

114TH CONGRESS  
1ST SESSION

# S. 1631

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to modify certain provisions relating to multiemployer pensions, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 18, 2015

Mr. SANDERS (for himself, Mr. BROWN, and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to modify certain provisions relating to multiemployer pensions, 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.**

4       This Act may be cited as the “Keep Our Pension  
5       Promises Act”.

6       **SEC. 2. RESTORING ANTI-CUTBACK PROVISIONS.**

7       Section 201 of the Multiemployer Pension Reform  
8       Act of 2014 (division O of Public Law 113–235) and the

1 amendments made by such section are repealed, and the  
 2 Employee Retirement Income Security Act of 1974 and  
 3 the Internal Revenue Code of 1986 shall be applied as if  
 4 such section and amendments had never been enacted.

5 **SEC. 3. PARTITIONS OF ELIGIBLE MULTIEMPLOYER PLANS.**

6 (a) IN GENERAL.—Section 4233 of the Employee Re-  
 7 tirement Income Security Act of 1974 (29 U.S.C. 1413),  
 8 as amended by section 122 of the Multiemployer Pension  
 9 Reform Act of 2014 (division O of Public Law 113–235),  
 10 is amended to read as follows:

11 **“SEC. 4233. PARTITIONS OF ELIGIBLE MULTIEMPLOYER**  
 12 **PLANS.**

13 “(a)(1) Upon the application by the plan sponsor of  
 14 an eligible multiemployer plan for a partition of the plan,  
 15 the corporation may order a partition of the plan in ac-  
 16 cordance with this section. The corporation shall make a  
 17 determination regarding the application, in accordance  
 18 with regulations promulgated by the corporation, not later  
 19 than 270 days after—

20 “(A) the date such application was filed; or

21 “(B) if later, the date such application was  
 22 completed.

23 “(2) At least 14 days before submitting an applica-  
 24 tion for partition of a plan under paragraph (1), the plan  
 25 sponsor of the plan shall notify all participants and bene-

1   ficiaries of such application, in the form and manner pre-  
 2   scribed by regulations issued by the corporation.

3       “(b) For purposes of this section, a multiemployer  
 4   plan is an eligible multiemployer plan if—

5           “(1) the plan is in critical status and is pro-  
 6       jected to become insolvent within the meaning of  
 7       section 4245—

8           “(A) during the current plan year or any  
 9       of the 14 succeeding plan years; or

10          “(B) during the current plan year or any  
 11       of the 19 succeeding plan years, if the plan has  
 12       a ratio of inactive participants to active partici-  
 13       pants that exceeds 2 to 1 and the funded per-  
 14       centage of the plan is less than 80 percent;

15          “(2) the corporation determines, after consulta-  
 16       tion with the Participant and Plan Sponsor Advoc-  
 17       ate selected under section 4004, that the plan spon-  
 18       sor has taken (or is taking concurrently with an ap-  
 19       plication for partition) all reasonable measures de-  
 20       scribed in section 432(e)(3)(A) of the Internal Rev-  
 21       enue Code of 1986, and has made (or is making)  
 22       benefit adjustments under section 432(e)(8) of such  
 23       Code to reduce the risk of insolvency;

24          “(3) 20 percent or more of the amount by  
 25       which the liabilities of the plan exceed the value of

1 plan assets is attributable to the service of partici-  
2 pants whose employers—

3 “(A) withdrew from the plan prior to the  
4 date of enactment of the Keep Our Pension  
5 Promises Act; and

6 “(B) failed to pay (or are delinquent with  
7 respect to paying) the full amount of the em-  
8 ployer’s withdrawal liability under section  
9 4201(b)(1) or as otherwise determined under  
10 an agreement with the plan;

11 “(4) the corporation reasonably expects that—

12 “(A) a partition of the plan will reduce the  
13 corporation’s expected long-term loss with re-  
14 spect to the plan; and

15 “(B) a partition of the plan is necessary  
16 for the plan to remain or become solvent; and

17 “(5) the corporation certifies to Congress that  
18 after partition the corporation will continue to have  
19 the ability to meet existing financial assistance obli-  
20 gations to other plans (including any liabilities asso-  
21 ciated with multiemployer plans that are insolvent or  
22 that are projected to become insolvent within 10  
23 years).

24 “(c)(1) A partition under this section shall consist of  
25 a transfer to the plan created by the partition order of

1 benefits to which eligible participants and beneficiaries  
2 were entitled under the plan that was partitioned, in an  
3 amount not to exceed the amount that would be guaran-  
4 teed under section 4022A if the plan were insolvent as  
5 of the date of the partition order.

6 “(2) The corporation’s partition order shall provide  
7 for an annual transfer by the corporation to the plan cre-  
8 ated by the partition order of an amount equal to the year-  
9 ly benefits that would be guaranteed under section 4022A  
10 to the eligible participants and beneficiaries if the plan  
11 were insolvent as of the date of the partition order.

12 “(3)(A) Where practicable, the initial transfer in ac-  
13 cordance with paragraph (2) shall be completed at least  
14 60 days prior to the plan year that immediately follows  
15 the partition start date. The partition order shall require  
16 that the initial transfer be sufficient to satisfy the guaran-  
17 teed benefits in the first plan year of the partitioned plan.

18 “(B) Subsequent transfers in accordance with para-  
19 graph (2) shall be completed at least 60 days prior to the  
20 first day of each succeeding plan year.

21 “(d)(1)(A) The plan created by the partition order  
22 is a successor plan to which section 4022A applies.

23 “(B) At the discretion of the plan sponsor, the plan  
24 created by the partition order may remain a part of the

1 plan that was partitioned or be maintained as a separate  
2 plan.

3 “(2)(A) The plan sponsor and the administrator of  
4 an eligible multiemployer plan prior to the partition shall  
5 be the plan sponsor and the administrator, respectively,  
6 of the plan created by the partition order, and shall adopt  
7 reasonable procedures to reduce administrative expenses  
8 and to coordinate benefit payments and communications  
9 with the participants and beneficiaries in the plan created  
10 by the partition order.

11 “(B) Benefit payments equal to the amount of an eli-  
12 gible participant or beneficiary’s guaranteed benefits shall  
13 be paid to such participant or beneficiary and may be—

14 “(i) paid separately by the plan created by the  
15 partition order; or

16 “(ii) paid in a single, monthly payment by the  
17 plan that was partitioned.

18 “(3) In the event an employer withdraws from the  
19 plan that was partitioned, withdrawal liability shall be  
20 computed under section 4201 with respect to both the plan  
21 that was partitioned and the plan created by the partition  
22 order.

23 “(e) In addition to the payment of guaranteed bene-  
24 fits under subsection (d)(2)(B), each eligible participant  
25 or beneficiary of the plan created by the partition order

1 shall receive a monthly benefit for each month the benefit  
2 is in pay status in an amount that—

3 “(1) the corporation, in consultation with the  
4 Participant and Plan Sponsor Advocate, determines  
5 to be fair to the plan, the participant or beneficiary,  
6 the employers, and the corporation; and

7 “(2) is at least equal to the lesser of—

8 “(A) the monthly nonforfeitable benefit for  
9 such participant or beneficiary payable under  
10 the plan that was partitioned; or

11 “(B) 80 percent of the maximum benefit  
12 commencing at age 65 guaranteed under sec-  
13 tion 4022(a) for participants and beneficiaries  
14 in terminated single employer plans, unreduced  
15 for early retirement.

16 Such monthly benefit may be combined with the monthly  
17 payment under subsection (d)(2)(B)(ii).

18 “(f)(1) The corporation shall establish a legacy fund  
19 for the purposes of funding the administrative and benefit  
20 costs to the corporation arising from partitions under this  
21 section, as described in paragraph (2).

22 “(2) Any administrative and benefit costs to the cor-  
23 poration arising from a partition ordered under this sec-  
24 tion in excess of amounts available in such legacy fund

1 shall be paid from the fund for basic benefits guaranteed  
 2 for multiemployer plans.

3 “(g) Only one partition order shall be issued with re-  
 4 spect to each eligible multiemployer plan.

5 “(h) For purposes of this subsection, the term ‘eligi-  
 6 ble participant or beneficiary’ means a participant or ben-  
 7 eficiary of an eligible multiemployer plan that is parti-  
 8 tioned in accordance with a petition order under this sec-  
 9 tion, and who is an employee or beneficiary of an employee  
 10 of an employer that is described in subsection (b)(3).

11 “(i) Not later than 14 days after the issuance of a  
 12 partition order under this section, the corporation shall  
 13 provide notice of such order to the Committee on Finance  
 14 of the Senate, the Committee on Health, Education,  
 15 Labor, and Pensions of the Senate, the Committee on  
 16 Education and the Workforce of the House of Representa-  
 17 tives, the Committee on Ways and Means of the House  
 18 of Representatives, and to all eligible participants or bene-  
 19 ficiaries whose guaranteed benefits will be paid directly or  
 20 indirectly by the plan created by the partition order.”.

21 (b) EFFECTIVE DATE.—The amendments made by  
 22 subsection (a) shall apply with respect to plan years begin-  
 23 ning after the date of enactment of this Act.

24 (c) TRANSFERS TO LEGACY FUND.—The Secretary  
 25 of the Treasury shall from time to time transfer from the



1 general fund of the Treasury to the legacy fund estab-  
 2 lished under section 4233(f)(1) of the Employee Retire-  
 3 ment Income Security Act of 1974 (29 U.S.C. 1413(f)(1))  
 4 (as amended by subsection (a)) amounts equal to the in-  
 5 crease in revenues to the Treasury by reason of the  
 6 amendments made by sections 6 and 7 of this Act.

7 (d) TRANSFERS BETWEEN FUNDS OF THE PBGC.—  
 8 Section 4005 of the Employee Retirement Income Security  
 9 Act of 1974 (29 U.S.C. 1305) is amended by adding at  
 10 the end the following:

11 “(i)(1) An eighth fund is established under section  
 12 4233(f) and credited with the amounts described in sec-  
 13 tion 3(c) of the Keep Our Pension Promises Act.

14 “(2) Notwithstanding subsection (g), the corporation  
 15 may transfer amounts into the legacy fund established  
 16 under section 4233(f)(1) from other funds established  
 17 under this section, as the corporation determines appro-  
 18 priate.”.

19 **SEC. 4. EMPLOYER WITHDRAWALS RELATING TO MULTIEM-**  
 20 **PLOYER PLANS.**

21 The matter preceding paragraph (1) of section  
 22 4225(b) of the Employee Retirement Income Security Act  
 23 of 1974 (29 U.S.C. 1405(b)) is amended by inserting “,  
 24 including an employer undergoing liquidation under chap-

1 ter 7 of title 11, United States Code, or similar provisions  
 2 of State law,” after “dissolution,”.

3 **SEC. 5. PRIORITIES OF CLAIMS IN BANKRUPTCY.**

4 (a) IN GENERAL.—Section 507(a) of title 11, United  
 5 States Code is amended—

6 (1) by redesignating paragraphs (1) through 10  
 7 as paragraphs (2) through (11), respectively;

8 (2) by inserting before paragraph (2) (as redes-  
 9 ignated) the following:

10 “(1) First, withdrawal liability determined  
 11 under part 1 of subtitle E of title IV of the Em-  
 12 ployee Retirement Income Security Act of 1974 (29  
 13 U.S.C. 1381 et seq.).”.

14 (3) in the matter preceding subparagraph (A)  
 15 of paragraph (2) (as redesignated), by striking  
 16 “First:” and inserting “Second:”;

17 (4) in paragraph (3) (as redesignated), by strik-  
 18 ing “Second,” and inserting “Third,”;

19 (5) in paragraph (4) (as redesignated), by strik-  
 20 ing “Third,” and inserting “Fourth,”;

21 (6) in the matter preceding subparagraph (A)  
 22 of paragraph (5) (as redesignated), by striking  
 23 “Fourth,” and inserting “Fifth,”;

1           (7) in the matter preceding subparagraph (A)  
 2       of paragraph (6) (as redesignated), by striking  
 3       “Fifth,” and inserting “Sixth,”;

4           (8) in the matter preceding subparagraph (A)  
 5       of paragraph (7) (as redesignated), by striking  
 6       “Sixth,” and inserting “Seventh,”;

7           (9) in paragraph (8) (as redesignated), by strik-  
 8       ing “Seventh,” and inserting “Eighth,”;

9           (10) in the matter preceding subparagraph (A)  
 10      of paragraph (9) (as redesignated), by striking  
 11      “Eighth,” and inserting “Ninth,”;

12          (11) in paragraph (10) (as redesignated), by  
 13      striking “Ninth,” and inserting “Tenth,”; and

14          (12) in paragraph (11) (as redesignated), by  
 15      striking “Tenth,” and inserting “Eleventh,”.

16       (b) TECHNICAL AND CONFORMING AMENDMENTS.—

17          (1) Section 502(i) of title 11, United States  
 18      Code, is amended by striking “section 507(a)(8)”  
 19      and inserting “section 507(a)(9)”.

20          (2) Section 503(b)(1)(B)(i) of title 11, United  
 21      States Code, is amended by striking “section  
 22      507(a)(8)” and inserting “section 507(a)(9)”.

23          (3) Section 507(d) of title 11, United States  
 24      Code, is amended by striking “(a)(1), (a)(4), (a)(5),  
 25      (a)(6), (a)(7), (a)(8), or (a)(9)” and inserting

1 “(a)(2), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), or  
2 (a)(10)”.

3 (4) Section 523(A) of title 11, United States  
4 Code, is amended by striking “section 507(a)(3) or  
5 507(a)(8)” and inserting “section 507(a)(4) or  
6 507(a)(9)”.

7 (5) Section 724 of title 11, United States Code,  
8 is amended—

9 (A) in subsection (b)(2), by striking “sec-  
10 tion 507(a)(1)(C) or 507(a)(2)” and inserting  
11 “section 507(a)(2)(C) or 507(a)(3)”; and

12 (B) in subsection (f)—

13 (i) in paragraph (1), by striking “sec-  
14 tion 507(a)(4)” and inserting “section  
15 507(a)(5)”; and

16 (ii) in paragraph (2), by striking “sec-  
17 tion 507(a)(5)” and inserting “section  
18 507(a)(6)”.

19 (6) Section 726(b) of title 11, United States  
20 Code, is amended by striking “paragraph (1), (2),  
21 (3), (4), (5), (6), (7), (8), (9), or (10) of section  
22 507(a)” and inserting “paragraphs (2) through (11)  
23 of section 507(a)”.

1           (7) Section 752(a) of title 11, United States  
2       Code, is amended by striking “section 507(a)(2)”  
3       and inserting “section 507(a)(3)”.

4           (8) Section 766 of title 11, United States Code,  
5       is amended—

6           (A) in subsection (h), by striking “section  
7       507(a)(2)” and inserting “section 507(a)(3)”;  
8       and

9           (B) in subsection (i)—

10           (i) in paragraph (1), by striking “sec-  
11       tion 507(a)(2)” and inserting “section  
12       507(a)(3)”;

13           (ii) in paragraph (2), by striking “sec-  
14       tion 507(a)(2)” and inserting “section  
15       507(a)(3)”.

16           (9) Section 901 of title 11, United States Code,  
17       is amended by striking “507(a)(2)” and inserting  
18       “507(a)(3)”.

19           (10) Section 943(b)(5) of title 11, United  
20       States Code, is amended by striking “section  
21       507(a)(2)” and inserting “section 507(a)(3)”.

22           (11) Section 1123(a)(1) of title 11, United  
23       States Code, is amended by striking “section  
24       507(a)(2), 507(a)(3), or 507(a)(8)” and inserting  
25       “section 507(a)(3), 507(a)(4), or 507(a)(9)”.

1           (12) Section 1129(a)(9) of title 11, United  
2 States Code, is amended—

3           (A) in subparagraph (A), by striking “sec-  
4 tion 507(a)(3) or 507(a)(4)” and inserting  
5 “section 507(a)(4) or 507(a)(5)”;

6           (B) in the matter preceding clause (i) of  
7 subparagraph (B), by striking “section  
8 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or  
9 507(a)(7)” and inserting “section 507(a)(2),  
10 507(a)(5), 507(a)(6), 507(a)(7), or 507(a)(8)”;

11          (C) in the matter preceding clause (i) of  
12 subparagraph (C), by striking “section  
13 507(a)(8)” and inserting “section 507(a)(9)”;  
14 and

15          (D) in subparagraph (D), by striking “sec-  
16 tion 507(a)(8)” and inserting “section  
17 507(a)(9)”.

18          (13) Section 1222(a)(4) of title 11, United  
19 States Code, is amended by striking “section  
20 507(a)(1)(B)” and inserting “507(a)(2)(B)”.

21          (14) Section 1226(b)(1) of title 11, United  
22 States Code, is amended by striking “section  
23 507(a)(2)” and inserting “section 507(a)(3)”.

1           (15) Section 1322(a)(4) of title 11, United  
 2       States Code, is amended by striking “section  
 3       507(a)(1)(B)” and inserting “section 507(a)(2)(B)”.

4           (16) Section 1326(b)(1) of title 11, United  
 5       States Code, is amended by striking “section  
 6       507(a)(2)” and inserting “section 507(a)(3)”.

7           (17) Section 1328(a)(2) of title 11, United  
 8       States Code, is amended by striking “section  
 9       507(a)(8)(C)” and inserting “section 507(a)(9)(C)”.

10 **SEC. 6. LIMITATION OF NONRECOGNITION OF LIKE-KIND**  
 11 **EXCHANGES.**

12       (a) IN GENERAL.—Paragraph (2) of section 1031(a)  
 13 of the Internal Revenue Code of 1986 is amended—

14           (1) by redesignating subparagraphs (A), (B),  
 15       (C), (D), (E), and (F) as clauses (i), (ii), (iii), (iv),  
 16       (v), and (vi), and by moving such clauses 2 ems to  
 17       the right,

18           (2) by moving the flush language after the first  
 19       sentence 2 ems to the right,

20           (3) by striking “(2) EXCEPTION.—This sub-  
 21       section” and inserting “(2) EXCEPTIONS.—

22                   “(A) EXCLUDED PROPERTY.—This sub-  
 23       section”, and

24           (4) by adding at the end the following new sub-  
 25       paragraph:

1                   “(B) DOLLAR LIMITATION FOR EX-  
2 CHANGES OF REAL PROPERTY.—

3                   “(i) IN GENERAL.—Paragraph (1)  
4 shall not apply so much of the gain which,  
5 but for such paragraph, would be recog-  
6 nized by the taxpayer with respect to real  
7 property exchanged during the taxable year  
8 as exceeds \$1,000,000.

9                   “(ii) SPECIAL RULES FOR PARTNER-  
10 SHIPS AND S-CORPORATIONS.—In the case  
11 of a pass-through entity, clause (i) shall be  
12 applied at both the entity and at the part-  
13 ner or owner level.

14                   “(iii) AGGREGATION RULES.—For  
15 purposes of this subparagraph—

16                   “(I) FAMILY MEMBERS.—Individ-  
17 uals who are spouses or who bear any  
18 of the relationships described in sec-  
19 tion 152(d)(2) to each other shall be  
20 treated as 1 taxpayer (without regard  
21 to whether spouses file a joint return).

22                   “(II) CORPORATIONS AND OTHER  
23 ENTITIES.—All persons treated as a  
24 single employer under subsection (a)  
25 or (b) of section 52 or subsection (m)



1 or (o) of section 414 shall be treated  
2 as 1 person.

3 “(iv) ADJUSTMENT FOR INFLATION.—

4 In the case of exchanges completed in a  
5 taxable year beginning after December 31,  
6 2016, the \$1,000,000 amount in clause (i)  
7 shall be increased by an amount equal to—

8 “(I) such dollar amount, multi-  
9 plied by

10 “(II) the cost-of-living adjust-  
11 ment determined under section 1(f)(3)  
12 for the calendar year in which the tax-  
13 able year begins, determined by sub-  
14 stituting ‘calendar year 2015’ for ‘cal-  
15 endar year 1992’ in subparagraph (B)  
16 thereof.

17 If any amount as adjusted under the pre-  
18 ceding sentence is not a multiple of  
19 \$1,000, such amount shall be rounded to  
20 the nearest multiple of \$1,000.”.

21 (b) EXCLUSION OF ART AND COLLECTIBLES.—Sub-  
22 paragraph (A) of section 1031(a)(2) of the Internal Rev-  
23 enue Code of 1986, as amended by subsection (a), is  
24 amended—

25 (1) by striking “or” at the end of clause (v),

1           (2) by striking the period at the end of clause  
2           (vi) and inserting “, or”, and

3           (3) by inserting after clause (vi) the following  
4           new clause:

5                       “(vii) any collectible (within the mean-  
6                       ing of section 408(m), without regard to  
7                       paragraph (3) thereof).”.

8           (c) REGULATORY AUTHORITY.—Subsection (f) of  
9           section 1031 of the Internal Revenue Code of 1986 is  
10          amended by adding at the end the following new para-  
11          graph:

12                   “(5) RULES RELATING TO DOLLAR LIMITA-  
13                   TION.—The Secretary shall prescribe such guidance  
14                   as is necessary for applying subsection (a)(2)(B)(i)  
15                   in the case of the exchange of multiple pieces of real  
16                   property by related persons.”.

17          (d) CONFORMING AMENDMENTS.—

18                   (1) Subsection (b) of section 1031 of the Inter-  
19                   nal Revenue Code of 1986 is amended—

20                       (A) by striking “IN KIND.—If an ex-  
21                       change” and inserting “IN KIND.—

22                       “(1) IN GENERAL.—If an exchange”, and

23                       (B) by adding at the end the following new  
24                       paragraph:

1           “(2) COORDINATION WITH SUBSECTION  
2           (A)(2)(B).—In the case of an exchange to which para-  
3           graph (1) applies—

4                   “(A) paragraph (1) shall be applied before  
5           the application of subsection (a)(2)(B), and

6                   “(B) subsection (a)(2)(B) shall be ap-  
7           plied—

8                           “(i) as if such exchange were within  
9           the provisions of subsection (a), and

10                           “(ii) by increasing the basis of the  
11           property disposed of by the taxpayer in  
12           such exchange by the amount of any gain  
13           determined under paragraph (1).”.

14           (2) Subsection (d) of section 1031 of such Code  
15           is amended by striking “in the amount of gain” and  
16           inserting “in the amount of gain (including any gain  
17           recognized by reason of subsection (a)(2)(B)(i))”.

18           (3) Subsection (i) of section 1031 of such Code  
19           is amended by striking “(a)(2)(B)” and inserting  
20           “(a)(2)(A)(ii)”.

21           (e) EFFECTIVE DATE.—The amendments made by  
22           this section shall apply to exchanges completed in taxable  
23           years beginning after December 31, 2015.

1 **SEC. 7. VALUATION RULES FOR CERTAIN TRANSFERS OF**  
 2 **NONBUSINESS ASSETS; LIMITATION ON MI-**  
 3 **NORITY DISCOUNTS.**

4 (a) IN GENERAL.—Section 2031 of the Internal Rev-  
 5 enue Code of 1986 is amended by redesignating subsection  
 6 (d) as subsection (f) and by inserting after subsection (c)  
 7 the following new subsections:

8 “(d) VALUATION RULES FOR CERTAIN TRANSFERS  
 9 OF NONBUSINESS ASSETS.—For purposes of this chapter  
 10 and chapter 12—

11 “(1) IN GENERAL.—In the case of the transfer  
 12 of any interest in an entity other than an interest  
 13 which is actively traded (within the meaning of sec-  
 14 tion 1092)—

15 “(A) the value of any nonbusiness assets  
 16 held by the entity with respect to such interest  
 17 shall be determined as if the transferor had  
 18 transferred such assets directly to the trans-  
 19 feree (and no valuation discount shall be al-  
 20 lowed with respect to such nonbusiness assets),  
 21 and

22 “(B) such nonbusiness assets shall not be  
 23 taken into account in determining the value of  
 24 the interest in the entity.

25 “(2) NONBUSINESS ASSETS.—For purposes of  
 26 this subsection—

1           “(A) IN GENERAL.—The term ‘nonbusi-  
 2           ness asset’ means any asset which is not used  
 3           in the active conduct of 1 or more trades or  
 4           businesses.

5           “(B) EXCEPTION FOR CERTAIN PASSIVE  
 6           ASSETS.—Except as provided in subparagraph  
 7           (C), a passive asset shall not be treated for pur-  
 8           poses of subparagraph (A) as used in the active  
 9           conduct of a trade or business unless—

10           “(i) the asset is property described in  
 11           paragraph (1) or (4) of section 1221(a) or  
 12           is a hedge with respect to such property,  
 13           or

14           “(ii) the asset is real property used in  
 15           the active conduct of 1 or more real prop-  
 16           erty trades or businesses (within the mean-  
 17           ing of section 469(c)(7)(C)) in which the  
 18           transferor materially participates and with  
 19           respect to which the transferor meets the  
 20           requirements of section 469(c)(7)(B)(ii).

21           For purposes of clause (ii), material participa-  
 22           tion shall be determined under the rules of sec-  
 23           tion 469(h), except that section 469(h)(3) shall  
 24           be applied without regard to the limitation to  
 25           farming activity.

1           “(C) EXCEPTION FOR WORKING CAP-  
 2           ITAL.—Any asset (including a passive asset)  
 3           which is held as a part of the reasonably re-  
 4           quired working capital needs of a trade or busi-  
 5           ness shall be treated as used in the active con-  
 6           duct of a trade or business.

7           “(3) PASSIVE ASSET.—For purposes of this  
 8           subsection, the term ‘passive asset’ means any—

9           “(A) cash or cash equivalents,

10           “(B) except to the extent provided by the  
 11           Secretary, stock in a corporation or any other  
 12           equity, profits, or capital interest in any entity,

13           “(C) evidence of indebtedness, option, for-  
 14           ward or futures contract, notional principal con-  
 15           tract, or derivative,

16           “(D) asset described in clause (iii), (iv), or  
 17           (v) of section 351(e)(1)(B),

18           “(E) annuity,

19           “(F) real property used in 1 or more real  
 20           property trades or businesses (as defined in sec-  
 21           tion 469(e)(7)(C)),

22           “(G) asset (other than a patent, trade-  
 23           mark, or copyright) which produces royalty in-  
 24           come,

25           “(H) commodity,

1           “(I) collectible (within the meaning of sec-  
2           tion 401(m)), or

3           “(J) any other asset specified in regula-  
4           tions prescribed by the Secretary.

5           “(4) LOOK-THRU RULES.—

6           “(A) IN GENERAL.—If a nonbusiness asset  
7           of an entity consists of a 10-percent interest in  
8           any other entity, this subsection shall be ap-  
9           plied by disregarding the 10-percent interest  
10          and by treating the entity as holding directly its  
11          ratable share of the assets of the other entity.  
12          This subparagraph shall be applied successively  
13          to any 10-percent interest of such other entity  
14          in any other entity.

15          “(B) 10-PERCENT INTEREST.—The term  
16          ‘10-percent interest’ means—

17               “(i) in the case of an interest in a cor-  
18               poration, ownership of at least 10 percent  
19               (by vote or value) of the stock in such cor-  
20               poration,

21               “(ii) in the case of an interest in a  
22               partnership, ownership of at least 10 per-  
23               cent of the capital or profits interest in the  
24               partnership, and

1                   “(iii) in any other case, ownership of  
 2                   at least 10 percent of the beneficial inter-  
 3                   ests in the entity.

4                   “(5) COORDINATION WITH SUBSECTION (b).—  
 5                   Subsection (b) shall apply after the application of  
 6                   this subsection.

7                   “(e) LIMITATION ON MINORITY DISCOUNTS.—For  
 8                   purposes of this chapter and chapter 12, in the case of  
 9                   the transfer of any interest in an entity other than an in-  
 10                  terest which is actively traded (within the meaning of sec-  
 11                  tion 1092), no discount shall be allowed by reason of the  
 12                  fact that the transferee does not have control of such enti-  
 13                  ty if the transferor, the transferee, and members of the  
 14                  family (as defined in section 2032A(e)(2)) of the trans-  
 15                  feror and transferee—

16                  “(1) have control of such entity, or

17                  “(2) own the majority of the ownership inter-  
 18                  ests (by value) in such entity.”.

19                  (b) EFFECTIVE DATE.—The amendments made by  
 20                  this section shall apply to transfers after the date of the  
 21                  enactment of this Act.

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