

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 [former] section 857(b)(3)(A)(ii) in sections 857(b)(3)(C) [now 857(b)(3)(B)] and 859(b)(1)(B) of such Code as amended, shall be considered to be a reference to [former] 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 852 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)(9), 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; Pub. L. 113-295, div. A, title II, §220(m), Dec. 19, 2014, 128 Stat. 4036.)

AMENDMENTS

2014—Subsec. (b). Pub. L. 113-295 substituted “857(b)(9)” for “857(b)(8)”.

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. 95-600, title VII, §701(t)(4), Nov. 6, 1978, 92 Stat. 2912, related to a deduction for deficiency dividends, prior to repeal by Pub. L. 95-600, title III, §362(d)(6), Nov. 6, 1978, 92 Stat. 2852. See section 860 of this title.

AMENDMENTS

1986—Pub. L. 99-514 designated existing provisions as subsec. (a) and added subsec. (b).

1978—Pub. L. 95-600, §701(t)(1), designated existing provisions as par. (1), substituted “change to any accounting period” for “change to or adopt any annual accounting period”, and added par. (2) and provision for nonapplicability of par. (2) to a real estate investment trust for any taxable year beginning on or before Oct. 4, 1976.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable 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 1978 AMENDMENT

Repeal of prior section 859 of this title and redesignation of section 860 of this title as this section by section 362(d)(6) 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.

Pub. L. 95-600, title VII, §701(t)(5), Nov. 6, 1978, 92 Stat. 2912, provided that: “The amendments made by this subsection [amending this section and sections 275, 856, 6212, and 6501 of this title] shall take effect on October 4, 1976.”

PART III—PROVISIONS WHICH APPLY TO BOTH REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS

Sec.

860. Deduction for deficiency dividends.

§ 860. Deduction for deficiency dividends

(a) General rule

If a determination with respect to any qualified investment entity results in any adjustment for any taxable year, a deduction shall be allowed to such entity for the amount of deficiency dividends for purposes of determining the deduction for dividends paid (for purposes of section 852 or 857, whichever applies) for such year.

(b) Qualified investment entity defined

For purposes of this section, the term “qualified investment entity” means—

- (1) a regulated investment company, and
- (2) a real estate investment trust.

(c) Rules for application of section

(1) Interest and additions to tax determined with respect to the amount of deficiency dividend deduction allowed

For purposes of determining interest, additions to tax, and additional amounts—

(A) the tax imposed by this chapter (after taking into account the deduction allowed by subsection (a)) on the qualified investment entity for the taxable year with respect to which the determination is made shall be deemed to be increased by an amount equal to the deduction allowed by subsection (a) with respect to such taxable year,

(B) the last date prescribed for payment of such increase in tax shall be deemed to have been the last date prescribed for the payment of tax (determined in the manner provided by section 6601(b)) for the taxable year with respect to which the determination is made, and

(C) such increase in tax shall be deemed to be paid as of the date the claim for the deficiency dividend deduction is filed.

(2) Credit or refund

If the allowance of a deficiency dividend deduction results in an overpayment of tax for any taxable year, credit or refund with respect to such overpayment shall be made as if on the date of the determination 2 years re-