

112TH CONGRESS  
1ST SESSION

# S. 1616

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.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2011

Mr. MENENDEZ (for himself and Mr. ENZI) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## 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 Invest-  
5       ment and Jobs 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—

5 (1) by striking all that precedes “If any class”  
 6 and inserting the following:

7 “(3) EXCEPTIONS FOR CERTAIN STOCK.—

8 “(A) EXCEPTION FOR STOCK REGULARLY  
 9 TRADED ON ESTABLISHED SECURITIES MAR-  
 10 KETS.—”,

11 (2) by inserting before the period the following:

12 “. In the case of any class of stock of a real estate  
 13 investment trust, the preceding sentence shall be ap-  
 14 plied by substituting ‘10 percent’ for ‘5 percent’”,  
 15 and

16 (3) by adding at the end the following new sub-  
 17 paragraph:

18 “(B) EXCEPTION FOR CERTAIN STOCK IN  
 19 REAL ESTATE INVESTMENT TRUSTS.—

20 “(i) IN GENERAL.—Stock of a real es-  
 21 tate investment trust held by a qualified  
 22 shareholder shall not be treated as a  
 23 United States real property interest except  
 24 to the extent that an investor in the quali-  
 25 fied shareholder (other than an investor  
 26 that is a qualified shareholder) holds (di-

1 rectly or indirectly through the qualified  
2 shareholder) more than 10 percent of the  
3 stock of such real estate investment trust.

4 “(ii) QUALIFIED SHAREHOLDER.—

5 For purposes of this subparagraph, the  
6 term ‘qualified shareholder’ means an enti-  
7 ty—

8 “(I) that is eligible for benefits of  
9 a comprehensive income tax treaty  
10 with the United States which includes  
11 an exchange of information program,

12 “(II) that is a qualified collective  
13 investment vehicle,

14 “(III) whose principal class of in-  
15 terests is listed and regularly traded  
16 on one or more recognized stock ex-  
17 changes (as defined in such com-  
18 prehensive income tax treaty), and

19 “(IV) that maintains records on  
20 the identity of each person who, at  
21 any time during the qualified share-  
22 holder’s taxable year, is the direct  
23 owner of more than 10 percent of the  
24 class of interest described in clause  
25 (III).

1           “(iii) QUALIFIED COLLECTIVE IN-  
2 VESTMENT VEHICLE.—For purposes of  
3 this subparagraph, the term ‘qualified col-  
4 lective investment vehicle’ means an entity  
5 that—

6           “(I) would be eligible for a re-  
7 duced rate of withholding under such  
8 comprehensive income tax treaty with  
9 respect to ordinary dividends paid by  
10 a real estate investment trust, even if  
11 such entity holds more than 10 per-  
12 cent of the stock of such real estate  
13 investment trust,

14           “(II) would be classified as a  
15 United States real property holding  
16 corporation (determined without re-  
17 gard to this paragraph) at any time  
18 during the 5-year period ending on  
19 the date of disposition of or distribu-  
20 tion with respect to the entity’s inter-  
21 ests in a real estate investment trust,  
22 or

23           “(III) is designated as such by  
24 the Secretary and is either—

1                   “(aa) fiscally transparent  
2                   within the meaning of section  
3                   894, or

4                   “(bb) required to include  
5                   dividends in its gross income, but  
6                   is entitled to a deduction for dis-  
7                   tributions to its investors.”.

8           (b) DISTRIBUTIONS BY REAL ESTATE INVESTMENT  
9 TRUSTS.—Paragraph (1) of section 897(h) of the Internal  
10 Revenue Code of 1986 is amended—

11           (1) by striking “Any distribution” and inserting  
12           the following:

13                   “(A) IN GENERAL.—Except as provided in  
14                   subparagraph (B), any distribution”,

15           (2) by inserting “(10 percent in the case of  
16           stock of a real estate investment trust)” after “5  
17           percent of such class of stock”,

18           (3) by inserting “, and any distribution to a  
19           qualified shareholder (as defined in subsection  
20           (c)(3)(B)(ii)) shall not be treated as gain recognized  
21           from the sale or exchange of a United States real  
22           property interest to the extent that the stock of the  
23           real estate investment trust held by such qualified  
24           shareholder is not treated as a United States real

1 property interest under subsection (c)(3)(B)” before  
2 the period at the end of the second sentence, and

3 (4) by adding at the end the following new sub-  
4 paragraph:

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

9 (c) DEFINITION.—Paragraph (4) of section 897(h) of  
10 the Internal Revenue Code of 1986 is amended by adding  
11 at the end of subparagraph (B) the following: “In deter-  
12 mining whether a qualified investment entity is domesti-  
13 cally controlled, any stock in the qualified investment enti-  
14 ty held by another qualified investment entity shall be  
15 treated as held by a foreign person unless such other  
16 qualified investment entity is domestically controlled. In  
17 making such a determination, a qualified investment enti-  
18 ty shall be permitted to presume that stock held by a hold-  
19 er of less than 5 percent of a class of stock regularly trad-  
20 ed on an established securities market in the United  
21 States is held by United States persons throughout the  
22 testing period except to the extent that the qualified in-  
23 vestment entity has actual knowledge regarding stock  
24 ownership.”.

1 (d) CONFORMING AMENDMENT.—Subparagraph (C)  
2 of section 897(c)(6) of the Internal Revenue Code of 1986  
3 is amended—

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

7 (2) by striking “substituting ‘5 percent’ for ‘50  
8 percent’” and inserting “substituting ‘5 percent or  
9 10 percent, whichever is applicable’ for ‘50 per-  
10 cent’”.

11 (e) EFFECTIVE DATES.—

12 (1) IN GENERAL.—The amendments made by  
13 subsection (a) shall apply to dispositions on and  
14 after the date of the enactment of this Act.

15 (2) DISTRIBUTIONS.—The amendments made  
16 by subsection (b) shall apply to any distribution by  
17 a real estate investment trust on or after the date  
18 of the enactment of this Act which is treated as a  
19 deduction for a taxable year of such trust ending  
20 after such date.

21 (3) DEFINITIONS.—The amendments made by  
22 subsections (c) and (d) shall take effect on the date  
23 of the enactment of this Act.

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

2 (a) UNITED STATES REAL PROPERTY INTEREST.—  
3 Subparagraph (B) of section 897(c)(1) of the Internal  
4 Revenue Code of 1986 is amended by striking all that pre-  
5 cedes “(i) as of the date of the disposition” and inserting  
6 the following:

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

13 (b) EFFECTIVE DATE.—The amendment made by  
14 this section shall take effect on the date of the enactment  
15 of this Act.

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