Guidelines for the Virginia REIT Subtraction

Introduction

During the 2018 Session, the Virginia General Assembly enacted House Bill 365 (2018 *Acts of Assembly*, Chapter 821), which established an individual and corporate income tax subtraction for income attributable to an investment in a Virginia real estate investment trust ("REIT").

These guidelines are published by the Department of Taxation ("the Department") to provide guidance to taxpayers regarding the subtraction for income attributable to an investment in a Virginia REIT. These guidelines are not rules or regulations subject to the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 et seq.) and are being published in accordance with the Tax Commissioner's general authority to supervise the administration of the tax laws of the Commonwealth pursuant to *Va. Code* § 58.1- 202. As necessary, additional information will be published and posted on the Department's website, www.tax.virginia.gov.

These guidelines represent the Department's interpretation of the relevant laws. They do not constitute formal rulemaking and hence do not have the force and effect of law or regulation. In the event that the final determination of any court holds that any provision of these guidelines is contrary to law, taxpayers who follow these guidelines will be treated as relying on erroneous written advice for purposes of waiving penalty and interest under *Va. Code* §§ 58.1-105, 58.1- 1835, and 58.1-1845. To the extent there is a question regarding the application of these guidelines, taxpayers are encouraged to write to the Department and seek a written response to their question.

General Overview

Effective for taxable years beginning on or after January 1, 2019, Virginia allows an individual and corporate income tax subtraction for any income attributable to an investment that was made on or after January 1, 2019, but before December 31, 2024 in an entity that has been certified by the Department as a Virginia REIT. A "Virginia REIT" is a real estate investment trust, as defined in 26 U.S.C. § 856, that has been certified by the Department as having invested at least 90 percent of the trust funds in Virginia and at least 40 percent of the trust funds in localities that are distressed or double distressed.

The subtraction is permitted only to the extent the income is included in an individual taxpayer's federal adjusted gross income or a corporate taxpayer's federal taxable income. If such income was partially excluded or deducted in determining federal adjusted gross income or federal taxable income, it may be subtracted only to the extent included therein. If such income has already been excluded from federal adjusted gross income or federal taxable income, it may not be subtracted again.

No subtraction is allowed for individual income tax purposes for an investment in a trust that is managed by a family member or an affiliate of the taxpayer. In addition, no subtraction is allowed for individual income tax purposes if, for the same investment, the taxpayer has claimed the:

- Subtraction for certain long-term capital gains;
- Subtraction for income attributable to an investment in a Virginia venture capital account; or
- Qualified Equity and Subordinated Debt Investments Tax Credit.

No subtraction is allowed for corporate income tax purposes for an investment in a trust that is managed by an affiliate of the taxpayer or for a taxpayer that has claimed, for the same investment, the:

- Subtraction for certain long-term capital gains; or
- Subtraction for income attributable to an investment in a Virginia venture capital account.

For purposes of the subtraction, "affiliated" means a direct or indirect ownership interest of at least 80 percent in an entity. An indirect ownership interest includes, but is not limited to, direct ownership interests held by a taxpayer's family members or an entity affiliated with such taxpayer or family members, or any combination of these.

For purposes of the subtraction, "family member" means, when applied with respect to an individual taxpayer, (i) spouse, (ii) children, (iii) grandchildren, (iv) parents, (v) spouse's parents, and (vi) grandparents.

Registration and Certification Process

Registration Application

Every REIT desiring to be certified by the Department as a Virginia REIT for purposes of the subtraction must first register with the Department by submitting an application indicating that it intends to invest at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in Virginia localities that are distressed or double distressed. Once the Department determines that a REIT intends to fulfill these requirements, it will provide certification to the REIT stating that the registration application has been approved. Such certification will be valid only for the calendar year for which it was issued.

Certification of Investment

A REIT that has invested at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in Virginia localities may then submit an application for certification as Virginia REIT. The taxpayer must include documentation to demonstrate that a least 90 percent of trust funds are invested in Virginia and that at least 40 percent of trust funds are invested in real estate in Virginia localities that are distressed or double distressed. Once the Department finds that the REIT has met these criteria, it will provide certification to the taxpayer stating the REIT is a Virginia REIT for purposes of the subtraction. Such certification is only valid for the calendar year for which it is issued. An investment fund may reapply for certification each year.

For purposes of the subtraction, a Virginia locality is “distressed” if:

- The locality has an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year; or

- The locality has a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year.

A Virginia locality is “double distressed” if it meets both of the criteria above.

<u>Application Deadline</u>

The registration and certification applications and any necessary attachments must be made on the form prescribed by the Department, postmarked no later than January 31 of the calendar year following the calendar year in which the REIT is applying for certification as a Virginia REIT. The registration application must be submitted to the Department before or at the time the certification application is submitted to the Department.

<u>Additional Information</u>

These guidelines are available online under the Guidance Documents section of the Department’s website, located at http://tax.virginia.gov/guidance-documents. For additional information, please contact the Department at **(804) 766-2992**.

Approved:

Craig M. Burns
Tax Commissioner