disallowed investment proceeds as described in paragraph seventeen of this subdivision for taxable years beginning on or after January first, two thousand seven and before January first, two thousand nine, and seventy-five percent of such disallowed investment proceeds for taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven, and one hundred percent of such disallowed investment proceeds for taxable years beginning on or after January first, two thousand eleven, except that in the case of a life insurance company, such modification shall apply only with respect to the company's share of such dividends, which share means the percentage determined under paragraph one of subsection (a) of section eight hundred twelve of the internal revenue code;

Section 5. Subparagraph (H) of paragraph 2 of subdivision (b) of section 1503 of the tax law, as added by chapter 649 of the laws of 1974 and as relettered by chapter 788 of the

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laws of 1978, is amended to read as follows:

(H) in the discretion of the tax commission commissioner , any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital . , except to the extent that such amounts are directly or indirectly attributable to (i) subsidiary capital, the income, gains or losses from which are not excluded from entire net income pursuant to subparagraph (A) of paragraph one of this subdivision, or (ii) income, gains or losses from subsidiary capital that are not excluded from entire net income pursuant to such subparagraph (A) ;

Section 6. Subdivision (b) of section 1503 of the tax law is amended by adding a new paragraph 17 to read as follows:

(17) Disallowed investment proceeds from a REIT or RIC. (A)

(i) As used in this paragraph, the term "REIT" means a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code.

(ii) As used in this paragraph, the term "RIC" means a regulated investment company as defined in section eight hundred fifty-one of the internal revenue code.

(iii) As used in this paragraph, the term "REIT holding company" means a corporation that (I) owns, directly or indirectly, over fifty percent of the capital stock of a REIT, or (II) in connection with one or more other corporations in its affiliated group (as such term is defined in section fifteen hundred four of the internal revenue code without regard to the exclusions provided for in subsection (b) of such section fifteen hundred four), owns over fifty percent of the capital stock of a REIT.

(iv) As used in this paragraph, the term "RIC holding company" means a corporation that (I) owns, directly or indirectly, over fifty percent of the capital stock of a RIC, or (II) in connection with one or more other corporations in its affiliated group (as such term is defined in section fifteen hundred four of the internal revenue code without regard to the exclusions provided for in subsection (b) of such section fifteen hundred four), owns over fifty percent of the capital stock of a RIC.

(B) For purposes of computing entire net income or other applicable taxable base, there shall be no exclusion or deduction for disallowed investment proceeds as defined in subparagraphs (C) and (D) of this paragraph.

(C) For purposes of the exclusion of income, gains and losses from subsidiary capital under subparagraph (A) of paragraph

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one of this subdivision, disallowed investment proceeds means (i) a distribution from, or gain or loss from the disposition of an ownership interest in, a REIT, (ii) a distribution from, or gain or loss from the disposition of an ownership interest in, a RIC, and (iii) a distribution from, or gain or loss from the disposition of an ownership interest in, a REIT holding company or a RIC holding company to the extent the distribution, gain or loss is attributable to such holding company's ownership interest in a REIT or a RIC.

(D) For purposes of the exclusion of dividends under subparagraph (B) of paragraph one of this subdivision, disallowed investment proceeds means (i) dividends from a REIT, (ii) dividends from a RIC, except to the extent such dividends are considered dividends for purposes of subsection (a) of section eight hundred fifty-four of the internal revenue code and are designated under such subsection for purposes of computing the deduction allowed under section two hundred forty-three of the internal revenue code, and (iii) dividends from a corporation that is a member of an affiliated group (as such term is defined in section fifteen hundred four of the internal revenue code without regard to the exclusions provided for in subsection (b) of such section fifteen hundred four) that includes the taxpayer, and that, alone or in connection with one or more other corporations in such affiliated group, owns over fifty percent of the capital stock of a REIT to the extent the dividends are attributable to such corporation's ownership interest in such a REIT.

(E) Notwithstanding clause (i) of subparagraph (B) of paragraph one of this subdivision, the following shall be subject to the exclusion under such subparagraph:

(i) dividends from a RIC that is a subsidiary of the taxpayer, to the extent the dividends from such subsidiary are considered dividends for purposes of subsection (a) of section eight hundred fifty-four of the internal revenue code and are designated under such subsection for purposes of computing the deduction allowed under section two hundred forty-three of the internal revenue code, and

(ii) dividends from a subsidiary of the taxpayer whose distributions are described in clause (iii) of subparagraph (C) of this paragraph and are attributable to an ownership interest in a RIC.

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Section 7. Paragraph 2 of subdivision (c) of section 1504 of the tax law, as added by chapter 649 of the laws of 1974, is amended to read as follows:

(2) Subsidiary capital. The portion of the taxpayer's subsidiary capital to be allocated within the state shall be determined by multiplying the amount of subsidiary capital invested in each subsidiary during the period covered by its return (or, in the case of any such capital so invested during only a portion of such period, such portion of such capital) by the percentage, if any, of the entire capital, or the issued capital stock, or the net income, as the case may be, of such subsidiary required to be allocated within the state on the return or returns, if any, required of such subsidiary under this chapter for the preceding year, and adding the sums so obtained ; except that, for purposes of this paragraph, the amount of such subsidiary capital, prior to allocation, shall be reduced by one hundred percent of the investments in the stock of, and any indebtedness from, subsidiaries the income, gains or losses from which are not excluded from entire net income pursuant to subparagraph (A) of paragraph one of subdivision (b) of section fifteen hundred three of this article, but only to the extent such investments or indebtedness are directly or indirectly attributable to income, gains or losses that are not so excluded .

Section 8. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2007.

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# Appendix B: Materials Relating to Captive REIT and RIC Reporting Requirement

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Appendix B presents materials relating to the captive REIT and RIC reporting requirement and the process by which taxpayers reported captive REIT and RIC information to the Tax Department.

Corporation Tax Memo TSB-M-09(1)(C), *Tax Treatment of Real Estate Investment Trusts (REITs) and Regulated Investment Companies (RICs)*, was published by the Department on January 9, 2009. This informational memo explains in detail the amendments made to the tax treatment of REITs and RICs in 2008. It also mentions that the legislation requires the Department to prepare a report on the effect of the provisions, and that affected taxpayers will be asked to submit information to assist in the preparation of the report.

The Captive REIT and RIC Reporting Requirement web page was published to the Tax Department's website in January of 2009. It explained the reason for the reporting requirement as well as how to report and what information to report. Taxpayers could use the web page to request a secure mailbox, download the reporting spreadsheet and guide, and link to TSB-M-09(1)(C).

N-Notice N-09-3, *Reporting Requirements for Owners of Captive Real Estate Investment Trusts and Captive Regulated Investment Companies*, was published by the Department in February of 2009. It alerted taxpayers to the captive REIT and RIC reporting requirement and directed taxpayers to the reporting web page to begin the reporting process.

The Captive REIT and RIC Reporting Guide was a document made available for taxpayers to download from the reporting web page. This guide contained imaged versions of all state and federal tax forms referenced by the spreadsheet, abridged to include only the information that taxpayers were required to report. It was provided as a visual guide to assist taxpayers in the completion of the reporting spreadsheet.

## **Tax Treatment of Real Estate Investment Trusts (REITs) and Regulated Investment Companies (RICs)**

The Tax Law has been amended concerning the tax treatment of REITs and RICs. A REIT or RIC is generally subject to tax under Article 9-A (franchise tax on general business corporations) of the Tax Law. The amendments change the combined reporting rules for REITs and RICs by now providing that a captive REIT or captive RIC may be required to be included in a combined return under Article 9-A, Article 32 (franchise tax on banking corporations), or Article 33 (franchise tax on insurance corporations). The provisions described below apply to taxable years beginning on or after January 1, 2008, and are repealed for taxable years beginning on or after January 1, 2011.

The information in this TSB-M supplements the information on REITs and RICs contained in TSB-M-08(12)C, *Summary of Corporation Tax Legislative Changes Enacted in 2008*.

### **General Definitions**

The following definitions have been added to Tax Law section 2:

- *REIT* means a real estate investment trust as defined in Internal Revenue Code (IRC) section 856.
- *RIC* means a regulated investment company as defined in IRC section 851.
- A *captive REIT* means a REIT that is not regularly traded on an established securities market and more than 50% of the voting stock of which is owned or controlled, directly or indirectly, by a single corporation that is not exempt from federal income tax and is not a REIT. Any voting stock in a REIT that is held in a segregated asset account of a life insurance corporation (as described in IRC section 817) is not taken into account for purposes of determining if a REIT is a captive REIT.
- A *captive RIC* means a RIC that is not regularly traded on an established securities market and more than 50% of the voting stock of which is owned or controlled, directly or indirectly, by a single corporation that is not exempt from federal income tax and is not a RIC. Any voting stock in a RIC that is held in a segregated asset account of a life insurance corporation (as described in IRC section 817) is not taken into account for purposes of determining if a RIC is a captive RIC.

The following definition has been added to Tax Law sections 211.4(a) (Article 9-A), 1462(f)(2) (Article 32), and 1515(f) (Article 33):

- The *closest controlling stockholder* means the corporation: (a) that indirectly owns or controls over 50% of the voting stock of a captive REIT or captive RIC; (b) is subject to tax under Article 9-A, 32, or 33 or otherwise required to be included in a combined return or report under Article 9-A, 32, or 33; and (c) is the fewest tiers of corporations away in the ownership structure from the captive REIT or captive RIC.

The following definition has been added to Tax Law sections 211.4(b)(1)(ii) (Article 9-A), 1462(f)(2)(v)(G) and 1462(f)(3)(ii) (Article 32), and 1515(f)(5)(ii) (Article 33):

- *Affiliated group* means affiliated group as defined in IRC section 1504, but without regard to the exceptions provided for in IRC section 1504(b) (relating to includable corporations).

## **Combined reporting rules for REITs and RICs**

### **Combined reporting rules under Article 9-A.**

The new legislation under Tax Law section 211.4(a)(6) requires a captive REIT or a captive RIC to be included in a combined report under Article 9-A if it meets any of the following conditions:

- a) A captive REIT or a captive RIC must be included in a combined report with the corporation that directly owns or controls over 50% of the voting stock of the captive REIT or captive RIC if that corporation is subject to tax or required to be included in a combined report under Article 9-A.
- b) If over 50% of the voting stock of a captive REIT or captive RIC is not directly owned or controlled by a corporation that is subject to tax or required to be included in a combined report under Article 9-A, then the captive REIT or captive RIC must be included in a combined return or report with the corporation that is the closest controlling stockholder of the captive REIT or captive RIC. If the closest controlling stockholder of the captive REIT or captive RIC is subject to tax or otherwise required to be included in a combined report under Article 9-A, then the captive REIT or captive RIC must be included in a combined report under Article 9-A.
- c) If the corporation that directly owns or controls the voting stock of the captive REIT or captive RIC is a corporation not permitted to make a combined report as provided in Tax Law section 211.4(a)(2), 211.4(a)(3), or 211.4(a)(5), then the rules in condition (b) above must be applied to determine the corporation in whose combined return or report the captive REIT or captive RIC should be included. If the corporation that is the closest controlling stockholder of the captive REIT or captive RIC is a corporation not

permitted to make a combined report as described in Tax Law section 211.4(a)(2), 211.4(a)(3), or 211.4(a)(5), then that corporation is deemed to not be in the ownership structure of the captive REIT or captive RIC, and the closest controlling stockholder is determined without regard to that corporation. The following types of corporations are described in Tax Law sections 211.4(a)(2), 211.4(a)(3), and 211.4(a)(5):

- corporations organized under the laws of a country other than the United States,
  - corporations principally engaged in a railroad or trucking business, and
  - corporations principally engaged in an aviation business or corporations that are qualified air freight forwarders with respect to an aviation corporation.
- d) If a captive REIT owns the stock of a qualified REIT subsidiary (as defined in IRC section 856(i)(2)), then the qualified REIT subsidiary must be included in a combined report with the captive REIT.
- e) If a captive REIT or a captive RIC is required by any of the conditions under Tax Law section 211.4(a)(6) to be included in a combined report with another corporation, and that other corporation is also required to be included in a combined report with another related corporation or corporations under Tax Law section 211.4(a), then the captive REIT or captive RIC must be included in that combined report with those corporations.

If a captive REIT or a captive RIC is not required to be included in a combined report with another corporation under conditions (a) or (b) above, or in a combined return under the provisions of Article 32 (Tax Law section 1462(f)(2)(v)) or Article 33 (Tax Law section 1515(f)(4)) described later, then the captive REIT or captive RIC is subject to the opening provisions of Tax Law section 211.4(a) and the provisions of Tax Law section 211.4(a)(4). Under these provisions the captive REIT or captive RIC must be included in a combined report under Article 9-A with another corporation if either:

- the substantial intercorporate transaction requirement in the opening provisions of Tax Law section 211.4(a) is satisfied, or
- the intercompany transactions or agreement, understanding, arrangement, or transaction requirement of Tax Law section 211.4(a)(4) is satisfied

and more than 50% of the voting stock of the captive REIT or captive RIC and substantially all of the capital stock of that other corporation are owned and controlled, directly or indirectly, by the same corporation.

Tax Law sections 209.4, 209.5, and 209.7 have been amended to provide that a captive REIT or a captive RIC that is required to be included in a combined return under either Tax Law section 1462(f) or 1515(f) is not subject to tax under Article 9-A. The amendments also

temporarily repeal language added by Chapter 60 of the Laws of 2007 requiring certain REITs and RICs to be included in a combined report under Article 9-A. The 2007 changes are not in effect for taxable years beginning on January 1, 2008, and before January 1, 2011. (See the section titled *Real Estate Investment Trusts (REITs) and Regulated Investment Companies (RICs)* in TSB-M-08(1)C, *Summary of Corporation Tax Legislative Changes Enacted in 2007 and Expiring Tax Law Provisions*, for a description of the temporarily repealed provisions.)

(Tax Law sections 209.4, 209.5, 209.7, 211.4(a)(6))

### **Combined reporting rules under Article 32.**

Tax Law section 1452(d) has been amended to provide that a captive REIT or captive RIC that is required to be included in a combined return under the provisions of Tax Law section 1462(f) will be subject to tax under Article 32 and will not be subject to tax under Article 9-A. The Gramm-Leach-Bliley (GLBA) transitional provisions do not apply to a captive REIT or a captive RIC required to be included in a combined return under Article 32 as provided by Tax Law section 1452(m)(4).

The new legislation under Tax Law section 1462(f)(2)(v) requires a captive REIT or a captive RIC to be included in a combined return under Article 32 under the following conditions:

- a) A captive REIT or a captive RIC must be included in a combined return with the banking corporation or bank holding company that directly owns or controls over 50% of the voting stock of the captive REIT or captive RIC if that banking corporation or bank holding company is subject to tax or required to be included in a combined return under Article 32.
- b) If over 50% of the voting stock of a captive REIT or captive RIC is not directly owned or controlled by a banking corporation or bank holding company that is subject to tax or required to be included in a combined return under Article 32, then the captive REIT or captive RIC must be included in a combined return or report with the corporation that is the closest controlling stockholder of the captive REIT or captive RIC. If the closest controlling stockholder of the captive REIT or captive RIC is a banking corporation or bank holding company that is subject to tax or required to be included in a combined return under Article 32, then the captive REIT or captive RIC must be included in a combined return under Article 32.
- c) If the corporation that directly owns or controls the voting stock of the captive REIT or captive RIC is a corporation not permitted to make a combined return as provided in Tax Law section 1462(f)(4)(ii) or 1462(f)(4)(iv), then the provisions in (b) above must be applied to determine the corporation in whose combined return or report the captive REIT or captive RIC should be included. If the corporation that is the closest controlling stockholder of the captive REIT or captive RIC is described in Tax Law section 1462(f)(4)(ii) or 1462(f)(4)(iv) as a corporation not permitted to make a

combined return, then that corporation is deemed to not be in the ownership structure of the captive REIT or captive RIC, and the closest controlling stockholder will be determined without regard to that corporation. The following types of corporations are described in Tax Law sections 1462(f)(4)(ii) and 1462(f)(4)(iv):

- corporations organized under the laws of a country other than the United States; and
  - corporations whose greatest tax, computed on a separate basis, is on taxable assets and whose net worth ratio, computed on a separate basis, is less than five percent and whose total assets are comprised of 33% or more of mortgages.
- d) If a captive REIT owns the stock of a qualified REIT subsidiary (as defined in IRC section 856(i)(2)), then the qualified REIT subsidiary must be included in any combined return required to be made by the captive REIT that owns its stock.
- e) If a captive REIT or a captive RIC is required by any of the conditions under Tax Law section 1462(f)(2) to be included in a combined return with another corporation, and that other corporation is required to be included in a combined return with another corporation under other provisions of Tax Law section 1462(f), the captive REIT or captive RIC must be included in that combined return with those corporations.
- f) A captive REIT or captive RIC must not be included in a combined return or report under Article 9-A, 32, or 33 if a banking corporation or bank holding company that directly or indirectly owns or controls over 50% of the voting stock of the captive REIT or captive RIC and is the closest controlling stockholder of the captive REIT or captive RIC is a member of an affiliated group (1) that does not include any corporation that is engaged in a business that a subsidiary of a bank holding company would not be permitted to be engaged in, unless the business is de minimus, and (2) whose members own assets the combined average of which does not exceed \$8 billion. In that instance, the captive REIT or captive RIC is subject to the provisions of Tax Law section 209.5 or 209.7 in Article 9-A.

(Tax Law sections 1452(d), 1452(m), 1462(f)(2)(v))

### **Combined reporting rules under Article 33.**

The new legislation under Tax Law section 1515(f)(4) requires a captive REIT or a captive RIC to be included in a combined return under Article 33 under the following conditions:

- a) A captive REIT or captive RIC must be included in a combined return with a life insurance corporation that directly owns or controls over 50% of the voting stock of the captive REIT or captive RIC if that corporation is subject to tax or required to be included in a combined return under Article 33.

- b) If over 50% of the voting stock of the captive REIT or captive RIC is not directly owned or controlled by a life insurance corporation that is subject to tax or required to be included in a combined return under Article 33, then the captive REIT or captive RIC must be included in a combined return or report with the corporation that is the closest controlling stockholder of the captive REIT or captive RIC. If the closest controlling stockholder of the captive REIT or captive RIC is a life insurance corporation subject to tax or required to be included in a combined return under Article 33, then the captive REIT or captive RIC must be included in a combined return under Article 33.
- c) If a captive REIT owns the stock of a qualified REIT subsidiary (as defined in IRC section 856(i)(2)), then the qualified REIT subsidiary must be included in any combined return required to be made by the captive REIT that owns the stock of the qualified REIT subsidiary.
- d) If a captive REIT or captive RIC is required under Tax Law section 1515(f)(4) to be included in a combined return with another corporation, and that other corporation is required to be included in a combined return with another related corporation under Tax Law section 1515(f), then the captive REIT or captive RIC must be included in that combined return with the other related corporation.

(Tax Law section 1515(f)(4))

**Computation rules for REITs and RICs that are required to be included in a combined report or return under Articles 9-A, 32, or 33**

**Computation of tax under Article 9-A.**

In the case of a combined report under Article 9-A, the tax is measured by the combined entire net income, combined minimum taxable income, or combined capital of all the corporations included in the report, including any captive REIT or captive RIC. However, the tax measured by combined capital may still not exceed the limitation provided for in Tax Law section 210.1(b).

A captive REIT or captive RIC required to be included in a combined report under Tax Law section 211.4 must compute entire net income as required under Tax Law section 209.5 (in the case of a captive REIT) or Tax Law section 209.7 (in the case of a captive RIC). However, the deduction under the IRC for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over 50% of the voting stock of the captive REIT or captive RIC is not allowed for taxable years beginning on or after January 1, 2008, and before January 1, 2011.

(Tax Law section 211.4(b)(1))

### **Computation of tax under Article 32.**

In the case of a combined return under Article 32, the tax is measured by the combined entire net income, combined alternative entire net income, or combined taxable assets of all the corporations included in the return, including any captive REIT or captive RIC.

In the case where a captive REIT is required under Tax Law section 1462(f) to be included in a combined return, *entire net income* means real estate investment trust taxable income as defined in IRC section 857(b)(2) (as modified by section 858), plus the capital gains amount taxable under IRC 857(b)(3), subject to the modifications to entire net income required by Tax Law section 1453.

In the case where a captive RIC is required under Tax Law section 1462(f) to be included in a combined return, *entire net income* means investment company taxable income as defined in IRC section 852(b)(2) (as modified by section 855), plus the capital gains amount taxable under IRC section 852(b)(3), subject to the modifications to entire net income required by Tax Law section 1453.

The legislation temporarily repeals the 2007 changes relating to the disallowed investment proceeds of banking corporations. The 2007 changes are not in effect for taxable years beginning on or after January 1, 2008, and before January 1, 2011.

Under new Tax Law section 1453(e)(18), a deduction is allowed in determining entire net income, to the extent not deductible in determining federal taxable income, for 100% of dividend income from subsidiary capital received during the taxable year. The dividend income must be directly attributable to a dividend from a captive REIT or captive RIC for which the captive REIT or captive RIC claimed a federal dividends paid deduction and that captive REIT or captive RIC is included in a combined return or report under Article 9-A, 32, or 33.

In computing entire net income, the deduction under the IRC for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over 50% of the voting stock of the captive REIT or captive RIC will be limited to the following percentages:

- 50% of the federal deduction amount for taxable years beginning on or after January 1, 2008, and before January 1, 2009;
- 25% of the federal deduction amount for taxable years beginning on or after January 1, 2009, and before January 1, 2011; and
- 0% of the federal deduction amount for taxable years beginning on or after January 1, 2011.

(Tax Law sections 1453(e)(11)(ii), 1453(e)(11)(iii), 1453(e)(18), 1453(u), 1462(f)(3))

### **Computation of tax under Article 33.**

In the case of a combined return under Article 33, the tax is measured by the combined entire net income or combined capital of all the corporations included in the return, including any captive REIT or captive RIC.

In the case of a captive REIT required under Tax Law section 1515(f) to be included in a combined return, *entire net income* means real estate investment trust taxable income as defined in IRC section 857(b)(2) (as modified by section 858), plus the capital gains amount taxable under IRC 857(b)(3), subject to the modifications to entire net income required by Tax Law section 1503.

In the case of a captive RIC required under Tax Law section 1515(f) to be included in a combined return, *entire net income* means investment company taxable income as defined in IRC section 852(b)(2) (as modified by section 855), plus the capital gains amount taxable under IRC section 852(b)(3), subject to the modifications to entire net income required by Tax Law section 1503.

In computing entire net income, the deduction under the IRC for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over 50% of the voting stock of the captive REIT or captive RIC is not allowed.

The new legislation also temporarily repeals the 2007 changes relating to the disallowed investment proceeds of insurance corporations, as well as the changes regarding subsidiary capital attributable to REITs and RICs. The 2007 changes are not in effect for taxable years beginning on or after January 1, 2008, and before January 1, 2011.

(Tax Law sections 1503(b)(1)(A), 1503(b)(1)(B), 1503(b)(2)(H), 1503(b)(17), 1504(c)(2), 1515(f)(5))

### **Report on the effect of the new REIT and RIC provisions**

The Tax Department is required to prepare a report that will analyze the effect of the REIT and RIC provisions on taxpayers in New York State. This report is due to be issued on June 1, 2009. To enable the Tax Department to prepare the report, taxpayers affected by the amendments should provide the Tax Department with sufficient information about their income,

expenses, and corporate structure by March 31, 2009. All information provided by taxpayers for purposes of this report will be kept confidential by the Tax Department, and will not be used by the Tax Department in auditing the taxpayer's tax liabilities under the Tax Law.

The Tax Department will provide additional information on the format to be used to submit the information at a later date.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.



Corporation tax &gt; Captive REIT &amp; RIC Reporting Requirement

## Captive REIT & RIC Reporting Requirement

A new reporting requirement applies to certain New York State taxpayers that directly or indirectly own captive real estate investment trusts (REITs) or captive regulated investment companies (RICs). You must report information to us if your New York State tax computation changed as a result of either the 2007 or 2008 New York State tax law amendments involving the taxation of REITs and RICs. Follow the instructions below to comply with the reporting requirement.

The filing deadline is March 31, 2009. For more information, see [TSB-M-09\(1\)C, Tax Treatment of Real Estate Investment Trusts \(REITs\) and Regulated Investment Companies \(RICs\)](#).

We require this data to prepare a legislatively mandated report analyzing the effects of the amendments on New York State taxpayers. We are required to keep the data reported for this purpose confidential and cannot use it for audit purposes.

### How to meet the reporting requirement

Report the data described below using this [spreadsheet](#). You must request a secure mailbox to submit your completed spreadsheet to the department.

Send us an [e-mail](#) that includes your:

- business name (provide the taxpayer name, not the REIT name)
- employer identification number
- first and last name of a contact person
- business address including city, state, and ZIP/postal code
- e-mail address
- contact phone number.

A Department employee will contact you to provide further details.

You can refer to the [Captive REIT & RIC Reporting Guide](#) for assistance in completing the spreadsheet. This guide contains imaged versions of all state and federal tax forms referenced by the spreadsheet, abridged to include only the information that taxpayers are required to report. We're providing the guide for informational purposes only. You cannot use it as a reporting mechanism.

### Information you must report

Taxpayers must report information for the 2006, 2007, and 2008 tax years. Required state data relates to the taxpayer and any captive REIT or RIC that it directly or indirectly owns. Required federal data relates only to these captive REITs and RICs. You will need to provide:

- data from state and federal tax forms

- information not available on tax forms, including information about your captive REITs and RICs, federal consolidated group, and financial statements
- answers to three general questions about the overall tax effect of the legislation

For the 2006 and 2007 tax years, use 2008 data but report according to the law in that year. Use best estimates if your final 2008 data is unavailable.

- **Taxpayer data**

Each taxpayer must report selected information for itself on the spreadsheet tab representing the **state** tax return it filed or expects to file according to the law and its own corporate structure in each year. Each taxpayer must also complete the spreadsheet tab for the main form questionnaire, which requests certain necessary information not present on tax returns.

- **REIT and RIC data**

Each taxpayer must report selected **state** tax information for each captive REIT or RIC it owns on the tab for REIT/RIC data. The data requested is the same as that reported on a Form CT-3 General Business Corporation Franchise Tax Return. You must report state tax data for all captive REITs or RICs, including those:

- owned directly as a subsidiary
- owned through a holding company or companies
- that are not a New York taxpayer
- required to be included in a combined return in 2007 and 2008 (complete the state tax information as you would complete a pro forma return representing how the captive REIT or RIC would have filed as a separate filer)

Each taxpayer must also report **federal** tax information for each captive REIT or RIC. The data requested is the same as that reported on the federal Form 1120-REIT, US Income Tax Return for Real Estate Investment Trusts, or Form 1120-RIC, US Income Tax Return for Regulated Investment Companies.

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Last Modified: February 10, 2009



## **Reporting Requirements for Owners of Captive Real Estate Investment Trusts and Captive Regulated Investment Companies**

The Tax Department is required to prepare a report that will analyze the effect of recent amendments to the Tax Law concerning captive real estate investment trusts (REITs) and captive regulated investment companies (RICs). For more information on these amendments see Corporation Tax Memo TSB-M-09(1)(C), *Tax Treatment of Real Estate Investment Trusts (REITs) and Regulated Investment Companies (RICs)*.

This report is due to be issued on June 1, 2009. To enable the Tax Department to prepare the report, taxpayers affected by the amendments must provide the Tax Department with sufficient information about their income, expenses, and corporate structure by March 31, 2009. All information provided by taxpayers for purposes of this report will be kept confidential by the Tax Department, and will not be used by the Tax Department in auditing the taxpayer's tax liabilities under the Tax Law.

To begin the reporting process, please visit the Department's Captive REIT and RIC Reporting Requirement page at <http://www.nystax.gov/reit/>. This page contains detailed instructions on what information affected taxpayers will be required to report and how this information is to be reported.

**NOTE:** An Important Notice is generally issued to announce a singular event, such as an update to a previously issued tax form or instruction, or to announce a new due date for filing returns and making payments of tax because of a natural disaster. The Department does not revise previously issued N-Notices.

# Captive REIT & RIC Reporting Guide

# REIT/RIC - CT-3 (Main Form)



## CT-3

New York State Department of Taxation and Finance

### General Business Corporation Franchise Tax Return

Tax Law — Article 9-A

Employer identification number	
Legal name of corporation	

**Computation of entire net income (ENI) base** (see instructions)

1 Federal taxable income (FTI) before net operating loss (NOL) and special deductions .....	1.	
10 Income from subsidiary capital (from Form CT-3-ATT, line 26) .....	10.	
16 Total subtractions (add lines 10 through 15) .....	16.	
17 ENI (subtract line 16 from line 9; show loss with a minus (-) sign; enter here and on line 42) .....	17.	
18 Investment income before allocation (from Form CT-3-ATT, line 22, but not more than line 17 above) .....	18.	
19 Business income before allocation (subtract line 18 from line 17) .....	19.	
20 Allocated investment income (multiply line 18 by <input type="text"/> % from Form CT-3-ATT, line 5) .....	20.	
21 Allocated business income (multiply line 19 by <input type="text"/> % from line 119, 121, or 141) .....	21.	
24 ENI base (line 22 plus or minus line 23) .....	24.	

**Computation of capital base** (enter whole dollars for lines 26 through 31; see instructions)

		<b>C</b> Average value
39 Capital base (add lines 37 and 38) .....	39.	

**Computation of minimum taxable income (MTI) base**

59 MTI (subtract line 58 from line 57) .....	59.	
64 Alternative investment income before allocation (subtract line 63 from line 62) .....	64.	
65 Alternative business income before allocation (subtract line 64 from line 59) .....	65.	
66 Allocated alternative business income (multiply line 65 by <input type="text"/> % from line 119, 121, or 161) .....	66.	
67 Allocated alternative investment income (multiply line 64 by <input type="text"/> % from Form CT-3-ATT, line 5) .....	67.	
70 MTI base (line 68 plus or minus line 69) .....	70.	
71 Tax on MTI base (multiply line 70 by 1.5% (.015)) .....	71.	

**Computation of tax**

72 Tax on ENI base from line 25 .....	72.	
73 Tax on capital base from line 40 (see instructions) New small business: First year <input type="checkbox"/> Second year <input type="checkbox"/> .....	73.	
74d Fixed dollar minimum tax (see instructions) .....	74d.	
75 Amount from line 71, 72, 73, or 74d, whichever is largest (see instructions for exception) .....	75.	
77 Subsidiary capital base tax from Form CT-3-ATT, line 32 .....	77.	
79 Tax credits (from line 100a; attach appropriate form for each credit claimed) .....	79.	
82 Tax due (see instructions) .....	82.	

# REIT/RIC – Main Form Questionnaire

## Mainform Questionnaire

**Federal consolidated group information**

For Article 9-A and Article 33 taxpayers that file a combined return, please provide the following information.

Number of corporations included in the federal consolidated group:

Total consolidated FTI before the net operating loss deduction (NOLD) (or operations loss):

Total consolidated FTI before the NOLD (or operations loss) of corporations that are included in the federal consolidated return but that are not included in a combined return for New York State tax:

**Information from financial statements**

Please provide the following information from the taxpayer's audited financial statements.

Revenue:	<input type="text"/>
Cost of goods sold:	<input type="text"/>
Gross profit:	<input type="text"/>
Gross profit margin:	<input type="text"/>
SG&A expense:	<input type="text"/>
Depreciation & Amortization:	<input type="text"/>
Operating income:	<input type="text"/>
Operating margin:	<input type="text"/>
Non-operating income:	<input type="text"/>
Non-operating expenses:	<input type="text"/>
Income taxes:	<input type="text"/>
Net Income after taxes:	<input type="text"/>
Continuing operations:	<input type="text"/>
Discontinued operations:	<input type="text"/>
Total operations:	<input type="text"/>
Total net income:	<input type="text"/>
Net profit margin:	<input type="text"/>
Number of employees:	<input type="text"/>

**Interest income**

Interest & Fees on loans:	<input type="text"/>
Interest & Dividends on securities available for sale:	<input type="text"/>
Other investments:	<input type="text"/>

**Non-interest income**

Fees for services to customers:	<input type="text"/>
Trust department income:	<input type="text"/>
Other non-interest income:	<input type="text"/>

**Overall tax effects of the legislation**

What was the overall tax effect on the taxpayer of the 2008 REIT/RIC legislative amendments as compared to the law in 2007?

What was the overall tax effect on the taxpayer of the 2008 REIT/RIC legislative amendments as compared to the law in 2006?

What was the overall tax effect on the taxpayer of the 2007 REIT/RIC legislative amendments as compared to the law in 2006?



# CT-3-A

New York State Department of Taxation and Finance

## General Business Corporation Combined Franchise Tax Return

Tax Law — Article 9-A

Employer identification number
Legal name of corporation

**Computation of combined entire net income (ENI) base**

1 Federal taxable income before net operating loss (NOL) and special deductions .....	1.
10 Income from subsidiary capital (see instructions) .....	10.
16 Total Subtractions (add lines 10 through 15, column E) .....	16.
17 Combined ENI (subtract line 16 from line 9; enter here and on line 42) .....	17.
18 Combined investment income before allocation (from line 215, but not more than line 17, column E) .....	18.
19 Combined business income before allocation (subtract line 18, column E, from line 17, column E) .....	19.
20 Allocated combined investment income (multiply line 18 by <input type="text"/> % from line 199) .....	20.
21 Allocated combined business income (multiply line 19 by <input type="text"/> % from line 128, 160, or 163) .....	21.
24 Combined ENI base (line 22 plus or minus line 23, column E) .....	24.

	A Parent	B Total subsidiaries	C Subtotal (column A + column B)	D Intercorporate eliminations		E Combined total (column C - column D)
1.					1.	
10.					10.	
16.					16.	
17.					17.	
18.					18.	
19.					19.	
20.					20.	
21.					21.	
24.					24.	

# REIT/RIC - CT-3-A (Main Form)

**Computation of combined capital base** (use average values and enter whole dollars for lines 26 through 31; see instructions)

39 Combined capital base (add lines 37 and 38) ..... **39.**

A Parent	B Total subsidiaries	C Subtotal (column A + column B)	D Intercorporate eliminations	E Combined total (column C - column D)
39.				39.

**Tax preference items**

- 59 Combined MTI (subtract line 58 from line 57) .....
- 64 Combined alternative investment income before allocation (subtract line 63 from line 62) .....
- 65 Combined alternative business income before allocation (subtract line 64 from line 59) .....
- 66 Allocated combined alternative business income (multiply line 65 by  % from line 128, 163, or 195) .....
- 67 Allocated combined alternative investment income (multiply line 64 by  % from line 199) .....
- 70 Combined MTI base (line 68 plus or minus line 69) .....
- 71 Tax on combined MTI base (multiply line 70 by 1.5% (.015)) .....

A Parent	B Total subsidiaries	C Subtotal (column A + column B)	D Intercorporate eliminations	E Combined total (column C - column D)
59.				59.
64.				64.
65.				65.
66.				66.
67.				67.
70.				70.
71.				71.

**Computation of tax**

72 Tax on combined ENI base from line 25 .....	72.	
73 Tax on combined capital base from line 40 (see instructions) New small business: First year <input type="checkbox"/> Second year <input type="checkbox"/> .....	73.	
74d Fixed dollar minimum tax (for the corporation filing this form) .....	74d.	
75 Amount from line 71, 72, 73, or 74d, whichever is largest (see instructions) .....	75.	
76 Combined subsidiary capital base tax from line 24 .....	76.	
78 Tax credits from line 101a (attach appropriate form for each credit claimed) .....	78.	
84 Total combined tax due (add lines 81, 83a, and 83b) .....	84.	

# REIT/RIC - CT-32 (Main Form)



New York State Department of Taxation and Finance  
**CT-32 Banking Corporation Franchise Tax Return**  
 Tax Law — Article 32

Employer identification number <input style="width: 95%;" type="text"/>
Legal name of corporation <input style="width: 95%;" type="text"/>

**Schedule A – Computation of tax and installment payments of estimated tax** (see instructions, Form CT-32-I)

1 Allocated taxable entire net income (ENI) (enter amount from line 61, and multiply by the tax rate of .071) .....	<input type="text"/> x .071	1.	<input type="text"/>
2 Allocated combined alternative ENI from line 69 .....	<input type="text"/> × .03	2.	<input type="text"/>
3 Allocated taxable assets enter amount line 73, and multiply by the appropriate tax rate; mark an X in the box) .00002 <input type="checkbox"/> .00004 <input type="checkbox"/> .0001 <input type="checkbox"/> .....		3.	<input type="text"/>
5 Franchise tax (amount from line 1, 2, 3, or 4, whichever is largest) .....		5.	<input type="text"/>
6 Tax credits (see instructions) .....		6.	<input type="text"/>
7 Net franchise tax (subtract line 6 from line 5) .....		7.	<input type="text"/>

**Schedule B – Computation and allocation of ENI** (see instructions)

22 FTI before NOL and special deductions .....	22.	<input type="text"/>
37 Total additions (add lines 25 through 36) .....	37.	<input type="text"/>
48 Dividend income from subsidiary capital (see instructions) .....	48.	<input type="text"/>
49 Net gains from subsidiary capital (see instructions) .....	49.	<input type="text"/>
58 Total subtractions (add lines 38 through 57) .....	58.	<input type="text"/>
59a ENI (add line 22 and line 37; subtract line 58) .....	59a.	<input type="text"/>

**Schedule C – Computation and allocation of alternative ENI**

66 Alternative ENI (add lines 62 through 65) .....	66.	<input type="text"/>
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**Schedule D – Computation of taxable assets and tax rate** (see instructions)

72 Taxable assets (subtract line 71 from line 70) .....	72.	<input type="text"/>
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**Schedule H – Allocation percentages**

	A New York State	B Everywhere
131 ENI allocation percentage (see instructions) .....	131.	<input type="text"/>

**Part 3 — Computation of taxable assets allocation** *(see instructions)*

	A New York State	B Everywhere
<b>161</b> Taxable assets allocation percentage <i>(see instructions)</i> .....	161.	

**Schedule I — Computation for lines 48 and 49** *(see instructions)*

	A	B	C
<b>180</b> All taxpayers enter in column A dividend income from non-REIT or non-RIC subsidiary capital .....	180.	60% (.6)	
<b>181</b> If taxable assets are \$8 billion or less, enter in column A dividend income from REIT or RIC subsidiary capital .....	181.	60% (.6)	
<b>182</b> If taxable assets are over \$8 billion, enter in column A dividend income from REIT or RIC subsidiary capital .....	182.	30% (.3)	
<b>183</b> Add lines 180, 181, and 182 .....	183.		
<b>184</b> All taxpayers enter in column A net gains from non-REIT or non-RIC subsidiary capital .....	184.	60% (.6)	
<b>185</b> If taxable assets are \$8 billion or less, enter in column A net gains from REIT or RIC subsidiary capital .....	185.	60% (.6)	
<b>186</b> If taxable assets are over \$8 billion, enter in column A net gains from REIT or RIC subsidiary capital .....	186.	30% (.3)	
<b>187</b> Add lines 184, 185, and 186 <i>(enter here and on line 49)</i> .....	187.		



New York State Department of Taxation and Finance  
**CT-32-A Banking Corporation Combined Franchise Tax Return**  
 Tax Law — Article 32

Employer identification number

Legal name of corporation

**Schedule A — Computation of combined tax and payment of estimated tax** (see instructions)

1	Allocated taxable entire net income (ENI) from line 59 .....	<input type="text"/> x .071	1.	<input type="text"/>
2	Allocated combined alternative ENI from line 68, column E .....	<input type="text"/> x .03	2.	<input type="text"/>
3	Allocated combined taxable assets from line 72, column E .....	<input type="text"/> x .0001	3.	<input type="text"/>
5	Combined franchise tax (amount from line 1, 2, 3, or 4, whichever is greatest) .....		5.	<input type="text"/>
6	Tax credits (see instructions) .....		6.	<input type="text"/>
9	Total combined franchise tax (add lines 7 and 8) .....		9.	<input type="text"/>

**Schedule B — Computation and allocation of ENI** (see instructions)

- 24 Federal taxable income (FTI) before net operating loss (NOL) and special deductions .....
- 37 Total additions (add lines 25 through 36) .....
- 46 Dividend income from subsidiary capital (see instructions) .....
- 47 Net gains from subsidiary capital (see instructions) .....
- 56 Total subtractions (add lines 38 through 55) .....
- 57a ENI (add line 24 and line 37; subtract line 56) .....

	A Parent corporation	B Total from member corporations	C Subtotal (column A + column B)	D Intercorporate eliminations	E Combined totals (column C - column D)
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**Schedule B — Computation and allocation of ENI**

24.	<input type="text"/>				
<b>Additions</b>					
37.	<input type="text"/>				
<b>Subtractions</b>					
46.	<input type="text"/>				
47.	<input type="text"/>				
56.	<input type="text"/>				
57a.	<input type="text"/>				

# REIT/RIC - CT-32-A (Main Form)

65 Alternative ENI (add lines 60 through 64) .....  
 71 Taxable assets (subtract line 70 from line 69) .....

	A Parent corporation	B Total from member corporations	C Subtotal (column A + column B)	D Intercorporate eliminations	E Combined totals (column C - column D)
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**Schedule C — Computation and allocation of alternative ENI**

65.					
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**Schedule D — Computation of taxable assets**

71.					
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**Additional information required**

Are you a member of a federal consolidated group ..... Yes  No

If you answered Yes, complete items A through E.

- A. Number of corporations included in the federal consolidated group .....
- B. Total consolidated FTI before the net operating loss deduction (NOLD) .....
- C. Total consolidated FTI before the NOLD of corporations that are included in the federal consolidated return but that are not included in a combined return for New York State tax .....

**Schedule J — Computation for lines 46 and 47 (see instructions)**

	A	B	C
213 All combined groups enter in column A the total from line 1, column A for all Schedule J worksheets completed ..	213.	60% (.6)	
214 If combined taxable assets are \$8 billion or less, enter in column A the total from line 2, column A for all Schedule J worksheets completed .....	214.	60% (.6)	
215 If combined taxable assets are over \$8 billion, enter in column A the total from line 3, column A for all Schedule J worksheets completed .....	215.	30% (.3)	
216 Add lines 213, 214, and 215 .....	216.		
217 All combined groups enter in column A the total from line 5, column A for all Schedule J worksheets .....	217.	60% (.6)	
218 If combined taxable assets are \$8 billion or less, enter in column A the total from line 6, column A for all Schedule J worksheets completed .....	218.	60% (.6)	
219 If combined taxable assets are over \$8 billion, enter in column A the total from line 7, column A for all Schedule J worksheets completed .....	219.	30% (.3)	
220 Add lines 217, 218, and 219 .....	220.		

114 ENI allocation percentage (see instructions) .....  
 161 Taxable assets allocation percentage (see instructions) .....

	A Parent corporation	B Total from member corporations	C Subtotal (column A + column B)	D Intercorporate eliminations	E Combined totals (column C - column D)
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**Schedule E — Allocation percentages**

114.	ENI allocation percentage (see instructions) .....	
161.	Taxable assets allocation percentage (see instructions) .....	



New York State Department of Taxation and Finance  
**CT-33 Life Insurance Corporation Franchise Tax Return**  
 Tax Law — Article 33

Employer identification number	
Legal name of corporation	

**Computation of tax and installment payments of estimated tax**

1	Allocated entire net income (ENI) from line 82 .....	x .071	1.	
2	Allocated business and investment capital from line 58 .....	x .0016	2.	
5	Allocated subsidiary capital from line 47 .....	x .0008	5.	
7	Total tax (amount from line 1, 2, 3, or 4, whichever is greatest, plus lines 5 and 6) .....			7.
8	Section 1505(b) floor limitation on tax (enter amount from line 86, column B) .....	x .015	8.	
10	Section 1505(a)(2) limitation on tax (enter amount from line 88) .....	x .02	10.	
12	Tax credits (enter amount from line 101) .....			12.
13	Tax due (subtract line 12 from line 11; if less than zero, enter 0) .....			13.

**Schedule B — Computation of allocation percentage** (if you do not claim an allocation, enter on line 45; see instructions)

45 Allocation percentage (divide line 44 by ten; if line 39 or 43 is zero, see instructions) .....	45.		%
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**Schedule G — Computation and allocation of ENI** (see instructions)

62 Federal taxable income before operations loss or net operating loss (NOL) (see instructions) .....	62.	
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**Subtractions**

73 Interest, dividends, and capital gains from subsidiary capital (attach list; see instructions) .....	73.	
80 Total subtractions (add lines 73 through 79) .....	80.	
81 ENI (subtract line 80 from line 72) .....	81.	



## CT-33-A

New York State Department of Taxation and Finance

### Life Insurance Corporation Combined Franchise Tax Return

Tax Law — Article 33

Employer identification number	
Legal name of corporation	

#### Computation of tax and installment payments of estimated tax

1	Combined allocated entire net income (ENI) from line 86		×	0.071	1.	
2	Combined allocated business and investment capital from line		×	0.0016	2.	
5	Combined allocated subsidiary capital from line 52		×	0.0008	5.	
8	Total combined tax before limitations on tax (add lines 6 and 7)				8.	
9	Combined life insurance company premiums from line		×	0.015	9.	
14	Combined life insurance company premiums from line 102		×	0.02	14.	
16	Tax credits (enter amount from line 116; see instructions)				16.	
17	Combined tax due (subtract line 16 from line 15; if less than zero, enter 0)				17.	

#### Schedule A — Computation of combined allocation percentage

(If you do not claim an allocation, enter 100 on line 48; see instructions)

48	Combined allocation percentage (divide line 47 by ten; if line 42 or 46 is 0, see instructions)	
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A	B	C	D	E
Parent	Total subsidiaries	Subtotal (column A + column B)	Intercorporate eliminations	Combined total (column C - column D)

#### Schedule A — Computation of combined allocation percentage

48.		48.	
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#### Schedule D — Computation and allocation of combined ENI (see instructions)

64	Federal taxable income (FTI) before operations loss or net operating loss (NOL)	
----	---	--

A	B	C	D	E
Parent	Total subsidiaries	Subtotal (column A + column B)	Intercorporate eliminations	Combined total (column C - column D)

#### Schedule D — Computation and allocation of combined ENI

64.		64.	
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#### Schedule D — Computation and allocation of combined ENI (see instructions)

76	Interest, dividends, and capital gains from subsidiary capital (attach list; see instructions)	
84	Total combined subtractions (add column E lines 76 through 83)	
86	Combined ENI (subtract line 84 from line 75)	

A	B	C	D	E
Parent	Total subsidiaries	Subtotal (column A + column B)	Intercorporate eliminations	Combined total (column C - column D)

#### Schedule D — Computation and allocation of combined ENI (continued; see instructions)

Subtractions				
76.				76.
84.				84.
85.				85.

# REIT/RIC – 1120-REIT (Sub Form)

Form <b>1120-REIT</b>  Department of the Treasury Internal Revenue Service	<h2 style="margin: 0;">U.S. Income Tax Return for Real Estate Investment Trusts</h2>	OMB No. 1545-1004  <h1 style="margin: 0;">2007</h1>
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<b>A</b> Year of REIT status election  <b>B</b> Check if a: 1 REIT with 100% owned subsidiaries (see instructions) <input type="checkbox"/> 2 Personal holding co. (attach Sch. PH) <input type="checkbox"/>	Please Type or Print	Name _____  Number, street, and room or suite no. (If a P.O. box, see instructions.) _____  City or town, state, and ZIP code      State      ZIP code _____	<b>C</b> Employer identification number _____  <b>D</b> Date REIT established _____
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**Part I—Real Estate Investment Trust Taxable Income** (see instructions)  
**Income** (EXCLUDING income required to be reported in Part II or Part IV)

<b>8</b> Total income. Add lines 1 through 7	▶	<b>8</b>	
<b>Deductions</b> (EXCLUDING deductions directly connected with income required to be reported in Part II or Part IV)			
<b>10</b> Salaries and wages (less employment credits)		<b>10</b>	
<b>19</b> Total deductions. Add lines 9 through 18	▶	<b>19</b>	
<b>20</b> Taxable income before net operating loss deduction, total deduction for dividends paid, and section 857(b)(2)(E) deduction. Subtract line 19 from line 8		<b>20</b>	
<b>21</b> Less: <b>a</b> Net operating loss deduction (see instructions)	<b>21a</b>		
<b>b</b> Total deduction for dividends paid (Schedule A, line 6)	<b>21b</b>		
<b>c</b> Section 857(b)(2)(E) deduction (Schedule J, lines 2c, 2e, and 2f)	<b>21c</b>	<b>21d</b>	

**Information regarding REITs and RICs**

Please provide the following information for each REIT or RIC owned by the taxpayer, regardless of whether such REIT or RIC is or was owned directly as a captive or through a holding company or companies.

Number of employees:

Total assets:

Total liabilities:

Dividends paid by the REIT or RIC to its closest controlling stockholder:

Dividends received by the taxpayer attributable to the REIT or RIC:

# REIT/RIC – 1120-RIC (Sub Form)

Form <b>1120-RIC</b>  Department of the Treasury Internal Revenue Service	<h2 style="margin: 0;">U.S. Income Tax Return for Regulated Investment Companies</h2>	OMB No. 1545-1010  <h1 style="margin: 0;">2007</h1>
<b>A</b> Year of RIC status election  <input style="width: 100%;" type="text"/>	<b>B</b> Date fund was established  <input style="width: 100%;" type="text"/>	<b>C</b> Employer identification number  <input style="width: 100%;" type="text"/>
<b>Please type or print</b>		
Name of fund <input style="width: 100%;" type="text"/>		
Number, street, and room or suite no. (if a P.O. box, see instructions.) <input style="width: 100%;" type="text"/>		
City or town <span style="float: right;">State ZIP code</span> <input style="width: 100%;" type="text"/>		

### Part I—Investment Company Taxable Income (see instructions)

<b>8 Total income.</b> Add lines 1 through 7 .....	<b>8</b>	<input style="width: 95%;" type="text"/>
<b>10 Salaries and wages</b> (less employment credits) .....	<b>10</b>	<input style="width: 95%;" type="text"/>
<b>23 Total deductions.</b> Add lines 9 through 22 .....	<b>23</b>	<input style="width: 95%;" type="text"/>
<b>24 Taxable income before deduction for dividends paid.</b> Subtract line 23 from line 8 .....	<b>24</b>	<input style="width: 95%;" type="text"/>
<b>25 Less: Deduction for dividends paid</b> (Schedule A, line 6a) .....	<b>25</b>	<input style="width: 95%;" type="text"/>

### Information regarding REITs and RICs

Please provide the following information for each REIT or RIC owned by the taxpayer, regardless of whether such REIT or RIC is or was owned directly as a captive or through a holding company or companies.

Number of employees:

Total assets:

Total liabilities:

Dividends paid by the REIT or RIC to its closest controlling stockholder:

Dividends received by the taxpayer attributable to the REIT or RIC:

# REIT/RIC - CT-3 (Sub Form)



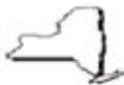
New York State Department of Taxation and Finance

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## CT-3

New York State Department of Taxation and Finance

### General Business Corporation Franchise Tax Return

Tax Law — Article 9-A

Employer identification number _____	
Legal name of corporation _____	
Mailing name (if different from legal name above) c/o _____	State or country of incorporation _____
Number and street or PO box _____	Date of incorporation _____
City _____ State _____ ZIP code _____	Foreign corporations: date began business in NYS _____

#### Computation of entire net income (ENI) base (see instructions)

1	Federal taxable income (FTI) before net operating loss (NOL) and special deductions .....	1.	_____
10	Income from subsidiary capital (from Form CT-3-ATT, line 26) .....	10.	_____
16	Total subtractions (add lines 10 through 15) .....	16.	_____
17	ENI (subtract line 16 from line 9; show loss with a minus (-) sign; enter here and on line 42) .....	17.	_____
18	Investment income before allocation (from Form CT-3-ATT, line 22, but not more than line 17 above) .....	18.	_____
19	Business income before allocation (subtract line 18 from line 17) .....	19.	_____
20	Allocated investment income (multiply line 18 by [ ] % from Form CT-3-ATT, line 5) .....	20.	_____
21	Allocated business income (multiply line 19 by [ ] % from line 119, 121, or 141) .....	21.	_____
24	ENI base (line 22 plus or minus line 23) .....	24.	_____

#### Computation of capital base (enter whole dollars for lines 26 through 31; see instructions)

		<b>C</b> Average value
39	Capital base (add lines 37 and 38) .....	39. _____

#### Computation of minimum taxable income (MTI) base

59	MTI (subtract line 58 from line 57) .....	59.	_____
64	Alternative investment income before allocation (subtract line 63 from line 62) .....	64.	_____
65	Alternative business income before allocation (subtract line 64 from line 59) .....	65.	_____
66	Allocated alternative business income (multiply line 65 by [ ] % from line 119, 121, or 161) .....	66.	_____
67	Allocated alternative investment income (multiply line 64 by [ ] % from Form CT-3-ATT, line 5) .....	67.	_____
70	MTI base (line 68 plus or minus line 69) .....	70.	_____
71	Tax on MTI base (multiply line 70 by 1.5% (.015)) .....	71.	_____

#### Computation of tax

72	Tax on ENI base from line 25 .....	72.	_____
73	Tax on capital base from line 40 (see instructions) New small business: First year    Second year .....	73.	_____
74d	Fixed dollar minimum tax (see instructions) .....	74d.	_____
75	Amount from line 71, 72, 73, or 74d, whichever is largest (see instructions for exception) .....	75.	_____
77	Subsidiary capital base tax from Form CT-3-ATT, line 32 .....	77.	_____
79	Tax credits (from line 100a; attach appropriate form for each credit claimed) .....	79.	_____
82	Tax due (see instructions) .....	82.	_____



For more information concerning the data provided in this publication, please contact:

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