

MAINE STATE LEGISLATURE

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Legislative Document

No. 2074

H.P. 1458

House of Representatives, December 21, 2007

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

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 19, 2007. Referred to the Committee on Taxation pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DUCHESNE of Hudson.
Cosponsored by Senator PERRY of Penobscot and
Representatives: BERRY of Bowdoinham, EBERLE of South Portland, PILON of Saco,
PINGREE of North Haven, PIOTTI of Unity, WATSON of Bath.

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

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

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

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

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

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

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

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

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

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

30 **3-A. Real estate investment trust.** "Real estate investment trust" means a real estate
31 investment trust as defined in the Code, Section 856.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (d) "Sustainably managed" means:

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

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

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

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

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

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

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

39 (e) For eligible timberlands held by the taxpayer for at least a 14-year
40 period beginning on or after January 1, 2005 but less than a 15-year

1 period beginning on or after January 1, 2005, 1/3 of the gain
2 recognized on the sale of the eligible timberlands;

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

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

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

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

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

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

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

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

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

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

4 (3) Taxpayers claiming this credit must attach a sworn statement from a forester
5 licensed pursuant to Title 32, chapter 76 that the timberlands for which the credit
6 is claimed have been managed sustainably. For the purposes of this
7 subparagraph, "sustainably" means that the timberlands for which the credit is
8 claimed have been managed to protect soil productivity and to maintain or
9 improve stand productivity and timber quality; known occurrences of threatened
10 or endangered species and rare or exemplary natural communities; significant
11 wildlife habitat and essential wildlife habitat; and water quality, wetlands and
12 riparian zones. Upon request of the State Tax Assessor, the Director of the Bureau
13 of Forestry within the Department of Conservation may provide assistance in
14 determining whether timberlands for which the credit is claimed have been
15 managed sustainably. When assistance is requested under this subparagraph, the
16 director or the director's designee may enter and examine the timberlands for the
17 purpose of determining whether the timberlands have been managed sustainably.

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

26 This modification may not reduce Maine taxable income to less than zero. To the
27 extent this modification results in Maine taxable income that is less than zero for the
28 taxable year, the excess negative modification amount may be carried forward and
29 applied as a subtraction modification for up to 10 taxable years. The entire amount of
30 the excess negative modification must be carried to the earliest of the taxable years to
31 which, by reason of this subsection, the negative modification may be carried and
32 then to each of the other taxable years to the extent the unused negative modification
33 is not used for a prior taxable year. Earlier carry-forward modifications must be used
34 before newer modifications generated in later years; and

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

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

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

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

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

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

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

13 **CHAPTER 820**

14 **REAL ESTATE INVESTMENT TRUSTS**

15 **§5208. Tax on real estate investment trusts**

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

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

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

22 (1) Real estate;

23 (2) Buildings; and

24 (3) Motor vehicles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

