

112TH CONGRESS
1ST SESSION

H. R. 2989

To amend the Internal Revenue Code of 1986 to exempt certain stock of real estate investment trusts from the tax on foreign investments in United States real property interests, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2011

Mr. BRADY of Texas (for himself, Mr. CROWLEY, Mr. TIBERI, and Ms. BERKLEY) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to exempt certain stock of real estate investment trusts from the tax on foreign investments in United States real property interests, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Real Estate Jobs and
5 Investment Act of 2011”.

1 **SEC. 2. EXCEPTION FROM FIRPTA FOR CERTAIN STOCK OF**
2 **REAL ESTATE INVESTMENT TRUSTS.**

3 (a) IN GENERAL.—Paragraph (3) of section 897(c)
4 of the Internal Revenue Code of 1986 is amended to read
5 as follows:

6 “(3) EXCEPTIONS FOR CERTAIN STOCK DIS-
7 POSITIONS.—

8 “(A) STOCK REGULARLY TRADED ON ES-
9 TABLISHED SECURITIES MARKETS.—If any
10 class of stock of a corporation is regularly trad-
11 ed on an established securities market, stock of
12 such class shall be treated as a United States
13 real property interest only in the case of a per-
14 son who, at some time during the shorter of the
15 periods described in paragraph (1)(A)(ii), held
16 more than 5 percent of such class of stock. In
17 the case of any class of stock of a real estate
18 investment trust, the preceding sentence shall
19 be applied by substituting ‘10 percent’ for ‘5
20 percent’.

21 “(B) CERTAIN STOCK IN REAL ESTATE IN-
22 VESTMENT TRUSTS.—

23 “(i) IN GENERAL.—Stock of a real es-
24 tate investment trust held by a qualified
25 shareholder shall not be treated as a
26 United States real property interest except

1 to the extent that an investor in the quali-
2 fied shareholder holds (directly or indi-
3 rectly through the qualified shareholder)
4 more than 10 percent of the stock of such
5 real estate investment trust.

6 “(ii) QUALIFIED SHAREHOLDER.—
7 For purposes of this subparagraph, the
8 term ‘qualified shareholder’ means a share-
9 holder—

10 “(I) which would be eligible for a
11 reduced rate of withholding under any
12 income tax treaty of the United States
13 with respect to ordinary dividends
14 paid by a real estate investment trust
15 even if such shareholder holds more
16 than 10 percent of the stock of such
17 real estate investment trust, and

18 “(II) whose principal class of in-
19 terests is listed and regularly traded
20 on one or more recognized stock ex-
21 changes (as defined in the relevant in-
22 come tax treaty referred to in sub-
23 clause (I)).”

1 (b) DISTRIBUTIONS OF REAL ESTATE INVESTMENT
2 TRUSTS.—Paragraph (1) of section 897(h) of such Code
3 is amended to read as follows:

4 “(1) LOOK-THROUGH OF DISTRIBUTIONS.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), any distribution by a quali-
7 fied investment entity to a nonresident alien in-
8 dividual, a foreign corporation, or other quali-
9 fied investment entity shall, to the extent attrib-
10 utable to gain from sales or exchanges by the
11 qualified investment entity of United States real
12 property interests, be treated as gain recognized
13 by such nonresident alien individual, foreign
14 corporation, or other qualified investment entity
15 from the sale or exchange of a United States
16 real property interest. Notwithstanding the pre-
17 ceding sentence—

18 “(i) any distribution by a qualified in-
19 vestment entity to a nonresident alien indi-
20 vidual or a foreign corporation with respect
21 to any class of stock which is regularly
22 traded on an established securities market
23 located in the United States shall not be
24 treated as gain recognized from the sale or
25 exchange of a United States real property

1 interest if such individual or corporation
2 did not own more than 5 percent of such
3 class of stock (10 percent in the case of
4 stock of a real estate investment trust) at
5 any time during the 1-year period ending
6 on the date of such distribution, and

7 “(ii) any distribution to a qualified
8 shareholder (as defined in subsection
9 (c)(3)(B)(ii)) shall not be treated as gain
10 recognized from the sale or exchange of a
11 United States real property interest to the
12 extent that the stock of the real estate in-
13 vestment trust held by such qualified
14 shareholder is not treated as a United
15 States real property interest under sub-
16 section (c)(3)(B).

17 “(B) SPECIAL RULE.—Subparagraph (A)
18 shall not apply to distributions which are treat-
19 ed as a sale or exchange of stock or property
20 pursuant to section 301(c)(3), 302, or 331.”.

21 (c) DEFINITION OF DOMESTICALLY CONTROLLED.—

22 Subparagraph (B) of section 897(h)(4) of such Code is
23 amended by adding at the end the following: “In deter-
24 mining whether a qualified investment entity is domesti-
25 cally controlled, any stock in the qualified investment enti-

1 ty held by another qualified investment entity shall be
2 treated as held by a foreign person unless such qualified
3 investment entity is domestically controlled. In making
4 such determination a qualified investment entity shall be
5 permitted to presume that stock held by a holder of less
6 than 5 percent of a class of stock traded on an established
7 securities market in the United States is held by United
8 States persons throughout the testing period except to the
9 extent that the qualified investment entity has actual
10 knowledge regarding stock ownership.”.

11 (d) CONFORMING AMENDMENT.—Subparagraph (C)
12 of section 897(c)(6) of such Code is amended—

13 (1) by striking “more than 5 percent” and in-
14 serting “more than 5 or 10 percent, whichever is ap-
15 plicable,” and

16 (2) by striking “substituting ‘5 percent’ for ‘50
17 percent’” and inserting “substituting ‘5 percent or
18 10 percent, whichever is applicable’ for ‘50 per-
19 cent’”.

20 (e) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to dispositions and distributions
22 made after the date of the enactment of this Act.

23 **SEC. 3. UNITED STATES REAL PROPERTY INTEREST.**

24 (a) IN GENERAL.—Subparagraph (B) of section
25 897(c)(1) of the Internal Revenue Code of 1986 is amend-

1 ed by striking all that precedes clause (i) and inserting
2 the following:

3 “(B) EXCLUSION FOR INTEREST IN CER-
4 TAIN CORPORATIONS.—The term ‘United States
5 real property interest’ does not include any in-
6 terest in a corporation (other than a qualified
7 investment entity (as defined in subsection
8 (h)(4)(A)(i)) if—”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall apply to dispositions made after the
11 date of the enactment of this Act.

○