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(Original Signature of Member)

113TH CONGRESS
1ST SESSION

H. R. ______

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

Mr. BRADY of Texas introduced the following bill; which was referred to the Committee on ______________________________

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Real Estate Investment and Jobs Act of 2013".

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

(a) IN GENERAL.—Paragraph (3) of section 897(c) of the Internal Revenue Code of 1986 is amended—

(1) by striking all that precedes ‘‘If any class’’ and inserting the following:

‘‘(3) EXCEPTIONS FOR CERTAIN STOCK.—

‘‘(A) EXCEPTION FOR STOCK REGULARLY TRADED ON ESTABLISHED SECURITIES MARKETS.—’’,

(2) by inserting before the period the following: ‘‘. In the case of any class of stock of a real estate investment trust, the preceding sentence shall be applied by substituting ‘10 percent’ for ‘5 percent’ ’’, and

(3) by adding at the end the following new subparagraph:

‘‘(B) EXCEPTION FOR CERTAIN STOCK IN REAL ESTATE INVESTMENT TRUSTS.—

‘‘(i) IN GENERAL.—Stock of a real estate investment trust held by a qualified shareholder shall not be treated as a United States real property interest except to the extent that an investor in the qualified shareholder (other than an investor that is a qualified shareholder) holds (directly or indirectly through the qualified shareholder) more than 10 percent of the stock of such real estate investment trust.

"(ii) QUALIFIED SHAREHOLDER.—For purposes of this subparagraph, the term 'qualified shareholder' means an entity—

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

"(II) that is a qualified collective investment vehicle,

"(III) whose principal class of interests is listed and regularly traded on one or more recognized stock exchanges (as defined in such comprehensive income tax treaty), and

"(IV) that maintains records on the identity of each person who, at any time during the qualified shareholder's taxable year, is the direct owner of more than 10 percent of the class of interest described in clause (III).

"(iii) QUALIFIED COLLECTIVE INVESTMENT VEHICLE.—For purposes of this subparagraph, the term 'qualified collective investment vehicle' means an entity that—

"(I) would be eligible for a reduced rate of withholding under such comprehensive income tax treaty with respect to ordinary dividends paid by a real estate investment trust, even if such entity holds more than 10 percent of the stock of such real estate investment trust,

(other than a corporation that is entitled to a deduction or exclusion for dividends paid to its shareholders or subject to a requirement to distribute any portion of its taxable income annually)

"(II) is a ~~C~~ corporation ~~(other than a real estate investment trust or regulated investment company)~~ engaged primarily in the trade or business of operating or managing real estate entities or assets, or

"(III) is designated as a qualified collective investment vehicle by the Secretary and is either—

either directly or through entities under common control (within the meaning of subsections (a) and (b) of section 52),

"(aa) fiscally transparent within the meaning of section 894, or "(bb) required to include dividends in its gross income, but is entitled to a deduction for distributions to its investors.".

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

(1) by striking "Any distribution" and inserting the following:

"(A) IN GENERAL.—Except as provided in subparagraph (B), any distribution",

(2) by inserting "(10 percent in the case of stock of a real estate investment trust)" after "5 percent of such class of stock",

(3) by inserting ", and any distribution to a qualified shareholder (as defined in subsection (c)(3)(B)(ii)) shall not be treated as gain recognized from the sale or exchange of a United States real property interest to the extent that the stock of the real estate investment trust held by such qualified shareholder is not treated as a United States real property interest under subsection (c)(3)(B)" before the period at the end of the second sentence, and

(4) by adding at the end the following new subparagraph:

"(B) SPECIAL RULE.—Subparagraph (A) shall not apply to distributions which are treated as a sale or exchange of stock or property pursuant to section 301(c)(3), 302, or 331.".

(c) DEFINITION.—Paragraph (4) of section 897(h) of the Internal Revenue Code of 1986 is amended by adding at the end of subparagraph (B) the following: "In determining whether a qualified investment entity is domestically controlled, any stock in the qualified investment entity held by another qualified investment entity shall be treated as held by a foreign person unless such other qualified investment entity is domestically controlled. In making such a determination, a qualified investment entity shall be permitted to presume that stock held by a holder of less than 5 percent of a class of stock regularly traded on an established securities market in the United States is held by United States persons throughout the testing period except to the extent that the qualified investment entity has actual knowledge regarding stock ownership.".

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

(1) by striking "more than 5 percent" and inserting "more than 5 or 10 percent, whichever is applicable,", and

(2) by striking "substituting '5 percent' for '50 percent')" and inserting "substituting '5 percent or 10 percent, whichever is applicable' for '50 percent')".

(e) EFFECTIVE DATES.—

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

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

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

SEC. 3. UNITED STATES REAL PROPERTY INTEREST.

(a) UNITED STATES REAL PROPERTY INTEREST.—Subparagraph (B) of section 897(c)(1) of the Internal Revenue Code of 1986 is amended by striking all that precedes ''(i) as of the date of the disposition'' and inserting the following:

''(B) EXCLUSION FOR INTEREST IN CERTAIN CORPORATIONS.—The term 'United States real property interest' does not include any interest in a corporation (other than a qualified investment entity (as defined in subsection (h)(4)(A)(i)) if—''.

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