§ 856. Definition of real estate investment trust

(a) In general

For purposes of this title, the term ''real estate investment trust'' means a corporation, trust, or association—

(1) which is managed by one or more trustees or directors;

(2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;

(3) which (but for the provisions of this part) would be taxable as a domestic corporation;

(4) which is neither (A) a financial institution referred to in section 582(c)(2), nor (B) an insurance company to which subchapter L applies;

(5) the beneficial ownership of which is held by 100 or more persons;

(6) subject to the provisions of subsection (k), which is not closely held (as determined under subsection (h)); and

(7) which meets the requirements of subsection (c).

(b) Determination of status

The conditions described in paragraphs (1) to (4), inclusive, of subsection (a) must be met during the entire taxable year, and the condition described in paragraph (5) must exist during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months.

(c) Limitations

A corporation, trust, or association shall not be considered a real estate investment trust for any taxable year unless—

(1) it files with its return for the taxable year an election to be a real estate investment trust or has made such election for a previous taxable year, and such election has not been terminated or revoked under subsection (g);

(2) at least 95 percent (90 percent for taxable years beginning before January 1, 1980) of its gross income (excluding gross income from prohibited transactions) is derived from—

(A) dividends;

(B) interest;

(C) rents from real property;

(D) gain from the sale or other disposition of stock, securities, and real property (including interests in real property and interests in mortgages on real property) which is not property described in section 1221(a)(1);

(E) abatements and refunds of taxes on real property;

(F) income and gain derived from foreclosure property (as defined in subsection (e));

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property);

(H) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction solely by reason of section 857(b)(6); and

(I) mineral royalty income earned in the first taxable year beginning after the date of the enactment of this subparagraph from real property owned by a timber real estate investment trust and held, or once held, in connection with the trade or business of producing timber by such real estate investment trust;

(3) at least 75 percent of its gross income (excluding gross income from prohibited transactions) is derived from—

(A) rents from real property;

(B) interest on obligations secured by mortgages on real property or on interests in real property;

(C) gain from the sale or other disposition of real property (including interests in real property and interests in mortgages on real property) which is not property described in section 1221(a)(1);

(D) dividends or other distributions on, and gain (other than gain from prohibited transactions) from the sale or other disposition of, transferable shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part;

(E) abatements and refunds of taxes on real property;

(F) income and gain derived from foreclosure property (as defined in subsection (e));

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property);

(H) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction solely by reason of section 857(b)(6); and

(I) qualified temporary investment income; and

(4) at the close of each quarter of the taxable year—

(A) at least 75 percent of the value of its total assets is represented by real estate assets, cash and cash items (including receivables), and Government securities; and

(B)(i) not more than 25 percent of the value of its total assets is represented by securities (other than those includible under subparagraph (A)),

(ii) not more than 25 percent of the value of its total assets is represented by securities of one or more taxable REIT subsidiaries,[1]

(iii) except with respect to a taxable REIT subsidiary and securities includible under subparagraph (A)—

(I) not more than 5 percent of the value of its total assets is represented by securities of any one issuer,

(II) the trust does not hold securities possessing more than 10 percent of the total voting power of the outstanding securities of any one issuer, and

(III) the trust does not hold securities having a value of more than 10 percent of the total value of the outstanding securities of any one issuer.

A real estate investment trust which meets the requirements of this paragraph at the close of any quarter shall not lose its status as a real estate investment trust because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements (including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset) unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A real estate investment trust which does not meet such requirements at the close of any quarter by reason of a discrepancy existing immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose its status for such quarter as a real estate investment trust if such discrepancy is eliminated within 30 days after the close of such quarter and in such cases it shall be considered to have met such requirements at the close of

[1] So in original. Probably should be followed by "and".

such quarter for purposes of applying the preceding sentence.

(5) For purposes of this part—

(A) The term ''value'' means, with respect to securities for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the trustees, except that in the case of securities of real estate investment trusts such fair value shall not exceed market value or asset value, whichever is higher.

(B) The term ''real estate assets'' means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part. Such term also includes any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, but only if such property is stock or a debt instrument, and only for the 1-year period beginning on the date the real estate trust receives such capital.

(C) The term ''interests in real property'' includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon, but does not include mineral, oil, or gas royalty interests.

(D) QUALIFIED TEMPORARY INVESTMENT INCOME.—

(i) IN GENERAL.—The term ''qualified temporary investment income'' means any income which—

(I) is attributable to stock or a debt instrument (within the meaning of section 1275(a)(1)),

(II) is attributable to the temporary investment of new capital, and

(III) is received or accrued during the 1-year period beginning on the date on which the real estate investment trust receives such capital.

(ii) NEW CAPITAL.—The term ''new capital'' means any amount received by the real estate investment trust—

(I) in exchange for stock (or certificates of beneficial interests) in such trust (other than amounts received pursuant to a dividend reinvestment plan), or

(II) in a public offering of debt obligations of such trust which have maturities of at least 5 years.

(E) A regular or residual interest in a REMIC shall be treated as a real estate asset, and any amount includible in gross income with respect to such an interest shall be treated as interest on an obligation secured by a mortgage on real property; except that, if less than 95 percent of the assets of such REMIC are real estate assets (determined as if the real estate investment trust held such assets), such real estate investment trust shall be treated as holding directly (and as receiving directly) its proportionate share of the assets and income of the REMIC. For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest held by such REMIC in another REMIC shall be treated as a real estate asset under principles similar to the principles of the preceding sentence, except that, if such REMIC's are part of a tiered structure, they shall be treated as one REMIC for purposes of this subparagraph.

(F) All other terms shall have the same meaning as when used in the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 and following).

(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent as determined by the Secretary—

(i) any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraphs (2) and (3) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and

(ii) any income of a real estate investment trust from a transaction entered into by the trust primarily to manage risk of currency fluctuations with respect to any item of income or gain described in paragraph (2) or (3) (or any property which generates such income or gain), including gain from the termination of such a transaction, shall not constitute gross income under paragraphs (2) and (3), but only if such transaction is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may prescribe).

(H) TREATMENT OF TIMBER GAINS.—

(i) IN GENERAL.—Gain from the sale of real property described in paragraph (2)(D) and (3)(C) shall include gain which is—

(I) recognized by an election under section 631(a) from timber owned by the real estate investment trust, the cutting of which is provided by a taxable REIT subsidiary of the real estate investment trust;

(II) recognized under section 631(b); or

(III) income which would constitute gain under subclause (I) or (II) but for the failure to meet the 1-year holding period requirement.

(ii) SPECIAL RULES.—

(I) For purposes of this subtitle, cut timber, the gain from which is recognized by a real estate investment trust pursuant to an election under section 631(a) described in clause (i)(I) or so much of clause (i)(III) as relates to clause (i)(I), shall be deemed to be sold to the taxable REIT subsidiary of the real estate investment trust on the first day of the taxable year.

(II) For purposes of this subtitle, income described in this subparagraph shall not be treated as gain from the sale of property described in section 1221(a)(1).

(iii) TERMINATION.—This subparagraph shall not apply to dispositions after the termination date.

(I) TIMBER REAL ESTATE INVESTMENT TRUST.—The term ''timber real estate investment trust'' means a real estate investment trust in which more than 50 percent in value of its total assets consists of real property held in connection with the trade or business of producing timber.

(J) SECRETARIAL AUTHORITY TO EXCLUDE OTHER ITEMS OF INCOME.—To the extent necessary to carry out the purposes of this part, the Secretary is authorized to determine, solely for purposes of this part, whether any item of income or gain which—

(i) does not otherwise qualify under paragraph (2) or (3) may be considered as not constituting gross income for purposes of paragraphs (2) or (3), or

(ii) otherwise constitutes gross income not qualifying under paragraph (2) or (3) may be considered as gross income which qualifies under paragraph (2) or (3).

(K) CASH.—If the real estate investment trust or its qualified business unit (as defined in section 989) uses any foreign currency as its functional currency (as defined in section 985(b)), the term ''cash'' includes such foreign currency but only to the extent such foreign currency—

(i) is held for use in the normal course of the activities of the trust or qualified business unit which give rise to items of income or gain described in paragraph (2) or (3) of subsection (c) or are directly related to acquiring or holding assets described in subsection (c)(4), and

(ii) is not held in connection with an activity described in subsection (n)(4).

(6) A corporation, trust, or association which fails to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year shall nevertheless be considered to have satisfied the requirements of such paragraphs for such taxable year if—

(A) following the corporation, trust, or association's identification of the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year, a description of each item of its gross income described in such paragraphs is set forth in a schedule for such taxable year filed in accordance with regulations prescribed by the Secretary, and

(B) the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, is due to reasonable cause and not due to willful neglect.

(7) RULES OF APPLICATION FOR FAILURE TO SATISFY PARAGRAPH (4).—

(A) IN GENERAL.—A corporation, trust, or association that fails to meet the requirements of paragraph (4) (other than a failure to meet the requirements of paragraph (4)(B)(iii) which is described in subparagraph (B)(i) of this paragraph) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

(i) following the corporation, trust, or association's identification of the failure to satisfy the requirements of such paragraph for a particular quarter, a description of each asset that causes the corporation, trust, or association to fail to satisfy the requirements of such paragraph at the close of such quarter of any taxable year is set forth in a schedule for such quarter filed in accordance with regulations prescribed by the Secretary,

(ii) the failure to meet the requirements of such paragraph for a particular quarter is due to reasonable cause and not due to willful neglect, and

(iii)(I) the corporation, trust, or association disposes of the assets set forth on the schedule specified in clause (i) within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

(B) RULE FOR CERTAIN DE MINIMIS FAILURES.—A corporation, trust, or association that fails to meet the requirements of paragraph (4)(B)(iii) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

(i) such failure is due to the ownership of assets the total value of which does not exceed the lesser of—

(I) 1 percent of the total value of the trust's assets at the end of the quarter for which such measurement is done, and

(II) $10,000,000, and

(ii)(I) the corporation, trust, or association, following the identification of such failure, disposes of assets in order to meet the requirements of such paragraph within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

(C) TAX.—

(i) TAX IMPOSED.—If subparagraph (A) applies to a corporation, trust, or association for any taxable year, there is hereby imposed on such corporation, trust, or association a tax in an amount equal to the greater of—

(I) $50,000, or

(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in the schedule specified in subparagraph (A)(i) for the period specified in clause (ii) by the highest rate of tax specified in section 11.

(ii) PERIOD.—For purposes of clause (i)(II), the period described in this clause is the period beginning on the first date that the failure to satisfy the requirements of such paragraph (4) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the trust disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such paragraph (4).

(iii) ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, the taxes imposed by this subparagraph shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.

(8) TERMINATION DATE.—For purposes of this subsection, the term ''termination date'' means, with respect to any taxpayer, the last day of the taxpayer's first taxable year beginning after the date of the enactment of this paragraph and before the date that is 1 year after such date of enactment.

(d) Rents from real property defined

(1) Amounts included

For purposes of paragraphs (2) and (3) of subsection (c), the term ''rents from real property'' includes (subject to paragraph (2))—

(A) rents from interests in real property,

(B) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated, and

(C) rent attributable to personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

For purposes of subparagraph (C), with respect to each lease of real property, rent attributable to personal property for the taxable year is that amount which bears the same ratio to total rent for the taxable year as the average of the fair market values of the personal property at the beginning and at the end of the taxable year bears to the average of the aggregate fair market values of both the real property and the personal property at the beginning and at the end of such taxable year.

(2) Amounts excluded

For purposes of paragraphs (2) and (3) of subsection (c), the term ''rents from real property'' does not include—

(A) except as provided in paragraphs (4) and (6), any amount received or accrued, directly or indirectly, with respect to any real or personal property, if the determination of such amount depends in whole or in part on the income or profits derived by any person from such property (except that any amount so received or accrued shall not be excluded from the term ''rents from real property'' solely by reason of being based on a fixed percentage or percentages of receipts or sales);

(B) except as provided in paragraph (8), any amount received or accrued directly or indirectly from any person if the real estate investment trust owns, directly or indirectly—

(i) in the case of any person which is a corporation, stock of such person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock of such person; or

(ii) in the case of any person which is not a corporation, an interest of 10 percent or more in the assets or net profits of such person; and

(C) any impermissible tenant service income (as defined in paragraph (7)).

(3) Independent contractor defined

For purposes of this subsection and subsection (e), the term ''independent contractor'' means any person—

(A) who does not own, directly or indirectly, more than 35 percent of the shares, or certificates of beneficial interest, in the real estate investment trust; and

(B) if such person is a corporation, not more than 35 percent of the total combined voting power of whose stock (or 35 percent of the total shares of all classes of whose stock), or, if such person is not a corporation, not more than 35 percent of the interest in whose assets or net profits is owned, directly or indirectly, by one or more persons owning 35 percent or more of the shares or certificates of beneficial interest in the trust.

In the event that any class of stock of either the real estate investment trust or such person is regularly traded on an established securities market, only persons who own, directly or indirectly, more than 5 percent of such class of stock shall be taken into account as owning any of the stock of such class for purposes of applying the 35 percent limitation set forth in subparagraph (B) (but all of the outstanding stock of such class shall be considered outstanding in order to compute the denominator for purpose of determining the applicable percentage of ownership).

(4) Special rule for certain contingent rents

Where a real estate investment trust receives or accrues, with respect to real or personal property, any amount which would be excluded from the term ''rents from real property'' solely because the tenant of the real estate investment trust receives or accrues, directly or indirectly, from subtenants any amount the determination of which depends in whole or in part on the income or profits derived by any person from such property, only a proportionate part (determined pursuant to regulations prescribed by the Secretary) of the amount received or accrued by the real estate investment trust from that tenant will be excluded from the term ''rents from real property''.

(5) Constructive ownership of stock

For purposes of this subsection, the rules prescribed by section 318(a) for determining the ownership of stock shall apply in determining the ownership of stock, assets, or net profits of any person; except that—

(A) ''10 percent'' shall be substituted for ''50 percent'' in subparagraph (C) of paragraphs (2) and (3) of section 318(a), and

(B) section 318(a)(3)(A) shall be applied in the case of a partnership by taking into account only partners who own (directly or indirectly) 25 percent or more of the capital interest, or the profits interest, in the partnership.

(6) Special rule for certain property subleased by tenant of real estate investment trusts

(A) In general

If—

(i) a real estate investment trust receives or accrues, with respect to real or personal property, amounts from a tenant which derives substantially all of its income with respect to such property from the subleasing of substantially all of such property, and

(ii) a portion of the amount such tenant receives or accrues, directly or indirectly, from subtenants consists of qualified rents,

then the amounts which the trust receives or accrues from the tenant shall not be excluded from the term ''rents from real property'' by reason of being based on the income or profits of such tenant to the extent the amounts so received or accrued are attributable to qualified rents received or accrued by such tenant.

(B) Qualified rents

For purposes of subparagraph (A), the term ''qualified rents'' means any amount which would be treated as rents from real property if received by the real estate investment trust.

(7) Impermissible tenant service income

For purposes of paragraph (2)(C)—

(A) In general

The term ''impermissible tenant service income'' means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the real estate investment trust for—

(i) services furnished or rendered by the trust to the tenants of such property, or

(ii) managing or operating such property.

(B) Disqualification of all amounts where more than de minimis amount

If the amount described in subparagraph (A) with respect to a property for any taxable year exceeds 1 percent of all amounts received or accrued during such taxable year directly or indirectly by the real estate investment trust with respect to such property, the impermissible tenant service income of the trust with respect to the property shall include all such amounts.

(C) Exceptions

For purposes of subparagraph (A)—

(i) services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income or through a taxable REIT subsidiary of such trust shall not be treated as furnished, rendered, or provided by the trust, and

(ii) there shall not be taken into account any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

(D) Amount attributable to impermissible services

For purposes of subparagraph (A), the amount treated as received for any service (or management or operation) shall not be less than 150 percent of the direct cost of the trust in furnishing or rendering the service (or providing the management or operation).

(E) Coordination with limitations

For purposes of paragraphs (2) and (3) of subsection (c), amounts described in subparagraph (A) shall be included in the gross income of the corporation, trust, or association.

(8) Special rule for taxable REIT subsidiaries

For purposes of this subsection, amounts paid to a real estate investment trust by a taxable REIT subsidiary of such trust shall not be excluded from rents from real property by reason of paragraph (2)(B) if the requirements of either of the following subparagraphs are met:

(A) Limited rental exception

(i) In general

The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in paragraph (2)(B).

(ii) Rents must be substantially comparable

Clause (i) shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents paid by the other tenants of the trust's property for comparable space.

(iii) Times for testing rent comparability

The substantial comparability requirement of clause (ii) shall be treated as met with respect to a lease to a taxable REIT subsidiary of the trust if such requirement is met under the terms of the lease—

(I) at the time such lease is entered into,

(II) at the time of each extension of the lease, including a failure to exercise a right to terminate, and

(III) at the time of any modification of the lease between the trust and the taxable REIT subsidiary if the rent under such lease is effectively increased pursuant to such modification.

With respect to subclause (III), if the taxable REIT subsidiary of the trust is a controlled taxable REIT subsidiary of the trust, the term ''rents from real property'' shall not in any event include rent under such lease to the extent of the increase in such rent on account of such modification.

(iv) Controlled taxable REIT subsidiary

For purposes of clause (iii), the term ''controlled taxable REIT subsidiary'' means, with respect to any real estate investment trust, any taxable REIT subsidiary of such trust if such trust owns directly or indirectly—

(I) stock possessing more than 50 percent of the total voting power of the outstanding stock of such subsidiary, or

(II) stock having a value of more than 50 percent of the total value of the outstanding stock of such subsidiary.

(v) Continuing qualification based on third party actions

If the requirements of clause (i) are met at a time referred to in clause (iii), such requirements shall continue to be treated as met so long as there is no increase in the space leased to any taxable REIT subsidiary of such trust or to any person described in paragraph (2)(B).

(vi) Correction period

If there is an increase referred to in clause (v) during any calendar quarter with respect to any property, the requirements of clause (iii) shall be treated as met during the quarter and the succeeding quarter if such requirements are met at the close of such succeeding quarter.

(B) Exception for certain lodging facilities and health care property

The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility (as defined in paragraph (9)(D)) or a qualified health care property (as defined in subsection (e)(6)(D)(i)) leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor. For purposes of this section, a taxable REIT subsidiary is not considered to be operating or managing a qualified health care property or qualified lodging facility solely because it—

(i) directly or indirectly possesses a license, permit, or similar instrument enabling it to do so, or

(ii) employs individuals working at such facility or property located outside the United States, but only if an eligible independent contractor is responsible for the daily supervision and direction of such individuals on behalf of the taxable REIT subsidiary pursuant to a management agreement or similar service contract.

(9) Eligible independent contractor

For purposes of paragraph (8)(B)—

(A) In general

The term ''eligible independent contractor'' means, with respect to any qualified lodging facility or qualified health care property (as defined in subsection (e)(6)(D)(i)), any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the taxable REIT subsidiary to operate such qualified lodging facility or qualified health care property, such contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities or qualified health care properties, respectively, for any person who is not a related person with respect to the real estate investment trust or the taxable REIT subsidiary.

(B) Special rules

Solely for purposes of this paragraph and paragraph (8)(B), a person shall not fail to be treated as an independent contractor with respect to any qualified lodging facility or qualified health care property (as so defined) by reason of the following:

(i) The taxable REIT subsidiary bears the expenses for the operation of such qualified lodging facility or qualified health care property pursuant to the management agreement or other similar service contract.

(ii) The taxable REIT subsidiary receives the revenues from the operation of such qualified lodging facility or qualified health care property, net of expenses for such operation and fees payable to the operator pursuant to such agreement or contract.

(iii) The real estate investment trust receives income from such person with respect to another property that is attributable to a lease of such other property to such person that was in effect as of the later of—

(I) January 1, 1999, or

(II) the earliest date that any taxable REIT subsidiary of such trust entered into a management agreement or other similar service contract with such person with respect to such qualified lodging facility or qualified health care property.

(C) Renewals, etc., of existing leases

For purposes of subparagraph (B)(iii)—

(i) a lease shall be treated as in effect on January 1, 1999, without regard to its renewal after such date, so long as such renewal is pursuant to the terms of such lease as in effect on whichever of the dates under subparagraph (B)(iii) is the latest, and

(ii) a lease of a property entered into after whichever of the dates under subparagraph (B)(iii) is the latest shall be treated as in effect on such date if—

(I) on such date, a lease of such property from the trust was in effect, and

(II) under the terms of the new lease, such trust receives a substantially similar or lesser benefit in comparison to the lease referred to in subclause (I).

(D) Qualified lodging facility

For purposes of this paragraph—

(i) In general

The term ''qualified lodging facility'' means any lodging facility unless wagering activities are conducted at or in connection with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility.

(ii) Lodging facility

The term ''lodging facility'' means a—

(I) hotel,

(II) motel, or

(III) other establishment more than one-half of the dwelling units in which are used on a transient basis.

(iii) Customary amenities and facilities

The term ''lodging facility'' includes customary amenities and facilities operated as part of, or associated with, the lodging facility so long as such amenities and facilities are customary for other properties of a comparable size and class owned by other owners unrelated to such real estate investment trust.

(E) Operate includes manage

References in this paragraph to operating a property shall be treated as including a reference to managing the property.

(F) Related person

Persons shall be treated as related to each other if such persons are treated as a single employer under subsection (a) or (b) of section 52.

(e) Special rules for foreclosure property

(1) Foreclosure property defined

For purposes of this part, the term ''foreclosure property'' means any real property (including interests in real property), and any personal property incident to such real property, acquired by the real estate investment trust as the result of such trust having bid in such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was default (or default was imminent) on a lease of such property or on an indebtedness which such property secured. Such term does not include property acquired by the real estate investment trust as a result of indebtedness arising from the sale or other disposition of property of the trust described in section 1221(a)(1) which was not originally acquired as foreclosure property.

(2) Grace period

Except as provided in paragraph (3), property shall cease to be foreclosure property with respect to the real estate investment trust as of the close of the 3d taxable year following the taxable year in which the trust acquired such property.

(3) Extensions

If the real estate investment trust establishes to the satisfaction of the Secretary that an extension of the grace period is necessary for the orderly liquidation of the trust's interests in such property, the Secretary may grant one extension of the grace period for such property. Any such extension shall not extend the grace period beyond the close of the 3d taxable year following the last taxable year in the period under paragraph (2).

(4) Termination of grace period in certain cases

Any foreclosure property shall cease to be such on the first day (occurring on or after the day on which the real estate investment trust acquired the property) on which—

(A) a lease is entered into with respect to such property which, by its terms, will give rise to income which is not described in subsection (c)(3) (other than subparagraph (F) of such subsection), or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day which is not described in such subsection,

(B) any construction takes place on such property (other than completion of a building, or completion of any other improvement, where more than 10 percent of the construction of such building or other improvement was completed before default became imminent), or

(C) if such day is more than 90 days after the day on which such property was acquired by the real estate investment trust and the property is used in a trade or business which is conducted by the trust (other than through an independent contractor (within the meaning of section (d)(3)) from whom the trust itself does not derive or receive any income).

For purposes of subparagraph (C), property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to such property to the extent that such activities would not result in amounts received or accrued, directly or indirectly, with respect to such property being treated as other than rents from real property.

(5) Taxpayer must make election

Property shall be treated as foreclosure property for purposes of this part only if the real estate investment trust so elects (in the manner provided in regulations prescribed by the Secretary) on or before the due date (including any extensions of time) for filing its return of tax under this chapter for the taxable year in which such trust acquires such property. A real estate investment trust may revoke any such election for a taxable year by filing the revocation (in the manner provided by the Secretary) on or before the due date (including any extension of time) for filing its return of tax under this chapter for the taxable year. If a trust revokes an election for any property, no election may be made by the trust under this paragraph with respect to the property for any subsequent taxable year.

(6) Special rule for qualified health care properties

For purposes of this subsection—

(A) Acquisition at expiration of lease

The term ''foreclosure property'' shall include any qualified health care property acquired by a real estate investment trust as the result of the termination of a lease of such property (other than a termination by reason of a default, or the imminence of a default, on the lease).

(B) Grace period

In the case of a qualified health care property which is foreclosure property solely by reason of subparagraph (A), in lieu of applying paragraphs (2) and (3)—

(i) the qualified health care property shall cease to be foreclosure property as of the close of the second taxable year after the taxable year in which such trust acquired such property, and

(ii) if the real estate investment trust establishes to the satisfaction of the Secretary that an extension of the grace period in clause (i) is necessary to the orderly leasing or liquidation of the trust's interest in such qualified health care property, the Secretary may grant one or more extensions of the grace period for such qualified health care property.

Any such extension shall not extend the grace period beyond the close of the 6th year after the taxable year in which such trust acquired such qualified health care property.

(C) Income from independent contractors

For purposes of applying paragraph (4)(C) with respect to qualified health care property which is foreclosure property by reason of subparagraph (A) or paragraph (1), income derived or received by the trust from an independent contractor shall be disregarded to the extent such income is attributable to—

(i) any lease of property in effect on the date the real estate investment trust acquired the qualified health care property (without regard to its renewal after such date so long as such renewal is pursuant to the terms of such lease as in effect on such date), or

(ii) any lease of property entered into after such date if—

(I) on such date, a lease of such property from the trust was in effect, and

(II) under the terms of the new lease, such trust receives a substantially similar or lesser benefit in comparison to the lease referred to in subclause (I).

(D) Qualified health care property

(i) In general

The term ''qualified health care property'' means any real property (including interests therein), and any personal property incident to such real property, which—

(I) is a health care facility, or

(II) is necessary or incidental to the use of a health care facility.

(ii) Health care facility

For purposes of clause (i), the term ''health care facility'' means a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility (as defined in section 7872(g)(4)), or other licensed facility which extends medical or nursing or ancillary services to patients and which, immediately before the termination, expiration, default, or breach of the lease of or mortgage secured by such facility, was operated by a provider of such services which was eligible for participation in the medicare program under title XVIII of the Social Security Act with respect to such facility.

(f) Interest

(1) In general

For purposes of paragraphs (2)(B) and (3)(B) of subsection (c), the term ''interest'' does not include any amount received or accrued, directly or indirectly, if the determination of such amount depends in whole or in part on the income or profits of any person except that—

(A) any amount so received or accrued shall not be excluded from the term ''interest'' solely by reason of being based on a fixed percentage or percentages of receipts or sales, and

(B) where a real estate investment trust receives any amount which would be excluded from the term ''interest'' solely because the debtor of the real estate investment trust receives or accrues any amount the determination of which depends in whole or in part on the income or profits of any person, only a proportionate part (determined pursuant to regulations prescribed by the Secretary) of the amount received or accrued by the real estate investment trust from the debtor will be excluded from the term ''interest''.

(2) Special rule

If—

(A) a real estate investment trust receives or accrues with respect to an obligation secured by a mortgage on real property or an interest in real property amounts from a debtor which derives substantially all of its gross income with respect to such property (not taking into account any gain on any disposition) from the leasing of substantially all of its interests in such property to tenants, and

(B) a portion of the amount which such debtor receives or accrues, directly or indirectly, from tenants consists of qualified rents (as defined in subsection (d)(6)(B)), then the amounts which the trust receives or accrues from such debtor shall not be excluded from the term ''interest'' by reason of being based on the income or profits of such debtor to the extent the amounts so received are attributable to qualified rents received or accrued by such debtor.

(g) Termination of election

(1) Failure to qualify

An election under subsection (c)(1) made by a corporation, trust, or association shall terminate if the corporation, trust, or association is not a real estate investment trust to which the provisions of this part apply for the taxable year with respect to which the election is made, or for any succeeding taxable year unless paragraph (5) applies. Such termination shall be effective for the taxable year for which the corporation, trust, or association is not a real estate investment trust to which the provisions of this part apply, and for all succeeding taxable years.

(2) Revocation

An election under subsection (c)(1) made by a corporation, trust, or association may be revoked by it for any taxable year after the first taxable year for which the election is effective. A revocation under this paragraph shall be effective for the taxable year in which made and for all succeeding taxable years. Such revocation must be made on or before the 90th day after the first day of the first taxable year for which the revocation is to be effective. Such revocation shall be made in such manner as the Secretary shall prescribe by regulations.

(3) Election after termination or revocation

Except as provided in paragraph (4), if a corporation, trust, or association has made an election under subsection (c)(1) and such election has been terminated or revoked under paragraph (1) or paragraph (2), such corporation, trust, or association (and any successor corporation, trust, or association) shall not be eligible to make an election under subsection (c)(1) for any taxable year prior to the fifth taxable year which begins after the first taxable year for which such termination or revocation is effective.

(4) Exception

If the election of a corporation, trust, or association has been terminated under paragraph (1), paragraph (3) shall not apply if—

(A) the corporation, trust, or association does not willfully fail to file within the time prescribed by law an income tax return for the taxable year with respect to which the termination of the election under subsection (c)(1) occurs;

(B) the inclusion of any incorrect information in the return referred to in subparagraph (A) is not due to fraud with intent to evade tax; and

(C) the corporation, trust, or association establishes to the satisfaction of the Secretary that its failure to qualify as a real estate investment trust to which the provisions of this part apply is due to reasonable cause and not due to willful neglect.

(5) Entities to which paragraph applies

This paragraph applies to a corporation, trust, or association—

(A) which is not a real estate investment trust to which the provisions of this part apply for the taxable year due to one or more failures to comply with one or more of the provisions of this part (other than paragraph (2), (3), or (4) of subsection (c)),

(B) such failures are due to reasonable cause and not due to willful neglect, and

(C) if such corporation, trust, or association pays (as prescribed by the Secretary in regulations and in the same manner as tax) a penalty of $50,000 for each failure to satisfy a provision of this part due to reasonable cause and not willful neglect.

(h) Closely held determinations

(1) Section 542(a)(2) applied

(A) In general

For purposes of subsection (a)(6), a corporation, trust, or association is closely held if the stock ownership requirement of section 542(a)(2) is met.

(B) Waiver of partnership attribution, etc.

For purposes of subparagraph (A)—

(i) paragraph (2) of section 544(a) shall be applied as if such paragraph did not contain the phrase ''or by or for his partner'', and

(ii) sections 544(a)(4)(A) and 544(b)(1) shall be applied by substituting ''the entity meet the stock ownership requirement of section 542(a)(2)'' for ''the corporation a personal holding company''.

(2) Subsections (a)(5) and (6) not to apply to 1st year

Paragraphs (5) and (6) of subsection (a) shall not apply to the 1st taxable year for which an election is made under subsection (c)(1) by any corporation, trust, or association.

(3) Treatment of trusts described in section 401(a)

(A) Look-thru treatment

(i) In general

Except as provided in clause (ii), in determining whether the stock ownership requirement of section 542(a)(2) is met for purposes of paragraph (1)(A), any stock held by a qualified trust shall be treated as held directly by its beneficiaries in proportion to their actuarial interests in such trust and shall not be treated as held by such trust.

(ii) Certain related trusts not eligible

Clause (i) shall not apply to any qualified trust if one or more disqualified persons (as defined in section 4975(e)(2), without regard to subparagraphs (B) and (I) thereof) with respect to such qualified trust hold in the aggregate 5 percent or more in value of the interests in the real estate investment trust and such real estate investment trust has accumulated earnings and profits attributable to any period for which it did not qualify as a real estate investment trust.

(B) Coordination with personal holding company rules

If any entity qualifies as a real estate investment trust for any taxable year by reason of subparagraph (A), such entity shall not be treated as a personal holding company for such taxable year for purposes of part II of subchapter G of this chapter.

(C) Treatment for purposes of unrelated business tax

If any qualified trust holds more than 10 percent (by value) of the interests in any pension-held REIT at any time during a taxable year, the trust shall be treated as having for such taxable year gross income from an unrelated trade or business in an amount which bears the same ratio to the aggregate dividends paid (or treated as paid) by the REIT to the trust for the taxable year of the REIT with or within which the taxable year of the trust ends (the ''REIT year'') as—

(i) the gross income (less direct expenses related thereto) of the REIT for the REIT year from unrelated trades or businesses (determined as if the REIT were a qualified trust), bears to

(ii) the gross income (less direct expenses related thereto) of the REIT for the REIT year.

This subparagraph shall apply only if the ratio determined under the preceding sentence is at least 5 percent.

(D) Pension-held REIT

The purposes of subparagraph (C)—

(i) In general

A real estate investment trust is a pension-held REIT if such trust would not have qualified as a real estate investment trust but for the provisions of this paragraph and if such trust is predominantly held by qualified trusts.

(ii) Predominantly held

For purposes of clause (i), a real estate investment trust is predominantly held by qualified trusts if—

(I) at least 1 qualified trust holds more than 25 percent (by value) of the interests in such real estate investment trust, or

(II) 1 or more qualified trusts (each of whom own more than 10 percent by value of the interests in such real estate investment trust) hold in the aggregate more than 50 percent (by value) of the interests in such real estate investment trust.

(E) Qualified trust

For purposes of this paragraph, the term ''qualified trust'' means any trust described in section 401(a) and exempt from tax under section 501(a).

(i) Treatment of certain wholly owned subsidiaries

(1) In general

For purposes of this title—

(A) a corporation which is a qualified REIT subsidiary shall not be treated as a separate corporation, and

(B) all assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the real estate investment trust.

(2) Qualified REIT subsidiary

For purposes of this subsection, the term ''qualified REIT subsidiary'' means any corporation if 100 percent of the stock of such corporation is held by the real estate investment trust. Such term shall not include a taxable REIT subsidiary.

(3) Treatment of termination of qualified subsidiary status

For purposes of this subtitle, if any corporation which was a qualified REIT subsidiary ceases to meet the requirements of paragraph (2), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the real estate investment trust in exchange for its stock.

(j) Treatment of shared appreciation mortgages

(1) In general

Solely for purposes of subsection (c) of this section and section 857(b)(6), any income derived from a shared appreciation provision shall be treated as gain recognized on the sale of the secured property.

(2) Treatment of income

For purposes of applying subsection (c) of this section and section 857(b)(6) to any income described in paragraph (1)—

(A) the real estate investment trust shall be treated as holding the secured property for the period during which it held the shared appreciation provision (or, if shorter, for the period during which the secured property was held by the person holding such property), and

(B) the secured property shall be treated as property described in section 1221(a)(1) if it is so described in the hands of the person holding the secured property (or it would be so described if held by the real estate investment trust).

(3) Coordination with prohibited transactions safe harbor

For purposes of section 857(b)(6)(C)—

(A) the real estate investment trust shall be treated as having sold the secured property when it recognizes any income described in paragraph (1), and

(B) any expenditures made by any holder of the secured property shall be treated as made by the real estate investment trust.

(4) Coordination with 4-year holding period

(A) In general

For purposes of section 857(b)(6)(C), if a real estate investment trust is treated as having sold secured property under paragraph (3)(A), the trust shall be treated as having held such property for at least 4 years if—

(i) the secured property is sold or otherwise disposed of pursuant to a case under title 11 of the United States Code,

(ii) the seller is under the jurisdiction of the court in such case, and

(iii) the disposition is required by the court or is pursuant to a plan approved by the court.

(B) Exception

Subparagraph (A) shall not apply if—

(i) the secured property was acquired by the seller with the intent to evict or foreclose, or

(ii) the trust knew or had reason to know that default on the obligation described in paragraph (5)(A) would occur.

(5) Definitions

For purposes of this subsection—

(A) Shared appreciation provision

The term ''shared appreciation provision'' means any provision—

(i) which is in connection with an obligation which is held by the real estate investment trust and is secured by an interest in real property, and

(ii) which entitles the real estate investment trust to receive a specified portion of any gain realized on the sale or exchange of such real property (or of any gain which would be realized if the property were sold on a specified date) or appreciation in value as of any specified date.

(B) Secured property

The term ''secured property'' means the real property referred to in subparagraph (A).

(k) Requirement that entity not be closely held treated as met in certain cases

A corporation, trust, or association—

(1) which for a taxable year meets the requirements of section 857(f)(1), and

(2) which does not know, or exercising reasonable diligence would not have known, whether the entity failed to meet the requirement of subsection (a)(6),

shall be treated as having met the requirement of subsection (a)(6) for the taxable year.

(*l*) Taxable REIT subsidiary

For purposes of this part—

(1) In general

The term ''taxable REIT subsidiary'' means, with respect to a real estate investment trust, a corporation (other than a real estate investment trust) if—

(A) such trust directly or indirectly owns stock in such corporation, and

(B) such trust and such corporation jointly elect that such corporation shall be treated as a taxable REIT subsidiary of such trust for purposes of this part.

Such an election, once made, shall be irrevocable unless both such trust and corporation consent to its revocation. Such election, and any revocation thereof, may be made without the consent of the Secretary.

(2) Thirty-five percent ownership in another taxable REIT subsidiary

The term ''taxable REIT subsidiary'' includes, with respect to any real estate investment trust, any corporation (other than a real estate investment trust) with respect to which a taxable REIT subsidiary of such trust owns directly or indirectly—

(A) securities possessing more than 35 percent of the total voting power of the outstanding securities of such corporation, or

(B) securities having a value of more than 35 percent of the total value of the outstanding securities of such corporation.

The preceding sentence shall not apply to a qualified REIT subsidiary (as defined in subsection (i)(2)). For purposes of subparagraph (B), securities described in subsection (m)(2)(A) shall not be taken into account.

(3) Exceptions

The term ''taxable REIT subsidiary'' shall not include—

(A) any corporation which directly or indirectly operates or manages a lodging facility or a health care facility, and

(B) any corporation which directly or indirectly provides to any other person (under a franchise, license, or otherwise) rights to any brand name under which any lodging facility or health care facility is operated.

Subparagraph (B) shall not apply to rights provided to an eligible independent contractor to operate or manage a lodging facility or a health care facility if such rights are held by such corporation as a franchisee, licensee, or in a similar capacity and such lodging facility or health care facility is either owned by such corporation or is leased to such corporation from the real estate investment trust.

(4) Definitions

For purposes of paragraph (3)—

(A) Lodging facility

The term ''lodging facility'' has the meaning given to such term by subsection (d)(9)(D)(ii).

(B) Health care facility

The term ''health care facility'' has the meaning given to such term by subsection (e)(6)(D)(ii).

(m) Safe harbor in applying subsection (c)(4)

(1) In general

In applying subclause (III) of subsection (c)(4)(B)(iii), except as otherwise determined by the Secretary in regulations, the following shall not be considered securities held by the trust:

(A) Straight debt securities of an issuer which meet the requirements of paragraph (2).

(B) Any loan to an individual or an estate.

(C) Any section 467 rental agreement (as defined in section 467(d)), other than with a person described in subsection (d)(2)(B).

(D) Any obligation to pay rents from real property (as defined in subsection (d)(1)).

(E) Any security issued by a State or any political subdivision thereof, the District of Columbia, a foreign government or any political subdivision thereof, or the Commonwealth of Puerto Rico, but only if the determination of any payment received or accrued under such security does not depend in whole or in part on the profits of any entity not described in this subparagraph or payments on any obligation issued by such an entity,

(F) Any security issued by a real estate investment trust.

(G) Any other arrangement as determined by the Secretary.

(2) Special rules relating to straight debt securities

(A) In general

For purposes of paragraph (1)(A), securities meet the requirements of this paragraph if such securities are straight debt, as defined in section 1361(c)(5) (without regard to subparagraph (B)(iii) thereof).

(B) Special rules relating to certain contingencies

For purposes of subparagraph (A), any interest or principal shall not be treated as failing to satisfy section 1361(c)(5)(B)(i) solely by reason of the fact that—

(i) the time of payment of such interest or principal is subject to a contingency, but only if—

(I) any such contingency does not have the effect of changing the effective yield to maturity, as determined under section 1272, other than a change in the annual yield to maturity which does not exceed the greater of ¼ of 1 percent or 5 percent of the annual yield to maturity, or

(II) neither the aggregate issue price nor the aggregate face amount of the issuer's debt instruments held by the trust exceeds $1,000,000 and not more than 12 months of unaccrued interest can be required to be prepaid thereunder, or

(ii) the time or amount of payment is subject to a contingency upon a default or the exercise of a prepayment right by the issuer of the debt, but only if such contingency is consistent with customary commercial practice.

(C) Special rules relating to corporate or partnership issuers

In the case of an issuer which is a corporation or a partnership, securities that otherwise would be described in paragraph (1)(A) shall be considered not to be so described if the trust holding such securities and any of its controlled taxable REIT subsidiaries (as defined in subsection (d)(8)(A)(iv)) hold any securities of the issuer which—

(i) are not described in paragraph (1) (prior to the application of this subparagraph), and

(ii) have an aggregate value greater than 1 percent of the issuer's outstanding securities determined without regard to paragraph (3)(A)(i).

(3) Look-through rule for partnership securities

(A) In general

For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

(i) a trust's interest as a partner in a partnership (as defined in section 7701(a)(2)) shall not be considered a security, and

(ii) the trust shall be deemed to own its proportionate share of each of the assets of the partnership.

(B) Determination of trust's interest in partnership assets

For purposes of subparagraph (A), with respect to any taxable year beginning after the date of the enactment of this subparagraph—

(i) the trust's interest in the partnership assets shall be the trust's proportionate interest in any securities issued by the partnership (determined without regard to subparagraph (A)(i) and paragraph (4), but not including securities described in paragraph (1)), and

(ii) the value of any debt instrument shall be the adjusted issue price thereof, as defined in section 1272(a)(4).

(4) Certain partnership debt instruments not treated as a security

For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

(A) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security to the extent of the trust's interest as a partner in the partnership, and

(B) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security if at least 75 percent of the partnership's gross income (excluding gross income from prohibited transactions) is derived from sources referred to in subsection (c)(3).

(5) Secretarial guidance

The Secretary is authorized to provide guidance (including through the issuance of a written determination, as defined in section 6110(b)) that an arrangement shall not be considered a security held by the trust for purposes of applying subclause (III) of subsection (c)(4)(B)(iii) notwithstanding that such arrangement otherwise could be considered a security under subparagraph (F) of subsection (c)(5).

(6) Transition rule

(A) In general

Notwithstanding paragraph (2)(C), securities held by a trust shall not be considered securities held by the trust for purposes of subsection (c)(4)(B)(iii)(III) during any period beginning on or before October 22, 2004, if such securities—

(i) are held by such trust continuously during such period, and

(ii) would not be taken into account for purposes of such subsection by reason of paragraph (7)(C) of subsection (c) (as in effect on October 22, 2004) if the amendments made by section 243 of the American Jobs Creation Act of 2004 had never been enacted.

(B) Rule not to apply to securities held after maturity date

Subparagraph (A) shall not apply with respect to any security after the later of October 22, 2004, or the latest maturity date under the contract (as in effect on October 22, 2004) taking into account any renewal or extension permitted under the contract if such renewal or extension does not significantly modify any other terms of the contract.

(C) Successors

If the successor of a trust to which this paragraph applies acquires securities in a transaction to which section 381 applies, such trusts shall be treated as a single entity for purposes of determining the holding period of such securities under subparagraph (A).

(n) Rules regarding foreign currency transactions

(1) In general

For purposes of this part—

(A) passive foreign exchange gain for any taxable year shall not constitute gross income for purposes of subsection (c)(2), and

(B) real estate foreign exchange gain for any taxable year shall not constitute gross income for purposes of subsection (c)(3).

(2) Real estate foreign exchange gain

For purposes of this subsection, the term ''real estate foreign exchange gain'' means—

(A) foreign currency gain (as defined in section 988(b)(1)) which is attributable to—

(i) any item of income or gain described in subsection (c)(3),

(ii) the acquisition or ownership of obligations secured by mortgages on real property or on interests in real property (other than foreign currency gain attributable to any item of income or gain described in clause (i)), or

(iii) becoming or being the obligor under obligations secured by mortgages on real property or on interests in real property (other than foreign currency gain attributable to any item of income or gain described in clause (i)),

(B) section 987 gain attributable to a qualified business unit (as defined by section 989) of the real estate investment trust, but only if such qualified business unit meets the requirements under—

(i) subsection (c)(3) for the taxable year, and

(ii) subsection (c)(4)(A) at the close of each quarter that the real estate investment trust has directly or indirectly held the qualified business unit, and

(C) any other foreign currency gain as determined by the Secretary.

(3) Passive foreign exchange gain

For purposes of this subsection, the term ''passive foreign exchange gain'' means—

(A) real estate foreign exchange gain,

(B) foreign currency gain (as defined in section 988(b)(1)) which is not described in subparagraph (A) and which is attributable to—

(i) any item of income or gain described in subsection (c)(2),

(ii) the acquisition or ownership of obligations (other than foreign currency gain attributable to any item of income or gain described in clause (i)), or

(iii) becoming or being the obligor under obligations (other than foreign currency gain attributable to any item of income or gain described in clause (i)), and

(C) any other foreign currency gain as determined by the Secretary.

(4) Exception for income from substantial and regular trading

Notwithstanding this subsection or any other provision of this part, any section 988 gain derived by a corporation, trust, or association from dealing, or engaging in substantial and regular trading, in securities (as defined in section 475(c)(2)) shall constitute gross income which does not qualify under paragraph (2) or (3) of subsection (c). This paragraph shall not apply to income which does not constitute gross income by reason of subsection (c)(5)(G).

(Added Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1004; amended Pub. L. 88–272, title II, §225(k)(4), Feb. 26, 1964, 78 Stat. 94; Pub. L. 88–554, §4(b)(4), Aug. 31, 1964, 78 Stat. 763; Pub. L. 93–625, §6(a), (b), (d)(1), Jan. 3, 1975, 88 Stat. 2112–2114; Pub. L. 94–455, title XIV, §1402(b)(1)(O), (2), title XVI, §§1602(a), 1603(a), (c)(1)–(4), 1604(a)–(c)(1), (d)–(f)(3)(A), (g), (k)(1), (2)(A), title XIX, §§1901(a)(111), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1746, 1748–1753, 1783, 1834; Pub. L. 95–600, title III, §363(a), (c), title VII, §701(t)(2), Nov. 6, 1978, 92 Stat. 2852, 2853, 2912; Pub. L. 98–369, div. A, title X, §1001(b)(12), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, §§661(a), 662, 663, 671(b)(1), title IX, §901(d)(4)(E), Oct. 22, 1986, 100 Stat. 2299, 2300, 2302, 2317, 2380; Pub. L. 100–647, title I, §1006(p)(1), (3), (4)(A), (5), (q), (t)(11), Nov. 10, 1988, 102 Stat. 3416, 3417, 3422; Pub. L. 103–66, title XIII, §13149(a), Aug. 10, 1993, 107 Stat. 445; Pub. L. 104–188, title I, §§1621(b)(5), 1704(t)(35), Aug. 20, 1996, 110 Stat. 1867, 1889; Pub. L. 105–34, title XII, §§1251(b)–1253, 1255(a), (b)(1), 1257, 1258, 1261, 1262, Aug. 5, 1997, 111 Stat. 1031–1036; Pub. L. 106–170, title V, §§532(c)(2)(H)–(K), 541–542(b)(3)(A)(i), (B)(i), 543, 551(a), 561(a), Dec. 17, 1999, 113 Stat. 1930, 1940–1943, 1948, 1949; Pub. L. 106–554, §1(a)(7) [title III, §319(9), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 108–357, title II, §243(a), (b), (d), (f)(1)–(3), title VIII, §835(b)(4), Oct. 22, 2004, 118 Stat. 1439, 1441–1444, 1593; Pub. L. 109–135, title IV, §§403(d)(1), (2), 412(hh), Dec. 21, 2005, 119 Stat. 2620, 2622, 2639; Pub. L. 110–172, §§9(b), 11(a)(18), Dec. 29, 2007, 121 Stat. 2484, 2486; Pub. L. 110–234, title XV, §§15312(a), (b), 15313(a), (b), 15314(a), May 22, 2008, 122 Stat. 1503, 1504; Pub. L. 110–246, §4(a), title XV, §§15312(a), (b), 15313(a), (b), 15314(a), June 18, 2008, 122 Stat. 1664, 2265, 2266; Pub. L. 110–289, div. C, title II, §§3031, 3032, 3041, 3061, July 30, 2008, 122 Stat. 2897, 2899–2901.)

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsec. (c)(2)(I), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

The Investment Company Act of 1940, referred to in subsec. (c)(5)(F), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The date of the enactment of this paragraph and such date of enactment, referred to in subsec. (c)(8), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

The Social Security Act, referred to in subsec. (e)(6)(D)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (m)(3)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

Section 243 of the American Jobs Creation Act of 2004, referred to in subsec. (m)(6)(A)(ii), is section 243 of Pub. L. 108–357, which amended this section and sections 857 and 860 of this title and enacted provisions set out as a note under this section.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (c)(2)(I). Pub. L. 110–246, § 15313(a), added subpar. (I).

Subsec. (c)(4). Pub. L. 110–289, § 3032(a), inserted "(including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset)" after "such requirements" in first sentence of concluding provisions.

Subsec. (c)(4)(B)(ii). Pub. L. 110–289, § 3041, substituted "than 25 percent" for "than 20 percent" and "REIT subsidiaries," for "REIT subsidiaries (in the case of a quarter which closes on or before the termination date, 25 percent in the case of a timber real estate investment trust), and".

Pub. L. 110–246, § 15314(a), inserted "(in the case of a quarter which closes on or before the termination date, 25 percent in the case of a timber real estate investment trust)" after "REIT subsidiaries".

Subsec. (c)(5)(G). Pub. L. 110–289, § 3031(b), amended subpar. (G) generally. Prior to amendment, text read as follows: "Except to the extent provided by regulations, any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraph (2) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets."

Subsec. (c)(5)(H). Pub. L. 110–246, § 15312(a), added subpar. (H).

Subsec. (c)(5)(I). Pub. L. 110–246, § 15313(b), added subpar. (I).

Subsec. (c)(5)(J). Pub. L. 110–289, § 3031(c), added subpar. (J).

Subsec. (c)(5)(K). Pub. L. 110–289, § 3032(b), added subpar. (K).

Subsec. (c)(8). Pub. L. 110–246, § 15312(b), added par. (8).

Subsec. (d)(8)(B). Pub. L. 110–289, § 3061(a), amended subpar. (B) generally. Prior to amendment, text read as follows: "The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor."

Subsec. (d)(9)(A), (B). Pub. L. 110–289, § 3061(b), amended subpars. (A) and (B) generally. Prior to amendment, subpar. (A) defined "eligible independent contractor" with respect to any qualified lodging facility and subpar. (B) set forth reasons by which a person would not fail to be treated as an independent contractor with respect to any qualified lodging facility.

Subsec. (*l*)(3). Pub. L. 110–289, § 3061(c), inserted "or a health care facility" after "a lodging facility" and "or health care facility" after "such lodging facility" in concluding provisions.

Subsec. (n). Pub. L. 110–289, § 3031(a), added subsec. (n).

2007—Subsec. (d)(9)(D)(ii). Pub. L. 110–172, § 9(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'lodging facility' means a hotel, motel, or other establishment more than one-half of the dwelling units in which are used on a transient basis."

Subsec. (*l*)(2). Pub. L. 110–172, § 11(a)(18), in concluding provisions, inserted last sentence and struck out former last sentence which read as follows: "The rule of section 856(c)(7) shall apply for purposes of subparagraph (B)."

2005—Subsec. (c)(7). Pub. L. 109–135, § 403(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) to (C) relating to rules of application for a corporation, trust, or association that fails to satisfy the requirements of paragraph (4) of this subsection.

Subsec. (g)(5)(A). Pub. L. 109–135, § 412(hh), substituted "paragraph (2), (3), or (4) of subsection (c)" for "subsection (c)(6) or (c)(7) of section 856".

Subsec. (m)(6). Pub. L. 109–135, § 403(d)(2), added par. (6).

2004—Subsec. (c)(5)(E). Pub. L. 108–357, § 835(b)(4), struck out last sentence which read as follows: "The principles of the preceding provisions of this subparagraph shall apply to regular interests in a FASIT."

Subsec. (c)(5)(G). Pub. L. 108–357, § 243(d), reenacted heading without change and amended text of subpar. (G) generally. Prior to amendment, subpar. (G) provided that, except to the extent provided by regulations, payment to a real estate investment trust under an interest rate swap or cap agreement, option, futures contract, forward rate agreement, or any similar financial instrument, entered into by the trust in a transaction to reduce the interest rate risks with respect to any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and gain from the sale or other disposition of any such investment, would be treated as income qualifying under par. (2).

Subsec. (c)(6)(A). Pub. L. 108–357, § 243(f)(2), added subpar. (A) and struck out former subpar. (A) which read as follows: "the nature and amount of each item of its gross income described in such paragraphs is set forth in a schedule attached to its income tax return for such taxable year;".

Subsec. (c)(6)(B), (C). Pub. L. 108–357, § 243(f)(2), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "the inclusion of any incorrect information in the schedule referred to in subparagraph (A) is not due to fraud with intent to evade tax; and".

Subsec. (c)(7). Pub. L. 108–357, § 243(f)(1), added par. (7).

Pub. L. 108–357, § 243(a)(1), struck out par. (7) which provided that securities of an issuer which were straight debt would not be taken into account in applying paragraph (4)(B)(iii)(III), if the issuer was an individual, if the only securities of such issuer which were held by the trust or a taxable REIT subsidiary of the trust were straight debt, or if the issuer was a partnership and the trust held at least a 20 percent profits interest in the partnership.

Subsec. (d)(8)(A). Pub. L. 108–357, §243(b), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in section 856(d)(2)(B). The preceding sentence shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents made by the other tenants of the trust's property for comparable space.''

Subsec. (g)(1). Pub. L. 108–357, §243(f)(3)(A), inserted ''unless paragraph (5) applies'' before ''. Such termination''.

Subsec. (g)(5). Pub. L. 108–357, §243(f)(3)(B), added par. (5).

Subsec. (m). Pub. L. 108–357, §243(a)(2), added subsec. (m).

2000—Subsec. (c)(7). Pub. L. 106–554, §1(a)(7) [title III, §319(9)], substituted ''paragraph (4)(B)(iii)(III)'' for ''paragraph (4)(B)(ii)(III)'' in introductory provisions.

Subsec. (*l*)(4)(A). Pub. L. 106–554, §1(a)(7) [title III, §319(10)], substituted ''subsection (d)(9)(D)(ii)'' for ''paragraph (9)(D)(ii)''.

1999—Subsec. (c)(2)(D), (3)(C). Pub. L. 106–170, §532(c)(2)(H), (I), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (c)(4)(B). Pub. L. 106–170, §541(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''not more than 25 percent of the value of its total assets is represented by securities (other than those includible under subparagraph (A)) for purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the trust and to not more than 10 percent of the outstanding voting securities of such issuer.''

Subsec. (c)(7). Pub. L. 106–170, §541(b), added par. (7).

Subsec. (d)(1). Pub. L. 106–170, §542(b)(3)(A)(i), substituted ''fair market values'' for ''adjusted bases'' in two places in concluding provisions.

Subsec. (d)(2)(B). Pub. L. 106–170, §542(b)(2), inserted ''except as provided in paragraph (8),'' after ''(B)'' in introductory provisions.

Subsec. (d)(2)(B)(i). Pub. L. 106–170, §542(b)(3)(B)(i), substituted ''value'' for ''number''.

Subsec. (d)(3). Pub. L. 106–170, §561(a), inserted concluding provisions.

Subsec. (d)(7)(C)(i). Pub. L. 106–170, §542(a), inserted ''or through a taxable REIT subsidiary of such trust'' after ''income''.

Subsec. (d)(8), (9). Pub. L. 106–170, §542(b)(1), added pars. (8) and (9).

Subsec. (e)(1). Pub. L. 106–170, §532(c)(2)(J), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (e)(6). Pub. L. 106–170, §551(a), added par. (6).

Subsec. (i)(2). Pub. L. 106–170, §543(b), inserted at end ''Such term shall not include a taxable REIT subsidiary.''

Subsec. (j)(2)(B). Pub. L. 106–170, §532(c)(2)(K), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (*l*). Pub. L. 106–170, §543(a), added subsec. (*l*).

1997—Subsec. (a)(6). Pub. L. 105–34, §1251(b)(2), inserted ''subject to the provisions of subsection (k),'' before ''which is not''.

Subsec. (c)(3)(I). Pub. L. 105–34, §1255(a)(1), inserted ''and'' at end.

Subsec. (c)(4). Pub. L. 105–34, §1255(a)(2), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''less than 30 percent of its gross income is derived from the sale or other disposition of—

''(A) stock or securities held for less than 1 year;

''(B) property in a transaction which is a prohibited transaction; and

''(C) real property (including interests in real property and interests in mortgages on real property) held for less than 4 years other than—

''(i) property compulsorily or involuntarily converted within the meaning of section 1033, and

''(ii) property which is foreclosure property within the definition of section 856(e); and''.

Subsec. (c)(5). Pub. L. 105–34, §1255(a)(3), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (c)(5)(G). Pub. L. 105–34, §1258, amended heading and text of subpar. (G) generally. Prior to amendment, text read as follows: ''Except to the extent provided by regulations, any—

''(i) payment to a real estate investment trust under a bona fide interest rate swap or cap agreement entered into by the real estate investment trust to hedge any variable rate indebtedness of such trust incurred or to be incurred to acquire or carry real estate assets, and

''(ii) any gain from the sale or other disposition of such agreement,

shall be treated as income qualifying under paragraph (2).''

Pub. L. 105–34, §1255(b)(1), struck out ''and such agreement shall be treated as a security for purposes of paragraph (4)(A)'' after ''under paragraph (2)'' in concluding provisions.

Subsec. (c)(6), (7). Pub. L. 105–34, §1255(a)(3), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (c)(8). Pub. L. 105–34, §1255(a)(2), struck out heading and text of par. (8). Text read as follows: ''In the case of the taxable year in which a real estate investment trust is completely liquidated, there shall not be taken into account under paragraph (4) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation.''

Subsec. (d)(2). Pub. L. 105–34, §1252(a), added subpar. (C) and struck out former subpar. (C) and concluding provisions which read as follows:

''(C) any amount received or accrued, directly or indirectly, with respect to any real or personal property if the real estate investment trust furnishes or renders services to the tenants of such property, or manages or operates such property, other than through an independent contractor from whom the trust itself does not derive or receive any income.

Subparagraph (C) shall not apply with respect to any amount if such amount would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).''

Subsec. (d)(5). Pub. L. 105–34, §1253, substituted ''except that—'' and subpars. (A) and (B) for ''except that '10 percent' shall be substituted for '50 percent' in subparagraph (C) of section 318(a)(2) and 318(a)(3).''

Subsec. (d)(7). Pub. L. 105–34, §1252(b), added par. (7).

Subsec. (e)(2). Pub. L. 105–34, §1257(a)(1), which directed amendment of par. (2) by substituting ''as of the close of the 3d taxable year following the taxable year in which the trust acquired such property'' for ''on the date which is 2 years after the date the trust acquired such property'', was executed by making the substitution for ''on the date which is 2 years after the date such trust acquired such property'' to reflect the probable intent of Congress.

Subsec. (e)(3). Pub. L. 105–34, §1257(a)(2), substituted ''grant one extension'' for ''grant one or more extensions'' and ''Any such extension shall not extend the grace period beyond the close of the 3d taxable year following the last taxable year in the period under paragraph (2).'' for ''Any such extension shall not extend the grace period beyond the date which is 6 years after the date such trust acquired such property.''

Subsec. (e)(4). Pub. L. 105–34, §1257(c), inserted concluding provisions ''For purposes of subparagraph (C), property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to such property to the extent that such activities would not result in amounts received or accrued, directly or indirectly, with respect to such property being treated as other than rents from real property.''

Subsec. (e)(5). Pub. L. 105–34, §1257(b), substituted ''A real estate investment trust may revoke any such election for a taxable year by filing the revocation (in the manner provided by the Secretary) on or before the due date (including any extension of time) for filing its return of tax under this chapter for the taxable year. If a trust revokes an election for any property, no election may be made by the trust under this paragraph with respect to the property for any subsequent taxable year.'' for ''Any such election shall be irrevocable.''

Subsec. (i)(2). Pub. L. 105–34, § 1262, struck out ''at all times during the period such corporation was in existence'' after ''real estate investment trust''.

Subsec. (j)(4). Pub. L. 105–34, § 1261(a), added par. (4). Former par. (4) redesignated (5).

Subsec. (j)(5). Pub. L. 105–34, § 1261(a), redesignated par. (4) as (5).

Subsec. (j)(5)(A)(ii). Pub. L. 105–34, § 1261(b), inserted before period at end ''or appreciation in value as of any specified date''.

Subsec. (k). Pub. L. 105–34, § 1251(b)(1), added subsec. (k).

1996—Subsec. (a)(4). Pub. L. 104–188, § 1704(t)(35), substituted ''section 582(c)(2)'' for ''section 582(c)(5)''.

Subsec. (c)(6)(E). Pub. L. 104–188, § 1621(b)(5), inserted at end ''The principles of the preceding provisions of this subparagraph shall apply to regular interests in a FASIT.''

1993—Subsec. (h)(3). Pub. L. 103–66 added par. (3).

1988—Subsec. (c)(6)(D). Pub. L. 100–647, § 1006(t)(11), struck out subpar. (D), as added by Pub. L. 99–514, § 671(b)(1), which read as follows: ''A regular or residual interest in a REMIC shall be treated as an interest in real property, and any amount includible in gross income with respect to such an interest shall be treated as interest; except that, if less than 95 percent of the assets of such REMIC are interests in real property (determined as if the taxpayer held such assets), such interest shall be so treated only in the proportion which the assets of the REMIC consist of such interests.''

Subsec. (c)(6)(D)(i)(I). Pub. L. 100–647, § 1006(p)(1), substituted ''debt instrument (within the meaning of section 1275(a)(1))'' for ''debt instrument''.

Subsec. (c)(6)(D)(ii)(I). Pub. L. 100–647, § 1006(p)(5), substituted ''stock (or certificates of beneficial interests) in such trust'' for ''stock in such trust''.

Subsec. (c)(6)(E), (F). Pub. L. 100–647, § 1006(t)(11), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (c)(6)(G). Pub. L. 100–647, § 1006(p)(4)(A), added subpar. (G).

Subsec. (c)(8). Pub. L. 100–647, § 1006(p)(3), added par. (8).

Subsec. (d)(6)(A). Pub. L. 100–647, § 1006(q)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If—

''(i) a real estate investment trust receives or accrues, with respect to real or personal property, amounts from a tenant which derives substantially all of its income with respect to such property from the subleasing of substantially all of such property, and

''(ii) such tenant receives or accrues, directly or indirectly, from subtenants only amounts which are qualified rents,

then the amounts that the trust receives or accrues from the tenant shall not be excluded from the term 'rents from real property' solely by reason of being based on the income or profits of such tenant.''

Subsec. (f). Pub. L. 100–647, § 1006(q)(2), amended subsec. (f) generally, making changes in content and structure.

1986—Subsec. (a)(4). Pub. L. 99–514, § 901(d)(4)(E), substituted ''referred to in section 582(c)(5)'' for ''to which section 585, 586, or 593 applies''.

Subsec. (a)(6). Pub. L. 99–514, § 661(a)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''which would not be a personal holding company (as defined in section 542) if all of its adjusted ordinary gross income (as defined in section 543(b)(2)) constituted personal holding company income (as defined in section 543); and''.

Subsec. (c)(3)(I). Pub. L. 99–514, § 662(b)(1), added subpar. (I).

Subsec. (c)(6)(B). Pub. L. 99–514, § 662(b)(2), inserted ''Such term also includes any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, but only if such property is stock or a debt instrument, and only for the 1-year period beginning on the date the real estate trust receives such capital.''

Subsec. (c)(6)(D). Pub. L. 99–514, § 671(b)(1), added subpar. (D) relating to REMIC interest. Former subpar. (D) redesignated (E).

Pub. L. 99–514, § 662(b)(3), added subpar. (D) relating to qualified temporary investment income. Former subpar. (D) redesignated (E).

Subsec. (c)(6)(E). Pub. L. 99–514, §§ 662(b)(3), 671(b)(1), made identical redesignations of former subpar. (D) as (E).

Subsec. (d)(2). Pub. L. 99–514, § 663(a), (b)(3), inserted reference to par. (6) in subpar. (A) and inserted at end ''Subparagraph (C) shall not apply with respect to any amount if such amount would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).''

Subsec. (d)(6). Pub. L. 99–514, § 663(b)(1), added par. (6).

Subsec. (f). Pub. L. 99–514, § 663(b)(2), amended subsec. (f) generally, restating former introductory provisions and par. (1) as introductory provisions of par. (1) and as subpar. (A), restating provisions of par. (2), adding subpar. (1)(B), and striking out former concluding provisions which read as follows: ''The provisions of this subsection shall apply only with respect to amounts received or accrued pursuant to loans made after May 27, 1976. For purposes of the preceding sentence, a loan is considered to be made before May 28, 1976, if such loan is made pursuant to a binding commitment entered into before May 28, 1976.''

Subsec. (h). Pub. L. 99–514, § 661(a)(2), added subsec. (h).

Subsec. (i). Pub. L. 99–514, § 662(a), added subsec. (i).

Subsec. (j). Pub. L. 99–514, § 662(c), added subsec. (j).

1984—Subsec. (c)(4)(A). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1978—Subsec. (c)(2)(H). Pub. L. 95–600, § 363(a)(1), added subpar. (H).

Subsec. (c)(3)(D). Pub. L. 95–600, § 701(t)(2), inserted ''(other than gain from prohibited transactions)'' after ''on, and gain''.

Subsec. (c)(3)(H). Pub. L. 95–600, § 363(a)(2), added subpar. (H).

Subsec. (c)(4)(B). Pub. L. 95–600, § 363(a)(3), substituted ''property in a transaction which is a prohibited transaction'' for ''section 1221(1) property (other than foreclosure property)''.

Subsec. (e)(3). Pub. L. 95–600, § 363(c), substituted ''the Secretary may grant one or more extensions of the grace period for such property'' for ''the Secretary may extend the grace period for such property'' and ''shall not extend the grace period beyond the date which is 6 years after the date such trust acquired such property'' for ''shall be for a period of not more than one year, and not more than two extensions shall be granted with respect to any property''.

1976—Subsec. (a). Pub. L. 94–455, §§ 1603(a), 1604(f)(1), (2), in introductory provisions substituted ''this title'' for ''this subtitle'' and ''a corporation, trust, or association'' for ''an unincorporated trust or an unincorporated association'', in par. (1) inserted ''or directors'' after ''trustees'', and in par. (4) substituted reference to which is neither (A) a financial institution to which section 585, 586, or 593 applies, nor (B) an insurance company to which subchapter L applies for reference to which does not hold any property primarily for sale to customers in the ordinary course of its trade or business.

Subsec. (c). Pub. L. 94–455, § 1604(f)(3)(A), in introductory provision substituted ''A corporation, trust, or association'' for ''A trust or association''.

Subsec. (c)(1). Pub. L. 94–455, §§1604(k)(2)(A), 1901(a)(111)(A), struck out reference to which began after Dec. 31, 1960 and inserted reference to such election has not been terminated or revoked under subsec. (g).

Subsec. (c)(2). Pub. L. 94–455, §§1603(c)(2), 1604(a), (c)(1), in introductory provision substituted "95 percent (90 percent for taxable years beginning before January 1, 1980) of its gross income (excluding gross income from prohibited transactions)" for "90 percent of its gross income", in subpar. (D) inserted reference to which is not property not described in section 1221(1), and added subpar. (G).

Subsec. (c)(3). Pub. L. 94–455, §§1603(c)(1), (3), 1604(c)(1), in introductory provision inserted "(excluding gross income from prohibited transactions) 75 percent of its gross income", in subpar. (C) inserted reference to which is not property described in section 1221(1), and added subpar. (G).

Subsec. (c)(4). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §§1402(b)(1)(O), 1604(d), in subpar. (A) provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977, added subpar. (B), and redesignated former subpar. (B) as (C), and in subpar. (C) as so redesignated, substituted "(including interest in real property and interest in mortgages on real property" for "(including interest in real property)" and inserted reference to property which is foreclosure property within the definition of section 856(e).

Subsec. (c)(6)(C). Pub. L. 94–455, §1604(e), inserted reference to options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

Subsec. (c)(6)(D). Pub. L. 94–455, §1901(a)(111)(B), inserted "(15 U.S.C. 80a–1 and following)" after ", as amended".

Subsec. (c)(7). Pub. L. 94–455, §1602(a), added par. (7).

Subsec. (d). Pub. L. 94–455, §1604(b), among other changes, inserted provisions including in definition of rents from real property charges for services customarily furnished or rendered in connection with rental of real property and rent attributable to personal property which is leased under, or in connection with, a lease of real property, provisions relating to the computation of the amount of rent attributable to personal property, and provisions relating to the special rule for certain contingent rents.

Subsec. (e)(1). Pub. L. 94–455, §1603(c)(4), inserted provision relating to the exclusion, from definition of foreclosure property, of property acquired by the real estate investment trust or other disposition of property of the trust described in section 1221(1) of this title.

Subsec. (e)(3), (5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" each time appearing.

Subsec. (f). Pub. L. 94–455, §1604(g), added subsec. (f).

Subsec. (g). Pub. L. 94–455, §1604(k)(1), added subsec. (g).

1975—Subsec. (a)(4). Pub. L. 93–625, §6(b), inserted "(other than foreclosure property, as defined in subsection (e))" after "property".

Subsec. (c)(2)(F), (3)(F). Pub. L. 93–625, §6(d)(1), added subpar. (F) to pars. (2) and (3).

Subsec. (e). Pub. L. 93–625, §6(a), added subsec. (e).

1964—Subsec. (a)(6). Pub. L. 88–272 substituted "adjusted ordinary gross income (as defined in section 543(b)(2))" for "gross income".

Subsec. (d). Pub. L. 88–554 inserted reference to subparagraph (C) of section 318(a)(3) of this title.

Effective Dates of 2008 Amendment

Pub. L. 110–289, div. C, title II, §3071, July 30, 2008, 122 Stat. 2902, provided that:

"(a) In General.—Except as otherwise provided in this section, the amendments made by this title [amending this section and section 857 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 30, 2008].

"(b) REIT Income Tests.—

"(1) The amendments made by section 3031(a) and (c) [amending this section] shall apply to gains and items of income recognized after the date of the enactment of this Act [July 30, 2008].

"(2) The amendment made by section 3031(b) [amending this section] shall apply to transactions entered into after the date of the enactment of this Act [July 30, 2008].

"(c) Conforming Foreign Currency Revisions.—

"(1) The amendment made by section 3033(a) [amending section 857 of this title] shall apply to gains recognized after the date of the enactment of this Act [July 30, 2008].

"(2) The amendment made by section 3033(b) [amending section 857 of this title] shall apply to gains and deductions recognized after the date of the enactment of this Act [July 30, 2008].

"(d) Dealer Sales.—The amendments made by subtitle C [subtitle C (§§3051, 3052) of title II of div. C of Pub. L. 110–289, amending section 857 of this title] shall apply to sales made after the date of the enactment of this Act [July 30, 2008]."

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15312(c), May 22, 2008, 122 Stat. 1504, and Pub. L. 110–246, §4(a), title XV, §15312(c), June 18, 2008, 122 Stat. 1664, 2266, provided that: "The amendments made by subsection (a) [amending this section] shall apply to dispositions in taxable years beginning after the date of the enactment of this Act [June 18, 2008]."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XV, §15313(c), May 22, 2008, 122 Stat. 1504, and Pub. L. 110–246, §4(a), title XV, §15313(c), June 18, 2008, 122 Stat. 1664, 2266, provided that: "The amendments by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [June 18, 2008]."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XV, §15314(b), May 22, 2008, 122 Stat. 1504, and Pub. L. 110–246, §4(a), title XV, §15314(b), June 18, 2008, 122 Stat. 1664, 2266, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [June 18, 2008]."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Effective Date of 2007 Amendment

Amendment by section 9(b) of Pub. L. 110–172 effective as if included in the provision of the Tax Relief Extension Act of 1999, Pub. L. 106–170, to which such amendment relates, see section 9(c) of Pub. L. 110–172, set out as a note under section 45 of this title.

Effective Date of 2005 Amendment

Amendments by section 403(d)(1), (2) of Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Effective Date of 2004 Amendment

Pub. L. 108–357, title II, §243(g), Oct. 22, 2004, 118 Stat. 1445, as amended by Pub. L. 109–135, title IV, §403(d)(4), Dec. 21, 2005, 119 Stat. 2622, provided that:

"(1) Subsections (a) and (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 2000.

''(2) SUBSECTIONS (c) AND (e).—The amendments made by subsections (c) and (e) [amending section 857 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].

''(3) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall apply to transactions entered into after December 31, 2004.

''(4) SUBSECTION (f).—

''(A) The amendment made by paragraph (1) of subsection (f) [amending this section] shall apply to failures with respect to which the requirements of subparagraph (A) or (B) of section 856(c)(7) of the Internal Revenue Code of 1986 (as added by such paragraph) are satisfied after the date of the enactment of this Act [Oct. 22, 2004].

''(B) The amendment made by paragraph (2) of subsection (f) [amending this section] shall apply to failures with respect to which the requirements of paragraph (6) of section 856(c) of the Internal Revenue Code of 1986 (as amended by such paragraph) are satisfied after the date of the enactment of this Act.

''(C) The amendments made by paragraph (3) of subsection (f) [amending this section] shall apply to failures with respect to which the requirements of paragraph (5) of section 856(g) of the Internal Revenue Code of 1986 (as added by such paragraph) are satisfied after the date of the enactment of this Act.

''(D) The amendment made by paragraph (4) of subsection (f) [amending section 857 of this title] shall apply to taxable years ending after the date of the enactment of this Act.

''(E) The amendments made by paragraph (5) of subsection (f) [amending section 860 of this title] shall apply to statements filed after the date of the enactment of this Act.''

Amendment by section 835(b)(4) of Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(H)–(K) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

Pub. L. 106–170, title V, § 542(b)(3)(A)(ii), Dec. 17, 1999, 113 Stat. 1943, provided that: ''The amendment made by this subparagraph [amending this section] shall apply to taxable years beginning after December 31, 2000.''

Pub. L. 106–170, title V, § 542(b)(3)(B)(ii), Dec. 17, 1999, 113 Stat. 1943, provided that: ''The amendment made by this subparagraph [amending this section] shall apply to amounts received or accrued in taxable years beginning after December 31, 2000, except for amounts paid pursuant to leases in effect on July 12, 1999, or pursuant to a binding contract in effect on such date and at all times thereafter.''

Pub. L. 106–170, title V, § 546, Dec. 17, 1999, 113 Stat. 1946, provided that:

''(a) IN GENERAL.—The amendments made by this subpart [subpart A (§§ 541–547) of title V of Pub. L. 106–170, amending this section and sections 163 and 857 of this title] shall apply to taxable years beginning after December 31, 2000.

''(b) TRANSITIONAL RULES RELATED TO SECTION 541.—

''(1) EXISTING ARRANGEMENTS.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by section 541 [amending this section] shall not apply to a real estate investment trust with respect to—

''(i) securities of a corporation held directly or indirectly by such trust on July 12, 1999;

''(ii) securities of a corporation held by an entity on July 12, 1999, if such trust acquires control of such entity pursuant to a written binding contract in effect on such date and at all times thereafter before such acquisition;

''(iii) securities received by such trust (or a successor) in exchange for, or with respect to, securities described in clause (i) or (ii) in a transaction in which gain or loss is not recognized; and

''(iv) securities acquired directly or indirectly by such trust as part of a reorganization (as defined in section 368(a)(1) of the Internal Revenue Code of 1986) with respect to such trust if such securities are described in clause (i), (ii), or (iii) with respect to any other real estate investment trust.

''(B) NEW TRADE OR BUSINESS OR SUBSTANTIAL NEW ASSETS.—Subparagraph (A) shall cease to apply to securities of a corporation as of the first day after July 12, 1999, on which such corporation engages in a substantial new line of business, or acquires any substantial asset, other than—

''(i) pursuant to a binding contract in effect on such date and at all times thereafter before the acquisition of such asset;

''(ii) in a transaction in which gain or loss is not recognized by reason of section 1031 or 1033 of the Internal Revenue Code of 1986; or

''(iii) in a reorganization (as so defined) with another corporation the securities of which are described in paragraph (1)(A) of this subsection.

''(C) LIMITATION ON TRANSITION RULES.—Subparagraph (A) shall cease to apply to securities of a corporation held, acquired, or received, directly or indirectly, by a real estate investment trust as of the first day after July 12, 1999, on which such trust acquires any additional securities of such corporation other than—

''(i) pursuant to a binding contract in effect on July 12, 1999, and at all times thereafter; or

''(ii) in a reorganization (as so defined) with another corporation the securities of which are described in paragraph (1)(A) of this subsection.

''(2) TAX-FREE CONVERSION.—If—

''(A) at the time of an election for a corporation to become a taxable REIT subsidiary, the amendment made by section 541 does not apply to such corporation by reason of paragraph (1); and

''(B) such election first takes effect before January 1, 2004,

such election shall be treated as a reorganization qualifying under section 368(a)(1)(A) of such Code.''

Pub. L. 106–170, title V, § 551(b), Dec. 17, 1999, 113 Stat. 1949, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000.''

Pub. L. 106–170, title V, § 561(b), Dec. 17, 1999, 113 Stat. 1950, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1263 of Pub. L. 105–34, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1621(b)(5) of Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, § 13149(b), Aug. 10, 1993, 107 Stat. 446, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, § 1006(p)(2), Nov. 10, 1988, 102 Stat. 3416, provided that: ''Notwithstanding section 669 of the Reform Act [Pub. L. 99–514, set out below], the amendment made by section 662(c) of the Reform Act [amending this section] shall apply to taxable years beginning after December 31, 1986, but only in the case of obligations acquired after October 22, 1986.''

Pub. L. 100–647, title I, §1006(p)(4)(B), Nov. 10, 1988, 102 Stat. 3417, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 10, 1988].''

Amendment by section 1006(p)(1), (3), (5), (q), (t)(11) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §669, Oct. 22, 1986, 100 Stat. 2308, as amended by Pub. L. 100–647, title I, §1018(u)(29), Nov. 10, 1988, 102 Stat. 3591, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle G (§§661–668) of title VI of Pub. L. 99–514, amending this section and sections 857 to 860, 4981, and 6697 of this title] shall apply to taxable years beginning after December 31, 1986.

''(b) SECTION 668.—The amendments made by section 668 [amending sections 857, 858, and 4981 of this title] shall apply to calendar years beginning after December 31, 1986.

''(c) RETENTION OF EXISTING TRANSITIONAL RULE.—The amendment made by section 663(b)(2) [amending this section] shall not apply with respect to amounts received or accrued pursuant to loans made before May 28, 1976. For purposes of the preceding sentence, a loan is considered to be made before May 28, 1976, if such loan is made pursuant to a binding commitment entered into before May 28, 1976.''

Amendment by section 671(b)(1) of Pub. L. 99–514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 901(d)(4)(E) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title II, §363(d), Nov. 6, 1978, 92 Stat. 2854, provided that: ''The amendments made by subsections (a) [amending this section] and (b) [amending section 857 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 6, 1978]. The amendment made by subsection (c) [amending this section] shall apply to extensions granted after the date of the enactment of this Act with respect to periods beginning after December 31, 1977.''

Amendment by section 701(t)(2) of Pub. L. 95–600 effective Oct. 4, 1976, see section 701(t)(5) of Pub. L. 95–600, set out as a note under section 859 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XVI, §1608(d), Oct. 4, 1976, 90 Stat. 1758, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by sections 1603, 1604, and 1605 [enacting sections 860 and 4981 of this title and amending this section and sections 275, 857, 858, 6161, 6211 to 6214, 6344, 6512, 6601, and 7422 of this title] shall apply to taxable years of real estate investment trusts beginning after the date of the enactment of this Act [Oct. 4, 1976].

''(2) If, as a result of a determination (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), occurring after the date of enactment of this Act [Oct. 4, 1976], with respect to the real estate investment trust, such trust does not meet the requirement of section 856(a)(4) of the Internal Revenue Code of 1986 (as in effect before the amendment of such section by this Act) for any taxable year beginning on or before the date of the enactment of this Act, such trust may elect, within 60 days after such determination in the manner provided in regulations prescribed by the Secretary of the Treasury or his delegate, to have the provisions of section 1603 (other than paragraphs (1), (2), (3), and (4) of section 1603(c)) apply with respect to such taxable year. Where the provisions of section 1603 apply to a real estate investment trust with respect to any taxable year beginning on or before the date of the enactment of this Act—

''(A) credit or refund of any overpayment of tax which results from the application of section 1603 to such taxable year shall be made as if on the date of the determination (as defined in section 859(c) of the Internal Revenue Code of 1986) 2 years remained before the expiration of the period of limitation prescribed by section 6511 of such Code on the filing of claim for refund for the taxable year to which the overpayment relates,

''(B) the running of the statute of limitations provided in section 6501 of such Code on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of any deficiency (as defined in section 6211 of such Code) established by such a determination, and all interest, additions to tax, additional amounts, or assessable penalties in respect thereof, shall be suspended for a period of 2 years after the date of such determination, and

''(C) the collection of any deficiency (as defined in section 6211 of such Code) established by such determination and all interest, additions to tax, additional amounts, and assessable penalties in respect thereof shall, except in cases of jeopardy, be stayed until the expiration of 60 days after the date of such determination.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (C) during the period for which the collection of such amount is stayed.

''(3) Section 856(g)(3) of the Internal Revenue Code of 1986, as added by section 1604 of this Act, shall not apply with respect to a termination of an election, filed by a taxpayer under section 856(c)(1) of such Code on or before the date of the enactment of this Act [Oct. 4, 1976], unless the provisions of part II of subchapter M of chapter 1 of subtitle A of such Code apply to such taxpayer for a taxable year ending after the date of the enactment of this Act for which such election is in effect.''

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–625, §6(e), Jan. 3, 1975, 88 Stat. 2114, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and section 857 of this title] apply to foreclosure property acquired after December 31, 1973. Notwithstanding the provisions of section 856(e)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) any taxpayer required to make an election with respect to foreclosure property sooner than 90 days after the date of enactment of this Act [Jan. 3, 1975], may make that election at any time before the 91st day after the date of enactment of this Act.''

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE

Pub. L. 86–779, § 10(k), Sept. 14, 1960, 74 Stat. 1009, provided that: ''The amendments made by this section [enacting this section and sections 857 and 858 and amending sections 11, 34, 116, 243, 318, 443, 852, 855, and 1504 of this title] shall apply with respect to taxable years of real estate investment trusts beginning after December 31, 1960.''

STUDY RELATING TO TAXABLE REIT SUBSIDIARIES

Pub. L. 106–170, title V, § 547, Dec. 17, 1999, 113 Stat. 1947, provided that: ''The Secretary of the Treasury shall conduct a study to determine how many taxable REIT subsidiaries are in existence and the aggregate amount of taxes paid by such subsidiaries. The Secretary shall submit a report to the Congress describing the results of such study.''

TRUST NOT DISQUALIFIED IN CERTAIN CASES WHERE INCOME TESTS NOT MET

Pub. L. 94–455, title XVI, § 1608(b), Oct. 4, 1976, 90 Stat. 1757, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by section 1602 [amending this section and section 857 of this title] shall apply to taxable years of real estate investment trusts beginning after the date of the enactment of this Act [Oct. 4, 1976]. In addition, the amendments made by section 1602 shall apply to a taxable year of a real estate investment trust beginning before the date of the enactment of this Act if, as the result of a determination (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) with respect to such trust occurring after the date of the enactment of this Act, such trust for such taxable years does not meet the requirements of section 856(c)(2) or section 856(c)(3), or of both such sections, of such Code as in effect for such taxable year. In any case, the amendment made by section 1602(a) requiring a schedule to be attached to the income tax return of certain real estate investment trusts shall apply only to taxable years of such trusts beginning after the date of the enactment of this Act. If the amendments made by section 1602 apply to a taxable year ending on or before the date of enactment of this Act, the reference to paragraph (2)(B) in section 857(b)(5) of such Code, as amended, shall be considered to be a reference to paragraph (2)(C) of section 857(b) of such Code, as in effect immediately before the enactment of this Act.''

§ 857. Taxation of real estate investment trusts and their beneficiaries

(a) Requirements applicable to real estate investment trusts

The provisions of this part (other than subsection (d) of this section and subsection (g) of section 856) shall not apply to a real estate investment trust for a taxable year unless—

(1) the deduction for dividends paid during the taxable year (as defined in section 561, but determined without regard to capital gains dividends) equals or exceeds—

(A) the sum of—

(i) 90 percent of the real estate investment trust taxable income for the taxable year (determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain); and

(ii) 90 percent of the excess of the net income from foreclosure property over the tax imposed on such income by subsection (b)(4)(A); minus

(B) any excess noncash income (as determined under subsection (e)); and

(2) either—

(A) the provisions of this part apply to the real estate investment trust for all taxable years beginning after February 28, 1986, or

(B) as of the close of the taxable year, the real estate investment trust has no earnings and profits accumulated in any non-REIT year.

For purposes of the preceding sentence, the term ''non-REIT year'' means any taxable year to which the provisions of this part did not apply with respect to the entity. The Secretary may waive the requirements of paragraph (1) for any taxable year if the real estate investment trust establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4981.

(b) Method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest

(1) Imposition of tax on real estate investment trusts

There is hereby imposed for each taxable year on the real estate investment trust taxable income of every real estate investment trust a tax computed as provided in section 11, as though the real estate investment trust taxable income were the taxable income referred to in section 11.

(2) Real estate investment trust taxable income

For purposes of this part, the term ''real estate investment trust taxable income'' means the taxable income of the real estate investment trust, adjusted as follows:

(A) The deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(B) The deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to that portion of such deduction which is attributable to the amount excluded under subparagraph (D).

(C) The taxable income shall be computed without regard to section 443(b) (relating to computation of tax on change of annual accounting period).

(D) There shall be excluded an amount equal to the net income from foreclosure property.

(E) There shall be deducted an amount equal to the tax imposed by paragraphs (5) and (7) of this subsection, section 856(c)(7)(C), and section 856(g)(5) for the taxable year.

(F) There shall be excluded an amount equal to any net income derived from prohibited transactions.

(3) Capital gains

(A) Alternative tax in case of capital gains

If for any taxable year a real estate investment trust has a net capital gain, then, in lieu of the tax imposed by subsection (b)(1), there is hereby imposed a tax (if such tax is less than the tax imposed by such subsection) which shall consist of the sum of—

(i) a tax, computed as provided in subsection (b)(1), on the real estate investment trust taxable income (determined by excluding such net capital gain and by computing the deduction for dividends paid without regard to capital gain dividends), and

(ii) a tax determined at the rates provided in section 1201(a) on the excess of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

(B) Treatment of capital gain dividends by shareholders

A capital gain dividend shall be treated by the shareholders or holders of beneficial interests as a gain from the sale or exchange of a capital asset held for more than 1 year.

(C) Definition of capital gain dividend

For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the real estate investment trust as a capital gain dividend in a written notice mailed to its shareholders or holders of beneficial interests at any time before the expiration of 30 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year); except that, if there is an increase in the excess described in subparagraph (A)(ii) of this paragraph for such year which results from a determination (as defined in section 860(e)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination. If the aggregate amount so designated with respect to a taxable year of the trust (including capital gain dividends paid after the close of the taxable year described in section 858) is greater than the net capital gain of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such net capital gain bears to the aggregate amount so designated. For purposes of this subparagraph, the amount of the net capital gain for any taxable year which is not a calendar year shall be determined without regard to any net capital loss attributable to transactions after December 31 of such year, and any such net capital loss shall be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing the taxable income of the real estate investment trust.

(D) Treatment by shareholders of undistributed capital gains

(i) Every shareholder of a real estate investment trust at the close of the trust's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the trust's taxable year falls, such amount as the trust shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 60 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year), but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A)(ii) which he would have received if all of such amount had been distributed as capital gain dividends by the trust to the holders of such shares at the close of its taxable year.

(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by subparagraph (A)(ii) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholders shall be allowed credit or refund as the case may be, for the tax so deemed to have been paid by him.

(iii) The adjusted basis of such shares in the hands of the holder shall be increased with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).

(iv) In the event of such designation, the tax imposed by subparagraph (A)(ii) shall be paid by the real estate investment trust within 30 days after the close of its taxable year.

(v) The earnings and profits of such real estate investment trust, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary.

(vi) As used in this subparagraph, the terms ''shares'' and ''shareholders'' shall include beneficial interests and holders of beneficial interests, respectively.

(E) Coordination with net operating loss provisions

For purposes of section 172, if a real estate investment trust pays capital gain dividends during any taxable year, the amount of the net capital gain for such taxable year (to the extent such gain does not exceed the amount of such capital gain dividends) shall be excluded in determining—

(i) the net operating loss for the taxable year, and

(ii) the amount of the net operating loss of any prior taxable year which may be carried through such taxable year under section 172(b)(2) to a succeeding taxable year.

(F) Certain distributions

In the case of a shareholder of a real estate investment trust to whom section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be included in computing long-term capital gains for such shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

(i) shall not be included in computing such shareholder's long-term capital gains, and

(ii) shall be included in such shareholder's gross income as a dividend from the real estate investment trust.

(4) Income from foreclosure property

(A) Imposition of tax

A tax is hereby imposed for each taxable year on the net income from foreclosure property of every real estate investment trust. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

(B) Net income from foreclosure property

For purposes of this part, the term ''net income from foreclosure property'' means the excess of—

(i) gain (including any foreign currency gain, as defined in section 988(b)(1)) from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in (or, in the case of foreign currency gain, not attributable to gross income described in) section 856(c)(3) other than subparagraph (F) thereof, over

(ii) the deductions allowed by this chapter which are directly connected with the production of the income referred to in clause (i).

(5) Imposition of tax in case of failure to meet certain requirements

If section 856(c)(6) applies to a real estate investment trust for any taxable year, there is hereby imposed on such trust a tax in an amount equal to the greater of—

(A) the excess of—

(i) 95 percent of the gross income (excluding gross income from prohibited transactions) of the real estate investment trust, over

(ii) the amount of such gross income which is derived from sources referred to in section 856(c)(2); or

(B) the excess of—

(i) 75 percent of the gross income (excluding gross income from prohibited transactions) of the real estate investment trust, over

(ii) the amount of such gross income which is derived from sources referred to in section 856(c)(3),

multiplied by a fraction the numerator of which is the real estate investment trust taxable income for the taxable year (determined without regard to the deductions provided in paragraphs (2)(B) and (2)(E), without regard to any net operating loss deduction, and by excluding any net capital gain) and the denominator of which is the gross income for the taxable year (excluding gross income from prohibited transactions; gross income and gain from foreclosure property (as defined in section 856(e), but only to the extent such gross income and gain is not described in subparagraph (A), (B), (C), (D), (E), or (G) of section 856(c)(3)); long-term capital gain; and short-term capital gain to the extent of any short-term capital loss).

(6) Income from prohibited transactions

(A) Imposition of tax

There is hereby imposed for each taxable year of every real estate investment trust a tax equal to 100 percent of the net income derived from prohibited transactions.

(B) Definitions

For purposes of this part—

(i) the term ''net income derived from prohibited transactions'' means the excess of the gain (including any foreign currency gain, as defined in section 988(b)(1)) from prohibited transactions over the deductions (including any foreign currency loss, as defined in section 988(b)(2)) allowed by this chapter which are directly connected with prohibited transactions;

(ii) in determining the amount of the net income derived from prohibited transactions, there shall not be taken into account any item attributable to any prohibited transaction for which there was a loss; and

(iii) the term ''prohibited transaction'' means a sale or other disposition of property described in section 1221(a)(1) which is not foreclosure property.

(C) Certain sales not to constitute prohibited transactions

For purposes of this part, the term ''prohibited transaction'' does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if—

(i) the trust has held the property for not less than 2 years;

(ii) aggregate expenditures made by the trust, or any partner of the trust, during the 2-year period preceding the date of sale which are includible in the basis of the property do not exceed 30 percent of the net selling price of the property;

(iii)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or (II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year, or (III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year;

(iv) in the case of property, which consists of land or improvements, not acquired through foreclosure (or deed in lieu of foreclosure), or lease termination, the trust has held the property for not less than 2 years for production of rental income; and

(v) if the requirement of clause (iii)(I) is not satisfied, substantially all of the marketing and development expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income.

(D) Certain sales not to constitute prohibited transactions

For purposes of this part, the term ''prohibited transaction'' does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if—

(i) the trust held the property for not less than 2 years in connection with the trade or business of producing timber,

(ii) the aggregate expenditures made by the trust, or a partner of the trust, during the 2-year period preceding the date of sale which—

(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

(II) are directly related to operation of the property for the production of timber or for the preservation of the property for use as timberland,

do not exceed 30 percent of the net selling price of the property,

(iii) the aggregate expenditures made by the trust, or a partner of the trust, during the 2-year period preceding the date of sale which—

(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

(II) are not directly related to operation of the property for the production of timber, or for the preservation of the property for use as timberland,

do not exceed 5 percent of the net selling price of the property,

(iv)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or

(II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year, or

(III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year,

(v) in the case that the requirement of clause (iv)(I) is not satisfied, substantially all of the marketing expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income, or, in the case of a sale on or before the termination date, a taxable REIT subsidiary, and

(vi) the sales price of the property sold by the trust is not based in whole or in part on income or profits, including income or profits derived from the sale or operation of such property.

(E) Special rules

In applying subparagraphs (C) and (D) the following special rules apply:

(i) The holding period of property acquired through foreclosure (or deed in lieu of foreclosure), or termination of the lease, includes the period for which the trust held the loan which such property secured, or the lease of such property.

(ii) In the case of a property acquired through foreclosure (or deed in lieu of foreclosure), or termination of a lease, expenditures made by, or for the account of, the mortgagor or lessee after default became imminent will be regarded as made by the trust.

(iii) Expenditures (including expenditures regarded as made directly by the trust, or indirectly by any partner of the trust, under clause (ii)) will not be taken into account if they relate to foreclosure property and did not cause the property to lose its status as foreclosure property.

(iv) Expenditures will not be taken into account if they are made solely to comply with standards or requirements of any government or governmental authority having relevant jurisdiction, or if they are made to restore the property as a result of losses arising from fire, storm or other casualty.

(v) The term ''expenditures'' does not include advances on a loan made by the trust.

(vi) The sale of more than one property to one buyer as part of one transaction constitutes one sale.

(vii) The term ''sale'' does not include any transaction in which the net selling price is less than $10,000.

(F) Sales not meeting requirements

In determining whether or not any sale constitutes a ''prohibited transaction'' for purposes of subparagraph (A), the fact that such sale does not meet the requirements of subparagraph (C) or (D) shall not be taken into account; and such determination, in the case of a sale not meeting such requirements, shall be made as if subparagraphs (C), (D), and (E) had not been enacted.

(G) Sales of property that are not a prohibited transaction

In the case of a sale on or before the termination date, the sale of property which is not a prohibited transaction through the application of subparagraph (D) shall be considered property held for investment or for use in a trade or business and not property described in section 1221(a)(1) for all purposes of this subtitle. For purposes of the preceding sentence, the reference to subparagraph (D) shall be a reference to such subparagraph as in effect on the day before the enactment of the Housing Assistance Tax Act of 2008, as modified by subparagraph (G) as so in effect.

(H) Termination date

For purposes of this paragraph, the term ''termination date'' has the meaning given such term by section 856(c)(8).

(7) Income from redetermined rents, redetermined deductions, and excess interest

(A) Imposition of tax

There is hereby imposed for each taxable year of the real estate investment trust a tax equal to 100 percent of redetermined rents, redetermined deductions, and excess interest.

(B) Redetermined rents

(i) In general

The term ''redetermined rents'' means rents from real property (as defined in section 856(d)) to the extent the amount of the rents would (but for subparagraph (E)) be reduced on distribution, apportionment, or allocation under section 482 to clearly reflect income as a result of services furnished or rendered by a taxable REIT subsidiary of the real estate investment trust to a tenant of such trust.

(ii) Exception for de minimis amounts

Clause (i) shall not apply to amounts described in section 856(d)(7)(A) with respect to a property to the extent such amounts do not exceed the one percent threshold described in section 856(d)(7)(B) with respect to such property.

(iii) Exception for comparably priced services

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

(I) such subsidiary renders a significant amount of similar services to persons other than such trust and tenants of such trust who are unrelated (within the meaning of section 856(d)(8)(F)) to such subsidiary, trust, and tenants, but

(II) only to the extent the charge for such service so rendered is substantially comparable to the charge for the similar services rendered to persons referred to in subclause (I).

(iv) Exception for certain separately charged services

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

(I) the rents paid to the trust by tenants (leasing at least 25 percent of the net leasable space in the trust's property) who are not receiving such service from such subsidiary are substantially comparable to the rents paid by tenants leasing comparable space who are receiving such service from such subsidiary, and

(II) the charge for such service from such subsidiary is separately stated.

(v) Exception for certain services based on subsidiary's income from the services

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if the gross income of such subsidiary from such service is not less than 150 percent of such subsidiary's direct cost in furnishing or rendering the service.

(vi) Exceptions granted by Secretary

The Secretary may waive the tax otherwise imposed by subparagraph (A) if the trust establishes to the satisfaction of the Secretary that rents charged to tenants were established on an arms' length basis even though a taxable REIT subsidiary of the trust provided services to such tenants.

(C) Redetermined deductions

The term ''redetermined deductions'' means deductions (other than redetermined rents) of a taxable REIT subsidiary of a real estate investment trust to the extent the amount of such deductions would (but for subparagraph (E)) be decreased on distribution, apportionment, or allocation under section 482 to clearly reflect income as between such subsidiary and such trust.

(D) Excess interest

The term ''excess interest'' means any deductions for interest payments by a taxable REIT subsidiary of a real estate investment trust to such trust to the extent that the interest payments are in excess of a rate that is commercially reasonable.

(E) Coordination with section 482

The imposition of tax under subparagraph (A) shall be in lieu of any distribution, apportionment, or allocation under section 482.

(F) Regulatory authority

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Until the Secretary prescribes such regulations, real estate investment trusts and their taxable REIT subsidiaries may base their allocations on any reasonable method.

(8) Loss on sale or exchange of stock held 6 months or less

(A) In general

If—

(i) subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share or beneficial interest is to be treated as a long-term capital gain, and

(ii) the taxpayer has held such share or interest for 6 months or less,

then any loss on the sale or exchange of such share or interest shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

(B) Determination of holding periods

For purposes of this paragraph, in determining the period for which the taxpayer has held any share of stock or beneficial interest—

(i) the rules of paragraphs (3) and (4) of section 246(c) shall apply, and

(ii) there shall not be taken into account any day which is more than 6 months after the date on which such share or interest becomes ex-dividend.

(C) Exception for losses incurred under periodic liquidation plans

To the extent provided in regulations, subparagraph (A) shall not apply to any loss incurred on the sale or exchange of shares of stock of, or beneficial interest in, a real estate investment trust pursuant to a plan which provides for the periodic liquidation of such shares or interests.

(9) Time certain dividends taken into account

For purposes of this title, any dividend declared by a real estate investment trust in October, November, or December of any calendar year and payable to shareholders of record on a specified date in such a month shall be deemed—

(A) to have been received by each shareholder on December 31 of such calendar year, and

(B) to have been paid by such trust on December 31 of such calendar year (or, if earlier, as provided in section 858).

The preceding sentence shall apply only if such dividend is actually paid by the company during January of the following calendar year.

(c) Restrictions applicable to dividends received from real estate investment trusts

(1) Section 243

For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered a dividend.

(2) Section (1)(h)(11)

(A) In general

In any case in which—

(i) a dividend is received from a real estate investment trust (other than a capital gain dividend), and

(ii) such trust meets the requirements of section 856(a) for the taxable year during which it paid such dividend,

then, in computing qualified dividend income, there shall be taken into account only that portion of such dividend designated by the real estate investment trust.

(B) Limitation

The aggregate amount which may be designated as qualified dividend income under subparagraph (A) shall not exceed the sum of—

(i) the qualified dividend income of the trust for the taxable year,

(ii) the excess of—

(I) the sum of the real estate investment trust taxable income computed under section 857(b)(2) for the preceding taxable year and the income subject to tax by reason of the application of the regulations under section 337(d) for such preceding taxable year, over

(II) the sum of the taxes imposed on the trust for such preceding taxable year under section 857(b)(1) and by reason of the application of such regulations, and

(iii) the amount of any earnings and profits which were distributed by the trust for such taxable year and accumulated in a taxable year with respect to which this part did not apply.

(C) Notice to shareholders

The amount of any distribution by a real estate investment trust which may be taken into account as qualified dividend income shall not exceed the amount so designated by the trust in a written notice to its shareholders mailed not later than 60 days after the close of its taxable year.

(D) Qualified dividend income

For purposes of this paragraph, the term ''qualified dividend income'' has the meaning given such term by section 1(h)(11)(B).

(d) Earnings and profits

(1) In general

The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings) shall not be reduced by any amount which is not allowable in computing its taxable income for such taxable year. For purposes of this subsection, the term ''real estate investment trust'' includes a domestic corporation, trust, or association which is a real estate investment trust determined without regard to the requirements of subsection (a).

(2) Coordination with tax on undistributed income

A real estate investment trust shall be treated as having sufficient earnings and profits to treat as a dividend any distribution (other than in a redemption to which section 302(a) applies) which is treated as a dividend by such trust. The preceding sentence shall not apply to the extent that the amount distributed during any calendar year by the trust exceeds the required distribution for such calendar year (as determined under section 4981).

(3) Distributions to meet requirements of subsection (a)(2)(B)

Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from earnings and profits which, but for the distribution, would result in a failure to meet such requirements (and allocated to such earnings on a first-in, first-out basis), and

(B) to the extent treated under subparagraph (A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of subsection (b)(2)(B) and section 858.

(e) Excess noncash income

(1) In general

For purposes of subsection (a)(1)(B), the term ''excess noncash income'' means the excess (if any) of—

(A) the amount determined under paragraph (2) for the taxable year, over

(B) 5 percent of the real estate investment trust taxable income for the taxable year determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain.

(2) Determination of amount

The amount determined under this paragraph for the taxable year is the sum of—

(A) the amount (if any) by which—

(i) the amounts includible in gross income under section 467 (relating to certain payments for the use of property or services), exceed

(ii) the amounts which would have been includible in gross income without regard to such section,

(B) any income on the disposition of a real estate asset if—

(i) there is a determination (as defined in section 860(e)) that such income is not eligible for nonrecognition under section 1031, and

(ii) failure to meet the requirements of section 1031 was due to reasonable cause and not to willful neglect,

(C) the amount (if any) by which—

(i) the amounts includible in gross income with respect to instruments to which section 860E(a) or 1272 applies, exceed

(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments, and

(D) amounts includible in income by reason of cancellation of indebtedness.

(f) Real estate investment trusts to ascertain ownership

(1) In general

Each real estate investment trust shall each taxable year comply with regulations prescribed by the Secretary for the purposes of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust.

(2) Failure to comply

(A) In general

If a real estate investment trust fails to comply with the requirements of paragraph (1) for a taxable year, such trust shall pay (on notice and demand by the Secretary and in the same manner as tax) a penalty of $25,000.

(B) Intentional disregard

If any failure under paragraph (1) is due to intentional disregard of the requirement under paragraph (1), the penalty under subparagraph (A) shall be $50,000.

(C) Failure to comply after notice

The Secretary may require a real estate investment trust to take such actions as the Secretary determines appropriate to ascertain actual ownership if the trust fails to meet the requirements of paragraph (1). If the trust fails to take such actions, the trust shall pay (on notice and demand by the Secretary and in the same manner as tax) an additional penalty equal to the penalty determined under subparagraph (A) or (B), whichever is applicable.

(D) Reasonable cause

No penalty shall be imposed under this paragraph with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

(g) Cross reference

For provisions relating to excise tax based on certain real estate investment trust taxable income not distributed during the taxable year, see section 4981.

(Added Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1006; amended Pub. L. 88–272, title II, §201(d)(11), Feb. 26, 1964, 78 Stat. 32; Pub. L. 91–172, title V, §511(c)(3), Dec. 30, 1969, 83 Stat. 637; Pub. L. 93–625, §6(c), (d)(2)–(4), Jan. 3, 1975, 88 Stat. 2113, 2114; Pub. L. 94–455, title XIV, §1402(b)(1)(P), (2), title XVI, §§1601(c), 1602(b), 1603(b), (c)(5), 1604(c)(2), (f)(3)(B), (j), (k)(2)(B), 1605(b)(2), 1606(a), (d), 1607(a), (b)(1)(A), (2), (3), title XIX, §§1901(a)(112), (b)(1)(V), (33)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1746–1748, 1750–1757, 1783, 1792, 1801, 1834; Pub. L. 95–600, title III, §§301(b)(12), 362(d)(3), 363(b), title IV, §403(c)(3), Nov. 6, 1978, 92 Stat. 2822, 2851, 2852, 2868; Pub. L. 96–222, title I, §103(a)(1), Apr. 1, 1980, 94 Stat. 208; Pub. L. 96–223, title IV, §404(b)(8), Apr. 2, 1980, 94 Stat. 307; Pub. L. 97–34, title III, §302(c)(5), (d)(1), Aug. 13, 1981, 95 Stat. 273, 274; Pub. L. 98–369, div. A, title I, §§16(a), 55(b), title X, §1001(b)(13), (e), July 18, 1984, 98 Stat. 505, 572, 1011, 1012; Pub. L. 99–514, title VI, §§612(b)(7), 661(b), 664, 665(a), (b)(1), 666, 668(b)(1)(A), (2), (3), Oct. 22, 1986, 100 Stat. 2251, 2300, 2303–2305, 2307, 2308; Pub. L. 100–647, title I, §§1006(r), (s)(2), (4), (5), 1018(u)(28), Nov. 10, 1988, 102 Stat. 3418, 3419, 3591; Pub. L. 101–508, title XI, §11704(a)(37), Nov. 5, 1990, 104 Stat. 1388–520; Pub. L. 105–34, title XII, §§1251(a), 1254(a), (b)(1), 1255(b)(2), (3), 1256, 1259, 1260, Aug. 5, 1997, 111 Stat. 1030, 1032–1035; Pub. L. 105–206, title VI, §6012(g), July 22, 1998, 112 Stat. 819; Pub. L. 106–170, title V, §§532(c)(2)(L), (M), 545, 556(a), (b), 566(a)(2), (b), Dec. 17, 1999, 113 Stat. 1930, 1944, 1949, 1950; Pub. L. 106–554, §1(a)(7) [title III, §311(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640; Pub. L. 107–147, title IV, §§413(a), 417(13), Mar. 9, 2002, 116 Stat. 54, 56; Pub. L. 108–27, title III, §302(d), May 28, 2003, 117 Stat. 763; Pub. L. 108–311, title IV, §402(a)(5)(E), Oct. 4, 2004, 118 Stat. 1185; Pub. L. 108–357, title II, §243(c), (e), (f)(4), title III, §321(a), title IV, §418(b), Oct. 22, 2004, 118 Stat. 1442, 1445, 1473, 1512; Pub. L. 109–135, title IV, §§403(d)(3), 412(ii), Dec. 21, 2005, 119 Stat. 2622, 2639; Pub. L. 110–172, §11(a)(17)(B), Dec. 29, 2007, 121 Stat. 2486; Pub. L. 110–234, title XV, §§15311(c), 15315(a)–(d), May 22, 2008, 122 Stat. 1503–1505; Pub. L. 110–246, §4(a), title XV, §§15311(c), 15315(a)–(d), June 18, 2008, 122 Stat. 1664, 2265–2267; Pub. L. 110–289, div. C, title II, §§3033, 3051, 3052, July 30, 2008, 122 Stat. 2900, 2901.)

References in Text

The date of enactment of the Housing Assistance Tax Act of 2008, referred to in subsec. (b)(6)(G), is the date of enactment of div. C of Pub. L. 110–289, which was approved July 30, 2008.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Amendments

2008—Subsec. (b)(3)(A)(ii). Pub. L. 110–246, §15311(c), substituted ‘‘rates’’ for ‘‘rate’’.

Subsec. (b)(4)(B)(i). Pub. L. 110–289, §3033(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ‘‘gain from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in subparagraph (A), (B), (C), (D), (E), or (G) of section 856(c)(3), over’’.

Subsec. (b)(6)(B)(i). Pub. L. 110–289, §3033(b), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ‘‘the term ‘net income derived from prohibited transactions’ means the excess of the gain from prohibited transactions over the deductions allowed by this chapter which are directly connected with prohibited transactions;’’.

Subsec. (b)(6)(C). Pub. L. 110–289, §3051(a)(3), substituted ‘‘real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if’’ for ‘‘real estate asset as defined in section 856(c)(5)(B) if’’ in introductory provisions.

Subsec. (b)(6)(C)(i). Pub. L. 110–289, §3051(a)(1), substituted ‘‘2 years’’ for ‘‘4 years’’.

Subsec. (b)(6)(C)(ii). Pub. L. 110–289, §3051(a)(2), substituted ‘‘2-year period’’ for ‘‘4-year period’’.

Subsec. (b)(6)(C)(iii)(III). Pub. L. 110–289, §3052(1), added subcl. (III).

Subsec. (b)(6)(C)(iv). Pub. L. 110–289, §3051(a)(1), substituted ‘‘2 years’’ for ‘‘4 years’’.

Subsec. (b)(6)(D). Pub. L. 110–289, §3051(a)(3), substituted ‘‘real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if’’ for ‘‘real estate asset (as defined in section 856(c)(5)(B)) if’’ in introductory provisions.

Subsec. (b)(6)(D)(i). Pub. L. 110–289, §3051(a)(1), substituted ‘‘2 years’’ for ‘‘4 years’’.

Subsec. (b)(6)(D)(ii), (iii). Pub. L. 110–289, §3051(a)(2), substituted ‘‘2-year period’’ for ‘‘4-year period’’ in introductory provisions.

Subsec. (b)(6)(D)(iv)(III). Pub. L. 110–289, §3052(2), added subcl. (III).

Subsec. (b)(6)(D)(v). Pub. L. 110–246, §15315(b), inserted ‘‘, or, in the case of a sale on or before the termination date, a taxable REIT subsidiary’’ after ‘‘any income’’.

Subsec. (b)(6)(G). Pub. L. 110–289, §3051(b), redesignated subpar. (H) as (G), inserted at end ‘‘For purposes of the preceding sentence, the reference to subparagraph (D) shall be a reference to such subparagraph as in effect on the day before the enactment of the Housing Assistance Tax Act of 2008, as modified by subparagraph (G) as so in effect.’’, and struck out former subpar. (G). Prior to amendment, text of subpar. (G) read as follows:

‘‘(i) In general.—In the case of the sale of a real estate asset (as defined in section 856(c)(5)(B)) to a qualified organization (as defined in section 170(h)(3)) exclusively for conservation purposes (within the meaning of section 170(h)(1)(C)), subparagraph (D) shall be applied—

‘‘(I) by substituting ‘2 years’ for ‘4 years’ in clause (i), and

‘‘(II) by substituting ‘2-year period’ for ‘4-year period’ in clauses (ii) and (iii).

‘‘(ii) Termination.—This subparagraph shall not apply to sales after the termination date.’’

Pub. L. 110–246, §15315(a), added subpar. (G).

Subsec. (b)(6)(H), (I). Pub. L. 110–289, §3051(b)(1), redesignated subpar. (I) as (H). Former subpar. (H) redesignated (G).

Pub. L. 110–246, §15315(c), (d), added subpars. (H) and (I).

2007—Subsec. (b)(8)(B). Pub. L. 110–172 amended heading and text generally. Prior to amendment, text read as follows: ‘‘For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer has held any share of stock or beneficial interest; except that ‘6 months’ shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).’’

2005—Subsec. (b)(2)(E). Pub. L. 109–135, §403(d)(3), substituted ‘‘section 856(c)(7)(C), and section 856(g)(5)’’ for ‘‘section 856(c)(7)(B)(iii), and section 856(g)(1).’’

Subsec. (b)(6)(E). Pub. L. 109–135, §412(ii)(1), substituted ‘‘subparagraphs (C) and (D)’’ for ‘‘subparagraph (C)’’ in introductory provisions.

Subsec. (b)(6)(F). Pub. L. 109–135, §412(ii)(2), substituted ‘‘subparagraph (C) or (D)’’ for ‘‘subparagraph (C) of this paragraph’’ and ‘‘subparagraphs (C), (D), and (E)’’ for ‘‘subparagraphs (C) and (D)’’.

2004—Subsec. (b)(2)(E). Pub. L. 108–357, §243(f)(4), substituted ‘‘(7) of this subsection, section 856(c)(7)(B)(iii), and section 856(g)(1).’’ for ‘‘(7)’’.

Subsec. (b)(3)(F). Pub. L. 108–357, §418(b), added subpar. (F).

Subsec. (b)(5)(A)(i). Pub. L. 108–357, §243(e), substituted ‘‘95 percent’’ for ‘‘90 percent’’.

Subsec. (b)(6)(D) to (F). Pub. L. 108–357, §321(a), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (b)(7)(B)(ii) to (vii). Pub. L. 108–357, §243(c), redesignated cls. (iii) to (vii) as (ii) to (vi), respectively, and struck out former cl. (ii), which related to exception for amounts received by a REIT for services furnished or rendered by a taxable REIT subsidiary that were described in section 856(d)(1)(B) of this title, or from a taxable REIT subsidiary that were described in par. (7)(C)(ii) of such section.

Subsec. (c)(2). Pub. L. 108–311, §402(a)(5)(E), reenacted heading without change and amended text generally. Prior to amendment, text related to rules applicable to dividends received from real estate investment trusts for purposes of section 1(h)(11) of this title.

2003—Subsec. (c). Pub. L. 108–27 reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as follows: ‘‘For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend.’’

2002—Subsec. (b)(7)(B)(i). Pub. L. 107–147, § 417(13), substituted ''section 856(d)'' for ''subsection 856(d)''.

Pub. L. 107–147, § 413(a)(1), substituted ''to the extent the amount of the rents'' for ''the amount of which''.

Subsec. (b)(7)(C). Pub. L. 107–147, § 413(a)(2), substituted ''to the extent the amount'' for ''if the amount''.

2000—Subsec. (b)(7)(B)(ii). Pub. L. 106–554 amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: ''Clause (i) shall not apply to amounts received directly or indirectly by a real estate investment trust for services described in paragraph (1)(B) or (7)(C)(i) of section 856(d).''

1999—Subsec. (a)(1)(A)(i), (ii). Pub. L. 106–170, § 556(a), substituted ''90 percent'' for ''95 percent (90 percent for taxable years beginning before January 1, 1980)''.

Subsec. (b)(2)(E). Pub. L. 106–170, § 545(b), substituted ''paragraphs (5) and (7)'' for ''paragraph (5)''.

Subsec. (b)(4)(B)(i). Pub. L. 106–170, § 532(c)(2)(L), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (b)(5)(A)(i). Pub. L. 106–170, § 556(b), substituted ''90 percent'' for ''95 percent (90 percent in the case of taxable years beginning before January 1, 1980)''.

Subsec. (b)(6)(B)(iii). Pub. L. 106–170, § 532(c)(2)(M), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (b)(7) to (9). Pub. L. 106–170, § 545(a), added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively.

Subsec. (d)(3)(A). Pub. L. 106–170, § 566(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from the earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply rather than the most recently accumulated earnings and profits, and''.

Subsec. (d)(3)(B). Pub. L. 106–170, § 566(b), inserted ''and section 858'' before period at end.

1998—Subsec. (d)(3)(A). Pub. L. 105–206 substituted ''earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply'' for ''earliest accumulated earnings and profits (other than earnings and profits to which subsection (a)(2)(A) applies)''.

1997—Subsec. (a)(2), (3). Pub. L. 105–34, § 1251(a)(1), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''the real estate investment trust complies for such year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust, and''.

Subsec. (b)(3)(D), (E). Pub. L. 105–34, § 1254(a), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (b)(5). Pub. L. 105–34, § 1255(b)(2), substituted ''section 856(c)(6)'' for ''section 856(c)(7)'' in introductory provisions.

Subsec. (b)(6)(C). Pub. L. 105–34, § 1255(b)(3), substituted ''section 856(c)(5)(B)'' for ''section 856(c)(6)(B)'' in introductory provisions.

Subsec. (b)(6)(C)(iii). Pub. L. 105–34, § 1260, substituted ''(other than sales of foreclosure property or sales to which section 1033 applies)'' for ''(other than foreclosure property)'' in subcls. (I) and (II).

Subsec. (b)(7)(A)(i). Pub. L. 105–34, § 1254(b)(1), substituted ''subparagraph (B) or (D)'' for ''subparagraph (B)''.

Subsec. (d)(3). Pub. L. 105–34, § 1256, added par. (3).

Subsec. (e)(2)(B) to (D). Pub. L. 105–34, § 1259, redesignated subpar. (C) as (B) and substituted a comma for period at end, added subpars. (C) and (D), and struck out former subpar. (B) which read as follows: ''in the case of a real estate investment trust using the cash receipts and disbursements method of accounting, the amount (if any) by which—

''(i) the amounts includible in gross income with respect to instruments to which section 1274 (relating to certain debt instruments issued for property) applies, exceed

''(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments; plus''.

Subsecs. (f), (g). Pub. L. 105–34, § 1251(a)(2), added subsec. (f) and redesignated former subsec. (f) as (g).

1990—Subsec. (b)(3)(C). Pub. L. 101–508 amended Pub. L. 100–647, § 1018(u)(28). See 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–647, § 1006(s)(4), inserted at end ''The Secretary may waive the requirements of paragraph (1) for any taxable year if the real estate investment trust establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4981.''

Subsec. (b)(3)(C). Pub. L. 100–647, § 1018(u)(28), as amended by Pub. L. 101–508, substituted ''such net capital loss shall'' for ''such net capital loss such''.

Pub. L. 100–647, § 1006(s)(2), substituted ''the taxable income of the real estate investment trust'' for ''real estate investment trust taxable income''.

Subsec. (b)(8). Pub. L. 100–647, § 1006(s)(5), substituted ''in October, November, or December'' for ''in December'' and ''in such a month'' for ''in such month'' in introductory text, ''on December 31 of such calendar year'' for ''on such date'', in subpars. (A) and (B), and ''during January'' for ''before February 1'' in last sentence.

Subsec. (e)(2)(B)(i). Pub. L. 100–647, § 1006(r), substituted ''with respect to instruments'' for ''as original issue discount on instruments''.

1986—Subsec. (a). Pub. L. 99–514, § 661(b), struck out ''and'' at end of par. (1), substituted '', and'' for the period at end of par. (2), and added par. (3) and last sentence.

Subsec. (a)(1)(B). Pub. L. 99–514, § 664(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the sum of—

''(i) the amount of any penalty imposed on the real estate investment trust by section 6697 which is paid by such trust during the taxable year; and

''(ii) the net loss derived from prohibited transactions,''.

Subsec. (b)(2)(F). Pub. L. 99–514, § 666(b)(2), struck out ''and there shall be included an amount equal to any net loss derived from prohibited transactions'' after ''prohibited transactions''.

Subsec. (b)(3)(C). Pub. L. 99–514, § 668(b)(3), inserted at end ''For purposes of this subparagraph, the amount of the net capital gain for any taxable year which is not a calendar year shall be determined without regard to any net capital loss attributable to transactions after December 31 of such year, and any such net capital loss such be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing real estate investment trust taxable income.''

Pub. L. 99–514, § 665(a)(2), (b)(1), inserted ''(or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)'', struck out last sentence which read as follows: ''For purposes of this subparagraph, the net capital gain shall be deemed not to exceed the real estate investment trust taxable income (determined without regard to the deduction for dividends paid (as defined in section 561) for the taxable year).''

Subsec. (b)(3)(D). Pub. L. 99–514, § 665(a)(1), added subpar. (D).

Subsec. (b)(6)(B)(ii). Pub. L. 99–514, § 666(b)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the term 'net loss derived from prohibited transactions' means the excess of the deductions allowed by this chapter which are directly connected with prohibited transactions over the gain from prohibited transactions; and''.

Subsec. (b)(6)(C)(ii). Pub. L. 99–514, § 666(a)(2), substituted ''30 percent'' for ''20 percent''.

Subsec. (b)(6)(C)(iii). Pub. L. 99–514, § 666(a)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''during the taxable year the trust does not make more than 5 sales of property (other than foreclosure property); and''.

Subsec. (b)(6)(C)(v). Pub. L. 99–514, § 666(a)(3), added cl. (v).

Subsec. (b)(8). Pub. L. 99–514, §668(b)(1)(A), added par. (8).

Subsec. (c). Pub. L. 99–514, §612(b)(7), which directed that ''section 116 (relating to an exclusion for dividends received by individuals), and'' be struck out, was executed by striking out ''section 116 (relating to an exclusion for dividends received by individuals) and'' before ''section 243'' as the probable intent of Congress.

Subsec. (d). Pub. L. 99–514, §668(b)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term 'real estate investment trust' includes a domestic corporation, trust, or association which is a real estate investment trust determined without regard to the requirements of subsection (a).''

Subsecs. (e), (f). Pub. L. 99–514, §664(b), added subsec. (e) and redesignated former subsec. (e) as (f).

1984—Subsec. (b)(3)(B). Pub. L. 98–369, §1001(b)(13), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (b)(7). Pub. L. 98–369, §55(b), substituted provisions relating to loss on sale or exchange of stock held 6 months or less for provisions which related to loss on sale or exchange of stock held 31 days or less.

Pub. L. 98–369, §1001(b)(13), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (c). Pub. L. 98–369, §16(a), repealed amendments made by Pub. L. 97–34, §302(c). See 1981 Amendment note below.

1981—Subsec. (c). Pub. L. 97–34, §302(c)(5), (d)(1), provided for general amendment of subsec. (c) so as to include provisions relating to treatment for section 128 of this title, adjustments to gross income and aggregate interest received, and notice to shareholders, applicable to taxable years beginning after Dec. 31, 1984. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Subsec. (b)(4)(A). Pub. L. 96–222 substituted provisions computing the tax on the net income from foreclosure property of every real estate investment trust by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b) for provisions determining the tax on the net income from foreclosure of property of every real estate investment trust by applying section 11 to such income as if such income constituted the taxable income of a corporation taxable under section 11 and struck out provisions requiring that for purposes of the preceding sentence, the surtax exemption be zero.

Subsec. (c). Pub. L. 96–223 temporarily substituted ''Limitations applicable to dividends received from real estate investment trusts'' for ''Restrictions applicable to dividends received from real estate investment trusts'' in heading, designated existing provisions as par. (1), substituted ''(1) CAPITAL GAIN DIVIDEND.—For purposes of section 116 (relating to exclusion for dividends and interest received by individuals), a capital gain dividend (as defined in subsection (b)(3)(C)) received from a real estate investment trust shall not be considered a dividend'' for ''For purposes of section 116 (relating to an exclusion for dividends received by individuals) and section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend'' in par. (1) as so designated, and added pars. (2) to (6).

1978—Subsec. (b)(1). Pub. L. 95–600, §301(b)(12), substituted ''a tax'' for ''a normal tax and surtax''.

Subsec. (b)(3)(A)(ii). Pub. L. 95–600, §403(c)(3), substituted ''a tax determined at the rate provided in section 1201(a) on'' for ''a tax of 30 percent of''.

Subsec. (b)(3)(C). Pub. L. 95–600, §362(d)(3), substituted ''section 860(e)'' for ''section 859(c)''.

Subsec. (b)(6)(C) to (E). Pub. L. 95–600, §363(b), added subpars. (C) to (E).

1976—Subsec. (a). Pub. L. 94–455, §§1604(j), (k)(2)(B), 1906(b)(13)(A), substituted ''(other than subsection (d) of this section and subsection (g) of section 856)'' for ''(other than subsection (d) of this section)'' in provisions preceding par. (1), in par. (1) redesignated existing subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), added subpar. (B), in both cls. (i) and (ii) of subpar. (A) as redesignated raised the percentage to 95 percent for taxable years beginning on and after Jan. 1, 1980, and, in cl. (i) of subpar. (A) as redesignated, inserted provision for the exclusion of net capital gain, and struck out ''or his delegate'' after ''Secretary'' in par. (2).

Subsec. (b)(1). Pub. L. 94–455, §1901(b)(1)(V), struck out provision that, for purposes of computing the normal tax under section 11, the taxable income and the dividends paid deduction of such real estate investment trust for the taxable year (computed without regard to capital gains dividends) would be reduced by the deduction provided by section 22 (relating to partially tax-exempt interest.

Subsec. (b)(2). Pub. L. 94–455, §§1602(b)(2), 1603(c)(5), 1606(a), (d), 1607(b)(1)(A), (2), struck out subpar. (A) which provided for the exclusion of the excess, if any, of the net long-term capital gain over the net short-term capital loss, and subpar. (E) which prohibited the allowance of the net operating loss deduction provided in section 172, redesignated subpars. (B), (C), (D), and (F) as subpars. (A), (B), (C), and (D), respectively, added subpars. (E) and (F), and in subpar. (B) as redesignated substituted ''subparagraph (D)'' for ''paragraph (F)'' and struck out ''shall be computed without regard to capital gains dividends and'' after ''shall be allowed, but''.

Subsec. (b)(3)(A). Pub. L. 94–455, §1607(a), substituted provisions setting an alternative tax in case of capital gains under which, if for any taxable year, a real estate investment trust has a net capital gain, then, in lieu of the tax imposed by subsection (b)(1), there is imposed a tax (if such tax is less than the tax imposed by such subsection) to consist of the sum of a tax, computed as provided in subsection (b)(1), on the real estate investment trust taxable income (determined by excluding such net capital gain and by computing the deduction for dividends paid without regard to capital gain dividends), and a tax of 30 percent of the excess of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only, for provisions posing a tax for each taxable year determined as provided in section 1201(a), on the excess, if any, of the net long-term capital gain over the sum of the net short-term capital loss and the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

Subsec. (b)(3)(B). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(P), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (b)(3)(C). Pub. L. 94–455, §§1601(c), 1607(b)(3), 1901(a)(112), (b)(33)(K), inserted ''; except that, if there is an increase in the excess described in subparagraph (A)(ii) of this paragraph for such year which results from a determination (as defined in section 859(c)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination'' after ''30 days after the close of its taxable year'', substituted ''net capital gain'' for ''excess of the net long-term capital gain over the net short-term capital loss'' in provision covering the portion of distributions which shall be capital gain dividends, inserted provision that the net capital gain be deemed not to exceed the real estate investment trust taxable income, and struck out provision which specified the source of deductions for dividends paid in the case of taxable years beginning before Jan. 1, 1975.

Subsec. (b)(4)(B)(i). Pub. L. 94–455, § 1604(c)(2), inserted reference to subparagraph (G) of section 856(c)(3).

Subsec. (b)(5). Pub. L. 94–455, § 1602(b)(1), added par. (5). Former par. (5) redesignated (7) and amended.

Subsec. (b)(6). Pub. L. 94–455, § 1603(b), added par. (6).

Subsec. (b)(7). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§ 1402(b)(1)(P), 1602(b)(1), redesignated par. (5) as (7) and provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (d). Pub. L. 94–455, § 1604(f)(3)(B), substituted ''a domestic corporation, trust,'' for ''a domestic unincorporated trust''.

Subsec. (e). Pub. L. 94–455, § 1605(b)(2), added subsec. (e).

1975—Subsec. (a)(1). Pub. L. 93–625, § 6(d)(2), incorporated existing par. (1) provisions in par. (1) introductory text and provisions designated as subpar. (A), substituted in subpar. (A) ''(determined without regard to the deduction for dividends paid (as defined in section 561))'' for ''(determined without regard to subsection (b)(2)(C))'', and added subpar. (B).

Subsec. (b)(2)(C). Pub. L. 93–625, § 6(d)(4), provided for computation of deduction for dividends paid without regard to that portion of such deduction which is attributable to the amount excluded under subparagraph (F).

Subsec. (b)(2)(F). Pub. L. 93–625, § 6(d)(3), added subpar. (F).

Subsec. (b)(4), (5). Pub. L. 93–625, § 6(c), added par. (4) and redesignated former par. (4) as (5).

1969—Subsec. (b)(3)(A). Pub. L. 91–172, § 511(c)(3)(A), substituted ''determined as provided in section 1201(a), on'' for ''of 25 percent of.''

Subsec. (b)(3)(C). Pub. L. 91–172, § 511(c)(3)(B), inserted provision requiring for the purposes of the deduction for capital gains dividends paid, in the case of a taxable year beginning before Jan. 1, 1975, the deduction for dividends paid shall first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

1964—Subsec. (c). Pub. L. 88–272 struck out ''section 34(a) (relating to credit for dividends received by individuals),'' before ''section 116'' and the comma before ''and''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 3033(a) of Pub. L. 110–289 applicable to gains recognized after July 30, 2008, and amendment by section 3033(b) of Pub. L. 110–289 applicable to gains and deductions recognized after July 30, 2008, see section 3071(c) of Pub. L. 110–289, set out as a note under section 856 of this title.

Amendment by sections 3051 and 3052 of Pub. L. 110–289 applicable to sales made after July 30, 2008, see section 3071(d) of Pub. L. 110–289, set out as a note under section 856 of this title.

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15311(c) of Pub. L. 110–246 applicable to taxable years ending after June 18, 2008, see section 15311(d) of Pub. L. 110–246, set out as a note under section 55 of this title.

Pub. L. 110–234, title XV, § 15315(e), May 22, 2008, 122 Stat. 1505, and Pub. L. 110–246, § 4(a), title XV, § 15315(e), June 18, 2008, 122 Stat. 1664, 2267, provided that: ''The amendments made by this section [amending this section] shall apply to dispositions in taxable years beginning after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(d)(3) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 243(c), (e) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, and amendment by section 243(f)(4) of Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 243(g)(2), (4)(D) of Pub. L. 108–357, set out as a note under section 856 of this title.

Pub. L. 108–357, title III, § 321(b), Oct. 22, 2004, 118 Stat. 1474, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title IV, § 418(c), Oct. 22, 2004, 118 Stat. 1513, as amended by Pub. L. 109–135, title IV, § 403(p)(2), Dec. 21, 2005, 119 Stat. 2626, provided that: ''The amendments made by this section [amending this section and section 897 of this title] shall apply to—

''(1) any distribution by a real estate investment trust which is treated as a deduction for a taxable year of such trust beginning after the date of the enactment of this Act [Oct. 22, 2004], and

''(2) any distribution by a real estate investment trust made after such date which is treated as a deduction under section 860 [probably means section 860 of the Internal Revenue Code of 1986] for a taxable year of such trust beginning on or before such date.''

Amendment by Pub. L. 108–311 effective as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 402(b) of Pub. L. 108–311, set out a note under section 1 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 413(b), Mar. 9, 2002, 116 Stat. 54, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in section 545 of the Tax Relief Extension Act of 1999 [Pub. L. 106–170].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, to which such amendment relates, see section 1(a)(7) [title III, § 311(d)] of Pub. L. 106–554, set out as a note under section 30A of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(L), (M) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

Amendment by section 545 of Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 2000, see section 546(a) of Pub. L. 106–170, set out as a note under section 856 of this title.

Pub. L. 106–170, title V, § 556(c), Dec. 17, 1999, 113 Stat. 1949, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000.''

Amendment by section 566(a)(2), (b) of Pub. L. 106–170 applicable to distributions after Dec. 31, 2000, see section 566(d) of Pub. L. 106–170, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1263 of Pub. L. 105–34, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(s)(5), Nov. 10, 1988, 102 Stat. 3419, provided that the amendment made by that section is effective with respect to dividends declared in 1988 and subsequent calendar years.

Amendment by sections 1006(r), (s)(2), (4) and 1018(u)(28) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 612(b)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

Amendments by sections 661(b), 664, 665(a), (b)(1), and 666 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 669(a) of Pub. L. 99–514, set out as a note under section 856 of this title.

Amendment by section 668(b)(1)(A), (2), (3) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 669(b) of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 55(b) of Pub. L. 98–369 applicable to losses incurred with respect to shares of stock and beneficial interest with respect to which the taxpayer's holding period begins after July 18, 1984, see section 55(c) of Pub. L. 98–369, set out as a note under section 852 of this title.

Amendment by section 1001(b)(13) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(12) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Amendment by section 362(d)(3) of Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

Amendment by section 363(b) of Pub. L. 95–600 applicable to taxable years ending after Nov. 6, 1978, see section 363(d) of Pub. L. 95–600, set out as a note under section 856 of this title.

Amendment by section 403(c)(3) of Pub. L. 95–600 effective on Nov. 6, 1978, see section 403(d)(3) of Pub. L. 95–600, set out as a note under section 528 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XVI, §1608(a), Oct. 4, 1976, 90 Stat. 1757, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by section 1601 [enacting sections 859 and 6697 of this title and amending this section and sections 316, 381, 6422, 6503, and 6515 of this title] shall apply with respect to determinations (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) occurring after the date of the enactment of this Act [Oct. 4, 1976]. If the amendments made by section 1601 apply to a taxable year ending on or before the date of enactment of this Act:

''(1) the reference to section 857(b)(3)(A)(ii) in sections 857(b)(3)(C) and 859(b)(1)(B) of such Code as amended, shall be considered to be a reference to section 857(b)(3)(A) of such Code, as in effect immediately before the enactment of this Act [Oct. 4, 1976], and

''(2) the reference to section 857(b)(2)(B) in section 859(a) of such Code, as amended, shall be considered to be a reference to section 857(b)(2)(C) of such Code, as in effect immediately before the enactment of this Act [Oct. 4, 1976].''

For effective date of amendment by section 1602(b)(1), (2) of Pub. L. 94–455, see section 1608(b) of Pub. L. 94–455, set out as a Trust Not Disqualified in Certain Cases Where Income Tests Not Met note under section 856 of this title.

For effective date of amendment by sections 1603, 1604, and 1605 of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

Pub. L. 94–455, title XVI, §1608(c), Oct. 4, 1976, 90 Stat. 1757, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by sections 1606 and 1607 [amending this section and sections 46, 172, and 443 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976]; except that in the case of a taxpayer which has a net operating loss (as defined in section 172(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for any taxable year ending after the date of enactment of this Act [Oct. 4, 1976] for which the provisions of part II of subchapter M of chapter 1 of subtitle A of such Code apply to such taxpayer, such loss shall not be a net operating loss carryback under section 172 of such Code to any taxable year ending on or before the date of enactment of this Act [Oct. 4, 1976].''

Amendment by section 1901(a)(112), (b)(1)(V), (33)(K) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 applicable to foreclosure property acquired after Dec. 31, 1973, see section

6(e) of Pub. L. 93–625, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 511(d) of Pub. L. 91–172, set out as an Effective Date note under section 1201 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

§ 858. Dividends paid by real estate investment trust after close of taxable year

(a) General rule

For purposes of this part, if a real estate investment trust—

(1) declares a dividend before the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and

(2) distributes the amount of such dividend to shareholders or holders of beneficial interests in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration,

the amount so declared and distributed shall, to the extent the trust elects in such return (and specifies in dollar amounts) in accordance with regulations prescribed by the Secretary, be considered as having been paid only during such taxable year, except as provided in subsections (b) and (c).

(b) Receipt by shareholder

Except as provided in section 857(b)(8), amounts to which subsection (a) applies shall be treated as received by the shareholder or holder of a beneficial interest in the taxable year in which the distribution is made.

(c) Notice to shareholders

In the case of amounts to which subsection (a) applies, any notice to shareholders or holders of beneficial interests required under this part with respect to such amounts shall be made not later than 30 days after the close of the taxable year in which the distribution is made (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year).

(Added Pub. L. 86–779, § 10(a), Sept. 14, 1960, 74 Stat. 1008; amended Pub. L. 94–455, title XVI, §§ 1604(h), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1752, 1834; Pub. L. 99–514, title VI, §§ 665(b)(2), 668(b)(1)(B), Oct. 22, 1986, 100 Stat. 2304, 2307; Pub. L. 100–647, title I, § 1018(u)(27), Nov. 10, 1988, 102 Stat. 3591.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647, § 1018(u)(27), made technical correction to directory language of Pub. L. 99–514, see 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–514, § 668(b)(1)(B), as amended by Pub. L. 100–647, § 1018(u)(27), substituted ''Except as provided in section 857(b)(8), amounts'' for ''Amounts''.

Subsec. (c). Pub. L. 99–514, § 665(b)(2), inserted ''(or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)''.

1976—Subsec. (a). Pub. L. 94–455, §§ 1604(h), 1906(b)(13)(A), inserted ''(and specifies in dollar amounts)'' after ''to the extent the trust elects in such return'' and substituted ''paid only during such taxable year'' for ''paid during such taxable year'', and struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 665(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, and by section 668(b)(1)(B) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1604(h) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.