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 ______________

Viz:

1 In lieu of the matter proposed to be inserted by the amendment of the House, insert 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 “American Jobs and Closing Tax Loopholes Act of 2010”.

7 (b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in titles I, II, and IV of this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provi-
“(B) the person receiving such interest shall be treated as having made the election under subsection (b)(1) unless such person makes an election under this paragraph to have such subsection not apply.”.

(b) Conforming Amendment.—Paragraph (2) of section 83(b) is amended by inserting “or subsection (c)(4)(B)” after “paragraph (1)”.

(c) Effective Date.—The amendments made by this section shall apply to interests in partnerships transferred after the date of the enactment of this Act.

SEC. 412. INCOME OF PARTNERS FOR PERFORMING INVESTMENT MANAGEMENT SERVICES TREATED AS ORDINARY INCOME RECEIVED FOR PERFORMANCE OF SERVICES.

(a) In General.—Part I of subchapter K of chapter 1 is amended by adding at the end the following new section:

“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING INVESTMENT MANAGEMENT SERVICES TO PARTNERSHIP.

“(a) Treatment of Distributive Share of Partnership Items.—For purposes of this title, in the case of an investment services partnership interest—
“(1) In general.—Notwithstanding section 702(b)—

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

“(B) any net loss with respect to such interest for such year, to the extent not disallowed under paragraph (2) for such year, shall be treated as an ordinary loss.

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

“(2) Treatment of losses.—

“(A) Limitation.—Any net loss with respect to such interest shall be allowed for any partnership taxable year only to the extent that such loss does not exceed the excess (if any) of—

“(i) the aggregate net income with respect to such interest for all prior partnership taxable years, over

“(ii) the aggregate net loss with respect to such interest not disallowed under
this subparagraph for all prior partnership taxable years.

"(B) CARRYFORWARD.—Any net loss for any partnership taxable year which is not allowed by reason of subparagraph (A) shall be treated as an item of loss with respect to such partnership interest for the succeeding partnership taxable year.

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

"(D) PRIOR PARTNERSHIP YEARS.—Any reference in this paragraph to prior partnership taxable years shall only include prior partnership taxable years to which this section applies.

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

"(A) NET INCOME.—The term 'net income' means, with respect to any investment services partnership interest for any partnership taxable year, the excess (if any) of—

"(i) all items of income and gain taken into account by the holder of such
interest under section 702 with respect to such interest for such year, over "(ii) all items of deduction and loss so taken into account.

"(B) Net loss.—The term 'net loss' means, with respect to such interest for such year, the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

"(4) Special rule for dividends.—Any dividend taken into account in determining net income or net loss for purposes of paragraph (1) shall not be treated as qualified dividend income for purposes of section 1(h).

"(b) Dispositions of partnership interests.—

"(1) Gain.—Any gain on the disposition of an investment services partnership interest shall be—

"(A) treated as ordinary income, and

"(B) recognized notwithstanding any other provision of this subtitle.

"(2) Loss.—Any loss on the disposition of an investment services partnership interest shall be treated as an ordinary loss to the extent of the excess (if any) of—
“(A) the aggregate net income with respect to such interest for all partnership taxable years to which this section applies, over

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

“(3) Exception for certain dispositions of interests in a publicly traded partnership.—

“(A) In general.—Paragraphs (1), (2), and (7) shall not apply in the case of an applicable disposition of an investment services partnership interest which is an interest in a publicly traded partnership (as defined in section 7704) if—

“(i) in the case of a disposition described in subparagraph (C)(i), neither the individual nor any member of such individual’s family (within the meaning of section 318(a)(1)), or

“(ii) in the case of a disposition described in subparagraph (C)(ii), neither the regulated investment company or real estate investment trust (nor any person re-
lated (within the meaning of section 267(b)) to such company),
has (at any time) provided (directly or indirectly through a partnership, S corporation, estate or trust) any of the services described in subsection (e)(1) with respect to assets held (directly or indirectly) by such publicly traded partnership.

“(B) LIMITATION ON APPLICATION OF SECTION.—This paragraph shall apply to an interest in a publicly traded partnership (as defined in section 7704) only if substantially all of such partnership’s gross income consists of those items described in paragraph (1)(E) (or so much of paragraph (1)(F) as relates to paragraph (1)(E)) of section 7704.

“(C) APPLICABLE DISPOSITION.—For purposes of this paragraph, the term ‘applicable disposition’ means a disposition (directly or indirectly through a partnership, S corporation, estate or trust) by—

“(i) an individual, or

“(ii) either—

“(I) a regulated investment company other than a regulated invest-
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ment company treated as closely held
(within the meaning of section
856(h)(1)), or

“(II) except as provided by the
Secretary, a real estate investment
trust.

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

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

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

“(5) DISPOSITION OF PORTION OF INTEREST.—
In the case of any disposition of an investment serv-
ces partnership interest, the amount of net loss
which otherwise would have (but for subsection
(a)(2)(C)) applied to reduce the basis of such inter-
est shall be disregarded for purposes of this section
for all succeeding partnership taxable years.
"(6) DISTRIBUTIONS OF PARTNERSHIP PROPERTY.—In the case of any distribution of property by a partnership with respect to any investment services partnership interest held by a partner—

"(A) the excess (if any) of—

"(i) the fair market value of such property at the time of such distribution, over

"(ii) the adjusted basis of such property in the hands of the partnership,

shall be taken into account as an increase in such partner’s distributive share of the taxable income of the partnership (except to the extent such excess is otherwise taken into account in determining the taxable income of the partnership),

"(B) such property shall be treated for purposes of subpart B of part II as money distributed to such partner in an amount equal to such fair market value, and

"(C) the basis of such property in the hands of such partner shall be such fair market value.

Subsection (b) of section 734 shall be applied without regard to the preceding sentence. In the case of
a taxpayer which satisfies requirements similar to
the requirements of subparagraphs (A) and (B) of
paragraph (4), this paragraph and paragraph (1)(B)
shall not apply to the distribution of a partnership
interest if such distribution is in connection with a
contribution (or deemed contribution) of any prop-
erty of the partnership to which section 721 applies
pursuant to a transaction described in paragraph
(1)(B) or (2) of section 708(b).

"(7) APPLICATION OF SECTION 751.—In apply-
ing section 751, an investment services partnership
interest shall be treated as an inventory item.

"(c) INVESTMENT SERVICES PARTNERSHIP INTER-
est.—For purposes of this section—

"(1) IN GENERAL.—The term ‘investment serv-
ices partnership interest’ means any interest in a
partnership which is held (directly or indirectly) by
any person if it was reasonably expected (at the time
that such person acquired such interest) that such
person (or any person related to such person) would
provide (directly or indirectly) a substantial quantity
of any of the following services with respect to assets
held (directly or indirectly) by the partnership:
“(A) Advising as to the advisability of investing in, purchasing, or selling any specified asset.

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

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

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

“(2) SPECIFIED ASSET.—The term ‘specified asset’ means securities (as defined in section 475(e)(2) without regard to the last sentence thereof), real estate held for rental or investment, interests in partnerships, commodities (as defined in section 475(e)(2)), or options or derivative contracts with respect to any of the foregoing.

“(3) EXCEPTION FOR FAMILY FARMS.—The term ‘specified asset’ shall not include any farm used for farming purposes if such farm is held by a partnership all of the interests in which are held (directly or indirectly) by members of the same family. Terms used in the preceding sentence which are also used in section 2032A shall have the same meaning as when used in such section.
“(4) RELATED PERSONS.—A person shall be treated as related to another person if the relationship between such persons is described in section 267 or 707(b).

“(d) EXCEPTION FOR CERTAIN CAPITAL INTERESTS.—

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

“(A) allocations of items are made by the partnership to such qualified capital interest in the same manner as such allocations are made to other qualified capital interests held by partners who do not provide any services described in subsection (c)(1) and who are not related to the partner holding the qualified capital interest, and

“(B) the allocations made to such other interests are significant compared to the allocations made to such qualified capital interest.

“(2) AUTHORITY TO PROVIDE EXCEPTIONS TO ALLOCATION REQUIREMENTS.—To the extent pro-
vided by the Secretary in regulations or other guidance—

"(A) ALLOCATIONS TO PORTION OF QUALIFIED CAPITAL INTEREST.—Paragraph (1) may be applied separately with respect to a portion of a qualified capital interest.

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

"(C) ALLOCATIONS TO SERVICE PROVIDERS' QUALIFIED CAPITAL INTERESTS WHICH ARE LESS THAN OTHER ALLOCATIONS.—Allocations shall not be treated as failing to meet the requirement of paragraph (1)(A) merely because the allocations to the qualified capital interest represent a lower return than the allocations made to the other qualified capital interests referred to in such paragraph.

"(3) SPECIAL RULE FOR CHANGES IN SERVICES.—In the case of an interest in a partnership
which is not an investment services partnership interest and which, by reason of a change in the services with respect to assets held (directly or indirectly) by the partnership, would (without regard to the reasonable expectation exception of subsection (c)(1)) have become such an interest—

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

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

“(4) SPECIAL RULE FOR TIERED PARTNERSHIPS.—Except as otherwise provided by the Secretary, in the case of tiered partnerships, all items which are allocated in a manner which meets the requirements of paragraph (1) to qualified capital interests in a lower-tier partnership shall retain such character to the extent allocated on the basis of qualified capital interests in any upper-tier partnership.
“(5) EXCEPTION FOR NO-SELF-CHARGED CARRY AND MANAGEMENT FEE PROVISIONS.—Except as otherwise provided by the Secretary, an interest shall not fail to be treated as satisfying the requirement of paragraph (1)(A) merely because the allocations made by the partnership to such interest do not reflect the cost of services described in subsection (c)(1) which are provided (directly or indirectly) to the partnership by the holder of such interest (or a related person).

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

“(A) the distributive share of gain or loss that would have been allocated to the qualified capital interest (consistent with the requirements of paragraph (1)) if the partnership had sold all of its assets at fair market value immediately before the disposition, bears to

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

"(7) QUALIFIED CAPITAL INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified capital interest’ means so much of a partner’s interest in the capital of the partnership as is attributable to—

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

"(ii) any amounts which have been included in gross income under section 83 with respect to the transfer of such interest, and

"(iii) the excess (if any) of—

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

"(II) any items of deduction and loss so taken into account.

"(B) ADJUSTMENT TO QUALIFIED CAPITAL INTEREST.—
"(i) DISTRIBUTIONS AND LOSSES.—

The qualified capital interest shall be reduced by distributions from the partnership with respect to such interest and by the excess (if any) of the amount described in subparagraph (A)(iii)(II) over the amount described in subparagraph (A)(iii)(I).

"(ii) SPECIAL RULE FOR CONTRIBUTIONS OF PROPERTY.—In the case of any contribution of property described in subparagraph (A)(i) with respect to which the fair market value of such property is not equal to the adjusted basis of such property immediately before such contribution, proper adjustments shall be made to the qualified capital interest to take into account such difference consistent with such regulations or other guidance as the Secretary may provide.

“(8) TREATMENT OF CERTAIN LOANS.—

“(A) PROCEEDS OF PARTNERSHIP LOANS NOT TREATED AS QUALIFIED CAPITAL INTEREST OF SERVICE PROVIDING PARTNERS.—For purposes of this subsection, an investment serv-
ices partnership interest shall not be treated as
a qualified capital interest to the extent that
such interest is acquired in connection with the
proceeds of any loan or other advance made or
guaranteed, directly or indirectly, by any other
partner or the partnership (or any person re-
lated to any such other partner or the part-
ship).

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

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

“(1) IN GENERAL.—If—
“(A) a person performs (directly or indirectly) investment management services for any entity,

“(B) such person holds (directly or indirectly) a disqualified interest with respect to 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.

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) DISQUALIFIED INTEREST.—

“(i) IN GENERAL.—The term ‘disqualified interest’ means, with respect to any entity—

“(I) any interest in such entity other than indebtedness,
“(II) convertible or contingent debt of such entity,

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

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

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

“(I) a partnership interest,

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

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

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

“(i) a domestic C corporation, or

“(ii) a foreign corporation substantially all of the income of which is—

“(I) effectively connected with the conduct of a trade or business in the United States, or
"(II) subject to a comprehensive foreign income tax (as defined in section 457A(d)(2)).

"(C) INVESTMENT MANAGEMENT SERVICES.—The term ‘investment management services’ means a substantial quantity of any of the services described in subsection (c)(1).

"(f) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance to—

"(1) provide modifications to the application of this section (including treating related persons as not related to one another) to the extent such modification is consistent with the purposes of this section,

"(2) prevent the avoidance of the purposes of this section, and

"(3) coordinate this section with the other provisions of this title.

"(g) SPECIAL RULES FOR INDIVIDUALS.—In the case of an individual—

"(1) IN GENERAL.—Subsection (a)(1) shall apply only to the applicable percentage of the net income or net loss referred to in such subsection.
(2) DISPOSITIONS, ETC.—The amount which (but for this paragraph) would be treated as ordinary income by reason of subsection (b) or (e) shall be the applicable percentage of such amount.

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

(4) SPECIAL RULE FOR RECOGNITION OF GAIN.—Gain which (but for this section) would not be recognized shall be recognized by reason of subsection (b) only to the extent that such gain is treated as ordinary income after application of paragraph (2).

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

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

(B) in the case of a prior partnership taxable year referred to in clause (i) or (ii) of sub-
paragraph (A) of such paragraph, only the applicable percentage (as in effect for such prior taxable year) of net income or net loss for such prior partnership taxable year shall be taken into account, and

"(C) any net loss carried forward to the succeeding partnership taxable year under subparagraph (B) of such paragraph shall—

"(i) be taken into account in such succeeding year without reduction under this subsection, and

"(ii) in lieu of being taken into account as an item of loss in such succeeding year, shall be taken into account—

"(I) as an increase in net loss or as a reduction in net income (including below zero), as the case may be, and

"(II) after any reduction in the amount of such net loss or net income under this subsection.

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

"(6) COORDINATION WITH TREATMENT OF DIVIDENDS.—Subsection (a)(4) shall only apply to
(7) APPLICABLE PERCENTAGE.—For purposes of this subsection—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘applicable percentage’ means 65 percent (50 percent in the case of any taxable year beginning before January 1, 2013).

(B) EXCEPTIONS FOR SALES OF ASSETS HELD AT LEAST 7 YEARS.—In the case of any taxable year beginning after December 31, 2012, the applicable percentage shall be 55 percent with respect to any net income or net loss under subsection (a)(1), or any income or gain under subsection (e), which is properly allocable to gain or loss from the sale or exchange of any asset which is held at least 7 years.

(h) CROSS REFERENCE.—For 40 percent penalty on certain underpayments due to the avoidance of this section, see section 6662.”.

(b) TREATMENT FOR PURPOSES OF SECTION 7704.—Subsection (d) of section 7704 is amended by adding at the end the following new paragraph:
"(6) Income from Investment Services Partnership Interests Not Qualified.—

"(A) In general.—Items of income and gain shall not be treated as qualifying income if such items are treated as ordinary income by reason of the application of section 710 (relating to special rules for partners providing investment management services to partnership). The preceding sentence shall not apply to any item described in paragraph (1)(E) (or so much of paragraph (1)(F) as relates to paragraph (1)(E)).

"(B) Special rules for certain partnerships.—

"(i) Certain partnerships owned by real estate investment trusts.—Subparagraph (A) shall not apply in the case of a partnership which meets each of the following requirements:

"(I) Such partnership is treated as publicly traded under this section solely by reason of interests in such partnership being convertible into interests in a real estate investment trust which is publicly traded."
“(II) 50 percent or more of the capital and profits interests of such partnership are owned, directly or indirectly, at all times during the taxable year by such real estate investment trust (determined with the application of section 267(e)).

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

“(ii) Certain partnerships owning other publicly traded partnerships.—Subparagraph (A) shall not apply in the case of a partnership which meets each of the following requirements:

“(I) Substantially all of the assets of such partnership consist of interests in one or more publicly traded partnerships (determined without regard to subsection (b)(2)).

“(II) Substantially all of the income of such partnership is ordinary income or section 1231 gain (as defined in section 1231(a)(3)).
“(C) Transitional Rule.—Subparagraph (A) shall not apply to any taxable year of the partnership beginning before the date which is 10 years after the date of the enactment of this paragraph.”.

(e) Imposition of Penalty on Underpayments.—

(1) In General.—Subsection (b) of section 6662 is amended by inserting after paragraph (7) the following new paragraph:

“(8) The application of subsection (e) of section 710 or the regulations prescribed under section 710(f) to prevent the avoidance of the purposes of section 710.”.

(2) Amount of Penalty.—

(A) In General.—Section 6662 is amended by adding at the end the following new subsection:

“(k) Increase in Penalty in Case of Property Transferred for Investment Management Services.—In the case of any portion of an underpayment to which this section applies by reason of subsection (b)(8), subsection (a) shall be applied with respect to such portion by substituting ‘40 percent’ for ‘20 percent’.”.
(B) CONFORMING AMENDMENT.—Subparagraph (B) of section 6662A(e)(2) is amended by striking "or (i)" and inserting "(i), (ii), or (k)".

(3) SPECIAL RULES FOR APPLICATION OF REASONABLE CAUSE EXCEPTION.—Subsection (e) of section 6664 is amended—

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

(B) by striking "paragraph (3)" in paragraph (5)(A), as so redesignated, and inserting "paragraph (4)"; and

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

"(3) SPECIAL RULE FOR UNDERPAYMENTS ATTRIBUTABLE TO INVESTMENT MANAGEMENT SERVICES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any portion of an underpayment to which this section applies by reason of subsection (b)(8) unless—

(i) the relevant facts affecting the tax treatment of the item are adequately disclosed,

(ii) there is or was substantial authority for such treatment, and
“(iii) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

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

(d) INCOME AND LOSS FROM INVESTMENT SERVICES

PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DETERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

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

“(18) notwithstanding the preceding provisions of this subsection, in the case of any individual en-
gaged in the trade or business of providing services described in section 710(c)(1) with respect to any entity, any amount treated as ordinary income or or-
dinary loss of such individual under section 710 with respect to such entity shall be taken into account in determining the net earnings from self-employment of such individual.”.
(2) Social Security Act.—Section 211(a) of
the Social Security Act is amended by striking
“and” at the end of paragraph (15), by striking the
period at the end of paragraph (16) and inserting “; and”, and by inserting after paragraph (16) the fol-
lowing new paragraph:

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

(e) Conforming Amendments.—

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

(2) Section 741 is amended by inserting “or
section 710 (relating to special rules for partners
providing investment management services to part-
nership)” before the period at the end.
(3) The table of sections for part I of sub-
chapter K of chapter 1 is amended by adding at the
end the following new item:

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

(f) EFFECTIVE DATE.—

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

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

(3) DISPOSITIONS OF PARTNERSHIP INTER-
ESTS.—Section 710(b) of the Internal Revenue Code
of 1986 (as added by this section) shall apply to dis-
positions and distributions after December 31, 2010.
(4) OTHER INCOME AND GAIN IN CONNECTION
WITH INVESTMENT MANAGEMENT SERVICES.—Sec-
tion 710(c) of such Code (as added by this section)
shall take effect on December 31, 2010.

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

(a) In General.—Section 1402 is amended by add-
ing at the end the following new subsection:

“(m) Special Rules for Professional Service
Businesses.—

“(1) Shareholders Providing Services to
Disqualified S Corporations.—

“(A) In general.—In the case of any dis-
qualified S corporation, each shareholder of
such disqualified S corporation who provides
substantial services with respect to the profes-
sional service business referred to in subpara-
graph (C) shall take into account such share-
holder’s pro rata share of all items of income or
loss described in section 1366 which are attrib-
utable to such business in determining the
shareholder’s net earnings from self-employ-
ment.

“(B) Treatment of family members.—
Except as otherwise provided by the Secretary,