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#### DRAFTING INFORMATION

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## The Jobs and Growth Tax Relief Reconciliation Act of 2003—Information Reporting for Payments in Lieu of Dividends

### Notice 2003-67

#### SECTION 1. PURPOSE

This notice provides guidance to brokers and individuals regarding provisions in the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the JGTRRA), Pub. L. No. 108-27, 117 Stat. 752, that affect information reporting for payments in lieu of dividends (sometimes called “substitute payments”). This notice announces that:

1. The Internal Revenue Service will exercise its authority under section 6724(a) of the Internal Revenue Code to waive penalties under sections 6721 and 6722 for information returns with respect to calendar year 2003 payments if a broker makes a good faith effort to satisfy its information reporting obligations in a way that is consistent with the statutory changes effected by the JGTRRA.

2. The Service has revised the instructions to the 2003 Form 1099-MISC, “Miscellaneous Income,” to require brokers to report payments in lieu of dividends to individuals in Box 8 of Form 1099-MISC.

3. The Service expects to revise Rev. Proc. 2003-28, 2003-16 I.R.B. 759, to allow brokers to furnish composite substitute payee statements for Forms 1099-DIV, “Dividends and Distributions,” and Forms 1099-MISC, reporting payments in lieu of dividends, as well as other information returns.

4. If a payment in lieu of dividends is reported as dividend income on a 2003

Form 1099-DIV, the taxpayer receiving the form may treat the payment for tax purposes as a dividend, and not as a payment in lieu of dividends, unless the taxpayer knows, or has reason to know, of the actual character of the payment.

5. The Service expects to amend section 1.6045-2 of the Income Tax Regulations to reflect the statutory changes effected by the JGTRRA regarding payments in lieu of dividends. The Service expects to amend the regulations to provide new rules for brokers to use to determine which shares are loanable and to permit brokers to use a new hierarchical method to allocate transferred shares to new pools of loanable shares. The amendments are expected to be applicable to dividends received on or after January 1, 2003.

#### SECTION 2. BACKGROUND

Effective for taxable years beginning after December 31, 2002, and beginning before January 1, 2009, section 302 of the JGTRRA reduces the tax rate for “qualified dividends” paid to an individual shareholder to the same tax rate as capital gains. The reduced tax rate does not apply to a dividend on stock that is held (within the meaning of section 246(c)) by the taxpayer for 60 days or less of the 120-day period that begins 60 days before the ex-dividend date. The favorable tax rate is also denied to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

The legislative history states, however, that “Payments in lieu of dividends are not eligible for the lower rates.” H.R. REP. NO. 108-94, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess. 31 n.36 (2003). (The distinction between payments made with respect to a financial instrument by its issuer and payments made by a third party who had borrowed the instrument was already relevant even before the JGTRRA for exempt interest dividends, capital gain dividends, distributions treated as a return of capital, foreign tax credit dividends, and dividends eligible for the dividends received deduction, but was generally not relevant for dividends or in lieu of dividend payments received by an individual. See section 1.6045-2(a), (f)). In addition, the Conference Report states:

In the case of brokers and dealers who engage in securities lending transactions, short sales, or other similar transactions on behalf of their customers in the normal course of their trade or business, the conferees intend that the IRS will exercise its authority under section 6724(a) to waive penalties where dealers and brokers attempt in good faith to comply with the information reporting requirements under sections 6042 and 6045, but are unable to reasonably comply because of the period necessary to conform their information reporting systems to the retroactive rate reductions on qualified dividends provided by the conference agreement. In addition, the conferees expect that individual taxpayers who receive payments in lieu of dividends from these transactions may treat the payments as dividend income to the extent that the payments are reported to them as dividend income on their Forms 1099-DIV received for calendar year 2003, unless they know or have reason to know that the payments are in fact payments in lieu of dividends rather than actual dividends. The conferees expect that the Treasury Department will issue guidance as rapidly as possible on information reporting with respect to payments in lieu of dividends made to individuals.

H.R. CONF. REP. NO. 108-126, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess. 42-43 (2003).

#### SECTION 3. WAIVER OF PENALTIES UNDER SECTION 6724(a)

Section 6721 imposes a penalty if a payor fails to file correct information returns with the Service, including returns required under section 6042 (relating to payment of dividends) and section 6045 (relating to returns of brokers). Section 6722 imposes a penalty if a payor fails to furnish correct information statements to payees, including statements required under sections 6042 and 6045. Section 6724(a) authorizes the Service to waive the section 6721 and 6722 penalties if the failure to comply is due to reasonable cause and not to willful neglect.

If they have not already done so, brokers as defined in section 6045 who engage in securities lending transactions, short sales, or other similar transactions

on behalf of their customers in the normal course of the brokers' trade or business should immediately undertake action to conform their information reporting systems to the JGTRRA. The Service expects brokers to complete those efforts as soon as reasonably possible for the calendar year 2003 and, to the extent reasonably possible, to comply with their reporting responsibilities in a manner consistent with the JGTRRA for payments in lieu of dividends for the calendar year 2003.

The Service will exercise its authority under section 6724(a) to waive penalties if a broker shows that it made a good faith attempt to comply with the information reporting requirements under sections 6042 and 6045 in a manner consistent with the JGTRRA for dividend payments made during calendar year 2003 but could not reasonably do so because the broker had inadequate time within which to conform the broker's information reporting systems to the JGTRRA. The Service will consider all relevant facts and circumstances in determining whether a broker acted in good faith in attempting to comply with the information reporting requirements for dividend payments made during calendar year 2003. For dividend payments made during calendar year 2004, however, except in extraordinary circumstances, the Service will consider brokers to have had adequate time to conform their information reporting systems to the new law for payments in lieu of dividends.

#### SECTION 4. INSTRUCTIONS TO FORM 1099-MISC AND REV. PROC. 2003-28

The Service has revised the Instructions to Form 1099-MISC for calendar year 2003 for payments in lieu of dividends. The revised instructions direct brokers to report payments in lieu of dividends in Box 8 of Form 1099-MISC whether the recipient is a corporation, an individual, or some other type of taxpayer. In addition, the Service expects to revise Rev. Proc. 2003-28 to allow brokers to furnish composite substitute payee statements for Forms 1099-DIV and Forms 1099-MISC, reporting payments in lieu of dividends, as well as other information returns.

#### SECTION 5. PAYMENTS REPORTED ON FORMS 1099-DIV FOR 2003

Some taxpayers may receive Forms 1099-DIV for calendar year 2003 that erroneously characterize payments in lieu of dividends as dividend income because the brokers issuing the forms have not yet modified their information reporting systems to comply with the JGTRRA. A taxpayer who receives payments in lieu of dividends may treat the payments as dividend income to the extent that the payments are reported to the taxpayer as dividend income on Form 1099-DIV for calendar year 2003, unless the taxpayer knows, or has reason to know, that the payments are in fact payments in lieu of dividends rather than actual dividends.

#### SECTION 6. AMENDMENT OF REGULATION SECTION 1.6045-2

In general, section 1.6045-2 of the existing regulations, which was issued prior to enactment of the JGTRRA, excludes from the broker reporting requirements of section 6045 payments in lieu of dividends received by a broker on behalf of an individual. That is, these regulations generally require broker reporting only for payments in lieu of dividends received on behalf of corporations. The Service expects to amend section 1.6045-2 to reflect the differential tax treatment under JGTRRA for dividends and payments in lieu of dividends, effective for dividends received on or after January 1, 2003.

Under the existing regulations, brokers must allocate transferred shares (that is, shares giving rise to payments in lieu of dividends) among: (1) shares of stock that the broker has borrowed under a securities lending agreement with the customer (borrowed shares); and (2) shares of stock that are held by the broker on behalf of customers who have authorized the broker to loan their shares to third parties (loanable shares). Loanable shares also include shares of the same class and issue held for the broker's own account. Under the existing regulations, transferred shares may be allocated first to borrowed shares; then, to the extent that the number of transferred shares exceeds the number of borrowed shares (or if the broker does not allocate the transferred shares to the borrowed shares

first), the broker must allocate the transferred shares between pools of loanable shares.

##### .01 *Loanable Shares Defined*

The amendments to section 1.6045-2 are expected to clarify the present rule that loanable shares do not include shares that the broker by law is prevented from lending. Thus, loanable shares do not include shares that the broker has not been given permission to borrow or lend, shares that the owner may not transfer (such as restricted stock), and shares that, although held in a margin account, may not be borrowed because of Securities and Exchange Commission restrictions on the value of the shares that may be borrowed from the account.

The Service also expects to amend the existing regulations to provide new rules regarding shares that are to be treated as loanable shares. When amended, the regulations are expected to permit brokers to exclude from loanable shares one or more of the following categories of shares:

1. All shares held for the broker's own account.
2. All shares that would not be loanable but for the fact that they are held in a margin account pursuant to account documentation authorizing the lending of shares.
3. Shares that the owner has requested the broker not to lend (even if the owner had executed a written authorization to lend), provided that, consistent with an established practice reflected in the broker's books and records, the broker complies with the request.
4. Shares which had been loaned, but with respect to which the owner exercised a right under the lending agreement to call back the shares within a fixed period.
5. Any other category of shares described in guidance issued by the Service.

The regulations are expected to provide that, under the preceding paragraph, shares in any of these five categories may

be treated as not loanable only if all of the following requirements are satisfied:

- a. At the time the broker designates the share as not loanable, the share has not, in fact, been loaned under an outstanding loan agreement;
- b. The designation of a category of shares as not being loanable is reflected in a written policy of the broker that was placed in its books and records on or before the time of the stock loans to be affected by the policy; and
- c. The policy is consistently applied for both tax and nontax purposes to all shares described in the category.

The Service invites comments on these categories of shares and on the requirements that must be satisfied to treat the shares as not loanable.

#### *.02 Allocation and Selection of Transferred Shares*

Pending issuance of amendments to section 1.6045-2, the rules of that section continue to apply for recordkeeping for payments in lieu of dividends and for identifying which customers had their shares transferred. A broker may continue to allocate transferred shares to borrowed shares. In addition, if a broker uses the method of allocation and selection of loanable shares specified in paragraph (f)(2)(ii) of section 1.6045-2, the amendments are expected to allow the broker, starting in 2003, to make the selection of the transferred shares within the individual pool described in section 1.6045-2(f)(2)(ii)(C) using the methods of selection of transferred shares used within the nonindividual pool as prescribed in section 1.6045-2(f)(2)(ii)(B).

The Service expects to amend the existing regulations to permit brokers to use a new hierarchical method to allocate transferred shares. Under this new hierarchical method, a broker must allocate transferred shares first to shares that are borrowed under a securities lending agreement. Brokers must then allocate the remaining transferred shares to one or more pools of shares held by tax-indifferent customers to the extent of loanable shares in

those pools. For this purpose, a tax-indifferent customer is a customer (for example, a tax-exempt entity) for whom the broker has reasonably determined that the tax treatment of qualifying dividends and payments in lieu of dividends are the same. These pools may also include shares held by customers for whom the tax treatment of dividends is more desirable than the tax treatment of payments in lieu of dividends, but who have specifically authorized that the shares be included in a tax-indifferent-customer pool. After the broker has exhausted all the loanable shares in the tax-indifferent-customer pools, the broker must allocate the transferred shares to a single residual pool of all other loanable shares. If only a portion of the loanable shares held in any pool are transferred, the broker must allocate the transferred shares among customers in the pool using the random lottery method provided in section 1.6045-2(f)(2)(ii)(B) of the existing regulations. A broker may use some other allocation method only with the consent of the Service. See Rev. Proc. 2003-1, 2003-1 I.R.B. 1, for the procedures to request a letter ruling. The Service invites comments on this hierarchical method as well as other methods of allocating transferred shares (giving rise to payments in lieu of dividends) among customers holding loanable shares. The amendments are expected to allow brokers to use the allocation method described in this Section 6 for dividends received after January 1, 2003. The provisions applicable to foreign persons receiving substitute dividends payments continue to apply (e.g., character rules under section 1.871-7(b)(2)).

#### SECTION 7. EFFECTIVE DATE

This Notice is effective September 16, 2003.

#### SECTION 8. COMMENTS

The Service invites interested persons to comment on the issues raised in this notice. Interested persons should send comments to:

CC:PA:LPD:PR (NOT-139295-03)  
Room 5203  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 5:00 p.m. to:

CC:PA:LPD:PR (NOT-139295-03)  
Courier's Desk  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Comments may also be transmitted electronically via the following e-mail address: *Notice.Comments@irs.coun.scl.treas.gov*. Please include "Notice 2003-67" in the subject line of any electronic communications.

#### SECTION 9. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1858.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The recordkeeping requirement in this notice is in Section 6. This information is required for brokers to use the rules for determining loanable shares and to use the rules for allocating transferred shares to loanable shares. The collection of information is voluntary to obtain a benefit. The likely respondents are businesses or other for profit institutions.

The estimated total annual recordkeeping burden is 60,000 hours.

The estimated annual burden per recordkeeper varies from 50 hours to 150 hours, depending on individual circumstances, with an estimated average of 100 hours.

The estimated number of recordkeepers is 600.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 10. CONTACT  
INFORMATION

The principal author of this notice is  
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cial Practice Division. Mr. Hara may be

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free number).

108TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
1st Session } 108-\_\_\_\_\_

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JOBS AND GROWTH TAX RELIEF  
RECONCILIATION ACT OF 2003

\_\_\_\_\_, 2003.—ORDERED TO BE PRINTED

Mr. THOMAS, from the committee of conference,  
submitted the following

CONFERENCE REPORT

(To accompany H.R. 2)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2), to provide for reconciliation pursuant to section 201 of the concurrent resolution on the budget for fiscal year 2004, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

1       respective meanings that such terms have in such  
2       section.

3       (d) EFFECTIVE DATES.—

4           (1) IN GENERAL.—Except as otherwise pro-  
5       vided by this subsection, the amendments made by  
6       this section shall apply to taxable years ending on or  
7       after May 6, 2003.

8           (2) WITHHOLDING.—The amendment made by  
9       subsection (a)(2)(C) shall apply to amounts paid  
10      after the date of the enactment of this Act.

11          (3) SMALL BUSINESS STOCK.—The amend-  
12      ments made by subsection (b)(3) shall apply to dis-  
13      positions on or after May 6, 2003.

14   **SEC. 302. DIVIDENDS OF INDIVIDUALS TAXED AT CAPITAL**  
15                           **GAIN RATES.**

16      (a) IN GENERAL.—Section 1(h) (relating to max-  
17      imum capital gains rate), as amended by section 301, is  
18      amended by adding at the end the following new para-  
19      graph:

20           “(11) DIVIDENDS TAXED AS NET CAPITAL  
21      GAIN.—

22           “(A) IN GENERAL.—For purposes of this  
23      subsection, the term ‘net capital gain’ means  
24      net capital gain (determined without regard to



1 this paragraph) increased by qualified dividend  
2 income.

3 “(B) QUALIFIED DIVIDEND INCOME.—For  
4 purposes of this paragraph—

5 “(i) IN GENERAL.—The term ‘quali-  
6 fied dividend income’ means dividends re-  
7 ceived during the taxable year from—

8 “(I) domestic corporations, and

9 “(II) qualified foreign corpora-  
10 tions.

11 “(ii) CERTAIN DIVIDENDS EX-  
12 CLUDED.—Such term shall not include—

13 “(I) any dividend from a corpora-  
14 tion which for the taxable year of the  
15 corporation in which the distribution  
16 is made, or the preceding taxable  
17 year, is a corporation exempt from tax  
18 under section 501 or 521,

19 “(II) any amount allowed as a  
20 deduction under section 591 (relating  
21 to deduction for dividends paid by  
22 mutual savings banks, etc.), and

23 “(III) any dividend described in  
24 section 404(k).



1                   “(iii) COORDINATION WITH SECTION  
2                   246(c).—Such term shall not include any  
3                   dividend on any share of stock—

4                   “(I) with respect to which the  
5                   holding period requirements of section  
6                   246(c) are not met (determined by  
7                   substituting in section 246(c)(1) ‘60  
8                   days’ for ‘45 days’ each place it ap-  
9                   pears and by substituting ‘120-day  
10                  period’ for ‘90-day period’), or

11                  “(II) to the extent that the tax-  
12                  payer is under an obligation (whether  
13                  pursuant to a short sale or otherwise)  
14                  to make related payments with respect  
15                  to positions in substantially similar or  
16                  related property.

17                  “(C) QUALIFIED FOREIGN CORPORA-  
18                  TIONS.—

19                  “(i) IN GENERAL.—Except as other-  
20                  wise provided in this paragraph, the term  
21                  ‘qualified foreign corporation’ means any  
22                  foreign corporation if—

23                  “(I) such corporation is incor-  
24                  porated in a possession of the United  
25                  States, or





1                   “(II) such corporation is eligible  
2                   for benefits of a comprehensive in-  
3                   come tax treaty with the United  
4                   States which the Secretary determines  
5                   is satisfactory for purposes of this  
6                   paragraph and which includes an ex-  
7                   change of information program.

8                   “(ii) DIVIDENDS ON STOCK READILY  
9                   TRADABLE ON UNITED STATES SECURITIES  
10                  MARKET.—A foreign corporation not other-  
11                  wise treated as a qualified foreign corpora-  
12                  tion under clause (i) shall be so treated  
13                  with respect to any dividend paid by such  
14                  corporation if the stock with respect to  
15                  which such dividend is paid is readily  
16                  tradable on an established securities mar-  
17                  ket in the United States.

18                  “(iii) EXCLUSION OF DIVIDENDS OF  
19                  CERTAIN FOREIGN CORPORATIONS.—Such  
20                  term shall not include any foreign corpora-  
21                  tion which for the taxable year of the cor-  
22                  poration in which the dividend was paid, or  
23                  the preceding taxable year, is a foreign  
24                  personal holding company (as defined in  
25                  section 552), a foreign investment com-



1           pany (as defined in section 1246(b)), or a  
2           passive foreign investment company (as de-  
3           fined in section 1297).

4           “(iv) COORDINATION WITH FOREIGN  
5           TAX CREDIT LIMITATION.—Rules similar  
6           to the rules of section 904(b)(2)(B) shall  
7           apply with respect to the dividend rate dif-  
8           ferential under this paragraph.

9           “(D) SPECIAL RULES.—

10           “(i) AMOUNTS TAKEN INTO ACCOUNT  
11           AS INVESTMENT INCOME.—Qualified divi-  
12           dend income shall not include any amount  
13           which the taxpayer takes into account as  
14           investment income under section  
15           163(d)(4)(B).

16           “(ii) EXTRAORDINARY DIVIDENDS.—  
17           If an individual receives, with respect to  
18           any share of stock, qualified dividend in-  
19           come from 1 or more dividends which are  
20           extraordinary dividends (within the mean-  
21           ing of section 1059(e)), any loss on the  
22           sale or exchange of such share shall, to the  
23           extent of such dividends, be treated as  
24           long-term capital loss.



1                   “(iii) TREATMENT OF DIVIDENDS  
2                   FROM REGULATED INVESTMENT COMPA-  
3                   NIES AND REAL ESTATE INVESTMENT  
4                   TRUSTS.—A dividend received from a regu-  
5                   lated investment company or a real estate  
6                   investment trust shall be subject to the  
7                   limitations prescribed in sections 854 and  
8                   857.”

9           (b) EXCLUSION OF DIVIDENDS FROM INVESTMENT  
10          INCOME.—Subparagraph (B) of section 163(d)(4) (defin-  
11          ing net investment income) is amended by adding at the  
12          end the following flush sentence:

13                “Such term shall include qualified dividend in-  
14                come (as defined in section 1(h)(11)(B)) only to  
15                the extent the taxpayer elects to treat such in-  
16                come as investment income for purposes of this  
17                subsection.”

18          (c) TREATMENT OF DIVIDENDS FROM REGULATED  
19          INVESTMENT COMPANIES.—

20                (1) Subsection (a) of section 854 (relating to  
21                dividends received from regulated investment compa-  
22                nies) is amended by inserting “section 1(h)(11) (re-  
23                lating to maximum rate of tax on dividends) and”  
24                after “For purposes of”.



1           (2) Paragraph (1) of section 854(b) (relating to  
2 other dividends) is amended by redesignating sub-  
3 paragraph (B) as subparagraph (C) and by inserting  
4 after subparagraph (A) the following new subpara-  
5 graph:

6           “(B) MAXIMUM RATE UNDER SECTION  
7 1(h).—

8           “(i) IN GENERAL.—If the aggregate  
9 dividends received by a regulated invest-  
10 ment company during any taxable year are  
11 less than 95 percent of its gross income,  
12 then, in computing the maximum rate  
13 under section 1(h)(11), rules similar to the  
14 rules of subparagraph (A) shall apply.

15           “(ii) GROSS INCOME.—For purposes  
16 of clause (i), in the case of 1 or more sales  
17 or other dispositions of stock or securities,  
18 the term ‘gross income’ includes only the  
19 excess of—

20           “(I) the net short-term capital  
21 gain from such sales or dispositions,  
22 over

23           “(II) the net long-term capital  
24 loss from such sales or dispositions.



1                   “(iii) DIVIDENDS FROM REAL ESTATE  
2                   INVESTMENT TRUSTS.—For purposes of  
3                   clause (i)—

4                   “(I) paragraph (3)(B)(ii) shall  
5                   not apply, and

6                   “(II) in the case of a distribution  
7                   from a trust described in such para-  
8                   graph, the amount of such distribu-  
9                   tion which is a dividend shall be sub-  
10                  ject to the limitations under section  
11                  857(c).

12                  “(iv) DIVIDENDS FROM QUALIFIED  
13                  FOREIGN CORPORATIONS.—For purposes  
14                  of clause (i), dividends received from quali-  
15                  fied foreign corporations (as defined in sec-  
16                  tion 1(h)(11)) shall also be taken into ac-  
17                  count in computing aggregate dividends re-  
18                  ceived.”

19                  (3) Subparagraph (C) of section 854(b)(1), as  
20                  redesignated by paragraph (2), is amended by strik-  
21                  ing “subparagraph (A)” and inserting “subpara-  
22                  graph (A) or (B)”.

23                  (4) Paragraph (2) of section 854(b) is amended  
24                  by inserting “the maximum rate under section  
25                  1(h)(11) and” after “for purposes of”.



1 (5) Subsection (b) of section 854 is amended by  
2 adding at the end the following new paragraph:

3 “(5) COORDINATION WITH SECTION 1(h)(11).—  
4 For purposes of paragraph (1)(B), an amount shall  
5 be treated as a dividend only if the amount is quali-  
6 fied dividend income (within the meaning of section  
7 1(h)(11)(B)).”

8 (d) TREATMENT OF DIVIDENDS RECEIVED FROM  
9 REAL ESTATE INVESTMENT TRUSTS.—Section 857(c)  
10 (relating to restrictions applicable to dividends received  
11 from real estate investment trusts) is amended to read as  
12 follows:

13 “(c) RESTRICTIONS APPLICABLE TO DIVIDENDS RE-  
14 CEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—

15 “(1) SECTION 243.—For purposes of section  
16 243 (relating to deductions for dividends received by  
17 corporations), a dividend received from a real estate  
18 investment trust which meets the requirements of  
19 this part shall not be considered a dividend.

20 “(2) SECTION 1(h)(11).—For purposes of sec-  
21 tion 1(h)(11) (relating to maximum rate of tax on  
22 dividends)—

23 “(A) rules similar to the rules of subpara-  
24 graphs (B) and (C) of section 854(b)(1) shall  
25 apply to dividends received from a real estate



1 investment trust which meets the requirements  
2 of this part, and

3 “(B) for purposes of such rules, such a  
4 trust shall be treated as receiving qualified divi-  
5 dend income during any taxable year in an  
6 amount equal to the sum of—

7 “(i) the excess of real estate invest-  
8 ment trust taxable income computed under  
9 section 857(b)(2) for the preceding taxable  
10 year over the tax payable by the trust  
11 under section 857(b)(1) for such preceding  
12 taxable year, and

13 “(ii) the excess of the income subject  
14 to tax by reason of the application of the  
15 regulations under section 337(d) for the  
16 preceding taxable year over the tax payable  
17 by the trust on such income for such pre-  
18 ceding taxable year.”

19 (e) CONFORMING AMENDMENTS.—

20 (1) Paragraph (3) of section 1(h), as redesign-  
21 nated by section 301, is amended to read as follows:

22 “(3) ADJUSTED NET CAPITAL GAIN.—For pur-  
23 poses of this subsection, the term ‘adjusted net cap-  
24 ital gain’ means the sum of—



1           “(A) net capital gain (determined without  
2           regard to paragraph (11)) reduced (but not  
3           below zero) by the sum of—

4                   “(i) unrecaptured section 1250 gain,  
5                   and

6                   “(ii) 28-percent rate gain, plus

7                   “(B) qualified dividend income (as defined  
8                   in paragraph (11)).”

9           (2) Subsection (f) of section 301 is amended  
10          adding at the end the following new paragraph:

11                   “(4) For taxation of dividends received by indi-  
12                   viduals at capital gain rates, see section 1(h)(11).”

13           (3) Paragraph (1) of section 306(a) is amended  
14          by adding at the end the following new subpara-  
15          graph:

16                   “(D) TREATMENT AS DIVIDEND.—For  
17                   purposes of section 1(h)(11) and such other  
18                   provisions as the Secretary may specify, any  
19                   amount treated as ordinary income under this  
20                   paragraph shall be treated as a dividend re-  
21                   ceived from the corporation.”

22           (4)(A) Subpart C of part II of subchapter C of  
23          chapter I (relating to collapsible corporations) is re-  
24          pealed.





1 (B)(i) Section 338(h) is amended by striking  
2 paragraph (14).

3 (ii) Sections 467(c)(5)(C), 1255(b)(2), and  
4 1257(d) are each amended by striking “,  
5 341(e)(12),”.

6 (iii) The table of subparts for part II of sub-  
7 chapter C of chapter 1 is amended by striking the  
8 item related to subpart C.

9 (5) Section 531 is amended by striking “equal  
10 to” and all that follows and inserting “equal to 15  
11 percent of the accumulated taxable income.”

12 (6) Section 541 is amended by striking “equal  
13 to” and all that follows and inserting “equal to 15  
14 percent of the undistributed personal holding com-  
15 pany income.”

16 (7) Section 584(c) is amended by adding at the  
17 end the following new flush sentence:

18 “The proportionate share of each participant in the  
19 amount of dividends received by the common trust fund  
20 and to which section 1(h)(11) applies shall be considered  
21 for purposes of such paragraph as having been received  
22 by such participant.”

23 (8) Paragraph (5) of section 702(a) is amended  
24 to read as follows:



1           “(5) dividends with respect to which section  
2           1(h)(11) or part VIII of subchapter B applies,”.

3           (f) EFFECTIVE DATE.—

4           (1) IN GENERAL.—Except as provided in para-  
5           graph (2), the amendments made by this section  
6           shall apply to taxable years beginning after Decem-  
7           ber 31, 2002.

8           (2) REGULATED INVESTMENT COMPANIES AND  
9           REAL ESTATE INVESTMENT TRUSTS.—In the case of  
10          a regulated investment company or a real estate in-  
11          vestment trust, the amendments made by this sec-  
12          tion shall apply to taxable years ending after Decem-  
13          ber 31, 2002; except that dividends received by such  
14          a company or trust on or before such date shall not  
15          be treated as qualified dividend income (as defined  
16          in section 1(h)(11)(B) of the Internal Revenue Code  
17          of 1986, as added by this Act).

18   **SEC. 303. SUNSET OF TITLE.**

19          All provisions of, and amendments made by, this title  
20          shall not apply to taxable years beginning after December  
21          31, 2008, and the Internal Revenue Code of 1986 shall  
22          be applied and administered to such years as if such provi-  
23          sions and amendments had never been enacted.

