

# 1993



Department of the Treasury  
Internal Revenue Service

# Instructions for Form 1120-REIT

## U.S. Income Tax Return for Real Estate Investment Trusts

Section references are to the Internal Revenue Code unless otherwise noted.

### Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping . . . . .	59 hr., 19 min.
Learning about the law or the form . . . . .	19 hr., 25 min.
Preparing the form. . . . .	38 hr., 55 min.
Copying, assembling, and sending the form to the IRS. . . . .	5 hr., 5 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Attention: Reports Clearance Officer, PC:FP, Washington, DC 20224; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-1004), Washington, DC 20503. **DO NOT** send the tax form to either of these offices. Instead, see the instructions for **Where To File** on page 2.

### General Instructions

**Note:** In addition to the publications listed throughout these instructions, real estate investment trusts may find it helpful to get **Pub. 534, Depreciation**; **Pub. 535, Business Expenses**; **Pub. 542, Tax Information on Corporations**; and **Pub. 946, How To Begin Depreciating Your Property**.

You can get these publications and other publications referred to in the instructions at most IRS offices. To order publications and forms, call our toll-free number 1-800-TAX-FORM (1-800-829-3676).

### Changes To Note

The Revenue Reconciliation Act of 1993 (the Act) made changes to the tax law for real estate investment trusts (REITs), including changes to the tax rates and the estimated tax rules.

### Tax Rates and Related Changes

The Act increased the maximum corporate tax rate to 35% for REITs with taxable income over \$10 million. REITs with taxable income over \$15 million are subject to an additional tax of 3% of the excess over \$15 million, or \$100,000, whichever is smaller. The new rates appear in the **Tax Rate Schedule** on page 9.

The Act also increased to 35% the tax on net income from foreclosure property. The personal holding company tax rate (Schedule PH (Form 1120)) has increased to 39.6%.

### Estimated Tax Rules

The estimated tax penalty is waived for underpayments of estimated taxes for any period before March 16, 1994, to the extent that the underpayment is attributable to changes made by the Act.

There are new estimated tax rules for tax years beginning after December 31, 1993. The new rules require a REIT to base its estimated tax payments on 100% (rather than 97%) of the tax shown on its return for the current year. The "safe harbor" rule that allows a REIT to avoid the penalty by paying 100% of its prior year tax still applies. The Act also added two new sets of periods over which a REIT may elect to annualize income. For details, see **Form 1120-W, Corporation Estimated Tax**.

### Depreciation and Amortization

- Goodwill and certain other intangible property acquired after August 10, 1993, may now be amortized over a 15-year period.
- Certain computer software acquired after August 10, 1993, may be depreciated using the straight line method over a 36-month period.
- The recovery period for figuring depreciation for nonresidential real property is 39 years for property placed in service after May 12, 1993.
- The maximum section 179 deduction for most filers has been increased to \$17,500 for property placed in service in tax years beginning after December 31, 1992.

For details, see **Form 4562, Depreciation and Amortization**.

### Other Tax Law Changes

- Dealers in securities must use the "mark-to-market" accounting method described in new section 475 for tax years ending on or after December 31, 1993.

Under the new rules, any security that is inventory to the dealer must be included in inventory at its fair market value. Any security that is not inventory and that is held at the close of the tax year is treated as sold at its fair market value on the last business day of the tax year, and any gain or loss must be taken into account in determining gross income. The gain or loss taken into account is generally treated as ordinary gain or loss.

Dealers required to change their accounting method to comply with the new law are treated as having initiated the change in accounting method and as having received the consent of the IRS to the change. Generally, the net amount of the section 481(a) adjustment (reported on line 7, page 1) is taken into account ratably over a 5-year period, beginning with the first taxable year ending on or after December 31, 1993.

For details, including exceptions, see new section 475.

- Lobbying expenses paid or incurred after December 31, 1993, are no longer deductible business expenses. Lobbying expenses include amounts paid or incurred in connection with influencing Federal or state legislation (but not local legislation), or amounts paid or incurred in connection with any communication with certain covered Federal executive branch officials in an attempt to influence the official actions or positions of the officials. A de minimis rule applies if the total amount of certain in-house expenditures for lobbying does not exceed \$2,000. If the REIT's lobbying expenses qualify under the de minimis rule, they are deductible.

A portion of payments for membership dues to a trade organization or other noncharitable organization that engages in lobbying activities may not be deductible if the dues are allocable to nondeductible lobbying expenditures by the organization. For more information, see section 162.

Charitable contributions paid or incurred after December 31, 1993, to an organization that conducts lobbying activities are not deductible if (1) the lobbying activities relate to matters of direct financial interest to the donor's trade or business, and (2) the principal purpose of the contribution was to avoid Federal income tax by obtaining a deduction for activities that would have been nondeductible under the lobbying expense rules if conducted directly by the donor. See section 170(f).

- No deduction is allowed for amounts paid or incurred for club dues (including dues for airline and hotel clubs), after December 31, 1993. For details, see section 274.
- No deduction is allowed for travel expenses paid or incurred after December 31, 1993, for a spouse, dependent, or other individual accompanying an officer or employee of the REIT on business travel, unless that spouse, dependent, or other individual is an employee of the REIT and the travel is for a bona fide business purpose and would otherwise be deductible. For details, see section 274.
- Generally, no deduction is allowed for any charitable contribution of \$250 or more made after December 31, 1993, unless the REIT has a contemporaneous written acknowledgment from the donee organization of the contribution (including a good faith estimate of the value of any goods or services provided to the donor in exchange for the donation). For details, see section 170.

- The following credits, which expired on June 30, 1992, are extended. Effective July 1, 1992:

The credit for increasing research activities is extended through June 30, 1995,

The targeted jobs credit is extended through December 31, 1994, and

The low-income housing credit is permanently extended.

REITs are allowed a credit of 5% of qualified cash contributions to certain community development corporations (CDCs). The CDCs are to be selected by the Secretary of Housing and Urban Development by July 1, 1994. Get **Form 8847**, Credit for Contributions to Certain Community Development Corporations, for more information.

## Purpose of Form

**Form 1120-REIT**, U.S. Income Tax Return for Real Estate Investment Trusts, is used to report the income, gains, losses, deductions, credits, and to figure the income tax liability of a REIT, defined in section 856.

## Who Must File

A corporation, trust, or association that elects to be treated as a REIT for the tax year (or has made that election for a prior tax year and the election has not been terminated or revoked) and meets the requirements listed below, must file Form 1120-REIT. The election is made by computing taxable income as a REIT on Form 1120-REIT.

An organization must meet the following requirements to qualify as a REIT:

1. It must be a corporation, trust, or association.
2. It must be managed by one or more trustees or directors.
3. The beneficial ownership must be evidenced by transferable shares, or by transferable certificates of beneficial interest.
4. The organization would otherwise be taxed as a domestic corporation.

5. It is neither a financial institution referred to in section 582(c)(2), or a subchapter L insurance company.

6. The beneficial ownership must be held by 100 or more persons. (However, the REIT does not have to meet this requirement until its second tax year.)

7. The organization cannot be closely-held, as defined in section 856(h). (However, the REIT does not have to meet this requirement until its second tax year.)

8. It must meet the gross income and diversification of investment requirements of section 856(c).

9. The organization must have been:

- (a) treated as a REIT for all tax years beginning after February 28, 1986; or
- (b) had, at the end of the tax year, no accumulated earnings and profits from any tax year that the organization was not a REIT.

10. It must maintain the actual ownership records as required by Regulations section 1.857-8.

11. It must adopt a calendar tax year unless the organization first qualified for REIT status before October 5, 1976.

12. The dividends paid deduction (excluding net capital gain dividends, if any) must equal or exceed:

- 95% of the REIT's taxable income (excluding the dividends paid deduction and any net capital gain); plus
- 95% of the excess of the REIT's net income from foreclosure property over the tax imposed on that income by section 857(b)(4)(A); less
- Any excess noncash income as determined under section 857(e).

See sections 856, 857, and the related regulations for details and exceptions.

**Note:** For income tax purposes, a corporation that is a qualified REIT subsidiary is not treated as a separate corporation. See section 856(i) for details.

## Termination of Election

Once the election to be treated as a REIT is made, it remains in effect until terminated or revoked. It terminates automatically for any tax year in which the corporation, trust, or association is not a qualified REIT as defined in section 856.

The election may also be revoked by the taxpayer for any tax year after the first tax year the election is effective by filing a statement with the service center where the corporation, trust, or association files its income tax return. The statement must be filed on or before the 90th day after the first day of the tax year for which the revocation is to be effective. The statement must be signed by an official authorized to sign the income tax return of the taxpayer and must contain the name, address, and employer identification number of the taxpayer, specify the tax year for which the election was made, and state that the taxpayer, pursuant to section 856(g)(2), revokes its election under section 856(c)(1) to be a REIT.

During the 4 years after the first year for which the termination or revocation is effective, the corporation, trust, or association may not make a new election

to be taxed as a REIT, except as provided in section 856(g)(4).

## When To File

Generally, a REIT must file its income tax return by the 15th day of the 3rd month after the end of the tax year. A new REIT filing a short period return must generally file by the 15th day of the 3rd month after the short period ends. A REIT that has dissolved must generally file by the 15th day of the 3rd month after the date it dissolved.

If the due date falls on a Saturday, Sunday, or legal holiday, the REIT may file on the next business day.

**Extension.—File Form 7004**, Application for Automatic Extension of Time To File Corporation Income Tax Return, to request a 6-month extension of time to file.

## Where To File

File the tax return at the applicable addresses listed below.

If the REIT's principal business, office, or agency is located in	Use the following Internal Revenue Service Center address
New Jersey, New York (New York City and counties of Nassau, Rockland, Suffolk, and Westchester)	Holtsville, NY 00501
New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	Andover, MA 05501
Florida, Georgia, South Carolina	Atlanta, GA 39901
Indiana, Kentucky, Michigan, Ohio, West Virginia	Cincinnati, OH 45999
Kansas, New Mexico, Oklahoma, Texas	Austin, TX 73301
Alaska, Arizona, California (counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba), Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Ogden, UT 84201
California (all other counties), Hawaii	Fresno, CA 93888
Illinois, Iowa, Minnesota, Missouri, Wisconsin	Kansas City, MO 64999
Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Tennessee	Memphis, TN 37501
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia	Philadelphia, PA 19255

REITs having their principal place of business outside the United States must

file with the Internal Revenue Service Center, Philadelphia, PA 19255.

A group of corporations located in several service center regions will often keep all the books and records at the principal office of the managing corporation. If this is the case, the income tax returns of the corporations may be filed with the service center region in which this principal office is located.

### Who Must Sign

The return must be signed and dated by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other corporate officer (such as tax officer) authorized to sign. Receivers, trustees, or assignees must also sign and date any return filed on behalf of a REIT.

If a corporate officer completes Form 1120-REIT, the Paid Preparer's space should remain blank. Anyone who prepares Form 1120-REIT but does not charge the REIT should not sign the return. Generally, anyone who is paid to prepare the return must sign it and fill in the Paid Preparer's Use Only area.

The paid preparer must complete the required preparer information and:

- Sign the return, by hand, in the space provided for the preparer's signature (signature stamps and labels are not acceptable).
- Give a copy of the return to the taxpayer.

### Accounting Methods

Taxable income must be computed using the method of accounting regularly used in keeping the REIT's books and records. Generally, permissible methods include the cash, accrual, or any other method authorized by the Internal Revenue Code. In all cases, the method used must clearly show taxable income.

Generally, a REIT must use the accrual method of accounting if its average annual gross receipts are more than \$5 million. See section 448(c).

Generally, an accrual basis taxpayer can deduct accrued expenses in the tax year in which all events that determine the liability have occurred, the amount of the liability can be figured with reasonable accuracy, and economic performance takes place with respect to the expense. There are exceptions to the economic performance rule for certain items, including recurring expenses. See section 461(h) and the related regulations for the rules for determining when economic performance takes place.

Generally, the REIT may change the method of accounting used to report taxable income (for income as a whole or for any material item) only by getting consent on **Form 3115**, Application for Change in Accounting Method. For more information, get **Pub. 538**, Accounting Periods and Methods.

### Change in Accounting Period

A REIT may not change its accounting period to any accounting period other than

the calendar year. Generally, before changing an accounting period, the Commissioner's approval must be obtained (Regulations section 1.442-1) by filing **Form 1128**, Application To Adopt, Change, or Retain a Tax Year. Also see Pub. 538. However, upon electing to be taxed as a REIT, an entity that has not engaged in any active trade or business may change its accounting period to a calendar year without the approval of the Commissioner.

### Rounding Off to Whole Dollars

The REIT may show amounts on the return and accompanying schedules as whole dollars. To do so, drop any amount less than 50 cents and increase any amount from 50 cents through 99 cents to the next higher dollar.

### Recordkeeping

The REIT's records should be kept for as long as they may be needed for the administration of any provision of the Internal Revenue Code. Usually, records that support an item of income, deduction, or credit on the return must be kept for 3 years from the date the return is due or filed, whichever is later. Keep records that verify the REIT's basis in property for as long as they are needed to figure the basis of the original or replacement property.

The REIT should also keep copies of any returns it has filed. They help in preparing future returns and in making computations when filing an amended return.

### Depository Method of Tax Payment

A REIT must pay the tax due in full no later than the 15th day of the 3rd month after the end of the tax year. Deposit REIT income tax payments (and estimated tax payments) with **Form 8109**, Federal Tax Deposit Coupon. Do not send deposits directly to an IRS office. Mail or deliver the completed Form 8109 with the payment to a qualified depository for Federal taxes or to the Federal Reserve bank (FRB) servicing the REIT's geographic area. Make checks or money orders payable to that depository or FRB.

To help ensure proper crediting, write the REIT's employer identification number, the tax period to which the deposit applies, and "Form 1120-REIT" on the check or money order. Be sure to darken the "1120" box on the coupon. These records of deposits will be sent to the IRS.

A penalty may be imposed if the deposits are mailed or delivered to an IRS office rather than to an authorized depository or FRB.

For more information on deposits, see the instructions in the coupon booklet (Form 8109) and **Pub. 583**, Taxpayers Starting a Business.

**Caution:** *If the REIT owes tax when it files Form 1120-REIT, do not include the payment with the tax return. Instead, mail or deliver the payment with Form 8109 to a qualified depository or FRB.*

### Estimated Tax Payments

Generally, a REIT must make installment payments of estimated tax if it expects its estimated tax to be \$500 or more. The estimated tax of the REIT is defined as its alternative minimum tax less the credit for Federal tax paid on fuels. Use Form 1120-W as a worksheet to compute estimated tax. For a calendar or fiscal year REIT, the installments are due by the 15th day of the 4th, 6th, 9th, and 12th months of the tax year. If any date falls on a Saturday, Sunday, or legal holiday, the installment is due on the next regular business day. Use the deposit coupons (Forms 8109) to make deposits of estimated tax. For more information on estimated tax payments, including penalties that apply if the REIT fails to make required payments, see the instructions for line 25 on page 7.

If the REIT overpaid estimated tax, it may be able to get a quick refund by filing **Form 4466**, Corporation Application for Quick Refund of Overpayment of Estimated Tax. The overpayment must be at least 10% of expected income tax liability and at least \$500. To apply for a quick refund, file Form 4466 before the 16th day of the 3rd month after the end of the tax year, but before the REIT files its income tax return. Do not file Form 4466 before the end of the REIT's tax year.

### Interest and Penalties

**Interest.**—Interest is charged on taxes not paid by the due date even if an extension of time to file is granted. Interest is also charged on penalties imposed for failure to file, negligence, fraud, gross valuation overstatements, and substantial understatements of tax from the due date (including extensions) to the date of payment. The interest charge is figured at a rate determined under section 6621.

**Late filing of return.**—A REIT that does not file its tax return by the due date, including extensions, may have to pay a penalty of 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a return that is more than 60 days late is the smaller of the tax due or \$100. The penalty will not be imposed if the REIT can show that the failure to file on time was due to reasonable cause. REITs that file late must attach a statement explaining the reasonable cause.

**Late payment of tax.**—A REIT that does not pay the tax when due may have to pay a penalty of ½ of 1% of the unpaid tax for each month or part of a month the tax is not paid, up to a maximum of 25% of the unpaid tax. This penalty may also apply to any additional tax not paid within 10 days of the date of the notice and demand for payment. The penalty will not be imposed if the REIT can show that the failure to pay on time was due to reasonable cause.

**Other penalties.**—Other penalties can be imposed for negligence, substantial understatement of tax, and fraud. See sections 6662 and 6663.

## Unresolved Tax Problems

The IRS has a Problem Resolution Program for taxpayers who have been unable to resolve their problems with the IRS. If the REIT has a tax problem it has been unable to resolve through normal channels, write to the REIT's local IRS district director or call the REIT's local IRS office and ask for Problem Resolution Assistance. Hearing-impaired persons who have access to TDD equipment may call 1-800-829-4059 to ask for help. The Problem Resolution office will ensure that the problem receives proper attention. Although the office cannot change the tax law or make technical decisions, it can help clear up problems that resulted from previous contacts.

## Other Forms, Returns, Schedules, and Statements That May Be Required

### Forms

The REIT may have to file any of the following:

**Form W-2**, Wage and Tax Statement, and **Form W-3**, Transmittal of Income and Tax Statements.

**Form 940** or **Form 940-EZ**, Employer's Annual Federal Unemployment (FUTA) Tax Return. The REIT may be liable for FUTA tax and may have to file Form 940 or 940-EZ if it paid wages of \$1,500 or more in any calendar quarter during the calendar year (or the preceding calendar year) or one or more employees worked for the REIT for some part of a day in any 20 different weeks during the calendar year (or the preceding calendar year).

**Form 941**, Employer's Quarterly Federal Tax Return. Employers must file this form quarterly to report income tax withheld and employer and employee social security and Medicare taxes. Agricultural employers must file **Form 943**, Employer's Annual Tax Return for Agricultural Employees, instead of Form 941, to report income tax withheld and employer and employee social security and Medicare taxes for farmworkers.

**Caution:** *The trust fund recovery penalty may apply if income, social security, and Medicare taxes that must be withheld are not withheld or are not paid to the IRS. The penalty is equal to the unpaid trust fund tax. The trust fund recovery penalty may be imposed on all persons who are determined by the IRS to be responsible for collecting, accounting for, and paying over these taxes, and who acted willfully in not doing so. See Circular E, Employer's Tax Guide (or Circular A, Agricultural Employer's Tax Guide), for details, including the definition of responsible person.*

**Form 966**, Corporate Dissolution or Liquidation.

**Form 1042**, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and **Form 1042S**, Foreign Person's U.S. Source Income Subject to Withholding. Use these forms to report and transmit withheld tax on payments or distributions made to nonresident alien individuals, foreign partnerships, or foreign

corporations to the extent payments or distributions constitute gross income from sources within the United States (see sections 861 through 865). For more information, see sections 1441 and 1442, and **Pub. 515**, Withholding of Tax on Nonresident Aliens and Foreign Corporations.

**Form 1096**, Annual Summary and Transmittal of U.S. Information Returns.

**Form 1098**, Mortgage Interest Statement. This form is used to report the receipt from any individual of \$600 or more of mortgage interest and points in the course of the REIT's trade or business for any calendar year.

**Forms 1099-A, B, DIV, INT, MISC, OID, PATR, R, and S.** These information returns are for reporting abandonments, acquisitions through foreclosure, proceeds from broker and barter exchange transactions, certain dividends and distributions, interest payments, medical and dental health care payments, miscellaneous income payments, nonemployee compensation, original issue discount, patronage dividends, distributions from profit-sharing plans, retirement plans, individual retirement arrangements, insurance contracts, etc., and proceeds from real estate transactions. Also, use these returns to report amounts received as a nominee on behalf of another person.

For more information, see the Instructions for Form 1099 and **Pub. 937**, Employment Taxes and Information Returns.

**Note:** *Every REIT must file Form 1099-MISC if, in the course of its trade or business, it makes payments of rents, commissions, or other fixed or determinable income (see section 6041) totaling \$600 or more to any one person during the calendar year.*

**Form 5452**, Corporate Report of Nondividend Distributions.

**Form 5498**, Individual Retirement Arrangement Information. Use this form to report contributions (including rollover contributions) to an individual retirement arrangement (IRA) and the value of an IRA or simplified employee pension (SEP) account.

**Form 5713**, International Boycott Report, for persons having operations in or related to "boycotting" countries. Also, persons who participate in or cooperate with an international boycott may have to complete Schedule A or Schedule B and Schedule C of Form 5713 to compute their loss of the following items: the foreign tax credit, the deferral of earnings of a controlled foreign corporation, IC-DISC benefits, and FSC benefits.

**Form 8275**, Disclosure Statement. Form 8275 is used by taxpayers and income tax return preparers to disclose items or positions (except those contrary to a regulation—see Form 8275-R below), that are not otherwise adequately disclosed on a tax return. The disclosure is made to avoid parts of the accuracy-related penalty imposed for negligence, disregard of rules, or substantial understatement of tax. Form 8275 is also used for disclosures relating

to preparer penalties for understatements due to unrealistic positions or for willful or reckless conduct.

**Form 8275-R**, Regulation Disclosure Statement, is used to disclose any item on a tax return for which a position has been taken that is contrary to Treasury regulations.

**Form 8281**, Information Return for Publicly Offered Original Issue Discount Instruments. This form is generally required to be filed by issuers of public offerings of debt instruments within 30 days of the issuance of the debt instrument.

**Form 8288**, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests, and **Form 8288-A**, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests. Use these forms to report and transmit withheld tax on the sale of U.S. real property by a foreign person. However, with respect to distributions described in Regulations section 1.1445-8, use Forms 1042 and 1042S. See section 1445 and the related regulations for additional information.

**Form 8300**, Report of Cash Payments Over \$10,000 Received in a Trade or Business. Generally, this form is used to report the receipt of more than \$10,000 in cash or foreign currency in one transaction or a series of related transactions.

Cashier's checks, bank drafts, and money orders with face amounts of \$10,000 or less are considered cash under certain circumstances. For more information, see Form 8300 and Regulations section 1.60501-1(c).

**Form 8612**, Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts. If the REIT is liable for the 4% excise tax on undistributed income imposed under section 4981, it must file this return for the calendar year.

**Form 8621**, Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund. A REIT that was a shareholder in a passive foreign investment company (as defined in section 1296) at any time during the tax year must complete and attach this form to its return.

## Statements

**Stock ownership in foreign corporations.**—Attach the statement required by section 551(c) if (a) the REIT owned 5% or more in value of the outstanding stock of a foreign personal holding company and (b) the REIT was required to include in its gross income any undistributed foreign personal holding company income from a foreign personal holding company.

A REIT may have to file **Form 5471**, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, if any of the following applies:

1. It controls a foreign corporation.
2. It acquires, disposes of, or owns 5% or more in value of the outstanding stock of a foreign corporation.
3. It owns stock in a foreign corporation that is a controlled foreign corporation for an uninterrupted period of 30 days or more

during the tax year of the foreign corporation that ends with or within its tax year, and it owned that stock on the last day of the foreign corporation's tax year.

**Foreign ownership in a domestic corporation.**—A REIT may have to file **Form 5472**, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. See page 10 for more information.

**Transfers to a corporation controlled by the transferor.**—If a person receives stock of a corporation in exchange for property, and no gain or loss is recognized under section 351, the person (transferor) and the transferee must each attach to their tax returns the information required by Regulations section 1.351-3.

## Attachments

Attach **Form 4136**, Credit for Federal Tax Paid on Fuels, after page 4, Form 1120-REIT. Attach schedules in alphabetical order and other forms in numerical order after Form 4136.

To assist us in processing the return, complete every applicable entry space on Form 1120-REIT. Do not write "See attached" instead of completing the entry spaces. If more space is needed on the forms or schedules, attach separate sheets. Use the same size and format as on the printed forms. But show the REIT's totals on the printed forms. Attach these separate sheets after all the schedules and forms. Be sure to put the REIT's name and employer identification number (EIN) on each sheet.

## Specific Instructions

**Period covered.**—File the 1993 return for calendar year 1993 and fiscal years that begin in 1993 and end in 1994. For a fiscal year, fill in the tax year space at the top of the form.

**Note:** *The 1993 Form 1120-REIT may also be used if (1) the REIT has a tax year of less than 12 months that begins and ends in 1994 and (2) the 1994 Form 1120-REIT is not available at the time the REIT is required to file its return. However, the REIT must show its 1994 tax year on the 1993 Form 1120-REIT and incorporate any tax law changes that are effective for tax years beginning after December 31, 1993.*

**Name.**—Type or print the REIT's true name (as set forth in the charter or other legal document creating it), address, and EIN on the appropriate lines.

**Address.**—Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the corporation has a P.O. box, show the box number instead of the street address.

**Note:** *If a change in address occurs after the return is filed, use **Form 8822**, Change of Address, to notify the IRS of the new address.*

**Item C. Employer identification number.**—Show the correct EIN in item C on page 1 of Form 1120-REIT. If the REIT does not have an EIN, it should apply for one on **Form SS-4**, Application for

Employer Identification Number. Form SS-4 can be obtained at most IRS or Social Security Administration (SSA) offices. If the REIT has not received its EIN by the time the return is due, write "Applied for" in the space for the EIN. See Pub. 583 for more information.

**Item D. Date REIT established.**—If the REIT is a corporation under state or local law, enter the date incorporated. If it is a trust or association, enter the date organized.

**Item E. Total assets.**—Enter the REIT's total assets (as determined by the accounting method regularly used in keeping the REIT's books and records) at the end of the tax year. If there are no assets at the end of the tax year, enter the total assets as of the beginning of the tax year.

**Item F. Final return, change of address, or amended return.**—If the REIT ceases to exist, file Form 1120-REIT and check the "Final return" box. If the REIT has changed its address since it last filed a return, check the box for "Change of address." If the REIT is amending its return, check the box for "Amended return."

## Part I—Real Estate Investment Trust Taxable Income

Do not include income or deductions attributable to any prohibited transaction (as defined in section 857(b)(6)) resulting in a gain. In addition, exclude gross income, gains, losses, and deductions from foreclosure property (as defined in section 856(e)) if the aggregate of such amounts results in net income. To report these items of income and deduction, see the instructions for Parts II and IV.

### Income

**Line 1. Dividends.**—Enter the total amount of dividends received during the tax year.

**Line 2. Interest.**—Enter taxable interest on U.S. obligations and on loans, notes, mortgages, bonds, bank deposits, corporate bonds, tax refunds, etc.

Do not offset interest expense against interest income.

Special rules apply to interest income from certain below-market rate loans. See section 7872 for more information.

**Line 3. Gross rents from real property.**—Include charges for services customarily furnished or rendered in connection with the rental of real property and rent from personal property leased under or in connection with a lease of real property (provided the rent from the personal property does not exceed 15% of the total rent for the tax year charged for both the real and personal property under such lease). See section 856(d)(2) for amounts excluded from the term "rents from real property."

**Line 4. Other gross rents.**—Enter the gross amount received for the rental of property not included on line 3.

**Line 5. Capital gain net income.**—Every sale or exchange of a capital asset must be reported in detail on **Schedule D (Form**

**1120)**, Capital Gains and Losses, even though no gain or (loss) is indicated.

**Line 7. Other income.**—Enter any other taxable income not reported on lines 1 through 6, except amounts that must be reported in Parts II or IV. List the type and amount of income on an attached schedule. If the REIT has only one item of other income, describe it in parentheses on line 7. Examples of other income to report on line 7 are:

- Any adjustment under section 481(a) required to be included in income during the current tax year due to a change in a method of accounting;
- Amounts received or accrued as consideration for entering into agreements to make real property loans or to purchase or lease real property;
- Recoveries of bad debts deducted in prior years under the specific charge-off method;
- The amount of credit for alcohol used as fuel (determined without regard to the limitation based on tax) that was entered on **Form 6478**, Credit for Alcohol Used as Fuel; and
- Refunds of taxes deducted in prior years to the extent they reduced income subject to tax in the year deducted (see section 111). Do not offset current year taxes against tax refunds.
- The amount of any deduction previously taken under section 179A that is subject to recapture. The REIT must recapture the benefit of any allowable deduction for qualified clean-fuel vehicle property (or clean-fuel vehicle refueling property), if, within 3 years of the date the property was placed in service, the property ceases to qualify. See Pub. 535 for details, including how to figure the recapture.

### Deductions

#### Limitations on Deductions

**Direct and indirect costs (including taxes) allocable to real or tangible personal property constructed or improved by the taxpayer.**—These costs must be capitalized in accordance with section 263A.

**Transactions between related taxpayers.**—Generally, an accrual basis taxpayer may only deduct business expenses and interest owed to a related party in the year the payment is included in the income of the related party. See sections 163(e)(3), 163(j), and 267 for limitations on deductions for unpaid interest and expenses.

**Golden parachute payments.**—A portion of the payments made by a REIT to key personnel that exceeds their usual compensation may not be deductible. This occurs when the REIT has an agreement (golden parachute) with these key employees to pay them these excessive amounts if control of the REIT changes. See section 280G.

**Business startup expenses.**—Business startup expenses are required to be capitalized unless an election is made to amortize them over a period of 60 months. See section 195.

**Passive activity limitations.**—Limitations on passive activity losses and credits under section 469 apply to REITs that are closely held (as defined in section 856(h)). REITs subject to the passive activity limitations must complete **Form 8810**, Corporate Passive Activity Loss and Credit Limitations, to compute their allowable passive activity loss and credit.

**Reducing certain expenses for which credits are allowable.**—For each of the credits listed below, the REIT must reduce the otherwise allowable deductions for expenses used to figure the credit by the amount of the current year credit:

1. The credit for increasing research activities.
2. The enhanced oil recovery credit.
3. The disabled access credit.
4. The jobs credit.

If the REIT has any of these credits, be sure to figure each current year credit before figuring the deduction for expenses on which the credit is based.

**Line 9. Compensation of officers.**—Do not include compensation deductible elsewhere on the return, such as elective contributions to a section 401(k) cash or deferred arrangement, or amounts contributed under a salary reduction SEP agreement.

**Line 10. Salaries and wages.**—Enter total salaries and wages paid or incurred for the tax year. Do not include salaries and wages deductible elsewhere on the return, such as elective contributions to a section 401(k) cash or deferred arrangement, or amounts contributed under a salary reduction SEP agreement.

**Caution:** *If the REIT provided taxable fringe benefits to its employees, such as personal use of a car, do not deduct as wages the amounts allocated for depreciation and other expenses claimed on lines 16 and 18.*

Enter on line 10b the amount of jobs credit from **Form 5884**, Jobs Credit.

**Line 11. Repairs and maintenance.**—Enter the cost of incidental repairs and maintenance, such as labor and supplies, that do not add to the value of the property or appreciably prolong its life. New buildings, machinery, or permanent improvements that increase the value of the property are not deductible. They must be depreciated or amortized.

**Line 12. Bad debts.**—Enter the total debts that became worthless in whole or in part during the tax year.

**Caution:** *A cash method taxpayer may not claim a bad debt deduction unless the amount was previously included in income.*

**Line 13. Rents.**—If the REIT rented or leased a vehicle, enter the total annual rent or lease expense paid or incurred during the year. Also complete Part V of **Form 4562**, Depreciation and Amortization. If the REIT leased a vehicle for a term of 30 days or more, the deduction for the vehicle lease expense may have to be reduced by an amount called the **inclusion amount**.

The lease term began:	And the vehicle's fair market value on the first day of the lease exceeded:
After 12/31/92 . . . . .	\$14,300
After 12/31/91 but before 1/1/93 . . . . .	\$13,700
After 12/31/90 but before 1/1/92 . . . . .	\$13,400
After 12/31/86 but before 1/1/91 . . . . .	\$12,800

If the lease term began after June 18, 1984, but before January 1, 1987, see **Pub. 917**, Business Use of a Car, to find out if the REIT has an inclusion amount. Also see Pub. 917 for instructions on figuring the inclusion amount.

**Line 14. Taxes and licenses.**—Enter taxes paid or incurred during the tax year, but do not include the following:

- Federal income taxes;
- Foreign or U.S. possession income taxes if a tax credit is claimed;
- Taxes not imposed on the REIT;
- Taxes, including state or local sales taxes, that are paid or incurred in connection with an acquisition or disposition of property (these taxes must be treated as a part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition);
- Taxes assessed against local benefits that increase the value of the property assessed (such as for paving, etc.);
- Taxes deducted elsewhere on the return; or
- Excise taxes imposed under section 4981 on undistributed REIT income.

See section 164(d) for apportionment of taxes on real property between seller and purchaser.

**Line 15. Interest.**—If the proceeds of a loan were used for more than one purpose (e.g., to purchase a portfolio investment and to acquire an interest in a passive activity), an interest allocation must be made. See Temporary Regulations section 1.163-8T for the interest allocation rules.

Do not include interest on indebtedness incurred or continued to purchase or carry obligations if the interest is wholly exempt from income tax. For exceptions, see section 265(b).

Generally, a cash basis taxpayer cannot deduct prepaid interest allocable to years following the current tax year. For example, a cash basis calendar year taxpayer who in 1993 prepaid interest allocable to any period after 1993 can deduct only the amount allocable to 1993.

Generally, the interest and carrying charges on straddles must be capitalized. See section 263(g).

See section 163(e)(5) for special rules for the disqualified portion of original issue discount on a high yield discount obligation.

Certain interest paid or accrued by the REIT (directly or indirectly) to a related person may be limited if no tax is imposed on that interest. See section 163(j) for more detailed information.

See section 7872 for special rules on the deductibility of foregone interest on certain below-market-rate loans.

**Line 16. Depreciation.**—Besides depreciation, include on line 16 the part of the cost that the REIT elected to expense under section 179 for certain tangible property placed in service during tax year 1993 or carried over from 1992. See **Form 4562**, Depreciation and Amortization, and its instructions.

**Line 18. Other deductions.**—**Note:** *Do not deduct penalties such as those listed under Interest and Penalties beginning on page 3.*

Attach a schedule, listing by type and amount, all allowable deductions that are not deductible elsewhere on Form 1120-REIT. Enter the total on this line.

Include on this line charitable contributions deductible under section 170 and amortization of organization expenses. Include contributions or gifts actually paid within the tax year to or for the use of charitable and governmental organizations described in section 170(c) and any unused contributions carried over from prior years.

The total amount claimed may not be more than 10% of taxable income. See section 170(b)(2) for more information.

If a REIT (other than a closely held corporation) contributes property other than cash and the deduction claimed for the property exceeds \$500, the REIT must attach a schedule to the return describing the kind of property contributed and the method used to determine its fair market value. A closely held REIT must complete **Form 8283**, Noncash Charitable Contributions, and attach it to its return. All other REITs generally must complete and attach Form 8283 to their returns for contributions of property other than money if the total claimed deduction for all property contributed was more than \$5,000.

REITs on the accrual basis may elect to deduct contributions paid by the 15th day of the 3rd month after the end of the tax year if the contributions are authorized by the board of directors during the tax year. Attach a declaration to the return, signed by an officer, stating that the resolution authorizing the contributions was adopted by the board of directors during the tax year. Also attach a copy of the resolution.

A REIT must also keep records, as required by the regulations for section 170, for all of its charitable contributions.

If the contribution carryover is included, show the amount and how it was determined.

Also include on line 18 the deduction for contributions to qualified pension, profit-sharing, or other funded deferred compensation plans. Employers who maintain such a plan generally must file one of the forms listed below, even if the plan is not a qualified plan under the Internal Revenue Code. The filing requirement applies even if the REIT does not claim a deduction for the current tax year. There are penalties for failure to file these forms on time and for overstating the pension plan deduction. See sections 6652(e) and 6662(f).

**Form 5500.**—Complete this form for each plan with 100 or more participants.

**Form 5500-C/R.**—Complete this form for each plan with fewer than 100 participants.

**Form 5500-EZ.**—Complete this form for a one-participant plan. The term “one-participant plan” also means a plan that covers the owners and their spouses or a plan that covers partners in a business partnership (or the partners and their spouses).

Generally, a deduction may not be taken for any amount that is allocable to a class of exempt income. See section 265(b) for exceptions.

Generally, a REIT can deduct only 80% of the amount otherwise allowable for meals and entertainment expenses. Also, meals must not be lavish or extravagant; a bona fide business discussion must occur during, immediately before, or immediately after the meal; and an employee of the REIT must be present at the meal. See section 274(k)(2) for exceptions. If a REIT claims a deduction for unallowable meal expenses, it may have to pay a penalty.

Additional limitations apply to deductions for gifts, skybox rentals, luxury water travel, convention expenses, and entertainment tickets. For details, see section 274 and **Pub. 463**, Travel, Entertainment, and Gift Expenses.

Generally, a REIT can deduct all other ordinary and necessary travel expenses paid or incurred in its trade or business. However, it cannot deduct an expense paid or incurred for a facility (such as a yacht or hunting lodge) that is used for an activity that is usually considered entertainment, amusement, or recreation.

**Note:** *The REIT may be able to deduct the expense if the amount is treated as compensation and reported on Form W-2 for an employee or on Form 1099-MISC for an independent contractor.*

The following expenses are not deductible if paid or incurred after December 31, 1993:

- Club dues
- Travel expenses for a spouse, dependent, and certain other individuals accompanying an officer or employee of the REIT on business travel.

See **Changes To Note** on page 1.

**Deduction for clean-fuel vehicles and certain refueling property.**—Section 179A allows a deduction for part of the cost of qualified clean-fuel vehicle property and qualified clean-fuel vehicle refueling property (defined below) placed in service after June 30, 1993.

**Qualified clean-fuel property** includes:

1. The part of the basis of a new vehicle designed to use a clean-burning fuel that is attributable to an engine that uses that fuel (and its related fuel storage, delivery, and exhaust systems), and

2. New retrofit parts and components used to convert a motor vehicle to operate on a clean-burning fuel.

Clean-burning fuels are natural gas, liquefied natural gas, liquefied petroleum (LP) gas, hydrogen, electricity, and fuels containing at least 85% alcohol (including methanol or ethanol) or ether.

The deduction for most motor vehicles (except certain trucks and vans), is limited

to \$2,000 per vehicle. A motor vehicle is any vehicle that has at least 4 wheels and is made for use on public roads.

The deduction for trucks and vans with a gross vehicle weight (gvw) over 10,000 pounds but not over 26,000 pounds is limited to \$5,000 per vehicle.

The deduction for trucks and vans with a gvw over 26,000 pounds and for buses that seat at least 20 adult passengers is limited to \$50,000 per vehicle.

If a vehicle may be propelled by both a clean-burning fuel and any other fuel, only the incremental cost of permitting the use of the clean-burning fuel is taken into account.

**Qualified clean-fuel vehicle refueling property** is new depreciable property used to store or dispense clean-burning fuels (or to recharge an electric vehicle) that is located at the point where the fuel is delivered into the tank of a clean-fuel vehicle (or where the vehicle is recharged). The deduction for this property is limited to \$100,000 per location.

For more details, see section 179A.

**Line 20. Taxable income before net operating loss deduction, total deduction for dividends paid, and section 857(b)(2)(E) deduction.**—Special at-risk rules under section 465 generally apply to closely held REITs engaged in any activity as a trade or business or for the production of income. These REITs may have to adjust the amount on line 20. But the at-risk rules do not apply to the following:

- Holding real property placed in service by the taxpayer before 1987;
- Equipment leasing under sections 465(c)(4), (5), and (6); and
- Any qualifying business of a qualified corporation under section 465(c)(7).

However, the at-risk rules do apply to the holding of mineral property.

For more information, see section 465 and **Form 6198**, At-Risk Limitations.

**Line 21a. Net operating loss deduction.**—The net operating loss (NOL) incurred by a REIT in one tax year may be used to reduce the REIT’s taxable income in another year. Generally, a REIT may carry an NOL over to each of the 15 years following the year of loss. REITs are **not** permitted to carry back an NOL to any year preceding the year of the loss. In addition, an NOL from a year that is not a REIT year may not be carried back to any year that is a REIT year. Enter on line 21a the total NOL carryovers from prior tax years, but do not enter more than the REIT’s taxable income. An NOL deduction cannot be taken in a year in which the REIT has negative taxable income. Attach a schedule showing the computation of the NOL deduction. Also complete question 12 on Schedule K.

For more information about NOLs and the NOL deduction, get **Pub. 536**, Net Operating Losses. Also see section 172(d)(6).

If capital gain dividends are paid during any tax year, the amount of the net capital gain for such tax year (to the extent of the capital gain dividends) is excluded in

determining: (1) the NOL for the tax year, and (2) the amount of the NOL of any prior tax year that may be carried over to any succeeding tax year.

After the REIT has applied the NOL to the first tax year to which it may be carried, the taxable income of that year is modified (as described in section 172(b)) to determine how much of the remaining loss may be carried to other years. See section 172(b) and the related regulations for details.

Special rules apply when an ownership change occurs (i.e., for any tax year ending after a post-1986 ownership change, the amount of the taxable income of a loss corporation that can be offset by pre-change NOL carryovers is limited). See section 382. Also see Temporary Regulations section 1.382-2T(a)(2)(ii), which requires that a loss corporation file an information statement with its income tax return for each tax year that it is a loss corporation and certain shifts in ownership occurred.

See section 384 for the limitation on the use of preacquisition losses of one corporation to offset recognized built-in gains of another corporation.

## Tax and Payments

**Line 24b. Estimated tax payments.**—Enter any estimated tax payments the REIT made for the tax year.

**Line 24h.**—Add the amounts on lines 24d through 24g and enter the total on line 24h.

**Backup withholding.**—If the REIT had income tax withheld from any payments it received because, for example, it failed to give the payer its correct EIN, include the amount withheld in the total for line 24h. This type of withholding is called backup withholding. Show the amount withheld in the blank space in the right-hand column between lines 23 and 24h, and write “backup withholding.”

**Line 25. Estimated tax penalty.**—A REIT that does not make estimated tax payments when due may be subject to an underpayment penalty for the period of underpayment. Generally, a REIT is subject to the penalty if its tax liability is \$500 or more, and it did not timely pay the smaller of (a) 97% of its alternative minimum tax minus the credit for Federal tax paid on fuels for 1993 as shown on the return, or (b) 100% of its prior year’s tax (computed in the same manner). See section 6655 for details and exceptions, including special rules for large corporations.

**Note:** *The estimated tax penalty is waived for underpayments of estimated taxes for any period before March 16, 1994, to the extent that the underpayment is attributable to changes made by the Revenue Reconciliation Act of 1993.*

**Form 2220**, Underpayment of Estimated Tax by Corporations, is used to see if the REIT owes a penalty and to figure the amount of the penalty. Generally, the REIT does not have to file this form because the IRS can figure the amount of any penalty and bill the REIT for it. However, the REIT must complete and attach Form 2220 even

if the REIT does not owe the penalty if any of the following apply.

- The annualized income or adjusted seasonal installment method is used.
- The REIT is a large corporation computing its first required installment based on the prior year's tax. (See the Form 2220 instructions for the definition of a large corporation.)
- The REIT is claiming a waiver of the penalty as described in the **Note** above.

If Form 2220 is attached, check the box on line 25, page 1, Form 1120-REIT, and enter the amount of any penalty on this line.

## Part II—Tax on Net Income From Foreclosure Property

Do NOT complete Part II unless the total of the gross income, gains, losses, and deductions from foreclosure property (as defined in section 856(e)) results in net income. If an overall net loss results, report the gross income, gains, losses, and deductions from foreclosure property on the appropriate lines in Part I, page 1.

Property may be treated as foreclosure property only if the property meets the requirements of section 856(e) and the REIT elects to so treat the property in the year the property was acquired. This election must be made by the due date for filing Form 1120-REIT (including extensions) by attaching a statement indicating that the election under section 856(e) is being made and identifying the property to which the election applies. The statement must also set forth the name, address, and EIN of the REIT, the date the property was acquired, and a brief description of how the property was acquired (including the name of the person from whom the property was acquired and a description of the lease or debt with respect to which default occurred or was imminent). Once made, the election is irrevocable. See section 856(e) and Regulations section 1.856-6 for additional information.

**Line 2. Gross income from foreclosure property.**—Do NOT include amounts described in sections 856(c)(3)(A), (B), (C), (D), (E), or (G). These amounts must be reported in Part I.

**Line 4. Deductions.**—Only those expenses that have a proximate and primary relationship to the earning of the income shown on line 3 may be deducted to arrive at net income from foreclosure property. The deductions include depreciation on foreclosure property, interest paid or accrued on debt of the REIT that is attributable to the carrying of the property, real estate taxes, and fees charged by an independent contractor to manage such property. Do not deduct general overhead and administrative expenses in Part II.

## Part III—Tax Imposed Under Section 857(b)(5) for Failure To Meet Certain Source-of-Income Requirements

All REITs must complete lines 1a through 8 of Part III. If line 8 is zero, the tax imposed under section 857(b)(5) does not apply and **Page 8**

the rest of Part III should not be completed. If line 8 is greater than zero, complete all of Part III and enter the tax from line 16 on Schedule J, line 3c.

**Caution:** *If line 8 is greater than zero, the REIT MUST:*

- Attach a schedule listing the nature and amount of each item of its gross income described in sections 856(c)(2) and (3);
- Not have fraudulently included any incorrect information in the attached schedule; and
- Have reasonable cause for not meeting the requirements of sections 856(c)(2) and (3).

Failure to meet these three conditions will terminate the election to be treated as a REIT effective for this tax year and all succeeding tax years.

## Part IV—Tax on Net Income From Prohibited Transactions

Section 857(b)(6) imposes a tax equal to 100% of the net income derived from prohibited transactions. The 100% tax is imposed to prevent a REIT from retaining any profit from ordinary retailing activities such as sales to customers of condominium units or subdivided lots in a development tract.

**Line 1. Gain from the sale or other disposition of property.**—Include only gain from the sale or other disposition of property described in section 1221(1) that is not foreclosure property (as defined in section 856(e)) and that does not qualify as an exception under section 857(b)(6)(C).

Do not net losses from prohibited transactions against gains in determining the amount to enter on line 1. Enter losses from prohibited transactions on the appropriate line in Part I.

**Line 2. Deductions.**—Only those expenses that have a proximate and primary relationship to the earning of the income shown on line 1 may be deducted to arrive at net income from prohibited transactions. Do not deduct general overhead and administrative expenses in Part IV.

## Tax on Certain Built-In Gains

The IRS expects to issue regulations under section 337(d) that will impose a tax on the net built-in gain of C corporation assets in connection with:

1. The qualification of a corporation to be taxed as a REIT, or
2. The transfer of such assets to a REIT in a carryover basis transaction.

Generally, the net built-in gain equals the excess of total gains over total losses that would have been realized if the corporation had sold all of its assets at their respective fair market values on the relevant date described below and immediately liquidated. Unless the corporation makes the election described below, the gain must be recognized by the corporation as of: **(a)** the last day of the tax year immediately preceding the year in which it qualified as a REIT, in the case of **1** above; or **(b)** the day before the date of the transfer of assets, in the case of **2** above.

**Election.**—The regulations will allow the REIT to elect to pay the tax on any built-in gains recognized within a 10-year period on the assets held by the corporation before it was taxed as a REIT or before it transferred the assets in a carryover basis transaction to the REIT. The built-in gains of an electing REIT and the tax imposed on the gains will be subject to rules similar to the rules relating to net income from foreclosure property under section 857.

In the case of a corporation qualifying to be taxed as a REIT, the regulations generally will apply to tax years beginning after June 9, 1987. However, the regulations will not apply to any corporation that was taxed as a REIT for its tax year that included June 9, 1987. In the case of carryover basis transactions, the regulations will generally apply to transactions occurring after June 9, 1987.

For more information, see Notice 88-19, 1988-1 C.B. 486.

**Note:** *Details on how to compute and report this tax on Form 1120-REIT (if the REIT makes the election described above) will be announced by the IRS after publication of the regulations under section 337(d). If the REIT is required to file Form 1120-REIT before these details are announced, the REIT should not include the built-in gains tax on Form 1120-REIT at the time of original filing. Rather, the tax should be reported on an amended Form 1120-REIT filed after the announcement is issued by the IRS.*

## Schedule A—Deduction for Dividends Paid

**Lines 1 through 5.**—Section 561 (taking into account sections 857(b)(8) and 858(a)) determines the deduction for dividends paid.

**Line 3.**—Dividends declared in October, November, or December and payable to shareholders of record in October, November, or December are treated by the REIT as paid on December 31 of that calendar year. The REIT is then eligible for the deduction for dividends paid for the year the dividends are declared even though they are not actually paid until January of the following calendar year.

If the REIT declared dividends in any of those months and actually paid them in January, as discussed above, enter on line 3 those dividends not already included on lines 1, 2, and 4 of Schedule A.

**Line 6.**—If, for any tax year the REIT has net income from foreclosure property (as defined in section 857(b)(4)(B)), the deduction for dividends paid to be entered on line 6 (and on line 21b, page 1) is determined by multiplying the amount on line 5 by the following fraction:

$$\frac{\text{REIT taxable income (determined without regard to the deduction for dividends paid)}}{\text{REIT taxable income (determined without regard to the deduction for dividends paid) + (Net income from foreclosure property minus the tax on net income from foreclosure property)}}$$



**Schedule J—Tax Computation**

**Lines 1 and 2**

**Members of a controlled group.**—A member of a controlled group, as defined in section 1563, must check the box on line 1 and complete lines 2a and 2b of Schedule J.

Members of a controlled group are entitled to one \$50,000, one \$25,000, and one \$9,925,000 taxable income bracket amount (in that order) on line 2a.

When a controlled group adopts or later amends an apportionment plan, each member must attach to its tax return a copy of its consent to this plan. The copy (or an attached statement) must show the part of the amount in each taxable income bracket apportioned to that member. See Regulations section 1.1561-3(b) for other requirements and for the time and manner of making the consent.

**Equal apportionment plan.** If no apportionment plan is adopted, the members of the controlled group must divide the amount in each taxable income bracket equally among themselves. For example, Controlled Group AB consists of Corporation A and Corporation B. They do not elect an apportionment plan. Therefore, Corporation A and Corporation B are each entitled to: \$25,000 (one-half of \$50,000) in the \$50,000 taxable income bracket on line 2a(1); \$12,500 (one-half of \$25,000) in the \$25,000 taxable income bracket on line 2a(2); and \$4,962,500 (one-half of \$9,925,000) in the \$9,925,000 taxable income bracket on line 2a(3).

**Unequal apportionment plan.** Members of a controlled group may elect an unequal apportionment plan and divide the taxable income brackets as they want. There is no need for consistency between taxable income brackets. Any member of the controlled group may be entitled to all, some, or none of the taxable income brackets. However, the total amount for all members of the controlled group cannot be more than the total amount in each taxable income bracket.

**Additional 5% tax.** Members of a controlled group are treated as one

corporation for purposes of figuring the applicability of the additional 5% tax that must be paid by corporations with taxable income in excess of \$100,000. If the additional tax applies, each member of the controlled group will pay that tax based on the part of the amount that is used in each taxable income bracket to reduce that member's tax. See section 1561(a). Each member of the group must enter its share of the additional 5% tax on line 2b(1) and attach to its tax return a schedule that shows the taxable income of the entire group as well as how its share of the additional 5% tax was figured.

**Additional 3% tax.** Members of a controlled group are treated as one corporation for purposes of figuring the additional 3% tax that must be paid by corporations with taxable income in excess of \$15 million. If the additional tax applies, each member of the controlled group will pay that tax based on the part of the amount that is used in each taxable income bracket to reduce that member's tax. See section 1561(a). Each member of the group must enter its share of the additional 3% tax on line 2b(2) and attach to its tax return a schedule that shows the taxable income of the entire group as well as how its share of the additional 3% tax is figured.

**Line 3a.**—A REIT must compute the tax on REIT taxable income as follows (members of a controlled group should see the instructions for lines 1 and 2):

**Tax Rate Schedule**

**If taxable income (line 22, page 1) is:**

Over—	But not over—	Tax is:	Of the amount over—
\$0	\$50,000	15%	\$0
50,000	75,000	\$7,500 + 25%	50,000
75,000	100,000	13,750 + 34%	75,000
100,000	335,000	22,250 + 39%	100,000
335,000	10,000,000	113,900 + 34%	335,000
10,000,000	15,000,000	3,400,000 + 35%	10,000,000
15,000,000	18,333,333	5,150,000 + 38%	15,000,000
18,333,333	-----	35%	0

**Each member of a controlled group computes its tax as follows:**

- |   |           |
|---|-----------|
| 1. Enter REIT taxable income (line 22, page 1)  | 1. _____  |
| 2. Enter line 1 or the REIT's share of the \$50,000 taxable income bracket, whichever is less   | 2. _____  |
| 3. Subtract line 2 from line 1  | 3. _____  |
| 4. Enter line 3 or the REIT's share of the \$25,000 taxable income bracket, whichever is less   | 4. _____  |
| 5. Subtract line 4 from line 3  | 5. _____  |
| 6. Enter line 5 or the REIT's share of the \$9,925,000 taxable income bracket, whichever is less  | 6. _____  |
| 7. Subtract line 6 from line 5  | 7. _____  |
| 8. Multiply line 2 by 15%   | 8. _____  |
| 9. Multiply line 4 by 25%   | 9. _____  |
| 10. Multiply line 6 by 34%  | 10. _____ |
| 11. Multiply line 7 by 35%  | 11. _____ |
| 12. If the taxable income of the controlled group exceeds \$100,000, enter this member's share of the smaller of: 5% of the taxable income in excess of \$100,000, or \$11,750 (See <b>Additional 5% tax</b> above.)        | 12. _____ |
| 13. If the taxable income of the controlled group exceeds \$15 million, enter this member's share of the smaller of: 3% of the taxable income in excess of \$15 million, or \$100,000 (See <b>Additional 3% tax</b> above.) | 13. _____ |
| 14. Add lines 8 through 13. Enter here and on line 3a, Schedule J.  | 14. _____ |

**Line 3e. Deferred tax amount under section 1291.**—If the REIT was a shareholder in a passive foreign investment company (PFIC), and the fund received an excess distribution or disposed of its investment in the PFIC during the year, it must include the aggregate increase in taxes due under section 1291(c)(2) in the amount entered on line 3e, Schedule J. On the dotted line to the left of line 3e, Schedule J, write "Section 1291" and the amount.

Do not include on line 3e the interest due under section 1291(c)(3). Instead, show the amount of interest owed in the bottom margin of page 1, Form 1120-REIT, and write "Section 1291 interest." For details, see **Form 8621**, Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

**Line 4a. Foreign tax credit.**—To find out when a REIT can take this credit for payment of income tax to a foreign country or U.S. possession, see **Form 1118**, Foreign Tax Credit—Corporations.

**Line 4b.**—Complete line 4b if the REIT can take either of the following credits. Be sure to check the appropriate box.

**Nonconventional source fuel credit.** A credit is allowed for the sale of qualified fuels produced from a nonconventional source. Section 29 contains a definition of qualified fuels, provisions for figuring the credit, and other special rules. Attach a separate schedule to the return showing the computation of the credit.

Also see Form 8827 if any of the 1992 credit is disallowed solely because of the tentative minimum tax limitation. Also see section 53(d).

**Qualified electric vehicle credit.** Include on line 4b any credit from **Form 8834**, Qualified Electric Vehicle Credit. This credit is available for qualified new electric vehicles placed in service after June 30, 1993. Vehicles that qualify for this credit are not eligible for the deduction for clean-fuel vehicles under section 179A.

**Line 4c. General business credit.**—Complete this line if the REIT can take any of the following credits. Complete **Form 3800**, General Business Credit, if the REIT has two or more of these credits, a credit carryforward or carryback (including an ESOP credit), or a passive activity credit. Enter the amount of the general business credit on line 4c, and check the box for Form 3800. If the REIT has only one credit, enter on line 4c the amount of the credit from the form. Also be sure to check the appropriate box for that form.

**Investment credit.** The investment credit was generally repealed for property placed in service after 1985. See **Form 3468**, Investment Credit, for exceptions.

**Jobs credit.** The REIT may qualify to take this credit if it hired members of special targeted groups during the tax year. See **Form 5884**, Jobs Credit, for more information.

**Credit for alcohol used as fuel.** A REIT may be able to take a credit for alcohol used as fuel. Use **Form 6478**, Credit for Alcohol Used as Fuel, to figure the credit.

**Credit for increasing research activities.**

See **Form 6765**, Credit for Increasing Research Activities, and section 41.

**Low-income housing credit.** See **Form 8586**, Low-Income Housing Credit, and section 42.

**Enhanced oil recovery credit.** A REIT may claim a credit for 15% of its qualified enhanced oil recovery costs. Use **Form 8830**, Enhanced Oil Recovery Credit, to figure the credit.

**Disabled access credit.** A REIT may be able to take a credit for certain expenditures paid or incurred to assist individuals with disabilities. See **Form 8826**, Disabled Access Credit, and section 44.

**Renewable electricity production credit.** A REIT may be able to take a credit for electricity produced by the REIT using closed-loop biomass or wind and sold to an unrelated person. See **Form 8835**, Renewable Electricity Production Credit, for details.

**Note:** *If the REIT is not filing Form 3800, but has the credit from Form 8847, Credit for Contributions to Certain Community Development Corporations, include the amount from Form 8847 in the total for line 4c. On the dotted line next to line 4c, write the form number and the amount of the credit.*

**Line 4d. Credit for prior year minimum tax.**—To figure the minimum tax credit and any carryforward of that credit, use **Form 8827**, Credit for Prior Year Minimum Tax—Corporations.

**Line 6. Personal holding company tax.**—A REIT is taxed as a personal holding company under section 542 if:

- At least 60% of its adjusted ordinary gross income for the tax year is personal holding company income, and
- At any time during the last half of the tax year more than 50% in value of its outstanding stock is owned, directly or indirectly, by five or fewer individuals.

See section 543(a) for the definition of personal holding company income and section 543(b)(2) for the definition of adjusted ordinary gross income.

To figure this tax, use **Schedule PH (Form 1120)**, U.S. Personal Holding Company Tax.

**Line 7. Recapture taxes.**—

**Recapture of investment credit.** If the REIT disposed of investment credit property or changed its use before the end of its useful life or recovery period, it may owe a tax. See **Form 4255**, Recapture of Investment Credit, for details.

**Recapture of low-income housing credit.** If the REIT disposed of property (or there was a reduction in the qualified basis of the property) on which it took the low-income housing credit, it may owe a tax. See **Form 8611**, Recapture of Low-Income Housing Credit, and section 42(j) for details.

**Recapture of qualified electric vehicle (QEV) credit.** The REIT must recapture part of the QEV credit it claimed in a prior year, if, within 3 years of the date the vehicle was placed in service, it ceases to qualify for the credit. Get Pub. 535 to see

how to figure the recapture. Include the amount of the recapture in the total for line 7, Schedule J, Form 1120-REIT. On the dotted line next to the entry space, write “QEV” and the amount.

**Line 8. Alternative minimum tax.**—The REIT may owe the alternative minimum tax if it has any of the adjustments and tax preference items listed on **Form 4626**, Alternative Minimum Tax—Corporations. The REIT must file Form 4626 if its taxable income (loss) combined with these adjustments and tax preference items is more than the smaller of:

- \$40,000, or
- The REIT’s allowable exemption amount (from Form 4626).

For this purpose, taxable income does not include the NOL deduction. Get Form 4626 for details.

Reduce the alternative minimum tax by any amount on Form 3800, Schedule A, line 34. On the dotted line to the left of line 8, write “Section 38(c)(2)” and the amount.

**Line 9. Total tax.—Interest on tax attributable to payments received on installment sales of certain timeshares and residential lots.** If the REIT elected to pay interest on the amount of tax attributable to payments received on installment obligations arising from the disposition of certain timeshares and residential lots under section 453(l)(3), it must include the interest due in the amount to be entered on line 9, Schedule J. On the dotted line to the left of line 9, Schedule J, write “Section 453(l)(3) interest” and the amount. Attach a schedule showing the computation.

**Interest on tax deferred under the installment method for certain nondealer installment obligations.** If an obligation arising from the disposition of property to which section 453A applies is outstanding at the close of the year, the REIT must include the interest due under section 453A(c) on line 9, Schedule J. On the dotted line to the left of line 9, Schedule J, write “Section 453A(c) interest” and the amount. Attach a schedule showing the computation.

**Deferred tax and interest on undistributed earnings of a qualified electing fund under section 1294.**—Complete Form 8621 to determine the REIT’s share of tax attributable to the undistributed earnings of a qualified electing fund, or the deferred tax due, if any, as a result of the termination of a section 1294 election. See the instructions for Form 8621 to figure the amount of tax to include in, or subtract from the total on line 9. Form 8621 also explains how to report any interest due under section 1294 on the deferred tax.

**Schedule K—Other Information**

The following instructions apply to questions 1 through 12 on page 3, Form 1120-REIT. Be sure to answer all of the questions that apply to the REIT.

**Question 3**

Check the “Yes” box for question 3 if the REIT is a subsidiary in a parent-subsidiary controlled group.

Any REIT that meets the requirement above should check the “Yes” box. This applies even if the REIT is a subsidiary member of one group and the parent corporation of another.

**Note:** *If the REIT is an “excluded member” of a controlled group (see section 1563(b)(2)), it is still considered a member of a controlled group for this purpose.*

**Parent-subsidiary controlled group.**—The term “parent-subsidiary controlled group” means one or more chains of corporations connected through stock ownership (section 1563(a)(1)). Both of the following requirements must be met:

1. 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of all classes of stock of each corporation in the group (except the parent) must be owned by one or more of the other corporations in the group.

2. The common parent must own at least 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of all classes of stock of at least one of the other corporations in the group.

Stock owned directly by other members of the group is not counted when computing the voting power or value.

See section 1563(d)(1) for the definition of “stock” for purposes of determining stock ownership above.

**Question 5**

Check the “Yes” box if one foreign person owned at least 25% of (a) the total voting power of all classes of stock of the corporation entitled to vote or (b) the total value of all classes of stock of the corporation.

The constructive ownership rules of section 318 apply in determining if a REIT is foreign owned. See section 6038A(c)(5) and the related regulations.

Enter on line 5a the percentage owned by the foreign person specified in question 5. On line 5b, write the name of the owner’s country.

**Note:** *If there is more than one 25%-or-more foreign owner, complete lines 5a and 5b for the foreign person with the highest percentage of ownership.*

**Foreign person.**—The term “foreign person” means:

- A foreign citizen or nonresident alien,
- An individual who is a citizen of a U.S. possession (but who is not a U.S. citizen or resident),
- A foreign partnership,
- A foreign corporation,
- Any foreign estate or trust within the meaning of section 7701(a)(31), or
- A foreign government (or one of its agencies or instrumentalities) to the extent that it is engaged in the conduct of a commercial activity as described in section 892.

**Owner's country.**—For individuals, the term “owner's country” means the country of residence. For all others, it is the country where incorporated, organized, created, or administered.

**Requirement to file Form 5472.**—If the REIT checked “Yes” to question 5, it may have to file **Form 5472**, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Generally, a 25% foreign-owned corporation that had a reportable transaction with a foreign or domestic related party during the tax year must file Form 5472. Form 5472 must be filed by the due date of the REIT's income tax return (including extensions). Attach Form 5472 to the tax return and file a copy of Form 5472 with the Internal Revenue Service Center, Philadelphia, PA 19255.

If the REIT's tax return is not filed when due, Form 5472 must nevertheless be timely filed at the service center where the tax return is due (with a copy to Philadelphia). When the tax return is filed, attach a copy of the previously filed Form 5472.

**Penalties for failure to file Form 5472.**—If a REIT doesn't file Form 5472 as described above, a \$10,000 penalty applies. The penalty also applies for failure to maintain records as required by Regulations section 1.6038A-3. For details, see Form 5472.

#### Question 7

**Foreign financial accounts.**—Check the “Yes” box if either **1** or **2**, below, applies to the REIT. Otherwise, check the “No” box:

1. At any time during the 1993 calendar year the REIT had an interest in or signature or other authority over a bank, securities, or other financial account in a foreign country; and
- The combined value of the accounts was more than \$10,000 at any time during the year; and

- The account was NOT with a U.S. military banking facility operated by a U.S. financial institution.

2. The REIT owns more than 50% of the stock in any corporation that would answer “Yes” to item **1** above.

Get **Form TD F 90-22.1**, Report of Foreign Bank and Financial Accounts, to see if the REIT is considered to have an interest in or signature or other authority over a financial account in a foreign country.

If “Yes” is checked for this question, file Form TD F 90-22.1 by June 30, 1994, with the Department of the Treasury at the address shown on the form. Form TD F 90-22.1 is not a tax return, so do not file it with Form 1120-REIT.

Form TD F 90-22.1 may be obtained from IRS Forms Distribution Centers or by calling the IRS toll-free number, 1-800-TAX-FORM (1-800-829-3676).

Also, if “Yes” is checked for this question, write the name of the foreign country or countries. Attach a separate sheet if more space is needed.

#### Question 11

**Tax-exempt interest.**—Show any tax-exempt interest received or accrued. Include any exempt-interest dividends received as a shareholder in a mutual fund or other regulated investment company.

#### Question 12

Enter the amount of the net operating loss (NOL) carryover to the tax year from prior years, regardless of whether any of the loss is used to offset income on this return. The amount to enter is the total of all NOLs generated in prior years but not used to offset income in a tax year prior to 1993. Do not reduce the amount by any NOL deduction reported on line 21a.

Pub. 536 has a worksheet for figuring a corporation's NOL carryover.

---

## Schedule L—Balance Sheets

**Line 4. Tax-exempt securities.**—Include on this line:

1. State and local government obligations, the interest on which is excludable from gross income under section 103(a), and
2. Stock in a mutual fund or other regulated investment company that distributed exempt-interest dividends during the tax year of the REIT.

---

## Schedule M-1—Reconciliation of Income (Loss) per Books With Income per Return

**Line 5c. Travel and entertainment.**—Include on line 5c any of the following:

- The 20% of the meals and entertainment not allowed under section 274(n).
- Expenses for the use of an entertainment facility.
- The part of business gifts over \$25.
- Expenses of an individual in excess of \$2,000, which are allocable to conventions on cruise ships.
- Employee achievement awards over \$400.
- The cost of entertainment tickets over face value (also subject to 20% disallowance under section 274(n)).
- The cost of skyboxes over the face value of nonluxury box seat tickets.
- The part of luxury water travel not allowed under section 274(m).
- Expenses for travel as a form of education.
- Other travel and entertainment expenses not allowed as a deduction.

**Line 7. Tax-exempt interest.**—Include as interest on line 7 any exempt-interest dividends received by the REIT as a shareholder in a mutual fund or other regulated investment company.

