

AMENDMENT TO THE
SENATE AMENDMENT TO H.R. 1

OFFERED BY MR. BEYER

In section 70101, redesignate subsection (c) as subsection (d) and insert after subsection (b) the following:

(c) APPLICATION OF SECTION TO PARTNERS PROVIDING INVESTMENT MANAGEMENT SERVICES TO PARTNERSHIPS.—Section 1(j) is amended by adding at the end the following:

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

“(A) **IN GENERAL.**—Notwithstanding section 702(b)—

“(i) an amount equal to the net capital gain with respect to such interest for any partnership taxable year shall be treated as ordinary income, and

“(ii) subject to the limitation of subparagraph (B), an amount equal to the net capital loss with respect to such interest for any partnership taxable year shall be treated as an ordinary loss.

“(B) **RECHARACTERIZATION OF LOSSES LIMITED TO RECHARACTERIZED GAINS.**—The amount treated as ordinary loss under subparagraph (A)(ii) for any taxable year shall not exceed the excess (if any) of—

“(i) the aggregate amount treated as ordinary income under subparagraph (A)(i) with respect to the investment services partnership interest for all preceding partnership taxable years to which this section applies, over

“(ii) the aggregate amount treated as ordinary loss under subparagraph (A)(ii) with respect to such interest for all preceding partnership taxable years to which this section applies.

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

“(i) NET CAPITAL GAIN.—The amount treated as ordinary income under subparagraph (A)(i) shall be allocated ratably among the items of long-term capital gain taken into account in determining such net capital gain.

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

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

“(i) IN GENERAL.—Net capital gain, long-term capital gain, and long-term capital loss, with respect to any investment services partnership interest for any taxable year, shall be determined under section 1222, except that such section shall be applied—

“(I) without regard to the recharacterization of any item as ordinary income or ordinary loss under this paragraph,

“(II) by only taking into account items of gain and loss taken into account by the holder of such interest under section 702 (other than subsection (a)(9) thereof) with respect to such interest for such taxable year, and

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

“(ii) NET CAPITAL LOSS.—The term ‘net capital loss’ means the excess of the losses from sales or exchanges of capital assets over the gains from such sales or exchanges. Rules similar to the rules of subclauses (I) through (III) of clause (i) shall apply for purposes of the preceding sentence.

“(E) SPECIAL RULE FOR DIVIDENDS.—Any dividend allocated with respect to any investment services partnership interest shall not be treated as qualified dividend income for purposes of subsection (h).

“(F) SPECIAL RULE FOR QUALIFIED SMALL BUSINESS STOCK.—Section 1202 shall not apply to any gain from the sale or exchange of qualified small business stock (as defined in section 1202(c)) allocated with respect to any investment services partnership interest.

“(8) INVESTMENT SERVICES PARTNERSHIP INTEREST.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘investment services partnership interest’ means any interest in an investment partnership acquired or held by any person in connection with the conduct of a trade or business described in subparagraph (B) by such person (or any person related to such person). An interest in an investment partnership held by any person—

“(i) shall not be treated as an investment services partnership interest for any period before the first date on which it is so held in connection with such a trade or business,

“(ii) shall not cease to be an investment services partnership interest merely because such person holds such interest other than in connection with such a trade or business, and

“(iii) shall be treated as an investment services partnership interest if acquired from a related person in whose hands such interest was an investment services partnership interest.

“(B) BUSINESSES TO WHICH THIS SECTION APPLIES.—A trade or business is described in this subparagraph if such trade or business primarily involves the performance of any of the following services with respect to assets held (directly or indirectly) by one or more investment partnerships referred to in subparagraph (A):

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

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

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

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

“(C) INVESTMENT PARTNERSHIP.—

“(i) IN GENERAL.—The term ‘investment partnership’ means any partnership if, at the end of any two consecutive calendar quarters ending after the date of enactment of this paragraph—

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

“(II) less than 75 percent of the capital of the partnership is attributable to qualified capital interests which constitute property held in connection with a trade or business of the owner of such interest.

“(ii) LOOK-THROUGH OF CERTAIN WHOLLY-OWNED ENTITIES FOR PURPOSES OF DETERMINING ASSETS OF THE PARTNERSHIP.—

“(I) IN GENERAL.—For purposes of determining the assets of a partnership under clause (i)(I)—

“(aa) any interest in a specified entity shall not be treated as an asset of such partnership, and

“(bb) such partnership shall be treated as holding its proportionate share of each of the assets of such specified entity.

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

“(aa) a partnership all of the capital and profits interests of which are held directly or indirectly by the upper-tier partnership, or

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

“(iii) SPECIAL RULES FOR DETERMINING IF PROPERTY HELD IN CONNECTION WITH TRADE OR BUSINESS.—

“(I) IN GENERAL.—Except as otherwise provided by the Secretary, solely for purposes of determining whether any interest in a partnership constitutes property held in connection with a trade or business under clause (i)(II)—

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

“(bb) such interest shall be treated as held by a person in connection with a trade or business during any taxable year if such interest was so held by such person during any 3 taxable years preceding such taxable year, and

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

“(II) CLOSELY RELATED PERSONS.—For purposes of subclause (I)(aa), a person shall be treated as closely related to another person if, taking into account the rules of section 267(c), the relationship between such persons is described in—

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

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

“(iv) ANTIABUSE RULES.—The Secretary may issue regulations or other guidance which prevent the avoidance of the purposes of clause (i), including regulations or other guidance which treat convertible and contingent debt (and other debt having the attributes of equity) as a capital interest in the partnership.

“(v) CONTROLLED GROUPS OF ENTITIES.—

“(I) IN GENERAL.—In the case of a controlled group of entities, if an interest in the partnership received in exchange for a contribution to the capital of the partnership by any member of such controlled group would (in the hands of such member) constitute property held in connection with a trade or business, then any interest in such partnership held by any member of such group shall be treated for purposes of subparagraph (A) as constituting (in the hands of such member) property held in connection with a trade or business.

“(II) CONTROLLED GROUP OF ENTITIES.—For purposes of subclause (I), the term ‘controlled group of entities’ means a controlled group of corporations as defined in section 1563(a)(1), applied without regard to subsections (a)(4) and (b)(2) of section 1563. A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

“(vi) SPECIAL RULE FOR CORPORATIONS.— For purposes of this subparagraph, in the case of a corporation, the determination of whether property is held in connection with a trade or business shall be determined as if the taxpayer were an individual.

“(D) SPECIFIED ASSET.—The term ‘specified asset’ means securities (as defined in section 475(c)(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)), cash or cash equivalents, or options or derivative contracts with respect to any of the foregoing.

“(E) RELATED PERSONS.—

“(i) IN GENERAL.—A person shall be treated as related to another person if the relationship between such persons is described in section 267(b) or 707(b).

“(ii) ATTRIBUTION OF PARTNER SERVICES.—Any service described in subparagraph (B) which is provided by a partner of a partnership shall be treated as also provided by such partnership.”.