

MEMO# 21233

June 15, 2007

Proposed Technical Corrections Language for New York Captive RIC Legislation; Comments Requested

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TO: TAX COMMITTEE No. 27-07

VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 8-07 RE: PROPOSED
TECHNICAL CORRECTIONS LANGUAGE FOR NEW YORK CAPTIVE RIC LEGISLATION;
COMMENTS REQUESTED

The New York General Assembly enacted budget legislation in April [\[1\]](#) that includes provisions to address concerns regarding so-called captive real estate investment trusts ("REITs") and captive regulated investment companies ("RICs"). [\[2\]](#) The captive RIC provisions, which are effective for tax years beginning on or after January 1, 2007, eliminate the dividends paid deduction paid by a controlled RIC and require a controlled RIC to file a combined business corporation tax report with its controlling corporation(s).

This legislation also includes a provision that phases out (50% phase-out for tax years 2007-2008, 75% phase-out for tax years 2009-2010 and 100% phase-out for tax years beginning after 2010) existing deductions for RIC dividends and proceeds on dispositions of RIC interests received by insurance companies.

The New York General Assembly may be considering technical corrections to address concerns that the ICI and others have raised regarding the recent budget legislation. The ICI's specific concerns are that the original legislation could deny deductions to (1) RICs in a fund of funds structure; (2) start-up RICs whose shares are held by a management

company and (3) insurance companies who hold RIC shares on behalf of separate accounts. The ICI's fund of funds concern would be addressed in a working draft (attached) prepared by the New York Department of Taxation and Finance. To address all of the ICI's concerns, we have prepared the following definition of a captive RIC:

"Captive RIC" means a RIC (a) that is not regularly traded on an established securities market, except for a RIC whose shares are owned by a company which holds the shares of the RIC as depositor for the benefit of a separate account; and (b) more than fifty percent of the voting stock of which is owned or controlled, directly or indirectly, by a single corporation that (i) is not exempt from federal income tax; (ii) is not a RIC; and (iii) is not the sponsor of the RIC that organized the RIC by investing seed money in it, provided that more than fifty percent of the RIC is owned by unrelated third parties within 12 months from the initial investment by the sponsor.

This definition could be a modification of subdivision 10 on page one of the attached technicals working draft, or it could be a proposed inclusion in some other legislation. Please review the ICI's proposed provisions and provide me with comments by 4:00 pm (eastern time) on Monday, June 18, 2007. You may contact me at 202-326-5835 or lrobinson@ici.org.

Lisa Robinson
Associate Counsel

[Attachment](#)

endnotes

[1] Go to Part F of <http://assembly.state.ny.us/leg/?bn=S02110&sh=t> to read the legislation.

[2] See Institute [Memorandum](#) (21045) to Tax Committee No. 15-07, dated April 10, 2007.