

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.**

**H. R. 4213**

An Act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT In the Nature of a Substitute intended to be proposed by Mr. BAUCUS

Viz:

1 In lieu of the matter proposed to be inserted, insert  
2 the following:

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**  
4 **TABLE OF CONTENTS.**

5 (a) **SHORT TITLE.**—This Act may be cited as the  
6 “American Jobs and Closing Tax Loopholes Act of 2010”.

7 (b) **AMENDMENT OF 1986 CODE.**—Except as other-  
8 wise expressly provided, whenever in titles I, II, and IV  
9 of this Act an amendment or repeal is expressed in terms  
10 of an amendment to, or repeal of, a section or other provi-  
11 sion, the reference shall be considered to be made to a

1 (1) by striking “In the case of any information”  
2 and inserting the following:

3 “(A) IN GENERAL.—In the case of any in-  
4 formation”; and

5 (2) by adding at the end the following:

6 “(B) APPLICATION TO FAILURES DUE TO  
7 REASONABLE CAUSE.—If the failure to furnish  
8 the information referred to in subparagraph (A)  
9 is due to reasonable cause and not willful ne-  
10 glect, subparagraph (A) shall apply only to the  
11 item or items related to such failure.”.

12 (b) EFFECTIVE DATE.—The amendments made by  
13 this section shall take effect as if included in section 513  
14 of the Hiring Incentives to Restore Employment Act.

15 **Subtitle B—Personal Service In-**  
16 **come Earned in Pass-thru Enti-**  
17 **ties**

18 **SEC. 411. PARTNERSHIP INTERESTS TRANSFERRED IN**  
19 **CONNECTION WITH PERFORMANCE OF SERV-**  
20 **ICES.**

21 (a) MODIFICATION TO ELECTION TO INCLUDE PART-  
22 NERSHIP INTEREST IN GROSS INCOME IN YEAR OF  
23 TRANSFER.—Subsection (c) of section 83 is amended by  
24 redesignating paragraph (4) as paragraph (5) and by in-  
25 serting after paragraph (3) the following new paragraph:

1           “(4) PARTNERSHIP INTERESTS.—Except as  
2           provided by the Secretary, in the case of any trans-  
3           fer of an interest in a partnership in connection with  
4           the provision of services to (or for the benefit of)  
5           such partnership—

6                   “(A) the fair market value of such interest  
7                   shall be treated for purposes of this section as  
8                   being equal to the amount of the distribution  
9                   which the partner would receive if the partner-  
10                  ship sold (at the time of the transfer) all of its  
11                  assets at fair market value and distributed the  
12                  proceeds of such sale (reduced by the liabilities  
13                  of the partnership) to its partners in liquidation  
14                  of the partnership, and

15                   “(B) the person receiving such interest  
16                   shall be treated as having made the election  
17                   under subsection (b)(1) unless such person  
18                   makes an election under this paragraph to have  
19                   such subsection not apply.”.

20           (b) CONFORMING AMENDMENT.—Paragraph (2) of  
21           section 83(b) is amended by inserting “or subsection  
22           (c)(4)(B)” after “paragraph (1)”.

23           (c) EFFECTIVE DATE.—The amendments made by  
24           this section shall apply to interests in partnerships trans-  
25           ferred after the date of the enactment of this Act.

1 **SEC. 412. INCOME OF PARTNERS FOR PERFORMING IN-**  
2 **VESTMENT MANAGEMENT SERVICES TREAT-**  
3 **ED AS ORDINARY INCOME RECEIVED FOR**  
4 **PERFORMANCE OF SERVICES.**

5 (a) IN GENERAL.—Part I of subchapter K of chapter  
6 1 is amended by adding at the end the following new sec-  
7 tion:

8 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**  
9 **VESTMENT MANAGEMENT SERVICES TO**  
10 **PARTNERSHIP.**

11 “(a) TREATMENT OF DISTRIBUTIVE SHARE OF  
12 PARTNERSHIP ITEMS.—For purposes of this title, in the  
13 case of an investment services partnership interest—

14 “(1) IN GENERAL.—Notwithstanding section  
15 702(b)—

16 “(A) any net income with respect to such  
17 interest for any partnership taxable year shall  
18 be treated as ordinary income, and

19 “(B) any net loss with respect to such in-  
20 terest for such year, to the extent not dis-  
21 allowed under paragraph (2) for such year,  
22 shall be treated as an ordinary loss.

23 All items of income, gain, deduction, and loss which  
24 are taken into account in computing net income or  
25 net loss shall be treated as ordinary income or ordi-  
26 nary loss (as the case may be).

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1 “(2) TREATMENT OF LOSSES.—

2 “(A) LIMITATION.—Any net loss with re-  
3 spect to such interest shall be allowed for any  
4 partnership taxable year only to the extent that  
5 such loss does not exceed the excess (if any)  
6 of—

7 “(i) the aggregate net income with re-  
8 spect to such interest for all prior partner-  
9 ship taxable years, over

10 “(ii) the aggregate net loss with re-  
11 spect to such interest not disallowed under  
12 this subparagraph for all prior partnership  
13 taxable years.

14 “(B) CARRYFORWARD.—Any net loss for  
15 any partnership taxable year which is not al-  
16 lowed by reason of subparagraph (A) shall be  
17 treated as an item of loss with respect to such  
18 partnership interest for the succeeding partner-  
19 ship taxable year.

20 “(C) BASIS ADJUSTMENT.—No adjustment  
21 to the basis of a partnership interest shall be  
22 made on account of any net loss which is not  
23 allowed by reason of subparagraph (A).

24 “(D) PRIOR PARTNERSHIP YEARS.—Any  
25 reference in this paragraph to prior partnership

1 taxable years shall only include prior partner-  
2 ship taxable years to which this section applies.

3 “(3) NET INCOME AND LOSS.—For purposes of  
4 this section—

5 “(A) NET INCOME.—The term ‘net in-  
6 come’ means, with respect to any investment  
7 services partnership interest for any partner-  
8 ship taxable year, the excess (if any) of—

9 “(i) all items of income and gain  
10 taken into account by the holder of such  
11 interest under section 702 with respect to  
12 such interest for such year, over

13 “(ii) all items of deduction and loss so  
14 taken into account.

15 “(B) NET LOSS.—The term ‘net loss’  
16 means, with respect to such interest for such  
17 year, the excess (if any) of the amount de-  
18 scribed in subparagraph (A)(ii) over the amount  
19 described in subparagraph (A)(i).

20 “(4) SPECIAL RULE FOR DIVIDENDS.—Any div-  
21 idend taken into account in determining net income  
22 or net loss for purposes of paragraph (1) shall not  
23 be treated as qualified dividend income for purposes  
24 of section 1(h).

25 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

1           “(1) GAIN.—Any gain on the disposition of an  
2 investment services partnership interest shall be—

3                   “(A) treated as ordinary income, and

4                   “(B) recognized notwithstanding any other  
5 provision of this subtitle.

6           “(2) LOSS.—Any loss on the disposition of an  
7 investment services partnership interest shall be  
8 treated as an ordinary loss to the extent of the ex-  
9 cess (if any) of—

10                   “(A) the aggregate net income with respect  
11 to such interest for all partnership taxable  
12 years to which this section applies, over

13                   “(B) the aggregate net loss with respect to  
14 such interest allowed under subsection (a)(2)  
15 for all partnership taxable years to which this  
16 section applies.

17           “(3) ELECTION WITH RESPECT TO CERTAIN EX-  
18 CHANGES.—Paragraph (1)(B) shall not apply to the  
19 contribution of an investment services partnership  
20 interest to a partnership in exchange for an interest  
21 in such partnership if—

22                   “(A) the taxpayer makes an irrevocable  
23 election to treat the partnership interest re-  
24 ceived in the exchange as an investment serv-  
25 ices partnership interest, and

1           “(B) the taxpayer agrees to comply with  
2           such reporting and recordkeeping requirements  
3           as the Secretary may prescribe.

4           “(4) DISPOSITION OF PORTION OF INTEREST.—  
5           In the case of any disposition of an investment serv-  
6           ices partnership interest, the amount of net loss  
7           which otherwise would have (but for subsection  
8           (a)(2)(C)) applied to reduce the basis of such inter-  
9           est shall be disregarded for purposes of this section  
10          for all succeeding partnership taxable years.

11          “(5) DISTRIBUTIONS OF PARTNERSHIP PROP-  
12          ERTY.—In the case of any distribution of property  
13          by a partnership with respect to any investment  
14          services partnership interest held by a partner—

15               “(A) the excess (if any) of—

16                   “(i) the fair market value of such  
17                   property at the time of such distribution,  
18                   over

19                   “(ii) the adjusted basis of such prop-  
20                   erty in the hands of the partnership,  
21                   shall be taken into account as an increase in  
22                   such partner’s distributive share of the taxable  
23                   income of the partnership (except to the extent  
24                   such excess is otherwise taken into account in

1 determining the taxable income of the partner-  
2 ship),

3 “(B) such property shall be treated for  
4 purposes of subpart B of part II as money dis-  
5 tributed to such partner in an amount equal to  
6 such fair market value, and

7 “(C) the basis of such property in the  
8 hands of such partner shall be such fair market  
9 value.

10 Subsection (b) of section 734 shall be applied with-  
11 out regard to the preceding sentence. In the case of  
12 a taxpayer which satisfies requirements similar to  
13 the requirements of subparagraphs (A) and (B) of  
14 paragraph (3), this paragraph and paragraph (1)(B)  
15 shall not apply to the distribution of a partnership  
16 interest if such distribution is in connection with a  
17 contribution (or deemed contribution) of any prop-  
18 erty of the partnership to which section 721 applies  
19 pursuant to a transaction described in paragraph  
20 (1)(B) or (2) of section 708(b).

21 “(6) APPLICATION OF SECTION 751.—

22 “(A) IN GENERAL.—In applying section  
23 751, an investment services partnership interest  
24 shall be treated as an inventory item.

1           “(B) EXCEPTION FOR CERTAIN DISPOSI-  
2           TIONS OF INTERESTS IN A PUBLICLY TRADED  
3           PARTNERSHIP.—Except as provided by the Sec-  
4           retary, this paragraph shall not apply in the  
5           case of any (direct or indirect) disposition of an  
6           interest in a publicly traded partnership (as de-  
7           fined in section 7704) which is not an invest-  
8           ment services partnership interest in the hands  
9           of the person disposing of such interest (or the  
10          hands of the person holding such interest indi-  
11          rectly).

12          “(c) INVESTMENT SERVICES PARTNERSHIP INTER-  
13          EST.—For purposes of this section—

14                 “(1) IN GENERAL.—The term ‘investment serv-  
15                 ices partnership interest’ means any interest in a  
16                 partnership which is held (directly or indirectly) by  
17                 any person if it was reasonably expected (at the time  
18                 that such person acquired such interest) that such  
19                 person (or any person related to such person) would  
20                 provide (directly or, to the extent provided by the  
21                 Secretary, indirectly) a substantial quantity of any  
22                 of the following services with respect to assets held  
23                 (directly or indirectly) by the partnership:

1           “(A) Advising as to the advisability of in-  
2           vesting in, purchasing, or selling any specified  
3           asset.

4           “(B) Managing, acquiring, or disposing of  
5           any specified asset.

6           “(C) Arranging financing with respect to  
7           acquiring specified assets.

8           “(D) Any activity in support of any service  
9           described in subparagraphs (A) through (C).

10          “(2) SPECIFIED ASSET.—The term ‘specified  
11          asset’ means securities (as defined in section  
12          475(c)(2) without regard to the last sentence there-  
13          of), real estate held for rental or investment, inter-  
14          ests in partnerships, commodities (as defined in sec-  
15          tion 475(e)(2)), or options or derivative contracts  
16          with respect to any of the foregoing.

17          “(3) EXCEPTION FOR FAMILY FARMS.—The  
18          term ‘specified asset’ shall not include any farm  
19          used for farming purposes if such farm is held by  
20          a partnership all of the interests in which are held  
21          (directly or indirectly) by members of the same fam-  
22          ily. Terms used in the preceding sentence which are  
23          also used in section 2032A shall have the same  
24          meaning as when used in such section.

1           “(4) EXCEPTION FOR PARTNERSHIPS WITH PRO  
2 RATA ALLOCATIONS BASED ON CAPITAL.—Except as  
3 provided by the Secretary, the term ‘investment  
4 services partnership interest’ shall not include any  
5 interest in a partnership if all distributions and all  
6 allocations of the partnership, and of any other part-  
7 nership in which the partnership directly or indi-  
8 rectly holds an interest, are made pro rata on the  
9 basis of the capital contributions of each partner  
10 which constitute qualified capital interests under  
11 subsection (d).

12           “(5) RELATED PERSONS.—A person shall be  
13 treated as related to another person if the relation-  
14 ship between such persons is described in section  
15 267 or 707(b).

16           “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-  
17 ESTS.—

18           “(1) IN GENERAL.—In the case of any portion  
19 of an investment services partnership interest which  
20 is a qualified capital interest, all items of income,  
21 gain, loss, and deduction which are allocated to such  
22 qualified capital interest shall not be taken into ac-  
23 count under subsection (a) if—

24                   “(A) allocations of items are made by the  
25 partnership to such qualified capital interest in

1 the same manner as such allocations are made  
2 to other qualified capital interests held by part-  
3 ners who do not provide any services described  
4 in subsection (c)(1) and who are not related to  
5 the partner holding the qualified capital inter-  
6 est, and

7 “(B) the allocations made to such other in-  
8 terests are significant compared to the alloca-  
9 tions made to such qualified capital interest.

10 “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO  
11 ALLOCATION REQUIREMENTS.—To the extent pro-  
12 vided by the Secretary in regulations or other guid-  
13 ance—

14 “(A) ALLOCATIONS TO PORTION OF QUALI-  
15 FIED CAPITAL INTEREST.—Paragraph (1) may  
16 be applied separately with respect to a portion  
17 of a qualified capital interest.

18 “(B) NO OR INSIGNIFICANT ALLOCATIONS  
19 TO NONSERVICE PROVIDERS.—In any case in  
20 which the requirements of paragraph (1)(B) are  
21 not satisfied, items of income, gain, loss, and  
22 deduction shall not be taken into account under  
23 subsection (a) to the extent that such items are  
24 properly allocable under such regulations or  
25 other guidance to qualified capital interests.

1           “(C) ALLOCATIONS TO SERVICE PRO-  
2           VIDERS’ QUALIFIED CAPITAL INTERESTS WHICH  
3           ARE LESS THAN OTHER ALLOCATIONS.—Alloca-  
4           tions shall not be treated as failing to meet the  
5           requirement of paragraph (1)(A) merely be-  
6           cause the allocations to the qualified capital in-  
7           terest represent a lower return than the alloca-  
8           tions made to the other qualified capital inter-  
9           ests referred to in such paragraph.

10           “(3) SPECIAL RULE FOR CHANGES IN SERV-  
11           ICES.—In the case of an interest in a partnership  
12           which is not an investment services partnership in-  
13           terest and which, by reason of a change in the serv-  
14           ices with respect to assets held (directly or indi-  
15           rectly) by the partnership, would (without regard to  
16           the reasonable expectation exception of subsection  
17           (c)(1)) have become such an interest—

18           “(A) notwithstanding subsection (c)(1),  
19           such interest shall be treated as an investment  
20           services partnership interest as of the time of  
21           such change, and

22           “(B) for purposes of this subsection, the  
23           qualified capital interest of the holder of such  
24           partnership interest immediately after such  
25           change shall not be less than the fair market

1 value of such interest (determined immediately  
2 before such change).

3 “(4) SPECIAL RULE FOR TIERED PARTNER-  
4 SHIPS.—Except as otherwise provided by the Sec-  
5 retary, in the case of tiered partnerships, all items  
6 which are allocated in a manner which meets the re-  
7 quirements of paragraph (1) to qualified capital in-  
8 terests in a lower-tier partnership shall retain such  
9 character to the extent allocated on the basis of  
10 qualified capital interests in any upper-tier partner-  
11 ship.

12 “(5) EXCEPTION FOR NO-SELF-CHARGED  
13 CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-  
14 cept as otherwise provided by the Secretary, an in-  
15 terest shall not fail to be treated as satisfying the  
16 requirement of paragraph (1)(A) merely because the  
17 allocations made by the partnership to such interest  
18 do not reflect the cost of services described in sub-  
19 section (c)(1) which are provided (directly or indi-  
20 rectly) to the partnership by the holder of such in-  
21 terest (or a related person).

22 “(6) SPECIAL RULE FOR DISPOSITIONS.—In the  
23 case of any investment services partnership interest  
24 any portion of which is a qualified capital interest,  
25 subsection (b) shall not apply to so much of any

1 gain or loss as bears the same proportion to the en-  
2 tire amount of such gain or loss as—

3 “(A) the distributive share of gain or loss  
4 that would have been allocated to the qualified  
5 capital interest (consistent with the require-  
6 ments of paragraph (1)) if the partnership had  
7 sold all of its assets at fair market value imme-  
8 diately before the disposition, bears to

9 “(B) the distributive share of gain or loss  
10 that would have been so allocated to the invest-  
11 ment services partnership interest of which such  
12 qualified capital interest is a part.

13 “(7) QUALIFIED CAPITAL INTEREST.—For pur-  
14 poses of this subsection—

15 “(A) IN GENERAL.—The term ‘qualified  
16 capital interest’ means so much of a partner’s  
17 interest in the capital of the partnership as is  
18 attributable to—

19 “(i) the fair market value of any  
20 money or other property contributed to the  
21 partnership in exchange for such interest  
22 (determined without regard to section  
23 752(a)),

24 “(ii) any amounts which have been in-  
25 cluded in gross income under section 83

1 with respect to the transfer of such inter-  
2 est, and

3 “(iii) the excess (if any) of—

4 “(I) any items of income and  
5 gain taken into account under section  
6 702 with respect to such interest, over

7 “(II) any items of deduction and  
8 loss so taken into account.

9 “(B) ADJUSTMENT TO QUALIFIED CAPITAL  
10 INTEREST.—

11 “(i) DISTRIBUTIONS AND LOSSES.—

12 The qualified capital interest shall be re-  
13 duced by distributions from the partner-  
14 ship with respect to such interest and by  
15 the excess (if any) of the amount described  
16 in subparagraph (A)(iii)(II) over the  
17 amount described in subparagraph  
18 (A)(iii)(I).

19 “(ii) SPECIAL RULE FOR CONTRIBU-  
20 TIONS OF PROPERTY.—In the case of any  
21 contribution of property described in sub-  
22 paragraph (A)(i) with respect to which the  
23 fair market value of such property is not  
24 equal to the adjusted basis of such prop-  
25 erty immediately before such contribution,

1 proper adjustments shall be made to the  
2 qualified capital interest to take into ac-  
3 count such difference consistent with such  
4 regulations or other guidance as the Sec-  
5 retary may provide.

6 “(8) TREATMENT OF CERTAIN LOANS.—

7 “(A) PROCEEDS OF PARTNERSHIP LOANS  
8 NOT TREATED AS QUALIFIED CAPITAL INTER-  
9 EST OF SERVICE PROVIDING PARTNERS.—For  
10 purposes of this subsection, an investment serv-  
11 ices partnership interest shall not be treated as  
12 a qualified capital interest to the extent that  
13 such interest is acquired in connection with the  
14 proceeds of any loan or other advance made or  
15 guaranteed, directly or indirectly, by any other  
16 partner or the partnership (or any person re-  
17 lated to any such other partner or the partner-  
18 ship). The preceding sentence shall not apply to  
19 the extent the loan or other advance is repaid  
20 before the date of the enactment of this section  
21 unless such repayment is made with the pro-  
22 ceeds of a loan or other advance described in  
23 the preceding sentence.

24 “(B) REDUCTION IN ALLOCATIONS TO  
25 QUALIFIED CAPITAL INTERESTS FOR LOANS

1 FROM NONSERVICE-PROVIDING PARTNERS TO  
2 THE PARTNERSHIP.—For purposes of this sub-  
3 section, any loan or other advance to the part-  
4 nership made or guaranteed, directly or indi-  
5 rectly, by a partner not providing services de-  
6 scribed in subsection (c)(1) to the partnership  
7 (or any person related to such partner) shall be  
8 taken into account in determining the qualified  
9 capital interests of the partners in the partner-  
10 ship.

11 “(e) OTHER INCOME AND GAIN IN CONNECTION  
12 WITH INVESTMENT MANAGEMENT SERVICES.—

13 “(1) IN GENERAL.—If—

14 “(A) a person performs (directly or indi-  
15 rectly) investment management services for any  
16 entity,

17 “(B) such person holds (directly or indi-  
18 rectly) a disqualified interest with respect to  
19 such entity, and

20 “(C) the value of such interest (or pay-  
21 ments thereunder) is substantially related to  
22 the amount of income or gain (whether or not  
23 realized) from the assets with respect to which  
24 the investment management services are per-  
25 formed,

1 any income or gain with respect to such interest  
2 shall be treated as ordinary income. Rules similar to  
3 the rules of subsections (a)(4) and (d) shall apply  
4 for purposes of this subsection.

5 “(2) DEFINITIONS.—For purposes of this sub-  
6 section—

7 “(A) DISQUALIFIED INTEREST.—

8 “(i) IN GENERAL.—The term ‘dis-  
9 qualified interest’ means, with respect to  
10 any entity—

11 “(I) any interest in such entity  
12 other than indebtedness,

13 “(II) convertible or contingent  
14 debt of such entity,

15 “(III) any option or other right  
16 to acquire property described in sub-  
17 clause (I) or (II), and

18 “(IV) any derivative instrument  
19 entered into (directly or indirectly)  
20 with such entity or any investor in  
21 such entity.

22 “(ii) EXCEPTIONS.—Such term shall  
23 not include—

24 “(I) a partnership interest,

1 “(II) except as provided by the  
2 Secretary, any interest in a taxable  
3 corporation, and

4 “(III) except as provided by the  
5 Secretary, stock in an S corporation.

6 “(B) TAXABLE CORPORATION.—The term  
7 ‘taxable corporation’ means—

8 “(i) a domestic C corporation, or

9 “(ii) a foreign corporation substan-  
10 tially all of the income of which is—

11 “(I) effectively connected with  
12 the conduct of a trade or business in  
13 the United States, or

14 “(II) subject to a comprehensive  
15 foreign income tax (as defined in sec-  
16 tion 457A(d)(2)).

17 “(C) INVESTMENT MANAGEMENT SERV-  
18 ICES.—The term ‘investment management serv-  
19 ices’ means a substantial quantity of any of the  
20 services described in subsection (e)(1).

21 “(f) REGULATIONS.—The Secretary shall prescribe  
22 such regulations or other guidance as is necessary or ap-  
23 propriate to carry out the purposes of this section, includ-  
24 ing regulations or other guidance to—

1           “(1) provide modifications to the application of  
2 this section (including treating related persons as  
3 not related to one another) to the extent such modi-  
4 fication is consistent with the purposes of this sec-  
5 tion,

6           “(2) prevent the avoidance of the purposes of  
7 this section, and

8           “(3) coordinate this section with the other pro-  
9 visions of this title.

10          “(g) SPECIAL RULES FOR INDIVIDUALS.—In the case  
11 of an individual—

12           “(1) IN GENERAL.—Subsection (a)(1) shall  
13 apply only to the applicable percentage of the net in-  
14 come or net loss referred to in such subsection.

15           “(2) DISPOSITIONS, ETC.—The amount which  
16 (but for this paragraph) would be treated as ordi-  
17 nary income by reason of subsection (b) or (e) shall  
18 be the applicable percentage of such amount.

19           “(3) PRO RATA ALLOCATION TO ITEMS.—For  
20 purposes of applying subsections (a) and (e), the ag-  
21 gregate amount treated as ordinary income for any  
22 such taxable year shall be allocated ratably among  
23 the items of income, gain, loss, and deduction taken  
24 into account in determining such amount.

1           “(4) SPECIAL RULE FOR RECOGNITION OF  
2 GAIN.—Gain which (but for this section) would not  
3 be recognized shall be recognized by reason of sub-  
4 section (b) only to the extent that such gain is treat-  
5 ed as ordinary income after application of paragraph  
6 (2).

7           “(5) COORDINATION WITH LIMITATION ON  
8 LOSSES.—For purposes of applying paragraph (2) of  
9 subsection (a) with respect to any net loss for any  
10 taxable year—

11                   “(A) such paragraph shall only apply with  
12 respect to the applicable percentage of such net  
13 loss for such taxable year,

14                   “(B) in the case of a prior partnership tax-  
15 able year referred to in clause (i) or (ii) of sub-  
16 paragraph (A) of such paragraph, only the ap-  
17 plicable percentage (as in effect for such prior  
18 taxable year) of net income or net loss for such  
19 prior partnership taxable year shall be taken  
20 into account, and

21                   “(C) any net loss carried forward to the  
22 succeeding partnership taxable year under sub-  
23 paragraph (B) of such paragraph shall—

1                   “(i) be taken into account in such  
2                   succeeding year without reduction under  
3                   this subsection, and

4                   “(ii) in lieu of being taken into ac-  
5                   count as an item of loss in such succeeding  
6                   year, shall be taken into account—

7                   “(I) as an increase in net loss or  
8                   as a reduction in net income (includ-  
9                   ing below zero), as the case may be,  
10                  and

11                  “(II) after any reduction in the  
12                  amount of such net loss or net income  
13                  under this subsection.

14                  A rule similar to the rule of the preceding sentence  
15                  shall apply for purposes of subsection (b)(2)(A).

16                  “(6) COORDINATION WITH TREATMENT OF  
17                  DIVIDENDS.—Subsection (a)(4) shall only apply to  
18                  the applicable percentage of dividends described  
19                  therein.

20                  “(7) APPLICABLE PERCENTAGE.—For purposes  
21                  of this subsection—

22                  “(A) IN GENERAL.—Except as provided in  
23                  subparagraphs (B) and (C), the term ‘applica-  
24                  ble percentage’ means 75 percent.

1           “(B) EXCEPTION FOR DISPOSITION OF AS-  
2           SETS HELD BY INVESTMENT SERVICES PART-  
3           NERSHIPS AT LEAST 5 YEARS.—The applicable  
4           percentage shall be 50 percent with respect to  
5           any net income or net loss under subsection  
6           (a)(1) which is properly allocable to gain or loss  
7           from the disposition (or a distribution under  
8           subsection (b)(5)) of any asset (other than an  
9           investment services partnership interest) which  
10          has been held by the investment services part-  
11          nership for at least 5 years.

12          “(C) EXCEPTION FOR DISPOSITION OF IN-  
13          VESTMENT SERVICES PARTNERSHIP INTERESTS  
14          HELD AT LEAST 5 YEARS.—

15                 “(i) IN GENERAL.—The applicable  
16                 percentage shall be 50 percent with respect  
17                 to—

18                         “(I) net income or net loss under  
19                         subsection (a)(1) which is properly al-  
20                         locable to gain or loss from the dis-  
21                         position (or a distribution under sub-  
22                         section (b)(5)) of an investment serv-  
23                         ices partnership interest which has  
24                         been held at least 5 years, and

1                   “(II) gain or loss under sub-  
2                   section (b) on the disposition of an in-  
3                   vestment services partnership interest  
4                   which has been held for at least 5  
5                   years,  
6                   but only to the extent such gain or loss is  
7                   attributable to assets held by the invest-  
8                   ment services partnership for at least 5  
9                   years.

10                   “(ii) APPLICATION IN THE CASE OF  
11                   TIERED PARTNERSHIPS, ETC.—For pur-  
12                   poses of determining whether the assets of  
13                   the investment services partnership have  
14                   been held for at least 5 years under clause  
15                   (i), an investment services partnership  
16                   shall be treated as owning its propor-  
17                   tionate share of the property of any other  
18                   partnership in which it has held an invest-  
19                   ment services partnership interest for at  
20                   least 5 years.

21                   “(iii) REGULATIONS.—The Secretary  
22                   may by regulation or other guidance ex-  
23                   tend the application of clause (ii) to enti-  
24                   ties other than investment services part-



1 other purposes (including reporting asset  
2 valuations to partners or potential partners  
3 in the partnership or any related partner-  
4 ship) if such inconsistent valuation method  
5 would result in the treatment of a greater  
6 amount of gain as attributable to a section  
7 197 intangible than would result under the  
8 valuation method used by the taxpayer for  
9 such other purposes,

10 “(ii) circumstances under which valu-  
11 ations are sufficiently independent to pro-  
12 vide an accurate determination of fair mar-  
13 ket value, and

14 “(iii) any information required to be  
15 furnished to the Secretary by the parties to  
16 the disposition with respect to such valu-  
17 ation.

18 “(F) DEFINITIONS AND SPECIAL RULES.—

19 For purposes of this paragraph—

20 “(i) INVESTMENT SERVICES PARTNER-  
21 SHIP.—The term ‘investment services part-  
22 nership’ means, with respect to any invest-  
23 ment services partnership interest, the en-  
24 tity in which such interest is held.

1                   “(ii) SECTION 197 INTANGIBLE.—The  
2                   term ‘section 197 intangible’ has the  
3                   meaning given such term in section 197(d).

4                   “(iii) APPLICATION TO DISQUALIFIED  
5                   INTERESTS.—Rules similar to the rules of  
6                   this paragraph shall apply with respect to  
7                   income or gain with respect to a disquali-  
8                   fied interest under subsection (e).

9                   “(h) CROSS REFERENCE.—For 40 percent penalty on  
10                  certain underpayments due to the avoidance of this sec-  
11                  tion, see section 6662.”.

12                  (b) TREATMENT FOR PURPOSES OF SECTION  
13                  7704.—Subsection (d) of section 7704 is amended by add-  
14                  ing at the end the following new paragraph:

15                         “(6) INCOME FROM INVESTMENT SERVICES  
16                         PARTNERSHIP INTERESTS NOT QUALIFIED.—

17                                 “(A) IN GENERAL.—Items of income and  
18                                 gain shall not be treated as qualifying income  
19                                 if such items are treated as ordinary income by  
20                                 reason of the application of section 710 (relat-  
21                                 ing to special rules for partners providing in-  
22                                 vestment management services to partnership).  
23                                 The preceding sentence shall not apply to any  
24                                 item described in paragraph (1)(E) (or so much

1 of paragraph (1)(F) as relates to paragraph  
2 (1)(E)).

3 “(B) SPECIAL RULES FOR CERTAIN PART-  
4 NERSHIPS.—

5 “(i) CERTAIN PARTNERSHIPS OWNED  
6 BY REAL ESTATE INVESTMENT TRUSTS.—

7 Subparagraph (A) shall not apply in the  
8 case of a partnership which meets each of  
9 the following requirements:

10 “(I) Such partnership is treated  
11 as publicly traded under this section  
12 solely by reason of interests in such  
13 partnership being convertible into in-  
14 terests in a real estate investment  
15 trust which is publicly traded.

16 “(II) 50 percent or more of the  
17 capital and profits interests of such  
18 partnership are owned, directly or in-  
19 directly, at all times during the tax-  
20 able year by such real estate invest-  
21 ment trust (determined with the ap-  
22 plication of section 267(c)).

23 “(III) Such partnership meets  
24 the requirements of paragraphs (2),  
25 (3), and (4) of section 856(c).

1                   “(ii) CERTAIN PARTNERSHIPS OWN-  
2                   ING OTHER PUBLICLY TRADED PARTNER-  
3                   SHIPS.—Subparagraph (A) shall not apply  
4                   in the case of a partnership which meets  
5                   each of the following requirements:

6                               “(I) Substantially all of the as-  
7                               sets of such partnership consist of in-  
8                               terests in one or more publicly traded  
9                               partnerships (determined without re-  
10                              gard to subsection (b)(2)).

11                             “(II) Substantially all of the in-  
12                             come of such partnership is ordinary  
13                             income or section 1231 gain (as de-  
14                             fined in section 1231(a)(3)).

15                           “(C) TRANSITIONAL RULE.—Subpara-  
16                           graph (A) shall not apply to any taxable year  
17                           of the partnership beginning before the date  
18                           which is 10 years after the date of the enact-  
19                           ment of this paragraph.”.

20                   (c) IMPOSITION OF PENALTY ON UNDERPAY-  
21                   MENTS.—

22                           (1) IN GENERAL.—Subsection (b) of section  
23                           6662 is amended by inserting after paragraph (7)  
24                           the following new paragraph:

1           “(8) The application of subsection (e) of section  
2           710, the regulations or other guidance prescribed  
3           under section 710(f) to prevent the avoidance of the  
4           purposes of section 710, or the regulations or other  
5           guidance prescribed under section 710(g)(7)(E).”.

6           (2) AMOUNT OF PENALTY.—

7           (A) IN GENERAL.—Section 6662 is amend-  
8           ed by adding at the end the following new sub-  
9           section:

10          “(k) INCREASE IN PENALTY IN CASE OF PROPERTY  
11 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-  
12 ICES.—In the case of any portion of an underpayment to  
13 which this section applies by reason of subsection (b)(8),  
14 subsection (a) shall be applied with respect to such portion  
15 by substituting ‘40 percent’ for ‘20 percent’.”.

16          (B) CONFORMING AMENDMENT.—Subpara-  
17 graph (B) of section 6662A(c)(2) is amended  
18 by striking “or (i)” and inserting “, (i), or (k)”.

19          (3) SPECIAL RULES FOR APPLICATION OF REA-  
20 SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-  
21 tion 6664 is amended—

22           (A) by redesignating paragraphs (3) and  
23           (4) as paragraphs (4) and (5), respectively;

1 (B) by striking “paragraph (3)” in para-  
2 graph (5)(A), as so redesignated, and inserting  
3 “paragraph (4)”; and

4 (C) by inserting after paragraph (2) the  
5 following new paragraph:

6 “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-  
7 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-  
8 ICES.—

9 “(A) IN GENERAL.—Paragraph (1) shall  
10 not apply to any portion of an underpayment to  
11 which section 6662 applies by reason of sub-  
12 section (b)(8) unless—

13 “(i) the relevant facts affecting the  
14 tax treatment of the item are adequately  
15 disclosed,

16 “(ii) there is or was substantial au-  
17 thority for such treatment, and

18 “(iii) the taxpayer reasonably believed  
19 that such treatment was more likely than  
20 not the proper treatment.

21 “(B) RULES RELATING TO REASONABLE  
22 BELIEF.—Rules similar to the rules of sub-  
23 section (d)(3) shall apply for purposes of sub-  
24 paragraph (A)(iii).”.

1 (d) INCOME AND LOSS FROM INVESTMENT SERVICES  
2 PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DE-  
3 TERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

4 (1) INTERNAL REVENUE CODE.—Section  
5 1402(a) is amended by striking “and” at the end of  
6 paragraph (16), by striking the period at the end of  
7 paragraph (17) and inserting “; and”, and by insert-  
8 ing after paragraph (17) the following new para-  
9 graph:

10 “(18) notwithstanding the preceding provisions  
11 of this subsection, in the case of any individual en-  
12 gaged in the trade or business of providing services  
13 described in section 710(e)(1) with respect to any  
14 entity, any amount treated as ordinary income or or-  
15 dinary loss of such individual under section 710 with  
16 respect to such entity shall be taken into account in  
17 determining the net earnings from self-employment  
18 of such individual.”.

19 (2) SOCIAL SECURITY ACT.—Section 211(a) of  
20 the Social Security Act is amended by striking  
21 “and” at the end of paragraph (15), by striking the  
22 period at the end of paragraph (16) and inserting “;  
23 and”, and by inserting after paragraph (16) the fol-  
24 lowing new paragraph:

1           “(17) Notwithstanding the preceding provisions  
2 of this subsection, in the case of any individual en-  
3 gaged in the trade or business of providing services  
4 described in section 710(e)(1) of the Internal Rev-  
5 enue Code of 1986 with respect to any entity, any  
6 amount treated as ordinary income or ordinary loss  
7 of such individual under section 710 of such Code  
8 with respect to such entity shall be taken into ac-  
9 count in determining the net earnings from self-em-  
10 ployment of such individual.”.

11 (e) CONFORMING AMENDMENTS.—

12           (1) Subsection (d) of section 731 is amended by  
13 inserting “section 710(b)(4) (relating to distribu-  
14 tions of partnership property),” after “to the extent  
15 otherwise provided by”.

16           (2) Section 741 is amended by inserting “or  
17 section 710 (relating to special rules for partners  
18 providing investment management services to part-  
19 nership)” before the period at the end.

20           (3) The table of sections for part I of sub-  
21 chapter K of chapter 1 is amended by adding at the  
22 end the following new item:

“Sec. 710. Special rules for partners providing investment management services  
to partnership.”.

23 (f) EFFECTIVE DATE.—

1           (1) IN GENERAL.—Except as otherwise pro-  
2           vided in this subsection, the amendments made by  
3           this section shall apply to taxable years ending after  
4           December 31, 2010.

5           (2) PARTNERSHIP TAXABLE YEARS WHICH IN-  
6           CLUDE EFFECTIVE DATE.—In applying section  
7           710(a) of the Internal Revenue Code of 1986 (as  
8           added by this section) in the case of any partnership  
9           taxable year which includes December 31, 2010, the  
10          amount of the net income referred to in such section  
11          shall be treated as being the lesser of the net income  
12          for the entire partnership taxable year or the net in-  
13          come determined by only taking into account items  
14          attributable to the portion of the partnership taxable  
15          year which is after such date.

16          (3) DISPOSITIONS OF PARTNERSHIP INTER-  
17          ESTS.—Section 710(b) of the Internal Revenue Code  
18          of 1986 (as added by this section) shall apply to dis-  
19          positions and distributions after December 31, 2010.

20          (4) OTHER INCOME AND GAIN IN CONNECTION  
21          WITH INVESTMENT MANAGEMENT SERVICES.—Sec-  
22          tion 710(e) of such Code (as added by this section)  
23          shall take effect on December 31, 2010.