

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4279
OFFERED BY MR. RANGEL OF NEW YORK**

Strike all after the enacting clause and insert the
following:

1 **TITLE I— DISPOSITION OF UN-**
2 **USED HEALTH BENEFITS IN**
3 **CAFETERIA PLANS AND**
4 **FLEXIBLE SPENDING AR-**
5 **RANGEMENTS**

6 **SEC. 101. DISPOSITION OF UNUSED HEALTH BENEFITS IN**
7 **CAFETERIA PLANS AND FLEXIBLE SPENDING**
8 **ARRANGEMENTS.**

9 (a) IN GENERAL.—Section 125 of the Internal Rev-
10 enue Code of 1986 (relating to cafeteria plans) is amended
11 by redesignating subsections (h) and (i) as subsections (i)
12 and (j), respectively, and by inserting after subsection (g)
13 the following:

14 “(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH
15 BENEFITS.—

16 “(1) IN GENERAL.—For purposes of this title,
17 a plan or other arrangement shall not fail to be
18 treated as a cafeteria plan solely because qualified
19 benefits under such plan include a health flexible

1 spending arrangement under which not more than
2 \$500 of unused health benefits may be carried for-
3 ward to the succeeding plan year of such health
4 flexible spending arrangement.

5 “(2) HEALTH FLEXIBLE SPENDING ARRANGE-
6 MENT.—For purposes of this subsection, the term
7 ‘health flexible spending arrangement’ means a flexi-
8 ble spending arrangement (as defined in section
9 106(c)) that is a qualified benefit and only permits
10 reimbursement for expenses for medical care (as de-
11 fined in section 213(d)(1), without regard to sub-
12 paragraphs (C) and (D) thereof).

13 “(3) UNUSED HEALTH BENEFITS.—For pur-
14 poses of this subsection, with respect to an em-
15 ployee, the term ‘unused health benefits’ means the
16 excess of—

17 “(A) the maximum amount of reimburse-
18 ment allowable to the employee for a plan year
19 under a health flexible spending arrangement,
20 over

21 “(B) the actual amount of reimbursement
22 for such year under such arrangement.”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 subsection (a) shall apply to taxable years beginning after
25 December 31, 2003.

1 **TITLE II—Enron-Related Tax**
2 **Shelter Provisions**

3 **SEC. 201. LIMITATION ON TRANSFER OR IMPORTATION OF**
4 **BUILT-IN LOSSES.**

5 (a) IN GENERAL.—Section 362 of the Internal Rev-
6 enue Code of 1986 (relating to basis to corporations) is
7 amended by adding at the end the following new sub-
8 section:

9 “(e) LIMITATIONS ON BUILT-IN LOSSES.—

10 “(1) LIMITATION ON IMPORTATION OF BUILT-
11 IN LOSSES.—

12 “(A) IN GENERAL.—If in any transaction
13 described in subsection (a) or (b) there would
14 (but for this subsection) be an importation of a
15 net built-in loss, the basis of each property de-
16 scribed in subparagraph (B) which is acquired
17 in such transaction shall (notwithstanding sub-
18 sections (a) and (b)) be its fair market value
19 immediately after such transaction.

20 “(B) PROPERTY DESCRIBED.—For pur-
21 poses of subparagraph (A), property is de-
22 scribed in this subparagraph if—

23 “(i) gain or loss with respect to such
24 property is not subject to tax under this

1 subtitle in the hands of the transferor im-
2 mediately before the transfer, and

3 “(ii) gain or loss with respect to such
4 property is subject to such tax in the
5 hands of the transferee immediately after
6 such transfer.

7 In any case in which the transferor is a part-
8 nership, the preceding sentence shall be applied
9 by treating each partner in such partnership as
10 holding such partner’s proportionate share of
11 the property of such partnership.

12 “(C) IMPORTATION OF NET BUILT-IN
13 LOSS.—For purposes of subparagraph (A),
14 there is an importation of a net built-in loss in
15 a transaction if the transferee’s aggregate ad-
16 justed bases of property described in subpara-
17 graph (B) which is transferred in such trans-
18 action would (but for this paragraph) exceed
19 the fair market value of such property imme-
20 diately after such transaction.

21 “(2) LIMITATION ON TRANSFER OF BUILT-IN
22 LOSSES IN SECTION 351 TRANSACTIONS.—

23 “(A) IN GENERAL.—If—

24 “(i) property is transferred by a
25 transferor in any transaction which is de-

1 scribed in subsection (a) and which is not
2 described in paragraph (1) of this sub-
3 section, and

4 “(ii) the transferee’s aggregate ad-
5 justed bases of such property so trans-
6 ferred would (but for this paragraph) ex-
7 ceed the fair market value of such property
8 immediately after such transaction,

9 then, notwithstanding subsection (a), the trans-
10 feree’s aggregate adjusted bases of the property
11 so transferred shall not exceed the fair market
12 value of such property immediately after such
13 transaction.

14 “(B) ALLOCATION OF BASIS REDUC-
15 TION.—The aggregate reduction in basis by
16 reason of subparagraph (A) shall be allocated
17 among the property so transferred in proportion
18 to their respective built-in losses immediately
19 before the transaction.

20 “(C) EXCEPTION FOR TRANSFERS WITHIN
21 AFFILIATED GROUP.—Subparagraph (A) shall
22 not apply to any transaction if the transferor
23 owns stock in the transferee meeting the re-
24 quirements of section 1504(a)(2). In the case of
25 property to which subparagraph (A) does not

1 apply by reason of the preceding sentence, the
2 transferor's basis in the stock received for such
3 property shall not exceed its fair market value
4 immediately after the transfer.”.

5 (b) COMPARABLE TREATMENT WHERE LIQUIDA-
6 TION.—Paragraph (1) of section 334(b) of such Code (re-
7 lating to liquidation of subsidiary) is amended to read as
8 follows:

9 “(1) IN GENERAL.—If property is received by a
10 corporate distributee in a distribution in a complete
11 liquidation to which section 332 applies (or in a
12 transfer described in section 337(b)(1)), the basis of
13 such property in the hands of such distributee shall
14 be the same as it would be in the hands of the trans-
15 feror; except that the basis of such property in the
16 hands of such distributee shall be the fair market
17 value of the property at the time of the
18 distribution—

19 “(A) in any case in which gain or loss is
20 recognized by the liquidating corporation with
21 respect to such property, or

22 “(B) in any case in which the liquidating
23 corporation is a foreign corporation, the cor-
24 porate distributee is a domestic corporation,
25 and the corporate distributee's aggregate ad-

1 justed bases of property described in section
2 362(e)(1)(B) which is distributed in such liq-
3 uidation would (but for this subparagraph) ex-
4 ceed the fair market value of such property im-
5 mediately after such liquidation.”.

6 (c) EFFECTIVE DATES.—

7 (1) IN GENERAL.—The amendment made by
8 subsection (a) shall apply to transactions after the
9 date of the enactment of this Act.

10 (2) LIQUIDATIONS.—The amendment made by
11 subsection (b) shall apply to liquidations after the
12 date of the enactment of this Act.

13 **SEC. 202. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
14 **STOCK HELD BY PARTNERSHIP IN COR-**
15 **PORATE PARTNER.**

16 (a) IN GENERAL.—Section 755 of the Internal Rev-
17 enue Code of 1986 is amended by adding at the end the
18 following new subsection:

19 “(c) NO ALLOCATION OF BASIS DECREASE TO
20 STOCK OF CORPORATE PARTNER.—In making an alloca-
21 tion under subsection (a) of any decrease in the adjusted
22 basis of partnership property under section 734(b)—

23 “(1) no allocation may be made to stock in a
24 corporation (or any person which is related (within
25 the meaning of section 267(b) or 707(b)(1)) to such

1 corporation) which is a partner in the partnership,
2 and

3 “(2) any amount not allocable to stock by rea-
4 son of paragraph (1) shall be allocated under sub-
5 section (a) to other partnership property in such
6 manner as the Secretary may prescribe.

7 Gain shall be recognized to the partnership to the extent
8 that the amount required to be allocated under paragraph
9 (2) to other partnership property exceeds the aggregate
10 adjusted basis of such other property immediately before
11 the allocation required by paragraph (2).”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to distributions after the date of
14 the enactment of this Act.

15 **SEC. 203. EXPANDED DISALLOWANCE OF DEDUCTION FOR**
16 **INTEREST ON CONVERTIBLE DEBT.**

17 (a) IN GENERAL.—Paragraph (2) of section 163(l)
18 of the Internal Revenue Code of 1986 is amended by in-
19 serting “or equity held by the issuer (or any related party)
20 in any other person” after “or a related party”.

21 (b) CAPITALIZATION ALLOWED WITH RESPECT TO
22 EQUITY OF PERSONS OTHER THAN ISSUER AND RE-
23 LATED PARTIES.—Section 163(l) of such Code is amended
24 by redesignating paragraphs (4) and (5) as paragraphs

1 (5) and (6) and by inserting after paragraph (3) the fol-
2 lowing new paragraph:

3 “(4) CAPITALIZATION ALLOWED WITH RESPECT
4 TO EQUITY OF PERSONS OTHER THAN ISSUER AND
5 RELATED PARTIES.—If the disqualified debt instru-
6 ment of a corporation is payable in equity held by
7 the issuer (or any related party) in any other person
8 (other than a related party), the basis of such equity
9 shall be increased by the amount not allowed as a
10 deduction by reason of paragraph (1) with respect to
11 the instrument.”.

12 (c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED
13 BY DEALERS IN SECURITIES.—Section 163(l) of such
14 Code, as amended by subsection (b), is amended by redес-
15 ignating paragraphs (5) and (6) as paragraphs (6) and
16 (7) and by inserting after paragraph (4) the following new
17 paragraph:

18 “(5) EXCEPTION FOR CERTAIN INSTRUMENTS
19 ISSUED BY DEALERS IN SECURITIES.—For purposes
20 of this subsection, the term ‘disqualified debt instru-
21 ment’ does not include indebtedness issued by a
22 dealer in securities (or a related party) which is pay-
23 able in, or by reference to, equity (other than equity
24 of the issuer or a related party) held by such dealer
25 in its capacity as a dealer in securities. For purposes

1 of this paragraph, the term ‘dealer in securities’ has
2 the meaning given such term by section 475.’’.

3 (d) CONFORMING AMENDMENTS.—Paragraph (3) of
4 section 163(l) of such Code is amended—

5 (1) by striking “or a related party” in the ma-
6 terial preceding subparagraph (A) and inserting “or
7 any other person”, and

8 (2) by striking “or interest” each place it ap-
9 pears.

10 (e) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to debt instruments issued after
12 the date of the enactment of this Act.

13 **SEC. 204. EXPANDED AUTHORITY TO DISALLOW TAX BENE-**
14 **FITS UNDER SECTION 269.**

15 (a) IN GENERAL.—Subsection (a) of section 269 of
16 the Internal Revenue Code of 1986 (relating to acquisi-
17 tions made to evade or avoid income tax) is amended to
18 read as follows:

19 “(a) IN GENERAL.—If—

20 “(1)(A) any person or persons acquire, directly
21 or indirectly, control of a corporation, or

22 “(B) any corporation acquires, directly or indi-
23 rectly, property of another corporation and the basis
24 of such property, in the hands of the acquiring cor-

1 poration, is determined by reference to the basis in
2 the hands of the transferor corporation, and

3 “(2) the principal purpose for which such acqui-
4 sition was made is evasion or avoidance of Federal
5 income tax,

6 then the Secretary may disallow such deduction, credit,
7 or other allowance. For purposes of paragraph (1)(A),
8 control means the ownership of stock possessing at least
9 50 percent of the total combined voting power of all class-
10 es of stock entitled to vote or at least 50 percent of the
11 total value of all shares of all classes of stock of the cor-
12 poration.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to stock and property acquired
15 after the date of the enactment of this Act.

16 **SEC. 205. MODIFICATION OF INTERACTION BETWEEN SUB-**
17 **PART F AND PASSIVE FOREIGN INVESTMENT**
18 **COMPANY RULES.**

19 (a) LIMITATION ON EXCEPTION FROM PFIC RULES
20 FOR UNITED STATES SHAREHOLDERS OF CONTROLLED
21 FOREIGN CORPORATIONS.—Paragraph (2) of section
22 1297(e) of the Internal Revenue Code of 1986 (relating
23 to passive foreign investment company) is amended by
24 adding at the end the following flush sentence:

1 “Such term shall not include any period if the
2 earning of subpart F income by such corpora-
3 tion during such period would result in only a
4 remote likelihood of an inclusion in gross in-
5 come under section 951(a)(1)(A)(i).”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to taxable years of controlled for-
8 eign corporations beginning after the date of the enact-
9 ment of this Act, and to taxable years of United States
10 shareholders with or within which such taxable years of
11 controlled foreign corporations end.

12 **TITLE III—PREVENTION OF COR-**
13 **PORATE EXPATRIATION TO**
14 **AVOID UNITED STATES IN-**
15 **COME TAX**

16 **SEC. 301. PREVENTION OF CORPORATE EXPATRIATION TO**
17 **AVOID UNITED STATES INCOME TAX.**

18 (a) IN GENERAL.—Paragraph (4) of section 7701(a)
19 of the Internal Revenue Code of 1986 (defining domestic)
20 is amended to read as follows:

21 “(4) DOMESTIC.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), the term ‘domestic’ when ap-
24 plied to a corporation or partnership means cre-
25 ated or organized in the United States or under

1 the law of the United States or of any State
2 unless, in the case of a partnership, the Sec-
3 retary provides otherwise by regulations.

4 “(B) CERTAIN CORPORATIONS TREATED
5 AS DOMESTIC.—

6 “(i) IN GENERAL.—The acquiring cor-
7 poration in a corporate expatriation trans-
8 action shall be treated as a domestic cor-
9 poration.

10 “(ii) CORPORATE EXPATRIATION
11 TRANSACTION.—For purposes of this sub-
12 paragraph, the term ‘corporate expatria-
13 tion transaction’ means any transaction
14 if—

15 “(I) a nominally foreign corpora-
16 tion (referred to in this subparagraph
17 as the ‘acquiring corporation’) ac-
18 quires, as a result of such transaction,
19 directly or indirectly substantially all
20 of the properties held directly or indi-
21 rectly by a domestic corporation, and

22 “(II) immediately after the trans-
23 action, more than 80 percent of the
24 stock (by vote or value) of the acquir-
25 ing corporation is held by former

1 shareholders of the domestic corpora-
2 tion by reason of holding stock in the
3 domestic corporation.

4 “(iii) LOWER STOCK OWNERSHIP RE-
5 QUIREMENT IN CERTAIN CASES.—Sub-
6 clause (II) of clause (ii) shall be applied by
7 substituting ‘50 percent’ for ‘80 percent’
8 with respect to any nominally foreign cor-
9 poration if—

10 “(I) such corporation does not
11 have substantial business activities
12 (when compared to the total business
13 activities of the expanded affiliated
14 group) in the foreign country in which
15 or under the law of which the corpora-
16 tion is created or organized, and

17 “(II) the stock of the corporation
18 is publicly traded and the principal
19 market for the public trading of such
20 stock is in the United States.

21 “(iv) PARTNERSHIP TRANSACTIONS.—
22 The term ‘corporate expatriation trans-
23 action’ includes any transaction if—

24 “(I) a nominally foreign corpora-
25 tion (referred to in this subparagraph

1 as the ‘acquiring corporation’) ac-
2 quires, as a result of such transaction,
3 directly or indirectly properties consti-
4 tuting a trade or business of a domes-
5 tic partnership,

6 “(II) immediately after the trans-
7 action, more than 80 percent of the
8 stock (by vote or value) of the acquir-
9 ing corporation is held by former
10 partners of the domestic partnership
11 or related foreign partnerships (deter-
12 mined without regard to stock of the
13 acquiring corporation which is sold in
14 a public offering related to the trans-
15 action), and

16 “(III) the acquiring corporation
17 meets the requirements of subclauses
18 (I) and (II) of clause (iii).

19 “(v) SPECIAL RULES.—For purposes
20 of this subparagraph—

21 “(I) a series of related trans-
22 actions shall be treated as 1 trans-
23 action, and

24 “(II) stock held by members of
25 the expanded affiliated group which

1 includes the acquiring corporation
2 shall not be taken into account in de-
3 termining ownership.

4 “(vi) OTHER DEFINITIONS.—For pur-
5 poses of this subparagraph—

6 “(I) NOMINALLY FOREIGN COR-
7 PORATION.—The term ‘nominally for-
8 eign corporation’ means any corpora-
9 tion which would (but for this sub-
10 paragraph) be treated as a foreign
11 corporation.

12 “(II) EXPANDED AFFILIATED
13 GROUP.—The term ‘expanded affili-
14 ated group’ means an affiliated group
15 (as defined in section 1504(a) without
16 regard to section 1504(b)).

17 “(III) RELATED FOREIGN PART-
18 NERSHIP.—A foreign partnership is
19 related to a domestic partnership if
20 they are under common control (with-
21 in the meaning of section 482), or
22 they shared the same trademark or
23 tradename.”

1 (b) EFFECTIVE DATES.—The amendment made by
2 this section shall apply to taxable years beginning after
3 the date of enactment of this Act.

