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I N   S E N A T E

June 14, 2016

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Introduced by Sen. YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to qualified financial instruments of RICS and REITS

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The opening paragraph of paragraph (a) of subdivision 5 of  
2     section 210-A of the tax law, as amended by section 4 of part P of chap-  
3     ter 60 of the laws of 2016, is amended to read as follows:  
4     A financial instrument is a "nonqualified financial instrument" if it  
5     is not a qualified financial instrument. A qualified financial instru-  
6     ment means a financial instrument that is of a type described in any of  
7     clauses (A), (B), (C), (D), (G), (H) or (I) of subparagraph two of this  
8     paragraph and that has been marked to market in the taxable year by the  
9     taxpayer under section 475 or section 1256 of the internal revenue code.  
10    Further, if the taxpayer has in the taxable year marked to market a  
11    financial instrument of the type described in any of the clauses (A),  
12    (B), (C), (D), (G), (H) or (I) of subparagraph two of this paragraph,  
13    then any financial instrument within that type described in the above  
14    specified clause or clauses that has not been marked to market by the  
15    taxpayer under section 475 or section 1256 of the internal revenue code  
16    is a qualified financial instrument in the taxable year. Notwithstanding  
17    the two preceding sentences, (i) a loan secured by real property shall  
18    not be a qualified financial instrument, (ii) if the only loans that are  
19    marked to market by the taxpayer under section 475 or section 1256 of  
20    the internal revenue code are loans secured by real property, then no  
21    loans shall be qualified financial instruments, (iii) stock that is  
22    investment capital as defined in paragraph (a) of subdivision five of  
23    section two hundred eight of this article shall not be a qualified  
24    financial instrument, and (iv) stock that generates other exempt income  
25    as defined in subdivision six-a of section two hundred eight of this  
26    article and that is not marked to market under section 475 or section  
27    1256 of the internal revenue code shall not constitute a qualified

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 financial instrument with respect to the income from that stock that is  
 2 described in such subdivision six-a. If a corporation is included in a  
 3 combined report, the definition of qualified financial instrument shall  
 4 be determined on a combined basis. IN THE CASE OF A RIC OR A REIT THAT  
 5 IS NOT A CAPTIVE RIC OR A CAPTIVE REIT, A QUALIFIED FINANCIAL INSTRUMENT  
 6 MEANS A FINANCIAL INSTRUMENT THAT IS OF A TYPE DESCRIBED IN ANY OF  
 7 CLAUSES (A), (B), (C), (D), (G), (H) OR (I) OF SUBPARAGRAPH TWO OF THIS  
 8 PARAGRAPH, OTHER THAN (I) A LOAN SECURED BY REAL PROPERTY, (II) STOCK  
 9 THAT IS INVESTMENT CAPITAL AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION  
 10 FIVE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE, AND (III) STOCK THAT  
 11 GENERATES OTHER EXEMPT INCOME AS DEFINED IN SUBDIVISION SIX-A OF SECTION  
 12 TWO HUNDRED EIGHT OF THIS ARTICLE WITH RESPECT TO THE INCOME FROM THAT  
 13 STOCK THAT IS DESCRIBED IN SUCH SUBDIVISION SIX-A.

14 S 2. Clause (D) of subparagraph 1 of paragraph (d) of subdivision 1 of  
 15 section 210 of the tax law, as amended by section 19 of part T of chap-  
 16 ter 59 of the laws of 2015, is amended to read as follows:

17 (D) Otherwise, for all other taxpayers not covered by clauses (A), (B)  
 18 [and], (C) AND (D-1) of this subparagraph, the amount prescribed by this  
 19 paragraph will be determined in accordance with the following table:

20 If New York receipts are:	The fixed dollar minimum tax is:
21 not more than \$100,000	\$ 25
22 more than \$100,000 but not over \$250,000	\$ 75
23 more than \$250,000 but not over \$500,000	\$ 175
24 more than \$500,000 but not over \$1,000,000	\$ 500
25 more than \$1,000,000 but not over \$5,000,000	\$1,500
26 more than \$5,000,000 but not over \$25,000,000	\$3,500
27 more than \$25,000,000 but not over \$50,000,000	\$5,000
28 more than \$50,000,000 but not over \$100,000,000	\$10,000
29 more than \$100,000,000 but not over \$250,000,000	\$20,000
30 more than \$250,000,000 but not over \$500,000,000	\$50,000
31 more than \$500,000,000 but not over \$1,000,000,000	\$100,000
32 Over \$1,000,000,000	\$200,000

33 S 3. Subparagraph 1 of paragraph (d) of subdivision 1 of section 210  
 34 of the tax law is amended by adding a new clause (D-1) to read as  
 35 follows:

36 (D-1) IN THE CASE OF A REIT OR A RIC THAT IS NOT A CAPTIVE REIT OR  
 37 CAPTIVE RIC, THE AMOUNT PRESCRIBED BY THIS PARAGRAPH WILL BE DETERMINED  
 38 IN ACCORDANCE WITH THE FOLLOWING TABLE:

39 IF NEW YORK RECEIPTS ARE:	THE FIXED DOLLAR MINIMUM TAX IS:
40 NOT MORE THAN \$100,000	\$ 25
41 MORE THAN \$100,000 BUT NOT OVER \$250,000	\$ 75
42 MORE THAN \$250,000 BUT NOT OVER \$500,000	\$ 175
43 MORE THAN \$500,000	\$ 500

44 S 4. The opening paragraph of paragraph (a) of subdivision 5 of  
 45 section 11-654.2 of the administrative code of the city of New York, as  
 46 amended by section 16 of part P of chapter 60 of the laws of 2016, is  
 47 amended to read as follows:

48 A financial instrument is a "nonqualified financial instrument" if it  
 49 is not a qualified financial instrument. A qualified financial instru-  
 50 ment means a financial instrument that is of a type described in any of  
 51 [clause] CLAUSES (i), (ii), (iii), (iv), (vii), (viii) or (ix) of  
 52 subparagraph two of this paragraph and that has been marked to market in

1 the taxable year by the taxpayer under section 475 or section 1256 of  
 2 the internal revenue code. Further, if the taxpayer has in the taxable  
 3 year marked to market a financial instrument of the type described in  
 4 any of [clause] CLAUSES (i), (ii), (iii), (iv), (vii), (viii) or (ix) of  
 5 subparagraph two of this paragraph, then any financial instrument within  
 6 that type described in the above specified clause or clauses that has  
 7 not been marked to market by the taxpayer under section 475 or section  
 8 1256 of the internal revenue code is a qualified financial instrument in  
 9 the taxable year. Notwithstanding the two preceding sentences, (i) a  
 10 loan secured by real property shall not be a qualified financial instru-  
 11 ment, (ii) if the only loans that are marked to market by the taxpayer  
 12 under section 475 or section 1256 of the internal revenue code are loans  
 13 secured by real property, then no loans shall be qualified financial  
 14 instruments, (iii) stock that is investment capital as defined in para-  
 15 graph (a) of subdivision four of section 11-652 of this subchapter shall  
 16 not be a qualified financial instrument, and (iv) stock that generates  
 17 other exempt income as defined in subdivision five-a of section 11-652  
 18 of this subchapter and that is not marked to market under section 475 or  
 19 section 1256 of the internal revenue code shall not constitute a quali-  
 20 fied financial instrument with respect to the income from that stock  
 21 that is described in such subdivision five-a. If a corporation is  
 22 included in a combined report, the definition of qualified financial  
 23 instrument shall be determined on a combined basis. IN THE CASE OF A  
 24 RIC OR A REIT THAT IS NOT A CAPTIVE RIC OR A CAPTIVE REIT, A QUALIFIED  
 25 FINANCIAL INSTRUMENT MEANS A FINANCIAL INSTRUMENT THAT IS OF A TYPE  
 26 DESCRIBED IN ANY OF CLAUSES (I), (II), (III), (IV), (VII), (VIII) OR  
 27 (IX) OF SUBPARAGRAPH TWO OF THIS PARAGRAPH, OTHER THAN (I) A LOAN  
 28 SECURED BY REAL PROPERTY, (II) STOCK THAT IS INVESTMENT CAPITAL AS  
 29 DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION 11-652 OF THIS  
 30 SUBCHAPTER, AND (III) STOCK THAT GENERATES OTHER EXEMPT INCOME AS  
 31 DEFINED IN SUBDIVISION FIVE-A OF SECTION 11-652 OF THIS SUBCHAPTER WITH  
 32 RESPECT TO THE INCOME FROM THAT STOCK THAT IS DESCRIBED IN SUCH SUBDIVI-  
 33 SION FIVE-A.

34 S 5. Clause (iv) of subparagraph 1 of paragraph (e) of subdivision 1  
 35 of section 11-654 of the administrative code of the city of New York, as  
 36 added by section 1 of part D of chapter 60 of the laws of 2015, is  
 37 amended to read as follows:

38 (iv) If New York city receipts are:	Fixed dollar minimum
39	tax is:
40 Not more than \$100,000	\$25
41 More than \$100,000 but not over \$250,000	\$75
42 More than \$250,000 but not over \$500,000	\$175
43 More than \$500,000 but not over \$1,000,000	\$500
44 More than \$1,000,000 but not over \$5,000,000	\$1,500
45 More than \$5,000,000 but not over \$25,000,000	\$3,500
46 More than \$25,000,000 but not over \$50,000,000	\$5,000
47 More than \$50,000,000 but not over \$100,000,000	\$10,000
48 More than \$100,000,000 but not over \$250,000,000	\$20,000
49 More than \$250,000,000 but not over \$500,000,000	\$50,000
50 More than \$500,000,000 but not over \$1,000,000,000	\$100,000
51 Over \$1,000,000,000	\$200,000

52 For purposes of this clause, New York city receipts are the receipts  
 53 computed in accordance with section 11-654.2 of this subchapter for the  
 54 taxable year. If the taxable year is less than twelve months, the amount  
 55 prescribed by this clause shall be reduced by twenty-five percent if the  
 56 period for which the taxpayer is subject to tax is more than six months

1 but not more than nine months and by fifty percent if the period for  
2 which the taxpayer is subject to tax is not more than six months. If the  
3 taxable year is less than twelve months, the amount of New York city  
4 receipts for purposes of this clause is determined by dividing the  
5 amount of the receipts for the taxable year by the number of months in  
6 the taxable year and multiplying the result by twelve.

7 PROVIDED HOWEVER, IN THE CASE OF A REIT OR RIC THAT IS NOT A CAPTIVE  
8 REIT OR A CAPTIVE RIC, THE FOLLOWING SCHEDULE SHALL APPLY:

9 IF NEW YORK CITY RECEIPTS ARE:	FIXED DOLLAR MINIMUM
10	TAX IS:
11 NOT MORE THAN \$100,000	\$25
12 MORE THAN \$100,000 BUT NOT OVER \$250,000	\$75
13 MORE THAN \$250,000 BUT NOT OVER \$500,000	\$175
14 MORE THAN \$500,000	\$500

15 S 6. This act shall take effect immediately; provided however that  
16 sections one, two and three of this act shall be deemed to have been in  
17 full force and effect on the same date and in the same manner as part A  
18 of chapter 59 of the laws of 2014, took effect; and provided further  
19 that sections four and five of this act shall be deemed to have been in  
20 full force and effect on the same date and in the same manner as part D  
21 of chapter 60 of the laws of 2015, took effect.