

AMENDMENT**OFFERED BY M_____**

In section 110001, redesignate subsection (c) as subsection (d) and insert after subsection (b) the following:

1 (c) APPLICATION OF SECTION TO PARTNERS PRO-
2 VIDING INVESTMENT MANAGEMENT SERVICES TO PART-
3 NERSHIPS.—Section 1(j) is amended by adding at the end
4 the following:

5 “(7) TREATMENT OF DISTRIBUTIVE SHARE OF
6 PARTNERSHIP ITEMS.—For purposes of this title, in
7 the case of an investment services partnership inter-
8 est—

9 “(A) IN GENERAL.—Notwithstanding sec-
10 tion 702(b)—

11 “(i) an amount equal to the net cap-
12 ital gain with respect to such interest for
13 any partnership taxable year shall be treat-
14 ed as ordinary income, and

15 “(ii) subject to the limitation of sub-
16 paragraph (B), an amount equal to the net
17 capital loss with respect to such interest

1 for any partnership taxable year shall be
2 treated as an ordinary loss.

3 “(B) RECHARACTERIZATION OF LOSSES
4 LIMITED TO RECHARACTERIZED GAINS.—The
5 amount treated as ordinary loss under subpara-
6 graph (A)(ii) for any taxable year shall not ex-
7 ceed the excess (if any) of—

8 “(i) the aggregate amount treated as
9 ordinary income under subparagraph (A)(i)
10 with respect to the investment services
11 partnership interest for all preceding part-
12 nership taxable years to which this section
13 applies, over

14 “(ii) the aggregate amount treated as
15 ordinary loss under subparagraph (A)(ii)
16 with respect to such interest for all pre-
17 ceding partnership taxable years to which
18 this section applies.

19 “(C) ALLOCATION TO ITEMS OF GAIN AND
20 LOSS.—

21 “(i) NET CAPITAL GAIN.—The
22 amount treated as ordinary income under
23 subparagraph (A)(i) shall be allocated rat-
24 ably among the items of long-term capital

1 gain taken into account in determining
2 such net capital gain.

3 “(ii) NET CAPITAL LOSS.—The
4 amount treated as ordinary loss under
5 paragraph (A)(ii) shall be allocated ratably
6 among the items of long-term capital loss
7 and short-term capital loss taken into ac-
8 count in determining such net capital loss.

9 “(D) TERMS RELATING TO CAPITAL GAINS
10 AND LOSSES.—For purposes of this section—

11 “(i) IN GENERAL.—Net capital gain,
12 long-term capital gain, and long-term cap-
13 ital loss, with respect to any investment
14 services partnership interest for any tax-
15 able year, shall be determined under sec-
16 tion 1222, except that such section shall be
17 applied—

18 “(I) without regard to the re-
19 characterization of any item as ordi-
20 nary income or ordinary loss under
21 this paragraph,

22 “(II) by only taking into account
23 items of gain and loss taken into ac-
24 count by the holder of such interest
25 under section 702 (other than sub-

1 section (a)(9) thereof) with respect to
2 such interest for such taxable year,
3 and

4 “(III) by treating property which
5 is taken into account in determining
6 gains and losses to which section 1231
7 applies as capital assets held for more
8 than 1 year.

9 “(ii) NET CAPITAL LOSS.—The term
10 ‘net capital loss’ means the excess of the
11 losses from sales or exchanges of capital
12 assets over the gains from such sales or ex-
13 changes. Rules similar to the rules of sub-
14 clauses (I) through (III) of clause (i) shall
15 apply for purposes of the preceding sen-
16 tence.

17 “(E) SPECIAL RULE FOR DIVIDENDS.—
18 Any dividend allocated with respect to any in-
19 vestment services partnership interest shall not
20 be treated as qualified dividend income for pur-
21 poses of subsection (h).

22 “(F) SPECIAL RULE FOR QUALIFIED
23 SMALL BUSINESS STOCK.—Section 1202 shall
24 not apply to any gain from the sale or exchange
25 of qualified small business stock (as defined in

1 section 1202(c)) allocated with respect to any
2 investment services partnership interest.

3 “(8) INVESTMENT SERVICES PARTNERSHIP IN-
4 TEREST.—For purposes of this subsection—

5 “(A) IN GENERAL.—The term ‘investment
6 services partnership interest’ means any inter-
7 est in an investment partnership acquired or
8 held by any person in connection with the con-
9 duct of a trade or business described in sub-
10 paragraph (B) by such person (or any person
11 related to such person). An interest in an in-
12 vestment partnership held by any person—

13 “(i) shall not be treated as an invest-
14 ment services partnership interest for any
15 period before the first date on which it is
16 so held in connection with such a trade or
17 business,

18 “(ii) shall not cease to be an invest-
19 ment services partnership interest merely
20 because such person holds such interest
21 other than in connection with such a trade
22 or business, and

23 “(iii) shall be treated as an invest-
24 ment services partnership interest if ac-
25 quired from a related person in whose

1 hands such interest was an investment
2 services partnership interest.

3 “(B) BUSINESSES TO WHICH THIS SEC-
4 TION APPLIES.—A trade or business is de-
5 scribed in this subparagraph if such trade or
6 business primarily involves the performance of
7 any of the following services with respect to as-
8 sets held (directly or indirectly) by one or more
9 investment partnerships referred to in subpara-
10 graph (A):

11 “(i) Advising as to the advisability of
12 investing in, purchasing, or selling any
13 specified asset.

14 “(ii) Managing, acquiring, or dis-
15 posing of any specified asset.

16 “(iii) Arranging financing with respect
17 to acquiring specified assets.

18 “(iv) Any activity in support of any
19 service described in clauses (i) through
20 (iii).

21 “(C) INVESTMENT PARTNERSHIP.—

22 “(i) IN GENERAL.—The term ‘invest-
23 ment partnership’ means any partnership
24 if, at the end of any two consecutive cal-

1 endar quarters ending after the date of en-
2 actment of this paragraph—

3 “(I) substantially all of the assets
4 of the partnership are specified assets
5 (determined without regard to any
6 section 197 intangible within the
7 meaning of section 197(d)), and

8 “(II) less than 75 percent of the
9 capital of the partnership is attrib-
10 utable to qualified capital interests
11 which constitute property held in con-
12 nection with a trade or business of the
13 owner of such interest.

14 “(ii) LOOK-THROUGH OF CERTAIN
15 WHOLLY-OWNED ENTITIES FOR PURPOSES
16 OF DETERMINING ASSETS OF THE PART-
17 NERSHIP.—

18 “(I) IN GENERAL.—For purposes
19 of determining the assets of a part-
20 nership under clause (i)(I)—

21 “(aa) any interest in a speci-
22 fied entity shall not be treated as
23 an asset of such partnership, and

24 “(bb) such partnership shall
25 be treated as holding its propor-

1 tionate share of each of the as-
2 sets of such specified entity.

3 “(II) SPECIFIED ENTITY.—For
4 purposes of subclause (I), the term
5 ‘specified entity’ means, with respect
6 to any partnership (hereafter referred
7 to as the upper-tier partnership), any
8 person which engages in the same
9 trade or business as the upper-tier
10 partnership and is—

11 “(aa) a partnership all of
12 the capital and profits interests
13 of which are held directly or indi-
14 rectly by the upper-tier partner-
15 ship, or

16 “(bb) a foreign corporation
17 which does not engage in a trade
18 or business in the United States
19 and all of the stock of which is
20 held directly or indirectly by the
21 upper-tier partnership.

22 “(iii) SPECIAL RULES FOR DETER-
23 MINING IF PROPERTY HELD IN CONNec-
24 TION WITH TRADE OR BUSINESS.—

1 “(I) IN GENERAL.—Except as
2 otherwise provided by the Secretary,
3 solely for purposes of determining
4 whether any interest in a partnership
5 constitutes property held in connec-
6 tion with a trade or business under
7 clause (i)(II)—

8 “(aa) a trade or business of
9 any person closely related to the
10 owner of such interest shall be
11 treated as a trade or business of
12 such owner,

13 “(bb) such interest shall be
14 treated as held by a person in
15 connection with a trade or busi-
16 ness during any taxable year if
17 such interest was so held by such
18 person during any 3 taxable
19 years preceding such taxable
20 year, and

21 “(cc) subparagraph (E)(ii)
22 shall not apply.

23 “(II) CLOSELY RELATED PER-
24 SONS.—For purposes of subclause
25 (I)(aa), a person shall be treated as

1 closely related to another person if,
2 taking into account the rules of sec-
3 tion 267(c), the relationship between
4 such persons is described in—

5 “(aa) paragraph (1) or (9)
6 of section 267(b), or

7 “(bb) section 267(b)(4), but
8 solely in the case of a trust with
9 respect to which each current
10 beneficiary is the grantor or a
11 person whose relationship to the
12 grantor is described in paragraph
13 (1) or (9) of section 267(b).

14 “(iv) ANTIABUSE RULES.—The Sec-
15 retary may issue regulations or other guid-
16 ance which prevent the avoidance of the
17 purposes of clause (i), including regula-
18 tions or other guidance which treat con-
19 vertible and contingent debt (and other
20 debt having the attributes of equity) as a
21 capital interest in the partnership.

22 “(v) CONTROLLED GROUPS OF ENTI-
23 TIES.—

24 “(I) IN GENERAL.—In the case
25 of a controlled group of entities, if an

1 interest in the partnership received in
2 exchange for a contribution to the
3 capital of the partnership by any
4 member of such controlled group
5 would (in the hands of such member)
6 constitute property held in connection
7 with a trade or business, then any in-
8 terest in such partnership held by any
9 member of such group shall be treated
10 for purposes of subparagraph (A) as
11 constituting (in the hands of such
12 member) property held in connection
13 with a trade or business.

14 “(II) CONTROLLED GROUP OF
15 ENTITIES.—For purposes of subclause
16 (I), the term ‘controlled group of enti-
17 ties’ means a controlled group of cor-
18 porations as defined in section
19 1563(a)(1), applied without regard to
20 subsections (a)(4) and (b)(2) of sec-
21 tion 1563. A partnership or any other
22 entity (other than a corporation) shall
23 be treated as a member of a con-
24 trolled group of entities if such entity
25 is controlled (within the meaning of

1 section 954(d)(3)) by members of
2 such group (including any entity
3 treated as a member of such group by
4 reason of this sentence).

5 “(vi) SPECIAL RULE FOR CORPORA-
6 TIONS.—For purposes of this subpara-
7 graph, in the case of a corporation, the de-
8 termination of whether property is held in
9 connection with a trade or business shall
10 be determined as if the taxpayer were an
11 individual.

12 “(D) SPECIFIED ASSET.—The term ‘speci-
13 fied asset’ means securities (as defined in sec-
14 tion 475(c)(2) without regard to the last sen-
15 tence thereof), real estate held for rental or in-
16 vestment, interests in partnerships, commodities
17 (as defined in section 475(e)(2)), cash or cash
18 equivalents, or options or derivative contracts
19 with respect to any of the foregoing.

20 “(E) RELATED PERSONS.—

21 “(i) IN GENERAL.—A person shall be
22 treated as related to another person if the
23 relationship between such persons is de-
24 scribed in section 267(b) or 707(b).

1 “(ii) ATTRIBUTION OF PARTNER
2 SERVICES.—Any service described in sub-
3 paragraph (B) which is provided by a part-
4 ner of a partnership shall be treated as
5 also provided by such partnership.”.

