

114TH CONGRESS
1ST SESSION

H. R. 2844

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2015

Ms. KAPTUR (for herself, Mr. RYAN of Ohio, Mr. ELLISON, Ms. SCHAKOWSKY, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. HONDA, and Ms. SLAUGHTER) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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”.

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

2 Section 201 of the Multiemployer Pension Reform
3 Act of 2014 (division O of Public Law 113–235) and the
4 amendments made by such section are repealed, and the
5 Employee Retirement Income Security Act of 1974 and
6 the Internal Revenue Code of 1986 shall be applied as if
7 such section and amendments had never been enacted.

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

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

14 **“SEC. 4233. PARTITIONS OF ELIGIBLE MULTIEMPLOYER**
15 **PLANS.**

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

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

24 “(B) if later, the date such application was
25 completed.

1 “(2) At least 14 days before submitting an applica-
2 tion for partition of a plan under paragraph (1), the plan
3 sponsor of the plan shall notify all participants and bene-
4 ficiaries of such application, in the form and manner pre-
5 scribed by regulations issued by the corporation.

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

8 “(1) the plan is in critical status and is pro-
9 jected to become insolvent within the meaning of
10 section 4245—

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

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

18 “(2) the corporation determines, after consulta-
19 tion with the Participant and Plan Sponsor Advo-
20 cate selected under section 4004, that the plan spon-
21 sor has taken (or is taking concurrently with an ap-
22 plication for partition) all reasonable measures de-
23 scribed in section 432(e)(3)(A) of the Internal Rev-
24 enue Code of 1986, and has made (or is making)

1 benefit adjustments under section 432(e)(8) of such
2 Code to reduce the risk of insolvency;

3 “(3) 20 percent or more of the amount by
4 which the liabilities of the plan exceed the value of
5 plan assets is attributable to the service of partici-
6 pants whose employers—

7 “(A) withdrew from the plan prior to the
8 date of enactment of the Keep Our Pension
9 Promises Act; and

10 “(B) failed to pay (or are delinquent with
11 respect to paying) the full amount of the em-
12 ployer’s withdrawal liability under section
13 4201(b)(1) or as otherwise determined under
14 an agreement with the plan;

15 “(4) the corporation reasonably expects that—

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

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

21 “(5) the corporation certifies to Congress that
22 after partition the corporation will continue to have
23 the ability to meet existing financial assistance obli-
24 gations to other plans (including any liabilities asso-
25 ciated with multiemployer plans that are insolvent or

1 that are projected to become insolvent within 10
2 years).

3 “(c)(1) A partition under this section shall consist of
4 a transfer to the plan created by the partition order of
5 benefits to which eligible participants and beneficiaries
6 were entitled under the plan that was partitioned, in an
7 amount not to exceed the amount that would be guaran-
8 teed under section 4022A if the plan were insolvent as
9 of the date of the partition order.

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

16 “(3)(A) Where practicable, the initial transfer in ac-
17 cordance with paragraph (2) shall be completed at least
18 60 days prior to the plan year that immediately follows
19 the partition start date. The partition order shall require
20 that the initial transfer be sufficient to satisfy the guaran-
21 teed benefits in the first plan year of the partitioned plan.

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

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

3 “(B) At the discretion of the plan sponsor, the plan
4 created by the partition order may remain a part of the
5 plan that was partitioned or be maintained as a separate
6 plan.

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

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

18 “(i) paid separately by the plan created by the
19 partition order; or

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

22 “(3) In the event an employer withdraws from the
23 plan that was partitioned, withdrawal liability shall be
24 computed under section 4201 with respect to both the plan

1 that was partitioned and the plan created by the partition
2 order.

3 “(e) In addition to the payment of guaranteed bene-
4 fits under subsection (d)(2)(B), each eligible participant
5 or beneficiary of the plan created by the partition order
6 shall receive a monthly benefit for each month the benefit
7 is in pay status in an amount that—

8 “(1) the corporation, in consultation with the
9 Participant and Plan Sponsor Advocate, determines
10 to be fair to the plan, the participant or beneficiary,
11 the employers, and the corporation; and

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

13 “(A) the monthly nonforfeitable benefit for
14 such participant or beneficiary payable under
15 the plan that was partitioned; or

16 “(B) 80 percent of the maximum benefit
17 commencing at age 65 guaranteed under sec-
18 tion 4022(a) for participants and beneficiaries
19 in terminated single employer plans, unreduced
20 for early retirement.

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

23 “(f)(1) The corporation shall establish a legacy fund
24 for the purposes of funding the administrative and benefit

1 costs to the corporation arising from partitions under this
2 section, as described in paragraph (2).

3 “(2) Any administrative and benefit costs to the cor-
4 poration arising from a partition ordered under this sec-
5 tion in excess of amounts available in such legacy fund
6 shall be paid from the fund for basic benefits guaranteed
7 for multiemployer plans.

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

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

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

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

4 (c) TRANSFERS TO LEGACY FUND.—The Secretary
5 of the Treasury shall from time to time transfer from the
6 general fund of the Treasury to the legacy fund estab-
7 lished under section 4233(f)(1) of the Employee Retire-
8 ment Income Security Act of 1974 (29 U.S.C. 1413(f)(1))
9 (as amended by subsection (a)) amounts equal to the in-
10 crease in revenues to the Treasury by reason of the
11 amendments made by sections 6 and 7 of this Act.

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

16 “(i)(1) An eighth fund is established under section
17 4233(f) and credited with the amounts described in sec-
18 tion 3(e) of the Keep Our Pension Promises Act.

19 “(2) Notwithstanding subsection (g), the corporation
20 may transfer amounts into the legacy fund established
21 under section 4233(f)(1) from other funds established
22 under this section, as the corporation determines appro-
23 priate.”.

1 **SEC. 4. EMPLOYER WITHDRAWALS RELATING TO MULTIEM-**
2 **PLOYER PLANS.**

3 The matter preceding paragraph (1) of section
4 4225(b) of the Employee Retirement Income Security Act
5 of 1974 (29 U.S.C. 1405(b)) is amended by inserting “,
6 including an employer undergoing liquidation under chap-
7 ter 7 of title 11, United States Code, or similar provisions
8 of State law,” after “dissolution,”.

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

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

12 (1) by redesignating paragraphs (1) through 10
13 as paragraphs (2) through (11), respectively;

14 (2) by inserting before paragraph (2) (as redesi-
15 gnated) the following:

16 “(1) First, withdrawal liability determined
17 under part 1 of subtitle E of title IV of the Em-
18 ployee Retirement Income Security Act of 1974 (29
19 U.S.C. 1381 et seq.)”;

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

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

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

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

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

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

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

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

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

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

19 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

23 (2) Section 503(b)(1)(B)(i) of title 11, United
24 States Code, is amended by striking “section
25 507(a)(8)” and inserting “section 507(a)(9)”.

1 (3) Section 507(d) of title 11, United States
2 Code, is amended by striking “(a)(1), (a)(4), (a)(5),
3 (a)(6), (a)(7), (a)(8), or (a)(9)” and inserting
4 “(a)(2), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), or
5 (a)(10)”.

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

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

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

15 (B) in subsection (f)—

16 (i) in paragraph (1), by striking “sec-
17 tion 507(a)(4)” and inserting “section
18 507(a)(5)”; and

19 (ii) in paragraph (2), by striking “sec-
20 tion 507(a)(5)” and inserting “section
21 507(a)(6)”.

22 (6) Section 726(b) of title 11, United States
23 Code, is amended by striking “paragraph (1), (2),
24 (3), (4), (5), (6), (7), (8), (9), or (10) of section

1 507(a)” and inserting “paragraphs (2) through (11)
2 of section 507(a)”.

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

6 (8) Section 766 of title 11, United States Code,
7 is amended—

8 (A) in subsection (h), by striking “section
9 507(a)(2)” and inserting “section 507(a)(3)”;
10 and

11 (B) in subsection (i)—

12 (i) in paragraph (1), by striking “sec-
13 tion 507(a)(2)” and inserting “section
14 507(a)(3)”;

15 (ii) in paragraph (2), by striking “sec-
16 tion 507(a)(2)” and inserting “section
17 507(a)(3)”.

18 (9) Section 901 of title 11, United States Code,
19 is amended by striking “507(a)(2)” and inserting
20 “507(a)(3)”.

21 (10) Section 943(b)(5) of title 11, United
22 States Code, is amended by striking “section
23 507(a)(2)” and inserting “section 507(a)(3)”.

24 (11) Section 1123(a)(1) of title 11, United
25 States Code, is amended by striking “section

1 507(a)(2), 507(a)(3), or 507(a)(8)” and inserting
2 “section 507(a)(3), 507(a)(4), or 507(a)(9)”.

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

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

8 (B) in the matter preceding clause (i) of
9 subparagraph (B), by striking “section
10 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or
11 507(a)(7)” and inserting “section 507(a)(2),
12 507(a)(5), 507(a)(6), 507(a)(7), or 507(a)(8)”;

13 (C) in the matter preceding clause (i) of
14 subparagraph (C), by striking “section
15 507(a)(8)” and inserting “section 507(a)(9)”;
16 and

17 (D) in subparagraph (D), by striking “sec-
18 tion 507(a)(8)” and inserting “section
19 507(a)(9)”.

20 (13) Section 1222(a)(4) of title 11, United
21 States Code, is amended by striking “section
22 507(a)(1)(B)” and inserting “507(a)(2)(B)”.

23 (14) Section 1226(b)(1) of title 11, United
24 States Code, is amended by striking “section
25 507(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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