§ 1.857–7

26 CFR Ch. I (4–1–12 Edition)

Earnings and profits of a real estate investment trust.

(a) Any real estate investment trust (whether or not such trust meets the requirements of section 857(a) and paragraph (a) of §1.857–1) for any taxable year beginning after December 31, 1960 shall apply paragraph (b) of this section in computing its earnings and profits for such taxable year.

(b) In the determination of the earnings and profits of a real estate investment trust, section 857(d) provides that such earnings and profits for any taxable year (but not the accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for the taxable year. Thus, if a trust would have had earnings and profits of $500,000 for the taxable year except for the fact that it had a net capital loss of $100,000, which amount was not deductible in determining its taxable income, its earnings and profits for that year if it is a real estate investment trust would be $400,000. If the real estate investment trust had no accumulated earnings and profits at the beginning of the taxable year, in determining its accumulated earnings and profits as of the beginning of the following taxable year, the earnings and profits for the taxable year to be considered in such computation would amount to $400,000 assuming...
that there had been no distribution from such earnings and profits. If dis-
tributions had been made in the taxable year in the amount of the earnings
and profits then available for distribution, $500,000, the trust would have as
of the beginning of the following taxable year neither accumulated earn-
ings and profits nor a deficit in accumulated earnings and profits, and
would begin such year with its paid-in capital reduced by $100,000, an amount
equal to the excess of the $500,000 distrib-
uted over the $400,000 accumulated earnings and profits which would oth-
erwise have been carried into the fol-
lowing taxable year. For purposes of
section 857(d) and this section, if an
amount equal to any net loss derived
from prohibited transactions is in-
cluded in real estate investment trust
taxable income pursuant to section
857(b)(2)(F), that amount shall be con-
sidered to be an amount which is not
allowable as a deduction in computing
taxable income for the taxable year.
The earnings and profits for the tax-
able year (but not the accumulated
earnings and profits) shall not be con-
sidered to be less than (i) in the case of
a taxable year ending before October 5,
1976, the amount (if any) of the net cap-
ital gain for the taxable year, or (ii) in
the case of a taxable year ending after
December 31, 1973, the amount (if any),
of the excess of the net income from
foreclosure property for the taxable
year over the tax imposed thereon by
section 857(b)(4)(A).

(a) In general. Under section 857(a)(2)
a real estate investment trust is re-
quired to keep such records as will dis-
lose the actual ownership of its out-
standing stock. Thus, every real estate
investment trust shall maintain in the
internal revenue district in which it is
required to file its income tax return
permanent records showing the inform-
ation relative to the actual owners of
its stock contained in the written
statements required by this section to
be demanded from its shareholders.
Such records shall be kept at all times
available for inspection by any internal
revenue officer or employee, and shall
be retained so long as the contents
thereof may become material in the
administration of any internal revenue
law.

(b) Actual owner of stock. The actual
owner of stock of a real estate invest-
ment trust is the person who is re-
quired to include in gross income in his
return the dividends received on the
stock. Generally, such person is the
shareholder of record of the real estate
investment trust. However, where the
shareholder of record is not the actual
owner of the stock, the stockholding
record of the real estate investment
trust may not disclose the actual own-
ership of such stock. Accordingly,
the real estate investment trust shall de-
mand written statements from share-
holders of record disclosing the actual
owners of stock as required in para-
graph (d) of this section.

(c) Stock ownership for personal hold-
ing company determination. For the pur-
pose of determining under section
856(a)(6) whether a trust, claiming to
be a real estate investment trust, is a
personal holding company, the perma-
nent records of the trust shall show the
maximum number of shares of the
trust (including the number and face
value of securities convertible into
stock of the trust) to be considered as
actually or constructively owned by
each of the actual owners of any of its
stock at any time during the last half
of the trust’s taxable year, as provided
in section 544.

(d) Statements to be demanded from
shareholders. The information required
by paragraphs (b) and (c) of this section
shall be set forth in written statements
which shall be demanded from share-
holders of record as follows: