

2012 -- S 2106

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO TAXATION -- BUSINESS CORPORATION TAX

Introduced By: Senators Tassoni, and Doyle

Date Introduced: January 18, 2012

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 44-11-1 of the General Laws in Chapter 44-11 entitled "Business
2 Corporation Tax" is hereby amended to read as follows:

3 **44-11-1. Definitions.** -- For the purpose of this chapter:

4 (1) (a) "Captive REIT" means a corporation, trust or association:

5 (i) That is considered a real estate investment trust for the taxable year under section 856
6 of the Internal Revenue Code;

7 (ii) That is not regularly traded on an established securities market; and

8 (iii) More than fifty percent (50%) of the voting power or value of the beneficial interests
9 or shares of which at any time during the last half of the taxable year, is owned or controlled,
10 directly or indirectly, by a single entity that is subject to the provisions of Subchapter C of
11 Chapter 1 of the Internal Revenue Code; and

12 (b) "Captive REIT" does not include:

13 (i) A corporation, trust or association more than fifty percent (50%) of the voting power
14 or value of the beneficial interests or shares of which, at any time during which the corporation,
15 trust or association satisfies item (1)(iii) of this subsection, is owned or controlled, directly or
16 indirectly, by:

17 (A) A real estate investment trust other than a real estate investment trust described in
18 item (i) of this subsection; or

19 (B) A person exempt from taxation under section 501(a) of the Internal Revenue Code;

1 or

2 (C) A listed Australian Property Trust; and

3 (ii) Subject to regulations that the tax administrator adopts, a real estate investment trust
4 that is intended to become regularly traded on an established securities market and that satisfies
5 the requirements of section 865(A)(5) and (6) of the Internal Revenue Code by reason of section
6 856(h)(2) of the Internal Revenue Code; and

7 (c) For purposes of this section, the constructive ownership rules prescribed under
8 section 318(a) of the Internal Revenue Code, as modified by section 856(d)(5) of the Internal
9 Revenue Code, shall apply in determining the ownership of stock, assets or net profits of any
10 person.

11 (2) "Corporation" means every corporation, joint-stock company, or association,
12 wherever incorporated, a real estate investment trust, a regulated investment company, a personal
13 holding company registered under the Federal Investment Company Act of 1940, 15 U.S.C.
14 section 80a-1 et seq., and also a trustee or trustees conducting a business where interest or
15 ownership is evidenced by certificates or other written instruments, deriving any income from
16 sources within this state or engaging in any activities or transactions within this state for the
17 purpose of profit or gain, whether or not an office or place of business is maintained in this state,
18 or whether or not the income, activities, or transactions are connected with intrastate, interstate, or
19 foreign commerce, except:

20 (i) State banks, mutual savings banks, federal savings banks, trust companies, national
21 banking associations, building and loan associations, credit unions, and loan and investment
22 companies;

23 (ii) Public service corporations included in chapter 13 of this title, except as otherwise
24 provided in section 44-13-2.2;

25 (iii) Insurance and surety companies;

26 ~~(iv)~~(A) Corporations specified in section 7-6-4, incorporated hospitals, schools, colleges,
27 and other institutions of learning not organized for business purposes and not doing business for
28 profit and no part of the net earnings of which inures to the benefit of any private stockholder or
29 individual, whether incorporated under any general law of this state or by any special act of the
30 general assembly of this state; Any corporation organized for educational purposes and claiming
31 exemption under this paragraph is not exempt with respect to its unrelated business taxable
32 income. Each corporation organized for educational purposes and claiming this exemption must
33 comply with the following:

34 (I) Provide proof of exemption from federal income tax by providing a letter of

1 [determination from the internal revenue service.](#)

2 [\(II\) Provide proof of filing an internal revenue service form 990 in all circumstances.](#)

3 [\(III\) Provide proof of filing an internal revenue service form 990T in all circumstances.](#)

4 [\(B\) If the unrelated business taxable income is greater than zero, these filings shall serve](#)
5 [as explicit proof that the corporation is not using the associated personal property exclusively for](#)
6 [educational purposes in accordance with subdivision 44-3-3\(7\);](#)

7 (v) Fraternal beneficiary societies as set forth in section 27-25-1;

8 (vi) Any corporation expressly exempt from taxation by charter;

9 (vii) Corporations which together with all corporations under direct or indirect common
10 ownership that satisfies the other requirements of this paragraph employ not less than five (5)
11 full-time equivalent employees in the state; which maintain an office in the state; and activities
12 within the state which are confined to the maintenance and management of their intangible
13 investments or of the intangible investments of corporations or business trusts registered as
14 investment companies under the Investment Company Act of 1940, 15 U.S.C. section 80a-1 et
15 seq., and the collection and distribution of the income from those investments or from tangible
16 property physically located outside the state. For purposes of this paragraph, "intangible
17 investments" includes, without limitation, investments in stocks, bonds, notes, and other debt
18 obligations, including debt obligations of affiliated corporations, patents, patent applications,
19 trademarks, trade names, copyrights, and similar types of intangible assets.

20 (3) "Fiscal year" means an accounting period of twelve (12) months ending on the last
21 day of any month other than December.

22 (4) "Place of business" means a regular place of business, which, in turn, means any
23 bona fide office, other than a statutory office, factory, warehouse, or other space which is
24 regularly used by the taxpayer in carrying on its business. Where, as a regular course of business,
25 property of the taxpayer is stored by it in a public warehouse until it is shipped to customers, the
26 warehouse is considered a regular place of business of the taxpayer and, where as a regular course
27 of business, raw material or partially furnished goods of a taxpayer are delivered to an
28 independent contractor to be converted, processed, finished, or improved and the finished goods
29 remain in the possession of the independent contractor until shipped to customers, the plant of the
30 independent contractor is considered a regular place of business of the taxpayer. The mere
31 consignment of goods by the taxpayer to an independent factor outside this state for sale at the
32 consignee's discretion does not constitute the taxpayer as having a regular place of business
33 outside this state.

34 (5) "Taxable year" means the calendar year or the fiscal year ending during the calendar

1 year upon the basis of which the net income is computed under this chapter. "Taxable year"
2 means, in the case of a return made for a fractional part of a year under the provisions of this
3 chapter or under regulations prescribed by the tax administrator, the period for which the return is
4 made.

5 (6) "Taxpayer" means and includes any corporation subject to the provisions of this
6 chapter.

7 SECTION 2. Section 44-30-1 of the General Laws in Chapter 44-30 entitled "Personal
8 Income Tax" is hereby amended to read as follows:

9 **44-30-1. Persons subject to tax.** -- (a) Imposition of tax. - A Rhode Island personal
10 income tax determined in accordance with the rates set forth in section 44-30-2 is imposed for
11 each taxable year (which shall be the same as the taxable year for federal income tax purposes) on
12 the Rhode Island income of every individual, estate, and trust.

13 (b) Partners and partnerships. - A partnership as such shall not be subject to the Rhode
14 Island personal income tax. Persons carrying on business as partners shall be liable for the Rhode
15 Island personal income tax only in their separate or individual capacities.

16 (c) Associations taxable as corporations. - An association, trust, or other unincorporated
17 organization, which is taxable as a corporation under the provisions of chapter 11 of this title,
18 shall not be subject to the Rhode Island personal income tax.

19 (d)(1) Exempt trusts and organizations. - A trust or other unincorporated organization,
20 which by reason of its purposes or activities is exempt from federal income tax, shall be exempt
21 from the Rhode Island personal income tax, except with respect to its unrelated business taxable
22 income. Each trust or unincorporated organization operated primarily with an educational purpose
23 must comply with this provision by providing the following:

24 (i) Proof of exemption from federal income tax due to purposes or activities must be
25 evidenced by providing a letter of determination from the internal revenue service.

26 (ii) A trust or unincorporated organization claiming exemption from the Rhode Island
27 personal income tax must provide proof of filing an internal revenue service form 990 in all
28 circumstances.

29 (iii) A trust or unincorporated organization claiming exemption from the Rhode Island
30 personal income tax must provide proof of filing an internal revenue service form 990T in all
31 circumstances.

32 (2) If the unrelated business taxable income is greater than zero, these filings shall serve
33 as explicit proof that the trust or unincorporated organization is not using the associated personal
34 property exclusively for educational purposes in accordance with subdivision 44-3-3(7).

1 (e) Cross references. - For definitions of Rhode Island income of:

2 (1) Resident individuals, see section 44-30-12.

3 (2) Resident estate or trust, see section 44-30-16.

4 (3) Nonresident individual, see section 44-30-32.

5 (4) Nonresident estate or trust, see section 44-30-35.

6 SECTION 3. Section 7-6-4 of the General Laws in Chapter 7-6 entitled "Rhode Island
7 Nonprofit Corporation Act" is hereby amended to read as follows:

8 **7-6-4. Purposes.** - (a) Corporations may be organized under this chapter for any lawful
9 purpose or purposes subject to the condition that no part of the net income or profit of any
10 corporation will be distributable to its members, directors, or officers. Subject to that condition,
11 the purpose or purposes for which corporations may be organized under this chapter include, but
12 are not limited to, any one or more of the following purposes or activities:

13 (1) Charitable; benevolent; eleemosynary; educational; civic; patriotic; political;
14 religious; social; recreational; fraternal; literary; cultural; athletic; scientific; agricultural;
15 horticultural; animal husbandry; health services; and professional, commercial, industrial, or trade
16 association;

17 (2) Libraries; and fire engine companies;

18 (3) Constructing, acquiring, leasing, fostering, encouraging and assisting the physical
19 location, settlement or resettlement of industrial, manufacturing, commercial, or recreational
20 facilities or enterprises within the state;

21 (4) Planning, constructing, erecting, maintaining, operating, and managing land,
22 buildings, and improvements in projects undertaken pursuant to chapters 31 -- 33 of title 45;

23 (5) Engaging in municipal projects authorized by the governing body of the
24 municipality; and

25 (6) Providing housing and related facilities and services for elderly persons.

26 (b) Corporations organized pursuant to this chapter with an educational purpose and
27 claiming or utilizing an exemption under chapter 44-11 shall not be exempt from taxation with
28 respect to its unrelated business taxable income. Each corporation claiming an exemption under
29 chapter 44-11 shall:

30 (1) Provide proof of exemption from federal income tax by providing a letter of
31 determination from the internal revenue service.

32 (2) Provide proof of filing an internal revenue service form 990 in all circumstances.

33 (3) Provide proof of filing an internal revenue service form 990T in all circumstances.

34 (i) If the unrelated business taxable income for corporations specified under subsection 7-

1 6-4(b) is greater than zero, these filings shall serve as explicit proof that the trust or
2 unincorporated organization is not using the associated personal property exclusively for
3 educational purposes in accordance with subdivision 44-3-3(7).

4 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION -- BUSINESS CORPORATION TAX

1 This act would require certain corporations claiming an exemption as a nonprofit to
2 provide internal revenue service filings as proof that the corporation is using its associated
3 personal property exclusively for educational purposes.

4 This act would take effect upon passage.

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