

106TH CONGRESS
1ST SESSION

H. R. 1616

To amend the Internal Revenue Code of 1986 to simplify certain provisions applicable to real estate investment trusts.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28 1999

Mr. THOMAS (for himself, Mr. CARDIN, Mr. BACHUS, Mr. FOLEY, Mr. ENGLISH, Mr. MCCREERY, Mr. SAM JOHNSON of Texas, Mr. DAVIS of Virginia, Mr. FORD, Mrs. THURMAN, Mr. MORAN of Virginia, Mr. WELLER, Mr. FROST, Mr. CRANE, Mr. HULSHOF, Mr. RAMSTAD, Ms. DUNN, Mr. NEAL of Massachusetts, Mr. HERGER, Mr. STARK, Mr. REYES, Mr. HAYWORTH, Mr. LEVIN, Mr. TANNER, Mr. CAMP, Mrs. JOHNSON of Connecticut, Mr. McDERMOTT, Mr. BECERRA, Mr. McNULTY, Mr. PORTMAN, Mr. SHAW, and Mr. HOUGHTON) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to simplify certain provisions applicable to real estate investment trusts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Real Estate Investment Trust Modernization Act of
6 1999”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-
2 wise expressly provided, whenever in this Act an amend-
3 ment or repeal is expressed in terms of an amendment
4 to, or repeal of, a section or other provision, the reference
5 shall be considered to be made to a section or other provi-
6 sion of the Internal Revenue Code of 1986.

7 **TITLE I—TREATMENT OF IN-**
8 **COME AND SERVICES PRO-**
9 **VIDED BY TAXABLE REIT SUB-**
10 **SIDIARIES**

11 **SEC. 101. MODIFICATIONS TO ASSET DIVERSIFICATION**
12 **TEST.**

13 Subparagraph (B) of section 856(c)(4) is amended
14 to read as follows:

15 “(B)(i) not more than 25 percent of the
16 value of its total assets is represented by securi-
17 ties (other than those includible under subpara-
18 graph (A)), and

19 “(ii) except with respect to a taxable REIT
20 subsidiary and securities includible under sub-
21 paragraph (A)—

22 “(I) not more than 5 percent of the
23 value of its total assets is represented by
24 securities of any 1 issuer,

1 “(II) the trust does not hold securities
2 possessing more than 10 percent of the
3 total voting power of the outstanding secu-
4 rities of any 1 issuer, and

5 “(III) the trust does not hold securi-
6 ties having a value of more than 10 per-
7 cent of the total value of the outstanding
8 securities of any 1 issuer.”

9 **SEC. 102. TREATMENT OF INCOME AND SERVICES PRO-**
10 **VIDED BY TAXABLE REIT SUBSIDIARIES.**

11 (a) INCOME FROM TAXABLE REIT SUBSIDIARIES
12 NOT TREATED AS IMPERMISSIBLE TENANT SERVICE IN-
13 COME.—Clause (i) of section 856(d)(7)(C) (relating to ex-
14 ceptions to impermissible tenant service income) is amend-
15 ed by inserting “or through a taxable REIT subsidiary
16 of such trust” after “income”.

17 (b) CERTAIN INCOME FROM TAXABLE REIT SUB-
18 SIDIARIES NOT EXCLUDED FROM RENTS FROM REAL
19 PROPERTY.—

20 (1) IN GENERAL.—Subsection (d) of section
21 856 (relating to rents from real property defined) is
22 amended by adding at the end the following new
23 paragraphs:

24 “(8) SPECIAL RULE FOR TAXABLE REIT SUB-
25 SIDIARIES.—For purposes of this subsection,

1 amounts paid to a real estate investment trust by a
2 taxable REIT subsidiary of such trust shall not be
3 excluded from rents from real property by reason of
4 paragraph (2)(B) if the requirements of subpara-
5 graph (A) or (B) are met.

6 “(A) LIMITED RENTAL EXCEPTION.—The
7 requirements of this subparagraph are met with
8 respect to any property if at least 90 percent of
9 the leased space of the property is rented to
10 persons other than taxable REIT subsidiaries of
11 such trust and other than persons described in
12 section 856(d)(2)(B). The preceding sentence
13 shall apply only to the extent that the amounts
14 paid to the trust as rents from real property (as
15 defined in paragraph (1) without regard to
16 paragraph (2)(B)) from such property are sub-
17 stantially comparable to such rents made by the
18 other tenants of the trust’s property for com-
19 parable space.

20 “(B) EXCEPTION FOR CERTAIN LODGING
21 FACILITIES.—The requirements of this subpara-
22 graph are met with respect to an interest in
23 real property which is a qualified lodging facil-
24 ity leased by the trust to a taxable REIT sub-
25 sidiary of the trust if the property is operated

1 on behalf of such subsidiary by a person who is
2 an eligible independent contractor.

3 “(9) ELIGIBLE INDEPENDENT CONTRACTOR.—

4 For purposes of paragraph (8)(B)—

5 “(A) IN GENERAL.—The term ‘eligible
6 independent contractor’ means, with respect to
7 any qualified lodging facility, any independent
8 contractor if, at the time such contractor enters
9 into a management agreement or other similar
10 service contract with the taxable REIT sub-
11 sidiary to operate the facility, such contractor
12 (or any related person) is actively engaged in
13 the trade or business of operating qualified
14 lodging facilities for any person who is not a re-
15 lated person with respect to the real estate in-
16 vestment trust or the taxable REIT subsidiary.

17 “(B) SPECIAL RULES.—Solely for purposes
18 of this paragraph and paragraph (8)(B), a per-
19 son shall not fail to be treated as an inde-
20 pendent contractor with respect to any qualified
21 lodging facility by reason of any of the fol-
22 lowing:

23 “(i) The taxable REIT subsidiary
24 bears the expenses for the operation of the

1 facility pursuant to the management agree-
2 ment or other similar service contract.

3 “(ii) The taxable REIT subsidiary re-
4 ceives the revenues from the operation of
5 such facility, net of expenses for such oper-
6 ation and fees payable to the operator pur-
7 suant to such agreement or contract.

8 “(iii) The real estate investment trust
9 receives income from such person with re-
10 spect to another property that is attrib-
11 utable to a lease of such other property to
12 such person that was in effect as on the
13 later of—

14 “(I) January 1, 1999, or

15 “(II) the earliest date that any
16 taxable REIT subsidiary of such trust
17 entered into a management agreement
18 or other similar service contract with
19 such person with respect to such
20 qualified lodging facility.

21 “(C) RENEWALS, ETC., OF EXISTING
22 LEASES.—For purposes of subparagraph
23 (B)(iii)—

24 “(i) a lease shall be treated as in ef-
25 fect on January 1, 1999, without regard to

1 its renewal after such date, so long as such
2 renewal is pursuant to the terms of such
3 lease as in effect on whichever of the dates
4 under subparagraph (B)(iii) is the latest,
5 and

6 “(ii) a lease of a property entered into
7 after whichever of the dates under sub-
8 paragraph (B)(iii) is the latest shall be
9 treated as in effect on such date if—

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

13 “(II) under the terms of the new
14 lease, such trust receives a substan-
15 tially similar or lesser benefit in com-
16 parison to the lease referred to in sub-
17 clause (I).

18 “(D) QUALIFIED LODGING FACILITY.—For
19 purposes of this paragraph—

20 “(i) IN GENERAL.—The term ‘quali-
21 fied lodging facility’ means any lodging fa-
22 cility unless wagering activities are con-
23 ducted at or in connection with such facil-
24 ity by any person who is engaged in the
25 business of accepting wagers and who is le-

1 gally authorized to engage in such business
2 at or in connection with such facility.

3 “(ii) LODGING FACILITY.—The term
4 ‘lodging facility’ means a hotel, motel, or
5 other establishment more than one-half of
6 the dwelling units in which are used on a
7 transient basis.

8 “(iii) CUSTOMARY AMENITIES AND FA-
9 CILITIES.—The term ‘lodging facility’ in-
10 cludes customary amenities and facilities
11 operated as part of, or associated with, the
12 lodging facility so long as such amenities
13 and facilities are customary for other prop-
14 erties of a comparable size and class owned
15 by other owners unrelated to such real es-
16 tate investment trust.

17 “(E) OPERATE INCLUDES MANAGE.—Ref-
18 erences in this paragraph to operating a prop-
19 erty shall be treated as including a reference to
20 managing the property.

21 “(F) RELATED PERSON.—Persons shall be
22 treated as related to each other if such persons
23 are treated as a single employer under sub-
24 section (a) or (b) of section 52.”

1 (2) CONFORMING AMENDMENT.—Subparagraph
2 (B) of section 856(d)(2) is amended by inserting
3 “except as provided in paragraph (8),” after “(B)”.

4 **SEC. 103. TAXABLE REIT SUBSIDIARY.**

5 (a) IN GENERAL.—Section 856 is amended by adding
6 at the end the following new subsection:

7 “(1) TAXABLE REIT SUBSIDIARY.—For purposes of
8 this part—

9 “(1) IN GENERAL.—The term ‘taxable REIT
10 subsidiary’ means, with respect to a real estate in-
11 vestment trust, a corporation (other than a real es-
12 tate investment trust) if—

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

15 “(B) such trust and such corporation joint-
16 ly elect that such corporation shall be treated as
17 a taxable REIT subsidiary of such trust for
18 purposes of this part.

19 Such an election, once made, shall be irrevocable un-
20 less both such trust and corporation consent to its
21 revocation. Such election, and any revocation there-
22 of, may be made without the consent of the Sec-
23 retary.

24 “(2) 35 PERCENT OWNERSHIP IN ANOTHER
25 TAXABLE REIT SUBSIDIARY.—The term ‘taxable

1 REIT subsidiary’ includes, with respect to any real
2 estate investment trust, any corporation (other than
3 a real estate investment trust) with respect to which
4 a taxable REIT subsidiary of such trust owns di-
5 rectly or indirectly—

6 “(A) securities possessing more than 35
7 percent of the total voting power of the out-
8 standing securities of such corporation, or

9 “(B) securities having a value of more
10 than 35 percent of the total value of the out-
11 standing securities of such corporation.

12 The preceding sentence shall not apply to a qualified
13 REIT subsidiary (as defined in subsection (i)(2)).

14 “(3) EXCEPTIONS.—The term ‘taxable REIT
15 subsidiary’ shall not include—

16 “(A) any corporation which directly or in-
17 directly operates or manages a lodging facility
18 or a health care facility, and

19 “(B) any corporation which directly or in-
20 directly provides to any other person (under a
21 franchise, license, or otherwise) rights to any
22 brand name under which any lodging facility or
23 health care facility is operated.

24 Subparagraph (B) shall not apply to rights provided
25 to an eligible independent contractor to operate or

1 manage a lodging facility if such rights are held by
2 such corporation as a franchisee, licensee, or in a
3 similar capacity and such lodging facility is either
4 owned by such corporation or is leased to such cor-
5 poration from the real estate investment trust.

6 “(4) DEFINITIONS.—For purposes of paragraph
7 (3)—

8 “(A) LODGING FACILITY.—The term ‘lodg-
9 ing facility’ has the meaning given to such term
10 by paragraph (9)(D)(ii).

11 “(B) HEALTH CARE FACILITY.—The term
12 ‘health care facility’ has the meaning given to
13 such term by subsection (e)(6)(D)(ii).”.

14 (b) CONFORMING AMENDMENT.—Paragraph (2) of
15 section 856(i) is amended by adding at the end the fol-
16 lowing new sentence: “Such term shall not include a tax-
17 able REIT subsidiary.”

18 **SEC. 104. LIMITATION ON EARNINGS STRIPPING.**

19 Paragraph (3) of section 163(j) (relating to limitation
20 on deduction for interest on certain indebtedness) is
21 amended by striking “and” at the end of subparagraph
22 (A), by striking the period at the end of subparagraph
23 (B) and inserting “, and”, and by adding at the end the
24 following new subparagraph:

1 “(C) any interest paid or accrued (directly
2 or indirectly) by a taxable REIT subsidiary (as
3 defined in section 856(l)) of a real estate invest-
4 ment trust to such trust.”.

5 **SEC. 105. 100 PERCENT TAX ON IMPROPERLY ALLOCATED**
6 **AMOUNTS.**

7 (a) IN GENERAL.—Subsection (b) of section 857 (re-
8 lating to method of taxation of real estate investment
9 trusts and holders of shares or certificates of beneficial
10 interest) is amended by redesignating paragraphs (7) and
11 (8) as paragraphs (8) and (9), respectively, and by insert-
12 ing after paragraph (6) the following new paragraph:

13 “(7) INCOME FROM REDETERMINED RENTS, RE-
14 DETERMINED DEDUCTIONS, AND EXCESS INTER-
15 EST.—

16 “(A) IMPOSITION OF TAX.—There is here-
17 by imposed for each taxable year of the real es-
18 tate investment trust a tax equal to 100 percent
19 of redetermined rents, redetermined deductions,
20 and excess interest.

21 “(B) REDETERMINED RENTS.—

22 “(i) IN GENERAL.—The term ‘redeter-
23 mined rents’ means rents from real prop-
24 erty (as defined in subsection 856(d)) the
25 amount of which would (but for subpara-

1 graph (E)) be reduced on distribution, ap-
2 portionment, or allocation under section
3 482 to clearly reflect income as a result of
4 services furnished or rendered by a taxable
5 REIT subsidiary of the real estate invest-
6 ment trust to a tenant of such trust.

7 “(ii) EXCEPTION FOR CERTAIN SERV-
8 ICES.—Clause (i) shall not apply to
9 amounts received directly or indirectly by a
10 real estate investment trust for services de-
11 scribed in paragraph (1)(B) or (7)(C)(i) of
12 section 856(d).

13 “(iii) EXCEPTION FOR DE MINIMIS
14 AMOUNTS.—Clause (i) shall not apply to
15 amounts described in section 856(d)(7)(A)
16 with respect to a property to the extent
17 such amounts do not exceed the one per-
18 cent threshold described in section
19 856(d)(7)(B) with respect to such prop-
20 erty.

21 “(iv) EXCEPTION FOR COMPARABLY
22 PRICED SERVICES.—Clause (i) shall not
23 apply to any service rendered by a taxable
24 REIT subsidiary of a real estate invest-
25 ment trust to a tenant of such trust if—

1 “(I) such subsidiary renders a
2 significant amount of similar services
3 to persons other than such trust and
4 tenants of such trust who are unre-
5 lated (within the meaning of section
6 856(d)(8)(F)) to such subsidiary,
7 trust, and tenants, but

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

13 “(v) EXCEPTION FOR CERTAIN SEPA-
14 RATELY CHARGED SERVICES.—Clause (i)
15 shall not apply to any service rendered by
16 a taxable REIT subsidiary of a real estate
17 investment trust to a tenant of such trust
18 if—

19 “(I) the rents paid to the trust
20 by tenants (leasing at least 25 percent
21 of the net leasable space in the trust’s
22 property) who are not receiving such
23 service from such subsidiary are sub-
24 stantially comparable to the rents
25 paid by tenants leasing comparable

1 space who are receiving such service
2 from such subsidiary, and

3 “(II) the charge for such service
4 from such subsidiary is separately
5 stated.

6 “(vi) EXCEPTION FOR CERTAIN SERV-
7 ICES BASED ON SUBSIDIARY’S INCOME
8 FROM THE SERVICES.—Clause (i) shall not
9 apply to any service rendered by a taxable
10 REIT subsidiary of a real estate invest-
11 ment trust to a tenant of such trust if the
12 gross income of such subsidiary from such
13 service is not less than 150 percent of such
14 subsidiary’s direct cost in furnishing or
15 rendering the service.

16 “(vii) EXCEPTIONS GRANTED BY SEC-
17 RETARY.—The Secretary may waive the
18 tax otherwise imposed by subparagraph
19 (A) if the trust establishes to the satisfac-
20 tion of the Secretary that rents charged to
21 tenants were established on an arms’
22 length basis even though a taxable REIT
23 subsidiary of the trust provided services to
24 such tenants.

1 “(viii) NO INFERENCE WITH RESPECT
2 TO RENTS NOT WITHIN EXCEPTIONS.—In
3 determining whether rents are subject to
4 reduction upon distribution, apportion-
5 ment, or allocation under section 482 for
6 purposes of subparagraph (B), the fact
7 that rents from real property do not meet
8 the requirements of clauses (ii) through
9 (vii) shall not be taken into account; and
10 such determination, in the case of rents
11 not meeting such requirements, shall be
12 made as if such clauses had not been en-
13 acted.

14 “(ix) NO INFERENCE AS TO WHETHER
15 REDETERMINED RENT IS RENT FROM REAL
16 PROPERTY.—Rent received by a real estate
17 investment trust shall not fail to qualify as
18 rents from real property under section
19 856(d) by reason of the fact that all or any
20 portion of such rent is determined to be re-
21 determined rent.

22 “(C) REDETERMINED DEDUCTIONS.—The
23 term ‘redetermined deductions’ means deduc-
24 tions (other than redetermined rents) of a tax-
25 able REIT subsidiary of a real estate invest-

1 ment trust if the amount of such deductions
2 would (but for subparagraph (E)) be increased
3 on distribution, apportionment, or allocation
4 under section 482 to clearly reflect income as
5 between such subsidiary and such trust.

6 “(D) EXCESS INTEREST.—The term ‘ex-
7 cess interest’ means any deductions for interest
8 payments by a taxable REIT subsidiary of a
9 real estate investment trust to such trust to the
10 extent that the interest payments are in excess
11 of a rate that is commercially reasonable.

12 “(E) COORDINATION WITH SECTION 482.—
13 The imposition of tax under subparagraph (A)
14 shall be in lieu of any distribution, apportion-
15 ment, or allocation under section 482.

16 “(F) REGULATORY AUTHORITY.—The Sec-
17 retary shall prescribe such regulations as may
18 be necessary or appropriate to carry out the
19 purposes of this paragraph. Until the Secretary
20 prescribes such regulations, real estate invest-
21 ment trusts and their taxable REIT subsidi-
22 aries may base their allocations on any reason-
23 able method.”.

24 (b) AMOUNT SUBJECT TO TAX NOT REQUIRED TO
25 BE DISTRIBUTED.—Subparagraph (E) of section

1 857(b)(2) (relating to real estate investment trust taxable
2 income) is amended by striking “paragraph (5)” and in-
3 serting “paragraphs (5) and (7)”.

4 **SEC. 106. EFFECTIVE DATE.**

5 (a) IN GENERAL.—The amendments made by this
6 title shall apply to taxable years beginning after the date
7 of enactment of this Act.

8 (b) TRANSITIONAL RULES RELATED TO SECTION
9 101.—

10 (1) EXISTING ARRANGEMENTS.—

11 (A) IN GENERAL.—Except as otherwise
12 provided in this paragraph, the amendment
13 made by section 101 shall not apply to a real
14 estate investment trust with respect to—

15 (i) securities of a corporation held di-
16 rectly or indirectly by such trust on April
17 28, 1999,

18 (ii) securities received by such trust
19 (or a successor) in exchange for, or with
20 respect to, securities described in clause (i)
21 in a transaction in which gain or loss is
22 not recognized, and

23 (iii) securities acquired directly or in-
24 directly by such trust as part of a reorga-
25 nization (as defined in section 368(a)(1) of

1 the Internal Revenue Code of 1986) with
2 respect to such trust if such securities are
3 described in clause (i) or (ii) with respect
4 to any other real estate investment trust.

5 (B) NEW TRADE OR BUSINESS OR SUB-
6 STANTIAL NEW ASSETS.—Subparagraph (A)
7 shall cease to apply to securities of a corpora-
8 tion as of the first day after April 28, 1999, on
9 which such corporation engages in a substantial
10 new line of business, or acquires any substantial
11 asset, other than—

12 (i) pursuant to a binding contract in
13 effect on such date and at all times there-
14 after before the acquisition of such asset,

15 (ii) in a transaction in which gain or
16 loss is not recognized by reason of section
17 1031 or 1033 of the Internal Revenue
18 Code of 1986, or

19 (iii) in a reorganization (as so de-
20 fined) with another corporation the securi-
21 ties of which are described in paragraph
22 (1)(A) of this subsection.

23 (2) TAX-FREE CONVERSION.—If—

24 (A) at the time of an election for a cor-
25 poration to become a taxable REIT subsidiary,

1 the amendment made by section 101 does not
2 apply to such corporation by reason of para-
3 graph (1), and

4 (B) such election first takes effect during
5 the 3-year period beginning on the date of the
6 enactment of this Act,

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

9 **TITLE II—HEALTH CARE REITS**

10 **SEC. 201. HEALTH CARE REITS.**

11 (a) SPECIAL FORECLOSURE RULE FOR HEALTH
12 CARE PROPERTIES.—Subsection (e) of section 856 (relat-
13 ing to special rules for foreclosure property) is amended
14 by adding at the end the following new paragraph:

15 “(6) SPECIAL RULE FOR QUALIFIED HEALTH
16 CARE PROPERTIES.—For purposes of this
17 subsection—

18 “(A) ACQUISITION AT EXPIRATION OF
19 LEASE.—The term ‘foreclosure property’ shall
20 include any qualified health care property ac-
21 quired by a real estate investment trust as the
22 result of the termination of a lease of such
23 property (other than a termination by reason of
24 a default, or the imminence of a default, on the
25 lease).

1 “(B) GRACE PERIOD.—In the case of a
2 qualified health care property which is fore-
3 closure property solely by reason of subpara-
4 graph (A), in lieu of applying paragraphs (2)
5 and (3)—

6 “(i) the qualified health care property
7 shall cease to be foreclosure property as of
8 the close of the second taxable year after
9 the taxable year in which such trust ac-
10 quired such property, and

11 “(ii) if the real estate investment
12 trust establishes to the satisfaction of the
13 Secretary that an extension of the grace
14 period in clause (i) is necessary to the or-
15 derly leasing or liquidation of the trust’s
16 interest in such qualified health care prop-
17 erty, the Secretary may grant 1 or more
18 extensions of the grace period for such
19 qualified health care property.

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

24 “(C) INCOME FROM INDEPENDENT CON-
25 TRACTORS.—For purposes of applying para-

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

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

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

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

19 “(II) under the terms of the new
20 lease, such trust receives a substan-
21 tially similar or lesser benefit in com-
22 parison to the lease referred to in sub-
23 clause (I).

24 “(D) QUALIFIED HEALTH CARE PROP-
25 ERTY.—

1 “(i) IN GENERAL.—The term ‘quali-
2 fied health care property’ means any real
3 property (including interests therein), and
4 any personal property incident to such real
5 property, which—

6 “(I) is a health care facility, or

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

9 “(ii) HEALTH CARE FACILITY.—For
10 purposes of clause (i), the term ‘health
11 care facility’ means a hospital, nursing fa-
12 cility, assisted living facility, congregate
13 care facility, qualified continuing care facil-
14 ity (as defined in section 7872(g)(4)), or
15 other licensed facility which extends med-
16 ical or nursing or ancillary services to pa-
17 tients and which, immediately before the
18 termination, expiration, default, or breach
19 of the lease of or mortgage secured by
20 such facility, was operated by a provider of
21 such services which was eligible for partici-
22 pation in the medicare program under title
23 XVIII of the Social Security Act with re-
24 spect to such facility.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 the date of enactment of this Act.

4 **TITLE III—CONFORMITY WITH**
5 **REGULATED INVESTMENT**
6 **COMPANY RULES**

7 **SEC. 301. CONFORMITY WITH REGULATED INVESTMENT**
8 **COMPANY RULES.**

9 (a) DISTRIBUTION REQUIREMENT.—Clauses (i) and
10 (ii) of section 857(a)(1)(A) (relating to requirements ap-
11 plicable to real estate investment trusts) are each amended
12 by striking “95 percent (90 percent for taxable years be-
13 ginning before January 1, 1980)” and inserting “90 per-
14 cent”.

15 (b) IMPOSITION OF TAX.—Clause (i) of section
16 857(b)(5)(A) (relating to imposition of tax in case of fail-
17 ure to meet certain requirements) is amended by striking
18 “95 percent (90 percent in the case of taxable years begin-
19 ning before January 1, 1980)” and inserting “90 per-
20 cent”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 the date of enactment of this Act.

1 **TITLE IV—CLARIFICATION OF**
2 **DEFINITION OF INDE-**
3 **PENDENT CONTRACTOR**

4 **SEC. 401. CLARIFICATION OF DEFINITION OF INDE-**
5 **PENDENT CONTRACTOR.**

6 (a) IN GENERAL.—Paragraph (3) of section 856(d)
7 (relating to independent contractor defined) is amended
8 by adding at the end the following flush sentence:

9 “In the event that any class of stock of either the
10 real estate investment trust or such person is regu-
11 larly traded on an established securities market, only
12 persons who own, directly or indirectly, more than 5
13 percent of such class of stock shall be taken into ac-
14 count as owning any of the stock of such class for
15 purposes of applying the 35 percent limitation set
16 forth in subparagraph (B) (but all of the out-
17 standing stock of such class shall be considered out-
18 standing in order to compute the denominator for
19 purpose of determining the applicable percentage of
20 ownership).”

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to taxable years beginning after
23 the date of the enactment of this Act.

1 **TITLE V—MODIFICATION OF**
2 **EARNINGS AND PROFITS RULES**

3 **SEC. 501. MODIFICATION OF EARNINGS AND PROFITS**
4 **RULES.**

5 (a) RULES FOR DETERMINING WHETHER REGU-
6 LATED INVESTMENT COMPANY HAS EARNINGS AND
7 PROFITS FROM NON-RIC YEAR.—Subsection (c) of sec-
8 tion 852 is amended by adding at the end the following
9 new paragraph:

10 “(3) DISTRIBUTIONS TO MEET REQUIREMENTS
11 OF SUBSECTION (a)(2)(B).—Any distribution which
12 is made in order to comply with the requirements of
13 subsection (a)(2)(B)—

14 “(A) shall be treated for purposes of this
15 subsection and subsection (a)(2)(B) as made
16 from the earliest earnings and profits accumu-
17 lated in any taxable year to which the provi-
18 sions of this part did not apply rather than the
19 most recently accumulated earnings and profits,
20 and

21 “(B) to the extent treated under subpara-
22 graph (A) as made from accumulated earnings
23 and profits, shall not be treated as a distribu-
24 tion for purposes of subsection (b)(2)(D) and
25 section 855.”.

1 (b) CLARIFICATION OF APPLICATION OF REIT
2 SPILLOVER DIVIDEND RULES TO DISTRIBUTIONS TO
3 MEET QUALIFICATION REQUIREMENT.—Subparagraph
4 (B) of section 857(d)(3) is amended by inserting before
5 the period “and section 858”.

6 (c) APPLICATION OF DEFICIENCY DIVIDEND PROCE-
7 DURES.—Paragraph (1) of section 852(e) is amended by
8 adding at the end the following new sentence: “If the de-
9 termination under subparagraph (A) is solely as a result
10 of the failure to meet the requirements of subsection
11 (a)(2), the preceding sentence shall also apply for pur-
12 poses of applying subsection (a)(2) to the non-RIC year.”

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning before,
15 on, or after the date of the enactment of this Act.

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