

118TH CONGRESS
1ST SESSION

H. R. 3749

To amend the Internal Revenue Code of 1986 to modify the treatment of certain rents received by real estate investment trusts from related parties.

IN THE HOUSE OF REPRESENTATIVES

MAY 30, 2023

Mr. LAHOOD (for himself and Mr. SCHNEIDER) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to modify the treatment of certain rents received by real estate investment trusts from related parties.

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 “Retail Revitalization
5 Act of 2023”.

6 **SEC. 2. MODIFICATION OF TREATMENT OF CERTAIN RENTS**

7 **RECEIVED BY REAL ESTATE INVESTMENT**

8 **TRUST FROM RELATED PARTIES.**

9 (a) SPECIAL RULE FOR DISTRESSED TENANTS.—

1 (1) IN GENERAL.—Section 856(d) of the Inter-
2 nal Revenue Code of 1986 is amended by adding at
3 the end the following new paragraph:

4 “(10) SPECIAL RULE FOR DISTRESSED TEN-
5 ANTS.—

6 “(A) IN GENERAL.—Except as otherwise
7 provided by the Secretary, in the case of a real
8 estate investment trust which makes a qualified
9 acquisition of a qualified tenant during the 4-
10 year period beginning on the date of the enact-
11 ment of this paragraph, paragraph (2)(B) shall
12 be applied with respect to such tenant by sub-
13 stituting ‘50 percent’ for ‘10 percent’ each
14 place it appears therein.

15 “(B) QUALIFIED ACQUISITION.—For pur-
16 poses of this paragraph—

17 “(i) IN GENERAL.—The term ‘quali-
18 fied acquisition’ means the acquisition by a
19 real estate investment trust of stock, as-
20 sets, or net profits in connection with the
21 bankruptcy, insolvency (within the mean-
22 ing of section 108(d)(3)), or cash flow in-
23 solvency of a qualified tenant.

24 “(ii) CASH FLOW INSOLVENCY.—For
25 purposes of clause (i), a qualified tenant

1 shall be treated as having cash flow insol-
2 vency following a reasonable determination
3 by the real estate investment trust, based
4 upon an examination of the facts and cir-
5 cumstances, that such tenant’s revenue is
6 insufficient to cover its debt service pay-
7 ments based on such tenant’s applicable fi-
8 nancial statement (as defined in section
9 451(b)(3)).

10 “(C) QUALIFIED TENANT.—For purposes
11 of this paragraph—

12 “(i) IN GENERAL.—The term ‘quali-
13 fied tenant’ means, with respect to any ac-
14 quisition referred to in subparagraph (B),
15 any person from which the real estate in-
16 vestment trust received or accrued rents
17 from real property pursuant to a lease
18 which was in effect on the date of the en-
19 actment of this paragraph.

20 “(ii) RENEWALS, ETC., OF EXISTING
21 LEASES.—For purposes of clause (i), a
22 lease shall be treated as in effect on the
23 date of the enactment of this paragraph if
24 the conditions of paragraph (9)(C) are sat-
25 isfied.

1 “(iii) SUCCESSORS.—The term ‘quali-
2 fied tenant’ shall include a person if such
3 person is a successor to a qualified tenant
4 within the meaning of subsection (g) (with-
5 out regard to such person’s status as a
6 real estate investment trust or any con-
7 tinuity of shareholder interest requirement)
8 or for purposes of section 381.

9 “(D) LIMITATION ON PERIOD FOR WHICH
10 TREATMENT APPLIES.—With respect to any
11 qualified acquisition, subparagraph (A) shall
12 apply only to amounts received or accrued dur-
13 ing the 7-taxable-year period beginning with the
14 taxable year which includes the date of such ac-
15 quisition.

16 “(E) COORDINATION WITH CERTAIN
17 OTHER PROVISIONS.—For purposes of clauses
18 (i) and (v) of paragraph (8)(A), whether a per-
19 son is described in paragraph (2)(B) shall be
20 determined after application of subparagraph
21 (A) of this paragraph.”.

22 “(2) CONFORMING AMENDMENT.—Section
23 856(d)(2)(B) of such Code is amended by striking
24 “paragraph (8)” and inserting “paragraphs (8) and
25 (10)”.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to qualified acquisi-
3 tions (as defined in section 856(d)(10)(B) of the In-
4 ternal Revenue Code of 1986, as added by this sub-
5 section) after the date of the enactment of this Act,
6 in taxable years ending after such date.

7 (b) INCREASE IN PERCENTAGE OF OWNERSHIP AT
8 WHICH RENTS ARE GENERALLY DISQUALIFIED.—

9 (1) IN GENERAL.—Section 856(d)(2)(B) of
10 such Code is amended by striking “10 percent” each
11 place it appears and inserting “30 percent”.

12 (2) EFFECTIVE DATE.—The amendment made
13 by this subsection shall apply to taxable years end-
14 ing after the date of the enactment of this Act.

15 (c) INCREASE IN PERCENTAGE OF OWNERSHIP AT
16 WHICH CONSTRUCTIVE OWNERSHIP RULES BEGIN TO
17 APPLY.—

18 (1) IN GENERAL.—Section 856(d)(5) of such
19 Code is amended—

20 (A) by striking “10 percent” in subpara-
21 graph (A) and inserting “30 percent”, and

22 (B) by striking “25 percent” in subpara-
23 graph (B) and inserting “30 percent”.

1 (2) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to taxable years end-
3 ing after the date of the enactment of this Act.

4 (d) LIMITATION ON APPLICATION OF CONSTRUCTIVE
5 OWNERSHIP RULES.—

6 (1) IN GENERAL.—Section 856(d)(5) of such
7 Code is amended by striking “and” at the end of
8 subparagraph (A), by striking the period at the end
9 of subparagraph (B) and inserting “, and”, and by
10 adding at the end the following:

11 “(C) except as otherwise provided by the
12 Secretary, stock, assets, and net profits con-
13 structively owned by a partnership, estate,
14 trust, or corporation by reason of the applica-
15 tion of section 318(a)(3) (after application of
16 subparagraphs (A) and (B)) shall not be con-
17 sidered as owned by it for purposes of again ap-
18 plying such section in order to make another
19 person the constructive owner of such stock, as-
20 sets, or net profits.

21 Subparagraph (C) shall not prevent any person from
22 being the constructive owner of stock, assets, or net
23 profits of any person as the result of any other ap-
24 plication of section 318(a) (as modified by this para-
25 graph).”.

1 (2) NO INFERENCE.—Nothing in the amend-
2 ments made by paragraph (1) shall be construed to
3 create any inference with respect to the proper appli-
4 cation of section 318 of the Internal Revenue Code
5 of 1986 to cases other than cases to which such
6 amendments apply.

7 (3) EFFECTIVE DATE.—The amendments made
8 by this subsection shall apply to taxable years end-
9 ing after the date of the enactment of this Act.

10 (e) MODIFICATION OF RENTAL EXCEPTION FOR
11 TAXABLE REIT SUBSIDIARIES.—

12 (1) IN GENERAL.—Section 856(d)(8)(A)(i) of
13 such Code is amended to read as follows:

14 “(i) IN GENERAL.—The requirements
15 of this subparagraph are met with respect
16 to any property if—

17 “(I) not more than 30 percent of
18 the leasable space of such property is
19 rented to taxable REIT subsidiaries
20 and other persons described in para-
21 graph (2)(B) (determined without re-
22 gard to paragraph (10)), and

23 “(II) not more than 50 percent
24 of the leasable space of such property
25 is rented to taxable REIT subsidiaries

1 and other persons described in para-
2 graph (2)(B) (determined after the
3 application of paragraph (10)).”.

4 (2) EFFECTIVE DATE.—The amendment made
5 by this subsection shall apply to taxable years end-
6 ing after the date of the enactment of this Act.

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