

3NAREIT

State & Local *Tax Policy*

# Bulletin

October 15, 1999

## New State Tax Developments

Next SALT Subcommittee Conference Call - **Tuesday, October 19, 1999 at 3:00 p.m. EST.** All interested parties are invited to attend. To be connected, please dial 1-800-288-1826. We will discuss the status of our lobbying effort in Tennessee as well as the other topics below.

**Alabama: No New Tax Scheme Yet.** As noted in the last SALT Bulletin, earlier this year, the U.S. Supreme Court in South Central Bell Telephone Co. v. Alabama declared Alabama's franchise tax unconstitutional and remanded the case to the Alabama Supreme Court to determine the appropriate remedy. We understand that the remanded case is still pending before the Alabama Supreme Court. We also understand that the Governor has stated publicly that "business" should pay for the approximately \$140 million shortfall in this year's budget. The Alabama legislature is considering a variety of alternative taxing schemes, but no specific alternative has been proposed. Stay tuned for further details.

**Arizona: DRD Ruling Clarified.** The Arizona Department of Revenue recently issued Corporate Tax Ruling 99-7, which supersedes Corporate Tax Ruling 99-2, discussed in the last SALT Bulletin. As in CTR 99-2, CTR 99-7 clarifies that "REIT Taxable Income," as calculated for federal income tax purposes (including the dividends paid deduction), is the starting point for determining Arizona taxable income. Furthermore, this ruling also provides that a REIT's corporate shareholder is entitled to the dividends received deduction ("DRD") as long as the shareholder meets the "control" requirements for the DRD under Arizona law. Under Arizona law, shareholders that own "50 percent or more of the voting stock of the payor corporation" satisfy this "control" requirement.

The last SALT Bulletin mentioned CTR 99-2's incorrect conclusion that this control requirement "cannot be satisfied after the REIT's first year of existence." CTR 99-7 correctly concludes that this control requirement "will generally not be satisfied after the REIT's first year of existence." Thus, a widely-held corporation that owns 50% or more of a REIT could still qualify for a DRD under Arizona law (unless the Administration's "closely held REIT" proposal is enacted). CTR 99-7 is reproduced at:  
<http://www.revenue.state.az.us/framerul/rulingf.htm>

**Florida: Is Partially Completed Property Subject to Florida Property Taxes?** Pending before the Florida Supreme Court is Fuchs v. Robbins, in which a lower court declared unconstitutional a 37-year old law prohibiting the assessment for property tax purposes of property that was not "substantially completed." Because Florida's local property taxes typically are not less than 2% of the assessed value of the real property, the Florida Supreme Court's agreement with the lower court could mean a significantly increased property tax bill for those REITs with Florida properties still under construction. NAREIT is seeking to determine the extent to which this affects our members. If your company is affected by this issue, please contact Dara Freedman by email at [dfreedman@nareit.com](mailto:dfreedman@nareit.com) or by telephone at (202) 739-9446.

**Ohio: Municipalities Denying DPD.** We continue to hear from our members that there are certain municipalities in the state of Ohio that have refused to allow a REIT a deduction for dividends paid ("DPD"). In some cases, their conclusions

NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS, INC.

1875 Eye Street NW, Suite 600, Washington, DC 20006-5413 • 202 739 9400, 800 3NAREIT • 202 739 9401 fax • [www.nareit.com](http://www.nareit.com)

© Copyright 1999 National Association of Real Estate Investment Trusts®

are based on their determination that the DPD is not an "ordinary business expense" under their statutes. As you may know, recently NAREIT members were able to defeat similar challenges to the DPD in New Jersey and Texas. We would like hear from those of you that have faced this issue in Ohio. Please contact Dara Freedman at NAREIT to let us know.

**Tennessee: Lobbying Effort Continues.** NAREIT continues to work with a coalition of about 40 of its corporate members to seek legislation that would repeal or reduce the impact of Tennessee's new franchise and excise taxes on REIT-owned limited liability entities. In late September, a joint committee of the Tennessee legislature heard testimony on our behalf that the enactment of the new taxes on limited liability entities was an example of the counter-productive patchwork of taxes that have had to be imposed to partly fund Tennessee's deficit. Dean Jernigan, CEO of Storage USA, Inc., a Tennessee-based REIT, described to the joint panel the negative impact of these new taxes on Tennessee real property values. In addition, an economist commissioned by our coalition presented a study demonstrating the negative effect on property values (and the concomitant reduction in property tax receipts) as a

result of the new taxes. Further meetings with key legislators and administrative personnel are planned. If you have any questions about or would like to offer any assistance with this effort, please contact Dara Freedman at NAREIT.

**Wisconsin: Will Corporate Limited Partners be Subject to Tax?** Proposed legislation in Wisconsin repeals the current exclusion from corporate income taxation of those corporations whose only contact with Wisconsin is that of a limited partner of a partnership doing business in Wisconsin. This legislation is viewed as highly likely to be enacted and may be retroactive to January 1, 1999. In appropriate fact patterns, this legislation could subject REITs to a new filing responsibility. However, given that Wisconsin law allows the DPD, this change should not cause a material tax liability for REITs.

Please contact NAREIT's REIT Counsel, Dara L. Freedman, at (202) 739-9446 or e-mail: [dfreedman@nareit.com](mailto:dfreedman@nareit.com) if you would like to contribute to the State & Local Tax Policy Bulletin or to advise of any state tax changes or developments that affect the REIT and publicly traded real estate industry.