

117TH CONGRESS
1ST SESSION

S. 2617

To amend the Internal Revenue Code of 1986 to revise the treatment of partnership interests received in connection with the performance of services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2021

Mr. WYDEN (for himself and Mr. WHITEHOUSE) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to revise the treatment of partnership interests received in connection with the performance of services, 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 “Ending the Carried
5 Interest Loophole Act”.

1 **SEC. 2. PARTNERSHIP INTERESTS TRANSFERRED IN CON-**
 2 **NECTION WITH PERFORMANCE OF SERVICES.**

3 (a) MODIFICATION OF ELECTION TO INCLUDE PART-
 4 NERSHIP INTEREST IN GROSS INCOME IN YEAR OF
 5 TRANSFER.—Subsection (c) of section 83 is amended by
 6 redesignating paragraph (4) as paragraph (5) and by in-
 7 serting after paragraph (3) the following new paragraph:

8 “(4) PARTNERSHIP INTERESTS.—Except as
 9 provided by the Secretary—

10 “(A) IN GENERAL.—In the case of any
 11 transfer of an interest in a partnership in con-
 12 nection with the performance of services—

13 “(i) the fair market value of such in-
 14 terest shall be treated for purposes of this
 15 section as being equal to the amount which
 16 the partner would receive if the partner-
 17 ship sold (at the time of the transfer) all
 18 of its assets for cash at their fair market
 19 value in a fully taxable transaction and
 20 distributed the proceeds of such sale (re-
 21 duced by the liabilities of the partnership)
 22 to its partners in complete liquidation, and

23 “(ii) the person receiving such interest
 24 shall be treated as having made the elec-
 25 tion under subsection (b)(1) unless such

1 person makes an election under this para-
 2 graph to have such subsection not apply.

3 “(B) COORDINATION WITH OTHER PART-
 4 NERSHIP RULES.—Except as otherwise provided
 5 by the Secretary, if, by reason of subparagraph
 6 (A), subsection (b)(1) applies to a partnership
 7 interest transferred to a person, then the
 8 amount included in the gross income of such
 9 person by reason of such subsection shall (at
 10 the time of the transfer)—

11 “(i) be treated as an addition to the
 12 capital account of such person with respect
 13 to such partnership for purposes of sub-
 14 chapter K, and

15 “(ii) if such interest is an applicable
 16 partnership interest under section 1299 at
 17 any time, be treated as invested capital of
 18 such person with respect to such interest
 19 for purposes of such section.

20 “(C) ELECTION.—The election under sub-
 21 paragraph (A)(ii) shall be made under rules
 22 similar to the rules of subsection (b)(2).

23 “(D) PARTNERSHIP INTEREST.—

24 “(i) IN GENERAL.—For purposes of
 25 this paragraph, any applicable financial in-

1 strument or contract (as defined in section
 2 1299(b)(2)(B)) or interest in an entity
 3 other than a partnership which is treated
 4 as an applicable partnership interest under
 5 section 1299(b)(2) shall be treated as an
 6 interest in a partnership.

7 “(ii) REGULATIONS.—The Secretary
 8 shall prescribe such regulations or other
 9 guidance as the Secretary determines nec-
 10 essary or appropriate to carry out this
 11 paragraph, including regulations for the
 12 application of this paragraph to applicable
 13 financial instruments or contracts (as so
 14 defined) or interests in entities other than
 15 partnerships which are treated as partner-
 16 ship interests under clause (i).”.

17 (b) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to interests in partnerships trans-
 19 ferred after the date of the enactment of this Act.

20 **SEC. 3. TREATMENT OF CERTAIN PARTNERSHIP INTER-**
 21 **ESTS RECEIVED IN CONNECTION WITH PER-**
 22 **FORMANCE OF SERVICES.**

23 (a) IN GENERAL.—Subchapter P of chapter 1 of the
 24 Internal Revenue Code of 1986 is amended by adding at
 25 the end the following new part:

1 **“PART VII—TREATMENT OF CERTAIN PARTNER-**
 2 **SHIP INTERESTS RECEIVED IN CONNECTION**
 3 **WITH PERFORMANCE OF SERVICES**

“Sec. 1299. Treatment of certain partnership interests received in connection with performance of services.

4 **“SEC. 1299. TREATMENT OF CERTAIN PARTNERSHIP INTER-**
 5 **ESTS RECEIVED IN CONNECTION WITH PER-**
 6 **FORMANCE OF SERVICES.**

7 “(a) IN GENERAL.—In the case of a taxpayer who
 8 holds 1 or more applicable partnership interests in any
 9 partnership at any time during any taxable year of the
 10 partnership ending with or within the taxable year of the
 11 taxpayer—

12 “(1) there shall be included in the gross income
 13 of the taxpayer as ordinary income an amount equal
 14 to the aggregate of the deemed compensation
 15 amounts determined under subsection (c) with re-
 16 spect to such interests in all partnerships, and

17 “(2) the taxpayer shall be treated as having for
 18 such taxable year of the taxpayer a long-term capital
 19 loss equal to the aggregate of such deemed com-
 20 pensation amounts.

21 “(b) APPLICABLE PARTNERSHIP INTEREST.—For
 22 purposes of this section—

“(1) IN GENERAL.—Except as provided in this subsection, the term ‘applicable partnership interest’ means any interest in a partnership which—

“(A) is directly or indirectly transferred to (or held by) the taxpayer in connection with the performance of services by the taxpayer, or any other person, in any applicable trade or business, or

“(B) is held by a taxpayer who received an applicable loan.

Such term shall not include any interest which is acquired pursuant to a sale or disposition to which subsection (c)(5) applies.

“(2) DETERMINATION OF INTEREST IN A PARTNERSHIP.—

“(A) IN GENERAL.—For purposes of paragraph (1), the term ‘interest in a partnership’ includes—

“(i) any applicable financial instrument or contract, or

“(ii) to the extent provided by the Secretary, any interest in an entity other than a partnership if such interest would be treated as an applicable partnership interest if such entity were a partnership.

“(B) APPLICABLE FINANCIAL INSTRUMENT
OR CONTRACT.—For purposes of this para-
graph—

“(i) IN GENERAL.—The term ‘applica-
ble financial instrument or contract’ means
any financial instrument or contract the
value of which is determined in whole or in
part by reference to any partnership or
partnership-related item (including the
amount of partnership distributions, the
value of partnership assets, or the results
of partnership operations).

“(ii) EXCEPTION FOR NON-CONVERT-
IBLE DEBT.—Such term shall not include
a financial instrument or contract if such
instrument or contract—

“(I) is treated as debt for Fed-
eral tax purposes, and

“(II) is not convertible into or
exchangeable for any partnership in-
terest and does not provide for a pay-
ment of similar or equivalent value.

“(3) APPLICABLE TRADE OR BUSINESS.—

“(A) IN GENERAL.—For purposes of para-
graph (1)(A), the term ‘applicable trade or

business’ means any activity conducted on a regular, continuous, and substantial basis which, regardless of whether the activity is conducted in one or more entities, consists, in whole or in part, of—

“(i) raising or returning capital, and

“(ii) either—

“(I) investing in (including acquiring or disposing of) specified assets (or identifying specified assets for such investing, acquisition, or disposition), or

“(II) developing specified assets.

“(B) SPECIFIED ASSETS.—

“(i) IN GENERAL.—The term ‘specified assets’ means securities, commodities, real estate held for rental or investment, cash or cash equivalents, options or derivative contracts with respect to any of the foregoing, and an interest in a partnership if such partnership has a direct or indirect interest in any of the foregoing.

“(ii) SECURITIES.—For purposes of clause (i), the term ‘securities’ has the

1 meaning given such term under section
 2 475(e)(2), determined—

3 “(I) by applying subparagraph
 4 (B) thereof without regard to whether
 5 the partnership or trust is widely held
 6 or publicly traded, and

7 “(II) without regard to the last
 8 sentence thereof.

9 “(iii) COMMODITIES.—For purposes
 10 of clause (i), the term ‘commodities’ has
 11 the meaning given such term under section
 12 475(e)(2), except that such term shall not
 13 include commodities held in connection
 14 with the active conduct of a commodities
 15 business as a producer, processor, mer-
 16 chant, or handler of commodities.

17 “(4) APPLICABLE LOAN.—

18 “(A) IN GENERAL.—The term ‘applicable
 19 loan’ means, with respect to any partnership in-
 20 terest, any loan issued directly or indirectly
 21 from the partnership, any other partner of the
 22 partnership, or any person related to such other
 23 partner or such partnership.

24 “(B) SAFE HARBOR.—The term ‘applicable
 25 loan’ does not include any loan which—

1 “(i) is fully recourse to the borrower
 2 or fully secured by the borrower’s assets,
 3 and

4 “(ii) requires payments of interest
 5 with a stated rate not less than the speci-
 6 fied rate determined under subsection
 7 (c)(2).

8 “(c) DEEMED COMPENSATION AMOUNT.—For pur-
 9 poses of this section—

10 “(1) DEEMED COMPENSATION AMOUNT.—

11 “(A) IN GENERAL.—The term ‘deemed
 12 compensation amount’ means, with respect to
 13 any applicable partnership interest for any
 14 partnership taxable year, an amount equal to
 15 the product of—

16 “(i) the specified rate determined
 17 under paragraph (2) for the calendar year
 18 in which such taxable year begins, multi-
 19 plied by

20 “(ii) the excess (if any) of—

21 “(I) an amount equal to the ap-
 22 plicable percentage of the weighted
 23 average of the aggregate of invested
 24 capital of all partners of the partner-

1 ship on each measurement date occur-
 2 ring within such taxable year, over

3 “(II) the weighted average of in-
 4 vested capital with respect to the ap-
 5 plicable partnership interest on each
 6 measurement date occurring within
 7 such taxable year.

8 “(B) MEASUREMENT DATE.—For purposes
 9 of subparagraph (A), the term ‘measurement
 10 date’ means—

11 “(i) the last day of the partnership
 12 taxable year,

13 “(ii) any date specified in the regula-
 14 tions under subchapter K as a date on
 15 which to revalue property of the partner-
 16 ship for purposes of adjusting capital ac-
 17 counts of the partner (without regard to
 18 whether the partnership capital accounts
 19 are adjusted on that date), and

20 “(iii) any other date specified by the
 21 Secretary.

22 “(2) SPECIFIED RATE.—The term ‘specified
 23 rate’ means, with respect to any calendar year, a
 24 percentage equal to the sum of—

1 “(A) the first segment rate (as defined in
2 section 430(h)(2)(C)(i)) for the first month of
3 such calendar year, plus

4 “(B) 9 percentage points.

5 “(3) APPLICABLE PERCENTAGE.—

6 “(A) IN GENERAL.—The term ‘applicable
7 percentage’ means, with respect to any applica-
8 ble partnership interest, the highest percentage
9 of profits of the partnership which could be al-
10 located to such interest (consistent with the
11 partnership agreement and determined as if all
12 performance targets with respect to such inter-
13 est had been met).

14 “(B) SECRETARIAL AUTHORITY.—The Sec-
15 retary shall prescribe rules for the determina-
16 tion of the applicable percentage in cases in
17 which the percentage of profits of a partnership
18 which may be allocated to the applicable part-
19 nership interest under the partnership agree-
20 ment may temporarily exceed the highest per-
21 centage determined under subparagraph (A).

22 “(4) INVESTED CAPITAL.—

23 “(A) IN GENERAL.—The term ‘invested
24 capital’ means, with respect to any partner as
25 of any day, the excess of—

1 “(i) the sum of—

2 “(I) the total cumulative value,
3 determined at the time of contribu-
4 tion, of all money or other property
5 contributed by the partner to the
6 partnership on or before such day (net
7 of any liabilities the partnership is
8 considered to assume or take subject
9 to), plus

10 “(II) the aggregate amounts of
11 the partner’s distributive share of in-
12 come and gain as of such day, over

13 “(ii) the sum of—

14 “(I) the aggregate value, deter-
15 mined at the time of distribution, of
16 all money or other property distrib-
17 uted to the partner from the partner-
18 ship on or before such day (net of any
19 liabilities the partner is considered to
20 assume or take subject to), plus

21 “(II) the aggregate amount of
22 the partner’s distributive share of loss
23 and deductions of the partnership as
24 of such day.

25 “(B) SPECIAL RULES.—

1 “(i) IN GENERAL.—For purposes of
2 subparagraph (A), invested capital shall be
3 determined—

4 “(I) without regard to amounts
5 considered as a contribution of money
6 or as a distribution of money by rea-
7 son of subsection (a) or (B) of section
8 752, and

9 “(II) without regard to income
10 required to be recognized by a con-
11 tributing partner under section 704(c)
12 with respect to property described in
13 subparagraph (A)(i)(I).

14 “(ii) ADJUSTMENTS.—The Secretary
15 may provide for rules making such adjust-
16 ments as the Secretary determines nec-
17 essary to the determination of invested
18 capital under subparagraph (A) in order to
19 carry out the purposes of this section.

20 “(C) TREATMENT OF BORROWINGS FROM
21 PARTNERSHIPS OR OTHER PARTNERS.—For
22 purposes of paragraph (1)(A), the amount of
23 invested capital with respect to any applicable
24 partnership interest shall be reduced by the

1 amount of any applicable loan to a partner who
2 is described in subsection (b)(1)(B).

3 “(5) ACCELERATED INCLUSION IN CASE OF
4 DISPOSITION OF APPLICABLE PARTNERSHIP INTER-
5 EST.—

6 “(A) IN GENERAL.—If a taxpayer who
7 holds an applicable partnership interest sells or
8 disposes of any portion of such interest during
9 a taxable year in the applicable period, the
10 amount determined under this subsection for
11 such taxable year shall be the sum of—

12 “(i) the amount determined under
13 paragraph (1) for the taxable year (deter-
14 mined as if no such sale or disposition had
15 occurred), plus

16 “(ii) an amount equal to the product
17 of—

18 “(I) the excess of the amount de-
19 termined under clause (i) over the
20 amount determined under paragraph
21 (1) for the taxable year, and

22 “(II) the number of taxable years
23 beginning after the date of the sale or
24 disposition and before the last day of
25 the applicable period.

1 “(B) APPLICABLE PERIOD.—For purposes
2 of this paragraph, the applicable period is the
3 10-year period beginning on the later of—

4 “(i) the date the taxpayer acquired
5 the applicable partnership interest, or

6 “(ii) the last date described in para-
7 graph (1)(B)(ii) on which there was an in-
8 crease in the amount of the taxpayers ap-
9 plicable percentage of the aggregate in-
10 vested capital of all partners of the part-
11 nership.

12 “(6) MULTIPLE INTERESTS.—If at any time
13 during a taxable year a taxpayer holds directly or in-
14 directly more than 1 applicable partnership interest
15 in a single partnership, such interests shall be treat-
16 ed as 1 applicable partnership interest for purposes
17 of applying this subsection.

18 “(d) RELATED PERSON.—For purposes of this sec-
19 tion, a person shall be treated as related to another person
20 if the relationship between such persons would be de-
21 scribed in section 267(b) or 707(b).

22 “(e) REPORTING.—A partnership shall report to the
23 Secretary, and include with the information required to
24 be furnished under section 6031(b) to each partner, the
25 amount of the partner’s deemed compensation amount for

1 the taxable year, if any. A similar rule applies to any enti-
 2 ty that receives a report of a deemed compensation
 3 amount for the taxable year.

4 “(f) REGULATIONS.—The Secretary shall issue such
 5 regulations or other guidance as necessary to carry out
 6 this section, including regulations—

7 “(1) to prevent the abuse of the purposes of
 8 this section, including through—

9 “(A) the allocation of income to tax indif-
 10 ferent parties, or

11 “(B) a reduction or increase in the in-
 12 vested capital of any partner (including at-
 13 tempts to undervalue or overvalue property),

14 “(2) which provide for the application of the
 15 rules of subsection (c) to applicable financial instru-
 16 ments and contracts and to entities other than part-
 17 nerships,

18 “(3) which provide in appropriate circumstances
 19 for purposes of this section the aggregation of assets
 20 held by related partnerships or for the
 21 disaggregation of assets within 1 partnership,

22 “(4) which provide for the application of this
 23 section in cases of tiered structures or entities,

1 “(5) which provide guidance with respect to for-
 2 giveness of any loan described in subsection
 3 (b)(4)(B), and

4 “(6) which provide rules for transfers or liq-
 5 uidations of applicable partnership interests by gift,
 6 inheritance, substituted basis transactions, and other
 7 transactions in which income is not recognized at
 8 the time of the transaction.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1)(A) Part IV of subchapter O of chapter 1 of
 11 the Internal Revenue Code of 1986 is amended by
 12 striking section 1061.

13 (B) The table of sections for part IV of sub-
 14 chapter O of chapter 1 of such Code is amended by
 15 striking the item relating to section 1061.

16 (2) The table of parts for subchapter P of such
 17 Code is amended by adding at the end the following
 18 new item:

“PART VII—TREATMENT OF CERTAIN PARTNERSHIP INTERESTS RECEIVED
 IN CONNECTION WITH PERFORMANCE OF SERVICES”.

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to taxable years of a taxpayer be-
 21 ginning after date of enactment of this Act, with or within
 22 which ends the taxable year of a partnership which begins
 23 after such date.

