An Act To Reestablish Fairness in Corporate Taxation by Taxing Real Estate Investment Trusts

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, real estate investment trusts have become increasingly more prevalent in Maine; and

Whereas, capital gains by these real estate investment trusts are not taxed at the entity level in Maine; and

Whereas, this legislation would tax real estate investment trusts at the corporate rate; and

Whereas, due to the change in taxing policy proposed by this legislation, time is needed to provide notice to members of real estate investment trusts to prepare and plan for the change; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §6203, sub-§1, as amended by PL 1993, c. 728, §4, is further amended to read:

1. Fund established. There is established the Land for Maine's Future Fund that is administered by the board. The Land for Maine's Future Fund consists of the proceeds from the sale of any bonds authorized for the purposes set forth in subsection 3, revenue from the tax imposed on real estate investment trusts pursuant to Title 36, section 5208 and any funds received as contributions from private and public sources for those purposes. The Land for Maine's Future Fund must be held separate and apart from all other money, funds and accounts. Eligible investment earnings credited to the assets of the Land for Maine's Future Fund become part of the assets of that fund. Any balance remaining in the Land for Maine's Future Fund at the end of any fiscal year must be carried forward for the next fiscal year.

Sec. 2. 36 MRSA §5102, sub-§3-A is enacted to read:

3-A. Real estate investment trust. "Real estate investment trust" means a real estate investment trust as defined in the Code, Section 856.

Sec. 3. 36 MRSA §5122, sub-§1, ¶X, as amended by PL 2007, c. 437, §16, is further amended to read:

X. An amount equal to the taxpayer's federal deduction relating to income attributable to domestic production activities claimed in accordance with Section 102 of the federal American Jobs Creation Act of 2004, Public Law 108-357; ~~and~~

Sec. 4. 36 MRSA §5122, sub-§1, ¶Y, as enacted by PL 2007, c. 437, §17 and affected by §22, is amended to read:

Y. Any amount of allowable deduction claimed for federal purposes in accordance with the election under Section 642(g) of the Code that is also used to determine the taxable estate for purposes of calculating the Maine estate tax under chapter 575.; and

Sec. 5. 36 MRSA §5122, sub-§1, ¶Z is enacted to read:

Z. For income tax years beginning on or after January 1, 2008, all items of loss, deduction and other expense of a real estate investment trust subject to the tax imposed by section 5208, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the real estate investment trust is an S corporation, the taxpayer's pro rata share and, if the real estate investment trust is a partnership or limited liability company, the taxpayer's distributive share. An addition may not be made under this paragraph for any losses recognized on the disposition by a taxpayer of an ownership interest in a real estate investment trust.

Sec. 6. 36 MRSA §5122, sub-§2, ¶Y, as enacted by PL 2007, c. 466, Pt. A, §68 and affected by §70, is amended to read:

Y. The portion of contributions to a qualified tuition program established under Section 529 of the Code up to $250 per designated beneficiary. This deduction may not be claimed on returns when federal adjusted gross income exceeds $100,000 for returns with a filing status of single or married filing separately or $200,000 for returns with a filing status of married joint or head of household; and

Sec. 7. 36 MRSA §5122, sub-§2, ¶Z, as enacted by PL 2007, c. 466, Pt. A, §69, is amended to read:

Z. For income tax years beginning on or after January 1, 2006, to the extent included in federal adjusted gross income and not otherwise removed from Maine taxable income, an amount equal to the total of capital gains and ordinary income resulting from depreciation recapture determined in accordance with the Code, Sections 1245 and 1250 that is realized upon the sale of property certified as multifamily affordable housing property by the Maine State Housing Authority in accordance with Title 30-A, section 4722, subsection 1, paragraph AA.; and

Sec. 8. 36 MRSA §5122, sub-§2, ¶AA is enacted to read:

AA. For income tax years beginning on or after January 1, 2008, all items of income, gain, interest, dividends, royalties and other income of a real estate investment trust subject to the tax imposed by section 5208, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the real estate investment trust is an S corporation, the taxpayer's pro rata share and, if the real estate investment trust is a partnership or limited liability company, the taxpayer's distributive share. A subtraction may not be made under this paragraph for:

(1) Any dividends or other distributions with respect to a taxpayer's ownership interest in a real estate investment trust; and

(2) Any gain recognized on the disposition by the taxpayer of an ownership interest in a real estate investment trust.

Sec. 9. 36 MRSA §5200-A, sub-§1, ¶P, as amended by PL 2005, c. 12, Pt. P, §8, is further amended to read:

P. The amount of the loan repayment included in the credit base of the recruitment credit under section 5219-V to the extent that the contribution has been used to adjust federal taxable income; ~~and~~

Sec. 10. 36 MRSA §5200-A, sub-§1, ¶S, as enacted by PL 2005, c. 12, Pt. P, §9 and affected by §10, is amended to read:

S. An amount equal to the taxpayer's federal deduction relating to income attributable to domestic production activities claimed in accordance with Section 102 of the federal American Jobs Creation Act of 2004, Public Law 108-357.~~;~~ and

Sec. 11. 36 MRSA §5200-A, sub-§1, ¶T is enacted to read:

T. For income tax years beginning on or after January 1, 2008, all items of loss, deduction and other expense of a real estate investment trust subject to the tax imposed by section 5208, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the real estate investment trust is an S corporation, the taxpayer's pro rata share and, if the real estate investment trust is a partnership or limited liability company, the taxpayer's distributive share. An addition may not be made under this paragraph for any losses recognized on the disposition by a taxpayer of an ownership interest in a real estate investment trust.

Sec. 12. 36 MRSA §5200-A, sub-§2, ¶P, as amended by PL 2005, c. 644, §9, is further amended to read:

P. For income tax years beginning on or after January 1, 2015, the gain attributable to the sale of sustainably managed, eligible timberlands as calculated pursuant to this paragraph.

(1) As used in this paragraph, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Commercial harvesting" or "commercially harvested" means the harvesting of forest products that have commercial value.

(b) "Eligible timberlands" means land of at least 10 acres located in the State and used primarily for the growth of trees to be commercially harvested. Land that would otherwise be included within this definition may not be excluded because of:

(i) Use of the land for multiple public recreation activities;

(ii) Statutory or governmental restrictions that prevent commercial harvesting of trees or require a primary use of the land other than commercial harvesting;

(iii) Deed restrictions, restrictive covenants or organizational charters that prevent commercial harvesting of trees or require a primary use of land other than commercial harvesting and that were effective prior to January 1, 1982; or

(iv) Past or present multiple use for mineral exploration.

(c) "Forest products that have commercial value" means logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass, fuel wood, Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, bough material or cones or other seed products.

(d) "Sustainably managed" means:

(i) A forest management and harvest plan, as defined in section 573, subsection 3-A, has been prepared for the eligible timberlands and has been in effect for the entire time period used to compute the amount of the subtraction modification under this paragraph; and

(ii) The taxpayer has received a written statement from a licensed forester certifying that, as of the time of the sale, the eligible timberlands have been managed in accordance with the plan under subdivision (i) during that period.

(2) To the extent included in the taxpayer's taxable income under the laws of the United States, the taxable income of the taxpayer under the laws of the United States must be decreased by:

(a) For eligible timberlands held by the taxpayer for at least a 10-year period beginning on or after January 1, 2005 but less than an 11-year period beginning on or after January 1, 2005, 1/15 of the gain recognized on the sale of the eligible timberlands;

(b) For eligible timberlands held by the taxpayer for at least an 11-year period beginning on or after January 1, 2005 but less than a 12-year period beginning on or after January 1, 2005, 2/15 of the gain recognized on the sale of the eligible timberlands;

(c) For eligible timberlands held by the taxpayer for at least a 12-year period beginning on or after January 1, 2005 but less than a 13-year period beginning on or after January 1, 2005, 1/5 of the gain recognized on the sale of the eligible timberlands;

(d) For eligible timberlands held by the taxpayer for at least a 13-year period beginning on or after January 1, 2005 but less than a 14-year period beginning on or after January 1, 2005, 4/15 of the gain recognized on the sale of the eligible timberlands;

(e) For eligible timberlands held by the taxpayer for at least a 14-year period beginning on or after January 1, 2005 but less than a 15-year period beginning on or after January 1, 2005, 1/3 of the gain recognized on the sale of the eligible timberlands;

(f) For eligible timberlands held by the taxpayer for at least a 15-year period beginning on or after January 1, 2005 but less than a 16-year period beginning on or after January 1, 2005, 2/5 of the gain recognized on the sale of the eligible timberlands;

(g) For eligible timberlands held by the taxpayer for at least a 16-year period beginning on or after January 1, 2005 but less than a 17-year period beginning on or after January 1, 2005, 7/15 of the gain recognized on the sale of the eligible timberlands;

(h) For eligible timberlands held by the taxpayer for at least a 17-year period beginning on or after January 1, 2005 but less than an 18-year period beginning on or after January 1, 2005, 8/15 of the gain recognized on the sale of the eligible timberlands;

(i) For eligible timberlands held by the taxpayer for at least an 18-year period beginning on or after January 1, 2005 but less than a 19-year period beginning on or after January 1, 2005, 3/5 of the gain recognized on the sale of the eligible timberlands;

(j) For eligible timberlands held by the taxpayer for at least a 19-year period beginning on or after January 1, 2005 but less than a 20-year period beginning on or after January 1, 2005, 2/3 of the gain recognized on the sale of the eligible timberlands;

(k) For eligible timberlands held by the taxpayer for at least a 20-year period beginning on or after January 1, 2005 but less than a 21-year period beginning on or after January 1, 2005, 11/15 of the gain recognized on the sale of the eligible timberlands;

(l) For eligible timberlands held by the taxpayer for at least a 21-year period beginning on or after January 1, 2005 but less than a 22-year period beginning on or after January 1, 2005, 4/5 of the gain recognized on the sale of the eligible timberlands;

(m) For eligible timberlands held by the taxpayer for at least a 22-year period beginning on or after January 1, 2005 but less than a 23-year period beginning on or after January 1, 2005, 13/15 of the gain recognized on the sale of the eligible timberlands;

(n) For eligible timberlands held by the taxpayer for at least a 23-year period beginning on or after January 1, 2005 but less than a 24-year period beginning on or after January 1, 2005, 14/15 of the gain recognized on the sale of the eligible timberlands; or

(o) For eligible timberlands held by the taxpayer for at least a 24-year period beginning on or after January 1, 2005, all of the gain recognized on the sale of the eligible timberlands.

(3) Taxpayers claiming this credit must attach a sworn statement from a forester licensed pursuant to Title 32, chapter 76 that the timberlands for which the credit is claimed have been managed sustainably. For the purposes of this subparagraph, "sustainably" means that the timberlands for which the credit is claimed have been managed to protect soil productivity and to maintain or improve stand productivity and timber quality; known occurrences of threatened or endangered species and rare or exemplary natural communities; significant wildlife habitat and essential wildlife habitat; and water quality, wetlands and riparian zones.

Upon request of the State Tax Assessor, the Director of the Bureau of Forestry within the Department of Conservation may provide assistance in determining whether timberlands for which the credit is claimed have been managed sustainably. When assistance is requested under this subparagraph, the director or the director's designee may enter and examine the timberlands for the purpose of determining whether the timberlands have been managed sustainably.

In the case of timberlands owned by an entity that is treated as a pass-through entity for income tax purposes, the land must be treated as eligible timberland if ownership and use of the land by the pass-through entity satisfies the requirements of this paragraph. If the owner of the eligible timberlands is an S corporation, the taxpayer must subtract the owner's pro rata share of the gain. If the owner of the timberlands is a partnership or limited liability company taxed as a partnership, the taxpayer must subtract the taxpayer's distributive share of the gain, subject to the percentage limitations provided in this paragraph.

This modification may not reduce Maine taxable income to less than zero. To the extent this modification results in Maine taxable income that is less than zero for the taxable year, the excess negative modification amount may be carried forward and applied as a subtraction modification for up to 10 taxable years. The entire amount of the excess negative modification must be carried to the earliest of the taxable years to which, by reason of this subsection, the negative modification may

be carried and then to each of the other taxable years to the extent the unused negative modification is not used for a prior taxable year. Earlier carry-forward modifications must be used before newer modifications generated in later years; ~~and~~

Sec. 13. 36 MRSA §5200-A, sub-§2, ¶Q, as enacted by PL 2005, c. 644, §10, is amended to read:

Q. For income tax years beginning on or after January 1, 2006, to the extent included in federal taxable income and not otherwise removed from Maine taxable income, an amount equal to the total of capital gains and ordinary income resulting from depreciation recapture determined in accordance with the Code, Sections 1245 and 1250 that is realized upon the sale of property certified as multifamily affordable housing property by the Maine State Housing Authority in accordance with Title 30-A, section 4722, subsection 1, paragraph AA.; and

Sec. 14. 36 MRSA §5200-A, sub-§2, ¶R is enacted to read:

R. For income tax years beginning on or after January 1, 2008, all items of income, gain, interest, dividends, royalties and other income of a real estate investment trust subject to the tax imposed by section 5208, to the extent that those items are passed through to the taxpayer for federal income tax purposes, including, if the real estate investment trust is an S corporation, the taxpayer's pro rata share and, if the real estate investment trust is a partnership or limited liability company, the taxpayer's distributive share. A subtraction may not be made under this paragraph for:

(1) Any dividends or other distributions with respect to a taxpayer's ownership interest in a real estate investment trust; and

(2) Any gain recognized on the disposition by the taxpayer of an ownership interest in a real estate investment trust.

Sec. 15. 36 MRSA c. 820 is enacted to read:

CHAPTER 820

REAL ESTATE INVESTMENT TRUSTS

§ 5208. Tax on real estate investment trusts

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Capital asset" means a capital asset as defined in the Code, Section 1221 located in Maine and held by a real estate investment trust.

B. "Tangible capital asset" means, without limitation, one of the following capital assets:

(1) Real estate;

(2) Buildings; and

(3) Motor vehicles.

2. Tax imposed. A tax is imposed for each calendar year or fiscal year ending during that calendar year on a real estate investment trust to the extent that the real estate investment trust recognizes gain upon the sale or exchange of a tangible capital asset during the tax year. The real estate investment trust shall pay a tax on the total net recognized gain resulting from the sale or exchange of a tangible capital asset that occurred during the tax year at the following rates.

If the income is:	The tax is:
Not over $25,000	3.5% of the income
Greater than $25,000 but not over $75,000	$875 plus 7.93% of the excess over $25,000
Greater than $75,000 but not over $250,000	$4,840 plus 8.33% of the excess over $75,000
Greater than $250,000	$19,418 plus 8.93% of the excess over $250,000

3. Treatment of sale or exchange. For purposes of this section, the loss or gain on the sale or exchange of a tangible capital asset must be handled according to this subsection.

A. If the sale or exchange of a tangible capital asset results in a total net recognized loss in the tax year, the real estate investment trust:

(1) May not carry forward or carry back the loss; and

(2) Is not entitled to a refund of any portion of the loss.

B. Gain realized from a sale or exchange of a tangible capital asset is reportable in this State even if recognition of the gain is deferred and regardless of the deferral mechanism.

4. Installment sale. Gain realized from an installment sale, as defined in the Code, Section 453, of a tangible capital asset must be reported, and the corresponding tax imposed by subsection 2 must be paid as the payments are received.

5. Transfer. Gain realized on the transfer of a tangible capital asset must be treated according to this subsection.

A. The gain realized on the transfer of a tangible capital asset in a like-kind exchange, as described in the Code, Section 1031, must be reported, and the corresponding tax imposed by subsection 2 must be paid if and when the gain is recognized for federal income tax purposes.

B. The gain realized on the transfer of a tangible capital asset in an involuntary conversion, as defined in the Code, Section 1033, must be reported, and the corresponding tax imposed by subsection 2 must be paid if and when the gain is recognized for federal income tax purposes.

6. Credit for tax on sale of exchange of capital asset by real estate investment trust. If a real estate investment trust is subject to the tax imposed under subsection 2 in a tax year, there is allowed a nonrefundable credit against the taxes imposed in chapter 805 or chapter 807 for that same tax year. The credit may be claimed only if:

A. The income giving rise to the tax liability under chapter 805 or chapter 807 for the tax year is directly attributable to the net gain recognized from the sale or exchange of a tangible capital asset; and

B. The real estate investment trust paid tax on that net recognized gain as provided for in subsection 2.

The credit is limited in amount to the tax liability imposed in subsection 2. The credit may not be used to offset or reduce the Maine tax liability of any other affiliated entity. The credit may not be carried forward or carried back.

7. Use of revenue. The State Tax Assessor annually shall certify the taxes, less any credit or refund, collected pursuant to this section to the State Controller. The State Controller, no later than 30 days following receipt of the certification, shall transfer the certified amount to the Land for Maine's Future Fund established in Title 5, section 6203.

8. Rulemaking. The bureau shall adopt routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A, and publish forms to carry out the purposes of this section, including ensuring that the credit allowed in subsection 6 is accurately claimed.

Sec. 16. Application. This Act applies to tax years beginning on or after January 1, 2008.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

Under current law, real estate investment trusts, or "REITs," which are a type of corporation that invests in real estate, are not taxed at the corporate or entity level, although distributions from the REIT are taxable income to participants in the REIT.

This bill taxes REITs at the corporate level at the same rate as other corporations are taxed in Maine. Revenue generated by this tax is dedicated to the Land for Maine's Future Fund. The bill also amends

current law to require an individual to modify that individual's taxable income based on any items of loss or gain by the REIT that are passed through the REIT to the individual.