

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 remained before the expiration of the period of limitations on the filing of claim for refund for the taxable year to which the overpayment relates.

**(d) Adjustment**

For purposes of this section—

**(1) Adjustment in the case of regulated investment company**

In the case of any regulated investment company, the term “adjustment” means—

(A) any increase in the investment company taxable income of the regulated investment company (determined without regard to the deduction for dividends paid (as defined in section 561)),

(B) any increase in the amount of the excess described in section 852(b)(3)(A) (relating to the excess of the net capital gain over the deduction for capital gain dividends paid), and

(C) any decrease in the deduction for dividends paid (as defined in section 561) determined without regard to capital gains dividends.

**(2) Adjustment in the case of real estate investment trust**

In the case of any real estate investment trust, the term “adjustment” means—

(A) any increase in the sum of—

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

(ii) the excess of the net income from foreclosure property (as defined in section 857(b)(4)(B)) over the tax on such income imposed by section 857(b)(4)(A),

(B) any increase in the amount of the excess described in section 857(b)(3)(A)(ii)<sup>1</sup> (relating to the excess of the net capital gain over the deduction for capital gains dividends paid), and

(C) any decrease in the deduction for dividends paid (as defined in section 561) determined without regard to capital gains dividends.

**(e) Determination**

For purposes of this section, the term “determination” means—

(1) a decision by the Tax Court, or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121;

(3) under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the qualified investment entity relating to the liability of such entity for tax; or

(4) a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.

**(f) Deficiency dividends**

**(1) Definition**

For purposes of this section, the term “deficiency dividends” means a distribution of property made by the qualified investment entity on or after the date of the determination and before filing claim under subsection (g), which would have been includible in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for tax resulting from the determination exists if distributed during such taxable year. No distribution of property shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determina-

<sup>1</sup> See References in Text note below.