Attachment F

Vote "Yes" on House Bill 1093
End abuse of Captive REITs and Captive RICs

Nobody likes to pay taxes. But it is our obligation to pay taxes to support the services on which we rely. It is only fair that everyone, including corporations that can afford high-priced accountants, pay what they rightfully owe. This bill is an effort to assure hard working Coloradans that corporate taxpayers are not taking advantage of the lack of reporting requirements and the lack of audit resources to shift the tax burden onto other taxpayers.

PROBLEM: Colorado may be losing out on millions of dollars in corporate income taxes owed under the existing tax laws because tax reporting requirements allow corporations to conceal taxable income. There is no way to know the shortfall in revenue without requiring certain transactions to be reported as part of state income tax filings.

Litigation in other states has resulted in collection of millions of dollars in back taxes. For example, Maryland will be collecting $10.8 million to cover three years of taxes owed from just one retailer. North Carolina succeeded in a court action to collect $33 million in back taxes owed by Wal*Mart. Massachusetts is seeking $42 million in back taxes, interest and penalties from several banks utilizing this scheme. The state of New York estimates it is missing out on $83 million a year due to this scheme.

HOW IS THIS POSSIBLE? Retail companies transfer their real estate to Real Estate Investment Trusts ("REITs"), which they own and control. The retailer pays rent to the REIT and deducts the rent as a business expense which reduces its taxable income. Federal tax laws require REITs to pay 90% of their income out as dividends. Because the retailer owns the REIT, it receives those rental payments in the form of nontaxable dividends.

Companies use transactions with Regulated Investment Companies ("RICs") for a similar purpose. RICs are usually legitimate mutual funds, but when a corporation owns and controls the RIC it can be used to receive and shelter income from taxation.

SOLUTION: House Bill 1093 does the following:

- Creates a definition in Colorado statutes of a captive Real Estate Investment Trusts and a Captive Regulated Investment Companies based on the definition created by the Multi-State Tax Commission.
- Identifies "Listed Transactions" and "Reportable Transactions" which must be reported with the income tax filings of a C Corporation.
- Establishes transactions involving captive REITs and captive RICs as "Listed Transactions."
- Creates a penalty for failure to disclose a reportable transaction or a listed transaction.
- Authorizes the Department of Revenue to study whether other transactions should be included as Listed Transactions in order to prevent illegal avoidance of state

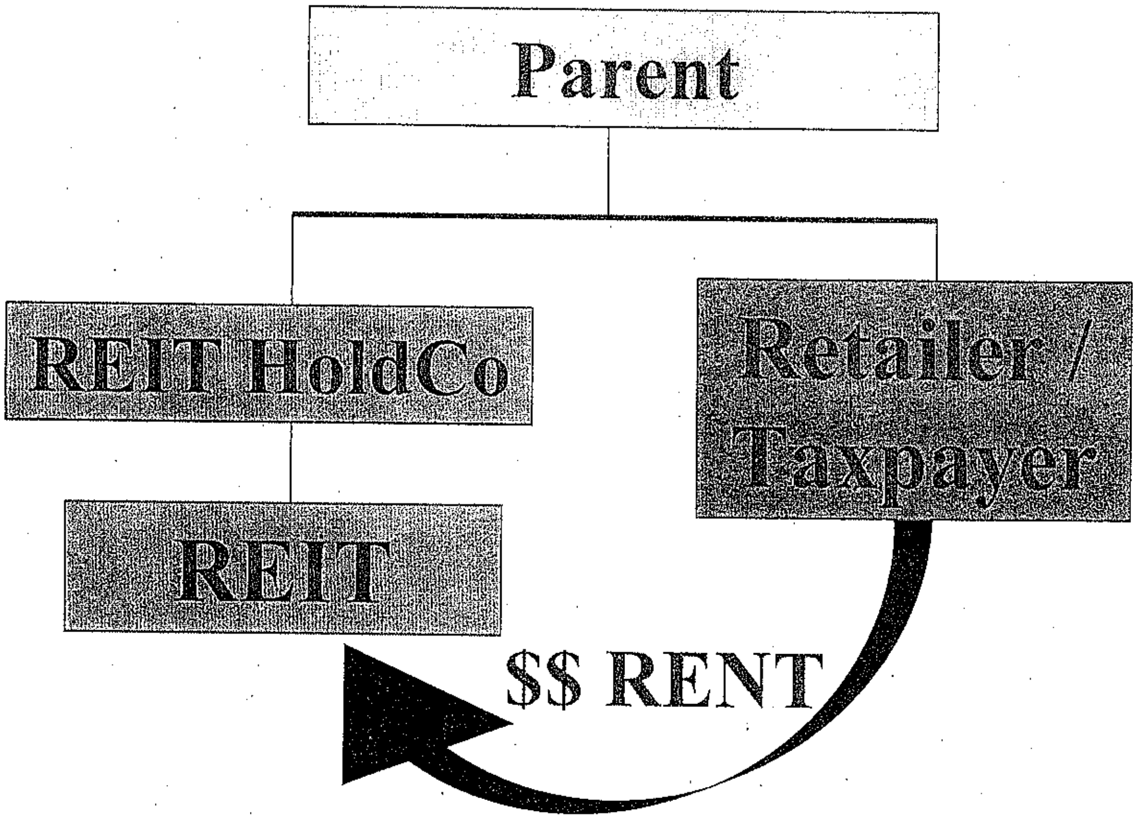
income tax liability and report to the Finance Committee of the House and Senate for consideration in future legislation.

DOES THIS INCREASE CORPORATE INCOME TAXES IN VIOLATION OF TABOR? No. HB1093 does not change the definition of taxable income or change any policy regarding how income is treated or taxed. It simply requires reporting of sufficient information for the Department of Revenue to determine whether listed transactions are being used to conceal otherwise taxable income.

WHAT ARE OTHER STATES DOING ABOUT THIS? Since 2003 ten other states have enacted legislation to impose penalties for understatement of income tax for reportable or listed transactions. Five states have created legislative authority to list transactions that differ from federal listed transaction. The Multi-State Tax Commission is considering a uniform law.

DOES ANYONE OPPOSE THIS BILL? Previous objections by the Colorado Association of Commerce and Industry, the Colorado Competitive Council and the Colorado Bankers Association concerning burdensome reporting requirements and penalties have been addressed. As a result, they are neutral on this bill.

Captive REIT – Rental REIT Structure



- The REIT ostensibly "owns" store locations used by Retailer.
- Retailer shifts income to REIT through rental payments.
- REIT avoids state income tax liability b/c of the dividends paid deduction for REITS.
- REIT HoldCo avoids tax on the dividend b/c it is located in a state that allows a DRD, a no tax state, or a combined return state where the dividend is eliminated.