



General Assembly

Substitute Bill No. 448

February Session, 2016

* SB00448FIN 040816 *

AN ACT CONCERNING STATE TAX POLICY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subparagraph (A) of subdivision (28) of subsection (a) of
2 section 12-213 of the 2016 supplement to the general statutes is
3 repealed and the following is substituted in lieu thereof (*Effective from*
4 *passage and applicable to income years commencing on or after January 1,*
5 *2016*):

6 (28) (A) "Captive real estate investment trust" means, except as
7 provided in subparagraph (B) of this subdivision, a corporation, a trust
8 or an association (i) that is considered a real estate investment trust for
9 the taxable year under Section 856 of the Internal Revenue Code; (ii)
10 that is not regularly traded on an established securities market; (iii) in
11 which more than fifty per cent of the voting power, beneficial interests
12 or shares are owned or controlled, directly or constructively, by a
13 single entity that is subject to Subchapter C of Chapter 1 of the Internal
14 Revenue Code; and (iv) that is not a qualified real estate investment
15 trust, as defined in subdivision (3) of subsection (a) of section 12-217.
16 Any voting power, beneficial interests or shares in a real estate
17 investment trust that are directly owned or controlled by a segregated
18 asset account of a life insurance company, as described in Section 817
19 of the Internal Revenue Code, shall not be taken into account for
20 purposes of determining whether a real estate investment trust is a

21 captive real estate investment trust.

22 Sec. 2. Subsection (b) of section 12-218 of the 2016 supplement to the
23 general statutes is repealed and the following is substituted in lieu
24 thereof (*Effective from passage and applicable to income years commencing*
25 *on or after January 1, 2016*):

26 (b) Except as otherwise provided in this chapter, on and after
27 January 1, 2016, the net income of the taxpayer shall be apportioned
28 within and without the state by means of an apportionment fraction.
29 The apportionment fraction shall represent the part of the taxpayer's
30 gross receipts from sales or other sources during the income year,
31 computed according to the method of accounting used in the
32 computation of its entire net income, which is assignable to the state,
33 and excluding any gross receipts attributable to an international
34 banking facility as defined in section 12-217. [, but including] For the
35 purposes of this subsection:

36 (1) Gross receipts from sales of tangible personal property are
37 assignable to this state if the property is delivered or shipped to a
38 purchaser within this state, other than a company which qualifies as a
39 Domestic International Sales Corporation (DISC) as defined in Section
40 992 of the Internal Revenue Code of 1986, or any subsequent
41 corresponding internal revenue code of the United States, as from time
42 to time amended, and as to which a valid election under Subsection (b)
43 of said Section 992 to be treated as a DISC is effective, regardless of the
44 F.O.B. point or other conditions of the sale. [,]

45 (2) Gross receipts from services [performed within the state, rentals
46 and royalties from properties situated within the state, royalties from
47 the use of patents or copyrights within the state,] are assignable to this
48 state if the market for services is in this state. The taxpayer's market for
49 the services is in this state if and to the extent the service is used at a
50 location in this state.

51 (3) Gross receipts from the rental, lease or license of real or tangible

52 personal property are assignable to this state to the extent such
53 property is situated within the state.

54 (4) Gross receipts from the rental, lease or license of intangible
55 property are assignable to this state if and to the extent the property is
56 used in this state. Intangible property utilized in marketing a good or
57 service to a consumer is used in this state if that good or service is
58 purchased by a consumer in this state.

59 (5) Gross receipts from interest managed or controlled within the
60 state [, net gains from the sale or other disposition of intangible assets
61 managed or controlled within the state, net gains from the sale or other
62 disposition of tangible assets situated within the state and all other
63 receipts earned within the state] are assignable to this state.

64 (6) Gross receipts from the sale or other disposition of real property,
65 tangible personal property or intangible property are excluded from
66 the calculation of the apportionment fraction if such property is not
67 held by the taxpayer primarily for sale to customers in the ordinary
68 course of the taxpayer's trade or business.

69 (7) Gross receipts, other than those receipts described in
70 subdivisions (1) to (6), inclusive, of this subsection, are assignable to
71 this state to the extent the taxpayer's market for the sales is in this state.

72 (8) If a taxpayer concludes that it cannot reasonably determine the
73 assignment of its receipts in accordance with subdivisions (1) to (7),
74 inclusive, of this subsection, such taxpayer may petition the
75 commissioner for approval to use a methodology that reasonably
76 approximates the assignment of such receipts provided for in this
77 subsection. Any such petition shall be submitted not later than sixty
78 days prior to the due date of the return for the first income year to
79 which the petition applies, determined with regard to any extension of
80 time for filing such return. The commissioner shall grant or deny such
81 petition before such due date.

82 Sec. 3. Subsection (b) of section 12-222 of the 2016 supplement to the

83 general statutes is repealed and the following is substituted in lieu
84 thereof (*Effective from passage and applicable to income years commencing*
85 *on or after January 1, 2016*):

86 (b) Such return shall be due on or before the first day of the month
87 next succeeding the due date of the company's corresponding federal
88 income tax return for the income year, determined without regard to
89 any extension of time for filing, or, in the case of any company that is
90 not required to file a federal income tax return for the income year, on
91 or before the first day of the [fourth] fifth month next succeeding the
92 end of the income year.

93 Sec. 4. Subdivision (12) of subsection (a) of section 12-407 of the 2016
94 supplement to the general statutes is repealed and the following is
95 substituted in lieu thereof (*Effective October 1, 2016*):

96 (12) "Retailer" includes: (A) Every person engaged in the business of
97 making sales at retail or in the business of making retail sales at
98 auction of tangible personal property owned by the person or others;
99 (B) every person engaged in the business of making sales for storage,
100 use or other consumption or in the business of making sales at auction
101 of tangible personal property owned by the person or others for
102 storage, use or other consumption; (C) every operator, as defined in
103 subdivision (18) of this subsection; (D) every seller rendering any
104 service described in subdivision (2) of this subsection; (E) every person
105 under whom any salesman, representative, peddler or canvasser
106 operates in this state, or from whom such salesman, representative,
107 peddler or canvasser obtains the tangible personal property that is
108 sold; (F) every person with whose assistance any seller is enabled to
109 solicit orders within this state; (G) every person making retail sales
110 from outside this state to a destination within this state and not
111 maintaining a place of business in this state who engages in regular or
112 systematic solicitation of sales of tangible personal property in this
113 state (i) by the display of advertisements on billboards or other
114 outdoor advertising in this state, (ii) by the distribution of catalogs,
115 periodicals, advertising flyers or other advertising by means of print,

116 radio or television media, or (iii) by mail, telegraphy, telephone,
117 computer data base, cable, optic, microwave or other communication
118 system, for the purpose of effecting retail sales of tangible personal
119 property, provided such person has made one hundred or more retail
120 sales from outside this state to destinations within this state during the
121 twelve-month period ended on the September thirtieth immediately
122 preceding the monthly or quarterly period with respect to which such
123 person's liability for tax under this chapter is determined; (H) any
124 person owned or controlled, either directly or indirectly, by a retailer
125 engaged in business in this state which is the same as or similar to the
126 line of business in which such person so owned or controlled is
127 engaged; (I) any person owned or controlled, either directly or
128 indirectly, by the same interests that own or control, either directly or
129 indirectly, a retailer engaged in business in this state which is the same
130 as or similar to the line of business in which such person so owned or
131 controlled is engaged; (J) any assignee of a person engaged in the
132 business of leasing tangible personal property to others, where leased
133 property of such person which is subject to taxation under this chapter
134 is situated within this state and such assignee has a security interest, as
135 defined in subdivision (35) of subsection (b) of section 42a-1-201, in
136 such property; (K) every person making retail sales of items of tangible
137 personal property from outside this state to a destination within this
138 state and not maintaining a place of business in this state who repairs
139 or services such items, under a warranty, in this state, either directly or
140 indirectly through an agent, independent contractor or subsidiary;
141 [and] (L) every person making sales of tangible personal property or
142 services through an agreement with another person located in this
143 state under which such person located in this state, for a commission
144 or other consideration that is based upon the sale of tangible personal
145 property or services by the retailer, directly or indirectly refers
146 potential customers, whether by a link on an Internet web site or
147 otherwise, to the retailer, provided the cumulative gross receipts from
148 sales by the retailer to customers in the state who are referred to the
149 retailer by all such persons with this type of an agreement with the
150 retailer, is in excess of two thousand dollars during the preceding four

151 quarterly periods ending on the last day of March, June, September
152 and December; and (M) every person who has a substantial economic
153 presence within this state, evidenced by a purposeful direction of
154 business toward this state, examined in light of the frequency, quantity
155 and systematic nature of the retailer's economic contacts with this
156 state, without regard to physical presence, and to the extent permitted
157 under the Constitution of the United States.

158 Sec. 5. Subparagraph (A) of subdivision (15) of subsection (a) of
159 section 12-407 of the 2016 supplement to the general statutes is
160 repealed and the following is substituted in lieu thereof (*Effective*
161 *October 1, 2016*):

162 (15) (A) "Engaged in business in the state" means and includes but
163 shall not be limited to the following acts or methods of transacting
164 business: (i) Selling in this state, or any activity in this state in
165 connection with selling in this state, tangible personal property for use,
166 storage or consumption within the state; (ii) engaging in the transfer
167 for a consideration of the occupancy of any room or rooms in a hotel or
168 lodging house for a period of thirty consecutive calendar days or less;
169 (iii) rendering in this state any service described in any of the
170 subparagraphs of subdivision (2) of this subsection; (iv) maintaining,
171 occupying or using, permanently or temporarily, directly or indirectly,
172 through a subsidiary or agent, by whatever name called, any office,
173 place of distribution, sales or sample room or place, warehouse or
174 storage point or other place of business or having any representative,
175 agent, salesman, canvasser or solicitor operating in this state for the
176 purpose of selling, delivering or taking orders; (v) notwithstanding the
177 fact that retail sales are made from outside this state to a destination
178 within this state and that a place of business is not maintained in this
179 state, engaging in regular or systematic solicitation of sales of tangible
180 personal property in this state by the display of advertisements on
181 billboards or other outdoor advertising in this state, by the distribution
182 of catalogs, periodicals, advertising flyers or other advertising by
183 means of print, radio or television media, or by mail, telegraphy,

184 telephone, computer data base, cable, optic, microwave or other
185 communication system, for the purpose of effecting retail sales of
186 tangible personal property, provided one hundred or more retail sales
187 from outside this state to destinations within this state are made
188 during the twelve-month period ended on the September thirtieth
189 immediately preceding the monthly or quarterly period with respect to
190 which liability for tax under this chapter is determined; (vi) being
191 owned or controlled, either directly or indirectly, by a retailer engaged
192 in business in this state which is the same as or similar to the line of
193 business in which the retailer so owned or controlled is engaged; (vii)
194 being owned or controlled, either directly or indirectly, by the same
195 interests that own or control, either directly or indirectly, a retailer
196 engaged in business in this state which is the same as or similar to the
197 line of business in which the retailer so owned or controlled is
198 engaged; (viii) being the assignee of a person engaged in the business
199 of leasing tangible personal property to others, where leased property
200 of such person is situated within this state and such assignee has a
201 security interest, as defined in subdivision (35) of subsection (b) of
202 section 42a-1-201, in such property; (ix) notwithstanding the fact that
203 retail sales of items of tangible personal property are made from
204 outside this state to a destination within this state and that a place of
205 business is not maintained in this state, repairing or servicing such
206 items, under a warranty, in this state, either directly or indirectly
207 through an agent, independent contractor or subsidiary; [and] (x)
208 selling tangible personal property or services through an agreement
209 with a person located in this state, under which such person located in
210 this state, for a commission or other consideration that is based upon
211 the sale of tangible personal property or services by the retailer,
212 directly or indirectly refers potential customers, whether by a link on
213 an Internet web site or otherwise, to the retailer, provided the
214 cumulative gross receipts from sales by the retailer to customers in the
215 state who are referred to the retailer by all such persons with this type
216 of agreement with the retailer is in excess of two thousand dollars
217 during the four preceding four quarterly periods ending on the last
218 day of March, June, September and December; and (xi) having a

219 substantial economic presence within this state, evidenced by a
220 purposeful direction of business toward this state, examined in light of
221 the frequency, quantity and systematic nature of the retailer's
222 economic contacts with this state, without regard to physical presence,
223 and to the extent permitted under the Constitution of the United
224 States.

225 Sec. 6. Subsection (c) of section 12-711 of the 2016 supplement to the
226 general statutes is repealed and the following is substituted in lieu
227 thereof (*Effective January 1, 2017, and applicable to income years*
228 *commencing on or after January 1, 2017*):

229 (c) (1) If a business, trade, profession or occupation is carried on
230 partly within and partly without this state, as determined under rules
231 or regulations of the commissioner, the items of income, gain, loss and
232 deduction derived from or connected with sources within this state
233 shall be determined by apportionment under such rules or regulations
234 and the provisions of this subsection.

235 (2) The proportion of the net amount of the items of income, gain,
236 loss and deduction attributable to the activities of the business, trade,
237 profession or occupation carried on in this state shall be determined by
238 multiplying the net amount of the items of income, gain, loss and
239 deduction of the business, trade, profession or occupation by the
240 [average of the percentages of property, payroll and gross income in
241 this state] gross income percentage. The gross income percentage shall
242 be computed by dividing the gross receipts from sales [of property or
243 services] earned within this state by the total gross receipts from sales,
244 [of property or services,] whether earned within or without this state.
245 For the purposes of this subdivision:

246 (A) Gross receipts from sales of tangible personal property are
247 considered to be earned within this state when the property is
248 delivered or shipped to a purchaser within this state, regardless of the
249 F.O.B. point or other conditions of the sale.

250 (B) Gross receipts from sales of services are considered to be earned
251 within this state [when the services are performed by an employee,
252 agent, agency or independent contractor chiefly situated at, connected
253 by contract or otherwise, with or sent out from, offices or branches of
254 the business, trade, profession or occupation or other agencies or
255 locations situated within this state.] if the market for the services is in
256 this state. The taxpayer's market for services is in this state if and to the
257 extent the service is used at a location in this state.

258 (C) Gross receipts from the rental, lease or license of tangible
259 personal property are considered to be earned within this state if and
260 to the extent such property is situated in this state.

261 (D) Gross receipts from the rental, lease or license of intangible
262 property are considered to be earned within this state if and to the
263 extent such property is used in this state. Intangible property utilized
264 in marketing a good or service to a consumer is used in this state if that
265 good or service is purchased by a consumer in this state.

266 (E) Gross receipts from the sale or other disposition of tangible
267 personal property or intangible property are excluded from the gross
268 income percentage if such property is not held by the taxpayer
269 primarily for sale to customers in the ordinary course of the taxpayer's
270 trade or business.

271 (F) Gross receipts from the sale, rental, lease or license of real
272 property are excluded from the gross income percentage.

273 (G) Gross receipts, other than those receipts described in
274 subparagraphs (A) to (F), inclusive, of this subdivision, are considered
275 to be earned within this state to the extent the taxpayer's market for the
276 sales is in this state.

277 (H) If a taxpayer concludes that it cannot reasonably determine
278 where its gross receipts are earned in accordance with subparagraphs
279 (A) to (G), inclusive, of this subdivision, such taxpayer may petition
280 the commissioner for approval to use a methodology that reasonably

281 approximates the method for determining where such receipts are
282 earned provided for in this subdivision. Any such petition shall be
283 submitted not later than sixty days prior to the due date of the return
284 for the first taxable year to which the petition applies, determined with
285 regard to any extension of time for filing such return. The
286 commissioner shall grant or deny such petition before such due date.

287 Sec. 7. Subsection (a) of section 12-712 of the general statutes is
288 repealed and the following is substituted in lieu thereof (*Effective*
289 *January 1, 2017, and applicable to income years commencing on or after*
290 *January 1, 2017*):

291 (a) (1) The portion of a nonresident partner's distributive share of
292 partnership income that is derived from or connected with sources
293 within this state shall be determined [pursuant to regulations adopted
294 by the commissioner, which regulations shall be consistent] in
295 accordance with the provisions of section 12-711, as amended by this
296 act.

297 (2) The portion of a nonresident shareholder's pro rata share of S
298 corporation income that is derived from or connected with sources
299 within this state shall be determined [pursuant to regulations adopted
300 by the commissioner, which regulations shall be consistent] in
301 accordance with the provisions of section 12-711, as amended by this
302 act.

303 (3) The portion of a nonresident beneficiary's share of trust or estate
304 income that is derived from or connected with sources within this state
305 shall be determined [under regulations adopted by the commissioner,
306 which regulations shall be consistent] in accordance with the
307 provisions of section 12-711, as amended by this act.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage and applicable to income years commencing on or after January 1, 2016</i>	12-213(a)(28)(A)
Sec. 2	<i>from passage and applicable to income years commencing on or after January 1, 2016</i>	12-218(b)
Sec. 3	<i>from passage and applicable to income years commencing on or after January 1, 2016</i>	12-222(b)
Sec. 4	<i>October 1, 2016</i>	12-407(a)(12)
Sec. 5	<i>October 1, 2016</i>	12-407(a)(15)(A)
Sec. 6	<i>January 1, 2017, and applicable to income years commencing on or after January 1, 2017</i>	12-711(c)
Sec. 7	<i>January 1, 2017, and applicable to income years commencing on or after January 1, 2017</i>	12-712(a)

FIN *Joint Favorable Subst.*