Legal Division Guidance 2011-06-02
(Qualified REIT Subsidiary – Minimum Franchise Tax Liability)

Q: Is a Qualified Real Estate Investment Trust Subsidiary ("QREITS") subject to the Minimum Franchise Tax ("MFT") under RTC section 23153?

A: No. A QREITS is defined as a corporation whose stock is 100 percent owned by a real estate investment trust within the meaning of IRC section 856(i)(2), to which California conforms under RTC section 24870. A QREITS is not treated as a separate corporation for California tax purposes and all of the assets, liabilities, and items of income, deductions, and credits of a QREITS are treated as assets, liabilities, income, deduction, and credits of its parent real estate investment trust under IRC section 856(i)(1) Therefore, a QREITS and its parent real estate investment trust are treated a single tax entity for California tax purposes. In addition, since the QREITS is disregarded as a separate entity for California income tax purposes, its activities are the activities of the parent REIT for purposes of RTC section 23101 (doing business). See Legal Ruling 2011-01.

Under RTC section 23153, the MFT is generally imposed upon corporations doing business in California, corporations qualified to transact intrastate business and/or corporations incorporated in California. A corporation that is considered to be a real estate investment trust may be subject to the MFT under RTC section 23153. Since a QREITS is not treated as a separate tax entity from its parent real estate investment trust, only the parent real estate investment trust is subject to the MFT.