

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-

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).

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 PERTY.—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 (4), 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 disposition of an interest in a pub-
6 licly traded partnership (as defined in section
7 7704) which is not an investment services part-
8 nership interest in the hands of the person dis-
9 posing of such interest.

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

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

22 “(A) Advising as to the advisability of in-
23 vesting in, purchasing, or selling any specified
24 asset.

1 “(B) Managing, acquiring, or disposing of
2 any specified asset.

3 “(C) Arranging financing with respect to
4 acquiring specified assets.

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

7 “(2) SPECIFIED ASSET.—The term ‘specified
8 asset’ means securities (as defined in section
9 475(c)(2) without regard to the last sentence there-
10 of), real estate held for rental or investment, inter-
11 ests in partnerships, commodities (as defined in sec-
12 tion 475(e)(2)), or options or derivative contracts
13 with respect to any of the foregoing.

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

22 “(4) RELATED PERSONS.—A person shall be
23 treated as related to another person if the relation-
24 ship between such persons is described in section
25 267 or 707(b).

1 “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-
2 ESTS.—

3 “(1) IN GENERAL.—In the case of any portion
4 of an investment services partnership interest which
5 is a qualified capital interest, all items of income,
6 gain, loss, and deduction which are allocated to such
7 qualified capital interest shall not be taken into ac-
8 count under subsection (a) if—

9 “(A) allocations of items are made by the
10 partnership to such qualified capital interest in
11 the same manner as such allocations are made
12 to other qualified capital interests held by part-
13 ners who do not provide any services described
14 in subsection (c)(1) and who are not related to
15 the partner holding the qualified capital inter-
16 est, and

17 “(B) the allocations made to such other in-
18 terests are significant compared to the alloca-
19 tions made to such qualified capital interest.

20 “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO
21 ALLOCATION REQUIREMENTS.—To the extent pro-
22 vided by the Secretary in regulations or other guid-
23 ance—

24 “(A) ALLOCATIONS TO PORTION OF QUALI-
25 FIED CAPITAL INTEREST.—Paragraph (1) may

1 be applied separately with respect to a portion
2 of a qualified capital interest.

3 “(B) NO OR INSIGNIFICANT ALLOCATIONS
4 TO NONSERVICE PROVIDERS.—In any case in
5 which the requirements of paragraph (1)(B) are
6 not satisfied, items of income, gain, loss, and
7 deduction shall not be taken into account under
8 subsection (a) to the extent that such items are
9 properly allocable under such regulations or
10 other guidance to qualified capital interests.

11 “(C) ALLOCATIONS TO SERVICE PRO-
12 VIDERS’ QUALIFIED CAPITAL INTERESTS WHICH
13 ARE LESS THAN OTHER ALLOCATIONS.—Alloca-
14 tions shall not be treated as failing to meet the
15 requirement of paragraph (1)(A) merely be-
16 cause the allocations to the qualified capital in-
17 terest represent a lower return than the alloca-
18 tions made to the other qualified capital inter-
19 ests referred to in such paragraph.

20 “(3) SPECIAL RULE FOR CHANGES IN SERV-
21 ICES.—In the case of an interest in a partnership
22 which is not an investment services partnership in-
23 terest and which, by reason of a change in the serv-
24 ices with respect to assets held (directly or indi-
25 rectly) by the partnership, would (without regard to

1 the reasonable expectation exception of subsection
2 (c)(1)) have become such an interest—

3 “(A) notwithstanding subsection (c)(1),
4 such interest shall be treated as an investment
5 services partnership interest as of the time of
6 such change, and

7 “(B) for purposes of this subsection, the
8 qualified capital interest of the holder of such
9 partnership interest immediately after such
10 change shall not be less than the fair market
11 value of such interest (determined immediately
12 before such change).

13 “(4) SPECIAL RULE FOR TIERED PARTNER-
14 SHIPS.—Except as otherwise provided by the Sec-
15 retary, in the case of tiered partnerships, all items
16 which are allocated in a manner which meets the re-
17 quirements of paragraph (1) to qualified capital in-
18 terests in a lower-tier partnership shall retain such
19 character to the extent allocated on the basis of
20 qualified capital interests in any upper-tier partner-
21 ship.

22 “(5) EXCEPTION FOR NO-SELF-CHARGED
23 CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-
24 cept as otherwise provided by the Secretary, an in-
25 terest shall not fail to be treated as satisfying the

1 requirement of paragraph (1)(A) merely because the
2 allocations made by the partnership to such interest
3 do not reflect the cost of services described in sub-
4 section (c)(1) which are provided (directly or indi-
5 rectly) to the partnership by the holder of such in-
6 terest (or a related person).

7 “(6) SPECIAL RULE FOR DISPOSITIONS.—In the
8 case of any investment services partnership interest
9 any portion of which is a qualified capital interest,
10 subsection (b) shall not apply to so much of any
11 gain or loss as bears the same proportion to the en-
12 tire amount of such gain or loss as—

13 “(A) the distributive share of gain or loss
14 that would have been allocated to the qualified
15 capital interest (consistent with the require-
16 ments of paragraph (1)) if the partnership had
17 sold all of its assets at fair market value imme-
18 diately before the disposition, bears to

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

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

1 “(A) IN GENERAL.—The term ‘qualified
2 capital interest’ means so much of a partner’s
3 interest in the capital of the partnership as is
4 attributable to—

5 “(i) the fair market value of any
6 money or other property contributed to the
7 partnership in exchange for such interest
8 (determined without regard to section
9 752(a)),

10 “(ii) any amounts which have been in-
11 cluded in gross income under section 83
12 with respect to the transfer of such inter-
13 est, and

14 “(iii) the excess (if any) of—

15 “(I) any items of income and
16 gain taken into account under section
17 702 with respect to such interest, over

18 “(II) any items of deduction and
19 loss so taken into account.

20 “(B) ADJUSTMENT TO QUALIFIED CAPITAL
21 INTEREST.—

22 “(i) DISTRIBUTIONS AND LOSSES.—
23 The qualified capital interest shall be re-
24 duced by distributions from the partner-
25 ship with respect to such interest and by

1 the excess (if any) of the amount described
2 in subparagraph (A)(iii)(II) over the
3 amount described in subparagraph
4 (A)(iii)(I).

5 “(ii) SPECIAL RULE FOR CONTRIBU-
6 TIONS OF PROPERTY.—In the case of any
7 contribution of property described in sub-
8 paragraph (A)(i) with respect to which the
9 fair market value of such property is not
10 equal to the adjusted basis of such prop-
11 erty immediately before such contribution,
12 proper adjustments shall be made to the
13 qualified capital interest to take into ac-
14 count such difference consistent with such
15 regulations or other guidance as the Sec-
16 retary may provide.

17 “(8) TREATMENT OF CERTAIN LOANS.—

18 “(A) PROCEEDS OF PARTNERSHIP LOANS
19 NOT TREATED AS QUALIFIED CAPITAL INTER-
20 EST OF SERVICE PROVIDING PARTNERS.—For
21 purposes of this subsection, an investment serv-
22 ices partnership interest shall not be treated as
23 a qualified capital interest to the extent that
24 such interest is acquired in connection with the
25 proceeds of any loan or other advance made or

1 guaranteed, directly or indirectly, by any other
2 partner or the partnership (or any person re-
3 lated to any such other partner or the partner-
4 ship).

5 “(B) REDUCTION IN ALLOCATIONS TO
6 QUALIFIED CAPITAL INTERESTS FOR LOANS
7 FROM NONSERVICE- PROVIDING PARTNERS TO
8 THE PARTNERSHIP.—For purposes of this sub-
9 section, any loan or other advance to the part-
10 nership made or guaranteed, directly or indi-
11 rectly, by a partner not providing services de-
12 scribed in subsection (c)(1) to the partnership
13 (or any person related to such partner) shall be
14 taken into account in determining the qualified
15 capital interests of the partners in the partner-
16 ship.

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

19 “(1) IN GENERAL.—If—

20 “(A) a person performs (directly or indi-
21 rectly) investment management services for any
22 entity,

23 “(B) such person holds (directly or indi-
24 rectly) a disqualified interest with respect to
25 such entity, and

“(C) the value of such interest (or payments thereunder) is substantially related to the amount of income or gain (whether or not realized) from the assets with respect to which the investment management services are performed,

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

11 “(2) DEFINITIONS.—For purposes of this sub-
12 section—

13 “(A) DISQUALIFIED INTEREST.—

14 “(i) IN GENERAL.—The term ‘dis-
15 qualified interest’ means, with respect to
16 any entity—

17 “(I) any interest in such entity
18 other than indebtedness, . . .

19 “(II) convertible or contingent
20 debt of such entity,

21 “(III) any option or other right
22 to acquire property described in sub-
23 clause (I) or (II), and

24 “(IV) any derivative instrument
25 entered into (directly or indirectly)

1 with such entity or any investor in
2 such entity.

3 “(ii) EXCEPTIONS.—Such term shall
4 not include—

5 “(I) a partnership interest,

6 “(II) except as provided by the
7 Secretary, any interest in a taxable
8 corporation, and

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

11 “(B) TAXABLE CORPORATION.—The term
12 ‘taxable corporation’ means—

13 “(i) a domestic C corporation, or

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

16 “(I) effectively connected with
17 the conduct of a trade or business in
18 the United States, or

19 “(II) subject to a comprehensive
20 foreign income tax (as defined in sec-
21 tion 457A(d)(2)).

22 “(C) INVESTMENT MANAGEMENT SERV-
23 ICES.—The term ‘investment management serv-
24 ices’ means a substantial quantity of any of the
25 services described in subsection (c)(1).

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

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

10 “(2) prevent the avoidance of the purposes of
11 this section, and

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

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

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

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

23 “(3) PRO RATA ALLOCATION TO ITEMS.—For
24 purposes of applying subsections (a) and (e), the ag-
25 gregate amount treated as ordinary income for any

1 such taxable year shall be allocated ratably among
2 the items of income, gain, loss, and deduction taken
3 into account in determining such amount.

4 “(4) SPECIAL RULE FOR RECOGNITION OF
5 GAIN.—Gain which (but for this section) would not
6 be recognized shall be recognized by reason of sub-
7 section (b) only to the extent that such gain is treat-
8 ed as ordinary income after application of paragraph
9 (2).

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

14 “(A) such paragraph shall only apply with
15 respect to the applicable percentage of such net
16 loss for such taxable year,

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

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

4 “(i) be taken into account in such
5 succeeding year without reduction under
6 this subsection, and

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

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

14 “(II) after any reduction in the
15 amount of such net loss or net income
16 under this subsection.

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

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

23 “(7) APPLICABLE PERCENTAGE.—For purposes
24 of this subsection—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term ‘applicable percent-
3 age’ means 75 percent.

4 “(B) EXCEPTIONS FOR SALES OF INTER-
5 ESTS AND ASSETS HELD AT LEAST 5 YEARS.—

6 “(i) IN GENERAL.—The applicable
7 percentage shall be 50 percent with respect
8 to—

9 “(I) any net income or net loss
10 under subsection (a)(1), or any in-
11 come or gain under subsection (e)
12 which is properly allocable to gain or
13 loss from the sale or exchange of any
14 asset which has been held at least 5
15 years, and

16 “(II) to the extent provided
17 under clause (ii), gain or loss under
18 subsection (b) on the disposition of an
19 investment services partnership inter-
20 est or gain under subsection (e) with
21 respect to a disqualified interest, but
22 only if such interest has been held for
23 at least 5 years.

24 “(ii) LOOK THROUGH IN THE CASE OF
25 DISPOSITION OF INTEREST.—Except as

1 provided by the Secretary, in the case of a
2 disposition of an interest in an entity de-
3 scribed in clause (i)(II), clause (i) shall be
4 applied only to the portion of the gain or
5 loss attributable to the assets of such enti-
6 ty which have been held for at least 5
7 years, unless substantially all of such as-
8 sets have been held for at least 5 years. In
9 the case of tiered entities, the preceding
10 sentence shall be applied by reference to
11 the assets of such entities rather than to
12 an interest in such entities.

13 “(iii) SPECIAL RULE FOR SECTION 197
14 INTANGIBLE GAIN OF MANAGEMENT ENTI-
15 TIES.—

16 “(I) IN GENERAL.—In the case
17 of the disposition of an investment
18 services partnership interest in a man-
19 agement entity which has been held
20 for at least 5 years, any section 197
21 intangible gain with respect to such
22 interest shall be treated as gain from
23 an asset held for at least 5 years. In
24 the case of tiered management enti-
25 ties, the holding period requirement

1 under the preceding sentence shall
2 apply with respect to interests in each
3 such management entity.

4 “(II) VALUATION BURDEN ON
5 THE TAXPAYER.—This clause shall
6 not apply to any gain from the dis-
7 position of an investment services
8 partnership interest unless the tax-
9 payer establishes (in such manner as
10 the Secretary shall provide) the
11 amount of the section 197 intangible
12 gain with respect to such disposition.

13 “(C) MANAGEMENT ENTITY.—For pur-
14 poses of this paragraph, the term ‘management
15 entity’ means a partnership the principal activ-
16 ity of which is providing the services described
17 in subsection (c) with respect to assets held (di-
18 rectly or indirectly) by such partnership.

19 “(D) SECTION 197 INTANGIBLE GAIN.—
20 For purposes of this paragraph—

21 “(i) IN GENERAL.—The term ‘section
22 197 intangible gain’ means, with respect to
23 any management entity, gain recognized on
24 the disposition of an investment services
25 partnership interest in such entity which is

1 attributable to any section 197 intangible
2 (within the meaning of section 197(d)).

3 “(ii) VALUE OF INVESTMENT SERV-
4 ICES PARTNERSHIP INTEREST DIS-
5 REGARDED.—Except as provided by the
6 Secretary, no portion of the value of an in-
7 vestment services partnership interest
8 (other than the interest being disposed of)
9 shall be taken into account in determining
10 section 197 intangible gain.

11 “(iii) LIMITATION.—For purposes of
12 clause (i), gain from the disposition of an
13 investment services partnership interest
14 shall in no event be treated as attributable
15 to a section 197 intangible (within the
16 meaning of section 197(d)) if such gain
17 would be included in the amount of the
18 distribution which the partner disposing of
19 such interest would receive if the partner-
20 ship sold (at the time of the disposition) all
21 of its assets at fair market value and dis-
22 tributed the proceeds of such sale (reduced
23 by the liabilities of the partnership) to its
24 partners in liquidation of the partnership.

1 “(iv) REGULATIONS.—The Secretary
2 shall prescribe regulations or guidance
3 which provide—

4 “(I) the acceptable valuation
5 methods for purposes of this subpara-
6 graph, except that such methods shall
7 not include any valuation method
8 which is inconsistent with the method
9 used by the taxpayer for other pur-
10 poses (including reporting asset valu-
11 ations to partners or marketing the
12 partnership or any lower-tier partner-
13 ship to prospective partners) if such
14 inconsistent valuation method would
15 result in a greater amount of section
16 197 intangible gain than would result
17 under the valuation method used by
18 the taxpayer for such other purposes,

19 “(II) circumstances under which
20 valuations are sufficiently independent
21 to provide an accurate determination
22 of fair market value, and

23 “(III) any information required
24 to be furnished to the Secretary by

1 the parties to the disposition with re-
2 spect to such valuation.

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

6 (b) TREATMENT FOR PURPOSES OF SECTION
7 7704.—Subsection (d) of section 7704 is amended by add-
8 ing at the end the following new paragraph:

9 “(6) INCOME FROM INVESTMENT SERVICES
10 PARTNERSHIP INTERESTS NOT QUALIFIED.—

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

21 “(B) SPECIAL RULES FOR CERTAIN PART-
22 NERSHIPS.—

23 “(i) CERTAIN PARTNERSHIPS OWNED
24 BY REAL ESTATE INVESTMENT TRUSTS.—
25 Subparagraph (A) shall not apply in the

1 case of a partnership which meets each of
2 the following requirements:

3 “(I) Such partnership is treated
4 as publicly traded under this section
5 solely by reason of interests in such
6 partnership being convertible into in-
7 terests in a real estate investment
8 trust which is publicly traded.

9 “(II) 50 percent or more of the
10 capital and profits interests of such
11 partnership are owned, directly or in-
12 directly, at all times during the tax-
13 able year by such real estate invest-
14 ment trust (determined with the ap-
15 plication of section 267(c)).

16 “(III) Such partnership meets
17 the requirements of paragraphs (2),
18 (3), and (4) of section 856(c).

19 “(ii) CERTAIN PARTNERSHIPS OWN-
20 ING OTHER PUBLICLY TRADED PARTNER-
21 SHIPS.—Subparagraph (A) shall not apply
22 in the case of a partnership which meets
23 each of the following requirements:

24 “(I) Substantially all of the as-
25 sets of such partnership consist of in-

1 terests in one or more publicly traded
2 partnerships (determined without re-
3 gard to subsection (b)(2)).

4 “(II) Substantially all of the in-
5 come of such partnership is ordinary
6 income or section 1231 gain (as de-
7 fined in section 1231(a)(3)).

8 “(C) TRANSITIONAL RULE.—Subpara-
9 graph (A) shall not apply to any taxable year
10 of the partnership beginning before the date
11 which is 10 years after the date of the enact-
12 ment of this paragraph.”.

13 (c) IMPOSITION OF PENALTY ON UNDERPAY-
14 MENTS.—

15 (1) IN GENERAL.—Subsection (b) of section
16 6662 is amended by inserting after paragraph (7)
17 the following new paragraph:

18 “(8) The application of subsection (e) of section
19 710, the regulations or other guidance prescribed
20 under section 710(f) to prevent the avoidance of the
21 purposes of section 710, or the regulations or other
22 guidance prescribed under section
23 710(g)(7)(D)(iv).”.

24 (2) AMOUNT OF PENALTY.—

1 (A) IN GENERAL.—Section 6662 is amend-
2 ed by adding at the end the following new sub-
3 section:

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

10 (B) CONFORMING AMENDMENT.—Subpara-
11 graph (B) of section 6662A(e)(2) is amended
12 by striking “or (i)” and inserting “, (i), or (k)”.

13 (3) SPECIAL RULES FOR APPLICATION OF REA-
14 SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-
15 tion 6664 is amended—

16 (A) by redesignating paragraphs (3) and
17 (4) as paragraphs (4) and (5), respectively;

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

21 (C) by inserting after paragraph (2) the
22 following new paragraph:

23 “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-
24 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-
25 ICES.—

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

5 “(i) the relevant facts affecting the
6 tax treatment of the item are adequately
7 disclosed,

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

10 “(iii) the taxpayer reasonably believed
11 that such treatment was more likely than
12 not the proper treatment.

13 “(B) RULES RELATING TO REASONABLE
14 BELIEF.—Rules similar to the rules of sub-
15 section (d)(3) shall apply for purposes of sub-
16 paragraph (A)(iii).”.

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

20 (1) INTERNAL REVENUE CODE.—Section
21 1402(a) is amended by striking “and” at the end of
22 paragraph (16), by striking the period at the end of
23 paragraph (17) and inserting “; and”, and by insert-
24 ing after paragraph (17) the following new para-
25 graph:

1 “(18) 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(c)(1) with respect to any
5 entity, any amount treated as ordinary income or or-
6 dinary loss of such individual under section 710 with
7 respect to such entity shall be taken into account in
8 determining the net earnings from self-employment
9 of such individual.”.

10 (2) SOCIAL SECURITY ACT.—Section 211(a) of
11 the Social Security Act is amended by striking
12 “and” at the end of paragraph (15), by striking the
13 period at the end of paragraph (16) and inserting “;
14 and”, and by inserting after paragraph (16) the fol-
15 lowing new paragraph:

16 “(17) Notwithstanding the preceding provisions
17 of this subsection, in the case of any individual en-
18 gaged in the trade or business of providing services
19 described in section 710(c)(1) of the Internal Rev-
20 enue Code of 1986 with respect to any entity, any
21 amount treated as ordinary income or ordinary loss
22 of such individual under section 710 of such Code
23 with respect to such entity shall be taken into ac-
24 count in determining the net earnings from self-em-
25 ployment of such individual.”.

1 (e) CONFORMING AMENDMENTS.—

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

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

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

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

13 (f) EFFECTIVE DATE.—

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

18 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-
19 CLUDE EFFECTIVE DATE.—In applying section
20 710(a) of the Internal Revenue Code of 1986 (as
21 added by this section) in the case of any partnership
22 taxable year which includes December 31, 2010, the
23 amount of the net income referred to in such section
24 shall be treated as being the lesser of the net income

1 for the entire partnership taxable year or the net in-
2 come determined by only taking into account items
3 attributable to the portion of the partnership taxable
4 year which is after such date.

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

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

13 **SEC. 413. EMPLOYMENT TAX TREATMENT OF PROFES-**
14 **SIONAL SERVICE BUSINESSES.**

15 (a) IN GENERAL.—Section 1402 is amended by add-
16 ing at the end the following new subsection:

17 “(m) SPECIAL RULES FOR PROFESSIONAL SERVICE
18 BUSINESSES.—

19 “(1) SHAREHOLDERS PROVIDING SERVICES TO
20 DISQUALIFIED S CORPORATIONS.—

21 “(A) IN GENERAL.—In the case of any dis-
22 qualified S corporation, each shareholder of
23 such disqualified S corporation who provides
24 substantial services with respect to the profes-
25 sional service business referred to in subpara-