S T A T E O F N E W Y O R K

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I N S E N A T E

June 14, 2016

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:

Section 1. The opening paragraph of paragraph (a) of subdivision 5 of section 210-A of the tax law, as amended by section 4 of part P of chapter 60 of the laws of 2016, is amended to read as follows:

A financial instrument is a "nonqualified financial instrument" if it is not a qualified financial instrument. A qualified financial instrument means a financial instrument that is of a type described in any of clauses (A), (B), (C), (D), (G), (H) or (I) of subparagraph two of this paragraph and that has been marked to market in the taxable year by the taxpayer under section 475 or section 1256 of the internal revenue code. Further, if the taxpayer has in the taxable year marked to market a financial instrument of the type described in any of the clauses (A), (B), (C), (D), (G), (H) or (I) of subparagraph two of this paragraph, then any financial instrument within that type described in the above specified clause or clauses that has not been marked to market by the taxpayer under section 475 or section 1256 of the internal revenue code is a qualified financial instrument in the taxable year. Notwithstanding the two preceding sentences, (i) a loan secured by real property shall not be a qualified financial instrument, (ii) if the only loans that are marked to market by the taxpayer under section 475 or section 1256 of the internal revenue code are loans secured by real property, then no loans shall be qualified financial instruments, (iii) stock that is investment capital as defined in paragraph (a) of subdivision five of section two hundred eight of this article shall not be a qualified financial instrument, and (iv) stock that generates other exempt income as defined in subdivision six-a of section two hundred eight of this article and that is not marked to market under section 475 or section 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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financial instrument with respect to the income from that stock that is described in such subdivision six-a. If a corporation is included in a combined report, the definition of qualified financial instrument shall be determined on a combined basis. IN THE CASE OF A RIC OR A REIT THAT IS NOT A CAPTIVE RIC OR A CAPTIVE REIT, A QUALIFIED FINANCIAL INSTRUMENT MEANS A FINANCIAL INSTRUMENT THAT IS OF A TYPE DESCRIBED IN ANY OF CLAUSES (A), (B), (C), (D), (G), (H) OR (I) OF SUBPARAGRAPH TWO OF THIS PARAGRAPH, OTHER THAN (I) A LOAN SECURED BY REAL PROPERTY, (II) STOCK THAT IS INVESTMENT CAPITAL AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE, AND (III) STOCK THAT GENERATES OTHER EXEMPT INCOME AS DEFINED IN SUBDIVISION SIX-A OF SECTION TWO HUNDRED EIGHT OF THIS ARTICLE WITH RESPECT TO THE INCOME FROM THAT STOCK THAT IS DESCRIBED IN SUCH SUBDIVISION SIX-A.

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

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

If New York receipts are:	The fixed dollar minimum tax is:
not more than $100,000	$ 25
more than $100,000 but not over $250,000	$ 75
more than $250,000 but not over $500,000	$ 175
more than $500,000 but not over $1,000,000	$ 500
more than $1,000,000 but not over $5,000,000	$1,500
more than $5,000,000 but not over $25,000,000	$3,500
more than $25,000,000 but not over $50,000,000	$5,000
more than $50,000,000 but not over $100,000,000	$10,000
more than $100,000,000 but not over $250,000,000	$20,000
more than $250,000,000 but not over $500,000,000	$50,000
more than $500,000,000 but not over $1,000,000,000	$100,000
Over $1,000,000,000	$200,000

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

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

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

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

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

the taxable year by the taxpayer under section 475 or section 1256 of the internal revenue code. Further, if the taxpayer has in the taxable year marked to market a financial instrument of the type described in any of [clause] CLAUSES (i), (ii), (iii), (iv), (vii), (viii) or (ix) of subparagraph two of this paragraph, then any financial instrument within that type described in the above specified clause or clauses that has not been marked to market by the taxpayer under section 475 or section 1256 of the internal revenue code is a qualified financial instrument in the taxable year. Notwithstanding the two preceding sentences, (i) a loan secured by real property shall not be a qualified financial instrument, (ii) if the only loans that are marked to market by the taxpayer under section 475 or section 1256 of the internal revenue code are loans secured by real property, then no loans shall be qualified financial instruments, (iii) stock that is investment capital as defined in paragraph (a) of subdivision four of section 11-652 of this subchapter shall not be a qualified financial instrument, and (iv) stock that generates other exempt income as defined in subdivision five-a of section 11-652 of this subchapter and that is not marked to market under section 475 or section 1256 of the internal revenue code shall not constitute a qualified financial instrument with respect to the income from that stock that is described in such subdivision five-a. If a corporation is included in a combined report, the definition of qualified financial instrument shall be determined on a combined basis. IN THE CASE OF A RIC OR A REIT THAT IS NOT A CAPTIVE RIC OR A CAPTIVE REIT, A QUALIFIED FINANCIAL INSTRUMENT MEANS A FINANCIAL INSTRUMENT THAT IS OF A TYPE DESCRIBED IN ANY OF CLAUSES (I), (II), (III), (IV), (VII), (VIII) OR (IX) OF SUBPARAGRAPH TWO OF THIS PARAGRAPH, OTHER THAN (I) A LOAN SECURED BY REAL PROPERTY, (II) STOCK THAT IS INVESTMENT CAPITAL AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION 11-652 OF THIS SUBCHAPTER, AND (III) STOCK THAT GENERATES OTHER EXEMPT INCOME AS DEFINED IN SUBDIVISION FIVE-A OF SECTION 11-652 OF THIS SUBCHAPTER WITH RESPECT TO THE INCOME FROM THAT STOCK THAT IS DESCRIBED IN SUCH SUBDIVISION FIVE-A.

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

(iv) If New York city receipts are:

	Fixed dollar minimum tax is:
Not more than $100,000	$25
More than $100,000 but not over $250,000	$75
More than $250,000 but not over $500,000	$175
More than $500,000 but not over $1,000,000	$500
More than $1,000,000 but not over $5,000,000	$1,500
More than $5,000,000 but not over $25,000,000	$3,500
More than $25,000,000 but not over $50,000,000	$5,000
More than $50,000,000 but not over $100,000,000	$10,000
More than $100,000,000 but not over $250,000,000	$20,000
More than $250,000,000 but not over $500,000,000	$50,000
More than $500,000,000 but not over $1,000,000,000	$100,000
Over $1,000,000,000	$200,000

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

but not more than nine months and by fifty percent if the period for which the taxpayer is subject to tax is not more than six months. If the taxable year is less than twelve months, the amount of New York city receipts for purposes of this clause is determined by dividing the amount of the receipts for the taxable year by the number of months in the taxable year and multiplying the result by twelve.
PROVIDED HOWEVER, IN THE CASE OF A REIT OR RIC THAT IS NOT A CAPTIVE REIT OR A CAPTIVE RIC, THE FOLLOWING SCHEDULE SHALL APPLY:

IF NEW YORK CITY RECEIPTS ARE:	FIXED DOLLAR MINIMUM TAX IS:
NOT MORE THAN $100,000	$25
MORE THAN $100,000 BUT NOT OVER $250,000	$75
MORE THAN $250,000 BUT NOT OVER $500,000	$175
MORE THAN $500,000	$500

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