

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4539

To amend the Internal Revenue Code of 1986 to modify the treatment of foreign investments in United States real property, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2010

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

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## A BILL

To amend the Internal Revenue Code of 1986 to modify the treatment of foreign investments in United States real property, 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 Revitaliza-  
5 tion Act of 2010”.

6 **SEC. 2. TREATMENT OF FOREIGN INVESTMENTS IN UNITED**  
7 **STATES REAL PROPERTY.**

8 (a) INTEREST IN DOMESTIC CORPORATION NOT A  
9 UNITED STATES REAL PROPERTY INTEREST.—Sub-

1 section (c) of section 897 of the Internal Revenue Code  
2 of 1986 is amended to read as follows:

3 “(c) UNITED STATES REAL PROPERTY INTEREST.—

4 For purposes of this section—

5 “(1) IN GENERAL.—The term ‘United States  
6 real property interest’ means an interest in real  
7 property (including an interest in a mine, well, or  
8 other natural deposit) located in the United States  
9 or the Virgin Islands.

10 “(2) OTHER SPECIAL RULES.—

11 “(A) INTEREST IN REAL PROPERTY.—The  
12 term ‘interest in real property’ includes fee  
13 ownership and co-ownership of land or improve-  
14 ments thereon, leaseholds of land or improve-  
15 ments thereon, options to acquire land or im-  
16 provements thereon, and options to acquire  
17 leaseholds of land or improvements thereon.

18 “(B) REAL PROPERTY INCLUDES ASSOCI-  
19 ATED PERSONAL PROPERTY.—The term ‘real  
20 property’ includes movable walls, furnishings,  
21 and other personal property associated with the  
22 use of the real property.”.

23 (b) RULES FOR CERTAIN INVESTMENT ENTITIES.—

24 Section 897(h) of such Code is amended to read as follows:

1       “(h) SPECIAL RULES FOR CERTAIN INVESTMENT  
2 ENTITIES.—For purposes of this section—

3               “(1) LOOK-THROUGH OF DISTRIBUTIONS.—Any  
4 distribution by a qualified investment entity to a  
5 nonresident alien individual or a foreign corporation  
6 shall, to the extent attributable to gain from sales or  
7 exchanges by the qualified investment entity (includ-  
8 ing as a result of sales or exchanges by a lower-tier  
9 qualified investment entity) of United States real  
10 property interests, be included in such foreign per-  
11 son’s gross income as an ordinary dividend from the  
12 qualified investment entity.

13               “(2) LIQUIDATING DISTRIBUTIONS.—In the  
14 event of a liquidating distribution, the lesser of—

15                       “(A) gain recognized under section 331, or

16                       “(B) the amount that would be treated as  
17 an ordinary dividend pursuant to paragraph  
18 (1),

19 shall be treated as an ordinary dividend.

20               “(3) PARTNERSHIPS.—For purposes of this  
21 paragraph, a qualified investment entity shall be  
22 deemed to own its proportionate share of each of the  
23 assets of any partnership (as defined in section  
24 7701(a)(2)) in which the qualified investment entity  
25 has an interest as a partner.

1           “(4) QUALIFIED INVESTMENT ENTITY.—The  
2           term ‘qualified investment entity’ means any real es-  
3           tate investment trust and any regulated investment  
4           company.”.

5           (c) REPEAL OF THE ELECTION BY A FOREIGN COR-  
6           PORATION TO BE TREATED AS A DOMESTIC CORPORA-  
7           TION.—Section 897 of such Code is amended by striking  
8           subsection (i).

9           (d) CONFORMING AMENDMENTS.—

10           (1) Section 852(b)(3)(E) of such Code is  
11           amended by striking “to which section 897 does not  
12           apply by reason of the second sentence of section  
13           897(h)(1)” and inserting “described in section  
14           897(h)(1)”.

15           (2) Section 857(b)(3)(F) of such Code is  
16           amended by striking “In the case of a shareholder  
17           of a real estate investment trust to whom section  
18           897 does not apply by reason of the second sentence  
19           of section 897(h)(1)” and inserting “In the case of  
20           a distribution described in section 897(h)(1) to a  
21           shareholder of a real estate investment trust”.

22           (3) Section 871(k)(2)(E) of such Code is  
23           amended by striking “to which section 897 does not  
24           apply by reason of the second sentence of section

1 897(h)(1)” and inserting “described in section  
2 897(h)(1)”.

3 (4) Section 884(d)(2) of such Code is amended  
4 by striking subparagraph (C) and redesignating sub-  
5 paragraphs (D) and (E) as subparagraphs (C) and  
6 (D), respectively.

7 (5)(A) Section 1445(b) of such Code is amend-  
8 ed by striking paragraphs (3), (6), and (8) and by  
9 redesignating paragraphs (4), (5), (7), and (9) as  
10 paragraphs (3), (4), (5), and (6), respectively.

11 (B) Section 1445(d)(1)(A) of such Code is  
12 amended by striking “or a domestic corporation fur-  
13 nishes the transferee an affidavit described in para-  
14 graph (3) of subsection (b)”.

15 (C) Section 1445(e) of such Code is amended  
16 by striking paragraphs (3) and (6) and by redesignig-  
17 nating paragraphs (4), (5), and (7) as paragraphs  
18 (3), (4), and (5), respectively.

19 (6) Paragraphs (1) and (2) of section 6039C(d)  
20 of such Code are amended to read as follows:

21 “(1) to the United States, in the case of any in-  
22 terest in real property located in the United States,  
23 and

1           “(2) to the Virgin Islands, in the case of any  
2           interest in real property located in the Virgin Is-  
3           lands.”.

4           (e) EFFECTIVE DATE.—The amendments made by  
5           this section shall apply to taxable years beginning after  
6           December 31, 2009.

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