

**SEC. 413. EMPLOYMENT TAX TREATMENT OF PROFESSIONAL SERVICE BUSINESSES.**

13 (a) IN GENERAL.—Section 1402 is amended by add  
14 ing at the end the following new subsection:

15 “(m) SPECIAL RULES FOR PROFESSIONAL SERVICE  
16 BUSINESSES.—

17 “(1) SHAREHOLDERS PROVIDING SERVICES TO  
18 DISQUALIFIED S CORPORATIONS.—

19 “(A) IN GENERAL.—In the case of any dis  
20 qualified S corporation, each shareholder of  
21 such disqualified S corporation who provides  
22 substantial services with respect to the profess  
23 sional service business referred to in subpara  
24 graph (C) shall take into account such share  
25 holder’s pro rata share of all items of income or

1 loss described in section 1366 which are attrib  
2 utable to such business in determining the  
3 shareholder's net earnings from self-employ  
4 ment.

5 “(B) TREATMENT OF FAMILY MEMBERS.—

6 Except as otherwise provided by the Secretary,  
7 the shareholder's pro rata share of items re  
8 ferred to in subparagraph (A) shall be increased  
9 by the pro rata share of such items of each  
10 member of such shareholder's family (within  
11 the meaning of section 318(a)(1)) who does not  
12 provide substantial services with respect to such  
13 professional service business.

14 “(C) DISQUALIFIED S CORPORATION.—For

15 purposes of this subsection, the term ‘disquali  
16 fied S corporation’ means—

17 “(i) any S corporation which is a  
18 partner in a partnership which is engaged  
19 in a professional service business if sub  
20 stantially all of the activities of such S cor  
21 poration are performed in connection with  
22 such partnership, and

23 “(ii) any other S corporation which is  
24 engaged in a professional service business  
25 if the principal asset of such business is

1 the reputation and skill of 3 or fewer em  
2 ployees.

3 “(2) PARTNERS.—In the case of any partner  
4 ship which is engaged in a professional service busi  
5 ness, subsection (a)(13) shall not apply to any part  
6 ner who provides substantial services with respect to  
7 such professional service business.

8 “(3) PROFESSIONAL SERVICE BUSINESS.—For  
9 purposes of this subsection, the term ‘professional  
10 service business’ means any trade or business if sub  
11 stantially all of the activities of such trade or busi  
12 ness involve providing services in the fields of health,  
13 law, lobbying, engineering, architecture, accounting,  
14 actuarial science, performing arts, consulting, ath  
15 letics, investment advice or management, or broker  
16 age services.

17 “(4) REGULATIONS.—The Secretary shall pre  
18 scribe such regulations as may be necessary or ap  
19 propriate to carry out the purposes of this sub  
20 section, including regulations which prevent the  
21 avoidance of the purposes of this subsection through  
22 tiered entities or otherwise.

23 “(5) CROSS REFERENCE.—For employment tax  
24 treatment of wages paid to shareholders of S cor  
25 porations, see subtitle C.”.

1 (b) CONFORMING AMENDMENT.—Section 211 of the  
2 Social Security Act is amended by adding at the end the  
3 following new subsection:

4 “(1) SPECIAL RULES FOR PROFESSIONAL SERVICE  
5 BUSINESSES.—

6 “(1) SHAREHOLDERS PROVIDING SERVICES TO  
7 DISQUALIFIED S CORPORATIONS.—

8 “(A) IN GENERAL.—In the case of any dis  
9 qualified S corporation, each shareholder of  
10 such disqualified S corporation who provides  
11 substantial services with respect to the profess  
12 sional service business referred to in subpara  
13 graph (C) shall take into account such share  
14 holder’s pro rata share of all items of income or  
15 loss described in section 1366 of the Internal  
16 Revenue Code of 1986 which are attributable to  
17 such business in determining the shareholder’s  
18 net earnings from self-employment.

19 “(B) TREATMENT OF FAMILY MEMBERS.—

20 Except as otherwise provided by the Secretary  
21 of the Treasury, the shareholder’s pro rata  
22 share of items referred to in subparagraph (A)  
23 shall be increased by the pro rata share of such  
24 items of each member of such shareholder’s  
25 family (within the meaning of section 318(a)(1))

1 of the Internal Revenue Code of 1986) who  
2 does not provide substantial services with re  
3 spect to such professional service business.

4 “(C) DISQUALIFIED S CORPORATION.—For  
5 purposes of this subsection, the term ‘disquali  
6 fied S corporation’ means—

7 “(i) any S corporation which is a  
8 partner in a partnership which is engaged  
9 in a professional service business if sub  
10 stantially all of the activities of such S cor  
11 poration are performed in connection with  
12 such partnership, and

13 “(ii) any other S corporation which is  
14 engaged in a professional service business  
15 if the principal asset of such business is  
16 the reputation and skill of 3 or fewer em  
17 ployees.

18 “(2) PARTNERS.—In the case of any partner  
19 ship which is engaged in a professional service busi  
20 ness, subsection (a)(12) shall not apply to any part  
21 ner who provides substantial services with respect to  
22 such professional service business.

23 “(3) PROFESSIONAL SERVICE BUSINESS.—For  
24 purposes of this subsection, the term ‘professional  
25 service business’ means any trade or business if sub-

1 stantially all of the activities of such trade or busi  
2 ness involve providing services in the fields of health,  
3 law, lobbying, engineering, architecture, accounting,  
4 actuarial science, performing arts, consulting, ath  
5 letics, investment advice or management, or broker  
6 age services.”.

7 (c) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to taxable years beginning after  
9 December 31, 2010.