

Calendar No. \_\_\_\_\_

106TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

[Report No. 106-\_\_\_\_]

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IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 1999

Mr. ROTH, from the Committee on Finance, reported the following original bill; which was read twice and placed on the calendar

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**A BILL**

To amend the Internal Revenue Code of 1986 to extend expiring provisions, to fully allow the nonrefundable personal credits against regular tax liability, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Tax Relief Extension Act of 1999”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-  
7 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment  
 2 to, or repeal of, a section or other provision, the reference  
 3 shall be considered to be made to a section or other provi-  
 4 sion of the Internal Revenue Code of 1986.

5 (c) TABLE OF CONTENTS.—The table of contents for  
 6 this Act is as follows:

Sec. 1. Short title; etc.

#### TITLE I—EXTENSION OF EXPIRED AND EXPIRING PROVISIONS

- Sec. 101. Extension of minimum tax relief for individuals.  
 Sec. 102. Extension of exclusion for employer-provided educational assistance.  
 Sec. 103. Extension of research and experimentation credit and increase in  
 rates for alternative incremental research credit.  
 Sec. 104. Extension of exceptions under subpart F for active financing income.  
 Sec. 105. Extension of suspension of net income limitation on percentage deple-  
 tion from marginal oil and gas wells.  
 Sec. 106. Extension of work opportunity tax credit and welfare-to-work tax  
 credit.  
 Sec. 107. Extension and modification of tax credit for electricity produced from  
 certain renewable resources.  
 Sec. 108. Expansion of brownfields environmental remediation.  
 Sec. 109. Temporary increase in amount of rum excise tax covered over to  
 Puerto Rico and Virgin Islands.  
 Sec. 110. Delay requirement that registered motor fuels terminals offer dyed  
 fuel as a condition of registration.  
 Sec. 111. Extension of production credit for fuel produced by certain gasifi-  
 cation facilities.

#### TITLE II—REVENUE OFFSET PROVISIONS

##### Subtitle A—General Provisions

- Sec. 201. Modification of individual estimated tax safe harbor.  
 Sec. 202. Modification of foreign tax credit carryover rules.  
 Sec. 203. Clarification of tax treatment of income and losses on derivatives.  
 Sec. 204. Inclusion of certain vaccines against streptococcus pneumoniae to list  
 of taxable vaccines.  
 Sec. 205. Expansion of reporting of cancellation of indebtedness income.  
 Sec. 206. Imposition of limitation on prefunding of certain employee benefits.  
 Sec. 207. Increase in elective withholding rate for nonperiodic distributions  
 from deferred compensation plans.  
 Sec. 208. Limitation on conversion of character of income from constructive  
 ownership transactions.  
 Sec. 209. Treatment of excess pension assets used for retiree health benefits.  
 Sec. 210. Modification of installment method and repeal of installment method  
 for accrual method taxpayers.  
 Sec. 211. Limitation on use of nonaccrual experience method of accounting.

## 3

- Sec. 212. Denial of charitable contribution deduction for transfers associated with split-dollar insurance arrangements.
- Sec. 213. Prevention of duplication of loss through assumption of liabilities giving rise to a deduction.
- Sec. 214. Consistent treatment and basis allocation rules for transfers of intangibles in certain nonrecognition transactions.
- Sec. 215. Distributions by a partnership to a corporate partner of stock in another corporation.
- Sec. 216. Prohibited allocations of stock in S corporation ESOP.

## Subtitle B—Provisions Relating to Real Estate Investment Trusts

## PART I—TREATMENT OF INCOME AND SERVICES PROVIDED BY TAXABLE REIT SUBSIDIARIES

- Sec. 221. Modifications to asset diversification test.
- Sec. 222. Treatment of income and services provided by taxable REIT subsidiaries.
- Sec. 223. Taxable REIT subsidiary.
- Sec. 224. Limitation on earnings stripping.
- Sec. 225. 100 percent tax on improperly allocated amounts.
- Sec. 226. Effective date.

## PART II—HEALTH CARE REITS

- Sec. 231. Health care REITs.

## PART III—CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES

- Sec. 241. Conformity with regulated investment company rules.

## PART IV—CLARIFICATION OF EXCEPTION FROM IMPERMISSIBLE TENANT SERVICE INCOME

- Sec. 251. Clarification of exception for independent operators.

## PART V—MODIFICATION OF EARNINGS AND PROFITS RULES

- Sec. 261. Modification of earnings and profits rules.

## PART VI—MODIFICATION OF ESTIMATED TAX RULES

- Sec. 271. Modification of estimated tax rules for closely held real estate investment trusts.

## PART VIII—MODIFICATION OF TREATMENT OF CLOSELY-HELD REITS

- Sec. 281. Controlled entities ineligible for REIT status.

## TITLE III—BUDGET PROVISION

- Sec. 301. Exclusion from paygo scorecard.

1 **TITLE I—EXTENSION OF EX-**  
2 **PIRED AND EXPIRING PROVI-**  
3 **SIONS**

4 **SEC. 101. EXTENSION OF MINIMUM TAX RELIEF FOR INDI-**  
5 **VIDUALS.**

6 (a) IN GENERAL.—The second sentence of section  
7 26(a) (relating to limitations based on amount of tax) is  
8 amended by striking “1998” and inserting “calendar year  
9 1998, 1999, or 2000”.

10 (b) CHILD CREDIT.—Section 24(d)(2) (relating to re-  
11 duction of credit to taxpayer subject to alternative mini-  
12 mum tax) is amended by striking “December 31, 1998”  
13 and inserting “December 31, 2000”.

14 (c) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to taxable years beginning after  
16 December 31, 1998.

17 **SEC. 102. EXTENSION OF EXCLUSION FOR EMPLOYER-PRO-**  
18 **VIDED EDUCATIONAL ASSISTANCE.**

19 (a) IN GENERAL.—Section 127(d) (relating to termi-  
20 nation) is amended by striking “May 31, 2000” and in-  
21 serting “December 31, 2000”.

22 (b) REPEAL OF LIMITATION ON GRADUATE EDU-  
23 CATION.—

24 (1) IN GENERAL.—The last sentence of section  
25 127(c)(1) (defining educational assistance) is

1 amended by striking “, and such term also does not  
2 include any payment for, or the provision of any  
3 benefits with respect to, any graduate level course of  
4 a kind normally taken by an individual pursuing a  
5 program leading to a law, business, medical, or other  
6 advanced academic or professional degree”.

7 (2) EFFECTIVE DATE.—The amendment made  
8 by paragraph (1) shall apply with respect to ex-  
9 penses relating to courses beginning after December  
10 31, 1999.

11 **SEC. 103. EXTENSION OF RESEARCH AND EXPERIMEN-**  
12 **TATION CREDIT AND INCREASE IN RATES**  
13 **FOR ALTERNATIVE INCREMENTAL RE-**  
14 **SEARCH CREDIT.**

15 (a) EXTENSION.—

16 (1) IN GENERAL.—Section 41(h) (relating to  
17 termination) is amended—

18 (A) by striking “June 30, 1999” and in-  
19 serting “December 31, 2000”,

20 (B) by striking “36-month” and inserting  
21 “54-month”, and

22 (C) by striking “36 months” and inserting  
23 “54 months”.

1           (2) CONFORMING AMENDMENT.—Section  
2           45C(b)(1)(D) is amended by striking “June 30,  
3           1999” and inserting “December 31, 2000”.

4           (3) EFFECTIVE DATE.—The amendments made  
5           by this subsection shall apply to amounts paid or in-  
6           curred after June 30, 1999.

7           (b) INCREASE IN PERCENTAGES UNDER ALTER-  
8           NATIVE INCREMENTAL CREDIT.—

9           (1) IN GENERAL.—Subparagraph (A) of section  
10          41(c)(4) is amended—

11                  (A) by striking “1.65 percent” and insert-  
12                  ing “2.65 percent”,

13                  (B) by striking “2.2 percent” and inserting  
14                  “3.2 percent”, and

15                  (C) by striking “2.75 percent” and insert-  
16                  ing “3.75 percent”.

17          (2) EFFECTIVE DATE.—The amendments made  
18          by this subsection shall apply to taxable years begin-  
19          ning after June 30, 1999.

20          (c) EXTENSION OF RESEARCH CREDIT TO RESEARCH  
21          IN PUERTO RICO AND THE POSSESSIONS OF THE UNITED  
22          STATES.—

23                  (1) IN GENERAL.—Section 41(d)(4)(F) (relat-  
24                  ing to foreign research) is amended by inserting “,

1 the Commonwealth of Puerto Rico, or any posses-  
2 sion of the United States” after “United States”.

3 (2) DENIAL OF DOUBLE BENEFIT.—Section  
4 280C(c)(1) is amended by inserting “or credit” after  
5 “deduction” each place it appears.

6 (3) EFFECTIVE DATE.—The amendments made  
7 by this subsection shall apply to amounts paid or in-  
8 curred after June 30, 1999.

9 **SEC. 104. EXTENSION OF EXCEPTIONS UNDER SUBPART F**  
10 **FOR ACTIVE FINANCING INCOME.**

11 (a) IN GENERAL.—Sections 953(e)(10) and  
12 954(h)(9) (relating to application) are each amended—

13 (1) by striking “the first taxable year” and in-  
14 serting “taxable years”,

15 (2) by striking “January 1, 2000” and insert-  
16 ing “January 1, 2001”, and

17 (3) by striking “within which such” and insert-  
18 ing “within which any such”.

19 (b) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to taxable years beginning after  
21 December 31, 1999.

1 **SEC. 105. EXTENSION OF SUSPENSION OF NET INCOME LIM-**  
2 **ITATION ON PERCENTAGE DEPLETION FROM**  
3 **MARGINAL OIL AND GAS WELLS.**

4 (a) IN GENERAL.—Subparagraph (H) of section  
5 613A(c)(6) (relating to temporary suspension of taxable  
6 limit with respect to marginal production) is amended by  
7 striking “January 1, 2000” and inserting “January 1,  
8 2001”.

9 (b) EFFECTIVE DATE.—The amendment made by  
10 this section shall apply to taxable years beginning after  
11 December 31, 1999.

12 **SEC. 106. EXTENSION OF WORK OPPORTUNITY TAX CREDIT**  
13 **AND WELFARE-TO-WORK TAX CREDIT.**

14 (a) TEMPORARY EXTENSION.—Sections 51(c)(4)(B)  
15 and 51A(f) (relating to termination) are each amended  
16 by striking “June 30, 1999” and inserting “December 31,  
17 2000”.

18 (b) CLARIFICATION OF FIRST YEAR OF EMPLOY-  
19 MENT.—Paragraph (2) of section 51(i) is amended by  
20 striking “during which he was not a member of a targeted  
21 group”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to individuals who begin work for  
24 the employer after June 30, 1999.



1 **SEC. 107. EXTENSION AND MODIFICATION OF TAX CREDIT**  
2 **FOR ELECTRICITY PRODUCED FROM CER-**  
3 **TAIN RENEWABLE RESOURCES.**

4 (a) EXTENSION AND MODIFICATION OF PLACED-IN-  
5 SERVICE RULES.—Paragraph (3) of section 45(c) is  
6 amended to read as follows:

7 “(3) QUALIFIED FACILITY.—

8 “(A) WIND FACILITY.—In the case of a fa-  
9 cility using wind to produce electricity, the term  
10 ‘qualified facility’ means any facility owned by  
11 the taxpayer which is originally placed in serv-  
12 ice after December 31, 1993, and before Janu-  
13 ary 1, 2001.

14 “(B) CLOSED-LOOP BIOMASS FACILITY.—  
15 In the case of a facility using closed-loop bio-  
16 mass to produce electricity, the term ‘qualified  
17 facility’ means any facility owned by the tax-  
18 payer which is—

19 “(i) originally placed in service after  
20 December 31, 1992, and before January 1,  
21 2001, or

22 “(ii) originally placed in service before  
23 December 31, 1992, and modified to use  
24 closed-loop biomass to co-fire with coal  
25 after such date and before January 1,  
26 2001.

1           “(C) BIOMASS FACILITY.—In the case of a  
2 facility using biomass (other than closed-loop  
3 biomass) to produce electricity, the term ‘quali-  
4 fied facility’ means any facility owned by the  
5 taxpayer which is originally placed in service be-  
6 fore January 1, 2001.

7           “(D) LANDFILL GAS OR POULTRY WASTE  
8 FACILITY.—

9           “(i) IN GENERAL.—In the case of a  
10 facility using landfill gas or poultry waste  
11 to produce electricity, the term ‘qualified  
12 facility’ means any facility of the taxpayer  
13 which is originally placed in service after  
14 December 31, 1999, and before January 1,  
15 2001.

16           “(ii) LANDFILL GAS.—In the case of a  
17 facility using landfill gas, such term shall  
18 include equipment and housing (not includ-  
19 ing wells and related systems required to  
20 collect and transmit gas to the production  
21 facility) required to generate electricity  
22 which are owned by the taxpayer and so  
23 placed in service.

24           “(E) SPECIAL RULE.—In the case of a  
25 qualified facility described in subparagraph (B)

1           or (C) using coal to co-fire with biomass, the  
2           10-year period referred to in subsection (a)  
3           shall be treated as beginning no earlier than  
4           January 1, 2000.”

5           (b) EXPANSION OF QUALIFIED ENERGY RE-  
6 SOURCES.—

7           (1) IN GENERAL.—Section 45(c)(1) (defining  
8           qualified energy resources) is amended by striking  
9           “and” at the end of subparagraph (A), by striking  
10          the period at the end of subparagraph (B) and in-  
11          serting a comma, and by adding at the end the fol-  
12          lowing new subparagraphs:

13                   “(C) biomass (other than closed-loop bio-  
14                   mass),

15                   “(D) landfill gas, and

16                   “(E) poultry waste.”

17          (2) DEFINITIONS.—Section 45(c), as amended  
18          by subsection (a), is amended by redesignating para-  
19          graph (3) as paragraph (6) and inserting after para-  
20          graph (2) the following new paragraphs:

21                   “(3) BIOMASS.—The term ‘biomass’ means any  
22                   solid, nonhazardous, cellulosic waste material which  
23                   is segregated from other waste materials and which  
24                   is derived from—

1           “(A) any of the following forest-related re-  
2 sources: mill residues, precommercial thinnings,  
3 slash, and brush, but not including old-growth  
4 timber,

5           “(B) urban sources, including waste pal-  
6 lets, crates, and dunnage, manufacturing and  
7 construction wood wastes, and landscape or  
8 right-of-way tree trimmings, but not including  
9 unsegregated municipal solid waste (garbage)  
10 or paper that is commonly recycled, or

11           “(C) agriculture sources, including orchard  
12 tree crops, vineyard, grain, legumes, sugar, and  
13 other crop by-products or residues.

14           “(4) LANDFILL GAS.—The term ‘landfill gas’  
15 means gas from the decomposition of any household  
16 solid waste, commercial solid waste, and industrial  
17 solid waste disposed of in a municipal solid waste  
18 landfill unit (as such terms are defined in regula-  
19 tions promulgated under subtitle D of the Solid  
20 Waste Disposal Act (42 U.S.C. 6941 et seq.)).

21           “(5) POULTRY WASTE.—The term ‘poultry  
22 waste’ means poultry manure and litter, including  
23 wood shavings, straw, rice hulls, and other bedding  
24 material for the disposition of manure.”

1           (c) SPECIAL RULES.—Section 45(d) (relating to defi-  
2 nitions and special rules) is amended by adding at the end  
3 the following new paragraphs:

4           “(6) CREDIT ELIGIBILITY IN THE CASE OF GOV-  
5 ERNMENT-OWNED FACILITIES USING POULTRY  
6 WASTE.—In the case of a facility using poultry  
7 waste to produce electricity and owned by a govern-  
8 mental unit, the person eligible for the credit under  
9 subsection (a) is the lessor or the operator of such  
10 facility.

11           “(7) PROPORTIONAL CREDIT FOR FACILITY  
12 USING COAL TO CO-FIRE WITH BIOMASS.—In the  
13 case of a qualified facility described in subparagraph  
14 (B) or (C) of subsection (c)(6) using coal to co-fire  
15 with biomass, the amount of the credit determined  
16 under subsection (a) for the taxable year shall be re-  
17 duced by the percentage coal comprises (on a Btu  
18 basis) of the average fuel input of the facility for the  
19 taxable year.

20           “(8) DENIAL OF DOUBLE BENEFIT.—No credit  
21 shall be allowed under this section with respect to a  
22 facility for any taxable year if the credit under sec-  
23 tion 29 is allowed in such year or has been allowed  
24 in any preceding taxable year with respect to any  
25 fuel produced from such facility.”

1 (d) CONFORMING AMENDMENT.—Section 29(d) (re-  
2 lating to other definitions and special rules) is amended  
3 by adding at the end the following new paragraph:

4 “(9) DENIAL OF DOUBLE BENEFIT.—No credit  
5 shall be allowed under this section with respect to  
6 any fuel produced from a facility for any taxable  
7 year if the credit under section 45 is allowed in such  
8 year or has been allowed in any preceding taxable  
9 year with respect to such facility.”

10 (e) EFFECTIVE DATE.—The amendments made by  
11 this section shall take effect on the date of the enactment  
12 of this Act.

13 **SEC. 108. EXPANSION OF BROWNFIELDS ENVIRONMENTAL**  
14 **REMEDIATION.**

15 (a) IN GENERAL.—Section 198(c) is amended to read  
16 as follows:

17 “(c) QUALIFIED CONTAMINATED SITE.—For pur-  
18 poses of this section—

19 “(1) IN GENERAL.—The term ‘qualified con-  
20 taminated site’ means any area—

21 “(A) which is held by the taxpayer for use  
22 in a trade or business or for the production of  
23 income, or which is property described in sec-  
24 tion 1221(1) in the hands of the taxpayer, and

1           “(B) at or on which there has been a re-  
2           lease (or threat of release) or disposal of any  
3           hazardous substance.

4           “(2) NATIONAL PRIORITIES LISTED SITES NOT  
5           INCLUDED.—Such term shall not include any site  
6           which is on, or proposed for, the national priorities  
7           list under section 105(a)(8)(B) of the Comprehen-  
8           sive Environmental Response, Compensation, and  
9           Liability Act of 1980 (as in effect on the date of the  
10          enactment of this section).

11          “(3) TAXPAYER MUST RECEIVE STATEMENT  
12          FROM STATE ENVIRONMENTAL AGENCY.—An area  
13          shall be treated as a qualified contaminated site with  
14          respect to expenditures paid or incurred during any  
15          taxable year only if the taxpayer receives a state-  
16          ment from the appropriate environmental agency of  
17          the State in which such area is located that such  
18          area meets the requirement of paragraph (1)(B).

19          “(4) APPROPRIATE STATE AGENCY.—For pur-  
20          poses of paragraph (3), the chief executive officer of  
21          each State may, in consultation with the Adminis-  
22          trator of the Environmental Protection Agency, des-  
23          ignate the appropriate State environmental agency  
24          within 60 days of the date of the enactment of this  
25          section. If the chief executive officer of a State has

1 not designated an appropriate State environmental  
2 agency within such 60-day period, the appropriate  
3 environmental agency for such State shall be des-  
4 ignated by the Administrator of the Environmental  
5 Protection Agency.”

6 (b) EFFECTIVE DATE.—The amendment made by  
7 this section shall apply to expenditures paid or incurred  
8 after December 31, 1999.

9 **SEC. 109. TEMPORARY INCREASE IN AMOUNT OF RUM EX-**  
10 **CISE TAX COVERED OVER TO PUERTO RICO**  
11 **AND VIRGIN ISLANDS.**

12 (a) IN GENERAL.—Section 7652(f)(1) (relating to  
13 limitation on cover over of tax on distilled spirits) is  
14 amended to read as follows:

15 “(1) \$10.50 (\$13.50 in the case of distilled  
16 spirits brought into the United States after June 30,  
17 1999, and before January 1, 2001), or”.

18 (b) EFFECTIVE DATE.—

19 (1) IN GENERAL.—The amendment made by  
20 this section shall take effect on July 1, 1999.

21 (2) SPECIAL RULE.—

22 (A) IN GENERAL.—For the period begin-  
23 ning after June 30, 1999, and before January  
24 1, 2001, the treasury of Puerto Rico shall make  
25 a Conservation Trust Fund transfer within 30



1 days from the date of each cover over payment  
2 made during such period to such treasury under  
3 section 7652(e) of the Internal Revenue Code of  
4 1986.

5 (B) CONSERVATION TRUST FUND TRANS-  
6 FER.—

7 (i) IN GENERAL.—For purposes of  
8 this paragraph, the term “Conservation  
9 Trust Fund transfer” means a transfer to  
10 the Puerto Rico Conservation Trust Fund  
11 of an amount equal to 50 cents per proof  
12 gallon of the taxes imposed under section  
13 5001 or section 7652 of such Code on dis-  
14 tilled spirits that are covered over to the  
15 treasury of Puerto Rico under section  
16 7652(e) of such Code.

17 (ii) TREATMENT OF TRANSFER.—  
18 Each Conservation Trust Fund transfer  
19 shall be treated as principal for an endow-  
20 ment, the income from which to be avail-  
21 able for use by the Puerto Rico Conserva-  
22 tion Trust Fund for the purposes for  
23 which the Trust Fund was established.

24 (iii) RESULT OF NONTRANSFER.—

1 (I) IN GENERAL.—Upon notifica-  
2 tion by the Secretary of the Interior  
3 that a Conservation Trust Fund  
4 transfer has not been made by the  
5 treasury of Puerto Rico during the pe-  
6 riod described in subparagraph (A),  
7 the Secretary of the Treasury shall,  
8 except as provided in subclause (II),  
9 deduct and withhold from the next  
10 cover over payment to be made to the  
11 treasury of Puerto Rico under section  
12 7652(e) of such Code an amount  
13 equal to the appropriate Conservation  
14 Trust Fund transfer and interest  
15 thereon at the underpayment rate es-  
16 tablished under section 6621 of such  
17 Code as of the due date of such trans-  
18 fer. The Secretary of the Treasury  
19 shall transfer such amount deducted  
20 and withheld, and the interest there-  
21 on, directly to the Puerto Rico Con-  
22 servation Trust Fund.

23 (II) GOOD CAUSE EXCEPTION.—  
24 If the Secretary of the Interior finds,  
25 after consultation with the Governor

1 of Puerto Rico, that the failure by the  
2 treasury of Puerto Rico to make a re-  
3 quired transfer was for good cause,  
4 and notifies the Secretary of the  
5 Treasury of the finding of such good  
6 cause before the due date of the next  
7 cover over payment following the noti-  
8 fication of nontransfer, then the Sec-  
9 retary of the Treasury shall not de-  
10 duct the amount of such nontransfer  
11 from any cover over payment.

12 (C) PUERTO RICO CONSERVATION TRUST  
13 FUND.—For purposes of this paragraph, the  
14 term “Puerto Rico Conservation Trust Fund”  
15 means the fund established pursuant to a  
16 Memorandum of Understanding between the  
17 United States Department of the Interior and  
18 the Commonwealth of Puerto Rico, dated De-  
19 cember 24, 1968.

20 **SEC. 110. DELAY REQUIREMENT THAT REGISTERED MOTOR**  
21 **FUELS TERMINALS OFFER DYED FUEL AS A**  
22 **CONDITION OF REGISTRATION.**

23 Subsection (f)(2) of section 1032 of the Taxpayer Re-  
24 lief Act of 1997, as amended by section 9008 of the Trans-

1 portation Equity Act for the 21st Century, is amended by  
2 striking “July 1, 2000” and inserting “January 1, 2001”.

3 **SEC. 111. EXTENSION OF PRODUCTION CREDIT FOR FUEL**  
4 **PRODUCED BY CERTAIN GASIFICATION FA-**  
5 **CILITIES.**

6 (a) IN GENERAL.—Section 29(g)(1)(A) (relating to  
7 extension for certain facilities) is amended by striking  
8 “July 1, 1998” and inserting “July 1, 2000”.

9 (b) EFFECTIVE DATE.—The amendment made by  
10 this section shall apply to fuels produced on and after July  
11 1, 1998.

12 (c) SPECIAL RULE.—

13 (1) IN GENERAL.—For purposes of the Internal  
14 Revenue Code of 1986, the credit determined under  
15 section 29 of such Code which is otherwise allowable  
16 under such Code by reason of the amendment made  
17 by subsection (a) and which is attributable to the  
18 suspension period shall not be taken into account  
19 prior to October 1, 2004. On or after such date,  
20 such credit may be taken into account through the  
21 filing of an amended return, an application for expe-  
22 dited refund, an adjustment of estimated taxes, or  
23 other means allowed by such Code. Interest shall not  
24 be allowed under section 6511(a) of such Code on  
25 any overpayment attributable to such credit for any

1 period before the 45th day after the credit is taken  
2 into account under the preceding sentence.

3 (2) SUSPENSION PERIOD.—For purposes of this  
4 subsection, the suspension period is the period be-  
5 ginning on July 1, 1998, and ending on September  
6 30, 2004.

7 (3) EXPEDITED REFUNDS.—

8 (A) IN GENERAL.—If there is an overpay-  
9 ment of tax with respect to a taxable year by  
10 reason of paragraph (1), the taxpayer may file  
11 an application for a tentative refund of such  
12 overpayment. Such application shall be in such  
13 manner and form, and contain such informa-  
14 tion, as the Secretary may prescribe.

15 (B) DEADLINE FOR APPLICATIONS.—Sub-  
16 paragraph (A) shall apply only to applications  
17 filed before October 1, 2005.

18 (C) ALLOWANCE OF ADJUSTMENTS.—Not  
19 later than 90 days after the date on which an  
20 application is filed under this paragraph, the  
21 Secretary shall—

22 (i) review the application,

23 (ii) determine the amount of the over-  
24 payment, and

1 (iii) apply, credit, or refund such over-  
2 payment,  
3 in a manner similar to the manner provided in  
4 section 6411(b) of such Code.

5 (D) CONSOLIDATED RETURNS.—The provi-  
6 sions of section 6411(c) of such Code shall  
7 apply to an adjustment under this paragraph in  
8 such manner as the Secretary may provide.

9 (4) CREDIT ATTRIBUTABLE TO SUSPENSION PE-  
10 RIOD.—For purposes of this subsection, in the case  
11 of a taxable year which includes a portion of the sus-  
12 pension period, the amount of credit determined  
13 under section 29 of such Code for such taxable year  
14 which is attributable to such period is the amount  
15 which bears the same ratio to the amount of credit  
16 determined under such section 29 for such taxable  
17 year as the number of months in the suspension pe-  
18 riod which are during such taxable year bears to the  
19 number of months in such taxable year.

20 (5) WAIVER OF STATUTE OF LIMITATIONS.—If,  
21 on October 1, 2004 (or at any time within the 1-  
22 year period beginning on such date) credit or refund  
23 of any overpayment of tax resulting from the provi-  
24 sions of this subsection is barred by any law or rule  
25 of law, credit or refund of such overpayment shall,

1 nevertheless, be allowed or made if claim therefore  
2 is filed before the date 1 year after October 1, 2004.

3 (6) SECRETARY.—For purposes of this sub-  
4 section, the term “Secretary” means the Secretary  
5 of the Treasury (or such Secretary’s delegate).

6 **TITLE II—REVENUE OFFSET**  
7 **PROVISIONS**

8 **Subtitle A—General Provisions**

9 **SEC. 201. MODIFICATION OF INDIVIDUAL ESTIMATED TAX**

10 **SAFE HARBOR.**

11 (a) IN GENERAL.—The table contained in clause  
12 (i) of section 6654(d)(1)(C) (relating to limitation on use  
13 of preceding year’s tax) is amended by striking all matter  
14 beginning with the item relating to 1999 or 2000 and in-  
15 serting the following new items:

“1999 .....	110.5
2000 .....	106
2001 .....	112
2002 .....	110
2003 .....	112
2004 or thereafter .....	110”.

16 (b) EFFECTIVE DATE.—The amendment made by  
17 this section shall apply with respect to any installment  
18 payment for taxable years beginning after December 31,  
19 1999.

1 **SEC. 202. MODIFICATION OF FOREIGN TAX CREDIT CARRY-**  
2 **OVER RULES.**

3 (a) IN GENERAL.—Section 904(c) (relating to limita-  
4 tion on credit) is amended—

5 (1) by striking “in the second preceding taxable  
6 year,” and

7 (2) by striking “or fifth” and inserting “fifth,  
8 sixth, or seventh”.

9 (b) EFFECTIVE DATE.—The amendment made by  
10 subsection (a) shall apply to credits arising in taxable  
11 years beginning after December 31, 1999.

12 **SEC. 203. CLARIFICATION OF TAX TREATMENT OF INCOME**  
13 **AND LOSS ON DERIVATIVES.**

14 (a) IN GENERAL.—Section 1221 (defining capital as-  
15 sets) is amended—

16 (1) by striking “For purposes” and inserting  
17 the following:

18 “(a) IN GENERAL.—For purposes”,

19 (2) by striking the period at the end of para-  
20 graph (5) and inserting a semicolon, and

21 (3) by adding at the end the following:

22 “(6) any commodities derivative financial in-  
23 strument held by a commodities derivatives dealer,  
24 unless—

25 “(A) it is established to the satisfaction of  
26 the Secretary that such instrument has no con-



1           nection to the activities of such dealer as a  
2           dealer, and

3           “(B) such instrument is clearly identified  
4           in such dealer’s records as being described in  
5           subparagraph (A) before the close of the day on  
6           which it was acquired, originated, or entered  
7           into (or such other time as the Secretary may  
8           by regulations prescribe);

9           “(7) any hedging transaction which is clearly  
10          identified as such before the close of the day on  
11          which it was acquired, originated, or entered into (or  
12          such other time as the Secretary may by regulations  
13          prescribe); or

14          “(8) supplies of a type regularly used or  
15          consumed by the taxpayer in the ordinary course of  
16          a trade or business of the taxpayer.

17          “(b) DEFINITIONS AND SPECIAL RULES.—

18                 “(1) COMMODITIES DERIVATIVE FINANCIAL IN-  
19                 STRUMENTS.—For purposes of subsection (a)(6)—

20                         “(A) COMMODITIES DERIVATIVES DEAL-  
21                         ER.—The term ‘commodities derivatives dealer’  
22                         means a person which regularly offers to enter  
23                         into, assume, offset, assign, or terminate posi-  
24                         tions in commodities derivative financial instru-

1           ments with customers in the ordinary course of  
2           a trade or business.

3                   “(B) COMMODITIES DERIVATIVE FINAN-  
4           CIAL INSTRUMENT.—

5                           “(i) IN GENERAL.—The term ‘com-  
6           modities derivative financial instrument’  
7           means any contract or financial instrument  
8           with respect to commodities (other than a  
9           share of stock in a corporation, a beneficial  
10          interest in a partnership or trust, a note,  
11          bond, debenture, or other evidence of in-  
12          debtedness, or a section 1256 contract (as  
13          defined in section 1256(b)), the value or  
14          settlement price of which is calculated by  
15          or determined by reference to a specified  
16          index.

17                           “(ii) SPECIFIED INDEX.—The term  
18          ‘specified index’ means any one or more or  
19          any combination of—

20                                   “(I) a fixed rate, price, or  
21                                   amount, or

22                                   “(II) a variable rate, price, or  
23                                   amount,

24                                   which is based on any current, objectively  
25                                   determinable financial or economic infor-

1           mation with respect to commodities which  
2           is not within the control of any of the par-  
3           ties to the contract or instrument and is  
4           not unique to any of the parties' cir-  
5           cumstances.

6           “(2) HEDGING TRANSACTION.—

7           “(A) IN GENERAL.—For purposes of this  
8           section, the term ‘hedging transaction’ means  
9           any transaction entered into by the taxpayer in  
10          the normal course of the taxpayer’s trade or  
11          business primarily—

12                 “(i) to manage risk of price changes  
13                 or currency fluctuations with respect to or-  
14                 dinary property which is held or to be held  
15                 by the taxpayer,

16                 “(ii) to manage risk of interest rate or  
17                 price changes or currency fluctuations with  
18                 respect to borrowings made or to be made,  
19                 or ordinary obligations incurred or to be  
20                 incurred, by the taxpayer, or

21                 “(iii) to manage such other risks as  
22                 the Secretary may prescribe in regulations.

23           “(B) TREATMENT OF NONIDENTIFICATION  
24          OR IMPROPER IDENTIFICATION OF HEDGING  
25          TRANSACTIONS.—Notwithstanding subsection

1 (a)(7), the Secretary shall prescribe regulations  
2 to properly characterize any income, gain, ex-  
3 pense, or loss arising from a transaction—

4 “(i) which is a hedging transaction  
5 but which was not identified as such in ac-  
6 cordance with subsection (a)(7), or

7 “(ii) which was so identified but is not  
8 a hedging transaction.

9 “(3) REGULATIONS.—The Secretary shall pre-  
10 scribe such regulations as are appropriate to carry  
11 out the purposes of paragraph (6) and (7) of sub-  
12 section (a) in the case of transactions involving re-  
13 lated parties.”.

14 (b) MANAGEMENT OF RISK.—

15 (1) Section 475(c)(3) is amended by striking  
16 “reduces” and inserting “manages”.

17 (2) Section 871(h)(4)(C)(iv) is amended by  
18 striking “to reduce” and inserting “to manage”.

19 (3) Clauses (i) and (ii) of section 988(d)(2)(A)  
20 are each amended by striking “to reduce” and in-  
21 serting “to manage”.

22 (4) Paragraph (2) of section 1256(e) is amend-  
23 ed to read as follows:

24 “(2) DEFINITION OF HEDGING TRANSACTION.—

25 For purposes of this subsection, the term ‘hedging

1 transaction’ means any hedging transaction (as de-  
2 fined in section 1221(b)(2)(A)) if, before the close of  
3 the day on which such transaction was entered into  
4 (or such earlier time as the Secretary may prescribe  
5 by regulations), the taxpayer clearly identifies such  
6 transaction as being a hedging transaction.”.

7 (c) CONFORMING AMENDMENTS.—

8 (1) Each of the following sections are amended  
9 by striking “section 1221” and inserting “section  
10 1221(a)”:

11 (A) Section 170(e)(3)(A).

12 (B) Section 170(e)(4)(B).

13 (C) Section 367(a)(3)(B)(i).

14 (D) Section 818(c)(3).

15 (E) Section 865(i)(1).

16 (F) Section 1092(a)(3)(B)(ii)(II).

17 (G) Subparagraphs (C) and (D) of section  
18 1231(b)(1).

19 (H) Section 1234(a)(3)(A).

20 (2) Each of the following sections are amended  
21 by striking “section 1221(1)” and inserting “section  
22 1221(a)(1)”:

23 (A) Section 198(c)(1)(A)(i).

24 (B) Section 263A(b)(2)(A).

- 1 (C) Clauses (i) and (iii) of section  
2 267(f)(3)(B).
- 3 (D) Section 341(d)(3).
- 4 (E) Section 543(a)(1)(D)(i).
- 5 (F) Section 751(d)(1).
- 6 (G) Section 775(c).
- 7 (H) Section 856(c)(2)(D).
- 8 (I) Section 856(c)(3)(C).
- 9 (J) Section 856(e)(1).
- 10 (K) Section 856(j)(2)(B).
- 11 (L) Section 857(b)(4)(B)(i).
- 12 (M) Section 857(b)(6)(B)(iii).
- 13 (N) Section 864(c)(4)(B)(iii).
- 14 (O) Section 864(d)(3)(A).
- 15 (P) Section 864(d)(6)(A).
- 16 (Q) Section 954(c)(1)(B)(iii).
- 17 (R) Section 995(b)(1)(C).
- 18 (S) Section 1017(b)(3)(E)(i).
- 19 (T) Section 1362(d)(3)(C)(ii).
- 20 (U) Section 4662(c)(2)(C).
- 21 (V) Section 7704(c)(3).
- 22 (W) Section 7704(d)(1)(D).
- 23 (X) Section 7704(d)(1)(G).
- 24 (Y) Section 7704(d)(5).

1           (3) Section 818(b)(2) is amended by striking  
2           “section 1221(2)” and inserting “section  
3           1221(a)(2)”.

4           (4) Section 1397B(e)(2) is amended by striking  
5           “section 1221(4)” and inserting “section  
6           1221(a)(4)”.

7           (d) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to any instrument held, acquired,  
9 or entered into, any transaction entered into, and supplies  
10 held or acquired on or after the date of the enactment  
11 of this Act.

12 **SEC. 204. INCLUSION OF CERTAIN VACCINES AGAINST**  
13 **STREPTOCOCCUS PNEUMONIAE TO LIST OF**  
14 **TAXABLE VACCINES.**

15           (a) INCLUSION OF VACCINES.—

16           (1) IN GENERAL.—Section 4132(a)(1) (defining  
17 taxable vaccine) is amended by adding at the end  
18 the following new subparagraph:

19                   “(L) Any conjugate vaccine against strep-  
20                   tococcus pneumoniae.”

21           (2) EFFECTIVE DATE.—

22           (A) SALES.—The amendment made by this  
23 subsection shall apply to vaccine sales beginning  
24 on the day after the date on which the Centers  
25 for Disease Control makes a final recommenda-

1           tion for routine administration to children of  
2           any conjugate vaccine against streptococcus  
3           pneumoniae, but shall not take effect if sub-  
4           section (b) does not take effect.

5           (B) DELIVERIES.—For purposes of sub-  
6           paragraph (A), in the case of sales on or before  
7           the date described in such subparagraph for  
8           which delivery is made after such date, the de-  
9           livery date shall be considered the sale date.

10          (b) VACCINE TAX AND TRUST FUND AMEND-  
11          MENTS.—

12           (1) Sections 1503 and 1504 of the Vaccine In-  
13          jury Compensation Program Modification Act (and  
14          the amendments made by such sections) are hereby  
15          repealed.

16           (2) Subparagraph (A) of section 9510(c)(1) is  
17          amended by striking “August 5, 1997” and insert-  
18          ing “October 21, 1998”.

19           (3) The amendments made by this subsection  
20          shall take effect as if included in the provisions of  
21          the Omnibus Consolidated and Emergency Supple-  
22          mental Appropriations Act, 1999 to which they re-  
23          late.

24          (c) REPORT.—Not later than January 31, 2000, the  
25          Comptroller General of the United States shall prepare



1 and submit a report to the Committee on Ways and Means  
2 of the House of Representatives and the Committee on  
3 Finance of the Senate on the operation of the Vaccine In-  
4 jury Compensation Trust Fund and on the adequacy of  
5 such Fund to meet future claims made under the Vaccine  
6 Injury Compensation Program.

7 **SEC. 205. EXPANSION OF REPORTING OF CANCELLATION**  
8 **OF INDEBTEDNESS INCOME.**

9 (a) IN GENERAL.—Paragraph (2) of section  
10 6050P(c) (relating to definitions and special rules) is  
11 amended by striking “and” at the end of subparagraph  
12 (B), by striking the period at the end of subparagraph  
13 (C) and inserting “, and”, and by inserting after subpara-  
14 graph (C) the following new subparagraph:

15 “(D) any organization a significant trade  
16 or business of which is the lending of money.”

17 (b) EFFECTIVE DATE.—The amendment made by  
18 subsection (a) shall apply to discharges of indebtedness  
19 after December 31, 1999.

20 **SEC. 206. IMPOSITION OF LIMITATION ON PREFUNDING OF**  
21 **CERTAIN EMPLOYEE BENEFITS.**

22 (a) BENEFITS TO WHICH EXCEPTION APPLIES.—  
23 Section 419A(f)(6)(A) (relating to exception for 10 or  
24 more employer plans) is amended to read as follows:

1           “(A) IN GENERAL.—This subpart shall not  
2           apply to a welfare benefit fund which is part of  
3           a 10 or more employer plan if the only benefits  
4           provided through the fund are 1 or more of the  
5           following:

6                   “(i) Medical benefits.

7                   “(ii) Disability benefits.

8                   “(iii) Group term life insurance bene-  
9                   fits which do not provide directly or indi-  
10                   rectly for any cash surrender value or  
11                   other money that can be paid, assigned,  
12                   borrowed, or pledged for collateral for a  
13                   loan.

14           The preceding sentence shall not apply to any  
15           plan which maintains experience-rating arrange-  
16           ments with respect to individual employers.”

17           (b) LIMITATION ON USE OF AMOUNTS FOR OTHER  
18           PURPOSES.—Section 4976(b) (defining disqualified bene-  
19           fit) is amended by adding at the end the following new  
20           paragraph:

21                   “(5) SPECIAL RULE FOR 10 OR MORE EM-  
22                   PLOYER PLANS EXEMPTED FROM PREFUNDING LIM-  
23                   ITS.—For purposes of paragraph (1)(C), if—

24                   “(A) subpart D of part I of subchapter D  
25                   of chapter 1 does not apply by reason of section

1           419A(f)(6) to contributions to provide 1 or  
2           more welfare benefits through a welfare benefit  
3           fund under a 10 or more employer plan, and

4                   “(B) any portion of the welfare benefit  
5           fund attributable to such contributions is used  
6           for a purpose other than that for which the con-  
7           tributions were made,

8           then such portion shall be treated as reverting to the  
9           benefit of the employers maintaining the fund.”

10          (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to contributions paid or accrued  
12 after June 9, 1999, in taxable years ending after such  
13 date.

14   **SEC. 207. INCREASE IN ELECTIVE WITHHOLDING RATE FOR**  
15                   **NONPERIODIC DISTRIBUTIONS FROM DE-**  
16                   **FERRED COMPENSATION PLANS.**

17          (a) IN GENERAL.—Section 3405(b)(1) (relating to  
18 withholding) is amended by striking “10 percent” and in-  
19 serting “15 percent”.

20          (b) EFFECTIVE DATE.—The amendment made by  
21 subsection (a) shall apply to distributions after December  
22 31, 2000.

1 **SEC. 208. LIMITATION ON CONVERSION OF CHARACTER OF**  
2 **INCOME FROM CONSTRUCTIVE OWNERSHIP**  
3 **TRANSACTIONS.**

4 (a) IN GENERAL.—Part IV of subchapter P of chap-  
5 ter 1 (relating to special rules for determining capital  
6 gains and losses) is amended by inserting after section  
7 1259 the following new section:

8 **“SEC. 1260. GAINS FROM CONSTRUCTIVE OWNERSHIP**  
9 **TRANSACTIONS.**

10 “(a) IN GENERAL.—If the taxpayer has gain from  
11 a constructive ownership transaction with respect to any  
12 financial asset and such gain would (without regard to this  
13 section) be treated as a long-term capital gain—

14 “(1) such gain shall be treated as ordinary in-  
15 come to the extent that such gain exceeds the net  
16 underlying long-term capital gain, and

17 “(2) to the extent such gain is treated as a  
18 long-term capital gain after the application of para-  
19 graph (1), the determination of the capital gain rate  
20 (or rates) applicable to such gain under section 1(h)  
21 shall be determined on the basis of the respective  
22 rate (or rates) that would have been applicable to  
23 the net underlying long-term capital gain.

24 “(b) INTEREST CHARGE ON DEFERRAL OF GAIN  
25 RECOGNITION.—

1           “(1) IN GENERAL.—If any gain is treated as  
2           ordinary income for any taxable year by reason of  
3           subsection (a)(1), the tax imposed by this chapter  
4           for such taxable year shall be increased by the  
5           amount of interest determined under paragraph (2)  
6           with respect to each prior taxable year during any  
7           portion of which the constructive ownership trans-  
8           action was open. Any amount payable under this  
9           paragraph shall be taken into account in computing  
10          the amount of any deduction allowable to the tax-  
11          payer for interest paid or accrued during such tax-  
12          able year.

13          “(2) AMOUNT OF INTEREST.—The amount of  
14          interest determined under this paragraph with re-  
15          spect to a prior taxable year is the amount of inter-  
16          est which would have been imposed under section  
17          6601 on the underpayment of tax for such year  
18          which would have resulted if the gain (which is  
19          treated as ordinary income by reason of subsection  
20          (a)(1)) had been included in gross income in the tax-  
21          able years in which it accrued (determined by treat-  
22          ing the income as accruing at a constant rate equal  
23          to the applicable Federal rate as in effect on the day  
24          the transaction closed). The period during which  
25          such interest shall accrue shall end on the due date

1 (without extensions) for the return of tax imposed  
2 by this chapter for the taxable year in which such  
3 transaction closed.

4 “(3) APPLICABLE FEDERAL RATE.—For pur-  
5 poses of paragraph (2), the applicable Federal rate  
6 is the applicable Federal rate determined under  
7 1274(d) (compounded semiannually) which would  
8 apply to a debt instrument with a term equal to the  
9 period the transaction was open.

10 “(4) NO CREDITS AGAINST INCREASE IN TAX.—  
11 Any increase in tax under paragraph (1) shall not  
12 be treated as tax imposed by this chapter for pur-  
13 poses of determining—

14 “(A) the amount of any credit allowable  
15 under this chapter, or

16 “(B) the amount of the tax imposed by  
17 section 55.

18 “(c) FINANCIAL ASSET.—For purposes of this sec-  
19 tion—

20 “(1) IN GENERAL.—The term ‘financial asset’  
21 means—

22 “(A) any equity interest in any pass-thru  
23 entity, and

24 “(B) to the extent provided in regula-  
25 tions—

1 “(i) any debt instrument, and

2 “(ii) any stock in a corporation which  
3 is not a pass-thru entity.

4 “(2) PASS-THRU ENTITY.—For purposes of  
5 paragraph (1), the term ‘pass-thru entity’ means—

6 “(A) a regulated investment company,

7 “(B) a real estate investment trust,

8 “(C) an S corporation,

9 “(D) a partnership,

10 “(E) a trust,

11 “(F) a common trust fund,

12 “(G) a passive foreign investment company  
13 (as defined in section 1297 without regard to  
14 subsection (e) thereof),

15 “(H) a foreign personal holding company,

16 “(I) a foreign investment company (as de-  
17 fined in section 1246(b)), and

18 “(J) a REMIC.

19 “(d) CONSTRUCTIVE OWNERSHIP TRANSACTION.—  
20 For purposes of this section—

21 “(1) IN GENERAL.—The taxpayer shall be  
22 treated as having entered into a constructive owner-  
23 ship transaction with respect to any financial asset  
24 if the taxpayer—

1           “(A) holds a long position under a notional  
2           principal contract with respect to the financial  
3           asset,

4           “(B) enters into a forward or futures con-  
5           tract to acquire the financial asset,

6           “(C) is the holder of a call option, and is  
7           the grantor of a put option, with respect to the  
8           financial asset and such options have substan-  
9           tially equal strike prices and substantially con-  
10          temporaneous maturity dates, or

11          “(D) to the extent provided in regulations  
12          prescribed by the Secretary, enters into one or  
13          more other transactions (or acquires one or  
14          more positions) that have substantially the  
15          same effect as a transaction described in any of  
16          the preceding subparagraphs.

17          “(2) EXCEPTION FOR POSITIONS WHICH ARE  
18          MARKED TO MARKET.—This section shall not apply  
19          to any constructive ownership transaction if all of  
20          the positions which are part of such transaction are  
21          marked to market under any provision of this title  
22          or the regulations thereunder.

23          “(3) LONG POSITION UNDER NOTIONAL PRIN-  
24          CIPAL CONTRACT.—A person shall be treated as  
25          holding a long position under a notional principal



1 contract with respect to any financial asset if such  
2 person—

3 “(A) has the right to be paid (or receive  
4 credit for) all or substantially all of the invest-  
5 ment yield (including appreciation) on such fi-  
6 nancial asset for a specified period, and

7 “(B) is obligated to reimburse (or provide  
8 credit for) all or substantially all of any decline  
9 in the value of such financial asset.

10 “(4) FORWARD CONTRACT.—The term ‘forward  
11 contract’ means any contract to acquire in the fu-  
12 ture (or provide or receive credit for the future value  
13 of) any financial asset.

14 “(e) NET UNDERLYING LONG-TERM CAPITAL  
15 GAIN.—For purposes of this section, in the case of any  
16 constructive ownership transaction with respect to any fi-  
17 nancial asset, the term ‘net underlying long-term capital  
18 gain’ means the aggregate net capital gain that the tax-  
19 payer would have had if—

20 “(1) the financial asset had been acquired for  
21 fair market value on the date such transaction was  
22 opened and sold for fair market value on the date  
23 such transaction was closed, and

1           “(2) only gains and losses that would have re-  
2           sulted from the deemed ownership under paragraph  
3           (1) were taken into account.

4           The amount of the net underlying long-term capital gain  
5           with respect to any financial asset shall be treated as zero  
6           unless the amount thereof is established by clear and con-  
7           vincing evidence.

8           “(f) SPECIAL RULE WHERE TAXPAYER TAKES DE-  
9           LIVERY.—Except as provided in regulations prescribed by  
10          the Secretary, if a constructive ownership transaction is  
11          closed by reason of taking delivery, this section shall be  
12          applied as if the taxpayer had sold all the contracts, op-  
13          tions, or other positions which are part of such transaction  
14          for fair market value on the closing date. The amount of  
15          gain recognized under the preceding sentence shall not ex-  
16          ceed the amount of gain treated as ordinary income under  
17          subsection (a). Proper adjustments shall be made in the  
18          amount of any gain or loss subsequently realized for gain  
19          recognized and treated as ordinary income under this sub-  
20          section.

21          “(g) REGULATIONS.—The Secretary shall prescribe  
22          such regulations as may be necessary or appropriate to  
23          carry out the purposes of this section, including regula-  
24          tions—

1           “(1) to permit taxpayers to mark to market  
2           constructive ownership transactions in lieu of apply-  
3           ing this section, and

4           “(2) to exclude certain forward contracts which  
5           do not convey substantially all of the economic re-  
6           turn with respect to a financial asset.”

7           (b) CLERICAL AMENDMENT.—The table of sections  
8           for part IV of subchapter P of chapter 1 is amended by  
9           adding at the end the following new item:

                  “Sec. 1260. Gains from constructive ownership transactions.”

10          (c) EFFECTIVE DATE.—The amendments made by  
11          this section shall apply to transactions entered into after  
12          July 11, 1999.

13          **SEC. 209. TREATMENT OF EXCESS PENSION ASSETS USED**  
14                                   **FOR RETIREE HEALTH BENEFITS.**

15          (a) EXTENSION.—

16               (1) IN GENERAL.—Paragraph (5) of section  
17               420(b) (relating to expiration) is amended by strik-  
18               ing “in any taxable year beginning after December  
19               31, 2000” and inserting “made after September 30,  
20               2009”.

21               (2) CONFORMING AMENDMENTS.—

22                       (A) Section 101(e)(3) of the Employee Re-  
23                       tirement Income Security Act of 1974 (29  
24                       U.S.C. 1021(e)(3)) is amended by striking  
25                       “January 1, 1995” and inserting “the date of

1 the enactment of the Tax Relief Extension Act  
2 of 1999”.

3 (B) Section 403(c)(1) of such Act (29  
4 U.S.C. 1103(c)(1)) is amended by striking  
5 “January 1, 1995” and inserting “the date of  
6 the enactment of the Tax Relief Extension Act  
7 of 1999”.

8 (C) Paragraph (13) of section 408(b) of  
9 such Act (29 U.S.C. 1108(b)(13)) is amend-  
10 ed—

11 (i) by striking “in a taxable year be-  
12 ginning before January 1, 2001” and in-  
13 serting “made before October 1, 2009”,  
14 and

15 (ii) by striking “January 1, 1995”  
16 and inserting “the date of the enactment  
17 of the Tax Relief Extension Act of 1999”.

18 (b) APPLICATION OF MINIMUM COST REQUIRE-  
19 MENTS.—

20 (1) IN GENERAL.—Paragraph (3) of section  
21 420(c) is amended to read as follows:

22 “(3) MINIMUM COST REQUIREMENTS.—

23 “(A) IN GENERAL.—The requirements of  
24 this paragraph are met if each group health  
25 plan or arrangement under which applicable

1 health benefits are provided provides that the  
2 applicable employer cost for each taxable year  
3 during the cost maintenance period shall not be  
4 less than the higher of the applicable employer  
5 costs for each of the 2 taxable years imme-  
6 diately preceding the taxable year of the quali-  
7 fied transfer.

8 “(B) APPLICABLE EMPLOYER COST.—For  
9 purposes of this paragraph, the term ‘applicable  
10 employer cost’ means, with respect to any tax-  
11 able year, the amount determined by dividing—

12 “(i) the qualified current retiree  
13 health liabilities of the employer for such  
14 taxable year determined—

15 “(I) without regard to any reduc-  
16 tion under subsection (e)(1)(B), and

17 “(II) in the case of a taxable  
18 year in which there was no qualified  
19 transfer, in the same manner as if  
20 there had been such a transfer at the  
21 end of the taxable year, by

22 “(ii) the number of individuals to  
23 whom coverage for applicable health bene-  
24 fits was provided during such taxable year.

1           “(C) ELECTION TO COMPUTE COST SEPA-  
2           RATELY.—An employer may elect to have this  
3           paragraph applied separately with respect to in-  
4           dividuals eligible for benefits under title XVIII  
5           of the Social Security Act at any time during  
6           the taxable year and with respect to individuals  
7           not so eligible.

8           “(D) COST MAINTENANCE PERIOD.—For  
9           purposes of this paragraph, the term ‘cost  
10          maintenance period’ means the period of 5 tax-  
11          able years beginning with the taxable year in  
12          which the qualified transfer occurs. If a taxable  
13          year is in two or more overlapping cost mainte-  
14          nance periods, this paragraph shall be applied  
15          by taking into account the highest applicable  
16          employer cost required to be provided under  
17          subparagraph (A) for such taxable year.”.

18          (2) CONFORMING AMENDMENTS.—

19                 (A) Clause (iii) of section 420(b)(1)(C) is  
20                 amended by striking “benefits” and inserting  
21                 “cost”.

22                 (B) Subparagraph (D) of section 420(e)(1)  
23                 is amended by striking “and shall not be sub-  
24                 ject to the minimum benefit requirements of  
25                 subsection (c)(3)” and inserting “or in calculat-

1           ing applicable employer cost under subsection  
2           (c)(3)(B)”.

3           (c) EFFECTIVE DATES.—

4           (1) IN GENERAL.—The amendments made by  
5           this section shall apply to qualified transfers occur-  
6           ring after the date of the enactment of this Act.

7           (2) TRANSITION RULE.—If the cost mainte-  
8           nance period for any qualified transfer after the date  
9           of the enactment of this Act includes any portion of  
10          a benefit maintenance period for any qualified trans-  
11          fer on or before such date, the amendments made by  
12          subsection (b) shall not apply to such portion of the  
13          cost maintenance period (and such portion shall be  
14          treated as a benefit maintenance period).

15 **SEC. 210. MODIFICATION OF INSTALLMENT METHOD AND**  
16                                   **REPEAL OF INSTALLMENT METHOD FOR AC-**  
17                                   **CRUAL METHOD TAXPAYERS.**

18          (a) REPEAL OF INSTALLMENT METHOD FOR AC-  
19          CRUAL BASIS TAXPAYERS.—

20           (1) IN GENERAL.—Subsection (a) of section  
21          453 (relating to installment method) is amended to  
22          read as follows:

23          “(a) USE OF INSTALLMENT METHOD.—

24           “(1) IN GENERAL.—Except as otherwise pro-  
25          vided in this section, income from an installment

1 sale shall be taken into account for purposes of this  
2 title under the installment method.

3 “(2) ACCRUAL METHOD TAXPAYER.—The in-  
4 stallment method shall not apply to income from an  
5 installment sale if such income would be reported  
6 under an accrual method of accounting without re-  
7 gard to this section. The preceding sentence shall  
8 not apply to a disposition described in subparagraph  
9 (A) or (B) of subsection (1)(2).”

10 (2) CONFORMING AMENDMENTS.—Sections  
11 453(d)(1), 453(i)(1), and 453(k) are each amended  
12 by striking “(a)” each place it appears and inserting  
13 “(a)(1)”.

14 (b) MODIFICATION OF PLEDGE RULES.—Paragraph  
15 (4) of section 453A(d) (relating to pledges, etc., of install-  
16 ment obligations) is amended by adding at the end the  
17 following: “A payment shall be treated as directly secured  
18 by an interest in an installment obligation to the extent  
19 an arrangement allows the taxpayer to satisfy all or a por-  
20 tion of the indebtedness with the installment obligation.”

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to sales or other dispositions occur-  
23 ring on or after the date of the enactment of this Act.



1 **SEC. 211. LIMITATION ON USE OF NONACCRUAL EXPERI-**  
2 **ENCE METHOD OF ACCOUNTING.**

3 (a) IN GENERAL.—Section 448(d)(5) (relating to  
4 special rule for services) is amended—

5 (1) by inserting “in fields described in para-  
6 graph (2)(A)” after “services by such person”, and

7 (2) by inserting “CERTAIN PERSONAL” before  
8 “SERVICES” in the heading.

9 (b) EFFECTIVE DATE.—

10 (1) IN GENERAL.—The amendments made by  
11 this section shall apply to taxable years ending after  
12 the date of the enactment of this Act.

13 (2) CHANGE IN METHOD OF ACCOUNTING.—In  
14 the case of any taxpayer required by the amend-  
15 ments made by this section to change its method of  
16 accounting for its first taxable year ending after the  
17 date of the enactment of this Act—

18 (A) such change shall be treated as initi-  
19 ated by the taxpayer,

20 (B) such change shall be treated as made  
21 with the consent of the Secretary of the Treas-  
22 ury, and

23 (C) the net amount of the adjustments re-  
24 quired to be taken into account by the taxpayer  
25 under section 481 of the Internal Revenue Code  
26 of 1986 shall be taken into account over a pe-

1           riod (not greater than 4 taxable years) begin-  
2           ning with such first taxable year.

3 **SEC. 212. DENIAL OF CHARITABLE CONTRIBUTION DEDUC-**  
4                   **TION FOR TRANSFERS ASSOCIATED WITH**  
5                   **SPLIT-DOLLAR INSURANCE ARRANGEMENTS.**

6           (a) IN GENERAL.—Subsection (f) of section 170 (re-  
7           lating to disallowance of deduction in certain cases and  
8           special rules) is amended by adding at the end the follow-  
9           ing new paragraph:

10                   “(10) SPLIT-DOLLAR LIFE INSURANCE, ANNU-  
11           ITY, AND ENDOWMENT CONTRACTS.—

12                           “(A) IN GENERAL.—Nothing in this sec-  
13           tion or in section 545(b)(2), 556(b)(2), 642(c),  
14           2055, 2106(a)(2), or 2522 shall be construed to  
15           allow a deduction, and no deduction shall be al-  
16           lowed, for any transfer to or for the use of an  
17           organization described in subsection (c) if in  
18           connection with such transfer—

19                                   “(i) the organization directly or indi-  
20           rectly pays, or has previously paid, any  
21           premium on any personal benefit contract  
22           with respect to the transferor, or

23                                   “(ii) there is an understanding or ex-  
24           pectation that any person will directly or  
25           indirectly pay any premium on any per-

1           sonal benefit contract with respect to the  
2           transferor.

3           “(B) PERSONAL BENEFIT CONTRACT.—  
4           For purposes of subparagraph (A), the term  
5           ‘personal benefit contract’ means, with respect  
6           to the transferor, any life insurance, annuity, or  
7           endowment contract if any direct or indirect  
8           beneficiary under such contract is the trans-  
9           feror, any member of the transferor’s family, or  
10          any other person (other than an organization  
11          described in subsection (e)) designated by the  
12          transferor.

13          “(C) APPLICATION TO CHARITABLE RE-  
14          MAINDER TRUSTS.—In the case of a transfer to  
15          a trust referred to in subparagraph (E), ref-  
16          erences in subparagraphs (A) and (F) to an or-  
17          ganization described in subsection (e) shall be  
18          treated as a reference to such trust.

19          “(D) EXCEPTION FOR CERTAIN ANNUITY  
20          CONTRACTS.—If, in connection with a transfer  
21          to or for the use of an organization described  
22          in subsection (e), such organization incurs an  
23          obligation to pay a charitable gift annuity (as  
24          defined in section 501(m)) and such organiza-  
25          tion purchases any annuity contract to fund

1 such obligation, persons receiving payments  
2 under the charitable gift annuity shall not be  
3 treated for purposes of subparagraph (B) as in-  
4 direct beneficiaries under such contract if—

5 “(i) such organization possesses all of  
6 the incidents of ownership under such con-  
7 tract,

8 “(ii) such organization is entitled to  
9 all the payments under such contract, and

10 “(iii) the timing and amount of pay-  
11 ments under such contract are substan-  
12 tially the same as the timing and amount  
13 of payments to each such person under  
14 such obligation (as such obligation is in ef-  
15 fect at the time of such transfer).

16 “(E) EXCEPTION FOR CERTAIN CON-  
17 TRACTS HELD BY CHARITABLE REMAINDER  
18 TRUSTS.—A person shall not be treated for pur-  
19 poses of subparagraph (B) as an indirect bene-  
20 ficiary under any life insurance, annuity, or en-  
21 dowment contract held by a charitable remain-  
22 der annuity trust or a charitable remainder  
23 unitrust (as defined in section 664(d)) solely by  
24 reason of being entitled to any payment re-

1           ferred to in paragraph (1)(A) or (2)(A) of sec-  
2           tion 664(d) if—

3                   “(i) such trust possesses all of the in-  
4                   cidents of ownership under such contract,  
5                   and

6                   “(ii) such trust is entitled to all the  
7                   payments under such contract.

8           “(F) EXCISE TAX ON PREMIUMS PAID.—

9                   “(i) IN GENERAL.—There is hereby  
10                  imposed on any organization described in  
11                  subsection (c) an excise tax equal to the  
12                  premiums paid by such organization on  
13                  any life insurance, annuity, or endowment  
14                  contract if the payment of premiums on  
15                  such contract is in connection with a trans-  
16                  fer for which a deduction is not allowable  
17                  under subparagraph (A), determined with-  
18                  out regard to when such transfer is made.

19                  “(ii) PAYMENTS BY OTHER PER-  
20                  SONS.—For purposes of clause (i), pay-  
21                  ments made by any other person pursuant  
22                  to an understanding or expectation re-  
23                  ferred to in subparagraph (A) shall be  
24                  treated as made by the organization.

1           “(iii) REPORTING.—Any organization  
2           on which tax is imposed by clause (i) with  
3           respect to any premium shall file an an-  
4           nual return which includes—

5                   “(I) the amount of such pre-  
6                   miums paid during the year and the  
7                   name and TIN of each beneficiary  
8                   under the contract to which the pre-  
9                   mium relates, and

10                   “(II) such other information as  
11                   the Secretary may require.

12           The penalties applicable to returns re-  
13           quired under section 6033 shall apply to  
14           returns required under this clause. Returns  
15           required under this clause shall be fur-  
16           nished at such time and in such manner as  
17           the Secretary shall by forms or regulations  
18           require.

19                   “(iv) CERTAIN RULES TO APPLY.—  
20           The tax imposed by this subparagraph  
21           shall be treated as imposed by chapter 42  
22           for purposes of this title other than sub-  
23           chapter B of chapter 42.

24                   “(G) SPECIAL RULE WHERE STATE RE-  
25           QUIRES SPECIFICATION OF CHARITABLE GIFT

1           ANNUITANT IN CONTRACT.—In the case of an  
2           obligation to pay a charitable gift annuity re-  
3           ferred to in subparagraph (D) which is entered  
4           into under the laws of a State which requires,  
5           in order for the charitable gift annuity to be ex-  
6           empt from insurance regulation by such State,  
7           that each beneficiary under the charitable gift  
8           annuity be named as a beneficiary under an an-  
9           nuity contract issued by an insurance company  
10          authorized to transact business in such State,  
11          the requirements of clauses (i) and (ii) of sub-  
12          paragraph (D) shall be treated as met if—

13                   “(i) such State law requirement was  
14                   in effect on February 8, 1999,

15                   “(ii) each such beneficiary under the  
16                   charitable gift annuity is a bona fide resi-  
17                   dent of such State at the time the obliga-  
18                   tion to pay a charitable gift annuity is en-  
19                   tered into, and

20                   “(iii) the only persons entitled to pay-  
21                   ments under such contract are persons en-  
22                   titled to payments as beneficiaries under  
23                   such obligation on the date such obligation  
24                   is entered into.

1           “(H) MEMBER OF FAMILY.—For purposes  
2 of this paragraph, an individual’s family con-  
3 sists of the individual’s grandparents, the  
4 grandparents of such individual’s spouse, the  
5 lineal descendants of such grandparents, and  
6 any spouse of such a lineal descendant.

7           “(I) REGULATIONS.—The Secretary shall  
8 prescribe such regulations as may be necessary  
9 or appropriate to carry out the purposes of this  
10 paragraph, including regulations to prevent the  
11 avoidance of such purposes.”

12 (b) EFFECTIVE DATE.—

13           (1) IN GENERAL.—Except as otherwise pro-  
14 vided in this section, the amendment made by this  
15 section shall apply to transfers made after February  
16 8, 1999.

17           (2) EXCISE TAX.—Except as provided in para-  
18 graph (3) of this subsection, section 170(f)(10)(F)  
19 of the Internal Revenue Code of 1986 (as added by  
20 this section) shall apply to premiums paid after the  
21 date of the enactment of this Act.

22           (3) REPORTING.—Clause (iii) of such section  
23 170(f)(10)(F) shall apply to premiums paid after  
24 February 8, 1999 (determined as if the tax imposed



1 by such section applies to premiums paid after such  
2 date).

3 **SEC. 213. PREVENTION OF DUPLICATION OF LOSS**  
4 **THROUGH ASSUMPTION OF LIABILITIES GIV-**  
5 **ING RISE TO A DEDUCTION.**

6 (a) IN GENERAL.—Section 358 (relating to basis to  
7 distributees) is amended by adding at the end the follow-  
8 ing new subsection:

9 “(h) SPECIAL RULES FOR ASSUMPTION OF LIABIL-  
10 ITIES TO WHICH SUBSECTION (d) DOES NOT APPLY.—

11 “(1) IN GENERAL.—If, after application of the  
12 other provisions of this section to an exchange or se-  
13 ries of exchanges, the basis of property to which  
14 subsection (a)(1) applies exceeds the fair market  
15 value of such property, then such basis shall be re-  
16 duced (but not below such fair market value) by the  
17 amount (determined as of the date of the exchange)  
18 of any liability—

19 “(A) which is assumed in exchange for  
20 such property, and

21 “(B) with respect to which subsection  
22 (d)(1) does not apply to the assumption.

23 “(2) EXCEPTION.—Paragraph (1) shall not  
24 apply to any liability if the trade or business giving

1 rise to the liability is transferred to the person as-  
2 suming the liability as part of the exchange.

3 “(3) LIABILITY.—For purposes of this sub-  
4 section, the term ‘liability’ shall include any obliga-  
5 tion to make payment, without regard to whether  
6 the obligation is fixed or contingent or otherwise  
7 taken into account for purposes of this title.

8 “(4) REGULATIONS.—The Secretary shall pre-  
9 scribe such regulations as may be necessary to carry  
10 out the provisions of this subsection.”

11 (b) APPLICATION OF COMPARABLE RULES TO PART-  
12 NERSHIPS.—The Secretary of the Treasury or his delegate  
13 shall prescribe rules which provide appropriate adjust-  
14 ments under subchapter K of chapter 1 of the Internal  
15 Revenue Code of 1986 to prevent the acceleration or dupli-  
16 cation of losses through the assumption of (or transfer of  
17 assets subject to) liabilities described in section 358(h)(3)  
18 of such Code (as added by subsection (a)) in transactions  
19 involving partnerships.

20 (c) EFFECTIVE DATES.—

21 (1) IN GENERAL.—The amendments made by  
22 this section shall apply to assumptions of liability  
23 after October 18, 1999.

24 (2) RULES.—The rules prescribed under sub-  
25 section (b) shall apply to assumptions of liability

1 after October 18, 1999, or such later date as may  
2 be prescribed in such rules.

3 **SEC. 214. CONSISTENT TREATMENT AND BASIS ALLOCA-**  
4 **TION RULES FOR TRANSFERS OF INTANGI-**  
5 **BLES IN CERTAIN NONRECOGNITION TRANS-**  
6 **ACTIONS.**

7 (a) TRANSFERS TO CORPORATIONS.—Section 351  
8 (relating to transfer to corporation controlled by trans-  
9 feror) is amended by redesignating subsection (h) as sub-  
10 section (i) and by inserting after subsection (g) the follow-  
11 ing new subsection:

12 “(h) TREATMENT OF TRANSFERS OF INTANGIBLE  
13 PROPERTY.—

14 “(1) TRANSFERS OF LESS THAN ALL SUBSTAN-  
15 TIAL RIGHTS.

16 “(A) IN GENERAL.—A transfer of an inter-  
17 est in intangible property (as defined in section  
18 936(h)(3)(B)) shall be treated under this sec-  
19 tion as a transfer of property even if the trans-  
20 fer is of less than all of the substantial rights  
21 of the transferor in the property.

22 “(B) ALLOCATION OF BASIS.—In the case  
23 of a transfer of less than all of the substantial  
24 rights of the transferor in the intangible prop-  
25 erty, the transferor’s basis immediately before

1           the transfer shall be allocated among the rights  
2           retained by the transferor and the rights trans-  
3           ferred on the basis of their respective fair mar-  
4           ket values.

5           “(2) NONRECOGNITION NOT TO APPLY TO IN-  
6           TANGIBLE PROPERTY DEVELOPED FOR TRANS-  
7           FEREE.—This section shall not apply to a transfer  
8           of intangible property developed by the transferor or  
9           any related person if such development was pursuant  
10          to an arrangement with the transferee.”

11          (b) TRANSFERS TO PARTNERSHIPS.—Subsection (d)  
12          of section 721 is amended to read as follows:

13          “(d) TRANSFERS OF INTANGIBLE PROPERTY.—

14                 “(1) IN GENERAL.—Rules similar to the rules  
15                 of section 351(h) shall apply for purposes of this  
16                 section.

17                 “(2) TRANSFERS TO FOREIGN PARTNER-  
18                 SHIPS.—For regulatory authority to treat intangi-  
19                 bles transferred to a partnership as sold, see section  
20                 367(d)(3).”

21          (c) EFFECTIVE DATE.—The amendments made by  
22          this section shall apply to transfers on or after the date  
23          of the enactment of this Act.

1 **SEC. 215. DISTRIBUTIONS BY A PARTNERSHIP TO A COR-**  
2 **PORATE PARTNER OF STOCK IN ANOTHER**  
3 **CORPORATION.**

4 (a) IN GENERAL.—Section 732 (relating to basis of  
5 distributed property other than money) is amended by  
6 adding at the end the following new subsection:

7 “(f) CORRESPONDING ADJUSTMENT TO BASIS OF AS-  
8 SETS OF A DISTRIBUTED CORPORATION CONTROLLED BY  
9 A CORPORATE PARTNER.—

10 “(1) IN GENERAL.—If—

11 “(A) a corporation (hereafter in this sub-  
12 section referred to as the ‘corporate partner’)  
13 receives a distribution from a partnership of  
14 stock in another corporation (hereafter in this  
15 subsection referred to as the ‘distributed cor-  
16 poration’),

17 “(B) the corporate partner has control of  
18 the distributed corporation immediately after  
19 the distribution or at any time thereafter, and

20 “(C) the partnership’s adjusted basis in  
21 such stock immediately before the distribution  
22 exceeded the corporate partner’s adjusted basis  
23 in such stock immediately after the distribution,  
24 then an amount equal to such excess shall be applied  
25 to reduce (in accordance with subsection (c)) the  
26 basis of property held by the distributed corporation

1 at such time (or, if the corporate partner does not  
2 control the distributed corporation at such time, at  
3 the time the corporate partner first has such con-  
4 trol).

5 “(2) EXCEPTION FOR CERTAIN DISTRIBUTIONS  
6 BEFORE CONTROL ACQUIRED.—Paragraph (1) shall  
7 not apply to any distribution of stock in the distrib-  
8 uted corporation if—

9 “(A) the corporate partner does not have  
10 control of such corporation immediately after  
11 such distribution, and

12 “(B) the corporate partner establishes to  
13 the satisfaction of the Secretary that such dis-  
14 tribution was not part of a plan or arrangement  
15 to acquire control of the distributed corpora-  
16 tion.

17 “(3) LIMITATIONS ON BASIS REDUCTION.—

18 “(A) IN GENERAL.—The amount of the re-  
19 duction under paragraph (1) shall not exceed  
20 the amount by which the sum of the aggregate  
21 adjusted bases of the property and the amount  
22 of money of the distributed corporation exceeds  
23 the corporate partner’s adjusted basis in the  
24 stock of the distributed corporation.

1           “(B) REDUCTION NOT TO EXCEED AD-  
2 JUSTED BASIS OF PROPERTY.—No reduction  
3 under paragraph (1) in the basis of any prop-  
4 erty shall exceed the adjusted basis of such  
5 property (determined without regard to such re-  
6 duction).

7           “(4) GAIN RECOGNITION WHERE REDUCTION  
8 LIMITED.—If the amount of any reduction under  
9 paragraph (1) (determined after the application of  
10 paragraph (3)(A)) exceeds the aggregate adjusted  
11 bases of the property of the distributed corpora-  
12 tion—

13           “(A) such excess shall be recognized by the  
14 corporate partner as long-term capital gain, and

15           “(B) the corporate partner’s adjusted basis  
16 in the stock of the distributed corporation shall  
17 be increased by such excess.

18           “(5) CONTROL.—For purposes of this sub-  
19 section, the term ‘control’ means ownership of stock  
20 meeting the requirements of section 1504(a)(2).

21           “(6) INDIRECT DISTRIBUTIONS.—For purposes  
22 of paragraph (1), if a corporation acquires (other  
23 than in a distribution from a partnership) stock the  
24 basis of which is determined in whole or in part by  
25 reference to subsection (a)(2) or (b), the corporation

1 shall be treated as receiving a distribution of such  
2 stock from a partnership.

3 “(7) SPECIAL RULE FOR STOCK IN CON-  
4 TROLLED CORPORATION.—If the property held by a  
5 distributed corporation is stock in a corporation  
6 which the distributed corporation controls, this sub-  
7 section shall be applied to reduce the basis of the  
8 property of such controlled corporation. This sub-  
9 section shall be reapplied to any property of any  
10 controlled corporation which is stock in a corpora-  
11 tion which it controls.

12 “(8) REGULATIONS.—The Secretary shall pre-  
13 scribe such regulations as may be necessary to carry  
14 out the purposes of this subsection, including regula-  
15 tions to avoid double counting and to prevent the  
16 abuse of such purposes.”

17 (b) EFFECTIVE DATE.—

18 (1) IN GENERAL.—Except as provided in para-  
19 graph (2), the amendment made by this section shall  
20 apply to distributions made after July 14, 1999.

21 (2) PARTNERSHIPS IN EXISTENCE ON JULY 14,  
22 1999.—In the case of a corporation which is a part-  
23 ner in a partnership as of July 14, 1999, the  
24 amendment made by this section shall apply to dis-



1       tributions made to such partner from such partner-  
2       ship after the date of the enactment of this Act.

3       **SEC. 216. PROHIBITED ALLOCATIONS OF STOCK IN S COR-**  
4       **PORATION ESOP.**

5       (a) IN GENERAL.—Section 409 (relating to qualifica-  
6       tions for tax credit employee stock ownership plans) is  
7       amended by redesignating subsection (p) as subsection (q)  
8       and by inserting after subsection (o) the following new  
9       subsection:

10       “(p) PROHIBITED ALLOCATIONS OF SECURITIES IN  
11       AN S CORPORATION.—

12               “(1) IN GENERAL.—An employee stock owner-  
13       ship plan holding employer securities consisting of  
14       stock in an S corporation shall provide that no por-  
15       tion of the assets of the plan attributable to (or allo-  
16       cable in lieu of) such employer securities may, dur-  
17       ing a nonallocation year, accrue (or be allocated di-  
18       rectly or indirectly under any plan of the employer  
19       meeting the requirements of section 401(a)) for the  
20       benefit of any disqualified person.

21               “(2) FAILURE TO MEET REQUIREMENTS.—

22                       “(A) IN GENERAL.—If a plan fails to meet  
23       the requirements of paragraph (1), the plan  
24       shall be treated as having distributed to any  
25       disqualified person the amount allocated to the

1 account of such person in violation of para-  
2 graph (1) at the time of such allocation.

3 “(B) CROSS REFERENCE.—

“**For excise tax relating to violations of paragraph  
(1) and ownership of synthetic equity, see section  
4979A.**

4 “(3) NONALLOCATION YEAR.—For purposes of  
5 this subsection—

6 “(A) IN GENERAL.—The term ‘nonalloca-  
7 tion year’ means any plan year of an employee  
8 stock ownership plan if, at any time during  
9 such plan year—

10 “(i) such plan holds employer securi-  
11 ties consisting of stock in an S corpora-  
12 tion, and

13 “(ii) disqualified persons own at least  
14 50 percent of the number of shares of  
15 stock in the S corporation.

16 “(B) CONTRIBUTION RULES.—For purposes  
17 of subparagraph (A)—

18 “(i) IN GENERAL.—The rules of sec-  
19 tion 318(a) shall apply for purposes of de-  
20 termining ownership, except that—

21 “(I) in applying paragraph (1)  
22 thereof, the members of an individ-  
23 ual’s family shall include members of

1 the family described in paragraph  
2 (4)(D), and

3 “(II) paragraph (4) thereof shall  
4 not apply.

5 “(ii) DEEMED-OWNED SHARES.—Not-  
6 withstanding the employee trust exception  
7 in section 318(a)(2)(B)(i), individual shall  
8 be treated as owning deemed-owned shares  
9 of the individual.

10 Solely for purposes of applying paragraph (5),  
11 this subparagraph shall be applied after the at-  
12 tribution rules of paragraph (5) have been ap-  
13 plied.

14 “(4) DISQUALIFIED PERSON.—For purposes of  
15 this subsection—

16 “(A) IN GENERAL.—The term ‘disqualified  
17 person’ means any person if—

18 “(i) the aggregate number of deemed-  
19 owned shares of such person and the mem-  
20 bers of such person’s family is at least 20  
21 percent of the number of deemed-owned  
22 shares of stock in the S corporation, or

23 “(ii) in the case of a person not de-  
24 scribed in clause (i), the number of  
25 deemed-owned shares of such person is at

1           least 10 percent of the number of deemed-  
2           owned shares of stock in such corporation.

3           “(B) TREATMENT OF FAMILY MEMBERS.—

4           In the case of a disqualified person described in  
5           subparagraph (A)(i), any member of such per-  
6           son’s family with deemed-owned shares shall be  
7           treated as a disqualified person if not otherwise  
8           treated as a disqualified person under subpara-  
9           graph (A).

10          “(C) DEEMED-OWNED SHARES.—

11           “(i) IN GENERAL.—The term  
12           ‘deemed-owned shares’ means, with respect  
13           to any person—

14                   “(I) the stock in the S corpora-  
15                   tion constituting employer securities  
16                   of an employee stock ownership plan  
17                   which is allocated to such person  
18                   under the plan, and

19                   “(II) such person’s share of the  
20                   stock in such corporation which is  
21                   held by such plan but which is not al-  
22                   located under the plan to participants.

23           “(ii) PERSON’S SHARE OF  
24           UNALLOCATED STOCK.—For purposes of  
25           clause (i)(II), a person’s share of

1 unallocated S corporation stock held by  
2 such plan is the amount of the unallocated  
3 stock which would be allocated to such per-  
4 son if the unallocated stock were allocated  
5 to all participants in the same proportions  
6 as the most recent stock allocation under  
7 the plan.

8 “(D) MEMBER OF FAMILY.—For purposes  
9 of this paragraph, the term ‘member of the  
10 family’ means, with respect to any individual—

11 “(i) the spouse of the individual,

12 “(ii) an ancestor or lineal descendant  
13 of the individual or the individual’s spouse,

14 “(iii) a brother or sister of the indi-  
15 vidual or the individual’s spouse and any  
16 lineal descendant of the brother or sister,  
17 and

18 “(iv) the spouse of any individual de-  
19 scribed in clause (ii) or (iii).

20 A spouse of an individual who is legally sepa-  
21 rated from such individual under a decree of di-  
22 vorce or separate maintenance shall not be  
23 treated as such individual’s spouse for purposes  
24 of this subparagraph.

1           “(5) TREATMENT OF SYNTHETIC EQUITY.—For  
2 purposes of paragraphs (3) and (4), in the case of  
3 a person who owns synthetic equity in the S corpora-  
4 tion, except to the extent provided in regulations, the  
5 shares of stock in such corporation on which such  
6 synthetic equity is based shall be treated as out-  
7 standing stock in such corporation and deemed-  
8 owned shares of such person if such treatment of  
9 synthetic equity of 1 or more such persons results  
10 in—

11                   “(A) the treatment of any person as a dis-  
12 qualified person, or

13                   “(B) the treatment of any year as a non-  
14 allocation year.

15 For purposes of this paragraph, synthetic equity  
16 shall be treated as owned by a person in the same  
17 manner as stock is treated as owned by a person  
18 under the rules of paragraphs (2) and (3) of section  
19 318(a). If, without regard to this paragraph, a per-  
20 son is treated as a disqualified person or a year is  
21 treated as a nonallocation year, this paragraph shall  
22 not be construed to result in the person or year not  
23 being so treated.

24           “(6) DEFINITIONS.—For purposes of this sub-  
25 section—

1           “(A) EMPLOYEE STOCK OWNERSHIP  
2 PLAN.—The term ‘employee stock ownership  
3 plan’ has the meaning given such term by sec-  
4 tion 4975(e)(7).

5           “(B) EMPLOYER SECURITIES.—The term  
6 ‘employer security’ has the meaning given such  
7 term by section 409(l).

8           “(C) SYNTHETIC EQUITY.—The term ‘syn-  
9 thetic equity’ means any stock option, warrant,  
10 restricted stock, deferred issuance stock right,  
11 or similar interest or right that gives the holder  
12 the right to acquire or receive stock of the S  
13 corporation in the future. Except to the extent  
14 provided in regulations, synthetic equity also in-  
15 cludes a stock appreciation right, phantom  
16 stock unit, or similar right to a future cash  
17 payment based on the value of such stock or  
18 appreciation in such value.

19           “(7) REGULATIONS.—The Secretary shall pre-  
20 scribe such regulations as may be necessary to carry  
21 out the purposes of this subsection.”

22           (b) COORDINATION WITH SECTION 4975(e)(7).—The  
23 last sentence of section 4975(e)(7) (defining employee  
24 stock ownership plan) is amended by inserting “, section  
25 409(p),” after “409(n)”.

1 (c) EXCISE TAX.—

2 (1) APPLICATION OF TAX.—Subsection (a) of  
3 section 4979A (relating to tax on certain prohibited  
4 allocations of employer securities) is amended—

5 (A) by striking “or” at the end of para-  
6 graph (1),

7 (B) by striking the period at the end of  
8 paragraph (2) and inserting a comma, and

9 (C) by striking all that follows paragraph  
10 (2) and inserting the following:

11 “(3) there is any allocation of employer securi-  
12 ties which violates the provisions of section 409(p),  
13 or a nonallocation year described in subsection  
14 (c)(2)(C) with respect to an employee stock owner-  
15 ship plan, or

16 “(4) any synthetic equity is owned by a dis-  
17 qualified person in any nonallocation year,

18 there is hereby imposed a tax on such allocation or owner-  
19 ship equal to 50 percent of the amount involved.”

20 (2) LIABILITY.—Section 4979A(c) (defining li-  
21 ability for tax) is amended to read as follows:

22 “(c) LIABILITY FOR TAX.—The tax imposed by this  
23 section shall be paid—

24 “(1) in the case of an allocation referred to in  
25 paragraph (1) or (2) of subsection (a), by—



1           “(A) the employer sponsoring such plan, or

2           “(B) the eligible worker-owned cooperative,

3           which made the written statement described in sec-

4           tion 664(g)(1)(E) or in section 1042(b)(3)(B) (as

5           the case may be), and

6           “(2) in the case of an allocation or ownership

7           referred to in paragraph (3) or (4) of subsection (a),

8           by the S corporation the stock in which was so allo-

9           cated or owned.”

10           (3) DEFINITIONS.—Section 4979A(e) (relating

11           to definitions) is amended to read as follows:

12           “(e) DEFINITIONS AND SPECIAL RULES.—For pur-

13           poses of this section—

14           “(1) DEFINITIONS.—Except as provided in

15           paragraph (2), terms used in this section have the

16           same respective meanings as when used in sections

17           409 and 4978.

18           “(2) SPECIAL RULES RELATING TO TAX IM-

19           POSED BY REASON OF PARAGRAPH (3) OR (4) OF

20           SUBSECTION (a).—

21           “(A) PROHIBITED ALLOCATIONS.—The

22           amount involved with respect to any tax im-

23           posed by reason of subsection (a)(3) is the

24           amount allocated to the account of any person

25           in violation of section 409(p)(1).

1           “(B) SYNTHETIC EQUITY.—The amount  
2 involved with respect to any tax imposed by rea-  
3 son of subsection (a)(4) is the value of the  
4 shares on which the synthetic equity is based.

5           “(C) SPECIAL RULE DURING FIRST NON-  
6 ALLOCATION YEAR.—For purposes of subpara-  
7 graph (A), the amount involved for the first  
8 nonallocation year of any employee stock owner-  
9 ship plan shall be determined by taking into ac-  
10 count the total value of all the deemed-owned  
11 shares of all disqualified persons with respect to  
12 such plan.

13           “(D) STATUTE OF LIMITATIONS.—The  
14 statutory period for the assessment of any tax  
15 imposed by this section by reason of paragraph  
16 (3) or (4) of subsection (a) shall not expire be-  
17 fore the date which is 3 years from the later  
18 of—

19                   “(i) the allocation or ownership re-  
20 ferred to in such paragraph giving rise to  
21 such tax, or

22                   “(ii) the date on which the Secretary  
23 is notified of such allocation or owner-  
24 ship.”

25           (d) EFFECTIVE DATES.—

1           (1) IN GENERAL.—The amendments made by  
2 this section shall apply to plan years beginning after  
3 December 31, 2000.

4           (2) EXCEPTION FOR CERTAIN PLANS.—In the  
5 case of any—

6           (A) employee stock ownership plan estab-  
7 lished after July 14, 1999, or

8           (B) employee stock ownership plan estab-  
9 lished on or before such date if employer securi-  
10 ties held by the plan consist of stock in a cor-  
11 poration with respect to which an election under  
12 section 1362(a) of the Internal Revenue Code  
13 of 1986 is not in effect on such date,

14 the amendments made by this section shall apply to  
15 plan years ending after July 14, 1999.

16 **Subtitle B—Provisions Relating to**  
17 **Real Estate Investment Trusts**

18 **PART I—TREATMENT OF INCOME AND SERVICES**

19 **PROVIDED BY TAXABLE REIT SUBSIDIARIES**

20 **SEC. 221. MODIFICATIONS TO ASSET DIVERSIFICATION**

21 **TEST.**

22           (a) IN GENERAL.—Subparagraph (B) of section  
23 856(c)(4) is amended to read as follows:

24           “(B)(i) not more than 25 percent of the  
25 value of its total assets is represented by securi-

1 ties (other than those includible under subpara-  
2 graph (A)),

3 “(ii) not more than 20 percent of the value  
4 of its total assets is represented by securities of  
5 1 or more taxable REIT subsidiaries, and

6 “(iii) except with respect to a taxable  
7 REIT subsidiary and securities includible under  
8 subparagraph (A)—

9 “(I) not more than 5 percent of the  
10 value of its total assets is represented by  
11 securities of any one issuer,

12 “(II) the trust does not hold securities  
13 possessing more than 10 percent of the  
14 total voting power of the outstanding secu-  
15 rities of any one issuer, and

16 “(III) the trust does not hold securi-  
17 ties having a value of more than 10 per-  
18 cent of the total value of the outstanding  
19 securities of any one issuer.”.

20 (b) EXCEPTION FOR STRAIGHT DEBT SECURITIES.—

21 Subsection (c) of section 856 is amended by adding at the  
22 end the following new paragraph:

23 “(7) STRAIGHT DEBT SAFE HARBOR IN APPLY-  
24 ING PARAGRAPH (4).—Securities of an issuer which  
25 are straight debt (as defined in section 1361(c)(5)

1 without regard to subparagraph (B)(iii) thereof  
2 shall not be taken into account in applying para-  
3 graph (4)(B)(ii)(III) if—

4 “(A) the issuer is an individual, or

5 “(B) the only securities of such issuer  
6 which are held by the trust or a taxable REIT  
7 subsidiary of the trust are straight debt (as so  
8 defined), or

9 “(C) the issuer is a partnership and the  
10 trust holds at least a 20 percent profits interest  
11 in the partnership.”.

12 **SEC. 222. TREATMENT OF INCOME AND SERVICES PRO-**  
13 **VIDED BY TAXABLE REIT SUBSIDIARIES.**

14 (a) INCOME FROM TAXABLE REIT SUBSIDIARIES  
15 NOT TREATED AS IMPERMISSIBLE TENANT SERVICE IN-  
16 COME.—Clause (i) of section 856(d)(7)(C) (relating to ex-  
17 ceptions to impermissible tenant service income) is amend-  
18 ed by inserting “or through a taxable REIT subsidiary  
19 of such trust” after “income”.

20 (b) CERTAIN INCOME FROM TAXABLE REIT SUB-  
21 SIDIARIES NOT EXCLUDED FROM RENTS FROM REAL  
22 PROPERTY.—

23 (1) IN GENERAL.—Subsection (d) of section  
24 856 (relating to rents from real property defined) is

1 amended by adding at the end the following new  
2 paragraphs:

3 “(8) SPECIAL RULE FOR TAXABLE REIT SUB-  
4 SIDIARIES.—For purposes of this subsection,  
5 amounts paid to a real estate investment trust by a  
6 taxable REIT subsidiary of such trust shall not be  
7 excluded from rents from real property by reason of  
8 paragraph (2)(B) if the requirements of either of the  
9 following subparagraphs are met:

10 “(A) LIMITED RENTAL EXCEPTION.—The  
11 requirements of this subparagraph are met with  
12 respect to any property if at least 90 percent of  
13 the leased space of the property is rented to  
14 persons other than taxable REIT subsidiaries of  
15 such trust and other than persons described in  
16 section 856(d)(2)(B). The preceding sentence  
17 shall apply only to the extent that the amounts  
18 paid to the trust as rents from real property (as  
19 defined in paragraph (1) without regard to  
20 paragraph (2)(B)) from such property are sub-  
21 stantially comparable to such rents made by the  
22 other tenants of the trust’s property for com-  
23 parable space.

24 “(B) EXCEPTION FOR CERTAIN LODGING  
25 FACILITIES.—The requirements of this subpara-

1 graph are met with respect to an interest in  
2 real property which is a qualified lodging facil-  
3 ity leased by the trust to a taxable REIT sub-  
4 sidiary of the trust if the property is operated  
5 on behalf of such subsidiary by a person who is  
6 an eligible independent contractor.

7 “(9) ELIGIBLE INDEPENDENT CONTRACTOR.—  
8 For purposes of paragraph (8)(B)—

9 “(A) IN GENERAL.—The term ‘eligible  
10 independent contractor’ means, with respect to  
11 any qualified lodging facility, any independent  
12 contractor if, at the time such contractor enters  
13 into a management agreement or other similar  
14 service contract with the taxable REIT subsidi-  
15 ary to operate the facility, such contractor (or  
16 any related person) is actively engaged in the  
17 trade or business of operating qualified lodging  
18 facilities for any person who is not a related  
19 person with respect to the real estate invest-  
20 ment trust or the taxable REIT subsidiary.

21 “(B) SPECIAL RULES.—Solely for purposes  
22 of this paragraph and paragraph (8)(B), a per-  
23 son shall not fail to be treated as an independ-  
24 ent contractor with respect to any qualified

1           lodging facility by reason of any of the follow-  
2           ing:

3                   “(i) The taxable REIT subsidiary  
4                   bears the expenses for the operation of the  
5                   facility pursuant to the management agree-  
6                   ment or other similar service contract.

7                   “(ii) The taxable REIT subsidiary re-  
8                   ceives the revenues from the operation of  
9                   such facility, net of expenses for such oper-  
10                  ation and fees payable to the operator pur-  
11                  suant to such agreement or contract.

12                  “(iii) The real estate investment trust  
13                  receives income from such person with re-  
14                  spect to another property that is attrib-  
15                  utable to a lease of such other property to  
16                  such person that was in effect as of the  
17                  later of—

18                           “(I) January 1, 1999, or

19                           “(II) the earliest date that any  
20                           taxable REIT subsidiary of such trust  
21                           entered into a management agreement  
22                           or other similar service contract with  
23                           such person with respect to such  
24                           qualified lodging facility.



1                   “(C) RENEWALS, ETC., OF EXISTING  
2 LEASES.—For purposes of subparagraph  
3 (B)(iii)—

4                   “(i) a lease shall be treated as in ef-  
5 fect on January 1, 1999, without regard to  
6 its renewal after such date, so long as such  
7 renewal is pursuant to the terms of such  
8 lease as in effect on whichever of the dates  
9 under subparagraph (B)(iii) is the latest,  
10 and

11                   “(ii) a lease of a property entered into  
12 after whichever of the dates under sub-  
13 paragraph (B)(iii) is the latest shall be  
14 treated as in effect on such date if—

15                   “(I) on such date, a lease of such  
16 property from the trust was in effect,  
17 and

18                   “(II) under the terms of the new  
19 lease, such trust receives a substan-  
20 tially similar or lesser benefit in com-  
21 parison to the lease referred to in sub-  
22 clause (I).

23                   “(D) QUALIFIED LODGING FACILITY.—For  
24 purposes of this paragraph—

1                   “(i) IN GENERAL.—The term ‘quali-  
2                   fied lodging facility’ means any lodging fa-  
3                   cility unless wagering activities are con-  
4                   ducted at or in connection with such facil-  
5                   ity by any person who is engaged in the  
6                   business of accepting wagers and who is le-  
7                   gally authorized to engage in such business  
8                   at or in connection with such facility.

9                   “(ii) LODGING FACILITY.—The term  
10                  ‘lodging facility’ means a hotel, motel, or  
11                  other establishment more than one-half of  
12                  the dwelling units in which are used on a  
13                  transient basis.

14                  “(iii) CUSTOMARY AMENITIES AND FA-  
15                  CILITIES.—The term ‘lodging facility’ in-  
16                  cludes customary amenities and facilities  
17                  operated as part of, or associated with, the  
18                  lodging facility so long as such amenities  
19                  and facilities are customary for other prop-  
20                  erties of a comparable size and class owned  
21                  by other owners unrelated to such real es-  
22                  tate investment trust.

23                  “(E) OPERATE INCLUDES MANAGE.—Ref-  
24                  erences in this paragraph to operating a prop-

1           erty shall be treated as including a reference to  
2           managing the property.

3           “(F) RELATED PERSON.—Persons shall be  
4           treated as related to each other if such persons  
5           are treated as a single employer under sub-  
6           section (a) or (b) of section 52.”.

7           (2) CONFORMING AMENDMENT.—Subparagraph  
8           (B) of section 856(d)(2) is amended by inserting  
9           “except as provided in paragraph (8),” after “(B)”.

10          (3) DETERMINING RENTS FROM REAL PROP-  
11          PERTY.—

12           (A)(i) Paragraph (1) of section 856(d) is  
13           amended by striking “adjusted bases” each  
14           place it occurs and inserting “fair market val-  
15           ues”.

16           (ii) The amendment made by this subpara-  
17           graph shall apply to taxable years beginning  
18           after December 31, 2000.

19           (B)(i) Clause (i) of section 856(d)(2)(B) is  
20           amended by striking “number” and inserting  
21           “value”.

22           (ii) The amendment made by this subpara-  
23           graph shall apply to amounts received or ac-  
24           crued in taxable years beginning after Decem-  
25           ber 31, 2000, except for amounts paid pursuant

1 to leases in effect on July 12, 1999, or pursu-  
2 ant to a binding contract in effect on such date  
3 and at all times thereafter.

4 **SEC. 223. TAXABLE REIT SUBSIDIARY.**

5 (a) IN GENERAL.—Section 856 is amended by adding  
6 at the end the following new subsection:

7 “(1) TAXABLE REIT SUBSIDIARY.—For purposes of  
8 this part—

9 “(1) IN GENERAL.—The term ‘taxable REIT  
10 subsidiary’ means, with respect to a real estate in-  
11 vestment trust, a corporation (other than a real es-  
12 tate investment trust) if—

13 “(A) such trust directly or indirectly owns  
14 stock in such corporation, and

15 “(B) such trust and such corporation joint-  
16 ly elect that such corporation shall be treated as  
17 a taxable REIT subsidiary of such trust for  
18 purposes of this part.

19 Such an election, once made, shall be irrevocable un-  
20 less both such trust and corporation consent to its  
21 revocation. Such election, and any revocation there-  
22 of, may be made without the consent of the Sec-  
23 retary.

24 “(2) 35 PERCENT OWNERSHIP IN ANOTHER  
25 TAXABLE REIT SUBSIDIARY.—The term ‘taxable

1 REIT subsidiary' includes, with respect to any real  
2 estate investment trust, any corporation (other than  
3 a real estate investment trust) with respect to which  
4 a taxable REIT subsidiary of such trust owns di-  
5 rectly or indirectly—

6 “(A) securities possessing more than 35  
7 percent of the total voting power of the out-  
8 standing securities of such corporation, or

9 “(B) securities having a value of more  
10 than 35 percent of the total value of the out-  
11 standing securities of such corporation.

12 The preceding sentence shall not apply to a qualified  
13 REIT subsidiary (as defined in subsection (i)(2)).  
14 The rule of section 856(c)(7) shall apply for pur-  
15 poses of subparagraph (B).

16 “(3) EXCEPTIONS.—The term ‘taxable REIT  
17 subsidiary’ shall not include—

18 “(A) any corporation which directly or in-  
19 directly operates or manages a lodging facility  
20 or a health care facility, and

21 “(B) any corporation which directly or in-  
22 directly provides to any other person (under a  
23 franchise, license, or otherwise) rights to any  
24 brand name under which any lodging facility or  
25 health care facility is operated.

1 Subparagraph (B) shall not apply to rights provided  
2 to an eligible independent contractor to operate or  
3 manage a lodging facility if such rights are held by  
4 such corporation as a franchisee, licensee, or in a  
5 similar capacity and such lodging facility is either  
6 owned by such corporation or is leased to such cor-  
7 poration from the real estate investment trust.

8 “(4) DEFINITIONS.—For purposes of paragraph  
9 (3)—

10 “(A) LODGING FACILITY.—The term ‘lodg-  
11 ing facility’ has the meaning given to such term  
12 by paragraph (9)(D)(ii).

13 “(B) HEALTH CARE FACILITY.—The term  
14 ‘health care facility’ has the meaning given to  
15 such term by subsection (e)(6)(D)(ii).”.

16 (b) CONFORMING AMENDMENT.—Paragraph (2) of  
17 section 856(i) is amended by adding at the end the follow-  
18 ing new sentence: “Such term shall not include a taxable  
19 REIT subsidiary.”.

20 **SEC. 224. LIMITATION ON EARNINGS STRIPPING.**

21 Paragraph (3) of section 163(j) (relating to limita-  
22 tion on deduction for interest on certain indebtedness) is  
23 amended by striking “and” at the end of subparagraph  
24 (A), by striking the period at the end of subparagraph

1 (B) and inserting “, and”, and by adding at the end the  
2 following new subparagraph:

3 “(C) any interest paid or accrued (directly  
4 or indirectly) by a taxable REIT subsidiary (as  
5 defined in section 856(l)) of a real estate invest-  
6 ment trust to such trust.”.

7 **SEC. 225. 100 PERCENT TAX ON IMPROPERLY ALLOCATED**  
8 **AMOUNTS.**

9 (a) IN GENERAL.—Subsection (b) of section 857 (re-  
10 lating to method of taxation of real estate investment  
11 trusts and holders of shares or certificates of beneficial  
12 interest) is amended by redesignating paragraphs (7) and  
13 (8) as paragraphs (8) and (9), respectively, and by insert-  
14 ing after paragraph (6) the following new paragraph:

15 “(7) INCOME FROM REDETERMINED RENTS, RE-  
16 DETERMINED DEDUCTIONS, AND EXCESS INTER-  
17 EST.—

18 “(A) IMPOSITION OF TAX.—There is here-  
19 by imposed for each taxable year of the real es-  
20 tate investment trust a tax equal to 100 percent  
21 of redetermined rents, redetermined deductions,  
22 and excess interest.

23 “(B) REDETERMINED RENTS.—

24 “(i) IN GENERAL.—The term ‘redeter-  
25 mined rents’ means rents from real prop-

1 erty (as defined in subsection 856(d)) the  
2 amount of which would (but for subpara-  
3 graph (E)) be reduced on distribution, ap-  
4 portionment, or allocation under section  
5 482 to clearly reflect income as a result of  
6 services furnished or rendered by a taxable  
7 REIT subsidiary of the real estate invest-  
8 ment trust to a tenant of such trust.

9 “(ii) EXCEPTION FOR CERTAIN SERV-  
10 ICES.—Clause (i) shall not apply to  
11 amounts received directly or indirectly by a  
12 real estate investment trust for services de-  
13 scribed in paragraph (1)(B) or (7)(C)(i) of  
14 section 856(d).

15 “(iii) EXCEPTION FOR DE MINIMIS  
16 AMOUNTS.—Clause (i) shall not apply to  
17 amounts described in section 856(d)(7)(A)  
18 with respect to a property to the extent  
19 such amounts do not exceed the one per-  
20 cent threshold described in section  
21 856(d)(7)(B) with respect to such prop-  
22 erty.

23 “(iv) EXCEPTION FOR COMPARABLY  
24 PRICED SERVICES.—Clause (i) shall not  
25 apply to any service rendered by a taxable



1 REIT subsidiary of a real estate invest-  
2 ment trust to a tenant of such trust if—

3 “(I) such subsidiary renders a  
4 significant amount of similar services  
5 to persons other than such trust and  
6 tenants of such trust who are unre-  
7 lated (within the meaning of section  
8 856(d)(8)(F)) to such subsidiary,  
9 trust, and tenants, but

10 “(II) only to the extent the  
11 charge for such service so rendered is  
12 substantially comparable to the charge  
13 for the similar services rendered to  
14 persons referred to in subclause (I).

15 “(v) EXCEPTION FOR CERTAIN SEPA-  
16 RATELY CHARGED SERVICES.—Clause (i)  
17 shall not apply to any service rendered by  
18 a taxable REIT subsidiary of a real estate  
19 investment trust to a tenant of such trust  
20 if—

21 “(I) the rents paid to the trust  
22 by tenants (leasing at least 25 percent  
23 of the net leasable space in the trust’s  
24 property) who are not receiving such  
25 service from such subsidiary are sub-

1                   stantially comparable to the rents  
2                   paid by tenants leasing comparable  
3                   space who are receiving such service  
4                   from such subsidiary, and

5                   “(II) the charge for such service  
6                   from such subsidiary is separately  
7                   stated.

8                   “(vi) EXCEPTION FOR CERTAIN SERV-  
9                   ICES BASED ON SUBSIDIARY’S INCOME  
10                  FROM THE SERVICES.—Clause (i) shall not  
11                  apply to any service rendered by a taxable  
12                  REIT subsidiary of a real estate invest-  
13                  ment trust to a tenant of such trust if the  
14                  gross income of such subsidiary from such  
15                  service is not less than 150 percent of such  
16                  subsidiary’s direct cost in furnishing or  
17                  rendering the service.

18                  “(vii) EXCEPTIONS GRANTED BY SEC-  
19                  RETARY.—The Secretary may waive the  
20                  tax otherwise imposed by subparagraph  
21                  (A) if the trust establishes to the satisfac-  
22                  tion of the Secretary that rents charged to  
23                  tenants were established on an arms’  
24                  length basis even though a taxable REIT

1 subsidiary of the trust provided services to  
2 such tenants.

3 “(C) REDETERMINED DEDUCTIONS.—The  
4 term ‘redetermined deductions’ means deduc-  
5 tions (other than redetermined rents) of a tax-  
6 able REIT subsidiary of a real estate invest-  
7 ment trust if the amount of such deductions  
8 would (but for subparagraph (E)) be decreased  
9 on distribution, apportionment, or allocation  
10 under section 482 to clearly reflect income as  
11 between such subsidiary and such trust.

12 “(D) EXCESS INTEREST.—The term ‘ex-  
13 cess interest’ means any deductions for interest  
14 payments by a taxable REIT subsidiary of a  
15 real estate investment trust to such trust to the  
16 extent that the interest payments are in excess  
17 of a rate that is commercially reasonable.

18 “(E) COORDINATION WITH SECTION 482.—  
19 The imposition of tax under subparagraph (A)  
20 shall be in lieu of any distribution, apportion-  
21 ment, or allocation under section 482.

22 “(F) REGULATORY AUTHORITY.—The Sec-  
23 retary shall prescribe such regulations as may  
24 be necessary or appropriate to carry out the  
25 purposes of this paragraph. Until the Secretary

1           prescribes such regulations, real estate invest-  
2           ment trusts and their taxable REIT subsidi-  
3           aries may base their allocations on any reason-  
4           able method.”.

5           (b) AMOUNT SUBJECT TO TAX NOT REQUIRED TO  
6 BE DISTRIBUTED.—Subparagraph (E) of section  
7 857(b)(2) (relating to real estate investment trust taxable  
8 income) is amended by striking “paragraph (5)” and in-  
9 serting “paragraphs (5) and (7)”.

10 **SEC. 226. EFFECTIVE DATE.**

11           (a) IN GENERAL.—The amendments made by this  
12 part shall apply to taxable years beginning after December  
13 31, 2000.

14           (b) TRANSITIONAL RULES RELATED TO SECTION  
15 221.—

16           (1) EXISTING ARRANGEMENTS.—

17                   (A) IN GENERAL.—Except as otherwise  
18 provided in this paragraph, the amendment  
19 made by section 221 shall not apply to a real  
20 estate investment trust with respect to—

21                           (i) securities of a corporation held di-  
22 rectly or indirectly by such trust on July  
23 12, 1999,

24                           (ii) securities of a corporation held by  
25 an entity on July 12, 1999, if such trust

1 acquires control of such entity pursuant to  
2 a written binding contract in effect on such  
3 date and at all times thereafter before such  
4 acquisition,

5 (iii) securities received by such trust  
6 (or a successor) in exchange for, or with  
7 respect to, securities described in clause (i)  
8 or (ii) in a transaction in which gain or  
9 loss is not recognized, and

10 (iv) securities acquired directly or in-  
11 directly by such trust as part of a reorga-  
12 nization (as defined in section 368(a)(1) of  
13 the Internal Revenue Code of 1986) with  
14 respect to such trust if such securities are  
15 described in clause (i), (ii), or (iii) with re-  
16 spect to any other real estate investment  
17 trust.

18 (B) NEW TRADE OR BUSINESS OR SUB-  
19 STANTIAL NEW ASSETS.—Subparagraph (A)  
20 shall cease to apply to securities of a corpora-  
21 tion as of the first day after July 12, 1999, on  
22 which such corporation engages in a substantial  
23 new line of business, or acquires any substantial  
24 asset, other than—

1 (i) pursuant to a binding contract in  
2 effect on such date and at all times there-  
3 after before the acquisition of such asset,

4 (ii) in a transaction in which gain or  
5 loss is not recognized by reason of section  
6 1031 or 1033 of the Internal Revenue  
7 Code of 1986, or

8 (iii) in a reorganization (as so de-  
9 fined) with another corporation the securi-  
10 ties of which are described in paragraph  
11 (1)(A) of this subsection.

12 (C) LIMITATION ON TRANSITION RULES.—  
13 Subparagraph (A) shall cease to apply to secu-  
14 rities of a corporation held, acquired, or re-  
15 ceived, directly or indirectly, by a real estate in-  
16 vestment trust as of the first day after July 12,  
17 1999, on which such trust acquires any addi-  
18 tional securities of such corporation other  
19 than—

20 (i) pursuant to a binding contract in  
21 effect on July 12, 1999, and at all times  
22 thereafter, or

23 (ii) in a reorganization (as so defined)  
24 with another corporation the securities of

1           which are described in paragraph (1)(A) of  
2           this subsection.

3           (2) TAX-FREE CONVERSION.—If—

4           (A) at the time of an election for a cor-  
5           poration to become a taxable REIT subsidiary,  
6           the amendment made by section 221 does not  
7           apply to such corporation by reason of para-  
8           graph (1), and

9           (B) such election first takes effect before  
10          January 1, 2004,

11          such election shall be treated as a reorganization  
12          qualifying under section 368(a)(1)(A) of such Code.

## 13                   **PART II—HEALTH CARE REITS**

### 14   **SEC. 231. HEALTH CARE REITS.**

15          (a) SPECIAL FORECLOSURE RULE FOR HEALTH  
16    CARE PROPERTIES.—Subsection (e) of section 856 (relat-  
17    ing to special rules for foreclosure property) is amended  
18    by adding at the end the following new paragraph:

19               “(6) SPECIAL RULE FOR QUALIFIED HEALTH  
20    CARE PROPERTIES.—For purposes of this sub-  
21    section—

22               “(A) ACQUISITION AT EXPIRATION OF  
23    LEASE.—The term ‘foreclosure property’ shall  
24    include any qualified health care property ac-  
25    quired by a real estate investment trust as the

1 result of the termination of a lease of such  
2 property (other than a termination by reason of  
3 a default, or the imminence of a default, on the  
4 lease).

5 “(B) GRACE PERIOD.—In the case of a  
6 qualified health care property which is fore-  
7 closure property solely by reason of subpara-  
8 graph (A), in lieu of applying paragraphs (2)  
9 and (3)—

10 “(i) the qualified health care property  
11 shall cease to be foreclosure property as of  
12 the close of the second taxable year after  
13 the taxable year in which such trust ac-  
14 quired such property, and

15 “(ii) if the real estate investment  
16 trust establishes to the satisfaction of the  
17 Secretary that an extension of the grace  
18 period in clause (i) is necessary to the or-  
19 derly leasing or liquidation of the trust’s  
20 interest in such qualified health care prop-  
21 erty, the Secretary may grant one or more  
22 extensions of the grace period for such  
23 qualified health care property.

24 Any such extension shall not extend the grace  
25 period beyond the close of the 6th year after



1 the taxable year in which such trust acquired  
2 such qualified health care property.

3 “(C) INCOME FROM INDEPENDENT CON-  
4 TRACTORS.—For purposes of applying para-  
5 graph (4)(C) with respect to qualified health  
6 care property which is foreclosure property by  
7 reason of subparagraph (A) or paragraph (1),  
8 income derived or received by the trust from an  
9 independent contractor shall be disregarded to  
10 the extent such income is attributable to—

11 “(i) any lease of property in effect on  
12 the date the real estate investment trust  
13 acquired the qualified health care property  
14 (without regard to its renewal after such  
15 date so long as such renewal is pursuant to  
16 the terms of such lease as in effect on such  
17 date), or

18 “(ii) any lease of property entered  
19 into after such date if—

20 “(I) on such date, a lease of such  
21 property from the trust was in effect,  
22 and

23 “(II) under the terms of the new  
24 lease, such trust receives a substan-  
25 tially similar or lesser benefit in com-

1                   parison to the lease referred to in sub-  
2                   clause (I).

3                   “(D) QUALIFIED HEALTH CARE PROP-  
4                   PERTY.—

5                   “(i) IN GENERAL.—The term ‘quali-  
6                   fied health care property’ means any real  
7                   property (including interests therein), and  
8                   any personal property incident to such real  
9                   property, which—

10                   “(I) is a health care facility, or

11                   “(II) is necessary or incidental to  
12                   the use of a health care facility.

13                   “(ii) HEALTH CARE FACILITY.—For  
14                   purposes of clause (i), the term ‘health  
15                   care facility’ means a hospital, nursing fa-  
16                   cility, assisted living facility, congregate  
17                   care facility, qualified continuing care facil-  
18                   ity (as defined in section 7872(g)(4)), or  
19                   other licensed facility which extends medi-  
20                   cal or nursing or ancillary services to pa-  
21                   tients and which, immediately before the  
22                   termination, expiration, default, or breach  
23                   of the lease of or mortgage secured by  
24                   such facility, was operated by a provider of  
25                   such services which was eligible for partici-

1                   pation in the medicare program under title  
2                   XVIII of the Social Security Act with re-  
3                   spect to such facility.”.

4           (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to taxable years beginning after  
6 December 31, 2000.

7           **PART III—CONFORMITY WITH REGULATED**

8                   **INVESTMENT COMPANY RULES**

9           **SEC. 241. CONFORMITY WITH REGULATED INVESTMENT**

10                   **COMPANY RULES.**

11           (a) DISTRIBUTION REQUIREMENT.—Clauses (i) and  
12 (ii) of section 857(a)(1)(A) (relating to requirements ap-  
13 plicable to real estate investment trusts) are each amended  
14 by striking “95 percent (90 percent for taxable years be-  
15 ginning before January 1, 1980)” and inserting “90 per-  
16 cent”.

17           (b) IMPOSITION OF TAX.—Clause (i) of section  
18 857(b)(5)(A) (relating to imposition of tax in case of fail-  
19 ure to meet certain requirements) is amended by striking  
20 “95 percent (90 percent in the case of taxable years begin-  
21 ning before January 1, 1980)” and inserting “90 per-  
22 cent”.

23           (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to taxable years beginning after  
25 December 31, 2000.

1 **PART IV—CLARIFICATION OF EXCEPTION FROM**  
2 **IMPERMISSIBLE TENANT SERVICE INCOME**  
3 **SEC. 251. CLARIFICATION OF EXCEPTION FOR INDEPEND-**  
4 **ENT OPERATORS.**

5 (a) IN GENERAL.—Paragraph (3) of section 856(d)  
6 (relating to independent contractor defined) is amended  
7 by adding at the end the following flush sentence:

8 “In the event that any class of stock of either the  
9 real estate investment trust or such person is regu-  
10 larly traded on an established securities market, only  
11 persons who own, directly or indirectly, more than 5  
12 percent of such class of stock shall be taken into ac-  
13 count as owning any of the stock of such class for  
14 purposes of applying the 35 percent limitation set  
15 forth in subparagraph (B) (but all of the outstand-  
16 ing stock of such class shall be considered outstand-  
17 ing in order to compute the denominator for purpose  
18 of determining the applicable percentage of owner-  
19 ship).”.

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall apply to taxable years beginning after  
22 December 31, 2000.

1       **PART V—MODIFICATION OF EARNINGS AND**  
2   **PROFITS RULES**

3       **SEC. 261. MODIFICATION OF EARNINGS AND PROFITS**  
4   **RULES.**

5       (a) RULES FOR DETERMINING WHETHER REGU-  
6 LATED INVESTMENT COMPANY HAS EARNINGS AND  
7 PROFITS FROM NON-RIC YEAR.—Subsection (c) of sec-  
8 tion 852 is amended by adding at the end the following  
9 new paragraph:

10               “(3) DISTRIBUTIONS TO MEET REQUIREMENTS  
11 OF SUBSECTION (a)(2)(B).—Any distribution which  
12 is made in order to comply with the requirements of  
13 subsection (a)(2)(B)—

14                       “(A) shall be treated for purposes of this  
15 subsection and subsection (a)(2)(B) as made  
16 from the earliest earnings and profits accumu-  
17 lated in any taxable year to which the provi-  
18 sions of this part did not apply rather than the  
19 most recently accumulated earnings and profits,  
20 and

21                       “(B) to the extent treated under subpara-  
22 graph (A) as made from accumulated earnings  
23 and profits, shall not be treated as a distribu-  
24 tion for purposes of subsection (b)(2)(D) and  
25 section 855.”.

1 (b) CLARIFICATION OF APPLICATION OF REIT  
2 SPILLOVER DIVIDEND RULES TO DISTRIBUTIONS TO  
3 MEET QUALIFICATION REQUIREMENT.—Subparagraph  
4 (B) of section 857(d)(3) is amended by inserting before  
5 the period “and section 858”.

6 (c) APPLICATION OF DEFICIENCY DIVIDEND PROCE-  
7 DURES.—Paragraph (1) of section 852(e) is amended by  
8 adding at the end the following new sentence: “If the de-  
9 termination under subparagraph (A) is solely as a result  
10 of the failure to meet the requirements of subsection  
11 (a)(2), the preceding sentence shall also apply for pur-  
12 poses of applying subsection (a)(2) to the non-RIC year.”.

13 (d) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to distributions after December 31,  
15 2000.

## 16 **PART VI—MODIFICATION OF ESTIMATED TAX**

### 17 **RULES**

#### 18 **SEC. 271. MODIFICATION OF ESTIMATED TAX RULES FOR**

#### 19 **CLOSELY HELD REAL ESTATE INVESTMENT** 20 **TRUSTS.**

21 (a) IN GENERAL.—Subsection (e) of section 6655  
22 (relating to estimated tax by corporations) is amended by  
23 adding at the end the following new paragraph:

24 “(5) TREATMENT OF CERTAIN REIT DIVI-  
25 DENDS.—

1           “(A) IN GENERAL.—Any dividend received  
2           from a closely held real estate investment trust  
3           by any person which owns (after application of  
4           subsections (d)(5) and (l)(3)(B) of section 856)  
5           10 percent or more (by vote or value) of the  
6           stock or beneficial interests in the trust shall be  
7           taken into account in computing annualized in-  
8           come installments under paragraph (2) in a  
9           manner similar to the manner under which  
10          partnership income inclusions are taken into ac-  
11          count.

12          “(B) CLOSELY HELD REIT.—For purposes  
13          of subparagraph (A), the term ‘closely held real  
14          estate investment trust’ means a real estate in-  
15          vestment trust with respect to which 5 or fewer  
16          persons own (after application of subsections  
17          (d)(5) and (l)(3)(B) of section 856) 50 percent  
18          or more (by vote or value) of the stock or bene-  
19          ficial interests in the trust.”

20          (b) EFFECTIVE DATE.—The amendment made by  
21          subsection (a) shall apply to estimated tax payments due  
22          on or after November 15, 1999.

1     **PART VII—MODIFICATION OF TREATMENT OF**  
2                     **CLOSELY-HELD REITS**  
3     **SEC. 281. CONTROLLED ENTITIES INELIGIBLE FOR REIT**  
4                     **STATUS.**

5             (a) IN GENERAL.—Subsection (a) of section 856 (re-  
6 relating to definition of real estate investment trust) is  
7 amended by striking “and” at the end of paragraph (6),  
8 by redesignating paragraph (7) as paragraph (8), and by  
9 inserting after paragraph (6) the following new paragraph:

10             “(7) which is not a controlled entity (as defined  
11 in subsection (1)); and”.

12             (b) CONTROLLED ENTITY.—Section 856 is amended  
13 by adding at the end the following new subsection:

14             “(1) CONTROLLED ENTITY.—

15             “(1) IN GENERAL.—For purposes of subsection  
16 (a)(7), an entity is a controlled entity if, at any time  
17 during the taxable year, one person (other than a  
18 qualified entity)—

19             “(A) in the case of a corporation, owns  
20 stock—

21             “(i) possessing at least 50 percent of  
22 the total voting power of the stock of such  
23 corporation, or

24             “(ii) having a value equal to at least  
25 50 percent of the total value of the stock  
26 of such corporation, or



1           “(B) in the case of a trust, owns beneficial  
2 interests in the trust which would meet the re-  
3 quirements of subparagraph (A) if such inter-  
4 ests were stock.

5           “(2) QUALIFIED ENTITY.—For purposes of  
6 paragraph (1), the term ‘qualified entity’ means—

7           “(A) any real estate investment trust, and

8           “(B) any partnership in which one real es-  
9 tate investment trust owns at least 50 percent  
10 of the capital and profits interests in the part-  
11 nership.

12           “(3) CONTRIBUTION RULES.—For purposes of  
13 this paragraphs (1) and (2)—

14           “(A) IN GENERAL.—Rules similar to the  
15 rules of subsections (d)(5) and (h)(3) shall  
16 apply; except that section 318(a)(3)(C) shall  
17 not be applied under such rules to treat stock  
18 owned by a qualified entity as being owned by  
19 a person which is not a qualified entity.

20           “(B) STAPLED ENTITIES.—A group of en-  
21 tities which are stapled entities (as defined in  
22 section 269B(c)(2)) shall be treated as one per-  
23 son.

24           “(4) EXCEPTION FOR CERTAIN NEW REITS.—

1           “(A) IN GENERAL.—The term ‘controlled  
2 entity’ shall not include an incubator REIT.

3           “(B) INCUBATOR REIT.—A corporation  
4 shall be treated as an incubator REIT for any  
5 taxable year during the eligibility period if it  
6 meets all the following requirements for such  
7 year:

8                   “(i) The corporation elects to be treat-  
9 ed as an incubator REIT.

10                   “(ii) The corporation has only voting  
11 common stock outstanding.

12                   “(iii) Not more than 50 percent of the  
13 corporation’s real estate assets consist of  
14 mortgages.

15                   “(iv) From not later than the begin-  
16 ning of the last half of the second taxable  
17 year, at least 10 percent of the corpora-  
18 tion’s capital is provided by lenders or eq-  
19 uity investors who are unrelated to the cor-  
20 poration’s largest shareholder.

21                   “(v) The corporation annually in-  
22 creases the value of its real estate assets  
23 by at least 10 percent.

1                   “(vi) The directors of the corporation  
2                   adopt a resolution setting forth an intent  
3                   to engage in a going public transaction.

4                   No election may be made with respect to any  
5                   REIT if an election under this subsection was  
6                   in effect for any predecessor of such REIT. The  
7                   requirement of clause (ii) shall not fail to be  
8                   met merely because a going public transaction  
9                   is accomplished through a transaction described  
10                  in section 368(a)(1) with another corporation  
11                  which had another class of stock outstanding  
12                  prior to the transaction.

13                  “(C) ELIGIBILITY PERIOD.—

14                  “(i) IN GENERAL.—The eligibility pe-  
15                  riod (for which an incubator REIT election  
16                  can be made) begins with the REIT’s sec-  
17                  ond taxable year and ends at the close of  
18                  the REIT’s third taxable year, except that  
19                  the REIT may, subject to clauses (ii), (iii),  
20                  and (iv), elect to extend such period for an  
21                  additional 2 taxable years.

22                  “(ii) GOING PUBLIC TRANSACTION.—  
23                  A REIT may not elect to extend the eligi-  
24                  bility period under clause (i) unless it en-  
25                  ters into an agreement with the Secretary

1 that if it does not engage in a going public  
2 transaction by the end of the extended eli-  
3 gibility period, it shall pay Federal income  
4 taxes for the 2 years of the extended eligi-  
5 bility period as if it had not made an incu-  
6 bator REIT election and had ceased to  
7 qualify as a REIT for those 2 taxable  
8 years.

9 “(iii) RETURNS, INTEREST, AND NO-  
10 TICE.—

11 “(I) RETURNS.—In the event the  
12 corporation ceases to be treated as a  
13 REIT by operation of clause (ii), the  
14 corporation shall file any appropriate  
15 amended returns reflecting the change  
16 in status within 3 months of the close  
17 of the extended eligibility period.

18 “(II) INTEREST.—Interest shall  
19 be payable on any tax imposed by rea-  
20 son of clause (ii) for any taxable year  
21 but, unless there was a finding under  
22 subparagraph (D), no substantial  
23 underpayment penalties shall be im-  
24 posed.



1           may still be liable for the penalties de-  
2           scribed in subparagraph (D) during the eli-  
3           gibility period.

4           “(D) SPECIAL PENALTIES.—If the Sec-  
5           retary determines that an incubator REIT elec-  
6           tion was filed for a principal purpose other than  
7           as part of a reasonable plan to undertake a  
8           going public transaction, an excise tax of  
9           \$20,000 shall be imposed on each of the cor-  
10          poration’s directors for each taxable year for  
11          which an election was in effect.

12          “(E) GOING PUBLIC TRANSACTION.—For  
13          purposes of this paragraph, a going public  
14          transaction means—

15                 “(i) a public offering of shares of the  
16                 stock of the incubator REIT;

17                 “(ii) a transaction, or series of trans-  
18                 actions, that results in the stock of the in-  
19                 cubator REIT being regularly traded on an  
20                 established securities market and that re-  
21                 sults in at least 50 percent of such stock  
22                 being held by shareholders who are unre-  
23                 lated to persons who held such stock before  
24                 it began to be so regularly traded; or

1                   “(iii) any transaction resulting in  
2                   ownership of the REIT by 200 or more  
3                   persons (excluding the largest single share-  
4                   holder) who in the aggregate own at least  
5                   50 percent of the stock of the REIT.

6                   For the purposes of this subparagraph, the  
7                   rules of paragraph (3) shall apply in determin-  
8                   ing the ownership of stock.

9                   “(F) DEFINITIONS.—The term ‘established  
10                  securities market’ shall have the meaning set  
11                  forth in the regulations under section 897.”

12                  (c) CONFORMING AMENDMENT.—Paragraph (2) of  
13                  section 856(h) is amended by striking “and (6)” each  
14                  place it appears and inserting “, (6), and (7)”.

15                  (d) EFFECTIVE DATE.—

16                   (1) IN GENERAL.—The amendments made by  
17                   this section shall apply to taxable years ending after  
18                   July 14, 1999.

19                   (2) EXCEPTION FOR EXISTING CONTROLLED  
20                   ENTITIES.—The amendments made by this section  
21                   shall not apply to any entity which is a controlled  
22                   entity (as defined in section 856(l) of the Internal  
23                   Revenue Code of 1986, as added by this section) as  
24                   of July 14, 1999, which is a real estate investment  
25                   trust for the taxable year which includes such date,

1 and which has significant business assets or activi-  
2 ties as of such date. For purposes of the preceding  
3 sentence, an entity shall be treated as such a con-  
4 trolled entity on July 14, 1999, if it becomes such  
5 an entity after such date in a transaction—

6 (A) made pursuant to a written agreement  
7 which was binding on such date and at all times  
8 thereafter, or

9 (B) described on or before such date in a  
10 filing with the Securities and Exchange Com-  
11 mission required solely by reason of the trans-  
12 action.

### 13 **TITLE III—BUDGET PROVISION**

#### 14 **SEC. 301. EXCLUSION FROM PAYGO SCORECARD.**

15 Any net deficit increase or net surplus increase re-  
16 sulting from the enactment of this Act shall not be count-  
17 ed for purposes of section 252 of the Balanced Budget  
18 and Emergency Deficit Control Act of 1985 (2 U.S.C.  
19 902).