

119TH CONGRESS
1ST SESSION

S. _____

To amend the Internal Revenue Code of 1986 to modify the partnership rules for taxation of basis-shifting transactions involving related parties, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to modify the partnership rules for taxation of basis-shifting transactions involving related parties, 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 “
5 _____ Act of _____”.

6 **SEC. 2. RULES FOR BASIS-SHIFTING TRANSACTIONS IN-**
7 **VOLVING RELATED PARTIES.**

8 (a) DISTRIBUTIONS.—

1 (1) RECOGNITION OF GAIN.—Section 731 of the
2 Internal Revenue Code of 1986 is amended by strik-
3 ing subsections (a) and (b) and inserting the fol-
4 lowing:

5 “(a) PARTNERS.—

6 “(1) IN GENERAL.—In the case of a distribu-
7 tion by a partnership to a partner—

8 “(A) gain shall not be recognized to such
9 partner, except to the extent that any money
10 distributed exceeds the adjusted basis of such
11 partner’s interest in the partnership imme-
12 diately before the distribution, and

13 “(B) loss shall not be recognized to such
14 partner, except that upon a distribution in liq-
15 uidation of a partner’s interest in a partnership
16 where no property other than that described in
17 clause (i) or (ii) is distributed to such partner,
18 loss shall be recognized to the extent of the ex-
19 cess of the adjusted basis of such partner’s in-
20 terest in the partnership over the sum of—

21 “(i) any money distributed, and

22 “(ii) the basis to the distributee, as
23 determined under section 732, of any unre-
24 alized receivables (as defined in section

1 751(c)) and inventory (as defined in sec-
2 tion 751(d)).

3 Any gain or loss recognized under this paragraph
4 shall be considered as gain or loss from the sale or
5 exchange of the partnership interest of the dis-
6 tributee partner.

7 “(2) EXCEPTION FOR CERTAIN RELATED-PARTY
8 PARTNERSHIP DISTRIBUTIONS.—Notwithstanding
9 paragraph (1)(A)—

10 “(A) IN GENERAL.—In the case of any dis-
11 tribution of property to which section 732(a)(2)
12 or (b) applies which is made from an applicable
13 partnership to a partner (including as part of
14 the termination of such partnership), such part-
15 ner shall, in addition to any amount which
16 would be recognized without regard to this sub-
17 paragraph, recognize gain in an amount equal
18 to the applicable basis increase.

19 “(B) APPLICABLE BASIS INCREASE.—For
20 purposes of this paragraph, the term ‘applicable
21 basis increase’ means, with respect to any dis-
22 tribution of any property described in subpara-
23 graph (A) to a partner, the aggregate increases
24 in basis to one or more partnership properties
25 under section 734(b)(1)(B) (without regard to

1 whether any such increase is suspended under
2 section 755) with respect to such distribution.

3 “(C) BASIS ADJUSTMENT.—In the case of
4 each distributed property with respect to which
5 gain is recognized by reason of subparagraph
6 (A), the basis of such property after the dis-
7 tribution shall be the basis determined under
8 section 732, increased by the amount of such
9 gain with respect to such property.

10 “(D) CHARACTER OF GAIN.—

11 “(i) IN GENERAL.—If a distribution of
12 any property to which subparagraph (A)
13 applies results in any portion of any appli-
14 cable basis increase in partnership prop-
15 erty under section 734(b)(1)(B), gain
16 under subparagraph (A) with respect to
17 such distributed property shall have the
18 same character as gain from the sale or ex-
19 change of the partnership property to
20 which such portion is allocated under sec-
21 tion 755.

22 “(ii) SPECIAL RULE WHERE BASIS IN-
23 CREASE SUSPENDED.—

24 “(I) IN GENERAL.—If the alloca-
25 tion under section 755 of any portion

1 of an applicable basis increase de-
2 scribed in clause (i) is suspended
3 under such section by the absence of
4 property, or insufficient adjusted basis
5 in property, to which such portion is
6 to be so allocated, gain under sub-
7 paragraph (A) with respect to such
8 distributed property shall be treated
9 as ordinary income.

10 “(II) SECRETARIAL AUTHOR-
11 ITY.—The Secretary may provide that
12 subclause (I) shall not apply in cases
13 where the Secretary determines nec-
14 essary and appropriate to carry out,
15 or prevent avoidance of, the purposes
16 of this paragraph.

17 “(E) COORDINATION WITH MARKETABLE
18 SECURITIES RULES.—If any property described
19 in subparagraph (A) consists of marketable se-
20 curities (as defined in subsection (c)(2))—

21 “(i) this paragraph shall apply to such
22 property before the application of sub-
23 section (c), and

24 “(ii) in applying subsection (c), the
25 basis of such property shall be the basis

1 determined after the application of sub-
2 paragraph (C).

3 The Secretary shall provide rules for the appli-
4 cation of this subparagraph, including coordina-
5 tion of the application of this subparagraph
6 with subsection (c) and the other provisions of
7 this subchapter.

8 “(b) PARTNERSHIPS.—

9 “(1) IN GENERAL.—Except as provided in para-
10 graph (2), no gain or loss shall be recognized to a
11 partnership on a distribution to a partner of prop-
12 erty, including money.

13 “(2) EXCEPTION FOR CERTAIN RELATED-PARTY
14 PARTNERSHIP DISTRIBUTIONS.—

15 “(A) IN GENERAL.—In the case of any dis-
16 tribution of property from an applicable part-
17 nership to a partner which under section 732(c)
18 results in an increase in basis in one or more
19 properties so distributed, gain shall be recog-
20 nized to the partnership in an amount equal to
21 the aggregate amount of such increases in basis
22 .

23 “(B) BASIS ADJUSTMENT.—In the case of
24 each partnership property with respect to which
25 gain is recognized by reason of subparagraph

1 (A), the basis of such property after the dis-
2 tribution shall be the basis determined under
3 section 734, increased by the amount of such
4 gain with respect to such property.

5 “(C) CHARACTER OF GAIN.—Any gain rec-
6 ognized under this paragraph which is allocable
7 to a portion of any basis increase in distributed
8 property described in subparagraph (A) shall
9 have the same character as gain from the sale
10 or exchange of such property.”.

11 (2) APPLICABLE PARTNERSHIP.—Section 731
12 of such Code is amended by adding at the end the
13 following new subsections:

14 “(e) APPLICABLE PARTNERSHIP.—For purposes of
15 this section—

16 “(1) IN GENERAL.—The term ‘applicable part-
17 nership’ means any partnership in which two or
18 more partners are related persons immediately be-
19 fore or after any distribution to a partner.

20 “(2) SMALL BUSINESS EXCEPTION.—

21 “(A) IN GENERAL.—A partnership shall
22 not be treated as an applicable partnership with
23 respect to any distribution made during a tax-
24 able year if such partnership meets the gross
25 receipts test under section 448(c) (determined

1 with the modification described in subparagraph
2 (C)) for such taxable year.

3 “(B) EXCEPTION NOT TO APPLY TO PART-
4 NERSHIPS PREVIOUSLY FAILING TEST OR TAX
5 SHELTERS.—

6 “(i) PARTNERSHIPS FAILING TEST
7 DISQUALIFIED PROSPECTIVELY.—If a part-
8 nership fails to meet the gross receipts test
9 described in subparagraph (A) for any tax-
10 able year which begins after the date of
11 the enactment of this subsection, subpara-
12 graph (A) shall not apply to such partner-
13 ship (or any successor) for such taxable
14 year or any succeeding taxable year.

15 “(ii) TAX SHELTERS.—Subparagraph
16 (A) shall not apply to a tax shelter prohib-
17 ited from using the cash receipts and dis-
18 bursements method of accounting under
19 section 448(a)(3), except that, for purposes
20 of applying this clause, a syndicate (as de-
21 fined in section 1256(e)(3)(B)) shall not be
22 treated as a tax shelter.

23 “(C) MODIFICATION.—In applying section
24 52(b) to section 448(c)(2) for purposes of this
25 paragraph, the term ‘trade or business’ shall in-

1 clude any activity treated as a trade or business
2 under paragraph (5) or (6) of section 469(c)
3 (determined without regard to the phrase ‘To
4 the extent provided in regulations’ in such para-
5 graph (6)).

6 “(3) RELATED PERSON.—A person shall be
7 treated as related to another person if they bear a
8 relationship to such other person described in sec-
9 tion 267(b) (without regard to section 267(c)(3)) or
10 707(b)(1).

11 “(f) REGULATIONS RELATING TO RELATED-PART-
12 NERSHIP BASIS-SHIFTING TRANSACTIONS.—The Sec-
13 retary shall prescribe such regulations or other guidance
14 as may be necessary or appropriate to carry out the pur-
15 poses of subsection (a)(2), subsection (b)(2), and section
16 743(g), including regulations or other guidance addressing
17 distributions and transfers that are substantially similar
18 to the distributions and transfers described in such provi-
19 sions or which have substantially similar results (including
20 through the participation of tax-indifferent parties). In the
21 case of tax-indifferent parties, such regulations may pro-
22 vide for equivalent methods for the recognition of gain,
23 including through the recognition of gain by the partner
24 with an increase in basis under section 732 or by reason
25 of section 734(b)(1).”.

1 (3) MANDATORY ADJUSTMENTS TO APPLICABLE
2 PARTNERSHIP PROPERTY WHEN PARTNERSHIP DIS-
3 TRIBUTES PROPERTY.—Section 734(a) of such Code
4 is amended—

5 (A) by striking “distribution of property to
6 a partner unless the election” and inserting
7 “distribution of property to a partner unless—
8 “(1) the election”,

9 (B) by striking “with respect to such part-
10 nership or unless there is” and inserting “with
11 respect to such partnership,
12 “(2) there is”,

13 (C) by striking the period at the end and
14 inserting “, or

15 “(3) if paragraph (1) and (2) do not apply,
16 such distribution is a distribution from an applicable
17 partnership (as defined in section 731(e)) but only
18 to the extent the application of this section to such
19 distribution results in a decrease in basis to partner-
20 ship property under subsection (b)(2).”.

21 (4) CONFORMING AMENDMENTS.—

22 (A) Section 731(c)(1) of such Code is
23 amended by striking “subsection (a)(1)” and
24 inserting “subsection (a)(1)(A)”.

1 (B) Section 734(b) of such Code is amend-
2 ed—

3 (i) in the matter preceding paragraph
4 (1)—

5 (I) by striking “or” after “ef-
6 fect” and inserting a comma, and

7 (II) by inserting “or to which
8 subsection (a)(3) applies,” after “re-
9 duction,”

10 (ii) in paragraph (1)(A), by striking
11 “section 731(a)(1)” and inserting “section
12 731(a)(1)(A)”, and

13 (iii) in paragraph (2)(A), by striking
14 “section 731(a)(2)” and inserting “section
15 731(a)(1)(B)”.

16 (b) TRANSFERS OF PARTNERSHIP INTERESTS.—Sec-
17 tion 743 of the Internal Revenue Code of 1986 is amended
18 by adding at the end the following new subsection:

19 “(g) SPECIAL RULES FOR RELATED-PARTY TRANS-
20 ACTIONS.—

21 “(1) IN GENERAL.—If subsection (b)(1) applies
22 to an applicable transfer—

23 “(A) any increase to the adjusted basis of
24 partnership property under subsection (b)(1)
25 shall not exceed the total gain (determined

1 without regard to any loss) recognized on such
2 transfer, and

3 “(B) the adjusted basis of partnership
4 property with respect to the transferee partner
5 immediately after the transfer shall be equal to
6 the sum of—

7 “(i) the adjusted basis of partnership
8 property with respect to the transferor
9 partner immediately before such transfer,
10 plus

11 “(ii) the increase in the adjusted basis
12 of the partnership property under sub-
13 section (b)(1) by reason of such transfer
14 (determined after application of subpara-
15 graph (A)).

16 “(2) APPLICABLE TRANSFER.—For purposes of
17 this subsection—

18 “(A) IN GENERAL.—The term ‘applicable
19 transfer’ means any transfer of a partnership
20 interest if—

21 “(i) two or more partners of the part-
22 nership are related persons immediately
23 before or after the transfer, and

24 “(ii) any amount of gain on the trans-
25 fer is not recognized under this chapter.

1 Such term shall not include any transfer of a
2 partnership interest from a partner to the part-
3 ner's estate or a deemed transfer from a grant-
4 or trust owned by the partner to a trust that
5 becomes a separate entity for purposes of this
6 chapter by reason of the partner's death.

7 “(B) RELATED PERSON.—For purposes of
8 subparagraph (A), a person shall be treated as
9 related to another person if they bear a rela-
10 tionship to such other person described in sec-
11 tion 267(b) (without regard to section
12 267(c)(3)) or 707(b)(1).”.

13 (c) APPLICATION OF ACCURACY RELATED PEN-
14 ALTIES.—

15 (1) IN GENERAL.—Section 6662(b) of the In-
16 ternal Revenue Code of 1986 is amended by adding
17 at the end the following new paragraph:

18 “(11) Any related-party partnership distribu-
19 tion understatement.”.

20 (2) RULES REGARDING RELATED-PARTY PART-
21 NERSHIP TRANSACTION UNDERSTATEMENTS.—Sec-
22 tion 6662 of such Code is amended by adding at the
23 end the following new subsection:

24 “(m) RELATED-PARTY PARTNERSHIP DISTRIBUTION
25 UNDERSTATEMENT.—

1 “(1) RELATED-PARTY PARTNERSHIP DISTRIBUTION UNDERSTATEMENT.—For purposes of this section, the term ‘related-party partnership distribution understatement’ means, for any taxable year, the portion of the understatement for such taxable year which is attributable to gain recognized under section 731(a)(2) or 731(b)(2).

8 “(2) INCREASE IN PENALTY.—In the case of any portion of an underpayment which is attributable to a related-party partnership distribution understatement, subsection (a) shall be applied with respect to such portion by substituting ‘40 percent’ for ‘20 percent’.”.

14 (d) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions and transfers occurring after **■**[date of introduction to be supplied]**■**.

17 (e) NO INFERENCE.—The amendments made by this section shall not be construed to create any inference with respect to whether any distribution to which subsection (a)(2) or (b)(2) of section 731 of the Internal Revenue Code of 1986 (as added by this section) applies, or any applicable transfer (as defined in section 743(g)(2) of such Code, as added by this section), has economic substance for purposes of applying the economic substance doctrine (as defined in section 7701(o) of such Code).