

106TH CONGRESS
1ST SESSION

S. 1057

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

IN THE SENATE OF THE UNITED STATES

MAY 14, 1999

Mr. MACK (for himself, Mr. GRAHAM, Mr. HATCH, Mr. CONRAD, Mr. NICKLES, Mr. KERREY, Mr. GRAMM, Mr. BRYAN, Mr. CHAFEE, Mr. BAUCUS, Mr. MURKOWSKI, Mr. BREAUX, Mr. JEFFORDS, Mr. ROBB, Mr. COVERDELL, Mr. ROCKEFELLER, Mr. HELMS, Mr. TORRICELLI, and Mrs. HUTCHISON) introduced the following bill; which was read twice and referred to the Committee on Finance

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”.

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

9 **SEC. 101. MODIFICATIONS TO ASSET DIVERSIFICATION**
 10 **TEST.**

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

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

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

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

23 “(II) the trust does not hold securities
 24 possessing more than 10 percent of the

1 total voting power of the outstanding secu-
 2 rities of any 1 issuer, and

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

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

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

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

18 (1) IN GENERAL.—Subsection (d) of section
 19 856 (relating to rents from real property defined) is
 20 amended by adding at the end the following new
 21 paragraphs:

22 “(8) SPECIAL RULE FOR TAXABLE REIT SUB-
 23 SIDIARIES.—For purposes of this subsection,
 24 amounts paid to a real estate investment trust by a
 25 taxable REIT subsidiary of such trust shall not be

1 excluded from rents from real property by reason of
2 paragraph (2)(B) if the requirements of subpara-
3 graph (A) or (B) are met.

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

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

1 “(9) ELIGIBLE INDEPENDENT CONTRACTOR.—

2 For purposes of paragraph (8)(B)—

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

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

21 “(i) The taxable REIT subsidiary
22 bears the expenses for the operation of the
23 facility pursuant to the management agree-
24 ment or other similar service contract.

“(ii) The taxable REIT subsidiary receives the revenues from the operation of such facility, 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 on 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.

“(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

1 lease as in effect on whichever of the dates
 2 under subparagraph (B)(iii) is the latest,
 3 and

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

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

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

16 “(D) QUALIFIED LODGING FACILITY.—For
 17 purposes of this paragraph—

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

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

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

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

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

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

1 **SEC. 103. TAXABLE REIT SUBSIDIARY.**

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

4 “(1) TAXABLE REIT SUBSIDIARY.—For purposes of
5 this part—

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

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

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

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

21 “(2) 35 PERCENT OWNERSHIP IN ANOTHER
22 TAXABLE REIT SUBSIDIARY.—The term ‘taxable
23 REIT subsidiary’ includes, with respect to any real
24 estate investment trust, any corporation (other than
25 a real estate investment trust) with respect to which

1 a taxable REIT subsidiary of such trust owns di-
2 rectly or indirectly—

3 “(A) securities possessing more than 35
4 percent of the total voting power of the out-
5 standing securities of such corporation, or

6 “(B) securities having a value of more
7 than 35 percent of the total value of the out-
8 standing securities of such corporation.

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

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

13 “(A) any corporation which directly or in-
14 directly operates or manages a lodging facility
15 or a health care facility, and

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

21 Subparagraph (B) shall not apply to rights provided
22 to an eligible independent contractor to operate or
23 manage a lodging facility if such rights are held by
24 such corporation as a franchisee, licensee, or in a
25 similar capacity and such lodging facility is either

1 owned by such corporation or is leased to such cor-
 2 poration from the real estate investment trust.

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

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

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

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

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

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

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

1 **SEC. 105. 100 PERCENT TAX ON IMPROPERLY ALLOCATED**
 2 **AMOUNTS.**

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

9 “(7) INCOME FROM REDETERMINED RENTS, RE-
 10 DETERMINED DEDUCTIONS, AND EXCESS INTER-
 11 EST.—

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

17 “(B) REDETERMINED RENTS.—

18 “(i) IN GENERAL.—The term ‘redeter-
 19 mined rents’ means rents from real prop-
 20 erty (as defined in subsection 856(d)) the
 21 amount of which would (but for subpara-
 22 graph (E)) be reduced on distribution, ap-
 23 portionment, or allocation under section
 24 482 to clearly reflect income as a result of
 25 services furnished or rendered by a taxable

1 REIT subsidiary of the real estate invest-
2 ment trust to a tenant of such trust.

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

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

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

22 “(I) such subsidiary renders a
23 significant amount of similar services
24 to persons other than such trust and
25 tenants of such trust who are unre-

1 lated (within the meaning of section
2 856(d)(8)(F)) to such subsidiary,
3 trust, and tenants, but

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

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

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

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

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

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

23 “(viii) NO INFERENCE WITH RESPECT
24 TO RENTS NOT WITHIN EXCEPTIONS.—In
25 determining whether rents are subject to

1 reduction upon distribution, apportion-
 2 ment, or allocation under section 482 for
 3 purposes of subparagraph (B), the fact
 4 that rents from real property do not meet
 5 the requirements of clauses (ii) through
 6 (vii) shall not be taken into account; and
 7 such determination, in the case of rents
 8 not meeting such requirements, shall be
 9 made as if such clauses had not been en-
 10 acted.

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

19 “(C) REDETERMINED DEDUCTIONS.—The
 20 term ‘redetermined deductions’ means deduc-
 21 tions (other than redetermined rents) of a tax-
 22 able REIT subsidiary of a real estate invest-
 23 ment trust if the amount of such deductions
 24 would (but for subparagraph (E)) be increased
 25 on distribution, apportionment, or allocation

1 under section 482 to clearly reflect income as
 2 between such subsidiary and such trust.

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

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

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

21 (b) AMOUNT SUBJECT TO TAX NOT REQUIRED TO
 22 BE DISTRIBUTED.—Subparagraph (E) of section
 23 857(b)(2) (relating to real estate investment trust taxable
 24 income) is amended by striking “paragraph (5)” and in-
 25 serting “paragraphs (5) and (7)”.

1 **SEC. 106. EFFECTIVE DATE.**

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

5 (b) TRANSITIONAL RULES RELATED TO SECTION
6 101.—

7 (1) EXISTING ARRANGEMENTS.—

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

12 (i) securities of a corporation held di-
13 rectly or indirectly by such trust on April
14 28, 1999,

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

20 (iii) securities acquired directly or in-
21 directly by such trust as part of a reorga-
22 nization (as defined in section 368(a)(1) of
23 the Internal Revenue Code of 1986) with
24 respect to such trust if such securities are
25 described in clause (i) or (ii) with respect
26 to any other real estate investment trust.

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

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

11 (ii) in a transaction in which gain or
12 loss is not recognized by reason of section
13 1031 or 1033 of the Internal Revenue
14 Code of 1986, or

15 (iii) in a reorganization (as so de-
16 fined) with another corporation the securi-
17 ties of which are described in paragraph
18 (1)(A) of this subsection.

19 (2) TAX-FREE CONVERSION.—If—

20 (A) at the time of an election for a cor-
21 poration to become a taxable REIT subsidiary,
22 the amendment made by section 101 does not
23 apply to such corporation by reason of para-
24 graph (1), and

1 (B) such election first takes effect during
 2 the 3-year period beginning on the date of the
 3 enactment of this Act,
 4 such election shall be treated as a reorganization
 5 qualifying under section 368(a)(1)(A) of such Code.

6 **TITLE II—HEALTH CARE REITS**

7 **SEC. 201. HEALTH CARE REITS.**

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

12 “(6) SPECIAL RULE FOR QUALIFIED HEALTH
 13 CARE PROPERTIES.—For purposes of this
 14 subsection—

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

23 “(B) GRACE PERIOD.—In the case of a
 24 qualified health care property which is fore-
 25 closure property solely by reason of subpara-

graph (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 ac-
quired 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 or-
derly leasing or liquidation of the trust’s
interest in such qualified health care prop-
erty, the Secretary may grant 1 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 CON-
TRACTORS.—For purposes of applying para-
graph (4)(C) with respect to qualified health
care property which is foreclosure property by
reason of subparagraph (A) or paragraph (1),

1 income derived or received by the trust from an
 2 independent contractor shall be disregarded to
 3 the extent such income is attributable to—

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

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

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

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

21 “(D) QUALIFIED HEALTH CARE PROP-
 22 ERTY.—

23 “(i) IN GENERAL.—The term ‘quali-
 24 fied health care property’ means any real
 25 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.”

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

1 **TITLE III—CONFORMITY WITH**
2 **REGULATED INVESTMENT**
3 **COMPANY RULES**

4 **SEC. 301. CONFORMITY WITH REGULATED INVESTMENT**
5 **COMPANY RULES.**

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

12 (b) IMPOSITION OF TAX.—Clause (i) of section
13 857(b)(5)(A) (relating to imposition of tax in case of fail-
14 ure to meet certain requirements) is amended by striking
15 “95 percent (90 percent in the case of taxable years begin-
16 ning before January 1, 1980)” and inserting “90 per-
17 cent”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 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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