

**AMENDMENT TO H.R. 1**

**OFFERED BY MR. CAPUANO OF MASSACHUSETTS**

In title I of division B, add at the end the following:

1 **Subtitle I—Income of Partners for**  
2 **Performing Investment Manage-**  
3 **ment Services Treated asordi-**  
4 **nary Income Received for Per-**  
5 **formance of Services**

6 **SEC. 1801. INCOME OF PARTNERS FOR PERFORMING IN-**  
7 **VESTMENT MANAGEMENT SERVICES TREAT-**  
8 **ED AS ORDINARY INCOME RECEIVED FOR**  
9 **PERFORMANCE OF SERVICES.**

10 (a) IN GENERAL.—Part I of subchapter K of chapter  
11 1 of the Internal Revenue Code of 1986 (relating to deter-  
12 mination of tax liability) is amended by adding at the end  
13 the following new section:

14 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**  
15 **VESTMENT MANAGEMENT SERVICES TO**  
16 **PARTNERSHIP.**

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

1           “(1) IN GENERAL.—Notwithstanding section  
2       702(b)—

3           “(A) any net income with respect to such  
4       interest for any partnership taxable year shall  
5       be treated as ordinary income for the perform-  
6       ance of services, and

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

11       “(2) TREATMENT OF LOSSES.—

12           “(A) LIMITATION.—Any net loss with re-  
13      spect to such interest shall be allowed for any  
14      partnership taxable year only to the extent that  
15      such loss does not exceed the excess (if any)  
16      of—

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

20           “(ii) the aggregate net loss with re-  
21      spect to such interest not disallowed under  
22      this subparagraph for all prior partnership  
23      taxable years.

24           “(B) CARRYFORWARD.—Any net loss for  
25      any partnership taxable year which is not al-

1           lowed by reason of subparagraph (A) shall be  
2           treated as an item of loss with respect to such  
3           partnership interest for the succeeding partner-  
4           ship taxable year.

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

9           “(D) PRIOR PARTNERSHIP YEARS.—Any  
10          reference in this paragraph to prior partnership  
11          taxable years shall only include prior partner-  
12          ship taxable years to which this section applies.

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

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

19                  “(i) all items of income and gain  
20                  taken into account by the holder of such  
21                  interest under section 702 with respect to  
22                  such interest for such year, over

23                  “(ii) all items of deduction and loss so  
24                  taken into account.

1           “(B) NET LOSS.—The term ‘net loss’  
2           means with respect to such interest for such  
3           year, the excess (if any) of the amount de-  
4           scribed in subparagraph (A)(ii) over the amount  
5           described in subparagraph (A)(i).

6           “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

7           “(1) GAIN.—Any gain on the disposition of an  
8           investment services partnership interest shall be  
9           treated as ordinary income for the performance of  
10          services.

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

15                 “(A) the aggregate net income with respect  
16                 to such interest for all partnership taxable  
17                 years, over

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

21          “(3) DISPOSITION OF PORTION OF INTEREST.—

22          In the case of any disposition of an investment serv-  
23          ices partnership interest, the amount of net loss  
24          which otherwise would have (but for subsection  
25          (a)(2)(C)) applied to reduce the basis of such inter-

1 est shall be disregarded for purposes of this section  
2 for all succeeding partnership taxable years.

3 “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-  
4 ERTY.—In the case of any distribution of appre-  
5 ciated property by a partnership with respect to any  
6 investment services partnership interest, gain shall  
7 be recognized by the partnership in the same man-  
8 ner as if the partnership sold such property at fair  
9 market value at the time of the distribution. For  
10 purposes of this paragraph, the term ‘appreciated  
11 property’ means any property with respect to which  
12 gain would be determined if sold as described in the  
13 preceding sentence.

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

16 “(1) IN GENERAL.—The term ‘investment serv-  
17 ices partnership interest’ means any interest in a  
18 partnership which is held by any person if such per-  
19 son provides (directly or indirectly), in the active  
20 conduct of a trade or business, a substantial quan-  
21 tity of any of the following services to the partner-  
22 ship:

23 “(A) Advising the partnership as to the  
24 value of any specified asset.

1           “(B) Advising the partnership as to the  
2           advisability of investing in, purchasing, or sell-  
3           ing any specified asset.

4           “(C) Managing, acquiring, or disposing of  
5           any specified asset.

6           “(D) Arranging financing with respect to  
7           acquiring specified assets.

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

10          For purposes of this paragraph, the term ‘specified  
11          asset’ means securities (as defined in section  
12          475(e)(2) without regard to the last sentence there-  
13          of), real estate, commodities (as defined in section  
14          475(e)(2))), or options or derivative contracts with  
15          respect to securities (as so defined), real estate, or  
16          commodities (as so defined).

17          “(2) EXCEPTION FOR CERTAIN CAPITAL INTER-  
18          ESTS.—

19                 “(A) IN GENERAL.—If—

20                         “(i) a portion of an investment serv-  
21                         ices partnership interest is acquired on ac-  
22                         count of a contribution of invested capital,  
23                         and

24                         “(ii) the partnership makes a reason-  
25                         able allocation of partnership items be-

1           tween the portion of the distributive share  
2           that is with respect to invested capital and  
3           the portion of such distributive share that  
4           is not with respect to invested capital,  
5           then subsection (a) shall not apply to the por-  
6           tion of the distributive share that is with re-  
7           spect to invested capital. An allocation will not  
8           be treated as reasonable for purposes of this  
9           subparagraph if such allocation would result in  
10          the partnership allocating a greater portion of  
11          income to invested capital than any other part-  
12          ner not providing services would have been allo-  
13          cated with respect to the same amount of in-  
14          vested capital.

15                 “(B) SPECIAL RULE FOR DISPOSITIONS.—  
16           In any case to which subparagraph (A) applies,  
17           subsection (b) shall not apply to any gain or  
18           loss allocable to invested capital. The portion of  
19           any gain or loss attributable to invested capital  
20           is the proportion of such gain or loss which is  
21           based on the distributive share of gain or loss  
22           that would have been allocable to invested cap-  
23           ital under subparagraph (A) if the partnership  
24           sold all of its assets immediately before the dis-  
25           position.

1           “(C) INVESTED CAPITAL.—For purposes  
2           of this paragraph, the term “invested capital”  
3           means, the fair market value at the time of con-  
4           tribution of, any money or other property con-  
5           tributed to the partnership.”.

6           (b) APPLICATION TO REAL ESTATE INVESTMENT  
7 TRUSTS.—Subsection (c) of section 856 of such Code is  
8 amended by adding at the end the following new para-  
9 graph:

10           “(8) EXCEPTION FROM RECHARACTERIZATION  
11           OF INCOME FROM INVESTMENT SERVICES PARTNER-  
12           SHIP INTERESTS.—Paragraphs (2), (3), and (4)  
13           shall be applied without regard to section 710 (relat-  
14           ing to special rules for partners providing investment  
15           management services to partnership).”.

16           (c) CONFORMING AMENDMENTS.—

17           (1) Subsection (d) of section 731 of such Code  
18           is amended by inserting “section 710(b)(4) (relating  
19           to distributions of partnership property),” before  
20           “section 736”.

21           (2) Section 741 of such Code is amended by in-  
22           serting “or section 710 (relating to special rules for  
23           partners providing investment management services  
24           to partnership)” before the period at the end.



1           (3) Paragraph (13) of section 1402(a) of such  
2 Code is amended—

3           (A) by striking “other than guaranteed”  
4 and inserting “other than—

5           “(A) guaranteed”,

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

8           (C) by adding at the end the following new  
9 subparagraph:

10           “(B) any income treated as ordinary in-  
11 come under section 710 received by an indi-  
12 vidual who provides a substantial quantity of  
13 the services described in section 710(c)(1);”.

14           (4) Paragraph (12) of section 211(a) of the So-  
15 cial Security Act 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 of the Internal Revenue  
25 Code of 1986 received by an individual who

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

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

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

