

112TH CONGRESS
2D SESSION

H. R. 5746

To amend the Internal Revenue Code of 1986 to modify certain rules applicable to real estate investment trusts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2012

Mr. TIBERI (for himself, Mr. NEAL, Mr. SAM JOHNSON of Texas, Mr. RANGEL, Mr. NUNES, Mr. STARK, Mr. REICHERT, Mr. LEWIS of Georgia, Mr. ROSKAM, Mr. BLUMENAUER, Mr. GERLACH, Mr. KIND, Mr. SCHOCK, Mr. CROWLEY, Ms. JENKINS, and Mr. PAULSEN) 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 modify certain rules applicable to real estate investment trusts, and for other purposes.

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; ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Update and Streamline REIT Act of 2012” or the “US
6 REIT Act of 2012”.

7 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
8 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment
 2 to, or repeal of, a section or other provision, the reference
 3 shall be considered to be made to a section or other provi-
 4 sion of the Internal Revenue Code of 1986.

5 (c) TABLE OF CONTENTS.—The table of contents for
 6 this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—UPDATE OF PROHIBITED TRANSACTION AND RELATED PROVISIONS

Sec. 101. Prohibited transaction safe harbors.

Sec. 102. Treatment of taxable REIT subsidiaries.

TITLE II—PREFERENTIAL AND DESIGNATED DIVIDENDS

Sec. 201. Repeal of preferential dividend rule for publicly offered REITs.

Sec. 202. Authority for alternative remedies to address certain failures.

Sec. 203. Treatment of interest-related dividends of specified REITs.

Sec. 204. Limitations on designation of dividends.

TITLE III—UPDATE AND MODIFICATION OF REIT INCOME AND ASSET TESTS

Sec. 301. Debt instruments of publicly offered REITs and mortgages treated as real estate assets.

Sec. 302. Asset and income test clarification regarding ancillary personal property.

Sec. 303. Special rules for treatment of timber gains made permanent.

Sec. 304. Treatment of mineral royalty income as qualifying income.

Sec. 305. Hedging provisions.

TITLE IV—EARNINGS AND PROFITS OF REAL ESTATE INVESTMENT TRUSTS

Sec. 401. Modification of real estate investment trust earnings and profits calculation to avoid duplicate taxation.

1 **TITLE I—UPDATE OF PROHIB-**
2 **ITED TRANSACTION AND RE-**
3 **LATED PROVISIONS**

4 **SEC. 101. PROHIBITED TRANSACTION SAFE HARBORS.**

5 (a) ALTERNATIVE 3-YEAR AVERAGING TEST FOR
6 PERCENTAGE OF ASSETS THAT CAN BE SOLD ANNU-
7 ALLY.—

8 (1) IN GENERAL.—Clause (iii) of section
9 857(b)(6)C) is amended by inserting before the
10 semicolon at the end the following: “, or (IV) the
11 trust satisfies the requirements of subclause (II) ap-
12 plied by substituting ‘20 percent’ for ‘10 percent’
13 and the 3-year average adjusted bases percentage
14 for the taxable year (as defined in subparagraph
15 (G)) does not exceed 10 percent, or (V) the trust
16 satisfies the requirements of subclause (III) applied
17 by substituting ‘20 percent’ for ‘10 percent’ and the
18 3-year average fair market value percentage for the
19 taxable year (as defined in subparagraph (H)) does
20 not exceed 10 percent”.

21 (2) 3-YEAR AVERAGE ADJUSTED BASES AND
22 FAIR MARKET VALUE PERCENTAGES.—Paragraph
23 (6) of section 857(b) is amended by redesignating
24 subparagraphs (G) and (H) as subparagraphs (I)

1 and (J), respectively, and by inserting after subpara-
2 graph (F) the following new subparagraphs:

3 “(G) 3-YEAR AVERAGE ADJUSTED BASES
4 PERCENTAGE.—The term ‘3-year average ad-
5 justed bases percentage’ means, with respect to
6 any taxable year, the ratio (expressed as a per-
7 centage) of—

8 “(i) the aggregate adjusted bases (as
9 determined for purposes of computing
10 earnings and profits) of property (other
11 than sales of foreclosure property or sales
12 to which section 1033 applies) sold during
13 the 3 taxable year period ending with such
14 taxable year, divided by

15 “(ii) the sum of the aggregate ad-
16 justed bases (as so determined) of all of
17 the assets of the trust as of the beginning
18 of each of the 3 taxable years which are
19 part of the period referred to in clause (i).

20 “(H) 3-YEAR AVERAGE FAIR MARKET
21 VALUE PERCENTAGE.—The term ‘3-year aver-
22 age fair market value percentage’ means, with
23 respect to any taxable year, the ratio (expressed
24 as a percentage) of—

1 “(i) the fair market value of property
2 (other than sales of foreclosure property or
3 sales to which section 1033 applies) sold
4 during the 3 taxable year period ending
5 with such taxable year, divided by

6 “(ii) the sum of the fair market value
7 of all of the assets of the trust as of the
8 beginning of each of the 3 taxable years
9 which are part of the period referred to in
10 clause (i).”.

11 (3) CONFORMING AMENDMENTS.—Clause (iv)
12 of section 857(b)(6)(D) is amended by adding “or”
13 at the end of subclause (III) and by adding at the
14 end the following new subclauses:

15 “(IV) the trust satisfies the re-
16 quirements of subclause (II) applied
17 by substituting ‘20 percent’ for ‘10
18 percent’ and the 3-year average ad-
19 justed bases percentage for the tax-
20 able year (as defined in subparagraph
21 (G)) does not exceed 10 percent, or

22 “(V) the trust satisfies the re-
23 quirements of subclause (III) applied
24 by substituting ‘20 percent’ for ‘10
25 percent’ and the 3-year average fair

1 market value percentage for the tax-
2 able year (as defined in subparagraph
3 (H)) does not exceed 10 percent.”.

4 (b) APPLICATION OF SAFE HARBORS INDEPENDENT
5 OF DETERMINATION WHETHER REAL ESTATE ASSET IS
6 INVENTORY PROPERTY.—

7 (1) IN GENERAL.—Subparagraphs (C) and (D)
8 of section 857(b)(6) are each amended by striking
9 “and which is described in section 1221(a)(1)” in
10 the matter preceding clause (i).

11 (2) NO INFERENCE FROM SAFE HARBORS.—
12 Subparagraph (F) of section 857(b)(6) is amended
13 to read as follows:

14 “(F) NO INFERENCE WITH RESPECT TO
15 TREATMENT AS INVENTORY PROPERTY.—The
16 determination of whether property is described
17 in section 1221(a)(1) shall be made without re-
18 gard to this paragraph.”.

19 (c) EFFECTIVE DATES.—

20 (1) IN GENERAL.—The amendments made by
21 subsection (a) shall apply to taxable years beginning
22 after the date of the enactment of this Act.

23 (2) APPLICATION OF SAFE HARBORS.—

24 (A) IN GENERAL.—Except as provided in
25 subparagraph (B), the amendments made by

1 subsection (b) shall take effect as if included in
2 section 3051 of the Housing Assistance Tax
3 Act of 2008.

4 (B) RETROACTIVE APPLICATION OF NO IN-
5 FERENCE NOT APPLICABLE TO CERTAIN TIM-
6 BER PROPERTY PREVIOUSLY TREATED AS NOT
7 INVENTORY PROPERTY.—The amendment made
8 by subsection (b)(2) shall not apply to any sale
9 of property to which section 857(b)(6)(G) of the
10 Internal Revenue Code of 1986 (as in effect on
11 the day before the date of the enactment of this
12 Act) applies.

13 **SEC. 102. TREATMENT OF TAXABLE REIT SUBSIDIARIES.**

14 (a) TAXABLE REIT SUBSIDIARIES TREATED IN
15 SAME MANNER AS INDEPENDENT CONTRACTORS FOR
16 CERTAIN PURPOSES.—

17 (1) MARKETING AND DEVELOPMENT EXPENSES
18 UNDER RENTAL PROPERTY SAFE HARBOR.—Clause
19 (v) of section 857(b)(6)(C) is amended by inserting
20 “or by a taxable REIT subsidiary” before the period
21 at the end.

22 (2) RULE FOR MARKETING EXPENSES UNDER
23 TIMBER PROPERTY SAFE HARBOR REINSTATED AND
24 MADE PERMANENT.—Clause (v) of section
25 857(b)(6)(D) is amended by striking “, or, in the

1 case of a sale on or before the termination date,”
2 and inserting “or by”.

3 (3) FORECLOSURE PROPERTY GRACE PERIOD.—

4 Subparagraph (C) of section 856(e)(4) is amended
5 by inserting “or through a taxable REIT subsidiary”
6 after “receive any income”.

7 (b) TAX ON REDETERMINED TRS SERVICE IN-
8 COME.—

9 (1) IN GENERAL.—Subparagraph (A) of section
10 857(b)(7) is amended by striking “and excess inter-
11 est” and inserting “excess interest, and redeter-
12 mined TRS service income”.

13 (2) REDETERMINED TRS SERVICE INCOME.—
14 Paragraph (7) of section 857(b) is amended by re-
15 designating subparagraphs (E) and (F) as subpara-
16 graphs (F) and (G), respectively, and inserting after
17 subparagraph (D) the following new subparagraph:

18 “(E) REDETERMINED TRS SERVICE IN-
19 COME.—

20 “(i) IN GENERAL.—The term ‘redeter-
21 mined TRS service income’ means gross
22 income of a taxable REIT subsidiary of a
23 real estate investment trust attributable to
24 services provided to, or on behalf of, such
25 trust (less deductions properly allocable

1 thereto) to the extent the amount of such
2 income (less such deductions) would (but
3 for subparagraph (F)) be increased on dis-
4 tribution, apportionment, or allocation
5 under section 482.

6 “(ii) COORDINATION WITH REDETER-
7 MINED RENTS.—Clause (i) shall not apply
8 with respect to gross income attributable
9 to services furnished or rendered to a ten-
10 ant of the real estate investment trust (or
11 to deductions properly allocable thereto).”.

12 (3) CONFORMING AMENDMENTS.—Subpara-
13 graphs (B)(i) and (C) of section 857(b)(7) are each
14 amended by striking “subparagraph (E)” and insert-
15 ing “subparagraph (F)”.

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

19 **TITLE II—PREFERENTIAL AND** 20 **DESIGNATED DIVIDENDS**

21 **SEC. 201. REPEAL OF PREFERENTIAL DIVIDEND RULE FOR** 22 **PUBLICLY OFFERED REITS.**

23 (a) IN GENERAL.—Subsection (c) of section 562 is
24 amended by inserting “or a publicly offered REIT (as de-
25 fined in section 856(c)(5)(K))” after “a publicly offered

1 regulated investment company (as defined in section
2 67(e)(2)(B))”.

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

6 **SEC. 202. AUTHORITY FOR ALTERNATIVE REMEDIES TO AD-**
7 **DRESS CERTAIN FAILURES.**

8 (a) IN GENERAL.—Subsection (e) of section 562 is
9 amended—

10 (1) by striking “In the case of a real estate in-
11 vestment trust” and inserting the following:

12 “(1) DETERMINATION OF EARNINGS AND PROF-
13 ITS FOR PURPOSES OF DIVIDENDS PAID DEDUC-
14 TION.—In the case of a real estate investment
15 trust”, and

16 (2) by adding at the end the following new
17 paragraph:

18 “(2) AUTHORITY TO PROVIDE ALTERNATIVE
19 REMEDIES FOR CERTAIN FAILURES.—In the case of
20 a failure of a distribution by a real estate investment
21 trust to comply with the requirements of subsection
22 (c), the Secretary may provide an appropriate rem-
23 edy to cure such failure in lieu of not considering
24 the distribution to be a dividend for purposes of
25 computing the dividends paid deduction if—

1 “(A) the Secretary determines that such
2 failure is inadvertent or is due to reasonable
3 cause and not due to willful neglect, or

4 “(B) such failure is of a type of failure
5 which the Secretary has identified for purposes
6 of this paragraph as being described in sub-
7 paragraph (A).”.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to distributions in taxable years
10 beginning after the date of the enactment of this Act.

11 **SEC. 203. TREATMENT OF INTEREST-RELATED DIVIDENDS**
12 **OF SPECIFIED REITS.**

13 (a) **NONRESIDENT ALIEN INDIVIDUALS.**—

14 (1) **IN GENERAL.**—Section 871 is amended by
15 redesignating subsection (n) as subsection (o) and
16 by inserting after subsection (m) the following new
17 subsection:

18 “(n) **INTEREST-RELATED DIVIDENDS OF SPECIFIED**
19 **REITS.**—

20 “(1) **IN GENERAL.**—Except as provided in para-
21 graph (2), no tax shall be imposed under paragraph
22 (1)(A) of subsection (a) on any interest-related divi-
23 dend received from a specified REIT.

24 “(2) **EXCEPTIONS.**—Paragraph (1) shall not
25 apply to any dividend described in subsection

1 (k)(1)(B) (determined by treating the specified
2 REIT as a regulated investment company).

3 “(3) INTEREST-RELATED DIVIDEND.—For pur-
4 poses of this subsection—

5 “(A) IN GENERAL.—The term ‘interest-re-
6 lated dividend’ means any dividend (or part
7 thereof) which is designated by the specified
8 REIT as an interest-related dividend in a writ-
9 ten notice mailed to its shareholders or holders
10 of beneficial interests before the expiration of
11 60 days after the close of its taxable year.

12 “(B) EXCESS REPORTED AMOUNT.—If the
13 aggregate amount so designated with respect to
14 a taxable year of the trust (including amounts
15 so designated with respect to dividends paid
16 after the close of the taxable year described in
17 section 858) is greater than the qualified net
18 interest income of the trust for such taxable
19 year, the portion of each distribution which
20 shall be an interest-related dividend shall be
21 only that portion of the amounts so designated
22 which such qualified net interest income bears
23 to the aggregate amount so designated.

24 “(C) QUALIFIED NET INTEREST IN-
25 COME.—The term ‘qualified net interest in-

1 come’ has the meaning given such term by sub-
2 section (k)(1)(D) (determined by treating the
3 specified REIT as a regulated investment com-
4 pany).

5 “(D) TERMINATION.—The term ‘interest-
6 related dividend’ shall not include any dividend
7 with respect to any taxable year of the trust be-
8 ginning after the date set forth in clause (v) of
9 subsection (k)(1)(C).

10 “(4) SPECIFIED REIT.—For purposes of this
11 subsection, the term ‘specified REIT’ means any
12 publicly offered REIT (as defined in section
13 856(c)(5)(K)) other than any real estate investment
14 trust with respect to which any foreign person owns
15 (within the meaning of section 856(d)(5)) 50 percent
16 or more (determined by vote or value) of the shares,
17 or certificates of beneficial interest, in such trust.”.

18 (2) CONFORMING AMENDMENT.—Clause (iv) of
19 section 871(k)(1)(E) is amended by striking “an-
20 other regulated investment company” and inserting
21 “a regulated investment company or a specified
22 REIT (as defined in subsection (n)(4))”.

23 (b) FOREIGN CORPORATIONS.—Section 881 is
24 amended by redesignating subsection (f) as subsection (g)

1 and by inserting after subsection (e) the following new
2 subsection:

3 “(f) TAX NOT TO APPLY TO INTEREST-RELATED
4 DIVIDENDS OF SPECIFIED REITS.—

5 “(1) IN GENERAL.—Except as provided in para-
6 graph (2), no tax shall be imposed under paragraph
7 (1) of subsection (a) on any interest-related dividend
8 (as defined in section 871(n)(3)) received from a
9 specified REIT (as defined in section 871(n)(4)).

10 “(2) EXCEPTIONS AND SPECIAL RULES.—Rules
11 similar to the rules of subparagraphs (B) and (C) of
12 subsection (e)(1) shall apply for purposes of this
13 subsection (determined by treating the specified
14 REIT as a regulated investment company).”.

15 (c) WITHHOLDING.—

16 (1) NONRESIDENT ALIENS.—Paragraph (12) of
17 section 1441(c) is amended—

18 (A) by striking “section 871(k)” in sub-
19 paragraph (A) and inserting “subsection (k) or
20 (n) of section 871”,

21 (B) by inserting “or real estate investment
22 trust (as the case may be)” after “regulated in-
23 vestment company” in subparagraph (B), and

24 (C) by striking “REGULATED INVESTMENT
25 COMPANIES” in the heading thereof and insert-

1 ing “REGULATED INVESTMENT COMPANIES AND
2 REAL ESTATE INVESTMENT TRUSTS”.

3 (2) FOREIGN CORPORATIONS.—Subsection (a)
4 of section 1442 is amended—

5 (A) by striking “sections 871(a) and
6 871(k)” and inserting “subsections (a), (k), and
7 (n) of section 871”,

8 (B) by striking “sections 881(a) and
9 881(e)” and inserting “subsections (a), (e), and
10 (f) of section 881”, and

11 (C) by inserting “or real estate investment
12 trust (as the case may be)” after “regulated in-
13 vestment company”.

14 (d) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by
16 this section shall apply to distributions made after
17 the date of the enactment of this Act.

18 (2) TRANSITION RULE.—In the case of a tax-
19 able year which includes the date of the enactment
20 of this Act, qualified net interest income (as defined
21 in section 871(n)(3)(C) of the Internal Revenue
22 Code of 1986, as added by this section) shall be de-
23 termined by taking into account only items properly
24 includible in gross income for the portion of such

1 taxable year after such date (and deductions prop-
2 erly allocable to such income).

3 **SEC. 204. LIMITATIONS ON DESIGNATION OF DIVIDENDS.**

4 (a) IN GENERAL.—Section 857 is amended by redese-
5 ignating subsection (g) as subsection (h) and by inserting
6 after subsection (f) the following new subsection:

7 “(g) LIMITATIONS ON DESIGNATION OF DIVI-
8 DENDS.—

9 “(1) OVERALL LIMITATION.—The aggregate
10 amount of dividends designated by a real estate in-
11 vestment trust under section 857(b)(3)(C), section
12 857(c)(2)(A), and section 871(n)(3) with respect to
13 any taxable year may not exceed the dividends paid
14 by such trust with respect to such year. For pur-
15 poses of the preceding sentence, dividends paid after
16 the close of the taxable year described in section 858
17 shall be treated as paid with respect to such year.

18 “(2) PROPORTIONALITY.—The Secretary may
19 prescribe regulations or other guidance requiring the
20 proportionality of the designation of particular types
21 of dividends among shares or beneficial interests of
22 a real estate investment trust.”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to distributions in taxable years
25 beginning after the date of the enactment of this Act.

1 **TITLE III—UPDATE AND MODI-**
2 **FICATION OF REIT INCOME**
3 **AND ASSET TESTS**

4 **SEC. 301. DEBT INSTRUMENTS OF PUBLICLY OFFERED**
5 **REITS AND MORTGAGES TREATED AS REAL**
6 **ESTATE ASSETS.**

7 (a) DEBT INSTRUMENTS OF PUBLICLY OFFERED
8 REITS TREATED AS REAL ESTATE ASSETS.—

9 (1) IN GENERAL.—Subparagraph (B) of section
10 856(c)(5) is amended—

11 (A) by striking “and shares” and inserting
12 “, shares”, and

13 (B) by inserting “, and debt instruments
14 issued by publicly offered REITs” before the
15 period at the end of the first sentence.

16 (2) INCOME FROM NONQUALIFIED DEBT IN-
17 STRUMENTS OF PUBLICLY OFFERED REITS NOT
18 QUALIFIED FOR PURPOSES OF SATISFYING THE 75
19 PERCENT GROSS INCOME TEST.—Subparagraph (H)
20 of section 856(c)(3) is amended by inserting “(other
21 than a nonqualified publicly offered REIT debt in-
22 strument)” after “real estate asset”.

23 (3) 25 PERCENT ASSET LIMITATION ON HOLD-
24 ING OF NONQUALIFIED DEBT INSTRUMENTS OF PUB-
25 LICLY OFFERED REITS.—Subparagraph (B) of sec-

1 tion 856(c)(4) is amended by redesignating clause
2 (iii) as clause (iv) and by inserting after clause (ii)
3 the following new clause:

4 “(iii) not more than 25 percent of the
5 value of its total assets is represented by
6 nonqualified publicly offered REIT debt in-
7 struments, and”.

8 (4) DEFINITIONS RELATED TO DEBT INSTRU-
9 MENTS OF PUBLICLY OFFERED REITS.—Paragraph
10 (5) of section 856(c) is amended by adding at the
11 end the following new subparagraph:

12 “(L) DEFINITIONS RELATED TO DEBT IN-
13 STRUMENTS OF PUBLICLY OFFERED REITS.—

14 “(i) PUBLICLY OFFERED REIT.—The
15 term ‘publicly offered REIT’ means any
16 real estate investment trust which meets
17 the requirements of this part and which is
18 required to file annual and periodic reports
19 with the Securities and Exchange Commis-
20 sion under the Securities Exchange Act of
21 1934.

22 “(ii) NONQUALIFIED PUBLICLY OF-
23 FERED REIT DEBT INSTRUMENT.—The
24 term ‘nonqualified publicly offered REIT
25 debt instrument’ means any real estate

1 asset which would cease to be a real estate
 2 asset if subparagraph (B) were applied
 3 without regard to the reference to ‘debt in-
 4 struments issued by publicly offered
 5 REITs’.”.

6 (b) INTERESTS IN MORTGAGES ON INTERESTS IN
 7 REAL PROPERTY TREATED AS REAL ESTATE ASSETS.—
 8 Subparagraph (B) of section 856(c)(5) is amended by in-
 9 serting “or on interests in real property” after “interests
 10 in mortgages on real property”.

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

14 **SEC. 302. ASSET AND INCOME TEST CLARIFICATION RE-**
 15 **GARDING ANCILLARY PERSONAL PROPERTY.**

16 (a) IN GENERAL.—Subsection (c) of section 856 is
 17 amended by adding at the end the following new para-
 18 graph:

19 “(9) SPECIAL RULES FOR CERTAIN PERSONAL
 20 PROPERTY WHICH IS ANCILLARY TO REAL PROP-
 21 PERTY.—

22 “(A) CERTAIN PERSONAL PROPERTY
 23 LEASED IN CONNECTION WITH REAL PROP-
 24 PERTY.—Personal property shall be treated as a
 25 real estate asset for purposes of paragraph

1 (4)(A) to the extent that rents attributable to
2 such personal property are treated as rents
3 from real property under subsection (d)(1)(C).

4 “(B) CERTAIN PERSONAL PROPERTY
5 MORTGAGED IN CONNECTION WITH REAL PROP-
6 ERTY.—In the case of an obligation secured by
7 a mortgage on both real property and personal
8 property, if the fair market value of such per-
9 sonal property does not exceed 15 percent of
10 the total fair market value of all such property,
11 such personal property shall be treated as real
12 property for purposes of applying paragraphs
13 (3)(B) and (4)(A). For purposes of the pre-
14 ceeding sentence, the fair market value of all
15 such property shall be determined in the same
16 manner as the fair market value of real prop-
17 erty is determined for purposes of apportioning
18 interest income between real property and per-
19 sonal property under paragraph (3)(B).”.

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

1 **SEC. 303. SPECIAL RULES FOR TREATMENT OF TIMBER**
2 **GAINS MADE PERMANENT.**

3 (a) IN GENERAL.—Subparagraph (H) of section
4 856(c)(5) is amended by striking clause (iii).

5 (b) CLARIFICATION OF EXEMPTION FROM PROHIB-
6 ITED TRANSACTION RULES.—Subclause (II) of section
7 856(c)(5)(H)(ii) is amended to read as follows:

8 “(II) EXEMPTION FROM PROHIB-
9 ITED TRANSACTION RULES.—For pur-
10 poses of this part, income described in
11 this subparagraph shall not be treated
12 as gain from a prohibited trans-
13 action.”.

14 (c) CONFORMING AMENDMENTS.—

15 (1) Subclause (I) of section 856(c)(5)(H)(ii) is
16 amended by inserting “DEEMED SALE OF CUT TIM-
17 BER.—” before “For purposes of”.

18 (2) Subsection (c) of section 856, as amended
19 by section 302, is amended by striking paragraph
20 (8) and redesignating paragraph (9) as paragraph
21 (8).

22 (3) Paragraph (6) of section 857(b), as amend-
23 ed by section 101(a), is amended by striking sub-
24 paragraphs (I) and (J).

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

4 **SEC. 304. TREATMENT OF MINERAL ROYALTY INCOME AS**
5 **QUALIFYING INCOME.**

6 (a) IN GENERAL.—Subparagraph (I) of section
7 856(c)(2) is amended to read as follows:

8 “(I) mineral royalty income (including oil
9 and gas royalties) from real property owned by
10 a real estate investment trust and held, or once
11 held, in connection with the trust’s trade or
12 business of generating rents from real property
13 or producing timber;”.

14 (b) CONFORMING AMENDMENT.—Paragraph (5) of
15 section 856(c), as amended by section 301, is amended
16 by striking subparagraph (I) and by redesignating sub-
17 paragraphs (J), (K), and (L) as subparagraphs (I), (J),
18 and (K), respectively.

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

22 **SEC. 305. HEDGING PROVISIONS.**

23 (a) MODIFICATION TO PERMIT THE TERMINATION
24 OF A HEDGING TRANSACTION USING AN ADDITIONAL
25 HEDGING INSTRUMENT.—Subparagraph (G) of section

1 856(c)(5) is amended by striking “and” at the end of
2 clause (i), by striking the period at the end of clause (ii)
3 and inserting “, and”, and by adding at the end the fol-
4 lowing new clause:

5 “(iii) if—

6 “(I) a real estate investment
7 trust enters into one or more positions
8 described in clause (i) with respect to
9 indebtedness described in clause (i) or
10 one or more positions described in
11 clause (ii) with respect to property
12 which generates income or gain de-
13 scribed in paragraph (2) or (3),

14 “(II) any portion of such indebt-
15 edness is extinguished or any portion
16 of such property is disposed of, and

17 “(III) in connection with such ex-
18 tinguishment or disposition, such
19 trust enters into one or more hedging
20 transactions (as defined in clause (ii)
21 or (iii) of section 1221(b)(2)(A)) with
22 respect to any position referred to in
23 subclause (I),

24 any income of such trust from any position
25 referred to in subclause (I) and from any

1 transaction referred to in subclause (III)
2 (including gain from the termination of
3 any such position or transaction) shall not
4 constitute gross income under paragraphs
5 (2) and (3) to the extent that such trans-
6 action hedges such position.”.

7 (b) IDENTIFICATION REQUIREMENTS.—

8 (1) IN GENERAL.—Subparagraph (G) of section
9 856(c)(5), as amended by subsection (a), is amended
10 by striking “and” at the end of clause (ii), by strik-
11 ing the period at the end of clause (iii) and inserting
12 “, and”, and by adding at the end the following new
13 clause:

14 “(iv) clauses (i), (ii), and (iii) shall
15 not apply with respect to any transaction
16 unless such transaction satisfies the identi-
17 fication requirement described in section
18 1221(a)(7) (determined after taking into
19 account any curative provisions provided
20 under the regulations referred to there-
21 in).”.

22 (2) CONFORMING AMENDMENTS.—Subpara-
23 graph (G) of section 856(c)(5) is amended—

1 (A) by striking “which is clearly identified
2 pursuant to section 1221(a)(7)” in clause (i),
3 and

4 (B) by striking “, but only if such trans-
5 action is clearly identified as such before the
6 close of the day on which it was acquired, origi-
7 nated, or entered into (or such other time as
8 the Secretary may prescribe)” in clause (ii).

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

12 **TITLE IV—EARNINGS AND PROF-**
13 **ITS OF REAL ESTATE INVEST-**
14 **MENT TRUSTS**

15 **SEC. 401. MODIFICATION OF REAL ESTATE INVESTMENT**
16 **TRUST EARNINGS AND PROFITS CALCULA-**
17 **TION TO AVOID DUPLICATE TAXATION.**

18 (a) EARNINGS AND PROFITS NOT INCREASED BY
19 AMOUNTS ALLOWED IN COMPUTING TAXABLE INCOME IN
20 PRIOR YEARS.—

21 (1) IN GENERAL.—Paragraph (1) of section
22 857(d) is amended to read as follows:

23 “(1) IN GENERAL.—The earnings and profits of
24 a real estate investment trust for any taxable year

1 (but not its accumulated earnings) shall not be re-
2 duced by any amount which—

3 “(A) is not allowable in computing its tax-
4 able income for such taxable year, and

5 “(B) was not allowable in computing its
6 taxable income for any prior taxable year.”.

7 (2) EXCEPTION FOR PURPOSES OF DETER-
8 MINING DIVIDENDS PAID DEDUCTION.—Paragraph
9 (1) of section 562(e), as amended by section 302, is
10 amended—

11 (A) by striking “deduction, the earnings”
12 and inserting the following: “deduction—

13 “(A) the earnings”,

14 (B) by striking the period at the end and
15 inserting “, and”, and

16 (C) by adding at the end the following new
17 subparagraph:

18 “(B) section 857(d)(1) shall be applied
19 without regard to subparagraph (B) thereof.”.

20 (3) CONFORMING AMENDMENTS.—Subsection
21 (d) of section 857 is amended by adding at the end
22 the following new paragraphs:

23 “(4) REAL ESTATE INVESTMENT TRUST.—For
24 purposes of this subsection, the term ‘real estate in-
25 vestment trust’ includes a domestic corporation,

1 trust, or association which is a real estate invest-
2 ment trust determined without regard to the require-
3 ments of subsection (a).

4 “(5) SPECIAL RULES FOR DETERMINING EARN-
5 INGS AND PROFITS FOR PURPOSES OF THE DEDUC-
6 TION FOR DIVIDENDS PAID.—For special rules for
7 determining the earnings and profits of a real estate
8 investment trust for purposes of the deduction for
9 dividends paid, see section 562(e)(1).”.

10 (b) TREATMENT OF GAIN ON SALES OF REAL PROP-
11 erty.—Subparagraph (A) of section 562(e)(1), as amend-
12 ed by section 202 and subsection (a), is amended to read
13 as follows:

14 “(A) the earnings and profits of such trust
15 for any taxable year (but not its accumulated
16 earnings) shall be increased by the amount of
17 gain (if any) on the sale or exchange of real
18 property which is taken into account in deter-
19 mining the taxable income of such trust for
20 such taxable year (and not otherwise taken into
21 account in determining such earnings and prof-
22 its), and”.

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

○