

110TH CONGRESS  
1ST SESSION

# H. R. 2834

To amend the Internal Revenue Code of 1986 to treat income received by partners for performing investment management services as ordinary income received for the performance of services.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 2007

Mr. LEVIN (for himself, Mr. RANGEL, Mr. STARK, Mr. McDERMOTT, Mr. LEWIS of Georgia, Mr. NEAL of Massachusetts, Mr. POMEROY, Mrs. JONES of Ohio, Mr. LARSON of Connecticut, Mr. BLUMENAUER, Mr. KIND, Mr. PASCRELL, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to treat income received by partners for performing investment management services as ordinary income received for the performance of services.

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

1 **SECTION 1. INCOME OF PARTNERS FOR PERFORMING IN-**  
2 **VESTMENT MANAGEMENT SERVICES TREAT-**  
3 **ED AS ORDINARY INCOME RECEIVED FOR**  
4 **PERFORMANCE OF SERVICES.**

5 (a) IN GENERAL.—Part I of subchapter K of chapter  
6 1 of the Internal Revenue Code of 1986 (relating to deter-  
7 mination of tax liability) is amended by adding at the end  
8 the following new section:

9 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**  
10 **VESTMENT MANAGEMENT SERVICES TO**  
11 **PARTNERSHIP.**

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

15 “(1) IN GENERAL.—Notwithstanding section  
16 702(b)—

17 “(A) any net income with respect to such  
18 interest for any partnership taxable year shall  
19 be treated as ordinary income for the perform-  
20 ance of services, and

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

25 “(2) TREATMENT OF LOSSES.—

1           “(A) LIMITATION.—Any net loss with re-  
2           spect to such interest shall be allowed for any  
3           partnership taxable year only to the extent that  
4           such loss does not exceed the excess (if any)  
5           of—

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

9                   “(ii) the aggregate net loss with re-  
10                  spect to such interest not disallowed under  
11                  this subparagraph for all prior partnership  
12                  taxable years.

13           “(B) CARRYFORWARD.—Any net loss for  
14           any partnership taxable year which is not al-  
15           lowed by reason of subparagraph (A) shall be  
16           treated as an item of loss with respect to such  
17           partnership interest for the succeeding partner-  
18           ship taxable year.

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

23           “(D) PRIOR PARTNERSHIP YEARS.—Any  
24           reference in this paragraph to prior partnership

1 taxable years shall only include prior partner-  
2 ship taxable years to which this section applies.

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

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

9 “(i) all items of income and gain  
10 taken into account by the holder of such  
11 interest under section 702 with respect to  
12 such interest for such year, over

13 “(ii) all items of deduction and loss so  
14 taken into account.

15 “(B) NET LOSS.—The term ‘net loss’  
16 means with respect to such interest for such  
17 year, the excess (if any) of the amount de-  
18 scribed in subparagraph (A)(ii) over the amount  
19 described in subparagraph (A)(i).

20 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

21 “(1) GAIN.—Any gain on the disposition of an  
22 investment services partnership interest shall be  
23 treated as ordinary income for the performance of  
24 services.

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

5                   “(A) the aggregate net income with respect  
6 to such interest for all partnership taxable  
7 years, over

8                   “(B) the aggregate net loss with respect to  
9 such interest allowed under subsection (a)(2)  
10 for all partnership taxable years.

11           “(3) DISPOSITION OF PORTION OF INTEREST.—  
12 In the case of any disposition of an investment serv-  
13 ices partnership interest, the amount of net loss  
14 which otherwise would have (but for subsection  
15 (a)(2)(C)) applied to reduce the basis of such inter-  
16 est shall be disregarded for purposes of this section  
17 for all succeeding partnership taxable years.

18           “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-  
19 erty.—In the case of any distribution of appre-  
20 ciated property by a partnership with respect to any  
21 investment services partnership interest, gain shall  
22 be recognized by the partnership in the same man-  
23 ner as if the partnership sold such property at fair  
24 market value at the time of the distribution. For  
25 purposes of this paragraph, the term ‘appreciated

1 property' means any property with respect to which  
2 gain would be determined if sold as described in the  
3 preceding sentence.

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

6 “(1) IN GENERAL.—The term ‘investment serv-  
7 ices partnership interest’ means any interest in a  
8 partnership which is held by any person if such per-  
9 son provides (directly or indirectly), in the active  
10 conduct of a trade or business, a substantial quan-  
11 tity of any of the following services to the partner-  
12 ship:

13 “(A) Advising the partnership as to the  
14 value of any specified asset.

15 “(B) Advising the partnership as to the  
16 advisability of investing in, purchasing, or sell-  
17 ing any specified asset.

18 “(C) Managing, acquiring, or disposing of  
19 any specified asset.

20 “(D) Arranging financing with respect to  
21 acquiring specified assets.

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

24 For purposes of this paragraph, the term ‘specified  
25 asset’ means securities (as defined in section

1 475(c)(2) without regard to the last sentence there-  
2 of), real estate, commodities (as defined in section  
3 475(e)(2))), or options or derivative contracts with  
4 respect to securities (as so defined), real estate, or  
5 commodities (as so defined).

6 “(2) EXCEPTION FOR CERTAIN CAPITAL INTER-  
7 ESTS.—

8 “(A) IN GENERAL.—If—

9 “(i) a portion of an investment serv-  
10 ices partnership interest is acquired on ac-  
11 count of a contribution of invested capital,  
12 and

13 “(ii) the partnership makes a reason-  
14 able allocation of partnership items be-  
15 tween the portion of the distributive share  
16 that is with respect to invested capital and  
17 the portion of such distributive share that  
18 is not with respect to invested capital,

19 then subsection (a) shall not apply to the por-  
20 tion of the distributive share that is with re-  
21 spect to invested capital. An allocation will not  
22 be treated as reasonable for purposes of this  
23 subparagraph if such allocation would result in  
24 the partnership allocating a greater portion of  
25 income to invested capital than any other part-

1           ner not providing services would have been allo-  
2           cated with respect to the same amount of in-  
3           vested capital.

4           “(B) SPECIAL RULE FOR DISPOSITIONS.—  
5           In any case to which subparagraph (A) applies,  
6           subsection (b) shall not apply to any gain or  
7           loss allocable to invested capital. The portion of  
8           any gain or loss attributable to invested capital  
9           is the proportion of such gain or loss which is  
10          based on the distributive share of gain or loss  
11          that would have been allocable to invested cap-  
12          ital under subparagraph (A) if the partnership  
13          sold all of its assets immediately before the dis-  
14          position.

15          “(C) INVESTED CAPITAL.—For purposes  
16          of this paragraph, the term ‘invested capital’  
17          means, the fair market value at the time of con-  
18          tribution of, any money or other property con-  
19          tributed to the partnership.”.

20          (b) APPLICATION TO REAL ESTATE INVESTMENT  
21 TRUSTS.—Subsection (c) of section 856 of such Code is  
22 amended by adding at the end the following new para-  
23 graph:

24          “(8) EXCEPTION FROM RECHARACTERIZATION  
25          OF INCOME FROM INVESTMENT SERVICES PARTNER-



1 SHIP INTERESTS.—Paragraphs (2), (3), and (4)  
2 shall be applied without regard to section 710 (relat-  
3 ing to special rules for partners providing investment  
4 management services to partnership).”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) Subsection (d) of section 731 of such Code  
7 is amended by inserting “section 710(b)(4) (relating  
8 to distributions of partnership property),” before  
9 “section 736”.

10 (2) Section 741 of such Code is amended by in-  
11 sserting “or section 710 (relating to special rules for  
12 partners providing investment management services  
13 to partnership)” before the period at the end.

14 (3) Paragraph (13) of section 1402(a) of such  
15 Code is amended—

16 (A) by striking “other than guaranteed”  
17 and inserting “other than—

18 “(A) guaranteed”,

19 (B) by striking the semi-colon at the end  
20 and inserting “, and”, and

21 (C) by adding at the end the following new  
22 subparagraph:

23 “(B) any income treated as ordinary in-  
24 come under section 710 received by an indi-

1           vidual who provides a substantial quantity of  
2           the services described in section 710(c)(1);”.

3           (4) Paragraph (12) of section 211(a) of the So-  
4           cial Security Act is amended—

5                   (A) by striking “other than guaranteed”  
6                   and inserting “other than—

7                           “(A) guaranteed”,

8                           (B) by striking the semi-colon at the end  
9                           and inserting “, and”, and

10                   (C) by adding at the end the following new  
11                   subparagraph:

12                           “(B) any income treated as ordinary in-  
13                           come under section 710 of the Internal Revenue  
14                           Code of 1986 received by an individual who  
15                           provides a substantial quantity of the services  
16                           described in section 710(c)(1) of such Code;”.

17           (5) The table of sections for part I of sub-  
18           chapter K of chapter 1 of such Code is amended by  
19           adding at the end the following new item:

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

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