
HOUSE BILL No. 1684

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-1-34.5.

Synopsis: Captive real estate investment trusts. Restricts the definition of "captive real estate investment trust" in current law by excluding the following entities from the 50% ownership condition: (1) A real estate investment trust that is not itself a captive real estate investment trust. (2) A qualified foreign entity. (3) An Australian property trust.

Effective: January 1, 2009 (retroactive).

Friend

January 16, 2009, read first time and referred to Committee on Rules and Legislative Procedures.

C
o
p
y



Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

C
O
P
Y

HOUSE BILL No. 1684

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-3-1-34.5, AS ADDED BY P.L.211-2007,
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2009 (RETROACTIVE)]: Sec. 34.5. (a) Except as
4 provided in subsection (b), "captive real estate investment trust" means
5 a corporation, a trust, or an association:
6 (1) that is considered a real estate investment trust for the taxable
7 year under Section 856 of the Internal Revenue Code;
8 (2) that is not regularly traded on an established securities market;
9 and
10 (3) in which more than fifty percent (50%) of the:
11 (A) voting power;
12 (B) beneficial interests; or
13 (C) shares;
14 are owned or controlled, directly or constructively, by a single
15 entity that is subject to Subchapter C of Chapter 1 of the Internal
16 Revenue Code.
17 (b) The term does not include a corporation, a trust, or an



1 association in which more than fifty percent (50%) of the entity's voting
 2 power, beneficial interests, or shares are owned by a single entity
 3 described in subsection (a)(3) that is owned or controlled, directly or
 4 constructively, by:

5 (1) a corporation, a trust, or an association that:

6 (A) is considered a real estate investment trust under Section
 7 856 of the Internal Revenue Code; **and**

8 **(B) is not a captive real estate investment trust (as defined**
 9 **in subsection (a));**

10 (2) a person exempt from taxation under Section 501 of the
 11 Internal Revenue Code; **or**

12 (3) a real estate investment trust that:

13 (A) is intended to become regularly traded on an established
 14 securities market; and

15 (B) satisfies the requirements of Section 856(a)(5) and Section
 16 856(a)(6) of the Internal Revenue Code under Section 856(h)
 17 of the Internal Revenue Code;

18 **(4) a qualified foreign entity; or**

19 **(5) a listed Australian property trust.**

20 (c) For purposes of this section, the constructive ownership rules of
 21 Section 318 of the Internal Revenue Code, as modified by Section
 22 856(d)(5) of the Internal Revenue Code, apply to the determination of
 23 the ownership of stock, assets, or net profits of any person.

24 **(d) As used in this section, "qualified foreign entity" means a**
 25 **corporation, trust, association, or partnership that is organized**
 26 **outside the laws of the United States and satisfies the following**
 27 **criteria:**

28 **(1) At least seventy-five percent (75%) of the entity's total**
 29 **asset value at the close of its taxable year is represented by**
 30 **real estate assets (as defined by Section 856(c)(5)(B) of the**
 31 **Internal Revenue Code, including shares or certificates of a**
 32 **beneficial interest in any real estate investment trust), cash**
 33 **and cash equivalents, and United States government**
 34 **securities.**

35 **(2) The entity:**

36 **(A) is not subject to taxation on amounts distributed to its**
 37 **beneficial owners; or**

38 **(B) is exempt from entry level taxation.**

39 **(3) The entity annually distributes at least eighty-five percent**
 40 **(85%) of its taxable income (as computed in the jurisdiction**
 41 **in which it is organized) to the holders of its shares or**
 42 **certificates of a beneficial interest.**

C
O
P
Y



- 1 **(4) Either of the following applies to the entity:**
- 2 **(A) Not more than ten percent (10%) of:**
- 3 **(i) the voting power; or**
- 4 **(ii) the value of the entity;**
- 5 **is held directly, indirectly, or constructively by a single**
- 6 **entity or individual.**
- 7 **(B) The shares or beneficial interests of the entity are**
- 8 **regularly traded on an established securities market.**
- 9 **(5) The entity is organized in a country that has a tax treaty**
- 10 **with the United States.**
- 11 **(e) As used in this section, "Australian property trust" means**
- 12 **either of the following:**
- 13 **(1) An Australian unit trust registered under the Australian**
- 14 **Corporations Act in which the principal class of units is listed**
- 15 **on a recognized stock exchange in Australia and is regularly**
- 16 **traded on an established securities market.**
- 17 **(2) An entity organized as a trust in which a listed Australian**
- 18 **property trust owns or controls, directly or indirectly, at least**
- 19 **seventy-five percent (75%) of the voting power or value of the**
- 20 **beneficial interests or shares in the trust.**
- 21 SECTION 2. [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]
- 22 **IC 6-3-1-34.5, as amended by this act, applies only to taxable years**
- 23 **beginning after December 31, 2008.**
- 24 SECTION 3. **An emergency is declared for this act.**

C
O
P
Y

