

## EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88-554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88-554, set out as a note under section 318 of this title.

Amendment by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88-272, set out as a note under section 316 of this title.

## EFFECTIVE DATE

Pub. L. 86-779, §10(k), Sept. 14, 1960, 74 Stat. 1009, provided that: "The amendments made by this section [enacting this section and sections 857 and 858 and amending sections 11, 34, 116, 243, 318, 443, 852, 855, and 1504 of this title] shall apply with respect to taxable years of real estate investment trusts beginning after December 31, 1960."

## STUDY RELATING TO TAXABLE REIT SUBSIDIARIES

Pub. L. 106-170, title V, §547, Dec. 17, 1999, 113 Stat. 1947, provided that: "The Secretary of the Treasury shall conduct a study to determine how many taxable REIT subsidiaries are in existence and the aggregate amount of taxes paid by such subsidiaries. The Secretary shall submit a report to the Congress describing the results of such study."

## TRUST NOT DISQUALIFIED IN CERTAIN CASES WHERE INCOME TESTS NOT MET

Pub. L. 94-455, title XVI, §1608(b), Oct. 4, 1976, 90 Stat. 1757, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by section 1602 [amending this section and section 857 of this title] shall apply to taxable years of real estate investment trusts beginning after the date of the enactment of this Act [Oct. 4, 1976]. In addition, the amendments made by section 1602 shall apply to a taxable year of a real estate investment trust beginning before the date of the enactment of this Act if, as the result of a determination (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) with respect to such trust occurring after the date of the enactment of this Act, such trust for such taxable years does not meet the requirements of section 856(c)(2) or section 856(c)(3), or of both such sections, of such Code as in effect for such taxable year. In any case, the amendment made by section 1602(a) requiring a schedule to be attached to the income tax return of certain real estate investment trusts shall apply only to taxable years of such trusts beginning after the date of the enactment of this Act. If the amendments made by section 1602 apply to a taxable year ending on or before the date of enactment of this Act, the reference to paragraph (2)(B) in section 857(b)(5) of such Code, as amended, shall be considered to be a reference to paragraph (2)(C) of section 857(b) of such Code, as in effect immediately before the enactment of this Act."

**§ 857. Taxation of real estate investment trusts and their beneficiaries****(a) Requirements applicable to real estate investment trusts**

The provisions of this part (other than subsection (d) of this section and subsection (g) of section 856) shall not apply to a real estate investment trust for a taxable year unless—

(1) the deduction for dividends paid during the taxable year (as defined in section 561, but determined without regard to capital gains dividends) equals or exceeds—

(A) the sum of—

(i) 90 percent of the real estate investment trust taxable income for the taxable

year (determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain); and

(ii) 90 percent of the excess of the net income from foreclosure property over the tax imposed on such income by subsection (b)(4)(A); minus

(B) any excess noncash income (as determined under subsection (e)); and

(2) either—

(A) the provisions of this part apply to the real estate investment trust for all taxable years beginning after February 28, 1986, or

(B) as of the close of the taxable year, the real estate investment trust has no earnings and profits accumulated in any non-REIT year.

For purposes of the preceding sentence, the term "non-REIT year" means any taxable year to which the provisions of this part did not apply with respect to the entity. The Secretary may waive the requirements of paragraph (1) for any taxable year if the real estate investment trust establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4981.

**(b) Method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest****(1) Imposition of tax on real estate investment trusts**

There is hereby imposed for each taxable year on the real estate investment trust taxable income of every real estate investment trust a tax computed as provided in section 11, as though the real estate investment trust taxable income were the taxable income referred to in section 11.

**(2) Real estate investment trust taxable income**

For purposes of this part, the term "real estate investment trust taxable income" means the taxable income of the real estate investment trust, adjusted as follows:

(A) The deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(B) The deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to that portion of such deduction which is attributable to the amount excluded under subparagraph (D).

(C) The taxable income shall be computed without regard to section 443(b) (relating to computation of tax on change of annual accounting period).

(D) There shall be excluded an amount equal to the net income from foreclosure property.

(E) There shall be deducted an amount equal to the tax imposed by paragraphs (5) and (7) of this subsection, section 856(c)(7)(C), and section 856(g)(5) for the taxable year.

(F) There shall be excluded an amount equal to any net income derived from prohibited transactions.

### (3) Capital gains

#### (A) Alternative tax in case of capital gains

If for any taxable year a real estate investment trust has a net capital gain, then, in lieu of the tax imposed by subsection (b)(1), there is hereby imposed a tax (if such tax is less than the tax imposed by such subsection) which shall consist of the sum of—

(i) a tax, computed as provided in subsection (b)(1), on the real estate investment trust taxable income (determined by excluding such net capital gain and by computing the deduction for dividends paid without regard to capital gain dividends), and

(ii) a tax determined at the rates provided in section 1201(a) on the excess of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

#### (B) Treatment of capital gain dividends by shareholders

A capital gain dividend shall be treated by the shareholders or holders of beneficial interests as a gain from the sale or exchange of a capital asset held for more than 1 year.

#### (C) Definition of capital gain dividend

For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the real estate investment trust as a capital gain dividend in a written notice mailed to its shareholders or holders of beneficial interests at any time before the expiration of 30 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year); except that, if there is an increase in the excess described in subparagraph (A)(ii) of this paragraph for such year which results from a determination (as defined in section 860(e)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination. If the aggregate amount so designated with respect to a taxable year of the trust (including capital gain dividends paid after the close of the taxable year described in section 858) is greater than the net capital gain of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such net capital gain bears to the aggregate amount so designated. For purposes of this subparagraph, the amount of the net capital gain for any taxable year which is not a calendar year shall be determined without regard to any net capital loss attributable to transactions after December 31 of such year, and any such net capital loss shall be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing the taxable income of the real estate investment trust.

#### (D) Treatment by shareholders of undistributed capital gains

(i) Every shareholder of a real estate investment trust at the close of the trust's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the trust's taxable year falls, such amount as the trust shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 60 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year), but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A)(ii) which he would have received if all of such amount had been distributed as capital gain dividends by the trust to the holders of such shares at the close of its taxable year.

(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by subparagraph (A)(ii) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholders shall be allowed credit or refund as the case may be, for the tax so deemed to have been paid by him.

(iii) The adjusted basis of such shares in the hands of the holder shall be increased with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (i).

(iv) In the event of such designation, the tax imposed by subparagraph (A)(ii) shall be paid by the real estate investment trust within 30 days after the close of its taxable year.

(v) The earnings and profits of such real estate investment trust, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary.

(vi) As used in this subparagraph, the terms "shares" and "shareholders" shall include beneficial interests and holders of beneficial interests, respectively.

#### (E) Coordination with net operating loss provisions

For purposes of section 172, if a real estate investment trust pays capital gain dividends during any taxable year, the amount of the net capital gain for such taxable year (to the extent such gain does not exceed the amount of such capital gain dividends) shall be excluded in determining—

(i) the net operating loss for the taxable year, and

(ii) the amount of the net operating loss of any prior taxable year which may be carried through such taxable year under section 172(b)(2) to a succeeding taxable year.

**(F) Certain distributions**

In the case of a shareholder of a real estate investment trust to whom section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be included in computing long-term capital gains for such shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

(i) shall not be included in computing such shareholder's long-term capital gains, and

(ii) shall be included in such shareholder's gross income as a dividend from the real estate investment trust.

**(4) Income from foreclosure property****(A) Imposition of tax**

A tax is hereby imposed for each taxable year on the net income from foreclosure property of every real estate investment trust. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

**(B) Net income from foreclosure property**

For purposes of this part, the term "net income from foreclosure property" means the excess of—

(i) gain (including any foreign currency gain, as defined in section 988(b)(1)) from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in (or, in the case of foreign currency gain, not attributable to gross income described in) section 856(c)(3) other than subparagraph (F) thereof, over

(ii) the deductions allowed by this chapter which are directly connected with the production of the income referred to in clause (i).

**(5) Imposition of tax in case of failure to meet certain requirements**

If section 856(c)(6) applies to a real estate investment trust for any taxable year, there is hereby imposed on such trust a tax in an amount equal to the greater of—

(A) the excess of—

(i) 95 percent of the gross income (excluding gross income from prohibited transactions) of the real estate investment trust, over

(ii) the amount of such gross income which is derived from sources referred to in section 856(c)(2); or

(B) the excess of—

(i) 75 percent of the gross income (excluding gross income from prohibited transactions) of the real estate investment trust, over

(ii) the amount of such gross income which is derived from sources referred to in section 856(c)(3),

multiplied by a fraction the numerator of which is the real estate investment trust

taxable income for the taxable year (determined without regard to the deductions provided in paragraphs (2)(B) and (2)(E), without regard to any net operating loss deduction, and by excluding any net capital gain) and the denominator of which is the gross income for the taxable year (excluding gross income from prohibited transactions; gross income and gain from foreclosure property (as defined in section 856(e), but only to the extent such gross income and gain is not described in subparagraph (A), (B), (C), (D), (E), or (G) of section 856(c)(3)); long-term capital gain; and short-term capital gain to the extent of any short-term capital loss).

**(6) Income from prohibited transactions****(A) Imposition of tax**

There is hereby imposed for each taxable year of every real estate investment trust a tax equal to 100 percent of the net income derived from prohibited transactions.

**(B) Definitions**

For purposes of this part—

(i) the term "net income derived from prohibited transactions" means the excess of the gain (including any foreign currency gain, as defined in section 988(b)(1)) from prohibited transactions over the deductions (including any foreign currency loss, as defined in section 988(b)(2)) allowed by this chapter which are directly connected with prohibited transactions;

(ii) in determining the amount of the net income derived from prohibited transactions, there shall not be taken into account any item attributable to any prohibited transaction for which there was a loss; and

(iii) the term "prohibited transaction" means a sale or other disposition of property described in section 1221(a)(1) which is not foreclosure property.

**(C) Certain sales not to constitute prohibited transactions**

For purposes of this part, the term "prohibited transaction" does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if—

(i) the trust has held the property for not less than 2 years;

(ii) aggregate expenditures made by the trust, or any partner of the trust, during the 2-year period preceding the date of sale which are includible in the basis of the property do not exceed 30 percent of the net selling price of the property;

(iii)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or (II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the be-

ginning of the taxable year, or (III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year;

(iv) in the case of property, which consists of land or improvements, not acquired through foreclosure (or deed in lieu of foreclosure), or lease termination, the trust has held the property for not less than 2 years for production of rental income; and

(v) if the requirement of clause (iii)(I) is not satisfied, substantially all of the marketing and development expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income.

**(D) Certain sales not to constitute prohibited transactions**

For purposes of this part, the term “prohibited transaction” does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if—

(i) the trust held the property for not less than 2 years in connection with the trade or business of producing timber,

(ii) the aggregate expenditures made by the trust, or a partner of the trust, during the 2-year period preceding the date of sale which—

(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

(II) are directly related to operation of the property for the production of timber or for the preservation of the property for use as timberland,

do not exceed 30 percent of the net selling price of the property,

(iii) the aggregate expenditures made by the trust, or a partner of the trust, during the 2-year period preceding the date of sale which—

(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

(II) are not directly related to operation of the property for the production of timber, or for the preservation of the property for use as timberland,

do not exceed 5 percent of the net selling price of the property,

(iv)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or

(II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of

the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year, or

(III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year,

(v) in the case that the requirement of clause (iv)(I) is not satisfied, substantially all of the marketing expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income, or, in the case of a sale on or before the termination date, a taxable REIT subsidiary, and

(vi) the sales price of the property sold by the trust is not based in whole or in part on income or profits, including income or profits derived from the sale or operation of such property.

**(E) Special rules**

In applying subparagraphs (C) and (D) the following special rules apply:

(i) The holding period of property acquired through foreclosure (or deed in lieu of foreclosure), or termination of the lease, includes the period for which the trust held the loan which such property secured, or the lease of such property.

(ii) In the case of a property acquired through foreclosure (or deed in lieu of foreclosure), or termination of a lease, expenditures made by, or for the account of, the mortgagor or lessee after default became imminent will be regarded as made by the trust.

(iii) Expenditures (including expenditures regarded as made directly by the trust, or indirectly by any partner of the trust, under clause (ii)) will not be taken into account if they relate to foreclosure property and did not cause the property to lose its status as foreclosure property.

(iv) Expenditures will not be taken into account if they are made solely to comply with standards or requirements of any government or governmental authority having relevant jurisdiction, or if they are made to restore the property as a result of losses arising from fire, storm or other casualty.

(v) The term “expenditures” does not include advances on a loan made by the trust.

(vi) The sale of more than one property to one buyer as part of one transaction constitutes one sale.

(vii) The term “sale” does not include any transaction in which the net selling price is less than \$10,000.

**(F) Sales not meeting requirements**

In determining whether or not any sale constitutes a “prohibited transaction” for purposes of subparagraph (A), the fact that such sale does not meet the requirements of

subparagraph (C) or (D) shall not be taken into account; and such determination, in the case of a sale not meeting such requirements, shall be made as if subparagraphs (C), (D), and (E) had not been enacted.

**(G) Sales of property that are not a prohibited transaction**

In the case of a sale on or before the termination date, the sale of property which is not a prohibited transaction through the application of subparagraph (D) shall be considered property held for investment or for use in a trade or business and not property described in section 1221(a)(1) for all purposes of this subtitle. For purposes of the preceding sentence, the reference to subparagraph (D) shall be a reference to such subparagraph as in effect on the day before the enactment of the Housing Assistance Tax Act of 2008, as modified by subparagraph (G) as so in effect.

**(H) Termination date**

For purposes of this paragraph, the term “termination date” has the meaning given such term by section 856(c)(8).

**(7) Income from redetermined rents, redetermined deductions, and excess interest**

**(A) Imposition of tax**

There is hereby imposed for each taxable year of the real estate investment trust a tax equal to 100 percent of redetermined rents, redetermined deductions, and excess interest.

**(B) Redetermined rents**

**(i) In general**

The term “redetermined rents” means rents from real property (as defined in section 856(d)) to the extent the amount of the rents would (but for subparagraph (E)) be reduced on distribution, apportionment, or allocation under section 482 to clearly reflect income as a result of services furnished or rendered by a taxable REIT subsidiary of the real estate investment trust to a tenant of such trust.

**(ii) Exception for de minimis amounts**

Clause (i) shall not apply to amounts described in section 856(d)(7)(A) with respect to a property to the extent such amounts do not exceed the one percent threshold described in section 856(d)(7)(B) with respect to such property.

**(iii) Exception for comparably priced services**

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

(I) such subsidiary renders a significant amount of similar services to persons other than such trust and tenants of such trust who are unrelated (within the meaning of section 856(d)(8)(F)) to such subsidiary, trust, and tenants, but

(II) only to the extent the charge for such service so rendered is substantially

comparable to the charge for the similar services rendered to persons referred to in subclause (I).

**(iv) Exception for certain separately charged services**

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

(I) the rents paid to the trust by tenants (leasing at least 25 percent of the net leasable space in the trust’s property) who are not receiving such service from such subsidiary are substantially comparable to the rents paid by tenants leasing comparable space who are receiving such service from such subsidiary, and

(II) the charge for such service from such subsidiary is separately stated.

**(v) Exception for certain services based on subsidiary’s income from the services**

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if the gross income of such subsidiary from such service is not less than 150 percent of such subsidiary’s direct cost in furnishing or rendering the service.

**(vi) Exceptions granted by Secretary**

The Secretary may waive the tax otherwise imposed by subparagraph (A) if the trust establishes to the satisfaction of the Secretary that rents charged to tenants were established on an arms’ length basis even though a taxable REIT subsidiary of the trust provided services to such tenants.

**(C) Redetermined deductions**

The term “redetermined deductions” means deductions (other than redetermined rents) of a taxable REIT subsidiary of a real estate investment trust to the extent the amount of such deductions would (but for subparagraph (E)) be decreased on distribution, apportionment, or allocation under section 482 to clearly reflect income as between such subsidiary and such trust.

**(D) Excess interest**

The term “excess interest” means any deductions for interest payments by a taxable REIT subsidiary of a real estate investment trust to such trust to the extent that the interest payments are in excess of a rate that is commercially reasonable.

**(E) Coordination with section 482**

The imposition of tax under subparagraph (A) shall be in lieu of any distribution, apportionment, or allocation under section 482.

**(F) Regulatory authority**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Until the Secretary prescribes such regulations, real estate investment trusts and their taxable REIT subsidiaries may base their allocations on any reasonable method.

**(8) Loss on sale or exchange of stock held 6 months or less****(A) In general**

If—

(i) subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share or beneficial interest is to be treated as a long-term capital gain, and

(ii) the taxpayer has held such share or interest for 6 months or less,

then any loss on the sale or exchange of such share or interest shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

**(B) Determination of holding periods**

For purposes of this paragraph, in determining the period for which the taxpayer has held any share of stock or beneficial interest—

(i) the rules of paragraphs (3) and (4) of section 246(c) shall apply, and

(ii) there shall not be taken into account any day which is more than 6 months after the date on which such share or interest becomes ex-dividend.

**(C) Exception for losses incurred under periodic liquidation plans**

To the extent provided in regulations, subparagraph (A) shall not apply to any loss incurred on the sale or exchange of shares of stock of, or beneficial interest in, a real estate investment trust pursuant to a plan which provides for the periodic liquidation of such shares or interests.

**(9) Time certain dividends taken into account**

For purposes of this title, any dividend declared by a real estate investment trust in October, November, or December of any calendar year and payable to shareholders of record on a specified date in such a month shall be deemed—

(A) to have been received by each shareholder on December 31 of such calendar year, and

(B) to have been paid by such trust on December 31 of such calendar year (or, if earlier, as provided in section 858).

The preceding sentence shall apply only if such dividend is actually paid by the company during January of the following calendar year.

**(c) Restrictions applicable to dividends received from real estate investment trusts****(1) Section 243**

For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered a dividend.

**(2) Section 1(h)(11)****(A) In general**

In any case in which—

(i) a dividend is received from a real estate investment trust (other than a capital gain dividend), and

(ii) such trust meets the requirements of section 856(a) for the taxable year during which it paid such dividend,

then, in computing qualified dividend income, there shall be taken into account only that portion of such dividend designated by the real estate investment trust.

**(B) Limitation**

The aggregate amount which may be designated as qualified dividend income under subparagraph (A) shall not exceed the sum of—

(i) the qualified dividend income of the trust for the taxable year,

(ii) the excess of—

(I) the sum of the real estate investment trust taxable income computed under section 857(b)(2) for the preceding taxable year and the income subject to tax by reason of the application of the regulations under section 337(d) for such preceding taxable year, over

(II) the sum of the taxes imposed on the trust for such preceding taxable year under section 857(b)(1) and by reason of the application of such regulations, and

(iii) the amount of any earnings and profits which were distributed by the trust for such taxable year and accumulated in a taxable year with respect to which this part did not apply.

**(C) Notice to shareholders**

The amount of any distribution by a real estate investment trust which may be taken into account as qualified dividend income shall not exceed the amount so designated by the trust in a written notice to its shareholders mailed not later than 60 days after the close of its taxable year.

**(D) Qualified dividend income**

For purposes of this paragraph, the term “qualified dividend income” has the meaning given such term by section 1(h)(11)(B).

**(d) Earnings and profits****(1) In general**

The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings) shall not be reduced by any amount which is not allowable in computing its taxable income for such taxable year. For purposes of this subsection, the term “real estate investment trust” includes a domestic corporation, trust, or association which is a real estate investment trust determined without regard to the requirements of subsection (a).

**(2) Coordination with tax on undistributed income**

A real estate investment trust shall be treated as having sufficient earnings and profits to treat as a dividend any distribution (other than in a redemption to which section 302(a) applies) which is treated as a dividend by such trust. The preceding sentence shall not apply to the extent that the amount distributed during any calendar year by the trust

exceeds the required distribution for such calendar year (as determined under section 4981).

**(3) Distributions to meet requirements of subsection (a)(2)(B)**

Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from earnings and profits which, but for the distribution, would result in a failure to meet such requirements (and allocated to such earnings on a first-in, first-out basis), and

(B) to the extent treated under subparagraph (A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of subsection (b)(2)(B) and section 858.

**(e) Excess noncash income**

**(1) In general**

For purposes of subsection (a)(1)(B), the term “excess noncash income” means the excess (if any) of—

(A) the amount determined under paragraph (2) for the taxable year, over

(B) 5 percent of the real estate investment trust taxable income for the taxable year determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain.

**(2) Determination of amount**

The amount determined under this paragraph for the taxable year is the sum of—

(A) the amount (if any) by which—

(i) the amounts includible in gross income under section 467 (relating to certain payments for the use of property or services), exceed

(ii) the amounts which would have been includible in gross income without regard to such section,

(B) any income on the disposition of a real estate asset if—

(i) there is a determination (as defined in section 860(e)) that such income is not eligible for nonrecognition under section 1031, and

(ii) failure to meet the requirements of section 1031 was due to reasonable cause and not to willful neglect,

(C) the amount (if any) by which—

(i) the amounts includible in gross income with respect to instruments to which section 860E(a) or 1272 applies, exceed

(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments, and

(D) amounts includible in income by reason of cancellation of indebtedness.

**(f) Real estate investment trusts to ascertain ownership**

**(1) In general**

Each real estate investment trust shall each taxable year comply with regulations pre-

scribed by the Secretary for the purposes of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust.

**(2) Failure to comply**

**(A) In general**

If a real estate investment trust fails to comply with the requirements of paragraph (1) for a taxable year, such trust shall pay (on notice and demand by the Secretary and in the same manner as tax) a penalty of \$25,000.

**(B) Intentional disregard**

If any failure under paragraph (1) is due to intentional disregard of the requirement under paragraph (1), the penalty under subparagraph (A) shall be \$50,000.

**(C) Failure to comply after notice**

The Secretary may require a real estate investment trust to take such actions as the Secretary determines appropriate to ascertain actual ownership if the trust fails to meet the requirements of paragraph (1). If the trust fails to take such actions, the trust shall pay (on notice and demand by the Secretary and in the same manner as tax) an additional penalty equal to the penalty determined under subparagraph (A) or (B), whichever is applicable.

**(D) Reasonable cause**

No penalty shall be imposed under this paragraph with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

**(g) Cross reference**

**For provisions relating to excise tax based on certain real estate investment trust taxable income not distributed during the taxable year, see section 4981.**

(Added Pub. L. 86-779, §10(a), Sept. 14, 1960, 74 Stat. 1006; amended Pub. L. 88-272, title II, §201(d)(11), Feb. 26, 1964, 78 Stat. 32; Pub. L. 91-172, title V, §511(c)(3), Dec. 30, 1969, 83 Stat. 637; Pub. L. 93-625, §6(c), (d)(2)-(4), Jan. 3, 1975, 88 Stat. 2113, 2114; Pub. L. 94-455, title XIV, §1402(b)(1)(P), (2), title XVI, §§1601(c), 1602(b), 1603(b), (c)(5), 1604(c)(2), (f)(3)(B), (j), (k)(2)(B), 1605(b)(2), 1606(a), (d), 1607(a), (b)(1)(A), (2), (3), title XIX, §§1901(a)(112), (b)(1)(V), (33)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1746-1748, 1750-1757, 1783, 1792, 1801, 1834; Pub. L. 95-600, title III, §§301(b)(12), 362(d)(3), 363(b), title IV, §403(c)(3), Nov. 6, 1978, 92 Stat. 2822, 2851, 2852, 2868; Pub. L. 96-222, title I, §103(a)(1), Apr. 1, 1980, 94 Stat. 208; Pub. L. 96-223, title IV, §404(b)(8), Apr. 2, 1980, 94 Stat. 307; Pub. L. 97-34, title III, §302(c)(5), (d)(1), Aug. 13, 1981, 95 Stat. 273, 274; Pub. L. 98-369, div. A, title I, §§16(a), 55(b), title X, §1001(b)(13), (e), July 18, 1984, 98 Stat. 505, 572, 1011, 1012; Pub. L. 99-514, title VI, §§612(b)(7), 661(b), 664, 665(a), (b)(1), 666, 668(b)(1)(A), (2), (3), Oct. 22, 1986, 100 Stat. 2251, 2300, 2303-2305, 2307, 2308; Pub. L. 100-647, title I, §§1006(r), (s)(2), (4), (5), 1018(u)(28), Nov. 10, 1988, 102 Stat. 3418, 3419, 3591; Pub. L. 101-508, title XI, §11704(a)(37), Nov. 5, 1990, 104 Stat. 1388-520; Pub. L. 105-34, title XII, §§1251(a), 1254(a), (b)(1), 1255(b)(2), (3), 1256,

1259, 1260, Aug. 5, 1997, 111 Stat. 1030, 1032-1035; Pub. L. 105-206, title VI, § 6012(g), July 22, 1998, 112 Stat. 819; Pub. L. 106-170, title V, §§ 532(c)(2)(L), (M), 545, 556(a), (b), 566(a)(2), (b), Dec. 17, 1999, 113 Stat. 1930, 1944, 1949, 1950; Pub. L. 106-554, § 1(a)(7) [title III, § 311(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-640; Pub. L. 107-147, title IV, §§ 413(a), 417(13), Mar. 9, 2002, 116 Stat. 54, 56; Pub. L. 108-27, title III, § 302(d), May 28, 2003, 117 Stat. 763; Pub. L. 108-311, title IV, § 402(a)(5)(E), Oct. 4, 2004, 118 Stat. 1185; Pub. L. 108-357, title II, § 243(c), (e), (f)(4), title III, § 321(a), title IV, § 418(b), Oct. 22, 2004, 118 Stat. 1442, 1445, 1473, 1512; Pub. L. 109-135, title IV, §§ 403(d)(3), 412(ii), Dec. 21, 2005, 119 Stat. 2622, 2639; Pub. L. 110-172, § 11(a)(17)(B), Dec. 29, 2007, 121 Stat. 2486; Pub. L. 110-234, title XV, §§ 15311(c), 15315(a)-(d), May 22, 2008, 122 Stat. 1503-1505; Pub. L. 110-246, § 4(a), title XV, §§ 15311(c), 15315(a)-(d), June 18, 2008, 122 Stat. 1664, 2265-2267; Pub. L. 110-289, div. C, title II, §§ 3033, 3051, 3052, July 30, 2008, 122 Stat. 2900, 2901.)

## REFERENCES IN TEXT

The date of enactment of the Housing Assistance Tax Act of 2008, referred to in subsec. (b)(6)(G), is the date of enactment of div. C of Pub. L. 110-289, which was approved July 30, 2008.

## CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

## AMENDMENTS

2008—Subsec. (b)(3)(A)(ii). Pub. L. 110-246, § 15311(c), substituted “rates” for “rate”.

Subsec. (b)(4)(B)(i). Pub. L. 110-289, § 3033(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “gain from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in subparagraph (A), (B), (C), (D), (E), or (G) of section 856(c)(3), over”.

Subsec. (b)(6)(B)(i). Pub. L. 110-289, § 3033(b), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “the term ‘net income derived from prohibited transactions’ means the excess of the gain from prohibited transactions over the deductions allowed by this chapter which are directly connected with prohibited transactions”.

Subsec. (b)(6)(C). Pub. L. 110-289, § 3051(a)(3), substituted “real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if” for “real estate asset as defined in section 856(c)(5)(B) if” in introductory provisions.

Subsec. (b)(6)(C)(i). Pub. L. 110-289, § 3051(a)(1), substituted “2 years” for “4 years”.

Subsec. (b)(6)(C)(ii). Pub. L. 110-289, § 3051(a)(2), substituted “2-year period” for “4-year period”.

Subsec. (b)(6)(C)(iii)(III). Pub. L. 110-289, § 3052(1), added subcl. (III).

Subsec. (b)(6)(C)(iv). Pub. L. 110-289, § 3051(a)(1), substituted “2 years” for “4 years”.

Subsec. (b)(6)(D). Pub. L. 110-289, § 3051(a)(3), substituted “real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if” for “real estate asset (as defined in section 856(c)(5)(B)) if” in introductory provisions.

Subsec. (b)(6)(D)(i). Pub. L. 110-289, § 3051(a)(1), substituted “2 years” for “4 years”.

Subsec. (b)(6)(D)(ii), (iii). Pub. L. 110-289, § 3051(a)(2), substituted “2-year period” for “4-year period” in introductory provisions.

Subsec. (b)(6)(D)(iv)(III). Pub. L. 110-289, § 3052(2), added subcl. (III).

Subsec. (b)(6)(D)(v). Pub. L. 110-246, § 15315(b), inserted “, or, in the case of a sale on or before the termination date, a taxable REIT subsidiary” after “any income”.

Subsec. (b)(6)(G). Pub. L. 110-289, § 3051(b), redesignated subpar. (H) as (G), inserted at end “For purposes of the preceding sentence, the reference to subparagraph (D) shall be a reference to such subparagraph as in effect on the day before the enactment of the Housing Assistance Tax Act of 2008, as modified by subparagraph (G) as so in effect.”, and struck out former subpar. (G). Prior to amendment, text of subpar. (G) read as follows:

“(i) IN GENERAL.—In the case of the sale of a real estate asset (as defined in section 856(c)(5)(B)) to a qualified organization (as defined in section 170(h)(3)) exclusively for conservation purposes (within the meaning of section 170(h)(1)(C)), subparagraph (D) shall be applied—

“(I) by substituting ‘2 years’ for ‘4 years’ in clause (i), and

“(II) by substituting ‘2-year period’ for ‘4-year period’ in clauses (ii) and (iii).

“(ii) TERMINATION.—This subparagraph shall not apply to sales after the termination date.”

Pub. L. 110-246, § 15315(a), added subpar. (G).

Subsec. (b)(6)(H), (I). Pub. L. 110-289, § 3051(b)(1), redesignated subpar. (I) as (H). Former subpar. (H) redesignated (G).

Pub. L. 110-246, § 15315(c), (d), added subpars. (H) and (I).

2007—Subsec. (b)(8)(B). Pub. L. 110-172 amended heading and text generally. Prior to amendment, text read as follows: “For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer has held any share of stock or beneficial interest; except that ‘6 months’ shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).”

2005—Subsec. (b)(2)(E). Pub. L. 109-135, § 403(d)(3), substituted “section 856(c)(7)(C), and section 856(g)(5)” for “section 856(c)(7)(B)(iii), and section 856(g)(1).”

Subsec. (b)(6)(E). Pub. L. 109-135, § 412(ii)(1), substituted “subparagraphs (C) and (D)” for “subparagraph (C)” in introductory provisions.

Subsec. (b)(6)(F). Pub. L. 109-135, § 412(ii)(2), substituted “subparagraph (C) or (D)” for “subparagraph (C) of this paragraph” and “subparagraphs (C), (D), and (E)” for “subparagraphs (C) and (D)”.

2004—Subsec. (b)(2)(E). Pub. L. 108-357, § 243(f)(4), substituted “(7) of this subsection, section 856(c)(7)(B)(iii), and section 856(g)(1).” for “(7)”.

Subsec. (b)(3)(F). Pub. L. 108-357, § 418(b), added subpar. (F).

Subsec. (b)(5)(A)(i). Pub. L. 108-357, § 243(e), substituted “95 percent” for “90 percent”.

Subsec. (b)(6)(D) to (F). Pub. L. 108-357, § 321(a), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (b)(7)(B)(ii) to (vii). Pub. L. 108-357, § 243(c), redesignated cls. (iii) to (vii) as (ii) to (vi), respectively, and struck out former cl. (ii), which related to exception for amounts received by a REIT for services furnished or rendered by a taxable REIT subsidiary that were described in section 856(d)(1)(B) of this title, or from a taxable REIT subsidiary that were described in par. (7)(C)(ii) of such section.

Subsec. (c)(2). Pub. L. 108-311, § 402(a)(5)(E), reenacted heading without change and amended text generally. Prior to amendment, text related to rules applicable to dividends received from real estate investment trusts for purposes of section 1(h)(11) of this title.

2003—Subsec. (c). Pub. L. 108-27 reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as follows: “For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend.”



2002—Subsec. (b)(7)(B)(i). Pub. L. 107-147, § 417(13), substituted “section 856(d)” for “subsection 856(d)”.

Pub. L. 107-147, § 413(a)(1), substituted “to the extent the amount of the rents” for “the amount of which”.

Subsec. (b)(7)(C). Pub. L. 107-147, § 413(a)(2), substituted “to the extent the amount” for “if the amount”.

2000—Subsec. (b)(7)(B)(ii). Pub. L. 106-554 amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: “Clause (i) shall not apply to amounts received directly or indirectly by a real estate investment trust for services described in paragraph (1)(B) or (7)(C)(i) of section 856(d).”

1999—Subsec. (a)(1)(A)(i), (ii). Pub. L. 106-170, § 556(a), substituted “90 percent” for “95 percent (90 percent for taxable years beginning before January 1, 1980)”.

Subsec. (b)(2)(E). Pub. L. 106-170, § 545(b), substituted “paragraphs (5) and (7)” for “paragraph (5)”.

Subsec. (b)(4)(B)(i). Pub. L. 106-170, § 532(c)(2)(L), substituted “section 1221(a)(1)” for “section 1221(1)”.

Subsec. (b)(5)(A)(i). Pub. L. 106-170, § 556(b), substituted “90 percent” for “95 percent (90 percent in the case of taxable years beginning before January 1, 1980)”.

Subsec. (b)(6)(B)(iii). Pub. L. 106-170, § 532(c)(2)(M), substituted “section 1221(a)(1)” for “section 1221(1)”.

Subsec. (b)(7) to (9). Pub. L. 106-170, § 545(a), added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively.

Subsec. (d)(3)(A). Pub. L. 106-170, § 566(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from the earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply rather than the most recently accumulated earnings and profits, and”.

Subsec. (d)(3)(B). Pub. L. 106-170, § 566(b), inserted “and section 858” before period at end.

1998—Subsec. (d)(3)(A). Pub. L. 105-206 substituted “earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply” for “earliest accumulated earnings and profits (other than earnings and profits to which subsection (a)(2)(A) applies)”.

1997—Subsec. (a)(2), (3). Pub. L. 105-34, § 1251(a)(1), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “the real estate investment trust complies for such year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust, and”.

Subsec. (b)(3)(D), (E). Pub. L. 105-34, § 1254(a), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (b)(5). Pub. L. 105-34, § 1255(b)(2), substituted “section 856(c)(6)” for “section 856(c)(7)” in introductory provisions.

Subsec. (b)(6)(C). Pub. L. 105-34, § 1255(b)(3), substituted “section 856(c)(5)(B)” for “section 856(c)(6)(B)” in introductory provisions.

Subsec. (b)(6)(C)(iii). Pub. L. 105-34, § 1260, substituted “(other than sales of foreclosure property or sales to which section 1033 applies)” for “(other than foreclosure property)” in subcls. (I) and (II).

Subsec. (b)(7)(A)(i). Pub. L. 105-34, § 1254(b)(1), substituted “subparagraph (B) or (D)” for “subparagraph (B)”.

Subsec. (d)(3). Pub. L. 105-34, § 1256, added par. (3).

Subsec. (e)(2)(B) to (D). Pub. L. 105-34, § 1259, redesignated subpar. (C) as (B) and substituted a comma for period at end, added subpars. (C) and (D), and struck out former subpar. (B) which read as follows: “in the case of a real estate investment trust using the cash receipts and disbursements method of accounting, the amount (if any) by which—

“(i) the amounts includible in gross income with respect to instruments to which section 1274 (relating to certain debt instruments issued for property) applies, exceed

“(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments; plus”.

Subsecs. (f), (g). Pub. L. 105-34, § 1251(a)(2), added subsec. (f) and redesignated former subsec. (f) as (g).

1990—Subsec. (b)(3)(C). Pub. L. 101-508 amended Pub. L. 100-647, § 1018(u)(28). See 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100-647, § 1006(s)(4), inserted at end “The Secretary may waive the requirements of paragraph (1) for any taxable year if the real estate investment trust establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4981.”

Subsec. (b)(3)(C). Pub. L. 100-647, § 1018(u)(28), as amended by Pub. L. 101-508, substituted “such net capital loss shall” for “such net capital loss such”.

Pub. L. 100-647, § 1006(s)(2), substituted “the taxable income of the real estate investment trust” for “real estate investment trust taxable income”.

Subsec. (b)(8). Pub. L. 100-647, § 1006(s)(5), substituted “in October, November, or December” for “in December” and “in such a month” for “in such month” in introductory text, “on December 31 of such calendar year” for “on such date”, in subpars. (A) and (B), and “during January” for “before February 1” in last sentence.

Subsec. (e)(2)(B)(i). Pub. L. 100-647, § 1006(r), substituted “with respect to instruments” for “as original issue discount on instruments”.

1986—Subsec. (a). Pub. L. 99-514, § 661(b), struck out “and” at end of par. (1), substituted “, and” for the period at end of par. (2), and added par. (3) and last sentence.

Subsec. (a)(1)(B). Pub. L. 99-514, § 664(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the sum of—

“(i) the amount of any penalty imposed on the real estate investment trust by section 6697 which is paid by such trust during the taxable year; and

“(ii) the net loss derived from prohibited transactions.”

Subsec. (b)(2)(F). Pub. L. 99-514, § 666(b)(2), struck out “and there shall be included an amount equal to any net loss derived from prohibited transactions” after “prohibited transactions”.

Subsec. (b)(3)(C). Pub. L. 99-514, § 668(b)(3), inserted at end “For purposes of this subparagraph, the amount of the net capital gain for any taxable year which is not a calendar year shall be determined without regard to any net capital loss attributable to transactions after December 31 of such year, and any such net capital loss such be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing real estate investment trust taxable income.”

Pub. L. 99-514, § 665(a)(2), (b)(1), inserted “(or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)”, struck out last sentence which read as follows: “For purposes of this subparagraph, the net capital gain shall be deemed not to exceed the real estate investment trust taxable income (determined without regard to the deduction for dividends paid (as defined in section 561) for the taxable year).”

Subsec. (b)(3)(D). Pub. L. 99-514, § 665(a)(1), added subpar. (D).

Subsec. (b)(6)(B)(ii). Pub. L. 99-514, § 666(b)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “the term ‘net loss derived from prohibited transactions’ means the excess of the deductions allowed by this chapter which are directly connected with prohibited transactions over the gain from prohibited transactions; and”.

Subsec. (b)(6)(C)(ii). Pub. L. 99-514, § 666(a)(2), substituted “30 percent” for “20 percent”.

Subsec. (b)(6)(C)(iii). Pub. L. 99-514, § 666(a)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “during the taxable year the trust does not make more than 5 sales of property (other than foreclosure property); and”.

Subsec. (b)(6)(C)(v). Pub. L. 99-514, § 666(a)(3), added cl. (v).

Subsec. (b)(8). Pub. L. 99-514, § 668(b)(1)(A), added par. (8).

Subsec. (c). Pub. L. 99-514, § 612(b)(7), which directed that “section 116 (relating to an exclusion for dividends received by individuals), and” be struck out, was executed by striking out “section 116 (relating to an exclusion for dividends received by individuals) and” before “section 243” as the probable intent of Congress.

Subsec. (d). Pub. L. 99-514, § 668(b)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The earnings and profits of a real estate investment trust 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 in computing its taxable income for such taxable year. For purposes of this subsection, the term ‘real estate investment trust’ includes a domestic corporation, trust, or association which is a real estate investment trust determined without regard to the requirements of subsection (a).”

Subsecs. (e), (f). Pub. L. 99-514, § 664(b), added subsec. (e) and redesignated former subsec. (e) as (f).

1984—Subsec. (b)(3)(B). Pub. L. 98-369, § 1001(b)(13), (e), substituted “6 months” for “1 year”, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (b)(7). Pub. L. 98-369, § 55(b), substituted provisions relating to loss on sale or exchange of stock held 6 months or less for provisions which related to loss on sale or exchange of stock held 31 days or less.

Pub. L. 98-369, § 1001(b)(13), (e), substituted “6 months” for “1 year”, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (c). Pub. L. 98-369, § 16(a), repealed amendments made by Pub. L. 97-34, § 302(c). See 1981 Amendment note below.

1981—Subsec. (c). Pub. L. 97-34, § 302(c)(5), (d)(1), provided for general amendment of subsec. (c) so as to include provisions relating to treatment for section 128 of this title, adjustments to gross income and aggregate interest received, and notice to shareholders, applicable to taxable years beginning after Dec. 31, 1984. Section 16(a) of Pub. L. 98-369, repealed section 302(c) of Pub. L. 97-34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Subsec. (b)(4)(A). Pub. L. 96-222 substituted provisions computing the tax on the net income from foreclosure property of every real estate investment trust by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b) for provisions determining the tax on the net income from foreclosure of property of every real estate investment trust by applying section 11 to such income as if such income constituted the taxable income of a corporation taxable under section 11 and struck out provisions requiring that for purposes of the preceding sentence, the surtax exemption be zero.

Subsec. (c). Pub. L. 96-223 temporarily substituted “Limitations applicable to dividends received from real estate investment trusts” for “Restrictions applicable to dividends received from real estate investment trusts” in heading, designated existing provisions as par. (1), substituted “(1) CAPITAL GAIN DIVIDEND.—For purposes of section 116 (relating to exclusion for dividends and interest received by individuals), a capital gain dividend (as defined in subsection (b)(3)(C)) received from a real estate investment trust shall not be considered a dividend” for “For purposes of section 116 (relating to an exclusion for dividends received by individuals) and section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend” in par. (1) as so designated, and added pars. (2) to (6).

1978—Subsec. (b)(1). Pub. L. 95-600, § 301(b)(12), substituted “a tax” for “a normal tax and surtax”.

Subsec. (b)(3)(A)(ii). Pub. L. 95-600, § 403(c)(3), substituted “a tax determined at the rate provided in section 1201(a) on” for “a tax of 30 percent of”.

Subsec. (b)(3)(C). Pub. L. 95-600, § 362(d)(3), substituted “section 860(e)” for “section 859(c)”.

Subsec. (b)(6)(C) to (E). Pub. L. 95-600, § 363(b), added subpars. (C) to (E).

1976—Subsec. (a). Pub. L. 94-455, §§ 1604(j), (k)(2)(B), 1906(b)(13)(A), substituted “(other than subsection (d) of this section and subsection (g) of section 856)” for “(other than subsection (d) of this section)” in provisions preceding par. (1), in par. (1) redesignated existing subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), added subpar. (B), in both cls. (i) and (ii) of subpar. (A) as redesignated raised the percentage to 95 percent for taxable years beginning on and after Jan. 1, 1980, and, in cl. (i) of subpar. (A) as redesignated, inserted provision for the exclusion of net capital gain, and struck out “or his delegate” after “Secretary” in par. (2).

Subsec. (b)(1). Pub. L. 94-455, § 1901(b)(1)(V), struck out provision that, for purposes of computing the normal tax under section 11, the taxable income and the dividends paid deduction of such real estate investment trust for the taxable year (computed without regard to capital gains dividends) would be reduced by the deduction provided by section 22 (relating to partially tax-exempt interest).

Subsec. (b)(2). Pub. L. 94-455, §§ 1602(b)(2), 1603(c)(5), 1606(a), (d), 1607(b)(1)(A), (2), struck out subpar. (A) which provided for the exclusion of the excess, if any, of the net long-term capital gain over the net short-term capital loss, and subpar. (E) which prohibited the allowance of the net operating loss deduction provided in section 172, redesignated subpars. (B), (C), (D), and (F) as subpars. (A), (B), (C), and (D), respectively, added subpars. (E) and (F), and in subpar. (B) as redesignated substituted “subparagraph (D)” for “paragraph (F)” and struck out “shall be computed without regard to capital gains dividends and” after “shall be allowed, but”.

Subsec. (b)(3)(A). Pub. L. 94-455, § 1607(a), substituted provisions setting an alternative tax in case of capital gains under which, if for any taxable year, a real estate investment trust has a net capital gain, then, in lieu of the tax imposed by subsection (b)(1), there is imposed a tax (if such tax is less than the tax imposed by such subsection) to consist of the sum of a tax, computed as provided in subsection (b)(1), on the real estate investment trust taxable income (determined by excluding such net capital gain and by computing the deduction for dividends paid without regard to capital gain dividends), and a tax of 30 percent of the excess of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only, for provisions posing a tax for each taxable year determined as provided in section 1201(a), on the excess, if any, of the net long-term capital gain over the sum of the net short-term capital loss and the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

Subsec. (b)(3)(B). Pub. L. 94-455, § 1402(b)(2), provided that “9 months” would be changed to “1 year”.

Pub. L. 94-455, § 1402(b)(1)(P), provided that “6 months” would be changed to “9 months” for taxable years beginning in 1977.

Subsec. (b)(3)(C). Pub. L. 94-455, §§ 1601(c), 1607(b)(3), 1901(a)(112), (b)(33)(K), inserted “; except that, if there is an increase in the excess described in subparagraph (A)(ii) of this paragraph for such year which results from a determination (as defined in section 859(c)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination” after “30 days after the close of its taxable year”, substituted “net capital gain” for “excess of the net long-term capital gain over the net short-term capital loss” in provision covering the portion of distributions which shall be capital gain dividends, inserted provision that the net capital gain

be deemed not to exceed the real estate investment trust taxable income, and struck out provision which specified the source of deductions for dividends paid in the case of taxable years beginning before Jan. 1, 1975.

Subsec. (b)(4)(B)(i). Pub. L. 94-455, §1604(c)(2), inserted reference to subparagraph (G) of section 856(c)(3).

Subsec. (b)(5). Pub. L. 94-455, §1602(b)(1), added par. (5). Former par. (5) redesignated (7) and amended.

Subsec. (b)(6). Pub. L. 94-455, §1603(b), added par. (6).  
Subsec. (b)(7). Pub. L. 94-455, §1402(b)(2), provided that “9 months” would be changed to “1 year”.

Pub. L. 94-455, §§1402(b)(1)(P), 1602(b)(1), redesignated par. (5) as (7) and provided that “6 months” would be changed to “9 months” for taxable years beginning in 1977.

Subsec. (d). Pub. L. 94-455, §1604(f)(3)(B), substituted “a domestic corporation, trust,” for “a domestic unincorporated trust”.

Subsec. (e). Pub. L. 94-455, §1605(b)(2), added subsec. (e).

1975—Subsec. (a)(1). Pub. L. 93-625, §6(d)(2), incorporated existing par. (1) provisions in par. (1) introductory text and provisions designated as subpar. (A), substituted in subpar. (A) “(determined without regard to the deduction for dividends paid (as defined in section 561))” for “(determined without regard to subsection (b)(2)(C))”, and added subpar. (B).

Subsec. (b)(2)(C). Pub. L. 93-625, §6(d)(4), provided for computation of deduction for dividends paid without regard to that portion of such deduction which is attributable to the amount excluded under subparagraph (F).

Subsec. (b)(2)(F). Pub. L. 93-625, §6(d)(3), added subpar. (F).

Subsec. (b)(4), (5). Pub. L. 93-625, §6(c), added par. (4) and redesignated former par. (4) as (5).

1969—Subsec. (b)(3)(A). Pub. L. 91-172, §511(c)(3)(A), substituted “determined as provided in section 1201(a), on” for “of 25 percent of.”

Subsec. (b)(3)(C). Pub. L. 91-172, §511(c)(3)(B), inserted provision requiring for the purposes of the deduction for capital gains dividends paid, in the case of a taxable year beginning before Jan. 1, 1975, the deduction for dividends paid shall first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

1964—Subsec. (c). Pub. L. 88-272 struck out “section 34(a) (relating to credit for dividends received by individuals),” before “section 116” and the comma before “and”.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 3033(a) of Pub. L. 110-289 applicable to gains recognized after July 30, 2008, and amendment by section 3033(b) of Pub. L. 110-289 applicable to gains and deductions recognized after July 30, 2008, see section 3071(c) of Pub. L. 110-289, set out as a note under section 856 of this title.

Amendment by sections 3051 and 3052 of Pub. L. 110-289 applicable to sales made after July 30, 2008, see section 3071(d) of Pub. L. 110-289, set out as a note under section 856 of this title.

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15311(c) of Pub. L. 110-246 applicable to taxable years ending after June 18, 2008, see section 15311(d) of Pub. L. 110-246, set out as a note under section 55 of this title.

Pub. L. 110-234, title XV, §15315(e), May 22, 2008, 122 Stat. 1505, and Pub. L. 110-246, §4(a), title XV, §15315(e), June 18, 2008, 122 Stat. 1664, 2267, provided that: “The amendments made by this section [amending this section] shall apply to dispositions in taxable years beginning after the date of the enactment of this Act [June 18, 2008].”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(d)(3) of Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 243(c), (e) of Pub. L. 108-357 applicable to taxable years beginning after Oct. 22, 2004, and amendment by section 243(f)(4) of Pub. L. 108-357 applicable to taxable years ending after Oct. 22, 2004, see section 243(g)(2), (4)(D) of Pub. L. 108-357, set out as a note under section 856 of this title.

Pub. L. 108-357, title III, §321(b), Oct. 22, 2004, 118 Stat. 1474, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].”

Pub. L. 108-357, title IV, §418(c), Oct. 22, 2004, 118 Stat. 1513, as amended by Pub. L. 109-135, title IV, §403(p)(2), Dec. 21, 2005, 119 Stat. 2626, provided that: “The amendments made by this section [amending this section and section 897 of this title] shall apply to—

“(1) any distribution by a real estate investment trust which is treated as a deduction for a taxable year of such trust beginning after the date of the enactment of this Act [Oct. 22, 2004], and

“(2) any distribution by a real estate investment trust made after such date which is treated as a deduction under section 860 [probably means section 860 of the Internal Revenue Code of 1986] for a taxable year of such trust beginning on or before such date.”

Amendment by Pub. L. 108-311 effective as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108-27, see section 402(b) of Pub. L. 108-311, set out a note under section 1 of this title.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108-27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title IV, §413(b), Mar. 9, 2002, 116 Stat. 54, provided that: “The amendments made by this section [amending this section] shall take effect as if included in section 545 of the Tax Relief Extension Act of 1999 [Pub. L. 106-170].”

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 effective as if included in the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106-170, to which such amendment relates, see section 1(a)(7) [title III, §311(d)] of Pub. L. 106-554, set out as a note under section 30A of this title.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(L), (M) of Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

Amendment by section 545 of Pub. L. 106-170 applicable to taxable years beginning after Dec. 31, 2000, see section 546(a) of Pub. L. 106-170, set out as a note under section 856 of this title.

Pub. L. 106-170, title V, §556(c), Dec. 17, 1999, 113 Stat. 1949, provided that: “The amendments made by this

section [amending this section] shall apply to taxable years beginning after December 31, 2000.”

Amendment by section 566(a)(2), (b) of Pub. L. 106-170 applicable to distributions after Dec. 31, 2000, see section 566(d) of Pub. L. 106-170, set out as a note under section 852 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years beginning after Aug. 5, 1997, see section 1263 of Pub. L. 105-34, set out as a note under section 852 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1006(s)(5), Nov. 10, 1988, 102 Stat. 3419, provided that the amendment made by that section is effective with respect to dividends declared in 1988 and subsequent calendar years.

Amendment by sections 1006(r), (s)(2), (4) and 1018(u)(28) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 612(b)(7) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99-514, set out as a note under section 301 of this title.

Amendments by sections 661(b), 664, 665(a), (b)(1), and 666 of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 669(a) of Pub. L. 99-514, set out as a note under section 856 of this title.

Amendment by section 668(b)(1)(A), (2), (3) of Pub. L. 99-514 applicable to calendar years beginning after Dec. 31, 1986, see section 669(b) of Pub. L. 99-514, set out as a note under section 856 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98-369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98-369, set out as a note under section 48 of this title.

Amendment by section 55(b) of Pub. L. 98-369 applicable to losses incurred with respect to shares of stock and beneficial interest with respect to which the taxpayer's holding period begins after July 18, 1984, see section 55(c) of Pub. L. 98-369, set out as a note under section 852 of this title.

Amendment by section 1001(b)(13) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96-223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96-223, set out as a note under section 265 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(12) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978,

see section 301(c) of Pub. L. 95-600, set out as a note under section 11 of this title.

Amendment by section 362(d)(3) of Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date note under section 860 of this title.

Amendment by section 363(b) of Pub. L. 95-600 applicable to taxable years ending after Nov. 6, 1978, see section 363(d) of Pub. L. 95-600, set out as a note under section 856 of this title.

Amendment by section 403(c)(3) of Pub. L. 95-600 effective on Nov. 6, 1978, see section 403(d)(3) of Pub. L. 95-600, set out as a note under section 528 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94-455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94-455, title XVI, §1608(a), Oct. 4, 1976, 90 Stat. 1757, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by section 1601 [enacting sections 859 and 6697 of this title and amending this section and sections 316, 381, 6422, 6503, and 6515 of this title] shall apply with respect to determinations (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) occurring after the date of the enactment of this Act [Oct. 4, 1976]. If the amendments made by section 1601 apply to a taxable year ending on or before the date of enactment of this Act:

“(1) the reference to section 857(b)(3)(A)(ii) in sections 857(b)(3)(C) and 859(b)(1)(B) of such Code as amended, shall be considered to be a reference to section 857(b)(3)(A) of such Code, as in effect immediately before the enactment of this Act [Oct. 4, 1976], and

“(2) the reference to section 857(b)(2)(B) in section 859(a) of such Code, as amended, shall be considered to be a reference to section 857(b)(2)(C) of such Code, as in effect immediately before the enactment of this Act [Oct. 4, 1976].”

For effective date of amendment by section 1602(b)(1), (2) of Pub. L. 94-455, see section 1608(b) of Pub. L. 94-455, set out as a Trust Not Disqualified in Certain Cases Where Income Tests Not Met note under section 856 of this title.

For effective date of amendment by sections 1603, 1604, and 1605 of Pub. L. 94-455, see section 1608(d) of Pub. L. 94-455, set out as a note under section 856 of this title.

Pub. L. 94-455, title XVI, §1608(c), Oct. 4, 1976, 90 Stat. 1757, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by sections 1606 and 1607 [amending this section and sections 46, 172, and 443 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976]; except that in the case of a taxpayer which has a net operating loss (as defined in section 172(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for any taxable year ending after the date of enactment of this Act [Oct. 4, 1976] for which the provisions of part II of subchapter M of chapter 1 of subtitle A of such Code apply to such taxpayer, such loss shall not be a net operating loss carryback under section 172 of such Code to any taxable year ending on or before the date of enactment of this Act [Oct. 4, 1976].”

Amendment by section 1901(a)(112), (b)(1)(V), (33)(K) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-625 applicable to foreclosure property acquired after Dec. 31, 1973, see section

6(e) of Pub. L. 93-625, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 511(d) of Pub. L. 91-172, set out as an Effective Date note under section 1201 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88-272, set out as a note under section 22 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86-779, set out as a note under section 856 of this title.

**§ 858. Dividends paid by real estate investment trust after close of taxable year**

**(a) General rule**

For purposes of this part, if a real estate investment trust—

(1) declares a dividend before the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and

(2) distributes the amount of such dividend to shareholders or holders of beneficial interests in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration,

the amount so declared and distributed shall, to the extent the trust elects in such return (and specifies in dollar amounts) in accordance with regulations prescribed by the Secretary, be considered as having been paid only during such taxable year, except as provided in subsections (b) and (c).

**(b) Receipt by shareholder**

Except as provided in section 857(b)(8), amounts to which subsection (a) applies shall be treated as received by the shareholder or holder of a beneficial interest in the taxable year in which the distribution is made.

**(c) Notice to shareholders**

In the case of amounts to which subsection (a) applies, any notice to shareholders or holders of beneficial interests required under this part with respect to such amounts shall be made not later than 30 days after the close of the taxable year in which the distribution is made (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year).

(Added Pub. L. 86-779, §10(a), Sept. 14, 1960, 74 Stat. 1008; amended Pub. L. 94-455, title XVI, §1604(h), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1752, 1834; Pub. L. 99-514, title VI, §665(b)(2), 668(b)(1)(B), Oct. 22, 1986, 100 Stat. 2304, 2307; Pub. L. 100-647, title I, §1018(u)(27), Nov. 10, 1988, 102 Stat. 3591.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-647, §1018(u)(27), made technical correction to directory language of Pub. L. 99-514, see 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99-514, §668(b)(1)(B), as amended by Pub. L. 100-647, §1018(u)(27), substituted “Except as provided in section 857(b)(8), amounts” for “Amounts”.

Subsec. (c). Pub. L. 99-514, §665(b)(2), inserted “(or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)”.

1976—Subsec. (a). Pub. L. 94-455, §§1604(h), 1906(b)(13)(A), inserted “(and specifies in dollar amounts)” after “to the extent the trust elects in such return” and substituted “paid only during such taxable year” for “paid during such taxable year”, and struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 665(b)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, and by section 668(b)(1)(B) of Pub. L. 99-514 applicable to calendar years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99-514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1604(h) of Pub. L. 94-455, see section 1608(d) of Pub. L. 94-455, set out as a note under section 856 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86-779, set out as a note under section 856 of this title.

**§ 859. Adoption of annual accounting period**

**(a) General rule**

For purposes of this subtitle—

(1) a real estate investment trust shall not change to any accounting period other than the calendar year, and

(2) a corporation, trust, or association may not elect to be a real estate investment trust for any taxable year beginning after October 4, 1976, unless its accounting period is the calendar year.

Paragraph (2) shall not apply to a corporation, trust, or association which was considered to be a real estate investment trust for any taxable year beginning on or before October 4, 1976.

**(b) Change of accounting period without approval**

Notwithstanding section 442, an entity which has not engaged in any active trade or business may change its accounting period to a calendar year without the approval of the Secretary if such change is in connection with an election under section 856(c).

(Added Pub. L. 94-455, title XVI, §1604(i)(1), Oct. 4, 1976, 90 Stat. 1752, §860; renumbered §859 and amended Pub. L. 95-600, title III, §362(d)(6), title VII, §701(t)(1), Nov. 6, 1978, 92 Stat. 2852, 2911; Pub. L. 99-514, title VI, §661(c), Oct. 22, 1986, 100 Stat. 2300.)

PRIOR PROVISIONS

A prior section 859, added Pub. L. 94-455, title XVI, §1601(a)(1), Oct. 4, 1976, 90 Stat. 1742; amended Pub. L.