

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 1827

By: Wilson

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5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; imposing  
8 certain tax upon real estate investment trusts;  
9 disallowing certain deduction; amending 68 O.S. 2001,  
10 Section 2353, as last amended by Section 12, Chapter  
11 272, O.S.L. 2006 (68 O.S. Supp. 2007, Section 2353),  
12 which relates to definitions for the Income Tax Code;  
13 modifying definition for taxable income to address  
14 certain dividends received from certain real estate  
15 investment trusts; providing for codification; and  
16 declaring an emergency.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 2358.8 of Title 68, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. The tax imposed by Section 2355 of Title 68 of the Oklahoma  
22 Statutes upon corporations shall be imposed upon real estate  
23 investment trusts and shall be computed only upon that part of the  
24 net income of the real estate investment trust which is subject to  
federal income tax as provided in Sections 857 and 858 of the  
Internal Revenue Code of 1986, as amended, except as otherwise  
provided in this section.

1 B. The term "real estate investment trust" shall have the  
2 meaning ascribed to such term in Section 856 of the Internal Revenue  
3 Code of 1986, as amended.

4 C. The dividends paid deduction otherwise allowed by federal  
5 law in computing net income of a real estate investment trust that  
6 is subject to federal income tax shall not be allowed as a deduction  
7 in computing the tax imposed pursuant to Section 2355 of Title 68 of  
8 the Oklahoma Statutes unless the real estate investment trust is  
9 either:

- 10 1. A publicly traded real estate investment trust; or
- 11 2. A qualified real estate investment trust as defined in this  
12 section.

13 D. For purposes of this section, the term "qualified real  
14 estate investment trust" means any real estate investment trust  
15 other than a real estate investment trust more than fifty percent  
16 (50%) of the voting power or value of the beneficial interests or  
17 shares of which are owned or controlled, directly or indirectly, by  
18 a single entity that is:

- 19 1. Subject to the provisions of Subchapter C of Chapter 1 of  
20 Subtitle A of Title 26 of the United States Code, as amended, and  
21 not exempt from federal income tax pursuant to the provisions of  
22 Section 501 of the Internal Revenue Code of 1986, as amended; and

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1        2. Not a real estate investment trust as defined in this  
2 section or a qualified real estate investment trust subsidiary under  
3 Section 856(i) of the Internal Revenue Code of 1986, as amended.

4        SECTION 2.        AMENDATORY        68 O.S. 2001, Section 2353, as  
5 last amended by Section 12, Chapter 272, O.S.L. 2006 (68 O.S. Supp.  
6 2007, Section 2353), is amended to read as follows:

7        Section 2353. For the purpose of and when used in Section 2351  
8 et seq. of this title, unless the context otherwise requires:

9        1. "Tax Commission" means the Oklahoma Tax Commission;

10       2. "Internal Revenue Code" means the United States Internal  
11 Revenue Code, as the same may be amended or adopted from time to  
12 time applicable to the taxable year; and other provisions of the  
13 laws of the United States relating to federal income taxes, as the  
14 same may be or become effective at any time or from time to time  
15 applicable to the taxable year;

16       3. Any term used in Section 2351 et seq. of this title shall  
17 have the same meaning as when used in a comparable context in the  
18 Internal Revenue Code, unless a different meaning is clearly  
19 required. For all taxable periods covered by Section 2351 et seq.  
20 of this title, the tax status and all elections of all taxpayers  
21 covered by Section 2351 et seq. of this title shall be the same for  
22 all purposes material hereto as they are for federal income tax  
23 purposes except when Section 2351 et seq. of this title specifically  
24 provides otherwise;

1       4. "Resident individual" means a natural person who is  
2 domiciled in this state, and any other natural person who spends in  
3 the aggregate more than seven (7) months of the taxable year within  
4 this state shall be presumed to be a resident for purposes of  
5 Section 2351 et seq. of this title in absence of proof to the  
6 contrary. A natural person who resides less than seven (7) months  
7 of the taxable year within this state is presumed to be a "part-year  
8 resident individual" for purposes of the Oklahoma Income Tax Code,  
9 Section 2351 et seq. of this title, in absence of proof to the  
10 contrary. A "nonresident individual" means an individual other than  
11 a resident individual or a part-year resident individual.

12       For all tax years beginning after December 31, 1981, a  
13 nonresident individual, with respect to foreign earned income and  
14 deductions, shall include an individual who:

- 15           a. during any period of twenty-four (24) consecutive  
16               months is out of the United States at least five  
17               hundred fifty (550) days,
- 18           b. during such period referred to in subparagraph a of  
19               this paragraph is not present in this state for more  
20               than ninety (90) days during any taxable year,
- 21           c. during any period of less than an entire taxable year,  
22               which period is contained within the period referred  
23               to in subparagraph a of this paragraph, is not present  
24               in this state for a number of days in excess of an

1 amount which bears the same ratio to ninety (90) days  
2 as the number of days contained in the period of less  
3 than an entire taxable year bears to three hundred  
4 sixty-five (365), and

- 5 d. during such period referred to in subparagraph a of  
6 this paragraph does not maintain a permanent place of  
7 abode in this state at which the spouse of the  
8 individual, unless such spouse is legally separated,  
9 or minor children of the individual are present for  
10 more than one hundred eighty (180) days;

11 5. "Resident estate" means the estate of a decedent who at  
12 death was domiciled in this state. "Nonresident estate" means an  
13 estate other than a resident estate;

14 6. "Resident trust" means:

- 15 a. a trust, or a portion of a trust, consisting of  
16 property transferred by will of a decedent domiciled  
17 in this state at death, or a trust, or a portion of a  
18 trust, consisting of the property of a person  
19 domiciled in this state if such trust is not  
20 irrevocable, and
- 21 b. a trust, or portion of a trust, consisting of property  
22 of a person domiciled in this state at the time such  
23 property was transferred to the trust if such trust or  
24 portion was then irrevocable or a person domiciled in

1           this state at the time such trust or portion became  
2           irrevocable. A trust, or portion of a trust, is  
3           irrevocable if it is not subject to a power  
4           exercisable solely by the transferor of such property,  
5           at any time, to revest title in the transferor.

6           "Nonresident trust" means a trust other than a  
7           resident trust;

8           7. "Resident partner" means a partner who is a resident  
9           individual, a resident estate, a resident trust or a resident  
10          corporation. "Nonresident partner" means a partner other than a  
11          resident partner;

12          8. "Resident beneficiary" means a beneficiary of an estate or  
13          trust which beneficiary is a resident individual, a resident estate,  
14          a resident trust or a resident corporation. "Nonresident  
15          beneficiary" means a beneficiary other than a resident beneficiary;

16          9. "Resident corporation" means a corporation whose principal  
17          place of business is located within the State of Oklahoma.

18          "Nonresident corporation" means any corporation other than a  
19          resident corporation;

20          10. "Taxable income" with respect to any taxpayer means the  
21          "taxable income", "life insurance company taxable income", "mutual  
22          insurance company taxable income", "(regulated) investment company  
23          taxable income", "real estate investment trust taxable income", and  
24          "cooperatives' taxable income" and any other "taxable income" as

1 defined in the Internal Revenue Code as applies to such taxpayer or  
2 any other income of such taxpayer including, but not limited to,  
3 lump sum distributions as defined by the Internal Revenue Code of  
4 1986, as amended; provided, in the case of income derived from oil  
5 and gas well production, any taxpayer, at his or her option, may  
6 deduct as an allowance for depletion, in lieu of other calculation  
7 of depletion based on the cost of the oil and gas deposit, twenty-  
8 two percent (22%) of the gross income derived from the properties  
9 during the taxable year. Provided further, for tax years beginning  
10 on or after January 1, 1997, and ending on or before December 31,  
11 1999, and for tax years beginning on or after January 1, 2001, and  
12 ending on or before December 31, 2011, for major oil companies as  
13 defined in Section 288.2 of Title 52 of the Oklahoma Statutes, such  
14 allowance shall not exceed fifty percent (50%) of the net income of  
15 the taxpayer (computed without allowance for depletion) from the  
16 property. During taxable years other than those specified herein,  
17 for all taxpayers, such allowance shall not exceed fifty percent  
18 (50%) of the net income of the taxpayer (computed without allowance  
19 for depletion) from the property. If a depletion allowance is  
20 allowed as a deduction in arriving at the adjusted gross income in  
21 the case of an individual, or taxable income for corporations and  
22 trusts, or distributable income of partnerships by the Internal  
23 Revenue Service, the percentage depletion so calculated shall in no

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1 event be a duplication of depletion allowed on the Federal Income  
2 Tax Return.

3 A dividend received from a real estate investment trust, as  
4 provided under Sections 856 to 859, inclusive, of the Internal  
5 Revenue Code, for the taxable year of the trust in which the  
6 dividend is paid shall not be:

7 a. treated as a dividend, and

8 b. included as part of the dividends received deduction  
9 otherwise available to the taxpayer. A deduction  
10 shall be allowed for that portion of wages or salaries  
11 paid or incurred for the taxable year equal to the  
12 amount of the credit allowable for the taxable year  
13 under Section 51 of the Internal Revenue Code and  
14 otherwise disallowed under Section 280C of the  
15 Internal Revenue Code. Deductions with respect to the  
16 following items, however, shall not be allowed:

17 (1) dividends received,

18 (2) losses sustained in other taxable years, except  
19 for the net operating losses as provided in  
20 Section 2358 of this title,

21 (3) taxes on or measured by income, franchise taxes  
22 measured by net income, franchise taxes for the  
23 privilege of doing business and capital stock  
24 taxes imposed by any state,

1           (4) the deduction allowed by Section 168(k) of the  
2           Internal Revenue Code,

3           (5) except as otherwise provided in Section 2358 of  
4           this title, interest expense paid, accrued or  
5           asserted in connection with a dividend of a note  
6           or similar obligation stating the requirement  
7           that such interest is to be paid by the  
8           corporation that dividends such obligation to its  
9           shareholders, and

10          (6) the deduction allowed by Section 199 of the  
11          Internal Revenue Code;

12          11. "Adjusted gross income" means "adjusted gross income" as  
13 defined in the Internal Revenue Code;

14          12. "Oklahoma taxable income" means "taxable income" as  
15 reported (or as would have been reported by the taxpayer had a  
16 return been filed) to the federal government, and in the event of  
17 adjustments thereto by the federal government as finally ascertained  
18 under the Internal Revenue Code, adjusted further as hereinafter  
19 provided;

20          13. "Oklahoma adjusted gross income" means "adjusted gross  
21 income" as reported to the federal government (or as would have been  
22 reported by the taxpayer had a return been filed), or in the event  
23 of adjustments thereby by the federal government as finally  
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1 ascertained under the Internal Revenue Code, adjusted further as  
2 hereinafter provided;

3 14. "State" means any state of the United States, the District  
4 of Columbia, the Commonwealth of Puerto Rico, any territory or  
5 possession of the United States or any political subdivision  
6 thereof; and

7 15. "Taxpayer" means any person subject to a tax imposed by  
8 this Article, or whose income is, in whole or in part, subject to a  
9 tax imposed by any provision of this article.

10 SECTION 3. It being immediately necessary for the preservation  
11 of the public peace, health and safety, an emergency is hereby  
12 declared to exist, by reason whereof this act shall take effect and  
13 be in full force from and after its passage and approval.

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