

Public Law 111–325
111th Congress

An Act

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

Dec. 22, 2010
[H.R. 4337]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, ETC.

(a) **SHORT TITLE.**—This Act may be cited as the “Regulated Investment Company Modernization Act of 2010”.

(b) **REFERENCE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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TITLE I—CAPITAL LOSS CARRYOVERS OF REGULATED INVESTMENT COMPANIES

SEC. 101. CAPITAL LOSS CARRYOVERS OF REGULATED INVESTMENT COMPANIES.

26 USC 1212.

(a) IN GENERAL.—Subsection (a) of section 1212 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) REGULATED INVESTMENT COMPANIES.—

“(A) IN GENERAL.—If a regulated investment company has a net capital loss for any taxable year—

“(i) paragraph (1) shall not apply to such loss,

“(ii) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss arising on the first day of the next taxable year, and

“(iii) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss arising on the first day of the next taxable year.

Applicability.

“(B) COORDINATION WITH GENERAL RULE.—If a net capital loss to which paragraph (1) applies is carried over to a taxable year of a regulated investment company—

“(i) LOSSES TO WHICH THIS PARAGRAPH APPLIES.—Clauses (ii) and (iii) of subparagraph (A) shall be applied without regard to any amount treated as a short-term capital loss under paragraph (1).

“(ii) LOSSES TO WHICH GENERAL RULE APPLIES.—Paragraph (1) shall be applied by substituting ‘net capital loss for the loss year or any taxable year thereafter (other than a net capital loss to which paragraph (3)(A) applies)’ for ‘net capital loss for the loss year or any taxable year thereafter’.”.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 1212(a)(1) is amended to read as follows:

“(C) a capital loss carryover to each of the 10 taxable years succeeding the loss year, but only to the extent such loss is attributable to a foreign expropriation loss.”.

(2) Paragraph (10) of section 1222 is amended by striking “section 1212” and inserting “section 1212(a)(1)”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to net capital

26 USC 1212
note.

losses for taxable years beginning after the date of the enactment of this Act.

(2) COORDINATION RULES.—Subparagraph (B) of section 1212(a)(3) of the Internal Revenue Code of 1986, as added by this section, shall apply to taxable years beginning after the date of the enactment of this Act. Applicability.

TITLE II—MODIFICATION OF GROSS INCOME AND ASSET TESTS OF REGULATED INVESTMENT COMPANIES

SEC. 201. SAVINGS PROVISIONS FOR FAILURES OF REGULATED INVESTMENT COMPANIES TO SATISFY GROSS INCOME AND ASSET TESTS.

(a) ASSET TEST.—Subsection (d) of section 851 is amended— 26 USC 851.

(1) by striking “A corporation which meets” and inserting the following:

“(1) IN GENERAL.—A corporation which meets”, and

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

“(2) SPECIAL RULES REGARDING FAILURE TO SATISFY REQUIREMENTS.—If paragraph (1) does not preserve a corporation’s status as a regulated investment company for any particular quarter—

“(A) IN GENERAL.—A corporation that fails to meet the requirements of subsection (b)(3) (other than a failure described in subparagraph (B)(i)) for such quarter shall nevertheless be considered to have satisfied the requirements of such subsection for such quarter if—

“(i) following the corporation’s identification of the failure to satisfy the requirements of such subsection for such quarter, a description of each asset that causes the corporation to fail to satisfy the requirements of such subsection at the close of such quarter is set forth in a schedule for such quarter filed in the manner provided by the Secretary,

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

“(iii)(I) the corporation 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’s identification of the failure to satisfy the requirements of such subsection occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or Deadline.

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

“(B) RULE FOR CERTAIN DE MINIMIS FAILURES.—A corporation that fails to meet the requirements of subsection (b)(3) for such quarter shall nevertheless be considered to have satisfied the requirements of such subsection 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 corporation’s assets at the end of the quarter for which such measurement is done, or

“(II) \$10,000,000, and

Deadline.

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

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

“(C) TAX.—

“(i) TAX IMPOSED.—If subparagraph (A) applies to a corporation for any quarter, there is hereby imposed on such corporation 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 subsection (b)(3) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the corporation disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such subsection.

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

26 USC 851.

(b) GROSS INCOME TEST.—Section 851 is amended by adding at the end the following new subsection:

“(i) FAILURE TO SATISFY GROSS INCOME TEST.—

“(1) DISCLOSURE REQUIREMENT.—A corporation that fails to meet the requirement of paragraph (2) of subsection (b) for any taxable year shall nevertheless be considered to have satisfied the requirement of such paragraph for such taxable year if—

“(A) following the corporation’s identification of the failure to meet such requirement for such taxable year, a description of each item of its gross income described in such paragraph is set forth in a schedule for such taxable year filed in the manner provided by the Secretary, and

“(B) the failure to meet such requirement is due to reasonable cause and not due to willful neglect.

“(2) IMPOSITION OF TAX ON FAILURES.—If paragraph (1) applies to a regulated investment company for any taxable year, there is hereby imposed on such company a tax in an amount equal to the excess of—

“(A) the gross income of such company which is not derived from sources referred to in subsection (b)(2), over

“(B) $\frac{1}{9}$ of the gross income of such company which is derived from such sources.”.

(c) DEDUCTION OF TAXES PAID FROM INVESTMENT COMPANY TAXABLE INCOME.—Paragraph (2) of section 852(b) is amended by adding at the end the following new subparagraph: 26 USC 852.

“(G) There shall be deducted an amount equal to the tax imposed by subsections (d)(2) and (i) of section 851 for the taxable year.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years with respect to which the due date (determined with regard to any extensions) of the return of tax for such taxable year is after the date of the enactment of this Act. 26 USC 851 note.

TITLE III—MODIFICATION OF RULES RELATED TO DIVIDENDS AND OTHER DISTRIBUTIONS

SEC. 301. MODIFICATION OF DIVIDEND DESIGNATION REQUIREMENTS AND ALLOCATION RULES FOR REGULATED INVESTMENT COMPANIES.

(a) CAPITAL GAIN DIVIDENDS.—

(1) IN GENERAL.—Subparagraph (C) of section 852(b)(3) is amended to read as follows:

“(C) DEFINITION OF CAPITAL GAIN DIVIDEND.—For purposes of this part—

“(i) IN GENERAL.—Except as provided in clause (ii), a capital gain dividend is any dividend, or part thereof, which is reported by the company as a capital gain dividend in written statements furnished to its shareholders.

“(ii) EXCESS REPORTED AMOUNTS.—If the aggregate reported amount with respect to the company for any taxable year exceeds the net capital gain of the company for such taxable year, a capital gain dividend is the excess of—

“(I) the reported capital gain dividend amount, over

“(II) the excess reported amount which is allocable to such reported capital gain dividend amount.

“(iii) ALLOCATION OF EXCESS REPORTED AMOUNT.—

“(I) IN GENERAL.—Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported capital gain dividend amount is that portion of the excess reported amount which bears the same ratio to the excess

Applicability.

reported amount as the reported capital gain dividend amount bears to the aggregate reported amount.

“(II) SPECIAL RULE FOR NONCALENDAR YEAR TAXPAYERS.—In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ‘post-December reported amount’ for ‘aggregate reported amount’ and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

“(iv) DEFINITIONS.—For purposes of this subparagraph—

“(I) REPORTED CAPITAL GAIN DIVIDEND AMOUNT.—The term ‘reported capital gain dividend amount’ means the amount reported to its shareholders under clause (i) as a capital gain dividend.

“(II) EXCESS REPORTED AMOUNT.—The term ‘excess reported amount’ means the excess of the aggregate reported amount over the net capital gain of the company for the taxable year.

“(III) AGGREGATE REPORTED AMOUNT.—The term ‘aggregate reported amount’ means the aggregate amount of dividends reported by the company under clause (i) as capital gain dividends for the taxable year (including capital gain dividends paid after the close of the taxable year described in section 855).

“(IV) POST-DECEMBER REPORTED AMOUNT.—The term ‘post-December reported amount’ means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

“(v) ADJUSTMENT FOR DETERMINATIONS.—If there is an increase in the excess described in subparagraph (A) for the taxable year which results from a determination (as defined in section 860(e)), the company may, subject to the limitations of this subparagraph, increase the amount of capital gain dividends reported under clause (i).

“(vi) SPECIAL RULE FOR LOSSES LATE IN THE CALENDAR YEAR.—For special rule for certain losses after October 31, see paragraph (8).”.

26 USC 860.

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 860(f)(2) is amended by inserting “or reported (as the case may be)” after “designated”.

(b) EXEMPT-INTEREST DIVIDENDS.—Subparagraph (A) of section 852(b)(5) is amended to read as follows:

“(A) DEFINITION OF EXEMPT-INTEREST DIVIDEND.—

“(i) IN GENERAL.—Except as provided in clause (ii), an exempt-interest dividend is any dividend or part thereof (other than a capital gain dividend) paid by a regulated investment company and reported by the company as an exempt-interest dividend in written statements furnished to its shareholders.

“(ii) EXCESS REPORTED AMOUNTS.—If the aggregate reported amount with respect to the company for any taxable year exceeds the exempt interest of the company for such taxable year, an exempt-interest dividend is the excess of—

“(I) the reported exempt-interest dividend amount, over

“(II) the excess reported amount which is allocable to such reported exempt-interest dividend amount.

“(iii) ALLOCATION OF EXCESS REPORTED AMOUNT.—

“(I) IN GENERAL.—Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported exempt-interest dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported exempt-interest dividend amount bears to the aggregate reported amount.

“(II) SPECIAL RULE FOR NONCALENDAR YEAR TAXPAYERS.—In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ‘post-December reported amount’ for ‘aggregate reported amount’ and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

Applicability.

“(iv) DEFINITIONS.—For purposes of this subparagraph—

“(I) REPORTED EXEMPT-INTEREST DIVIDEND AMOUNT.—The term ‘reported exempt-interest dividend amount’ means the amount reported to its shareholders under clause (i) as an exempt-interest dividend.

“(II) EXCESS REPORTED AMOUNT.—The term ‘excess reported amount’ means the excess of the aggregate reported amount over the exempt interest of the company for the taxable year.

“(III) AGGREGATE REPORTED AMOUNT.—The term ‘aggregate reported amount’ means the aggregate amount of dividends reported by the company under clause (i) as exempt-interest dividends for the taxable year (including exempt-interest dividends paid after the close of the taxable year described in section 855).

“(IV) POST-DECEMBER REPORTED AMOUNT.—The term ‘post-December reported amount’ means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

“(V) EXEMPT INTEREST.—The term ‘exempt interest’ means, with respect to any regulated investment company, the excess of the amount of interest excludable from gross income under

section 103(a) over the amounts disallowed as deductions under sections 265 and 171(a)(2).”.

(c) FOREIGN TAX CREDITS.—

26 USC 853.

(1) IN GENERAL.—Subsection (c) of section 853 is amended—

(A) by striking “so designated by the company in a written notice mailed to its shareholders not later than 60 days after the close of the taxable year” and inserting “so reported by the company in a written statement furnished to such shareholder”, and

(B) by striking “NOTICE” in the heading and inserting “STATEMENTS”.

(2) CONFORMING AMENDMENTS.—Subsection (d) of section 853 is amended—

(A) by striking “and the notice to shareholders required by subsection (c)” in the text thereof, and

(B) by striking “AND NOTIFYING SHAREHOLDERS” in the heading thereof.

(d) CREDITS FOR TAX CREDIT BONDS.—

(1) IN GENERAL.—Subsection (c) of section 853A is amended—

(A) by striking “so designated by the regulated investment company in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year” and inserting “so reported by the regulated investment company in a written statement furnished to such shareholder”, and

(B) by striking “NOTICE” in the heading and inserting “STATEMENTS”.

(2) CONFORMING AMENDMENTS.—Subsection (d) of section 853A is amended—

(A) by striking “and the notice to shareholders required by subsection (c)” in the text thereof, and

(B) by striking “AND NOTIFYING SHAREHOLDERS” in the heading thereof.

(e) DIVIDEND RECEIVED DEDUCTION, ETC.—

(1) IN GENERAL.—Paragraph (1) of section 854(b) is amended—

(A) by striking “designated under this subparagraph by the regulated investment company” in subparagraph (A) and inserting “reported by the regulated investment company as eligible for such deduction in written statements furnished to its shareholders”,

(B) by striking “designated by the regulated investment company” in subparagraph (B)(i) and inserting “reported by the regulated investment company as qualified dividend income in written statements furnished to its shareholders”,

(C) by striking “designated” in subparagraph (C)(i) and inserting “reported”, and

(D) by striking “designated” in subparagraph (C)(ii) and inserting “reported”.

(2) CONFORMING AMENDMENTS.—Subsection (b) of section 854 is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), and (5), as paragraphs (2), (3), and (4), respectively.

(f) DIVIDENDS PAID TO CERTAIN FOREIGN PERSONS.—

(1) INTEREST-RELATED DIVIDENDS.—Subparagraph (C) of section 871(k)(1) is amended by striking all that precedes “any taxable year of the company beginning” and inserting the following: 26 USC 871.

“(C) INTEREST-RELATED DIVIDEND.—For purposes of this paragraph—

“(i) IN GENERAL.—Except as provided in clause (ii), an interest related dividend is any dividend, or part thereof, which is reported by the company as an interest related dividend in written statements furnished to its shareholders.

“(ii) EXCESS REPORTED AMOUNTS.—If the aggregate reported amount with respect to the company for any taxable year exceeds the qualified net interest income of the company for such taxable year, an interest related dividend is the excess of—

“(I) the reported interest related dividend amount, over

“(II) the excess reported amount which is allocable to such reported interest related dividend amount.

“(iii) ALLOCATION OF EXCESS REPORTED AMOUNT.—

“(I) IN GENERAL.—Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported interest related dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported interest related dividend amount bears to the aggregate reported amount.

“(II) SPECIAL RULE FOR NONCALENDAR YEAR TAXPAYERS.—In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ‘post-December reported amount’ for ‘aggregate reported amount’ and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

Applicability.

“(iv) DEFINITIONS.—For purposes of this subparagraph—

“(I) REPORTED INTEREST RELATED DIVIDEND AMOUNT.—The term ‘reported interest related dividend amount’ means the amount reported to its shareholders under clause (i) as an interest related dividend.

“(II) EXCESS REPORTED AMOUNT.—The term ‘excess reported amount’ means the excess of the aggregate reported amount over the qualified net interest income of the company for the taxable year.

“(III) AGGREGATE REPORTED AMOUNT.—The term ‘aggregate reported amount’ means the aggregate amount of dividends reported by the company under clause (i) as interest related dividends for

the taxable year (including interest related dividends paid after the close of the taxable year described in section 855).

“(IV) POST-DECEMBER REPORTED AMOUNT.—

The term ‘post-December reported amount’ means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

“(v) TERMINATION.—The term ‘interest related dividend’ shall not include any dividend with respect to”.

26 USC 871.

(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—Subparagraph (C) of section 871(k)(2) is amended by striking all that precedes “any taxable year of the company beginning” and inserting the following:

Definitions.

“(C) SHORT-TERM CAPITAL GAIN DIVIDEND.—For purposes of this paragraph—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘short-term capital gain dividend’ means any dividend, or part thereof, which is reported by the company as a short-term capital gain dividend in written statements furnished to its shareholders.

“(ii) EXCESS REPORTED AMOUNTS.—If the aggregate reported amount with respect to the company for any taxable year exceeds the qualified short-term gain of the company for such taxable year, the term ‘short-term capital gain dividend’ means the excess of—

“(I) the reported short-term capital gain dividend amount, over

“(II) the excess reported amount which is allocable to such reported short-term capital gain dividend amount.

“(iii) ALLOCATION OF EXCESS REPORTED AMOUNT.—

“(I) IN GENERAL.—Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported short-term capital gain dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported short-term capital gain dividend amount bears to the aggregate reported amount.

Applicability.

“(II) SPECIAL RULE FOR NONCALENDAR YEAR TAXPAYERS.—In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ‘post-December reported amount’ for ‘aggregate reported amount’ and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

“(iv) DEFINITIONS.—For purposes of this subparagraph—

“(I) REPORTED SHORT-TERM CAPITAL GAIN DIVIDEND AMOUNT.—The term ‘reported short-term capital gain dividend amount’ means the amount reported to its shareholders under clause (i) as a short-term capital gain dividend.

“(II) EXCESS REPORTED AMOUNT.—The term ‘excess reported amount’ means the excess of the aggregate reported amount over the qualified short-term gain of the company for the taxable year.

“(III) AGGREGATE REPORTED AMOUNT.—The term ‘aggregate reported amount’ means the aggregate amount of dividends reported by the company under clause (i) as short-term capital gain dividends for the taxable year (including short-term capital gain dividends paid after the close of the taxable year described in section 855).

“(IV) POST-DECEMBER REPORTED AMOUNT.—The term ‘post-December reported amount’ means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

“(v) TERMINATION.—The term ‘short-term capital gain dividend’ shall not include any dividend with respect to”.

(g) CONFORMING AMENDMENTS.—Section 855 is amended— 26 USC 855.

(1) by striking subsection (c) and redesignating subsection (d) as subsection (c), and

(2) by striking “, (c) and (d)” in subsection (a) and inserting “and (c)”.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act. 26 USC 852 note.

(i) APPLICATION OF JGTRRA SUNSET.—Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 shall apply to the amendments made by subparagraphs (B) and (D) of subsection (e)(1) to the same extent and in the same manner as section 303 of such Act applies to the amendments made by section 302 of such Act. 26 USC 854 note.

SEC. 302. EARNINGS AND PROFITS OF REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Paragraph (1) of section 852(c) is amended to read as follows:

“(1) TREATMENT OF NONDEDUCTIBLE ITEMS.—

“(A) NET CAPITAL LOSS.—If a regulated investment company has a net capital loss for any taxable year—

“(i) such net capital loss shall not be taken into account for purposes of determining the company’s earnings and profits, and

“(ii) any capital loss arising on the first day of the next taxable year by reason of clause (ii) or (iii) of section 1212(a)(3)(A) shall be treated as so arising for purposes of determining earnings and profits.

“(B) OTHER NONDEDUCTIBLE ITEMS.—

“(i) IN GENERAL.—The earnings and profits of a regulated investment company 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 (other than by reason of section 265 or 171(a)(2)) in computing its taxable income for such taxable year.

“(ii) COORDINATION WITH TREATMENT OF NET CAPITAL LOSSES.—Clause (i) shall not apply to a net capital loss to which subparagraph (A) applies.”.

(b) CONFORMING AMENDMENTS.—

26 USC 852.

(1) Subsection (c) of section 852 is amended by adding at the end the following new paragraph:

“(4) REGULATED INVESTMENT COMPANY.—For purposes of this subsection, the term ‘regulated investment company’ includes a domestic corporation which is a regulated investment company determined without regard to the requirements of subsection (a).”.

(2) Paragraphs (1)(A) and (2)(A) of section 871(k) are each amended by inserting “which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid” before the period at the end.

26 USC 852 note.

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

SEC. 303. PASS-THRU OF EXEMPT-INTEREST DIVIDENDS AND FOREIGN TAX CREDITS IN FUND OF FUNDS STRUCTURE.

(a) IN GENERAL.—Section 852 is amended by adding at the end the following new subsection:

“(g) SPECIAL RULES FOR FUND OF FUNDS.—

“(1) IN GENERAL.—In the case of a qualified fund of funds—

“(A) such fund shall be qualified to pay exempt-interest dividends to its shareholders without regard to whether such fund satisfies the requirements of the first sentence of subsection (b)(5), and

“(B) such fund may elect the application of section 853 (relating to foreign tax credit allowed to shareholders) without regard to the requirement of subsection (a)(1) thereof.

“(2) QUALIFIED FUND OF FUNDS.—For purposes of this subsection, the term ‘qualified fund of funds’ means a regulated investment company if (at the close of each quarter of the taxable year) at least 50 percent of the value of its total assets is represented by interests in other regulated investment companies.”.

26 USC 852 note.

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

SEC. 304. MODIFICATION OF RULES FOR SPILLOVER DIVIDENDS OF REGULATED INVESTMENT COMPANIES.

(a) DEADLINE FOR DECLARATION OF DIVIDEND.—Paragraph (1) of section 855(a) is amended to read as follows:

“(1) declares a dividend before the later of—

“(A) the 15th day of the 9th month following the close of the taxable year, or

“(B) in the case of an extension of time for filing the company’s return for the taxable year, the due date for filing such return taking into account such extension, and”.

(b) DEADLINE FOR DISTRIBUTION OF DIVIDEND.—Paragraph (2) of section 855(a) is amended by striking “the first regular dividend payment” and inserting “the first dividend payment of the same type of dividend”.

(c) **SHORT-TERM CAPITAL GAIN.**—Subsection (a) of section 855 is amended by adding at the end the following: “For purposes of paragraph (2), a dividend attributable to any short-term capital gain with respect to which a notice is required under the Investment Company Act of 1940 shall be treated as the same type of dividend as a capital gain dividend.”. 26 USC 855.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to distributions in taxable years beginning after the date of the enactment of this Act. 26 USC 855 note.

SEC. 305. RETURN OF CAPITAL DISTRIBUTIONS OF REGULATED INVESTMENT COMPANIES.

(a) **IN GENERAL.**—Subsection (b) of section 316 is amended by adding at the end the following new paragraph:

“(4) **CERTAIN DISTRIBUTIONS BY REGULATED INVESTMENT COMPANIES IN EXCESS OF EARNINGS AND PROFITS.**—In the case of a regulated investment company that has a taxable year other than a calendar year, if the distributions by the company with respect to any class of stock of such company for the taxable year exceed the company’s current and accumulated earnings and profits which may be used for the payment of dividends on such class of stock, the company’s current earnings and profits shall, for purposes of subsection (a), be allocated first to distributions with respect to such class of stock made during the portion of the taxable year which precedes January 1.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to distributions made in taxable years beginning after the date of the enactment of this Act. 26 USC 316 note.

SEC. 306. DISTRIBUTIONS IN REDEMPTION OF STOCK OF A REGULATED INVESTMENT COMPANY.

(a) **REDEMPTIONS TREATED AS EXCHANGES.**—

(1) **IN GENERAL.**—Subsection (b) of section 302 is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

“(5) **REDEMPTIONS BY CERTAIN REGULATED INVESTMENT COMPANIES.**—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall apply to any distribution in redemption of stock of a publicly offered regulated investment company (within the meaning of section 67(c)(2)(B)) if—

“(A) such redemption is upon the demand of the stockholder, and

“(B) such company issues only stock which is redeemable upon the demand of the stockholder.”.

(2) **CONFORMING AMENDMENT.**—Subsection (a) of section 302 is amended by striking “or (4)” and inserting “(4), or (5)”.

(b) **LOSSES ON REDEMPTIONS NOT DISALLOWED FOR FUND-OF-FUNDS REGULATED INVESTMENT COMPANIES.**—Paragraph (3) of section 267(f) is amended by adding at the end the following new subparagraph: 26 USC 267 note.

“(D) **REDEMPTIONS BY FUND-OF-FUNDS REGULATED INVESTMENT COMPANIES.**—Except to the extent provided in regulations prescribed by the Secretary, subsection (a)(1) shall not apply to any distribution in redemption of stock of a regulated investment company if—

“(i) such company issues only stock which is redeemable upon the demand of the stockholder, and

“(ii) such redemption is upon the demand of another regulated investment company.”.

26 USC 267 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 307. REPEAL OF PREFERENTIAL DIVIDEND RULE FOR PUBLICLY OFFERED REGULATED INVESTMENT COMPANIES.

(a) **IN GENERAL.**—Subsection (c) of section 562 is amended by striking “The amount” and inserting “Except in the case of a publicly offered regulated investment company (as defined in section 67(c)(2)(B)), the amount”.

(b) **CONFORMING AMENDMENT.**—Section 562(c) is amended by inserting “(other than a publicly offered regulated investment company (as so defined))” after “regulated investment company” in the second sentence thereof.

26 USC 562 note.

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

SEC. 308. ELECTIVE DEFERRAL OF CERTAIN LATE-YEAR LOSSES OF REGULATED INVESTMENT COMPANIES.

(a) **IN GENERAL.**—Paragraph (8) of section 852(b) is amended to read as follows:

“(8) **ELECTIVE DEFERRAL OF CERTAIN LATE-YEAR LOSSES.**—

“(A) **IN GENERAL.**—Except as otherwise provided by the Secretary, a regulated investment company may elect for any taxable year to treat any portion of any qualified late-year loss for such taxable year as arising on the first day of the following taxable year for purposes of this title.

“(B) **QUALIFIED LATE-YEAR LOSS.**—For purposes of this paragraph, the term ‘qualified late-year loss’ means—

“(i) any post-October capital loss, and

“(ii) any late-year ordinary loss.

“(C) **POST-OCTOBER CAPITAL LOSS.**—For purposes of this paragraph, the term ‘post-October capital loss’ means the greatest of—

“(i) the net capital loss attributable to the portion of the taxable year after October 31,

“(ii) the net long-term capital loss attributable to such portion of the taxable year, or

“(iii) the net short-term capital loss attributable to such portion of the taxable year.

“(D) **LATE-YEAR ORDINARY LOSS.**—For purposes of this paragraph, the term ‘late-year ordinary loss’ means the excess (if any) of—

“(i) the sum of—

“(I) the specified losses (as defined in section 4982(e)(5)(B)(ii)) attributable to the portion of the taxable year after October 31, plus

“(II) the ordinary losses not described in subclause (I) attributable to the portion of the taxable year after December 31, over

“(ii) the sum of—

“(I) the specified gains (as defined in section 4982(e)(5)(B)(i)) attributable to the portion of the taxable year after October 31, plus

“(II) the ordinary income not described in subclause (I) attributable to the portion of the taxable year after December 31.

“(E) SPECIAL RULE FOR COMPANIES DETERMINING REQUIRED CAPITAL GAIN DISTRIBUTIONS ON TAXABLE YEAR BASIS.—In the case of a company to which an election under section 4982(e)(4) applies—

“(i) if such company’s taxable year ends with the month of November, the amount of qualified late-year losses (if any) shall be computed without regard to any income, gain, or loss described in subparagraphs (C), (D)(i)(I), and (D)(ii)(I), and

“(ii) if such company’s taxable year ends with the month of December, subparagraph (A) shall not apply.”.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 852 is amended by striking paragraph (10). 26 USC 852.

(2) Paragraph (2) of section 852(c) is amended by striking the first sentence and inserting the following: “For purposes of applying this chapter to distributions made by a regulated investment company with respect to any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss attributable to the portion of the taxable year after October 31 and without regard to any late-year ordinary loss (as defined in subsection (b)(8)(D)).”

(3) Subparagraph (D) of section 871(k)(2) is amended by striking the last two sentences and inserting the following: “For purposes of this subparagraph, the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act. 26 USC 852 note.

SEC. 309. EXCEPTION TO HOLDING PERIOD REQUIREMENT FOR CERTAIN REGULARLY DECLARED EXEMPT-INTEREST DIVIDENDS.

(a) IN GENERAL.—Subparagraph (E) of section 852(b)(4) is amended by striking all that precedes “In the case of a regulated investment company” and inserting the following:

“(E) EXCEPTION TO HOLDING PERIOD REQUIREMENT FOR CERTAIN REGULARLY DECLARED EXEMPT-INTEREST DIVIDENDS.—

“(i) DAILY DIVIDEND COMPANIES.—Except as otherwise provided by regulations, subparagraph (B) shall not apply with respect to a regular dividend paid by a regulated investment company which declares exempt-interest dividends on a daily basis in an amount equal to at least 90 percent of its net tax-exempt interest and distributes such dividends on a monthly or more frequent basis.

“(ii) AUTHORITY TO SHORTEN REQUIRED HOLDING PERIOD WITH RESPECT TO OTHER COMPANIES.—”.

26 USC 852. (b) CONFORMING AMENDMENT.—Clause (ii) of section 852(b)(4)(E), as amended by subsection (a), is amended by inserting “(other than a company described in clause (i))” after “regulated investment company”.

26 USC 852 note. (c) EFFECTIVE DATE.—The amendments made by this section shall apply to losses incurred on shares of stock for which the taxpayer’s holding period begins after the date of the enactment of this Act.

TITLE IV—MODIFICATIONS RELATED TO EXCISE TAX APPLICABLE TO REG- ULATED INVESTMENT COMPANIES

SEC. 401. EXCISE TAX EXEMPTION FOR CERTAIN REGULATED INVESTMENT COMPANIES OWNED BY TAX EXEMPT ENTITIES.

(a) IN GENERAL.—Subsection (f) of section 4982 is amended—
(1) by striking “either” in the matter preceding paragraph (1),

(2) by striking “or” at the end of paragraph (1),
(3) by striking the period at the end of paragraph (2),
and

(4) by inserting after paragraph (2) the following new paragraphs:

“(3) any other tax-exempt entity whose ownership of beneficial interests in the company would not preclude the application of section 817(h)(4), or

“(4) another regulated investment company described in this subsection.”.

26 USC 4982
note.

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

SEC. 402. DEFERRAL OF CERTAIN GAINS AND LOSSES OF REGULATED INVESTMENT COMPANIES FOR EXCISE TAX PURPOSES.

(a) IN GENERAL.—Subsection (e) of section 4982 is amended by striking paragraphs (5) and (6) and inserting the following new paragraphs:

“(5) TREATMENT OF SPECIFIED GAINS AND LOSSES AFTER OCTOBER 31 OF CALENDAR YEAR.—

“(A) IN GENERAL.—Any specified gain or specified loss which (but for this paragraph) would be properly taken into account for the portion of the calendar year after October 31 shall be treated as arising on January 1 of the following calendar year.

“(B) SPECIFIED GAINS AND LOSSES.—For purposes of this paragraph—

“(i) SPECIFIED GAIN.—The term ‘specified gain’ means ordinary gain from the sale, exchange, or other disposition of property (including the termination of a position with respect to such property). Such term shall include any foreign currency gain attributable to a section 988 transaction (within the meaning of

section 988) and any amount includible in gross income under section 1296(a)(1).

“(ii) SPECIFIED LOSS.—The term ‘specified loss’ means ordinary loss from the sale, exchange, or other disposition of property (including the termination of a position with respect to such property). Such term shall include any foreign currency loss attributable to a section 988 transaction (within the meaning of section 988) and any amount allowable as a deduction under section 1296(a)(2).

“(C) SPECIAL RULE FOR COMPANIES ELECTING TO USE THE TAXABLE YEAR.—In the case of any company making an election under paragraph (4), subparagraph (A) shall be applied by substituting the last day of the company’s taxable year for October 31.

“(6) TREATMENT OF MARK TO MARKET GAIN.—

“(A) IN GENERAL.—For purposes of determining a regulated investment company’s ordinary income, notwithstanding paragraph (1)(C), each specified mark to market provision shall be applied as if such company’s taxable year ended on October 31. In the case of a company making an election under paragraph (4), the preceding sentence shall be applied by substituting the last day of the company’s taxable year for October 31.

“(B) SPECIFIED MARK TO MARKET PROVISION.—For purposes of this paragraph, the term ‘specified mark to market provision’ means sections 1256 and 1296 and any other provision of this title (or regulations thereunder) which treats property as disposed of on the last day of the taxable year.

“(7) ELECTIVE DEFERRAL OF CERTAIN ORDINARY LOSSES.—Except as provided in regulations prescribed by the Secretary, in the case of a regulated investment company which has a taxable year other than the calendar year—

“(A) such company may elect to determine its ordinary income for the calendar year without regard to any net ordinary loss (determined without regard to specified gains and losses taken into account under paragraph (5)) which is attributable to the portion of such calendar year which is after the beginning of the taxable year which begins in such calendar year, and

“(B) any amount of net ordinary loss not taken into account for a calendar year by reason of subparagraph (A) shall be treated as arising on the 1st day of the following calendar year.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after the date of the enactment of this Act. 26 USC 4982 note.

SEC. 403. DISTRIBUTED AMOUNT FOR EXCISE TAX PURPOSES DETERMINED ON BASIS OF TAXES PAID BY REGULATED INVESTMENT COMPANY.

(a) IN GENERAL.—Subsection (c) of section 4982 is amended by adding at the end the following new paragraph: 26 USC 4982.

“(4) SPECIAL RULE FOR ESTIMATED TAX PAYMENTS.—

“(A) IN GENERAL.—In the case of a regulated investment company which elects the application of this paragraph for any calendar year—

“(i) the distributed amount with respect to such company for such calendar year shall be increased by the amount on which qualified estimated tax payments are made by such company during such calendar year, and

“(ii) the distributed amount with respect to such company for the following calendar year shall be reduced by the amount of such increase.

“(B) QUALIFIED ESTIMATED TAX PAYMENTS.—For purposes of this paragraph, the term ‘qualified estimated tax payments’ means, with respect to any calendar year, payments of estimated tax of a tax described in paragraph (1)(B) for any taxable year which begins (but does not end) in such calendar year.”.

26 USC 4982
note.

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

SEC. 404. INCREASE IN REQUIRED DISTRIBUTION OF CAPITAL GAIN NET INCOME.

26 USC 4982.

(a) IN GENERAL.—Subparagraph (B) of section 4982(b)(1) is amended by striking “98 percent” and inserting “98.2 percent”.

26 USC 4982
note.

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

TITLE V—OTHER PROVISIONS

SEC. 501. REPEAL OF ASSESSABLE PENALTY WITH RESPECT TO LIABILITY FOR TAX OF REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 is amended by striking section 6697 (and by striking the item relating to such section in the table of sections of such part).

(b) CONFORMING AMENDMENT.—Section 860 is amended by striking subsection (j).

26 USC 860 note.

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

SEC. 502. MODIFICATION OF SALES LOAD BASIS DEFERRAL RULE FOR REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Subparagraph (C) of section 852(f)(1) is amended by striking “subsequently acquires” and inserting “acquires, during the period beginning on the date of the disposition referred to in subparagraph (B) and ending on January 31 of the calendar year following the calendar year that includes the date of such disposition.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to charges incurred in taxable years beginning after the date of the enactment of this Act. 26 USC 852 note.

Approved December 22, 2010.

LEGISLATIVE HISTORY—H.R. 4337:

CONGRESSIONAL RECORD, Vol. 156 (2010):

Sept. 28, considered and passed House.

Dec. 8, considered and passed Senate, amended.

Dec. 15, House concurred in Senate amendment.