

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
2 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
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 “(B) the person receiving such interest
2 shall be treated as having made the election
3 under subsection (b)(1) unless such person
4 makes an election under this paragraph to have
5 such subsection not apply.”.

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

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

12 **SEC. 412. INCOME OF PARTNERS FOR PERFORMING IN-**
13 **VESTMENT MANAGEMENT SERVICES TREAT-**
14 **ED AS ORDINARY INCOME RECEIVED FOR**
15 **PERFORMANCE OF SERVICES.**

16 (a) IN GENERAL.—Part I of subchapter K of chapter
17 1 is amended by adding at the end the following new sec-
18 tion:

19 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
20 **VESTMENT MANAGEMENT SERVICES TO**
21 **PARTNERSHIP.**

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

1 “(1) IN GENERAL.—Notwithstanding section
2 702(b)—

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

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

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

14 “(2) TREATMENT OF LOSSES.—

15 “(A) LIMITATION.—Any net loss with re-
16 spect to such interest shall be allowed for any
17 partnership taxable year only to the extent that
18 such loss does not exceed the excess (if any)
19 of—

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

23 “(ii) the aggregate net loss with re-
24 spect to such interest not disallowed under

1 this subparagraph for all prior partnership
2 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.

9 “(C) BASIS ADJUSTMENT.—No adjustment
10 to the basis of a partnership interest shall be
11 made on account of any net loss which is not
12 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.

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

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

23 “(i) all items of income and gain
24 taken into account by the holder of such

1 interest under section 702 with respect to
2 such interest for such year, over

3 “(ii) all items of deduction and loss so
4 taken into account.

5 “(B) NET LOSS.—The term ‘net loss’
6 means, with respect to such interest for such
7 year, the excess (if any) of the amount de-
8 scribed in subparagraph (A)(ii) over the amount
9 described in subparagraph (A)(i).

10 “(4) SPECIAL RULE FOR DIVIDENDS.—Any div-
11 idend taken into account in determining net income
12 or net loss for purposes of paragraph (1) shall not
13 be treated as qualified dividend income for purposes
14 of section 1(h).

15 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

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

18 “(A) treated as ordinary income, and

19 “(B) recognized notwithstanding any other
20 provision of this subtitle.

21 “(2) LOSS.—Any loss on the disposition of an
22 investment services partnership interest shall be
23 treated as an ordinary loss to the extent of the ex-
24 cess (if any) of—

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

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

8 “(3) EXCEPTION FOR CERTAIN DISPOSITIONS
9 OF INTERESTS IN A PUBLICLY TRADED PARTNER-
10 SHIP.—

11 “(A) IN GENERAL.—Paragraphs (1), (2),
12 and (7) shall not apply in the case of an appli-
13 cable disposition of an investment services part-
14 nership interest which is an interest in a pub-
15 licly traded partnership (as defined in section
16 7704) if—

17 “(i) in the case of a disposition de-
18 scribed in subparagraph (C)(i), neither the
19 individual nor any member of such individ-
20 ual’s family (within the meaning of section
21 318(a)(1)), or

22 “(ii) in the case of a disposition de-
23 scribed in subparagraph (C)(ii), neither the
24 regulated investment company or real es-
25 tate investment trust (nor any person re-

1 lated (within the meaning of section
2 267(b)) to such company),
3 has (at any time) provided (directly or indi-
4 rectly through a partnership, S corporation, es-
5 tate or trust) any of the services described in
6 subsection (c)(1) with respect to assets held (di-
7 rectly or indirectly) by such publicly traded
8 partnership.

9 “(B) LIMITATION ON APPLICATION OF
10 SECTION.—This paragraph shall apply to an in-
11 terest in a publicly traded partnership (as de-
12 fined in section 7704) only if substantially all
13 of such partnership’s gross income consists of
14 those items described in paragraph (1)(E) (or
15 so much of paragraph (1)(F) as relates to para-
16 graph (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—

22 “(i) an individual, or

23 “(ii) either—

24 “(I) a regulated investment com-
25 pany other than a regulated invest-

1 ment company treated as closely held
2 (within the meaning of section
3 856(h)(1)), or

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

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

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

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

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

1 “(6) DISTRIBUTIONS OF PARTNERSHIP PROP-
2 ERTY.—In the case of any distribution of property
3 by a partnership with respect to any investment
4 services partnership interest held by a partner—

5 “(A) the excess (if any) of—

6 “(i) the fair market value of such
7 property at the time of such distribution,
8 over

9 “(ii) the adjusted basis of such prop-
10 erty in the hands of the partnership,
11 shall be taken into account as an increase in
12 such partner’s distributive share of the taxable
13 income of the partnership (except to the extent
14 such excess is otherwise taken into account in
15 determining the taxable income of the partner-
16 ship),

17 “(B) such property shall be treated for
18 purposes of subpart B of part II as money dis-
19 tributed to such partner in an amount equal to
20 such fair market value, and

21 “(C) the basis of such property in the
22 hands of such partner shall be such fair market
23 value.

24 Subsection (b) of section 734 shall be applied with-
25 out regard to the preceding sentence. In the case of

1 a taxpayer which satisfies requirements similar to
2 the requirements of subparagraphs (A) and (B) of
3 paragraph (4), this paragraph and paragraph (1)(B)
4 shall not apply to the distribution of a partnership
5 interest if such distribution is in connection with a
6 contribution (or deemed contribution) of any prop-
7 erty of the partnership to which section 721 applies
8 pursuant to a transaction described in paragraph
9 (1)(B) or (2) of section 708(b).

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

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

15 “(1) IN GENERAL.—The term ‘investment serv-
16 ices partnership interest’ means any interest in a
17 partnership which is held (directly or indirectly) by
18 any person if it was reasonably expected (at the time
19 that such person acquired such interest) that such
20 person (or any person related to such person) would
21 provide (directly or indirectly) a substantial quantity
22 of any of the following services with respect to assets
23 held (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) RELATED PERSONS.—A person shall be
2 treated as related to another person if the relation-
3 ship between such persons is described in section
4 267 or 707(b).

5 “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-
6 ESTS.—

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

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

21 “(B) the allocations made to such other in-
22 terests are significant compared to the alloca-
23 tions made to such qualified capital interest.

24 “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO
25 ALLOCATION REQUIREMENTS.—To the extent pro-

1 vided by the Secretary in regulations or other guid-
2 ance—

3 “(A) ALLOCATIONS TO PORTION OF QUALI-
4 FIED CAPITAL INTEREST.—Paragraph (1) may
5 be applied separately with respect to a portion
6 of a qualified capital interest.

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

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

24 “(3) SPECIAL RULE FOR CHANGES IN SERV-
25 ICES.—In the case of an interest in a partnership

1 which is not an investment services partnership in-
2 terest and which, by reason of a change in the serv-
3 ices with respect to assets held (directly or indi-
4 rectly) by the partnership, would (without regard to
5 the reasonable expectation exception of subsection
6 (c)(1)) have become such an interest—

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

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

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

1 “(5) EXCEPTION FOR NO-SELF-CHARGED
2 CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-
3 cept as otherwise provided by the Secretary, an in-
4 terest shall not fail to be treated as satisfying the
5 requirement of paragraph (1)(A) merely because the
6 allocations made by the partnership to such interest
7 do not reflect the cost of services described in sub-
8 section (c)(1) which are provided (directly or indi-
9 rectly) to the partnership by the holder of such in-
10 terest (or a related person).

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

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

23 “(B) the distributive share of gain or loss
24 that would have been so allocated to the invest-

1 ment services partnership interest of which such
2 qualified capital interest is a part.

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

5 “(A) IN GENERAL.—The term ‘qualified
6 capital interest’ means so much of a partner’s
7 interest in the capital of the partnership as is
8 attributable to—

9 “(i) the fair market value of any
10 money or other property contributed to the
11 partnership in exchange for such interest
12 (determined without regard to section
13 752(a)),

14 “(ii) any amounts which have been in-
15 cluded in gross income under section 83
16 with respect to the transfer of such inter-
17 est, and

18 “(iii) the excess (if any) of—

19 “(I) any items of income and
20 gain taken into account under section
21 702 with respect to such interest, over

22 “(II) any items of deduction and
23 loss so taken into account.

24 “(B) ADJUSTMENT TO QUALIFIED CAPITAL
25 INTEREST.—

1 “(i) DISTRIBUTIONS AND LOSSES.—

2 The qualified capital interest shall be re-
3 duced by distributions from the partner-
4 ship with respect to such interest and by
5 the excess (if any) of the amount described
6 in subparagraph (A)(iii)(II) over the
7 amount described in subparagraph
8 (A)(iii)(I).

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

21 “(8) TREATMENT OF CERTAIN LOANS.—

22 “(A) PROCEEDS OF PARTNERSHIP LOANS
23 NOT TREATED AS QUALIFIED CAPITAL INTER-
24 EST OF SERVICE PROVIDING PARTNERS.—For
25 purposes of this subsection, an investment serv-

1 ices partnership interest shall not be treated as
2 a qualified capital interest to the extent that
3 such interest is acquired in connection with the
4 proceeds of any loan or other advance made or
5 guaranteed, directly or indirectly, by any other
6 partner or the partnership (or any person re-
7 lated to any such other partner or the partner-
8 ship).

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

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

23 “(1) IN GENERAL.—If—

1 “(A) a person performs (directly or indi-
2 rectly) investment management services for any
3 entity,

4 “(B) such person holds (directly or indi-
5 rectly) a disqualified interest with respect to
6 such entity, and

7 “(C) the value of such interest (or pay-
8 ments thereunder) is substantially related to
9 the amount of income or gain (whether or not
10 realized) from the assets with respect to which
11 the investment management services are per-
12 formed,

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

17 “(2) DEFINITIONS.—For purposes of this sub-
18 section—

19 “(A) DISQUALIFIED INTEREST.—

20 “(i) IN GENERAL.—The term ‘dis-
21 qualified interest’ means, with respect to
22 any entity—

23 “(I) any interest in such entity
24 other than indebtedness,

1 “(II) convertible or contingent
2 debt of such entity,

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

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

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

12 “(I) a partnership interest,

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

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

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

20 “(i) a domestic C corporation, or

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

23 “(I) effectively connected with
24 the conduct of a trade or business in
25 the United States, or

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

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

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

12 “(1) provide modifications to the application of
13 this section (including treating related persons as
14 not related to one another) to the extent such modi-
15 fication is consistent with the purposes of this sec-
16 tion,

17 “(2) prevent the avoidance of the purposes of
18 this section, and

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

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

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

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

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

11 “(4) SPECIAL RULE FOR RECOGNITION OF
12 GAIN.—Gain which (but for this section) would not
13 be recognized shall be recognized by reason of sub-
14 section (b) only to the extent that such gain is treat-
15 ed as ordinary income after application of paragraph
16 (2).

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

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

24 “(B) in the case of a prior partnership tax-
25 able year referred to in clause (i) or (ii) of sub-

1 paragraph (A) of such paragraph, only the ap-
2 plicable percentage (as in effect for such prior
3 taxable year) of net income or net loss for such
4 prior partnership taxable year shall be taken
5 into account, and

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

9 “(i) be taken into account in such
10 succeeding year without reduction under
11 this subsection, and

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

15 “(I) as an increase in net loss or
16 as a reduction in net income (includ-
17 ing below zero), as the case may be,
18 and

19 “(II) after any reduction in the
20 amount of such net loss or net income
21 under this subsection.

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

24 “(6) COORDINATION WITH TREATMENT OF
25 DIVIDENDS.—Subsection (a)(4) shall only apply to

1 the applicable percentage of dividends described
2 therein.

3 “(7) APPLICABLE PERCENTAGE.—For purposes
4 of this subsection—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), the term ‘applicable percent-
7 age’ means 65 percent (50 percent in the case
8 of any taxable year beginning before January 1,
9 2013).

10 “(B) EXCEPTIONS FOR SALES OF ASSETS
11 HELD AT LEAST 7 YEARS.—In the case of any
12 taxable year beginning after December 31,
13 2012, the applicable percentage shall be 55 per-
14 cent with respect to any net income or net loss
15 under subsection (a)(1), or any income or gain
16 under subsection (e), which is properly allocable
17 to gain or loss from the sale or exchange of any
18 asset which is held at least 7 years.

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

22 (b) TREATMENT FOR PURPOSES OF SECTION
23 7704.—Subsection (d) of section 7704 is amended by add-
24 ing at the end the following new paragraph:

1 “(6) INCOME FROM INVESTMENT SERVICES
2 PARTNERSHIP INTERESTS NOT QUALIFIED.—

3 “(A) IN GENERAL.—Items of income and
4 gain shall not be treated as qualifying income
5 if such items are treated as ordinary income by
6 reason of the application of section 710 (relat-
7 ing to special rules for partners providing in-
8 vestment management services to partnership).
9 The preceding sentence shall not apply to any
10 item described in paragraph (1)(E) (or so much
11 of paragraph (1)(F) as relates to paragraph
12 (1)(E)).

13 “(B) SPECIAL RULES FOR CERTAIN PART-
14 NERSHIPS.—

15 “(i) CERTAIN PARTNERSHIPS OWNED
16 BY REAL ESTATE INVESTMENT TRUSTS.—
17 Subparagraph (A) shall not apply in the
18 case of a partnership which meets each of
19 the following requirements:

20 “(I) Such partnership is treated
21 as publicly traded under this section
22 solely by reason of interests in such
23 partnership being convertible into in-
24 terests in a real estate investment
25 trust which is publicly traded.

1 “(II) 50 percent or more of the
2 capital and profits interests of such
3 partnership are owned, directly or in-
4 directly, at all times during the tax-
5 able year by such real estate invest-
6 ment trust (determined with the ap-
7 plication of section 267(c)).

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

11 “(ii) CERTAIN PARTNERSHIPS OWN-
12 ING OTHER PUBLICLY TRADED PARTNER-
13 SHIPS.—Subparagraph (A) shall not apply
14 in the case of a partnership which meets
15 each of the following requirements:

16 “(I) Substantially all of the as-
17 sets of such partnership consist of in-
18 terests in one or more publicly traded
19 partnerships (determined without re-
20 gard to subsection (b)(2)).

21 “(II) Substantially all of the in-
22 come of such partnership is ordinary
23 income or section 1231 gain (as de-
24 fined in section 1231(a)(3)).

1 “(C) TRANSITIONAL RULE.—Subpara-
2 graph (A) shall not apply to any taxable year
3 of the partnership beginning before the date
4 which is 10 years after the date of the enact-
5 ment of this paragraph.”.

6 (c) IMPOSITION OF PENALTY ON UNDERPAY-
7 MENTS.—

8 (1) IN GENERAL.—Subsection (b) of section
9 6662 is amended by inserting after paragraph (7)
10 the following new paragraph:

11 “(8) The application of subsection (e) of section
12 710 or the regulations prescribed under section
13 710(f) to prevent the avoidance of the purposes of
14 section 710.”.

15 (2) AMOUNT OF PENALTY.—

16 (A) IN GENERAL.—Section 6662 is amend-
17 ed by adding at the end the following new sub-
18 section:

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

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

4 (3) SPECIAL RULES FOR APPLICATION OF REA-
5 SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-
6 tion 6664 is amended—

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

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

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

14 “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-
15 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-
16 ICES.—

17 “(A) IN GENERAL.—Paragraph (1) shall
18 not apply to any portion of an underpayment to
19 which this section applies by reason of sub-
20 section (b)(8) unless—

21 “(i) the relevant facts affecting the
22 tax treatment of the item are adequately
23 disclosed,

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

1 “(iii) the taxpayer reasonably believed
2 that such treatment was more likely than
3 not the proper treatment.

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

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

11 (1) INTERNAL REVENUE CODE.—Section
12 1402(a) is amended by striking “and” at the end of
13 paragraph (16), by striking the period at the end of
14 paragraph (17) and inserting “; and”, and by insert-
15 ing after paragraph (17) the following new para-
16 graph:

17 “(18) notwithstanding the preceding provisions
18 of this subsection, in the case of any individual en-
19 gaged in the trade or business of providing services
20 described in section 710(c)(1) with respect to any
21 entity, any amount treated as ordinary income or or-
22 dinary loss of such individual under section 710 with
23 respect to such entity shall be taken into account in
24 determining the net earnings from self-employment
25 of such individual.”.

1 (2) SOCIAL SECURITY ACT.—Section 211(a) of
2 the Social Security Act is amended by striking
3 “and” at the end of paragraph (15), by striking the
4 period at the end of paragraph (16) and inserting “;
5 and”, and by inserting after paragraph (16) the fol-
6 lowing new paragraph:

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

17 (e) CONFORMING AMENDMENTS.—

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

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

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

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

4 (f) EFFECTIVE DATE.—

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

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

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

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

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

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

9 “(m) SPECIAL RULES FOR PROFESSIONAL SERVICE
10 BUSINESSES.—

11 “(1) SHAREHOLDERS PROVIDING SERVICES TO
12 DISQUALIFIED S CORPORATIONS.—

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

24 “(B) TREATMENT OF FAMILY MEMBERS.—
25 Except as otherwise provided by the Secretary,