

Digital Realty Trust, Inc.  
Form 8-K  
April 02, 2013

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 OR 15(d) of**

**The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): April 2, 2013**

**DIGITAL REALTY TRUST, INC.**

**DIGITAL REALTY TRUST, L.P.**

**(Exact name of registrant as specified in its charter)**

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|  |                                 |                                       |
|--|---------------------------------|---------------------------------------|
| <b>Maryland</b>                                      | <b>001-32336</b>                | <b>26-0081711</b>                     |
| <b>Maryland</b><br>(State or other jurisdiction      | <b>000-54023</b><br>(Commission | <b>20-2402955</b><br>(I.R.S. Employer |
| of incorporation)                                    | File Number)                    | Identification No.)                   |
| <b>Four Embarcadero Center, Suite 3200</b>           |                                 |                                       |
| <b>San Francisco, California</b>                     |                                 |                                       |
| (Address of principal executive offices)             | <b>(415) 738-6500</b>           | <b>94111</b><br>(Zip Code)            |
| (Registrant's telephone number, including area code) |                                 |                                       |

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 8.01 Other Events.**

**SUPPLEMENTAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

This discussion is a supplement to, and is intended to be read together with, the discussion under the heading "United States Federal Income Tax Considerations" included in our Registration Statement on Form S-3 (File No. 333-180886 and 333-180886-01), which we refer to as the Registration Statement, and supersedes, in its entirety, the discussion under the heading "Supplemental United States Federal Income Tax Considerations" included in our Current Report on Form 8-K filed with the SEC on June 26, 2012. This summary is for general information only and is not tax advice.

*The following is a supplement to, and should be read together with, the discussion under the heading "United States Federal Income Tax Considerations - Taxation of Our Company" in the Registration Statement.*

*Proposed Treasury Regulations Regarding Certain Asset Dispositions*

If we acquire any asset from a corporation which is or has been a C corporation in a transaction in which the tax basis of the asset in our hands is less than the fair market value of the asset, in each case determined at the time we acquired the asset, and we subsequently recognize gain on the disposition of the asset during the ten-year period beginning on the date on which we acquired the asset, then as described in the Registration Statement under the heading "Taxation of Our Company-General," we generally will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (a) the fair market value of the asset over (b) our adjusted basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that the necessary parties make or refrain from making the appropriate elections under the applicable Treasury regulations then in effect.

The IRS has issued Proposed Treasury Regulations which would exclude from the application of this built-in gains tax any gain from the sale of property acquired by us in an exchange under Section 1031 (a like kind exchange) or 1033 (an involuntary conversion) of the Code. These Proposed Treasury Regulations will not be effective unless they are issued in final form, and as of the date of this report, it is not possible to determine whether the proposed regulations will be finalized in their current form or at all.

*The following discussion supersedes the first three paragraphs in the discussion under the heading "United States Federal Income Tax Considerations - Taxation of Our Company-Annual Distribution Requirements" in the Registration Statement.*

To maintain our qualification as a REIT, we are required to distribute dividends, other than capital gain dividends, to our stockholders in an amount at least equal to the sum of:

90% of our REIT taxable income ; and

90% of our after tax net income, if any, from foreclosure property; minus

the excess of the sum of specified items of our non-cash income over 5% of our REIT taxable income as described below.

For these purposes, our REIT taxable income is computed without regard to the dividends paid deduction and our net capital gain. In addition, for purposes of this test, non-cash income generally means income attributable to leveling of stepped rents, original issue discount, cancellation of indebtedness, and any like-kind exchanges that are later determined to be taxable.

Also, our REIT taxable income will be reduced by any taxes we are required to pay on any gain we recognize from the disposition of any asset we acquired from a corporation which is or has been a C corporation in a

transaction in which our basis in the asset is less than the fair market value of the asset, in each case determined at the time we acquired the asset, within the ten-year period following our acquisition of such asset. See Proposed Treasury Regulations Regarding Certain Asset Dispositions above.

*The following discussion supersedes the discussion under the headings United States Federal Income Tax Considerations Tax Rates and Tax Rates Medicare Tax on Unearned Income in the Registration Statement.*

**Tax Rates.** Beginning January 1, 2013, the maximum tax rate for non-corporate taxpayers for (1) capital gains, including certain capital gain dividends, is generally 20% (although depending on the characteristics of the assets that produced these gains and on designations that we may make, certain capital gain dividends may be taxed at a 25% rate) and (2) qualified dividend income is generally 20%. However, dividends payable by REITs are not eligible for the 20% tax rate on qualified dividend income, except to the extent that certain holding requirements have been met and the REIT's dividends are attributable to dividends received from taxable corporations (such as its taxable REIT subsidiaries) or to income that was subject to tax at the corporate/REIT level (for example, if the REIT distributed taxable income that it retained and paid tax on in the prior taxable year). In addition, United States stockholders that are corporations may be required to treat up to 20% of some capital gain dividends as ordinary income.

*Medicare Tax on Unearned Income.* Certain United States stockholders that are individuals, estates or trusts are required pay an additional 3.8% tax on, among other things, dividends on and capital gains from the sale or other disposition of stock. United States stockholders should consult their tax advisors regarding the effect, if any, of these rules on their ownership and disposition of our capital stock.

*The following discussion supersedes the discussion under the heading United States Federal Income Tax Considerations Foreign Accounts in the Registration Statement.*

**Foreign Accounts.** Withholding taxes may apply to certain types of payments made to foreign financial institutions (as specially defined in the Code) and certain other non-United States entities. Specifically, a 30% withholding tax may be imposed on dividends on, and gross proceeds from the sale or other disposition of, our capital stock paid to a foreign financial institution or to a non-financial foreign entity, unless (1) the foreign financial institution undertakes certain diligence and reporting, (2) the non-financial foreign entity either certifies it does not have any substantial United States owners or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in clause (1) above, it must enter into an agreement with the United States Treasury requiring, among other things, that it undertake to identify accounts held by certain United States persons or United States-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing these rules may be subject to different rules.

The IRS has issued final Treasury Regulations providing that the withholding provisions described above will generally apply to payments of dividends made on or after January 1, 2014 and to payments of gross proceeds from a sale or other disposition of capital stock on or after January 1, 2017. Because we may not know the extent to which a distribution is a dividend for United States federal income tax purposes at the time it is made, for purposes of these withholding rules we may treat the entire distribution as a dividend. Prospective investors should consult their tax advisors regarding these withholding provisions.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrants have duly caused this report to be signed on their behalf by the undersigned hereunto duly authorized.

Date: April 2, 2013

**Digital Realty Trust, Inc.**

By: /s/ Joshua A. Mills

**Joshua A. Mills**  
**Senior Vice President, General Counsel**

**and Assistant Secretary**

**Digital Realty Trust, L.P.**

By: Digital Realty Trust, Inc.  
Its general partner

By: /s/ Joshua A. Mills

**Joshua A. Mills**  
**Senior Vice President, General Counsel**

**and Assistant Secretary**