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(Original Signature of Member)

119TH CONGRESS  
2D SESSION

# H. R. 9175

To amend the Internal Revenue Code of 1986 to provide rules for taxation of income relating to the mining and staking of digital assets, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. CAREY introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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## A BILL

To amend the Internal Revenue Code of 1986 to provide rules for taxation of income relating to the mining and staking of digital assets, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Tax Clarity for Mining and Staking Act”.

6 (b) **REFERENCES.**—Except as otherwise expressly  
7 provided, whenever in this Act an amendment or repeal  
8 is expressed in terms of an amendment to, or repeal of,

1 a section or other provision, the reference shall be consid-  
2 ered to be made to a section or other provision of the In-  
3 ternal Revenue Code of 1986.

4 (c) TABLE OF CONTENTS.—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title; etc.

Sec. 2. Treatment of certain digital assets received in connection with the vali-  
dation of digital asset transactions.

Sec. 3. Investment trusts engaged in digital asset staking.

Sec. 4. Definitions.

6 **SEC. 2. TREATMENT OF CERTAIN DIGITAL ASSETS RE-**  
7 **CEIVED IN CONNECTION WITH THE VALIDA-**  
8 **TION OF DIGITAL ASSET TRANSACTIONS.**

9 (a) IN GENERAL.—Chapter 1 is amended by insert-  
10 ing after subchapter V the following new subchapter:

11 **“Subchapter W—Newly Minted Digital Assets**  
12 **Received in Connection With the Valid-**  
13 **ation of Digital Asset Transactions**

“Sec. 1400W-1. Current inclusions in gross income; costs not capitalized.

“Sec. 1400W-2. Election to defer inclusion of income and capitalize costs of  
qualified newly minted digital assets.

“Sec. 1400W-3. Definitions; regulations.

14 **“SEC. 1400W-1. CURRENT INCLUSIONS IN GROSS INCOME;**  
15 **COSTS NOT CAPITALIZED.**

16 “(a) IN GENERAL.—In the case of the acquisition of  
17 any newly minted digital asset—

18 “(1) the fair market value of such asset shall  
19 be included in the taxpayer’s gross income as ordi-  
20 nary income as of the time of such acquisition, and

1           “(2) the amount included in gross income under  
2 paragraph (1) shall be properly taken into account  
3 in determining the taxpayer’s basis in such asset.

4           “(b) ACQUISITION COSTS NOT CAPITALIZED.—

5           “(1) IN GENERAL.—Notwithstanding any provi-  
6 sion of this title (other than paragraph (2) and sec-  
7 tion 1400W-2), specified acquisition costs shall be  
8 treated as an expense which is not chargeable to  
9 capital account.

10           “(2) AUTHORITY FOR EXCEPTION TO CONFORM  
11 WITH TAXPAYER’S APPLICABLE FINANCIAL STATE-  
12 MENT.—The Secretary may issue regulations or  
13 other guidance which allow specified acquisition  
14 costs to be chargeable to capital account if such  
15 treatment would be consistent with the treatment of  
16 such costs for purposes of the applicable financial  
17 statement (as defined in section 451(b)(3)) of the  
18 taxpayer.

19           **“SEC. 1400W-2. ELECTION TO DEFER INCLUSION OF INCOME**  
20                           **AND CAPITALIZE COSTS OF QUALIFIED**  
21                           **NEWLY MINTED DIGITAL ASSETS.**

22           “(a) IN GENERAL.—Notwithstanding section 1400W-  
23 1, in the case of any taxpayer for any taxable year to  
24 which an election under subsection (e) applies—

1           “(1) all qualified newly minted digital assets ac-  
2           quired by such taxpayer during such taxable year  
3           shall not be included in the taxpayer’s gross income  
4           by reason of such acquisition, and

5           “(2) specified acquisition costs paid or incurred  
6           during such taxable year shall be chargeable to cap-  
7           ital account with respect to qualified newly minted  
8           digital assets in accordance with the rules provided  
9           in subsection (c) (and no deduction shall otherwise  
10          be allowed under this subtitle with respect to such  
11          costs).

12          “(b) RECOGNITION AND CHARACTER OF GAIN OR  
13          LOSS ON DISPOSITION.—

14                 “(1) IN GENERAL.—In the case of a disposition  
15                 of any qualified newly minted digital asset—

16                         “(A) any gain on such disposition shall  
17                         be—

18                                 “(i) recognized notwithstanding any  
19                                 other provision of this subtitle, and

20                                 “(ii) treated as gain from the disposi-  
21                                 tion of property which is not a capital  
22                                 asset, and

23                         “(B) any loss on such disposition shall be  
24                         treated as loss from the disposition of property  
25                         which is not a capital asset to the extent that

1           such loss exceeds the portion of the basis of  
2           such property that is not attributable to speci-  
3           fied acquisition costs.

4           “(2) EXCEPTION FOR CERTAIN NONRECOGNI-  
5           TION TRANSACTIONS.—Paragraph (1) shall not  
6           apply to—

7                   “(A) any disposition to which section 1058  
8                   applies, and

9                   “(B) to the extent provided by the Sec-  
10                  retary, any disposition which is a nonrecog-  
11                  nition transaction described in subchapter C or  
12                  K.

13           “(3) SPECIAL RULE FOR DETERMINING CARRY-  
14           OVER BASIS.—In the case of any disposition of a  
15           qualified newly minted digital asset with respect to  
16           which gain is recognized by the transferor under  
17           paragraph (1), if the basis of such asset in the  
18           hands of the transferee is determined by reference to  
19           the basis of such asset in the hands of the trans-  
20           feror, proper adjustments shall be made in the de-  
21           termination of basis to take into account such gain.

22           “(c) CAPITALIZATION OF SPECIFIED ACQUISITION  
23           COSTS.—

24                   “(1) IN GENERAL.—For purposes of this sec-  
25                  tion, the Secretary shall provide rules for the proper

1 allocation of specified acquisition costs among quali-  
2 fied newly minted digital assets.

3 “(2) CESSATION OF ACTIVITIES.—The rules  
4 provided under paragraph (1) shall include rules  
5 that provide for the proper deduction of specified ac-  
6 quisition costs which are not otherwise allocated to  
7 qualified newly minted digital assets pursuant to  
8 such rules because the taxpayer indefinitely ceases  
9 all activities related to the validation of digital assets  
10 (including staking and mining).

11 “(d) QUALIFIED NEWLY MINTED DIGITAL ASSET.—  
12 For purposes of this section—

13 “(1) IN GENERAL.—The term ‘qualified newly  
14 minted digital assets’ means, with respect to any  
15 taxpayer for any taxable year, any newly minted dig-  
16 ital asset (determined without regard to subpara-  
17 graph (B) of section 1400W-3(a)(1)) acquired by  
18 such taxpayer during such taxable year if—

19 “(A) the election under subsection (e) ap-  
20 plies to such taxpayer for such taxable year,  
21 and

22 “(B) the taxpayer—

23 “(i) in the case of any such newly  
24 minted digital asset issued in connection  
25 with a validation of digital asset trans-

1 actions which was not supported by the  
2 staking of digital assets—

3 “(I) is the person who validated  
4 such digital asset transactions, and

5 “(II) is the first owner of such  
6 newly minted digital asset, or

7 “(ii) in the case of any such newly  
8 minted digital asset issued in connection  
9 with a validation of digital asset trans-  
10 actions which was supported by the staking  
11 of digital assets—

12 “(I) is the person who holds the  
13 digital assets that were so staked, and

14 “(II) either is the first owner of  
15 such newly minted digital asset or ac-  
16 quired such newly minted digital asset  
17 promptly after such newly minted dig-  
18 ital asset was issued.

19 “(2) LESSEE TREATED AS HOLDER.—For pur-  
20 poses of paragraph (1)(B)(ii)(I), if a digital asset is  
21 lent to any person, such person (and not the person  
22 lending such asset) shall be treated as holding such  
23 asset.

24 “(e) ELECTION.—

1           “(1) IN GENERAL.—An election under this sec-  
2           tion shall apply for the taxable year for which it is  
3           made and for each taxable year thereafter unless re-  
4           voked with the consent of the Secretary. Such elec-  
5           tion shall be made at such time and in such manner  
6           as the Secretary may provide.

7           “(2) APPLICATION TO PARTNERSHIPS AND S  
8           CORPORATIONS.—In the case of any partnership or  
9           S corporation, the election under this section shall  
10          be made at the partnership or S corporation level.

11          “(3) TREATMENT AS CHANGE IN METHOD OF  
12          ACCOUNTING.—A taxpayer making an election under  
13          this section shall be treated for purposes of section  
14          481 as making a change in method of accounting  
15          which is initiated by the taxpayer and made with the  
16          consent of the Secretary. Such change shall be ap-  
17          plied only on a cut-off basis, and no adjustments  
18          shall be made under section 481(a).

19          “(f) CONTROLLED FOREIGN CORPORATIONS AND  
20          PASSIVE FOREIGN INVESTMENT CORPORATIONS INELI-  
21          GIBLE.—This section shall not apply to—

22                 “(1) any controlled foreign corporation or any  
23                 passive foreign investment company (as defined in  
24                 section 1297),

1           “(2) except as otherwise provided by the Sec-  
2     retary—

3           “(A) any foreign trust, and

4           “(B) any partnership in which one or more  
5     controlled foreign corporations, passive foreign  
6     investment companies (as so defined), or for-  
7     eign trusts are partners in such partnership,  
8     and

9           “(3) to the extent provided by the Secretary,  
10    any partnership or trust if one or more entities de-  
11    scribed in paragraph (2)(B) are indirectly partners  
12    in such partnership or direct or indirect beneficiaries  
13    of such trust.

14       “(g) TREATMENT OF CERTAIN GRANTOR TRUSTS.—  
15    The regulations or other guidance issued by the Secretary  
16    under section 1400W-3(c) may include regulations or  
17    other guidance providing rules for the application of this  
18    section with respect to digital assets owned through a  
19    widely traded fixed investment trust, including regulations  
20    or other guidance—

21       “(1) modifying information reporting require-  
22    ments or requiring additional information reporting  
23    with respect to newly minted digital assets acquired  
24    through such a trust,

1           “(2) providing reasonable methods for brokers  
2           (or any other person required to report information  
3           with respect to such a trust) to determine and report  
4           the portion of the interest in such a trust that re-  
5           sults from the acquisition of newly minted digital as-  
6           sets during a taxpayer’s holding period,

7           “(3) requiring owners of interests in such a  
8           trust to notify the broker (or any other person re-  
9           quired to report information with respect to such a  
10          trust) whether an election has been made under sub-  
11          section (e),

12          “(4) providing rules for the appropriate alloca-  
13          tion of basis to the portion of the interest in such  
14          a trust that is attributable to the acquisition of  
15          newly minted digital assets, including by requiring  
16          the allocation of any basis (other than specified ac-  
17          quisition costs required to be capitalized under this  
18          section) to a taxpayer’s other interests in such a  
19          trust,

20          “(5) providing rules to reduce administrative  
21          and compliance burdens by providing for aggrega-  
22          tion, approximation, or other reasonable methods to  
23          compute and report gain attributable to newly mint-  
24          ed digital assets acquired through such a trust, and

1           “(6) defining the widely traded fixed investment  
2 trusts to which the regulations or other guidance  
3 under this subsection applies.

4 **“SEC. 1400W-3. DEFINITIONS; SPECIAL RULES; REGULA-**  
5 **TIONS.**

6           “(a) DEFINITIONS.—For purposes of this sub-  
7 chapter—

8           “(1) NEWLY MINTED DIGITAL ASSET.—

9           “(A) IN GENERAL.—The term ‘newly mint-  
10 ed digital asset’ means any digital asset that is  
11 issued in connection with the validation of dig-  
12 ital asset transactions (including digital asset  
13 validation supporting activities) and that (prior  
14 to such issuance) was not owned by any person.

15           “(B) TERMINATION OF TREATMENT AS  
16 NEWLY MINTED.—A digital asset shall not be  
17 treated as a newly minted digital asset at any  
18 time after the disposition of such asset by the  
19 first owner of such asset.

20           “(C) AUTHORIZATION OF REASONABLE  
21 METHODS OF DETERMINATION.—

22           “(i) IN GENERAL.—Except as other-  
23 wise provided pursuant to clause (ii), a  
24 taxpayer may use any reasonable method  
25 to determine whether a digital asset ac-

1           required by the taxpayer is a newly minted  
2           digital asset.

3           “(ii) AUTHORITY OF SECRETARY TO  
4           IDENTIFY METHODS.— The Secretary may  
5           issue such regulations or other guidance as  
6           the Secretary determines necessary or ap-  
7           propriate specifying methods that are, or  
8           are not, reasonable for purposes of clause  
9           (i).

10          “(2) SPECIFIED ACQUISITION COSTS.—

11           “(A) IN GENERAL.—The term ‘specified  
12           acquisition costs’ means any amount paid or in-  
13           curred in connection with validating any digital  
14           asset transaction if, at the time such amount is  
15           paid or incurred there is a reasonable possibility  
16           that the taxpayer will acquire a newly minted  
17           digital asset in connection with such validation.  
18           Such term shall not include any amount unless  
19           such amount would (without regard to this sub-  
20           chapter) be either allowable as a deduction or  
21           chargeable to capital account.

22           “(B) INCLUSION OF CERTAIN COSTS.—For  
23           purposes of subparagraph (A), the term  
24           ‘amount paid or incurred in connection with  
25           validating any digital asset transaction’ includes

1 any amount paid or incurred in connection with  
2 the activity of validating, or attempting to vali-  
3 date, any digital asset transaction, including—

4 “(i) the direct costs of such activity,

5 “(ii) indirect costs allocable to such  
6 activity,

7 “(iii) fees paid or incurred to another  
8 party to carry out such activity, and

9 “(iv) interest costs allocable to such  
10 activity.

11 “(b) SPECIAL RULES.—For purposes of this sub-  
12 chapter—

13 “(1) ACQUIRE.—A person shall be treated as  
14 acquiring a newly minted digital asset in any case  
15 where such person comes to possess such asset and  
16 without regard to the manner in which such person  
17 comes to possess such asset.

18 “(2) CLARIFICATION THAT CERTAIN TRANS-  
19 FERS ARE TREATED AS DISPOSITIONS.—The fol-  
20 lowing shall not fail to be treated as a disposition for  
21 purposes of this subchapter:

22 “(A) The distribution of any digital asset  
23 from a trust to a beneficiary.

1           “(B) The transfer of any digital asset from  
2           a decedent (whether or not incident to the dece-  
3           dent’s death).

4           “(c) REGULATIONS.—The Secretary shall issue such  
5 regulations or other guidance as may be necessary or ap-  
6 propriate to carry out the purposes of this subchapter, in-  
7 cluding to prevent the abuse of the provisions of this sub-  
8 chapter.”.

9           (b) CLARIFICATION OF SOURCING RULES FOR DIG-  
10 ITAL ASSETS ACQUIRED IN CONNECTION WITH VALI-  
11 DATING DIGITAL ASSET TRANSACTIONS.—Section 863 is  
12 amended by adding at the end the following new sub-  
13 section:

14           “(f) TREATMENT OF DIGITAL ASSETS ACQUIRED IN  
15 CONNECTION WITH VALIDATING DIGITAL ASSET TRANS-  
16 ACTIONS.—

17           “(1) INCOME ON ACQUISITION.—Income from  
18 the acquisition of any digital asset received in con-  
19 nection with the validation of digital asset trans-  
20 actions (including digital asset validation supporting  
21 activities) shall be sourced—

22           “(A) in the United States if the taxpayer  
23 is a United States resident at the time of acqui-  
24 sition, and

1           “(B) outside the United States if the tax-  
2           payer is a nonresident at the time of acquisi-  
3           tion.

4           “(2) CERTAIN DEFERRED INCOME RECOGNIZED  
5           ON DISPOSITION.—Income described in section  
6           1400W-2(b) shall be sourced—

7           “(A) in the United States if the taxpayer  
8           is a United States resident at the time of dis-  
9           position, and

10           “(B) outside the United States if the tax-  
11           payer is a nonresident at the time of disposi-  
12           tion.

13           “(3) TREATMENT OF BRANCHES.—

14           “(A) FOREIGN BRANCHES.—In the case of  
15           a United States person with a qualified busi-  
16           ness unit (as defined in section 989(a)) in a  
17           foreign country, income described in paragraph  
18           (1) or (2) that constitute business profits at-  
19           tributable to such unit shall be sourced outside  
20           the United States.

21           “(B) U.S. BRANCHES.—In the case of a  
22           person that is not a United States person and  
23           that maintains an office or other fixed place of  
24           business in the United States, income described  
25           in paragraph (1) or (2) attributable to such of-

1           fice or other fixed place of business shall be  
2           sourced in the United States.

3           “(C) **ATTRIBUTION.**—For purposes of sub-  
4           paragraphs (A) and (B), the Secretary may  
5           issue such regulations or other guidance as the  
6           Secretary determines necessary or appropriate  
7           for purposes of determining the amount of busi-  
8           ness profits attributable to a qualified business  
9           unit or office or other fixed place of business.

10          “(4) **TREATMENT OF PARTNERSHIPS.**—In the  
11          case of a partnership, except as otherwise provided  
12          by the Secretary in regulations or other guidance,  
13          this subsection shall be applied at the partner level.

14          “(5) **UNITED STATES RESIDENT; NON-**  
15          **RESIDENT.**—For purposes of this subsection, the  
16          terms ‘United States resident’ and ‘nonresident’  
17          have the meaning given such terms, respectively, in  
18          section 865(g)(1), determined after application of  
19          section 865(g)(2).”.

20          **(c) RULES RELATING TO PARTNERSHIPS THAT**  
21          **HOLD NEWLY MINTED DIGITAL ASSETS.**—Section 751(c)  
22          is amended in the flush language at the end—

23                  (1) by striking “and an oil, gas, or geothermal  
24                  property (described in section 1254)” and inserting  
25                  “an oil, gas or geothermal property (described in

1 section 1254), and qualified newly minted digital as-  
2 sets (as defined in section 1400W-2(d))”, and

3 (2) by striking “or 1254(a)” and inserting  
4 “1254(a), or 1400W-2(b)(1)(A)”.

5 (d) COORDINATION WITH DEDUCTION FOR QUALI-  
6 FIED BUSINESS INCOME.—Section 199A(c)(3)(B) is  
7 amended by redesignating clause (vii) as clause (x) and  
8 inserting after clause (vi) the following new clauses:

9 “(vii) Any item of gain or loss on the  
10 disposition of any newly minted digital  
11 asset (as defined in section 1400W-  
12 3(a)(1)).

13 “(viii) Any item of income includible  
14 in gross income under section 1400W-  
15 1(a)(1).

16 “(ix) Any item of gain realized under  
17 subsection (a) or (b) of section 751 by rea-  
18 son of the references in section 751(c) to  
19 ‘qualified newly minted digital assets (as  
20 defined in section 1400W-2(d)’ and to  
21 ‘1400W-2(b)(1)(A)’.”.

22 (e) CLERICAL AMENDMENT.—The table of sub-  
23 chapters for chapter 1 is amended by inserting after the  
24 item relating to subchapter V the following new item:

“SUBCHAPTER W—NEWLY MINTED DIGITAL ASSETS RECEIVED IN  
CONNECTION WITH VALIDATING DIGITAL ASSET TRANSACTIONS”.

1 (f) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to assets acquired in taxable years  
3 beginning after the date of the enactment of this Act.

4 (g) NO INFERENCE WITH RESPECT TO PROPER  
5 TREATMENT OF NEWLY MINTED DIGITAL ASSETS TO  
6 WHICH THE AMENDMENTS MADE BY THIS SECTION DO  
7 NOT APPLY.—Nothing in this section (or any amendment  
8 made by this section) shall be construed to create any in-  
9 ference with respect to the proper application of any provi-  
10 sion of the Internal Revenue Code of 1986 with respect  
11 to any newly minted digital asset (as defined 1400W-3 of  
12 such Code, as added by this section) acquired in any tax-  
13 able year beginning on or before the date of the enactment  
14 of this Act.

15 **SEC. 3. INVESTMENT TRUSTS ENGAGED IN DIGITAL ASSET**  
16 **STAKING.**

17 (a) IN GENERAL.—Section 7701(p), as added by sec-  
18 tion 4 of this Act, is amended by adding at the end the  
19 following new paragraph:

20 “(7) STATUS OF TRUSTS ENGAGED IN DIGITAL  
21 ASSET STAKING.—

22 “(A) IN GENERAL.—An entity or arrange-  
23 ment shall not fail to be treated as a trust for  
24 purposes of this title solely by reason of the

1 power of the trustee of such entity or under  
2 such arrangement to—

3 “(i) engage in staking digital assets  
4 held by the trust,

5 “(ii) retain or distribute digital assets  
6 received in connection with such staking,

7 “(iii) determine which digital assets  
8 held by the trust to use in staking,

9 “(iv) to the extent that any digital as-  
10 sets held by the trust are committed to  
11 staking, take measures necessary or appro-  
12 priate to ensure that the trust has suffi-  
13 cient liquidity to make distributions in re-  
14 demption of interests in the trust, includ-  
15 ing by purchasing the right to borrow  
16 money or digital assets to make such dis-  
17 tributions, and

18 “(v) perform acts related to the exer-  
19 cise of the powers described in the pre-  
20 ceding clauses of this subparagraph.

21 “(B) NOT TO APPLY TO VALIDATING  
22 TRADE OR BUSINESS.—Subparagraph (A) shall  
23 not apply in the case of an entity or arrange-  
24 ment engaged in the active conduct of a trade

1 or business of validating digital asset trans-  
2 actions.

3 “(C) REGULATIONS.—The Secretary may  
4 prescribe such regulations or other guidance as  
5 may be necessary or appropriate to carry out  
6 the purposes of this paragraph.”.

7 (b) CLERICAL AMENDMENT.—The heading for sec-  
8 tion 7701(p), as added by section 4 of this Act, is amended  
9 by inserting “AND SPECIAL RULES” after “DEFINI-  
10 TIONS”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable years ending after the  
13 date of the enactment of this Act.

14 **SEC. 4. DEFINITIONS.**

15 Section 7701 is amended—

16 (1) by redesignating subsection (p) as sub-  
17 section (q), and

18 (2) by inserting after subsection (o) the fol-  
19 lowing new subsection:

20 “(p) DEFINITIONS RELATED TO DIGITAL ASSETS.—  
21 For purposes of this title—

22 “(1) DIGITAL ASSET.—The term ‘digital asset’  
23 means, except as otherwise provided by the Sec-  
24 retary, any digital representation of value which is  
25 recorded on a cryptographically secured distributed

1 ledger or any similar technology as specified by the  
2 Secretary.

3 “(2) DIGITAL ASSET TRANSACTION.—The term  
4 ‘digital asset transaction’ means any transfer of a  
5 digital asset recorded on the cryptographically se-  
6 cured distributed ledger (or similar technology) re-  
7 ferred to in paragraph (1).

8 “(3) DIGITAL ASSET VALIDATION SUPPORTING  
9 ACTIVITIES.—The term ‘digital asset validation sup-  
10 porting activities’ means staking, mining, or similar  
11 activities in support of the validation of digital asset  
12 transactions.

13 “(4) VALIDATION.—The term ‘validate’, and  
14 any derivative of such term (including ‘validation’),  
15 when used in connection with a digital asset trans-  
16 action, includes the processes of proposing trans-  
17 actions for validation and verifying the validation of  
18 transactions.

19 “(5) STAKING.—The term ‘staking’, when used  
20 in connection with a digital asset, means—

21 “(A) making such asset available in sup-  
22 port of the validation of digital asset trans-  
23 actions, and

24 “(B) except as otherwise provided by the  
25 Secretary, any substantially similar activity.

1           “(6) MINING.—The term ‘mining’, when used  
2           in connection with a digital asset, means—

3                   “(A) performing computations, or making  
4                   available computing power, in support of the  
5                   validation of digital asset transactions, and

6                   “(B) except as otherwise provided by the  
7                   Secretary, any substantially similar activity.”.