

1 **SECTION 1. SHORT TITLE; ETC.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “American Jobs Creation Act of 2004”.

4 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
5 wise expressly provided, whenever in this Act an amend-
6 ment or repeal is expressed in terms of an amendment
7 to, or repeal of, a section or other provision, the reference
8 shall be considered to be made to a section or other provi-
9 sion of the Internal Revenue Code of 1986.

10 (c) **TABLE OF CONTENTS.**—The table of contents of
11 this Act is as follows:

**TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR
EXTRATERRITORIAL INCOME**

Sec. 101. Repeal of exclusion for extraterritorial income.

Sec. 102. Deduction relating to income attributable to domestic production ac-
tivities.

TITLE II—BUSINESS TAX INCENTIVES

Subtitle A—Small Business Expensing

Sec. 201. 2-year extension of increased expensing for small business.

Subtitle B—Depreciation

Sec. 211. Recovery period for depreciation of certain leasehold improvements
and restaurant property.

Subtitle C—Community Revitalization

Sec. 221. Modification of targeted areas and low-income communities for new
markets tax credit.

Sec. 222. Expansion of designated renewal community area based on 2000 cen-
sus data.

Sec. 223. Modification of income requirement for census tracts within high mi-
gration rural counties.

Subtitle D—S Corporation Reform and Simplification

Sec. 231. Members of family treated as 1 shareholder.

Sec. 232. Increase in number of eligible shareholders to 100.

Sec. 233. Expansion of bank S corporation eligible shareholders to include
IRAs.



- Sec. 234. Disregard of unexercised powers of appointment in determining potential current beneficiaries of ESBT.
- Sec. 235. Transfer of suspended losses incident to divorce, etc.
- Sec. 236. Use of passive activity loss and at-risk amounts by qualified subchapter S trust income beneficiaries.
- Sec. 237. Exclusion of investment securities income from passive income test for bank S corporations.
- Sec. 238. Relief from inadvertently invalid qualified subchapter S subsidiary elections and terminations.
- Sec. 239. Information returns for qualified subchapter S subsidiaries.
- Sec. 240. Repayment of loans for qualifying employer securities.

Subtitle E—Other Business Incentives

- Sec. 241. Phaseout of 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in general fund.
- Sec. 242. Modification of application of income forecast method of depreciation.
- Sec. 243. Improvements related to real estate investment trusts.
- Sec. 244. Special rules for certain film and television productions.
- Sec. 245. Credit for maintenance of railroad track.
- Sec. 246. Suspension of occupational taxes relating to distilled spirits, wine, and beer.
- Sec. 247. Modification of unrelated business income limitation on investment in certain small business investment companies.
- Sec. 248. Election to determine corporate tax on certain international shipping activities using per ton rate.

Subtitle F—Stock Options and Employee Stock Purchase Plan Stock Options

- Sec. 251. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.

TITLE III—TAX RELIEF FOR AGRICULTURE AND SMALL MANUFACTURERS

Subtitle A—Volumetric Ethanol Excise Tax Credit

- Sec. 301. Alcohol and biodiesel excise tax credit and extension of alcohol fuels income tax credit.
- Sec. 302. Biodiesel income tax credit.
- Sec. 303. Information reporting for persons claiming certain tax benefits.

Subtitle B—Agricultural Incentives

- Sec. 311. Special rules for livestock sold on account of weather-related conditions.
- Sec. 312. Payment of dividends on stock of cooperatives without reducing patronage dividends.
- Sec. 313. Apportionment of small ethanol producer credit.
- Sec. 314. Coordinate farmers and fishermen income averaging and the alternative minimum tax.
- Sec. 315. Capital gain treatment under section 631(b) to apply to outright sales by landowners.
- Sec. 316. Modification to cooperative marketing rules to include value added processing involving animals.
- Sec. 317. Extension of declaratory judgment procedures to farmers' cooperative organizations.



- Sec. 318. Certain expenses of rural letter carriers.
- Sec. 319. Treatment of certain income of cooperatives.
- Sec. 320. Exclusion for payments to individuals under National Health Service Corps loan repayment program and certain State loan repayment programs.
- Sec. 321. Modification of safe harbor rules for timber REITs.
- Sec. 322. Expensing of certain reforestation expenditures.

Subtitle C—Incentives for Small Manufacturers

- Sec. 331. Net income from publicly traded partnerships treated as qualifying income of regulated investment companies.
- Sec. 332. Simplification of excise tax imposed on bows and arrows.
- Sec. 333. Reduction of excise tax on fishing tackle boxes.
- Sec. 334. Sonar devices suitable for finding fish.
- Sec. 335. Charitable contribution deduction for certain expenses incurred in support of Native Alaskan subsistence whaling.
- Sec. 336. Modification of depreciation allowance for aircraft.
- Sec. 337. Modification of placed in service rule for bonus depreciation property.
- Sec. 338. Expensing of capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
- Sec. 339. Credit for production of low sulfur diesel fuel.
- Sec. 340. Expansion of qualified small-issue bond program.
- Sec. 341. Oil and gas from marginal wells.

TITLE IV—TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

- Sec. 401. Interest expense allocation rules.
- Sec. 402. Recharacterization of overall domestic loss.
- Sec. 403. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.
- Sec. 404. Reduction to 2 foreign tax credit baskets.
- Sec. 405. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.
- Sec. 406. Clarification of treatment of certain transfers of intangible property.
- Sec. 407. United States property not to include certain assets of controlled foreign corporation.
- Sec. 408. Translation of foreign taxes.
- Sec. 409. Repeal of withholding tax on dividends from certain foreign corporations.
- Sec. 410. Equal treatment of interest paid by foreign partnerships and foreign corporations.
- Sec. 411. Treatment of certain dividends of regulated investment companies.
- Sec. 412. Look-thru treatment for sales of partnership interests.
- Sec. 413. Repeal of foreign personal holding company rules and foreign investment company rules.
- Sec. 414. Determination of foreign personal holding company income with respect to transactions in commodities.
- Sec. 415. Modifications to treatment of aircraft leasing and shipping income.
- Sec. 416. Modification of exceptions under subpart F for active financing.
- Sec. 417. 10-year foreign tax credit carryover; 1-year foreign tax credit carryback.
- Sec. 418. Modification of the treatment of certain REIT distributions attributable to gain from sales or exchanges of United States real property interests.



- Sec. 419. Exclusion of income derived from certain wagers on horse races and dog races from gross income of nonresident alien individuals.
- Sec. 420. Limitation of withholding tax for Puerto Rico corporations.
- Sec. 421. Foreign tax credit under alternative minimum tax.
- Sec. 422. Incentives to reinvest foreign earnings in United States.
- Sec. 423. Delay in effective date of final regulations governing exclusion of income from international operation of ships or aircraft.
- Sec. 424. Study of earnings stripping provisions.

TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

- Sec. 501. Deduction of State and local general sales taxes in lieu of State and local income taxes.

TITLE VI—FAIR AND EQUITABLE TOBACCO REFORM

- Sec. 601. Short title.

Subtitle A—Termination of Federal Tobacco Quota and Price Support Programs

- Sec. 611. Termination of tobacco quota program and related provisions.
- Sec. 612. Termination of tobacco price support program and related provisions.
- Sec. 613. Conforming amendments.
- Sec. 614. Continuation of liability for 2004 and earlier crop years.

Subtitle B—Transitional Payments to Tobacco Quota Holders and Producers of Tobacco

- Sec. 621. Definitions.
- Sec. 622. Contract payments to tobacco quota holders.
- Sec. 623. Contract payments for producers of quota tobacco.
- Sec. 624. Administration.
- Sec. 625. Use of assessments as source of funds for payments.
- Sec. 626. Tobacco Trust Fund.
- Sec. 627. Limitation on total expenditures.

Subtitle C—Implementation and Transition

- Sec. 641. Treatment of tobacco loan pool stocks and outstanding loan costs.
- Sec. 642. Regulations.
- Sec. 643. Effective date.

TITLE VII—MISCELLANEOUS PROVISIONS

- Sec. 701. Brownfields demonstration program for qualified green building and sustainable design projects.
- Sec. 702. Exclusion of gain or loss on sale or exchange of certain brownfield sites from unrelated business taxable income.
- Sec. 703. Civil rights tax relief.
- Sec. 704. Modification of class life for certain track facilities.
- Sec. 705. Suspension of policyholders surplus account provisions.
- Sec. 706. Certain Alaska natural gas pipeline property treated as 7-year property.
- Sec. 707. Extension of enhanced oil recovery credit to certain Alaska facilities.
- Sec. 708. Method of accounting for naval shipbuilders.



- Sec. 709. Modification of minimum cost requirement for transfer of excess pension assets.
- Sec. 710. Expansion of credit for electricity produced from certain renewable resources.
- Sec. 711. Certain business credits allowed against regular and minimum tax.
- Sec. 712. Inclusion of primary and secondary medical strategies for children and adults with sickle cell disease as medical assistance under the Medicaid program.
- Sec. 713. Ceiling fans.
- Sec. 714. Certain steam generators, and certain reactor vessel heads and pressurizers, used in nuclear facilities.

TITLE VIII—REVENUE PROVISIONS

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- Sec. 801. Tax treatment of expatriated entities and their foreign parents.
- Sec. 802. Excise tax on stock compensation of insiders in expatriated corporations.
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- Sec. 804. Revision of tax rules on expatriation of individuals.
- Sec. 805. Reporting of taxable mergers and acquisitions.
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Subtitle B—Provisions Relating to Tax Shelters

PART I—TAXPAYER-RELATED PROVISIONS

- Sec. 811. Penalty for failing to disclose reportable transactions.
- Sec. 812. Accuracy-related penalty for listed transactions, other reportable transactions having a significant tax avoidance purpose, etc.
- Sec. 813. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
- Sec. 814. Statute of limitations for taxable years for which required listed transactions not reported.
- Sec. 815. Disclosure of reportable transactions.
- Sec. 816. Failure to furnish information regarding reportable transactions.
- Sec. 817. Modification of penalty for failure to maintain lists of investors.
- Sec. 818. Penalty on promoters of tax shelters.
- Sec. 819. Modifications of substantial understatement penalty for nonreportable transactions.
- Sec. 820. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
- Sec. 821. Penalty on failure to report interests in foreign financial accounts.
- Sec. 822. Regulation of individuals practicing before the Department of Treasury.

PART II—OTHER PROVISIONS

- Sec. 831. Treatment of stripped interests in bond and preferred stock funds, etc.
- Sec. 832. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.
- Sec. 833. Disallowance of certain partnership loss transfers.
- Sec. 834. No reduction of basis under section 734 in stock held by partnership in corporate partner.



- Sec. 835. Repeal of special rules for FASITS.
- Sec. 836. Limitation on transfer or importation of built-in losses.
- Sec. 837. Clarification of banking business for purposes of determining investment of earnings in United States property.
- Sec. 838. Denial of deduction for interest on underpayments attributable to nondisclosed reportable transactions.
- Sec. 839. Clarification of rules for payment of estimated tax for certain deemed asset sales.
- Sec. 840. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale.
- Sec. 841. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.
- Sec. 842. Deposits made to suspend running of interest on potential underpayments.
- Sec. 843. Partial payment of tax liability in installment agreements.
- Sec. 844. Affirmation of consolidated return regulation authority.
- Sec. 845. Expanded disallowance of deduction for interest on convertible debt.

PART III—LEASING

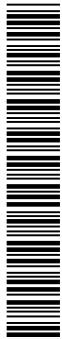
- Sec. 847. Reform of tax treatment of certain leasing arrangements.
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- Sec. 851. Exemption from certain excise taxes for mobile machinery.
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- Sec. 861. Display of registration.
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- Sec. 863. Penalties for failure to register and failure to report.
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- Sec. 866. Two-party exchanges.
- Sec. 867. Modifications of tax on use of certain vehicles.
- Sec. 868. Dedication of revenues from certain penalties to the Highway Trust Fund.
- Sec. 869. Simplification of tax on tires.
- Sec. 870. Transmix and diesel fuel blend stocks treated as taxable fuel.
- Sec. 871. Study regarding fuel tax compliance.

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- Sec. 881. Qualified tax collection contracts.
- Sec. 882. Treatment of charitable contributions of patents and similar property.



- Sec. 883. Increased reporting for noncash charitable contributions.
- Sec. 884. Donations of motor vehicles, boats, and airplanes.
- Sec. 885. Treatment of nonqualified deferred compensation plans.
- Sec. 886. Extension of amortization of intangibles to sports franchises.
- Sec. 887. Modification of continuing levy on payments to Federal vendors.
- Sec. 888. Modification of straddle rules.
- Sec. 889. Addition of vaccines against hepatitis A to list of taxable vaccines.
- Sec. 890. Addition of vaccines against influenza to list of taxable vaccines.
- Sec. 891. Extension of IRS user fees.
- Sec. 892. COBRA fees.
- Sec. 893. Prohibition on nonrecognition of gain through complete liquidation of holding company.
- Sec. 894. Effectively connected income to include certain foreign source income.
- Sec. 895. Recapture of overall foreign losses on sale of controlled foreign corporation.
- Sec. 896. Recognition of cancellation of indebtedness income realized on satisfaction of debt with partnership interest.
- Sec. 897. Denial of installment sale treatment for all readily tradable debt.
- Sec. 898. Modification of treatment of transfers to creditors in divisive reorganizations.
- Sec. 899. Clarification of definition of nonqualified preferred stock.
- Sec. 900. Modification of definition of controlled group of corporations.
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- Sec. 902. Consistent amortization of periods for intangibles.
- Sec. 903. Freeze of provisions regarding suspension of interest where Secretary fails to contact taxpayer.
- Sec. 904. Increase in withholding from supplemental wage payments in excess of \$1,000,000.
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- Sec. 906. Application of basis rules to nonresident aliens.
- Sec. 907. Limitation of employer deduction for certain entertainment expenses.
- Sec. 908. Residence and source rules relating to United States possessions.
- Sec. 909. Sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy.
- Sec. 910. Expansion of limitation on depreciation of certain passenger automobiles.

1 **TITLE I—PROVISIONS RELATING**
 2 **TO REPEAL OF EXCLUSION**
 3 **FOR EXTRATERRITORIAL IN-**
 4 **COME**

5 **SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL**
 6 **INCOME.**

- 7 (a) IN GENERAL.—Section 114 is hereby repealed.
- 8 (b) CONFORMING AMENDMENTS.—



1 (1) Subpart E of part III of subchapter N of
2 chapter 1 (relating to qualifying foreign trade in-
3 come) is hereby repealed.

4 (2) The table of subparts for such part III is
5 amended by striking the item relating to subpart E.

6 (3) The table of sections for part III of sub-
7 chapter B of chapter 1 is amended by striking the
8 item relating to section 114.

9 (4) The second sentence of section
10 56(g)(4)(B)(i) is amended by striking “114 or”.

11 (5) Section 275(a) is amended—

12 (A) by inserting “or” at the end of para-
13 graph (4)(A), by striking “or” at the end of
14 paragraph (4)(B) and inserting a period, and
15 by striking subparagraph (C), and

16 (B) by striking the last sentence.

17 (6) Paragraph (3) of section 864(e) is
18 amended—

19 (A) by striking:

20 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
21 ACCOUNT.—

22 “(A) IN GENERAL.—For purposes of”; and
23 inserting:

24 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
25 ACCOUNT.—For purposes of”, and



1 (B) by striking subparagraph (B).

2 (7) Section 903 is amended by striking “114,
3 164(a),” and inserting “164(a)”.

4 (8) Section 999(e)(1) is amended by striking
5 “941(a)(5),”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to transactions after December 31,
8 2004.

9 (d) TRANSITIONAL RULE FOR 2005 AND 2006.—

10 (1) IN GENERAL.—In the case of transactions
11 during 2005 or 2006, the amount includible in gross
12 income by reason of the amendments made by this
13 section shall not exceed the applicable percentage of
14 the amount which would have been so included but
15 for this subsection.

16 (2) APPLICABLE PERCENTAGE.—For purposes
17 of paragraph (1), the applicable percentage shall be
18 as follows:

19 (A) For 2005, the applicable percentage
20 shall be 20 percent.

21 (B) For 2006, the applicable percentage
22 shall be 40 percent.

23 (e) REVOCATION OF ELECTION TO BE TREATED AS
24 DOMESTIC CORPORATION.—If, during the 1-year period
25 beginning on the date of the enactment of this Act, a cor-



1 poration for which an election is in effect under section
2 943(e) of the Internal Revenue Code of 1986 revokes such
3 election, no gain or loss shall be recognized with respect
4 to property treated as transferred under clause (ii) of sec-
5 tion 943(e)(4)(B) of such Code to the extent such
6 property—

7 (1) was treated as transferred under clause (i)
8 thereof, or

9 (2) was acquired during a taxable year to which
10 such election applies and before May 1, 2003, in the
11 ordinary course of its trade or business.

12 The Secretary of the Treasury (or such Secretary's dele-
13 gate) may prescribe such regulations as may be necessary
14 to prevent the abuse of the purposes of this subsection.

15 (f) BINDING CONTRACTS.—The amendments made
16 by this section shall not apply to any transaction in the
17 ordinary course of a trade or business which occurs pursu-
18 ant to a binding contract—

19 (1) which is between the taxpayer and a person
20 who is not a related person (as defined in section
21 943(b)(3) of such Code, as in effect on the day be-
22 fore the date of the enactment of this Act), and

23 (2) which is in effect on September 17, 2003,
24 and at all times thereafter.



1 For purposes of this subsection, a binding contract shall
2 include a purchase option, renewal option, or replacement
3 option which is included in such contract and which is en-
4 forceable against the seller or lessor.

5 **SEC. 102. DEDUCTION RELATING TO INCOME ATTRIB-**
6 **UTABLE TO DOMESTIC PRODUCTION ACTIVI-**
7 **TIES.**

8 (a) IN GENERAL.—Part VI of subchapter B of chap-
9 ter 1 (relating to itemized deductions for individuals and
10 corporations) is amended by adding at the end the fol-
11 lowing new section:

12 **“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
13 **TION ACTIVITIES.**

14 “(a) ALLOWANCE OF DEDUCTION.—

15 “(1) IN GENERAL.—There shall be allowed as a
16 deduction an amount equal to 9 percent of the lesser
17 of—

18 “(A) the qualified production activities in-
19 come of the taxpayer for the taxable year, or

20 “(B) taxable income (determined without
21 regard to this section) for the taxable year.

22 “(2) PHASEIN.—In the case of any taxable year
23 beginning after 2004 and before 2010, paragraph
24 (1) and subsections (d)(1) and (d)(6) shall be ap-
25 plied by substituting for the percentage contained



1 therein the transition percentage determined under
2 the following table:

“For taxable years beginning in:	The transition percentage is:
2005 or 2006	3
2007, 2008, or 2009	6.

3 “(b) DEDUCTION LIMITED TO WAGES PAID.—

4 “(1) IN GENERAL.—The amount of the deduc-
5 tion allowable under subsection (a) for any taxable
6 year shall not exceed 50 percent of the W-2 wages
7 of the employer for the taxable year.

8 “(2) W-2 WAGES.—For purposes of paragraph
9 (1), the term ‘W-2 wages’ means the sum of the ag-
10 gregate amounts the taxpayer is required to include
11 on statements under paragraphs (3) and (8) of sec-
12 tion 6051(a) with respect to employment of employ-
13 ees of the taxpayer during the calendar year ending
14 during the taxpayer’s taxable year.

15 “(3) ACQUISITIONS AND DISPOSITIONS.—The
16 Secretary shall provide for the application of this
17 subsection in cases where the taxpayer acquires, or
18 disposes of, the major portion of a trade or business
19 or the major portion of a separate unit of a trade
20 or business during the taxable year.

21 “(c) QUALIFIED PRODUCTION ACTIVITIES IN-
22 COME.—For purposes of this section—



1 “(1) IN GENERAL.—The term ‘qualified produc-
2 tion activities income’ for any taxable year means an
3 amount equal to the excess (if any) of—

4 “(A) the taxpayer’s domestic production
5 gross receipts for such taxable year, over

6 “(B) the sum of—

7 “(i) the cost of goods sold that are al-
8 locable to such receipts,

9 “(ii) other deductions, expenses, or
10 losses directly allocable to such receipts,
11 and

12 “(iii) a ratable portion of other deduc-
13 tions, expenses, and losses that are not di-
14 rectly allocable to such receipts or another
15 class of income.

16 “(2) ALLOCATION METHOD.—The Secretary
17 shall prescribe rules for the proper allocation of
18 items of income, deduction, expense, and loss for
19 purposes of determining income attributable to do-
20 mestic production activities.

21 “(3) SPECIAL RULES FOR DETERMINING
22 COSTS.—

23 “(A) IN GENERAL.—For purposes of deter-
24 mining costs under clause (i) of paragraph
25 (1)(B), any item or service brought into the



1 United States shall be treated as acquired by
2 purchase, and its cost shall be treated as not
3 less than its value immediately after it entered
4 the United States. A similar rule shall apply in
5 determining the adjusted basis of leased or
6 rented property where the lease or rental gives
7 rise to domestic production gross receipts.

8 “(B) EXPORTS FOR FURTHER MANUFAC-
9 TURE.—In the case of any property described
10 in subparagraph (A) that had been exported by
11 the taxpayer for further manufacture, the in-
12 crease in cost or adjusted basis under subpara-
13 graph (A) shall not exceed the difference be-
14 tween the value of the property when exported
15 and the value of the property when brought
16 back into the United States after the further
17 manufacture.

18 “(4) DOMESTIC PRODUCTION GROSS RE-
19 CEIPTS.—

20 “(A) IN GENERAL.—The term ‘domestic
21 production gross receipts’ means the gross re-
22 cepts of the taxpayer which are derived from—

23 “(i) any lease, rental, license, sale, ex-
24 change, or other disposition of—



1 “(I) qualifying production prop-
2 erty which was manufactured, pro-
3 duced, grown, or extracted by the tax-
4 payer in whole or in significant part
5 within the United States,

6 “(II) any qualified film produced
7 by the taxpayer, or

8 “(III) electricity, natural gas, or
9 potable water produced by the tax-
10 payer in the United States,

11 “(ii) construction performed in the
12 United States, or

13 “(iii) engineering or architectural
14 services performed in the United States for
15 construction projects in the United States.

16 “(B) EXCEPTIONS.—Such term shall not
17 include gross receipts of the taxpayer which are
18 derived from—

19 “(i) the sale of food and beverages
20 prepared by the taxpayer at a retail estab-
21 lishment, and

22 “(ii) the transmission or distribution
23 of electricity, natural gas, or potable water.

24 “(5) QUALIFYING PRODUCTION PROPERTY.—

25 The term ‘qualifying production property’ means—



1 “(A) tangible personal property,
2 “(B) any computer software, and
3 “(C) any property described in section
4 168(f)(4).

5 “(6) QUALIFIED FILM.—The term ‘qualified
6 film’ means any property described in section
7 168(f)(3) if not less than 50 percent of the total
8 compensation relating to the production of such
9 property is compensation for services performed in
10 the United States by actors, production personnel,
11 directors, and producers. Such term does not include
12 property with respect to which records are required
13 to be maintained under section 2257 of title 18,
14 United States Code.

15 “(7) RELATED PERSONS.—

16 “(A) IN GENERAL.—The term ‘domestic
17 production gross receipts’ shall not include any
18 gross receipts of the taxpayer derived from
19 property leased, licensed, or rented by the tax-
20 payer for use by any related person.

21 “(B) RELATED PERSON.—For purposes of
22 subparagraph (A), a person shall be treated as
23 related to another person if such persons are
24 treated as a single employer under subsection
25 (a) or (b) of section 52 or subsection (m) or (o)



1 of section 414, except that determinations
2 under subsections (a) and (b) of section 52
3 shall be made without regard to section
4 1563(b).

5 “(d) DEFINITIONS AND SPECIAL RULES.—

6 “(1) APPLICATION OF SECTION TO PASS-THRU
7 ENTITIES.—

8 “(A) IN GENERAL.—In the case of an S
9 corporation, partnership, estate or trust, or
10 other pass-thru entity—

11 “(i) subject to the provisions of para-
12 graphs (2) and (3), this section shall be
13 applied at the shareholder, partner, or
14 similar level, and

15 “(ii) the Secretary shall prescribe
16 rules for the application of this section, in-
17 cluding rules relating to—

18 “(I) restrictions on the allocation
19 of the deduction to taxpayers at the
20 partner or similar level, and

21 “(II) additional reporting re-
22 quirements.

23 “(B) APPLICATION OF WAGE LIMITA-
24 TION.—Notwithstanding subparagraph (A)(i),
25 for purposes of applying subsection (b), a



1 shareholder, partner, or similar person which is
2 allocated qualified production activities income
3 from an S corporation, partnership, estate,
4 trust, or other pass-thru entity shall also be
5 treated as having been allocated W-2 wages
6 from such entity in an amount equal to the
7 lesser of—

8 “(i) such person’s allocable share of
9 such wages (without regard to this sub-
10 paragraph), as determined under regula-
11 tions prescribed by the Secretary, or

12 “(ii) 2 times 9 percent of the qualified
13 production activities income allocated to
14 such person for the taxable year.

15 “(2) APPLICATION TO INDIVIDUALS.—In the
16 case of an individual, subsection (a)(1)(B) shall be
17 applied by substituting ‘adjusted gross income’ for
18 ‘taxable income’. For purposes of the preceding sen-
19 tence, adjusted gross income shall be determined—

20 “(A) after application of sections 86, 135,
21 137, 219, 221, 222, and 469, and

22 “(B) without regard to this section.

23 “(3) PATRONS OF AGRICULTURAL AND HORTI-
24 CULTURAL COOPERATIVES.—



1 “(A) IN GENERAL.—If any amount de-
2 scribed in paragraph (1) or (3) of section
3 1385(a)—

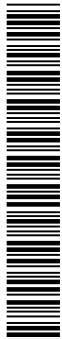
4 “(i) is received by a person from an
5 organization to which part I of subchapter
6 T applies which is engaged—

7 “(I) in the manufacturing, pro-
8 duction, growth, or extraction in
9 whole or significant part of any agri-
10 cultural or horticultural product, or

11 “(II) in the marketing of agricul-
12 tural or horticultural products, and

13 “(ii) is allocable to the portion of the
14 qualified production activities income of
15 the organization which, but for this para-
16 graph, would be deductible under sub-
17 section (a) by the organization and is des-
18 ignated as such by the organization in a
19 written notice mailed to its patrons during
20 the payment period described in section
21 1382(d),

22 then such person shall be allowed a deduction
23 under subsection (a) with respect to such
24 amount. The taxable income of the organization
25 shall not be reduced under section 1382 by rea-



1 son of any amount to which the preceding sen-
2 tence applies.

3 “(B) SPECIAL RULES.—For purposes of
4 applying subparagraph (A), in determining the
5 qualified production activities income which
6 would be deductible by the organization under
7 subsection (a)—

8 “(i) there shall not be taken into ac-
9 count in computing the organization’s tax-
10 able income any deduction allowable under
11 subsection (b) or (c) of section 1382 (relat-
12 ing to patronage dividends, per-unit retain
13 allocations, and nonpatronage distribu-
14 tions), and

15 “(ii) in the case of an organization de-
16 scribed in subparagraph (A)(i)(II), the or-
17 ganization shall be treated as having man-
18 ufactured, produced, grown, or extracted in
19 whole or significant part any qualifying
20 production property marketed by the orga-
21 nization which its patrons have so manu-
22 factured, produced, grown, or extracted.

23 “(4) SPECIAL RULE FOR AFFILIATED
24 GROUPS.—



1 “(A) IN GENERAL.—All members of an ex-
2 panded affiliated group shall be treated as a
3 single corporation for purposes of this section.

4 “(B) EXPANDED AFFILIATED GROUP.—
5 For purposes of this section, the term ‘ex-
6 panded affiliated group’ means an affiliated
7 group as defined in section 1504(a),
8 determined—

9 “(i) by substituting ‘50 percent’ for
10 ‘80 percent’ each place it appears, and

11 “(ii) without regard to paragraphs (2)
12 and (4) of section 1504(b).

13 “(C) ALLOCATION OF DEDUCTION.—Ex-
14 cept as provided in regulations, the deduction
15 under subsection (a) shall be allocated among
16 the members of the expanded affiliated group in
17 proportion to each member’s respective amount
18 (if any) of qualified production activities in-
19 come.

20 “(5) TRADE OR BUSINESS REQUIREMENT.—
21 This section shall be applied by only taking into ac-
22 count items which are attributable to the actual con-
23 duct of a trade or business.

24 “(6) COORDINATION WITH MINIMUM TAX.—The
25 deduction under this section shall be allowed for



1 purposes of the tax imposed by section 55; except
2 that for purposes of section 55, the deduction under
3 subsection (a) shall be 9 percent of the lesser of—

4 “(A) qualified production activities income
5 (determined without regard to part IV of sub-
6 chapter A), or

7 “(B) alternative minimum taxable income
8 (determined without regard to this section) for
9 the taxable year.

10 In the case of an individual, subparagraph (B) shall
11 be applied by substituting ‘adjusted gross income’
12 for ‘alternative minimum taxable income’. For pur-
13 poses of the preceding sentence, adjusted gross in-
14 come shall be determined in the same manner as
15 provided in paragraph (2).

16 “(7) REGULATIONS.—The Secretary shall pre-
17 scribe such regulations as are necessary to carry out
18 the purposes of this section.”.

19 (b) MINIMUM TAX.—Section 56(g)(4)(C) (relating to
20 disallowance of items not deductible in computing earnings
21 and profits) is amended by adding at the end the following
22 new clause:

23 “(v) DEDUCTION FOR DOMESTIC PRO-
24 Duction.—Clause (i) shall not apply to



1 any amount allowable as a deduction under
2 section 199.”.

3 (c) SPECIAL RULE RELATING TO ELECTION TO
4 TREAT CUTTING OF TIMBER AS A SALE OR EXCHANGE.—
5 Any election under section 631(a) of the Internal Revenue
6 Code of 1986 made for a taxable year ending on or before
7 the date of the enactment of this Act may be revoked by
8 the taxpayer for any taxable year ending after such date.
9 For purposes of determining whether such taxpayer may
10 make a further election under such section, such election
11 (and any revocation under this section) shall not be taken
12 into account.

13 (d) TECHNICAL AMENDMENTS.—

14 (1) Sections 86(b)(2)(A), 135(c)(4)(A),
15 137(b)(3)(A), and 219(g)(3)(A)(ii) are each amend-
16 ed by inserting “199,” before “221”.

17 (2) Clause (i) of section 221(b)(2)(C) is amend-
18 ed by inserting by inserting “199,” before “222”.

19 (3) Clause (i) of section 222(b)(2)(C) is amend-
20 ed by inserting “199,” before “911”.

21 (4) Paragraph (1) of section 246(b) is amended
22 by inserting “199,” after “172,”.

23 (5) Clause (iii) of section 469(i)(3)(F) is
24 amended by inserting “199,” before “219,”.



1 (6) Subsection (a) of section 613 is amended by
2 inserting “and without the deduction under section
3 199” after “without allowances for depletion”.

4 (7) Subsection (a) of section 1402 is amended
5 by striking “and” at the end of paragraph (14), by
6 striking the period at the end of paragraph (15) and
7 inserting “, and”, and by inserting after paragraph
8 (15) the following new paragraph:

9 “(16) the deduction provided by section 199
10 shall not be allowed.”.

11 (8) The table of sections for part VI of sub-
12 chapter B of chapter 1 is amended by adding at the
13 end the following new item:

 “Sec. 199. Income attributable to domestic production activi-
 ties.”.

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 December 31, 2004.



1 **TITLE II—BUSINESS TAX**
2 **INCENTIVES**
3 **Subtitle A—Small Business**
4 **Expensing**

5 **SEC. 201. 2-YEAR EXTENSION OF INCREASED EXPENSING**
6 **FOR SMALL BUSINESS.**

7 Subsections (b), (c), and (d) of section 179 are each
8 amended by striking “2006” each place it appears and
9 inserting “2008”.

10 **Subtitle B—Depreciation**

11 **SEC. 211. RECOVERY PERIOD FOR DEPRECIATION OF CER-**
12 **TAIN LEASEHOLD IMPROVEMENTS AND RES-**
13 **TAURANT PROPERTY.**

14 (a) 15-YEAR RECOVERY PERIOD.—Subparagraph
15 (E) of section 168(e)(3) (relating to classification of cer-
16 tain property) is amended by striking “and” at the end
17 of clause (ii), by striking the period at the end of clause
18 (iii) and inserting a comma, and by adding at the end the
19 following new clauses:

20 “(iv) any qualified leasehold improve-
21 ment property placed in service before Jan-
22 uary 1, 2006, and

23 “(v) any qualified restaurant property
24 placed in service before January 1, 2006.”.



1 (b) QUALIFIED LEASEHOLD IMPROVEMENT PROP-
2 ERTY.—Subsection (e) of section 168 is amended by add-
3 ing at the end the following new paragraph:

4 “(6) QUALIFIED LEASEHOLD IMPROVEMENT
5 PROPERTY.—The term ‘qualified leasehold improve-
6 ment property’ has the meaning given such term in
7 section 168(k)(3) except that the following special
8 rules shall apply:

9 “(A) IMPROVEMENTS MADE BY LESSOR.—
10 In the case of an improvement made by the per-
11 son who was the lessor of such improvement
12 when such improvement was placed in service,
13 such improvement shall be qualified leasehold
14 improvement property (if at all) only so long as
15 such improvement is held by such person.

16 “(B) EXCEPTION FOR CHANGES IN FORM
17 OF BUSINESS.—Property shall not cease to be
18 qualified leasehold improvement property under
19 subparagraph (A) by reason of—

20 “(i) death,

21 “(ii) a transaction to which section
22 381(a) applies,

23 “(iii) a mere change in the form of
24 conducting the trade or business so long as
25 the property is retained in such trade or



1 business as qualified leasehold improve-
2 ment property and the taxpayer retains a
3 substantial interest in such trade or busi-
4 ness,

5 “(iv) the acquisition of such property
6 in an exchange described in section 1031,
7 1033, or 1038 to the extent that the basis
8 of such property includes an amount rep-
9 resenting the adjusted basis of other prop-
10 erty owned by the taxpayer or a related
11 person, or

12 “(v) the acquisition of such property
13 by the taxpayer in a transaction described
14 in section 332, 351, 361, 721, or 731 (or
15 the acquisition of such property by the tax-
16 payer from the transferee or acquiring cor-
17 poration in a transaction described in such
18 section), to the extent that the basis of the
19 property in the hands of the taxpayer is
20 determined by reference to its basis in the
21 hands of the transferor or distributor.”.

22 (c) QUALIFIED RESTAURANT PROPERTY.—Sub-
23 section (e) of section 168 (as amended by subsection (b))
24 is further amended by adding at the end the following new
25 paragraph:



1 “(7) QUALIFIED RESTAURANT PROPERTY.—The
2 term ‘qualified restaurant property’ means any sec-
3 tion 1250 property which is an improvement to a
4 building if—

5 “(A) such improvement is placed in service
6 more than 3 years after the date such building
7 was first placed in service, and

8 “(B) more than 50 percent of the build-
9 ing’s square footage is devoted to preparation
10 of, and seating for on-premises consumption of,
11 prepared meals.”.

12 (d) REQUIREMENT TO USE STRAIGHT LINE METH-
13 OD.—

14 (1) Paragraph (3) of section 168(b) is amended
15 by adding at the end the following new subpara-
16 graphs:

17 “(G) Qualified leasehold improvement
18 property described in subsection (e)(6).

19 “(H) Qualified restaurant property de-
20 scribed in subsection (e)(7).”.

21 (2) Subparagraph (A) of section 168(b)(2) is
22 amended by inserting before the comma “not re-
23 ferred to in paragraph (3)”.



1 (e) ALTERNATIVE SYSTEM.—The table contained in
2 section 168(g)(3)(B) is amended by adding at the end the
3 following new items:

“(E)(iv)	39
“(E)(v)	39”.

4 (f) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to property placed in service after
6 the date of the enactment of this Act.

7 **Subtitle C—Community**
8 **Revitalization**

9 **SEC. 221. MODIFICATION OF TARGETED AREAS AND LOW-**
10 **INCOME COMMUNITIES FOR NEW MARKETS**
11 **TAX CREDIT.**

12 (a) TARGETED AREAS.—Paragraph (2) of section
13 45D(e) (relating to targeted areas) is amended to read
14 as follows:

15 “(2) TARGETED POPULATIONS.—The Secretary
16 shall prescribe regulations under which 1 or more
17 targeted populations (within the meaning of section
18 103(20) of the Riegle Community Development and
19 Regulatory Improvement Act of 1994 (12 U.S.C.
20 4702(20))) may be treated as low-income commu-
21 nities. Such regulations shall include procedures for
22 determining which entities are qualified active low-
23 income community businesses with respect to such
24 populations.”.



1 (b) TRACTS WITH LOW POPULATION.—Subsection
2 (e) of section 45D (defining low-income community) is
3 amended by adding at the end the following:

4 “(4) TRACTS WITH LOW POPULATION.—A pop-
5 ulation census tract with a population of less than
6 2,000 shall be treated as a low-income community
7 for purposes of this section if such tract—

8 “(A) is within an empowerment zone the
9 designation of which is in effect under section
10 1391, and

11 “(B) is contiguous to 1 or more low-in-
12 come communities (determined without regard
13 to this paragraph).”.

14 (c) EFFECTIVE DATES.—

15 (1) TARGETED AREAS.—The amendment made
16 by subsection (a) shall apply to designations made
17 by the Secretary of the Treasury after the date of
18 the enactment of this Act.

19 (2) TRACTS WITH LOW POPULATION.—The
20 amendment made by subsection (b) shall apply to in-
21 vestments made after the date of the enactment of
22 this Act.



1 **SEC. 222. EXPANSION OF DESIGNATED RENEWAL COMMU-**
2 **NITY AREA BASED ON 2000 CENSUS DATA.**

3 (a) IN GENERAL.—Section 1400E (relating to des-
4 ignation of renewal communities) is amended by adding
5 at the end the following new subsection:

6 “(g) EXPANSION OF DESIGNATED AREA BASED ON
7 2000 CENSUS.—

8 “(1) IN GENERAL.—At the request of all gov-
9 ernments which nominated an area as a renewal
10 community, the Secretary of Housing and Urban
11 Development may expand the area of such commu-
12 nity to include any census tract if—

13 “(A)(i) at the time such community was
14 nominated, such community would have met the
15 requirements of this section using 1990 census
16 data even if such tract had been included in
17 such community, and

18 “(ii) such tract has a poverty rate using
19 2000 census data which exceeds the poverty
20 rate for such tract using 1990 census data, or

21 “(B)(i) such community would be de-
22 scribed in subparagraph (A)(i) but for the fail-
23 ure to meet one or more of the requirements of
24 paragraphs (2)(C)(i), (3)(C), and (3)(D) of
25 subsection (c) using 1990 census data,



1 “(ii) such community, including such tract,
2 has a population of not more than 200,000
3 using either 1990 census data or 2000 census
4 data,

5 “(iii) such tract meets the requirement of
6 subsection (c)(3)(C) using 2000 census data,
7 and

8 “(iv) such tract meets the requirement of
9 subparagraph (A)(ii).

10 “(2) EXCEPTION FOR CERTAIN CENSUS TRACTS
11 WITH LOW POPULATION IN 1990.—In the case of any
12 census tract which did not have a poverty rate deter-
13 mined by the Bureau of the Census using 1990 cen-
14 sus data, paragraph (1)(B) shall be applied without
15 regard to clause (iv) thereof.

16 “(3) SPECIAL RULE FOR CERTAIN CENSUS
17 TRACTS WITH LOW POPULATION IN 2000.—At the re-
18 quest of all governments which nominated an area
19 as a renewal community, the Secretary of Housing
20 and Urban Development may expand the area of
21 such community to include any census tract if—

22 “(A) either—

23 “(i) such tract has no population
24 using 2000 census data, or



1 “(ii) no poverty rate for such tract is
2 determined by the Bureau of the Census
3 using 2000 census data,

4 “(B) such tract is one of general distress,
5 and

6 “(C) such community, including such tract,
7 meets the requirements of subparagraphs (A)
8 and (B) of subsection (c)(2).

9 “(4) PERIOD IN EFFECT.—Any expansion
10 under this subsection shall take effect as provided in
11 subsection (b).”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall take effect as if included in the
14 amendments made by section 101 of the Community Re-
15 newal Tax Relief Act of 2000.

16 **SEC. 223. MODIFICATION OF INCOME REQUIREMENT FOR**
17 **CENSUS TRACTS WITHIN HIGH MIGRATION**
18 **RURAL COUNTIES.**

19 (a) IN GENERAL.—Section 45D(e) (relating to low-
20 income community), as amended by this Act, is amended
21 by inserting after paragraph (4) the following new para-
22 graph:

23 “(5) MODIFICATION OF INCOME REQUIREMENT
24 FOR CENSUS TRACTS WITHIN HIGH MIGRATION
25 RURAL COUNTIES.—



1 “(1) MEMBERS OF FAMILY TREATED AS 1
2 SHAREHOLDER.—

3 “(A) IN GENERAL.—For purpose of sub-
4 section (b)(1)(A)—

5 “(i) except as provided in clause (ii),
6 a husband and wife (and their estates)
7 shall be treated as 1 shareholder, and

8 “(ii) in the case of a family with re-
9 spect to which an election is in effect
10 under subparagraph (D), all members of
11 the family shall be treated as 1 share-
12 holder.

13 “(B) MEMBERS OF THE FAMILY.—For
14 purpose of subparagraph (A)(ii)—

15 “(i) IN GENERAL.—The term ‘mem-
16 bers of the family’ means the common an-
17 cestor, lineal descendants of the common
18 ancestor, and the spouses (or former
19 spouses) of such lineal descendants or com-
20 mon ancestor.

21 “(ii) COMMON ANCESTOR—For pur-
22 poses of this paragraph, an individual shall
23 not be considered a common ancestor if, as
24 of the later of the effective date of this
25 paragraph or the time the election under



1 section 1362(a) is made, the individual is
2 more than 6 generations removed from the
3 youngest generation of shareholders who
4 would (but for this clause) be members of
5 the family. For purposes of the preceding
6 sentence, a spouse (or former spouse) shall
7 be treated as being of the same generation
8 as the individual to which such spouse is
9 (or was) married.

10 “(C) EFFECT OF ADOPTION, ETC.—In de-
11 termining whether any relationship specified in
12 subparagraph (B) exists, the rules of section
13 152(b)(2) shall apply.

14 “(D) ELECTION.—An election under sub-
15 paragraph (A)(ii)—

16 “(i) may, except as otherwise provided
17 in regulations prescribed by the Secretary,
18 be made by any member of the family, and

19 “(ii) shall remain in effect until termi-
20 nated as provided in regulations prescribed
21 by the Secretary.”

22 (b) RELIEF FROM INADVERTENT INVALID ELECTION
23 OR TERMINATION.—Section 1362(f) (relating to inad-
24 vertent invalid elections or terminations), as amended by
25 this Act, is amended—



1 (1) by inserting “or section 1361(c)(1)(A)(ii)”
2 after “section 1361(b)(3)(B)(ii),” in paragraph (1),
3 and

4 (2) by inserting “or section 1361(c)(1)(D)(iii)”
5 after “section 1361(b)(3)(C),” in paragraph (1)(B).

6 (c) EFFECTIVE DATES.—

7 (1) SUBSECTION (a).—The amendment made
8 by subsection (a) shall apply to taxable years begin-
9 ning after December 31, 2004.

10 (2) SUBSECTION (b).—The amendments made
11 by subsection (b) shall apply to elections and termi-
12 nations made after December 31, 2004.

13 **SEC. 232. INCREASE IN NUMBER OF ELIGIBLE SHARE-**
14 **HOLDERS TO 100.**

15 (a) IN GENERAL.—Section 1361(b)(1)(A) (defining
16 small business corporation) is amended by striking “75”
17 and inserting “100”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to taxable years beginning after
20 December 31, 2004.

21 **SEC. 233. EXPANSION OF BANK S CORPORATION ELIGIBLE**
22 **SHAREHOLDERS TO INCLUDE IRAS.**

23 (a) IN GENERAL.—Section 1361(c)(2)(A) (relating to
24 certain trusts permitted as shareholders) is amended by
25 inserting after clause (v) the following new clause:



1 “(vi) In the case of a corporation
2 which is a bank (as defined in section
3 581), a trust which constitutes an indi-
4 vidual retirement account under section
5 408(a), including one designated as a Roth
6 IRA under section 408A, but only to the
7 extent of the stock held by such trust in
8 such bank as of the date of the enactment
9 of this clause.”.

10 (b) TREATMENT AS SHAREHOLDER.—Section
11 1361(c)(2)(B) (relating to treatment as shareholders) is
12 amended by adding at the end the following new clause:

13 “(vi) In the case of a trust described
14 in clause (vi) of subparagraph (A), the in-
15 dividual for whose benefit the trust was
16 created shall be treated as a shareholder.”.

17 (c) SALE OF BANK STOCK IN IRA RELATING TO S
18 CORPORATION ELECTION EXEMPT FROM PROHIBITED
19 TRANSACTION RULES.—Section 4975(d) (relating to ex-
20 emptions) is amended by striking “or” at the end of para-
21 graph (14), by striking the period at the end of paragraph
22 (15) and inserting “; or”, and by adding at the end the
23 following new paragraph:

24 “(16) a sale of stock held by a trust which con-
25 stitutes an individual retirement account under sec-



1 tion 408(a) to the individual for whose benefit such
2 account is established if—

3 “(A) such stock is in a bank (as defined in
4 section 581),

5 “(B) such stock is held by such trust as of
6 the date of the enactment of this paragraph,

7 “(C) such sale is pursuant to an election
8 under section 1362(a) by such bank,

9 “(D) such sale is for fair market value at
10 the time of sale (as established by an inde-
11 pendent appraiser) and the terms of the sale
12 are otherwise at least as favorable to such trust
13 as the terms that would apply on a sale to an
14 unrelated party,

15 “(E) such trust does not pay any commis-
16 sions, costs, or other expenses in connection
17 with the sale, and

18 “(F) the stock is sold in a single trans-
19 action for cash not later than 120 days after
20 the S corporation election is made.”.

21 (d) CONFORMING AMENDMENT.—Section 512(e)(1)
22 is amended by inserting “1361(c)(2)(A)(vi) or” before
23 “1361(c)(6)”.



1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act.

4 **SEC. 234. DISREGARD OF UNEXERCISED POWERS OF AP-**
5 **POINTMENT IN DETERMINING POTENTIAL**
6 **CURRENT BENEFICIARIES OF ESBT.**

7 (a) IN GENERAL.—Section 1361(e)(2) (defining po-
8 tential current beneficiary) is amended—

9 (1) by inserting “(determined without regard to
10 any power of appointment to the extent such power
11 remains unexercised at the end of such period)”
12 after “of the trust” in the first sentence, and

13 (2) by striking “60-day” in the second sentence
14 and inserting “1-year”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 December 31, 2004.

18 **SEC. 235. TRANSFER OF SUSPENDED LOSSES INCIDENT TO**
19 **DIVORCE, ETC.**

20 (a) IN GENERAL.—Section 1366(d)(2) (relating to
21 indefinite carryover of disallowed losses and deductions)
22 is amended to read as follows:

23 “(2) INDEFINITE CARRYOVER OF DISALLOWED
24 LOSSES AND DEDUCTIONS.—



1 (2) by striking the period at the end of sub-
2 paragraph (B) and inserting “, and”, and

3 (3) by adding at the end the following new sub-
4 paragraph:

5 “(C) for purposes of applying sections 465
6 and 469 to the beneficiary of the trust, the dis-
7 position of the S corporation stock by the trust
8 shall be treated as a disposition by such bene-
9 ficiary.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to transfers made after December
12 31, 2004.

13 **SEC. 237. EXCLUSION OF INVESTMENT SECURITIES INCOME**
14 **FROM PASSIVE INCOME TEST FOR BANK S**
15 **CORPORATIONS.**

16 (a) IN GENERAL.—Section 1362(d)(3) (relating to
17 where passive investment income exceeds 25 percent of
18 gross receipts for 3 consecutive taxable years and corpora-
19 tion has accumulated earnings and profits) is amended by
20 adding at the end the following new subparagraph:

21 “(F) EXCEPTION FOR BANKS; ETC.—In
22 the case of a bank (as defined in section 581),
23 a bank holding company (within the meaning of
24 section 2(a) of the Bank Holding Company Act
25 of 1956 (12 U.S.C. 1841(a))), or a financial



1 holding company (within the meaning of section
2 2(p) of such Act), the term ‘passive investment
3 income’ shall not include—

4 “(i) interest income earned by such
5 bank or company, or

6 “(ii) dividends on assets required to
7 be held by such bank or company, includ-
8 ing stock in the Federal Reserve Bank, the
9 Federal Home Loan Bank, or the Federal
10 Agricultural Mortgage Bank or participa-
11 tion certificates issued by a Federal Inter-
12 mediate Credit Bank.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to taxable years beginning after
15 December 31, 2004.

16 **SEC. 238. RELIEF FROM INADVERTENTLY INVALID QUALI-**
17 **FIED SUBCHAPTER S SUBSIDIARY ELECTIONS**
18 **AND TERMINATIONS.**

19 (a) IN GENERAL.—Section 1362(f) (relating to inad-
20 vertent invalid elections or terminations) is amended—

21 (1) by inserting “, section 1361(b)(3)(B)(ii),”
22 after “subsection (a)” in paragraph (1),

23 (2) by inserting “, section 1361(b)(3)(C),” after
24 “subsection (d)” in paragraph (1)(B),



1 (3) by amending paragraph (3)(A) to read as
2 follows:

3 “(A) so that the corporation for which the
4 election was made or the termination occurred
5 is a small business corporation or a qualified
6 subchapter S subsidiary, as the case may be,
7 or”,

8 (4) by amending paragraph (4) to read as fol-
9 lows:

10 “(4) the corporation for which the election was
11 made or the termination occurred, and each person
12 who was a shareholder in such corporation at any
13 time during the period specified pursuant to this
14 subsection, agrees to make such adjustments (con-
15 sistent with the treatment of such corporation as an
16 S corporation or a qualified subchapter S subsidiary,
17 as the case may be) as may be required by the Sec-
18 retary with respect to such period,” and

19 (5) by inserting “or a qualified subchapter S
20 subsidiary, as the case may be” after “S corpora-
21 tion” in the matter following paragraph (4).

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to elections made and terminations
24 made after December 31, 2004.



1 **SEC. 239. INFORMATION RETURNS FOR QUALIFIED SUB-**
2 **CHAPTER S SUBSIDIARIES.**

3 (a) IN GENERAL.—Section 1361(b)(3)(A) (relating
4 to treatment of certain wholly owned subsidiaries) is
5 amended by inserting “and in the case of information re-
6 turns required under part III of subchapter A of chapter
7 61” after “Secretary”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to taxable years beginning after
10 December 31, 2004.

11 **SEC. 240. REPAYMENT OF LOANS FOR QUALIFYING EM-**
12 **PLOYER SECURITIES.**

13 (a) IN GENERAL.—Subsection (f) of section 4975 (re-
14 lating to other definitions and special rules) is amended
15 by adding at the end the following new paragraph:

16 “(7) S CORPORATION REPAYMENT OF LOANS
17 FOR QUALIFYING EMPLOYER SECURITIES.—A plan
18 shall not be treated as violating the requirements of
19 section 401 or 409 or subsection (e)(7), or as engag-
20 ing in a prohibited transaction for purposes of sub-
21 section (d)(3), merely by reason of any distribution
22 (as described in section 1368(a)) with respect to S
23 corporation stock that constitutes qualifying em-
24 ployer securities, which in accordance with the plan
25 provisions is used to make payments on a loan de-
26 scribed in subsection (d)(3) the proceeds of which



1 were used to acquire such qualifying employer secu-
2 rities (whether or not allocated to participants). The
3 preceding sentence shall not apply in the case of a
4 distribution which is paid with respect to any em-
5 ployer security which is allocated to a participant
6 unless the plan provides that employer securities
7 with a fair market value of not less than the amount
8 of such distribution are allocated to such participant
9 for the year which (but for the preceding sentence)
10 such distribution would have been allocated to such
11 participant.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to distributions with respect to S
14 corporation stock made after December 31, 1997.

15 **Subtitle E—Other Business**

16 **Incentives**

17 **SEC. 241. PHASEOUT OF 4.3-CENT MOTOR FUEL EXCISE**

18 **TAXES ON RAILROADS AND INLAND WATER-**

19 **WAY TRANSPORTATION WHICH REMAIN IN**

20 **GENERAL FUND.**

21 (a) TAXES ON TRAINS.—

22 (1) IN GENERAL.—Clause (ii) of section
23 4041(a)(1)(C) is amended by striking subclauses (I),
24 (II), and (III) and inserting the following new sub-
25 clauses:



1 “(I) 3.3 cents per gallon after
2 December 31, 2004, and before July
3 1, 2005,

4 “(II) 2.3 cents per gallon after
5 June 30, 2005, and before January 1,
6 2007, and

7 “(III) 0 after December 31,
8 2006.”.

9 (2) CONFORMING AMENDMENTS.—

10 (A) Subsection (d) of section 4041 is
11 amended by redesignating paragraph (3) as
12 paragraph (4) and by inserting after paragraph
13 (2) the following new paragraph:

14 “(3) DIESEL FUEL USED IN TRAINS.—In the
15 case of any sale for use or use after December 31,
16 2006, there is hereby imposed a tax of 0.1 cent per
17 gallon on any liquid other than gasoline (as defined
18 in section 4083)—

19 “(A) sold by any person to an owner, les-
20 see, or other operator of a diesel-powered train
21 for use as a fuel in such train, or

22 “(B) used by any person as a fuel in a die-
23 sel-powered train unless there was a taxable
24 sale of such fuel under subparagraph (A).



1 No tax shall be imposed by this paragraph on the
2 sale or use of any liquid if tax was imposed on such
3 liquid under section 4081.”.

4 (B) Subsection (f) of section 4082 is
5 amended by striking “section 4041(a)(1)” and
6 inserting “subsections (a)(1) and (d)(3) of sec-
7 tion 4041”.

8 (C) Subparagraph (B) of section
9 6421(f)(3) is amended to read as follows:

10 “(B) so much of the rate specified in sec-
11 tion 4081(a)(2)(A) as does not exceed the rate
12 applicable under section 4041(a)(1)(C)(ii).”.

13 (D) Subparagraph (B) of section
14 6427(l)(3) is amended to read as follows:

15 “(B) so much of the rate specified in sec-
16 tion 4081(a)(2)(A) as does not exceed the rate
17 applicable under section 4041(a)(1)(C)(ii).”.

18 (b) FUEL USED ON INLAND WATERWAYS.—Subpara-
19 graph (C) of section 4042(b)(2) is amended to read as
20 follows:

21 “(C) The deficit reduction rate is—

22 “(i) 3.3 cents per gallon after Decem-
23 ber 31, 2004, and before July 1, 2005,

24 “(ii) 2.3 cents per gallon after June
25 30, 2005, and before January 1, 2007, and



1 “(iii) 0 after December 31, 2006.”.

2 (c) EFFECTIVE DATE.—The amendments made by
3 this section shall take effect on January 1, 2005.

4 **SEC. 242. MODIFICATION OF APPLICATION OF INCOME**
5 **FORECAST METHOD OF DEPRECIATION.**

6 (a) IN GENERAL.—Section 167(g) (relating to depre-
7 ciation under income forecast method) is amended by add-
8 ing at the end the following new paragraph:

9 “(7) TREATMENT OF PARTICIPATIONS AND RE-
10 SIDUALS.—

11 “(A) IN GENERAL.—For purposes of deter-
12 mining the depreciation deduction allowable
13 with respect to a property under this sub-
14 section, the taxpayer may include participations
15 and residuals with respect to such property in
16 the adjusted basis of such property for the tax-
17 able year in which the property is placed in
18 service, but only to the extent that such partici-
19 pations and residuals relate to income estimated
20 (for purposes of this subsection) to be earned in
21 connection with the property before the close of
22 the 10th taxable year referred to in paragraph
23 (1)(A).

24 “(B) PARTICIPATIONS AND RESIDUALS.—
25 For purposes of this paragraph, the term ‘par-



1 participations and residuals' means, with respect to
2 any property, costs the amount of which by con-
3 tract varies with the amount of income earned
4 in connection with such property.

5 “(C) SPECIAL RULES RELATING TO RE-
6 COMPUTATION YEARS.—If the adjusted basis of
7 any property is determined under this para-
8 graph, paragraph (4) shall be applied by sub-
9 stituting ‘for each taxable year in such period’
10 for ‘for such period’.

11 “(D) OTHER SPECIAL RULES.—

12 “(i) PARTICIPATIONS AND RESIDU-
13 ALS.—Notwithstanding subparagraph (A),
14 the taxpayer may exclude participations
15 and residuals from the adjusted basis of
16 such property and deduct such participa-
17 tions and residuals in the taxable year that
18 such participations and residuals are paid.

19 “(ii) COORDINATION WITH OTHER
20 RULES.—Deductions computed in accord-
21 ance with this paragraph shall be allowable
22 notwithstanding paragraph (1)(B) or sec-
23 tions 263, 263A, 404, 419, or 461(h).

24 “(E) AUTHORITY TO MAKE ADJUST-
25 MENTS.—The Secretary shall prescribe appro-



1 prorate adjustments to the basis of property and
2 to the look-back method for the additional
3 amounts allowable as a deduction solely by rea-
4 son of this paragraph.”.

5 (b) DETERMINATION OF INCOME.—Section 167(g)(5)
6 (relating to special rules) is amended by redesignating
7 subparagraphs (E) and (F) as subparagraphs (F) and
8 (G), respectively, and inserting after subparagraph (D)
9 the following new subparagraph:

10 “(E) TREATMENT OF DISTRIBUTION
11 COSTS.—For purposes of this subsection, the
12 income with respect to any property shall be the
13 taxpayer’s gross income from such property.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to property placed in service after
16 the date of the enactment of this Act.

17 **SEC. 243. IMPROVEMENTS RELATED TO REAL ESTATE IN-**
18 **VESTMENT TRUSTS.**

19 (a) EXPANSION OF STRAIGHT DEBT SAFE HAR-
20 BOR.—Section 856 (defining real estate investment trust)
21 is amended—

- 22 (1) in subsection (c) by striking paragraph (7),
23 and
24 (2) by adding at the end the following new sub-
25 section:



1 “(m) SAFE HARBOR IN APPLYING SUBSECTION
2 (c)(4).—

3 “(1) IN GENERAL.—In applying subclause (III)
4 of subsection (c)(4)(B)(iii), except as otherwise de-
5 termined by the Secretary in regulations, the fol-
6 lowing shall not be considered securities held by the
7 trust:

8 “(A) Straight debt securities of an issuer
9 which meet the requirements of paragraph (2).

10 “(B) Any loan to an individual or an es-
11 tate.

12 “(C) Any section 467 rental agreement (as
13 defined in section 467(d)), other than with a
14 person described in subsection (d)(2)(B).

15 “(D) Any obligation to pay rents from real
16 property (as defined in subsection (d)(1)).

17 “(E) Any security issued by a State or any
18 political subdivision thereof, the District of Co-
19 lumbia, a foreign government or any political
20 subdivision thereof, or the Commonwealth of
21 Puerto Rico, but only if the determination of
22 any payment received or accrued under such se-
23 curity does not depend in whole or in part on
24 the profits of any entity not described in this



1 subparagraph or payments on any obligation
2 issued by such an entity,

3 “(F) Any security issued by a real estate
4 investment trust.

5 “(G) Any other arrangement as deter-
6 mined by the Secretary.

7 “(2) SPECIAL RULES RELATING TO STRAIGHT
8 DEBT SECURITIES.—

9 “(A) IN GENERAL.—For purposes of para-
10 graph (1)(A), securities meet the requirements
11 of this paragraph if such securities are straight
12 debt, as defined in section 1361(c)(5) (without
13 regard to subparagraph (B)(iii) thereof).

14 “(B) SPECIAL RULES RELATING TO CER-
15 TAIN CONTINGENCIES.—For purposes of sub-
16 paragraph (A), any interest or principal shall
17 not be treated as failing to satisfy section
18 1361(c)(5)(B)(i) solely by reason of the fact
19 that—

20 “(i) the time of payment of such in-
21 terest or principal is subject to a contin-
22 gency, but only if—

23 “(I) any such contingency does
24 not have the effect of changing the ef-
25 fective yield to maturity, as deter-



1 mined under section 1272, other than
2 a change in the annual yield to matu-
3 rity which does not exceed the greater
4 of $\frac{1}{4}$ of 1 percent or 5 percent of the
5 annual yield to maturity, or

6 “(II) neither the aggregate issue price
7 nor the aggregate face amount of the
8 issuer’s debt instruments held by the trust
9 exceeds \$1,000,000 and not more than 12
10 months of unaccrued interest can be re-
11 quired to be prepaid thereunder, or

12 “(ii) the time or amount of payment
13 is subject to a contingency upon a default
14 or the exercise of a prepayment right by
15 the issuer of the debt, but only if such con-
16 tingency is consistent with customary com-
17 mercial practice.

18 “(C) SPECIAL RULES RELATING TO COR-
19 PORATE OR PARTNERSHIP ISSUERS.—In the
20 case of an issuer which is a corporation or a
21 partnership, securities that otherwise would be
22 described in paragraph (1)(A) shall be consid-
23 ered not to be so described if the trust holding
24 such securities and any of its controlled taxable
25 REIT subsidiaries (as defined in subsection



1 (d)(8)(A)(iv)) hold any securities of the issuer
2 which—

3 “(i) are not described in paragraph
4 (1) (prior to the application of this sub-
5 paragraph), and

6 “(ii) have an aggregate value greater
7 than 1 percent of the issuer’s outstanding
8 securities determined without regard to
9 paragraph (3)(A)(i).

10 “(3) LOOK-THROUGH RULE FOR PARTNERSHIP
11 SECURITIES.—

12 “(A) IN GENERAL.—For purposes of ap-
13 plying subclause (III) of subsection
14 (c)(4)(B)(iii)—

15 “(i) a trust’s interest as a partner in
16 a partnership (as defined in section
17 7701(a)(2)) shall not be considered a secu-
18 rity, and

19 “(ii) the trust shall be deemed to own
20 its proportionate share of each of the as-
21 sets of the partnership.

22 “(B) DETERMINATION OF TRUST’S INTER-
23 EST IN PARTNERSHIP ASSETS.—For purposes
24 of subparagraph (A), with respect to any tax-



1 able year beginning after the date of the enact-
2 ment of this subparagraph—

3 “(i) the trust’s interest in the partner-
4 ship assets shall be the trust’s propor-
5 tionate interest in any securities issued by
6 the partnership (determined without re-
7 gard to subparagraph (A)(i) and para-
8 graph (4), but not including securities de-
9 scribed in paragraph (1)), and

10 “(ii) the value of any debt instrument
11 shall be the adjusted issue price thereof, as
12 defined in section 1272(a)(4).

13 “(4) CERTAIN PARTNERSHIP DEBT INSTRU-
14 MENTS NOT TREATED AS A SECURITY.—For pur-
15 poses of applying subclause (III) of subsection
16 (c)(4)(B)(iii)—

17 “(A) any debt instrument issued by a part-
18 nership and not described in paragraph (1)
19 shall not be considered a security to the extent
20 of the trust’s interest as a partner in the part-
21 nership, and

22 “(B) any debt instrument issued by a part-
23 nership and not described in paragraph (1)
24 shall not be considered a security if at least 75
25 percent of the partnership’s gross income (ex-



1 including gross income from prohibited trans-
2 actions) is derived from sources referred to in
3 subsection (c)(3).

4 “(5) SECRETARIAL GUIDANCE.—The Secretary
5 is authorized to provide guidance (including through
6 the issuance of a written determination, as defined
7 in section 6110(b)) that an arrangement shall not be
8 considered a security held by the trust for purposes
9 of applying subclause (III) of subsection
10 (c)(4)(B)(iii) notwithstanding that such arrangement
11 otherwise could be considered a security under sub-
12 paragraph (F) of subsection (c)(5).”.

13 (b) CLARIFICATION OF APPLICATION OF LIMITED
14 RENTAL EXCEPTION.—Subparagraph (A) of section
15 856(d)(8) (relating to special rules for taxable REIT sub-
16 sidiaries) is amended to read as follows:

17 “(A) LIMITED RENTAL EXCEPTION.—

18 “(i) IN GENERAL.—The requirements
19 of this subparagraph are met with respect
20 to any property if at least 90 percent of
21 the leased space of the property is rented
22 to persons other than taxable REIT sub-
23 sidiaries of such trust and other than per-
24 sons described in paragraph (2)(B).



1 “(ii) RENTS MUST BE SUBSTANTIALLY
2 COMPARABLE.—Clause (i) shall apply only
3 to the extent that the amounts paid to the
4 trust as rents from real property (as de-
5 fined in paragraph (1) without regard to
6 paragraph (2)(B)) from such property are
7 substantially comparable to such rents paid
8 by the other tenants of the trust’s property
9 for comparable space.

10 “(iii) TIMES FOR TESTING RENT COM-
11 PARABILITY.—The substantial com-
12 parability requirement of clause (ii) shall
13 be treated as met with respect to a lease
14 to a taxable REIT subsidiary of the trust
15 if such requirement is met under the terms
16 of the lease—

17 “(I) at the time such lease is en-
18 tered into,

19 “(II) at the time of each exten-
20 sion of the lease, including a failure to
21 exercise a right to terminate, and

22 “(III) at the time of any modi-
23 fication of the lease between the trust
24 and the taxable REIT subsidiary if
25 the rent under such lease is effectively



1 increased pursuant to such modifica-
2 tion.

3 With respect to subclause (III), if the tax-
4 able REIT subsidiary of the trust is a con-
5 trolled taxable REIT subsidiary of the
6 trust, the term ‘rents from real property’
7 shall not in any event include rent under
8 such lease to the extent of the increase in
9 such rent on account of such modification.

10 “(iv) CONTROLLED TAXABLE REIT
11 SUBSIDIARY.—For purposes of clause (iii),
12 the term ‘controlled taxable REIT sub-
13 sidiary’ means, with respect to any real es-
14 tate investment trust, any taxable REIT
15 subsidiary of such trust if such trust owns
16 directly or indirectly—

17 “(I) stock possessing more than
18 50 percent of the total voting power
19 of the outstanding stock of such sub-
20 sidiary, or

21 “(II) stock having a value of
22 more than 50 percent of the total
23 value of the outstanding stock of such
24 subsidiary.



1 “(v) CONTINUING QUALIFICATION
2 BASED ON THIRD PARTY ACTIONS.—If the
3 requirements of clause (i) are met at a
4 time referred to in clause (iii), such re-
5 quirements shall continue to be treated as
6 met so long as there is no increase in the
7 space leased to any taxable REIT sub-
8 sidiary of such trust or to any person de-
9 scribed in paragraph (2)(B).

10 “(vi) CORRECTION PERIOD.—If there
11 is an increase referred to in clause (v) dur-
12 ing any calendar quarter with respect to
13 any property, the requirements of clause
14 (iii) shall be treated as met during the
15 quarter and the succeeding quarter if such
16 requirements are met at the close of such
17 succeeding quarter.”.

18 (c) DELETION OF CUSTOMARY SERVICES EXCEP-
19 TION.—Subparagraph (B) of section 857(b)(7) (relating
20 to redetermined rents) is amended by striking clause (ii)
21 and by redesignating clauses (iii), (iv), (v), (vi), and (vii)
22 as clauses (ii), (iii), (iv), (v), and (vi), respectively.

23 (d) CONFORMITY WITH GENERAL HEDGING DEFINI-
24 TION.—Subparagraph (G) of section 856(c)(5) (relating



1 to treatment of certain hedging instruments) is amended
2 to read as follows:

3 “(G) TREATMENT OF CERTAIN HEDGING
4 INSTRUMENTS.—Except to the extent provided
5 by regulations, any income of a real estate in-
6 vestment trust from a hedging transaction (as
7 defined in clause (ii) or (iii) of section
8 1221(b)(2)(A)) which is clearly identified pur-
9 suant to section 1221(a)(7), including gain
10 from the sale or disposition of such a trans-
11 action, shall not constitute gross income under
12 paragraph (2) to the extent that the transaction
13 hedges any indebtedness incurred or to be in-
14 curred by the trust to acquire or carry real es-
15 tate assets.”.

16 (e) CONFORMITY WITH REGULATED INVESTMENT
17 COMPANY RULES.—Clause (i) of section 857(b)(5)(A) (re-
18 lating to imposition of tax in case of failure to meet certain
19 requirements) is amended by striking “90 percent” and
20 inserting “95 percent”.

21 (f) SAVINGS PROVISIONS.—

22 (1) RULES OF APPLICATION FOR FAILURE TO
23 SATISFY SECTION 856(c)(4).—Section 856(c) (relat-
24 ing to definition of real estate investment trust) is



1 amended by inserting after paragraph (6) the fol-
2 lowing new paragraph:

3 “(7) RULES OF APPLICATION FOR FAILURE TO
4 SATISFY PARAGRAPH (4).—

5 “(A) DE MINIMIS FAILURE.—A corpora-
6 tion, trust, or association that fails to meet the
7 requirements of paragraph (4)(B)(iii) for a par-
8 ticular quarter shall nevertheless be considered
9 to have satisfied the requirements of such para-
10 graph for such quarter if—

11 “(i) such failure is due to the owner-
12 ship of assets the total value of which does
13 not exceed the lesser of—

14 “(I) 1 percent of the total value
15 of the trust’s assets at the end of the
16 quarter for which such measurement
17 is done, and

18 “(II) \$10,000,000, and

19 “(ii)(I) the corporation, trust, or asso-
20 ciation, following the identification of such
21 failure, disposes of assets in order to meet
22 the requirements of such paragraph within
23 6 months after the last day of the quarter
24 in which the corporation, trust or associa-
25 tion’s identification of the failure to satisfy



1 the requirements of such paragraph oc-
2 curred or such other time period prescribed
3 by the Secretary and in the manner pre-
4 scribed by the Secretary, or

5 “(II) the requirements of such para-
6 graph are otherwise met within the time
7 period specified in subclause (I).

8 “(B) FAILURES EXCEEDING DE MINIMIS
9 AMOUNT.—A corporation, trust, or association
10 that fails to meet the requirements of para-
11 graph (4) for a particular quarter shall never-
12 theless be considered to have satisfied the re-
13 quirements of such paragraph for such quarter
14 if—

15 “(i) such failure involves the owner-
16 ship of assets the total value of which ex-
17 ceeds the de minimis standard described in
18 subparagraph (A)(i) at the end of the
19 quarter for which such measurement is
20 done,

21 “(ii) following the corporation, trust,
22 or association’s identification of the failure
23 to satisfy the requirements of such para-
24 graph for a particular quarter, a descrip-
25 tion of each asset that causes the corpora-



1 tion, trust, or association to fail to satisfy
2 the requirements of such paragraph at the
3 close of such quarter of any taxable year is
4 set forth in a schedule for such quarter
5 filed in accordance with regulations pre-
6 scribed by the Secretary,

7 “ (iii) the failure to meet the require-
8 ments of such paragraph for a particular
9 quarter is due to reasonable cause and not
10 due to willful neglect,

11 “ (iv) the corporation, trust, or asso-
12 ciation pays a tax computed under sub-
13 paragraph (C), and

14 “ (v) (I) the corporation, trust, or asso-
15 ciation disposes of the assets set forth on
16 the schedule specified in clause (ii) within
17 6 months after the last day of the quarter
18 in which the corporation, trust or associa-
19 tion’s identification of the failure to satisfy
20 the requirements of such paragraph oc-
21 curred or such other time period prescribed
22 by the Secretary and in the manner pre-
23 scribed by the Secretary, or



1 “(II) the requirements of such para-
2 graph are otherwise met within the time
3 period specified in subclause (I).

4 “(C) TAX.—For purposes of subparagraph
5 (B)(iv)—

6 “(i) TAX IMPOSED.—If a corporation,
7 trust, or association elects the application
8 of this subparagraph, there is hereby im-
9 posed a tax on the failure described in sub-
10 paragraph (B) of such corporation, trust,
11 or association. Such tax shall be paid by
12 the corporation, trust, or association.

13 “(ii) TAX COMPUTED.—The amount
14 of the tax imposed by clause (i) shall be
15 the greater of—

16 “(I) \$50,000, or

17 “(II) the amount determined
18 (pursuant to regulations promulgated
19 by the Secretary) by multiplying the
20 net income generated by the assets
21 described in the schedule specified in
22 subparagraph (B)(ii) for the period
23 specified in clause (iii) by the highest
24 rate of tax specified in section 11.



1 “(iii) PERIOD.—For purposes of
2 clause (ii)(II), the period described in this
3 clause is the period beginning on the first
4 date that the failure to satisfy the require-
5 ments of such paragraph (4) occurs as a
6 result of the ownership of such assets and
7 ending on the earlier of the date on which
8 the trust disposes of such assets or the end
9 of the first quarter when there is no longer
10 a failure to satisfy such paragraph (4).

11 “(iv) ADMINISTRATIVE PROVISIONS.—
12 For purposes of subtitle F, the taxes im-
13 posed by this subparagraph shall be treat-
14 ed as excise taxes with respect to which the
15 deficiency procedures of such subtitle
16 apply.”.

17 (2) MODIFICATION OF RULES OF APPLICATION
18 FOR FAILURE TO SATISFY SECTIONS 856(c)(2) OR
19 856(c)(3).—Paragraph (6) of section 856(c) (relat-
20 ing to definition of real estate investment trust) is
21 amended by striking subparagraphs (A) and (B), by
22 redesignating subparagraph (C) as subparagraph
23 (B), and by inserting before subparagraph (B) (as
24 so redesignated) the following new subparagraph:



1 “(A) following the corporation, trust, or
2 association’s identification of the failure to meet
3 the requirements of paragraph (2) or (3), or of
4 both such paragraphs, for any taxable year, a
5 description of each item of its gross income de-
6 scribed in such paragraphs is set forth in a
7 schedule for such taxable year filed in accord-
8 ance with regulations prescribed by the Sec-
9 retary, and”.

10 (3) REASONABLE CAUSE EXCEPTION TO LOSS
11 OF REIT STATUS IF FAILURE TO SATISFY REQUIRE-
12 MENTS.—Subsection (g) of section 856 (relating to
13 termination of election) is amended—

14 (A) in paragraph (1) by inserting before
15 the period at the end of the first sentence the
16 following: “unless paragraph (5) applies”, and

17 (B) by adding at the end the following new
18 paragraph:

19 “(5) ENTITIES TO WHICH PARAGRAPH AP-
20 PLIES.—This paragraph applies to a corporation,
21 trust, or association—

22 “(A) which is not a real estate investment
23 trust to which the provisions of this part apply
24 for the taxable year due to one or more failures
25 to comply with one or more of the provisions of



1 this part (other than subsection (c)(6) or (c)(7)
2 of section 856),

3 “(B) such failures are due to reasonable
4 cause and not due to willful neglect, and

5 “(C) if such corporation, trust, or associa-
6 tion pays (as prescribed by the Secretary in
7 regulations and in the same manner as tax) a
8 penalty of \$50,000 for each failure to satisfy a
9 provision of this part due to reasonable cause
10 and not willful neglect.”.

11 (4) DEDUCTION OF TAX PAID FROM AMOUNT
12 REQUIRED TO BE DISTRIBUTED.—Subparagraph (E)
13 of section 857(b)(2) is amended by striking “(7)”
14 and inserting “(7) of this subsection, section
15 856(c)(7)(B)(iii), and section 856(g)(1).”.

16 (5) EXPANSION OF DEFICIENCY DIVIDEND PRO-
17 CEDURE.—Subsection (e) of section 860 is amended
18 by striking “or” at the end of paragraph (2), by
19 striking the period at the end of paragraph (3) and
20 inserting “; or”, and by adding at the end the fol-
21 lowing new paragraph:

22 “(4) a statement by the taxpayer attached to its
23 amendment or supplement to a return of tax for the
24 relevant tax year.”.

25 (g) EFFECTIVE DATES.—



1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall apply to taxable years beginning after Decem-
4 ber 31, 2000.

5 (2) SUBSECTIONS (c) THROUGH (f).—The
6 amendments made by subsections (c), (d), (e), and
7 (f) shall apply to taxable years beginning after the
8 date of the enactment of this Act.

9 **SEC. 244. SPECIAL RULES FOR CERTAIN FILM AND TELE-**
10 **VISION PRODUCTIONS.**

11 (a) IN GENERAL.—Part VI of subchapter B of chap-
12 ter 1 is amended by inserting after section 180 the fol-
13 lowing new section:

14 **“SEC. 181. TREATMENT OF CERTAIN QUALIFIED FILM AND**
15 **TELEVISION PRODUCTIONS.**

16 **“(a) ELECTION TO TREAT COSTS AS EXPENSES.—**

17 **“(1) IN GENERAL.—**A taxpayer may elect to
18 treat the cost of any qualified film or television pro-
19 duction as an expense which is not chargeable to
20 capital account. Any cost so treated shall be allowed
21 as a deduction.

22 **“(2) DOLLAR LIMITATION.—**

23 **“(A) IN GENERAL.—**Paragraph (1) shall
24 not apply to any qualified film or television pro-



1 duction the aggregate cost of which exceeds
2 \$15,000,000.

3 “(B) HIGHER DOLLAR LIMITATION FOR
4 PRODUCTIONS IN CERTAIN AREAS.—In the case
5 of any qualified film or television production the
6 aggregate cost of which is significantly incurred
7 in an area eligible for designation as—

8 “(i) a low-income community under
9 section 45D, or

10 “(ii) a distressed county or isolated
11 area of distress by the Delta Regional Au-
12 thority established under section 2009aa-1
13 of title 7, United States Code,

14 subparagraph (A) shall be applied by sub-
15 stituting ‘\$20,000,000’ for ‘\$15,000,000’.

16 “(b) NO OTHER DEDUCTION OR AMORTIZATION DE-
17 DUCTION ALLOWABLE.—With respect to the basis of any
18 qualified film or television production to which an election
19 is made under subsection (a), no other depreciation or am-
20 ortization deduction shall be allowable.

21 “(c) ELECTION.—

22 “(1) IN GENERAL.—An election under this sec-
23 tion with respect to any qualified film or television
24 production shall be made in such manner as pre-
25 scribed by the Secretary and by the due date (in-



1 including extensions) for filing the taxpayer's return of
2 tax under this chapter for the taxable year in which
3 costs of the production are first incurred.

4 “(2) REVOCATION OF ELECTION.—Any election
5 made under this section may not be revoked without
6 the consent of the Secretary.

7 “(d) QUALIFIED FILM OR TELEVISION PRODUC-
8 TION.—For purposes of this section—

9 “(1) IN GENERAL.—The term ‘qualified film or
10 television production’ means any production de-
11 scribed in paragraph (2) if 75 percent of the total
12 compensation of the production is qualified com-
13 pensation.

14 “(2) PRODUCTION.—

15 “(A) IN GENERAL.—A production is de-
16 scribed in this paragraph if such production is
17 property described in section 168(f)(3). For
18 purposes of a television series, only the first 44
19 episodes of such series may be taken into ac-
20 count.

21 “(B) EXCEPTION.—A production is not de-
22 scribed in this paragraph if records are required
23 under section 2257 of title 18, United States
24 Code, to be maintained with respect to any per-
25 former in such production.



1 “(3) QUALIFIED COMPENSATION.—For pur-
2 poses of paragraph (1)—

3 “(A) IN GENERAL.—The term ‘qualified
4 compensation’ means compensation for services
5 performed in the United States by actors, direc-
6 tors, producers, and other relevant production
7 personnel.

8 “(B) PARTICIPATIONS AND RESIDUALS EX-
9 CLUDED.—The term ‘compensation’ does not
10 include participations and residuals (as defined
11 in section 167(g)(7)(B)).

12 “(e) APPLICATION OF CERTAIN OTHER RULES.—For
13 purposes of this section, rules similar to the rules of sub-
14 sections (b)(2) and (c)(4) of section 194 shall apply.

15 “(f) TERMINATION.—This section shall not apply to
16 qualified film and television productions commencing after
17 December 31, 2008.”.

18 (b) CONFORMING AMENDMENT.—The table of sec-
19 tions for part VI of subchapter B of chapter 1 is amended
20 by inserting after the item relating to section 180 the fol-
21 lowing new item:

 “Sec. 181. Treatment of certain qualified film and television pro-
 ductions.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to qualified film and television pro-
24 ductions (as defined in section 181(d)(1) of the Internal



1 Revenue Code of 1986, as added by this section) com-
2 mencing after the date of the enactment of this Act.

3 **SEC. 245. CREDIT FOR MAINTENANCE OF RAILROAD**
4 **TRACK.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-
6 chapter A of chapter 1 (relating to business-related cred-
7 its) is amended by adding at the end the following new
8 section:

9 **“SEC. 45G. RAILROAD TRACK MAINTENANCE CREDIT.**

10 “(a) GENERAL RULE.—For purposes of section 38,
11 the railroad track maintenance credit determined under
12 this section for the taxable year is an amount equal to
13 50 percent of the qualified railroad track maintenance ex-
14 penditures paid or incurred by an eligible taxpayer during
15 the taxable year.

16 “(b) LIMITATION.—The credit allowed under sub-
17 section (a) for any taxable year shall not exceed the prod-
18 uct of—

19 “(1) \$3,500, and

20 “(2) the number of miles of railroad track
21 owned or leased by the eligible taxpayer as of the
22 close of the taxable year.

23 A mile of railroad track may be taken into account by
24 a person other than the owner only if such mile is assigned
25 to such person by the owner for purposes of this sub-



1 section. Any mile which is so assigned may not be taken
2 into account by the owner for purposes of this subsection.

3 “(c) ELIGIBLE TAXPAYER.—For purposes of this sec-
4 tion, the term ‘eligible taxpayer’ means—

5 “(1) any Class II or Class III railroad, and

6 “(2) any person who transports property using
7 the rail facilities of a person described in paragraph
8 (1) or who furnishes railroad-related property or
9 services to such a person.

10 “(d) QUALIFIED RAILROAD TRACK MAINTENANCE
11 EXPENDITURES.—For purposes of this section, the term
12 ‘qualified railroad track maintenance expenditures’ means
13 expenditures (whether or not otherwise chargeable to cap-
14 ital account) for maintaining railroad track (including
15 roadbed, bridges, and related track structures) owned or
16 leased as of January 1, 2005, by a Class II or Class III
17 railroad.

18 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—

19 “(1) CLASS II OR CLASS III RAILROAD.—For
20 purposes of this section, the terms ‘Class II railroad’
21 and ‘Class III railroad’ have the respective meanings
22 given such terms by the Surface Transportation
23 Board.



1 “(2) CONTROLLED GROUPS.—Rules similar to
2 the rules of paragraph (1) of section 41(f) shall
3 apply for purposes of this section.

4 “(3) BASIS ADJUSTMENT.—For purposes of
5 this subtitle, if a credit is allowed under this section
6 with respect to any railroad track, the basis of such
7 track shall be reduced by the amount of the credit
8 so allowed.

9 “(f) APPLICATION OF SECTION.—This section shall
10 apply to qualified railroad track maintenance expenditures
11 paid or incurred during taxable years beginning after De-
12 cember 31, 2004, and before January 1, 2008.”.

13 (b) LIMITATION ON CARRYBACK.—

14 (1) IN GENERAL.—Subsection (d) of section 39
15 is amended to read as follows:

16 “(d) TRANSITIONAL RULE.—No portion of the un-
17 used business credit for any taxable year which is attrib-
18 utable to a credit specified in section 38(b) or any portion
19 thereof may be carried back to any taxable year before
20 the first taxable year for which such specified credit or
21 such portion is allowable (without regard to subsection
22 (a)).”.

23 (2) EFFECTIVE DATE.—The amendment made
24 by paragraph (1) shall apply with respect to taxable
25 years ending after December 31, 2003.



1 (c) CONFORMING AMENDMENTS.—

2 (1) Section 38(b) (relating to general business
3 credit) is amended by striking “plus” at the end of
4 paragraph (14), by striking the period at the end of
5 paragraph (15) and inserting “, plus”, and by add-
6 ing at the end the following new paragraph:

7 “(16) the railroad track maintenance credit de-
8 termined under section 45G(a).”.

9 (2) Subsection (a) of section 1016 is amended
10 by striking “and” at the end of paragraph (27), by
11 striking the period at the end of paragraph (28) and
12 inserting “, and”, and by inserting after paragraph
13 (28) the following new paragraph:

14 “(29) in the case of railroad track with respect
15 to which a credit was allowed under section 45G, to
16 the extent provided in section 45G(e)(3).”.

17 (d) CLERICAL AMENDMENT.—The table of sections
18 for subpart D of part IV of subchapter A of chapter 1
19 is amended by inserting after the item relating to section
20 45F the following new item:

“Sec. 45G. Railroad track maintenance credit.”.

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 2004.



1 **SEC. 246. SUSPENSION OF OCCUPATIONAL TAXES RELAT-**
2 **ING TO DISTILLED SPIRITS, WINE, AND BEER.**

3 (a) IN GENERAL.—Subpart G of part II of sub-
4 chapter A of chapter 51 is amended by redesignating sec-
5 tion 5148 as section 5149 and by inserting after section
6 5147 the following new section:

7 **“SEC. 5148. SUSPENSION OF OCCUPATIONAL TAX.**

8 “(a) IN GENERAL.—Notwithstanding sections 5081,
9 5091, 5111, 5121, and 5131, the rate of tax imposed
10 under such sections for the suspension period shall be
11 zero. During such period, persons engaged in or carrying
12 on a trade or business covered by such sections shall reg-
13 ister under section 5141 and shall comply with the record-
14 keeping requirements under this part.

15 “(b) SUSPENSION PERIOD.—For purposes of sub-
16 section (a), the suspension period is the period beginning
17 on July 1, 2005, and ending on June 30, 2008.”.

18 (b) CONFORMING AMENDMENT.—Section 5117 is
19 amended by adding at the end the following new sub-
20 section:

21 “(d) SPECIAL RULE DURING SUSPENSION PE-
22 RIOD.—Except as provided in subsection (b) or by the Sec-
23 retary, during the suspension period (as defined in section
24 5148) it shall be unlawful for any dealer to purchase dis-
25 tilled spirits for resale from any person other than a



1 wholesale dealer in liquors who is required to keep records
2 under section 5114.”.

3 (c) CLERICAL AMENDMENT.—The table of sections
4 for subpart G of part II of subchapter A of chapter 51
5 is amended by striking the last item and inserting the fol-
6 lowing new items:

“Sec. 5148. Suspension of occupational tax.
“Sec. 5149. Cross references.”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the date of the enactment
9 of this Act.

10 **SEC. 247. MODIFICATION OF UNRELATED BUSINESS IN-**
11 **COME LIMITATION ON INVESTMENT IN CER-**
12 **TAIN SMALL BUSINESS INVESTMENT COMPA-**
13 **NIES.**

14 (a) IN GENERAL.—Paragraph (6) of section 514(c)
15 (relating to acquisition indebtedness) is amended to read
16 as follows:

17 “(6) CERTAIN FEDERAL FINANCING.—

18 “(A) IN GENERAL.—For purposes of this
19 section, the term ‘acquisition indebtedness’ does
20 not include—

21 “(i) an obligation, to the extent that
22 it is insured by the Federal Housing Ad-
23 ministration, to finance the purchase, reha-



1 bilitation, or construction of housing for
2 low and moderate income persons, or

3 “(ii) indebtedness incurred by a small
4 business investment company licensed after
5 the date of the enactment of the American
6 Jobs Creation Act of 2004 under the Small
7 Business Investment Act of 1958 if such
8 indebtedness is evidenced by a debenture—

9 “(I) issued by such company
10 under section 303(a) of such Act, and

11 “(II) held or guaranteed by the
12 Small Business Administration.

13 “(B) LIMITATION.—Subparagraph (A)(ii)
14 shall not apply with respect to any small busi-
15 ness investment company during any period
16 that—

17 “(i) any organization which is exempt
18 from tax under this title (other than a gov-
19 ernmental unit) owns more than 25 per-
20 cent of the capital or profits interest in
21 such company, or

22 “(ii) organizations which are exempt
23 from tax under this title (including govern-
24 mental units other than any agency or in-
25 strumentality of the United States) own, in



1 the aggregate, 50 percent or more of the
2 capital or profits interest in such com-
3 pany.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to indebtedness incurred after the
6 date of the enactment of this Act by a small business in-
7 vestment company licensed after the date of the enactment
8 of this Act.

9 **SEC. 248. ELECTION TO DETERMINE CORPORATE TAX ON**
10 **CERTAIN INTERNATIONAL SHIPPING ACTIVI-**
11 **TIES USING PER TON RATE.**

12 (a) IN GENERAL.—Chapter 1 is amended by insert-
13 ing after subchapter Q the following new subchapter:

14 **“Subchapter R—Election To Determine Cor-**
15 **porate Tax on Certain International Ship-**
16 **ping Activities Using Per Ton Rate**

- “Sec. 1352. Alternative tax on qualifying shipping activities.
- “Sec. 1353. Notional shipping income.
- “Sec. 1354. Alternative tax election; revocation; termination.
- “Sec. 1355. Definitions and special rules.
- “Sec. 1356. Qualifying shipping activities.
- “Sec. 1357. Items not subject to regular tax; depreciation; inter-
est.
- “Sec. 1358. Allocation of credits, income, and deductions.
- “Sec. 1359. Disposition of qualifying vessels.

17 **“SEC. 1352. ALTERNATIVE TAX ON QUALIFYING SHIPPING**
18 **ACTIVITIES.**

19 “In the case of an electing corporation, the tax im-
20 posed by section 11 shall be the amount equal to the sum
21 of—



1 “(1) the tax imposed by section 11 determined
2 after the application of this subchapter, and

3 “(2) a tax equal to—

4 “(A) the highest rate of tax specified in
5 section 11, multiplied by

6 “(B) the notional shipping income for the
7 taxable year.

8 **“SEC. 1353. NOTIONAL SHIPPING INCOME.**

9 “(a) IN GENERAL.—For purposes of this subchapter,
10 the notional shipping income of an electing corporation
11 shall be the sum of the amounts determined under sub-
12 section (b) for each qualifying vessel operated by such
13 electing corporation.

14 “(b) AMOUNTS.—

15 “(1) IN GENERAL.—For purposes of subsection
16 (a), the amount of notional shipping income of an
17 electing corporation for each qualifying vessel for the
18 taxable year shall equal the product of—

19 “(A) the daily notional shipping income,
20 and

21 “(B) the number of days during the tax-
22 able year that the electing corporation operated
23 such vessel as a qualifying vessel in United
24 States foreign trade.



1 “(2) TREATMENT OF VESSELS THE INCOME
2 FROM WHICH IS NOT OTHERWISE SUBJECT TO
3 TAX.—In the case of a qualifying vessel any of the
4 income from which is not included in gross income
5 by reason of section 883 or otherwise, the amount
6 of notional shipping income from such vessel for the
7 taxable year shall be the amount which bears the
8 same ratio to such shipping income (determined
9 without regard to this paragraph) as the gross in-
10 come from the operation of such vessel in the United
11 States foreign trade bears to the sum of such gross
12 income and the income so excluded.

13 “(c) DAILY NOTIONAL SHIPPING INCOME.—For pur-
14 poses of subsection (b), the daily notional shipping income
15 from the operation of a qualifying vessel is—

16 “(1) 40 cents for each 100 tons of so much of
17 the net tonnage of the vessel as does not exceed
18 25,000 net tons, and

19 “(2) 20 cents for each 100 tons of so much of
20 the net tonnage of the vessel as exceeds 25,000 net
21 tons.

22 “(d) MULTIPLE OPERATORS OF VESSEL.—If for any
23 period 2 or more persons are operators of a qualifying ves-
24 sel, the notional shipping income from the operation of
25 such vessel for such period shall be allocated among such



1 persons on the basis of their respective ownership and
2 charter interests in such vessel or on such other basis as
3 the Secretary may prescribe by regulations.

4 **“SEC. 1354. ALTERNATIVE TAX ELECTION; REVOCATION;**
5 **TERMINATION.**

6 “(a) IN GENERAL.—A qualifying vessel operator may
7 elect the application of this subchapter.

8 “(b) TIME AND MANNER; YEARS FOR WHICH EF-
9 FECTIVE.—An election under this subchapter—

10 “(1) shall be made in such form as prescribed
11 by the Secretary, and

12 “(2) shall be effective for the taxable year for
13 which made and all succeeding taxable years until
14 terminated under subsection (d).

15 Such election may be effective for any taxable year only
16 if made before the due date (including extensions) for fil-
17 ing the corporation’s return for such taxable year.

18 “(c) CONSISTENT ELECTIONS BY MEMBERS OF CON-
19 TROLLED GROUPS.—An election under subsection (a) by
20 a member of a controlled group shall apply to all quali-
21 fying vessel operators that are members of such group.

22 “(d) TERMINATION.—

23 “(1) BY REVOCATION.—

24 “(A) IN GENERAL.—An election under
25 subsection (a) may be terminated by revocation.



1 “(B) WHEN EFFECTIVE.—Except as pro-
2 vided in subparagraph (C)—

3 “(i) a revocation made during the tax-
4 able year and on or before the 15th day of
5 the 3d month thereof shall be effective on
6 the 1st day of such taxable year, and

7 “(ii) a revocation made during the
8 taxable year but after such 15th day shall
9 be effective on the 1st day of the following
10 taxable year.

11 “(C) REVOCATION MAY SPECIFY PROSPEC-
12 TIVE DATE.—If the revocation specifies a date
13 for revocation which is on or after the day on
14 which the revocation is made, the revocation
15 shall be effective for taxable years beginning on
16 and after the date so specified.

17 “(2) BY PERSON CEASING TO BE QUALIFYING
18 VESSEL OPERATOR.—

19 “(A) IN GENERAL.—An election under
20 subsection (a) shall be terminated whenever (at
21 any time on or after the 1st day of the 1st tax-
22 able year for which the corporation is an elect-
23 ing corporation) such corporation ceases to be
24 a qualifying vessel operator.



1 “(B) WHEN EFFECTIVE.—Any termination
2 under this paragraph shall be effective on and
3 after the date of cessation.

4 “(C) ANNUALIZATION.—The Secretary
5 shall prescribe such annualization and other
6 rules as are appropriate in the case of a termi-
7 nation under this paragraph.

8 “(e) ELECTION AFTER TERMINATION.—If a quali-
9 fying vessel operator has made an election under sub-
10 section (a) and if such election has been terminated under
11 subsection (d), such operator (and any successor operator)
12 shall not be eligible to make an election under subsection
13 (a) for any taxable year before its 5th taxable year which
14 begins after the 1st taxable year for which such termi-
15 nation is effective, unless the Secretary consents to such
16 election.

17 **“SEC. 1355. DEFINITIONS AND SPECIAL RULES.**

18 “(a) DEFINITIONS.—For purposes of this
19 subchapter—

20 “(1) ELECTING CORPORATION.—The term
21 ‘electing corporation’ means any corporation for
22 which an election is in effect under this subchapter.

23 “(2) ELECTING GROUP; CONTROLLED GROUP.—



1 “(A) ELECTING GROUP.—The term ‘elect-
2 ing group’ means a controlled group of which
3 one or more members is an electing corporation.

4 “(B) CONTROLLED GROUP.—The term
5 ‘controlled group’ means any group which
6 would be treated as a single employer under
7 subsection (a) or (b) of section 52 if paragraphs
8 (1) and (2) of section 52(a) did not apply.

9 “(3) QUALIFYING VESSEL OPERATOR.—The
10 term ‘qualifying vessel operator’ means any
11 corporation—

12 “(A) who operates one or more qualifying
13 vessels, and

14 “(B) who meets the shipping activity re-
15 quirement in subsection (c).

16 “(4) QUALIFYING VESSEL.—The term ‘quali-
17 fying vessel’ means a self-propelled (or a combina-
18 tion self-propelled and non-self-propelled) United
19 States flag vessel of not less than 10,000 deadweight
20 tons used exclusively in the United States foreign
21 trade during the period that the election under this
22 subchapter is in effect.

23 “(5) UNITED STATES FLAG VESSEL.—The term
24 ‘United States flag vessel’ means any vessel docu-
25 mented under the laws of the United States.



1 “(6) UNITED STATES DOMESTIC TRADE.—The
2 term ‘United States domestic trade’ means the
3 transportation of goods or passengers between places
4 in the United States.

5 “(7) UNITED STATES FOREIGN TRADE.—The
6 term ‘United States foreign trade’ means the trans-
7 portation of goods or passengers between a place in
8 the United States and a foreign place or between
9 foreign places.

10 “(8) CHARTER.—The term ‘charter’ includes an
11 operating agreement.

12 “(b) OPERATING A VESSEL.—For purposes of this
13 subchapter—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), a person is treated as operating any ves-
16 sel during any period if such vessel is—

17 “(A) owned by, or chartered (including a
18 time charter) to, the person, and

19 “(B) is in use as a qualifying vessel during
20 such period.

21 “(2) BAREBOAT CHARTERS.—A person is treat-
22 ed as operating and using a vessel that it has char-
23 tered out on bareboat charter terms only if—



1 “(A)(i) the vessel is temporarily surplus to
2 the person’s requirements and the term of the
3 charter does not exceed 3 years, or

4 “(ii) the vessel is bareboat chartered to a
5 member of a controlled group which includes
6 such person or to an unrelated person who sub-
7 bareboats or time charters the vessel to such a
8 member (including the owner of the vessel), and

9 “(B) the vessel is used as a qualifying ves-
10 sel by the person to whom ultimately chartered.

11 “(c) SHIPPING ACTIVITY REQUIREMENT.—For pur-
12 poses of this section—

13 “(1) IN GENERAL.—Except as otherwise pro-
14 vided in this subsection, a corporation meets the
15 shipping activity requirement of this subsection for
16 any taxable year only if the requirement of para-
17 graph (4) is met for each of the 2 preceding taxable
18 years.

19 “(2) SPECIAL RULE FOR 1ST YEAR OF ELEC-
20 TION.—A corporation meets the shipping activity re-
21 quirement of this subsection for the first taxable
22 year for which the election under section 1354(a) is
23 in effect only if the requirement of paragraph (4) is
24 met for the preceding taxable year.



1 “(3) CONTROLLED GROUPS.—A corporation
2 who is a member of a controlled group meets the
3 shipping activity requirement of this subsection only
4 if such requirement is met determined—

5 “(A) by treating all members of such
6 group as 1 person, and

7 “(B) by disregarding vessel charters be-
8 tween members of such group.

9 “(4) REQUIREMENT.—The requirement of this
10 paragraph is met for any taxable year if, on average
11 during such year, at least 25 percent of the aggre-
12 gate tonnage of qualifying vessels used by the cor-
13 poration were owned by such corporation or char-
14 tered to such corporation on bareboat charter terms.

15 “(d) ACTIVITIES CARRIED ON PARTNERSHIPS,
16 ETC.—In applying this subchapter to a partner in a
17 partnership—

18 “(1) each partner shall be treated as operating
19 vessels operated by the partnership,

20 “(2) each partner shall be treated as conducting
21 the activities conducted by the partnership, and

22 “(3) the extent of a partner’s ownership or
23 charter interest in any vessel owned by or chartered
24 to the partnership shall be determined on the basis
25 of the partner’s interest in the partnership.



1 A similar rule shall apply with respect to other pass-thru
2 entities.

3 “(e) EFFECT OF TEMPORARILY CEASING TO OPER-
4 ATE A QUALIFYING VESSEL.—

5 “(1) IN GENERAL.—For purposes of sub-
6 sections (b) and (c), an electing corporation shall be
7 treated as continuing to use a qualifying vessel dur-
8 ing any period of temporary cessation if the electing
9 corporation gives timely notice to the Secretary
10 stating—

11 “(A) that it has temporarily ceased to op-
12 erate the qualifying vessel, and

13 “(B) its intention to resume operating the
14 qualifying vessel.

15 “(2) NOTICE.—Notice shall be deemed timely if
16 given not later than the due date (including exten-
17 sions) for the corporation’s tax return for the tax-
18 able year in which the temporary cessation begins.

19 “(3) PERIOD DISREGARD IN EFFECT.—The pe-
20 riod of temporary cessation under paragraph (1)
21 shall continue until the earlier of the date on
22 which—

23 “(A) the electing corporation abandons its
24 intention to resume operation of the qualifying
25 vessel, or



1 “(B) the electing corporation resumes op-
2 eration of the qualifying vessel.

3 “(f) EFFECT OF TEMPORARILY OPERATING A QUALI-
4 FYING VESSEL IN THE UNITED STATES DOMESTIC
5 TRADE.—

6 “(1) IN GENERAL.—For purposes of this sub-
7 chapter, an electing corporation shall be treated as
8 continuing to use a qualifying vessel in the United
9 States foreign trade during any period of temporary
10 use in the United States domestic trade if the elect-
11 ing corporation gives timely notice to the Secretary
12 stating—

13 “(A) that it temporarily operates or has
14 operated in the United States domestic trade a
15 qualifying vessel which had been used in the
16 United States foreign trade, and

17 “(B) its intention to resume operation of
18 the vessel in the United States foreign trade.

19 “(2) NOTICE.—Notice shall be deemed timely if
20 given not later than the due date (including exten-
21 sions) for the corporation’s tax return for the tax-
22 able year in which the temporary cessation begins.

23 “(3) PERIOD DISREGARD IN EFFECT.—The pe-
24 riod of temporary use under paragraph (1) continues
25 until the earlier of the date of which—



1 “(A) the electing corporation abandons its
2 intention to resume operations of the vessel in
3 the United States foreign trade, or

4 “(B) the electing corporation resumes op-
5 eration of the vessel in the United States for-
6 eign trade.

7 “(4) NO DISREGARD IF DOMESTIC TRADE USE
8 EXCEEDS 30 DAYS.—Paragraph (1) shall not apply
9 to any qualifying vessel which is operated in the
10 United States domestic trade for more than 30 days
11 during the taxable year.

12 “(g) REGULATIONS.—The Secretary shall prescribe
13 such regulations as may be necessary or appropriate to
14 carry out the purposes of this section.

15 **“SEC. 1356. QUALIFYING SHIPPING ACTIVITIES.**

16 “(a) QUALIFYING SHIPPING ACTIVITIES.—For pur-
17 poses of this subchapter, the term ‘qualifying shipping ac-
18 tivities’ means—

19 “(1) core qualifying activities,

20 “(2) qualifying secondary activities, and

21 “(3) qualifying incidental activities.

22 “(b) CORE QUALIFYING ACTIVITIES.—For purposes
23 of this subchapter, the term ‘core qualifying activities’
24 means activities in operating qualifying vessels in United
25 States foreign trade.



1 “(c) QUALIFYING SECONDARY ACTIVITIES.—For
2 purposes of this section—

3 “(1) IN GENERAL.—The term ‘qualifying sec-
4 ondary activities’ means secondary activities but only
5 to the extent that, without regard to this sub-
6 chapter, the gross income derived by such corpora-
7 tion from such activities does not exceed 20 percent
8 of the gross income derived by the corporation from
9 its core qualifying activities.

10 “(2) SECONDARY ACTIVITIES.—The term ‘sec-
11 ondary activities’ means—

12 “(A) the active management or operation
13 of vessels other than qualifying vessels in the
14 United States foreign trade,

15 “(B) the provision of vessel, barge, con-
16 tainer, or cargo-related facilities or services to
17 any person,

18 “(C) other activities of the electing cor-
19 poration and other members of its electing
20 group that are an integral part of its business
21 of operating qualifying vessels in United States
22 foreign trade, including—

23 “(i) ownership or operation of barges,
24 containers, chassis, and other equipment
25 that are the complement of, or used in con-



1 nection with, a qualifying vessel in United
2 States foreign trade,

3 “(ii) the inland haulage of cargo
4 shipped, or to be shipped, on qualifying
5 vessels in United States foreign trade, and

6 “(iii) the provision of terminal, main-
7 tenance, repair, logistical, or other vessel,
8 barge, container, or cargo-related services
9 that are an integral part of operating
10 qualifying vessels in United States foreign
11 trade, and

12 “(D) such other activities as may be pre-
13 scribed by the Secretary pursuant to regula-
14 tions.

15 “(3) COORDINATION WITH CORE ACTIVITIES.—

16 “(A) IN GENERAL.—Such term shall not
17 include any core qualifying activities.

18 “(B) NONELECTING CORPORATIONS.—In
19 the case of a corporation (other than an elect-
20 ing corporation) which is a member of an elect-
21 ing group, any core qualifying activities of the
22 corporation shall be treated as qualifying sec-
23 ondary activities (and not as core qualifying ac-
24 tivities).



1 “(d) QUALIFYING INCIDENTAL ACTIVITIES.—For
2 purposes of this section, the term ‘qualified incidental ac-
3 tivities’ means shipping-related activities if—

4 “(1) they are incidental to the corporation’s
5 core qualifying activities,

6 “(2) they are not qualifying secondary activi-
7 ties, and

8 “(3) without regard to this subchapter, the
9 gross income derived by such corporation from such
10 activities does not exceed 0.1 percent of the corpora-
11 tion’s gross income from its core qualifying activi-
12 ties.

13 “(e) APPLICATION OF GROSS INCOME TESTS IN CASE
14 OF ELECTING GROUP.—In the case of an electing group,
15 subsections (c)(1) and (d)(3) shall be applied as if such
16 group were 1 entity, and the limitations under such sub-
17 sections shall be allocated among the corporations in such
18 group.

19 **“SEC. 1357. ITEMS NOT SUBJECT TO REGULAR TAX; DEPRE-
20 CIATION; INTEREST.**

21 “(a) EXCLUSION FROM GROSS INCOME.—Gross in-
22 come of an electing corporation shall not include its in-
23 come from qualifying shipping activities.

24 “(b) ELECTING GROUP MEMBER.—Gross income of
25 a corporation (other than an electing corporation) which



1 is a member of an electing group shall not include its in-
2 come from qualifying shipping activities conducted by such
3 member.

4 “(c) DENIAL OF LOSSES, DEDUCTIONS, AND CRED-
5 ITS.—

6 “(1) GENERAL RULE.—Subject to paragraph
7 (2), each item of loss, deduction (other than for in-
8 terest expense), or credit of any taxpayer with re-
9 spect to any activity the income from which is ex-
10 cluded from gross income under this section shall be
11 disallowed.

12 “(2) DEPRECIATION.—

13 “(A) IN GENERAL.—Notwithstanding para-
14 graph (1), the adjusted basis (for purposes of
15 determining gain) of any qualifying vessel shall
16 be determined as if the deduction for deprecia-
17 tion had been allowed.

18 “(B) METHOD.—

19 “(i) IN GENERAL.—Except as pro-
20 vided in clause (ii), the straight-line meth-
21 od of depreciation shall apply to qualifying
22 vessels the income from operation of which
23 is excluded from gross income under this
24 section.



1 “(ii) EXCEPTION.—Clause (i) shall
2 not apply to any qualifying vessel which is
3 subject to a charter entered into before the
4 date of the enactment of this subchapter.

5 “(3) INTEREST.—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), the interest expense of an
8 electing corporation shall be disallowed in the
9 ratio that the fair market value of such cor-
10 poration’s qualifying vessels bears to the fair
11 market value of such corporation’s total assets.

12 “(B) ELECTING GROUP.—In the case of a
13 corporation which is a member of an electing
14 group, the interest expense of such corporation
15 shall be disallowed in the ratio that the fair
16 market value of such corporation’s qualifying
17 vessels bears to the fair market value of the
18 electing groups total assets.

19 **“SEC. 1358. ALLOCATION OF CREDITS, INCOME, AND DE-**
20 **DUCTIONS.**

21 “(a) QUALIFYING SHIPPING ACTIVITIES.—For pur-
22 poses of this chapter, the qualifying shipping activities of
23 an electing corporation shall be treated as a separate trade
24 or business activity distinct from all other activities con-
25 ducted by such corporation.



1 “(b) EXCLUSION OF CREDITS OR DEDUCTIONS.—

2 “(1) No deduction shall be allowed against the
3 notional shipping income of an electing corporation,
4 and no credit shall be allowed against the tax im-
5 posed by section 1352(a)(2).

6 “(2) No deduction shall be allowed for any net
7 operating loss attributable to the qualifying shipping
8 activities of any person to the extent that such loss
9 is carried forward by such person from a taxable
10 year preceding the first taxable year for which such
11 person was an electing corporation.

12 “(c) TRANSACTIONS NOT AT ARM’S LENGTH.—Sec-
13 tion 482 applies in accordance with this subsection to a
14 transaction or series of transactions—

15 “(1) as between an electing corporation and an-
16 other person, or

17 “(2) as between an person’s qualifying shipping
18 activities and other activities carried on by it.

19 **“SEC. 1359. DISPOSITION OF QUALIFYING VESSELS.**

20 “(a) IN GENERAL.—If any qualifying vessel operator
21 sells or disposes of any qualifying vessel in an otherwise
22 taxable transaction, at the election of such operator, no
23 gain shall be recognized if any replacement qualifying ves-
24 sel is acquired during the period specified in subsection
25 (b), except to the extent that the amount realized upon



1 such sale or disposition exceeds the cost of the replace-
2 ment qualifying vessel.

3 “(b) PERIOD WITHIN WHICH PROPERTY MUST BE
4 REPLACED.—The period referred to in subsection (a) shall
5 be the period beginning one year prior to the disposition
6 of the qualifying vessel and ending—

7 “(1) 3 years after the close of the first taxable
8 year in which the gain is realized, or

9 “(2) subject to such terms and conditions as
10 may be specified by the Secretary, on such later date
11 as the Secretary may designate on application by the
12 taxpayer.

13 Such application shall be made at such time and in such
14 manner as the Secretary may by regulations prescribe.

15 “(c) APPLICATION OF SECTION TO NONCORPORATE
16 OPERATORS.—For purposes of this section, the term
17 ‘qualifying vessel operator’ includes any person who would
18 be a qualifying vessel operator were such person a corpora-
19 tion.

20 “(d) TIME FOR ASSESSMENT OF DEFICIENCY AT-
21 TRIBUTABLE TO GAIN.—If a qualifying vessel operator
22 has made the election provided in subsection (a), then—

23 “(1) the statutory period for the assessment of
24 any deficiency, for any taxable year in which any
25 part of the gain is realized, attributable to such gain



1 shall not expire prior to the expiration of 3 years
2 from the date the Secretary is notified by such oper-
3 ator (in such manner as the Secretary may by regu-
4 lations prescribe) of the replacement qualifying ves-
5 sel or of an intention not to replace, and

6 “(2) such deficiency may be assessed before the
7 expiration of such 3-year period notwithstanding the
8 provisions of section 6212(c) or the provisions of any
9 other law or rule of law which would otherwise pre-
10 vent such assessment.

11 “(e) BASIS OF REPLACEMENT QUALIFYING VES-
12 SEL.—In the case of any replacement qualifying vessel
13 purchased by the qualifying vessel operator which resulted
14 in the nonrecognition of any part of the gain realized as
15 the result of a sale or other disposition of a qualifying
16 vessel, the basis shall be the cost of the replacement quali-
17 fying vessel decreased in the amount of the gain not so
18 recognized; and if the property purchased consists of more
19 than one piece of property, the basis determined under
20 this sentence shall be allocated to the purchased properties
21 in proportion to their respective costs.”

22 (b) TECHNICAL AMENDMENTS.—

23 (1) The second sentence of section
24 56(g)(4)(B)(i), as amended by this Act, is further



1 amended by inserting “or 1357” after “section
2 139A”.

3 (2) The table of subchapters for chapter 1 is
4 amended by inserting after the item relating to sub-
5 chapter S the following new item:

“Subchapter R. Election to determine corporate tax on certain
international shipping activities using per ton rate.”

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to taxable years beginning after
8 the date of the enactment of this Act.

9 **Subtitle F—Stock Options and Em-**
10 **ployee Stock Purchase Plan**
11 **Stock Options**

12 **SEC. 251. EXCLUSION OF INCENTIVE STOCK OPTIONS AND**
13 **EMPLOYEE STOCK PURCHASE PLAN STOCK**
14 **OPTIONS FROM WAGES.**

15 (a) EXCLUSION FROM EMPLOYMENT TAXES.—

16 (1) SOCIAL SECURITY TAXES.—

17 (A) Section 3121(a) (relating to definition
18 of wages) is amended by striking “or” at the
19 end of paragraph (20), by striking the period at
20 the end of paragraph (21) and inserting “; or”,
21 and by inserting after paragraph (21) the fol-
22 lowing new paragraph:

23 “(22) remuneration on account of—



1 “(A) a transfer of a share of stock to any
2 individual pursuant to an exercise of an incen-
3 tive stock option (as defined in section 422(b))
4 or under an employee stock purchase plan (as
5 defined in section 423(b)), or

6 “(B) any disposition by the individual of
7 such stock.”.

8 (B) Section 209(a) of the Social Security
9 Act is amended by striking “or” at the end of
10 paragraph (17), by striking the period at the
11 end of paragraph (18) and inserting “; or”, and
12 by inserting after paragraph (18) the following
13 new paragraph:

14 “(19) Remuneration on account of—

15 “(A) a transfer of a share of stock to any
16 individual pursuant to an exercise of an incen-
17 tive stock option (as defined in section 422(b)
18 of the Internal Revenue Code of 1986) or under
19 an employee stock purchase plan (as defined in
20 section 423(b) of such Code), or

21 “(B) any disposition by the individual of
22 such stock.”.

23 (2) RAILROAD RETIREMENT TAXES.—Sub-
24 section (e) of section 3231 is amended by adding at
25 the end the following new paragraph:



1 “(12) QUALIFIED STOCK OPTIONS.—The term
2 ‘compensation’ shall not include any remuneration
3 on account of—

4 “(A) a transfer of a share of stock to any
5 individual pursuant to an exercise of an incen-
6 tive stock option (as defined in section 422(b))
7 or under an employee stock purchase plan (as
8 defined in section 423(b)), or

9 “(B) any disposition by the individual of
10 such stock.”.

11 (3) UNEMPLOYMENT TAXES.—Section 3306(b)
12 (relating to definition of wages) is amended by strik-
13 ing “or” at the end of paragraph (17), by striking
14 the period at the end of paragraph (18) and insert-
15 ing “; or”, and by inserting after paragraph (18) the
16 following new paragraph:

17 “(19) remuneration on account of—

18 “(A) a transfer of a share of stock to any
19 individual pursuant to an exercise of an incen-
20 tive stock option (as defined in section 422(b))
21 or under an employee stock purchase plan (as
22 defined in section 423(b)), or

23 “(B) any disposition by the individual of
24 such stock.”.



1 (b) WAGE WITHHOLDING NOT REQUIRED ON DIS-
2 QUALIFYING DISPOSITIONS.—Section 421(b) (relating to
3 effect of disqualifying dispositions) is amended by adding
4 at the end the following new sentence: “No amount shall
5 be required to be deducted and withheld under chapter
6 24 with respect to any increase in income attributable to
7 a disposition described in the preceding sentence.”.

8 (c) WAGE WITHHOLDING NOT REQUIRED ON COM-
9 PENSATION WHERE OPTION PRICE IS BETWEEN 85 PER-
10 CENT AND 100 PERCENT OF VALUE OF STOCK.—Section
11 423(c) (relating to special rule where option price is be-
12 tween 85 percent and 100 percent of value of stock) is
13 amended by adding at the end the following new sentence:
14 “No amount shall be required to be deducted and withheld
15 under chapter 24 with respect to any amount treated as
16 compensation under this subsection.”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to stock acquired pursuant to op-
19 tions exercised after the date of the enactment of this Act.



1 **TITLE III—TAX RELIEF FOR AG-**
2 **RICULTURE AND SMALL MAN-**
3 **UFACTURERS**

4 **Subtitle A—Volumetric Ethanol**
5 **Excise Tax Credit**

6 **SEC. 301. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT**
7 **AND EXTENSION OF ALCOHOL FUELS IN-**
8 **COME TAX CREDIT.**

9 (a) IN GENERAL.—Subchapter B of chapter 65 (re-
10 lating to rules of special application) is amended by insert-
11 ing after section 6425 the following new section:

12 **“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL**
13 **MIXTURES.**

14 “(a) ALLOWANCE OF CREDITS.—There shall be al-
15 lowed as a credit against the tax imposed by section 4081
16 an amount equal to the sum of—

17 “(1) the alcohol fuel mixture credit, plus

18 “(2) the biodiesel mixture credit.

19 “(b) ALCOHOL FUEL MIXTURE CREDIT.—

20 “(1) IN GENERAL.—For purposes of this sec-
21 tion, the alcohol fuel mixture credit is the product
22 of the applicable amount and the number of gallons
23 of alcohol used by the taxpayer in producing any al-
24 cohol fuel mixture for sale or use in a trade or busi-
25 ness of the taxpayer.



1 “(2) APPLICABLE AMOUNT.—For purposes of
2 this subsection—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), the applicable amount is 51
5 cents.

6 “(B) MIXTURES NOT CONTAINING ETH-
7 ANOL.—In the case of an alcohol fuel mixture
8 in which none of the alcohol consists of ethanol,
9 the applicable amount is 60 cents.

10 “(3) ALCOHOL FUEL MIXTURE.—For purposes
11 of this subsection, the term ‘alcohol fuel mixture’
12 means a mixture of alcohol and a taxable fuel
13 which—

14 “(A) is sold by the taxpayer producing
15 such mixture to any person for use as a fuel,
16 or

17 “(B) is used as a fuel by the taxpayer pro-
18 ducing such mixture.

19 For purposes of subparagraph (A), a mixture pro-
20 duced by any person at a refinery prior to a taxable
21 event which includes ethyl tertiary butyl ether or
22 other ethers produced from alcohol shall be treated
23 as sold at the time of its removal from the refinery
24 (and only at such time) to another person for use as
25 a fuel.



1 “(4) OTHER DEFINITIONS.—For purposes of
2 this subsection—

3 “(A) ALCOHOL.—The term ‘alcohol’ in-
4 cludes methanol and ethanol but does not
5 include—

6 “(i) alcohol produced from petroleum,
7 natural gas, or coal (including peat), or

8 “(ii) alcohol with a proof of less than
9 190 (determined without regard to any
10 added denaturants).

11 Such term also includes an alcohol gallon equiv-
12 alent of ethyl tertiary butyl ether or other
13 ethers produced from such alcohol.

14 “(B) TAXABLE FUEL.—The term ‘taxable
15 fuel’ has the meaning given such term by sec-
16 tion 4083(a)(1).

17 “(5) TERMINATION.—This subsection shall not
18 apply to any sale, use, or removal for any period
19 after December 31, 2010.

20 “(c) BIODIESEL MIXTURE CREDIT.—

21 “(1) IN GENERAL.—For purposes of this sec-
22 tion, the biodiesel mixture credit is the product of
23 the applicable amount and the number of gallons of
24 biodiesel used by the taxpayer in producing any bio-



1 diesel mixture for sale or use in a trade or business
2 of the taxpayer.

3 “(2) APPLICABLE AMOUNT.—For purposes of
4 this subsection—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), the applicable amount is 50
7 cents.

8 “(B) AMOUNT FOR AGRI-BIODIESEL.—In
9 the case of any biodiesel which is agri-biodiesel,
10 the applicable amount is \$1.00.

11 “(3) BIODIESEL MIXTURE.—For purposes of
12 this section, the term ‘biodiesel mixture’ means a
13 mixture of biodiesel and diesel fuel (as defined in
14 section 4083(a)(3)), determined without regard to
15 any use of kerosene, which—

16 “(A) is sold by the taxpayer producing
17 such mixture to any person for use as a fuel,
18 or

19 “(B) is used as a fuel by the taxpayer pro-
20 ducing such mixture.

21 “(4) CERTIFICATION FOR BIODIESEL.—No
22 credit shall be allowed under this subsection unless
23 the taxpayer obtains a certification (in such form
24 and manner as prescribed by the Secretary) from
25 the producer of the biodiesel which identifies the



1 product produced and the percentage of biodiesel
2 and agri-biodiesel in the product.

3 “(5) OTHER DEFINITIONS.—Any term used in
4 this subsection which is also used in section 40A
5 shall have the meaning given such term by section
6 40A.

7 “(6) TERMINATION.—This subsection shall not
8 apply to any sale, use, or removal for any period
9 after December 31, 2006.

10 “(d) MIXTURE NOT USED AS A FUEL, ETC.—

11 “(1) IMPOSITION OF TAX.—If—

12 “(A) any credit was determined under this
13 section with respect to alcohol or biodiesel used
14 in the production of any alcohol fuel mixture or
15 biodiesel mixture, respectively, and

16 “(B) any person—

17 “(i) separates the alcohol or biodiesel
18 from the mixture, or

19 “(ii) without separation, uses the mix-
20 ture other than as a fuel,

21 then there is hereby imposed on such person a
22 tax equal to the product of the applicable
23 amount and the number of gallons of such alco-
24 hol or biodiesel.



1 “(2) APPLICABLE LAWS.—All provisions of law,
2 including penalties, shall, insofar as applicable and
3 not inconsistent with this section, apply in respect of
4 any tax imposed under paragraph (1) as if such tax
5 were imposed by section 4081 and not by this sec-
6 tion.

7 “(e) COORDINATION WITH EXEMPTION FROM EX-
8 CISE TAX.—Rules similar to the rules under section 40(c)
9 shall apply for purposes of this section.”.

10 (b) REGISTRATION REQUIREMENT.—Section
11 4101(a)(1) (relating to registration), as amended by sec-
12 tion 861, is amended by inserting “and every person pro-
13 ducing or importing biodiesel (as defined in section
14 40A(d)(1)) or alcohol (as defined in section
15 6426(b)(4)(A))” before “shall register with the Sec-
16 retary”.

17 (c) ADDITIONAL AMENDMENTS.—

18 (1) Section 40(c) is amended by striking “sub-
19 section (b)(2), (k), or (m) of section 4041, section
20 4081(e), or section 4091(c)” and inserting “section
21 4041(b)(2), section 6426, or section 6427(e)”.

22 (2) Paragraph (4) of section 40(d) is amended
23 to read as follows:

24 “(4) VOLUME OF ALCOHOL.—For purposes of
25 determining under subsection (a) the number of gal-



1 lons of alcohol with respect to which a credit is al-
2 lowable under subsection (a), the volume of alcohol
3 shall include the volume of any denaturant (includ-
4 ing gasoline) which is added under any formulas ap-
5 proved by the Secretary to the extent that such de-
6 naturants do not exceed 5 percent of the volume of
7 such alcohol (including denaturants).”.

8 (3) Section 40(e)(1) is amended—

9 (A) by striking “2007” in subparagraph
10 (A) and inserting “2010”, and

11 (B) by striking “2008” in subparagraph
12 (B) and inserting “2011”.

13 (4) Section 40(h) is amended—

14 (A) by striking “2007” in paragraph (1)
15 and inserting “2010”, and

16 (B) by striking “, 2006, or 2007” in the
17 table contained in paragraph (2) and inserting
18 “through 2010”.

19 (5) Section 4041(b)(2)(B) is amended by strik-
20 ing “a substance other than petroleum or natural
21 gas” and inserting “coal (including peat)”.

22 (6) Section 4041 is amended by striking sub-
23 section (k).

24 (7) Section 4081 is amended by striking sub-
25 section (c).



1 (8) Paragraph (2) of section 4083(a) is amend-
2 ed to read as follows:

3 “(2) GASOLINE.—The term ‘gasoline’—

4 “(A) includes any gasoline blend, other
5 than qualified methanol or ethanol fuel (as de-
6 fined in section 4041(b)(2)(B)), partially ex-
7 empt methanol or ethanol fuel (as defined in
8 section 4041(m)(2)), or a denatured alcohol,
9 and

10 “(B) includes, to the extent prescribed in
11 regulations—

12 “(i) any gasoline blend stock, and

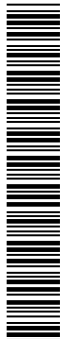
13 “(ii) any product commonly used as
14 an additive in gasoline (other than alco-
15 hol).

16 For purposes of subparagraph (B)(i), the term ‘gas-
17 oline blend stock’ means any petroleum product
18 component of gasoline.”.

19 (9) Section 6427 is amended by inserting after
20 subsection (d) the following new subsection:

21 “(e) ALCOHOL OR BIODIESEL USED TO PRODUCE
22 ALCOHOL FUEL AND BIODIESEL MIXTURES.—Except as
23 provided in subsection (k)—

24 “(1) USED TO PRODUCE A MIXTURE.—If any
25 person produces a mixture described in section 6426



1 in such person's trade or business, the Secretary
2 shall pay (without interest) to such person an
3 amount equal to the alcohol fuel mixture credit or
4 the biodiesel mixture credit with respect to such mix-
5 ture.

6 “(2) COORDINATION WITH OTHER REPAYMENT
7 PROVISIONS.—No amount shall be payable under
8 paragraph (1) with respect to any mixture with re-
9 spect to which an amount is allowed as a credit
10 under section 6426.

11 “(3) TERMINATION.—This subsection shall not
12 apply with respect to—

13 “(A) any alcohol fuel mixture (as defined
14 in section 6426(b)(3)) sold or used after De-
15 cember 31, 2010, and

16 “(B) any biodiesel mixture (as defined in
17 section 6426(e)(3)) sold or used after December
18 31, 2006.”.

19 (10) Section 6427(i)(3) is amended—

20 (A) by striking “subsection (f)” both
21 places it appears in subparagraph (A) and in-
22 serting “subsection (e)(1)”,

23 (B) by striking “gasoline, diesel fuel, or
24 kerosene used to produce a qualified alcohol
25 mixture (as defined in section 4081(e)(3))” in



1 subparagraph (A) and inserting “a mixture de-
2 scribed in section 6426”,

3 (C) by adding at the end of subparagraph
4 (A) the following new flush sentence:

5 “In the case of an electronic claim, this sub-
6 paragraph shall be applied without regard to
7 clause (i).”,

8 (D) by striking “subsection (f)(1)” in sub-
9 paragraph (B) and inserting “subsection
10 (e)(1)”,

11 (E) by striking “20 days of the date of the
12 filing of such claim” in subparagraph (B) and
13 inserting “45 days of the date of the filing of
14 such claim (20 days in the case of an electronic
15 claim)”, and

16 (F) by striking “ALCOHOL MIXTURE” in
17 the heading and inserting “ALCOHOL FUEL AND
18 BIODIESEL MIXTURE”.

19 (11) Section 9503(b)(1) is amended by adding
20 at the end the following new flush sentence:

21 “For purposes of this paragraph, taxes received
22 under sections 4041 and 4081 shall be determined
23 without reduction for credits under section 6426.”.

24 (12) Section 9503(b)(4) is amended—



1 (A) by adding “or” at the end of subpara-
2 graph (C),

3 (B) by striking the comma at the end of
4 subparagraph (D)(iii) and inserting a period,
5 and

6 (C) by striking subparagraphs (E) and
7 (F).

8 (13) Section 9503(c)(2)(A) is amended by add-
9 ing at the end the following: “Clauses (i)(III) and
10 (ii) shall not apply to claims under section
11 6427(e).”.

12 (14) The table of sections for subchapter B of
13 chapter 65 is amended by inserting after the item
14 relating to section 6425 the following new item:

“Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.”.

15 (d) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as otherwise pro-
17 vided in this subsection, the amendments made by
18 this section shall apply to fuel sold or used after De-
19 cember 31, 2004.

20 (2) REGISTRATION REQUIREMENT.—The
21 amendment made by subsection (b) shall take effect
22 on April 1, 2005.

23 (3) EXTENSION OF ALCOHOL FUELS CREDIT.—
24 The amendments made by paragraphs (3), (4), and



1 (14) of subsection (c) shall take effect on the date
2 of the enactment of this Act.

3 (4) REPEAL OF GENERAL FUND RETENTION OF
4 CERTAIN ALCOHOL FUELS TAXES.—The amend-
5 ments made by subsection (c)(12) shall apply to fuel
6 sold or used after September 30, 2004.

7 (e) FORMAT FOR FILING.—The Secretary of the
8 Treasury shall describe the electronic format for filing
9 claims described in section 6427(i)(3)(B) of the Internal
10 Revenue Code of 1986 (as amended by subsection
11 (c)(10)(C)) not later than December 31, 2004.

12 **SEC. 302. BIODIESEL INCOME TAX CREDIT.**

13 (a) IN GENERAL.—Subpart D of part IV of sub-
14 chapter A of chapter 1 (relating to business related cred-
15 its) is amended by inserting after section 40 the following
16 new section:

17 **“SEC. 40A. BIODIESEL USED AS FUEL.**

18 “(a) GENERAL RULE.—For purposes of section 38,
19 the biodiesel fuels credit determined under this section for
20 the taxable year is an amount equal to the sum of—

21 “(1) the biodiesel mixture credit, plus

22 “(2) the biodiesel credit.

23 “(b) DEFINITION OF BIODIESEL MIXTURE CREDIT
24 AND BIODIESEL CREDIT.—For purposes of this section—

25 “(1) BIODIESEL MIXTURE CREDIT.—



1 “(A) IN GENERAL.—The biodiesel mixture
2 credit of any taxpayer for any taxable year is
3 50 cents for each gallon of biodiesel used by the
4 taxpayer in the production of a qualified bio-
5 diesel mixture.

6 “(B) QUALIFIED BIODIESEL MIXTURE.—
7 The term ‘qualified biodiesel mixture’ means a
8 mixture of biodiesel and diesel fuel (as defined
9 in section 4083(a)(3)), determined without re-
10 gard to any use of kerosene, which—

11 “(i) is sold by the taxpayer producing
12 such mixture to any person for use as a
13 fuel, or

14 “(ii) is used as a fuel by the taxpayer
15 producing such mixture.

16 “(C) SALE OR USE MUST BE IN TRADE OR
17 BUSINESS, ETC.—Biodiesel used in the produc-
18 tion of a qualified biodiesel mixture shall be
19 taken into account—

20 “(i) only if the sale or use described
21 in subparagraph (B) is in a trade or busi-
22 ness of the taxpayer, and

23 “(ii) for the taxable year in which
24 such sale or use occurs.



1 “(D) CASUAL OFF-FARM PRODUCTION NOT
2 ELIGIBLE.—No credit shall be allowed under
3 this section with respect to any casual off-farm
4 production of a qualified biodiesel mixture.

5 “(2) BIODIESEL CREDIT.—

6 “(A) IN GENERAL.—The biodiesel credit of
7 any taxpayer for any taxable year is 50 cents
8 for each gallon of biodiesel which is not in a
9 mixture with diesel fuel and which during the
10 taxable year—

11 “(i) is used by the taxpayer as a fuel
12 in a trade or business, or

13 “(ii) is sold by the taxpayer at retail
14 to a person and placed in the fuel tank of
15 such person’s vehicle.

16 “(B) USER CREDIT NOT TO APPLY TO BIO-
17 DIESEL SOLD AT RETAIL.—No credit shall be
18 allowed under subparagraph (A)(i) with respect
19 to any biodiesel which was sold in a retail sale
20 described in subparagraph (A)(ii).

21 “(3) CREDIT FOR AGRI-BIODIESEL.—In the
22 case of any biodiesel which is agri-biodiesel, para-
23 graphs (1)(A) and (2)(A) shall be applied by sub-
24 stituting ‘\$1.00’ for ‘50 cents’.



1 “(4) CERTIFICATION FOR BIODIESEL.—No
2 credit shall be allowed under this section unless the
3 taxpayer obtains a certification (in such form and
4 manner as prescribed by the Secretary) from the
5 producer or importer of the biodiesel which identifies
6 the product produced and the percentage of biodiesel
7 and agri-biodiesel in the product.

8 “(c) COORDINATION WITH CREDIT AGAINST EXCISE
9 TAX.—The amount of the credit determined under this
10 section with respect to any biodiesel shall be properly re-
11 duced to take into account any benefit provided with re-
12 spect to such biodiesel solely by reason of the application
13 of section 6426 or 6427(e).

14 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
15 poses of this section—

16 “(1) BIODIESEL.—The term ‘biodiesel’ means
17 the monoalkyl esters of long chain fatty acids de-
18 rived from plant or animal matter which meet—

19 “(A) the registration requirements for
20 fuels and fuel additives established by the Envi-
21 ronmental Protection Agency under section 211
22 of the Clean Air Act (42 U.S.C. 7545), and

23 “(B) the requirements of the American So-
24 ciety of Testing and Materials D6751.



1 “(2) AGRI-BIODIESEL.—The term ‘agri-bio-
2 diesel’ means biodiesel derived solely from virgin oils,
3 including esters derived from virgin vegetable oils
4 from corn, soybeans, sunflower seeds, cottonseeds,
5 canola, crambe, rapeseeds, safflowers, flaxseeds, rice
6 bran, and mustard seeds, and from animal fats.

7 “(3) MIXTURE OR BIODIESEL NOT USED AS A
8 FUEL, ETC.—

9 “(A) MIXTURES.—If—

10 “(i) any credit was determined under
11 this section with respect to biodiesel used
12 in the production of any qualified biodiesel
13 mixture, and

14 “(ii) any person—

15 “(I) separates the biodiesel from
16 the mixture, or

17 “(II) without separation, uses the
18 mixture other than as a fuel,

19 then there is hereby imposed on such person a
20 tax equal to the product of the rate applicable
21 under subsection (b)(1)(A) and the number of
22 gallons of such biodiesel in such mixture.

23 “(B) BIODIESEL.—If—



1 “(i) any credit was determined under
2 this section with respect to the retail sale
3 of any biodiesel, and

4 “(ii) any person mixes such biodiesel
5 or uses such biodiesel other than as a fuel,
6 then there is hereby imposed on such person a
7 tax equal to the product of the rate applicable
8 under subsection (b)(2)(A) and the number of
9 gallons of such biodiesel.

10 “(C) APPLICABLE LAWS.—All provisions of
11 law, including penalties, shall, insofar as appli-
12 cable and not inconsistent with this section,
13 apply in respect of any tax imposed under sub-
14 paragraph (A) or (B) as if such tax were im-
15 posed by section 4081 and not by this chapter.

16 “(4) PASS-THRU IN THE CASE OF ESTATES AND
17 TRUSTS.—Under regulations prescribed by the Sec-
18 retary, rules similar to the rules of subsection (d) of
19 section 52 shall apply.

20 “(e) TERMINATION.—This section shall not apply to
21 any sale or use after December 31, 2006.”.

22 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
23 NESS CREDIT.—Section 38(b) (relating to current year
24 business credit), as amended by this Act, is amended by
25 striking “plus” at the end of paragraph (15), by striking



1 the period at the end of paragraph (16) and inserting “,
2 plus”, and by inserting after paragraph (16) the following
3 new paragraph:

4 “(17) the biodiesel fuels credit determined
5 under section 40A(a).”.

6 (c) CONFORMING AMENDMENTS.—

7 (1)(A) Section 87 is amended to read as fol-
8 lows:

9 **“SEC. 87. ALCOHOL AND BIODIESEL FUELS CREDITS.**

10 “Gross income includes—

11 “(1) the amount of the alcohol fuel credit deter-
12 mined with respect to the taxpayer for the taxable
13 year under section 40(a), and

14 “(2) the biodiesel fuels credit determined with
15 respect to the taxpayer for the taxable year under
16 section 40A(a).”.

17 (B) The item relating to section 87 in the table
18 of sections for part II of subchapter B of chapter 1
19 is amended by striking “fuel credit” and inserting
20 “and biodiesel fuels credits”.

21 (2) Section 196(c) is amended by striking
22 “and” at the end of paragraph (9), by striking the
23 period at the end of paragraph (10) and inserting “,
24 and”, and by adding at the end the following new
25 paragraph:



1 “(11) the biodiesel fuels credit determined
2 under section 40A(a).”.

3 (3) The table of sections for subpart D of part
4 IV of subchapter A of chapter 1 is amended by add-
5 ing after the item relating to section 40 the fol-
6 lowing new item:

 “Sec. 40A. Biodiesel used as fuel.”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to fuel produced, and sold or used,
9 after December 31, 2004, in taxable years ending after
10 such date.

11 **SEC. 303. INFORMATION REPORTING FOR PERSONS CLAIM-**
12 **ING CERTAIN TAX BENEFITS.**

13 (a) IN GENERAL.—Subpart C of part III of sub-
14 chapter A of chapter 32 is amended by adding at the end
15 the following new section:

16 **“SEC. 4104. INFORMATION REPORTING FOR PERSONS**
17 **CLAIMING CERTAIN TAX BENEFITS.**

18 “(a) IN GENERAL.—The Secretary shall require any
19 person claiming tax benefits—

20 “(1) under the provisions of section 34, 40, and
21 40A, to file a return at the time such person claims
22 such benefits (in such manner as the Secretary may
23 prescribe), and



1 **Subtitle B—Agricultural Incentives**

2 **SEC. 311. SPECIAL RULES FOR LIVESTOCK SOLD ON AC-**
3 **COUNT OF WEATHER-RELATED CONDITIONS.**

4 (a) REPLACEMENT OF LIVESTOCK WITH OTHER
5 FARM PROPERTY.—Subsection (f) of section 1033 (relat-
6 ing to involuntary conversions) is amended—

7 (1) by inserting “drought, flood, or other
8 weather-related conditions, or” after “because of”,

9 (2) by inserting “in the case of soil contamina-
10 tion or other environmental contamination” after
11 “including real property”, and

12 (3) by striking “WHERE THERE HAS BEEN
13 ENVIRONMENTAL CONTAMINATION” in the heading
14 and inserting “IN CERTAIN CASES”.

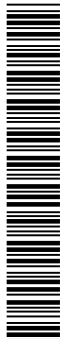
15 (b) EXTENSION OF REPLACEMENT PERIOD OF IN-
16 VOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e)
17 of section 1033 (relating to involuntary conversions) is
18 amended—

19 (1) by striking “CONDITIONS.—For purposes”
20 and inserting “CONDITIONS.—

21 “(1) IN GENERAL.—For purposes”, and

22 (2) by adding at the end the following new
23 paragraph:

24 “(2) EXTENSION OF REPLACEMENT PERIOD.—



1 “(A) IN GENERAL.—In the case of
2 drought, flood, or other weather-related condi-
3 tions described in paragraph (1) which result in
4 the area being designated as eligible for assist-
5 ance by the Federal Government, subsection
6 (a)(2)(B) shall be applied with respect to any
7 converted property by substituting ‘4 years’ for
8 ‘2 years’.

9 “(B) FURTHER EXTENSION BY SEC-
10 RETARY.—The Secretary may extend on a re-
11 gional basis the period for replacement under
12 this section (after the application of subpara-
13 graph (A)) for such additional time as the Sec-
14 retary determines appropriate if the weather-re-
15 lated conditions which resulted in such applica-
16 tion continue for more than 3 years.”.

17 (c) INCOME INCLUSION RULES.—Section 451(e) (re-
18 lating to special rule for proceeds from livestock sold on
19 account of drought, flood, or other weather-related condi-
20 tions) is amended by adding at the end the following new
21 paragraph:

22 “(3) SPECIAL ELECTION RULES.—If section
23 1033(e)(2) applies to a sale or exchange of livestock
24 described in paragraph (1), the election under para-



1 graph (1) shall be deemed valid if made during the
2 replacement period described in such section.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to any taxable year with respect
5 to which the due date (without regard to extensions) for
6 the return is after December 31, 2002.

7 **SEC. 312. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**
8 **TIVES WITHOUT REDUCING PATRONAGE**
9 **DIVIDENDS.**

10 (a) **IN GENERAL.**—Subsection (a) of section 1388
11 (relating to patronage dividend defined) is amended by
12 adding at the end the following: “For purposes of para-
13 graph (3), net earnings shall not be reduced by amounts
14 paid during the year as dividends on capital stock or other
15 proprietary capital interests of the organization to the ex-
16 tent that the articles of incorporation or bylaws of such
17 organization or other contract with patrons provide that
18 such dividends are in addition to amounts otherwise pay-
19 able to patrons which are derived from business done with
20 or for patrons during the taxable year.”.

21 (b) **EFFECTIVE DATE.**—The amendment made by
22 this section shall apply to distributions in taxable years
23 beginning after the date of the enactment of this Act.



1 **SEC. 313. APPORTIONMENT OF SMALL ETHANOL PRO-**
2 **DUCER CREDIT.**

3 (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO
4 PATRONS OF A COOPERATIVE.—Section 40(g) (relating to
5 definitions and special rules for eligible small ethanol pro-
6 ducer credit) is amended by adding at the end the fol-
7 lowing new paragraph:

8 “(6) ALLOCATION OF SMALL ETHANOL PRO-
9 DUCER CREDIT TO PATRONS OF COOPERATIVE.—

10 “(A) ELECTION TO ALLOCATE.—

11 “(i) IN GENERAL.—In the case of a
12 cooperative organization described in sec-
13 tion 1381(a), any portion of the credit de-
14 termined under subsection (a)(3) for the
15 taxable year may, at the election of the or-
16 ganization, be apportioned pro rata among
17 patrons of the organization on the basis of
18 the quantity or value of business done with
19 or for such patrons for the taxable year.

20 “(ii) FORM AND EFFECT OF ELEC-
21 TION.—An election under clause (i) for any
22 taxable year shall be made on a timely
23 filed return for such year. Such election,
24 once made, shall be irrevocable for such
25 taxable year.



1 “(B) TREATMENT OF ORGANIZATIONS AND
2 PATRONS.—

3 “(i) ORGANIZATIONS.—The amount of
4 the credit not apportioned to patrons pur-
5 suant to subparagraph (A) shall be in-
6 cluded in the amount determined under
7 subsection (a)(3) for the taxable year of
8 the organization.

9 “(ii) PATRONS.—The amount of the
10 credit apportioned to patrons pursuant to
11 subparagraph (A) shall be included in the
12 amount determined under such subsection
13 for the first taxable year of each patron
14 ending on or after the last day of the pay-
15 ment period (as defined in section
16 1382(d)) for the taxable year of the orga-
17 nization or, if earlier, for the taxable year
18 of each patron ending on or after the date
19 on which the patron receives notice from
20 the cooperative of the apportionment.

21 “(iii) SPECIAL RULES FOR DECREASE
22 IN CREDITS FOR TAXABLE YEAR.—If the
23 amount of the credit of the organization
24 determined under such subsection for a
25 taxable year is less than the amount of



1 such credit shown on the return of the or-
2 ganization for such year, an amount equal
3 to the excess of—
4 “(I) such reduction, over
5 “(ii) the amount not apportioned
6 to such patrons under subparagraph
7 (A) for the taxable year,
8 shall be treated as an increase in tax im-
9 posed by this chapter on the organization.
10 Such increase shall not be treated as tax
11 imposed by this chapter for purposes of de-
12 termining the amount of any credit under
13 this chapter or for purposes of section
14 55.”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to taxable years ending after the
17 date of the enactment of this Act.

18 **SEC. 314. COORDINATE FARMERS AND FISHERMEN INCOME**
19 **AVERAGING AND THE ALTERNATIVE MIN-**
20 **IMUM TAX.**

21 (a) IN GENERAL.—Section 55(c) (defining regular
22 tax) is amended by redesignating paragraph (2) as para-
23 graph (3) and by inserting after paragraph (1) the fol-
24 lowing new paragraph:



1 “(2) COORDINATION WITH INCOME AVERAGING
2 FOR FARMERS AND FISHERMEN.—Solely for pur-
3 poses of this section, section 1301 (relating to aver-
4 aging of farm and fishing income) shall not apply in
5 computing the regular tax.”.

6 (b) ALLOWING INCOME AVERAGING FOR FISHER-
7 MEN.—

8 (1) IN GENERAL.—Section 1301(a) is amended
9 by striking “farming business” and inserting “farm-
10 ing business or fishing business”.

11 (2) DEFINITION OF ELECTED FARM INCOME.—

12 (A) IN GENERAL.—Clause (i) of section
13 1301(b)(1)(A) is amended by inserting “or fish-
14 ing business” before the semicolon.

15 (B) CONFORMING AMENDMENT.—Subpara-
16 graph (B) of section 1301(b)(1) is amended by
17 inserting “or fishing business” after “farming
18 business” both places it occurs.

19 (3) DEFINITION OF FISHING BUSINESS.—Sec-
20 tion 1301(b) is amended by adding at the end the
21 following new paragraph:

22 “(4) FISHING BUSINESS.—The term ‘fishing
23 business’ means the conduct of commercial fishing
24 as defined in section 3 of the Magnuson-Stevens



1 Fishery Conservation and Management Act (16
2 U.S.C. 1802).”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2003.

6 **SEC. 315. CAPITAL GAIN TREATMENT UNDER SECTION**
7 **631(b) TO APPLY TO OUTRIGHT SALES BY**
8 **LANDOWNERS.**

9 (a) IN GENERAL.—The first sentence of section
10 631(b) (relating to disposal of timber with a retained eco-
11 nomic interest) is amended by striking “retains an eco-
12 nomic interest in such timber” and inserting “either re-
13 tains an economic interest in such timber or makes an
14 outright sale of such timber”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) The third sentence of section 631(b) is
17 amended by striking “The date of disposal” and in-
18 serting “In the case of disposal of timber with a re-
19 tained economic interest, the date of disposal”.

20 (2) The heading for section 631(b) is amended
21 by striking “WITH A RETAINED ECONOMIC INTER-
22 EST”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to sales after December 31, 2004.



1 **SEC. 316. MODIFICATION TO COOPERATIVE MARKETING**
2 **RULES TO INCLUDE VALUE ADDED PROC-**
3 **ESSING INVOLVING ANIMALS.**

4 (a) IN GENERAL.—Section 1388 (relating to defini-
5 tions and special rules) is amended by adding at the end
6 the following new subsection:

7 “(k) COOPERATIVE MARKETING INCLUDES VALUE-
8 ADDED PROCESSING INVOLVING ANIMALS.—For pur-
9 poses of section 521 and this subchapter, the marketing
10 of the products of members or other producers shall in-
11 clude the feeding of such products to cattle, hogs, fish,
12 chickens, or other animals and the sale of the resulting
13 animals or animal products.”.

14 (b) CONFORMING AMENDMENT.—Section 521(b) is
15 amended by adding at the end the following new para-
16 graph:

17 “(7) CROSS REFERENCE.—

**“For treatment of value-added processing involv-
ing animals, see section 1388(k).”.**

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 the date of the enactment of this Act.



1 **SEC. 317. EXTENSION OF DECLARATORY JUDGMENT PRO-**
2 **CEDURES TO FARMERS' COOPERATIVE ORGA-**
3 **NIZATIONS.**

4 (a) IN GENERAL.—Section 7428(a)(1) (relating to
5 declaratory judgments of tax exempt organizations) is
6 amended by striking “or” at the end of subparagraph (B)
7 and by adding at the end the following new subparagraph:

8 “(D) with respect to the initial classifica-
9 tion or continuing classification of a cooperative
10 as an organization described in section 521(b)
11 which is exempt from tax under section 521(a),
12 or”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply with respect to pleadings filed after
15 the date of the enactment of this Act.

16 **SEC. 318. CERTAIN EXPENSES OF RURAL LETTER CAR-**
17 **RIERS.**

18 (a) IN GENERAL.—Section 162(o) (relating to treat-
19 ment of certain reimbursed expenses of rural mail car-
20 riers) is amended by redesignating paragraph (2) as para-
21 graph (3) and by inserting after paragraph (1) the fol-
22 lowing:

23 “(2) SPECIAL RULE WHERE EXPENSES EXCEED
24 REIMBURSEMENTS.—Notwithstanding paragraph
25 (1)(A), if the expenses incurred by an employee for
26 the use of a vehicle in performing services described



1 in paragraph (1) exceed the qualified reimburse-
2 ments for such expenses, such excess shall be taken
3 into account in computing the miscellaneous
4 itemized deductions of the employee under section
5 67.”.

6 (b) CONFORMING AMENDMENT.—The heading for
7 section 162(o) is amended by striking “REIMBURSED”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 2003.

11 **SEC. 319. TREATMENT OF CERTAIN INCOME OF COOPERA-**
12 **TIVES.**

13 (a) INCOME FROM OPEN ACCESS AND NUCLEAR DE-
14 COMMISSIONING TRANSACTIONS.—

15 (1) IN GENERAL.—Subparagraph (C) of section
16 501(c)(12) is amended by striking clause (ii) and
17 adding at the end the following:

18 “(ii) from any provision or sale of
19 electric energy transmission services or an-
20 cillary services if such services are provided
21 on a nondiscriminatory open access basis
22 under an open access transmission tariff
23 approved or accepted by FERC or under
24 an independent transmission provider
25 agreement approved or accepted by FERC



1 (other than income received or accrued di-
2 rectly or indirectly from a member),

3 “(iii) from the provision or sale of
4 electric energy distribution services or an-
5 cillary services if such services are provided
6 on a nondiscriminatory open access basis
7 to distribute electric energy not owned by
8 the mutual or electric cooperative
9 company—

10 “(I) to end-users who are served
11 by distribution facilities not owned by
12 such company or any of its members
13 (other than income received or ac-
14 crued directly or indirectly from a
15 member), or

16 “(II) generated by a generation
17 facility not owned or leased by such
18 company or any of its members and
19 which is directly connected to dis-
20 tribution facilities owned by such com-
21 pany or any of its members (other
22 than income received or accrued di-
23 rectly or indirectly from a member),

24 “(iv) from any nuclear decommis-
25 sioning transaction, or



1 “(v) from any asset exchange or con-
2 version transaction.

3 Clauses (ii) through (v) shall not apply to tax-
4 able years beginning after December 31,
5 2006.”.

6 (2) DEFINITIONS AND SPECIAL RULES.—Para-
7 graph (12) of section 501(e) is amended by adding
8 at the end the following new subparagraphs:

9 “(E) For purposes of subparagraph (C)(ii),
10 the term ‘FERC’ means the Federal Energy
11 Regulatory Commission and references to such
12 term shall be treated as including the Public
13 Utility Commission of Texas with respect to
14 any ERCOT utility (as defined in section
15 212(k)(2)(B) of the Federal Power Act (16
16 U.S.C. 824k(k)(2)(B))).

17 “(F) For purposes of subparagraph
18 (C)(iii), the term ‘nuclear decommissioning
19 transaction’ means—

20 “(i) any transfer into a trust, fund, or
21 instrument established to pay any nuclear
22 decommissioning costs if the transfer is in
23 connection with the transfer of the mutual
24 or cooperative electric company’s interest



1 in a nuclear power plant or nuclear power
2 plant unit,

3 “(ii) any distribution from any trust,
4 fund, or instrument established to pay any
5 nuclear decommissioning costs, or

6 “(iii) any earnings from any trust,
7 fund, or instrument established to pay any
8 nuclear decommissioning costs.

9 “(G) For purposes of subparagraph
10 (C)(iv), the term ‘asset exchange or conversion
11 transaction’ means any voluntary exchange or
12 involuntary conversion of any property related
13 to generating, transmitting, distributing, or sell-
14 ing electric energy by a mutual or cooperative
15 electric company, the gain from which qualifies
16 for deferred recognition under section 1031 or
17 1033, but only if the replacement property ac-
18 quired by such company pursuant to such sec-
19 tion constitutes property which is used, or to be
20 used, for—

21 “(i) generating, transmitting, distrib-
22 uting, or selling electric energy, or

23 “(ii) producing, transmitting, distrib-
24 uting, or selling natural gas.”.



1 (b) TREATMENT OF INCOME FROM LOAD LOSS
2 TRANSACTIONS, ETC.—Paragraph (12) of section 501(c),
3 as amended by subsection (a)(2), is amended by adding
4 after subparagraph (G) the following new subparagraph:

5 “(H)(i) In the case of a mutual or coopera-
6 tive electric company described in this para-
7 graph or an organization described in section
8 1381(a)(2)(C), income received or accrued from
9 a load loss transaction shall be treated as an
10 amount collected from members for the sole
11 purpose of meeting losses and expenses.

12 “(ii) For purposes of clause (i), the term
13 ‘load loss transaction’ means any wholesale or
14 retail sale of electric energy (other than to
15 members) to the extent that the aggregate sales
16 during the recovery period do not exceed the
17 load loss mitigation sales limit for such period.

18 “(iii) For purposes of clause (ii), the load
19 loss mitigation sales limit for the recovery pe-
20 riod is the sum of the annual load losses for
21 each year of such period.

22 “(iv) For purposes of clause (iii), a mutual
23 or cooperative electric company’s annual load
24 loss for each year of the recovery period is the
25 amount (if any) by which—



1 “(I) the megawatt hours of electric
2 energy sold during such year to members
3 of such electric company are less than

4 “(II) the megawatt hours of electric
5 energy sold during the base year to such
6 members.

7 “(v) For purposes of clause (iv)(II), the
8 term ‘base year’ means—

9 “(I) the calendar year preceding the
10 start-up year, or

11 “(II) at the election of the mutual or
12 cooperative electric company, the second or
13 third calendar years preceding the start-up
14 year.

15 “(vi) For purposes of this subparagraph,
16 the recovery period is the 7-year period begin-
17 ning with the start-up year.

18 “(vii) For purposes of this subparagraph,
19 the start-up year is the first year that the mu-
20 tual or cooperative electric company offers non-
21 discriminatory open access or the calendar year
22 which includes the date of the enactment of this
23 subparagraph, if later, at the election of such
24 company.



1 “(viii) A company shall not fail to be treat-
2 ed as a mutual or cooperative electric company
3 for purposes of this paragraph or as a corpora-
4 tion operating on a cooperative basis for pur-
5 poses of section 1381(a)(2)(C) by reason of the
6 treatment under clause (i).

7 “(ix) For purposes of subparagraph (A), in
8 the case of a mutual or cooperative electric
9 company, income received, or accrued, indirectly
10 from a member shall be treated as an amount
11 collected from members for the sole purpose of
12 meeting losses and expenses.

13 “(x) This subparagraph shall not apply to
14 taxable years beginning after December 31,
15 2006.”.

16 (c) EXCEPTION FROM UNRELATED BUSINESS TAX-
17 ABLE INCOME.—Subsection (b) of section 512 (relating to
18 modifications) is amended by adding at the end the fol-
19 lowing new paragraph:

20 “(18) TREATMENT OF MUTUAL OR COOPERA-
21 TIVE ELECTRIC COMPANIES.—In the case of a mu-
22 tual or cooperative electric company described in sec-
23 tion 501(c)(12), there shall be excluded income
24 which is treated as member income under subpara-
25 graph (H) thereof.”.



1 (d) CROSS REFERENCE.—Section 1381 is amended
2 by adding at the end the following new subsection:

3 “(c) CROSS REFERENCE.—

“For treatment of income from load loss trans-
actions of organizations described in subsection
(a)(2)(C), see section 501(c)(12)(H).”.

4 (e) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years beginning after
6 the date of the enactment of this Act.

7 **SEC. 320. EXCLUSION FOR PAYMENTS TO INDIVIDUALS**
8 **UNDER NATIONAL HEALTH SERVICE CORPS**
9 **LOAN REPAYMENT PROGRAM AND CERTAIN**
10 **STATE LOAN REPAYMENT PROGRAMS.**

11 (a) IN GENERAL.—Section 108(f) (relating to stu-
12 dent loans) is amended by adding at the end the following
13 new paragraph:

14 “(4) PAYMENTS UNDER NATIONAL HEALTH
15 SERVICE CORPS LOAN REPAYMENT PROGRAM AND
16 CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In
17 the case of an individual, gross income shall not in-
18 clude any amount received under section 338B(g) of
19 the Public Health Service Act or under a State pro-
20 gram described in section 338I of such Act.”.

21 (b) TREATMENT FOR PURPOSES OF EMPLOYMENT
22 TAXES.—Each of the following provisions is amended by
23 inserting “108(f)(4),” after “74(c),”:

24 (1) Section 3121(a)(20).



1 (2) Section 3231(e)(5).

2 (3) Section 3306(b)(16).

3 (4) Section 3401(a)(19).

4 (5) Section 209(a)(17) of the Social Security
5 Act.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to amounts received by an indi-
8 vidual in taxable years beginning after December 31,
9 2003.

10 **SEC. 321. MODIFICATION OF SAFE HARBOR RULES FOR**
11 **TIMBER REITS.**

12 (a) EXPANSION OF PROHIBITED TRANSACTION SAFE
13 HARBOR.—Section 857(b)(6) (relating to income from
14 prohibited transactions) is amended by redesignating sub-
15 paragraphs (D) and (E) as subparagraphs (E) and (F),
16 respectively, and by inserting after subparagraph (C) the
17 following new subparagraph:

18 “(D) CERTAIN SALES NOT TO CONSTITUTE
19 PROHIBITED TRANSACTIONS.—For purposes of
20 this part, the term ‘prohibited transaction’ does
21 not include a sale of property which is a real es-
22 tate asset (as defined in section 856(c)(5)(B))
23 if—



1 “(i) the trust held the property for
2 not less than 4 years in connection with
3 the trade or business of producing timber,

4 “(ii) the aggregate expenditures made
5 by the trust, or a partner of the trust, dur-
6 ing the 4-year period preceding the date of
7 sale which—

8 “(I) are includible in the basis of
9 the property (other than timberland
10 acquisition expenditures), and

11 “(II) are directly related to oper-
12 ation of the property for the produc-
13 tion of timber or for the preservation
14 of the property for use as timberland,
15 do not exceed 30 percent of the net selling
16 price of the property,

17 “(iii) the aggregate expenditures made
18 by the trust, or a partner of the trust, dur-
19 ing the 4-year period preceding the date of
20 sale which—

21 “(I) are includible in the basis of
22 the property (other than timberland
23 acquisition expenditures), and

24 “(II) are not directly related to
25 operation of the property for the pro-



1 duction of timber, or for the preserva-
2 tion of the property for use as
3 timberland,
4 do not exceed 5 percent of the net selling
5 price of the property,

6 “(iv)(I) during the taxable year the
7 trust does not make more than 7 sales of
8 property (other than sales of foreclosure
9 property or sales to which section 1033 ap-
10 plies), or

11 “(II) the aggregate adjusted bases (as
12 determined for purposes of computing
13 earnings and profits) of property (other
14 than sales of foreclosure property or sales
15 to which section 1033 applies) sold during
16 the taxable year does not exceed 10 per-
17 cent of the aggregate bases (as so deter-
18 mined) of all of the assets of the trust as
19 of the beginning of the taxable year,

20 “(v) in the case that the requirement
21 of clause (iv)(I) is not satisfied, substan-
22 tially all of the marketing expenditures
23 with respect to the property were made
24 through an independent contractor (as de-
25 fined in section 856(d)(3)) from whom the



1 trust itself does not derive or receive any
2 income, and

3 “(vi) the sales price of the property
4 sold by the trust is not based in whole or
5 in part on income or profits, including in-
6 come or profits derived from the sale or
7 operation of such property.”.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to taxable years beginning after
10 the date of the enactment of this Act.

11 **SEC. 322. EXPENSING OF CERTAIN REFORESTATION EX-**
12 **PENDITURES.**

13 (a) **IN GENERAL.**—So much of subsection (b) of sec-
14 tion 194 (relating to amortization of reforestation expendi-
15 tures) as precedes paragraph (2) is amended to read as
16 follows:

17 “(b) **TREATMENT AS EXPENSES.**—

18 “(1) **ELECTION TO TREAT CERTAIN REFOREST-**
19 **ATION EXPENDITURES AS EXPENSES.**—

20 “(A) **IN GENERAL.**—In the case of any
21 qualified timber property with respect to which
22 the taxpayer has made (in accordance with reg-
23 ulations prescribed by the Secretary) an election
24 under this subsection, the taxpayer shall treat
25 reforestation expenditures which are paid or in-



1 curred during the taxable year with respect to
2 such property as an expense which is not
3 chargeable to capital account. The reforestation
4 expenditures so treated shall be allowed as a de-
5 duction.

6 “(B) DOLLAR LIMITATION.—The aggre-
7 gate amount of reforestation expenditures which
8 may be taken into account under subparagraph
9 (A) with respect to each qualified timber prop-
10 erty for any taxable year shall not exceed
11 \$10,000 (\$5,000 in the case of a separate re-
12 turn by a married individual (as defined in sec-
13 tion 7703)).”.

14 (b) NET AMORTIZABLE BASIS.—Section 194(c)(2)
15 (defining amortizable basis) is amended by inserting
16 “which have not been taken into account under subsection
17 (b)” after “expenditures”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) Section 194(b) is amended by striking para-
20 graphs (3) and (4).

21 (2) Section 194(b)(2) is amended by striking
22 “paragraph (1)” both places it appears and inserting
23 “paragraph (1)(B)”.



1 (3) Section 194(e) is amended by striking para-
2 graph (4) and inserting the following new para-
3 graphs:

4 “(4) TREATMENT OF TRUSTS AND ESTATES.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), this section shall not apply
7 to trusts and estates.

8 “(B) AMORTIZATION DEDUCTION AL-
9 LOWED TO ESTATES.—The benefit of the de-
10 duction for amortization provided by subsection
11 (a) shall be allowed to estates in the same man-
12 ner as in the case of an individual. The allow-
13 able deduction shall be apportioned between the
14 income beneficiary and the fiduciary under reg-
15 ulations prescribed by the Secretary. Any
16 amount so apportioned to a beneficiary shall be
17 taken into account for purposes of determining
18 the amount allowable as a deduction under sub-
19 section (a) to such beneficiary.

20 “(5) APPLICATION WITH OTHER DEDUC-
21 TIONS.—No deduction shall be allowed under any
22 other provision of this chapter with respect to any
23 expenditure with respect to which a deduction is al-
24 lowed or allowable under this section to the tax-
25 payer.”.



1 (4) The heading for section 194 is amended by
2 striking “**AMORTIZATION**” and inserting “**TREAT-**
3 **MENT**”.

4 (5) The item relating to section 194 in the table
5 of sections for part VI of subchapter B of chapter
6 1 is amended by striking “Amortization” and insert-
7 ing “Treatment”.

8 (d) REPEAL OF REFORESTATION CREDIT.—

9 (1) IN GENERAL.—Section 46 (relating to
10 amount of credit) is amended—

11 (A) by adding “and” at the end of para-
12 graph (1),

13 (B) by striking “, and” at the end of para-
14 graph (2) and inserting a period, and

15 (C) by striking paragraph (3).

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 48 is amended—

18 (i) by striking subsection (b),

19 (ii) by striking “this subsection” in
20 paragraph (5) of subsection (a) and insert-
21 ing “subsection (a)”, and

22 (iii) by redesignating such paragraph
23 (5) as subsection (b).

24 (B) The heading for section 48 is amended
25 by striking “; **REFORESTATION CREDIT**”.



1 (C) The item relating to section 48 in the
2 table of sections for subpart E of part IV of
3 subchapter A of chapter 1 is amended by strik-
4 ing “, reforestation credit”.

5 (D) Section 50(c)(3) is amended by strik-
6 ing “or reforestation credit”.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply with respect to expenditures paid
9 or incurred after the date of the enactment of this Act.

10 **Subtitle C—Incentives for Small**
11 **Manufacturers**

12 **SEC. 331. NET INCOME FROM PUBLICLY TRADED PARTNER-**
13 **SHIPS TREATED AS QUALIFYING INCOME OF**
14 **REGULATED INVESTMENT COMPANIES.**

15 (a) IN GENERAL.—Paragraph (2) of section 851(b)
16 (defining regulated investment company) is amended to
17 read as follows:

18 “(2) at least 90 percent of its gross income is
19 derived from—

20 “(A) dividends, interest, payments with re-
21 spect to securities loans (as defined in section
22 512(a)(5)), and gains from the sale or other
23 disposition of stock or securities (as defined in
24 section 2(a)(36) of the Investment Company
25 Act of 1940, as amended) or foreign currencies,



1 or other income (including but not limited to
2 gains from options, futures or forward con-
3 tracts) derived with respect to its business of
4 investing in such stock, securities, or currencies,
5 and

6 “(B) net income derived from an interest
7 in a qualified publicly traded partnership (as
8 defined in subsection (h)); and”.

9 (b) SOURCE FLOW-THROUGH RULE NOT TO
10 APPLY.—The last sentence of section 851(b) is amended
11 by inserting “(other than a qualified publicly traded part-
12 nership as defined in subsection (h))” after “derived from
13 a partnership”.

14 (c) LIMITATION ON OWNERSHIP.—Subsection (c) of
15 section 851 is amended by redesignating paragraph (5)
16 as paragraph (6) and inserting after paragraph (4) the
17 following new paragraph:

18 “(5) The term ‘outstanding voting securities of
19 such issuer’ shall include the equity securities of a
20 qualified publicly traded partnership (as defined in
21 subsection (h)).”.

22 (d) DEFINITION OF QUALIFIED PUBLICLY TRADED
23 PARTNERSHIP.—Section 851 is amended by adding at the
24 end the following new subsection:



1 “(h) QUALIFIED PUBLICLY TRADED PARTNER-
2 SHIP.—For purposes of this section, the term ‘qualified
3 publicly traded partnership’ means a publicly traded part-
4 nership described in section 7704(b) other than a partner-
5 ship which would satisfy the gross income requirements
6 of section 7704(c)(2) if qualifying income included only
7 income described in subsection (b)(2)(A).”.

8 (e) DEFINITION OF QUALIFYING INCOME.—Section
9 7704(d)(4) is amended by striking “section 851(b)(2)”
10 and inserting “section 851(b)(2)(A)”.

11 (f) LIMITATION ON COMPOSITION OF ASSETS.—Sub-
12 paragraph (B) of section 851(b)(3) is amended to read
13 as follows:

14 “(B) not more than 25 percent of the
15 value of its total assets is invested in—

16 “(i) the securities (other than Govern-
17 ment securities or the securities of other
18 regulated investment companies) of any
19 one issuer,

20 “(ii) the securities (other than the se-
21 curities of other regulated investment com-
22 panies) of two or more issuers which the
23 taxpayer controls and which are deter-
24 mined, under regulations prescribed by the
25 Secretary, to be engaged in the same or



1 similar trades or businesses or related
2 trades or businesses, or

3 “(iii) the securities of one or more
4 qualified publicly traded partnerships (as
5 defined in subsection (h)).”.

6 (g) APPLICATION OF SPECIAL PASSIVE ACTIVITY
7 RULE TO REGULATED INVESTMENT COMPANIES.—Sub-
8 section (k) of section 469 (relating to separate application
9 of section in case of publicly traded partnerships) is
10 amended by adding at the end the following new para-
11 graph:

12 “(4) APPLICATION TO REGULATED INVEST-
13 MENT COMPANIES.—For purposes of this section, a
14 regulated investment company (as defined in section
15 851) holding an interest in a qualified publicly trad-
16 ed partnership (as defined in section 851(h)) shall
17 be treated as a taxpayer described in subsection
18 (a)(2) with respect to items attributable to such in-
19 terest.”.

20 (h) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years beginning after
22 the date of the enactment of this Act.



1 **SEC. 332. SIMPLIFICATION OF EXCISE TAX IMPOSED ON**
2 **BOWS AND ARROWS.**

3 (a) BOWS.—Paragraph (1) of section 4161(b) (relat-
4 ing to bows) is amended to read as follows:

5 “(1) BOWS.—

6 “(A) IN GENERAL.—There is hereby im-
7 posed on the sale by the manufacturer, pro-
8 ducer, or importer of any bow which has a peak
9 draw weight of 30 pounds or more, a tax equal
10 to 11 percent of the price for which so sold.

11 “(B) ARCHERY EQUIPMENT.—There is
12 hereby imposed on the sale by the manufac-
13 turer, producer, or importer—

14 “(i) of any part or accessory suitable
15 for inclusion in or attachment to a bow de-
16 scribed in subparagraph (A), and

17 “(ii) of any quiver or broadhead suit-
18 able for use with an arrow described in
19 paragraph (2),

20 a tax equal to 11 percent of the price for which
21 so sold.”.

22 (b) ARROWS.—Subsection (b) of section 4161 (relat-
23 ing to bows and arrows, etc.) is amended by redesignating
24 paragraph (3) as paragraph (4) and inserting after para-
25 graph (2) the following:

26 “(3) ARROWS.—



1 “(A) IN GENERAL.—There is hereby im-
2 posed on the sale by the manufacturer, pro-
3 ducer, or importer of any arrow, a tax equal to
4 12 percent of the price for which so sold.

5 “(B) EXCEPTION.—In the case of any
6 arrow of which the shaft or any other compo-
7 nent has been previously taxed under paragraph
8 (1) or (2)—

9 “(i) section 6416(b)(3) shall not
10 apply, and

11 “(ii) the tax imposed by subparagraph
12 (A) shall be an amount equal to the excess
13 (if any) of—

14 “(I) the amount of tax imposed
15 by this paragraph (determined with-
16 out regard to this subparagraph), over

17 “(II) the amount of tax paid with
18 respect to the tax imposed under
19 paragraph (1) or (2) on such shaft or
20 component.

21 “(C) ARROW.—For purposes of this para-
22 graph, the term ‘arrow’ means any shaft de-
23 scribed in paragraph (2) to which additional
24 components are attached.”.



1 (c) CONFORMING AMENDMENTS.—Section
2 4161(b)(2) is amended—

3 (1) by inserting “(other than broadheads)”
4 after “point”, and

5 (2) by striking “ARROWS.—” in the heading
6 and inserting “ARROW COMPONENTS.—”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to articles sold by the manufac-
9 turer, producer, or importer after the date which is 30
10 days after the date of the enactment of this Act.

11 **SEC. 333. REDUCTION OF EXCISE TAX ON FISHING TACKLE**
12 **BOXES.**

13 (a) IN GENERAL.—Subsection (a) of section 4161
14 (relating to sport fishing equipment) is amended by redes-
15 ignating paragraph (3) as paragraph (4) and by inserting
16 after paragraph (2) the following new paragraph:

17 “(3) 3 PERCENT RATE OF TAX FOR TACKLE
18 BOXES.—In the case of fishing tackle boxes, para-
19 graph (1) shall be applied by substituting ‘3 percent’
20 for ‘10 percent’.”.

21 (b) EFFECTIVE DATE.—The amendments made this
22 section shall apply to articles sold by the manufacturer,
23 producer, or importer after December 31, 2004.



1 **SEC. 334. SONAR DEVICES SUITABLE FOR FINDING FISH.**

2 (a) NOT TREATED AS SPORT FISHING EQUIP-
3 MENT.—Subsection (a) of section 4162 (relating to sport
4 fishing equipment defined) is amended by inserting “and”
5 at the end of paragraph (8), by striking “, and” at the
6 end of paragraph (9) and inserting a period, and by strik-
7 ing paragraph (10).

8 (b) CONFORMING AMENDMENT.—Section 4162 is
9 amended by striking subsection (b) and by redesignating
10 subsection (c) as subsection (b).

11 (c) EFFECTIVE DATE.—The amendments made this
12 section shall apply to articles sold by the manufacturer,
13 producer, or importer after December 31, 2004.

14 **SEC. 335. CHARITABLE CONTRIBUTION DEDUCTION FOR**
15 **CERTAIN EXPENSES INCURRED IN SUPPORT**
16 **OF NATIVE ALASKAN SUBSISTENCE WHAL-**
17 **ING.**

18 (a) IN GENERAL.—Section 170 (relating to chari-
19 table, etc., contributions and gifts), as amended by this
20 Act, is amended by redesignating subsection (n) as sub-
21 section (o) and by inserting after subsection (m) the fol-
22 lowing new subsection:

23 “(n) EXPENSES PAID BY CERTAIN WHALING CAP-
24 TAINS IN SUPPORT OF NATIVE ALASKAN SUBSISTENCE
25 WHALING.—



1 “(1) IN GENERAL.—In the case of an individual
2 who is recognized by the Alaska Eskimo Whaling
3 Commission as a whaling captain charged with the
4 responsibility of maintaining and carrying out sanc-
5 tioned whaling activities and who engages in such
6 activities during the taxable year, the amount de-
7 scribed in paragraph (2) (to the extent such amount
8 does not exceed \$10,000 for the taxable year) shall
9 be treated for purposes of this section as a chari-
10 table contribution.

11 “(2) AMOUNT DESCRIBED.—

12 “(A) IN GENERAL.—The amount described
13 in this paragraph is the aggregate of the rea-
14 sonable and necessary whaling expenses paid by
15 the taxpayer during the taxable year in carrying
16 out sanctioned whaling activities.

17 “(B) WHALING EXPENSES.—For purposes
18 of subparagraph (A), the term ‘whaling ex-
19 penses’ includes expenses for—

20 “(i) the acquisition and maintenance
21 of whaling boats, weapons, and gear used
22 in sanctioned whaling activities,

23 “(ii) the supplying of food for the
24 crew and other provisions for carrying out
25 such activities, and



1 “(iii) storage and distribution of the
2 catch from such activities.

3 “(3) SANCTIONED WHALING ACTIVITIES.—For
4 purposes of this subsection, the term ‘sanctioned
5 whaling activities’ means subsistence bowhead whale
6 hunting activities conducted pursuant to the man-
7 agement plan of the Alaska Eskimo Whaling Com-
8 mission.

9 “(4) SUBSTANTIATION OF EXPENSES.—The
10 Secretary shall issue guidance requiring that the
11 taxpayer substantiate the whaling expenses for
12 which a deduction is claimed under this subsection,
13 including by maintaining appropriate written records
14 with respect to the time, place, date, amount, and
15 nature of the expense, as well as the taxpayer’s eligi-
16 bility for such deduction, and that (to the extent
17 provided by the Secretary) such substantiation be
18 provided as part of the taxpayer’s return of tax.”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 subsection (a) shall apply to contributions made after De-
21 cember 31, 2004.

22 **SEC. 336. MODIFICATION OF DEPRECIATION ALLOWANCE**
23 **FOR AIRCRAFT.**

24 (a) AIRCRAFT TREATED AS QUALIFIED PROP-
25 PERTY.—



1 (1) IN GENERAL.—Paragraph (2) of section
2 168(k) is amended by redesignating subparagraphs
3 (C) through (F) as subparagraphs (D) through (G),
4 respectively, and by inserting after subparagraph
5 (B) the following new subparagraph:

6 “(C) CERTAIN AIRCRAFT.—The term
7 ‘qualified property’ includes property—

8 “(i) which meets the requirements of
9 clauses (ii) and (iii) of subparagraph (A),

10 “(ii) which is an aircraft which is not
11 a transportation property (as defined in
12 subparagraph (B)(iii)) other than for agri-
13 cultural or firefighting purposes,

14 “(iii) which is purchased and on which
15 such purchaser, at the time of the contract
16 for purchase, has made a nonrefundable
17 deposit of the lesser of—

18 “(I) 10 percent of the cost, or

19 “(II) \$100,000, and

20 “(iv) which has—

21 “(I) an estimated production pe-
22 riod exceeding 4 months, and

23 “(II) a cost exceeding
24 \$200,000.”.



1 (2) PLACED IN SERVICE DATE.—Clause (iv) of
2 section 168(k)(2)(A) is amended by striking “sub-
3 paragraph (B)” and inserting “subparagraphs (B)
4 and (C)”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Section 168(k)(2)(B) is amended by adding
7 at the end the following new clause:

8 “(iv) APPLICATION OF SUBPARA-
9 GRAPH.—This subparagraph shall not
10 apply to any property which is described in
11 subparagraph (C).”.

12 (2) Section 168(k)(4)(A)(ii) is amended by
13 striking “paragraph (2)(C)” and inserting “para-
14 graph (2)(D)”.

15 (3) Section 168(k)(4)(B)(iii) is amended by in-
16 serting “and paragraph (2)(C)” after “of this para-
17 graph)”.

18 (4) Section 168(k)(4)(C) is amended by striking
19 “subparagraphs (B) and (D)” and inserting “sub-
20 paragraphs (B), (C), and (E)”.

21 (5) Section 168(k)(4)(D) is amended by strik-
22 ing “Paragraph (2)(E)” and inserting “Paragraph
23 (2)(F)”.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall take effect as if included in the amend-



1 ments made by section 101 of the Job Creation and Work-
2 er Assistance Act of 2002.

3 **SEC. 337. MODIFICATION OF PLACED IN SERVICE RULE**
4 **FOR BONUS DEPRECIATION PROPERTY.**

5 (a) IN GENERAL.—Subclause (II) of section
6 168(k)(2)(E)(iii) (relating to syndication), as amended by
7 the Working Families Tax Relief Act of 2004 and as re-
8 designated by this Act, is amended by inserting before the
9 comma at the end the following: “(or, in the case of mul-
10 tiple units of property subject to the same lease, within
11 3 months after the date the final unit is placed in service,
12 so long as the period between the time the first unit is
13 placed in service and the time the last unit is placed in
14 service does not exceed 12 months)”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to property sold after June 4,
17 2004.

18 **SEC. 338. EXPENSING OF CAPITAL COSTS INCURRED IN**
19 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
20 **TION AGENCY SULFUR REGULATIONS.**

21 (a) IN GENERAL.—Part VI of subchapter B of chap-
22 ter 1 (relating to itemized deductions for individuals and
23 corporations) is amended by inserting after section 179A
24 the following new section:



1 **“SEC. 179B. DEDUCTION FOR CAPITAL COSTS INCURRED IN**
2 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
3 **TION AGENCY SULFUR REGULATIONS.**

4 “(a) ALLOWANCE OF DEDUCTION.—In the case of a
5 small business refiner (as defined in section 45H(c)(1))
6 which elects the application of this section, there shall be
7 allowed as a deduction an amount equal to 75 percent of
8 qualified capital costs (as defined in section 45H(c)(2))
9 which are paid or incurred by the taxpayer during the tax-
10 able year.

11 “(b) REDUCED PERCENTAGE.—In the case of a small
12 business refiner with average daily domestic refinery runs
13 for the 1-year period ending on December 31, 2002, in
14 excess of 155,000 barrels, the number of percentage
15 points described in subsection (a) shall be reduced (not
16 below zero) by the product of such number (before the
17 application of this subsection) and the ratio of such excess
18 to 50,000 barrels.

19 “(c) BASIS REDUCTION.—

20 “(1) IN GENERAL.—For purposes of this title,
21 the basis of any property shall be reduced by the
22 portion of the cost of such property taken into ac-
23 count under subsection (a).

24 “(2) ORDINARY INCOME RECAPTURE.—For
25 purposes of section 1245, the amount of the deduc-
26 tion allowable under subsection (a) with respect to



1 any property which is of a character subject to the
2 allowance for depreciation shall be treated as a de-
3 duction allowed for depreciation under section 167.”.

4 “(d) COORDINATION WITH OTHER PROVISIONS.—
5 Section 280B shall not apply to amounts which are treated
6 as expenses under this section.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 263(a)(1), as amended by this Act,
9 is amended by striking “or” at the end of subpara-
10 graph (G), by striking the period at the end of sub-
11 paragraph (H) and inserting “, or”, and by adding
12 at the end the following new subparagraph:

13 “(I) expenditures for which a deduction is
14 allowed under section 179B.”.

15 (2) Section 263A(c)(3) is amended by inserting
16 “179B,” after “section”.

17 (3) Section 312(k)(3)(B) is amended by strik-
18 ing “or 179A” each place it appears in the heading
19 and text and inserting “179A, or 179B”.

20 (4) Section 1016(a) is amended by striking
21 “and” at the end of paragraph (28), by striking the
22 period at the end of paragraph (29) and inserting “,
23 and”, and by inserting after paragraph (29) the fol-
24 lowing new paragraph:



1 “(30) to the extent provided in section
2 179B(c).”

3 (5) Paragraphs (2)(C) and (3)(C) of section
4 1245(a) are each amended by inserting “179B,”
5 after “179A,”.

6 (6) The table of sections for part VI of sub-
7 chapter B of chapter 1, as amended by this Act, is
8 amended by inserting after the item relating to sec-
9 tion 179A the following new item:

“Sec. 179B. Deduction for capital costs incurred in complying
with Environmental Protection Agency sulfur regu-
lations.”.

10 (c) **EFFECTIVE DATE.**—The amendment made by
11 this section shall apply to expenses paid or incurred after
12 December 31, 2002, in taxable years ending after such
13 date.

14 **SEC. 339. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**
15 **SEL FUEL.**

16 (a) **IN GENERAL.**—Subpart D of part IV of sub-
17 chapter A of chapter 1 (relating to business-related cred-
18 its), as amended by this Act, is amended by inserting after
19 section 45G the following new section:

20 **“SEC. 45H. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**
21 **SEL FUEL.**

22 “(a) **IN GENERAL.**—For purposes of section 38, the
23 amount of the low sulfur diesel fuel production credit de-
24 termined under this section with respect to any facility



1 of a small business refiner is an amount equal to 5 cents
2 for each gallon of low sulfur diesel fuel produced during
3 the taxable year by such small business refiner at such
4 facility.

5 “(b) MAXIMUM CREDIT.—

6 “(1) IN GENERAL.—The aggregate credit deter-
7 mined under subsection (a) for any taxable year with
8 respect to any facility shall not exceed—

9 “(A) 25 percent of the qualified capital
10 costs incurred by the small business refiner
11 with respect to such facility, reduced by

12 “(B) the aggregate credits determined
13 under this section for all prior taxable years
14 with respect to such facility.

15 “(2) REDUCED PERCENTAGE.—In the case of a
16 small business refiner with average daily domestic
17 refinery runs for the 1-year period ending on De-
18 cember 31, 2002, in excess of 155,000 barrels, the
19 number of percentage points described in paragraph
20 (1) shall be reduced (not below zero) by the product
21 of such number (before the application of this para-
22 graph) and the ratio of such excess to 50,000 bar-
23 rels.

24 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-
25 poses of this section—



1 “(1) SMALL BUSINESS REFINER.—The term
2 ‘small business refiner’ means, with respect to any
3 taxable year, a refiner of crude oil—

4 “(A) with respect to which not more than
5 1,500 individuals are engaged in the refinery
6 operations of the business on any day during
7 such taxable year, and

8 “(B) the average daily domestic refinery
9 run or average retained production of which for
10 all facilities of the taxpayer for the 1-year pe-
11 riod ending on December 31, 2002, did not ex-
12 ceed 205,000 barrels.

13 “(2) QUALIFIED CAPITAL COSTS.—The term
14 ‘qualified capital costs’ means, with respect to any
15 facility, those costs paid or incurred during the ap-
16 plicable period for compliance with the applicable
17 EPA regulations with respect to such facility, includ-
18 ing expenditures for the construction of new process
19 operation units or the dismantling and reconstruc-
20 tion of existing process units to be used in the pro-
21 duction of low sulfur diesel fuel, associated adjacent
22 or offsite equipment (including tankage, catalyst,
23 and power supply), engineering, construction period
24 interest, and sitework.



1 “(3) APPLICABLE EPA REGULATIONS.—The
2 term ‘applicable EPA regulations’ means the High-
3 way Diesel Fuel Sulfur Control Requirements of the
4 Environmental Protection Agency.

5 “(4) APPLICABLE PERIOD.—The term ‘applica-
6 ble period’ means, with respect to any facility, the
7 period beginning on January 1, 2003, and ending on
8 the earlier of the date which is 1 year after the date
9 on which the taxpayer must comply with the applica-
10 ble EPA regulations with respect to such facility or
11 December 31, 2009.

12 “(5) LOW SULFUR DIESEL FUEL.—The term
13 ‘low sulfur diesel fuel’ means diesel fuel with a sul-
14 fur content of 15 parts per million or less.

15 “(d) REDUCTION IN BASIS.—For purposes of this
16 subtitle, if a credit is determined under this section for
17 any expenditure with respect to any property, the increase
18 in basis of such property which would (but for this sub-
19 section) result from such expenditure shall be reduced by
20 the amount of the credit so determined.

21 “(e) SPECIAL RULE FOR DETERMINATION OF REFIN-
22 ERY RUNS.—For purposes this section and section
23 179B(b), in the calculation of average daily domestic re-
24 finery run or retained production, only refineries which on
25 April 1, 2003, were refineries of the refiner or a related



1 person (within the meaning of section 613A(d)(3)), shall
2 be taken into account.

3 “(f) CERTIFICATION.—

4 “(1) REQUIRED.—No credit shall be allowed
5 unless, not later than the date which is 30 months
6 after the first day of the first taxable year in which
7 the low sulfur diesel fuel production credit is deter-
8 mined with respect to a facility, the small business
9 refiner obtains certification from the Secretary, after
10 consultation with the Administrator of the Environ-
11 mental Protection Agency, that the taxpayer’s quali-
12 fied capital costs with respect to such facility will re-
13 sult in compliance with the applicable EPA regula-
14 tions.

15 “(2) CONTENTS OF APPLICATION.—An applica-
16 tion for certification shall include relevant informa-
17 tion regarding unit capacities and operating charac-
18 teristics sufficient for the Secretary, after consulta-
19 tion with the Administrator of the Environmental
20 Protection Agency, to determine that such qualified
21 capital costs are necessary for compliance with the
22 applicable EPA regulations.

23 “(3) REVIEW PERIOD.—Any application shall
24 be reviewed and notice of certification, if applicable,
25 shall be made within 60 days of receipt of such ap-



1 plication. In the event the Secretary does not notify
2 the taxpayer of the results of such certification with-
3 in such period, the taxpayer may presume the cer-
4 tification to be issued until so notified.

5 “(4) STATUTE OF LIMITATIONS.—With respect
6 to the credit allowed under this section—

7 “(A) the statutory period for the assess-
8 ment of any deficiency attributable to such
9 credit shall not expire before the end of the 3-
10 year period ending on the date that the review
11 period described in paragraph (3) ends with re-
12 spect to the taxpayer, and

13 “(B) such deficiency may be assessed be-
14 fore the expiration of such 3-year period not-
15 withstanding the provisions of any other law or
16 rule of law which would otherwise prevent such
17 assessment.

18 “(g) COOPERATIVE ORGANIZATIONS.—

19 “(1) APPORTIONMENT OF CREDIT.—

20 “(A) IN GENERAL.—In the case of a coop-
21 erative organization described in section
22 1381(a), any portion of the credit determined
23 under subsection (a) for the taxable year may,
24 at the election of the organization, be appor-
25 tioned among patrons eligible to share in pa-



1 tronage dividends on the basis of the quantity
2 or value of business done with or for such pa-
3 trons for the taxable year.

4 “(B) FORM AND EFFECT OF ELECTION.—
5 An election under subparagraph (A) for any
6 taxable year shall be made on a timely filed re-
7 turn for such year. Such election, once made,
8 shall be irrevocable for such taxable year.

9 “(2) TREATMENT OF ORGANIZATIONS AND PA-
10 TRONS.—

11 “(A) ORGANIZATIONS.—The amount of the
12 credit not apportioned to patrons pursuant to
13 paragraph (1) shall be included in the amount
14 determined under subsection (a) for the taxable
15 year of the organization.

16 “(B) PATRONS.—The amount of the credit
17 apportioned to patrons pursuant to paragraph
18 (1) shall be included in the amount determined
19 under subsection (a) for the first taxable year
20 of each patron ending on or after the last day
21 of the payment period (as defined in section
22 1382(d)) for the taxable year of the organiza-
23 tion or, if earlier, for the taxable year of each
24 patron ending on or after the date on which the



1 patron receives notice from the cooperative of
2 the apportionment.

3 “(3) SPECIAL RULE.—If the amount of a credit
4 which has been apportioned to any patron under this
5 subsection is decreased for any reason—

6 “(A) such amount shall not increase the
7 tax imposed on such patron, and

8 “(B) the tax imposed by this chapter on
9 such organization shall be increased by such
10 amount.

11 The increase under subparagraph (B) shall not be
12 treated as tax imposed by this chapter for purposes
13 of determining the amount of any credit under this
14 chapter or for purposes of section 55.”.

15 (b) CREDIT MADE PART OF GENERAL BUSINESS
16 CREDIT.—Subsection (b) of section 38 (relating to general
17 business credit), as amended by this Act, is amended by
18 striking “plus” at the end of paragraph (16), by striking
19 the period at the end of paragraph (17) and inserting “,
20 plus”, and by inserting after paragraph (17) the following
21 new paragraph:

22 “(18) the low sulfur diesel fuel production cred-
23 it determined under section 45H(a).”.

24 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C
25 (relating to certain expenses for which credits are allow-



1 able) is amended by adding at the end the following new
2 subsection:

3 “(d) LOW SULFUR DIESEL FUEL PRODUCTION
4 CREDIT.—No deduction shall be allowed for that portion
5 of the expenses otherwise allowable as a deduction for the
6 taxable year which is equal to the amount of the credit
7 determined for the taxable year under section 45H(a).”.

8 (d) BASIS ADJUSTMENT.—Section 1016(a) (relating
9 to adjustments to basis), as amended by this Act, is
10 amended by striking “and” at the end of paragraph (29),
11 by striking the period at the end of paragraph (30) and
12 inserting “, and”, and by inserting after paragraph (30)
13 the following new paragraph:

14 “(31) in the case of a facility with respect to
15 which a credit was allowed under section 45H, to
16 the extent provided in section 45H(d).”.

17 (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS
18 CREDITS.—Section 196(c) (defining qualified business
19 credits), as amended by this Act, is amended by striking
20 “and” at the end of paragraph (10), by striking the period
21 at the end of paragraph (11) and inserting “, and”, and
22 by adding after paragraph (11) the following new para-
23 graph:

24 “(12) the low sulfur diesel fuel production cred-
25 it determined under section 45H(a).”.



1 (e) CLERICAL AMENDMENT.—The table of sections
2 for subpart D of part IV of subchapter A of chapter 1,
3 as amended by this Act, is amended by inserting after the
4 item relating to section 45G the following new item:

“Sec. 45H. Credit for production of low sulfur diesel fuel.”.

5 (f) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to expenses paid or incurred after
7 December 31, 2002, in taxable years ending after such
8 date.

9 **SEC. 340. EXPANSION OF QUALIFIED SMALL-ISSUE BOND**
10 **PROGRAM.**

11 (a) IN GENERAL.—Section 144(a)(4) (relating to
12 \$10,000,000 limit in certain cases) is amended by adding
13 at the end the following new subparagraph:

14 “(G) ADDITIONAL CAPITAL EXPENDITURES
15 NOT TAKEN INTO ACCOUNT.—With respect to
16 bonds issued after September 30, 2009, in addi-
17 tion to any capital expenditure described in sub-
18 paragraph (C), capital expenditures of not to
19 exceed \$10,000,000 shall not be taken into ac-
20 count for purposes of applying subparagraph
21 (A)(ii).”.

22 (b) CONFORMING AMENDMENT.—Subparagraph (F)
23 of section 144(a)(4) is amended by adding at the end the
24 following new sentence: “This subparagraph shall not
25 apply to bonds issued after September 30, 2009.”.



1 **SEC. 341. OIL AND GAS FROM MARGINAL WELLS.**

2 (a) IN GENERAL.—Subpart D of part IV of sub-
3 chapter A of chapter 1 (relating to business credits), as
4 amended by this Act, is amended by inserting after section
5 45H the following:

6 **“SEC. 45I. CREDIT FOR PRODUCING OIL AND GAS FROM**
7 **MARGINAL WELLS.**

8 “(a) GENERAL RULE.—For purposes of section 38,
9 the marginal well production credit for any taxable year
10 is an amount equal to the product of—

11 “(1) the credit amount, and

12 “(2) the qualified credit oil production and the
13 qualified natural gas production which is attrib-
14 utable to the taxpayer.

15 “(b) CREDIT AMOUNT.—For purposes of this
16 section—

17 “(1) IN GENERAL.—The credit amount is—

18 “(A) \$3 per barrel of qualified crude oil
19 production, and

20 “(B) 50 cents per 1,000 cubic feet of
21 qualified natural gas production.

22 “(2) REDUCTION AS OIL AND GAS PRICES IN-
23 CREASE.—

24 “(A) IN GENERAL.—The \$3 and 50 cents
25 amounts under paragraph (1) shall each be re-
26 duced (but not below zero) by an amount which



1 bears the same ratio to such amount (deter-
2 mined without regard to this paragraph) as—

3 “(i) the excess (if any) of the applica-
4 ble reference price over \$15 (\$1.67 for
5 qualified natural gas production), bears to

6 “(ii) \$3 (\$0.33 for qualified natural
7 gas production).

8 The applicable reference price for a taxable
9 year is the reference price of the calendar year
10 preceding the calendar year in which the tax-
11 able year begins.

12 “(B) INFLATION ADJUSTMENT.—In the
13 case of any taxable year beginning in a calendar
14 year after 2005, each of the dollar amounts
15 contained in subparagraph (A) shall be in-
16 creased to an amount equal to such dollar
17 amount multiplied by the inflation adjustment
18 factor for such calendar year (determined under
19 section 43(b)(3)(B) by substituting ‘2004’ for
20 ‘1990’).

21 “(C) REFERENCE PRICE.—For purposes of
22 this paragraph, the term ‘reference price’
23 means, with respect to any calendar year—



1 “(i) in the case of qualified crude oil
2 production, the reference price determined
3 under section 29(d)(2)(C), and

4 “(ii) in the case of qualified natural
5 gas production, the Secretary’s estimate of
6 the annual average wellhead price per
7 1,000 cubic feet for all domestic natural
8 gas.

9 “(c) QUALIFIED CRUDE OIL AND NATURAL GAS
10 PRODUCTION.—For purposes of this section—

11 “(1) IN GENERAL.—The terms ‘qualified crude
12 oil production’ and ‘qualified natural gas production’
13 mean domestic crude oil or natural gas which is pro-
14 duced from a qualified marginal well.

15 “(2) LIMITATION ON AMOUNT OF PRODUCTION
16 WHICH MAY QUALIFY.—

17 “(A) IN GENERAL.—Crude oil or natural
18 gas produced during any taxable year from any
19 well shall not be treated as qualified crude oil
20 production or qualified natural gas production
21 to the extent production from the well during
22 the taxable year exceeds 1,095 barrels or bar-
23 rel-of-oil equivalents (as defined in section
24 29(d)(5)).

25 “(B) PROPORTIONATE REDUCTIONS.—



1 “(i) SHORT TAXABLE YEARS.—In the
2 case of a short taxable year, the limitations
3 under this paragraph shall be proportion-
4 ately reduced to reflect the ratio which the
5 number of days in such taxable year bears
6 to 365.

7 “(ii) WELLS NOT IN PRODUCTION EN-
8 TIRE YEAR.—In the case of a well which is
9 not capable of production during each day
10 of a taxable year, the limitations under
11 this paragraph applicable to the well shall
12 be proportionately reduced to reflect the
13 ratio which the number of days of produc-
14 tion bears to the total number of days in
15 the taxable year.

16 “(3) DEFINITIONS.—

17 “(A) QUALIFIED MARGINAL WELL.—The
18 term ‘qualified marginal well’ means a domestic
19 well—

20 “(i) the production from which during
21 the taxable year is treated as marginal
22 production under section 613A(c)(6), or

23 “(ii) which, during the taxable year—



1 “(I) has average daily production
2 of not more than 25 barrel-of-oil
3 equivalents (as so defined), and

4 “(II) produces water at a rate
5 not less than 95 percent of total well
6 effluent.

7 “(B) CRUDE OIL, ETC.—The terms ‘crude
8 oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have
9 the meanings given such terms by section
10 613A(e).

11 “(d) OTHER RULES.—

12 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
13 PAYER.—In the case of a qualified marginal well in
14 which there is more than one owner of operating in-
15 terests in the well and the crude oil or natural gas
16 production exceeds the limitation under subsection
17 (c)(2), qualifying crude oil production or qualifying
18 natural gas production attributable to the taxpayer
19 shall be determined on the basis of the ratio which
20 taxpayer’s revenue interest in the production bears
21 to the aggregate of the revenue interests of all oper-
22 ating interest owners in the production.

23 “(2) OPERATING INTEREST REQUIRED.—Any
24 credit under this section may be claimed only on



1 production which is attributable to the holder of an
2 operating interest.

3 “(3) PRODUCTION FROM NONCONVENTIONAL
4 SOURCES EXCLUDED.—In the case of production
5 from a qualified marginal well which is eligible for
6 the credit allowed under section 29 for the taxable
7 year, no credit shall be allowable under this section
8 unless the taxpayer elects not to claim the credit
9 under section 29 with respect to the well.”.

10 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
11 tion 38(b), as amended by this Act, is amended by striking
12 “plus” at the end of paragraph (17), by striking the period
13 at the end of paragraph (18) and inserting “, plus”, and
14 by inserting after paragraph (18) the following:

15 “(19) the marginal oil and gas well production
16 credit determined under section 45I(a).”.

17 (c) CARRYBACK.—Subsection (a) of section 39 (relat-
18 ing to carryback and carryforward of unused credits gen-
19 erally) is amended by adding at the end the following:

20 “(3) 5-YEAR CARRYBACK FOR MARGINAL OIL
21 AND GAS WELL PRODUCTION CREDIT.—Notwith-
22 standing subsection (d), in the case of the marginal
23 oil and gas well production credit—



1 “(A) this section shall be applied sepa-
2 rately from the business credit (other than the
3 marginal oil and gas well production credit),

4 “(B) paragraph (1) shall be applied by
5 substituting ‘5 taxable years’ for ‘1 taxable
6 years’ in subparagraph (A) thereof, and

7 “(C) paragraph (2) shall be applied—

8 “(i) by substituting ‘25 taxable years’
9 for ‘21 taxable years’ in subparagraph (A)
10 thereof, and

11 “(ii) by substituting ‘24 taxable years’
12 for ‘20 taxable years’ in subparagraph (B)
13 thereof.”.

14 (d) CLERICAL AMENDMENT.—The table of sections
15 for subpart D of part IV of subchapter A of chapter 1,
16 as amended by this Act, is amended by inserting after sec-
17 tion 45H the following:

 “Sec. 45I. Credit for producing oil and gas from marginal wells.”.

18 (e) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to production in taxable years be-
20 ginning after December 31, 2004.



1 **TITLE IV—TAX REFORM AND**
2 **SIMPLIFICATION FOR UNITED**
3 **STATES BUSINESSES**

4 **SEC. 401. INTEREST EXPENSE ALLOCATION RULES.**

5 (a) ELECTION TO ALLOCATE ON WORLDWIDE
6 BASIS.—Section 864 is amended by redesignating sub-
7 section (f) as subsection (g) and by inserting after sub-
8 section (e) the following new subsection:

9 “(f) ELECTION TO ALLOCATE INTEREST, ETC. ON
10 WORLDWIDE BASIS.—For purposes of this subchapter, at
11 the election of the worldwide affiliated group—

12 “(1) ALLOCATION AND APPORTIONMENT OF IN-
13 TEREST EXPENSE.—

14 “(A) IN GENERAL.—The taxable income of
15 each domestic corporation which is a member of
16 a worldwide affiliated group shall be determined
17 by allocating and apportioning interest expense
18 of each member as if all members of such group
19 were a single corporation.

20 “(B) TREATMENT OF WORLDWIDE AFFILI-
21 ATED GROUP.—The taxable income of the do-
22 mestic members of a worldwide affiliated group
23 from sources outside the United States shall be
24 determined by allocating and apportioning the
25 interest expense of such domestic members to



1 such income in an amount equal to the excess
2 (if any) of—

3 “(i) the total interest expense of the
4 worldwide affiliated group multiplied by
5 the ratio which the foreign assets of the
6 worldwide affiliated group bears to all the
7 assets of the worldwide affiliated group,
8 over

9 “(ii) the interest expense of all foreign
10 corporations which are members of the
11 worldwide affiliated group to the extent
12 such interest expense of such foreign cor-
13 porations would have been allocated and
14 apportioned to foreign source income if
15 this subsection were applied to a group
16 consisting of all the foreign corporations in
17 such worldwide affiliated group.

18 “(C) WORLDWIDE AFFILIATED GROUP.—
19 For purposes of this paragraph, the term
20 ‘worldwide affiliated group’ means a group con-
21 sisting of—

22 “(i) the includible members of an af-
23 filiated group (as defined in section
24 1504(a), determined without regard to



1 paragraphs (2) and (4) of section
2 1504(b)), and

3 “(ii) all controlled foreign corpora-
4 tions in which such members in the aggre-
5 gate meet the ownership requirements of
6 section 1504(a)(2) either directly or indi-
7 rectly through applying paragraph (2) of
8 section 958(a) or through applying rules
9 similar to the rules of such paragraph to
10 stock owned directly or indirectly by do-
11 mestic partnerships, trusts, or estates.

12 “(2) ALLOCATION AND APPORTIONMENT OF
13 OTHER EXPENSES.—Expenses other than interest
14 which are not directly allocable or apportioned to
15 any specific income producing activity shall be allo-
16 cated and apportioned as if all members of the affili-
17 ated group were a single corporation. For purposes
18 of the preceding sentence, the term ‘affiliated group’
19 has the meaning given such term by section 1504
20 (determined without regard to paragraph (4) of sec-
21 tion 1504(b)).

22 “(3) TREATMENT OF TAX-EXEMPT ASSETS;
23 BASIS OF STOCK IN NONAFFILIATED 10-PERCENT
24 OWNED CORPORATIONS.—The rules of paragraphs
25 (3) and (4) of subsection (e) shall apply for purposes



1 of this subsection, except that paragraph (4) shall be
2 applied on a worldwide affiliated group basis.

3 “(4) TREATMENT OF CERTAIN FINANCIAL IN-
4 STITUTIONS.—

5 “(A) IN GENERAL.—For purposes of para-
6 graph (1), any corporation described in sub-
7 paragraph (B) shall be treated as an includible
8 corporation for purposes of section 1504 only
9 for purposes of applying this subsection sepa-
10 rately to corporations so described.

11 “(B) DESCRIPTION.—A corporation is de-
12 scribed in this subparagraph if—

13 “(i) such corporation is a financial in-
14 stitution described in section 581 or 591,

15 “(ii) the business of such financial in-
16 stitution is predominantly with persons
17 other than related persons (within the
18 meaning of subsection (d)(4)) or their cus-
19 tomers, and

20 “(iii) such financial institution is re-
21 quired by State or Federal law to be oper-
22 ated separately from any other entity
23 which is not such an institution.



1 “(C) TREATMENT OF BANK AND FINAN-
2 CIAL HOLDING COMPANIES.—To the extent pro-
3 vided in regulations—

4 “(i) a bank holding company (within
5 the meaning of section 2(a) of the Bank
6 Holding Company Act of 1956 (12 U.S.C.
7 1841(a)),

8 “(ii) a financial holding company
9 (within the meaning of section 2(p) of the
10 Bank Holding Company Act of 1956 (12
11 U.S.C. 1841(p)), and

12 “(iii) any subsidiary of a financial in-
13 stitution described in section 581 or 591,
14 or of any such bank or financial holding
15 company, if such subsidiary is predomi-
16 nantly engaged (directly or indirectly) in
17 the active conduct of a banking, financing,
18 or similar business,

19 shall be treated as a corporation described in
20 subparagraph (B).

21 “(5) ELECTION TO EXPAND FINANCIAL INSTI-
22 TUTION GROUP OF WORLDWIDE GROUP.—

23 “(A) IN GENERAL.—If a worldwide affili-
24 ated group elects the application of this sub-
25 section, all financial corporations which—



1 “(i) are members of such worldwide
2 affiliated group, but

3 “(ii) are not corporations described in
4 paragraph (4)(B),

5 shall be treated as described in paragraph
6 (4)(B) for purposes of applying paragraph
7 (4)(A). This subsection (other than this para-
8 graph) shall apply to any such group in the
9 same manner as this subsection (other than this
10 paragraph) applies to the pre-election worldwide
11 affiliated group of which such group is a part.

12 “(B) FINANCIAL CORPORATION.—For pur-
13 poses of this paragraph, the term ‘financial cor-
14 poration’ means any corporation if at least 80
15 percent of its gross income is income described
16 in section 904(d)(2)(D)(ii) and the regulations
17 thereunder which is derived from transactions
18 with persons who are not related (within the
19 meaning of section 267(b) or 707(b)(1)) to the
20 corporation. For purposes of the preceding sen-
21 tence, there shall be disregarded any item of in-
22 come or gain from a transaction or series of
23 transactions a principal purpose of which is the
24 qualification of any corporation as a financial
25 corporation.



1 “(C) ANTI-ABUSE RULES.—In the case of
2 a corporation which is a member of an electing
3 financial institution group, to the extent that
4 such corporation—

5 “(i) distributes dividends or makes
6 other distributions with respect to its stock
7 after the date of the enactment of this
8 paragraph to any member of the pre-elec-
9 tion worldwide affiliated group (other than
10 to a member of the electing financial insti-
11 tution group) in excess of the greater of—

12 “(I) its average annual dividend
13 (expressed as a percentage of current
14 earnings and profits) during the 5-
15 taxable-year period ending with the
16 taxable year preceding the taxable
17 year, or

18 “(II) 25 percent of its average
19 annual earnings and profits for such
20 5-taxable-year period, or

21 “(ii) deals with any person in any
22 manner not clearly reflecting the income of
23 the corporation (as determined under prin-
24 ciples similar to the principles of section
25 482),



1 an amount of indebtedness of the electing fi-
2 nancial institution group equal to the excess
3 distribution or the understatement or overstate-
4 ment of income, as the case may be, shall be re-
5 characterized (for the taxable year and subse-
6 quent taxable years) for purposes of this para-
7 graph as indebtedness of the worldwide affili-
8 ated group (excluding the electing financial in-
9 stitution group). If a corporation has not been
10 in existence for 5 taxable years, this subpara-
11 graph shall be applied with respect to the pe-
12 riod it was in existence.

13 “(D) ELECTION.—An election under this
14 paragraph with respect to any financial institu-
15 tion group may be made only by the common
16 parent of the pre-election worldwide affiliated
17 group and may be made only for the first tax-
18 able year beginning after December 31, 2008,
19 in which such affiliated group includes 1 or
20 more financial corporations. Such an election,
21 once made, shall apply to all financial corpora-
22 tions which are members of the electing finan-
23 cial institution group for such taxable year and
24 all subsequent years unless revoked with the
25 consent of the Secretary.



1 “(E) DEFINITIONS RELATING TO
2 GROUPS.—For purposes of this paragraph—

3 “(i) PRE-ELECTION WORLDWIDE AF-
4 FILLATED GROUP.—The term ‘pre-election
5 worldwide affiliated group’ means, with re-
6 spect to a corporation, the worldwide affili-
7 ated group of which such corporation
8 would (but for an election under this para-
9 graph) be a member for purposes of apply-
10 ing paragraph (1).

11 “(ii) ELECTING FINANCIAL INSTITU-
12 TION GROUP.—The term ‘electing financial
13 institution group’ means the group of cor-
14 porations to which this subsection applies
15 separately by reason of the application of
16 paragraph (4)(A) and which includes fi-
17 nancial corporations by reason of an elec-
18 tion under subparagraph (A).

19 “(F) REGULATIONS.—The Secretary shall
20 prescribe such regulations as may be appro-
21 priate to carry out this subsection, including
22 regulations—

23 “(i) providing for the direct allocation
24 of interest expense in other circumstances
25 where such allocation would be appropriate



1 to carry out the purposes of this sub-
2 section,

3 “(ii) preventing assets or interest ex-
4 pense from being taken into account more
5 than once, and

6 “(iii) dealing with changes in mem-
7 bers of any group (through acquisitions or
8 otherwise) treated under this paragraph as
9 an affiliated group for purposes of this
10 subsection.

11 “(6) ELECTION.—An election to have this sub-
12 section apply with respect to any worldwide affiliated
13 group may be made only by the common parent of
14 the domestic affiliated group referred to in para-
15 graph (1)(C) and may be made only for the first
16 taxable year beginning after December 31, 2008, in
17 which a worldwide affiliated group exists which in-
18 cludes such affiliated group and at least 1 foreign
19 corporation. Such an election, once made, shall apply
20 to such common parent and all other corporations
21 which are members of such worldwide affiliated
22 group for such taxable year and all subsequent years
23 unless revoked with the consent of the Secretary.”.

24 (b) EXPANSION OF REGULATORY AUTHORITY.—
25 Paragraph (7) of section 864(e) is amended—



1 (1) by inserting before the comma at the end of
2 subparagraph (B) “and in other circumstances
3 where such allocation would be appropriate to carry
4 out the purposes of this subsection”, and

5 (2) by striking “and” at the end of subpara-
6 graph (E), by redesignating subparagraph (F) as
7 subparagraph (G), and by inserting after subpara-
8 graph (E) the following new subparagraph:

9 “(F) preventing assets or interest expense
10 from being taken into account more than once,
11 and”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2008.

15 **SEC. 402. RECHARACTERIZATION OF OVERALL DOMESTIC**
16 **LOSS.**

17 (a) GENERAL RULE.—Section 904 is amended by re-
18 designating subsections (g), (h), (i), (j), and (k) as sub-
19 sections (h), (i), (j), (k), and (l) respectively, and by in-
20 serting after subsection (f) the following new subsection:

21 “(g) RECHARACTERIZATION OF OVERALL DOMESTIC
22 LOSS.—

23 “(1) GENERAL RULE.—For purposes of this
24 subpart and section 936, in the case of any taxpayer
25 who sustains an overall domestic loss for any taxable



1 year beginning after December 31, 2006, that por-
2 tion of the taxpayer's taxable income from sources
3 within the United States for each succeeding taxable
4 year which is equal to the lesser of—

5 “(A) the amount of such loss (to the extent
6 not used under this paragraph in prior taxable
7 years), or

8 “(B) 50 percent of the taxpayer's taxable
9 income from sources within the United States
10 for such succeeding taxable year,

11 shall be treated as income from sources without the
12 United States (and not as income from sources with-
13 in the United States).

14 “(2) OVERALL DOMESTIC LOSS DEFINED.—For
15 purposes of this subsection—

16 “(A) IN GENERAL.—The term ‘overall do-
17 mestic loss’ means any domestic loss to the ex-
18 tent such loss offsets taxable income from
19 sources without the United States for the tax-
20 able year or for any preceding taxable year by
21 reason of a carryback. For purposes of the pre-
22 ceding sentence, the term ‘domestic loss’ means
23 the amount by which the gross income for the
24 taxable year from sources within the United
25 States is exceeded by the sum of the deductions



1 properly apportioned or allocated thereto (deter-
2 mined without regard to any carryback from a
3 subsequent taxable year).

4 “(B) TAXPAYER MUST HAVE ELECTED
5 FOREIGN TAX CREDIT FOR YEAR OF LOSS.—
6 The term ‘overall domestic loss’ shall not in-
7 clude any loss for any taxable year unless the
8 taxpayer chose the benefits of this subpart for
9 such taxable year.

10 “(3) CHARACTERIZATION OF SUBSEQUENT IN-
11 COME.—

12 “(A) IN GENERAL.—Any income from
13 sources within the United States that is treated
14 as income from sources without the United
15 States under paragraph (1) shall be allocated
16 among and increase the income categories in
17 proportion to the loss from sources within the
18 United States previously allocated to those in-
19 come categories.

20 “(B) INCOME CATEGORY.—For purposes of
21 this paragraph, the term ‘income category’ has
22 the meaning given such term by subsection
23 (f)(5)(E)(i).

24 “(4) COORDINATION WITH SUBSECTION (f).—
25 The Secretary shall prescribe such regulations as



1 may be necessary to coordinate the provisions of this
2 subsection with the provisions of subsection (f).”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 535(d)(2) is amended by striking
5 “section 904(g)(6)” and inserting “section
6 904(h)(6)”.

7 (2) Subparagraph (A) of section 936(a)(2) is
8 amended by striking “section 904(f)” and inserting
9 “subsections (f) and (g) of section 904”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to losses for taxable years begin-
12 ning after December 31, 2006.

13 **SEC. 403. LOOK-THRU RULES TO APPLY TO DIVIDENDS**
14 **FROM NONCONTROLLED SECTION 902 COR-**
15 **PORATIONS.**

16 (a) IN GENERAL.—Section 904(d)(4) (relating to
17 look-thru rules apply to dividends from noncontrolled sec-
18 tion 902 corporations) is amended to read as follows:

19 “(4) LOOK-THRU APPLIES TO DIVIDENDS FROM
20 NONCONTROLLED SECTION 902 CORPORATIONS.—

21 “(A) IN GENERAL.—For purposes of this
22 subsection, any dividend from a noncontrolled
23 section 902 corporation with respect to the tax-
24 payer shall be treated as income described in a



1 subparagraph of paragraph (1) in proportion to
2 the ratio of—

3 “(i) the portion of earnings and prof-
4 its attributable to income described in such
5 subparagraph, to

6 “(ii) the total amount of earnings and
7 profits.

8 “(B) EARNINGS AND PROFITS OF CON-
9 TROLLED FOREIGN CORPORATIONS.—In the
10 case of any distribution from a controlled for-
11 eign corporation to a United States share-
12 holder, rules similar to the rules of subpara-
13 graph (A) shall apply in determining the extent
14 to which earnings and profits of the controlled
15 foreign corporation which are attributable to
16 dividends received from a noncontrolled section
17 902 corporation may be treated as income in a
18 separate category.

19 “(C) SPECIAL RULES.—For purposes of
20 this paragraph—

21 “(i) EARNINGS AND PROFITS.—

22 “(I) IN GENERAL.—The rules of
23 section 316 shall apply.

24 “(II) REGULATIONS.—The Sec-
25 retary may prescribe regulations re-



1 garding the treatment of distributions
2 out of earnings and profits for periods
3 before the taxpayer's acquisition of
4 the stock to which the distributions
5 relate.

6 “(ii) INADEQUATE SUBSTAN-
7 TIATION.—If the Secretary determines that
8 the proper subparagraph of paragraph (1)
9 in which a dividend is described has not
10 been substantiated, such dividend shall be
11 treated as income described in paragraph
12 (1)(A).

13 “(iii) COORDINATION WITH HIGH-
14 TAXED INCOME PROVISIONS.—Rules simi-
15 lar to the rules of paragraph (3)(F) shall
16 apply for purposes of this paragraph.

17 “(iv) LOOK-THRU WITH RESPECT TO
18 CARRYOVER OF CREDIT.—Rules similar to
19 subparagraph (A) also shall apply to any
20 carryforward under subsection (c) from a
21 taxable year beginning before January 1,
22 2003, of tax allocable to a dividend from a
23 noncontrolled section 902 corporation with
24 respect to the taxpayer. The Secretary may
25 by regulations provide for the allocation of



1 any carryback of tax allocable to a divi-
2 dend from a noncontrolled section 902 cor-
3 poration from a taxable year beginning on
4 or after January 1, 2003, to a taxable year
5 beginning before such date for purposes of
6 allocating such dividend among the sepa-
7 rate categories in effect for the taxable
8 year to which carried.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Subparagraph (E) of section 904(d)(1) is
11 hereby repealed.

12 (2) Section 904(d)(2)(C)(iii) is amended by
13 adding “and” at the end of subclause (I), by striking
14 subclause (II), and by redesignating subclause (III)
15 as subclause (II).

16 (3) The last sentence of section 904(d)(2)(D) is
17 amended to read as follows: “Such term does not in-
18 clude any financial services income.”.

19 (4) Section 904(d)(2)(E) is amended—

20 (A) by inserting “or (4)” after “paragraph
21 (3)” in clause (i), and

22 (B) by striking clauses (ii) and (iv) and by
23 redesignating clause (iii) as clause (ii).

24 (5) Section 904(d)(3)(F) is amended by strik-
25 ing “(D), or (E)” and inserting “or (D)”.



1 (6) Section 864(d)(5)(A)(i) is amended by
2 striking “(C)(iii)(III)” and inserting “(C)(iii)(II)”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2002.

6 **SEC. 404. REDUCTION TO 2 FOREIGN TAX CREDIT BASKETS.**

7 (a) IN GENERAL.—Paragraph (1) of section 904(d)
8 (relating to separate application of section with respect to
9 certain categories of income) is amended to read as fol-
10 lows:

11 “(1) IN GENERAL.—The provisions of sub-
12 sections (a), (b), and (c) and sections 902, 907, and
13 960 shall be applied separately with respect to—

14 “(A) passive category income, and

15 “(B) general category income.”

16 (b) CATEGORIES.—Paragraph (2) of section 904(d)
17 is amended by striking subparagraph (B), by redesignig-
18 nating subparagraph (A) as subparagraph (B), and by in-
19 serting before subparagraph (B) (as so redesignated) the
20 following new subparagraph:

21 “(A) CATEGORIES.—

22 “(i) PASSIVE CATEGORY INCOME.—

23 The term ‘passive category income’ means
24 passive income and specified passive cat-
25 egory income.



1 “(ii) GENERAL CATEGORY INCOME.—
2 The term ‘general category income’ means
3 income other than passive category in-
4 come.”.

5 (c) SPECIFIED PASSIVE CATEGORY INCOME.—Sub-
6 paragraph (B) of section 904(d)(2), as so redesignated,
7 is amended by adding at the end the following new clause:

8 “(v) SPECIFIED PASSIVE CATEGORY
9 INCOME.—The term ‘specified passive cat-
10 egory income’ means—

11 “(I) dividends from a DISC or
12 former DISC (as defined in section
13 992(a)) to the extent such dividends
14 are treated as income from sources
15 without the United States,

16 “(II) taxable income attributable
17 to foreign trade income (within the
18 meaning of section 923(b)), and

19 “(III) distributions from a FSC
20 (or a former FSC) out of earnings
21 and profits attributable to foreign
22 trade income (within the meaning of
23 section 923(b)) or interest or carrying
24 charges (as defined in section
25 927(d)(1)) derived from a transaction



1 which results in foreign trade income
2 (as defined in section 923(b)).”.

3 (d) TREATMENT OF FINANCIAL SERVICES.—Para-
4 graph (2) of section 904(d), as amended by section
5 403(b)(3), is amended by striking subparagraph (D), by
6 redesignating subparagraph (C) as subparagraph (D), and
7 by inserting before subparagraph (D) (as so redesignated)
8 the following new subparagraph:

9 “(C) TREATMENT OF FINANCIAL SERVICES
10 INCOME AND COMPANIES.—

11 “(i) IN GENERAL.—Financial services
12 income shall be treated as general category
13 income in the case of—

14 “(I) a member of a financial
15 services group, and

16 “(II) any other person if such
17 person is predominantly engaged in
18 the active conduct of a banking, insur-
19 ance, financing, or similar business.

20 “(ii) FINANCIAL SERVICES GROUP.—

21 The term ‘financial services group’ means
22 any affiliated group (as defined in section
23 1504(a) without regard to paragraphs (2)
24 and (3) of section 1504(b)) which is pre-
25 dominantly engaged in the active conduct



1 of a banking, insurance, financing, or simi-
2 lar business. In determining whether such
3 a group is so engaged, there shall be taken
4 into account only the income of members
5 of the group that are—

6 “(I) United States corporations,
7 or

8 “(II) controlled foreign corpora-
9 tions in which such United States cor-
10 porations own, directly or indirectly,
11 at least 80 percent of the total voting
12 power and value of the stock.

13 “(iii) PASS-THRU ENTITIES.—The
14 Secretary shall by regulation specify for
15 purposes of this subparagraph the treat-
16 ment of financial services income received
17 or accrued by partnerships and by other
18 pass-thru entities which are not members
19 of a financial services group.”.

20 (e) TREATMENT OF INCOME TAX BASE DIF-
21 FERENCES.—Paragraph (2) of section 904(d) is amended
22 by redesignating subparagraphs (H) and (I) as subpara-
23 graphs (I) and (J), respectively, and by inserting after
24 subparagraph (G) the following new subparagraph:



1 “(H) TREATMENT OF INCOME TAX BASE
2 DIFFERENCES.—

3 “(i) IN GENERAL.—In the case of tax-
4 able years beginning after December 31,
5 2006, tax imposed under the law of a for-
6 eign country or possession of the United
7 States on an amount which does not con-
8 stitute income under United States tax
9 principles shall be treated as imposed on
10 income described in paragraph (1)(B).

11 “(ii) SPECIAL RULE FOR YEARS BE-
12 FORE 2007.—

13 “(I) IN GENERAL.—In the case
14 of taxes paid or accrued in taxable
15 years beginning after December 31,
16 2004, and before January 1, 2007, a
17 taxpayer may elect to treat tax im-
18 posed under the law of a foreign coun-
19 try or possession of the United States
20 on an amount which does not con-
21 stitute income under United States
22 tax principles as tax imposed on in-
23 come described in subparagraph (C)
24 or (I) of paragraph (1).



1 “(II) ELECTION IRREVOCABLE.—
2 Any such election shall apply to the
3 taxable year for which made and all
4 subsequent taxable years described in
5 subclause (I) unless revoked with the
6 consent of the Secretary.”.

7 (f) CONFORMING AMENDMENTS.—

8 (1) Clause (iii) of section 904(d)(2)(B) (relating
9 to exceptions from passive income), as so redesign-
10 ated, is amended by striking subclause (I) and by
11 redesignating subclauses (II) and (III) as subclauses
12 (I) and (II), respectively.

13 (2) Clause (i) of section 904(d)(2)(D) (defining
14 financial services income), as so redesignated, is
15 amended by adding “or” at the end of subclause (I)
16 and by striking subclauses (II) and (III) and insert-
17 ing the following new subclause:

18 “(II) passive income (determined
19 without regard to subparagraph
20 (B)(iii)(II)).”

21 (3) Section 904(d)(2)(D) (defining financial
22 services income), as so redesignated and amended by
23 section 404(b)(3), is amended by striking clause
24 (iii).



1 (4) Paragraph (3) of section 904(d) is amended
2 to read as follows:

3 “(3) LOOK-THRU IN CASE OF CONTROLLED
4 FOREIGN CORPORATIONS.—

5 “(A) IN GENERAL.—Except as otherwise
6 provided in this paragraph, dividends, interest,
7 rents, and royalties received or accrued by the
8 taxpayer from a controlled foreign corporation
9 in which the taxpayer is a United States share-
10 holder shall not be treated as passive category
11 income.

12 “(B) SUBPART F INCLUSIONS.—Any
13 amount included in gross income under section
14 951(a)(1)(A) shall be treated as passive cat-
15 egory income to the extent the amount so in-
16 cluded is attributable to passive category in-
17 come.

18 “(C) INTEREST, RENTS, AND ROYAL-
19 TIES.—Any interest, rent, or royalty which is
20 received or accrued from a controlled foreign
21 corporation in which the taxpayer is a United
22 States shareholder shall be treated as passive
23 category income to the extent it is properly allo-
24 cable (under regulations prescribed by the Sec-



1 retary) to passive category income of the con-
2 trolled foreign corporation.

3 “(D) DIVIDENDS.—Any dividend paid out
4 of the earnings and profits of any controlled
5 foreign corporation in which the taxpayer is a
6 United States shareholder shall be treated as
7 passive category income in proportion to the
8 ratio of—

9 “(i) the portion of the earnings and
10 profits attributable to passive category in-
11 come, to

12 “(ii) the total amount of earnings and
13 profits.

14 “(E) LOOK-THRU APPLIES ONLY WHERE
15 SUBPART F APPLIES.—If a controlled foreign
16 corporation meets the requirements of section
17 954(b)(3)(A) (relating to de minimis rule) for
18 any taxable year, for purposes of this para-
19 graph, none of its foreign base company income
20 (as defined in section 954(a) without regard to
21 section 954(b)(5)) and none of its gross insur-
22 ance income (as defined in section
23 954(b)(3)(C)) for such taxable year shall be
24 treated as passive category income, except that
25 this sentence shall not apply to any income



1 which (without regard to this sentence) would
2 be treated as financial services income. Solely
3 for purposes of applying subparagraph (D),
4 passive income of a controlled foreign corpora-
5 tion shall not be treated as passive category in-
6 come if the requirements of section 954(b)(4)
7 are met with respect to such income.

8 “(F) COORDINATION WITH HIGH-TAXED
9 INCOME PROVISIONS.—

10 “(i) In determining whether any in-
11 come of a controlled foreign corporation is
12 passive category income, subclause (II) of
13 paragraph (2)(B)(iii) shall not apply.

14 “(ii) Any income of the taxpayer
15 which is treated as passive category income
16 under this paragraph shall be so treated
17 notwithstanding any provision of para-
18 graph (2); except that the determination of
19 whether any amount is high-taxed income
20 shall be made after the application of this
21 paragraph.

22 “(G) DIVIDEND.—For purposes of this
23 paragraph, the term ‘dividend’ includes any
24 amount included in gross income in section
25 951(a)(1)(B). Any amount included in gross in-



1 come under section 78 to the extent attrib-
2 utable to amounts included in gross income in
3 section 951(a)(1)(A) shall not be treated as a
4 dividend but shall be treated as included in
5 gross income under section 951(a)(1)(A).

6 “(H) LOOK-THRU APPLIES TO PASSIVE
7 FOREIGN INVESTMENT COMPANY INCLUSION.—
8 If—

9 “(i) a passive foreign investment com-
10 pany is a controlled foreign corporation,
11 and

12 “(ii) the taxpayer is a United States
13 shareholder in such controlled foreign cor-
14 poration,

15 any amount included in gross income under sec-
16 tion 1293 shall be treated as income in a sepa-
17 rate category to the extent such amount is at-
18 tributable to income in such category.”.

19 (5) Paragraph (2) of section 904(d) is amended
20 by adding at the end the following new subpara-
21 graph:

22 “(K) TRANSITIONAL RULES FOR 2007
23 CHANGES.—For purposes of paragraph (1)—

24 “(i) taxes carried from any taxable
25 year beginning before January 1, 2007, to



1 any taxable year beginning on or after
2 such date, with respect to any item of in-
3 come, shall be treated as described in the
4 subparagraph of paragraph (1) in which
5 such income would be described were such
6 taxes paid or accrued in a taxable year be-
7 ginning on or after such date, and

8 “(ii) the Secretary may by regulations
9 provide for the allocation of any carryback
10 of taxes with respect to income from a tax-
11 able year beginning on or after January 1,
12 2007, to a taxable year beginning before
13 such date for purposes of allocating such
14 income among the separate categories in
15 effect for the taxable year to which car-
16 ried.”.

17 (6) Section 904(j)(3)(A)(i) is amended by strik-
18 ing “subsection (d)(2)(A)” and inserting “subsection
19 (d)(2)(B)”.

20 (g) EFFECTIVE DATES.—

21 (1) IN GENERAL.—The amendments made by
22 this section shall apply to taxable years beginning
23 after December 31, 2006.

24 (2) TRANSITIONAL RULE RELATING TO INCOME
25 TAX BASE DIFFERENCE.—Section 904(d)(2)(H)(ii)



1 of the Internal Revenue Code of 1986, as added by
2 subsection (e), shall apply to taxable years beginning
3 after December 31, 2004.

4 **SEC. 405. ATTRIBUTION OF STOCK OWNERSHIP THROUGH**
5 **PARTNERSHIPS TO APPLY IN DETERMINING**
6 **SECTION 902 AND 960 CREDITS.**

7 (a) IN GENERAL.—Subsection (e) of section 902 is
8 amended by redesignating paragraph (7) as paragraph (8)
9 and by inserting after paragraph (6) the following new
10 paragraph:

11 “(7) CONSTRUCTIVE OWNERSHIP THROUGH
12 PARTNERSHIPS.—Stock owned, directly or indirectly,
13 by or for a partnership shall be considered as being
14 owned proportionately by its partners. Stock consid-
15 ered to be owned by a person by reason of the pre-
16 ceding sentence shall, for purposes of applying such
17 sentence, be treated as actually owned by such per-
18 son. The Secretary may prescribe such regulations
19 as may be necessary to carry out the purposes of
20 this paragraph, including rules to account for special
21 partnership allocations of dividends, credits, and
22 other incidents of ownership of stock in determining
23 proportionate ownership.”.

24 (b) CLARIFICATION OF COMPARABLE ATTRIBUTION
25 UNDER SECTION 901(b)(5).—Paragraph (5) of section



1 901(b) is amended by striking “any individual” and in-
2 serting “any person”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxes of foreign corporations
5 for taxable years of such corporations beginning after the
6 date of the enactment of this Act.

7 **SEC. 406. CLARIFICATION OF TREATMENT OF CERTAIN**
8 **TRANSFERS OF INTANGIBLE PROPERTY.**

9 (a) IN GENERAL.—Subparagraph (C) of section
10 367(d)(2) is amended by adding at the end the following
11 new sentence: “For purposes of applying section 904(d),
12 any such amount shall be treated in the same manner as
13 if such amount were a royalty.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to amounts treated as received pur-
16 suant to section 367(d)(2) of the Internal Revenue Code
17 of 1986 on or after August 5, 1997.

18 **SEC. 407. UNITED STATES PROPERTY NOT TO INCLUDE**
19 **CERTAIN ASSETS OF CONTROLLED FOREIGN**
20 **CORPORATION.**

21 (a) IN GENERAL.—Section 956(c)(2) (relating to ex-
22 ceptions from property treated as United States property)
23 is amended by striking “and” at the end of subparagraph
24 (J), by striking the period at the end of subparagraph (K)



1 and inserting a semicolon, and by adding at the end the
2 following new subparagraphs:

3 “(L) securities acquired and held by a con-
4 trolled foreign corporation in the ordinary
5 course of its business as a dealer in securities
6 if—

7 “(i) the dealer accounts for the securi-
8 ties as securities held primarily for sale to
9 customers in the ordinary course of busi-
10 ness, and

11 “(ii) the dealer disposes of the securi-
12 ties (or such securities mature while held
13 by the dealer) within a period consistent
14 with the holding of securities for sale to
15 customers in the ordinary course of busi-
16 ness; and

17 “(M) an obligation of a United States per-
18 son which—

19 “(i) is not a domestic corporation, and

20 “(ii) is not—

21 “(I) a United States shareholder
22 (as defined in section 951(b)) of the
23 controlled foreign corporation, or

24 “(II) a partnership, estate, or
25 trust in which the controlled foreign



1 corporation, or any related person (as
2 defined in section 954(d)(3)), is a
3 partner, beneficiary, or trustee imme-
4 diately after the acquisition of any ob-
5 ligation of such partnership, estate, or
6 trust by the controlled foreign cor-
7 poration.”.

8 (b) CONFORMING AMENDMENT.—Section 956(e)(2)
9 is amended by striking “and (K)” in the last sentence and
10 inserting “, (K), and (L)”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to taxable years of foreign corpora-
13 tions beginning after December 31, 2004, and to taxable
14 years of United States shareholders with or within which
15 such taxable years of foreign corporations end.

16 **SEC. 408. TRANSLATION OF FOREIGN TAXES.**

17 (a) ELECTIVE EXCEPTION FOR TAXES PAID OTHER
18 THAN IN FUNCTIONAL CURRENCY.—Paragraph (1) of
19 section 986(a) (relating to determination of foreign taxes
20 and foreign corporation’s earnings and profits) is amended
21 by redesignating subparagraph (D) as subparagraph (E)
22 and by inserting after subparagraph (C) the following new
23 subparagraph:



1 “(D) ELECTIVE EXCEPTION FOR TAXES
2 PAID OTHER THAN IN FUNCTIONAL CUR-
3 RENCY.—

4 “(i) IN GENERAL.—At the election of
5 the taxpayer, subparagraph (A) shall not
6 apply to any foreign income taxes the li-
7 ability for which is denominated in any
8 currency other than in the taxpayer’s func-
9 tional currency.

10 “(ii) APPLICATION TO QUALIFIED
11 BUSINESS UNITS.—An election under this
12 subparagraph may apply to foreign income
13 taxes attributable to a qualified business
14 unit in accordance with regulations pre-
15 scribed by the Secretary.

16 “(iii) ELECTION.—Any such election
17 shall apply to the taxable year for which
18 made and all subsequent taxable years un-
19 less revoked with the consent of the Sec-
20 retary.”.

21 (b) SPECIAL RULE FOR REGULATED INVESTMENT
22 COMPANIES.—

23 (1) IN GENERAL.—Section 986(a)(1), as
24 amended by subsection (a), is amended by redesignig-



1 nating subparagraph (E) as subparagraph (F) and
2 by inserting after subparagraph (D) the following:

3 “(E) SPECIAL RULE FOR REGULATED IN-
4 VESTMENT COMPANIES.—In the case of a regu-
5 lated investment company which takes into ac-
6 count income on an accrual basis, subpara-
7 graphs (A) through (D) shall not apply and for-
8 eign income taxes paid or accrued with respect
9 to such income shall be translated into dollars
10 using the exchange rate as of the date the in-
11 come accrues.”.

12 (2) CONFORMING AMENDMENT.—Section
13 986(a)(2) is amended by inserting “or (E)” after
14 “subparagraph (A)”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 December 31, 2004.

18 **SEC. 409. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**

19 **FROM CERTAIN FOREIGN CORPORATIONS.**

20 (a) IN GENERAL.—Paragraph (2) of section 871(i)
21 (relating to tax not to apply to certain interest and divi-
22 dends) is amended by adding at the end the following new
23 subparagraph:

24 “(D) Dividends paid by a foreign corpora-
25 tion which are treated under section



1 861(a)(2)(B) as income from sources within the
2 United States.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to payments made after December
5 31, 2004.

6 **SEC. 410. EQUAL TREATMENT OF INTEREST PAID BY FOR-**
7 **EIGN PARTNERSHIPS AND FOREIGN COR-**
8 **PORATIONS.**

9 (a) **IN GENERAL.**—Paragraph (1) of section 861(a)
10 is amended by striking “and” at the end of subparagraph
11 (A), by striking the period at the end of subparagraph
12 (B) and inserting “, and”, and by adding at the end the
13 following new subparagraph:

14 “(C) in the case of a foreign partnership,
15 which is predominantly engaged in the active
16 conduct of a trade or business outside the
17 United States, any interest not paid by a trade
18 or business engaged in by the partnership in
19 the United States and not allocable to income
20 which is effectively connected (or treated as ef-
21 fectively connected) with the conduct of a trade
22 or business in the United States.”.

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



1 **SEC. 411. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**
2 **LATED INVESTMENT COMPANIES.**

3 (a) TREATMENT OF CERTAIN DIVIDENDS.—

4 (1) NONRESIDENT ALIEN INDIVIDUALS.—Sec-
5 tion 871 (relating to tax on nonresident alien indi-
6 viduals) is amended by redesignating subsection (k)
7 as subsection (l) and by inserting after subsection (j)
8 the following new subsection:

9 “(k) EXEMPTION FOR CERTAIN DIVIDENDS OF REG-
10 ULATED INVESTMENT COMPANIES.—

11 “(1) INTEREST-RELATED DIVIDENDS.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), no tax shall be imposed
14 under paragraph (1)(A) of subsection (a) on
15 any interest-related dividend received from a
16 regulated investment company.

17 “(B) EXCEPTIONS.—Subparagraph (A)
18 shall not apply—

19 “(i) to any interest-related dividend
20 received from a regulated investment com-
21 pany by a person to the extent such divi-
22 dend is attributable to interest (other than
23 interest described in subparagraph (E) (i)
24 or (iii)) received by such company on in-
25 debtedness issued by such person or by any
26 corporation or partnership with respect to



1 which such person is a 10-percent share-
2 holder,

3 “*(ii)* to any interest-related dividend
4 with respect to stock of a regulated invest-
5 ment company unless the person who
6 would otherwise be required to deduct and
7 withhold tax from such dividend under
8 chapter 3 receives a statement (which
9 meets requirements similar to the require-
10 ments of subsection (h)(5)) that the bene-
11 ficial owner of such stock is not a United
12 States person, and

13 “*(iii)* to any interest-related dividend
14 paid to any person within a foreign coun-
15 try (or any interest-related dividend pay-
16 ment addressed to, or for the account of,
17 persons within such foreign country) dur-
18 ing any period described in subsection
19 (h)(6) with respect to such country.

20 Clause (iii) shall not apply to any dividend with
21 respect to any stock which was acquired on or
22 before the date of the publication of the Sec-
23 retary’s determination under subsection (h)(6).

24 “(C) INTEREST-RELATED DIVIDEND.—For
25 purposes of this paragraph, the term ‘interest-



1 related dividend' means any dividend (or part
2 thereof) which is designated by the regulated
3 investment company as an interest-related divi-
4 dend in a written notice mailed to its share-
5 holders not later than 60 days after the close
6 of its taxable year. If the aggregate amount so
7 designated with respect to a taxable year of the
8 company (including amounts so designated with
9 respect to dividends paid after the close of the
10 taxable year described in section 855) is greater
11 than the qualified net interest income of the
12 company for such taxable year, the portion of
13 each distribution which shall be an interest-re-
14 lated dividend shall be only that portion of the
15 amounts so designated which such qualified net
16 interest income bears to the aggregate amount
17 so designated. Such term shall not include any
18 dividend with respect to any taxable year of the
19 company beginning after December 31, 2007.

20 “(D) QUALIFIED NET INTEREST IN-
21 COME.—For purposes of subparagraph (C), the
22 term ‘qualified net interest income’ means the
23 qualified interest income of the regulated in-
24 vestment company reduced by the deductions
25 properly allocable to such income.



1 “(E) QUALIFIED INTEREST INCOME.—For
2 purposes of subparagraph (D), the term ‘quali-
3 fied interest income’ means the sum of the fol-
4 lowing amounts derived by the regulated invest-
5 ment company from sources within the United
6 States:

7 “(i) Any amount includible in gross
8 income as original issue discount (within
9 the meaning of section 1273) on an obliga-
10 tion payable 183 days or less from the date
11 of original issue (without regard to the pe-
12 riod held by the company).

13 “(ii) Any interest includible in gross
14 income (including amounts recognized as
15 ordinary income in respect of original issue
16 discount or market discount or acquisition
17 discount under part V of subchapter P and
18 such other amounts as regulations may
19 provide) on an obligation which is in reg-
20 istered form; except that this clause shall
21 not apply to—

22 “(I) any interest on an obligation
23 issued by a corporation or partnership
24 if the regulated investment company



1 is a 10-percent shareholder in such
2 corporation or partnership, and

3 “(II) any interest which is treat-
4 ed as not being portfolio interest
5 under the rules of subsection (h)(4).

6 “(iii) Any interest referred to in sub-
7 section (i)(2)(A) (without regard to the
8 trade or business of the regulated invest-
9 ment company).

10 “(iv) Any interest-related dividend in-
11 cludable in gross income with respect to
12 stock of another regulated investment com-
13 pany.

14 “(F) 10-PERCENT SHAREHOLDER.—For
15 purposes of this paragraph, the term ‘10-per-
16 cent shareholder’ has the meaning given such
17 term by subsection (h)(3)(B).

18 “(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), no tax shall be imposed
21 under paragraph (1)(A) of subsection (a) on
22 any short-term capital gain dividend received
23 from a regulated investment company.

24 “(B) EXCEPTION FOR ALIENS TAXABLE
25 UNDER SUBSECTION (a)(2).—Subparagraph (A)



1 shall not apply in the case of any nonresident
2 alien individual subject to tax under subsection
3 (a)(2).

4 “(C) SHORT-TERM CAPITAL GAIN DIVI-
5 DEND.—For purposes of this paragraph, the
6 term ‘short-term capital gain dividend’ means
7 any dividend (or part thereof) which is des-
8 ignated by the regulated investment company as
9 a short-term capital gain dividend in a written
10 notice mailed to its shareholders not later than
11 60 days after the close of its taxable year. If
12 the aggregate amount so designated with re-
13 spect to a taxable year of the company (includ-
14 ing amounts so designated with respect to divi-
15 dends paid after the close of the taxable year
16 described in section 855) is greater than the
17 qualified short-term gain of the company for
18 such taxable year, the portion of each distribu-
19 tion which shall be a short-term capital gain
20 dividend shall be only that portion of the
21 amounts so designated which such qualified
22 short-term gain bears to the aggregate amount
23 so designated. Such term shall not include any
24 dividend with respect to any taxable year of the
25 company beginning after December 31, 2007.



1 “(D) QUALIFIED SHORT-TERM GAIN.—For
2 purposes of subparagraph (C), the term ‘quali-
3 fied short-term gain’ means the excess of the
4 net short-term capital gain of the regulated in-
5 vestment company for the taxable year over the
6 net long-term capital loss (if any) of such com-
7 pany for such taxable year. For purposes of this
8 subparagraph—

9 “(i) the net short-term capital gain of
10 the regulated investment company shall be
11 computed by treating any short-term cap-
12 ital gain dividend includible in gross in-
13 come with respect to stock of another regu-
14 lated investment company as a short-term
15 capital gain, and

16 “(ii) the excess of the net short-term
17 capital gain for a taxable year over the net
18 long-term capital loss for a taxable year (to
19 which an election under section 4982(e)(4)
20 does not apply) shall be determined with-
21 out regard to any net capital loss or net
22 short-term capital loss attributable to
23 transactions after October 31 of such year,
24 and any such net capital loss or net short-



1 term capital loss shall be treated as arising
2 on the 1st day of the next taxable year.

3 To the extent provided in regulations, clause
4 (ii) shall apply also for purposes of computing
5 the taxable income of the regulated investment
6 company.”

7 (2) FOREIGN CORPORATIONS.—Section 881 (re-
8 lating to tax on income of foreign corporations not
9 connected with United States business) is amended
10 by redesignating subsection (e) as subsection (f) and
11 by inserting after subsection (d) the following new
12 subsection:

13 “(e) TAX NOT TO APPLY TO CERTAIN DIVIDENDS
14 OF REGULATED INVESTMENT COMPANIES.—

15 “(1) INTEREST-RELATED DIVIDENDS.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), no tax shall be imposed
18 under paragraph (1) of subsection (a) on any
19 interest-related dividend (as defined in section
20 871(k)(1)) received from a regulated investment
21 company.

22 “(B) EXCEPTION.—Subparagraph (A)
23 shall not apply—

24 “(i) to any dividend referred to in sec-
25 tion 871(k)(1)(B), and



1 “(ii) to any interest-related dividend
2 received by a controlled foreign corporation
3 (within the meaning of section 957(a)) to
4 the extent such dividend is attributable to
5 interest received by the regulated invest-
6 ment company from a person who is a re-
7 lated person (within the meaning of section
8 864(d)(4)) with respect to such controlled
9 foreign corporation.

10 “(C) TREATMENT OF DIVIDENDS RE-
11 CEIVED BY CONTROLLED FOREIGN CORPORA-
12 TIONS.—The rules of subsection (c)(5)(A) shall
13 apply to any (within the meaning of section
14 957(a)) to the extent such dividend is attrib-
15 utable to interest received by the regulated in-
16 vestment company which is described in clause
17 (ii) of section 871(k)(1)(E) (and not described
18 in clause (i) or (iii) of such section).

19 “(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—
20 No tax shall be imposed under paragraph (1) of sub-
21 section (a) on any short-term capital gain dividend
22 (as defined in section 871(k)(2)) received from a
23 regulated investment company.”.

24 (3) WITHHOLDING TAXES.—



1 (A) Section 1441(c) (relating to excep-
2 tions) is amended by adding at the end the fol-
3 lowing new paragraph:

4 “(12) CERTAIN DIVIDENDS RECEIVED FROM
5 REGULATED INVESTMENT COMPANIES.—

6 “(A) IN GENERAL.—No tax shall be re-
7 quired to be deducted and withheld under sub-
8 section (a) from any amount exempt from the
9 tax imposed by section 871(a)(1)(A) by reason
10 of section 871(k).

11 “(B) SPECIAL RULE.—For purposes of
12 subparagraph (A), clause (i) of section
13 871(k)(1)(B) shall not apply to any dividend
14 unless the regulated investment company knows
15 that such dividend is a dividend referred to in
16 such clause. A similar rule shall apply with re-
17 spect to the exception contained in section
18 871(k)(2)(B).”.

19 (B) Section 1442(a) (relating to with-
20 holding of tax on foreign corporations) is
21 amended—

22 (i) by striking “and the reference in
23 section 1441(c)(10)” and inserting “the
24 reference in section 1441(c)(10)”, and



1 (ii) by inserting before the period at
2 the end the following: “, and the references
3 in section 1441(c)(12) to sections 871(a)
4 and 871(k) shall be treated as referring to
5 sections 881(a) and 881(e) (except that for
6 purposes of applying subparagraph (A) of
7 section 1441(c)(12), as so modified, clause
8 (ii) of section 881(e)(1)(B) shall not apply
9 to any dividend unless the regulated invest-
10 ment company knows that such dividend is
11 a dividend referred to in such clause)”.

12 (b) ESTATE TAX TREATMENT OF INTEREST IN CER-
13 TAIN REGULATED INVESTMENT COMPANIES.—Section
14 2105 (relating to property without the United States for
15 estate tax purposes) is amended by adding at the end the
16 following new subsection:

17 “(d) STOCK IN A RIC.—

18 “(1) IN GENERAL.—For purposes of this sub-
19 chapter, stock in a regulated investment company
20 (as defined in section 851) owned by a nonresident
21 not a citizen of the United States shall not be
22 deemed property within the United States in the
23 proportion that, at the end of the quarter of such in-
24 vestment company’s taxable year immediately pre-
25 ceding a decedent’s date of death (or at such other



1 time as the Secretary may designate in regulations),
2 the assets of the investment company that were
3 qualifying assets with respect to the decedent bore
4 to the total assets of the investment company.

5 “(2) QUALIFYING ASSETS.—For purposes of
6 this subsection, qualifying assets with respect to a
7 decedent are assets that, if owned directly by the de-
8 cedent, would have been—

9 “(A) amounts, deposits, or debt obligations
10 described in subsection (b) of this section,

11 “(B) debt obligations described in the last
12 sentence of section 2104(c), or

13 “(C) other property not within the United
14 States.

15 “(3) TERMINATION.—This subsection shall not
16 apply to estates of decedents dying after December
17 31, 2007.”

18 (c) TREATMENT OF REGULATED INVESTMENT COM-
19 PANIES UNDER SECTION 897.—

20 (1) Paragraph (1) of section 897(h) is amended
21 by striking “REIT” each place it appears and in-
22 serting “qualified investment entity”.

23 (2) Paragraphs (2) and (3) of section 897(h)
24 are amended to read as follows:



1 “(2) SALE OF STOCK IN DOMESTICALLY CON-
2 TROLLED ENTITY NOT TAXED.—The term ‘United
3 States real property interest’ does not include any
4 interest in a domestically controlled qualified invest-
5 ment entity.

6 “(3) DISTRIBUTIONS BY DOMESTICALLY CON-
7 TROLLED QUALIFIED INVESTMENT ENTITIES.—In
8 the case of a domestically controlled qualified invest-
9 ment entity, rules similar to the rules of subsection
10 (d) shall apply to the foreign ownership percentage
11 of any gain.”

12 (3) Subparagraphs (A) and (B) of section
13 897(h)(4) are amended to read as follows:

14 “(A) QUALIFIED INVESTMENT ENTITY.—

15 “(i) IN GENERAL.—The term ‘quali-
16 fied investment entity’ means—

17 “(I) any real estate investment
18 trust, and

19 “(II) any regulated investment
20 company.

21 “(ii) TERMINATION.—Clause (i)(II)
22 shall not apply after December 31, 2007.

23 “(B) DOMESTICALLY CONTROLLED.—The
24 term ‘domestically controlled qualified invest-
25 ment entity’ means any qualified investment en-



1 tity in which at all times during the testing pe-
2 riod less than 50 percent in value of the stock
3 was held directly or indirectly by foreign per-
4 sons.”

5 (4) Subparagraphs (C) and (D) of section
6 897(h)(4) are each amended by striking “REIT”
7 and inserting “qualified investment entity”.

8 (5) The subsection heading for subsection (h) of
9 section 897 is amended by striking “REITS” and
10 inserting “CERTAIN INVESTMENT ENTITIES”.

11 (d) EFFECTIVE DATE.—

12 (1) IN GENERAL.—Except as otherwise pro-
13 vided in this subsection, the amendments made by
14 this section shall apply to dividends with respect to
15 taxable years of regulated investment companies be-
16 ginning after December 31, 2004.

17 (2) ESTATE TAX TREATMENT.—The amend-
18 ment made by subsection (b) shall apply to estates
19 of decedents dying after December 31, 2004.

20 (3) CERTAIN OTHER PROVISIONS.—The amend-
21 ments made by subsection (c) (other than paragraph
22 (1) thereof) shall take effect after December 31,
23 2004.



1 **SEC. 412. LOOK-THRU TREATMENT FOR SALES OF PART-**
2 **nership Interests.**

3 (a) IN GENERAL.—Section 954(c) (defining foreign
4 personal holding company income) is amended by adding
5 after paragraph (3) the following new paragraph:

6 “(4) LOOK-THRU RULE FOR CERTAIN PARTNER-
7 SHIP SALES.—

8 “(A) IN GENERAL.—In the case of any
9 sale by a controlled foreign corporation of an
10 interest in a partnership with respect to which
11 such corporation is a 25-percent owner, such
12 corporation shall be treated for purposes of this
13 subsection as selling the proportionate share of
14 the assets of the partnership attributable to
15 such interest. The Secretary shall prescribe
16 such regulations as may be appropriate to pre-
17 vent abuse of the purposes of this paragraph,
18 including regulations providing for coordination
19 of this paragraph with the provisions of sub-
20 chapter K.

21 “(B) 25-PERCENT OWNER.—For purposes
22 of this paragraph, the term ‘25-percent owner’
23 means a controlled foreign corporation which
24 owns directly 25 percent or more of the capital
25 or profits interest in a partnership. For pur-
26 poses of the preceding sentence, if a controlled



1 foreign corporation is a shareholder or partner
2 of a corporation or partnership, the controlled
3 foreign corporation shall be treated as owning
4 directly its proportionate share of any such cap-
5 ital or profits interest held directly or indirectly
6 by such corporation or partnership.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to taxable years of foreign corpora-
9 tions beginning after December 31, 2004, and to taxable
10 years of United States shareholders with or within which
11 such taxable years of foreign corporations end.

12 **SEC. 413. REPEAL OF FOREIGN PERSONAL HOLDING COM-**
13 **PANY RULES AND FOREIGN INVESTMENT**
14 **COMPANY RULES.**

15 (a) GENERAL RULE.—The following provisions are
16 hereby repealed:

17 (1) Part III of subchapter G of chapter 1 (re-
18 lating to foreign personal holding companies).

19 (2) Section 1246 (relating to gain on foreign in-
20 vestment company stock).

21 (3) Section 1247 (relating to election by foreign
22 investment companies to distribute income cur-
23 rently).

24 (b) EXEMPTION OF FOREIGN CORPORATIONS FROM
25 PERSONAL HOLDING COMPANY RULES.—



1 (1) IN GENERAL.—Subsection (c) of section
2 542 (relating to exceptions) is amended—

3 (A) by striking paragraph (5) and insert-
4 ing the following:

5 “(5) a foreign corporation,”

6 (B) by striking paragraphs (7) and (10)
7 and by redesignating paragraphs (8) and (9) as
8 paragraphs (7) and (8), respectively,

9 (C) by inserting “and” at the end of para-
10 graph (7) (as so redesignated), and

11 (D) by striking “; and” at the end of para-
12 graph (8) (as so redesignated) and inserting a
13 period.

14 (2) TREATMENT OF INCOME FROM PERSONAL
15 SERVICE CONTRACTS.—Paragraph (1) of section
16 954(c) is amended by adding at the end the fol-
17 lowing new subparagraph:

18 “(I) PERSONAL SERVICE CONTRACTS.—

19 “(i) Amounts received under a con-
20 tract under which the corporation is to fur-
21 nish personal services if—

22 “(I) some person other than the
23 corporation has the right to designate
24 (by name or by description) the indi-



1 vidual who is to perform the services,
2 or

3 “(II) the individual who is to per-
4 form the services is designated (by
5 name or by description) in the con-
6 tract, and

7 “(ii) amounts received from the sale
8 or other disposition of such a contract.

9 This subparagraph shall apply with respect to
10 amounts received for services under a particular
11 contract only if at some time during the taxable
12 year 25 percent or more in value of the out-
13 standing stock of the corporation is owned, di-
14 rectly or indirectly, by or for the individual who
15 has performed, is to perform, or may be des-
16 ignated (by name or by description) as the one
17 to perform, such services.”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) Section 1(h) is amended—

20 (A) in paragraph (10), by inserting “and”
21 at the end of subparagraph (F), by striking
22 subparagraph (G), and by redesignating sub-
23 paragraph (H) as subparagraph (G), and

24 (B) by striking “a foreign personal holding
25 company (as defined in section 552), a foreign



1 investment company (as defined in section
2 1246(b)), or” in paragraph (11)(C)(iii).

3 (2) Paragraph (2) of section 171(c) is
4 amended—

5 (A) by striking “, or by a foreign personal
6 holding company, as defined in section 552”,
7 and

8 (B) by striking “, or foreign personal hold-
9 ing company”.

10 (3) Paragraph (2) of section 245(a) is amended
11 by striking “foreign personal holding company or”.

12 (4) Section 312 is amended by striking sub-
13 section (j).

14 (5) Subsection (m) of section 312 is amended
15 by striking “, a foreign investment company (within
16 the meaning of section 1246(b)), or a foreign per-
17 sonal holding company (within the meaning of sec-
18 tion 552)”.

19 (6) Subsection (e) of section 443 is amended by
20 striking paragraph (3) and by redesignating para-
21 graphs (4) and (5) as paragraphs (3) and (4), re-
22 spectively.

23 (7) Subparagraph (B) of section 465(c)(7) is
24 amended by adding “or” at the end of clause (i), by



1 striking clause (ii), and by redesignating clause (iii)
2 as clause (ii).

3 (8) Paragraph (1) of section 543(b) is amended
4 by inserting “and” at the end of subparagraph (A),
5 by striking “, and” at the end of subparagraph (B)
6 and inserting a period, and by striking subparagraph
7 (C).

8 (9) Paragraph (1) of section 562(b) is amended
9 by striking “or a foreign personal holding company
10 described in section 552”.

11 (10) Section 563 is amended—

12 (A) by striking subsection (c),

13 (B) by redesignating subsection (d) as sub-
14 section (c), and

15 (C) by striking “subsection (a), (b), or (c)”
16 in subsection (c) (as so redesignated) and in-
17 serting “subsection (a) or (b)”.

18 (11) Subsection (d) of section 751 is amended
19 by adding “and” at the end of paragraph (2), by
20 striking paragraph (3), by redesignating paragraph
21 (4) as paragraph (3), and by striking “paragraph
22 (1), (2), or (3)” in paragraph (3) (as so redesi-
23 gnated) and inserting “paragraph (1) or (2)”.

24 (12) Paragraph (2) of section 864(d) is amend-
25 ed by striking subparagraph (A) and by redesi-



1 nating subparagraphs (B) and (C) as subparagraphs
2 (A) and (B), respectively.

3 (13)(A) Subparagraph (A) of section 898(b)(1)
4 is amended to read as follows:

5 “(A) which is treated as a controlled for-
6 eign corporation for any purpose under subpart
7 F of part III of this subchapter, and”.

8 (B) Subparagraph (B) of section 898(b)(2) is
9 amended by striking “and sections 551(f) and 554,
10 whichever are applicable,”.

11 (C) Paragraph (3) of section 898(b) is amended
12 to read as follows:

13 “(3) UNITED STATES SHAREHOLDER.—The
14 term ‘United States shareholder’ has the meaning
15 given to such term by section 951(b), except that, in
16 the case of a foreign corporation having related per-
17 son insurance income (as defined in section
18 953(c)(2)), the Secretary may treat any person as a
19 United States shareholder for purposes of this sec-
20 tion if such person is treated as a United States
21 shareholder under section 953(c)(1).”.

22 (D) Subsection (c) of section 898 is amended to
23 read as follows:

24 “(c) DETERMINATION OF REQUIRED YEAR.—

25 “(1) IN GENERAL.—The required year is—



1 “(A) the majority U.S. shareholder year,
2 or

3 “(B) if there is no majority U.S. share-
4 holder year, the taxable year prescribed under
5 regulations.

6 “(2) 1-MONTH DEFERRAL ALLOWED.—A speci-
7 fied foreign corporation may elect, in lieu of the tax-
8 able year under paragraph (1)(A), a taxable year be-
9 ginning 1 month earlier than the majority U.S.
10 shareholder year.

11 “(3) MAJORITY U.S. SHAREHOLDER YEAR.—

12 “(A) IN GENERAL.—For purposes of this
13 subsection, the term ‘majority U.S. shareholder
14 year’ means the taxable year (if any) which, on
15 each testing day, constituted the taxable year
16 of—

17 “(i) each United States shareholder
18 described in subsection (b)(2)(A), and

19 “(ii) each United States shareholder
20 not described in clause (i) whose stock was
21 treated as owned under subsection
22 (b)(2)(B) by any shareholder described in
23 such clause.

24 “(B) TESTING DAY.—The testing days
25 shall be—



1 “(i) the first day of the corporation’s
2 taxable year (determined without regard to
3 this section), or

4 “(ii) the days during such representa-
5 tive period as the Secretary may pre-
6 scribe.”.

7 (14) Clause (ii) of section 904(d)(2)(A) is
8 amended to read as follows:

9 “(ii) CERTAIN AMOUNTS INCLUDED.—
10 Except as provided in clause (iii), the term
11 ‘passive income’ includes, except as pro-
12 vided in subparagraph (E)(iii) or para-
13 graph (3)(I), any amount includible in
14 gross income under section 1293 (relating
15 to certain passive foreign investment com-
16 panies).”.

17 (15)(A) Subparagraph (A) of section 904(h)(1),
18 as redesignated by this Act, is amended by adding
19 “or” at the end of clause (i), by striking clause (ii),
20 and by redesignating clause (iii) as clause (ii).

21 (B) The paragraph heading of paragraph (2) of
22 section 904(h), as so redesignated, is amended by
23 striking “FOREIGN PERSONAL HOLDING OR”.



1 (16) Section 951 is amended by striking sub-
2 sections (c) and (d) and by redesignating subsections
3 (e) and (f) as subsections (c) and (d), respectively.

4 (17) Paragraph (3) of section 989(b) is amend-
5 ed by striking “, 551(a),”.

6 (18) Paragraph (5) of section 1014(b) is
7 amended by inserting “and before January 1,
8 2005,” after “August 26, 1937,”.

9 (19) Subsection (a) of section 1016 is amended
10 by striking paragraph (13).

11 (20)(A) Paragraph (3) of section 1212(a) is
12 amended to read as follows:

13 “(3) SPECIAL RULES ON CARRYBACKS.—A net
14 capital loss of a corporation shall not be carried
15 back under paragraph (1)(A) to a taxable year—

16 “(A) for which it is a regulated investment
17 company (as defined in section 851), or

18 “(B) for which it is a real estate invest-
19 ment trust (as defined in section 856).”.

20 (B) The amendment made by subparagraph (A)
21 shall apply to taxable years beginning after Decem-
22 ber 31, 2004.

23 (21) Section 1223 is amended by striking para-
24 graph (10) and by redesignating the following para-
25 graphs accordingly.



1 (22) Subsection (d) of section 1248 is amended
2 by striking paragraph (5) and by redesignating
3 paragraphs (6) and (7) as paragraphs (5) and (6),
4 respectively.

5 (23) Paragraph (2) of section 1260(c) is
6 amended by striking subparagraphs (H) and (I) and
7 by redesignating subparagraph (J) as subparagraph
8 (H).

9 (24)(A) Subparagraph (F) of section
10 1291(b)(3) is amended by striking “551(d), 959(a),”
11 and inserting “959(a)”.

12 (B) Subsection (e) of section 1291 is amended
13 by inserting “(as in effect on the day before the date
14 of the enactment of the American Jobs Creation Act
15 of 2004)” after “section 1246”.

16 (25) Paragraph (2) of section 1294(a) is
17 amended to read as follows:

18 “(2) ELECTION NOT PERMITTED WHERE
19 AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION
20 951.—The taxpayer may not make an election under
21 paragraph (1) with respect to the undistributed
22 PFIC earnings tax liability attributable to a quali-
23 fied electing fund for the taxable year if any amount
24 is includible in the gross income of the taxpayer



1 under section 951 with respect to such fund for such
2 taxable year.”.

3 (26) Section 6035 is hereby repealed.

4 (27) Subparagraph (D) of section 6103(e)(1) is
5 amended by striking clause (iv) and redesignating
6 clauses (v) and (vi) as clauses (iv) and (v), respec-
7 tively.

8 (28) Subparagraph (B) of section 6501(e)(1) is
9 amended to read as follows:

10 “(B) CONSTRUCTIVE DIVIDENDS.—If the
11 taxpayer omits from gross income an amount
12 properly includible therein under section
13 951(a), the tax may be assessed, or a pro-
14 ceeding in court for the collection of such tax
15 may be done without assessing, at any time
16 within 6 years after the return was filed.”.

17 (29) Subsection (a) of section 6679 is
18 amended—

19 (A) by striking “6035, 6046, and 6046A”
20 in paragraph (1) and inserting “6046 and
21 6046A”, and

22 (B) by striking paragraph (3).

23 (30) Sections 170(f)(10)(A), 508(d), 4947, and
24 4948(c)(4) are each amended by striking
25 “556(b)(2),” each place it appears.



1 (31) The table of parts for subchapter G of
2 chapter 1 is amended by striking the item relating
3 to part III.

4 (32) The table of sections for part IV of sub-
5 chapter P of chapter 1 is amended by striking the
6 items relating to sections 1246 and 1247.

7 (33) The table of sections for subpart A of part
8 III of subchapter A of chapter 61 is amended by
9 striking the item relating to section 6035.

10 (d) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by this section
13 shall apply to taxable years of foreign corporations
14 beginning after December 31, 2004, and to taxable
15 years of United States shareholders with or within
16 which such taxable years of foreign corporations
17 end.

18 (2) SUBSECTION (c)(27).—The amendments
19 made by subsection (c)(27) shall apply to disclosures
20 of return or return information with respect to tax-
21 able years beginning after December 31, 2004.



1 **SEC. 414. DETERMINATION OF FOREIGN PERSONAL HOLD-**
2 **ING COMPANY INCOME WITH RESPECT TO**
3 **TRANSACTIONS IN COMMODITIES.**

4 (a) IN GENERAL.—Clauses (i) and (ii) of section
5 954(e)(1)(C) (relating to commodity transactions) are
6 amended to read as follows:

7 “(i) arise out of commodity hedging
8 transactions (as defined in paragraph
9 (4)(A)),

10 “(ii) are active business gains or
11 losses from the sale of commodities, but
12 only if substantially all of the controlled
13 foreign corporation’s commodities are
14 property described in paragraph (1), (2),
15 or (8) of section 1221(a), or”.

16 (b) DEFINITION AND SPECIAL RULES.—Subsection
17 (c) of section 954, as amended by this Act, is amended
18 by adding after paragraph (4) the following new para-
19 graph:

20 “(5) DEFINITION AND SPECIAL RULES RELAT-
21 ING TO COMMODITY TRANSACTIONS.—

22 “(A) COMMODITY HEDGING TRANS-
23 ACTIONS.—For purposes of paragraph
24 (1)(C)(i), the term ‘commodity hedging trans-
25 action’ means any transaction with respect to a
26 commodity if such transaction—



1 “(i) is a hedging transaction as de-
2 fined in section 1221(b)(2), determined—

3 “(I) without regard to subpara-
4 graph (A)(ii) thereof,

5 “(II) by applying subparagraph
6 (A)(i) thereof by substituting ‘ordi-
7 nary property or property described in
8 section 1231(b)’ for ‘ordinary prop-
9 erty’, and

10 “(III) by substituting ‘controlled
11 foreign corporation’ for ‘taxpayer’
12 each place it appears, and

13 “(ii) is clearly identified as such in ac-
14 cordance with section 1221(a)(7).

15 “(B) TREATMENT OF DEALER ACTIVITIES
16 UNDER PARAGRAPH (1)(C).—Commodities with
17 respect to which gains and losses are not taken
18 into account under paragraph (2)(C) in com-
19 puting a controlled foreign corporation’s foreign
20 personal holding company income shall not be
21 taken into account in applying the substantially
22 all test under paragraph (1)(C)(ii) to such cor-
23 poration.

24 “(C) REGULATIONS.—The Secretary shall
25 prescribe such regulations as are appropriate to



1 carry out the purposes of paragraph (1)(C) in
2 the case of transactions involving related par-
3 ties.”.

4 (c) MODIFICATION OF EXCEPTION FOR DEALERS.—
5 Clause (i) of section 954(c)(2)(C) is amended by inserting
6 “and transactions involving physical settlement” after
7 “(including hedging transactions”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to transactions entered into after
10 December 31, 2004.

11 **SEC. 415. MODIFICATIONS TO TREATMENT OF AIRCRAFT**
12 **LEASING AND SHIPPING INCOME.**

13 (a) ELIMINATION OF FOREIGN BASE COMPANY SHIP-
14 PING INCOME.—Section 954 (relating to foreign base com-
15 pany income) is amended—

16 (1) by striking paragraph (4) of subsection (a)
17 (relating to foreign base company shipping income),
18 and

19 (2) by striking subsection (f) (relating to for-
20 eign base company shipping income).

21 (b) SAFE HARBOR FOR CERTAIN LEASING ACTIVI-
22 TIES.—Subparagraph (A) of section 954(c)(2) is amended
23 by adding at the end the following new sentence: “For
24 purposes of the preceding sentence, rents derived from
25 leasing an aircraft or vessel in foreign commerce shall not



1 fail to be treated as derived in the active conduct of a
2 trade or business if, as determined under regulations pre-
3 scribed by the Secretary, the active leasing expenses are
4 not less than 10 percent of the profit on the lease.”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) Section 952(c)(1)(B)(iii) is amended by
7 striking subclause (I) and redesignating subclauses
8 (II) through (VI) as subclauses (I) through (V), re-
9 spectively.

10 (2) Subsection (b) of section 954 is amended—

11 (A) by striking “the foreign base company
12 shipping income,” in paragraph (5),

13 (B) by striking paragraphs (6) and (7),
14 and

15 (C) by redesignating paragraph (8) as
16 paragraph (6).

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years of foreign corpora-
19 tions beginning after December 31, 2004, and to taxable
20 years of United States shareholders with or within which
21 such taxable years of foreign corporations end.

22 **SEC. 416. MODIFICATION OF EXCEPTIONS UNDER SUBPART**
23 **F FOR ACTIVE FINANCING.**

24 (a) IN GENERAL.—Section 954(h)(3) is amended by
25 adding at the end the following:



1 “(E) DIRECT CONDUCT OF ACTIVITIES.—
2 For purposes of subparagraph (A)(ii)(II), an
3 activity shall be treated as conducted directly by
4 an eligible controlled foreign corporation or
5 qualified business unit in its home country if
6 the activity is performed by employees of a re-
7 lated person and—

8 “(i) the related person is an eligible
9 controlled foreign corporation the home
10 country of which is the same as the home
11 country of the corporation or unit to which
12 subparagraph (A)(ii)(II) is being applied,

13 “(ii) the activity is performed in the
14 home country of the related person, and

15 “(iii) the related person is com-
16 pensated on an arm’s-length basis for the
17 performance of the activity by its employ-
18 ees and such compensation is treated as
19 earned by such person in its home country
20 for purposes of the home country’s tax
21 laws.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to taxable years of such foreign
24 corporations beginning after December 31, 2004, and to



1 taxable years of United States shareholders with or within
2 which such taxable years of such foreign corporations end.

3 **SEC. 417. 10-YEAR FOREIGN TAX CREDIT CARRYOVER; 1-**
4 **YEAR FOREIGN TAX CREDIT CARRYBACK.**

5 (a) GENERAL RULE.—Section 904(c) (relating to
6 carryback and carryover of excess tax paid) is amended—

7 (1) by striking “in the second preceding taxable
8 year,” and

9 (2) by striking “, and in the first, second, third,
10 fourth, or fifth” and inserting “and in any of the
11 first 10”.

12 (b) EXCESS EXTRACTION TAXES.—Paragraph (1) of
13 section 907(f) is amended—

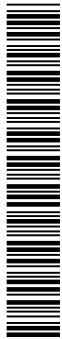
14 (1) by striking “in the second preceding taxable
15 year,”

16 (2) by striking “, and in the first, second, third,
17 fourth, or fifth” and inserting “and in any of the
18 first 10”, and

19 (3) by striking the last sentence.

20 (c) EFFECTIVE DATE.—

21 (1) CARRYBACK.—The amendments made by
22 subsections (a)(1) and (b)(1) shall apply to excess
23 foreign taxes arising in taxable years beginning after
24 the date of the enactment of this Act.

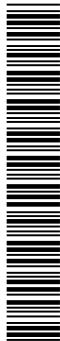


1 (2) CARRYOVER.—The amendments made by
2 subsections (a)(2) and (b)(2) shall apply to excess
3 foreign taxes which (without regard to the amend-
4 ments made by this section) may be carried to any
5 taxable year ending after the date of the enactment
6 of this Act.

7 **SEC. 418. MODIFICATION OF THE TREATMENT OF CERTAIN**
8 **REIT DISTRIBUTIONS ATTRIBUTABLE TO**
9 **GAIN FROM SALES OR EXCHANGES OF**
10 **UNITED STATES REAL PROPERTY INTERESTS.**

11 (a) IN GENERAL.—Paragraph (1) of section 897(h)
12 (relating to look-through of distributions) is amended by
13 adding at the end the following new sentence: “Notwith-
14 standing the preceding sentence, any distribution by a
15 REIT with respect to any class of stock which is regularly
16 traded on an established securities market located in the
17 United States shall not be treated as gain recognized from
18 the sale or exchange of a United States real property in-
19 terest if the shareholder did not own more than 5 percent
20 of such class of stock at any time during the taxable
21 year.”.

22 (b) CONFORMING AMENDMENT.—Paragraph (3) of
23 section 857(b) (relating to capital gains) is amended by
24 adding at the end the following new subparagraph:



1 “(F) CERTAIN DISTRIBUTIONS.—In the
2 case of a shareholder of a real estate invest-
3 ment trust to whom section 897 does not apply
4 by reason of the second sentence of section
5 897(h)(1), the amount which would be included
6 in computing long-term capital gains for such
7 shareholder under subparagraph (B) or (D)
8 (without regard to this subparagraph)—

9 “(i) shall not be included in com-
10 puting such shareholder’s long-term capital
11 gains, and

12 “(ii) shall be included in such share-
13 holder’s gross income as a dividend from
14 the real estate investment trust.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 the date of the enactment of this Act.

18 **SEC. 419. EXCLUSION OF INCOME DERIVED FROM CERTAIN**
19 **WAGERS ON HORSE RACES AND DOG RACES**
20 **FROM GROSS INCOME OF NONRESIDENT**
21 **ALIEN INDIVIDUALS.**

22 (a) IN GENERAL.—Subsection (b) of section 872 (re-
23 lating to exclusions) is amended by redesignating para-
24 graphs (5), (6), and (7) as paragraphs (6), (7), and (8),



1 respectively, and inserting after paragraph (4) the fol-
2 lowing new paragraph:

3 “(5) INCOME DERIVED FROM WAGERING
4 TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—
5 Gross income derived by a nonresident alien indi-
6 vidual from a legal wagering transaction initiated
7 outside the United States in a parimutuel pool with
8 respect to a live horse race or dog race in the United
9 States.”.

10 (b) CONFORMING AMENDMENT.—Section 883(a)(4)
11 is amended by striking “(5), (6), and (7)” and inserting
12 “(6), (7), and (8)”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to wagers made after the date of
15 the enactment of this Act.

16 **SEC. 420. LIMITATION OF WITHHOLDING TAX FOR PUERTO**
17 **RICO CORPORATIONS.**

18 (a) IN GENERAL.—Subsection (b) of section 881 is
19 amended by redesignating paragraph (2) as paragraph (3)
20 and by inserting after paragraph (1) the following new
21 paragraph:

22 “(2) COMMONWEALTH OF PUERTO RICO.—

23 “(A) IN GENERAL.—If dividends are re-
24 ceived during a taxable year by a corporation—



1 “(i) created or organized in, or under
2 the law of, the Commonwealth of Puerto
3 Rico, and

4 “(ii) with respect to which the re-
5 quirements of subparagraphs (A), (B), and
6 (C) of paragraph (1) are met for the tax-
7 able year,

8 subsection (a) shall be applied for such taxable
9 year by substituting ‘10 percent’ for ‘30 per-
10 cent’.

11 “(B) APPLICABILITY.—If, on or after the
12 date of the enactment of this paragraph, an in-
13 crease in the rate of the Commonwealth of
14 Puerto Rico’s withholding tax which is generally
15 applicable to dividends paid to United States
16 corporations not engaged in a trade or business
17 in the Commonwealth to a rate greater than 10
18 percent takes effect, this paragraph shall not
19 apply to dividends received on or after the ef-
20 fective date of the increase.”.

21 (b) WITHHOLDING.—Subsection (c) of section 1442
22 (relating to withholding of tax on foreign corporations) is
23 amended—

24 (1) by striking “For purposes” and inserting
25 the following:



1 “(1) GUAM, AMERICAN SAMOA, THE NORTHERN
2 MARIANA ISLANDS, AND THE VIRGIN ISLANDS.—For
3 purposes”, and

4 (2) by adding at the end the following new
5 paragraph:

6 “(2) COMMONWEALTH OF PUERTO RICO.—

7 “(A) IN GENERAL.—If dividends are re-
8 ceived during a taxable year by a corporation—

9 “(i) created or organized in, or under
10 the law of, the Commonwealth of Puerto
11 Rico, and

12 “(ii) with respect to which the re-
13 quirements of subparagraphs (A), (B), and
14 (C) of section 881(b)(1) are met for the
15 taxable year,

16 subsection (a) shall be applied for such taxable
17 year by substituting ‘10 percent’ for ‘30 per-
18 cent’.

19 “(B) APPLICABILITY.—If, on or after the
20 date of the enactment of this paragraph, an in-
21 crease in the rate of the Commonwealth of
22 Puerto Rico’s withholding tax which is generally
23 applicable to dividends paid to United States
24 corporations not engaged in a trade or business
25 in the Commonwealth to a rate greater than 10



1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2004.

4 **SEC. 422. INCENTIVES TO REINVEST FOREIGN EARNINGS IN**
5 **UNITED STATES.**

6 (a) IN GENERAL.—Subpart F of part III of sub-
7 chapter N of chapter 1 (relating to controlled foreign cor-
8 porations) is amended by adding at the end the following
9 new section:

10 **“SEC. 965. TEMPORARY DIVIDENDS RECEIVED DEDUCTION.**

11 “(a) DEDUCTION.—

12 “(1) IN GENERAL.—In the case of a corpora-
13 tion which is a United States shareholder and for
14 which the election under this section is in effect for
15 the taxable year, there shall be allowed as a deduc-
16 tion an amount equal to 85 percent of the cash divi-
17 dends which are received during such taxable year
18 by such shareholder from controlled foreign corpora-
19 tions.

20 “(2) DIVIDENDS PAID INDIRECTLY FROM CON-
21 TROLLED FOREIGN CORPORATIONS.—If, within the
22 taxable year for which the election under this section
23 is in effect, a United States shareholder receives a
24 cash distribution from a controlled foreign corpora-
25 tion which is excluded from gross income under sec-



1 tion 959(a), such distribution shall be treated for
2 purposes of this section as a cash dividend to the ex-
3 tent of any amount included in income by such
4 United States shareholder under section
5 951(a)(1)(A) as a result of any cash dividend during
6 such taxable year to—

7 “(A) such controlled foreign corporation
8 from another controlled foreign corporation that
9 is in a chain of ownership described in section
10 958(a), or

11 “(B) any other controlled foreign corpora-
12 tion in such chain of ownership, but only to the
13 extent of cash distributions described in section
14 959(b) which are made during such taxable
15 year to the controlled foreign corporation from
16 which such United States shareholder received
17 such distribution.

18 “(b) LIMITATIONS.—

19 “(1) IN GENERAL.—The amount of dividends
20 taken into account under subsection (a) shall not ex-
21 ceed the greater of—

22 “(A) \$500,000,000,

23 “(B) the amount shown on the applicable
24 financial statement as earnings permanently re-
25 invested outside the United States, or



1 “(C) in the case of an applicable financial
2 statement which fails to show a specific amount
3 of earnings permanently reinvested outside the
4 United States and which shows a specific
5 amount of tax liability attributable to such
6 earnings, the amount equal to the amount of
7 such liability divided by 0.35.

8 The amounts described in subparagraphs (B) and
9 (C) shall be treated as being zero if there is no such
10 statement or such statement fails to show a specific
11 amount of such earnings or liability, as the case may
12 be.

13 “(2) DIVIDENDS MUST BE EXTRAORDINARY.—
14 The amount of dividends taken into account under
15 subsection (a) shall not exceed the excess (if any)
16 of—

17 “(A) the dividends received during the tax-
18 able year by such shareholder from controlled
19 foreign corporations, over

20 “(B) the annual average for the base pe-
21 riod years of—

22 “(i) the dividends received during
23 each base period year by such shareholder
24 from controlled foreign corporations,



1 “(ii) the amounts includible in such
2 shareholder’s gross income for each base
3 period year under section 951(a)(1)(B)
4 with respect to controlled foreign corpora-
5 tions, and

6 “(iii) the amounts that would have
7 been included for each base period year
8 but for section 959(a) with respect to con-
9 trolled foreign corporations.

10 The amount taken into account under clause
11 (iii) for any base period year shall not include
12 any amount which is not includible in gross in-
13 come by reason of an amount described in
14 clause (ii) with respect to a prior taxable year.
15 Amounts described in subparagraph (B) for any
16 base period year shall be such amounts as
17 shown on the most recent return filed for such
18 year; except that amended returns filed after
19 June 30, 2003, shall not be taken into account.

20 “(3) REDUCTION OF BENEFIT IF INCREASE IN
21 RELATED PARTY INDEBTEDNESS.—The amount of
22 dividends which would (but for this paragraph) be
23 taken into account under subsection (a) shall be re-
24 duced by the excess (if any) of—



1 “(A) the amount of indebtedness of the
2 controlled foreign corporation to any related
3 person (as defined in section 954(d)(3)) as of
4 the close of the taxable year for which the elec-
5 tion under this section is in effect, over

6 “(B) the amount of indebtedness of the
7 controlled foreign corporation to any related
8 person (as so defined) as of the close of October
9 3, 2004.

10 All controlled foreign corporations with respect to
11 which the taxpayer is a United States shareholder
12 shall be treated as 1 controlled foreign corporation
13 for purposes of this paragraph.

14 “(4) REQUIREMENT TO INVEST IN UNITED
15 STATES.—Subsection (a) shall not apply to any divi-
16 dend received by a United States shareholder unless
17 the amount of the dividend is invested in the United
18 States pursuant to a domestic reinvestment plan
19 which—

20 “(A) is approved by the taxpayer’s presi-
21 dent, chief executive officer, or comparable offi-
22 cial before the payment of such dividend and
23 subsequently approved by the taxpayer’s board
24 of directors, management committee, executive
25 committee, or similar body, and



1 “(B) provides for the reinvestment of such
2 dividend in the United States (other than as
3 payment for executive compensation), including
4 as a source for the funding of worker hiring
5 and training, infrastructure, research and devel-
6 opment, capital investments, or the financial
7 stabilization of the corporation for the purposes
8 of job retention or creation.

9 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
10 poses of this section—

11 “(1) APPLICABLE FINANCIAL STATEMENT.—
12 The term ‘applicable financial statement’ means,
13 with respect to a United States shareholder, the
14 most recently audited financial statement (including
15 notes and other documents which accompany such
16 statement) which includes such shareholder—

17 “(A) which is certified on or before June
18 30, 2003, as being prepared in accordance with
19 generally accepted accounting principles, and

20 “(B) which is used for the purposes of a
21 statement or report—

22 “(i) to creditors,

23 “(ii) to shareholders, or

24 “(iii) for any other substantial nontax
25 purpose.



1 In the case of a corporation required to file a finan-
2 cial statement with the Securities and Exchange
3 Commission, such term means the most recent such
4 statement filed on or before June 30, 2003.

5 “(2) BASE PERIOD YEARS.—

6 “(A) IN GENERAL.—The base period years
7 are the 3 taxable years—

8 “(i) which are among the 5 most re-
9 cent taxable years ending on or before
10 June 30, 2003, and

11 “(ii) which are determined by
12 disregarding—

13 “(I) 1 taxable year for which the
14 sum of the amounts described in
15 clauses (i), (ii), and (iii) of subsection
16 (b)(2)(B) is the largest, and

17 “(II) 1 taxable year for which
18 such sum is the smallest.

19 “(B) SHORTER PERIOD.—If the taxpayer
20 has fewer than 5 taxable years ending on or be-
21 fore June 30, 2003, then in lieu of applying
22 subparagraph (A), the base period years shall
23 include all the taxable years of the taxpayer
24 ending on or before June 30, 2003.

25 “(C) MERGERS, ACQUISITIONS, ETC.—



1 “(i) IN GENERAL.—Rules similar to
2 the rules of subparagraphs (A) and (B) of
3 section 41(f)(3) shall apply for purposes of
4 this paragraph.

5 “(ii) SPIN-OFFS, ETC.—If there is a
6 distribution to which section 355 (or so
7 much of section 356 as relates to section
8 355) applies during the 5-year period re-
9 ferred to in subparagraph (A)(i) and the
10 controlled corporation (within the meaning
11 of section 355) is a United States
12 shareholder—

13 “(I) the controlled corporation
14 shall be treated as being in existence
15 during the period that the distributing
16 corporation (within the meaning of
17 section 355) is in existence, and

18 “(II) for purposes of applying
19 subsection (b)(2) to the controlled cor-
20 poration and the distributing corpora-
21 tion, amounts described in subsection
22 (b)(2)(B) which are received or in-
23 cludible by the distributing corpora-
24 tion or controlled corporation (as the
25 case may be) before the distribution



1 referred to in subclause (I) from a
2 controlled foreign corporation shall be
3 allocated between such corporations in
4 proportion to their respective interests
5 as United States shareholders of such
6 controlled foreign corporation imme-
7 diately after such distribution.

8 Subclause (II) shall not apply if neither
9 the controlled corporation nor the distrib-
10 uting corporation is a United States share-
11 holder of such controlled foreign corpora-
12 tion immediately after such distribution.

13 “(3) DIVIDEND.—The term ‘dividend’ shall not
14 include amounts includible in gross income as a divi-
15 dend under section 78, 367, or 1248. In the case of
16 a liquidation under section 332 to which section
17 367(b) applies, the preceding sentence shall not
18 apply to the extent the United States shareholder
19 actually receives cash as part of the liquidation.

20 “(4) COORDINATION WITH DIVIDENDS RE-
21 CEIVED DEDUCTION.—No deduction shall be allowed
22 under section 243 or 245 for any dividend for which
23 a deduction is allowed under this section.

24 “(5) CONTROLLED GROUPS.—



1 “(A) IN GENERAL.—All United States
2 shareholders which are members of an affiliated
3 group filing a consolidated return under section
4 1501 shall be treated as one United States
5 shareholder.

6 “(B) APPLICATION OF \$500,000,000
7 LIMIT.—All corporations which are treated as a
8 single employer under section 52(a) shall be
9 limited to one \$500,000,000 amount in sub-
10 section (b)(1)(A), and such amount shall be di-
11 vided among such corporations under regula-
12 tions prescribed by the Secretary.

13 “(C) PERMANENTLY REINVESTED EARN-
14 INGS.—If a financial statement is an applicable
15 financial statement for more than 1 United
16 States shareholder, the amount applicable
17 under subparagraph (B) or (C) of subsection
18 (b)(1) shall be divided among such shareholders
19 under regulations prescribed by the Secretary.

20 “(d) DENIAL OF FOREIGN TAX CREDIT; DENIAL OF
21 CERTAIN EXPENSES.—

22 “(1) FOREIGN TAX CREDIT.—No credit shall be
23 allowed under section 901 for any taxes paid or ac-
24 crued (or treated as paid or accrued) with respect to
25 the deductible portion of—



1 “(A) any dividend, or

2 “(B) any amount described in subsection
3 (a)(2) which is included in income under section
4 951(a)(1)(A).

5 No deduction shall be allowed under this chapter for
6 any tax for which credit is not allowable by reason
7 of the preceding sentence.

8 “(2) EXPENSES.—No deduction shall be al-
9 lowed for expenses properly allocated and appor-
10 tioned to the deductible portion described in para-
11 graph (1).

12 “(3) DEDUCTIBLE PORTION.—For purposes of
13 paragraph (1), unless the taxpayer otherwise speci-
14 fies, the deductible portion of any dividend or other
15 amount is the amount which bears the same ratio to
16 the amount of such dividend or other amount as the
17 amount allowed as a deduction under subsection (a)
18 for the taxable year bears to the amount described
19 in subsection (b)(2)(A) for such year.

20 “(e) INCREASE IN TAX ON INCLUDED AMOUNTS NOT
21 REDUCED BY CREDITS, ETC.—

22 “(1) IN GENERAL.—Any tax under this chapter
23 by reason of nondeductible CFC dividends shall not
24 be treated as tax imposed by this chapter for pur-
25 poses of determining—



1 “(A) the amount of any credit allowable
2 under this chapter, or

3 “(B) the amount of the tax imposed by
4 section 55.

5 Subparagraph (A) shall not apply to the credit
6 under section 53 or to the credit under section 27(a)
7 with respect to taxes attributable to such dividends.

8 “(2) LIMITATION ON REDUCTION IN TAXABLE
9 INCOME, ETC.—

10 “(A) IN GENERAL.—The taxable income of
11 any United States shareholder for any taxable
12 year shall in no event be less than the amount
13 of nondeductible CFC dividends received during
14 such year.

15 “(B) COORDINATION WITH SECTION 172.—
16 The nondeductible CFC dividends for any tax-
17 able year shall not be taken into account—

18 “(i) in determining under section 172
19 the amount of any net operating loss for
20 such taxable year, and

21 “(ii) in determining taxable income
22 for such taxable year for purposes of the
23 2nd sentence of section 172(b)(2).

24 “(3) NONDEDUCTIBLE CFC DIVIDENDS.—For
25 purposes of this subsection, the term ‘nondeductible



1 CFC dividends' means the excess of the amount of
2 dividends taken into account under subsection (a)
3 over the deduction allowed under subsection (a) for
4 such dividends.

5 “(f) ELECTION.—The taxpayer may elect to apply
6 this section to—

7 “(1) the taxpayer’s last taxable year which be-
8 gins before the date of the enactment of this section,
9 or

10 “(2) the taxpayer’s first taxable year which be-
11 gins during the 1-year period beginning on such
12 date.

13 Such election may be made for a taxable year only if made
14 before the due date (including extensions) for filing the
15 return of tax for such taxable year.”

16 (b) ALTERNATIVE MINIMUM TAX.—Subparagraph
17 (C) of section 56(g)(4) is amended by inserting after
18 clause (v) the following new clause:

19 “(vi) SPECIAL RULE FOR CERTAIN
20 DISTRIBUTIONS FROM CONTROLLED FOR-
21 EIGN CORPORATIONS.—Clause (i) shall not
22 apply to any deduction allowable under
23 section 965.”



1 (c) CLERICAL AMENDMENT.—The table of sections
2 for subpart F of part III of subchapter N of chapter 1
3 is amended by adding at the end the following new item:

“Sec. 965. Temporary dividends received deduction.”.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years ending on or after
6 the date of the enactment of this Act.

7 **SEC. 423. DELAY IN EFFECTIVE DATE OF FINAL REGULA-**
8 **TIONS GOVERNING EXCLUSION OF INCOME**
9 **FROM INTERNATIONAL OPERATION OF SHIPS**
10 **OR AIRCRAFT.**

11 Notwithstanding the provisions of Treasury regula-
12 tion § 1.883–5, the final regulations issued by the Sec-
13 retary of the Treasury relating to income derived by for-
14 eign corporations from the international operation of ships
15 or aircraft (Treasury regulations § 1.883–1 through
16 § 1.883–5) shall apply to taxable years of a foreign cor-
17 poration seeking qualified foreign corporation status be-
18 ginning after September 24, 2004.

19 **SEC. 424. STUDY OF EARNINGS STRIPPING PROVISIONS.**

20 (a) IN GENERAL.—The Secretary of the Treasury or
21 the Secretary’s delegate shall conduct a study of the effec-
22 tiveness of the provisions of the Internal Revenue Code
23 of 1986 applicable to earnings stripping, including a study
24 of—



1 (1) the effectiveness of section 163(j) of such
2 Code in preventing the shifting of income outside the
3 United States,

4 (2) whether any deficiencies of such provisions
5 place United States-based businesses at a competi-
6 tive disadvantage relative to foreign-based busi-
7 nesses,

8 (3) the impact of earnings stripping activities
9 on the United States tax base,

10 (4) whether laws of foreign countries facilitate
11 stripping of earnings out of the United States, and

12 (5) whether changes to the earning stripping
13 rules would affect jobs in the United States.

14 (b) REPORT.—Not later than June 30, 2005, the
15 Secretary shall submit to the Congress a report of the
16 study conducted under this section, including specific rec-
17 ommendations as to how to improve the provisions of such
18 Code applicable to earnings stripping.



1 **TITLE V—DEDUCTION OF STATE**
2 **AND LOCAL GENERAL SALES**
3 **TAXES**

4 **SEC. 501. DEDUCTION OF STATE AND LOCAL GENERAL**
5 **SALES TAXES IN LIEU OF STATE AND LOCAL**
6 **INCOME TAXES.**

7 (a) IN GENERAL.—Subsection (b) of section 164 (re-
8 lating to definitions and special rules) is amended by add-
9 ing at the end the following:

10 “(5) GENERAL SALES TAXES.—For purposes of
11 subsection (a)—

12 “(A) ELECTION TO DEDUCT STATE AND
13 LOCAL SALES TAXES IN LIEU OF STATE AND
14 LOCAL INCOME TAXES.—

15 “(i) IN GENERAL.—At the election of
16 the taxpayer for the taxable year, sub-
17 section (a) shall be applied—

18 “(I) without regard to the ref-
19 erence to State and local income
20 taxes, and

21 “(II) as if State and local general
22 sales taxes were referred to in a para-
23 graph thereof.

24 “(B) DEFINITION OF GENERAL SALES
25 TAX.—The term ‘general sales tax’ means a tax



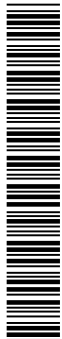
1 imposed at one rate with respect to the sale at
2 retail of a broad range of classes of items.

3 “(C) SPECIAL RULES FOR FOOD, ETC.—In
4 the case of items of food, clothing, medical sup-
5 plies, and motor vehicles—

6 “(i) the fact that the tax does not
7 apply with respect to some or all of such
8 items shall not be taken into account in
9 determining whether the tax applies with
10 respect to a broad range of classes of
11 items, and

12 “(ii) the fact that the rate of tax ap-
13 plicable with respect to some or all of such
14 items is lower than the general rate of tax
15 shall not be taken into account in deter-
16 mining whether the tax is imposed at one
17 rate.

18 “(D) ITEMS TAXED AT DIFFERENT
19 RATES.—Except in the case of a lower rate of
20 tax applicable with respect to an item described
21 in subparagraph (C), no deduction shall be al-
22 lowed under this paragraph for any general
23 sales tax imposed with respect to an item at a
24 rate other than the general rate of tax.



1 “(E) COMPENSATING USE TAXES.—A com-
2 pensating use tax with respect to an item shall
3 be treated as a general sales tax. For purposes
4 of the preceding sentence, the term ‘compen-
5 sating use tax’ means, with respect to any item,
6 a tax which—

7 “(i) is imposed on the use, storage, or
8 consumption of such item, and

9 “(ii) is complementary to a general
10 sales tax, but only if a deduction is allow-
11 able under this paragraph with respect to
12 items sold at retail in the taxing jurisdic-
13 tion which are similar to such item.

14 “(F) SPECIAL RULE FOR MOTOR VEHI-
15 CLES.—In the case of motor vehicles, if the rate
16 of tax exceeds the general rate, such excess
17 shall be disregarded and the general rate shall
18 be treated as the rate of tax.

19 “(G) SEPARATELY STATED GENERAL
20 SALES TAXES.—If the amount of any general
21 sales tax is separately stated, then, to the ex-
22 tent that the amount so stated is paid by the
23 consumer (other than in connection with the
24 consumer’s trade or business) to the seller, such



1 amount shall be treated as a tax imposed on,
2 and paid by, such consumer.

3 “(H) AMOUNT OF DEDUCTION MAY BE DE-
4 TERMINED UNDER TABLES.—

5 “(i) IN GENERAL.—At the election of
6 the taxpayer for the taxable year, the
7 amount of the deduction allowed under this
8 paragraph for such year shall be—

9 “(I) the amount determined
10 under this paragraph (without regard
11 to this subparagraph) with respect to
12 motor vehicles, boats, and other items
13 specified by the Secretary, and

14 “(II) the amount determined
15 under tables prescribed by the Sec-
16 retary with respect to items to which
17 subclause (I) does not apply.

18 “(ii) REQUIREMENTS FOR TABLES.—

19 The tables prescribed under clause (i)—

20 “(I) shall reflect the provisions of
21 this paragraph,

22 “(II) shall be based on the aver-
23 age consumption by taxpayers on a
24 State-by-State basis (as determined
25 by the Secretary) of items to which



1 clause (i)(I) does not apply, taking
2 into account filing status, number of
3 dependents, adjusted gross income,
4 and rates of State and local general
5 sales taxation, and

6 “(III) need only be determined
7 with respect to adjusted gross incomes
8 up to the applicable amount (as deter-
9 mined under section 68(b)).

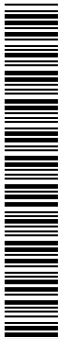
10 “(I) APPLICATION OF PARAGRAPH.—This
11 paragraph shall apply to taxable years begin-
12 ning after December 31, 2003, and before Jan-
13 uary 1, 2006.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 December 31, 2003.

17 **TITLE VI—FAIR AND EQUITABLE**
18 **TOBACCO REFORM**

19 **SEC. 601. SHORT TITLE.**

20 This title may be cited as the “Fair and Equitable
21 Tobacco Reform Act of 2004”.



1 **Subtitle A—Termination of Federal**
2 **Tobacco Quota and Price Sup-**
3 **port Programs**

4 **SEC. 611. TERMINATION OF TOBACCO QUOTA PROGRAM**
5 **AND RELATED PROVISIONS.**

6 (a) **MARKETING QUOTAS.**—Part I of subtitle B of
7 title III of the Agricultural Adjustment Act of 1938 (7
8 U.S.C. 1311 et seq.) is repealed.

9 (b) **TOBACCO INSPECTIONS.**—Section 213 of the To-
10 bacco Adjustment Act of 1983 (7 U.S.C. 511r) is repealed.

11 (c) **TOBACCO CONTROL.**—The Act of April 25, 1936
12 (commonly known as the Tobacco Control Act; 7 U.S.C.
13 515 et seq.), is repealed.

14 (d) **PROCESSING TAX.**—Section 9(b) of the Agricul-
15 tural Adjustment Act (7 U.S.C. 609(b)), reenacted with
16 amendments by the Agricultural Marketing Agreement
17 Act of 1937, is amended—

18 (1) in paragraph (2), by striking “tobacco,”;
19 and

20 (2) in paragraph (6)(B)(i), by striking “, or, in
21 the case of tobacco, is less than the fair exchange
22 value by not more than 10 per centum,”.

23 (e) **DECLARATION OF POLICY.**—Section 2 of the Ag-
24 ricultural Adjustment Act of 1938 (7 U.S.C. 1282) is
25 amended by striking “tobacco,”.



1 (f) DEFINITIONS.—Section 301(b) of the Agricultural
2 Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

3 (1) in paragraph (3)—

4 (A) by striking subparagraph (C); and

5 (B) by redesignating subparagraph (D) as
6 subparagraph (C);

7 (2) in paragraph (6)(A), by striking “tobacco,”;

8 (3) in paragraph (10)—

9 (A) by striking subparagraph (B); and

10 (B) by redesignating subparagraph (C) as
11 subparagraph (B);

12 (4) in paragraph (11)(B), by striking “and to-
13 bacco”;

14 (5) in paragraph (12), by striking “tobacco,”;

15 (6) in paragraph (14)—

16 (A) in subparagraph (A), by striking
17 “(A)”; and

18 (B) by striking subparagraphs (B), (C),
19 and (D);

20 (7) by striking paragraph (15);

21 (8) in paragraph (16)—

22 (A) by striking subparagraph (B); and

23 (B) by redesignating subparagraph (C) as
24 subparagraph (B);

25 (9) by striking paragraph (17); and



1 (10) by redesignating paragraph (16) as para-
2 graph (15).

3 (g) PARITY PAYMENTS.—Section 303 of the Agricul-
4 tural Adjustment Act of 1938 (7 U.S.C. 1303) is amended
5 in the first sentence by striking “rice, or tobacco,” and
6 inserting “or rice,”.

7 (h) ADMINISTRATIVE PROVISIONS.—Section 361 of
8 the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361)
9 is amended by striking “tobacco,”.

10 (i) ADJUSTMENT OF QUOTAS.—Section 371 of the
11 Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is
12 amended—

13 (1) in the first sentence of subsection (a), by
14 striking “rice, or tobacco” and inserting “or rice”;
15 and

16 (2) in the first sentence of subsection (b), by
17 striking “rice, or tobacco” and inserting “or rice”.

18 (j) REPORTS AND RECORDS.—Section 373 of the Ag-
19 ricultural Adjustment Act of 1938 (7 U.S.C. 1373) is
20 amended—

21 (1) by striking “rice, or tobacco” each place it
22 appears in subsections (a) and (b) and inserting “or
23 rice”; and

24 (2) in subsection (a)—



1 (A) in the first sentence, by striking “all
2 persons engaged in the business of redrying,
3 prizing, or stemming tobacco for producers,”;
4 and

5 (B) in the last sentence, by striking
6 “\$500;” and all that follows through the period
7 at the end of the sentence and inserting
8 “\$500.”.

9 (k) REGULATIONS.—Section 375 of the Agricultural
10 Adjustment Act of 1938 (7 U.S.C. 1375) is amended—

11 (1) in subsection (a), by striking “peanuts, or
12 tobacco” and inserting “or peanuts”; and

13 (2) by striking subsection (c).

14 (l) EMINENT DOMAIN.—Section 378 of the Agricul-
15 tural Adjustment Act of 1938 (7 U.S.C. 1378) is
16 amended—

17 (1) in the first sentence of subsection (c), by
18 striking “cotton, and tobacco” and inserting “and
19 cotton”; and

20 (2) by striking subsections (d), (e), and (f).

21 (m) BURLEY TOBACCO FARM RECONSTITUTION.—
22 Section 379 of the Agricultural Adjustment Act of 1938
23 (7 U.S.C. 1379) is amended—

24 (1) in subsection (a)—

25 (A) by striking “(a)”; and



1 (B) in paragraph (6), by striking “, but
2 this clause (6) shall not be applicable in the
3 case of burley tobacco”; and

4 (2) by striking subsections (b) and (c).

5 (n) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the
6 Act of April 16, 1955 (Public Law 89–12; 7 U.S.C. 1314c
7 note), is repealed.

8 (o) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The
9 Act of July 12, 1952 (7 U.S.C. 1315), is repealed.

10 (p) TRANSFER OF ALLOTMENTS.—Section 703 of the
11 Food and Agriculture Act of 1965 (7 U.S.C. 1316) is re-
12 pealed.

13 (q) ADVANCE RECOURSE LOANS.—Section
14 13(a)(2)(B) of the Food Security Improvements Act of
15 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking
16 “tobacco and”.

17 (r) TOBACCO FIELD MEASUREMENT.—Section 1112
18 of the Omnibus Budget Reconciliation Act of 1987 (Public
19 Law 100–203; 101 Stat. 1330-8) is amended by striking
20 subsection (c).

21 (s) BURLEY TOBACCO IMPORT REVIEW.—Section 3
22 of Public Law 98–59 (7 U.S.C. 625) is repealed.



1 **SEC. 612. TERMINATION OF TOBACCO PRICE SUPPORT**
2 **PROGRAM AND RELATED PROVISIONS.**

3 (a) **TERMINATION OF TOBACCO PRICE SUPPORT AND**
4 **NO NET COST PROVISIONS.**—Sections 106, 106A, and
5 106B of the Agricultural Act of 1949 (7 U.S.C. 1445,
6 1445–1, 1445–2) are repealed.

7 (b) **PARITY PRICE SUPPORT.**—Section 101 of the Ag-
8 ricultural Act of 1949 (7 U.S.C. 1441) is amended—

9 (1) in the first sentence of subsection (a), by
10 striking “tobacco (except as otherwise provided here-
11 in), corn,” and inserting “corn”;

12 (2) by striking subsections (c), (g), (h), and (i);

13 (3) in subsection (d)(3)—

14 (A) by striking “, except tobacco,”; and

15 (B) by striking “and no price support shall
16 be made available for any crop of tobacco for
17 which marketing quotas have been disapproved
18 by producers;” and

19 (4) by redesignating subsections (d) and (e) as
20 subsections (c) and (d), respectively.

21 (c) **DEFINITION OF BASIC AGRICULTURAL COM-**
22 **MODITY.**—Section 408(c) of the Agricultural Act of 1949
23 (7 U.S.C. 1428(c)) is amended by striking “tobacco,”.

24 (d) **POWERS OF COMMODITY CREDIT CORPORA-**
25 **TION.**—Section 5 of the Commodity Credit Corporation
26 Charter Act (15 U.S.C. 714c) is amended by inserting



1 “(other than tobacco)” after “agricultural commodities”
2 each place it appears.

3 **SEC. 613. CONFORMING AMENDMENTS.**

4 Section 320B(c)(1) of the Agricultural Adjustment
5 Act of 1938 (7 U.S.C. 1314h(c)(1)) is amended—

6 (1) by inserting “(A)” after “(1)”;

7 (2) by striking “by” at the end and inserting
8 “or”; and

9 (3) by adding at the end the following:

10 “(B) in the case of the 2004 marketing year,
11 the price support rate for the kind of tobacco in-
12 volved in effect under section 106 of the Agricultural
13 Act of 1949 (7 U.S.C. 1445) at the time of the vio-
14 lation; by”.

15 **SEC. 614. CONTINUATION OF LIABILITY FOR 2004 AND EAR-**
16 **LIER CROP YEARS.**

17 The amendments made by this subtitle shall not af-
18 fect the liability of any person under any provision of law
19 so amended with respect to the 2004 or an earlier crop
20 of each kind of tobacco.

21 **Subtitle B—Transitional Payments**
22 **to Tobacco Quota Holders and**
23 **Producers of Tobacco**

24 **SEC. 621. DEFINITIONS.**

25 In this subtitle and subtitle C:



1 (1) AGRICULTURAL ACT OF 1949.—The term
2 “Agricultural Act of 1949” means the Agricultural
3 Act of 1949 (7 U.S.C. 1421 et seq.), as in effect on
4 the day before the date of the enactment of this
5 title.

6 (2) AGRICULTURAL ADJUSTMENT ACT OF
7 1938.—The term “Agricultural Adjustment Act of
8 1938” means the Agricultural Adjustment Act of
9 1938 (7 U.S.C. 1281 et seq.), as in effect on the day
10 before the date of the enactment of this title.

11 (3) CONSIDERED PLANTED.—The term “con-
12 sidered planted” means tobacco that was planted,
13 but failed to be produced as a result of a natural
14 disaster, as determined by the Secretary.

15 (4) CONTRACT.—The term “contract” means a
16 contract entered into under section 622 or 623.

17 (5) CONTRACT PAYMENT.—The term “contract
18 payment” means a payment made under section 622
19 or 623 pursuant to a contract.

20 (6) PRODUCER OF QUOTA TOBACCO.—The term
21 “producer of quota tobacco” means an owner, oper-
22 ator, landlord, tenant, or sharecropper that shared
23 in the risk of producing tobacco on a farm where to-
24 bacco was produced or considered planted pursuant
25 to a tobacco farm poundage quota or farm acreage



1 allotment established under part I of subtitle B of
2 title III of the Agricultural Adjustment Act of 1938
3 (7 U.S.C. 1311 et seq.).

4 (7) QUOTA TOBACCO.—The term ‘quota to-
5 bacco’ means a kind of tobacco that is subject to a
6 farm marketing quota or farm acreage allotment for
7 the 2004 tobacco marketing year under a marketing
8 quota or allotment program established under part
9 I of subtitle B of title III of the Agricultural Adjust-
10 ment Act of 1938 (7 U.S.C. 1311 et seq.).

11 (8) TOBACCO.—The term “tobacco” means
12 each of the following kinds of tobacco:

13 (A) Flue-cured tobacco, comprising types
14 11, 12, 13, and 14.

15 (B) Fire-cured tobacco, comprising types
16 22 and 23.

17 (C) Dark air-cured tobacco, comprising
18 types 35 and 36.

19 (D) Virginia sun-cured tobacco, comprising
20 type 37.

21 (E) Virginia fire-cured tobacco, comprising
22 type 21.

23 (F) Burley tobacco, comprising type 31.

24 (G) Cigar-filler and cigar-binder tobacco,
25 comprising types 42, 43, 44, 53, 54, and 55.



1 (9) TOBACCO QUOTA HOLDER.—The term “to-
2 bacco quota holder” means a person that was an
3 owner of a farm, as of the date of enactment of this
4 title, for which a basic tobacco farm marketing
5 quota or farm acreage allotment for quota tobacco
6 was established for the 2004 tobacco marketing
7 year.

8 (10) TOBACCO TRUST FUND.—The term “To-
9 bacco Trust Fund” means the Tobacco Trust Fund
10 established under section 626.

11 (11) SECRETARY.—The term “Secretary”
12 means the Secretary of Agriculture.

13 **SEC. 622. CONTRACT PAYMENTS TO TOBACCO QUOTA**
14 **HOLDERS.**

15 (a) CONTRACT OFFERED.—The Secretary shall offer
16 to enter into a contract with each tobacco quota holder
17 under which the tobacco quota holder shall be entitled to
18 receive payments under this section in exchange for the
19 termination of tobacco marketing quotas and related price
20 support under the amendments made by sections 611 and
21 612. The contract payments shall constitute full and fair
22 consideration for the termination of such tobacco mar-
23 keting quotas and related price support.

24 (b) ELIGIBILITY.—To be eligible to enter into a con-
25 tract to receive a contract payment under this section, a



1 person shall submit to the Secretary an application con-
2 taining such information as the Secretary may require to
3 demonstrate to the satisfaction of the Secretary that the
4 person is a tobacco quota holder. The application shall be
5 submitted within such time, in such form, and in such
6 manner as the Secretary may require.

7 (c) BASE QUOTA LEVEL.—

8 (1) ESTABLISHMENT.—The Secretary shall es-
9 tablish a base quota level applicable to each tobacco
10 quota holder identified under subsection (b).

11 (2) POUNDAGE QUOTAS.—Subject to adjust-
12 ment under subsection (d), for each kind of tobacco
13 for which the marketing quota is expressed in
14 pounds, the base quota level for each tobacco quota
15 holder shall be equal to the basic quota for quota to-
16 bacco established for the 2002 tobacco marketing
17 year under a marketing quota program established
18 under part I of subtitle B of title III of the Agri-
19 culture Adjustment Act of 1938 on the farm owned
20 by the tobacco quota holder.

21 (3) MARKETING QUOTAS OTHER THAN POUND-
22 AGE QUOTAS.—Subject to adjustment under sub-
23 section (d), for each kind of tobacco for which there
24 is marketing quota or allotment on an acreage basis,
25 the base quota level for each tobacco quota holder



1 shall be the quantity equal to the product obtained
2 by multiplying—

3 (A) the basic tobacco farm marketing
4 quota or allotment for the 2002 marketing year
5 established by the Secretary for quota tobacco
6 owned by the tobacco quota holder; by

7 (B) the average production yield, per acre,
8 for the period covering the 2001, 2002, and
9 2003 crop years for that kind of tobacco in the
10 county in which the quota tobacco is located.

11 (d) TREATMENT OF CERTAIN CONTRACTS AND
12 AGREEMENTS.—

13 (1) EFFECT OF PURCHASE CONTRACT.—If
14 there was an agreement for the purchase of all or
15 part of a farm described in subsection (c) as of the
16 date of the enactment of this title, and the parties
17 to the sale are unable to agree to the disposition of
18 eligibility for contract payments, the Secretary, tak-
19 ing into account any transfer of quota that has been
20 agreed to, shall provide for the equitable division of
21 the contract payments among the parties by adjust-
22 ing the determination of who is the tobacco quota
23 holder with respect to particular pounds or allotment
24 of the quota.



1 (2) EFFECT OF AGREEMENT FOR PERMANENT
2 QUOTA TRANSFER.—If the Secretary determines
3 that there was in existence, as of the day before the
4 date of the enactment of this title, an agreement for
5 the permanent transfer of quota, but that the trans-
6 fer was not completed by that date, the Secretary
7 shall consider the tobacco quota holder to be the
8 party to the agreement that, as of that date, was the
9 owner of the farm to which the quota was to be
10 transferred.

11 (e) CONTRACT PAYMENTS.—

12 (1) CALCULATION OF TOTAL PAYMENT
13 AMOUNT.—The total amount of contract payments
14 to which an eligible tobacco quota holder is entitled
15 under this section, with respect to a kind of tobacco,
16 shall be equal to the product obtained by
17 multiplying—

18 (A) \$7.00 per pound; by

19 (B) the base quota level of the tobacco
20 quota holder determined under subsection (c)
21 with respect to that kind of tobacco.

22 (2) ANNUAL PAYMENT.—During each of fiscal
23 years 2005 through 2014, the Secretary shall make
24 a contract payment under this section to each eligi-
25 ble tobacco quota holder, with respect to a kind of



1 tobacco, in an amount equal to $\frac{1}{10}$ of the amount
2 determined under paragraph (1) for the tobacco
3 quota holder for that kind of tobacco.

4 (f) DEATH OF TOBACCO QUOTA HOLDER.—If a to-
5 bacco quota holder who is entitled to contract payments
6 under this section dies and is survived by a spouse or one
7 or more dependents, the right to receive the payments
8 shall transfer to the surviving spouse or, if there is no
9 surviving spouse, to the estate of the tobacco quota holder.

10 **SEC. 623. CONTRACT PAYMENTS FOR PRODUCERS OF**
11 **QUOTA TOBACCO.**

12 (a) CONTRACT OFFERED.—The Secretary shall offer
13 to enter into a contract with each producer of quota to-
14 bacco under which the producer of quota tobacco shall be
15 entitled to receive payments under this section in exchange
16 for the termination of tobacco marketing quotas and re-
17 lated price support under the amendments made by sec-
18 tions 611 and 612. The contract payments shall constitute
19 full and fair consideration for the termination of such to-
20 bacco marketing quotas and related price support.

21 (b) ELIGIBILITY.—

22 (1) APPLICATION AND DETERMINATION.—To be
23 eligible to enter into a contract to receive a contract
24 payment under this section, a person shall submit to
25 the Secretary an application containing such infor-



1 mation as the Secretary may require to demonstrate
2 to the satisfaction of the Secretary that the person
3 is a producer of quota tobacco. The application shall
4 be submitted within such time, in such form, and in
5 such manner as the Secretary may require.

6 (2) EFFECT OF MULTIPLE PRODUCERS FOR
7 SAME QUOTA TOBACCO.—If, on the basis of the ap-
8 plications submitted under paragraph (1) or other
9 information, the Secretary determines that two or
10 more persons are a producer of the same quota to-
11 bacco, the Secretary shall provide for an equitable
12 distribution among the persons of the contract pay-
13 ments made under this section with respect to that
14 quota tobacco, based on relative share of such per-
15 sons in the risk of producing the quota tobacco and
16 such other factors as the Secretary considers appro-
17 priate.

18 (c) BASE QUOTA LEVEL.—

19 (1) ESTABLISHMENT.—The Secretary shall es-
20 tablish a base quota level applicable to each pro-
21 ducer of quota tobacco, as determined under this
22 subsection.

23 (2) FLUE-CURED AND BURLEY TOBACCO.—In
24 the case of Flue-cured tobacco (types 11, 12, 13,
25 and 14) and Burley tobacco (type 31), the base



1 quota level for each producer of quota tobacco shall
2 be equal to the effective tobacco marketing quota
3 (irrespective of disaster lease and transfers) under
4 part I of subtitle B of title III of the Agriculture
5 Adjustment Act of 1938 for the 2002 marketing
6 year for quota tobacco produced on the farm.

7 (3) OTHER KINDS OF TOBACCO.—In the case of
8 each kind of tobacco (other than tobacco covered by
9 paragraph (2)), for the purpose of calculating a con-
10 tract payment to a producer of quota tobacco, the
11 base quota level for the producer of quota tobacco
12 shall be the quantity obtained by multiplying—

13 (A) the basic tobacco farm acreage allot-
14 ment for the 2002 marketing year established
15 by the Secretary for quota tobacco produced on
16 the farm; by

17 (B) the average annual yield, per acre, of
18 quota tobacco produced on the farm for the pe-
19 riod covering the 2001, 2002, and 2003 crop
20 years.

21 (d) CONTRACT PAYMENTS.—

22 (1) CALCULATION OF TOTAL PAYMENT
23 AMOUNT.—Subject to subsection (b)(2), the total
24 amount of contract payments to which an eligible
25 producer of quota tobacco is entitled under this sec-



1 tion, with respect to a kind of tobacco, shall be equal
2 to the product obtained by multiplying—

3 (A) subject to paragraph (2), \$3.00 per
4 pound; by

5 (B) the base quota level of the producer of
6 quota tobacco determined under subsection (c)
7 with respect to that kind of tobacco.

8 (2) ANNUAL PAYMENT.—During each of fiscal
9 years 2005 through 2014, the Secretary shall make
10 a contract payment under this section to each eligi-
11 ble producer of tobacco, with respect to a kind of to-
12 bacco, in an amount equal to $\frac{1}{10}$ of the amount de-
13 termined under paragraph (1) for the producer for
14 that kind of tobacco.

15 (3) VARIABLE PAYMENT RATES.—The rate for
16 payments to a producer of quota tobacco under
17 paragraph (1)(A) shall be equal to—

18 (A) in the case of a producer of quota to-
19 bacco that produced quota tobacco marketed, or
20 considered planted, under a marketing quota in
21 all three of the 2002, 2003, or 2004 tobacco
22 marketing years, the rate prescribed under
23 paragraph (1)(A);

24 (B) in the case of a producer of quota to-
25 bacco that produced quota tobacco marketed, or



1 considered planted, under a marketing quota in
2 only two of those tobacco marketing years, $\frac{2}{3}$
3 of the rate prescribed under paragraph (1)(A);

4 (C) in the case of a producer of quota to-
5 bacco that produced quota tobacco marketed, or
6 considered planted, under a marketing quota in
7 only one of those tobacco marketing years, $\frac{1}{3}$
8 of the rate prescribed under paragraph (1)(A).

9 (e) DEATH OF TOBACCO PRODUCER.—If a producer
10 of quota tobacco who is entitled to contract payments
11 under this section dies and is survived by a spouse or one
12 or more dependents, the right to receive the contract pay-
13 ments shall transfer to the surviving spouse or, if there
14 is no surviving spouse, to the estate of the producer.

15 **SEC. 624. ADMINISTRATION.**

16 (a) TIME FOR PAYMENT OF CONTRACT PAY-
17 MENTS.—Contract payments required to be made for a
18 fiscal year shall be made by the Secretary as soon as prac-
19 ticable.

20 (b) USE OF COUNTY COMMITTEES TO RESOLVE DIS-
21 PUTES.—Any dispute regarding the eligibility of a person
22 to enter into a contract or to receive contract payments,
23 and any dispute regarding the amount of a contract pay-
24 ment, may be appealed to the county committee estab-
25 lished under section 8 of the Soil Conservation and Do-



1 mestic Allotment Act (16 U.S.C. 590h) for the county or
2 other area in which the farming operation of the person
3 is located.

4 (c) ROLE OF NATIONAL APPEALS DIVISION.—Any
5 adverse determination of a county committee under sub-
6 section (b) may be appealed to the National Appeals Divi-
7 sion established under subtitle H of the Department of
8 Agriculture Reorganization Act of 1994 (7 U.S.C. 6991
9 et seq.).

10 (d) USE OF FINANCIAL INSTITUTIONS.—The Sec-
11 retary may use a financial institution to manage assets,
12 make contract payments, and otherwise carry out this
13 title.

14 (e) PAYMENT TO FINANCIAL INSTITUTIONS.—The
15 Secretary shall permit a tobacco quota holder or producer
16 of quota tobacco entitled to contract payments to assign
17 to a financial institution the right to receive the contract
18 payments. Upon receiving notification of the assignment,
19 the Secretary shall make subsequent contract payments
20 for the tobacco quota holder or producer of quota tobacco
21 directly to the financial institution designated by the to-
22 bacco quota holder or producer of quota tobacco. The Sec-
23 retary shall make information available to tobacco quota
24 holders and producers of quota tobacco regarding their
25 ability to elect to have the Secretary make payments di-



1 rectly to a financial institution under this subsection so
2 that they may obtain a lump sum or other payment.

3 **SEC. 625. USE OF ASSESSMENTS AS SOURCE OF FUNDS FOR**
4 **PAYMENTS.**

5 (a) DEFINITIONS.—In this section:

6 (1) BASE PERIOD.—The term “base period”
7 means the one-year period ending the June 30 be-
8 fore the beginning of a fiscal year.

9 (2) GROSS DOMESTIC VOLUME.—The term
10 “gross domestic volume” means the volume of to-
11 bacco products—

12 (A) removed (as defined by section 5702 of
13 the Internal Revenue Code of 1986); and

14 (B) not exempt from tax under chapter 52
15 of the Internal Revenue Code of 1986 at the
16 time of their removal under that chapter or the
17 Harmonized Tariff Schedule of the United
18 States (19 U.S.C. 1202).

19 (3) MARKET SHARE.—The term “market
20 share” means the share of each manufacturer or im-
21 porter of a class of tobacco product (expressed as a
22 decimal to the fourth place) of the total volume of
23 domestic sales of the class of tobacco product during
24 the base period for a fiscal year for an assessment
25 under this section.



1 (b) QUARTERLY ASSESSMENTS.—

2 (1) IMPOSITION OF ASSESSMENT.—The Sec-
3 retary, acting through the Commodity Credit Cor-
4 poration, shall impose quarterly assessments during
5 each of fiscal years 2005 through 2014, calculated
6 in accordance with this section, on each tobacco
7 product manufacturer and tobacco product importer
8 that sells tobacco products in domestic commerce in
9 the United States during that fiscal year.

10 (2) AMOUNTS.—Beginning with the calendar
11 quarter ending on December 31 of each of fiscal
12 years 2005 through 2014, the assessment payments
13 over each four-calendar quarter period shall be suffi-
14 cient to cover—

15 (A) the contract payments made under sec-
16 tions 622 and 623 during that period; and

17 (B) other expenditures from the Tobacco
18 Trust Fund made during the base quarter peri-
19 ods corresponding to the four calendar quarters
20 of that period.

21 (3) DEPOSIT.—Assessments collected under this
22 section shall be deposited in the Tobacco Trust
23 Fund.

24 (c) ASSESSMENTS FOR CLASSES OF TOBACCO PROD-
25 UCTS.—



1 (1) INITIAL ALLOCATION.—The percentage of
2 the total amount required by subsection (b) to be as-
3 sessed against, and paid by, the manufacturers and
4 importers of each class of tobacco product in fiscal
5 year 2005 shall be as follows:

6 (A) For cigarette manufacturers and im-
7 porters, 96.331 percent.

8 (B) For cigar manufacturers and import-
9 ers, 2.783 percent.

10 (C) For snuff manufacturers and import-
11 ers, 0.539 percent.

12 (D) For roll-your-own tobacco manufactur-
13 ers and importers, 0.171 percent.

14 (E) For chewing tobacco manufacturers
15 and importers, 0.111 percent.

16 (F) For pipe tobacco manufacturers and
17 importers, 0.066 percent.

18 (2) SUBSEQUENT ALLOCATIONS.—For subse-
19 quent fiscal years, the Secretary shall periodically
20 adjust the percentage of the total amount required
21 under subsection (b) to be assessed against, and
22 paid by, the manufacturers and importers of each
23 class of tobacco product specified in paragraph (1)
24 to reflect changes in the share of gross domestic vol-
25 ume held by that class of tobacco product.

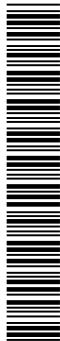


1 (3) EFFECT OF INSUFFICIENT AMOUNTS.—If
2 the Secretary determines that the assessment im-
3 posed under subsection (b) will result in insufficient
4 amounts to carry out this subtitle during a fiscal
5 year, the Secretary shall assess such additional
6 amounts as the Secretary determines to be necessary
7 to carry out this subtitle during that fiscal year. The
8 additional amount shall be allocated to manufactur-
9 ers and importers of each class of tobacco product
10 specified in paragraph (1) in the same manner and
11 based on the same percentages applicable under
12 paragraph (1) or (2) for that fiscal year.

13 (d) NOTIFICATION AND TIMING OF ASSESSMENTS.—

14 (1) NOTIFICATION OF ASSESSMENTS.—The
15 Secretary shall provide each manufacturer or im-
16 porter subject to an assessment under subsection (b)
17 with written notice setting forth the amount to be
18 assessed against the manufacturer or importer for
19 each quarterly payment period. The notice for a
20 quarterly period shall be provided not later than 30
21 days before the date payment is due under para-
22 graph (3).

23 (2) CONTENT.—The notice shall include the fol-
24 lowing information with respect to the quarterly pe-



1 riod used by the Secretary in calculating the
2 amount:

3 (A) The total combined assessment for all
4 manufacturers and importers of tobacco prod-
5 ucts.

6 (B) The total assessment with respect to
7 the class of tobacco products manufactured or
8 imported by the manufacturer or importer.

9 (C) Any adjustments to the percentage al-
10 locations among the classes of tobacco products
11 made pursuant to paragraph (2) or (3) of sub-
12 section (c).

13 (D) The volume of gross sales of the appli-
14 cable class of tobacco product treated as made
15 by the manufacturer or importer for purposes
16 of calculating the manufacturer's or importer's
17 market share under subsection (f).

18 (E) The total volume of gross sales of the
19 applicable class of tobacco product that the Sec-
20 retary treated as made by all manufacturers
21 and importers for purposes of calculating the
22 manufacturer's or importer's market share
23 under subsection (f).

24 (F) The manufacturer's or importer's mar-
25 ket share of the applicable class of tobacco



1 product, as determined by the Secretary under
2 subsection (f).

3 (G) The market share, as determined by
4 the Secretary under subsection (f), of each
5 other manufacturer and importer, for each ap-
6 plicable class of tobacco product.

7 (3) TIMING OF ASSESSMENT PAYMENTS.—

8 (A) COLLECTION DATE.—Assessments
9 shall be collected at the end of each calendar
10 year quarter, except that the Secretary shall en-
11 sure that the final assessment due under this
12 section is collected not later than September 30,
13 2014.

14 (B) BASE PERIOD QUARTER.—The assess-
15 ment for a calendar year quarter shall cor-
16 respond to the base period quarter that ended
17 at the end of the preceding calendar year quar-
18 ter.

19 (e) ALLOCATION OF ASSESSMENT WITHIN EACH
20 CLASS OF TOBACCO PRODUCT.—

21 (1) PRO RATA BASIS.—The assessment for each
22 class of tobacco product specified in subsection
23 (c)(1) shall be allocated on a pro rata basis among
24 manufacturers and importers based on each manu-



1 facturer's or importer's share of gross domestic vol-
2 ume.

3 (2) LIMITATION.—No manufacturer or importer
4 shall be required to pay an assessment that is based
5 on a share that is in excess of the manufacturer's
6 or importer's share of domestic volume.

7 (f) ALLOCATION OF TOTAL ASSESSMENTS BY MAR-
8 KET SHARE.—The amount of the assessment for each
9 class of tobacco product specified in subsection (c)(1) to
10 be paid by each manufacturer or importer of that class
11 of tobacco product shall be determined for each quarterly
12 payment period by multiplying—

13 (1) the market share of the manufacturer or
14 importer, as calculated with respect to that payment
15 period, of the class of tobacco product; by

16 (2) the total amount of the assessment for that
17 quarterly payment period under subsection (c), for
18 the class of tobacco product.

19 (g) DETERMINATION OF VOLUME OF DOMESTIC
20 SALES.—

21 (1) IN GENERAL.—The calculation of the vol-
22 ume of domestic sales of a class of tobacco product
23 by a manufacturer or importer, and by all manufac-
24 turers and importers as a group, shall be made by
25 the Secretary based on information provided by the



1 manufacturers and importers pursuant to subsection
2 (h), as well as any other relevant information pro-
3 vided to or obtained by the Secretary.

4 (2) GROSS DOMESTIC VOLUME.—The volume of
5 domestic sales shall be calculated based on gross do-
6 mestic volume.

7 (3) MEASUREMENT.—For purposes of the cal-
8 culations under this subsection and the certifications
9 under subsection (h) by the Secretary, the volumes
10 of domestic sales shall be measured by—

11 (A) in the case of cigarettes and cigars,
12 the number of cigarettes and cigars; and

13 (B) in the case of the other classes of to-
14 bacco products specified in subsection (c)(1), in
15 terms of number of pounds, or fraction thereof,
16 of those products.

17 (h) MEASUREMENT OF VOLUME OF DOMESTIC
18 SALES.—

19 (1) SUBMISSION OF INFORMATION.—Each man-
20 ufacturer and importer of tobacco products shall
21 submit to the Secretary a certified copy of each of
22 the returns or forms described by paragraph (2)
23 that are required to be filed with a Federal agency
24 on the same date that those returns or forms are
25 filed, or required to be filed, with the agency.



1 (2) RETURNS AND FORMS.—The returns and
2 forms described by this paragraph are those returns
3 and forms that relate to—

4 (A) the removal of tobacco products into
5 domestic commerce (as defined by section 5702
6 of the Internal Revenue Code of 1986); and

7 (B) the payment of the taxes imposed
8 under chapter 52 of the Internal Revenue Code
9 of 1986, including AFT Form 5000.24 and
10 United States Customs Form 7501 under cur-
11 rently applicable regulations.

12 (3) EFFECT OF FAILURE TO PROVIDE RE-
13 QUIRED INFORMATION.—Any person that knowingly
14 fails to provide information required under this sub-
15 section or that provides false information under this
16 subsection shall be subject to the penalties described
17 in section 1003 of title 18, United States Code. The
18 Secretary may also assess against the person a civil
19 penalty in an amount not to exceed two percent of
20 the value of the kind of tobacco products manufac-
21 tured or imported by the person during the fiscal
22 year in which the violation occurred, as determined
23 by the Secretary.

24 (i) CHALLENGE TO ASSESSMENT.—



1 (1) APPEAL TO SECRETARY.—A manufacturer
2 or importer subject to this section may contest an
3 assessment imposed on the manufacturer or im-
4 porter under this section by notifying the Secretary,
5 not later than 30 business days after receiving the
6 assessment notification required by subsection (d),
7 that the manufacturer or importer intends to contest
8 the assessment.

9 (2) INFORMATION.—Not later than 180 days
10 after the date of the enactment of this title, the Sec-
11 retary shall establish by regulation a procedure
12 under which a manufacturer or importer contesting
13 an assessment under this subsection may present in-
14 formation to the Secretary to demonstrate that the
15 assessment applicable to the manufacturer or im-
16 porter is incorrect. In challenging the assessment,
17 the manufacturer or importer may use any informa-
18 tion that is available, including third party data on
19 industry or individual company sales volumes.

20 (3) REVISION.—If a manufacturer or importer
21 establishes that the initial determination of the
22 amount of an assessment is incorrect, the Secretary
23 shall revise the amount of the assessment so that
24 the manufacturer or importer is required to pay only
25 the amount correctly determined.



1 (4) TIME FOR REVIEW.—Not later than 30
2 days after receiving notice from a manufacturer or
3 importer under paragraph (1), the Secretary shall—

4 (A) decide whether the information pro-
5 vided to the Secretary under paragraph (2),
6 and any other information that the Secretary
7 determines is appropriate, is sufficient to estab-
8 lish that the original assessment was incorrect;
9 and

10 (B) make any revisions necessary to ensure
11 that each manufacturer and importer pays only
12 its correct pro rata share of total gross domes-
13 tic volume from all sources.

14 (5) IMMEDIATE PAYMENT OF UNDISPUTED
15 AMOUNTS.—The regulations promulgated by the
16 Secretary under paragraph (2) shall provide for the
17 immediate payment by a manufacturer or importer
18 challenging an assessment of that portion of the as-
19 sessment that is not in dispute. The manufacturer
20 and importer may place into escrow, in accordance
21 with such regulations, only the portion of the assess-
22 ment being challenged in good faith pending final
23 determination of the claim.

24 (j) JUDICIAL REVIEW.—

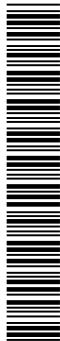


1 (1) IN GENERAL.—Any manufacturer or im-
2 porter aggrieved by a determination of the Secretary
3 with respect to the amount of any assessment may
4 seek review of the determination in the United
5 States District Court for the District of Columbia or
6 for the district in which the manufacturer or im-
7 porter resides or has its principal place of business
8 at any time following exhaustion of the administra-
9 tive remedies available under subsection (i).

10 (2) TIME LIMITS.—Administrative remedies
11 shall be deemed exhausted if no decision by the Sec-
12 retary is made within the time limits established
13 under subsection (i)(4).

14 (3) EXCESSIVE ASSESSMENTS.—The court shall
15 restrain collection of the excessive portion of any as-
16 sessment or order a refund of excessive assessments
17 already paid, along with interest calculated at the
18 rate prescribed in section 3717 of title 31, United
19 States Code, if it finds that the Secretary's deter-
20 mination is not supported by a preponderance of the
21 information available to the Secretary.

22 (k) TERMINATION DATE.—The authority provided by
23 this section to impose assessments terminates on Sep-
24 tember 30, 2014.



1 **SEC. 626. TOBACCO TRUST FUND.**

2 (a) ESTABLISHMENT.—There is established in the
3 Commodity Credit Corporation a revolving trust fund, to
4 be known as the “Tobacco Trust Fund”, which shall be
5 used in carrying out this subtitle. The Tobacco Trust
6 Fund shall consist of the following:

7 (1) Assessments collected under section 625.

8 (2) Such amounts as are necessary from the
9 Commodity Credit Corporation.

10 (3) Any interest earned on investment of
11 amounts in the Tobacco Trust Fund under sub-
12 section (c).

13 (b) EXPENDITURES.—

14 (1) AUTHORIZED EXPENDITURES.—Subject to
15 paragraph (2), and notwithstanding any other provi-
16 sion of law, the Secretary shall use amounts in the
17 Tobacco Trust Fund, in such amounts as the Sec-
18 retary determines are necessary—

19 (A) to make payments under sections 622
20 and 623;

21 (B) to provide reimbursement under sec-
22 tion 641(e);

23 (C) to reimburse the Commodity Credit
24 Corporation for costs incurred by the Com-
25 modity Credit Corporation under paragraph
26 (2); and



1 (D) to make payments to financial institu-
2 tions to satisfy contractual obligations under
3 section 622 or 623.

4 (2) EXPENDITURES BY COMMODITY CREDIT
5 CORPORATION.—Notwithstanding any other provi-
6 sion of law, the Secretary shall use the funds, facili-
7 ties, and authorities of the Commodity Credit Cor-
8 poration to make payments described in paragraph
9 (1). Not later than January 1, 2015, the Secretary
10 shall use amounts in the Tobacco Trust Fund to
11 fully reimburse, with interest, the Commodity Credit
12 Corporation for all funds of the Commodity Credit
13 Corporation expended under the authority of this
14 paragraph. Administrative costs incurred by the Sec-
15 retary or the Commodity Credit Corporation to carry
16 out this title may not be paid using amounts in the
17 Tobacco Trust Fund.

18 (c) INVESTMENT OF AMOUNTS.—

19 (1) IN GENERAL.—The Commodity Credit Cor-
20 poration shall invest such portion of the amounts in
21 the Tobacco Trust Fund as are not, in the judgment
22 of the Commodity Credit Corporation, required to
23 meet current expenditures.



1 (2) INTEREST-BEARING OBLIGATIONS.—Invest-
2 ments may be made only in interest-bearing obliga-
3 tions of the United States.

4 (3) ACQUISITION OF OBLIGATIONS.—For the
5 purpose of investments under paragraph (1), obliga-
6 tions may be acquired—

7 (A) on original issue at the issue price; or

8 (B) by purchase of outstanding obligations
9 at the market price.

10 (4) SALE OF OBLIGATIONS.—Any obligation ac-
11 quired by the Tobacco Trust Fund may be sold by
12 the Commodity Credit Corporation at the market
13 price.

14 (5) CREDITS TO FUND.—The interest on, and
15 the proceeds from the sale or redemption of, any ob-
16 ligations held in the Tobacco Trust Fund shall be
17 credited to and form a part of the Fund.

18 **SEC. 627. LIMITATION ON TOTAL EXPENDITURES.**

19 The total amount expended by the Secretary from the
20 Tobacco Trust Fund to make payments under sections
21 622 and 623 and for the other authorized purposes of the
22 Fund shall not exceed \$10,140,000,000.



1 **Subtitle C—Implementation and**
2 **Transition**

3 **SEC. 641. TREATMENT OF TOBACCO LOAN POOL STOCKS**
4 **AND OUTSTANDING LOAN COSTS.**

5 (a) DISPOSAL OF STOCKS.—To provide for the or-
6 derly disposition of quota tobacco held by an association
7 that has entered into a loan agreement with the Com-
8 modity Credit Corporation under section 106A or 106B
9 of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–
10 2) (referred to in this section as an “association”), loan
11 pool stocks for each kind of tobacco held by the association
12 shall be disposed of in accordance with this section.

13 (b) DISPOSAL BY ASSOCIATIONS.—For each kind of
14 tobacco held by an association, the association shall be re-
15 sponsible for the disposal of a specific quantity of the loan
16 pool stocks for that kind of tobacco held by the associa-
17 tion. The quantity transferred to the association for dis-
18 posal shall be equal to the quantity determined by
19 dividing—

20 (1) the amount of funds held by the association
21 in the No Net Cost Tobacco Fund and the No Net
22 Cost Tobacco Account established under sections
23 106A and 106B of the Agricultural Act of 1949 (7
24 U.S.C. 1445–1, 1445–2) for the kind of tobacco; by



1 (2) the average list price per pound for the kind
2 of tobacco, as determined by the Secretary.

3 (c) DISPOSAL OF REMAINDER BY COMMODITY CRED-
4 IT CORPORATION.—

5 (1) DISPOSAL.—Any loan pool stocks of a kind
6 of tobacco of an association that are not transferred
7 to the association under subsection (b) for disposal
8 shall be disposed of by Commodity Credit Corpora-
9 tion in a manner determined by the Secretary.

10 (2) REIMBURSEMENT.—As required by section
11 626(b)(1)(B), the Secretary shall transfer from the
12 Tobacco Trust Fund to the No Net Cost Tobacco
13 Fund or the No Net Cost Tobacco Account of an as-
14 sociation established under section 106A or 106B of
15 the Agricultural Act of 1949 (7 U.S.C. 1445–1,
16 1445–2) such amounts as the Secretary determines
17 will be adequate to reimburse the Commodity Credit
18 Corporation for any net losses that the Corporation
19 may sustain under its loan agreements with the as-
20 sociation.

21 (d) TRANSFER OF REMAINING NO NET COST
22 FUNDS.—Any funds in the No Net Cost Tobacco Fund
23 or the No Net Cost Tobacco Account of an association
24 established under sections 106A and 106B of the Agricul-
25 tural Act of 1949 (7 U.S.C. 1445–1, 1445–2) that remain



1 after the application of subsections (b) and (c) shall be
2 transferred to the association for distribution to producers
3 of quota tobacco in accordance with a plan approved by
4 the Secretary.

5 **SEC. 642. REGULATIONS.**

6 (a) IN GENERAL.—The Secretary may promulgate
7 such regulations as are necessary to implement this title
8 and the amendments made by this title.

9 (b) PROCEDURE.—The promulgation of the regula-
10 tions and administration of this title and the amendments
11 made by this title shall be made without regard to—

12 (1) the notice and comment provisions of sec-
13 tion 553 of title 5, United States Code;

14 (2) the Statement of Policy of the Secretary of
15 Agriculture effective July 24, 1971 (36 Fed. Reg.
16 13804), relating to notices of proposed rulemaking
17 and public participation in rulemaking; and

18 (3) chapter 35 of title 44, United States Code
19 (commonly known as the “Paperwork Reduction
20 Act”).

21 (c) CONGRESSIONAL REVIEW OF AGENCY RULE-
22 MAKING.—In carrying out this section, the Secretary shall
23 use the authority provided under section 808 of title 5,
24 United States Code.



1 **SEC. 643. EFFECTIVE DATE.**

2 This title and the amendments made by this title
3 shall apply to the 2005 and subsequent crops of each kind
4 of tobacco.

5 **TITLE VII—MISCELLANEOUS**
6 **PROVISIONS**

7 **SEC. 701. BROWNFIELDS DEMONSTRATION PROGRAM FOR**
8 **QUALIFIED GREEN BUILDING AND SUSTAIN-**
9 **ABLE DESIGN PROJECTS.**

10 (a) TREATMENT AS EXEMPT FACILITY BOND.—Sub-
11 section (a) of section 142 (relating to the definition of ex-
12 empt facility bond) is amended by striking “or” at the
13 end of paragraph (12), by striking the period at the end
14 of paragraph (13) and inserting “, or”, and by inserting
15 at the end the following new paragraph:

16 “(14) qualified green building and sustainable
17 design projects.”.

18 (b) QUALIFIED GREEN BUILDING AND SUSTAINABLE
19 DESIGN PROJECTS.—Section 142 (relating to exempt fa-
20 cility bonds) is amended by adding at the end thereof the
21 following new subsection:

22 “(1) QUALIFIED GREEN BUILDING AND SUSTAIN-
23 ABLE DESIGN PROJECTS.—

24 “(1) IN GENERAL.—For purposes of subsection
25 (a)(14), the term ‘qualified green building and sus-
26 tainable design project’ means any project which is

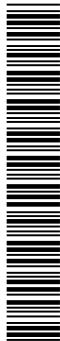


1 designated by the Secretary, after consultation with
2 the Administrator of the Environmental Protection
3 Agency, as a qualified green building and sustain-
4 able design project and which meets the require-
5 ments of clauses (i), (ii), (iii), and (iv) of paragraph
6 (4)(A).

7 “(2) DESIGNATIONS.—

8 “(A) IN GENERAL.—Within 60 days after
9 the end of the application period described in
10 paragraph (3)(A), the Secretary, after consulta-
11 tion with the Administrator of the Environ-
12 mental Protection Agency, shall designate quali-
13 fied green building and sustainable design
14 projects. At least one of the projects designated
15 shall be located in, or within a 10-mile radius
16 of, an empowerment zone as designated pursu-
17 ant to section 1391, and at least one of the
18 projects designated shall be located in a rural
19 State. No more than one project shall be des-
20 igned in a State. A project shall not be des-
21 igned if such project includes a stadium or
22 arena for professional sports exhibitions or
23 games.

24 “(B) MINIMUM CONSERVATION AND TECH-
25 NOLOGY INNOVATION OBJECTIVES.—The Sec-



1 retary, after consultation with the Adminis-
2 trator of the Environmental Protection Agency,
3 shall ensure that, in the aggregate, the projects
4 designated shall—

5 “(i) reduce electric consumption by
6 more than 150 megawatts annually as
7 compared to conventional generation,

8 “(ii) reduce daily sulfur dioxide emis-
9 sions by at least 10 tons compared to coal
10 generation power,

11 “(iii) expand by 75 percent the do-
12 mestic solar photovoltaic market in the
13 United States (measured in megawatts) as
14 compared to the expansion of that market
15 from 2001 to 2002, and

16 “(iv) use at least 25 megawatts of
17 fuel cell energy generation.

18 “(3) LIMITED DESIGNATIONS.—A project may
19 not be designated under this subsection unless—

20 “(A) the project is nominated by a State
21 or local government within 180 days of the en-
22 actment of this subsection, and

23 “(B) such State or local government pro-
24 vides written assurances that the project will



1 satisfy the eligibility criteria described in para-
2 graph (4).

3 “(4) APPLICATION.—

4 “(A) IN GENERAL.—A project may not be
5 designated under this subsection unless the ap-
6 plication for such designation includes a project
7 proposal which describes the energy efficiency,
8 renewable energy, and sustainable design fea-
9 tures of the project and demonstrates that the
10 project satisfies the following eligibility criteria:

11 “(i) GREEN BUILDING AND SUSTAIN-
12 ABLE DESIGN.—At least 75 percent of the
13 square footage of commercial buildings
14 which are part of the project is registered
15 for United States Green Building Council’s
16 LEED certification and is reasonably ex-
17 pected (at the time of the designation) to
18 receive such certification. For purposes of
19 determining LEED certification as re-
20 quired under this clause, points shall be
21 credited by using the following:

22 “(I) For wood products, certifi-
23 cation under the Sustainable Forestry
24 Initiative Program and the American
25 Tree Farm System.



1 “(II) For renewable wood prod-
2 ucts, as credited for recycled content
3 otherwise provided under LEED cer-
4 tification.

5 “(III) For composite wood prod-
6 ucts, certification under standards es-
7 tablished by the American National
8 Standards Institute, or such other vol-
9 untary standards as published in the
10 Federal Register by the Administrator
11 of the Environmental Protection
12 Agency.

13 “(ii) BROWNFIELD REDEVELOP-
14 MENT.—The project includes a brownfield
15 site as defined by section 101(39) of the
16 Comprehensive Environmental Response,
17 Compensation, and Liability Act of 1980
18 (42 U.S.C. 9601), including a site de-
19 scribed in subparagraph (D)(ii)(II)(aa)
20 thereof.

21 “(iii) STATE AND LOCAL SUPPORT.—
22 The project receives specific State or local
23 government resources which will support
24 the project in an amount equal to at least
25 \$5,000,000. For purposes of the preceding



1 sentence, the term ‘resources’ includes tax
2 abatement benefits and contributions in
3 kind.

4 “(iv) SIZE.—The project includes at
5 least one of the following:

6 “(I) At least 1,000,000 square
7 feet of building.

8 “(II) At least 20 acres.

9 “(v) USE OF TAX BENEFIT.—The
10 project proposal includes a description of
11 the net benefit of the tax-exempt financing
12 provided under this subsection which will
13 be allocated for financing of one or more
14 of the following:

15 “(I) The purchase, construction,
16 integration, or other use of energy ef-
17 ficiency, renewable energy, and sus-
18 tainable design features of the project.

19 “(II) Compliance with certifi-
20 cation standards cited under clause
21 (i).

22 “(III) The purchase, remediation,
23 and foundation construction and prep-
24 aration of the brownfields site.



1 “(vi) PROHIBITED FACILITIES.—An
2 issue shall not be treated as an issue de-
3 scribed in subsection (a)(14) if any pro-
4 ceeds of such issue are used to provide any
5 facility the principal business of which is
6 the sale of food or alcoholic beverages for
7 consumption on the premises.

8 “(vii) EMPLOYMENT.—The project is
9 projected to provide permanent employ-
10 ment of at least 1,500 full time equivalents
11 (150 full time equivalents in rural States)
12 when completed and construction employ-
13 ment of at least 1,000 full time equivalents
14 (100 full time equivalents in rural States).
15 The application shall include an independent
16 analysis which describes the project’s economic
17 impact, including the amount of projected em-
18 ployment.

19 “(B) PROJECT DESCRIPTION.—Each appli-
20 cation described in subparagraph (A) shall con-
21 tain for each project a description of—

22 “(i) the amount of electric consump-
23 tion reduced as compared to conventional
24 construction,



1 “(ii) the amount of sulfur dioxide
2 daily emissions reduced compared to coal
3 generation,

4 “(iii) the amount of the gross in-
5 stalled capacity of the project’s solar pho-
6 tovoltaic capacity measured in megawatts,
7 and

8 “(iv) the amount, in megawatts, of
9 the project’s fuel cell energy generation.

10 “(5) CERTIFICATION OF USE OF TAX BEN-
11 EFIT.—No later than 30 days after the completion
12 of the project, each project must certify to the Sec-
13 retary that the net benefit of the tax-exempt financ-
14 ing was used for the purposes described in para-
15 graph (4).

16 “(6) DEFINITIONS.—For purposes of this
17 subsection—

18 “(A) RURAL STATE.—The term ‘rural
19 State’ means any State which has—

20 “(i) a population of less than
21 4,500,000 according to the 2000 census,

22 “(ii) a population density of less than
23 150 people per square mile according to
24 the 2000 census, and



1 “(iii) increased in population by less
2 than half the rate of the national increase
3 between the 1990 and 2000 censuses.

4 “(B) LOCAL GOVERNMENT.—The term
5 ‘local government’ has the meaning given such
6 term by section 1393(a)(5).

7 “(C) NET BENEFIT OF TAX-EXEMPT FI-
8 NANCING.—The term ‘net benefit of tax-exempt
9 financing’ means the present value of the inter-
10 est savings (determined by a calculation estab-
11 lished by the Secretary) which result from the
12 tax-exempt status of the bonds.

13 “(7) AGGREGATE FACE AMOUNT OF TAX-EX-
14 EMPT FINANCING.—

15 “(A) IN GENERAL.—An issue shall not be
16 treated as an issue described in subsection
17 (a)(14) if the aggregate face amount of bonds
18 issued by the State or local government pursu-
19 ant thereto for a project (when added to the ag-
20 gregate face amount of bonds previously so
21 issued for such project) exceeds an amount des-
22 ignated by the Secretary as part of the designa-
23 tion.

24 “(B) LIMITATION ON AMOUNT OF
25 BONDS.—The Secretary may not allocate au-



1 thority to issue qualified green building and
2 sustainable design project bonds in an aggre-
3 gate face amount exceeding \$2,000,000,000.

4 “(8) TERMINATION.—Subsection (a)(14) shall
5 not apply with respect to any bond issued after Sep-
6 tember 30, 2009.

7 “(9) TREATMENT OF CURRENT REFUNDING
8 BONDS.—Paragraphs (7)(B) and (8) shall not apply
9 to any bond (or series of bonds) issued to refund a
10 bond issued under subsection (a)(14) before October
11 1, 2009, if—

12 “(A) the average maturity date of the issue
13 of which the refunding bond is a part is not
14 later than the average maturity date of the
15 bonds to be refunded by such issue,

16 “(B) the amount of the refunding bond
17 does not exceed the outstanding amount of the
18 refunded bond, and

19 “(C) the net proceeds of the refunding
20 bond are used to redeem the refunded bond not
21 later than 90 days after the date of the
22 issuance of the refunding bond.

23 For purposes of subparagraph (A), average maturity
24 shall be determined in accordance with section
25 147(b)(2)(A).”.



1 (c) EXEMPTION FROM GENERAL STATE VOLUME
2 CAPS.—Paragraph (3) of section 146(g) (relating to ex-
3 ception for certain bonds) is amended—

4 (1) by striking “or (13)” and inserting “(13),
5 or (14)”, and

6 (2) by striking “and qualified public educational
7 facilities” and inserting “qualified public educational
8 facilities, and qualified green building and sustain-
9 able design projects”.

10 (d) ACCOUNTABILITY.—Each issuer shall maintain,
11 on behalf of each project, an interest bearing reserve ac-
12 count equal to 1 percent of the net proceeds of any bond
13 issued under this section for such project. Not later than
14 5 years after the date of issuance, the Secretary of the
15 Treasury, after consultation with the Administrator of the
16 Environmental Protection Agency, shall determine wheth-
17 er the project financed with such bonds has substantially
18 complied with the terms and conditions described in sec-
19 tion 142(l)(4) of the Internal Revenue Code of 1986 (as
20 added by this section). If the Secretary, after such con-
21 sultation, certifies that the project has substantially com-
22 plied with such terms and conditions and meets the com-
23 mitments set forth in the application for such project de-
24 scribed in section 142(l)(4) of such Code, amounts in the
25 reserve account, including all interest, shall be released to



1 the project. If the Secretary determines that the project
2 has not substantially complied with such terms and condi-
3 tions, amounts in the reserve account, including all inter-
4 est, shall be paid to the United States Treasury.

5 (e) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to bonds issued after December
7 31, 2004.

8 **SEC. 702. EXCLUSION OF GAIN OR LOSS ON SALE OR EX-**
9 **CHANGE OF CERTAIN BROWNFIELD SITES**
10 **FROM UNRELATED BUSINESS TAXABLE IN-**
11 **COME.**

12 (a) IN GENERAL.—Subsection (b) of section 512 (re-
13 lating to unrelated business taxable income) is amended
14 by adding at the end the following new paragraph:

15 “(18) TREATMENT OF GAIN OR LOSS ON SALE
16 OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

17 “(A) IN GENERAL.—Notwithstanding para-
18 graph (5)(B), there shall be excluded any gain
19 or loss from the qualified sale, exchange, or
20 other disposition of any qualifying brownfield
21 property by an eligible taxpayer.

22 “(B) ELIGIBLE TAXPAYER.—For purposes
23 of this paragraph—

24 “(i) IN GENERAL.—The term ‘eligible
25 taxpayer’ means, with respect to a prop-



1 erty, any organization exempt from tax
2 under section 501(a) which—

3 “(I) acquires from an unrelated
4 person a qualifying brownfield prop-
5 erty, and

6 “(II) pays or incurs eligible re-
7 mediation expenditures with respect to
8 such property in an amount which ex-
9 ceeds the greater of \$550,000 or 12
10 percent of the fair market value of the
11 property at the time such property
12 was acquired by the eligible taxpayer,
13 determined as if there was not a pres-
14 ence of a hazardous substance, pollut-
15 ant, or contaminant on the property
16 which is complicating the expansion,
17 redevelopment, or reuse of the prop-
18 erty.

19 “(ii) EXCEPTION.—Such term shall
20 not include any organization which is—

21 “(I) potentially liable under sec-
22 tion 107 of the Comprehensive Envi-
23 ronmental Response, Compensation,
24 and Liability Act of 1980 with respect
25 to the qualifying brownfield property,



1 “(II) affiliated with any other
2 person which is so potentially liable
3 through any direct or indirect familial
4 relationship or any contractual, cor-
5 porate, or financial relationship (other
6 than a contractual, corporate, or fi-
7 nancial relationship which is created
8 by the instruments by which title to
9 any qualifying brownfield property is
10 conveyed or financed or by a contract
11 of sale of goods or services), or

12 “(III) the result of a reorganiza-
13 tion of a business entity which was so
14 potentially liable.

15 “(C) QUALIFYING BROWNFIELD PROP-
16 ERTY.—For purposes of this paragraph—

17 “(i) IN GENERAL.—The term ‘quali-
18 fying brownfield property’ means any real
19 property which is certified, before the tax-
20 payer incurs any eligible remediation ex-
21 penditures (other than to obtain a Phase I
22 environmental site assessment), by an ap-
23 propriate State agency (within the mean-
24 ing of section 198(c)(4)) in the State in
25 which such property is located as a



1 brownfield site within the meaning of sec-
2 tion 101(39) of the Comprehensive Envi-
3 ronmental Response, Compensation, and
4 Liability Act of 1980 (as in effect on the
5 date of the enactment of this paragraph).

6 “(ii) REQUEST FOR CERTIFICATION.—
7 Any request by an eligible taxpayer for a
8 certification described in clause (i) shall in-
9 clude a sworn statement by the eligible
10 taxpayer and supporting documentation of
11 the presence of a hazardous substance, pol-
12 lutant, or contaminant on the property
13 which is complicating the expansion, rede-
14 velopment, or reuse of the property given
15 the property’s reasonably anticipated fu-
16 ture land uses or capacity for uses of the
17 property (including a Phase I environ-
18 mental site assessment and, if applicable,
19 evidence of the property’s presence on a
20 local, State, or Federal list of brownfields
21 or contaminated property) and other envi-
22 ronmental assessments prepared or ob-
23 tained by the taxpayer.



1 “(D) QUALIFIED SALE, EXCHANGE, OR
2 OTHER DISPOSITION.—For purposes of this
3 paragraph—

4 “(i) IN GENERAL.—A sale, exchange,
5 or other disposition of property shall be
6 considered as qualified if—

7 “(I) such property is transferred
8 by the eligible taxpayer to an unre-
9 lated person, and

10 “(II) within 1 year of such trans-
11 fer the eligible taxpayer has received a
12 certification from the Environmental
13 Protection Agency or an appropriate
14 State agency (within the meaning of
15 section 198(c)(4)) in the State in
16 which such property is located that, as
17 a result of the eligible taxpayer’s re-
18 mediation actions, such property
19 would not be treated as a qualifying
20 brownfield property in the hands of
21 the transferee.

22 For purposes of subclause (II), before
23 issuing such certification, the Environ-
24 mental Protection Agency or appropriate
25 State agency shall respond to comments



1 received pursuant to clause (ii)(V) in the
2 same form and manner as required under
3 section 117(b) of the Comprehensive Envi-
4 ronmental Response, Compensation, and
5 Liability Act of 1980 (as in effect on the
6 date of the enactment of this paragraph).

7 “(ii) REQUEST FOR CERTIFICATION.—
8 Any request by an eligible taxpayer for a
9 certification described in clause (i) shall be
10 made not later than the date of the trans-
11 fer and shall include a sworn statement by
12 the eligible taxpayer certifying the fol-
13 lowing:

14 “(I) Remedial actions which com-
15 ply with all applicable or relevant and
16 appropriate requirements (consistent
17 with section 121(d) of the Com-
18 prehensive Environmental Response,
19 Compensation, and Liability Act of
20 1980) have been substantially com-
21 pleted, such that there are no haz-
22 ardous substances, pollutants, or con-
23 taminants which complicate the ex-
24 pansion, redevelopment, or reuse of
25 the property given the property’s rea-



1 sonably anticipated future land uses
2 or capacity for uses of the property.

3 “(II) The reasonably anticipated
4 future land uses or capacity for uses
5 of the property are more economically
6 productive or environmentally bene-
7 ficial than the uses of the property in
8 existence on the date of the certifi-
9 cation described in subparagraph
10 (C)(i). For purposes of the preceding
11 sentence, use of property as a landfill
12 or other hazardous waste facility shall
13 not be considered more economically
14 productive or environmentally bene-
15 ficial.

16 “(III) A remediation plan has
17 been implemented to bring the prop-
18 erty into compliance with all applica-
19 ble local, State, and Federal environ-
20 mental laws, regulations, and stand-
21 ards and to ensure that the remedi-
22 ation protects human health and the
23 environment.

24 “(IV) The remediation plan de-
25 scribed in subclause (III), including



1 any physical improvements required to
2 remediate the property, is either com-
3 plete or substantially complete, and, if
4 substantially complete, sufficient mon-
5 itoring, funding, institutional controls,
6 and financial assurances have been
7 put in place to ensure the complete
8 remediation of the property in accord-
9 ance with the remediation plan as
10 soon as is reasonably practicable after
11 the sale, exchange, or other disposi-
12 tion of such property.

13 “(V) Public notice and the oppor-
14 tunity for comment on the request for
15 certification was completed before the
16 date of such request. Such notice and
17 opportunity for comment shall be in
18 the same form and manner as re-
19 quired for public participation re-
20 quired under section 117(a) of the
21 Comprehensive Environmental Re-
22 sponse, Compensation, and Liability
23 Act of 1980 (as in effect on the date
24 of the enactment of this paragraph).
25 For purposes of this subclause, public



1 notice shall include, at a minimum,
2 publication in a major local newspaper
3 of general circulation.

4 “(iii) ATTACHMENT TO TAX RE-
5 TURNS.—A copy of each of the requests
6 for certification described in clause (ii) of
7 subparagraph (C) and this subparagraph
8 shall be included in the tax return of the
9 eligible taxpayer (and, where applicable, of
10 the qualifying partnership) for the taxable
11 year during which the transfer occurs.

12 “(iv) SUBSTANTIAL COMPLETION.—
13 For purposes of this subparagraph, a re-
14 medial action is substantially complete
15 when any necessary physical construction
16 is complete, all immediate threats have
17 been eliminated, and all long-term threats
18 are under control.

19 “(E) ELIGIBLE REMEDIATION EXPENDI-
20 TURES.—For purposes of this paragraph—

21 “(i) IN GENERAL.—The term ‘eligible
22 remediation expenditures’ means, with re-
23 spect to any qualifying brownfield prop-
24 erty, any amount paid or incurred by the
25 eligible taxpayer to an unrelated third per-



1 son to obtain a Phase I environmental site
2 assessment of the property, and any
3 amount so paid or incurred after the date
4 of the certification described in subpara-
5 graph (C)(i) for goods and services nec-
6 essary to obtain a certification described in
7 subparagraph (D)(i) with respect to such
8 property, including expenditures—

9 “(I) to manage, remove, control,
10 contain, abate, or otherwise remediate
11 a hazardous substance, pollutant, or
12 contaminant on the property,

13 “(II) to obtain a Phase II envi-
14 ronmental site assessment of the
15 property, including any expenditure to
16 monitor, sample, study, assess, or oth-
17 erwise evaluate the release, threat of
18 release, or presence of a hazardous
19 substance, pollutant, or contaminant
20 on the property,

21 “(III) to obtain environmental
22 regulatory certifications and approvals
23 required to manage the remediation
24 and monitoring of the hazardous sub-



1 stance, pollutant, or contaminant on
2 the property, and

3 “(IV) regardless of whether it is
4 necessary to obtain a certification de-
5 scribed in subparagraph (D)(i)(II), to
6 obtain remediation cost-cap or stop-
7 loss coverage, re-opener or regulatory
8 action coverage, or similar coverage
9 under environmental insurance poli-
10 cies, or financial guarantees required
11 to manage such remediation and mon-
12 itoring.

13 “(ii) EXCEPTIONS.—Such term shall
14 not include—

15 “(I) any portion of the purchase
16 price paid or incurred by the eligible
17 taxpayer to acquire the qualifying
18 brownfield property,

19 “(II) environmental insurance
20 costs paid or incurred to obtain legal
21 defense coverage, owner/operator li-
22 ability coverage, lender liability cov-
23 erage, professional liability coverage,
24 or similar types of coverage,



1 “(III) any amount paid or in-
2 curred to the extent such amount is
3 reimbursed, funded, or otherwise sub-
4 sidized by grants provided by the
5 United States, a State, or a political
6 subdivision of a State for use in con-
7 nection with the property, proceeds of
8 an issue of State or local government
9 obligations used to provide financing
10 for the property the interest of which
11 is exempt from tax under section 103,
12 or subsidized financing provided (di-
13 rectly or indirectly) under a Federal,
14 State, or local program provided in
15 connection with the property, or

16 “(IV) any expenditure paid or in-
17 curred before the date of the enact-
18 ment of this paragraph.

19 For purposes of subclause (III), the Sec-
20 retary may issue guidance regarding the
21 treatment of government-provided funds
22 for purposes of determining eligible reme-
23 diation expenditures.

24 “(F) DETERMINATION OF GAIN OR
25 LOSS.—For purposes of this paragraph, the de-



1 termination of gain or loss shall not include an
2 amount treated as gain which is ordinary in-
3 come with respect to section 1245 or section
4 1250 property, including amounts deducted as
5 section 198 expenses which are subject to the
6 recapture rules of section 198(e), if the tax-
7 payer had deducted such amounts in the com-
8 putation of its unrelated business taxable in-
9 come.

10 “(G) SPECIAL RULES FOR PARTNER-
11 SHIPS.—

12 “(i) IN GENERAL.—In the case of an
13 eligible taxpayer which is a partner of a
14 qualifying partnership which acquires, re-
15 mediates, and sells, exchanges, or other-
16 wise disposes of a qualifying brownfield
17 property, this paragraph shall apply to the
18 eligible taxpayer’s distributive share of the
19 qualifying partnership’s gain or loss from
20 the sale, exchange, or other disposition of
21 such property.

22 “(ii) QUALIFYING PARTNERSHIP.—
23 The term ‘qualifying partnership’ means a
24 partnership which—



1 “(I) has a partnership agreement
2 which satisfies the requirements of
3 section 514(c)(9)(B)(vi) at all times
4 beginning on the date of the first cer-
5 tification received by the partnership
6 under subparagraph (C)(i),

7 “(II) satisfies the requirements
8 of subparagraphs (B)(i), (C), (D), and
9 (E), if ‘qualified partnership’ is sub-
10 stituted for ‘eligible taxpayer’ each
11 place it appears therein (except sub-
12 paragraph (D)(iii)), and

13 “(III) is not an organization
14 which would be prevented from consti-
15 tuting an eligible taxpayer by reason
16 of subparagraph (B)(ii).

17 “(iii) REQUIREMENT THAT TAX-EX-
18 EMPT PARTNER BE A PARTNER SINCE
19 FIRST CERTIFICATION.—This paragraph
20 shall apply with respect to any eligible tax-
21 payer which is a partner of a partnership
22 which acquires, remediates, and sells, ex-
23 changes, or otherwise disposes of a quali-
24 fying brownfield property only if such eligi-
25 ble taxpayer was a partner of the quali-



1 fying partnership at all times beginning on
2 the date of the first certification received
3 by the partnership under subparagraph
4 (C)(i) and ending on the date of the sale,
5 exchange, or other disposition of the prop-
6 erty by the partnership.

7 “(iv) REGULATIONS.—The Secretary
8 shall prescribe such regulations as are nec-
9 essary to prevent abuse of the require-
10 ments of this subparagraph, including
11 abuse through—

12 “(I) the use of special allocations
13 of gains or losses, or

14 “(II) changes in ownership of
15 partnership interests held by eligible
16 taxpayers.

17 “(H) SPECIAL RULES FOR MULTIPLE
18 PROPERTIES.—

19 “(i) IN GENERAL.—An eligible tax-
20 payer or a qualifying partnership of which
21 the eligible taxpayer is a partner may
22 make a 1-time election to apply this para-
23 graph to more than 1 qualifying brownfield
24 property by averaging the eligible remedi-
25 ation expenditures for all such properties



1 acquired during the election period. If the
2 eligible taxpayer or qualifying partnership
3 makes such an election, the election shall
4 apply to all qualified sales, exchanges, or
5 other dispositions of qualifying brownfield
6 properties the acquisition and transfer of
7 which occur during the period for which
8 the election remains in effect.

9 “(ii) ELECTION.—An election under
10 clause (i) shall be made with the eligible
11 taxpayer’s or qualifying partnership’s time-
12 ly filed tax return (including extensions)
13 for the first taxable year for which the tax-
14 payer or qualifying partnership intends to
15 have the election apply. An election under
16 clause (i) is effective for the period—

17 “(I) beginning on the date which
18 is the first day of the taxable year of
19 the return in which the election is in-
20 cluded or a later day in such taxable
21 year selected by the eligible taxpayer
22 or qualifying partnership, and

23 “(II) ending on the date which is
24 the earliest of a date of revocation se-
25 lected by the eligible taxpayer or



1 qualifying partnership, the date which
2 is 8 years after the date described in
3 subclause (I), or, in the case of an
4 election by a qualifying partnership of
5 which the eligible taxpayer is a part-
6 ner, the date of the termination of the
7 qualifying partnership.

8 “(iii) REVOCATION.—An eligible tax-
9 payer or qualifying partnership may revoke
10 an election under clause (i)(II) by filing a
11 statement of revocation with a timely filed
12 tax return (including extensions). A rev-
13 ocation is effective as of the first day of
14 the taxable year of the return in which the
15 revocation is included or a later day in
16 such taxable year selected by the eligible
17 taxpayer or qualifying partnership. Once
18 an eligible taxpayer or qualifying partner-
19 ship revokes the election, the eligible tax-
20 payer or qualifying partnership is ineligible
21 to make another election under clause (i)
22 with respect to any qualifying brownfield
23 property subject to the revoked election.

24 “(I) RECAPTURE.—If an eligible taxpayer
25 excludes gain or loss from a sale, exchange, or



1 other disposition of property to which an elec-
2 tion under subparagraph (H) applies, and such
3 property fails to satisfy the requirements of this
4 paragraph, the unrelated business taxable in-
5 come of the eligible taxpayer for the taxable
6 year in which such failure occurs shall be deter-
7 mined by including any previously excluded gain
8 or loss from such sale, exchange, or other dis-
9 position allocable to such taxpayer, and interest
10 shall be determined at the overpayment rate es-
11 tablished under section 6621 on any resulting
12 tax for the period beginning with the due date
13 of the return for the taxable year during which
14 such sale, exchange, or other disposition oc-
15 curred, and ending on the date of payment of
16 the tax.

17 “(J) RELATED PERSONS.—For purposes of
18 this paragraph, a person shall be treated as re-
19 lated to another person if—

20 “(i) such person bears a relationship
21 to such other person described in section
22 267(b) (determined without regard to
23 paragraph (9) thereof), or section
24 707(b)(1), determined by substituting ‘25



1 percent' for '50 percent' each place it ap-
2 pears therein, and

3 “(ii) in the case such other person is
4 a nonprofit organization, if such person
5 controls directly or indirectly more than 25
6 percent of the governing body of such or-
7 ganization.

8 “(K) TERMINATION.—Except for purposes
9 of determining the average eligible remediation
10 expenditures for properties acquired during the
11 election period under subparagraph (H), this
12 paragraph shall not apply to any property ac-
13 quired by the eligible taxpayer or qualifying
14 partnership after December 31, 2009.”.

15 (b) EXCLUSION FROM DEFINITION OF DEBT-FI-
16 NANCED PROPERTY.—Section 514(b)(1) (defining debt-fi-
17 nanced property) is amended by striking “or” at the end
18 of subparagraph (C), by striking the period at the end of
19 subparagraph (D) and inserting “; or”, and by inserting
20 after subparagraph (D) the following new subparagraph:

21 “(E) any property the gain or loss from
22 the sale, exchange, or other disposition of which
23 would be excluded by reason of the provisions
24 of section 512(b)(18) in computing the gross
25 income of any unrelated trade or business.”.



1 (c) SAVINGS CLAUSE.—Nothing in the amendments
2 made by this section shall affect any duty, liability, or
3 other requirement imposed under any other Federal or
4 State law. Notwithstanding section 128(b) of the Com-
5 prehensive Environmental Response, Compensation, and
6 Liability Act of 1980, a certification provided by the Envi-
7 ronmental Protection Agency or an appropriate State
8 agency (within the meaning of section 198(c)(4) of the In-
9 ternal Revenue Code of 1986) shall not affect the liability
10 of any person under section 107(a) of such Act.

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to any gain or loss on the sale,
13 exchange, or other disposition of any property acquired by
14 the taxpayer after December 31, 2004.

15 **SEC. 703. CIVIL RIGHTS TAX RELIEF.**

16 (a) DEDUCTION ALLOWED WHETHER OR NOT TAX-
17 PAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a)
18 of section 62 (defining adjusted gross income) is amended
19 by inserting after paragraph (18) the following new item:

20 “(19) COSTS INVOLVING DISCRIMINATION
21 SUITS, ETC.—Any deduction allowable under this
22 chapter for attorney fees and court costs paid by, or
23 on behalf of, the taxpayer in connection with any ac-
24 tion involving a claim of unlawful discrimination (as
25 defined in subsection (e)) or a claim of a violation



1 of subchapter III of chapter 37 of title 31, United
2 States Code or a claim made under section
3 1862(b)(3)(A) of the Social Security Act (42 U.S.C.
4 1395y(b)(3)(A)). The preceding sentence shall not
5 apply to any deduction in excess of the amount in-
6 cludible in the taxpayer's gross income for the tax-
7 able year on account of a judgment or settlement
8 (whether by suit or agreement and whether as lump
9 sum or periodic payments) resulting from such
10 claim.”.

11 (b) UNLAWFUL DISCRIMINATION DEFINED.—Section
12 62 is amended by adding at the end the following new
13 subsection:

14 “(e) UNLAWFUL DISCRIMINATION DEFINED.—For
15 purposes of subsection (a)(19), the term ‘unlawful dis-
16 crimination’ means an act that is unlawful under any of
17 the following:

18 “(1) Section 302 of the Civil Rights Act of
19 1991 (2 U.S.C. 1202).

20 “(2) Section 201, 202, 203, 204, 205, 206, or
21 207 of the Congressional Accountability Act of 1995
22 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or
23 1317).

24 “(3) The National Labor Relations Act (29
25 U.S.C. 151 et seq.).



1 “(4) The Fair Labor Standards Act of 1938
2 (29 U.S.C. 201 et seq.).

3 “(5) Section 4 or 15 of the Age Discrimination
4 in Employment Act of 1967 (29 U.S.C. 623 or
5 633a).

6 “(6) Section 501 or 504 of the Rehabilitation
7 Act of 1973 (29 U.S.C. 791 or 794).

8 “(7) Section 510 of the Employee Retirement
9 Income Security Act of 1974 (29 U.S.C. 1140).

10 “(8) Title IX of the Education Amendments of
11 1972 (20 U.S.C. 1681 et seq.).

12 “(9) The Employee Polygraph Protection Act of
13 1988 (29 U.S.C. 2001 et seq.).

14 “(10) The Worker Adjustment and Retraining
15 Notification Act (29 U.S.C. 2102 et seq.).

16 “(11) Section 105 of the Family and Medical
17 Leave Act of 1993 (29 U.S.C. 2615).

18 “(12) Chapter 43 of title 38, United States
19 Code (relating to employment and reemployment
20 rights of members of the uniformed services).

21 “(13) Section 1977, 1979, or 1980 of the Re-
22 vised Statutes (42 U.S.C. 1981, 1983, or 1985).

23 “(14) Section 703, 704, or 717 of the Civil
24 Rights Act of 1964 (42 U.S.C. 2000e-2, 2000e-3,
25 or 2000e-16).



1 “(15) Section 804, 805, 806, 808, or 818 of the
2 Fair Housing Act (42 U.S.C. 3604, 3605, 3606,
3 3608, or 3617).

4 “(16) Section 102, 202, 302, or 503 of the
5 Americans with Disabilities Act of 1990 (42 U.S.C.
6 12112, 12132, 12182, or 12203).

7 “(17) Any provision of Federal law (popularly
8 known as whistleblower protection provisions) pro-
9 hibiting the discharge of an employee, the discrimi-
10 nation against an employee, or any other form of re-
11 taliation or reprisal against an employee for assert-
12 ing rights or taking other actions permitted under
13 Federal law.

14 “(18) Any provision of Federal, State, or local
15 law, or common law claims permitted under Federal,
16 State, or local law—

17 “(i) providing for the enforcement of
18 civil rights, or

19 “(ii) regulating any aspect of the em-
20 ployment relationship, including claims for
21 wages, compensation, or benefits, or pro-
22 hibiting the discharge of an employee, the
23 discrimination against an employee, or any
24 other form of retaliation or reprisal against



1 an employee for asserting rights or taking
2 other actions permitted by law.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to fees and costs paid after the
5 date of the enactment of this Act with respect to any judg-
6 ment or settlement occurring after such date.

7 **SEC. 704. MODIFICATION OF CLASS LIFE FOR CERTAIN**
8 **TRACK FACILITIES.**

9 (a) 7-YEAR PROPERTY.—Subparagraph (C) of sec-
10 tion 168(e)(3) (relating to classification of certain prop-
11 erty) is amended by redesignating clause (ii) as clause (iii)
12 and by inserting after clause (i) the following new clause:

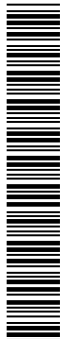
13 “(ii) any motorsports entertainment
14 complex, and”.

15 (b) DEFINITION.—Section 168(i) (relating to defini-
16 tions and special rules) is amended by adding at the end
17 the following new paragraph:

18 “(15) MOTORSPORTS ENTERTAINMENT COM-
19 PLEX.—

20 “(A) IN GENERAL.—The term ‘motor-
21 sports entertainment complex’ means a racing
22 track facility which—

23 “(i) is permanently situated on land,
24 and



1 “(ii) during the 36-month period fol-
2 lowing the first day of the month in which
3 the asset is placed in service, hosts 1 or
4 more racing events for automobiles (of any
5 type), trucks, or motorcycles which are
6 open to the public for the price of admis-
7 sion.

8 “(B) ANCILLARY AND SUPPORT FACILI-
9 TIES.—Such term shall include, if owned by the
10 taxpayer who owns the complex and provided
11 for the benefit of patrons of the complex—

12 “(i) ancillary facilities and land im-
13 provements in support of the complex’s ac-
14 tivities (including parking lots, sidewalks,
15 waterways, bridges, fences, and land-
16 scaping),

17 “(ii) support facilities (including food
18 and beverage retailing, souvenir vending,
19 and other nonlodging accommodations),
20 and

21 “(iii) appurtenances associated with
22 such facilities and related attractions and
23 amusements (including ticket booths, race
24 track surfaces, suites and hospitality facili-
25 ties, grandstands and viewing structures,



1 props, walls, facilities that support the de-
2 livery of entertainment services, other spe-
3 cial purpose structures, facades, shop inte-
4 riors, and buildings).

5 “(C) EXCEPTION.—Such term shall not in-
6 clude any transportation equipment, adminis-
7 trative services assets, warehouses, administra-
8 tive buildings, hotels, or motels.

9 “(D) TERMINATION.—This paragraph
10 shall not apply to any property placed in service
11 after December 31, 2007.”.

12 (c) EFFECTIVE DATE.—

13 (1) IN GENERAL.—The amendments made by
14 this section shall apply to any property placed in
15 service after the date of the enactment of this Act.

16 (2) SPECIAL RULE FOR ASSET CLASS 80.0.—In
17 the case of race track facilities placed in service
18 after the date of the enactment of this Act, such fa-
19 cilities shall not be treated as theme and amusement
20 facilities classified under asset class 80.0.

21 (3) NO INFERENCE.—Nothing in this section or
22 the amendments made by this section shall be con-
23 strued to affect the treatment of property placed in
24 service on or before the date of the enactment of this
25 Act.



1 **SEC. 705. SUSPENSION OF POLICYHOLDERS SURPLUS AC-**
2 **COUNT PROVISIONS.**

3 (a) DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-
4 1984 POLICYHOLDERS SURPLUS ACCOUNT.—Section 815
5 (relating to distributions to shareholders from pre-1984
6 policyholders surplus account) is amended by adding at
7 the end the following:

8 “(g) SPECIAL RULES APPLICABLE DURING 2005
9 AND 2006.—In the case of any taxable year of a stock
10 life insurance company beginning after December 31,
11 2004, and before January 1, 2007—

12 “(1) the amount under subsection (a)(2) for
13 such taxable year shall be treated as zero, and

14 “(2) notwithstanding subsection (b), in deter-
15 mining any subtractions from an account under sub-
16 sections (c)(3) and (d)(3), any distribution to share-
17 holders during such taxable year shall be treated as
18 made first out of the policyholders surplus account,
19 then out of the shareholders surplus account, and fi-
20 nally out of other accounts.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to taxable years beginning after
23 December 31, 2004.



1 **SEC. 706. CERTAIN ALASKA NATURAL GAS PIPELINE PROP-**
2 **ERTY TREATED AS 7-YEAR PROPERTY.**

3 (a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-
4 year property), as amended by this Act, is amended by
5 striking “and” at the end of clause (ii), by redesignating
6 clause (iii) as clause (iv), and by inserting after clause (ii)
7 the following new clause:

8 “(iii) any Alaska natural gas pipeline,
9 and”.

10 (b) ALASKA NATURAL GAS PIPELINE.—Section
11 168(i) (relating to definitions and special rules), as
12 amended by this Act, is amended by inserting after para-
13 graph (15) the following new paragraph:

14 “(16) ALASKA NATURAL GAS PIPELINE.—The
15 term ‘Alaska natural gas pipeline’ means the natural
16 gas pipeline system located in the State of Alaska
17 which—

18 “(A) has a capacity of more than
19 500,000,000,000 Btu of natural gas per day,
20 and

21 “(B) is—

22 “(i) placed in service after December
23 31, 2013, or

24 “(ii) treated as placed in service on
25 January 1, 2014, if the taxpayer who



1 places such system in service before Janu-
2 ary 1, 2014, elects such treatment.

3 Such term includes the pipe, trunk lines, related
4 equipment, and appurtenances used to carry natural
5 gas, but does not include any gas processing plant.”.

6 (c) ALTERNATIVE SYSTEM.—The table contained in
7 section 168(g)(3)(B) (relating to special rule for certain
8 property assigned to classes) is amended by inserting after
9 the item relating to subparagraph (C)(ii) the following
10 new item:

“(C)(iii) 22”.

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to property placed in service after
13 December 31, 2004.

14 **SEC. 707. EXTENSION OF ENHANCED OIL RECOVERY CRED-**
15 **IT TO CERTAIN ALASKA FACILITIES.**

16 (a) IN GENERAL.—Section 43(c)(1) (defining quali-
17 fied enhanced oil recovery costs) is amended by adding at
18 the end the following new subparagraph:

19 “(D) Any amount which is paid or in-
20 curred during the taxable year to construct a
21 gas treatment plant which—

22 “(i) is located in the area of the
23 United States (within the meaning of sec-
24 tion 638(1)) lying north of 64 degrees
25 North latitude,



1 “(ii) prepares Alaska natural gas for
2 transportation through a pipeline with a
3 capacity of at least 2,000,000,000,000 Btu
4 of natural gas per day, and

5 “(iii) produces carbon dioxide which is
6 injected into hydrocarbon-bearing geologi-
7 cal formations.”.

8 (b) ALASKA NATURAL GAS.—Section 43(c) is amend-
9 ed by adding at the end the following new paragraph:

10 “(5) ALASKA NATURAL GAS.—For purposes of
11 paragraph (1)(D)—

12 “(1) IN GENERAL.—The term ‘Alaska natural
13 gas’ means natural gas entering the Alaska natural
14 gas pipeline (as defined in section 168(i)(16) (deter-
15 mined without regard to subparagraph (B) thereof))
16 which is produced from a well—

17 “(A) located in the area of the State of
18 Alaska lying north of 64 degrees North lati-
19 tude, determined by excluding the area of the
20 Alaska National Wildlife Refuge (including the
21 continental shelf thereof within the meaning of
22 section 638(1)), and

23 “(B) pursuant to the applicable State and
24 Federal pollution prevention, control, and per-
25 mit requirements from such area (including the



1 continental shelf thereof within the meaning of
2 section 638(1)).

3 “(2) NATURAL GAS.—The term ‘natural gas’
4 has the meaning given such term by section
5 613A(e)(2).”.

6 (c) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to costs paid or incurred in taxable
8 years beginning after December 31, 2004.

9 **SEC. 708. METHOD OF ACCOUNTING FOR NAVAL SHIP-**
10 **BUILDERS.**

11 (a) IN GENERAL.—In the case of a qualified naval
12 ship contract, the taxable income of such contract during
13 the 5-taxable year period beginning with the taxable year
14 in which the contract commencement date occurs shall be
15 determined under a method identical to the method used
16 in the case of a qualified ship contract (as defined in sec-
17 tion 10203(b)(2)(B) of the Revenue Act of 1987).

18 (b) RECAPTURE OF TAX BENEFIT.—In the case of
19 a qualified naval ship contract to which subsection (a) ap-
20 plies, the taxpayer’s tax imposed by chapter 1 of the Inter-
21 nal Revenue Code of 1986 for the first taxable year fol-
22 lowing the 5-taxable year period described in subsection
23 (a) shall be increased by the excess (if any) of—



1 (1) the amount of tax which would have been
2 imposed during such period if this section had not
3 been enacted, over

4 (2) the amount of tax so imposed during such
5 period.

6 (c) QUALIFIED NAVAL SHIP CONTRACT.—For pur-
7 poses of this section—

8 (1) IN GENERAL.—The term “qualified naval
9 ship contract” means any contract or portion thereof
10 that is for the construction in the United States of
11 1 ship or submarine for the Federal Government if
12 the taxpayer reasonably expects the acceptance date
13 will occur no later than 9 years after the construc-
14 tion commencement date.

15 (2) ACCEPTANCE DATE.—The term “acceptance
16 date” means the date 1 year after the date on which
17 the Federal Government issues a letter of acceptance
18 or other similar document for the ship or submarine.

19 (3) CONSTRUCTION COMMENCEMENT DATE.—
20 The term “construction commencement date” means
21 the date on which the physical fabrication of any
22 section or component of the ship or submarine be-
23 gins in the taxpayer’s shipyard.

24 (d) EFFECTIVE DATE.—This section shall apply to
25 contracts for ships or submarines with respect to which



1 the construction commencement date occurs after the date
2 of the enactment of this Act.

3 **SEC. 709. MODIFICATION OF MINIMUM COST REQUIRE-**
4 **MENT FOR TRANSFER OF EXCESS PENSION**
5 **ASSETS.**

6 (a) AMENDMENTS OF ERISA.—

7 (1) Section 101(e)(3) of the Employee Retirement
8 Income Security Act of 1974 (29 U.S.C.
9 1021(e)(3)) is amended by striking “Pension Fund-
10 ing Equity Act of 2004” and inserting “American
11 Jobs Creation Act of 2004”.

12 (2) Section 403(c)(1) of such Act (29 U.S.C.
13 1103(c)(1)) is amended by striking “Pension Fund-
14 ing Equity Act of 2004” and inserting “American
15 Jobs Creation Act of 2004”.

16 (3) Paragraph (13) of section 408(b) of such
17 Act (29 U.S.C. 1108(b)(3)) is amended by striking
18 “Pension Funding Equity Act of 2004” and insert-
19 ing “American Jobs Creation Act of 2004”.

20 (b) MINIMUM COST REQUIREMENTS.—

21 (1) IN GENERAL.—Section 420(c)(3)(E) is
22 amended by adding at the end the following new
23 clause:

24 “(ii) INSIGNIFICANT COST REDUC-
25 TIONS PERMITTED.—



1 “(I) IN GENERAL.—An eligible
2 employer shall not be treated as fail-
3 ing to meet the requirements of this
4 paragraph for any taxable year if, in
5 lieu of any reduction of retiree health
6 coverage permitted under the regula-
7 tions prescribed under clause (i), the
8 employer reduces applicable employer
9 cost by an amount not in excess of the
10 reduction in costs which would have
11 occurred if the employer had made the
12 maximum permissible reduction in re-
13 tiree health coverage under such regu-
14 lations. In applying such regulations
15 to any subsequent taxable year, any
16 reduction in applicable employer cost
17 under this clause shall be treated as if
18 it were an equivalent reduction in re-
19 tiree health coverage.

20 “(II) ELIGIBLE EMPLOYER.—For
21 purposes of subclause (I), an employer
22 shall be treated as an eligible em-
23 ployer for any taxable year if, for the
24 preceding taxable year, the qualified
25 current retiree health liabilities of the



1 employer were at least 5 percent of
2 the gross receipts of the employer.
3 For purposes of this subclause, the
4 rules of paragraphs (2), (3)(B), and
5 (3)(C) of section 448(c) shall apply in
6 determining the amount of an employ-
7 er's gross receipts.”.

8 (2) CONFORMING AMENDMENT.—Section
9 420(c)(3)(E) is amended by striking “The Sec-
10 retary” and inserting:

11 “(i) IN GENERAL.—The Secretary”.

12 (3) EFFECTIVE DATE.—The amendments made
13 by this subsection shall apply to taxable years end-
14 ing after the date of the enactment of this Act.

15 **SEC. 710. EXPANSION OF CREDIT FOR ELECTRICITY PRO-**
16 **DUCTION FROM CERTAIN RENEWABLE RE-**
17 **SOURCES.**

18 (a) EXPANSION OF QUALIFIED ENERGY RE-
19 SOURCES.—Subsection (c) of section 45 (relating to elec-
20 tricity produced from certain renewable resources) is
21 amended to read as follows:

22 “(c) QUALIFIED ENERGY RESOURCES AND REFINED
23 COAL.—For purposes of this section—

24 “(1) IN GENERAL.—The term ‘qualified energy
25 resources’ means—



- 1 “(A) wind,
- 2 “(B) closed-loop biomass,
- 3 “(C) open-loop biomass,
- 4 “(D) geothermal energy,
- 5 “(E) solar energy,
- 6 “(F) small irrigation power, and
- 7 “(G) municipal solid waste.

8 “(2) CLOSED-LOOP BIOMASS.—The term
9 ‘closed-loop biomass’ means any organic material
10 from a plant which is planted exclusively for pur-
11 poses of being used at a qualified facility to produce
12 electricity.

13 “(3) OPEN-LOOP BIOMASS.—

14 “(A) IN GENERAL.—The term ‘open-loop
15 biomass’ means—

16 “(i) any agricultural livestock waste
17 nutrients, or

18 “(ii) any solid, nonhazardous, cel-
19 lulosic waste material which is segregated
20 from other waste materials and which is
21 derived from—

22 “(I) any of the following forest-
23 related resources: mill and harvesting
24 residues, precommercial thinnings,
25 slash, and brush,



1 “(II) solid wood waste materials,
2 including waste pallets, crates,
3 dunnage, manufacturing and con-
4 struction wood wastes (other than
5 pressure-treated, chemically-treated,
6 or painted wood wastes), and land-
7 scape or right-of-way tree trimmings,
8 but not including municipal solid
9 waste, gas derived from the bio-
10 degradation of solid waste, or paper
11 which is commonly recycled, or

12 “(III) agriculture sources, includ-
13 ing orchard tree crops, vineyard,
14 grain, legumes, sugar, and other crop
15 by-products or residues.

16 Such term shall not include closed-loop biomass
17 or biomass burned in conjunction with fossil
18 fuel (cofiring) beyond such fossil fuel required
19 for startup and flame stabilization.

20 “(B) AGRICULTURAL LIVESTOCK WASTE
21 NUTRIENTS.—

22 “(i) IN GENERAL.—The term ‘agricul-
23 tural livestock waste nutrients’ means agri-
24 cultural livestock manure and litter, includ-
25 ing wood shavings, straw, rice hulls, and



1 other bedding material for the disposition
2 of manure.

3 “(ii) AGRICULTURAL LIVESTOCK.—

4 The term ‘agricultural livestock’ includes
5 bovine, swine, poultry, and sheep.

6 “(4) GEOTHERMAL ENERGY.—The term ‘geo-
7 thermal energy’ means energy derived from a geo-
8 thermal deposit (within the meaning of section
9 613(e)(2)).

10 “(5) SMALL IRRIGATION POWER.—The term
11 ‘small irrigation power’ means power—

12 “(A) generated without any dam or im-
13 poundment of water through an irrigation sys-
14 tem canal or ditch, and

15 “(B) the nameplate capacity rating of
16 which is not less than 150 kilowatts but is less
17 than 5 megawatts.

18 “(6) MUNICIPAL SOLID WASTE.—The term
19 ‘municipal solid waste’ has the meaning given the
20 term ‘solid waste’ under section 2(27) of the Solid
21 Waste Disposal Act (42 U.S.C. 6903).

22 “(7) REFINED COAL.—

23 “(A) IN GENERAL.—The term ‘refined
24 coal’ means a fuel which—



1 “(i) is a liquid, gaseous, or solid syn-
2 thetic fuel produced from coal (including
3 lignite) or high carbon fly ash, including
4 such fuel used as a feedstock,

5 “(ii) is sold by the taxpayer with the
6 reasonable expectation that it will be used
7 for purpose of producing steam,

8 “(iii) is certified by the taxpayer as
9 resulting (when used in the production of
10 steam) in a qualified emission reduction,
11 and

12 “(iv) is produced in such a manner as
13 to result in an increase of at least 50 per-
14 cent in the market value of the refined coal
15 (excluding any increase caused by mate-
16 rials combined or added during the produc-
17 tion process), as compared to the value of
18 the feedstock coal.

19 “(B) QUALIFIED EMISSION REDUCTION.—
20 The term ‘qualified emission reduction’ means a
21 reduction of at least 20 percent of the emissions
22 of nitrogen oxide and either sulfur dioxide or
23 mercury released when burning the refined coal
24 (excluding any dilution caused by materials
25 combined or added during the production proc-



1 ess), as compared to the emissions released
2 when burning the feedstock coal or comparable
3 coal predominantly available in the marketplace
4 as of January 1, 2003.”.

5 (b) EXPANSION OF QUALIFIED FACILITIES.—

6 (1) IN GENERAL.—Section 45 is amended by
7 redesignating subsection (d) as subsection (e) and by
8 inserting after subsection (e) the following new sub-
9 section:

10 “(d) QUALIFIED FACILITIES.—For purposes of this
11 section—

12 “(1) WIND FACILITY.—In the case of a facility
13 using wind to produce electricity, the term ‘qualified
14 facility’ means any facility owned by the taxpayer
15 which is originally placed in service after December
16 31, 1993, and before January 1, 2006.

17 “(2) CLOSED-LOOP BIOMASS FACILITY.—

18 “(A) IN GENERAL.—In the case of a facil-
19 ity using closed-loop biomass to produce elec-
20 tricity, the term ‘qualified facility’ means any
21 facility—

22 “(i) owned by the taxpayer which is
23 originally placed in service after December
24 31, 1992, and before January 1, 2006, or



1 “(ii) owned by the taxpayer which be-
2 fore January 1, 2006, is originally placed
3 in service and modified to use closed-loop
4 biomass to co-fire with coal, with other bio-
5 mass, or with both, but only if the modi-
6 fication is approved under the Biomass
7 Power for Rural Development Programs or
8 is part of a pilot project of the Commodity
9 Credit Corporation as described in 65 Fed.
10 Reg. 63052.

11 “(B) SPECIAL RULES.—In the case of a
12 qualified facility described in subparagraph
13 (A)(ii)—

14 “(i) the 10-year period referred to in
15 subsection (a) shall be treated as beginning
16 no earlier than the date of the enactment
17 of this clause,

18 “(ii) the amount of the credit deter-
19 mined under subsection (a) with respect to
20 the facility shall be an amount equal to the
21 amount determined without regard to this
22 clause multiplied by the ratio of the ther-
23 mal content of the closed-loop biomass
24 used in such facility to the thermal content
25 of all fuels used in such facility, and



1 “(iii) if the owner of such facility is
2 not the producer of the electricity, the per-
3 son eligible for the credit allowable under
4 subsection (a) shall be the lessee or the op-
5 erator of such facility.

6 “(3) OPEN-LOOP BIOMASS FACILITIES.—

7 “(A) IN GENERAL.—In the case of a facil-
8 ity using open-loop biomass to produce elec-
9 tricity, the term ‘qualified facility’ means any
10 facility owned by the taxpayer which—

11 “(i) in the case of a facility using ag-
12 ricultural livestock waste nutrients—

13 “(I) is originally placed in service
14 after the date of the enactment of this
15 subclause and before January 1,
16 2006, and

17 “(II) the nameplate capacity rat-
18 ing of which is not less than 150 kilo-
19 watts, and

20 “(ii) in the case of any other facility,
21 is originally placed in service before Janu-
22 ary 1, 2006.

23 “(B) CREDIT ELIGIBILITY.—In the case of
24 any facility described in subparagraph (A), if
25 the owner of such facility is not the producer of



1 the electricity, the person eligible for the credit
2 allowable under subsection (a) shall be the les-
3 see or the operator of such facility.

4 “(4) GEOTHERMAL OR SOLAR ENERGY FACIL-
5 ITY.—In the case of a facility using geothermal or
6 solar energy to produce electricity, the term ‘quali-
7 fied facility’ means any facility owned by the tax-
8 payer which is originally placed in service after the
9 date of the enactment of this paragraph and before
10 January 1, 2006. Such term shall not include any
11 property described in section 48(a)(3) the basis of
12 which is taken into account by the taxpayer for pur-
13 poses of determining the energy credit under section
14 48.

15 “(5) SMALL IRRIGATION POWER FACILITY.—In
16 the case of a facility using small irrigation power to
17 produce electricity, the term ‘qualified facility’
18 means any facility owned by the taxpayer which is
19 originally placed in service after the date of the en-
20 actment of this paragraph and before January 1,
21 2006.

22 “(6) LANDFILL GAS FACILITIES.—In the case
23 of a facility producing electricity from gas derived
24 from the biodegradation of municipal solid waste,
25 the term ‘qualified facility’ means any facility owned



1 by the taxpayer which is originally placed in service
2 after the date of the enactment of this paragraph
3 and before January 1, 2006.

4 “(7) TRASH COMBUSTION FACILITIES.—In the
5 case of a facility which burns municipal solid waste
6 to produce electricity, the term ‘qualified facility’
7 means any facility owned by the taxpayer which is
8 originally placed in service after the date of the en-
9 actment of this paragraph and before January 1,
10 2006.

11 “(8) REFINED COAL PRODUCTION FACILITY.—
12 The term ‘refined coal production facility’ means a
13 facility which is placed in service after the date of
14 the enactment of this paragraph and before January
15 1, 2009.”.

16 (2) RULES FOR REFINED COAL PRODUCTION
17 FACILITIES.—Subsection (e) of section 45, as so re-
18 designated, is amended by adding at the end the fol-
19 lowing new paragraph:

20 “(8) REFINED COAL PRODUCTION FACILI-
21 TIES.—

22 “(A) DETERMINATION OF CREDIT
23 AMOUNT.—In the case of a producer of refined
24 coal, the credit determined under this section
25 (without regard to this paragraph) for any tax-



1 able year shall be increased by an amount equal
2 to \$4.375 per ton of qualified refined coal—

3 “(i) produced by the taxpayer at a re-
4 fined coal production facility during the
5 10-year period beginning on the date the
6 facility was originally placed in service, and

7 “(ii) sold by the taxpayer—

8 “(I) to an unrelated person, and

9 “(II) during such 10-year period
10 and such taxable year.

11 “(B) PHASEOUT OF CREDIT.—The amount
12 of the increase determined under subparagraph
13 (A) shall be reduced by an amount which bears
14 the same ratio to the amount of the increase
15 (determined without regard to this subpara-
16 graph) as—

17 “(i) the amount by which the ref-
18 erence price of fuel used as a feedstock
19 (within the meaning of subsection
20 (c)(7)(A)) for the calendar year in which
21 the sale occurs exceeds an amount equal to
22 1.7 multiplied by the reference price for
23 such fuel in 2002, bears to

24 “(ii) \$8.75.



1 “(C) APPLICATION OF RULES.—Rules
2 similar to the rules of the subsection (b)(3) and
3 paragraphs (1) through (5) and (9) of this sub-
4 section shall apply for purposes of determining
5 the amount of any increase under this para-
6 graph.”.

7 (3) CONFORMING AMENDMENTS.—

8 (A) Section 45(e), as so redesignated, is
9 amended by striking “subsection (c)(3)(A)” in
10 paragraph (7)(A)(i) and inserting “subsection
11 (d)(1)”.

12 (B) The heading of section 45 and the
13 item relating to such section in the table of sec-
14 tions for subpart D of part IV of subchapter A
15 of chapter 1 are each amended by inserting be-
16 fore the period at the end “, etc”.

17 (C) Paragraph (2) of section 45(b) is
18 amended by striking “The 1.5 cent amount”
19 and all that follows through “paragraph (1)”
20 and inserting “The 1.5 cent amount in sub-
21 section (a), the 8 cent amount in paragraph
22 (1), the \$4.375 amount in subsection (e)(8)(A),
23 and in subsection (e)(8)(B)(i) the reference
24 price of fuel used as a feedstock (within the
25 meaning of subsection (e)(7)(A)) in 2002”.



1 (c) SPECIAL CREDIT RATE AND PERIOD FOR ELEC-
2 TRICITY PRODUCED AND SOLD AFTER ENACTMENT
3 DATE.—Section 45(b) is amended by adding at the end
4 the following new paragraph:

5 “(4) CREDIT RATE AND PERIOD FOR ELEC-
6 TRICITY PRODUCED AND SOLD FROM CERTAIN FA-
7 CILITIES.—

8 “(A) CREDIT RATE.—In the case of elec-
9 tricity produced and sold in any calendar year
10 after 2003 at any qualified facility described in
11 paragraph (3), (5), (6), or (7) of subsection (d),
12 the amount in effect under subsection (a)(1) for
13 such calendar year (determined before the ap-
14 plication of the last sentence of paragraph (2)
15 of this subsection) shall be reduced by one-half.

16 “(B) CREDIT PERIOD.—

17 “(i) IN GENERAL.—Except as pro-
18 vided in clause (ii), in the case of any facil-
19 ity described in paragraph (3), (4), (5),
20 (6), or (7) of subsection (d), the 5-year pe-
21 riod beginning on the date the facility was
22 originally placed in service shall be sub-
23 stituted for the 10-year period in sub-
24 section (a)(2)(A)(ii).



1 “(ii) CERTAIN OPEN-LOOP BIOMASS
2 FACILITIES.—In the case of any facility de-
3 scribed in subsection (d)(3)(A)(ii) placed in
4 service before the date of the enactment of
5 this paragraph, the 5-year period begin-
6 ning on the date of the enactment of this
7 Act shall be substituted for the 10-year pe-
8 riod in subsection (a)(2)(A)(ii).”.

9 (d) COORDINATION WITH OTHER CREDITS.—Section
10 45(e), as redesignated and amended by this section, is
11 amended by inserting after paragraph (8) the following
12 new paragraph:

13 “(9) COORDINATION WITH CREDIT FOR PRO-
14 DUCING FUEL FROM A NONCONVENTIONAL
15 SOURCE.—The term ‘qualified facility’ shall not in-
16 clude any facility the production from which is al-
17 lowed as a credit under section 29 for the taxable
18 year or any prior taxable year.”.

19 (e) COORDINATION WITH SECTION 48.—Section
20 48(a)(3) (defining energy property) is amended by adding
21 at the end the following new sentence: “Such term shall
22 not include any property which is part of a facility the
23 production from which is allowed as a credit under section
24 45 for the taxable year or any prior taxable year.”.



1 (f) ELIMINATION OF CERTAIN CREDIT REDUC-
2 TIONS.—Section 45(b)(3) (relating to credit reduced for
3 grants, tax-exempt bonds, subsidized energy financing,
4 and other credits) is amended—

5 (1) by inserting “the lesser of $\frac{1}{2}$ or” before “a
6 fraction” in the matter preceding subparagraph (A),
7 and

8 (2) by adding at the end the following new sen-
9 tence: “This paragraph shall not apply with respect
10 to any facility described in subsection (d)(2)(A)(ii).”.

11 (g) EFFECTIVE DATES.—

12 (1) IN GENERAL.—Except as otherwise pro-
13 vided in this subsection, the amendments made by
14 this section shall apply to electricity produced and
15 sold after the date of the enactment of this Act, in
16 taxable years ending after such date.

17 (2) CERTAIN BIOMASS FACILITIES.—With re-
18 spect to any facility described in section
19 45(d)(3)(A)(ii) of the Internal Revenue Code of
20 1986, as added by subsection (b)(1), which is placed
21 in service before the date of the enactment of this
22 Act, the amendments made by this section shall
23 apply to electricity produced and sold after Decem-
24 ber 31, 2004, in taxable years ending after such
25 date.



1 (3) CREDIT RATE AND PERIOD FOR NEW FA-
2 CILITIES.—The amendments made by subsection (c)
3 shall apply to electricity produced and sold after De-
4 cember 31, 2004, in taxable years ending after such
5 date.

6 (4) NONAPPLICATION OF AMENDMENTS TO
7 PREEFFECTIVE DATE POULTRY WASTE FACILI-
8 TIES.—The amendments made by this section shall
9 not apply with respect to any poultry waste facility
10 (within the meaning of section 45(c)(3)(C), as in ef-
11 fect on the day before the date of the enactment of
12 this Act) placed in service before January 1, 2004.

13 (5) REFINED COAL PRODUCTION FACILITIES.—
14 Section 45(e)(8) of the Internal Revenue Code of
15 1986, as added by this section, shall apply to refined
16 coal produced and sold after the date of the enact-
17 ment of this Act.

18 **SEC. 711. CERTAIN BUSINESS RELATED CREDITS ALLOWED**

19 **AGAINST REGULAR AND MINIMUM TAX.**

20 (a) IN GENERAL.—Subsection (c) of section 38 (re-
21 lating to limitation based on amount of tax) is amended
22 by redesignating paragraph (4) as paragraph (5) and by
23 inserting after paragraph (3) the following new paragraph:

24 “(4) SPECIAL RULES FOR SPECIFIED CRED-
25 ITS.—



1 “(A) IN GENERAL.—In the case of speci-
2 fied credits—

3 “(i) this section and section 39 shall
4 be applied separately with respect to such
5 credits, and

6 “(ii) in applying paragraph (1) to
7 such credits—

8 “(I) the tentative minimum tax
9 shall be treated as being zero, and

10 “(II) the limitation under para-
11 graph (1) (as modified by subclause
12 (I)) shall be reduced by the credit al-
13 lowed under subsection (a) for the
14 taxable year (other than the specified
15 credits).

16 “(B) SPECIFIED CREDITS.—For purposes
17 of this subsection, the term ‘specified credits’
18 includes—

19 “(i) for taxable years beginning after
20 December 31, 2004, the credit determined
21 under section 40,

22 “(ii) the credit determined under sec-
23 tion 45 to the extent that such credit is at-
24 tributable to electricity or refined coal
25 produced—



1 “(I) at a facility which is origi-
2 nally placed in service after the date
3 of the enactment of this paragraph,
4 and

5 “(II) during the 4-year period be-
6 ginning on the date that such facility
7 was originally placed in service”.

8 (b) CONFORMING AMENDMENTS.—Paragraph
9 (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) are each
10 amended by inserting “or the specified credits” after “em-
11 ployee credit”.

12 (c) EFFECTIVE DATE.—Except as otherwise pro-
13 vided, the amendments made by this section shall apply
14 to taxable years ending after the date of the enactment
15 of this Act.

16 **SEC. 712. INCLUSION OF PRIMARY AND SECONDARY MED-**
17 **ICAL STRATEGIES FOR CHILDREN AND**
18 **ADULTS WITH SICKLE CELL DISEASE AS MED-**
19 **ICAL ASSISTANCE UNDER THE MEDICAID**
20 **PROGRAM.**

21 (a) OPTIONAL MEDICAL ASSISTANCE.—

22 (1) IN GENERAL.—Section 1905 of the Social
23 Security Act (42 U.S.C. 1396d) is amended—

24 (A) in subsection (a)—



1 (i) by striking “and” at the end of
2 paragraph (26);

3 (ii) by redesignating paragraph (27)
4 as paragraph (28); and

5 (iii) by inserting after paragraph (26),
6 the following:

7 “(27) subject to subsection (x), primary and
8 secondary medical strategies and treatment and
9 services for individuals who have Sickle Cell Disease;
10 and”; and

11 (B) by adding at the end the following:

12 “(x) For purposes of subsection (a)(27), the strate-
13 gies, treatment, and services described in that subsection
14 include the following:

15 “(1) Chronic blood transfusion (with
16 deferoxamine chelation) to prevent stroke in individ-
17 uals with Sickle Cell Disease who have been identi-
18 fied as being at high risk for stroke.

19 “(2) Genetic counseling and testing for individ-
20 uals with Sickle Cell Disease or the sickle cell trait
21 to allow health care professionals to treat such indi-
22 viduals and to prevent symptoms of Sickle Cell Dis-
23 ease.



1 “(3) Other treatment and services to prevent
2 individuals who have Sickle Cell Disease and who
3 have had a stroke from having another stroke.”.

4 (2) RULE OF CONSTRUCTION.—Nothing in sub-
5 sections (a)(27) or (x) of section 1905 of the Social
6 Security Act (42 U.S.C. 1396d), as added by para-
7 graph (1), shall be construed as implying that a
8 State medicaid program under title XIX of such Act
9 could not have treated, prior to the date of enact-
10 ment of this Act, any of the primary and secondary
11 medical strategies and treatment and services de-
12 scribed in such subsections as medical assistance
13 under such program, including as early and periodic
14 screening, diagnostic, and treatment services under
15 section 1905(r) of such Act.

16 (b) FEDERAL REIMBURSEMENT FOR EDUCATION
17 AND OTHER SERVICES RELATED TO THE PREVENTION
18 AND TREATMENT OF SICKLE CELL DISEASE.—Section
19 1903(a)(3) of the Social Security Act (42 U.S.C.
20 1396b(a)(3)) is amended—

21 (1) in subparagraph (D), by striking “plus” at
22 the end and inserting “and”; and

23 (2) by adding at the end the following:



1 “(E) 50 percent of the sums expended with
2 respect to costs incurred during such quarter as
3 are attributable to providing—

4 “(i) services to identify and educate
5 individuals who are likely to be eligible for
6 medical assistance under this title and who
7 have Sickle Cell Disease or who are car-
8 riers of the sickle cell gene, including edu-
9 cation regarding how to identify such indi-
10 viduals; or

11 “(ii) education regarding the risks of
12 stroke and other complications, as well as
13 the prevention of stroke and other com-
14 plications, in individuals who are likely to
15 be eligible for medical assistance under
16 this title and who have Sickle Cell Disease;
17 plus”.

18 (c) DEMONSTRATION PROGRAM FOR THE DEVELOP-
19 MENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS
20 FOR THE PREVENTION AND TREATMENT OF SICKLE
21 CELL DISEASE.—

22 (1) AUTHORITY TO CONDUCT DEMONSTRATION
23 PROGRAM.—

24 (A) IN GENERAL.—The Administrator,
25 through the Bureau of Primary Health Care



1 and the Maternal and Child Health Bureau,
2 shall conduct a demonstration program by mak-
3 ing grants to up to 40 eligible entities for each
4 fiscal year in which the program is conducted
5 under this section for the purpose of developing
6 and establishing systemic mechanisms to im-
7 prove the prevention and treatment of Sickle
8 Cell Disease, including through—

9 (i) the coordination of service delivery
10 for individuals with Sickle Cell Disease;

11 (ii) genetic counseling and testing;

12 (iii) bundling of technical services re-
13 lated to the prevention and treatment of
14 Sickle Cell Disease;

15 (iv) training of health professionals;

16 and

17 (v) identifying and establishing other
18 efforts related to the expansion and coordi-
19 nation of education, treatment, and con-
20 tinuity of care programs for individuals
21 with Sickle Cell Disease.

22 (B) GRANT AWARD REQUIREMENTS.—

23 (i) GEOGRAPHIC DIVERSITY.—The
24 Administrator shall, to the extent prac-
25 ticable, award grants under this section to



1 eligible entities located in different regions
2 of the United States.

3 (ii) PRIORITY.—In awarding grants
4 under this subsection, the Administrator
5 shall give priority to awarding grants to el-
6 igible entities that are—

7 (I) Federally-qualified health cen-
8 ters that have a partnership or other
9 arrangement with a comprehensive
10 Sickle Cell Disease treatment center
11 that does not receive funds from the
12 National Institutes of Health; or

13 (II) Federally-qualified health
14 centers that intend to develop a part-
15 nership or other arrangement with a
16 comprehensive Sickle Cell Disease
17 treatment center that does not receive
18 funds from the National Institutes of
19 Health.

20 (2) ADDITIONAL REQUIREMENTS.—An eligible
21 entity awarded a grant under this subsection shall
22 use funds made available under the grant to carry
23 out, in addition to the activities described in para-
24 graph (1)(A), the following activities:



1 (A) To facilitate and coordinate the deliv-
2 ery of education, treatment, and continuity of
3 care for individuals with Sickle Cell Disease
4 under—

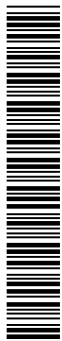
5 (i) the entity's collaborative agreement
6 with a community-based Sickle Cell Dis-
7 ease organization or a nonprofit entity that
8 works with individuals who have Sickle Cell
9 Disease;

10 (ii) the Sickle Cell Disease newborn
11 screening program for the State in which
12 the entity is located; and

13 (iii) the maternal and child health
14 program under title V of the Social Secu-
15 rity Act (42 U.S.C. 701 et seq.) for the
16 State in which the entity is located.

17 (B) To train nursing and other health
18 staff who provide care for individuals with Sick-
19 le Cell Disease.

20 (C) To enter into a partnership with adult
21 or pediatric hematologists in the region and
22 other regional experts in Sickle Cell Disease at
23 tertiary and academic health centers and State
24 and county health offices.



1 (D) To identify and secure resources for
2 ensuring reimbursement under the medicaid
3 program, State children's health insurance pro-
4 gram, and other health programs for the pre-
5 vention and treatment of Sickle Cell Disease.

6 (3) NATIONAL COORDINATING CENTER.—

7 (A) ESTABLISHMENT.—The Administrator
8 shall enter into a contract with an entity to
9 serve as the National Coordinating Center for
10 the demonstration program conducted under
11 this subsection.

12 (B) ACTIVITIES DESCRIBED.—The Na-
13 tional Coordinating Center shall—

14 (i) collect, coordinate, monitor, and
15 distribute data, best practices, and findings
16 regarding the activities funded under
17 grants made to eligible entities under the
18 demonstration program;

19 (ii) develop a model protocol for eligi-
20 ble entities with respect to the prevention
21 and treatment of Sickle Cell Disease;

22 (iii) develop educational materials re-
23 garding the prevention and treatment of
24 Sickle Cell Disease; and



1 (iv) prepare and submit to Congress a
2 final report that includes recommendations
3 regarding the effectiveness of the dem-
4 onstration program conducted under this
5 subsection and such direct outcome meas-
6 ures as—

7 (I) the number and type of
8 health care resources utilized (such as
9 emergency room visits, hospital visits,
10 length of stay, and physician visits for
11 individuals with Sickle Cell Disease);
12 and

13 (II) the number of individuals
14 that were tested and subsequently re-
15 ceived genetic counseling for the sickle
16 cell trait.

17 (4) APPLICATION.—An eligible entity desiring a
18 grant under this subsection shall submit an applica-
19 tion to the Administrator at such time, in such man-
20 ner, and containing such information as the Admin-
21 istrator may require.

22 (5) DEFINITIONS.—In this subsection:

23 (A) ADMINISTRATOR.—The term “Admin-
24 istrator” means the Administrator of the
25 Health Resources and Services Administration.



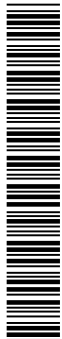
1 (B) ELIGIBLE ENTITY.—The term “eligible
2 entity” means a Federally-qualified health cen-
3 ter, a nonprofit hospital or clinic, or a univer-
4 sity health center that provides primary health
5 care, that—

6 (i) has a collaborative agreement with
7 a community-based SickleCell Disease or-
8 ganization or a nonprofit entity with expe-
9 rience in working with individuals who
10 have Sickle Cell Disease; and

11 (ii) demonstrates to the Administrator
12 that either the Federally-qualified health
13 center, the nonprofit hospital or clinic, the
14 university health center, the organization
15 or entity described in clause (i), or the ex-
16 perts described in paragraph (2)(C), has at
17 least 5 years of experience in working with
18 individuals who have Sickle Cell Disease.

19 (C) FEDERALLY-QUALIFIED HEALTH CEN-
20 TER.—The term “Federally-qualified health
21 center” has the meaning given that term in sec-
22 tion 1905(l)(2)(B) of the Social Security Act
23 (42 U.S.C. 1396d(l)(2)(B)).

24 (6) AUTHORIZATION OF APPROPRIATIONS.—
25 There is authorized to be appropriated to carry out



1 this subsection, \$10,000,000 for each of fiscal years
 2 2005 through 2009.

3 (d) EFFECTIVE DATE.—The amendments made by
 4 subsections (a) and (b) take effect on the date of enact-
 5 ment of this Act and apply to medical assistance and serv-
 6 ices provided under title XIX of the Social Security Act
 7 (42 U.S.C. 1396 et seq.) on or after that date.

8 **SEC. 713. CEILING FANS.**

9 (a) IN GENERAL.—Subchapter II of chapter 99 of
 10 the Harmonized Tariff Schedule of the United States is
 11 amended by inserting in numerical sequence the following
 12 new heading:

“	9902.84.14	Ceiling fans for permanent installa- tion (provided for in subheading 8414.51.00)	Free	No change	No change	On or before 12/31/2006	”.
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13 (b) EFFECTIVE DATE.—The amendment made by
 14 this section applies to goods entered, or withdrawn from
 15 warehouse, for consumption on or after the 15th day after
 16 the date of enactment of this Act.

17 **SEC. 714. CERTAIN STEAM GENERATORS, AND CERTAIN RE-**
 18 **ACTOR VESSEL HEADS AND PRESSURIZERS,**
 19 **USED IN NUCLEAR FACILITIES.**

20 (a) CERTAIN STEAM GENERATORS.—Heading
 21 9902.84.02 of the Harmonized Tariff Schedule of the
 22 United States is amended by striking “12/31/2006” and
 23 inserting “12/31/2008”.



1 (b) CERTAIN REACTOR VESSEL HEADS AND PRES-
 2 SURIZERS.—Subchapter II of chapter 99 of the Har-
 3 monized Tariff Schedule of the United States is amended
 4 by inserting in numerical sequence the following new head-
 5 ing:

“	9902.84.03	Reactor vessel heads and presurizers for nuclear reactors (provided for in subheading 8401.40.00)	Free	No change	No change	On or before 12/31/2008	”.
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6 (c) EFFECTIVE DATE.—

7 (1) SUBSECTION (a).—The amendment made
 8 by subsection (a) shall take effect on the date of the
 9 enactment of this Act.

10 (2) SUBSECTION (b).—The amendment made
 11 subsection (b) shall apply to goods entered, or with-
 12 drawn from warehouse, for consumption on or after
 13 the 15th day after the date of the enactment of this
 14 Act.



1 **TITLE VIII—REVENUE**
2 **PROVISIONS**
3 **Subtitle A—Provisions to Reduce**
4 **Tax Avoidance Through Indi-**
5 **vidual and Corporate Expatria-**
6 **tion**

7 **SEC. 801. TAX TREATMENT OF EXPATRIATED ENTITIES AND**
8 **THEIR FOREIGN PARENTS.**

9 (a) IN GENERAL.—Subchapter C of chapter 80 (re-
10 lating to provisions affecting more than one subtitle) is
11 amended by adding at the end the following new section:

12 **“SEC. 7874. RULES RELATING TO EXPATRIATED ENTITIES**
13 **AND THEIR FOREIGN PARENTS.**

14 “(a) TAX ON INVERSION GAIN OF EXPATRIATED EN-
15 TITIES.—

16 “(1) IN GENERAL.—The taxable income of an
17 expatriated entity for any taxable year which in-
18 cludes any portion of the applicable period shall in
19 no event be less than the inversion gain of the entity
20 for the taxable year.

21 “(2) EXPATRIATED ENTITY.—For purposes of
22 this subsection—

23 “(A) IN GENERAL.—The term ‘expatriated
24 entity’ means—



1 “(i) the domestic corporation or part-
2 nership referred to in subparagraph (B)(i)
3 with respect to which a foreign corporation
4 is a surrogate foreign corporation, and

5 “(ii) any United States person who is
6 related (within the meaning of section
7 267(b) or 707(b)(1)) to a domestic cor-
8 poration or partnership described in clause
9 (i).

10 “(B) SURROGATE FOREIGN CORPORA-
11 TION.—A foreign corporation shall be treated
12 as a surrogate foreign corporation if, pursuant
13 to a plan (or a series of related transactions)—

14 “(i) the entity completes after March
15 4, 2003, the direct or indirect acquisition
16 of substantially all of the properties held
17 directly or indirectly by a domestic cor-
18 poration or substantially all of the prop-
19 erties constituting a trade or business of a
20 domestic partnership,

21 “(ii) after the acquisition at least 60
22 percent of the stock (by vote or value) of
23 the entity is held—

24 “(I) in the case of an acquisition
25 with respect to a domestic corpora-



1 tion, by former shareholders of the
2 domestic corporation by reason of
3 holding stock in the domestic corpora-
4 tion, or

5 “(II) in the case of an acquisition
6 with respect to a domestic partner-
7 ship, by former partners of the do-
8 mestic partnership by reason of hold-
9 ing a capital or profits interest in the
10 domestic partnership, and

11 “(iii) after the acquisition the ex-
12 panded affiliated group which includes the
13 entity does not have substantial business
14 activities in the foreign country in which,
15 or under the law of which, the entity is
16 created or organized, when compared to
17 the total business activities of such ex-
18 panded affiliated group.

19 An entity otherwise described in clause (i) with
20 respect to any domestic corporation or partner-
21 ship trade or business shall be treated as not so
22 described if, on or before March 4, 2003, such
23 entity acquired directly or indirectly more than
24 half of the properties held directly or indirectly
25 by such corporation or more than half of the



1 properties constituting such partnership trade
2 or business, as the case may be.

3 “(3) COORDINATION WITH SUBSECTION (b).—

4 Paragraph (1) shall not apply to any entity which is
5 treated as a domestic corporation under subsection
6 (b).

7 “(b) INVERTED CORPORATIONS TREATED AS DO-
8 MESTIC CORPORATIONS.—Notwithstanding section
9 7701(a)(4), a foreign corporation shall be treated for pur-
10 poses of this title as a domestic corporation if such cor-
11 poration would be a surrogate foreign corporation if sub-
12 section (a)(2) were applied by substituting ‘80 percent’ for
13 ‘60 percent’.

14 “(c) DEFINITIONS AND SPECIAL RULES.—

15 “(1) EXPANDED AFFILIATED GROUP.—The
16 term ‘expanded affiliated group’ means an affiliated
17 group as defined in section 1504(a) but without re-
18 gard to section 1504(b)(3), except that section
19 1504(a) shall be applied by substituting ‘more than
20 50 percent’ for ‘at least 80 percent’ each place it ap-
21 pears.

22 “(2) CERTAIN STOCK DISREGARDED.—There
23 shall not be taken into account in determining own-
24 ership under subsection (a)(2)(B)(ii)—



1 “(A) stock held by members of the ex-
2 panded affiliated group which includes the for-
3 eign corporation, or

4 “(B) stock of such foreign corporation
5 which is sold in a public offering related to the
6 acquisition described in subsection (a)(2)(B)(i).

7 “(3) PLAN DEEMED IN CERTAIN CASES.—If a
8 foreign corporation acquires directly or indirectly
9 substantially all of the properties of a domestic cor-
10 poration or partnership during the 4-year period be-
11 ginning on the date which is 2 years before the own-
12 ership requirements of subsection (a)(2)(B)(ii) are
13 met, such actions shall be treated as pursuant to a
14 plan.

15 “(4) CERTAIN TRANSFERS DISREGARDED.—The
16 transfer of properties or liabilities (including by con-
17 tribution or distribution) shall be disregarded if such
18 transfers are part of a plan a principal purpose of
19 which is to avoid the purposes of this section.

20 “(5) SPECIAL RULE FOR RELATED PARTNER-
21 SHIPS.—For purposes of applying subsection
22 (a)(2)(B)(ii) to the acquisition of a trade or business
23 of a domestic partnership, except as provided in reg-
24 ulations, all partnerships which are under common



1 control (within the meaning of section 482) shall be
2 treated as 1 partnership.

3 “(6) REGULATIONS.—The Secretary shall pre-
4 scribe such regulations as may be appropriate to de-
5 termine whether a corporation is a surrogate foreign
6 corporation, including regulations—

7 “(A) to treat warrants, options, contracts
8 to acquire stock, convertible debt interests, and
9 other similar interests as stock, and

10 “(B) to treat stock as not stock.

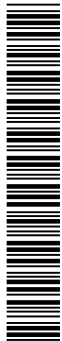
11 “(d) OTHER DEFINITIONS.—For purposes of this
12 section—

13 “(1) APPLICABLE PERIOD.—The term ‘applica-
14 ble period’ means the period—

15 “(A) beginning on the first date properties
16 are acquired as part of the acquisition described
17 in subsection (a)(2)(B)(i), and

18 “(B) ending on the date which is 10 years
19 after the last date properties are acquired as
20 part of such acquisition.

21 “(2) INVERSION GAIN.—The term ‘inversion
22 gain’ means the income or gain recognized by reason
23 of the transfer during the applicable period of stock
24 or other properties by an expatriated entity, and any
25 income received or accrued during the applicable pe-



1 riod by reason of a license of any property by an ex-
2 patriated entity—

3 “(A) as part of the acquisition described in
4 subsection (a)(2)(B)(i), or

5 “(B) after such acquisition if the transfer
6 or license is to a foreign related person.

7 Subparagraph (B) shall not apply to property de-
8 scribed in section 1221(a)(1) in the hands of the ex-
9 patriated entity.

10 “(3) FOREIGN RELATED PERSON.—The term
11 ‘foreign related person’ means, with respect to any
12 expatriated entity, a foreign person which—

13 “(A) is related (within the meaning of sec-
14 tion 267(b) or 707(b)(1)) to such entity, or

15 “(B) is under the same common control
16 (within the meaning of section 482) as such en-
17 tity.

18 “(e) SPECIAL RULES.—

19 “(1) CREDITS NOT ALLOWED AGAINST TAX ON
20 INVERSION GAIN.—Credits (other than the credit al-
21 lowed by section 901) shall be allowed against the
22 tax imposed by this chapter on an expatriated entity
23 for any taxable year described in subsection (a) only
24 to the extent such tax exceeds the product of—



1 “(A) the amount of the inversion gain for
2 the taxable year, and

3 “(B) the highest rate of tax specified in
4 section 11(b)(1).

5 For purposes of determining the credit allowed by
6 section 901, inversion gain shall be treated as from
7 sources within the United States.

8 “(2) SPECIAL RULES FOR PARTNERSHIPS.—In
9 the case of an expatriated entity which is a
10 partnership—

11 “(A) subsection (a)(1) shall apply at the
12 partner rather than the partnership level,

13 “(B) the inversion gain of any partner for
14 any taxable year shall be equal to the sum of—

15 “(i) the partner’s distributive share of
16 inversion gain of the partnership for such
17 taxable year, plus

18 “(ii) gain recognized for the taxable
19 year by the partner by reason of the trans-
20 fer during the applicable period of any
21 partnership interest of the partner in such
22 partnership to the surrogate foreign cor-
23 poration, and

24 “(C) the highest rate of tax specified in
25 the rate schedule applicable to the partner



1 under this chapter shall be substituted for the
2 rate of tax referred to in paragraph (1).

3 “(3) COORDINATION WITH SECTION 172 AND
4 MINIMUM TAX.—Rules similar to the rules of para-
5 graphs (3) and (4) of section 860E(a) shall apply
6 for purposes of subsection (a).

7 “(4) STATUTE OF LIMITATIONS.—

8 “(A) IN GENERAL.—The statutory period
9 for the assessment of any deficiency attrib-
10 utable to the inversion gain of any taxpayer for
11 any pre-inversion year shall not expire before
12 the expiration of 3 years from the date the Sec-
13 retary is notified by the taxpayer (in such man-
14 ner as the Secretary may prescribe) of the ac-
15 quisition described in subsection (a)(2)(B)(i) to
16 which such gain relates and such deficiency
17 may be assessed before the expiration of such
18 3-year period notwithstanding the provisions of
19 any other law or rule of law which would other-
20 wise prevent such assessment.

21 “(B) PRE-INVERSION YEAR.—For purposes
22 of subparagraph (A), the term ‘pre-inversion
23 year’ means any taxable year if—

24 “(i) any portion of the applicable pe-
25 riod is included in such taxable year, and



1 “(ii) such year ends before the taxable
2 year in which the acquisition described in
3 subsection (a)(2)(B)(i) is completed.

4 “(f) SPECIAL RULE FOR TREATIES.—Nothing in sec-
5 tion 894 or 7852(d) or in any other provision of law shall
6 be construed as permitting an exemption, by reason of any
7 treaty obligation of the United States heretofore or here-
8 after entered into, from the provisions of this section.

9 “(g) REGULATIONS.—The Secretary shall provide
10 such regulations as are necessary to carry out this section,
11 including regulations providing for such adjustments to
12 the application of this section as are necessary to prevent
13 the avoidance of the purposes of this section, including the
14 avoidance of such purposes through—

15 “(1) the use of related persons, pass-through or
16 other noncorporate entities, or other intermediaries,
17 or

18 “(2) transactions designed to have persons
19 cease to be (or not become) members of expanded
20 affiliated groups or related persons.”.

21 “(b) CONFORMING AMENDMENT.—The table of sec-
22 tions for subchapter C of chapter 80 is amended by adding
23 at the end the following new item:

 “Sec. 7874. Rules relating to expatriated entities and their for-
 eign parents.”.



1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years ending after
3 March 4, 2003.

4 **SEC. 802. EXCISE TAX ON STOCK COMPENSATION OF INSID-**
5 **ERS IN EXPATRIATED CORPORATIONS.**

6 (a) IN GENERAL.—Subtitle D is amended by insert-
7 ing after chapter 44 end the following new chapter:

8 **“CHAPTER 45—PROVISIONS RELATING TO**
9 **EXPATRIATED ENTITIES**

“Sec. 4985. Stock compensation of insiders in expatriated cor-
porations.

10 **“SEC. 4985. STOCK COMPENSATION OF INSIDERS IN EXPA-**
11 **TRIATED CORPORATIONS.**

12 “(a) IMPOSITION OF TAX.—In the case of an indi-
13 vidual who is a disqualified individual with respect to any
14 expatriated corporation, there is hereby imposed on such
15 person a tax equal to—

16 “(1) the rate of tax specified in section
17 1(h)(1)(C), multiplied by

18 “(2) the value (determined under subsection
19 (b)) of the specified stock compensation held (di-
20 rectly or indirectly) by or for the benefit of such in-
21 dividual or a member of such individual’s family (as
22 defined in section 267) at any time during the 12-
23 month period beginning on the date which is 6
24 months before the expatriation date.



1 “(b) VALUE.—For purposes of subsection (a)—

2 “(1) IN GENERAL.—The value of specified stock
3 compensation shall be—

4 “(A) in the case of a stock option (or other
5 similar right) or a stock appreciation right, the
6 fair value of such option or right, and

7 “(B) in any other case, the fair market
8 value of such compensation.

9 “(2) DATE FOR DETERMINING VALUE.—The
10 determination of value shall be made—

11 “(A) in the case of specified stock com-
12 pensation held on the expatriation date, on such
13 date,

14 “(B) in the case of such compensation
15 which is canceled during the 6 months before
16 the expatriation date, on the day before such
17 cancellation, and

18 “(C) in the case of such compensation
19 which is granted after the expatriation date, on
20 the date such compensation is granted.

21 “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN
22 RECOGNIZED.—Subsection (a) shall apply to any disquali-
23 fied individual with respect to an expatriated corporation
24 only if gain (if any) on any stock in such corporation is
25 recognized in whole or part by any shareholder by reason



1 of the acquisition referred to in section 7874(a)(2)(B)(i)
2 with respect to such corporation.

3 “(d) EXCEPTION WHERE GAIN RECOGNIZED ON
4 COMPENSATION.—Subsection (a) shall not apply to—

5 “(1) any stock option which is exercised on the
6 expatriation date or during the 6-month period be-
7 fore such date and to the stock acquired in such ex-
8 ercise, if income is recognized under section 83 on
9 or before the expatriation date with respect to the
10 stock acquired pursuant to such exercise, and

11 “(2) any other specified stock compensation
12 which is exercised, sold, exchanged, distributed,
13 cashed-out, or otherwise paid during such period in
14 a transaction in which income, gain, or loss is recog-
15 nized in full.

16 “(e) DEFINITIONS.—For purposes of this section—

17 “(1) DISQUALIFIED INDIVIDUAL.—The term
18 ‘disqualified individual’ means, with respect to a cor-
19 poration, any individual who, at any time during the
20 12-month period beginning on the date which is 6
21 months before the expatriation date—

22 “(A) is subject to the requirements of sec-
23 tion 16(a) of the Securities Exchange Act of
24 1934 with respect to such corporation or any



1 member of the expanded affiliated group which
2 includes such corporation, or

3 “(B) would be subject to such require-
4 ments if such corporation or member were an
5 issuer of equity securities referred to in such
6 section.

7 “(2) EXPATRIATED CORPORATION; EXPATRIA-
8 TION DATE.—

9 “(A) EXPATRIATED CORPORATION.—The
10 term ‘expatriated corporation’ means any cor-
11 poration which is an expatriated entity (as de-
12 fined in section 7874(a)(2)). Such term in-
13 cludes any predecessor or successor of such a
14 corporation.

15 “(B) EXPATRIATION DATE.—The term ‘ex-
16 patriation date’ means, with respect to a cor-
17 poration, the date on which the corporation
18 first becomes an expatriated corporation.

19 “(3) SPECIFIED STOCK COMPENSATION.—

20 “(A) IN GENERAL.—The term ‘specified
21 stock compensation’ means payment (or right
22 to payment) granted by the expatriated cor-
23 poration (or by any member of the expanded af-
24 filiated group which includes such corporation)
25 to any person in connection with the perform-



1 ance of services by a disqualified individual for
2 such corporation or member if the value of such
3 payment or right is based on (or determined by
4 reference to) the value (or change in value) of
5 stock in such corporation (or any such mem-
6 ber).

7 “(B) EXCEPTIONS.—Such term shall not
8 include—

9 “(i) any option to which part II of
10 subchapter D of chapter 1 applies, or

11 “(ii) any payment or right to payment
12 from a plan referred to in section
13 280G(b)(6).

14 “(4) EXPANDED AFFILIATED GROUP.—The
15 term ‘expanded affiliated group’ means an affiliated
16 group (as defined in section 1504(a) without regard
17 to section 1504(b)(3)); except that section 1504(a)
18 shall be applied by substituting ‘more than 50 per-
19 cent’ for ‘at least 80 percent’ each place it appears.

20 “(f) SPECIAL RULES.—For purposes of this
21 section—

22 “(1) CANCELLATION OF RESTRICTION.—The
23 cancellation of a restriction which by its terms will
24 never lapse shall be treated as a grant.



1 “(2) PAYMENT OR REIMBURSEMENT OF TAX BY
2 CORPORATION TREATED AS SPECIFIED STOCK COM-
3 PENSATION.—Any payment of the tax imposed by
4 this section directly or indirectly by the expatriated
5 corporation or by any member of the expanded affili-
6 ated group which includes such corporation—

7 “(A) shall be treated as specified stock
8 compensation, and

9 “(B) shall not be allowed as a deduction
10 under any provision of chapter 1.

11 “(3) CERTAIN RESTRICTIONS IGNORED.—
12 Whether there is specified stock compensation, and
13 the value thereof, shall be determined without regard
14 to any restriction other than a restriction which by
15 its terms will never lapse.

16 “(4) PROPERTY TRANSFERS.—Any transfer of
17 property shall be treated as a payment and any right
18 to a transfer of property shall be treated as a right
19 to a payment.

20 “(5) OTHER ADMINISTRATIVE PROVISIONS.—
21 For purposes of subtitle F, any tax imposed by this
22 section shall be treated as a tax imposed by subtitle
23 A.



1 “(g) REGULATIONS.—The Secretary shall prescribe
2 such regulations as may be necessary or appropriate to
3 carry out the purposes of this section.”.

4 (b) DENIAL OF DEDUCTION.—

5 (1) IN GENERAL.—Paragraph (6) of section
6 275(a) is amended by inserting “45,” before “46,”.

7 (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-
8 PENSATION REDUCED BY PAYMENT OF EXCISE TAX
9 ON SPECIFIED STOCK COMPENSATION.—Paragraph
10 (4) of section 162(m) is amended by adding at the
11 end the following new subparagraph:

12 “(G) COORDINATION WITH EXCISE TAX ON
13 SPECIFIED STOCK COMPENSATION.—The dollar
14 limitation contained in paragraph (1) with re-
15 spect to any covered employee shall be reduced
16 (but not below zero) by the amount of any pay-
17 ment (with respect to such employee) of the tax
18 imposed by section 4985 directly or indirectly
19 by the expatriated corporation (as defined in
20 such section) or by any member of the ex-
21 panded affiliated group (as defined in such sec-
22 tion) which includes such corporation.”.

23 (c) CONFORMING AMENDMENTS.—

24 (1) The last sentence of section 3121(v)(2)(A)
25 is amended by inserting before the period “or to any



1 specified stock compensation (as defined in section
2 4985) on which tax is imposed by section 4985”.

3 (2) The table of chapters for subtitle D is
4 amended by inserting after the item relating to
5 chapter 44 the following new item:

“Chapter 45. Provisions relating to expatriated entities.”.

6 (d) **EFFECTIVE DATE.**—The amendments made by
7 this section shall take effect on March 4, 2003; except that
8 periods before such date shall not be taken into account
9 in applying the periods in subsections (a) and (e)(1) of
10 section 4985 of the Internal Revenue Code of 1986, as
11 added by this section.

12 **SEC. 803. REINSURANCE OF UNITED STATES RISKS IN FOR-**
13 **EIGN JURISDICTIONS.**

14 (a) **IN GENERAL.**—Section 845(a) (relating to alloca-
15 tion in case of reinsurance agreement involving tax avoid-
16 ance or evasion) is amended by striking “source and char-
17 acter” and inserting “amount, source, or character”.

18 (b) **EFFECTIVE DATE.**—The amendments made by
19 this section shall apply to any risk reinsured after the date
20 of the enactment of this Act.

21 **SEC. 804. REVISION OF TAX RULES ON EXPATRIATION OF**
22 **INDIVIDUALS.**

23 (a) **EXPATRIATION TO AVOID TAX.**—



1 (1) IN GENERAL.—Subsection (a) of section
2 877 (relating to treatment of expatriates) is amend-
3 ed to read as follows:

4 “(a) TREATMENT OF EXPATRIATES.—

5 “(1) IN GENERAL.—Every nonresident alien in-
6 dividual to whom this section applies and who, with-
7 in the 10-year period immediately preceding the
8 close of the taxable year, lost United States citizen-
9 ship shall be taxable for such taxable year in the
10 manner provided in subsection (b) if the tax imposed
11 pursuant to such subsection (after any reduction in
12 such tax under the last sentence of such subsection)
13 exceeds the tax which, without regard to this section,
14 is imposed pursuant to section 871.

15 “(2) INDIVIDUALS SUBJECT TO THIS SEC-
16 TION.—This section shall apply to any individual
17 if—

18 “(A) the average annual net income tax
19 (as defined in section 38(c)(1)) of such indi-
20 vidual for the period of 5 taxable years ending
21 before the date of the loss of United States citi-
22 zenship is greater than \$124,000,

23 “(B) the net worth of the individual as of
24 such date is \$2,000,000 or more, or



1 “(C) such individual fails to certify under
2 penalty of perjury that he has met the require-
3 ments of this title for the 5 preceding taxable
4 years or fails to submit such evidence of such
5 compliance as the Secretary may require.

6 In the case of the loss of United States citizenship
7 in any calendar year after 2004, such \$124,000
8 amount shall be increased by an amount equal to
9 such dollar amount multiplied by the cost-of-living
10 adjustment determined under section 1(f)(3) for
11 such calendar year by substituting ‘2003’ for ‘1992’
12 in subparagraph (B) thereof. Any increase under the
13 preceding sentence shall be rounded to the nearest
14 multiple of \$1,000.”.

15 (2) REVISION OF EXCEPTIONS FROM ALTER-
16 NATIVE TAX.—Subsection (c) of section 877 (relat-
17 ing to tax avoidance not presumed in certain cases)
18 is amended to read as follows:

19 “(c) EXCEPTIONS.—

20 “(1) IN GENERAL.—Subparagraphs (A) and
21 (B) of subsection (a)(2) shall not apply to an indi-
22 vidual described in paragraph (2) or (3).

23 “(2) DUAL CITIZENS.—

24 “(A) IN GENERAL.—An individual is de-
25 scribed in this paragraph if—



1 “(i) the individual became at birth a
2 citizen of the United States and a citizen
3 of another country and continues to be a
4 citizen of such other country, and

5 “(ii) the individual has had no sub-
6 stantial contacts with the United States.

7 “(B) SUBSTANTIAL CONTACTS.—An indi-
8 vidual shall be treated as having no substantial
9 contacts with the United States only if the
10 individual—

11 “(i) was never a resident of the
12 United States (as defined in section
13 7701(b)),

14 “(ii) has never held a United States
15 passport, and

16 “(iii) was not present in the United
17 States for more than 30 days during any
18 calendar year which is 1 of the 10 calendar
19 years preceding the individual’s loss of
20 United States citizenship.

21 “(3) CERTAIN MINORS.—An individual is de-
22 scribed in this paragraph if—

23 “(A) the individual became at birth a cit-
24 izen of the United States,



1 “(B) neither parent of such individual was
2 a citizen of the United States at the time of
3 such birth,

4 “(C) the individual’s loss of United States
5 citizenship occurs before such individual attains
6 age 18½, and

7 “(D) the individual was not present in the
8 United States for more than 30 days during
9 any calendar year which is 1 of the 10 calendar
10 years preceding the individual’s loss of United
11 States citizenship.”.

12 (3) CONFORMING AMENDMENT.—Section
13 2107(a) is amended to read as follows:

14 “(a) TREATMENT OF EXPATRIATES.—A tax com-
15 puted in accordance with the table contained in section
16 2001 is hereby imposed on the transfer of the taxable es-
17 tate, determined as provided in section 2106, of every de-
18 cedent nonresident not a citizen of the United States if
19 the date of death occurs during a taxable year with respect
20 to which the decedent is subject to tax under section
21 877(b).”.

22 (b) SPECIAL RULES FOR DETERMINING WHEN AN
23 INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN
24 OR LONG-TERM RESIDENT.—Section 7701 (relating to
25 definitions) is amended by redesignating subsection (n) as



1 subsection (o) and by inserting after subsection (m) the
2 following new subsection:

3 “(n) SPECIAL RULES FOR DETERMINING WHEN AN
4 INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN
5 OR LONG-TERM RESIDENT.—An individual who would
6 (but for this subsection) cease to be treated as a citizen
7 or resident of the United States shall continue to be treat-
8 ed as a citizen or resident of the United States, as the
9 case may be, until such individual—

10 “(1) gives notice of an expatriating act or ter-
11 mination of residency (with the requisite intent to
12 relinquish citizenship or terminate residency) to the
13 Secretary of State or the Secretary of Homeland Se-
14 curity, and

15 “(2) provides a statement in accordance with
16 section 6039G.”.

17 (c) PHYSICAL PRESENCE IN THE UNITED STATES
18 FOR MORE THAN 30 DAYS.—Section 877 (relating to ex-
19 patriation to avoid tax) is amended by adding at the end
20 the following new subsection:

21 “(g) PHYSICAL PRESENCE.—

22 “(1) IN GENERAL.—This section shall not apply
23 to any individual to whom this section would other-
24 wise apply for any taxable year during the 10-year
25 period referred to in subsection (a) in which such in-



1 dividual is physically present in the United States at
2 any time on more than 30 days in the calendar year
3 ending in such taxable year, and such individual
4 shall be treated for purposes of this title as a citizen
5 or resident of the United States, as the case may be,
6 for such taxable year.

7 “(2) EXCEPTION.—

8 “(A) IN GENERAL.—In the case of an indi-
9 vidual described in any of the following sub-
10 paragraphs of this paragraph, a day of physical
11 presence in the United States shall be dis-
12 regarded if the individual is performing services
13 in the United States on such day for an em-
14 ployer. The preceding sentence shall not apply
15 if—

16 “(i) such employer is related (within
17 the meaning of section 267 and 707) to
18 such individual, or

19 “(ii) such employer fails to meet such
20 requirements as the Secretary may pre-
21 scribe by regulations to prevent the avoid-
22 ance of the purposes of this paragraph.

23 Not more than 30 days during any calendar
24 year may be disregarded under this subpara-
25 graph.



1 “(B) INDIVIDUALS WITH TIES TO OTHER
2 COUNTRIES.—An individual is described in this
3 subparagraph if—

4 “(i) the individual becomes (not later
5 than the close of a reasonable period after
6 loss of United States citizenship or termi-
7 nation of residency) a citizen or resident of
8 the country in which—

9 “(I) such individual was born,

10 “(II) if such individual is mar-
11 ried, such individual’s spouse was
12 born, or

13 “(III) either of such individual’s
14 parents were born, and

15 “(ii) the individual becomes fully lia-
16 ble for income tax in such country.

17 “(C) MINIMAL PRIOR PHYSICAL PRESENCE
18 IN THE UNITED STATES.—An individual is de-
19 scribed in this subparagraph if, for each year in
20 the 10-year period ending on the date of loss of
21 United States citizenship or termination of resi-
22 dency, the individual was physically present in
23 the United States for 30 days or less. The rule
24 of section 7701(b)(3)(D)(ii) shall apply for pur-
25 poses of this subparagraph.”.



1 (d) TRANSFERS SUBJECT TO GIFT TAX.—

2 (1) IN GENERAL.—Subsection (a) of section
3 2501 (relating to taxable transfers) is amended by
4 striking paragraph (4), by redesignating paragraph
5 (5) as paragraph (4), and by striking paragraph (3)
6 and inserting the following new paragraph:

7 “(3) EXCEPTION.—

8 “(A) CERTAIN INDIVIDUALS.—Paragraph
9 (2) shall not apply in the case of a donor to
10 whom section 877(b) applies for the taxable
11 year which includes the date of the transfer.

12 “(B) CREDIT FOR FOREIGN GIFT TAXES.—
13 The tax imposed by this section solely by reason
14 of this paragraph shall be credited with the
15 amount of any gift tax actually paid to any for-
16 eign country in respect of any gift which is tax-
17 able under this section solely by reason of this
18 paragraph.”.

19 (2) TRANSFERS OF CERTAIN STOCK.—Sub-
20 section (a) of section 2501 is amended by adding at
21 the end the following new paragraph:

22 “(5) TRANSFERS OF CERTAIN STOCK.—

23 “(A) IN GENERAL.—In the case of a trans-
24 fer of stock in a foreign corporation described
25 in subparagraph (B) by a donor to whom sec-



1 tion 877(b) applies for the taxable year which
2 includes the date of the transfer—

3 “(i) section 2511(a) shall be applied
4 without regard to whether such stock is
5 situated within the United States, and

6 “(ii) the value of such stock for pur-
7 poses of this chapter shall be its U.S.-asset
8 value determined under subparagraph (C).

9 “(B) FOREIGN CORPORATION DE-
10 SCRIBED.—A foreign corporation is described in
11 this subparagraph with respect to a donor if—

12 “(i) the donor owned (within the
13 meaning of section 958(a)) at the time of
14 such transfer 10 percent or more of the
15 total combined voting power of all classes
16 of stock entitled to vote of the foreign cor-
17 poration, and

18 “(ii) such donor owned (within the
19 meaning of section 958(a)), or is consid-
20 ered to have owned (by applying the own-
21 ership rules of section 958(b)), at the time
22 of such transfer, more than 50 percent
23 of—



1 “(I) the total combined voting
2 power of all classes of stock entitled
3 to vote of such corporation, or

4 “(II) the total value of the stock
5 of such corporation.

6 “(C) U.S.-ASSET VALUE.—For purposes of
7 subparagraph (A), the U.S.-asset value of stock
8 shall be the amount which bears the same ratio
9 to the fair market value of such stock at the
10 time of transfer as—

11 “(i) the fair market value (at such
12 time) of the assets owned by such foreign
13 corporation and situated in the United
14 States, bears to

15 “(ii) the total fair market value (at
16 such time) of all assets owned by such for-
17 eign corporation.”.

18 (e) ENHANCED INFORMATION REPORTING FROM IN-
19 DIVIDUALS LOSING UNITED STATES CITIZENSHIP.—

20 (1) IN GENERAL.—Subsection (a) of section
21 6039G is amended to read as follows:

22 “(a) IN GENERAL.—Notwithstanding any other pro-
23 vision of law, any individual to whom section 877(b) ap-
24 plies for any taxable year shall provide a statement for



1 such taxable year which includes the information described
2 in subsection (b).”.

3 (2) INFORMATION TO BE PROVIDED.—Sub-
4 section (b) of section 6039G is amended to read as
5 follows:

6 “(b) INFORMATION TO BE PROVIDED.—Information
7 required under subsection (a) shall include—

8 “(1) the taxpayer’s TIN,

9 “(2) the mailing address of such individual’s
10 principal foreign residence,

11 “(3) the foreign country in which such indi-
12 vidual is residing,

13 “(4) the foreign country of which such indi-
14 vidual is a citizen,

15 “(5) information detailing the income, assets,
16 and liabilities of such individual,

17 “(6) the number of days during any portion of
18 which that the individual was physically present in
19 the United States during the taxable year, and

20 “(7) such other information as the Secretary
21 may prescribe.”.

22 (3) INCREASE IN PENALTY.—Subsection (d) of
23 section 6039G is amended to read as follows:

24 “(d) PENALTY.—If—



1 **“SEC. 6043A. RETURNS RELATING TO TAXABLE MERGERS**
2 **AND ACQUISITIONS.**

3 “(a) IN GENERAL.—According to the forms or regu-
4 lations prescribed by the Secretary, the acquiring corpora-
5 tion in any taxable acquisition shall make a return setting
6 forth—

7 “(1) a description of the acquisition,

8 “(2) the name and address of each shareholder
9 of the acquired corporation who is required to recog-
10 nize gain (if any) as a result of the acquisition,

11 “(3) the amount of money and the fair market
12 value of other property transferred to each such
13 shareholder as part of such acquisition, and

14 “(4) such other information as the Secretary
15 may prescribe.

16 To the extent provided by the Secretary, the requirements
17 of this section applicable to the acquiring corporation shall
18 be applicable to the acquired corporation and not to the
19 acquiring corporation.

20 “(b) NOMINEES.—According to the forms or regula-
21 tions prescribed by the Secretary—

22 “(1) REPORTING.—Any person who holds stock
23 as a nominee for another person shall furnish in the
24 manner prescribed by the Secretary to such other
25 person the information provided by the corporation
26 under subsection (d).



1 “(2) REPORTING TO NOMINEES.—In the case of
2 stock held by any person as a nominee, references in
3 this section (other than in subsection (c)) to a share-
4 holder shall be treated as a reference to the nomi-
5 nee.

6 “(c) TAXABLE ACQUISITION.—For purposes of this
7 section, the term ‘taxable acquisition’ means any acquisi-
8 tion by a corporation of stock in or property of another
9 corporation if any shareholder of the acquired corporation
10 is required to recognize gain (if any) as a result of such
11 acquisition.

12 “(d) STATEMENTS TO BE FURNISHED TO SHARE-
13 HOLDERS.—According to the forms or regulations pre-
14 scribed by the Secretary, every person required to make
15 a return under subsection (a) shall furnish to each share-
16 holder whose name is required to be set forth in such re-
17 turn a written statement showing—

18 “(1) the name, address, and phone number of
19 the information contact of the person required to
20 make such return,

21 “(2) the information required to be shown on
22 such return with respect to such shareholder, and

23 “(3) such other information as the Secretary
24 may prescribe.



1 The written statement required under the preceding sen-
2 tence shall be furnished to the shareholder on or before
3 January 31 of the year following the calendar year during
4 which the taxable acquisition occurred.”.

5 (b) ASSESSABLE PENALTIES.—

6 (1) Subparagraph (B) of section 6724(d)(1)
7 (relating to definitions) is amended by redesignating
8 clauses (ii) through (xviii) as clauses (iii) through
9 (xix), respectively, and by inserting after clause (i)
10 the following new clause:

11 “(ii) section 6043A(a) (relating to re-
12 turns relating to taxable mergers and ac-
13 quisitions),”.

14 (2) Paragraph (2) of section 6724(d) is amend-
15 ed by redesignating subparagraphs (F) through
16 (BB) as subparagraphs (G) through (CC), respec-
17 tively, and by inserting after subparagraph (E) the
18 following new subparagraph:

19 “(F) subsections (b) and (d) of section
20 6043A (relating to returns relating to taxable
21 mergers and acquisitions).”.

22 (c) CLERICAL AMENDMENT.—The table of sections
23 for subpart B of part III of subchapter A of chapter 61
24 is amended by inserting after the item relating to section
25 6043 the following new item:



“Sec. 6043A. Returns relating to taxable mergers and acquisitions.”.

1 (d) **EFFECTIVE DATE.**—The amendments made by
2 this section shall apply to acquisitions after the date of
3 the enactment of this Act.

4 **SEC. 806. STUDIES.**

5 (a) **TRANSFER PRICING RULES.**—The Secretary of
6 the Treasury or the Secretary’s delegate shall conduct a
7 study regarding the effectiveness of current transfer pric-
8 ing rules and compliance efforts in ensuring that cross-
9 border transfers and other related-party transactions, par-
10 ticularly transactions involving intangible assets, service
11 contracts, or leases cannot be used improperly to shift in-
12 come out of the United States. The study shall include
13 a review of the contemporaneous documentation and pen-
14 alty rules under section 6662 of the Internal Revenue
15 Code of 1986, a review of the regulatory and administra-
16 tive guidance implementing the principles of section 482
17 of such Code to transactions involving intangible property
18 and services and to cost-sharing arrangements, and an ex-
19 amination of whether increased disclosure of cross-border
20 transactions should be required. The study shall set forth
21 specific recommendations to address all abuses identified
22 in the study. Not later than June 30, 2005, such Sec-
23 retary or delegate shall submit to the Congress a report
24 of such study.



1 (b) INCOME TAX TREATIES.—The Secretary of the
2 Treasury or the Secretary’s delegate shall conduct a study
3 of United States income tax treaties to identify any inap-
4 propriate reductions in United States withholding tax that
5 provide opportunities for shifting income out of the United
6 States, and to evaluate whether existing anti-abuse mecha-
7 nisms are operating properly. The study shall include spe-
8 cific recommendations to address all inappropriate uses of
9 tax treaties. Not later than June 30, 2005, such Secretary
10 or delegate shall submit to the Congress a report of such
11 study.

12 (c) EFFECTIVENESS OF CORPORATE EXPATRIATION
13 PROVISIONS.—The Secretary of the Treasury or the Sec-
14 retary’s delegate shall conduct a study of the effectiveness
15 of the provisions of this title on corporate expatriation.
16 The study shall include such recommendations as such
17 Secretary or delegate may have to improve the effective-
18 ness of such provisions in carrying out the purposes of
19 this title. Not later than December 31, 2006, such Sec-
20 retary or delegate shall submit to the Congress a report
21 of such study.



1 **Subtitle B—Provisions Relating to**
2 **Tax Shelters**

3 **Part I—Taxpayer-Related Provisions**

4 **SEC. 811. PENALTY FOR FAILING TO DISCLOSE REPORT-**
5 **ABLE TRANSACTIONS.**

6 (a) IN GENERAL.—Part I of subchapter B of chapter
7 68 (relating to assessable penalties) is amended by insert-
8 ing after section 6707 the following new section:

9 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**
10 **ABLE TRANSACTION INFORMATION WITH RE-**
11 **TURN.**

12 “(a) IMPOSITION OF PENALTY.—Any person who
13 fails to include on any return or statement any informa-
14 tion with respect to a reportable transaction which is re-
15 quired under section 6011 to be included with such return
16 or statement shall pay a penalty in the amount determined
17 under subsection (b).

18 “(b) AMOUNT OF PENALTY.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), the amount of the penalty under sub-
21 section (a) shall be—

22 “(A) \$10,000 in the case of a natural per-
23 son, and

24 “(B) \$50,000 in any other case.



1 “(2) LISTED TRANSACTION.—The amount of
2 the penalty under subsection (a) with respect to a
3 listed transaction shall be—

4 “(A) \$100,000 in the case of a natural
5 person, and

6 “(B) \$200,000 in any other case.

7 “(c) DEFINITIONS.—For purposes of this section—

8 “(1) REPORTABLE TRANSACTION.—The term
9 ‘reportable transaction’ means any transaction with
10 respect to which information is required to be in-
11 cluded with a return or statement because, as deter-
12 mined under regulations prescribed under section
13 6011, such transaction is of a type which the Sec-
14 retary determines as having a potential for tax
15 avoidance or evasion.

16 “(2) LISTED TRANSACTION.—The term ‘listed
17 transaction’ means a reportable transaction which is
18 the same as, or substantially similar to, a trans-
19 action specifically identified by the Secretary as a
20 tax avoidance transaction for purposes of section
21 6011.

22 “(d) AUTHORITY TO RESCIND PENALTY.—

23 “(1) IN GENERAL.—The Commissioner of In-
24 ternal Revenue may rescind all or any portion of any



1 penalty imposed by this section with respect to any
2 violation if—

3 “(A) the violation is with respect to a re-
4 reportable transaction other than a listed trans-
5 action, and

6 “(B) rescinding the penalty would promote
7 compliance with the requirements of this title
8 and effective tax administration.

9 “(2) NO JUDICIAL APPEAL.—Notwithstanding
10 any other provision of law, any determination under
11 this subsection may not be reviewed in any judicial
12 proceeding.

13 “(3) RECORDS.—If a penalty is rescinded under
14 paragraph (1), the Commissioner shall place in the
15 file in the Office of the Commissioner the opinion of
16 the Commissioner with respect to the determination,
17 including—

18 “(A) a statement of the facts and cir-
19 cumstances relating to the violation,

20 “(B) the reasons for the rescission, and

21 “(C) the amount of the penalty rescinded.

22 “(e) PENALTY REPORTED TO SEC.—In the case of
23 a person—

24 “(1) which is required to file periodic reports
25 under section 13 or 15(d) of the Securities Ex-



1 change Act of 1934 or is required to be consolidated
2 with another person for purposes of such reports,
3 and

4 “(2) which—

5 “(A) is required to pay a penalty under
6 this section with respect to a listed transaction,

7 “(B) is required to pay a penalty under
8 section 6662A with respect to any reportable
9 transaction at a rate prescribed under section
10 6662A(c), or

11 “(C) is required to pay a penalty under
12 section 6662(h) with respect to any reportable
13 transaction and would (but for section
14 6662A(e)(2)(C)) have been subject to penalty
15 under section 6662A at a rate prescribed under
16 section 6662A(c),

17 the requirement to pay such penalty shall be disclosed in
18 such reports filed by such person for such periods as the
19 Secretary shall specify. Failure to make a disclosure in
20 accordance with the preceding sentence shall be treated
21 as a failure to which the penalty under subsection (b)(2)
22 applies.

23 “(f) COORDINATION WITH OTHER PENALTIES.—The
24 penalty imposed by this section shall be in addition to any
25 other penalty imposed by this title.”



1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions for part I of subchapter B of chapter 68 is amended
3 by inserting after the item relating to section 6707 the
4 following:

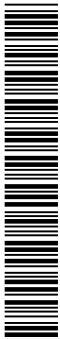
“Sec. 6707A. Penalty for failure to include reportable transaction
information with return.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to returns and statements the due
7 date for which is after the date of the enactment of this
8 Act.

9 (d) REPORT.—The Commissioner of Internal Rev-
10 enue shall annually report to the Committee on Ways and
11 Means of the House of Representatives and the Committee
12 on Finance of the Senate—

13 (1) a summary of the total number and aggre-
14 gate amount of penalties imposed, and rescinded,
15 under section 6707A of the Internal Revenue Code
16 of 1986, and

17 (2) a description of each penalty rescinded
18 under section 6707(c) of such Code and the reasons
19 therefor.



1 **SEC. 812. ACCURACY-RELATED PENALTY FOR LISTED**
2 **TRANSACTIONS, OTHER REPORTABLE TRANS-**
3 **ACTIONS HAVING A SIGNIFICANT TAX AVOID-**
4 **ANCE PURPOSE, ETC.**

5 (a) IN GENERAL.—Subchapter A of chapter 68 is
6 amended by inserting after section 6662 the following new
7 section:

8 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**
9 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
10 **TO REPORTABLE TRANSACTIONS.**

11 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
12 reportable transaction understatement for any taxable
13 year, there shall be added to the tax an amount equal to
14 20 percent of the amount of such understatement.

15 “(b) REPORTABLE TRANSACTION UNDERSTATE-
16 MENT.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘reportable trans-
18 action understatement’ means the sum of—

19 “(A) the product of—

20 “(i) the amount of the increase (if
21 any) in taxable income which results from
22 a difference between the proper tax treat-
23 ment of an item to which this section ap-
24 plies and the taxpayer’s treatment of such
25 item (as shown on the taxpayer’s return of
26 tax), and



1 “(ii) the highest rate of tax imposed
2 by section 1 (section 11 in the case of a
3 taxpayer which is a corporation), and

4 “(B) the amount of the decrease (if any)
5 in the aggregate amount of credits determined
6 under subtitle A which results from a difference
7 between the taxpayer’s treatment of an item to
8 which this section applies (as shown on the tax-
9 payer’s return of tax) and the proper tax treat-
10 ment of such item.

11 For purposes of subparagraph (A), any reduction of
12 the excess of deductions allowed for the taxable year
13 over gross income for such year, and any reduction
14 in the amount of capital losses which would (without
15 regard to section 1211) be allowed for such year,
16 shall be treated as an increase in taxable income.

17 “(2) ITEMS TO WHICH SECTION APPLIES.—This
18 section shall apply to any item which is attributable
19 to—

20 “(A) any listed transaction, and

21 “(B) any reportable transaction (other
22 than a listed transaction) if a significant pur-
23 pose of such transaction is the avoidance or
24 evasion of Federal income tax.



1 “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED
2 AND OTHER AVOIDANCE TRANSACTIONS.—Subsection (a)
3 shall be applied by substituting ‘30 percent’ for ‘20 per-
4 cent’ with respect to the portion of any reportable trans-
5 action understatement with respect to which the require-
6 ment of section 6664(d)(2)(A) is not met.

7 “(d) DEFINITIONS OF REPORTABLE AND LISTED
8 TRANSACTIONS.—For purposes of this section, the terms
9 ‘reportable transaction’ and ‘listed transaction’ have the
10 respective meanings given to such terms by section
11 6707A(c).

12 “(e) SPECIAL RULES.—

13 “(1) COORDINATION WITH PENALTIES, ETC.,
14 ON OTHER UNDERSTATEMENTS.—In the case of an
15 understatement (as defined in section 6662(d)(2))—

16 “(A) the amount of such understatement
17 (determined without regard to this paragraph)
18 shall be increased by the aggregate amount of
19 reportable transaction understatements for pur-
20 poses of determining whether such understate-
21 ment is a substantial understatement under
22 section 6662(d)(1), and

23 “(B) the addition to tax under section
24 6662(a) shall apply only to the excess of the
25 amount of the substantial understatement (if



1 any) after the application of subparagraph (A)
2 over the aggregate amount of reportable trans-
3 action understatements.

4 “(2) COORDINATION WITH OTHER PEN-
5 ALTIES.—

6 “(A) APPLICATION OF FRAUD PENALTY.—
7 References to an underpayment in section 6663
8 shall be treated as including references to a re-
9 reportable transaction understatement.

10 “(B) NO DOUBLE PENALTY.—This section
11 shall not apply to any portion of an understatement
12 on which a penalty is imposed under section
13 6663.

14 “(C) COORDINATION WITH VALUATION
15 PENALTIES.—

16 “(i) SECTION 6662(E).—Section
17 6662(e) shall not apply to any portion of
18 an understatement on which a penalty is
19 imposed under this section.

20 “(ii) SECTION 6662(H).—This section
21 shall not apply to any portion of an under-
22 statement on which a penalty is imposed
23 under section 6662(h).

24 “(3) SPECIAL RULE FOR AMENDED RE-
25 TURNS.—Except as provided in regulations, in no



1 event shall any tax treatment included with an
2 amendment or supplement to a return of tax be
3 taken into account in determining the amount of any
4 reportable transaction understatement if the amend-
5 ment or supplement is filed after the earlier of the
6 date the taxpayer is first contacted by the Secretary
7 regarding the examination of the return or such
8 other date as is specified by the Secretary.”.

9 (b) DETERMINATION OF OTHER UNDERSTATE-
10 MENTS.—Subparagraph (A) of section 6662(d)(2) is
11 amended by adding at the end the following flush sen-
12 tence:

13 “The excess under the preceding sentence shall
14 be determined without regard to items to which
15 section 6662A applies.”.

16 (c) REASONABLE CAUSE EXCEPTION.—

17 (1) IN GENERAL.—Section 6664 is amended by
18 adding at the end the following new subsection:

19 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-
20 ABLE TRANSACTION UNDERSTATEMENTS.—

21 “(1) IN GENERAL.—No penalty shall be im-
22 posed under section 6662A with respect to any por-
23 tion of a reportable transaction understatement if it
24 is shown that there was a reasonable cause for such



1 portion and that the taxpayer acted in good faith
2 with respect to such portion.

3 “(2) SPECIAL RULES.—Paragraph (1) shall not
4 apply to any reportable transaction understatement
5 unless—

6 “(A) the relevant facts affecting the tax
7 treatment of the item are adequately disclosed
8 in accordance with the regulations prescribed
9 under section 6011,

10 “(B) there is or was substantial authority
11 for such treatment, and

12 “(C) the taxpayer reasonably believed that
13 such treatment was more likely than not the
14 proper treatment.

15 A taxpayer failing to adequately disclose in accord-
16 ance with section 6011 shall be treated as meeting
17 the requirements of subparagraph (A) if the penalty
18 for such failure was rescinded under section
19 6707A(d).

20 “(3) RULES RELATING TO REASONABLE BE-
21 LIEF.—For purposes of paragraph (2)(C)—

22 “(A) IN GENERAL.—A taxpayer shall be
23 treated as having a reasonable belief with re-
24 spect to the tax treatment of an item only if
25 such belief—



1 “(i) is based on the facts and law that
2 exist at the time the return of tax which
3 includes such tax treatment is filed, and

4 “(ii) relates solely to the taxpayer’s
5 chances of success on the merits of such
6 treatment and does not take into account
7 the possibility that a return will not be au-
8 dited, such treatment will not be raised on
9 audit, or such treatment will be resolved
10 through settlement if it is raised.

11 “(B) CERTAIN OPINIONS MAY NOT BE RE-
12 LIED UPON.—

13 “(i) IN GENERAL.—An opinion of a
14 tax advisor may not be relied upon to es-
15 tablish the reasonable belief of a taxpayer
16 if—

17 “(I) the tax advisor is described
18 in clause (ii), or

19 “(II) the opinion is described in
20 clause (iii).

21 “(ii) DISQUALIFIED TAX ADVISORS.—
22 A tax advisor is described in this clause if
23 the tax advisor—

24 “(I) is a material advisor (within
25 the meaning of section 6111(b)(1))



1 and participates in the organization,
2 management, promotion, or sale of
3 the transaction or is related (within
4 the meaning of section 267(b) or
5 707(b)(1)) to any person who so par-
6 ticipates,

7 “(II) is compensated directly or
8 indirectly by a material advisor with
9 respect to the transaction,

10 “(III) has a fee arrangement
11 with respect to the transaction which
12 is contingent on all or part of the in-
13 tended tax benefits from the trans-
14 action being sustained, or

15 “(IV) as determined under regu-
16 lations prescribed by the Secretary,
17 has a disqualifying financial interest
18 with respect to the transaction.

19 “(iii) DISQUALIFIED OPINIONS.—For
20 purposes of clause (i), an opinion is dis-
21 qualified if the opinion—

22 “(I) is based on unreasonable
23 factual or legal assumptions (includ-
24 ing assumptions as to future events),



1 “(II) unreasonably relies on rep-
2 resentations, statements, findings, or
3 agreements of the taxpayer or any
4 other person,

5 “(III) does not identify and con-
6 sider all relevant facts, or

7 “(IV) fails to meet any other re-
8 quirement as the Secretary may pre-
9 scribe.”.

10 (2) CONFORMING AMENDMENTS.—

11 (A) Paragraph (1) of section 6664(c) is
12 amended by striking “this part” and inserting
13 “section 6662 or 6663”.

14 (B) The heading for subsection (c) of sec-
15 tion 6664 is amended by inserting “FOR UN-
16 DERPAYMENTS” after “EXCEPTION”.

17 (d) REDUCTION IN PENALTY FOR SUBSTANTIAL UN-
18 DERSTATEMENT OF INCOME TAX NOT TO APPLY TO TAX
19 SHELTERS.—Subparagraph (C) of section 6662(d)(2) (re-
20 lating to substantial understatement of income tax) is
21 amended to read as follows:

22 “(C) REDUCTION NOT TO APPLY TO TAX
23 SHELTERS.—



1 “(i) IN GENERAL.—Subparagraph (B)
2 shall not apply to any item attributable to
3 a tax shelter.

4 “(ii) TAX SHELTER.—For purposes of
5 clause (i), the term ‘tax shelter’ means—

6 “(I) a partnership or other enti-
7 ty,

8 “(II) any investment plan or ar-
9 rangement, or

10 “(III) any other plan or arrange-
11 ment,

12 if a significant purpose of such partner-
13 ship, entity, plan, or arrangement is the
14 avoidance or evasion of Federal income
15 tax.”.

16 (e) CLERICAL AMENDMENTS.—

17 (1) The heading for section 6662 is amended to
18 read as follows:

19 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
20 **ON UNDERPAYMENTS.”.**

21 (2) The table of sections for part II of sub-
22 chapter A of chapter 68 is amended by striking the
23 item relating to section 6662 and inserting the fol-
24 lowing new items:

 “Sec. 6662. Imposition of accuracy-related penalty on underpay-
 ments.



“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”.

1 (f) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years ending after the
3 date of the enactment of this Act.

4 **SEC. 813. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
5 **PRIVILEGES RELATING TO TAXPAYER COM-**
6 **MUNICATIONS.**

7 (a) IN GENERAL.—Section 7525(b) (relating to sec-
8 tion not to apply to communications regarding corporate
9 tax shelters) is amended to read as follows:

10 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS
11 REGARDING TAX SHELTERS.—The privilege under sub-
12 section (a) shall not apply to any written communication
13 which is—

14 “(1) between a federally authorized tax practi-
15 tioner and—

16 “(A) any person,

17 “(B) any director, officer, employee, agent,
18 or representative of the person, or

19 “(C) any other person holding a capital or
20 profits interest in the person, and

21 “(2) in connection with the promotion of the di-
22 rect or indirect participation of the person in any
23 tax shelter (as defined in section
24 6662(d)(2)(C)(ii)).”.



1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to communications made on or
3 after the date of the enactment of this Act.

4 **SEC. 814. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**
5 **FOR WHICH REQUIRED LISTED TRANS-**
6 **ACTIONS NOT REPORTED.**

7 (a) IN GENERAL.—Section 6501(c) (relating to ex-
8 ceptions) is amended by adding at the end the following
9 new paragraph:

10 “(10) LISTED TRANSACTIONS.—If a taxpayer
11 fails to include on any return or statement for any
12 taxable year any information with respect to a listed
13 transaction (as defined in section 6707A(c)(2))
14 which is required under section 6011 to be included
15 with such return or statement, the time for assess-
16 ment of any tax imposed by this title with respect
17 to such transaction shall not expire before the date
18 which is 1 year after the earlier of—

19 “(A) the date on which the Secretary is
20 furnished the information so required, or

21 “(B) the date that a material advisor (as
22 defined in section 6111) meets the requirements
23 of section 6112 with respect to a request by the
24 Secretary under section 6112(b) relating to



1 such transaction with respect to such tax-
2 payer.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to taxable years with respect to
5 which the period for assessing a deficiency did not expire
6 before the date of the enactment of this Act.

7 **SEC. 815. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

8 (a) **IN GENERAL.**—Section 6111 (relating to registra-
9 tion of tax shelters) is amended to read as follows:

10 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

11 “(a) **IN GENERAL.**—Each material advisor with re-
12 spect to any reportable transaction shall make a return
13 (in such form as the Secretary may prescribe) setting
14 forth—

15 “(1) information identifying and describing the
16 transaction,

17 “(2) information describing any potential tax
18 benefits expected to result from the transaction, and

19 “(3) such other information as the Secretary
20 may prescribe.

21 Such return shall be filed not later than the date specified
22 by the Secretary.

23 “(b) **DEFINITIONS.**—For purposes of this section—

24 “(1) **MATERIAL ADVISOR.**—



1 “(A) IN GENERAL.—The term ‘material
2 advisor’ means any person—

3 “(i) who provides any material aid,
4 assistance, or advice with respect to orga-
5 nizing, managing, promoting, selling, im-
6 plementing, insuring, or carrying out any
7 reportable transaction, and

8 “(ii) who directly or indirectly derives
9 gross income in excess of the threshold
10 amount (or such other amount as may be
11 prescribed by the Secretary) for such ad-
12 vice or assistance.

13 “(B) THRESHOLD AMOUNT.—For purposes
14 of subparagraph (A), the threshold amount is—

15 “(i) \$50,000 in the case of a report-
16 able transaction substantially all of the tax
17 benefits from which are provided to nat-
18 ural persons, and

19 “(ii) \$250,000 in any other case.

20 “(2) REPORTABLE TRANSACTION.—The term
21 ‘reportable transaction’ has the meaning given to
22 such term by section 6707A(c).

23 “(c) REGULATIONS.—The Secretary may prescribe
24 regulations which provide—



1 “(1) that only 1 person shall be required to
2 meet the requirements of subsection (a) in cases in
3 which 2 or more persons would otherwise be re-
4 quired to meet such requirements,

5 “(2) exemptions from the requirements of this
6 section, and

7 “(3) such rules as may be necessary or appro-
8 priate to carry out the purposes of this section.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) The item relating to section 6111 in the
11 table of sections for subchapter B of chapter 61 is
12 amended to read as follows:

 “Sec. 6111. Disclosure of reportable transactions.”.

13 (2) So much of section 6112 as precedes sub-
14 section (c) thereof is amended to read as follows:

15 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
16 **ACTIONS MUST KEEP LISTS OF ADVISEES,**
17 **ETC.**

18 “(a) IN GENERAL.—Each material advisor (as de-
19 fined in section 6111) with respect to any reportable
20 transaction (as defined in section 6707A(c)) shall (wheth-
21 er or not required to file a return under section 6111 with
22 respect to such transaction) maintain (in such manner as
23 the Secretary may by regulations prescribe) a list—



1 “(1) identifying each person with respect to
2 whom such advisor acted as a material advisor with
3 respect to such transaction, and

4 “(2) containing such other information as the
5 Secretary may by regulations require.”.

6 (3) Section 6112 is amended—

7 (A) by redesignating subsection (c) as sub-
8 section (b),

9 (B) by inserting “written” before “re-
10 quest” in subsection (b)(1) (as so redesign-
11 ated), and

12 (C) by striking “shall prescribe” in sub-
13 section (b)(2) (as so redesignated) and inserting
14 “may prescribe”.

15 (4) The item relating to section 6112 in the
16 table of sections for subchapter B of chapter 61 is
17 amended to read as follows:

 “Sec. 6112. Material advisors of reportable transactions must
 keep lists of advisees, etc.”.

18 (5)(A) The heading for section 6708 is amend-
19 ed to read as follows:



1 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
2 **WITH RESPECT TO REPORTABLE TRANS-**
3 **ACTIONS.”**

4 (B) The item relating to section 6708 in the
5 table of sections for part I of subchapter B of chap-
6 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”.

7 (c) **EFFECTIVE DATE.**—The amendments made by
8 this section shall apply to transactions with respect to
9 which material aid, assistance, or advice referred to in sec-
10 tion 6111(b)(1)(A)(i) of the Internal Revenue Code of
11 1986 (as added by this section) is provided after the date
12 of the enactment of this Act.

13 **SEC. 816. FAILURE TO FURNISH INFORMATION REGARDING**
14 **REPORTABLE TRANSACTIONS.**

15 (a) **IN GENERAL.**—Section 6707 (relating to failure
16 to furnish information regarding tax shelters) is amended
17 to read as follows:

18 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
19 **ING REPORTABLE TRANSACTIONS.**

20 “(a) **IN GENERAL.**—If a person who is required to
21 file a return under section 6111(a) with respect to any
22 reportable transaction—

23 “(1) fails to file such return on or before the
24 date prescribed therefor, or



1 “(2) files false or incomplete information with
2 the Secretary with respect to such transaction,
3 such person shall pay a penalty with respect to such return
4 in the amount determined under subsection (b).

5 “(b) AMOUNT OF PENALTY.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), the penalty imposed under subsection (a)
8 with respect to any failure shall be \$50,000.

9 “(2) LISTED TRANSACTIONS.—The penalty im-
10 posed under subsection (a) with respect to any listed
11 transaction shall be an amount equal to the greater
12 of—

13 “(A) \$200,000, or

14 “(B) 50 percent of the gross income de-
15 rived by such person with respect to aid, assist-
16 ance, or advice which is provided with respect
17 to the listed transaction before the date the re-
18 turn is filed under section 6111.

19 Subparagraph (B) shall be applied by substituting
20 ‘75 percent’ for ‘50 percent’ in the case of an inten-
21 tional failure or act described in subsection (a).

22 “(c) RESCISSION AUTHORITY.—The provisions of
23 section 6707A(d) (relating to authority of Commissioner
24 to rescind penalty) shall apply to any penalty imposed
25 under this section.



1 “(d) REPORTABLE AND LISTED TRANSACTIONS.—
2 For purposes of this section, the terms ‘reportable trans-
3 action’ and ‘listed transaction’ have the respective mean-
4 ings given to such terms by section 6707A(c).”.

5 (b) CLERICAL AMENDMENT.—The item relating to
6 section 6707 in the table of sections for part I of sub-
7 chapter B of chapter 68 is amended by striking “tax shel-
8 ters” and inserting “reportable transactions”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to returns the due date for which
11 is after the date of the enactment of this Act.

12 **SEC. 817. MODIFICATION OF PENALTY FOR FAILURE TO**
13 **MAINTAIN LISTS OF INVESTORS.**

14 (a) IN GENERAL.—Subsection (a) of section 6708 is
15 amended to read as follows:

16 “(a) IMPOSITION OF PENALTY.—

17 “(1) IN GENERAL.—If any person who is re-
18 quired to maintain a list under section 6112(a) fails
19 to make such list available upon written request to
20 the Secretary in accordance with section 6112(b)
21 within 20 business days after the date of such re-
22 quest, such person shall pay a penalty of \$10,000
23 for each day of such failure after such 20th day.

24 “(2) REASONABLE CAUSE EXCEPTION.—No
25 penalty shall be imposed by paragraph (1) with re-



1 spect to the failure on any day if such failure is due
2 to reasonable cause.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to requests made after the date
5 of the enactment of this Act.

6 **SEC. 818. PENALTY ON PROMOTERS OF TAX SHELTERS.**

7 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-
8 TERS.—Section 6700(a) is amended by adding at the end
9 the following new sentence: “Notwithstanding the first
10 sentence, if an activity with respect to which a penalty
11 imposed under this subsection involves a statement de-
12 scribed in paragraph (2)(A), the amount of the penalty
13 shall be equal to 50 percent of the gross income derived
14 (or to be derived) from such activity by the person on
15 which the penalty is imposed.”

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to activities after the date of the
18 enactment of this Act.

19 **SEC. 819. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**
20 **MENT PENALTY FOR NONREPORTABLE**
21 **TRANSACTIONS.**

22 (a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-
23 TIONS.—Section 6662(d)(1)(B) (relating to special rule
24 for corporations) is amended to read as follows:



1 “(B) SPECIAL RULE FOR CORPORA-
2 TIONS.—In the case of a corporation other than
3 an S corporation or a personal holding company
4 (as defined in section 542), there is a substan-
5 tial understatement of income tax for any tax-
6 able year if the amount of the understatement
7 for the taxable year exceeds the lesser of—

8 “(i) 10 percent of the tax required to
9 be shown on the return for the taxable
10 year (or, if greater, \$10,000), or

11 “(ii) \$10,000,000.”.

12 (b) SECRETARIAL LIST.—

13 (1) IN GENERAL.—Section 6662(d) is amended
14 by adding at the end the following new paragraph:

15 “(3) SECRETARIAL LIST.—The Secretary may
16 prescribe a list of positions which the Secretary be-
17 lieves do not meet the 1 or more of the standards
18 specified in paragraph (2)(B)(i), section 6664(d)(2),
19 and section 6694(a)(1). Such list (and any revisions
20 thereof) shall be published in the Federal Register
21 or the Internal Revenue Bulletin.”.

22 (2) CONFORMING AMENDMENT.—Paragraph (2)
23 of section 6662(d) is amended by striking subpara-
24 graph (D).



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

4 **SEC. 820. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
5 **CONDUCT RELATED TO TAX SHELTERS AND**
6 **REPORTABLE TRANSACTIONS.**

7 (a) IN GENERAL.—Section 7408 (relating to action
8 to enjoin promoters of abusive tax shelters, etc.) is amend-
9 ed by redesignating subsection (c) as subsection (d) and
10 by striking subsections (a) and (b) and inserting the fol-
11 lowing new subsections:

12 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-
13 tion in the name of the United States to enjoin any person
14 from further engaging in specified conduct may be com-
15 menced at the request of the Secretary. Any action under
16 this section shall be brought in the district court of the
17 United States for the district in which such person resides,
18 has his principal place of business, or has engaged in spec-
19 ified conduct. The court may exercise its jurisdiction over
20 such action (as provided in section 7402(a)) separate and
21 apart from any other action brought by the United States
22 against such person.

23 “(b) ADJUDICATION AND DECREE.—In any action
24 under subsection (a), if the court finds—



1 “(1) that the person has engaged in any speci-
2 fied conduct, and

3 “(2) that injunctive relief is appropriate to pre-
4 vent recurrence of such conduct,

5 the court may enjoin such person from engaging in such
6 conduct or in any other activity subject to penalty under
7 this title.

8 “(c) SPECIFIED CONDUCT.—For purposes of this
9 section, the term ‘specified conduct’ means any action, or
10 failure to take action, which is—

11 “(1) subject to penalty under section 6700,
12 6701, 6707, or 6708, or

13 “(2) in violation of any requirement under reg-
14 ulations issued under section 330 of title 31, United
15 States Code.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) The heading for section 7408 is amended to
18 read as follows:

19 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
20 **LATED TO TAX SHELTERS AND REPORTABLE**
21 **TRANSACTIONS.”**

22 (2) The table of sections for subchapter A of
23 chapter 76 is amended by striking the item relating
24 to section 7408 and inserting the following new
25 item:



“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.”.

1 (c) EFFECTIVE DATE.—The amendment made by
2 this section shall take effect on the day after the date of
3 the enactment of this Act.

4 **SEC. 821. PENALTY ON FAILURE TO REPORT INTERESTS IN**
5 **FOREIGN FINANCIAL ACCOUNTS.**

6 (a) IN GENERAL.—Section 5321(a)(5) of title 31,
7 United States Code, is amended to read as follows:

8 “(5) FOREIGN FINANCIAL AGENCY TRANS-
9 ACTION VIOLATION.—

10 “(A) PENALTY AUTHORIZED.—The Sec-
11 retary of the Treasury may impose a civil
12 money penalty on any person who violates, or
13 causes any violation of, any provision of section
14 5314.

15 “(B) AMOUNT OF PENALTY.—

16 “(i) IN GENERAL.—Except as pro-
17 vided in subparagraph (C), the amount of
18 any civil penalty imposed under subpara-
19 graph (A) shall not exceed \$10,000.

20 “(ii) REASONABLE CAUSE EXCEP-
21 TION.—No penalty shall be imposed under
22 subparagraph (A) with respect to any vio-
23 lation if—



1 “(I) such violation was due to
2 reasonable cause, and

3 “(II) the amount of the trans-
4 action or the balance in the account
5 at the time of the transaction was
6 properly reported.

7 “(C) WILLFUL VIOLATIONS.—In the case
8 of any person willfully violating, or willfully
9 causing any violation of, any provision of sec-
10 tion 5314—

11 “(i) the maximum penalty under sub-
12 paragraph (B)(i) shall be increased to the
13 greater of—

14 “(I) \$100,000, or

15 “(II) 50 percent of the amount
16 determined under subparagraph (D),
17 and

18 “(ii) subparagraph (B)(ii) shall not
19 apply.

20 “(D) AMOUNT.—The amount determined
21 under this subparagraph is—

22 “(i) in the case of a violation involving
23 a transaction, the amount of the trans-
24 action, or



1 “(ii) in the case of a violation involv-
2 ing a failure to report the existence of an
3 account or any identifying information re-
4 quired to be provided with respect to an
5 account, the balance in the account at the
6 time of the violation.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to violations occurring after the
9 date of the enactment of this Act.

10 **SEC. 822. REGULATION OF INDIVIDUALS PRACTICING BE-**
11 **FORE THE DEPARTMENT OF TREASURY.**

12 (a) CENSURE; IMPOSITION OF PENALTY.—

13 (1) IN GENERAL.—Section 330(b) of title 31,
14 United States Code, is amended—

15 (A) by inserting “, or censure,” after “De-
16 partment”, and

17 (B) by adding at the end the following new
18 flush sentence:

19 “The Secretary may impose a monetary penalty on any
20 representative described in the preceding sentence. If the
21 representative was acting on behalf of an employer or any
22 firm or other entity in connection with the conduct giving
23 rise to such penalty, the Secretary may impose a monetary
24 penalty on such employer, firm, or entity if it knew, or
25 reasonably should have known, of such conduct. Such pen-



1 alty shall not exceed the gross income derived (or to be
2 derived) from the conduct giving rise to the penalty and
3 may be in addition to, or in lieu of, any suspension, disbar-
4 ment, or censure of the representative.”.

5 (2) EFFECTIVE DATE.—The amendments made
6 by this subsection shall apply to actions taken after
7 the date of the enactment of this Act.

8 (b) TAX SHELTER OPINIONS, ETC.—Section 330 of
9 such title 31 is amended by adding at the end the fol-
10 lowing new subsection:

11 “(d) Nothing in this section or in any other provision
12 of law shall be construed to limit the authority of the Sec-
13 retary of the Treasury to impose standards applicable to
14 the rendering of written advice with respect to any entity,
15 transaction plan or arrangement, or other plan or arrange-
16 ment, which is of a type which the Secretary determines
17 as having a potential for tax avoidance or evasion.”.

18 **Part II—Other Provisions**

19 **SEC. 831. TREATMENT OF STRIPPED INTERESTS IN BOND**
20 **AND PREFERRED STOCK FUNDS, ETC.**

21 (a) IN GENERAL.—Section 1286 (relating to tax
22 treatment of stripped bonds) is amended by redesignating
23 subsection (f) as subsection (g) and by inserting after sub-
24 section (e) the following new subsection:



1 “(f) TREATMENT OF STRIPPED INTERESTS IN BOND
2 AND PREFERRED STOCK FUNDS, ETC.—In the case of an
3 account or entity substantially all of the assets of which
4 consist of bonds, preferred stock, or a combination thereof,
5 the Secretary may by regulations provide that rules simi-
6 lar to the rules of this section and 305(e), as appropriate,
7 shall apply to interests in such account or entity to which
8 (but for this subsection) this section or section 305(e), as
9 the case may be, would not apply.”.

10 (b) CROSS REFERENCE.—Subsection (e) of section
11 305 is amended by adding at the end the following new
12 paragraph:

13 “(7) CROSS REFERENCE.—

**“For treatment of stripped interests in certain ac-
counts or entities holding preferred stock, see sec-
tion 1286(f).”.**

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to purchases and dispositions after
16 the date of the enactment of this Act.

17 **SEC. 832. MINIMUM HOLDING PERIOD FOR FOREIGN TAX**
18 **CREDIT ON WITHHOLDING TAXES ON INCOME**
19 **OTHER THAN DIVIDENDS.**

20 (a) IN GENERAL.—Section 901 is amended by redес-
21 ignating subsection (l) as subsection (m) and by inserting
22 after subsection (k) the following new subsection:



1 “(1) MINIMUM HOLDING PERIOD FOR WITHHOLDING
2 TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS
3 ETC.—

4 “(1) IN GENERAL.—In no event shall a credit
5 be allowed under subsection (a) for any withholding
6 tax (as defined in subsection (k)) on any item of in-
7 come or gain with respect to any property if—

8 “(A) such property is held by the recipient
9 of the item for 15 days or less during the 31-
10 day period beginning on the date which is 15
11 days before the date on which the right to re-
12 ceive payment of such item arises, or

13 “(B) to the extent that the recipient of the
14 item is under an obligation (whether pursuant
15 to a short sale or otherwise) to make related
16 payments with respect to positions in substan-
17 tially similar or related property.

18 This paragraph shall not apply to any dividend to
19 which subsection (k) applies.

20 “(2) EXCEPTION FOR TAXES PAID BY DEAL-
21 ERS.—

22 “(A) IN GENERAL.—Paragraph (1) shall
23 not apply to any qualified tax with respect to
24 any property held in the active conduct in a for-



1 eign country of a business as a dealer in such
2 property.

3 “(B) QUALIFIED TAX.—For purposes of
4 subparagraph (A), the term ‘qualified tax’
5 means a tax paid to a foreign country (other
6 than the foreign country referred to in subpara-
7 graph (A)) if—

8 “(i) the item to which such tax is at-
9 tributable is subject to taxation on a net
10 basis by the country referred to in sub-
11 paragraph (A), and

12 “(ii) such country allows a credit
13 against its net basis tax for the full
14 amount of the tax paid to such other for-
15 eign country.

16 “(C) DEALER.—For purposes of subpara-
17 graph (A), the term ‘dealer’ means—

18 “(i) with respect to a security, any
19 person to whom paragraphs (1) and (2) of
20 subsection (k) would not apply by reason
21 of paragraph (4) thereof if such security
22 were stock, and

23 “(ii) with respect to any other prop-
24 erty, any person with respect to whom



1 such property is described in section
2 1221(a)(1).

3 “(D) REGULATIONS.—The Secretary may
4 prescribe such regulations as may be appro-
5 priate to carry out this paragraph, including
6 regulations to prevent the abuse of the excep-
7 tion provided by this paragraph and to treat
8 other taxes as qualified taxes.

9 “(3) EXCEPTIONS.—The Secretary may by reg-
10 ulation provide that paragraph (1) shall not apply to
11 property where the Secretary determines that the
12 application of paragraph (1) to such property is not
13 necessary to carry out the purposes of this sub-
14 section.

15 “(4) CERTAIN RULES TO APPLY.—Rules similar
16 to the rules of paragraphs (5), (6), and (7) of sub-
17 section (k) shall apply for purposes of this sub-
18 section.

19 “(5) DETERMINATION OF HOLDING PERIOD.—
20 Holding periods shall be determined for purposes of
21 this subsection without regard to section 1235 or
22 any similar rule.”.

23 (b) CONFORMING AMENDMENT.—The heading of
24 subsection (k) of section 901 is amended by inserting “ON
25 DIVIDENDS” after “TAXES”.



1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid or accrued more
3 than 30 days after the date of the enactment of this Act.

4 **SEC. 833. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS**
5 **TRANSFERS.**

6 (a) TREATMENT OF CONTRIBUTED PROPERTY WITH
7 BUILT-IN LOSS.—Paragraph (1) of section 704(c) is
8 amended by striking “and” at the end of subparagraph
9 (A), by striking the period at the end of subparagraph
10 (B) and inserting “, and”, and by adding at the end the
11 following:

12 “(C) if any property so contributed has a
13 built-in loss—

14 “(i) such built-in loss shall be taken
15 into account only in determining the
16 amount of items allocated to the contrib-
17 uting partner, and

18 “(ii) except as provided in regulations,
19 in determining the amount of items allo-
20 cated to other partners, the basis of the
21 contributed property in the hands of the
22 partnership shall be treated as being equal
23 to its fair market value at the time of con-
24 tribution.



1 For purposes of subparagraph (C), the term ‘built-
2 in loss’ means the excess of the adjusted basis of the
3 property (determined without regard to subpara-
4 graph (C)(ii)) over its fair market value at the time
5 of contribution.”.

6 (b) SPECIAL RULES FOR TRANSFERS OF PARTNER-
7 SHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN
8 LOSS.—

9 (1) ADJUSTMENT OF PARTNERSHIP BASIS RE-
10 QUIRED.—Subsection (a) of section 743 (relating to
11 optional adjustment to basis of partnership prop-
12 erty) is amended by inserting before the period “or
13 unless the partnership has a substantial built-in loss
14 immediately after such transfer”.

15 (2) ADJUSTMENT.—Subsection (b) of section
16 743 is amended by inserting “or which has a sub-
17 stantial built-in loss immediately after such trans-
18 fer” after “section 754 is in effect”.

19 (3) SUBSTANTIAL BUILT-IN LOSS.—Section 743
20 is amended by adding at the end the following new
21 subsection:

22 “(d) SUBSTANTIAL BUILT-IN LOSS.—

23 “(1) IN GENERAL.—For purposes of this sec-
24 tion, a partnership has a substantial built-in loss
25 with respect to a transfer of an interest in a part-



1 nership if the partnership's adjusted basis in the
2 partnership property exceeds by more than \$250,000
3 the fair market value of such property.

4 “(2) REGULATIONS.—The Secretary shall pre-
5 scribe such regulations as may be appropriate to
6 carry out the purposes of paragraph (1) and section
7 734(d), including regulations aggregating related
8 partnerships and disregarding property acquired by
9 the partnership in an attempt to avoid such pur-
10 poses.”.

11 (4) ALTERNATIVE RULES FOR ELECTING IN-
12 VESTMENT PARTNERSHIPS.—

13 (A) IN GENERAL.—Section 743 is amended
14 by adding after subsection (d) the following new
15 subsection:

16 “(e) ALTERNATIVE RULES FOR ELECTING INVEST-
17 MENT PARTNERSHIPS.—

18 “(1) NO ADJUSTMENT OF PARTNERSHIP
19 BASIS.—For purposes of this section, an electing in-
20 vestment partnership shall not be treated as having
21 a substantial built-in loss with respect to any trans-
22 fer occurring while the election under paragraph
23 (6)(A) is in effect.

24 “(2) LOSS DEFERRAL FOR TRANSFEREE PART-
25 NER.—In the case of a transfer of an interest in an



1 electing investment partnership, the transferee part-
2 ner's distributive share of losses (without regard to
3 gains) from the sale or exchange of partnership
4 property shall not be allowed except to the extent
5 that it is established that such losses exceed the loss
6 (if any) recognized by the transferor (or any prior
7 transferor to the extent not fully offset by a prior
8 disallowance under this paragraph) on the transfer
9 of the partnership interest.

10 “(3) NO REDUCTION IN PARTNERSHIP BASIS.—
11 Losses disallowed under paragraph (2) shall not de-
12 crease the transferee partner's basis in the partner-
13 ship interest.

14 “(4) EFFECT OF TERMINATION OF PARTNER-
15 SHIP.—This subsection shall be applied without re-
16 gard to any termination of a partnership under sec-
17 tion 708(b)(1)(B).

18 “(5) CERTAIN BASIS REDUCTIONS TREATED AS
19 LOSSES.—In the case of a transferee partner whose
20 basis in property distributed by the partnership is
21 reduced under section 732(a)(2), the amount of the
22 loss recognized by the transferor on the transfer of
23 the partnership interest which is taken into account
24 under paragraph (2) shall be reduced by the amount
25 of such basis reduction.



1 “(6) ELECTING INVESTMENT PARTNERSHIP.—

2 For purposes of this subsection, the term ‘electing
3 investment partnership’ means any partnership if—

4 “(A) the partnership makes an election to
5 have this subsection apply,

6 “(B) the partnership would be an invest-
7 ment company under section 3(a)(1)(A) of the
8 Investment Company Act of 1940 but for an
9 exemption under paragraph (1) or (7) of section
10 3(e) of such Act,

11 “(C) such partnership has never been en-
12 gaged in a trade or business,

13 “(D) substantially all of the assets of such
14 partnership are held for investment,

15 “(E) at least 95 percent of the assets con-
16 tributed to such partnership consist of money,

17 “(F) no assets contributed to such part-
18 nership had an adjusted basis in excess of fair
19 market value at the time of contribution,

20 “(G) all partnership interests of such part-
21 nership are issued by such partnership pursu-
22 ant to a private offering before the date which
23 is 24 months after the date of the first capital
24 contribution to such partnership,



1 “(H) the partnership agreement of such
2 partnership has substantive restrictions on each
3 partner’s ability to cause a redemption of the
4 partner’s interest, and

5 “(I) the partnership agreement of such
6 partnership provides for a term that is not in
7 excess of 15 years.

8 The election described in subparagraph (A), once
9 made, shall be irrevocable except with the consent of
10 the Secretary.

11 “(7) REGULATIONS.—The Secretary shall pre-
12 scribe such regulations as may be appropriate to
13 carry out the purposes of this subsection, including
14 regulations for applying this subsection to tiered
15 partnerships.”.

16 (B) INFORMATION REPORTING.—Section
17 6031 is amended by adding at the end the fol-
18 lowing new subsection:

19 “(f) ELECTING INVESTMENT PARTNERSHIPS.—In
20 the case of any electing investment partnership (as defined
21 in section 743(e)(6)), the information required under sub-
22 section (b) to be furnished to any partner to whom section
23 743(e)(2) applies shall include such information as is nec-
24 essary to enable the partner to compute the amount of
25 losses disallowed under section 743(e).”.



1 (5) SPECIAL RULE FOR SECURITIZATION PART-
2 NERSHIPS.—Section 743 is amended by adding after
3 subsection (e) the following new subsection:

4 “(f) EXCEPTION FOR SECURITIZATION PARTNER-
5 SHIPS.—

6 “(1) NO ADJUSTMENT OF PARTNERSHIP
7 BASIS.—For purposes of this section, a
8 securitization partnership shall not be treated as
9 having a substantial built-in loss with respect to any
10 transfer.

11 “(2) SECURITIZATION PARTNERSHIP.—For pur-
12 poses of paragraph (1), the term ‘securitization part-
13 nership’ means any partnership the sole business ac-
14 tivity of which is to issue securities which provide for
15 a fixed principal (or similar) amount and which are
16 primarily serviced by the cash flows of a discrete
17 pool (either fixed or revolving) of receivables or other
18 financial assets that by their terms convert into cash
19 in a finite period, but only if the sponsor of the pool
20 reasonably believes that the receivables and other fi-
21 nancial assets comprising the pool are not acquired
22 so as to be disposed of.”

23 (6) CLERICAL AMENDMENTS.—

24 (A) The section heading for section 743 is
25 amended to read as follows:



1 **“SEC. 743. SPECIAL RULES WHERE SECTION 754 ELECTION**
2 **OR SUBSTANTIAL BUILT-IN LOSS.”**

3 (B) The table of sections for subpart C of
4 part II of subchapter K of chapter 1 is amend-
5 ed by striking the item relating to section 743
6 and inserting the following new item:

“Sec. 743. Special rules where section 754 election or substantial
built-in loss.”.

7 (c) **ADJUSTMENT TO BASIS OF UNDISTRIBUTED**
8 **PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL**
9 **BASIS REDUCTION.—**

10 (1) **ADJUSTMENT REQUIRED.—**Subsection (a)
11 of section 734 (relating to optional adjustment to
12 basis of undistributed partnership property) is
13 amended by inserting before the period “or unless
14 there is a substantial basis reduction”.

15 (2) **ADJUSTMENT.—**Subsection (b) of section
16 734 is amended by inserting “or unless there is a
17 substantial basis reduction” after “section 754 is in
18 effect”.

19 (3) **SUBSTANTIAL BASIS REDUCTION.—**Section
20 734 is amended by adding at the end the following
21 new subsection:

22 **“(d) SUBSTANTIAL BASIS REDUCTION.—**

23 **“(1) IN GENERAL.—**For purposes of this sec-
24 tion, there is a substantial basis reduction with re-



1 spect to a distribution if the sum of the amounts de-
2 scribed in subparagraphs (A) and (B) of subsection
3 (b)(2) exceeds \$250,000.

4 “(2) REGULATIONS.—

**“For regulations to carry out this subsection, see
 section 743(d)(2).”.**

5 (4) EXCEPTION FOR SECURITIZATION PART-
6 NERSHIPS.—Section 734 is amended by inserting
7 after subsection (d) the following new subsection:

8 “(e) EXCEPTION FOR SECURITIZATION PARTNER-
9 SHIPS.—For purposes of this section, a securitization
10 partnership (as defined in section 743(f)) shall not be
11 treated as having a substantial basis reduction with re-
12 spect to any distribution of property to a partner.”.

13 (5) CLERICAL AMENDMENTS.—

14 (A) The section heading for section 734 is
15 amended to read as follows:

16 **“SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED**
17 **PARTNERSHIP PROPERTY WHERE SECTION**
18 **754 ELECTION OR SUBSTANTIAL BASIS RE-**
19 **DUCTION.”**

20 (B) The table of sections for subpart B of
21 part II of subchapter K of chapter 1 is amend-
22 ed by striking the item relating to section 734
23 and inserting the following new item:



“Sec. 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.”.

1 (d) EFFECTIVE DATES.—

2 (1) SUBSECTION (a).—The amendment made
3 by subsection (a) shall apply to contributions made
4 after the date of the enactment of this Act.

5 (2) SUBSECTION (b).—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (B), the amendments made by
8 subsection (b) shall apply to transfers after the
9 date of the enactment of this Act.

10 (B) TRANSITION RULE.—In the case of an
11 electing investment partnership which is in ex-
12 istence on June 4, 2004, section 743(e)(6)(H)
13 of the Internal Revenue Code of 1986, as added
14 by this section, shall not apply to such partner-
15 ship and section 743(e)(6)(I) of such Code, as
16 so added, shall be applied by substituting “20
17 years” for “15 years”.

18 (3) SUBSECTION (c).—The amendments made
19 by subsection (c) shall apply to distributions after
20 the date of the enactment of this Act.



1 **SEC. 834. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
2 **STOCK HELD BY PARTNERSHIP IN COR-**
3 **PORATE PARTNER.**

4 (a) IN GENERAL.—Section 755 is amended by adding
5 at the end the following new subsection:

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

10 “(1) no allocation may be made to stock in a
11 corporation (or any person related (within the mean-
12 ing of sections 267(b) and 707(b)(1)) to such cor-
13 poration) which is a partner in the partnership, and

14 “(2) any amount not allocable to stock by rea-
15 son of paragraph (1) shall be allocated under sub-
16 section (a) to other partnership property.

17 Gain shall be recognized to the partnership to the extent
18 that the amount required to be allocated under paragraph
19 (2) to other partnership property exceeds the aggregate
20 adjusted basis of such other property immediately before
21 the allocation required by paragraph (2).”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to distributions after the date of
24 the enactment of this Act.



1 **SEC. 835. REPEAL OF SPECIAL RULES FOR FASITS.**

2 (a) IN GENERAL.—Part V of subchapter M of chap-
3 ter 1 (relating to financial asset securitization investment
4 trusts) is hereby repealed.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Paragraph (6) of section 56(g) is amended
7 by striking “REMIC, or FASIT” and inserting “or
8 REMIC”.

9 (2) Clause (ii) of section 382(l)(4)(B) is amend-
10 ed by striking “a REMIC to which part IV of sub-
11 chapter M applies, or a FASIT to which part V of
12 subchapter M applies,” and inserting “or a REMIC
13 to which part IV of subchapter M applies,”.

14 (3) Paragraph (1) of section 582(c) is amended
15 by striking “, and any regular interest in a
16 FASIT,”.

17 (4) Subparagraph (E) of section 856(c)(5) is
18 amended by striking the last sentence.

19 (5)(A) Section 860G(a)(1) is amended by add-
20 ing at the end the following new sentence: “An inter-
21 est shall not fail to qualify as a regular interest sole-
22 ly because the specified principal amount of the reg-
23 ular interest (or the amount of interest accrued on
24 the regular interest) can be reduced as a result of
25 the nonoccurrence of 1 or more contingent payments
26 with respect to any reverse mortgage loan held by



1 the REMIC if, on the startup day for the REMIC,
2 the sponsor reasonably believes that all principal and
3 interest due under the regular interest will be paid
4 at or prior to the liquidation of the REMIC.”.

5 (B) The last sentence of section 860G(a)(3) is
6 amended by inserting “, and any reverse mortgage
7 loan (and each balance increase on such loan meet-
8 ing the requirements of subparagraph (A)(iii)) shall
9 be treated as an obligation secured by an interest in
10 real property” before the period at the end.

11 (6) Paragraph (3) of section 860G(a) is amend-
12 ed by adding “and” at the end of subparagraph (B),
13 by striking “, and” at the end of subparagraph (C)
14 and inserting a period, and by striking subparagraph
15 (D).

16 (7) Section 860G(a)(3), as amended by para-
17 graph (6), is amended by adding at the end the fol-
18 lowing new sentence: “For purposes of subparagraph
19 (A), if more than 50 percent of the obligations
20 transferred to, or purchased by, the REMIC are
21 originated by the United States or any State (or any
22 political subdivision, agency, or instrumentality of
23 the United States or any State) and are principally
24 secured by an interest in real property, then each
25 obligation transferred to, or purchased by, the



1 REMIC shall be treated as secured by an interest in
2 real property.”.

3 (8)(A) Section 860G(a)(3)(A) is amended by
4 striking “or” at the end of clause (i), by inserting
5 “or” at the end of clause (ii), and by inserting after
6 clause (ii) the following new clause:

7 “(iii) represents an increase in the
8 principal amount under the original terms
9 of an obligation described in clause (i) or
10 (ii) if such increase—

11 “(I) is attributable to an advance
12 made to the obligor pursuant to the
13 original terms of the obligation,

14 “(II) occurs after the startup
15 day, and

16 “(III) is purchased by the
17 REMIC pursuant to a fixed price con-
18 tract in effect on the startup day.”.

19 (B) Section 860G(a)(7)(B) is amended to read
20 as follows:

21 “(B) QUALIFIED RESERVE FUND.—For
22 purposes of subparagraph (A), the term ‘quali-
23 fied reserve fund’ means any reasonably re-
24 quired reserve to—



1 “(i) provide for full payment of ex-
2 penses of the REMIC or amounts due on
3 regular interests in the event of defaults on
4 qualified mortgages or lower than expected
5 returns on cash flow investments, or

6 “(ii) provide a source of funds for the
7 purchase of obligations described in clause
8 (ii) or (iii) of paragraph (3)(A).

9 The aggregate fair market value of the assets
10 held in any such reserve shall not exceed 50
11 percent of the aggregate fair market value of all
12 of the assets of the REMIC on the startup day,
13 and the amount of any such reserve shall be
14 promptly and appropriately reduced to the ex-
15 tent the amount held in such reserve is no
16 longer reasonably required for purposes speci-
17 fied in clause (i) or (ii) of this subparagraph.”.

18 (9) Subparagraph (C) of section 1202(e)(4) is
19 amended by striking “REMIC, or FASIT” and in-
20 serting “or REMIC”.

21 (10) Clause (xi) of section 7701(a)(19)(C) is
22 amended—

23 (A) by striking “and any regular interest
24 in a FASIT,” and



1 (B) by striking “or FASIT” each place it
2 appears.

3 (11) Subparagraph (A) of section 7701(i)(2) is
4 amended by striking “or a FASIT”.

5 (12) The table of parts for subchapter M of
6 chapter 1 is amended by striking the item relating
7 to part V.

8 (c) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), the amendments made by this section
11 shall take effect on January 1, 2005.

12 (2) EXCEPTION FOR EXISTING FASITS.—Para-
13 graph (1) shall not apply to any FASIT in existence
14 on the date of the enactment of this Act to the ex-
15 tent that regular interests issued by the FASIT be-
16 fore such date continue to remain outstanding in ac-
17 cordance with the original terms of issuance.

18 **SEC. 836. LIMITATION ON TRANSFER OR IMPORTATION OF**
19 **BUILT-IN LOSSES.**

20 (a) IN GENERAL.—Section 362 (relating to basis to
21 corporations) is amended by adding at the end the fol-
22 lowing new subsection:

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

24 “(1) LIMITATION ON IMPORTATION OF BUILT-
25 IN LOSSES.—



1 “(A) IN GENERAL.—If in any transaction
2 described in subsection (a) or (b) there would
3 (but for this subsection) be an importation of a
4 net built-in loss, the basis of each property de-
5 scribed in subparagraph (B) which is acquired
6 in such transaction shall (notwithstanding sub-
7 sections (a) and (b)) be its fair market value
8 immediately after such transaction.

9 “(B) PROPERTY DESCRIBED.—For pur-
10 poses of subparagraph (A), property is de-
11 scribed in this subparagraph if—

12 “(i) gain or loss with respect to such
13 property is not subject to tax under this
14 subtitle in the hands of the transferor im-
15 mediately before the transfer, and

16 “(ii) gain or loss with respect to such
17 property is subject to such tax in the
18 hands of the transferee immediately after
19 such transfer.

20 In any case in which the transferor is a part-
21 nership, the preceding sentence shall be applied
22 by treating each partner in such partnership as
23 holding such partner’s proportionate share of
24 the property of such partnership.



1 “(C) IMPORTATION OF NET BUILT-IN
2 LOSS.—For purposes of subparagraph (A),
3 there is an importation of a net built-in loss in
4 a transaction if the transferee’s aggregate ad-
5 justed bases of property described in subpara-
6 graph (B) which is transferred in such trans-
7 action would (but for this paragraph) exceed
8 the fair market value of such property imme-
9 diately after such transaction.

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

12 “(A) IN GENERAL.—If—

13 “(i) property is transferred by a
14 transferor in any transaction which is de-
15 scribed in subsection (a) and which is not
16 described in paragraph (1) of this sub-
17 section, and

18 “(ii) the transferee’s aggregate ad-
19 justed bases of such property so trans-
20 ferred would (but for this paragraph) ex-
21 ceed the fair market value of such property
22 immediately after such transaction,

23 then, notwithstanding subsection (a), the trans-
24 feree’s aggregate adjusted bases of the property
25 so transferred shall not exceed the fair market



1 value of such property immediately after such
2 transaction.

3 “(B) ALLOCATION OF BASIS REDUC-
4 TION.—The aggregate reduction in basis by
5 reason of subparagraph (A) shall be allocated
6 among the property so transferred in proportion
7 to their respective built-in losses immediately
8 before the transaction.

9 “(C) ELECTION TO APPLY LIMITATION TO
10 TRANSFEROR’S STOCK BASIS.—

11 “(i) IN GENERAL.—If the transferor
12 and transferee of a transaction described
13 in subparagraph (A) both elect the applica-
14 tion of this subparagraph—

15 “(I) subparagraph (A) shall not
16 apply, and

17 “(II) the transferor’s basis in the
18 stock received for property to which
19 subparagraph (A) does not apply by
20 reason of the election shall not exceed
21 its fair market value immediately
22 after the transfer.

23 “(ii) ELECTION.—An election under
24 clause (i) shall be included with the return
25 of tax for the taxable year in which the



1 transaction occurred, shall be in such form
2 and manner as the Secretary may pre-
3 scribe, and, once made, shall be irrev-
4 ocable.”.

5 (b) COMPARABLE TREATMENT WHERE LIQUIDA-
6 TION.—Paragraph (1) of section 334(b) (relating to liq-
7 uidation of subsidiary) is amended to read as follows:

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

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

21 “(B) in any case in which the liquidating
22 corporation is a foreign corporation, the cor-
23 porate distributee is a domestic corporation,
24 and the corporate distributee’s aggregate ad-
25 justed bases of property described in section



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

5 (c) EFFECTIVE DATES.—

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

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

12 **SEC. 837. CLARIFICATION OF BANKING BUSINESS FOR PUR-**
13 **POSES OF DETERMINING INVESTMENT OF**
14 **EARNINGS IN UNITED STATES PROPERTY.**

15 (a) IN GENERAL.—Subparagraph (A) of section
16 956(c)(2) is amended to read as follows:

17 “(A) obligations of the United States,
18 money, or deposits with—

19 “(i) any bank (as defined by section
20 2(c) of the Bank Holding Company Act of
21 1956 (12 U.S.C. 1841(c)), without regard
22 to subparagraphs (C) and (G) of para-
23 graph (2) of such section), or

24 “(ii) any corporation not described in
25 clause (i) with respect to which a bank



1 holding company (as defined by section
2 2(a) of such Act) or financial holding com-
3 pany (as defined by section 2(p) of such
4 Act) owns directly or indirectly more than
5 80 percent by vote or value of the stock of
6 such corporation;”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall take effect on the date of the enactment
9 of this Act.

10 **SEC. 838. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
11 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**
12 **CLOSED REPORTABLE TRANSACTIONS.**

13 (a) IN GENERAL.—Section 163 (relating to deduction
14 for interest) is amended by redesignating subsection (m)
15 as subsection (n) and by inserting after subsection (l) the
16 following new subsection:

17 “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE
18 TO NONDISCLOSED REPORTABLE TRANSACTIONS.—No
19 deduction shall be allowed under this chapter for any in-
20 terest paid or accrued under section 6601 on any under-
21 payment of tax which is attributable to the portion of any
22 reportable transaction understatement (as defined in sec-
23 tion 6662A(b)) with respect to which the requirement of
24 section 6664(d)(2)(A) is not met.”.



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

4 **SEC. 839. CLARIFICATION OF RULES FOR PAYMENT OF ES-**
5 **TIMATED TAX FOR CERTAIN DEEMED ASSET**
6 **SALES.**

7 (a) IN GENERAL.—Paragraph (13) of section 338(h)
8 (relating to tax on deemed sale not taken into account for
9 estimated tax purposes) is amended by adding at the end
10 the following: “The preceding sentence shall not apply
11 with respect to a qualified stock purchase for which an
12 election is made under paragraph (10).”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall apply to transactions occurring after
15 the date of the enactment of this Act.

16 **SEC. 840. RECOGNITION OF GAIN FROM THE SALE OF A**
17 **PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-**
18 **KIND EXCHANGE WITHIN 5 YEARS OF SALE.**

19 (a) IN GENERAL.—Section 121(d) (relating to special
20 rules for exclusion of gain from sale of principal residence)
21 is amended by adding at the end the following new para-
22 graph:

23 “(10) PROPERTY ACQUIRED IN LIKE-KIND EX-
24 CHANGE.—If a taxpayer acquired property in an ex-
25 change to which section 1031 applied, subsection (a)



1 shall not apply to the sale or exchange of such prop-
2 erty if it occurs during the 5-year period beginning
3 with the date of the acquisition of such property.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to sales or exchanges after the date
6 of the enactment of this Act.

7 **SEC. 841. PREVENTION OF MISMATCHING OF INTEREST**
8 **AND ORIGINAL ISSUE DISCOUNT DEDUC-**
9 **TIONS AND INCOME INCLUSIONS IN TRANS-**
10 **ACTIONS WITH RELATED FOREIGN PERSONS.**

11 (a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3)
12 (relating to special rule for original issue discount on obli-
13 gation held by related foreign person) is amended by re-
14 designating subparagraph (B) as subparagraph (C) and
15 by inserting after subparagraph (A) the following new sub-
16 paragraph:

17 “(B) SPECIAL RULE FOR CERTAIN FOR-
18 EIGN ENTITIES.—

19 “(i) IN GENERAL.—In the case of any
20 debt instrument having original issue dis-
21 count which is held by a related foreign
22 person which is a controlled foreign cor-
23 poration (as defined in section 957) or a
24 passive foreign investment company (as de-
25 fined in section 1297), a deduction shall be



1 allowable to the issuer with respect to such
2 original issue discount for any taxable year
3 before the taxable year in which paid only
4 to the extent such original issue discount is
5 includible (determined without regard to
6 properly allocable deductions and qualified
7 deficits under section 952(c)(1)(B)) during
8 such prior taxable year in the gross income
9 of a United States person who owns (with-
10 in the meaning of section 958(a)) stock in
11 such corporation.

12 “(ii) SECRETARIAL AUTHORITY.—The
13 Secretary may by regulation exempt trans-
14 actions from the application of clause (i),
15 including any transaction which is entered
16 into by a payor in the ordinary course of
17 a trade or business in which the payor is
18 predominantly engaged.”.

19 (b) INTEREST AND OTHER DEDUCTIBLE
20 AMOUNTS.—Section 267(a)(3) is amended—

21 (1) by striking “The Secretary” and inserting:

22 “(A) IN GENERAL.—The Secretary”, and

23 (2) by adding at the end the following new sub-
24 paragraph:



1 “(B) SPECIAL RULE FOR CERTAIN FOR-
2 EIGN ENTITIES.—

3 “(i) IN GENERAL.—Notwithstanding
4 subparagraph (A), in the case of any item
5 payable to a controlled foreign corporation
6 (as defined in section 957) or a passive
7 foreign investment company (as defined in
8 section 1297), a deduction shall be allow-
9 able to the payor with respect to such
10 amount for any taxable year before the
11 taxable year in which paid only to the ex-
12 tent that an amount attributable to such
13 item is includible (determined without re-
14 gard to properly allocable deductions and
15 qualified deficits under section
16 952(c)(1)(B)) during such prior taxable
17 year in the gross income of a United
18 States person who owns (within the mean-
19 ing of section 958(a)) stock in such cor-
20 poration.

21 “(ii) SECRETARIAL AUTHORITY.—The
22 Secretary may by regulation exempt trans-
23 actions from the application of clause (i),
24 including any transaction which is entered
25 into by a payor in the ordinary course of



1 a trade or business in which the payor is
2 predominantly engaged and in which the
3 payment of the accrued amounts occurs
4 within 8½ months after accrual or within
5 such other period as the Secretary may
6 prescribe.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to payments accrued on or after
9 the date of the enactment of this Act.

10 **SEC. 842. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
11 **TEREST ON POTENTIAL UNDERPAYMENTS.**

12 (a) IN GENERAL.—Subchapter A of chapter 67 (re-
13 lating to interest on underpayments) is amended by add-
14 ing at the end the following new section:

15 **“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
16 **TEREST ON POTENTIAL UNDERPAYMENTS,**
17 **ETC.**

18 “(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN
19 AS PAYMENT OF TAX.—A taxpayer may make a cash de-
20 posit with the Secretary which may be used by the Sec-
21 retary to pay any tax imposed under subtitle A or B or
22 chapter 41, 42, 43, or 44 which has not been assessed
23 at the time of the deposit. Such a deposit shall be made
24 in such manner as the Secretary shall prescribe.



1 “(b) NO INTEREST IMPOSED.—To the extent that
2 such deposit is used by the Secretary to pay tax, for pur-
3 poses of section 6601 (relating to interest on underpay-
4 ments), the tax shall be treated as paid when the deposit
5 is made.

6 “(c) RETURN OF DEPOSIT.—Except in a case where
7 the Secretary determines that collection of tax is in jeop-
8 ardy, the Secretary shall return to the taxpayer any
9 amount of the deposit (to the extent not used for a pay-
10 ment of tax) which the taxpayer requests in writing.

11 “(d) PAYMENT OF INTEREST.—

12 “(1) IN GENERAL.—For purposes of section
13 6611 (relating to interest on overpayments), except
14 as provided in paragraph (4), a deposit which is re-
15 turned to a taxpayer shall be treated as a payment
16 of tax for any period to the extent (and only to the
17 extent) attributable to a disputable tax for such pe-
18 riod. Under regulations prescribed by the Secretary,
19 rules similar to the rules of section 6611(b)(2) shall
20 apply.

21 “(2) DISPUTABLE TAX.—

22 “(A) IN GENERAL.—For purposes of this
23 section, the term ‘disputable tax’ means the
24 amount of tax specified at the time of the de-
25 posit as the taxpayer’s reasonable estimate of



1 the maximum amount of any tax attributable to
2 disputable items.

3 “(B) SAFE HARBOR BASED ON 30-DAY
4 LETTER.—In the case of a taxpayer who has
5 been issued a 30-day letter, the maximum
6 amount of tax under subparagraph (A) shall
7 not be less than the amount of the proposed de-
8 ficiency specified in such letter.

9 “(3) OTHER DEFINITIONS.—For purposes of
10 paragraph (2)—

11 “(A) DISPUTABLE ITEM.—The term ‘dis-
12 putable item’ means any item of income, gain,
13 loss, deduction, or credit if the taxpayer—

14 “(i) has a reasonable basis for its
15 treatment of such item, and

16 “(ii) reasonably believes that the Sec-
17 retary also has a reasonable basis for dis-
18 allowing the taxpayer’s treatment of such
19 item.

20 “(B) 30-DAY LETTER.—The term ‘30-day
21 letter’ means the first letter of proposed defi-
22 ciency which allows the taxpayer an opportunity
23 for administrative review in the Internal Rev-
24 enue Service Office of Appeals.



1 “(4) RATE OF INTEREST.—The rate of interest
2 under this subsection shall be the Federal short-
3 term rate determined under section 6621(b), com-
4 pounded daily.

5 “(e) USE OF DEPOSITS.—

6 “(1) PAYMENT OF TAX.—Except as otherwise
7 provided by the taxpayer, deposits shall be treated
8 as used for the payment of tax in the order depos-
9 ited.

10 “(2) RETURNS OF DEPOSITS.—Deposits shall
11 be treated as returned to the taxpayer on a last-in,
12 first-out basis.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 for subchapter A of chapter 67 is amended by adding at
15 the end the following new item:

 “Sec. 6603. Deposits made to suspend running of interest on po-
 tential underpayments, etc.”.

16 (c) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall apply to deposits made after the
19 date of the enactment of this Act.

20 (2) COORDINATION WITH DEPOSITS MADE
21 UNDER REVENUE PROCEDURE 84-58.—In the case of
22 an amount held by the Secretary of the Treasury or
23 his delegate on the date of the enactment of this Act
24 as a deposit in the nature of a cash bond deposit



1 pursuant to Revenue Procedure 84-58, the date that
2 the taxpayer identifies such amount as a deposit
3 made pursuant to section 6603 of the Internal Rev-
4 enue Code (as added by this Act) shall be treated as
5 the date such amount is deposited for purposes of
6 such section 6603.

7 **SEC. 843. PARTIAL PAYMENT OF TAX LIABILITY IN IN-**
8 **STALLMENT AGREEMENTS.**

9 (a) IN GENERAL.—

10 (1) Section 6159(a) (relating to authorization
11 of agreements) is amended—

12 (A) by striking “satisfy liability for pay-
13 ment of” and inserting “make payment on”,
14 and

15 (B) by inserting “full or partial” after “fa-
16 cilitate”.

17 (2) Section 6159(e) (relating to Secretary re-
18 quired to enter into installment agreements in cer-
19 tain cases) is amended in the matter preceding para-
20 graph (1) by inserting “full” before “payment”.

21 (b) REQUIREMENT TO REVIEW PARTIAL PAYMENT
22 AGREEMENTS EVERY TWO YEARS.—Section 6159 is
23 amended by redesignating subsections (d) and (e) as sub-
24 sections (e) and (f), respectively, and inserting after sub-
25 section (c) the following new subsection:



1 (c) EFFECTIVE DATE.—This section, and the amend-
2 ment made by this section, shall apply to taxable years
3 beginning before, on, or after the date of the enactment
4 of this Act.

5 **SEC. 845. EXPANDED DISALLOWANCE OF DEDUCTION FOR**
6 **INTEREST ON CONVERTIBLE DEBT.**

7 (a) IN GENERAL.—Paragraph (2) of section 163(l)
8 is amended by inserting “or equity held by the issuer (or
9 any related party) in any other person” after “or a related
10 party”.

11 (b) CAPITALIZATION ALLOWED WITH RESPECT TO
12 EQUITY OF PERSONS OTHER THAN ISSUER AND RE-
13 LATED PARTIES.—Section 163(l) is amended by redesignig-
14 nating paragraphs (4) and (5) as paragraphs (5) and (6)
15 and by inserting after paragraph (3) the following new
16 paragraph:

17 “(4) CAPITALIZATION ALLOWED WITH RESPECT
18 TO EQUITY OF PERSONS OTHER THAN ISSUER AND
19 RELATED PARTIES.—If the disqualified debt instru-
20 ment of a corporation is payable in equity held by
21 the issuer (or any related party) in any other person
22 (other than a related party), the basis of such equity
23 shall be increased by the amount not allowed as a
24 deduction by reason of paragraph (1) with respect to
25 the instrument.”.



1 (c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED
2 BY DEALERS IN SECURITIES.—Section 163(l), as amend-
3 ed by subsection (b), is amended by redesignating para-
4 graphs (5) and (6) as paragraphs (6) and (7) and by in-
5 serting after paragraph (4) the following new paragraph:

6 “(5) EXCEPTION FOR CERTAIN INSTRUMENTS
7 ISSUED BY DEALERS IN SECURITIES.—For purposes
8 of this subsection, the term ‘disqualified debt instru-
9 ment’ does not include indebtedness issued by a
10 dealer in securities (or a related party) which is pay-
11 able in, or by reference to, equity (other than equity
12 of the issuer or a related party) held by such dealer
13 in its capacity as a dealer in securities. For purposes
14 of this paragraph, the term ‘dealer in securities’ has
15 the meaning given such term by section 475.”.

16 (d) CONFORMING AMENDMENT.—Paragraph (3) of
17 section 163(l) is amended by striking “or a related party”
18 in the material preceding subparagraph (A) and inserting
19 “or any other person”.

20 (e) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to debt instruments issued after
22 October 3, 2004.



1 **Part III—Leasing**

2 **SEC. 847. REFORM OF TAX TREATMENT OF CERTAIN LEAS-**
3 **ING ARRANGEMENTS.**

4 (a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-
5 EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subpara-
6 graph (A) of section 168(g)(3) (relating to special rules
7 for determining class life) is amended by inserting “(not-
8 withstanding any other subparagraph of this paragraph)”
9 after “shall”.

10 (b) LIMITATION ON DEPRECIATION AND AMORTIZA-
11 TION PERIODS FOR INTANGIBLES LEASED TO TAX-EX-
12 EMPT ENTITY.—

13 (1) COMPUTER SOFTWARE.—Paragraph (1) of
14 section 167(f) is amended by adding at the end the
15 following new subparagraph:

16 “(C) TAX-EXEMPT USE PROPERTY SUB-
17 JECT TO LEASE.—In the case of computer soft-
18 ware which would be tax-exempt use property
19 as defined in subsection (h) of section 168 if
20 such section applied to computer software, the
21 useful life under subparagraph (A) shall not be
22 less than 125 percent of the lease term (within
23 the meaning of section 168(i)(3)).”.

24 (2) CERTAIN INTERESTS OR RIGHTS ACQUIRED
25 SEPARATELY.—Paragraph (2) of section 167(f) is
26 amended by adding at the end the following new



1 sentence: “If such property would be tax-exempt use
2 property as defined in subsection (h) of section 168
3 if such section applied to such property, the useful
4 life under such regulations shall not be less than
5 125 percent of the lease term (within the meaning
6 of section 168(i)(3)).”.

7 (3) SECTION 197 INTANGIBLES.—Section 197(f)
8 (relating to special rules) is amended by adding at
9 the end the following new paragraph:

10 “(10) TAX-EXEMPT USE PROPERTY SUBJECT
11 TO LEASE.—In the case of any section 197 intan-
12 gible which would be tax-exempt use property as de-
13 fined in subsection (h) of section 168 if such section
14 applied to such intangible, the amortization period
15 under this section shall not be less than 125 percent
16 of the lease term (within the meaning of section
17 168(i)(3)).”.

18 (c) LEASE TERM TO INCLUDE RELATED SERVICE
19 CONTRACTS.—Subparagraph (A) of section 168(i)(3) (re-
20 lating to lease term) is amended by striking “and” at the
21 end of clause (i), by redesignating clause (ii) as clause
22 (iii), and by inserting after clause (i) the following new
23 clause:

24 “(ii) the term of a lease shall include
25 the term of any service contract or similar



1 arrangement (whether or not treated as a
2 lease under section 7701(e))—

3 “(I) which is part of the same
4 transaction (or series of related trans-
5 actions) which includes the lease, and

6 “(II) which is with respect to the
7 property subject to the lease or sub-
8 stantially similar property, and”.

9 (d) EXPANSION OF SHORT-TERM LEASE EXEMPTION
10 FOR QUALIFIED TECHNOLOGICAL EQUIPMENT.—Sub-
11 paragraph (A) of section 168(h)(3) is amended by adding
12 at the end the following new sentence: “Notwithstanding
13 subsection (i)(3)(A)(i), in determining a lease term for
14 purposes of the preceding sentence, there shall not be
15 taken into account any option of the lessee to renew at
16 the fair market value rent determined at the time of re-
17 newal; except that the aggregate period not taken into ac-
18 count by reason of this sentence shall not exceed 24
19 months.”.

20 (e) TREATMENT OF CERTAIN INDIAN TRIBAL GOV-
21 ERNMENTS AS TAX-EXEMPT ENTITIES.—Section
22 168(h)(2)(A) is amended by striking “and” at the end of
23 clause (ii), by striking the period at the end of clause (iii)
24 and inserting “, and”, and by inserting at the end the
25 following:



1 “(iv) any Indian tribal government de-
2 scribed in section 7701(a)(40).

3 For purposes of applying this subsection, any
4 Indian tribal government referred to in clause
5 (iv) shall be treated in the same manner as a
6 State.”

7 **SEC. 848. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
8 **PROPERTY USED BY GOVERNMENTS OR**
9 **OTHER TAX-EXEMPT ENTITIES.**

10 (a) IN GENERAL.—Subpart C of part II of sub-
11 chapter E of chapter 1 (relating to taxable year for which
12 deductions taken) is amended by adding at the end the
13 following new section:

14 **“SEC. 470. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
15 **PROPERTY USED BY GOVERNMENTS OR**
16 **OTHER TAX-EXEMPT ENTITIES.**

17 “(a) LIMITATION ON LOSSES.—Except as otherwise
18 provided in this section, a tax-exempt use loss for any tax-
19 able year shall not be allowed.

20 “(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—
21 Any tax-exempt use loss with respect to any tax-exempt
22 use property which is disallowed under subsection (a) for
23 any taxable year shall be treated as a deduction with re-
24 spect to such property in the next taxable year.

25 “(c) DEFINITIONS.—For purposes of this section—



1 “(1) TAX-EXEMPT USE LOSS.—The term ‘tax-
2 exempt use loss’ means, with respect to any taxable
3 year, the amount (if any) by which—

4 “(A) the sum of—

5 “(i) the aggregate deductions (other
6 than interest) directly allocable to a tax-ex-
7 empt use property, plus

8 “(ii) the aggregate deductions for in-
9 terest properly allocable to such property,
10 exceed

11 “(B) the aggregate income from such
12 property.

13 “(2) TAX-EXEMPT USE PROPERTY.—The term
14 ‘tax-exempt use property’ has the meaning given to
15 such term by section 168(h), except that such sec-
16 tion shall be applied—

17 “(A) without regard to paragraphs (1)(C)
18 and (3) thereof, and

19 “(B) as if property described in—

20 “(i) section 167(f)(1)(B),

21 “(ii) section 167(f)(2), and

22 “(iii) section 197 intangible,

23 were tangible property.

24 Such term shall not include property which would
25 (but for this sentence) be tax-exempt use property



1 solely by reason of section 168(h)(6) if any credit is
2 allowable under section 42 or 47 with respect to
3 such property.

4 “(d) EXCEPTION FOR CERTAIN LEASES.—This sec-
5 tion shall not apply to any lease of property which meets
6 the requirements of all of the following paragraphs:

7 “(1) AVAILABILITY OF FUNDS.—

8 “(A) IN GENERAL.—A lease of property
9 meets the requirements of this paragraph if (at
10 any time during the lease term) not more than
11 an allowable amount of funds are—

12 “(i) subject to any arrangement re-
13 ferred to in subparagraph (B), or

14 “(ii) set aside or expected to be set
15 aside,

16 to or for the benefit of the lessor or any lender,
17 or to or for the benefit of the lessee to satisfy
18 the lessee’s obligations or options under the
19 lease. For purposes of clause (ii), funds shall be
20 treated as set aside or expected to be set aside
21 only if a reasonable person would conclude,
22 based on the facts and circumstances, that such
23 funds are set aside or expected to be set aside.

24 “(B) ARRANGEMENTS.—The arrangements
25 referred to in this subparagraph include a de-

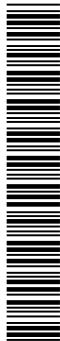


1 feasance arrangement, a loan by the lessee to
2 the lessor or any lender, a deposit arrangement,
3 a letter of credit collateralized with cash or cash
4 equivalents, a payment undertaking agreement,
5 prepaid rent (within the meaning of the regula-
6 tions under section 467), a sinking fund ar-
7 rangement, a guaranteed investment contract,
8 financial guaranty insurance, and any similar
9 arrangement (whether or not such arrangement
10 provides credit support).

11 “(C) ALLOWABLE AMOUNT.—

12 “(i) IN GENERAL.—Except as other-
13 wise provided in this subparagraph, the
14 term ‘allowable amount’ means an amount
15 equal to 20 percent of the lessor’s adjusted
16 basis in the property at the time the lease
17 is entered into.

18 “(ii) HIGHER AMOUNT PERMITTED IN
19 CERTAIN CASES.—To the extent provided
20 in regulations, a higher percentage shall be
21 permitted under clause (i) where necessary
22 because of the credit-worthiness of the les-
23 see. In no event may such regulations per-
24 mit a percentage of more than 50 percent.



1 “(iii) OPTION TO PURCHASE.—If
2 under the lease the lessee has the option to
3 purchase the property for a fixed price or
4 for other than the fair market value of the
5 property (determined at the time of exer-
6 cise), the allowable amount at the time
7 such option may be exercised may not ex-
8 ceed 50 percent of the price at which such
9 option may be exercised.

10 “(iv) NO ALLOWABLE AMOUNT FOR
11 CERTAIN ARRANGEMENTS.—The allowable
12 amount shall be zero with respect to any
13 arrangement which involves—

14 “(I) a loan from the lessee to the
15 lessor or a lender,

16 “(II) any deposit received, letter
17 of credit issued, or payment under-
18 taking agreement entered into by a
19 lender otherwise involved in the trans-
20 action, or

21 “(III) in the case of a trans-
22 action which involves a lender, any
23 credit support made available to the
24 lessor in which any such lender does



1 not have a claim that is senior to the
2 lessor.

3 For purposes of subclause (I), the term
4 'loan' shall not include any amount treated
5 as a loan under section 467 with respect to
6 a section 467 rental agreement.

7 “(2) LESSOR MUST MAKE SUBSTANTIAL EQUITY
8 INVESTMENT.—

9 “(A) IN GENERAL.—A lease of property
10 meets the requirements of this paragraph if—

11 “(i) the lessor—

12 “(I) has at the time the lease is
13 entered into an unconditional at-risk
14 equity investment (as determined by
15 the Secretary) in the property of at
16 least 20 percent of the lessor’s ad-
17 justed basis in the property as of that
18 time, and

19 “(II) maintains such investment
20 throughout the term of the lease, and

21 “(ii) the fair market value of the
22 property at the end of the lease term is
23 reasonably expected to be equal to at least
24 20 percent of such basis.



1 “(B) RISK OF LOSS.—For purposes of
2 clause (ii), the fair market value at the end of
3 the lease term shall be reduced to the extent
4 that a person other than the lessor bears a risk
5 of loss in the value of the property.

6 “(C) PARAGRAPH NOT TO APPLY TO
7 SHORT-TERM LEASES.—This paragraph shall
8 not apply to any lease with a lease term of 5
9 years or less.

10 “(3) LESSEE MAY NOT BEAR MORE THAN MINI-
11 MAL RISK OF LOSS.—

12 “(A) IN GENERAL.—A lease of property
13 meets the requirements of this paragraph if
14 there is no arrangement under which the lessee
15 bears—

16 “(i) any portion of the loss that would
17 occur if the fair market value of the leased
18 property were 25 percent less than its rea-
19 sonably expected fair market value at the
20 time the lease is terminated, or

21 “(ii) more than 50 percent of the loss
22 that would occur if the fair market value
23 of the leased property at the time the lease
24 is terminated were zero.



1 “(B) EXCEPTION.—The Secretary may by
2 regulations provide that the requirements of
3 this paragraph are not met where the lessee
4 bears more than a minimal risk of loss.

5 “(C) PARAGRAPH NOT TO APPLY TO
6 SHORT-TERM LEASES.—This paragraph shall
7 not apply to any lease with a lease term of 5
8 years or less.

9 “(4) PROPERTY WITH MORE THAN 7-YEAR
10 CLASS LIFE.—In the case of a lease—

11 “(A) of property with a class life (as de-
12 fined in section 168(i)(1)) of more than 7
13 years, other than fixed-wing aircraft and ves-
14 sels, and

15 “(B) under which the lessee has the option
16 to purchase the property,
17 the lease meets the requirements of this paragraph
18 only if the purchase price under the option equals
19 the fair market value of the property (determined at
20 the time of exercise).

21 “(e) SPECIAL RULES.—

22 “(1) TREATMENT OF FORMER TAX-EXEMPT
23 USE PROPERTY.—

24 “(A) IN GENERAL.—In the case of any
25 former tax-exempt use property—



1 “(i) any deduction allowable under
2 subsection (b) with respect to such prop-
3 erty for any taxable year shall be allowed
4 only to the extent of any net income (with-
5 out regard to such deduction) from such
6 property for such taxable year, and

7 “(ii) any portion of such unused de-
8 duction remaining after application of
9 clause (i) shall be treated as a deduction
10 allowable under subsection (b) with respect
11 to such property in the next taxable year.

12 “(B) FORMER TAX-EXEMPT USE PROP-
13 ERTY.—For purposes of this subsection, the
14 term ‘former tax-exempt use property’ means
15 any property which—

16 “(i) is not tax-exempt use property for
17 the taxable year, but

18 “(ii) was tax-exempt use property for
19 any prior taxable year.

20 “(2) DISPOSITION OF ENTIRE INTEREST IN
21 PROPERTY.—If during the taxable year a taxpayer
22 disposes of the taxpayer’s entire interest in tax-ex-
23 empt use property (or former tax-exempt use prop-
24 erty), rules similar to the rules of section 469(g)
25 shall apply for purposes of this section.



1 “(3) COORDINATION WITH SECTION 469.—This
2 section shall be applied before the application of sec-
3 tion 469.

4 “(4) COORDINATION WITH SECTIONS 1031 AND
5 1033.—

6 “(A) IN GENERAL.—Sections 1031(a) and
7 1033(a) shall not apply if—

8 “(i) the exchanged or converted prop-
9 erty is tax-exempt use property subject to
10 a lease which was entered into before
11 March 13, 2004, and which would not have
12 met the requirements of subsection (d) had
13 such requirements been in effect when the
14 lease was entered into, or

15 “(ii) the replacement property is tax-
16 exempt use property subject to a lease
17 which does not meet the requirements of
18 subsection (d).

19 “(B) ADJUSTED BASIS.—In the case of
20 property acquired by the lessor in a transaction
21 to which section 1031 or 1033 applies, the ad-
22 justed basis of such property for purposes of
23 this section shall be equal to the lesser of—



1 “(i) the fair market value of the prop-
2 erty as of the beginning of the lease term,
3 or

4 “(ii) the amount which would be the
5 lessor’s adjusted basis if such sections did
6 not apply to such transaction.

7 “(f) OTHER DEFINITIONS.—For purposes of this
8 section—

9 “(1) RELATED PARTIES.—The terms ‘lessor’,
10 ‘lessee’, and ‘lender’ each include any related party
11 (within the meaning of section 197(f)(9)(C)(i)).

12 “(2) LEASE TERM.—The term ‘lease term’ has
13 the meaning given to such term by section 168(i)(3).

14 “(3) LENDER.—The term ‘lender’ means, with
15 respect to any lease, a person that makes a loan to
16 the lessor which is secured (or economically similar
17 to being secured) by the lease or the leased property.

18 “(4) LOAN.—The term ‘loan’ includes any simi-
19 lar arrangement.

20 “(g) REGULATIONS.—The Secretary shall prescribe
21 such regulations as may be necessary or appropriate to
22 carry out the purposes of this section, including regula-
23 tions which—

24 “(1) allow in appropriate cases the aggregation
25 of property subject to the same lease, and



1 (B) is approved by the Federal Transit Ad-
2 ministration before January 1, 2006, and

3 (C) includes a description of such property
4 and the value of such property.

5 (3) EXCHANGES AND CONVERSION OF TAX-EX-
6 EMPT USE PROPERTY.—Section 470(e)(4) of the In-
7 ternal Revenue Code of 1986, as added by section
8 848, shall apply to property exchanged or converted
9 after the date of the enactment of this Act.

10 (4) INTANGIBLES AND INDIAN TRIBAL GOVERN-
11 MENTS.—The amendments made subsections (b)(2),
12 (b)(3), and (e) of section 847, and the treatment of
13 property described in clauses (ii) and (iii) of section
14 470(c)(2)(B) of the Internal Revenue Code of 1986
15 (as added by section 848) as tangible property, shall
16 apply to leases entered into after October 3, 2004.

17 **Subtitle C—Reduction of Fuel Tax**
18 **Evasion**

19 **SEC. 851. EXEMPTION FROM CERTAIN EXCISE TAXES FOR**
20 **MOBILE MACHINERY.**

21 (a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND
22 TRAILERS SOLD AT RETAIL.—

23 (1) IN GENERAL.—Section 4053 (relating to ex-
24 emptions) is amended by adding at the end the fol-
25 lowing new paragraph:



1 “(8) MOBILE MACHINERY.—Any vehicle which
2 consists of a chassis—

3 “(A) to which there has been permanently
4 mounted (by welding, bolting, riveting, or other
5 means) machinery or equipment to perform a
6 construction, manufacturing, processing, farm-
7 ing, mining, drilling, timbering, or similar oper-
8 ation if the operation of the machinery or
9 equipment is unrelated to transportation on or
10 off the public highways,

11 “(B) which has been specially designed to
12 serve only as a mobile carriage and mount (and
13 a power source, where applicable) for the par-
14 ticular machinery or equipment involved, wheth-
15 er or not such machinery or equipment is in op-
16 eration, and

17 “(C) which, by reason of such special de-
18 sign, could not, without substantial structural
19 modification, be used as a component of a vehi-
20 cle designed to perform a function of trans-
21 porting any load other than that particular ma-
22 chinery or equipment or similar machinery or
23 equipment requiring such a specially designed
24 chassis.”.



1 (2) EFFECTIVE DATE.—The amendment made
2 by this subsection shall take effect on the day after
3 the date of the enactment of this Act.

4 (b) EXEMPTION FROM TAX ON USE OF CERTAIN VE-
5 HICLES.—

6 (1) IN GENERAL.—Section 4483 (relating to ex-
7 emptions) is amended by redesignating subsection
8 (g) as subsection (h) and by inserting after sub-
9 section (f) the following new subsection:

10 “(g) EXEMPTION FOR MOBILE MACHINERY.—No tax
11 shall be imposed by section 4481 on the use of any vehicle
12 described in section 4053(8).”.

13 (2) EFFECTIVE DATE.—The amendments made
14 by this subsection shall take effect on the day after
15 the date of the enactment of this Act.

16 (c) EXEMPTION FROM TAX ON TIRES.—

17 (1) IN GENERAL.—Section 4072(b)(2) is
18 amended by adding at the end the following flush
19 sentence: “Such term shall not include tires of a
20 type used exclusively on vehicles described in section
21 4053(8).”.

22 (2) EFFECTIVE DATE.—The amendment made
23 by this subsection shall take effect on the day after
24 the date of the enactment of this Act.

25 (d) REFUND OF FUEL TAXES.—



1 (1) IN GENERAL.—Section 6421(e)(2) (defining
2 off-highway business use) is amended by adding at
3 the end the following new subparagraph:

4 “(C) USES IN MOBILE MACHINERY.—

5 “(i) IN GENERAL.—The term ‘off-
6 highway business use’ shall include any use
7 in a vehicle which meets the requirements
8 described in clause (ii).

9 “(ii) REQUIREMENTS FOR MOBILE
10 MACHINERY.—The requirements described
11 in this clause are—

12 “(I) the design-based test, and

13 “(II) the use-based test.

14 “(iii) DESIGN-BASED TEST.—For pur-
15 poses of clause (ii)(I), the design-based
16 test is met if the vehicle consists of a
17 chassis—

18 “(I) to which there has been per-
19 manently mounted (by welding, bolt-
20 ing, riveting, or other means) machin-
21 ery or equipment to perform a con-
22 struction, manufacturing, processing,
23 farming, mining, drilling, timbering,
24 or similar operation if the operation of
25 the machinery or equipment is unre-



1 lated to transportation on or off the
2 public highways,

3 “(II) which has been specially de-
4 signed to serve only as a mobile car-
5 riage and mount (and a power source,
6 where applicable) for the particular
7 machinery or equipment involved,
8 whether or not such machinery or
9 equipment is in operation, and

10 “(III) which, by reason of such
11 special design, could not, without sub-
12 stantial structural modification, be
13 used as a component of a vehicle de-
14 signed to perform a function of trans-
15 porting any load other than that par-
16 ticular machinery or equipment or
17 similar machinery or equipment re-
18 quiring such a specially designed chas-
19 sis.

20 “(iv) USE-BASED TEST.—For pur-
21 poses of clause (ii)(II), the use-based test
22 is met if the use of the vehicle on public
23 highways was less than 7,500 miles during
24 the taxpayer’s taxable year. This clause
25 shall be applied without regard to use of



1 the vehicle by any organization which is
2 described in section 501(c) and exempt
3 from tax under section 501(a).”.

4 (2) NO TAX-FREE SALES.—Subsection (b) of
5 section 4082 is amended by inserting before the pe-
6 riod at the end “and such term shall not include any
7 use described in section 6421(e)(2)(C)”.

8 (3) ANNUAL REFUND OF TAX PAID.—Section
9 6427(i)(2) (relating to exceptions) is amended by
10 adding at the end the following new subparagraph:

11 “(C) NONAPPLICATION OF PARAGRAPH.—
12 This paragraph shall not apply to any fuel used
13 solely in any off-highway business use described
14 in section 6421(e)(2)(C).”.

15 (4) EFFECTIVE DATE.—The amendments made
16 by this subsection shall apply to taxable years begin-
17 ning after the date of the enactment of this Act.

18 **SEC. 852. MODIFICATION OF DEFINITION OF OFF-HIGHWAY**
19 **VEHICLE.**

20 (a) IN GENERAL.—Section 7701(a) (relating to defi-
21 nitions) is amended by adding at the end the following
22 new paragraph:

23 “(48) OFF-HIGHWAY VEHICLES.—

24 “(A) OFF-HIGHWAY TRANSPORTATION VE-
25 HICLES.—



1 “(i) IN GENERAL.—A vehicle shall not
2 be treated as a highway vehicle if such ve-
3 hicle is specially designed for the primary
4 function of transporting a particular type
5 of load other than over the public highway
6 and because of this special design such ve-
7 hicle’s capability to transport a load over
8 the public highway is substantially limited
9 or impaired.

10 “(ii) DETERMINATION OF VEHICLE’S
11 DESIGN.—For purposes of clause (i), a ve-
12 hicle’s design is determined solely on the
13 basis of its physical characteristics.

14 “(iii) DETERMINATION OF SUBSTAN-
15 TIAL LIMITATION OR IMPAIRMENT.—For
16 purposes of clause (i), in determining
17 whether substantial limitation or impair-
18 ment exists, account may be taken of fac-
19 tors such as the size of the vehicle, wheth-
20 er such vehicle is subject to the licensing,
21 safety, and other requirements applicable
22 to highway vehicles, and whether such ve-
23 hicle can transport a load at a sustained
24 speed of at least 25 miles per hour. It is
25 immaterial that a vehicle can transport a



1 greater load off the public highway than
2 such vehicle is permitted to transport over
3 the public highway.

4 “(B) NONTRANSPORTATION TRAILERS AND
5 SEMITRAILERS.—A trailer or semitrailer shall
6 not be treated as a highway vehicle if it is spe-
7 cially designed to function only as an enclosed
8 stationary shelter for the carrying on of an off-
9 highway function at an off-highway site.”.

10 (c) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendment made by this section shall
13 take effect on the date of the enactment of this Act.

14 (2) FUEL TAXES.—With respect to taxes im-
15 posed under subchapter B of chapter 31 and part
16 III of subchapter A of chapter 32, the amendment
17 made by this section shall apply to taxable periods
18 beginning after the date of the enactment of this
19 Act.

20 **SEC. 853. TAXATION OF AVIATION-GRADE KEROSENE.**

21 (a) RATE OF TAX.—

22 (1) IN GENERAL.—Subparagraph (A) of section
23 4081(a)(2) is amended by striking “and” at the end
24 of clause (ii), by striking the period at the end of



1 clause (iii) and inserting “, and”, and by adding at
2 the end the following new clause:

3 “(iv) in the case of aviation-grade ker-
4 osene, 21.8 cents per gallon.”.

5 (2) COMMERCIAL AVIATION.—Paragraph (2) of
6 section 4081(a) is amended by adding at the end the
7 following new subparagraph:

8 “(C) TAXES IMPOSED ON FUEL USED IN
9 COMMERCIAL AVIATION.—In the case of avia-
10 tion-grade kerosene which is removed from any
11 refinery or terminal directly into the fuel tank
12 of an aircraft for use in commercial aviation,
13 the rate of tax under subparagraph (A)(iv) shall
14 be 4.3 cents per gallon.”.

15 (3) CERTAIN REFUELER TRUCKS, TANKERS,
16 AND TANK WAGONS TREATED AS TERMINAL.—

17 (A) IN GENERAL.—Subsection (a) of sec-
18 tion 4081 is amended by adding at the end the
19 following new paragraph:

20 “(3) CERTAIN REFUELER TRUCKS, TANKERS,
21 AND TANK WAGONS TREATED AS TERMINAL.—

22 “(A) IN GENERAL.—For purposes of para-
23 graph (2)(C), a refueler truck, tanker, or tank
24 wagon shall be treated as part of a terminal
25 if—



1 “(i) such terminal is located within a
2 secured area of an airport,

3 “(ii) any aviation-grade kerosene
4 which is loaded in such truck, tanker, or
5 wagon at such terminal is for delivery only
6 into aircraft at the airport in which such
7 terminal is located,

8 “(iii) such truck, tanker, or wagon
9 meets the requirements of subparagraph
10 (B) with respect to such terminal, and

11 “(iv) except in the case of exigent cir-
12 cumstances identified by the Secretary in
13 regulations, no vehicle registered for high-
14 way use is loaded with aviation-grade ker-
15 osene at such terminal.

16 “(B) REQUIREMENTS.—A refueler truck,
17 tanker, or tank wagon meets the requirements
18 of this subparagraph with respect to a terminal
19 if such truck, tanker, or wagon—

20 “(i) has storage tanks, hose, and cou-
21 pling equipment designed and used for the
22 purposes of fueling aircraft,

23 “(ii) is not registered for highway use,
24 and

25 “(iii) is operated by—



1 “(I) the terminal operator of
2 such terminal, or

3 “(II) a person that makes a daily
4 accounting to such terminal operator
5 of each delivery of fuel from such
6 truck, tanker, or wagon.

7 “(C) REPORTING.—The Secretary shall re-
8 quire under section 4101(d) reporting by such
9 terminal operator of—

10 “(i) any information obtained under
11 subparagraph (B)(iii)(II), and

12 “(ii) any similar information main-
13 tained by such terminal operator with re-
14 spect to deliveries of fuel made by trucks,
15 tankers, or wagons operated by such ter-
16 minal operator.”.

17 (B) LIST OF AIRPORTS WITH SECURED
18 TERMINALS.—Not later than December 15,
19 2004, the Secretary of the Treasury shall pub-
20 lish and maintain a list of airports which in-
21 clude a secured area in which a terminal is lo-
22 cated (within the meaning of section
23 4081(a)(3)(A)(i) of the Internal Revenue Code
24 of 1986, as added by this paragraph).



1 (4) LIABILITY FOR TAX ON AVIATION-GRADE
2 KEROSENE USED IN COMMERCIAL AVIATION.—Sub-
3 section (a) of section 4081 is amended by adding at
4 the end the following new paragraph:

5 “(4) LIABILITY FOR TAX ON AVIATION-GRADE
6 KEROSENE USED IN COMMERCIAL AVIATION.—For
7 purposes of paragraph (2)(C), the person who uses
8 the fuel for commercial aviation shall pay the tax
9 imposed under such paragraph. For purposes of the
10 preceding sentence, fuel shall be treated as used
11 when such fuel is removed into the fuel tank.”.

12 (5) NONTAXABLE USES.—

13 (A) IN GENERAL.—Section 4082 is amend-
14 ed by redesignating subsections (e) and (f) as
15 subsections (f) and (g), respectively, and by in-
16 serting after subsection (d) the following new
17 subsection:

18 “(e) AVIATION-GRADE KEROSENE.—In the case of
19 aviation-grade kerosene which is exempt from the tax im-
20 posed by section 4041(c) (other than by reason of a prior
21 imposition of tax) and which is removed from any refinery
22 or terminal directly into the fuel tank of an aircraft, the
23 rate of tax under section 4081(a)(2)(A)(iv) shall be zero.”.

24 (B) CONFORMING AMENDMENTS.—



1 (i) Subsection (b) of section 4082 is
2 amended by adding at the end the fol-
3 lowing new flush sentence:

4 “The term ‘nontaxable use’ does not include the use of
5 aviation-grade kerosene in an aircraft.”.

6 (ii) Section 4082(d) is amended by
7 striking paragraph (1) and by redesignig-
8 nating paragraphs (2) and (3) as para-
9 graphs (1) and (2), respectively.

10 (6) NONAIRCRAFT USE OF AVIATION-GRADE
11 KEROSENE.—

12 (A) IN GENERAL.—Subparagraph (B) of
13 section 4041(a)(1) is amended by adding at the
14 end the following new sentence: “This subpara-
15 graph shall not apply to aviation-grade ker-
16 osene.”.

17 (B) CONFORMING AMENDMENT.—The
18 heading for paragraph (1) of section 4041(a) is
19 amended by inserting “AND KEROSENE” after
20 “DIESEL FUEL”.

21 (b) COMMERCIAL AVIATION.—Section 4083 is
22 amended by redesignating subsections (b) and (c) as sub-
23 sections (c) and (d), respectively, and by inserting after
24 subsection (a) the following new subsection:



1 “(b) COMMERCIAL AVIATION.—For purposes of this
2 subpart, the term ‘commercial aviation’ means any use of
3 an aircraft in a business of transporting persons or prop-
4 erty for compensation or hire by air, unless properly allo-
5 cable to any transportation exempt from the taxes imposed
6 by sections 4261 and 4271 by reason of section 4281 or
7 4282 or by reason of section 4261(h).”.

8 (c) REFUNDS.—

9 (1) IN GENERAL.—Paragraph (4) of section
10 6427(l) is amended to read as follows:

11 “(4) REFUNDS FOR AVIATION-GRADE KER-
12 OSENE.—

13 “(A) NO REFUND OF CERTAIN TAXES ON
14 FUEL USED IN COMMERCIAL AVIATION.—In the
15 case of aviation-grade kerosene used in com-
16 mercial aviation (as defined in section 4083(b))
17 (other than supplies for vessels or aircraft with-
18 in the meaning of section 4221(d)(3)), para-
19 graph (1) shall not apply to so much of the tax
20 imposed by section 4081 as is attributable to—

21 “(i) the Leaking Underground Stor-
22 age Tank Trust Fund financing rate im-
23 posed by such section, and



1 “(ii) so much of the rate of tax speci-
2 fied in section 4081(a)(2)(A)(iv) as does
3 not exceed 4.3 cents per gallon.

4 “(B) PAYMENT TO ULTIMATE, REG-
5 ISTERED VENDOR.—With respect to aviation-
6 grade kerosene, if the ultimate purchaser of
7 such kerosene waives (at such time and in such
8 form and manner as the Secretary shall pre-
9 scribe) the right to payment under paragraph
10 (1) and assigns such right to the ultimate ven-
11 dor, then the Secretary shall pay the amount
12 which would be paid under paragraph (1) to
13 such ultimate vendor, but only if such ultimate
14 vendor—

15 “(i) is registered under section 4101,
16 and

17 “(ii) meets the requirements of sub-
18 paragraph (A), (B), or (D) of section
19 6416(a)(1).”.

20 (2) TIME FOR FILING CLAIMS.—Subparagraph
21 (A) of section 6427(i)(4) is amended—

22 (A) by striking “subsection (l)(5)” both
23 places it appears and inserting “paragraph
24 (4)(B) or (5) of subsection (l)”, and



1 (B) by striking “the preceding sentence”
2 and inserting “subsection (l)(5)”.

3 (3) CONFORMING AMENDMENT.—Subparagraph
4 (B) of section 6427(l)(2) is amended to read as fol-
5 lows:

6 “(B) in the case of aviation-grade
7 kerosene—

8 “(i) any use which is exempt from the
9 tax imposed by section 4041(c) other than
10 by reason of a prior imposition of tax, or

11 “(ii) any use in commercial aviation
12 (within the meaning of section 4083(b)).”.

13 (d) REPEAL OF PRIOR TAXATION OF AVIATION
14 FUEL.—

15 (1) IN GENERAL.—Part III of subchapter A of
16 chapter 32 is amended by striking subpart B and by
17 redesignating subpart C as subpart B.

18 (2) CONFORMING AMENDMENTS.—

19 (A) Section 4041(c) is amended to read as
20 follows:

21 “(c) AVIATION-GRADE KEROSENE.—

22 “(1) IN GENERAL.—There is hereby imposed a
23 tax upon aviation-grade kerosene—



1 “(A) sold by any person to an owner, les-
2 see, or other operator of an aircraft for use in
3 such aircraft, or

4 “(B) used by any person in an aircraft un-
5 less there was a taxable sale of such fuel under
6 subparagraph (A).

7 “(2) EXEMPTION FOR PREVIOUSLY TAXED
8 FUEL.—No tax shall be imposed by this subsection
9 on the sale or use of any aviation-grade kerosene if
10 tax was imposed on such liquid under section 4081
11 and the tax thereon was not credited or refunded.

12 “(3) RATE OF TAX.—The rate of tax imposed
13 by this subsection shall be the rate of tax applicable
14 under section 4081(a)(2)(A)(iv) which is in effect at
15 the time of such sale or use.”.

16 (B) Section 4041(d)(2) is amended by
17 striking “section 4091” and inserting “section
18 4081”.

19 (C) Section 4041 is amended by striking
20 subsection (e).

21 (D) Section 4041 is amended by striking
22 subsection (i).

23 (E) Section 4041(m)(1) is amended to
24 read as follows:



1 “(1) IN GENERAL.—In the case of the sale or
2 use of any partially exempt methanol or ethanol fuel
3 the rate of the tax imposed by subsection (a)(2)
4 shall be—

5 “(A) after September 30, 1997, and before
6 October 1, 2005—

7 “(i) in the case of fuel none of the al-
8 cohool in which consists of ethanol, 9.15
9 cents per gallon, and

10 “(ii) in any other case, 11.3 cents per
11 gallon, and

12 “(B) after September 30, 2005—

13 “(i) in the case of fuel none of the al-
14 cohool in which consists of ethanol, 2.15
15 cents per gallon, and

16 “(ii) in any other case, 4.3 cents per
17 gallon.”.

18 (F) Sections 4101(a), 4103, 4221(a), and
19 6206 are each amended by striking “, 4081, or
20 4091” and inserting “or 4081”.

21 (G) Section 6416(b)(2) is amended by
22 striking “4091 or”.

23 (H) Section 6416(b)(3) is amended by
24 striking “or 4091” each place it appears.



1 (I) Section 6416(d) is amended by striking
2 “or to the tax imposed by section 4091 in the
3 case of refunds described in section 4091(d)”.

4 (J) Section 6427(j)(1) is amended by
5 striking “, 4081, and 4091” and inserting “and
6 4081”.

7 (K)(i) Section 6427(l)(1) is amended to
8 read as follows:

9 “(1) IN GENERAL.—Except as otherwise pro-
10 vided in this subsection and in subsection (k), if any
11 diesel fuel or kerosene on which tax has been im-
12 posed by section 4041 or 4081 is used by any person
13 in a nontaxable use, the Secretary shall pay (without
14 interest) to the ultimate purchaser of such fuel an
15 amount equal to the aggregate amount of tax im-
16 posed on such fuel under section 4041 or 4081, as
17 the case may be, reduced by any payment made to
18 the ultimate vendor under paragraph (4)(B).”.

19 (ii) Paragraph (5)(B) of section 6427(l) is
20 amended by striking “Paragraph (1)(A) shall
21 not apply to kerosene” and inserting “Para-
22 graph (1) shall not apply to kerosene (other
23 than aviation-grade kerosene)”.

24 (L) Subparagraph (B) of section
25 6724(d)(1), as amended by section 805, is



1 amended by striking clause (xvi) and by redesi-
2 gnating the succeeding clauses accordingly.

3 (M) Paragraph (2) of section 6724(d), as
4 amended by section 805, is amended by striking
5 subparagraph (X) and by redesignating the suc-
6 ceeding subparagraphs accordingly.

7 (N) Paragraph (1) of section 9502(b) is
8 amended by adding “and” at the end of sub-
9 paragraph (B) and by striking subparagraphs
10 (C) and (D) and inserting the following new
11 subparagraph:

12 “(C) section 4081 with respect to aviation
13 gasoline and aviation-grade kerosene, and”.

14 (O) The last sentence of section 9502(b) is
15 amended to read as follows:

16 “There shall not be taken into account under paragraph
17 (1) so much of the taxes imposed by section 4081 as are
18 determined at the rate specified in section
19 4081(a)(2)(B).”.

20 (P) Subsection (b) of section 9508 is
21 amended by striking paragraph (3) and by re-
22 designating paragraphs (4) and (5) as para-
23 graphs (3) and (4), respectively.



1 (Q) Section 9508(e)(2)(A) is amended by
2 striking “sections 4081 and 4091” and insert-
3 ing “section 4081”.

4 (R) The table of subparts for part III of
5 subchapter A of chapter 32 is amended to read
6 as follows:

“Subpart A. Motor and aviation fuels.
“Subpart B. Special provisions applicable to fuels tax.”.

7 (S) The heading for subpart A of part III
8 of subchapter A of chapter 32 is amended to
9 read as follows:

10 **“Subpart A—Motor and Aviation Fuels”.**

11 (T) The heading for subpart B of part III
12 of subchapter A of chapter 32, as redesignated
13 by paragraph (1), is amended to read as fol-
14 lows:

15 **“Subpart B—Special Provisions Applicable to Fuels**
16 **Tax”.**

17 (e) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to aviation-grade kerosene re-
19 moved, entered, or sold after December 31, 2004.

20 (f) FLOOR STOCKS TAX.—

21 (1) IN GENERAL.—There is hereby imposed on
22 aviation-grade kerosene held on January 1, 2005, by
23 any person a tax equal to—



1 (A) the tax which would have been imposed
2 before such date on such kerosene had the
3 amendments made by this section been in effect
4 at all times before such date, reduced by

5 (B) the sum of—

6 (i) the tax imposed before such date
7 on such kerosene under section 4091 of the
8 Internal Revenue Code of 1986, as in ef-
9 fect on such date, and

10 (ii) in the case of kerosene held exclu-
11 sively for such person's own use, the
12 amount which such person would (but for
13 this clause) reasonably expect (as of such
14 date) to be paid as a refund under section
15 6427(l) of such Code with respect to such
16 kerosene.

17 (2) EXCEPTION FOR FUEL HELD IN AIRCRAFT
18 FUEL TANK.—Paragraph (1) shall not apply to ker-
19 osene held in the fuel tank of an aircraft on January
20 1, 2005.

21 (3) LIABILITY FOR TAX AND METHOD OF PAY-
22 MENT.—

23 (A) LIABILITY FOR TAX.—The person
24 holding the kerosene on January 1, 2005, to



1 which the tax imposed by paragraph (1) applies
2 shall be liable for such tax.

3 (B) METHOD AND TIME FOR PAYMENT.—

4 The tax imposed by paragraph (1) shall be paid
5 at such time and in such manner as the Sec-
6 retary of the Treasury (or the Secretary's dele-
7 gate) shall prescribe, including the nonapplica-
8 tion of such tax on de minimis amounts of ker-
9 osene.

10 (4) TRANSFER OF FLOOR STOCK TAX REVE-
11 NUES TO TRUST FUNDS.—For purposes of deter-
12 mining the amount transferred to any trust fund,
13 the tax imposed by this subsection shall be treated
14 as imposed by section 4081 of the Internal Revenue
15 Code of 1986—

16 (A) in any case in which tax was not im-
17 posed by section 4091 of such Code, at the
18 Leaking Underground Storage Tank Trust
19 Fund financing rate under such section to the
20 extent of 0.1 cents per gallon, and

21 (B) at the rate under section
22 4081(a)(2)(A)(iv) of such Code to the extent of
23 the remainder.

24 (5) HELD BY A PERSON.—For purposes of this
25 subsection, kerosene shall be considered as held by



1 a person if title thereto has passed to such person
2 (whether or not delivery to the person has been
3 made).

4 (6) OTHER LAWS APPLICABLE.—All provisions
5 of law, including penalties, applicable with respect to
6 the tax imposed by section 4081 of such Code shall,
7 insofar as applicable and not inconsistent with the
8 provisions of this subsection, apply with respect to
9 the floor stock tax imposed by paragraph (1) to the
10 same extent as if such tax were imposed by such
11 section.

12 **SEC. 854. DYE INJECTION EQUIPMENT.**

13 (a) IN GENERAL.—Section 4082(a)(2) (relating to
14 exemptions for diesel fuel and kerosene) is amended by
15 inserting “by mechanical injection” after “indelibly dyed”.

16 (b) DYE INJECTOR SECURITY.—Not later than 180
17 days after the date of the enactment of this Act, the Sec-
18 retary of the Treasury shall issue regulations regarding
19 mechanical dye injection systems described in the amend-
20 ment made by subsection (a), and such regulations shall
21 include standards for making such systems tamper resist-
22 ant.

23 (c) PENALTY FOR TAMPERING WITH OR FAILING TO
24 MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL
25 DYE INJECTION SYSTEMS.—



1 (1) IN GENERAL.—Part I of subchapter B of
2 chapter 68 (relating to assessable penalties) is
3 amended by adding after section 6715 the following
4 new section:

5 **“SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN**
6 **SECURITY REQUIREMENTS FOR MECHAN-**
7 **ICAL DYE INJECTION SYSTEMS.**

8 “(a) IMPOSITION OF PENALTY—

9 “(1) TAMPERING.—If any person tampers with
10 a mechanical dye injection system used to indelibly
11 dye fuel for purposes of section 4082, such person
12 shall pay a penalty in addition to the tax (if any).

13 “(2) FAILURE TO MAINTAIN SECURITY RE-
14 QUIREMENTS.—If any operator of a mechanical dye
15 injection system used to indelibly dye fuel for pur-
16 poses of section 4082 fails to maintain the security
17 standards for such system as established by the Sec-
18 retary, then such operator shall pay a penalty in ad-
19 dition to the tax (if any).

20 “(b) AMOUNT OF PENALTY.—The amount of the
21 penalty under subsection (a) shall be—

22 “(1) for each violation described in paragraph
23 (1), the greater of—

24 “(A) \$25,000, or



1 “(B) \$10 for each gallon of fuel involved,
2 and

3 “(2) for each—

4 “(A) failure to maintain security standards
5 described in paragraph (2), \$1,000, and

6 “(B) failure to correct a violation described
7 in paragraph (2), \$1,000 per day for each day
8 after which such violation was discovered or
9 such person should have reasonably known of
10 such violation.

11 “(c) JOINT AND SEVERAL LIABILITY.—

12 “(1) IN GENERAL.—If a penalty is imposed
13 under this section on any business entity, each offi-
14 cer, employee, or agent of such entity or other con-
15 tracting party who willfully participated in any act
16 giving rise to such penalty shall be jointly and sever-
17 ally liable with such entity for such penalty.

18 “(2) AFFILIATED GROUPS.—If a business entity
19 described in paragraph (1) is part of an affiliated
20 group (as defined in section 1504(a)), the parent
21 corporation of such entity shall be jointly and sever-
22 ally liable with such entity for the penalty imposed
23 under this section.”.

24 “(2) CLERICAL AMENDMENT.—The table of sec-
25 tions for part I of subchapter B of chapter 68 is



1 amended by adding after the item related to section
2 6715 the following new item:

“Sec. 6715A. Tampering with or failing to maintain security re-
quirements for mechanical dye injection systems.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 subsections (a) and (c) shall take effect on the 180th day
5 after the date on which the Secretary issues the regula-
6 tions described in subsection (b).

7 **SEC. 855. ELIMINATION OF ADMINISTRATIVE REVIEW FOR**
8 **TAXABLE USE OF DYED FUEL.**

9 (a) **IN GENERAL.**—Section 6715 is amended by in-
10 serting at the end the following new subsection:

11 “(e) **NO ADMINISTRATIVE APPEAL FOR THIRD AND**
12 **SUBSEQUENT VIOLATIONS.**—In the case of any person
13 who is found to be subject to the penalty under this section
14 after a chemical analysis of such fuel and who has been
15 penalized under this section at least twice after the date
16 of the enactment of this subsection, no administrative ap-
17 peal or review shall be allowed with respect to such finding
18 except in the case of a claim regarding—

19 “(1) fraud or mistake in the chemical analysis,
20 or

21 “(2) mathematical calculation of the amount of
22 the penalty.”.



1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to penalties assessed after the date
3 of the enactment of this Act.

4 **SEC. 856. PENALTY ON UNTAXED CHEMICALLY ALTERED**
5 **DYED FUEL MIXTURES.**

6 (a) IN GENERAL.—Section 6715(a) (relating to dyed
7 fuel sold for use or used in taxable use, etc.) is amended
8 by striking “or” in paragraph (2), by inserting “or” at
9 the end of paragraph (3), and by inserting after paragraph
10 (3) the following new paragraph:

11 “(4) any person who has knowledge that a dyed
12 fuel which has been altered as described in para-
13 graph (3) sells or holds for sale such fuel for any
14 use which the person knows or has reason to know
15 is not a nontaxable use of such fuel,”.

16 (b) CONFORMING AMENDMENT.—Section 6715(a)(3)
17 is amended by striking “alters, or attempts to alter,” and
18 inserting “alters, chemically or otherwise, or attempts to
19 so alter,”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on the date of the enactment
22 of this Act.



1 **SEC. 857. TERMINATION OF DYED DIESEL USE BY INTER-**
2 **CITY BUSES.**

3 (a) IN GENERAL.—Paragraph (3) of section 4082(b)
4 (relating to nontaxable use) is amended to read as follows:

5 “(3) any use described in section
6 4041(a)(1)(C)(iii)(II).”.

7 (b) ULTIMATE VENDOR REFUND.—Subsection (b) of
8 section 6427 is amended by adding at the end the fol-
9 lowing new paragraph:

10 “(4) REFUNDS FOR USE OF DIESEL FUEL IN
11 CERTAIN INTERCITY BUSES.—With respect to any
12 fuel to which paragraph (2)(A) applies, if the ulti-
13 mate purchaser of such fuel waives (at such time
14 and in such form and manner as the Secretary shall
15 prescribe) the right to payment under paragraph (1)
16 and assigns such right to the ultimate vendor, then
17 the Secretary shall pay the amount which would be
18 paid under paragraph (1) to such ultimate vendor,
19 but only if such ultimate vendor—

20 “(A) is registered under section 4101, and

21 “(B) meets the requirements of subpara-
22 graph (A), (B), or (D) of section 6416(a)(1).”.

23 (c) PAYMENT OF REFUNDS.—Subparagraph (A) of
24 section 6427(i)(4), as amended by this Act, is amended
25 by inserting “subsections (b)(4) and” after “filed under”.



1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to fuel sold after December 31,
3 2004.

4 **SEC. 858. AUTHORITY TO INSPECT ON-SITE RECORDS.**

5 (a) IN GENERAL.—Section 4083(d)(1)(A) (relating
6 to administrative authority), as amended by this Act, is
7 amended by striking “and” at the end of clause (i) and
8 by inserting after clause (ii) the following new clause:

9 “(iii) inspecting any books and
10 records and any shipping papers pertaining
11 to such fuel, and”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on the date of the enactment
14 of this Act.

15 **SEC. 859. ASSESSABLE PENALTY FOR REFUSAL OF ENTRY.**

16 (a) IN GENERAL.—Part I of subchapter B of chapter
17 68 (relating to assessable penalties), as amended by this
18 Act, is amended by inserting after section 6716 the fol-
19 lowing new section:

20 **“SEC. 6717. REFUSAL OF ENTRY.**

21 “(a) IN GENERAL.—In addition to any other penalty
22 provided by law, any person who refuses to admit entry
23 or refuses to permit any other action by the Secretary au-
24 thorized by section 4083(d)(1) shall pay a penalty of
25 \$1,000 for such refusal.



1 “(b) JOINT AND SEVERAL LIABILITY.—

2 “(1) IN GENERAL.—If a penalty is imposed
3 under this section on any business entity, each offi-
4 cer, employee, or agent of such entity or other con-
5 tracting party who willfully participated in any act
6 giving rise to such penalty shall be jointly and sever-
7 ally liable with such entity for such penalty.

8 “(2) AFFILIATED GROUPS.—If a business entity
9 described in paragraph (1) is part of an affiliated
10 group (as defined in section 1504(a)), the parent
11 corporation of such entity shall be jointly and sever-
12 ally liable with such entity for the penalty imposed
13 under this section.

14 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
15 shall be imposed under this section with respect to any
16 failure if it is shown that such failure is due to reasonable
17 cause.”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) Section 4083(d)(3), as amended by this Act,
20 is amended—

21 (A) by striking “ENTRY.—The penalty”
22 and inserting: “ENTRY.—

23 “(A) FORFEITURE.—The penalty”, and

24 (B) by adding at the end the following new
25 subparagraph:



1 (c) PUBLICATION OF REGISTERED PERSONS.—Be-
2 ginning on January 1, 2005, the Secretary of the Treas-
3 ury (or the Secretary’s delegate) shall periodically publish
4 under section 6103(k)(7) of the Internal Revenue Code
5 of 1986 a current list of persons registered under section
6 4101 of such Code who are required to register under such
7 section.

8 **SEC. 861. DISPLAY OF REGISTRATION.**

9 (a) IN GENERAL.—Subsection (a) of section 4101
10 (relating to registration) is amended—

11 (1) by striking “Every” and inserting the fol-
12 lowing:

13 “(1) IN GENERAL.—Every”, and

14 (2) by adding at the end the following new
15 paragraph:

16 “(2) DISPLAY OF REGISTRATION.—Every oper-
17 ator of a vessel required by the Secretary to register
18 under this section shall display proof of registration
19 through an identification device prescribed by the
20 Secretary on each vessel used by such operator to
21 transport any taxable fuel.”.

22 (b) CIVIL PENALTY FOR FAILURE TO DISPLAY REG-
23 ISTRATION.—

24 (1) IN GENERAL.—Part I of subchapter B of
25 chapter 68 (relating to assessable penalties), as



1 amended by this Act, is amended by inserting after
2 section 6717 the following new section:

3 **“SEC. 6718. FAILURE TO DISPLAY TAX REGISTRATION ON**
4 **VESSELS.**

5 “(a) FAILURE TO DISPLAY REGISTRATION.—Every
6 operator of a vessel who fails to display proof of registra-
7 tion pursuant to section 4101(a)(2) shall pay a penalty
8 of \$500 for each such failure. With respect to any vessel,
9 only one penalty shall be imposed by this section during
10 any calendar month.

11 “(b) MULTIPLE VIOLATIONS.—In determining the
12 penalty under subsection (a) on any person, subsection (a)
13 shall be applied by increasing the amount in subsection
14 (a) by the product of such amount and the aggregate num-
15 ber of penalties (if any) imposed with respect to prior
16 months by this section on such person (or a related person
17 or any predecessor of such person or related person).

18 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
19 shall be imposed under this section with respect to any
20 failure if it is shown that such failure is due to reasonable
21 cause.”.

22 (2) CLERICAL AMENDMENT.—The table of sec-
23 tions for part I of subchapter B of chapter 68, as
24 amended by this Act, is amended by inserting after



1 the item relating to section 6717 the following new
2 item:

“Sec. 6718. Failure to display tax registration on vessels.”.

3 (c) EFFECTIVE DATES.—

4 (1) SUBSECTION (a).—The amendments made
5 by subsection (a) shall take effect on January 1,
6 2005.

7 (2) SUBSECTION (b).—The amendments made
8 by subsection (b) shall apply to penalties imposed
9 after December 31, 2004.

10 **SEC. 862. REGISTRATION OF PERSONS WITHIN FOREIGN**
11 **TRADE ZONES, ETC.**

12 (a) IN GENERAL.—Section 4101(a), as amended by
13 this Act, is amended by redesignating paragraph (2) as
14 paragraph (3), and by inserting after paragraph (1) the
15 following new paragraph:

16 “(2) REGISTRATION OF PERSONS WITHIN FOR-
17 EIGN TRADE ZONES, ETC.—The Secretary shall re-
18 quire registration by any person which—

19 “(A) operates a terminal or refinery within
20 a foreign trade zone or within a customs bond-
21 ed storage facility, or

22 “(B) holds an inventory position with re-
23 spect to a taxable fuel in such a terminal.”.



1 (b) TECHNICAL AMENDMENT.—Section 6718(a), as
2 added by this Act, is amended by striking “section
3 4101(a)(2)” and inserting “section 4101(a)(3)”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on January 1, 2005.

6 **SEC. 863. PENALTIES FOR FAILURE TO REGISTER AND**
7 **FAILURE TO REPORT.**

8 (a) INCREASED PENALTY.—Subsection (a) of section
9 7272 (relating to penalty for failure to register) is amend-
10 ed by inserting “(\$10,000 in the case of a failure to reg-
11 ister under section 4101)” after “\$50”.

12 (b) INCREASED CRIMINAL PENALTY.—Section 7232
13 (relating to failure to register under section 4101, false
14 representations of registration status, etc.) is amended by
15 striking “\$5,000” and inserting “\$10,000”.

16 (c) ASSESSABLE PENALTY FOR FAILURE TO REG-
17 ISTER.—

18 (1) IN GENERAL.—Part I of subchapter B of
19 chapter 68 (relating to assessable penalties), as
20 amended by this Act, is amended by inserting after
21 section 6718 at the end the following new section:

22 **“SEC. 6719. FAILURE TO REGISTER.**

23 **“(a) FAILURE TO REGISTER.—**Every person who is
24 required to register under section 4101 and fails to do
25 so shall pay a penalty in addition to the tax (if any).



1 “(b) AMOUNT OF PENALTY.—The amount of the
2 penalty under subsection (a) shall be—

3 “(1) \$10,000 for each initial failure to register,
4 and

5 “(2) \$1,000 for each day thereafter such person
6 fails to register.

7 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
8 shall be imposed under this section with respect to any
9 failure if it is shown that such failure is due to reasonable
10 cause.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-
12 tions for part I of subchapter B of chapter 68, as
13 amended by this Act, is amended by inserting after
14 the item relating to section 6718 the following new
15 item:

 “Sec. 6719. Failure to register.”.

16 (d) ASSESSABLE PENALTY FOR FAILURE TO RE-
17 PORT.—

18 (1) IN GENERAL.—Part II of subchapter B of
19 chapter 68 (relating to assessable penalties) is
20 amended by adding at the end the following new sec-
21 tion:

22 **“SEC. 6725. FAILURE TO REPORT INFORMATION UNDER**
23 **SECTION 4101.**

24 “(a) IN GENERAL.—In the case of each failure de-
25 scribed in subsection (b) by any person with respect to



1 a vessel or facility, such person shall pay a penalty of
2 \$10,000 in addition to the tax (if any).

3 “(b) FAILURES SUBJECT TO PENALTY.—For pur-
4 poses of subsection (a), the failures described in this sub-
5 section are—

6 “(1) any failure to make a report under section
7 4101(d) on or before the date prescribed therefor,
8 and

9 “(2) any failure to include all of the informa-
10 tion required to be shown on such report or the in-
11 clusion of incorrect information.

12 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
13 shall be imposed under this section with respect to any
14 failure if it is shown that such failure is due to reasonable
15 cause.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions for part II of subchapter B of chapter 68 is
18 amended by adding at the end the following new
19 item:

“Sec. 6725. Failure to report information under section 4101.”.

20 (e) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to penalties imposed after Decem-
22 ber 31, 2004.



1 **SEC. 864. ELECTRONIC FILING OF REQUIRED INFORMA-**
2 **TION REPORTS.**

3 (a) IN GENERAL.—Section 4101(d) is amended by
4 adding at the end the following new flush sentence:

5 “Any person who is required to report under this sub-
6 section and who has 25 or more reportable transactions
7 in a month shall file such report in electronic format.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply on January 1, 2006.

10 **SEC. 865. TAXABLE FUEL REFUNDS FOR CERTAIN ULTI-**
11 **MATE VENDORS.**

12 (a) IN GENERAL.—Paragraph (4) of section 6416(a)
13 (relating to abatements, credits, and refunds) is amended
14 to read as follows:

15 “(4) REGISTERED ULTIMATE VENDOR TO AD-
16 MINISTER CREDITS AND REFUNDS OF GASOLINE
17 TAX.—

18 “(A) IN GENERAL.—For purposes of this
19 subsection, if an ultimate vendor purchases any
20 gasoline on which tax imposed by section 4081
21 has been paid and sells such gasoline to an ulti-
22 mate purchaser described in subparagraph (C)
23 or (D) of subsection (b)(2) (and such gasoline
24 is for a use described in such subparagraph),
25 such ultimate vendor shall be treated as the
26 person (and the only person) who paid such tax,



1 but only if such ultimate vendor is registered
2 under section 4101.

3 “(B) TIMING OF CLAIMS.—The procedure
4 and timing of any claim under subparagraph
5 (A) shall be the same as for claims under sec-
6 tion 6427(i)(4), except that the rules of section
7 6427(i)(3)(B) regarding electronic claims shall
8 not apply unless the ultimate vendor has cer-
9 tified to the Secretary for the most recent quar-
10 ter of the taxable year that all ultimate pur-
11 chasers of the vendor are certified and entitled
12 to a refund under subparagraph (C) or (D) of
13 subsection (b)(2).”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect on January 1, 2005.

16 **SEC. 866. TWO-PARTY EXCHANGES.**

17 (a) IN GENERAL.—Subpart C of part III of sub-
18 chapter A of chapter 32, as amended by this Act, is
19 amended by inserting after section 4104 the following new
20 section:

21 **“SEC. 4105. TWO-PARTY EXCHANGES.**

22 “(a) IN GENERAL.—In a two-party exchange, the de-
23 livering person shall not be liable for the tax imposed
24 under of section 4081(a)(1)(A)(ii).



1 “(b) TWO-PARTY EXCHANGE.—The term ‘two-party
2 exchange’ means a transaction, other than a sale, in which
3 taxable fuel is transferred from a delivering person reg-
4 istered under section 4101 as a taxable fuel registrant to
5 a receiving person who is so registered where all of the
6 following occur:

7 “(1) The transaction includes a transfer from
8 the delivering person, who holds the inventory posi-
9 tion for taxable fuel in the terminal as reflected in
10 the records of the terminal operator.

11 “(2) The exchange transaction occurs before or
12 contemporaneous with completion of removal across
13 the rack from the terminal by the receiving person.

14 “(3) The terminal operator in its books and
15 records treats the receiving person as the person
16 that removes the product across the terminal rack
17 for purposes of reporting the transaction to the Sec-
18 retary.

19 “(4) The transaction is the subject of a written
20 contract.”.

21 (b) CONFORMING AMENDMENT.—The table of sec-
22 tions for subpart C of part III of subchapter A of chapter
23 32, as amended by of this Act, is amended by adding after
24 the last item the following new item:

 “Sec. 4105. Two-party exchanges.”.



1 (c) EFFECTIVE DATE.—The amendment made by
2 this section shall take effect on the date of the enactment
3 of this Act.

4 **SEC. 867. MODIFICATIONS OF TAX ON USE OF CERTAIN VE-**
5 **HICLES.**

6 (a) PRORATION OF TAX WHERE VEHICLE SOLD.—

7 (1) IN GENERAL.—Subparagraph (A) of section
8 4481(c)(2) (relating to where vehicle destroyed or
9 stolen) is amended by striking “destroyed or stolen”
10 both places it appears and inserting “sold, de-
11 stroyed, or stolen”.

12 (2) CONFORMING AMENDMENT.—The heading
13 for section 4481(c)(2) is amended by striking “DE-
14 STROYED OR STOLEN” and inserting “SOLD, DE-
15 STROYED, OR STOLEN”.

16 (b) REPEAL OF INSTALLMENT PAYMENT.—

17 (1) Section 6156 (relating to installment pay-
18 ment of tax on use of highway motor vehicles) is re-
19 pealed.

20 (2) The table of sections for subchapter A of
21 chapter 62 is amended by striking the item relating
22 to section 6156.

23 (c) ELECTRONIC FILING.—Section 4481 is amended
24 by redesignating subsection (e) as subsection (f) and by
25 inserting after subsection (d) the following new subsection:



1 “(e) ELECTRONIC FILING.—Any taxpayer who files
2 a return under this section with respect to 25 or more
3 vehicles for any taxable period shall file such return elec-
4 tronically.”.

5 (d) REPEAL OF REDUCTION IN TAX FOR CERTAIN
6 TRUCKS.—Section 4483 is amended by striking subsection
7 (f).

8 (e) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable periods beginning after
10 the date of the enactment of this Act.

11 **SEC. 868. DEDICATION OF REVENUES FROM CERTAIN PEN-**
12 **ALTIES TO THE HIGHWAY TRUST FUND.**

13 (a) IN GENERAL.—Subsection (b) of section 9503
14 (relating to transfer to Highway Trust Fund of amounts
15 equivalent to certain taxes) is amended by redesignating
16 paragraph (5) as paragraph (6) and inserting after para-
17 graph (4) the following new paragraph:

18 “(5) CERTAIN PENALTIES.—There are hereby
19 appropriated to the Highway Trust Fund amounts
20 equivalent to the penalties paid under sections 6715,
21 6715A, 6717, 6718, 6719, 6725, 7232, and 7272
22 (but only with regard to penalties under such section
23 related to failure to register under section 4101).”.

24 (b) CONFORMING AMENDMENTS.—



1 (1) The heading of subsection (b) of section
2 9503 is amended by inserting “AND PENALTIES”
3 after “TAXES”.

4 (2) The heading of paragraph (1) of section
5 9503(b) is amended by striking “IN GENERAL” and
6 inserting “CERTAIN TAXES”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to penalties assessed on or after
9 the date of the enactment of this Act.

10 **SEC. 869. SIMPLIFICATION OF TAX ON TIRES.**

11 (a) IN GENERAL.—Subsection (a) of section 4071 is
12 amended to read as follows:

13 “(a) IMPOSITION AND RATE OF TAX.—There is here-
14 by imposed on taxable tires sold by the manufacturer, pro-
15 ducer, or importer thereof a tax at the rate of 9.45 cents
16 (4.725 cents in the case of a biasply tire or super single
17 tire) for each 10 pounds so much of the maximum rated
18 load capacity thereof as exceeds 3,500 pounds.”

19 (b) BIASPLY AND SUPER SINGLE TIRES.—Section
20 4072 is amended by adding at the end the following new
21 subsections:

22 “(c) BIASPLY.—For purposes of this part, the term
23 ‘biasply tire’ means a pneumatic tire on which the ply
24 cords that extend to the beads are laid at alternate angles



1 substantially less than 90 degrees to the centerline of the
2 tread.

3 “(d) SUPER SINGLE TIRE.—For purposes of this
4 part, the term ‘super single tire’ means a single tire great-
5 er than 13 inches in cross section width designed to re-
6 place 2 tires in a dual fitment.”.

7 (b) TAXABLE TIRE.—Section 4072, as amended by
8 subsection (a), is amended by redesignating subsections
9 (a), (b), (c), and (d) as subsections (b), (c), (d), and (e)
10 respectively, and by inserting before subsection (b) (as so
11 redesignated) the following new subsection:

12 “(a) TAXABLE TIRE.—For purposes of this chapter,
13 the term ‘taxable tire’ means any tire of the type used
14 on highway vehicles if wholly or in part made of rubber
15 and if marked pursuant to Federal regulations for high-
16 way use.”

17 (c) EXEMPTION FOR TIRES SOLD TO DEPARTMENT
18 OF DEFENSE.—Section 4073 is amended to read as fol-
19 lows:

20 **“SEC. 4073. EXEMPTIONS.**

21 “The tax imposed by section 4071 shall not apply to
22 tires sold for the exclusive use of the Department of De-
23 fense or the Coast Guard.”.

24 (d) CONFORMING AMENDMENTS.—



1 (1) Section 4071 is amended by striking sub-
2 section (c) and by moving subsection (e) after sub-
3 section (b) and redesignating subsection (e) as sub-
4 section (c).

5 (2) The item relating to section 4073 in the
6 table of sections for part II of subchapter A of chap-
7 ter 32 is amended to read as follows:

 “Sec. 4073. Exemptions.”.

8 (e) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to sales in calendar years begin-
10 ning more than 30 days after the date of the enactment
11 of this Act.

12 **SEC. 870. TRANSMIX AND DIESEL FUEL BLEND STOCKS**
13 **TREATED AS TAXABLE FUEL.**

14 (a) IN GENERAL.—Paragraph (3) of section 4083(a)
15 is amended to read as follows:

16 “(3) DIESEL FUEL.—

17 “(A) IN GENERAL.—The term ‘diesel fuel’
18 means—

19 “(i) any liquid (other than gasoline)
20 which is suitable for use as a fuel in a die-
21 sel-powered highway vehicle, or a diesel-
22 powered train,

23 “(ii) transmix, and

24 “(iii) diesel fuel blend stocks identified
25 by the Secretary.



1 “(B) TRANSMIX.—For purposes of sub-
2 paragraph (A), the term ‘transmix’ means a by-
3 product of refined products pipeline operations
4 created by the mixing of different specification
5 products during pipeline transportation.”.

6 (b) CONFORMING AMENDMENT.—Subsection (h) of
7 section 6427 is amended to read as follows:

8 “(h) BLEND STOCKS NOT USED FOR PRODUCING
9 TAXABLE FUEL.—

10 “(1) GASOLINE BLEND STOCKS OR ADDITIVES
11 NOT USED FOR PRODUCING GASOLINE.—Except as
12 provided in subsection (k), if any gasoline blend
13 stock or additive (within the meaning of section
14 4083(a)(2)) is not used by any person to produce
15 gasoline and such person establishes that the ulti-
16 mate use of such gasoline blend stock or additive is
17 not to produce gasoline, the Secretary shall pay
18 (without interest) to such person an amount equal to
19 the aggregate amount of the tax imposed on such
20 person with respect to such gasoline blend stock or
21 additive.

22 “(2) DIESEL FUEL BLEND STOCKS OR ADDI-
23 TIVES NOT USED FOR PRODUCING DIESEL.—Except
24 as provided in subsection (k), if any diesel fuel blend
25 stock is not used by any person to produce diesel



1 fuel and such person establishes that the ultimate
2 use of such diesel fuel blend stock is not to produce
3 diesel fuel, the Secretary shall pay (without interest)
4 to such person an amount equal to the aggregate
5 amount of the tax imposed on such person with re-
6 spect to such diesel fuel blend stock.”.

7 (c) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to fuel removed, sold, or used after
9 December 31, 2004.

10 **SEC. 871. STUDY REGARDING FUEL TAX COMPLIANCE.**

11 (a) IN GENERAL.—Not later than January 31, 2005,
12 the Secretary of the Treasury shall submit to the Com-
13 mittee on Finance of the Senate and the Committee on
14 Ways and Means of the House of Representatives a report
15 regarding compliance with the tax imposed under sub-
16 chapter B of chapter 31 and part III of subchapter A of
17 chapter 32 of the Internal Revenue Code of 1986. Such
18 report shall include the information, analysis, and rec-
19 ommendations specified in subsections (b), (c), and (d).

20 (b) TAXABLE FUEL BLENDSTOCKS.—The Secretary
21 shall identify chemical products to be added to the list of
22 blendstocks from lab analysis of fuel samples collected by
23 the Internal Revenue Service which have been blended
24 with taxable fuel but are not treated as blendstocks. The
25 Secretary shall include statistics regarding the frequency



1 in which a chemical product has been collected, and wheth-
2 er the sample contained an above normal concentration
3 of the chemical product.

4 (c) WASTE PRODUCTS ADDED TO TAXABLE
5 FUELS.—The report shall include a discussion of Internal
6 Revenue Service findings regarding the addition of waste
7 products to taxable fuel and any recommendations to ad-
8 dress the taxation of such products.

9 (d) ERRONEOUS CLAIMS OF FUEL TAX EXEMP-
10 TIONS.—The report shall include a discussion of Internal
11 Revenue Service findings regarding sales of taxable fuel
12 to entities claiming exempt status as a State or local gov-
13 ernment and the frequency of erroneous certifications of
14 tax exempt status. The Secretary, in consultation with
15 representatives of State and local governments, shall pro-
16 vide recommendations to address such erroneous claims,
17 including recommendations on the feasibility of a State
18 maintained list of exempt governmental entities within the
19 State.

20 **Subtitle D—Other Revenue**

21 **Provisions**

22 **SEC. 881. QUALIFIED TAX COLLECTION CONTRACTS.**

23 (a) CONTRACT REQUIREMENTS.—



1 (1) IN GENERAL.—Subchapter A of chapter 64
2 (relating to collection) is amended by adding at the
3 end the following new section:

4 **“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.**

5 “(a) IN GENERAL.—Nothing in any provision of law
6 shall be construed to prevent the Secretary from entering
7 into a qualified tax collection contract.

8 “(b) QUALIFIED TAX COLLECTION CONTRACT.—For
9 purposes of this section, the term ‘qualified tax collection
10 contract’ means any contract which—

11 “(1) is for the services of any person (other
12 than an officer or employee of the Treasury Depart-
13 ment)—

14 “(A) to locate and contact any taxpayer
15 specified by the Secretary,

16 “(B) to request full payment from such
17 taxpayer of an amount of Federal tax specified
18 by the Secretary and, if such request cannot be
19 met by the taxpayer, to offer the taxpayer an
20 installment agreement providing for full pay-
21 ment of such amount during a period not to ex-
22 ceed 5 years, and

23 “(C) to obtain financial information speci-
24 fied by the Secretary with respect to such tax-
25 payer,



1 “(2) prohibits each person providing such serv-
2 ices under such contract from committing any act or
3 omission which employees of the Internal Revenue
4 Service are prohibited from committing in the per-
5 formance of similar services,

6 “(3) prohibits subcontractors from—

7 “(A) having contacts with taxpayers,

8 “(B) providing quality assurance services,

9 and

10 “(C) composing debt collection notices, and

11 “(4) permits subcontractors to perform other
12 services only with the approval of the Secretary.

13 “(c) FEES.—The Secretary may retain and use—

14 “(1) an amount not in excess of 25 percent of
15 the amount collected under any qualified tax collec-
16 tion contract for the costs of services performed
17 under such contract, and

18 “(2) an amount not in excess of 25 percent of
19 such amount collected for collection enforcement ac-
20 tivities of the Internal Revenue Service.

21 The Secretary shall keep adequate records regarding
22 amounts so retained and used. The amount credited as
23 paid by any taxpayer shall be determined without regard
24 to this subsection.



1 “(d) NO FEDERAL LIABILITY.—The United States
2 shall not be liable for any act or omission of any person
3 performing services under a qualified tax collection con-
4 tract.

5 “(e) APPLICATION OF FAIR DEBT COLLECTION
6 PRACTICES ACT.—The provisions of the Fair Debt Collec-
7 tion Practices Act (15 U.S.C. 1692 et seq.) shall apply
8 to any qualified tax collection contract, except to the ex-
9 tent superseded by section 6304, section 7602(c), or by
10 any other provision of this title.

11 “(f) CROSS REFERENCES.—

**“(1) For damages for certain unauthorized collec-
tion actions by persons performing services under a
qualified tax collection contract, see section 7433A.**

**“(2) For application of Taxpayer Assistance Or-
ders to persons performing services under a quali-
fied tax collection contract, see section 7811(g).”.**

12 (2) CONFORMING AMENDMENTS.—

13 (A) Section 7809(a) is amended by insert-
14 ing “6306,” before “7651”.

15 (B) The table of sections for subchapter A
16 of chapter 64 is amended by adding at the end
17 the following new item:

 “Sec. 6306. Qualified tax collection contracts.”.

18 (b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED
19 COLLECTION ACTIONS BY PERSONS PERFORMING SERV-
20 ICES UNDER QUALIFIED TAX COLLECTION CON-
21 TRACTS.—



1 (1) IN GENERAL.—Subchapter B of chapter 76
2 (relating to proceedings by taxpayers and third par-
3 ties) is amended by inserting after section 7433 the
4 following new section:

5 **“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHOR-**
6 **IZED COLLECTION ACTIONS BY PERSONS**
7 **PERFORMING SERVICES UNDER QUALIFIED**
8 **TAX COLLECTION CONTRACTS.**

9 “(a) IN GENERAL.—Subject to the modifications pro-
10 vided by subsection (b), section 7433 shall apply to the
11 acts and omissions of any person performing services
12 under a qualified tax collection contract (as defined in sec-
13 tion 6306(b)) to the same extent and in the same manner
14 as if such person were an employee of the Internal Rev-
15 enue Service.

16 “(b) MODIFICATIONS.—For purposes of subsection
17 (a)—

18 “(1) Any civil action brought under section
19 7433 by reason of this section shall be brought
20 against the person who entered into the qualified tax
21 collection contract with the Secretary and shall not
22 be brought against the United States.

23 “(2) Such person and not the United States
24 shall be liable for any damages and costs determined
25 in such civil action.



1 “(3) Such civil action shall not be an exclusive
2 remedy with respect to such person.

3 “(4) Subsections (c), (d)(1), and (e) of section
4 7433 shall not apply.”.

5 (2) CLERICAL AMENDMENT.—The table of sec-
6 tions for subchapter B of chapter 76 is amended by
7 inserting after the item relating to section 7433 the
8 following new item:

 “Sec. 7433A. Civil damages for certain unauthorized collection ac-
 tions by persons performing services under qualified
 tax collection contracts.”.

9 (c) APPLICATION OF TAXPAYER ASSISTANCE OR-
10 DERS TO PERSONS PERFORMING SERVICES UNDER A
11 QUALIFIED TAX COLLECTION CONTRACT.—Section 7811
12 (relating to taxpayer assistance orders) is amended by
13 adding at the end the following new subsection:

14 “(g) APPLICATION TO PERSONS PERFORMING SERV-
15 ICES UNDER A QUALIFIED TAX COLLECTION CON-
16 TRACT.—Any order issued or action taken by the National
17 Taxpayer Advocate pursuant to this section shall apply to
18 persons performing services under a qualified tax collec-
19 tion contract (as defined in section 6306(b)) to the same
20 extent and in the same manner as such order or action
21 applies to the Secretary.”.

22 (d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT
23 MISCONDUCT TO PERFORM UNDER CONTRACT.—Section
24 1203 of the Internal Revenue Service Restructuring Act



1 of 1998 (relating to termination of employment for mis-
2 conduct) is amended by adding at the end the following
3 new subsection:

4 “(e) INDIVIDUALS PERFORMING SERVICES UNDER A
5 QUALIFIED TAX COLLECTION CONTRACT.—An individual
6 shall cease to be permitted to perform any services under
7 any qualified tax collection contract (as defined in section
8 6306(b) of the Internal Revenue Code of 1986) if there
9 is a final determination by the Secretary of the Treasury
10 under such contract that such individual committed any
11 act or omission described under subsection (b) in connec-
12 tion with the performance of such services.”.

13 (e) BIENNIAL REPORT.—The Secretary of the Treas-
14 ury shall biennially submit (beginning in 2005) to the
15 Committee on Finance of the Senate and the Committee
16 on Ways and Means of the House of Representatives a
17 report with respect to qualified tax collection contracts
18 under section 6306 of the Internal Revenue Code of 1986
19 (as added by this section) which includes—

20 (1) a complete cost benefit analysis,

21 (2) the impact of such contracts on collection
22 enforcement staff levels in the Internal Revenue
23 Service,

24 (3) the impact of such contracts on the total
25 number and amount of unpaid assessments, and on



1 the number and amount of assessments collected by
2 Internal Revenue Service personnel after initial con-
3 tact by a contractor,

4 (4) the amounts collected and the collection
5 costs incurred (directly and indirectly) by the Inter-
6 nal Revenue Service,

7 (5) an evaluation of contractor performance,

8 (6) a disclosure safeguard report in a form
9 similar to that required under section 6103(p)(5) of
10 such Code, and

11 (7) a measurement plan which includes a com-
12 parison of the best practices used by the private col-
13 lectors with the Internal Revenue Service's own col-
14 lection techniques) and mechanisms to identify and
15 capture information on successful collection tech-
16 niques used by the contractors which could be adopt-
17 ed by the Internal Revenue Service.

18 (f) EFFECTIVE DATE.—The amendments made to
19 this section shall take effect on the date of the enactment
20 of this Act.

21 **SEC. 882. TREATMENT OF CHARITABLE CONTRIBUTIONS OF**
22 **PATENTS AND SIMILAR PROPERTY.**

23 (a) IN GENERAL.—Subparagraph (B) of section
24 170(e)(1) is amended by striking “or” at the end of clause



1 (i), by adding “or” at the end of clause (ii), and by insert-
2 ing after clause (ii) the following new clause:

3 “(iii) of any patent, copyright (other
4 than a copyright described in section
5 1221(a)(3) or 1231(b)(1)(C)), trademark,
6 trade name, trade secret, know-how, soft-
7 ware (other than software described in sec-
8 tion 197(e)(3)(A)(i)), or similar property,
9 or applications or registrations of such
10 property.”

11 (b) CERTAIN DONEE INCOME FROM INTELLECTUAL
12 PROPERTY TREATED AS AN ADDITIONAL CHARITABLE
13 CONTRIBUTION.—Section 170 is amended by redesign-
14 nating subsection (m) as subsection (n) and by inserting
15 after subsection (l) the following new subsection:

16 “(m) CERTAIN DONEE INCOME FROM INTELLEC-
17 TUAL PROPERTY TREATED AS AN ADDITIONAL CHARI-
18 TABLE CONTRIBUTION.—

19 “(1) TREATMENT AS ADDITIONAL CONTRIBU-
20 TION.—In the case of a taxpayer who makes a quali-
21 fied intellectual property contribution, the deduction
22 allowed under subsection (a) for each taxable year of
23 the taxpayer ending on or after the date of such con-
24 tribution shall be increased (subject to the limita-
25 tions under subsection (b)) by the applicable per-



1 centage of qualified donee income with respect to
2 such contribution which is properly allocable to such
3 year under this subsection.

4 “(2) REDUCTION IN ADDITIONAL DEDUCTIONS
5 TO EXTENT OF INITIAL DEDUCTION.—With respect
6 to any qualified intellectual property contribution,
7 the deduction allowed under subsection (a) shall be
8 increased under paragraph (1) only to the extent
9 that the aggregate amount of such increases with re-
10 spect to such contribution exceed the amount al-
11 lowed as a deduction under subsection (a) with re-
12 spect to such contribution determined without re-
13 gard to this subsection.

14 “(3) QUALIFIED DONEE INCOME.—For pur-
15 poses of this subsection, the term ‘qualified donee
16 income’ means any net income received by or ac-
17 crued to the donee which is properly allocable to the
18 qualified intellectual property.

19 “(4) ALLOCATION OF QUALIFIED DONEE IN-
20 COME TO TAXABLE YEARS OF DONOR.—For pur-
21 poses of this subsection, qualified donee income shall
22 be treated as properly allocable to a taxable year of
23 the donor if such income is received by or accrued
24 to the donee for the taxable year of the donee which
25 ends within or with such taxable year of the donor.



1 “(5) 10-YEAR LIMITATION.—Income shall not
 2 be treated as properly allocable to qualified intellec-
 3 tual property for purposes of this subsection if such
 4 income is received by or accrued to the donee after
 5 the 10-year period beginning on the date of the con-
 6 tribution of such property.

7 “(6) BENEFIT LIMITED TO LIFE OF INTELLEC-
 8 TUAL PROPERTY.—Income shall not be treated as
 9 properly allocable to qualified intellectual property
 10 for purposes of this subsection if such income is re-
 11 ceived by or accrued to the donee after the expira-
 12 tion of the legal life of such property.

13 “(7) APPLICABLE PERCENTAGE.—For purposes
 14 of this subsection, the term ‘applicable percentage’
 15 means the percentage determined under the fol-
 16 lowing table which corresponds to a taxable year of
 17 the donor ending on or after the date of the quali-
 18 fied intellectual property contribution:

“Taxable Year of Donor Ending on or After Date of Contribution:	Applicable Percentage:
1st	100
2nd	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th	10
12th	10.



1 “(8) QUALIFIED INTELLECTUAL PROPERTY
2 CONTRIBUTION.—For purposes of this subsection,
3 the term ‘qualified intellectual property contribution’
4 means any charitable contribution of qualified intel-
5 lectual property—

6 “(A) the amount of which taken into ac-
7 count under this section is reduced by reason of
8 subsection (e)(1), and

9 “(B) with respect to which the donor in-
10 forms the donee at the time of such contribu-
11 tion that the donor intends to treat such con-
12 tribution as a qualified intellectual property
13 contribution for purposes of this subsection and
14 section 6050L.

15 “(9) QUALIFIED INTELLECTUAL PROPERTY.—
16 For purposes of this subsection, the term ‘qualified
17 intellectual property’ means property described in
18 subsection (e)(1)(B)(iii) (other than property con-
19 tributed to or for the use of an organization de-
20 scribed in subsection (e)(1)(B)(ii)).

21 “(10) OTHER SPECIAL RULES.—

22 “(A) APPLICATION OF LIMITATIONS ON
23 CHARITABLE CONTRIBUTIONS.—Any increase
24 under this subsection of the deduction provided
25 under subsection (a) shall be treated for pur-



1 poses of subsection (b) as a deduction which is
2 attributable to a charitable contribution to the
3 donee to which such increase relates.

4 “(B) NET INCOME DETERMINED BY
5 DONEE.—The net income taken into account
6 under paragraph (3) shall not exceed the
7 amount of such income reported under section
8 6050L(b)(1).

9 “(C) DEDUCTION LIMITED TO 12 TAXABLE
10 YEARS.—Except as may be provided under sub-
11 paragraph (D)(i), this subsection shall not
12 apply with respect to any qualified intellectual
13 property contribution for any taxable year of
14 the donor after the 12th taxable year of the
15 donor which ends on or after the date of such
16 contribution.

17 “(D) REGULATIONS.—The Secretary may
18 issue regulations or other guidance to carry out
19 the purposes of this subsection, including regu-
20 lations or guidance—

21 “(i) modifying the application of this
22 subsection in the case of a donor or donee
23 with a short taxable year, and

24 “(ii) providing for the determination
25 of an amount to be treated as net income



1 of the donee which is properly allocable to
2 qualified intellectual property in the case
3 of a donee who uses such property to fur-
4 ther a purpose or function constituting the
5 basis of the donee's exemption under sec-
6 tion 501 (or, in the case of a governmental
7 unit, any purpose described in section
8 170(e)) and does not possess a right to re-
9 ceive any payment from a third party with
10 respect to such property.”.

11 (c) REPORTING REQUIREMENTS.—

12 (1) IN GENERAL.—Section 6050L (relating to
13 returns relating to certain dispositions of donated
14 property) is amended to read as follows:

15 **“SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED**
16 **PROPERTY.**

17 “(a) DISPOSITIONS OF DONATED PROPERTY.—

18 “(1) IN GENERAL.—If the donee of any chari-
19 table deduction property sells, exchanges, or other-
20 wise disposes of such property within 2 years after
21 its receipt, the donee shall make a return (in accord-
22 ance with forms and regulations prescribed by the
23 Secretary) showing—

24 “(A) the name, address, and TIN of the
25 donor,



1 “(B) a description of the property,

2 “(C) the date of the contribution,

3 “(D) the amount received on the disposi-
4 tion, and

5 “(E) the date of such disposition.

6 “(2) DEFINITIONS.—For purposes of this
7 subsection—

8 “(A) CHARITABLE DEDUCTION PROP-
9 erty.—The term ‘charitable deduction prop-
10 erty’ means any property (other than publicly
11 traded securities) contributed in a contribution
12 for which a deduction was claimed under sec-
13 tion 170 if the claimed value of such property
14 (plus the claimed value of all similar items of
15 property donated by the donor to 1 or more
16 donees) exceeds \$5,000.

17 “(B) PUBLICLY TRADED SECURITIES.—
18 The term ‘publicly traded securities’ means se-
19 curities for which (as of the date of the con-
20 tribution) market quotations are readily avail-
21 able on an established securities market.

22 “(b) QUALIFIED INTELLECTUAL PROPERTY CON-
23 TRIBUTIONS.—

24 “(1) IN GENERAL.—Each donee with respect to
25 a qualified intellectual property contribution shall



1 make a return (at such time and in such form and
2 manner as the Secretary may by regulations pre-
3 scribe) with respect to each specified taxable year of
4 the donee showing—

5 “(A) the name, address, and TIN of the
6 donor,

7 “(B) a description of the qualified intellec-
8 tual property contributed,

9 “(C) the date of the contribution, and

10 “(D) the amount of net income of the
11 donee for the taxable year which is properly al-
12 locable to the qualified intellectual property (de-
13 termined without regard to paragraph (10)(B)
14 of section 170(m) and with the modifications
15 described in paragraphs (5) and (6) of such
16 section).

17 “(2) DEFINITIONS.—For purposes of this
18 subsection—

19 “(A) IN GENERAL.—Terms used in this
20 subsection which are also used in section
21 170(m) have the respective meanings given
22 such terms in such section.

23 “(B) SPECIFIED TAXABLE YEAR.—The
24 term ‘specified taxable year’ means, with re-
25 spect to any qualified intellectual property con-



1 tribution, any taxable year of the donee any
2 portion of which is part of the 10-year period
3 beginning on the date of such contribution.

4 “(c) STATEMENT TO BE FURNISHED TO DONORS.—
5 Every person making a return under subsection (a) or (b)
6 shall furnish a copy of such return to the donor at such
7 time and in such manner as the Secretary may by regula-
8 tions prescribe.”.

9 (2) CLERICAL AMENDMENT.—The table of sec-
10 tions for subpart A of part II of subchapter A of
11 chapter 61 is amended by striking the item relating
12 to section 6050L and inserting the following new
13 item:

 “Sec. 6050L. Returns relating to certain donated property.”.

14 (d) COORDINATION WITH APPRAISAL REQUIRE-
15 MENTS.—Subclause (I) of section 170(f)(11)(A)(ii), as
16 added by this Act, is amended by inserting “subsection
17 (e)(1)(B)(iii) or” before “section 1221(a)(1)”.

18 (e) ANTI-ABUSE RULES.—The Secretary of the
19 Treasury may prescribe such regulations or other guid-
20 ance as may be necessary or appropriate to prevent the
21 avoidance of the purposes of section 170(e)(1)(B)(iii) of
22 the Internal Revenue Code of 1986 (as added by sub-
23 section (a)), including preventing—

24 (1) the circumvention of the reduction of the
25 charitable deduction by embedding or bundling the



1 patent or similar property as part of a charitable
2 contribution of property that includes the patent or
3 similar property,

4 (2) the manipulation of the basis of the prop-
5 erty to increase the amount of the charitable deduc-
6 tion through the use of related persons, pass-thru
7 entities, or other intermediaries, or through the use
8 of any provision of law or regulation (including the
9 consolidated return regulations), and

10 (3) a donor from changing the form of the pat-
11 ent or similar property to property of a form for
12 which different deduction rules would apply.

13 (f) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to contributions made after June
15 3, 2004.

16 **SEC. 883. INCREASED REPORTING FOR NONCASH CHARI-**
17 **TABLE CONTRIBUTIONS.**

18 (a) IN GENERAL.—Subsection (f) of section 170 (re-
19 lating to disallowance of deduction in certain cases and
20 special rules) is amended by adding after paragraph (10)
21 the following new paragraph:

22 “(11) QUALIFIED APPRAISAL AND OTHER DOC-
23 UMENTATION FOR CERTAIN CONTRIBUTIONS.—

24 “(A) IN GENERAL.—



1 “(i) DENIAL OF DEDUCTION.—In the
2 case of an individual, partnership, or cor-
3 poration, no deduction shall be allowed
4 under subsection (a) for any contribution
5 of property for which a deduction of more
6 than \$500 is claimed unless such person
7 meets the requirements of subparagraphs
8 (B), (C), and (D), as the case may be,
9 with respect to such contribution.

10 “(ii) EXCEPTIONS.—

11 “(I) READILY VALUED PROP-
12 erty.—Subparagraphs (C) and (D)
13 shall not apply to cash, property de-
14 scribed in section 1221(a)(1), publicly
15 traded securities (as defined in section
16 6050L(a)(2)(B)), and any qualified
17 vehicle described in paragraph
18 (12)(A)(ii) for which an acknowledge-
19 ment under paragraph (12)(B)(iii) is
20 provided.

21 “(II) REASONABLE CAUSE.—
22 Clause (i) shall not apply if it is
23 shown that the failure to meet such
24 requirements is due to reasonable
25 cause and not to willful neglect.



1 “(B) PROPERTY DESCRIPTION FOR CON-
2 TRIBUTIONS OF MORE THAN \$500.—In the case
3 of contributions of property for which a deduc-
4 tion of more than \$500 is claimed, the require-
5 ments of this subparagraph are met if the indi-
6 vidual, partnership or corporation includes with
7 the return for the taxable year in which the
8 contribution is made a description of such prop-
9 erty and such other information as the Sec-
10 retary may require. The requirements of this
11 subparagraph shall not apply to a C corporation
12 which is not a personal service corporation or a
13 closely held C corporation.

14 “(C) QUALIFIED APPRAISAL FOR CON-
15 TRIBUTIONS OF MORE THAN \$5,000.—In the
16 case of contributions of property for which a
17 deduction of more than \$5,000 is claimed, the
18 requirements of this subparagraph are met if
19 the individual, partnership, or corporation ob-
20 tains a qualified appraisal of such property and
21 attaches to the return for the taxable year in
22 which such contribution is made such informa-
23 tion regarding such property and such appraisal
24 as the Secretary may require.



1 “(D) SUBSTANTIATION FOR CONTRIBU-
2 TIONS OF MORE THAN \$500,000.—In the case of
3 contributions of property for which a deduction
4 of more than \$500,000 is claimed, the require-
5 ments of this subparagraph are met if the indi-
6 vidual, partnership, or corporation attaches to
7 the return for the taxable year a qualified ap-
8 praisal of such property.

9 “(E) QUALIFIED APPRAISAL.—For pur-
10 poses of this paragraph, the term ‘qualified ap-
11 praisal’ means, with respect to any property, an
12 appraisal of such property which is treated for
13 purposes of this paragraph as a qualified ap-
14 praisal under regulations or other guidance pre-
15 scribed by the Secretary.

16 “(F) AGGREGATION OF SIMILAR ITEMS OF
17 PROPERTY.—For purposes of determining
18 thresholds under this paragraph, property and
19 all similar items of property donated to 1 or
20 more donees shall be treated as 1 property.

21 “(G) SPECIAL RULE FOR PASS-THRU ENTI-
22 TIES.—In the case of a partnership or S cor-
23 poration, this paragraph shall be applied at the
24 entity level, except that the deduction shall be
25 denied at the partner or shareholder level.



1 “(H) REGULATIONS.—The Secretary may
2 prescribe such regulations as may be necessary
3 or appropriate to carry out the purposes of this
4 paragraph, including regulations that may pro-
5 vide that some or all of the requirements of this
6 paragraph do not apply in appropriate cases.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to contributions made after June
9 3, 2004.

10 **SEC. 884. DONATIONS OF MOTOR VEHICLES, BOATS, AND**
11 **AIRPLANES.**

12 (a) IN GENERAL.—Subsection (f) of section 170 (re-
13 lating to disallowance of deduction in certain cases and
14 special rules), as amended by this Act, is amended by in-
15 serting after paragraph (11) the following new paragraph:

16 “(12) CONTRIBUTIONS OF USED MOTOR VEHI-
17 CLES, BOATS, AND AIRPLANES.—

18 “(A) IN GENERAL.—In the case of a con-
19 tribution of a qualified vehicle the claimed value
20 of which exceeds \$500—

21 “(i) paragraph (8) shall not apply and
22 no deduction shall be allowed under sub-
23 section (a) for such contribution unless the
24 taxpayer substantiates the contribution by
25 a contemporaneous written acknowledge-



1 ment of the contribution by the donee or-
2 organization that meets the requirements of
3 subparagraph (B) and includes the ac-
4 knowledge with the taxpayer's return
5 of tax which includes the deduction, and

6 “(ii) if the organization sells the vehi-
7 cle without any significant intervening use
8 or material improvement of such vehicle by
9 the organization, the amount of the deduc-
10 tion allowed under subsection (a) shall not
11 exceed the gross proceeds received from
12 such sale.

13 “(B) CONTENT OF ACKNOWLEDGEMENT.—
14 An acknowledgement meets the requirements of
15 this subparagraph if it includes the following
16 information:

17 “(i) The name and taxpayer identi-
18 fication number of the donor.

19 “(ii) The vehicle identification number
20 or similar number.

21 “(iii) In the case of a qualified vehicle
22 to which subparagraph (A)(ii) applies—

23 “(I) a certification that the vehi-
24 cle was sold in an arm's length trans-
25 action between unrelated parties,



1 “(II) the gross proceeds from the
2 sale, and

3 “(III) a statement that the de-
4 ductible amount may not exceed the
5 amount of such gross proceeds.

6 “(iv) In the case of a qualified vehicle
7 to which subparagraph (A)(ii) does not
8 apply—

9 “(I) a certification of the in-
10 tended use or material improvement
11 of the vehicle and the intended dura-
12 tion of such use, and

13 “(II) a certification that the vehi-
14 cle would not be transferred in ex-
15 change for money, other property, or
16 services before completion of such use
17 or improvement.

18 “(C) CONTEMPORANEOUS.—For purposes
19 of subparagraph (A), an acknowledgement shall
20 be considered to be contemporaneous if the
21 donee organization provides it within 30 days
22 of—

23 “(i) the sale of the qualified vehicle,
24 or



1 “(ii) in the case of an acknowledge-
2 ment including a certification described in
3 subparagraph (B)(iv), the contribution of
4 the qualified vehicle.

5 “(D) INFORMATION TO SECRETARY.—A
6 donee organization required to provide an ac-
7 knowledgement under this paragraph shall pro-
8 vide to the Secretary the information contained
9 in the acknowledgement. Such information shall
10 be provided at such time and in such manner
11 as the Secretary may prescribe.

12 “(E) QUALIFIED VEHICLE.—For purposes
13 of this paragraph, the term ‘qualified vehicle’
14 means any—

15 “(i) motor vehicle manufactured pri-
16 marily for use on public streets, roads, and
17 highways,

18 “(ii) boat, or

19 “(iii) airplane.

20 Such term shall not include any property which
21 is described in section 1221(a)(1).

22 “(F) REGULATIONS OR OTHER GUID-
23 ANCE.—The Secretary shall prescribe such reg-
24 ulations or other guidance as may be necessary
25 to carry out the purposes of this paragraph.



1 The Secretary may prescribe regulations or
2 other guidance which exempts sales by the
3 donee organization which are in direct further-
4 ance of such organization's charitable purpose
5 from the requirements of subparagraphs (A)(ii)
6 and (B)(iv)(II).”.

7 (b) PENALTY FOR FRAUDULENT ACKNOWLEDG-
8 MENTS.—

9 (1) IN GENERAL.—Part I of subchapter B of
10 chapter 68 (relating to assessable penalties), as
11 amended by this Act, is amended by inserting after
12 section 6719 the following new section:

13 **“SEC. 6720. FRAUDULENT ACKNOWLEDGMENTS WITH RE-**
14 **SPECT TO DONATIONS OF MOTOR VEHICLES,**
15 **BOATS, AND AIRPLANES.**

16 “Any donee organization required under section
17 170(f)(12)(A) to furnish a contemporaneous written ac-
18 knowledgment to a donor which knowingly furnishes a
19 false or fraudulent acknowledgment, or which knowingly
20 fails to furnish such acknowledgment in the manner, at
21 the time, and showing the information required under sec-
22 tion 170(f)(12), or regulations prescribed thereunder,
23 shall for each such act, or for each such failure, be subject
24 to a penalty equal to—



1 “(1) in the case of an acknowledgment with re-
2 spect to a qualified vehicle to which section
3 170(f)(12)(A)(ii) applies, the greater of—

4 “(A) the product of the highest rate of tax
5 specified in section 1 and the sales price stated
6 on the acknowledgment, or

7 “(B) the gross proceeds from the sale of
8 such vehicle, and

9 “(2) in the case of an acknowledgment with re-
10 spect to any other qualified vehicle to which section
11 170(f)(12) applies, the greater of—

12 “(A) the product of the highest rate of tax
13 specified in section 1 and the claimed value of
14 the vehicle, or

15 “(B) \$5,000.”.

16 (2) CONFORMING AMENDMENT.—The table of
17 sections for part I of subchapter B of chapter 68,
18 as amended by this Act, is amended by inserting
19 after the item relating to section 6719 the following
20 new item:

 “Sec. 6720. Fraudulent acknowledgments with respect to dona-
 tions of motor vehicles, boats, and airplanes.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to contributions made after De-
23 cember 31, 2004.



1 **SEC. 885. TREATMENT OF NONQUALIFIED DEFERRED COM-**
2 **PENSATION PLANS.**

3 (a) IN GENERAL.—Subpart A of part I of subchapter
4 D of chapter 1 is amended by adding at the end the fol-
5 lowing new section:

6 **“SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED**
7 **COMPENSATION UNDER NONQUALIFIED DE-**
8 **FERRED COMPENSATION PLANS.**

9 “(a) RULES RELATING TO CONSTRUCTIVE RE-
10 CEIPT.—

11 “(1) PLAN FAILURES.—

12 “(A) GROSS INCOME INCLUSION.—

13 “(i) IN GENERAL.—If at any time
14 during a taxable year a nonqualified de-
15 ferred compensation plan—

16 “(I) fails to meet the require-
17 ments of paragraphs (2), (3), and (4),
18 or

19 “(II) is not operated in accord-
20 ance with such requirements,

21 all compensation deferred under the plan
22 for the taxable year and all preceding tax-
23 able years shall be includible in gross in-
24 come for the taxable year to the extent not
25 subject to a substantial risk of forfeiture



1 and not previously included in gross in-
2 come.

3 “(ii) APPLICATION ONLY TO AF-
4 FECTED PARTICIPANTS.—Clause (i) shall
5 only apply with respect to all compensation
6 deferred under the plan for participants
7 with respect to whom the failure relates.

8 “(B) INTEREST AND ADDITIONAL TAX
9 PAYABLE WITH RESPECT TO PREVIOUSLY DE-
10 FERRED COMPENSATION.—

11 “(i) IN GENERAL.—If compensation is
12 required to be included in gross income
13 under subparagraph (A) for a taxable year,
14 the tax imposed by this chapter for the
15 taxable year shall be increased by the sum
16 of—

17 “(I) the amount of interest deter-
18 mined under clause (ii), and

19 “(II) an amount equal to 20 per-
20 cent of the compensation which is re-
21 quired to be included in gross income.

22 “(ii) INTEREST.—For purposes of
23 clause (i), the interest determined under
24 this clause for any taxable year is the
25 amount of interest at the underpayment



1 rate plus 1 percentage point on the under-
2 payments that would have occurred had
3 the deferred compensation been includible
4 in gross income for the taxable year in
5 which first deferred or, if later, the first
6 taxable year in which such deferred com-
7 pensation is not subject to a substantial
8 risk of forfeiture.

9 “(2) DISTRIBUTIONS.—

10 “(A) IN GENERAL.—The requirements of
11 this paragraph are met if the plan provides that
12 compensation deferred under the plan may not
13 be distributed earlier than—

14 “(i) separation from service as deter-
15 mined by the Secretary (except as provided
16 in subparagraph (B)(i)),

17 “(ii) the date the participant becomes
18 disabled (within the meaning of subpara-
19 graph (C)),

20 “(iii) death,

21 “(iv) a specified time (or pursuant to
22 a fixed schedule) specified under the plan
23 at the date of the deferral of such com-
24 pensation,



1 “(v) to the extent provided by the
2 Secretary, a change in the ownership or ef-
3 fective control of the corporation, or in the
4 ownership of a substantial portion of the
5 assets of the corporation, or

6 “(vi) the occurrence of an unforesee-
7 able emergency.

8 “(B) SPECIAL RULES.—

9 “(i) SPECIFIED EMPLOYEES.—In the
10 case of any specified employee, the require-
11 ment of subparagraph (A)(i) is met only if
12 distributions may not be made before the
13 date which is 6 months after the date of
14 separation from service (or, if earlier, the
15 date of death of the employee). For pur-
16 poses of the preceding sentence, a specified
17 employee is a key employee (as defined in
18 section 416(i) without regard to paragraph
19 (5) thereof) of a corporation any stock in
20 which is publicly traded on an established
21 securities market or otherwise.

22 “(ii) UNFORESEEABLE EMER-
23 GENCY.—For purposes of subparagraph
24 (A)(vi)—



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“(I) IN GENERAL.—The term ‘unforeseeable emergency’ means a severe financial hardship to the participant resulting from an illness or accident of the participant, the participant’s spouse, or a dependent (as defined in section 152(a)) of the participant, loss of the participant’s property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

“(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved



1 through reimbursement or compensa-
2 tion by insurance or otherwise or by
3 liquidation of the participant's assets
4 (to the extent the liquidation of such
5 assets would not itself cause severe fi-
6 nancial hardship).

7 “(C) DISABLED.—For purposes of sub-
8 paragraph (A)(ii), a participant shall be consid-
9 ered disabled if the participant—

10 “(i) is unable to engage in any sub-
11 stantial gainful activity by reason of any
12 medically determinable physical or mental
13 impairment which can be expected to result
14 in death or can be expected to last for a
15 continuous period of not less than 12
16 months, or

17 “(ii) is, by reason of any medically de-
18 terminable physical or mental impairment
19 which can be expected to result in death or
20 can be expected to last for a continuous
21 period of not less than 12 months, receiv-
22 ing income replacement benefits for a pe-
23 riod of not less than 3 months under an
24 accident and health plan covering employ-
25 ees of the participant's employer.



1 “(3) ACCELERATION OF BENEFITS.—The re-
2 quirements of this paragraph are met if the plan
3 does not permit the acceleration of the time or
4 schedule of any payment under the plan, except as
5 provided in regulations by the Secretary.

6 “(4) ELECTIONS.—

7 “(A) IN GENERAL.—The requirements of
8 this paragraph are met if the requirements of
9 subparagraphs (B) and (C) are met.

10 “(B) INITIAL DEFERRAL DECISION.—

11 “(i) IN GENERAL.—The requirements
12 of this subparagraph are met if the plan
13 provides that compensation for services
14 performed during a taxable year may be
15 deferred at the participant’s election only if
16 the election to defer such compensation is
17 made not later than the close of the pre-
18 ceding taxable year or at such other time
19 as provided in regulations.

20 “(ii) FIRST YEAR OF ELIGIBILITY.—

21 In the case of the first year in which a
22 participant becomes eligible to participate
23 in the plan, such election may be made
24 with respect to services to be performed
25 subsequent to the election within 30 days



1 after the date the participant becomes eli-
2 gible to participate in such plan.

3 “(iii) PERFORMANCE-BASED COM-
4 PENSATION.—In the case of any perform-
5 ance-based compensation based on services
6 performed over a period of at least 12
7 months, such election may be made no
8 later than 6 months before the end of the
9 period.

10 “(C) CHANGES IN TIME AND FORM OF DIS-
11 TRIBUTION.—The requirements of this subpara-
12 graph are met if, in the case of a plan which
13 permits under a subsequent election a delay in
14 a payment or a change in the form of
15 payment—

16 “(i) the plan requires that such elec-
17 tion may not take effect until at least 12
18 months after the date on which the elec-
19 tion is made,

20 “(ii) in the case of an election related
21 to a payment not described in clause (ii),
22 (iii), or (vi) of paragraph (2)(A), the plan
23 requires that the first payment with re-
24 spect to which such election is made be de-
25 ferred for a period of not less than 5 years



1 from the date such payment would other-
2 wise have been made, and

3 “(iii) the plan requires that any elec-
4 tion related to a payment described in
5 paragraph (2)(A)(iv) may not be made less
6 than 12 months prior to the date of the
7 first scheduled payment under such para-
8 graph.

9 “(b) RULES RELATING TO FUNDING.—

10 “(1) OFFSHORE PROPERTY IN A TRUST.—In
11 the case of assets set aside (directly or indirectly) in
12 a trust (or other arrangement determined by the
13 Secretary) for purposes of paying deferred com-
14 pensation under a nonqualified deferred compensa-
15 tion plan, for purposes of section 83 such assets
16 shall be treated as property transferred in connec-
17 tion with the performance of services whether or not
18 such assets are available to satisfy claims of general
19 creditors—

20 “(A) at the time set aside if such assets
21 (or such trust or other arrangement) are lo-
22 cated outside of the United States, or

23 “(B) at the time transferred if such assets
24 (or such trust or other arrangement) are subse-



1 quently transferred outside of the United
2 States.

3 This paragraph shall not apply to assets located in
4 a foreign jurisdiction if substantially all of the serv-
5 ices to which the nonqualified deferred compensation
6 relates are performed in such jurisdiction.

7 “(2) EMPLOYER’S FINANCIAL HEALTH.—In the
8 case of compensation deferred under a nonqualified
9 deferred compensation plan, there is a transfer of
10 property within the meaning of section 83 with re-
11 spect to such compensation as of the earlier of—

12 “(A) the date on which the plan first pro-
13 vides that assets will become restricted to the
14 provision of benefits under the plan in connec-
15 tion with a change in the employer’s financial
16 health, or

17 “(B) the date on which assets are so re-
18 stricted,

19 whether or not such assets are available to satisfy
20 claims of general creditors.

21 “(3) INCOME INCLUSION FOR OFFSHORE
22 TRUSTS AND EMPLOYER’S FINANCIAL HEALTH.—For
23 each taxable year that assets treated as transferred
24 under this subsection remain set aside in a trust or
25 other arrangement subject to paragraph (1) or (2),



1 any increase in value in, or earnings with respect to,
2 such assets shall be treated as an additional transfer
3 of property under this subsection (to the extent not
4 previously included in income).

5 “(4) INTEREST ON TAX LIABILITY PAYABLE
6 WITH RESPECT TO TRANSFERRED PROPERTY.—

7 “(A) IN GENERAL.—If amounts are re-
8 quired to be included in gross income by reason
9 of paragraph (1) or (2) for a taxable year, the
10 tax imposed by this chapter for such taxable
11 year shall be increased by the sum of—

12 “(i) the amount of interest determined
13 under subparagraph (B), and

14 “(ii) an amount equal to 20 percent of
15 the amounts required to be included in
16 gross income.

17 “(B) INTEREST.—For purposes of sub-
18 subparagraph (A), the interest determined under
19 this subparagraph for any taxable year is the
20 amount of interest at the underpayment rate
21 plus 1 percentage point on the underpayments
22 that would have occurred had the amounts so
23 required to be included in gross income by
24 paragraph (1) or (2) been includible in gross in-
25 come for the taxable year in which first de-



1 ferred or, if later, the first taxable year in
2 which such amounts are not subject to a sub-
3 stantial risk of forfeiture.

4 “(c) NO INFERENCE ON EARLIER INCOME INCLU-
5 SION OR REQUIREMENT OF LATER INCLUSION.—Nothing
6 in this section shall be construed to prevent the inclusion
7 of amounts in gross income under any other provision of
8 this chapter or any other rule of law earlier than the time
9 provided in this section. Any amount included in gross in-
10 come under this section shall not be required to be in-
11 cluded in gross income under any other provision of this
12 chapter or any other rule of law later than the time pro-
13 vided in this section.

14 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—
15 For purposes of this section—

16 “(1) NONQUALIFIED DEFERRED COMPENSA-
17 TION PLAN.—The term ‘nonqualified deferred com-
18 pensation plan’ means any plan that provides for the
19 deferral of compensation, other than—

20 “(A) a qualified employer plan, and

21 “(B) any bona fide vacation leave, sick
22 leave, compensatory time, disability pay, or
23 death benefit plan.

24 “(2) QUALIFIED EMPLOYER PLAN.—The term
25 ‘qualified employer plan’ means—



1 “(A) any plan, contract, pension, account,
2 or trust described in subparagraph (A) or (B)
3 of section 219(g)(5) (without regard to sub-
4 paragraph (A)(iii)),

5 “(B) any eligible deferred compensation
6 plan (within the meaning of section 457(b)),
7 and

8 “(C) any plan described in section 415(m).

9 “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—
10 The term ‘plan’ includes any agreement or arrange-
11 ment, including an agreement or arrangement that
12 includes one person.

13 “(4) SUBSTANTIAL RISK OF FORFEITURE.—The
14 rights of a person to compensation are subject to a
15 substantial risk of forfeiture if such person’s rights
16 to such compensation are conditioned upon the fu-
17 ture performance of substantial services by any indi-
18 vidual.

19 “(5) TREATMENT OF EARNINGS.—References to
20 deferred compensation shall be treated as including
21 references to income (whether actual or notional) at-
22 tributable to such compensation or such income.

23 “(6) AGGREGATION RULES.—Except as pro-
24 vided by the Secretary, rules similar to the rules of
25 subsections (b) and (c) of section 414 shall apply.



1 “(e) REGULATIONS.—The Secretary shall prescribe
2 such regulations as may be necessary or appropriate to
3 carry out the purposes of this section, including
4 regulations—

5 “(1) providing for the determination of
6 amounts of deferral in the case of a nonqualified de-
7 ferred compensation plan which is a defined benefit
8 plan,

9 “(2) relating to changes in the ownership and
10 control of a corporation or assets of a corporation
11 for purposes of subsection (a)(2)(A)(v),

12 “(3) exempting arrangements from the applica-
13 tion of subsection (b) if such arrangements will not
14 result in an improper deferral of United States tax
15 and will not result in assets being effectively beyond
16 the reach of creditors,

17 “(4) defining financial health for purposes of
18 subsection (b)(2), and

19 “(5) disregarding a substantial risk of for-
20 feiture in cases where necessary to carry out the
21 purposes of this section.”.

22 (b) TREATMENT OF DEFERRED AMOUNTS.—

23 (1) W-2 FORMS.—

24 (A) IN GENERAL.—Subsection (a) of sec-
25 tion 6051 (relating to receipts for employees) is



1 amended by striking “and” at the end of para-
2 graph (11), by striking the period at the end of
3 paragraph (12) and inserting “, and”, and by
4 inserting after paragraph (12) the following
5 new paragraph:

6 “(13) the total amount of deferrals for the year
7 under a nonqualified deferred compensation plan
8 (within the meaning of section 409A(d)).”.

9 (B) THRESHOLD.—Subsection (a) of sec-
10 tion 6051 is amended by adding at the end the
11 following: “In the case of the amounts required
12 to be shown by paragraph (13), the Secretary
13 may (by regulation) establish a minimum
14 amount of deferrals below which paragraph
15 (13) does not apply.”.

16 (2) WAGE WITHHOLDING.—Section 3401(a)
17 (defining wages) is amended by adding at the end
18 the following flush sentence: “The term ‘wages’ in-
19 cludes any amount includible in gross income of an
20 employee under section 409A and payment of such
21 amount shall be treated as having been made in the
22 taxable year in which the amount is so includible.”.

23 (3) OTHER REPORTING.—Section 6041 (relat-
24 ing to information at source) is amended by adding
25 at the end the following new subsection:



1 “(g) NONQUALIFIED DEFERRED COMPENSATION.—

2 Subsection (a) shall apply to—

3 “(1) any deferrals for the year under a non-
4 qualified deferred compensation plan (within the
5 meaning of section 409A(d)), whether or not paid,
6 except that this paragraph shall not apply to deferr-
7 rals which are required to be reported under section
8 6051(a)(13) (without regard to any de minimis ex-
9 ception), and

10 “(2) any amount includible under section 409A
11 and which is not treated as wages under section
12 3401(a).”.

13 (c) CLERICAL AMENDMENT.—The table of sections
14 for such subpart A of part I of subchapter D of chapter
15 1 is amended by adding at the end the following new item:

“Sec. 409A. Inclusion in gross income of deferred compensation
under nonqualified deferred compensation plans.”.

16 (d) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall apply to amounts deferred after
19 December 31, 2004.

20 (2) SPECIAL RULES.—

21 (A) EARNINGS.—The amendments made
22 by this section shall apply to earnings on de-
23 ferred compensation only to the extent that
24 such amendments apply to such compensation.



1 (B) MATERIAL MODIFICATIONS.—For pur-
2 poses of this subsection, amounts deferred in
3 taxable years beginning before January 1,
4 2005, shall be treated as amounts deferred in
5 a taxable year beginning on or after such date
6 if the plan under which the deferral is made is
7 materially modified after October 3, 2004, un-
8 less such modification is pursuant to the guid-
9 ance issued under subsection (f).

10 (3) EXCEPTION FOR NONELECTIVE DEFERRED
11 COMPENSATION.—The amendments made by this
12 section shall not apply to any nonelective deferred
13 compensation to which section 457 of the Internal
14 Revenue Code of 1986 does not apply by reason of
15 section 457(e)(12) of such Code, but only if such
16 compensation is provided under a nonqualified de-
17 ferred compensation plan—

18 (A) which was in existence on May 1,
19 2004,

20 (B) which was providing nonelective de-
21 ferred compensation described in such section
22 457(e)(12) on such date, and

23 (C) which is established or maintained by
24 an organization incorporated on July 2, 1974.



1 If, after May 1, 2004, a plan described in the pre-
2 ceding sentence adopts a plan amendment which
3 provides a material change in the classes of individ-
4 uals eligible to participate in the plan, this para-
5 graph shall not apply to any nonelective deferred
6 compensation provided under the plan on or after
7 the date of the adoption of the amendment.

8 (e) GUIDANCE RELATING TO CHANGE OF OWNER-
9 SHIP OR CONTROL.—Not later than 90 days after the date
10 of the enactment of this Act, the Secretary of the Treasury
11 shall issue guidance on what constitutes a change in own-
12 ership or effective control for purposes of section 409A
13 of the Internal Revenue Code of 1986, as added by this
14 section.

15 (f) GUIDANCE RELATING TO TERMINATION OF CER-
16 TAIN EXISTING ARRANGEMENTS.—Not later than 60 days
17 after the date of the enactment of this Act, the Secretary
18 of the Treasury shall issue guidance providing a limited
19 period during which a nonqualified deferred compensation
20 plan adopted before December 31, 2004, may, without vio-
21 lating the requirements of paragraphs (2), (3), and (4)
22 of section 409A(a) of the Internal Revenue Code of 1986
23 (as added by this section), be amended—

24 (1) to provide that a participant may terminate
25 participation in the plan, or cancel an outstanding



1 deferral election with regard to amounts deferred
2 after December 31, 2004, but only if amounts sub-
3 ject to the termination or cancellation are includible
4 in income of the participant as earned (or, if later,
5 when no longer subject to substantial risk of for-
6 feiture), and

7 (2) to conform to the requirements of such sec-
8 tion 409A with regard to amounts deferred after De-
9 cember 31, 2004.

10 **SEC. 886. EXTENSION OF AMORTIZATION OF INTANGIBLES**
11 **TO SPORTS FRANCHISES.**

12 (a) IN GENERAL.—Section 197(e) (relating to excep-
13 tions to definition of section 197 intangible) is amended
14 by striking paragraph (6) and by redesignating para-
15 graphs (7) and (8) as paragraphs (6) and (7), respectively.

16 (b) CONFORMING AMENDMENTS.—

17 (1)(A) Section 1056 (relating to basis limitation
18 for player contracts transferred in connection with
19 the sale of a franchise) is repealed.

20 (B) The table of sections for part IV of sub-
21 chapter O of chapter 1 is amended by striking the
22 item relating to section 1056.

23 (2) Section 1245(a) (relating to gain from dis-
24 position of certain depreciable property) is amended
25 by striking paragraph (4).



1 (3) Section 1253 (relating to transfers of fran-
2 chises, trademarks, and trade names) is amended by
3 striking subsection (e).

4 (c) EFFECTIVE DATES.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), the amendments made by this section
7 shall apply to property acquired after the date of the
8 enactment of this Act.

9 (2) SECTION 1245.—The amendment made by
10 subsection (b)(2) shall apply to franchises acquired
11 after the date of the enactment of this Act.

12 **SEC. 887. MODIFICATION OF CONTINUING LEVY ON PAY-**
13 **MENTS TO FEDERAL VENDERS.**

14 (a) IN GENERAL.—Section 6331(h) (relating to con-
15 tinuing levy on certain payments) is amended by adding
16 at the end the following new paragraph:

17 “(3) INCREASE IN LEVY FOR CERTAIN PAY-
18 MENTS.—Paragraph (1) shall be applied by sub-
19 stituting ‘100 percent’ for ‘15 percent’ in the case
20 of any specified payment due to a vendor of goods
21 or services sold or leased to the Federal Govern-
22 ment.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall take effect on the date of the enactment
25 of this Act.



1 **SEC. 888. MODIFICATION OF STRADDLE RULES.**

2 (a) RULES RELATING TO IDENTIFIED STRADDLES.—

3 (1) IN GENERAL.—Subparagraph (A) of section
4 1092(a)(2) (relating to special rule for identified
5 straddles) is amended to read as follows:

6 “(A) IN GENERAL.—In the case of any
7 straddle which is an identified straddle—

8 “(i) paragraph (1) shall not apply
9 with respect to identified positions com-
10 prising the identified straddle,

11 “(ii) if there is any loss with respect
12 to any identified position of the identified
13 straddle, the basis of each of the identified
14 offsetting positions in the identified strad-
15 dle shall be increased by an amount which
16 bears the same ratio to the loss as the un-
17 recognized gain with respect to such offset-
18 ting position bears to the aggregate unrec-
19 ognized gain with respect to all such off-
20 setting positions, and

21 “(iii) any loss described in clause (ii)
22 shall not otherwise be taken into account
23 for purposes of this title.”.

24 (2) IDENTIFIED STRADDLE.—Section
25 1092(a)(2)(B) (defining identified straddle) is
26 amended—



1 (A) by striking clause (ii) and inserting the
2 following:

3 “(ii) to the extent provided by regula-
4 tions, the value of each position of which
5 (in the hands of the taxpayer immediately
6 before the creation of the straddle) is not
7 less than the basis of such position in the
8 hands of the taxpayer at the time the
9 straddle is created, and”, and

10 (B) by adding at the end the following new
11 flush sentence:

12 “The Secretary shall prescribe regulations
13 which specify the proper methods for clearly
14 identifying a straddle as an identified straddle
15 (and the positions comprising such straddle),
16 which specify the rules for the application of
17 this section for a taxpayer which fails to prop-
18 erly identify the positions of an identified strad-
19 dle, and which specify the ordering rules in
20 cases where a taxpayer disposes of less than an
21 entire position which is part of an identified
22 straddle.”.

23 (3) UNRECOGNIZED GAIN.—Section 1092(a)(3)
24 (defining unrecognized gain) is amended by redesign-
25 ating subparagraph (B) as subparagraph (C) and



1 by inserting after subparagraph (A) the following
2 new subparagraph:

3 “(B) SPECIAL RULE FOR IDENTIFIED
4 STRADDLES.—For purposes of paragraph
5 (2)(A)(ii), the unrecognized gain with respect to
6 any identified offsetting position shall be the ex-
7 cess of the fair market value of the position at
8 the time of the determination over the fair mar-
9 ket value of the position at the time the tax-
10 payer identified the position as a position in an
11 identified straddle.”.

12 (4) CONFORMING AMENDMENT.—Section
13 1092(e)(2) is amended by striking subparagraph (B)
14 and by redesignating subparagraph (C) as subpara-
15 graph (B).

16 (b) PHYSICALLY SETTLED POSITIONS.—Section
17 1092(d) (relating to definitions and special rules) is
18 amended by adding at the end the following new para-
19 graph:

20 “(8) SPECIAL RULES FOR PHYSICALLY SET-
21 TLED POSITIONS.—For purposes of subsection (a), if
22 a taxpayer settles a position which is part of a strad-
23 dle by delivering property to which the position re-
24 lates (and such position, if terminated, would result



1 in a realization of a loss), then such taxpayer shall
2 be treated as if such taxpayer—

3 “(A) terminated the position for its fair
4 market value immediately before the settlement,
5 and

6 “(B) sold the property so delivered by the
7 taxpayer at its fair market value.”.

8 (c) REPEAL OF STOCK EXCEPTION.—

9 (1) IN GENERAL.—Paragraph (3) of section
10 1092(d) (relating to definitions and special rules) is
11 amended to read as follows:

12 “(3) SPECIAL RULES FOR STOCK.—For pur-
13 poses of paragraph (1)—

14 “(A) IN GENERAL.—In the case of stock,
15 the term ‘personal property’ includes stock only
16 if—

17 “(i) such stock is of a type which is
18 actively traded and at least 1 of the posi-
19 tions offsetting such stock is a position
20 with respect to such stock or substantially
21 similar or related property, or

22 “(ii) such stock is of a corporation
23 formed or availed of to take positions in
24 personal property which offset positions
25 taken by any shareholder.



1 (b) EFFECTIVE DATE.—

2 (1) SALES, ETC.—The amendments made by
3 subsection (a) shall apply to sales and uses on or
4 after the first day of the first month which begins
5 more than 4 weeks after the date of the enactment
6 of this Act.

7 (2) DELIVERIES.—For purposes of paragraph
8 (1) and section 4131 of the Internal Revenue Code
9 of 1986, in the case of sales on or before the effec-
10 tive date described in such paragraph for which de-
11 livery is made after such date, the delivery date shall
12 be considered the sale date.

13 **SEC. 890. ADDITION OF VACCINES AGAINST INFLUENZA TO**
14 **LIST OF TAXABLE VACCINES.**

15 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-
16 able vaccine), as amended by this Act, is amended by add-
17 ing at the end the following new subparagraph:

18 “(N) Any trivalent vaccine against influ-
19 enza.”.

20 (b) EFFECTIVE DATE.—

21 (1) SALES, ETC.—The amendment made by this
22 section shall apply to sales and uses on or after the
23 later of—



1 (A) the first day of the first month which
2 begins more than 4 weeks after the date of the
3 enactment of this Act, or

4 (B) the date on which the Secretary of
5 Health and Human Services lists any vaccine
6 against influenza for purposes of compensation
7 for any vaccine-related injury or death through
8 the Vaccine Injury Compensation Trust Fund.

9 (2) DELIVERIES.—For purposes of paragraph
10 (1) and section 4131 of the Internal Revenue Code
11 of 1986, in the case of sales on or before the effec-
12 tive date described in such paragraph for which de-
13 livery is made after such date, the delivery date shall
14 be considered the sale date.

15 **SEC. 891. EXTENSION OF IRS USER FEES.**

16 (a) IN GENERAL.—Section 7528(c) (relating to ter-
17 mination) is amended by striking “December 31, 2004”
18 and inserting “September 30, 2014”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to requests after the date of the
21 enactment of this Act.

22 **SEC. 892. COBRA FEES.**

23 (a) USE OF MERCHANDISE PROCESSING FEE.—Sec-
24 tion 13031(f) of the Consolidated Omnibus Budget Rec-
25 onciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—



1 (1) in paragraph (1), by aligning subparagraph
2 (B) with subparagraph (A); and
3 (2) in paragraph (2), by striking “commercial
4 operations” and all that follows through “proc-
5 essing.” and inserting “customs revenue functions as
6 defined in section 415 of the Homeland Security Act
7 of 2002 (other than functions performed by the Of-
8 fice of International Affairs referred to in section
9 415(8) of that Act), and for automation (including
10 the Automation Commercial Environment computer
11 system), and for no other purpose. To the extent
12 that funds in the Customs User Fee Account are in-
13 sufficient to pay the costs of such customs revenue
14 functions, customs duties in an amount equal to the
15 amount of such insufficiency shall be available, to
16 the extent provided for in appropriations Acts, to
17 pay the costs of such customs revenue functions in
18 the amount of such insufficiency, and shall be avail-
19 able for no other purpose. The provisions of the first
20 and second sentences of this paragraph specifying
21 the purposes for which amounts in the Customs
22 User Fee Account may be made available shall not
23 be superseded except by a provision of law which
24 specifically modifies or supersedes such provisions.”.



1 (b) REIMBURSEMENT OF APPROPRIATIONS FROM
2 COBRA FEES.—Section 13031(f)(3) of the Consolidated
3 Omnibus Budget Reconciliation Act of 1985 (19 U.S.C.
4 58c(f)(3)) is amended by adding at the end the following:

5 “(E) Nothing in this paragraph shall be construed
6 to preclude the use of appropriated funds, from sources
7 other than the fees collected under subsection (a), to pay
8 the costs set forth in clauses (i), (ii), and (iii) of subpara-
9 graph (A).”.

10 (c) SENSE OF CONGRESS; EFFECTIVE PERIOD FOR
11 COLLECTING FEES; STANDARD FOR SETTING FEES.—

12 (1) SENSE OF CONGRESS.—The Congress finds
13 that—

14 (A) the fees set forth in paragraphs (1)
15 through (8) of subsection (a) of section 13031
16 of the Consolidated Omnibus Budget Reconcili-
17 ation Act of 1985 have been reasonably related
18 to the costs of providing customs services in
19 connection with the activities or items for which
20 the fees have been charged under such para-
21 graphs; and

22 (B) the fees collected under such para-
23 graphs have not exceeded, in the aggregate, the
24 amounts paid for the costs described in sub-
25 section (f)(3)(A) incurred in providing customs



1 services in connection with the activities or
2 items for which the fees were charged under
3 such paragraphs.

4 (2) EFFECTIVE PERIOD; STANDARD FOR SET-
5 TING FEES.—Section 13031(j)(3) of the Consoli-
6 dated Omnibus Budget Reconciliation Act of 1985 is
7 amended to read as follows:

8 “(3)(A) Fees may not be charged under paragraphs
9 (9) and (10) of subsection (a) after September 30, 2014.

10 “(B)(i) Subject to clause (ii), Fees may not be
11 charged under paragraphs (1) through (8) of subsection
12 (a) after September 30, 2014.

13 “(ii) In fiscal year 2006 and in each succeeding fiscal
14 year for which fees under paragraphs (1) through (8) of
15 subsection (a) are authorized—

16 “(I) the Secretary of the Treasury shall charge
17 fees under each such paragraph in amounts that are
18 reasonably related to the costs of providing customs
19 services in connection with the activity or item for
20 which the fee is charged under such paragraph, ex-
21 cept that in no case may the fee charged under any
22 such paragraph exceed by more than 10 percent the
23 amount otherwise prescribed by such paragraph;

24 “(II) the amount of fees collected under such
25 paragraphs may not exceed, in the aggregate, the



1 amounts paid in that fiscal year for the costs de-
2 scribed in subsection (f)(3)(A) incurred in providing
3 customs services in connection with the activity or
4 item for which the fees are charged under such
5 paragraphs;

6 “(III) a fee may not be collected under any
7 such paragraph except to the extent such fee will be
8 expended to pay the costs described in subsection
9 (f)(3)(A) incurred in providing customs services in
10 connection with the activity or item for which the fee
11 is charged under such paragraph; and

12 “(IV) any fee collected under any such para-
13 graph shall be available for expenditure only to pay
14 the costs described in subsection (f)(3)(A) incurred
15 in providing customs services in connection with the
16 activity or item for which the fee is charged under
17 such paragraph.”.

18 (d) CLERICAL AMENDMENTS.—Section 13031 of the
19 Consolidated Omnibus Budget Reconciliation Act of 1985
20 is amended—

21 (1) in subsection (a)(5)(B), by striking “\$1.75”
22 and inserting “\$1.75.”;

23 (2) in subsection (b)—

24 (A) in paragraph (1)(A), by aligning clause

25 (iii) with clause (ii);



1 (B) in paragraph (7), by striking “para-
2 graphs” and inserting “paragraph”; and

3 (C) in paragraph (9), by aligning subpara-
4 graph (B) with subparagraph (A); and

5 (3) in subsection (e)(2), by aligning subpara-
6 graph (B) with subparagraph (A).

7 (e) STUDY OF ALL FEES COLLECTED BY DEPART-
8 MENT OF HOMELAND SECURITY.—The Secretary of the
9 Treasury shall conduct a study of all the fees collected
10 by the Department of Homeland Security, and shall sub-
11 mit to the Congress, not later than September 30, 2005,
12 a report containing the recommendations of the Secretary
13 on—

14 (1) what fees should be eliminated;

15 (2) what the rate of fees retained should be;

16 and

17 (3) any other recommendations with respect to
18 the fees that the Secretary considers appropriate.

19 **SEC. 893. PROHIBITION ON NONRECOGNITION OF GAIN**
20 **THROUGH COMPLETE LIQUIDATION OF**
21 **HOLDING COMPANY.**

22 (a) IN GENERAL.—Section 332 is amended by adding
23 at the end the following new subsection:

24 “(d) RECOGNITION OF GAIN ON LIQUIDATION OF
25 CERTAIN HOLDING COMPANIES.—



1 “(1) IN GENERAL.—In the case of any distribu-
2 tion to a foreign corporation in complete liquidation
3 of an applicable holding company—

4 “(A) subsection (a) and section 331 shall
5 not apply to such distribution, and

6 “(B) such distribution shall be treated as
7 a distribution to which section 301 applies.

8 “(2) APPLICABLE HOLDING COMPANY.—For
9 purposes of this subsection—

10 “(A) IN GENERAL.—The term ‘applicable
11 holding company’ means any domestic
12 corporation—

13 “(i) which is a common parent of an
14 affiliated group,

15 “(ii) stock of which is directly owned
16 by the distributee foreign corporation,

17 “(iii) substantially all of the assets of
18 which consist of stock in other members of
19 such affiliated group, and

20 “(iv) which has not been in existence
21 at all times during the 5 years immediately
22 preceding the date of the liquidation.

23 “(B) AFFILIATED GROUP.—For purposes
24 of this subsection, the term ‘affiliated group’
25 has the meaning given such term by section



1 1504(a) (without regard to paragraphs (2) and
2 (4) of section 1504(b)).

3 “(3) COORDINATION WITH SUBPART F.—If the
4 distributee of a distribution described in paragraph
5 (1) is a controlled foreign corporation (as defined in
6 section 957), then notwithstanding paragraph (1) or
7 subsection (a), such distribution shall be treated as
8 a distribution to which section 331 applies.

9 “(4) REGULATIONS.—The Secretary shall pro-
10 vide such regulations as appropriate to prevent the
11 abuse of this subsection, including regulations which
12 provide, for the purposes of clause (iv) of paragraph
13 (2)(A), that a corporation is not in existence for any
14 period unless it is engaged in the active conduct of
15 a trade or business or owns a significant ownership
16 interest in another corporation so engaged.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to distributions in complete liq-
19 uidation occurring on or after the date of the enactment
20 of this Act.

21 **SEC. 894. EFFECTIVELY CONNECTED INCOME TO INCLUDE**
22 **CERTAIN FOREIGN SOURCE INCOME.**

23 (a) IN GENERAL.—Section 864(c)(4)(B) (relating to
24 treatment of income from sources without the United



1 States as effectively connected income) is amended by add-
2 ing at the end the following new flush sentence:

3 “Any income or gain which is equivalent to any
4 item of income or gain described in clause (i),
5 (ii), or (iii) shall be treated in the same manner
6 as such item for purposes of this subpara-
7 graph.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to taxable years beginning after
10 the date of the enactment of this Act.

11 **SEC. 895. RECAPTURE OF OVERALL FOREIGN LOSSES ON**
12 **SALE OF CONTROLLED FOREIGN CORPORA-**
13 **TION.**

14 (a) IN GENERAL.—Section 904(f)(3) (relating to dis-
15 positions) is amending by adding at the end the following
16 new subparagraph:

17 “(D) APPLICATION TO CERTAIN DISPOSI-
18 TIONS OF STOCK IN CONTROLLED FOREIGN
19 CORPORATION.—

20 “(i) IN GENERAL.—This paragraph
21 shall apply to an applicable disposition in
22 the same manner as if it were a disposition
23 of property described in subparagraph (A),
24 except that the exception contained in sub-
25 paragraph (C)(i) shall not apply.



1 “(ii) APPLICABLE DISPOSITION.—For
2 purposes of clause (i), the term ‘applicable
3 disposition’ means any disposition of any
4 share of stock in a controlled foreign cor-
5 poration in a transaction or series of trans-
6 actions if, immediately before such trans-
7 action or series of transactions, the tax-
8 payer owned more than 50 percent (by
9 vote or value) of the stock of the controlled
10 foreign corporation. Such term shall not
11 include a disposition described in clause
12 (iii) or (iv), except that clause (i) shall
13 apply to any gain recognized on any such
14 disposition.

15 “(iii) EXCEPTION FOR CERTAIN EX-
16 CHANGES WHERE OWNERSHIP PERCENT-
17 AGE RETAINED.—A disposition shall not be
18 treated as an applicable disposition under
19 clause (ii) if it is part of a transaction or
20 series of transactions—

21 “(I) to which section 351 or 721
22 applies, or under which the transferor
23 receives stock in a foreign corporation
24 in exchange for the stock in the con-
25 trolled foreign corporation and the



1 stock received is exchanged basis
2 property (as defined in section
3 7701(a)(44)), and

4 “(II) immediately after which,
5 the transferor owns (by vote or value)
6 at least the same percentage of stock
7 in the controlled foreign corporation
8 (or, if the controlled foreign corpora-
9 tion is not in existence after such
10 transaction or series of transactions,
11 in another foreign corporation stock
12 in which was received by the trans-
13 feror in exchange for stock in the con-
14 trolled foreign corporation) as the per-
15 centage of stock in the controlled for-
16 eign corporation which the taxpayer
17 owned immediately before such trans-
18 action or series of transactions.

19 “(iv) EXCEPTION FOR CERTAIN ASSET
20 ACQUISITIONS.—A disposition shall not be
21 treated as an applicable disposition under
22 clause (ii) if it is part of a transaction or
23 series of transactions in which the tax-
24 payer (or any member of a controlled
25 group of corporations filing a consolidated



1 return under section 1501 which includes
2 the taxpayer) acquires the assets of a con-
3 trolled foreign corporation in exchange for
4 the shares of the controlled foreign cor-
5 poration in a liquidation described in sec-
6 tion 332 or a reorganization described in
7 section 368(a)(1).

8 “(v) CONTROLLED FOREIGN COR-
9 PORATION.—For purposes of this subpara-
10 graph, the term ‘controlled foreign cor-
11 poration’ has the meaning given such term
12 by section 957.

13 “(vi) STOCK OWNERSHIP.—For pur-
14 poses of this subparagraph, ownership of
15 stock shall be determined under the rules
16 of subsections (a) and (b) of section 958.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to dispositions after the date of
19 the enactment of this Act.

20 **SEC. 896. RECOGNITION OF CANCELLATION OF INDEBTED-**
21 **NESS INCOME REALIZED ON SATISFACTION**
22 **OF DEBT WITH PARTNERSHIP INTEREST.**

23 (a) IN GENERAL.—Paragraph (8) of section 108(e)
24 (relating to general rules for discharge of indebtedness (in-



1 cluding discharges not in title 11 cases or insolvency) is
2 amended to read as follows:

3 “(8) INDEBTEDNESS SATISFIED BY CORPORATE
4 STOCK OR PARTNERSHIP INTEREST.—For purposes
5 of determining income of a debtor from discharge of
6 indebtedness, if—

7 “(A) a debtor corporation transfers stock,
8 or

9 “(B) a debtor partnership transfers a cap-
10 ital or profits interest in such partnership,
11 to a creditor in satisfaction of its recourse or non-
12 recourse indebtedness, such corporation or partner-
13 ship shall be treated as having satisfied the indebt-
14 edness with an amount of money equal to the fair
15 market value of the stock or interest. In the case of
16 any partnership, any discharge of indebtedness in-
17 come recognized under this paragraph shall be in-
18 cluded in the distributive shares of taxpayers which
19 were the partners in the partnership immediately be-
20 fore such discharge.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply with respect to cancellations of in-
23 debtedness occurring on or after the date of the enactment
24 of this Act.



1 **SEC. 897. DENIAL OF INSTALLMENT SALE TREATMENT FOR**
2 **ALL READILY TRADABLE DEBT.**

3 (a) IN GENERAL.—Section 453(f)(4)(B) (relating to
4 purchaser evidences of indebtedness payable on demand
5 or readily tradable) is amended by striking “is issued by
6 a corporation or a government or political subdivision
7 thereof and”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to sales occurring on or after the
10 date of the enactment of this Act.

11 **SEC. 898. MODIFICATION OF TREATMENT OF TRANSFERS**
12 **TO CREDITORS IN DIVISIVE REORGANIZA-**
13 **TIONS.**

14 (a) IN GENERAL.—Section 361(b)(3) (relating to
15 treatment of transfers to creditors) is amended by adding
16 at the end the following new sentence: “In the case of a
17 reorganization described in section 368(a)(1)(D) with re-
18 spect to which stock or securities of the corporation to
19 which the assets are transferred are distributed in a trans-
20 action which qualifies under section 355, this paragraph
21 shall apply only to the extent that the sum of the money
22 and the fair market value of other property transferred
23 to such creditors does not exceed the adjusted bases of
24 such assets transferred.”.

25 (b) LIABILITIES IN EXCESS OF BASIS.—Section
26 357(c)(1)(B) is amended by inserting “with respect to



1 which stock or securities of the corporation to which the
2 assets are transferred are distributed in a transaction
3 which qualifies under section 355” after “section
4 368(a)(1)(D)”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to transfers of money or other
7 property, or liabilities assumed, in connection with a reor-
8 ganization occurring on or after the date of the enactment
9 of this Act.

10 **SEC. 899. CLARIFICATION OF DEFINITION OF NON-**
11 **QUALIFIED PREFERRED STOCK.**

12 (a) IN GENERAL.—Section 351(g)(3)(A) is amended
13 by adding at the end the following: “Stock shall not be
14 treated as participating in corporate growth to any signifi-
15 cant extent unless there is a real and meaningful likeli-
16 hood of the shareholder actually participating in the earn-
17 ings and growth of the corporation.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to transactions after May 14,
20 2003.

21 **SEC. 900. MODIFICATION OF DEFINITION OF CONTROLLED**
22 **GROUP OF CORPORATIONS.**

23 (a) IN GENERAL.—Section 1563(a)(2) (relating to
24 brother-sister controlled group) is amended by striking



1 “possessing—” and all that follows through “(B)” and in-
2 serting “possessing”.

3 (b) APPLICATION OF EXISTING RULES TO OTHER
4 CODE PROVISIONS.—Section 1563(f) (relating to other
5 definitions and rules) is amended by adding at the end
6 the following new paragraph:

7 “(5) BROTHER-SISTER CONTROLLED GROUP
8 DEFINITION FOR PROVISIONS OTHER THAN THIS
9 PART.—

10 “(A) IN GENERAL.—Except as specifically
11 provided in an applicable provision, subsection
12 (a)(2) shall be applied to an applicable provi-
13 sion as if it read as follows:

14 ““(2) BROTHER-SISTER CONTROLLED GROUP.—
15 Two or more corporations if 5 or fewer persons who
16 are individuals, estates, or trusts own (within the
17 meaning of subsection (d)(2) stock possessing—

18 ““(A) at least 80 percent of the total com-
19 bined voting power of all classes of stock enti-
20 tled to vote, or at least 80 percent of the total
21 value of shares of all classes of stock, of each
22 corporation, and

23 ““(B) more than 50 percent of the total
24 combined voting power of all classes of stock
25 entitled to vote or more than 50 percent of the



1 total value of shares of all classes of stock of
2 each corporation, taking into account the stock
3 ownership of each such person only to the ex-
4 tent such stock ownership is identical with re-
5 spect to each such corporation.’

6 “(B) APPLICABLE PROVISION.—For pur-
7 poses of this paragraph, an applicable provision
8 is any provision of law (other than this part)
9 which incorporates the definition of controlled
10 group of corporations under subsection (a).”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to taxable years beginning after
13 the date of the enactment of this Act.

14 **SEC. 901. CLASS LIVES FOR UTILITY GRADING COSTS.**

15 (a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E)
16 (defining 15-year property), as amended by this Act, is
17 amended by striking “and” at the end of clause (iv), by
18 striking the period at the end of clause (v) and inserting
19 “, and”, and by adding at the end the following new
20 clause:

21 “(vi) initial clearing and grading land
22 improvements with respect to gas utility
23 property.”.



1 (b) ELECTRIC UTILITY PROPERTY.—Section
2 168(e)(3) is amended by adding at the end the following
3 new subparagraph:

4 “(F) 20-YEAR PROPERTY.—The term ‘20-
5 year property’ means initial clearing and grad-
6 ing land improvements with respect to any elec-
7 tric utility transmission and distribution
8 plant.”.

9 (c) CONFORMING AMENDMENT.—The table contained
10 in section 168(g)(3)(B), as amended by this Act, is
11 amended by inserting after the item relating to subpara-
12 graph (E)(v) the following new items:

“(E)(vi)	20”.
“(F)	25”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to property placed in service after
15 the date of the enactment of this Act.

16 **SEC. 902. CONSISTENT AMORTIZATION OF PERIODS FOR IN-**
17 **TANGIBLES.**

18 (a) START-UP EXPENDITURES.—

19 (1) ALLOWANCE OF DEDUCTION.—Paragraph
20 (1) of section 195(b) (relating to start-up expendi-
21 tures) is amended to read as follows:

22 “(1) ALLOWANCE OF DEDUCTION.—If a tax-
23 payer elects the application of this subsection with
24 respect to any start-up expenditures—



1 “(A) the taxpayer shall be allowed a deduc-
2 tion for the taxable year in which the active
3 trade or business begins in an amount equal to
4 the lesser of—

5 “(i) the amount of start-up expendi-
6 tures with respect to the active trade or
7 business, or

8 “(ii) \$5,000, reduced (but not below
9 zero) by the amount by which such start-
10 up expenditures exceed \$50,000, and

11 “(B) the remainder of such start-up ex-
12 penditures shall be allowed as a deduction rat-
13 ably over the 180-month period beginning with
14 the month in which the active trade or business
15 begins.”.

16 (2) CONFORMING AMENDMENT.—Subsection (b)
17 of section 195 is amended by striking “AMORTIZE”
18 and inserting “DEDUCT” in the heading.

19 (b) ORGANIZATIONAL EXPENDITURES.—Subsection
20 (a) of section 248 (relating to organizational expenditures)
21 is amended to read as follows:

22 “(a) ELECTION TO DEDUCT.—If a corporation elects
23 the application of this subsection (in accordance with reg-
24 ulations prescribed by the Secretary) with respect to any
25 organizational expenditures—



1 “(1) the corporation shall be allowed a deduc-
2 tion for the taxable year in which the corporation be-
3 gins business in an amount equal to the lesser of—

4 “(A) the amount of organizational expendi-
5 tures with respect to the taxpayer, or

6 “(B) \$5,000, reduced (but not below zero)
7 by the amount by which such organizational ex-
8 penditures exceed \$50,000, and

9 “(2) the remainder of such organizational ex-
10 penditures shall be allowed as a deduction ratably
11 over the 180-month period beginning with the month
12 in which the corporation begins business.”.

13 (c) TREATMENT OF ORGANIZATIONAL AND SYNDICA-
14 TION FEES OR PARTNERSHIPS.—

15 (1) IN GENERAL.—Section 709(b) (relating to
16 amortization of organization fees) is amended by re-
17 designating paragraph (2) as paragraph (3) and by
18 amending paragraph (1) to read as follows:

19 “(1) ALLOWANCE OF DEDUCTION.—If a tax-
20 payer elects the application of this subsection (in ac-
21 cordance with regulations prescribed by the Sec-
22 retary) with respect to any organizational
23 expenses—

24 “(A) the taxpayer shall be allowed a deduc-
25 tion for the taxable year in which the partner-



1 ship begins business in an amount equal to the
2 lesser of—

3 “(i) the amount of organizational ex-
4 penses with respect to the partnership, or

5 “(ii) \$5,000, reduced (but not below
6 zero) by the amount by which such organi-
7 zational expenses exceed \$50,000, and

8 “(B) the remainder of such organizational
9 expenses shall be allowed as a deduction ratably
10 over the 180-month period beginning with the
11 month in which the partnership begins busi-
12 ness.

13 “(2) DISPOSITIONS BEFORE CLOSE OF AMORTI-
14 ZATION PERIOD.—In any case in which a partner-
15 ship is liquidated before the end of the period to
16 which paragraph (1)(B) applies, any deferred ex-
17 penses attributable to the partnership which were
18 not allowed as a deduction by reason of this section
19 may be deducted to the extent allowable under sec-
20 tion 165.”.

21 (2) CONFORMING AMENDMENT.—Subsection (b)
22 of section 709 is amended by striking “AMORTIZA-
23 TION” and inserting “DEDUCTION” in the heading.



1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid or incurred after
3 the date of the enactment of this Act.

4 **SEC. 903. FREEZE OF PROVISIONS REGARDING SUSPEN-**
5 **SION OF INTEREST WHERE SECRETARY FAILS**
6 **TO CONTACT TAXPAYER.**

7 (a) IN GENERAL.—Section 6404(g) (relating to sus-
8 pension of interest and certain penalties where Secretary
9 fails to contact taxpayer) is amended by striking “1-year
10 period (18-month period in the case of taxable years begin-
11 ning before January 1, 2004)” both places it appears and
12 inserting “18-month period”.

13 (b) EXCEPTION FOR GROSS MISSTATEMENT.—Sec-
14 tion 6404(g)(2) (relating to exceptions) is amended by
15 striking “or” at the end of subparagraph (C), by redesign-
16 ating subparagraph (D) as subparagraph (E), and by in-
17 serting after subparagraph (C) the following new subpara-
18 graph:

19 “(D) any interest, penalty, addition to tax,
20 or additional amount with respect to any gross
21 misstatement; or”.

22 (c) EXCEPTION FOR LISTED AND REPORTABLE
23 TRANSACTIONS.—Section 6404(g)(2) (relating to excep-
24 tions), as amended by subsection (b), is amended by strik-
25 ing “or” at the end of subparagraph (D), by redesignating



1 subparagraph (E) as subparagraph (F), and by inserting
2 after subparagraph (D) the following new subparagraph:

3 “(E) any interest, penalty, addition to tax,
4 or additional amount with respect to any re-
5 portable transaction with respect to which the
6 requirement of section 6664(d)(2)(A) is not met
7 and any listed transaction (as defined in
8 6707A(c)); or”.

9 (d) EFFECTIVE DATES.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), the amendments made by this section
12 shall apply to taxable years beginning after Decem-
13 ber 31, 2003.

14 (2) EXCEPTION FOR REPORTABLE OR LISTED
15 TRANSACTIONS.—The amendments made by sub-
16 section (c) shall apply with respect to interest accru-
17 ing after October 3, 2004.

18 **SEC. 904. INCREASE IN WITHHOLDING FROM SUPPLE-**
19 **MENTAL WAGE PAYMENTS IN EXCESS OF**
20 **\$1,000,000.**

21 (a) IN GENERAL.—If an employer elects under
22 Treasury Regulation 31.3402(g)-1 to determine the
23 amount to be deducted and withheld from any supple-
24 mental wage payment by using a flat percentage rate, the
25 rate to be used in determining the amount to be so de-



1 ducted and withheld shall not be less than 28 percent (or
2 the corresponding rate in effect under section 1(i)(2) of
3 the Internal Revenue Code of 1986 for taxable years be-
4 ginning in the calendar year in which the payment is
5 made).

6 (b) SPECIAL RULE FOR LARGE PAYMENTS.—

7 (1) IN GENERAL.—Notwithstanding subsection
8 (a), if the supplemental wage payment, when added
9 to all such payments previously made by the em-
10 ployer to the employee during the calendar year, ex-
11 ceeds \$1,000,000, the rate used with respect to such
12 excess shall be equal to the maximum rate of tax in
13 effect under section 1 of such Code for taxable years
14 beginning in such calendar year.

15 (2) AGGREGATION.—All persons treated as a
16 single employer under subsection (a) or (b) of sec-
17 tion 52 of the Internal Revenue Code of 1986 shall
18 be treated as a single employer for purposes of this
19 subsection.

20 (c) CONFORMING AMENDMENT.—Section 13273 of
21 the Revenue Reconciliation Act of 1993 (Public Law 103–
22 66) is repealed.

23 (d) EFFECTIVE DATE.—The provisions of, and the
24 amendment made by, this section shall apply to payments
25 made after December 31, 2004.



1 **SEC. 905. TREATMENT OF SALE OF STOCK ACQUIRED PUR-**
2 **SUANT TO EXERCISE OF STOCK OPTIONS TO**
3 **COMPLY WITH CONFLICT-OF-INTEREST RE-**
4 **QUIREMENTS.**

5 (a) IN GENERAL.—Section 421 (relating to general
6 rules for certain stock options) is amended by adding at
7 the end the following new subsection:

8 “(d) CERTAIN SALES TO COMPLY WITH CONFLICT-
9 OF-INTEREST REQUIREMENTS.—If—

10 “(1) a share of stock is transferred to an eligi-
11 ble person (as defined in section 1043(b)(1)) pursu-
12 ant to such person’s exercise of an option to which
13 this part applies, and

14 “(2) such share is disposed of by such person
15 pursuant to a certificate of divestiture (as defined in
16 section 1043(b)(2)),
17 such disposition shall be treated as meeting the require-
18 ments of section 422(a)(1) or 423(a)(1), whichever is ap-
19 plicable.”

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to sales after the date of the enact-
22 ment of this Act.

23 **SEC. 906. APPLICATION OF BASIS RULES TO NONRESIDENT**
24 **ALIENS.**

25 (a) IN GENERAL.—Section 72 (relating to annuities
26 and certain proceeds of endowment and life insurance con-



1 tracts) is amended by redesignating subsection (w) as sub-
2 section (x) and by inserting after subsection (v) the fol-
3 lowing new subsection:

4 “(w) APPLICATION OF BASIS RULES TO NON-
5 RESIDENT ALIENS.—

6 “(1) IN GENERAL.—Notwithstanding any other
7 provision of this section, for purposes of determining
8 the portion of any distribution which is includible in
9 gross income of a distributee who is a citizen or resi-
10 dent of the United States, the investment in the con-
11 tract shall not include any applicable nontaxable
12 contributions or applicable nontaxable earnings.

13 “(2) APPLICABLE NONTAXABLE CONTRIBU-
14 TION.—For purposes of this subsection, the term
15 ‘applicable nontaxable contribution’ means any em-
16 ployer or employee contribution—

17 “(A) which was made with respect to
18 compensation—

19 “(i) for labor or personal services per-
20 formed by an employee who, at the time
21 the labor or services were performed, was
22 a nonresident alien for purposes of the
23 laws of the United States in effect at such
24 time, and



1 “(ii) which is treated as from sources
2 without the United States, and

3 “(B) which was not subject to income tax
4 (and would have been subject to income tax if
5 paid as cash compensation when the services
6 were rendered) under the laws of the United
7 States or any foreign country.

8 “(3) APPLICABLE NONTAXABLE EARNINGS.—
9 For purposes of this subsection, the term ‘applicable
10 nontaxable earnings’ means earnings—

11 “(A) which are paid or accrued with re-
12 spect to any employer or employee contribution
13 which was made with respect to compensation
14 for labor or personal services performed by an
15 employee,

16 “(B) with respect to which the employee
17 was at the time the earnings were paid or ac-
18 crued a nonresident alien for purposes of the
19 laws of the United States, and

20 “(C) which were not subject to income tax
21 under the laws of the United States or any for-
22 eign country.

23 “(4) REGULATIONS.—The Secretary shall pre-
24 scribe such regulations as may be necessary to carry
25 out the provisions of this subsection, including regu-



1 lations treating contributions and earnings as not
2 subject to tax under the laws of any foreign country
3 where appropriate to carry out the purposes of this
4 subsection.”

5 (b) BASIS.—Section 83 (relating to property trans-
6 ferred in connection with the performance of services is
7 amended by adding after paragraph (3) of subsection (c)
8 the following new paragraph:

9 “(4) For purposes of determining an individ-
10 ual’s basis in property transferred in connection with
11 the performance of services, rules similar to the
12 rules of section 72(w) shall apply.”

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to distributions on or after the date
15 of the enactment of this Act.

16 **SEC. 907. LIMITATION OF EMPLOYER DEDUCTION FOR CER-**
17 **TAIN ENTERTAINMENT EXPENSES.**

18 (a) IN GENERAL.—Paragraph (2) of section 274(e)
19 (relating to expenses treated as compensation) is amended
20 to read as follows:

21 “(2) EXPENSES TREATED AS COMPENSATION.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), expenses for goods, services,
24 and facilities, to the extent that the expenses
25 are treated by the taxpayer, with respect to the



1 recipient of the entertainment, amusement, or
2 recreation, as compensation to an employee on
3 the taxpayer's return of tax under this chapter
4 and as wages to such employee for purposes of
5 chapter 24 (relating to withholding of income
6 tax at source on wages).

7 “(B) SPECIFIED INDIVIDUALS.—

8 “(i) IN GENERAL.—In the case of a
9 recipient who is a specified individual, sub-
10 paragraph (A) and paragraph (9) shall
11 each be applied by substituting ‘to the ex-
12 tent that the expenses do not exceed the
13 amount of the expenses which’ for ‘to the
14 extent that the expenses’.

15 “(ii) SPECIFIED INDIVIDUAL.—For
16 purposes of clause (i), the term ‘specified
17 individual’ means any individual who—

18 “(I) is subject to the require-
19 ments of section 16(a) of the Securi-
20 ties Exchange Act of 1934 with re-
21 spect to the taxpayer, or

22 “(II) would be subject to such re-
23 quirements if the taxpayer were an
24 issuer of equity securities referred to
25 in such section.”



1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to expenses incurred after the date
3 of the enactment of this Act.

4 **SEC. 908. RESIDENCE AND SOURCE RULES RELATING TO**
5 **UNITED STATES POSSESSIONS.**

6 (a) RESIDENCE AND SOURCE RULES.—Subpart D of
7 part III of subchapter N of chapter 1 (relating to posses-
8 sions of the United States) is amended by adding at the
9 end the following new section:

10 **“SEC. 937. RESIDENCE AND SOURCE RULES INVOLVING**
11 **POSSESSIONS.**

12 “(a) BONA FIDE RESIDENT.—For purposes of this
13 subpart, section 865(g)(3), section 876, section 881(b),
14 paragraphs (2) and (3) of section 901(b), section 957(c),
15 section 3401(a)(8)(C), and section 7654(a), except as pro-
16 vided in regulations, the term ‘bona fide resident’ means
17 a person—

18 “(1) who is present for at least 183 days during
19 the taxable year in Guam, American Samoa, the
20 Northern Mariana Islands, Puerto Rico, or the Vir-
21 gin Islands, as the case may be, and

22 “(2) who does not have a tax home (determined
23 under the principles of section 911(d)(3) without re-
24 gard to the second sentence thereof) outside such
25 specified possession during the taxable year and does



1 not have a closer connection (determined under the
2 principles of section 7701(b)(3)(B)(ii)) to the United
3 States or a foreign country than to such specified
4 possession.

5 For purposes of paragraph (1), the determination as to
6 whether a person is present for any day shall be made
7 under the principles of section 7701(b).

8 “(b) SOURCE RULES.—Except as provided in regula-
9 tions, for purposes of this title—

10 “(1) except as provided in paragraph (2), rules
11 similar to the rules for determining whether income
12 is income from sources within the United States or
13 is effectively connected with the conduct of a trade
14 or business within the United States shall apply for
15 purposes of determining whether income is from
16 sources within a possession specified in subsection
17 (a)(1) or effectively connected with the conduct of a
18 trade or business within any such possession, and

19 “(2) any income treated as income from sources
20 within the United States or as effectively connected
21 with the conduct of a trade or business within the
22 United States shall not be treated as income from
23 sources within any such possession or as effectively
24 connected with the conduct of a trade or business
25 within any such possession.



1 “(c) REPORTING REQUIREMENT.—

2 “(1) IN GENERAL.—If, for any taxable year, an
3 individual takes the position for United States in-
4 come tax reporting purposes that the individual be-
5 came, or ceases to be, a bona fide resident of a pos-
6 session specified in subsection (a)(1), such individual
7 shall file with the Secretary, at such time and in
8 such manner as the Secretary may prescribe, notice
9 of such position.

10 “(2) TRANSITION RULE.—If, for any of an indi-
11 vidual’s 3 taxable years ending before the individ-
12 ual’s first taxable year ending after the date of the
13 enactment of this subsection, the individual took a
14 position described in paragraph (1), the individual
15 shall file with the Secretary, at such time and in
16 such manner as the Secretary may prescribe, notice
17 of such position.”.

18 (b) PENALTY.—Section 6688 is amended—

19 (1) by inserting “under section 937(c) or” be-
20 fore “by regulations”, and

21 (2) by striking “\$100” and inserting “\$1,000”.

22 (c) CONFORMING AND CLERICAL AMENDMENTS.—

23 (1) Section 931(d) is amended to read as fol-
24 lows:



1 “(d) EMPLOYEES OF THE UNITED STATES.—
2 Amounts paid for services performed as an employee of
3 the United States (or any agency thereof) shall be treated
4 as not described in paragraph (1) or (2) of subsection
5 (a).”

6 (2) Section 932 is amended by striking “at the
7 close of the taxable year” and inserting “during the
8 entire taxable year” each place it appears.

9 (3) Section 934(b)(4) is amended by striking
10 “the Virgin Islands or” each place it appears.

11 (4) Section 935, as in effect before the effective
12 date of its repeal, is amended—

13 (A) by striking “for the taxable year who”
14 in subsection (a) and inserting “who, during
15 the entire taxable year”,

16 (B) by inserting “bona fide” before “resi-
17 dent” in subsection (a)(1),

18 (C) in subsection (b)(1)—

19 (i) by inserting “(other a bona fide
20 resident of Guam during the entire taxable
21 year)” after “United States” in subpara-
22 graph (A), and

23 (ii) by inserting “bona fide” before
24 “resident” in subparagraph (B), and



1 (D) in subsection (b)(2) by striking “resi-
2 dence and”.

3 (5) Section 957(c) is amended—

4 (A) in paragraph (2)(B) by striking “con-
5 duct of an active” and inserting “active conduct
6 of a”, and

7 (B) in the last sentence by striking “de-
8 rived from sources within a possession, was ef-
9 fectively connected with the conduct of a trade
10 or business within a possession, or”.

11 (6) The table of sections of subpart D of part
12 III of subchapter N of chapter 1 is amended by add-
13 ing at the end the following new item:

“Sec. 937. Residence and source rules involving possessions.”.

14 (d) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as otherwise pro-
16 vided in this subsection, the amendments made by
17 this section shall apply to taxable years ending after
18 the date of the enactment of this Act.

19 (2) 183-DAY RULE.—Section 937(a)(1) of the
20 Internal Revenue Code of 1986 (as added by this
21 section) shall apply to taxable years beginning after
22 the date of the enactment of this Act.

23 (3) SOURCING.—Section 937(b)(2) of such
24 Code (as so added) shall apply to income earned
25 after the date of the enactment of this Act.



1 **SEC. 909. SALES OR DISPOSITIONS TO IMPLEMENT FED-**
2 **ERAL ENERGY REGULATORY COMMISSION**
3 **OR STATE ELECTRIC RESTRUCTURING POL-**
4 **ICY.**

5 (a) IN GENERAL.—Section 451 (relating to general
6 rule for taxable year of inclusion) is amended by adding
7 at the end the following new subsection:

8 “(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO
9 IMPLEMENT FEDERAL ENERGY REGULATORY COMMIS-
10 SION OR STATE ELECTRIC RESTRUCTURING POLICY.—

11 “(1) IN GENERAL.—In the case of any quali-
12 fying electric transmission transaction for which the
13 taxpayer elects the application of this section, quali-
14 fied gain from such transaction shall be
15 recognized—

16 “(A) in the taxable year which includes the
17 date of such transaction to the extent the
18 amount realized from such transaction
19 exceeds—

20 “(i) the cost of exempt utility property
21 which is purchased by the taxpayer during
22 the 4-year period beginning on such date,
23 reduced (but not below zero) by

24 “(ii) any portion of such cost pre-
25 viously taken into account under this sub-
26 section, and



1 “(B) ratably over the 8-taxable year period
2 beginning with the taxable year which includes
3 the date of such transaction, in the case of any
4 such gain not recognized under subparagraph
5 (A).

6 “(2) QUALIFIED GAIN.—For purposes of this
7 subsection, the term ‘qualified gain’ means, with re-
8 spect to any qualifying electric transmission trans-
9 action in any taxable year—

10 “(A) any ordinary income derived from
11 such transaction which would be required to be
12 recognized under section 1245 or 1250 for such
13 taxable year (determined without regard to this
14 subsection), and

15 “(B) any income derived from such trans-
16 action in excess of the amount described in sub-
17 paragraph (A) which is required to be included
18 in gross income for such taxable year (deter-
19 mined without regard to this subsection).

20 “(3) QUALIFYING ELECTRIC TRANSMISSION
21 TRANSACTION.—For purposes of this subsection, the
22 term ‘qualifying electric transmission transaction’
23 means any sale or other disposition before January
24 1, 2007, of—



1 “(A) property used in the trade or business
2 of providing electric transmission services, or

3 “(B) any stock or partnership interest in a
4 corporation or partnership, as the case may be,
5 whose principal trade or business consists of
6 providing electric transmission services,

7 but only if such sale or disposition is to an inde-
8 pendent transmission company.

9 “(4) INDEPENDENT TRANSMISSION COM-
10 PANY.—For purposes of this subsection, the term
11 ‘independent transmission company’ means—

12 “(A) an independent transmission provider
13 approved by the Federal Energy Regulatory
14 Commission,

15 “(B) a person—

16 “(i) who the Federal Energy Regu-
17 latory Commission determines in its au-
18 thorization of the transaction under section
19 203 of the Federal Power Act (16 U.S.C.
20 824b) or by declaratory order is not a
21 market participant within the meaning of
22 such Commission’s rules applicable to inde-
23 pendent transmission providers, and

24 “(ii) whose transmission facilities to
25 which the election under this subsection



1 applies are under the operational control of
2 a Federal Energy Regulatory Commission-
3 approved independent transmission pro-
4 vider before the close of the period speci-
5 fied in such authorization, but not later
6 than the close of the period applicable
7 under subsection (a)(2)(B) as extended
8 under paragraph (2), or

9 “(C) in the case of facilities subject to the
10 jurisdiction of the Public Utility Commission of
11 Texas—

12 “(i) a person which is approved by
13 that Commission as consistent with Texas
14 State law regarding an independent trans-
15 mission provider, or

16 “(ii) a political subdivision or affiliate
17 thereof whose transmission facilities are
18 under the operational control of a person
19 described in clause (i).

20 “(5) EXEMPT UTILITY PROPERTY.—For pur-
21 poses of this subsection—

22 “(A) IN GENERAL.—The term ‘exempt
23 utility property’ means property used in the
24 trade or business of—



1 “(i) generating, transmitting, distrib-
2 uting, or selling electricity, or

3 “(ii) producing, transmitting, distrib-
4 uting, or selling natural gas.

5 “(B) NONRECOGNITION OF GAIN BY REA-
6 SON OF ACQUISITION OF STOCK.—Acquisition of
7 control of a corporation shall be taken into ac-
8 count under this subsection with respect to a
9 qualifying electric transmission transaction only
10 if the principal trade or business of such cor-
11 poration is a trade or business referred to in
12 subparagraph (A).

13 “(6) SPECIAL RULE FOR CONSOLIDATED
14 GROUPS.—In the case of a corporation which is a
15 member of an affiliated group filing a consolidated
16 return, any exempt utility property purchased by an-
17 other member of such group shall be treated as pur-
18 chased by such corporation for purposes of applying
19 paragraph (1)(A).

20 “(7) TIME FOR ASSESSMENT OF DEFICI-
21 CIENCIES.—If the taxpayer has made the election
22 under paragraph (1) and any gain is recognized by
23 such taxpayer as provided in paragraph (1)(B),
24 then—



1 “(A) the statutory period for the assess-
2 ment of any deficiency, for any taxable year in
3 which any part of the gain on the transaction
4 is realized, attributable to such gain shall not
5 expire prior to the expiration of 3 years from
6 the date the Secretary is notified by the tax-
7 payer (in such manner as the Secretary may by
8 regulations prescribe) of the purchase of exempt
9 utility property or of an intention not to pur-
10 chase such property, and

11 “(B) such deficiency may be assessed be-
12 fore the expiration of such 3-year period not-
13 withstanding any law or rule of law which
14 would otherwise prevent such assessment.

15 “(8) PURCHASE.—For purposes of this sub-
16 section, the taxpayer shall be considered to have
17 purchased any property if the unadjusted basis of
18 such property is its cost within the meaning of sec-
19 tion 1012.

20 “(9) ELECTION.—An election under paragraph
21 (1) shall be made at such time and in such manner
22 as the Secretary may require and, once made, shall
23 be irrevocable.

24 “(10) NONAPPLICATION OF INSTALLMENT
25 SALES TREATMENT.—Section 453 shall not apply to



1 any qualifying electric transmission transaction with
2 respect to which an election to apply this subsection
3 is made.”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to transactions occurring after the
6 date of the enactment of this Act, in taxable years ending
7 after such date.

8 **SEC. 910. EXPANSION OF LIMITATION ON DEPRECIATION**
9 **OF CERTAIN PASSENGER AUTOMOBILES.**

10 (a) IN GENERAL.—Section 179(b) (relating to limita-
11 tions) is amended by adding at the end the following new
12 paragraph:

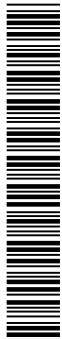
13 “(6) LIMITATION ON COST TAKEN INTO AC-
14 COUNT FOR CERTAIN PASSENGER VEHICLES.—

15 “(A) IN GENERAL.—The cost of any sport
16 utility vehicle for any taxable year which may
17 be taken into account under this section shall
18 not exceed \$25,000.

19 “(B) SPORT UTILITY VEHICLE.—For pur-
20 poses of subparagraph (A)—

21 “(i) IN GENERAL.—The term ‘sport
22 utility vehicle’ means any 4-wheeled
23 vehicle—

24 “(I) which is primarily designed
25 or which can be used to carry pas-



1 sengers over public streets, roads, or
2 highways (except any vehicle operated
3 exclusively on a rail or rails),

4 “(II) which is not subject to sec-
5 tion 280F, and

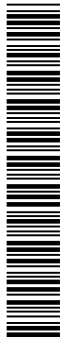
6 “(III) which is rated at not more
7 than 14,000 pounds gross vehicle
8 weight.

9 “(ii) CERTAIN VEHICLES EX-
10 CLUDED.—Such term does not include any
11 vehicle which—

12 “(I) is designed to have a seating
13 capacity of more than 9 persons be-
14 hind the driver’s seat,

15 “(II) is equipped with a cargo
16 area of at least 6 feet in interior
17 length which is an open area or is de-
18 signed for use as an open area but is
19 enclosed by a cap and is not readily
20 accessible directly from the passenger
21 compartment, or

22 “(III) has an integral enclosure,
23 fully enclosing the driver compartment
24 and load carrying device, does not
25 have seating rearward of the driver’s



1 seat, and has no body section pro-
2 truding more than 30 inches ahead of
3 the leading edge of the windshield.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to property placed in service after
6 the date of the enactment of this Act.

And the Senate agree to the same.

