

In the Senate of the United States,

July 15, 2004.

Resolved, That the bill from the House of Representatives (H.R. 4520) entitled “An Act to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;***

2 ***TABLE OF CONTENTS.***

3 (a) *SHORT TITLE.*—*This Act may be cited as the*

4 *“Jumpstart Our Business Strength (JOBS) Act”.*

1 (b) *AMENDMENT OF 1986 CODE.*—*Except as otherwise*
 2 *expressly provided, whenever in this Act an amendment or*
 3 *repeal is expressed in terms of an amendment to, or repeal*
 4 *of, a section or other provision, the reference shall be consid-*
 5 *ered to be made to a section or other provision of the Inter-*
 6 *nal Revenue Code of 1986.*

7 (c) *TABLE OF CONTENTS.*—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

*TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR
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Sec. 101. Repeal of exclusion for extraterritorial income.

Sec. 102. Deduction relating to income attributable to United States production activities.

Sec. 103. Deduction for United States production activities includes income related to certain architectural and engineering services.

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Sec. 202. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.

Sec. 203. Foreign tax credit under alternative minimum tax.

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Sec. 206. Determination of foreign personal holding company income with respect to transactions in commodities.

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Sec. 211. Repeal of foreign personal holding company rules and foreign investment company rules.

Sec. 212. Expansion of de minimis rule under subpart F.

Sec. 213. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.

Sec. 214. Application of uniform capitalization rules to foreign persons.

Sec. 215. Repeal of withholding tax on dividends from certain foreign corporations.

Sec. 216. Repeal of special capital gains tax on aliens present in the United States for 183 days or more.

Subtitle C—Additional International Tax Provisions

Sec. 221. Active leasing income from aircraft and vessels.

- Sec. 222. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company income rules.*
- Sec. 223. Look-thru treatment for sales of partnership interests.*
- Sec. 224. Election not to use average exchange rate for foreign tax paid other than in functional currency.*
- Sec. 225. Treatment of income tax base differences.*
- Sec. 226. Modification of exceptions under subpart F for active financing.*
- Sec. 227. United States property not to include certain assets of controlled foreign corporation.*
- Sec. 228. Provide equal treatment for interest paid by foreign partnerships and foreign corporations.*
- Sec. 229. Clarification of treatment of certain transfers of intangible property.*
- Sec. 230. Modification of the treatment of certain REIT distributions attributable to gain from sales or exchanges of United States real property interests.*
- Sec. 231. Toll tax on excess qualified foreign distribution amount.*
- Sec. 232. Exclusion of income derived from certain wagers on horse races and dog races from gross income of nonresident alien individuals.*
- Sec. 233. Limitation of withholding tax for Puerto Rico corporations.*
- Sec. 234. Report on WTO dispute settlement panels and the appellate body.*
- Sec. 235. Study of impact of international tax laws on taxpayers other than large corporations.*
- Sec. 236. Delay in effective date of final regulations governing exclusion of income from international operation of ships or aircraft.*
- Sec. 237. Interest payments deductible where disqualified guarantee has no economic effect.*

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- Sec. 303. Exemption of natural aging process in determination of production period for distilled spirits under section 263A.*
- Sec. 304. Modification of active business definition under section 355.*
- Sec. 305. Modified taxation of imported archery products.*
- Sec. 306. Modification to cooperative marketing rules to include value added processing involving animals.*
- Sec. 307. Extension of declaratory judgment procedures to farmers' cooperative organizations.*
- Sec. 308. Temporary suspension of personal holding company tax.*
- Sec. 309. Increase in section 179 expensing.*
- Sec. 310. Five-year carryback of net operating losses.*
- Sec. 311. Extension and modification of research credit.*
- Sec. 312. Expansion of research credit.*
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- Sec. 321. Special rules for certain film and television productions.*
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1 **TITLE I—PROVISIONS RELATING**
2 **TO REPEAL OF EXCLUSION**
3 **FOR EXTRATERRITORIAL IN-**
4 **COME**

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

7 (a) *IN GENERAL.*—Section 114 is hereby repealed.

8 (b) *CONFORMING AMENDMENTS.*—

9 (1)(A) *Subpart E of part III of subchapter N of*
10 *chapter 1 (relating to qualifying foreign trade in-*
11 *come) is hereby repealed.*

12 (B) *The table of subparts for such part III is*
13 *amended by striking the item relating to subpart E.*

14 (2) *The table of sections for part III of sub-*
15 *chapter B of chapter 1 is amended by striking the*
16 *item relating to section 114.*

17 (3) *The second sentence of section 56(g)(4)(B)(i)*
18 *is amended by striking “114 or”.*

19 (4) *Section 275(a) is amended—*

20 (A) *by inserting “or” at the end of para-*
21 *graph (4)(A), by striking “or” at the end of*
22 *paragraph (4)(B) and inserting a period, and by*
23 *striking subparagraph (C), and*

24 (B) *by striking the last sentence.*

1 (5) Paragraph (3) of section 864(e) is
2 amended—

3 (A) by striking:

4 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO AC-
5 COUNT.—

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

8 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO AC-
9 COUNT.—For purposes of”, and

10 (B) by striking subparagraph (B).

11 (6) Section 903 is amended by striking “114,
12 164(a),” and inserting “164(a)”.

13 (7) Section 999(c)(1) is amended by striking
14 “941(a)(5),”.

15 (c) EFFECTIVE DATE.—

16 (1) IN GENERAL.—The amendments made by
17 this section shall apply to transactions occurring after
18 the date of the enactment of this Act.

19 (2) BINDING CONTRACTS.—The amendments
20 made by this section shall not apply to any trans-
21 action in the ordinary course of a trade or business
22 which occurs pursuant to a binding contract—

23 (A) which is between the taxpayer and a
24 person who is not a related person (as defined in
25 section 943(b)(3) of the Internal Revenue Code of

1 1986, as in effect on the day before the date of
2 the enactment of this Act), and

3 (B) which is in effect on September 17,
4 2003, and at all times thereafter.

5 (d) *REVOCAION OF SECTION 943(e) ELECTIONS.*—

6 (1) *IN GENERAL.*—*In the case of a corporation*
7 *that elected to be treated as a domestic corporation*
8 *under section 943(e) of the Internal Revenue Code of*
9 *1986 (as in effect on the day before the date of the en-*
10 *actment of this Act)*—

11 (A) *the corporation may, during the 1-year*
12 *period beginning on the date of the enactment of*
13 *this Act, revoke such election, effective as of such*
14 *date of enactment, and*

15 (B) *if the corporation does revoke such*
16 *election*—

17 (i) *such corporation shall be treated as*
18 *a domestic corporation transferring (as of*
19 *such date of enactment) all of its property*
20 *to a foreign corporation in connection with*
21 *an exchange described in section 354 of such*
22 *Code, and*

23 (ii) *no gain or loss shall be recognized*
24 *on such transfer.*

1 (2) *EXCEPTION.*—Subparagraph (B)(ii) of para-
2 graph (1) shall not apply to gain on any asset held
3 by the revoking corporation if—

4 (A) the basis of such asset is determined in
5 whole or in part by reference to the basis of such
6 asset in the hands of the person from whom the
7 revoking corporation acquired such asset,

8 (B) the asset was acquired by transfer (not
9 as a result of the election under section 943(e) of
10 such Code) occurring on or after the 1st day on
11 which its election under section 943(e) of such
12 Code was effective, and

13 (C) a principal purpose of the acquisition
14 was the reduction or avoidance of tax (other
15 than a reduction in tax under section 114 of
16 such Code, as in effect on the day before the date
17 of the enactment of this Act).

18 (e) *GENERAL TRANSITION.*—

19 (1) *IN GENERAL.*—In the case of a taxable year
20 ending after the date of the enactment of this Act and
21 beginning before January 1, 2007, for purposes of
22 chapter 1 of such Code, a current FSC/ETI bene-
23 ficiary shall be allowed a deduction equal to the tran-
24 sition amount determined under this subsection with
25 respect to such beneficiary for such year.

1 (2) *CURRENT FSC/ETI BENEFICIARY.*—The term
 2 “current FSC/ETI beneficiary” means any corpora-
 3 tion which entered into one or more transactions dur-
 4 ing its taxable year beginning in calendar year 2002
 5 with respect to which FSC/ETI benefits were allow-
 6 able.

7 (3) *TRANSITION AMOUNT.*—For purposes of this
 8 subsection—

9 (A) *IN GENERAL.*—The transition amount
 10 applicable to any current FSC/ETI beneficiary
 11 for any taxable year is the phaseout percentage
 12 of the base period amount.

13 (B) *PHASEOUT PERCENTAGE.*—

14 (i) *IN GENERAL.*—In the case of a tax-
 15 payer using the calendar year as its taxable
 16 year, the phaseout percentage shall be deter-
 17 mined under the following table:

Years:	The phaseout percentage is:
2005	80
2006	60.

18 (ii) *SPECIAL RULE FOR 2004.*—The
 19 phaseout percentage for 2004 shall be the
 20 amount that bears the same ratio to 80 per-
 21 cent as the number of days after the date of
 22 the enactment of this Act bears to 366.

1 (iii) *SPECIAL RULE FOR FISCAL YEAR*
2 *TAXPAYERS.—In the case of a taxpayer not*
3 *using the calendar year as its taxable year,*
4 *the phaseout percentage is the weighted av-*
5 *erage of the phaseout percentages deter-*
6 *mined under the preceding provisions of*
7 *this paragraph with respect to calendar*
8 *years any portion of which is included in*
9 *the taxpayer’s taxable year. The weighted*
10 *average shall be determined on the basis of*
11 *the respective portions of the taxable year in*
12 *each calendar year.*

13 (C) *SHORT TAXABLE YEAR.—The Secretary*
14 *shall prescribe guidance for the computation of*
15 *the transition amount in the case of a short tax-*
16 *able year.*

17 (4) *BASE PERIOD AMOUNT.—For purposes of this*
18 *subsection, the base period amount is the average*
19 *FSC/ETI benefit for the taxpayer’s taxable years be-*
20 *ginning in calendar years 2000, 2001, and 2002.*

21 (5) *FSC/ETI BENEFIT.—For purposes of this*
22 *subsection, the term “FSC/ETI benefit” means—*

23 (A) *amounts excludable from gross income*
24 *under section 114 of such Code, and*

1 (B) the exempt foreign trade income of re-
2 lated foreign sales corporations from property
3 acquired from the taxpayer (determined without
4 regard to section 923(a)(5) of such Code (relating
5 to special rule for military property), as in effect
6 on the day before the date of the enactment of the
7 FSC Repeal and Extraterritorial Income Exclu-
8 sion Act of 2000).

9 In determining the FSC/ETI benefit there shall be ex-
10 cluded any amount attributable to a transaction with
11 respect to which the taxpayer is the lessor unless the
12 leased property was manufactured or produced in
13 whole or in significant part by the taxpayer.

14 (6) SPECIAL RULE FOR AGRICULTURAL AND
15 HORTICULTURAL COOPERATIVES.—Determinations
16 under this subsection with respect to an organization
17 described in section 943(g)(1) of such Code, as in ef-
18 fect on the day before the date of the enactment of this
19 Act, shall be made at the cooperative level and the
20 purposes of this subsection shall be carried out in a
21 manner similar to section 199(h)(2) of such Code, as
22 added by this Act. Such determinations shall be in
23 accordance with such requirements and procedures as
24 the Secretary may prescribe.

1 (7) *CERTAIN RULES TO APPLY.*—*Rules similar to*
2 *the rules of section 41(f) of such Code shall apply for*
3 *purposes of this subsection.*

4 (8) *COORDINATION WITH BINDING CONTRACT*
5 *RULE.*—*The deduction determined under paragraph*
6 *(1) for any taxable year shall be reduced by the*
7 *phaseout percentage of any FSC/ETI benefit realized*
8 *for the taxable year by reason of subsection (c)(2) or*
9 *section 5(c)(1)(B) of the FSC Repeal and*
10 *Extraterritorial Income Exclusion Act of 2000, except*
11 *that for purposes of this paragraph the phaseout per-*
12 *centage for 2004 shall be treated as being equal to 100*
13 *percent.*

14 (9) *SPECIAL RULE FOR TAXABLE YEAR WHICH*
15 *INCLUDES DATE OF ENACTMENT.*—*In the case of a*
16 *taxable year which includes the date of the enactment*
17 *of this Act, the deduction allowed under this sub-*
18 *section to any current FSC/ETI beneficiary shall in*
19 *no event exceed—*

20 (A) *100 percent of such beneficiary's base*
21 *period amount for calendar year 2004, reduced*
22 *by*

23 (B) *the FSC/ETI benefit of such beneficiary*
24 *with respect to transactions occurring during the*

1 portion of the taxable year ending on the date of
2 the enactment of this Act.

3 **SEC. 102. DEDUCTION RELATING TO INCOME ATTRIB-**
4 **UTABLE TO UNITED STATES PRODUCTION AC-**
5 **TIVITIES.**

6 (a) *IN GENERAL.*—Part VI of subchapter B of chapter
7 1 (relating to itemized deductions for individuals and cor-
8 porations) is amended by adding at the end the following
9 new section:

10 **“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
11 **TION ACTIVITIES.**

12 “(a) *ALLOWANCE OF DEDUCTION.*—

13 “(1) *IN GENERAL.*—There shall be allowed as a
14 deduction an amount equal to 9 percent of the quali-
15 fied production activities income of the taxpayer for
16 the taxable year.

17 “(2) *PHASEIN.*—In the case of taxable years be-
18 ginning in 2004, 2005, 2006, 2007, or 2008, para-
19 graph (1) shall be applied by substituting for the per-
20 centage contained therein the transition percentage
21 determined under the following table:

“Taxable years beginning in:	The transition percentage is:
2004, 2005, or 2006	5
2007	6
2008	7.

22 “(b) *DEDUCTION LIMITED TO WAGES PAID.*—

1 “(1) *IN GENERAL.*—*The amount of the deduction*
2 *allowable under subsection (a) for any taxable year*
3 *shall not exceed 50 percent of the W-2 wages of the*
4 *employer for the taxable year.*

5 “(2) *W-2 WAGES.*—*For purposes of paragraph*
6 *(1), the term ‘W-2 wages’ means the sum of the aggre-*
7 *gate amounts the taxpayer is required to include on*
8 *statements under paragraphs (3) and (8) of section*
9 *6051(a) with respect to employment of employees of*
10 *the taxpayer during the taxpayer’s taxable year.*

11 “(3) *SPECIAL RULES.*—

12 “(A) *PASS-THRU ENTITIES.*—*In the case of*
13 *an S corporation, partnership, estate or trust, or*
14 *other pass-thru entity, the limitation under this*
15 *subsection shall apply at the entity level. The*
16 *preceding sentence shall not apply to any entity*
17 *all of the ownership interests of which are held*
18 *directly or indirectly by members of the same ex-*
19 *panded affiliated group.*

20 “(B) *ACQUISITIONS AND DISPOSITIONS.*—
21 *The Secretary shall provide for the application*
22 *of this subsection in cases where the taxpayer ac-*
23 *quires, or disposes of, the major portion of a*
24 *trade or business or the major portion of a sepa-*

1 rate unit of a trade or business during the tax-
2 able year.

3 “(c) *QUALIFIED PRODUCTION ACTIVITIES INCOME.*—

4 *For purposes of this section—*

5 “(1) *IN GENERAL.*—*The term ‘qualified produc-*
6 *tion activities income’ means an amount equal to the*
7 *portion of the modified taxable income of the taxpayer*
8 *which is attributable to domestic production activi-*
9 *ties.*

10 “(2) *REDUCTION FOR TAXABLE YEARS BEGIN-*
11 *NING BEFORE 2013.*—*The amount otherwise deter-*
12 *mined under paragraph (1) (the ‘unreduced amount’)*
13 *shall not exceed—*

14 “(A) *in the case of taxable years beginning*
15 *before 2010, the product of the unreduced*
16 *amount and the domestic/worldwide fraction,*
17 *and*

18 “(B) *in the case of taxable years beginning*
19 *in 2010, 2011, or 2012, an amount equal to the*
20 *sum of—*

21 “(i) *the product of the unreduced*
22 *amount and the domestic/worldwide frac-*
23 *tion, plus*

24 “(ii) *the applicable percentage of an*
25 *amount equal to the unreduced amount*

1 *minus the amount determined under clause*
2 *(i).*

3 *For purposes of subparagraph (B)(ii), the applicable*
4 *percentage is 25 percent for 2010, 50 percent for*
5 *2011, and 75 percent for 2012.*

6 “(d) *DETERMINATION OF INCOME ATTRIBUTABLE TO*
7 *DOMESTIC PRODUCTION ACTIVITIES.—For purposes of this*
8 *section—*

9 “(1) *IN GENERAL.—The portion of the modified*
10 *taxable income which is attributable to domestic pro-*
11 *duction activities is so much of the modified taxable*
12 *income for the taxable year as does not exceed—*

13 “(A) *the taxpayer’s domestic production*
14 *gross receipts for such taxable year, reduced by*

15 “(B) *the sum of—*

16 “(i) *the costs of goods sold that are al-*
17 *locable to such receipts,*

18 “(ii) *other deductions, expenses, or*
19 *losses directly allocable to such receipts, and*

20 “(iii) *a proper share of other deduc-*
21 *tions, expenses, and losses that are not di-*
22 *rectly allocable to such receipts or another*
23 *class of income.*

24 “(2) *ALLOCATION METHOD.—The Secretary shall*
25 *prescribe rules for the proper allocation of items of in-*

1 *come, deduction, expense, and loss for purposes of de-*
2 *termining income attributable to domestic production*
3 *activities.*

4 “(3) *SPECIAL RULES FOR DETERMINING*
5 *COSTS.—*

6 “(A) *IN GENERAL.—For purposes of deter-*
7 *mining costs under clause (i) of paragraph*
8 *(1)(B), any item or service brought into the*
9 *United States shall be treated as acquired by*
10 *purchase, and its cost shall be treated as not less*
11 *than its fair market value immediately after it*
12 *entered the United States. A similar rule shall*
13 *apply in determining the adjusted basis of leased*
14 *or rented property where the lease or rental gives*
15 *rise to domestic production gross receipts.*

16 “(B) *EXPORTS FOR FURTHER MANUFAC-*
17 *TURE.—In the case of any property described in*
18 *subparagraph (A) that had been exported by the*
19 *taxpayer for further manufacture, the increase in*
20 *cost or adjusted basis under subparagraph (A)*
21 *shall not exceed the difference between the value*
22 *of the property when exported and the value of*
23 *the property when brought back into the United*
24 *States after the further manufacture.*

1 “(4) *MODIFIED TAXABLE INCOME.*—*The term*
2 *‘modified taxable income’ means taxable income com-*
3 *puted without regard to the deduction allowable under*
4 *this section.*

5 “(e) *DOMESTIC PRODUCTION GROSS RECEIPTS.*—*For*
6 *purposes of this section—*

7 “(1) *IN GENERAL.*—*The term ‘domestic produc-*
8 *tion gross receipts’ means the gross receipts of the tax-*
9 *payer which are derived from—*

10 “(A) *any sale, exchange, or other disposi-*
11 *tion of, or*

12 “(B) *any lease, rental, or license of,*
13 *qualifying production property which was manufac-*
14 *tured, produced, grown, or extracted in whole or in*
15 *significant part by the taxpayer within the United*
16 *States.*

17 “(2) *SPECIAL RULES FOR CERTAIN PROPERTY.*—
18 *In the case of any qualifying production property de-*
19 *scribed in subsection (f)(1)(C)—*

20 “(A) *such property shall be treated for pur-*
21 *poses of paragraph (1) as produced in signifi-*
22 *cant part by the taxpayer within the United*
23 *States if more than 50 percent of the aggregate*
24 *development and production costs are incurred*
25 *by the taxpayer within the United States, and*

1 “(B) if a taxpayer acquires such property
2 before such property begins to generate substan-
3 tial gross receipts, any development or produc-
4 tion costs incurred before the acquisition shall be
5 treated as incurred by the taxpayer for purposes
6 of subparagraph (A) and paragraph (1).

7 “(3) GROSS RECEIPTS FROM USE OF FILMS AND
8 VIDEO TAPE.—In the case of any qualifying produc-
9 tion property which is property described in section
10 168(f)(3) produced in whole or in significant part by
11 the taxpayer within the United States (determined
12 after application of paragraph (2)), domestic produc-
13 tion gross receipts shall include gross receipts derived
14 by the taxpayer from the use of the property by the
15 taxpayer.

16 “(f) QUALIFYING PRODUCTION PROPERTY.—For pur-
17 poses of this section—

18 “(1) IN GENERAL.—Except as otherwise provided
19 in this paragraph, the term ‘qualifying production
20 property’ means—

21 “(A) any tangible personal property,

22 “(B) any computer software, and

23 “(C) any property described in section
24 168(f) (3) or (4), including any underlying
25 copyright or trademark.

1 “(2) *EXCLUSIONS FROM QUALIFYING PRODUCTION PROPERTY.*—*The term ‘qualifying production property’ shall not include—*

4 “(A) *consumable property that is sold, leased, or licensed by the taxpayer as an integral part of the provision of services,*

7 “(B) *oil or gas,*

8 “(C) *electricity,*

9 “(D) *water supplied by pipeline to the consumer,*

11 “(E) *utility services, or*

12 “(F) *any film, tape, recording, book, magazine, newspaper, or similar property the market for which is primarily topical or otherwise essentially transitory in nature.*

16 *Subparagraph (F) shall not apply to property described in section 168(f)(3) to the extent of the gross receipts from the use of the property to which subsection (e)(3) applies (determined after application of this sentence).*

20 “(g) *DOMESTIC/WORLDWIDE FRACTION.*—*For purposes of this section—*

22 “(1) *IN GENERAL.*—*The term ‘domestic/worldwide fraction’ means a fraction (not greater than 1)—*

1 “(A) *the numerator of which is the value of*
2 *the domestic production of the taxpayer, and*

3 “(B) *the denominator of which is the value*
4 *of the worldwide production of the taxpayer.*

5 “(2) *VALUE OF DOMESTIC PRODUCTION.—The*
6 *value of domestic production is the excess (if any)*
7 *of—*

8 “(A) *the domestic production gross receipts,*
9 *over*

10 “(B) *the cost of purchased inputs allocable*
11 *to such receipts that are deductible under this*
12 *chapter for the taxable year.*

13 “(3) *PURCHASED INPUTS.—*

14 “(A) *IN GENERAL.—Purchased inputs are*
15 *any of the following items acquired by purchase:*

16 “(i) *Services (other than services of em-*
17 *ployees) used in manufacture, production,*
18 *growth, or extraction activities.*

19 “(ii) *Items consumed in connection*
20 *with such activities.*

21 “(iii) *Items incorporated as part of the*
22 *property being manufactured, produced,*
23 *grown, or extracted.*

1 “(B) *SPECIAL RULE.*—*Rules similar to the*
2 *rules of subsection (d)(3) shall apply for pur-*
3 *poses of this subsection.*

4 “(4) *VALUE OF WORLDWIDE PRODUCTION.*—

5 “(A) *IN GENERAL.*—*The value of worldwide*
6 *production shall be determined under the prin-*
7 *ciples of paragraph (2), except that—*

8 “(i) *worldwide production gross re-*
9 *ceipts shall be taken into account, and*

10 “(ii) *paragraph (3)(B) shall not apply.*

11 “(B) *WORLDWIDE PRODUCTION GROSS RE-*
12 *CEIPTS.*—*The worldwide production gross re-*
13 *ceipts is the amount that would be determined*
14 *under subsection (e) if such subsection were ap-*
15 *plied without any reference to the United States.*

16 “(h) *DEFINITIONS AND SPECIAL RULES.*—

17 “(1) *APPLICATION OF SECTION TO PASS-THRU*
18 *ENTITIES.*—*In the case of an S corporation, partner-*
19 *ship, estate or trust, or other pass-thru entity—*

20 “(A) *subject to the provisions of paragraph*
21 *(2) and subsection (b)(3)(A), this section shall be*
22 *applied at the shareholder, partner, or similar*
23 *level, and*

1 “(B) the Secretary shall prescribe rules for
2 the application of this section, including rules
3 relating to—

4 “(i) restrictions on the allocation of the
5 deduction to taxpayers at the partner or
6 similar level, and

7 “(ii) additional reporting require-
8 ments.

9 “(2) PATRONS OF AGRICULTURAL AND HORTI-
10 CULTURAL COOPERATIVES.—

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

14 “(i) is received by a person from an
15 organization to which part I of subchapter
16 T applies which is engaged—

17 “(I) in the manufacturing, pro-
18 duction, growth, or extraction in whole
19 or significant part of any agricultural
20 or horticultural product, or

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

23 “(ii) is allocable to the portion of the
24 qualified production activities income of the
25 organization which, but for this paragraph,

1 *would be deductible under subsection (a) by*
2 *the organization and is designated as such*
3 *by the organization in a written notice*
4 *mailed to its patrons during the payment*
5 *period described in section 1382(d),*
6 *then such person shall be allowed a deduction*
7 *under subsection (a) with respect to such*
8 *amount. The taxable income of the organization*
9 *shall not be reduced under section 1382 by rea-*
10 *son of any amount to which the preceding sen-*
11 *tence applies.*

12 “(B) *SPECIAL RULES.—For purposes of ap-*
13 *plying subparagraph (A), in determining the*
14 *qualified production activities income of the or-*
15 *ganization under this section—*

16 “(i) *there shall not be taken into ac-*
17 *count in computing the organization’s*
18 *modified taxable income any deduction al-*
19 *lowable under subsection (b) or (c) of sec-*
20 *tion 1382 (relating to patronage dividends,*
21 *per-unit retain allocations, and nonpatron-*
22 *age distributions), and*

23 “(ii) *in the case of an organization de-*
24 *scribed in subparagraph (A)(i)(II), the or-*
25 *ganization shall be treated as having manu-*

1 *factured, produced, grown, or extracted in*
2 *whole or significant part any qualifying*
3 *production property marketed by the orga-*
4 *nization which its patrons have so manu-*
5 *factured, produced, grown, or extracted.*

6 “(3) *SPECIAL RULE FOR AFFILIATED GROUPS.—*

7 “(A) *IN GENERAL.—All members of an ex-*
8 *panded affiliated group shall be treated as a sin-*
9 *gle corporation for purposes of this section.*

10 “(B) *EXPANDED AFFILIATED GROUP.—The*
11 *term ‘expanded affiliated group’ means an affili-*
12 *ated group as defined in section 1504(a),*
13 *determined—*

14 “(i) *by substituting ‘50 percent’ for ‘80*
15 *percent’ each place it appears, and*

16 “(ii) *without regard to paragraphs (2)*
17 *and (4) of section 1504(b).*

18 *For purposes of determining the domestic/world-*
19 *wide fraction under subsection (g), clause (ii)*
20 *shall be applied by also disregarding paragraphs*
21 *(3) and (8) of section 1504(b).*

22 “(4) *COORDINATION WITH MINIMUM TAX.—The*
23 *deduction under this section shall be allowed for pur-*
24 *poses of the tax imposed by section 55; except that for*
25 *purposes of section 55, alternative minimum taxable*

1 *income shall be taken into account in determining the*
2 *deduction under this section.*

3 “(5) *ORDERING RULE.*—*The amount of any*
4 *other deduction allowable under this chapter shall be*
5 *determined as if this section had not been enacted.*

6 “(6) *TRADE OR BUSINESS REQUIREMENT.*—*This*
7 *section shall be applied by only taking into account*
8 *items which are attributable to the actual conduct of*
9 *a trade or business.*

10 “(7) *POSSESSIONS, ETC.*—

11 “(A) *IN GENERAL.*—*For purposes of sub-*
12 *sections (d) and (e), the term ‘United States’ in-*
13 *cludes the Commonwealth of Puerto Rico, Guam,*
14 *American Samoa, the Commonwealth of the*
15 *Northern Mariana Islands, and the Virgin Is-*
16 *lands of the United States.*

17 “(B) *SPECIAL RULES FOR APPLYING WAGE*
18 *LIMITATION.*—*For purposes of applying the limi-*
19 *tation under subsection (b) for any taxable*
20 *year—*

21 “(i) *the determination of W–2 wages of*
22 *a taxpayer shall be made without regard to*
23 *any exclusion under section 3401(a)(8) for*
24 *remuneration paid for services performed in*

1 *a jurisdiction described in subparagraph*
2 *(A), and*

3 “(ii) *in determining the amount of*
4 *any credit allowable under section 30A or*
5 *936 for the taxable year, there shall not be*
6 *taken into account any wages which are*
7 *taken into account in applying such limita-*
8 *tion.*

9 “(8) *COORDINATION WITH TRANSITION RULES.—*
10 *For purposes of this section—*

11 “(A) *domestic production gross receipts*
12 *shall not include gross receipts from any trans-*
13 *action if the binding contract transition relief of*
14 *section 101(c)(2) of the Jumpstart Our Business*
15 *Strength (JOBS) Act applies to such trans-*
16 *action, and*

17 “(B) *any deduction allowed under section*
18 *101(e) of such Act shall be disregarded in deter-*
19 *mining the portion of the taxable income which*
20 *is attributable to domestic production gross re-*
21 *ceipts.*

22 “(9) *SEPARATE APPLICATION TO FILMS AND VID-*
23 *EOTAPE.—*

24 “(A) *IN GENERAL.—In the case of quali-*
25 *fying production property described in section*

1 168(f)(3), the deduction under this section shall
2 be determined separately with respect to quali-
3 fied production activities income of the taxpayer
4 allocable to each of the following markets with
5 respect to such property:

6 “(i) Theatrical.

7 “(ii) Broadcast television (including
8 cable, foreign, pay-per-view, and syndica-
9 tion).

10 “(iii) Home video.

11 “(B) RULES FOR SEPARATE DETERMINA-
12 TION.—Except as provided in subparagraph
13 (C)—

14 “(i) any computation required to de-
15 termine the amount of the deduction with
16 respect to any of the markets described in
17 subparagraph (A) shall be made by only
18 taking into account items properly allocable
19 to such market, including the computation
20 of qualified production activities income,
21 modified taxable income, and the domestic/
22 worldwide fraction, and

23 “(ii) such items shall not be taken into
24 account in determining the deduction with
25 respect to either of the other 2 markets or

1 with respect to qualified production activi-
 2 ties income of the taxpayer not allocable to
 3 any of such markets.

4 “(C) *WAGE LIMITATION*.—This paragraph
 5 shall not apply for purposes of subsection (b)
 6 and subsection (b) shall be applied after the ap-
 7 plication of this paragraph.”

8 (b) *MINIMUM TAX*.—Section 56(g)(4)(C) (relating to
 9 disallowance of items not deductible in computing earnings
 10 and profits) is amended by adding at the end the following
 11 new clause:

12 “(v) *DEDUCTION FOR DOMESTIC PRO-*
 13 *DUCTION*.—Clause (i) shall not apply to
 14 any amount allowable as a deduction under
 15 section 199.”.

16 (c) *CLERICAL AMENDMENT*.—The table of sections for
 17 part VI of subchapter B of chapter 1 is amended by adding
 18 at the end the following new item:

 “Sec. 199. Income attributable to domestic production activities.”.

19 (d) *EFFECTIVE DATE*.—

20 (1) *IN GENERAL*.—The amendments made by
 21 this section shall apply to taxable years ending after
 22 the date of the enactment of this Act.

23 (2) *APPLICATION OF SECTION 15*.—Section 15 of
 24 the Internal Revenue Code of 1986 shall apply to the

1 amendments made by this section as if they were
2 changes in a rate of tax.

3 **SEC. 103. DEDUCTION FOR UNITED STATES PRODUCTION**
4 **ACTIVITIES INCLUDES INCOME RELATED TO**
5 **CERTAIN ARCHITECTURAL AND ENGINEER-**
6 **ING SERVICES.**

7 (a) *IN GENERAL.*—Paragraph (1) of section 199(e) (re-
8 lating to domestic production gross receipts), as added by
9 section 102, is amended to read as follows:

10 “(1) *IN GENERAL.*—

11 “(A) *RECEIPTS FROM QUALIFYING PRODUC-*
12 *TION PROPERTY.*—The term ‘domestic production
13 gross receipts’ means the gross receipts of the tax-
14 payer which are derived from—

15 “(i) any sale, exchange, or other dis-
16 position of, or

17 “(ii) any lease, rental, or license of,
18 qualifying production property which was man-
19 ufactured, produced, grown, or extracted in
20 whole or in significant part by the taxpayer
21 within the United States.

22 “(B) *RECEIPTS FROM CERTAIN SERVICES.*—

23 “(i) *IN GENERAL.*—Such term also in-
24 cludes the applicable percentage of gross re-
25 ceipts of the taxpayer which are derived

1 *from any engineering or architectural serv-*
 2 *ices performed in the United States for con-*
 3 *struction projects in the United States.*

4 “(i) *APPLICABLE PERCENTAGE.—For*
 5 *purposes of clause (i), the applicable per-*
 6 *centage shall be determined under the fol-*
 7 *lowing table:*

“In the case of any taxable The applicable percentage is—	
year beginning in—	
2004, 2005, 2006, 2007, or 2008	25
2009, 2010, 2011, or 2012	50
2013 or thereafter	100.

8 (b) *LIMITATION OF EMPLOYER DEDUCTION FOR CER-*
 9 *TAIN ENTERTAINMENT EXPENSES WITH RESPECT TO COV-*
 10 *ERED EMPLOYEES.—Paragraph (2) of section 274(e) (relat-*
 11 *ing to expenses treated as compensation) is amended to read*
 12 *as follows:*

13 “(2) *EXPENSES TREATED AS COMPENSATION.—*
 14 *Expenses for goods, services, and facilities—*

15 “(A) *in the case of a covered employee*
 16 *(within the meaning of section 162(m)(3)), to the*
 17 *extent that the expenses do not exceed the amount*
 18 *of the expenses treated by the taxpayer, with re-*
 19 *spect to the recipient of the entertainment,*
 20 *amusement, or recreation, as compensation to*
 21 *such covered employee on the taxpayer’s return*
 22 *of tax under this chapter and as wages to such*

1 covered employee for purposes of chapter 24 (re-
2 lating to withholding of income tax at source on
3 wages), and

4 “(B) in the case of any other employee, to
5 the extent that the expenses are treated by the
6 taxpayer, with respect to the recipient of the en-
7 tertainment, amusement, or recreation, as com-
8 pensation to such employee on the taxpayer’s re-
9 turn of tax under this chapter and as wages to
10 such employee for purposes of chapter 24 (relat-
11 ing to withholding of income tax at source on
12 wages).”.

13 (c) *EFFECTIVE DATES.*—

14 (1) *SUBSECTION (a).*—The amendment made by
15 subsection (a) shall apply to taxable years ending
16 after the date of the enactment of this Act, and section
17 15 of the Internal Revenue Code of 1986 shall apply
18 to the amendment made by this subsection as if it
19 were a change in the rate of tax.

20 (2) *SUBSECTION (b).*—The amendment made by
21 subsection (b) shall apply to expenses incurred after
22 the date of the enactment of this Act and before Janu-
23 ary 1, 2006.

1 **TITLE II—INTERNATIONAL TAX**
2 **PROVISIONS**
3 **Subtitle A—International Tax**
4 **Reform**

5 **SEC. 201. 20-YEAR FOREIGN TAX CREDIT CARRYOVER; 1-**
6 **YEAR FOREIGN TAX CREDIT CARRYBACK.**

7 (a) *GENERAL RULE.*—Section 904(c) (relating to
8 carryback and carryover of excess tax paid) is amended—

9 (1) by striking “in the second preceding taxable
10 year,” and

11 (2) by striking “, and in the first, second, third,
12 fourth, or fifth” and inserting “and in any of the first
13 20”.

14 (b) *EXCESS EXTRACTION TAXES.*—Paragraph (1) of
15 section 907(f) is amended—

16 (1) by striking “in the second preceding taxable
17 year,”

18 (2) by striking “, and in the first, second, third,
19 fourth, or fifth” and inserting “and in any of the first
20 20”, and

21 (3) by striking the last sentence.

22 (c) *EFFECTIVE DATE.*—

23 (1) *CARRYBACK.*—The amendments made by sub-
24 sections (a)(1) and (b)(1) shall apply to excess foreign

1 *taxes arising in taxable years beginning after the date*
2 *of the enactment of this Act.*

3 (2) *CARRYOVER.*—*The amendments made by sub-*
4 *sections (a)(2) and (b)(2) shall apply to excess foreign*
5 *taxes which (without regard to the amendments made*
6 *by this section) may be carried to any taxable year*
7 *ending after the date of the enactment of this Act.*

8 **SEC. 202. LOOK-THRU RULES TO APPLY TO DIVIDENDS**
9 **FROM NONCONTROLLED SECTION 902 COR-**
10 **PORATIONS.**

11 (a) *IN GENERAL.*—*Section 904(d)(4) (relating to look-*
12 *thru rules apply to dividends from noncontrolled section*
13 *902 corporations) is amended to read as follows:*

14 “(4) *LOOK-THRU APPLIES TO DIVIDENDS FROM*
15 *NONCONTROLLED SECTION 902 CORPORATIONS.*—

16 “(A) *IN GENERAL.*—*For purposes of this*
17 *subsection, any dividend from a noncontrolled*
18 *section 902 corporation with respect to the tax-*
19 *payer shall be treated as income described in a*
20 *subparagraph of paragraph (1) in proportion to*
21 *the ratio of—*

22 “(i) *the portion of earnings and profits*
23 *attributable to income described in such*
24 *subparagraph, to*

1 “(ii) *the total amount of earnings and*
2 *profits.*

3 “(B) *EARNINGS AND PROFITS OF CON-*
4 *TROLLED FOREIGN CORPORATIONS.—In the case*
5 *of any distribution from a controlled foreign cor-*
6 *poration to a United States shareholder, rules*
7 *similar to the rules of subparagraph (A) shall*
8 *apply in determining the extent to which earn-*
9 *ings and profits of the controlled foreign corpora-*
10 *tion which are attributable to dividends received*
11 *from a noncontrolled section 902 corporation*
12 *may be treated as income in a separate category.*

13 “(C) *SPECIAL RULES.—For purposes of this*
14 *paragraph—*

15 “(i) *EARNINGS AND PROFITS.—*

16 “(I) *IN GENERAL.—The rules of*
17 *section 316 shall apply.*

18 “(II) *REGULATIONS.—The Sec-*
19 *retary may prescribe regulations re-*
20 *garding the treatment of distributions*
21 *out of earnings and profits for periods*
22 *before the taxpayer’s acquisition of the*
23 *stock to which the distributions relate.*

24 “(ii) *INADEQUATE SUBSTANTIATION.—*
25 *If the Secretary determines that the proper*

1 subparagraph of paragraph (1) in which a
2 dividend is described has not been substan-
3 tiated, such dividend shall be treated as in-
4 come described in paragraph (1)(A).

5 “(iii) COORDINATION WITH HIGH-
6 TAXED INCOME PROVISIONS.—Rules similar
7 to the rules of paragraph (3)(F) shall apply
8 for purposes of this paragraph.

9 “(iv) LOOK-THRU WITH RESPECT TO
10 CARRYOVER OF CREDIT.—Rules similar to
11 subparagraph (A) also shall apply to any
12 carryforward under subsection (c) from a
13 taxable year beginning before January 1,
14 2003, of tax allocable to a dividend from a
15 noncontrolled section 902 corporation with
16 respect to the taxpayer. The Secretary may
17 by regulations provide for the allocation of
18 any carryback of tax allocable to a dividend
19 from a noncontrolled section 902 corpora-
20 tion to such a taxable year for purposes of
21 allocating such dividend among the separate
22 categories in effect for such taxable year.”.

23 (b) CONFORMING AMENDMENTS.—

24 (1) Subparagraph (E) of section 904(d)(1) is
25 hereby repealed.

1 (2) Section 904(d)(2)(C)(iii) is amended by add-
 2 ing “and” at the end of subclause (I), by striking sub-
 3 clause (II), and by redesignating subclause (III) as
 4 subclause (II).

5 (3) The last sentence of section 904(d)(2)(D) is
 6 amended to read as follows: “Such term does not in-
 7 clude any financial services income.”.

8 (4) Section 904(d)(2)(E) is amended—
 9 (A) by inserting “or (4)” after “paragraph
 10 (3)” in clause (i), and

11 (B) by striking clauses (ii) and (iv) and by
 12 redesignating clause (iii) as clause (ii).

13 (5) Section 904(d)(3)(F) is amended by striking
 14 “(D), or (E)” and inserting “or (D)”.

15 (6) Section 864(d)(5)(A)(i) is amended by strik-
 16 ing “(C)(iii)(III)” and inserting “(C)(iii)(II)”.

17 (c) *EFFECTIVE DATE.*—The amendments made by this
 18 section shall apply to taxable years beginning after Decem-
 19 ber 31, 2002.

20 **SEC. 203. FOREIGN TAX CREDIT UNDER ALTERNATIVE MIN-**
 21 **IMUM TAX.**

22 (a) *IN GENERAL.*—

23 (1) Subsection (a) of section 59 is amended by
 24 striking paragraph (2) and by redesignating para-

1 *graphs (3) and (4) as paragraphs (2) and (3), respec-*
 2 *tively.*

3 (2) *Section 53(d)(1)(B)(i)(II) is amended by*
 4 *striking “and if section 59(a)(2) did not apply”.*

5 (b) *EFFECTIVE DATE.—The amendments made by this*
 6 *section shall apply to taxable years beginning after Decem-*
 7 *ber 31, 2004.*

8 **SEC. 204. RECHARACTERIZATION OF OVERALL DOMESTIC**
 9 **LOSS.**

10 (a) *GENERAL RULE.—Section 904 is amended by re-*
 11 *designating subsections (g), (h), (i), (j), and (k) as sub-*
 12 *sections (h), (i), (j), (k), and (l) respectively, and by insert-*
 13 *ing after subsection (f) the following new subsection:*

14 “(g) *RECHARACTERIZATION OF OVERALL DOMESTIC*
 15 *LOSS.—*

16 “(1) *GENERAL RULE.—For purposes of this sub-*
 17 *part and section 936, in the case of any taxpayer who*
 18 *sustains an overall domestic loss for any taxable year*
 19 *beginning after December 31, 2006, that portion of*
 20 *the taxpayer’s taxable income from sources within the*
 21 *United States for each succeeding taxable year which*
 22 *is equal to the lesser of—*

23 “(A) *the amount of such loss (to the extent*
 24 *not used under this paragraph in prior taxable*
 25 *years), or*

1 “(B) 50 percent of the taxpayer’s taxable
2 income from sources within the United States for
3 such succeeding taxable year,
4 shall be treated as income from sources without the
5 United States (and not as income from sources within
6 the United States).

7 “(2) OVERALL DOMESTIC LOSS DEFINED.—For
8 purposes of this subsection—

9 “(A) IN GENERAL.—The term ‘overall do-
10 mestic loss’ means any domestic loss to the extent
11 such loss offsets taxable income from sources
12 without the United States for the taxable year or
13 for any preceding taxable year by reason of a
14 carryback. For purposes of the preceding sen-
15 tence, the term ‘domestic loss’ means the amount
16 by which the gross income for the taxable year
17 from sources within the United States is exceeded
18 by the sum of the deductions properly appor-
19 tioned or allocated thereto (determined without
20 regard to any carryback from a subsequent tax-
21 able year).

22 “(B) TAXPAYER MUST HAVE ELECTED FOR-
23 EIGN TAX CREDIT FOR YEAR OF LOSS.—The term
24 ‘overall domestic loss’ shall not include any loss

1 *for any taxable year unless the taxpayer chose*
2 *the benefits of this subpart for such taxable year.*

3 “(3) *CHARACTERIZATION OF SUBSEQUENT IN-*
4 *COME.—*

5 “(A) *IN GENERAL.—Any income from*
6 *sources within the United States that is treated*
7 *as income from sources without the United*
8 *States under paragraph (1) shall be allocated*
9 *among and increase the income categories in*
10 *proportion to the loss from sources within the*
11 *United States previously allocated to those in-*
12 *come categories.*

13 “(B) *INCOME CATEGORY.—For purposes of*
14 *this paragraph, the term ‘income category’ has*
15 *the meaning given such term by subsection*
16 *(f)(5)(E)(i).*

17 “(4) *COORDINATION WITH SUBSECTION (f).—The*
18 *Secretary shall prescribe such regulations as may be*
19 *necessary to coordinate the provisions of this sub-*
20 *section with the provisions of subsection (f).”.*

21 (b) *CONFORMING AMENDMENTS.—*

22 (1) *Section 535(d)(2) is amended by striking*
23 *“section 904(g)(6)” and inserting “section 904(h)(6)”.*

1 (2) *Subparagraph (A) of section 936(a)(2) is*
2 *amended by striking “section 904(f)” and inserting*
3 *“subsections (f) and (g) of section 904”.*

4 (c) *EFFECTIVE DATE.—The amendments made by this*
5 *section shall apply to losses for taxable years beginning*
6 *after December 31, 2006.*

7 **SEC. 205. INTEREST EXPENSE ALLOCATION RULES.**

8 (a) *ELECTION TO ALLOCATE ON WORLDWIDE*
9 *BASIS.—Section 864 is amended by redesignating sub-*
10 *section (f) as subsection (g) and by inserting after sub-*
11 *section (e) the following new subsection:*

12 “*(f) ELECTION TO ALLOCATE INTEREST, ETC. ON*
13 *WORLDWIDE BASIS.—For purposes of this subchapter, at*
14 *the election of the worldwide affiliated group—*

15 “*(1) ALLOCATION AND APPORTIONMENT OF IN-*
16 *TEREST EXPENSE.—*

17 “*(A) IN GENERAL.—The taxable income of*
18 *each domestic corporation which is a member of*
19 *a worldwide affiliated group shall be determined*
20 *by allocating and apportioning interest expense*
21 *of each member as if all members of such group*
22 *were a single corporation.*

23 “*(B) TREATMENT OF WORLDWIDE AFFILI-*
24 *ATED GROUP.—The taxable income of the domes-*
25 *tic members of a worldwide affiliated group from*

1 sources outside the United States shall be deter-
2 mined by allocating and apportioning the inter-
3 est expense of such domestic members to such in-
4 come in an amount equal to the excess (if any)
5 of—

6 “(i) the total interest expense of the
7 worldwide affiliated group multiplied by
8 the ratio which the foreign assets of the
9 worldwide affiliated group bears to all the
10 assets of the worldwide affiliated group,
11 over

12 “(ii) the interest expense of all foreign
13 corporations which are members of the
14 worldwide affiliated group to the extent
15 such interest expense of such foreign cor-
16 porations would have been allocated and
17 apportioned to foreign source income if this
18 subsection were applied to a group con-
19 sisting of all the foreign corporations in
20 such worldwide affiliated group.

21 “(C) *WORLDWIDE AFFILIATED GROUP.*—For
22 purposes of this paragraph, the term ‘worldwide
23 affiliated group’ means a group consisting of—

24 “(i) the includible members of an af-
25 filiated group (as defined in section

1 1504(a), determined without regard to
2 paragraphs (2) and (4) of section 1504(b)),
3 and

4 “(ii) all controlled foreign corporations
5 in which such members in the aggregate
6 meet the ownership requirements of section
7 1504(a)(2) either directly or indirectly
8 through applying paragraph (2) of section
9 958(a) or through applying rules similar to
10 the rules of such paragraph to stock owned
11 directly or indirectly by domestic partner-
12 ships, trusts, or estates.

13 “(2) *ALLOCATION AND APPORTIONMENT OF*
14 *OTHER EXPENSES.—Expenses other than interest*
15 *which are not directly allocable or apportioned to any*
16 *specific income producing activity shall be allocated*
17 *and apportioned as if all members of the affiliated*
18 *group were a single corporation. For purposes of the*
19 *preceding sentence, the term ‘affiliated group’ has the*
20 *meaning given such term by section 1504 (determined*
21 *without regard to paragraph (4) of section 1504(b)).*

22 “(3) *TREATMENT OF TAX-EXEMPT ASSETS; BASIS*
23 *OF STOCK IN NONAFFILIATED 10-PERCENT OWNED*
24 *CORPORATIONS.—The rules of paragraphs (3) and (4)*
25 *of subsection (e) shall apply for purposes of this sub-*

1 *section, except that paragraph (4) shall be applied on*
2 *a worldwide affiliated group basis.*

3 *“(4) TREATMENT OF CERTAIN FINANCIAL INSTI-*
4 *TUTIONS.—*

5 *“(A) IN GENERAL.—For purposes of para-*
6 *graph (1), any corporation described in subpara-*
7 *graph (B) shall be treated as an includible cor-*
8 *poration for purposes of section 1504 only for*
9 *purposes of applying this subsection separately*
10 *to corporations so described.*

11 *“(B) DESCRIPTION.—A corporation is de-*
12 *scribed in this subparagraph if—*

13 *“(i) such corporation is a financial in-*
14 *stitution described in section 581 or 591,*

15 *“(ii) the business of such financial in-*
16 *stitution is predominantly with persons*
17 *other than related persons (within the*
18 *meaning of subsection (d)(4)) or their cus-*
19 *tomers, and*

20 *“(iii) such financial institution is re-*
21 *quired by State or Federal law to be oper-*
22 *ated separately from any other entity which*
23 *is not such an institution.*

1 “(C) *TREATMENT OF BANK AND FINANCIAL*
2 *HOLDING COMPANIES.—To the extent provided in*
3 *regulations—*

4 “(i) *a bank holding company (within*
5 *the meaning of section 2(a) of the Bank*
6 *Holding Company Act of 1956 (12 U.S.C.*
7 *1841(a)),*

8 “(ii) *a financial holding company*
9 *(within the meaning of section 2(p) of the*
10 *Bank Holding Company Act of 1956 (12*
11 *U.S.C. 1841(p)), and*

12 “(iii) *any subsidiary of a financial in-*
13 *stitution described in section 581 or 591, or*
14 *of any such bank or financial holding com-*
15 *pany, if such subsidiary is predominantly*
16 *engaged (directly or indirectly) in the active*
17 *conduct of a banking, financing, or similar*
18 *business,*

19 *shall be treated as a corporation described in*
20 *subparagraph (B).*

21 “(5) *ELECTION TO EXPAND FINANCIAL INSTITU-*
22 *TION GROUP OF WORLDWIDE GROUP.—*

23 “(A) *IN GENERAL.—If a worldwide affili-*
24 *ated group elects the application of this sub-*
25 *section, all financial corporations which—*

1 “(i) are members of such worldwide af-
2 filiated group, but

3 “(ii) are not corporations described in
4 paragraph (4)(B),

5 shall be treated as described in paragraph (4)(B)
6 for purposes of applying paragraph (4)(A). This
7 subsection (other than this paragraph) shall
8 apply to any such group in the same manner as
9 this subsection (other than this paragraph) ap-
10 plies to the pre-election worldwide affiliated
11 group of which such group is a part.

12 “(B) *FINANCIAL CORPORATION*.—For pur-
13 poses of this paragraph, the term ‘financial cor-
14 poration’ means any corporation if at least 80
15 percent of its gross income is income described in
16 section 904(d)(2)(C)(ii) and the regulations
17 thereunder which is derived from transactions
18 with persons who are not related (within the
19 meaning of section 267(b) or 707(b)(1)) to the
20 corporation. For purposes of the preceding sen-
21 tence, there shall be disregarded any item of in-
22 come or gain from a transaction or series of
23 transactions a principal purpose of which is the
24 qualification of any corporation as a financial
25 corporation.

1 “(C) *ANTIABUSE RULES.*—*In the case of a*
2 *corporation which is a member of an electing fi-*
3 *nancial institution group, to the extent that such*
4 *corporation—*

5 “(i) *distributes dividends or makes*
6 *other distributions with respect to its stock*
7 *after the date of the enactment of this para-*
8 *graph to any member of the pre-election*
9 *worldwide affiliated group (other than to a*
10 *member of the electing financial institution*
11 *group) in excess of the greater of—*

12 “(I) *its average annual dividend*
13 *(expressed as a percentage of current*
14 *earnings and profits) during the 5-tax-*
15 *able-year period ending with the tax-*
16 *able year preceding the taxable year, or*

17 “(II) *25 percent of its average an-*
18 *nual earnings and profits for such 5-*
19 *taxable-year period, or*

20 “(ii) *deals with any person in any*
21 *manner not clearly reflecting the income of*
22 *the corporation (as determined under prin-*
23 *ciples similar to the principles of section*
24 *482),*

1 *an amount of indebtedness of the electing finan-*
2 *cial institution group equal to the excess dis-*
3 *tribution or the understatement or overstatement*
4 *of income, as the case may be, shall be re-*
5 *characterized (for the taxable year and subse-*
6 *quent taxable years) for purposes of this para-*
7 *graph as indebtedness of the worldwide affiliated*
8 *group (excluding the electing financial institu-*
9 *tion group). If a corporation has not been in ex-*
10 *istence for 5 taxable years, this subparagraph*
11 *shall be applied with respect to the period it was*
12 *in existence.*

13 “(D) *ELECTION.*—*An election under this*
14 *paragraph with respect to any financial institu-*
15 *tion group may be made only by the common*
16 *parent of the pre-election worldwide affiliated*
17 *group and may be made only for the first taxable*
18 *year beginning after December 31, 2008, in*
19 *which such affiliated group includes 1 or more*
20 *financial corporations. Such an election, once*
21 *made, shall apply to all financial corporations*
22 *which are members of the electing financial in-*
23 *stitution group for such taxable year and all*
24 *subsequent years unless revoked with the consent*
25 *of the Secretary.*

1 “(E) *DEFINITIONS RELATING TO GROUPS.*—

2 *For purposes of this paragraph—*

3 “(i) *PRE-ELECTION WORLDWIDE AF-*
4 *FILIATED GROUP.*—*The term ‘pre-election*
5 *worldwide affiliated group’ means, with re-*
6 *spect to a corporation, the worldwide affili-*
7 *ated group of which such corporation would*
8 *(but for an election under this paragraph)*
9 *be a member for purposes of applying para-*
10 *graph (1).*

11 “(ii) *ELECTING FINANCIAL INSTITU-*
12 *TION GROUP.*—*The term ‘electing financial*
13 *institution group’ means the group of cor-*
14 *porations to which this subsection applies*
15 *separately by reason of the application of*
16 *paragraph (4)(A) and which includes finan-*
17 *cial corporations by reason of an election*
18 *under subparagraph (A).*

19 “(F) *REGULATIONS.*—*The Secretary shall*
20 *prescribe such regulations as may be appropriate*
21 *to carry out this subsection, including*
22 *regulations—*

23 “(i) *providing for the direct allocation*
24 *of interest expense in other circumstances*

1 where such allocation would be appropriate
2 to carry out the purposes of this subsection,

3 “(ii) preventing assets or interest ex-
4 pense from being taken into account more
5 than once, and

6 “(iii) dealing with changes in members
7 of any group (through acquisitions or other-
8 wise) treated under this paragraph as an
9 affiliated group for purposes of this sub-
10 section.

11 “(6) *ELECTION.*—An election to have this sub-
12 section apply with respect to any worldwide affiliated
13 group may be made only by the common parent of the
14 domestic affiliated group referred to in paragraph
15 (1)(C) and may be made only for the first taxable
16 year beginning after December 31, 2008, in which a
17 worldwide affiliated group exists which includes such
18 affiliated group and at least 1 foreign corporation.
19 Such an election, once made, shall apply to such com-
20 mon parent and all other corporations which are
21 members of such worldwide affiliated group for such
22 taxable year and all subsequent years unless revoked
23 with the consent of the Secretary.”.

24 (b) *EXPANSION OF REGULATORY AUTHORITY.*—Para-
25 graph (7) of section 864(e) is amended—

1 (1) *by inserting before the comma at the end of*
2 *subparagraph (B) “and in other circumstances where*
3 *such allocation would be appropriate to carry out the*
4 *purposes of this subsection”, and*

5 (2) *by striking “and” at the end of subpara-*
6 *graph (E), by redesignating subparagraph (F) as sub-*
7 *paragraph (G), and by inserting after subparagraph*
8 *(E) the following new subparagraph:*

9 *“(F) preventing assets or interest expense*
10 *from being taken into account more than once,*
11 *and”.*

12 (c) *EFFECTIVE DATE.—The amendments made by this*
13 *section shall apply to taxable years beginning after Decem-*
14 *ber 31, 2008.*

15 **SEC. 206. DETERMINATION OF FOREIGN PERSONAL HOLD-**
16 **ING COMPANY INCOME WITH RESPECT TO**
17 **TRANSACTIONS IN COMMODITIES.**

18 (a) *IN GENERAL.—Clauses (i) and (ii) of section*
19 *954(c)(1)(C) (relating to commodity transactions) are*
20 *amended to read as follows:*

21 *“(i) arise out of commodity hedging*
22 *transactions (as defined in paragraph*
23 *(4)(A)),*

24 *“(ii) are active business gains or losses*
25 *from the sale of commodities, but only if*

1 *substantially all of the controlled foreign*
2 *corporation's commodities are property de-*
3 *scribed in paragraph (1), (2), or (8) of sec-*
4 *tion 1221(a), or”.*

5 **(b) DEFINITION AND SPECIAL RULES.**—*Subsection (c)*
6 *of section 954 is amended by adding after paragraph (3)*
7 *the following new paragraph:*

8 **“(4) DEFINITION AND SPECIAL RULES RELATING**
9 **TO COMMODITY TRANSACTIONS.—**

10 **“(A) COMMODITY HEDGING TRANS-**
11 **ACTIONS.—***For purposes of paragraph (1)(C)(i),*
12 *the term ‘commodity hedging transaction’ means*
13 *any transaction with respect to a commodity if*
14 *such transaction—*

15 *“(i) is a hedging transaction as de-*
16 *finied in section 1221(b)(2), determined—*

17 *“(I) without regard to subpara-*
18 *graph (A)(ii) thereof,*

19 *“(II) by applying subparagraph*
20 *(A)(i) thereof by substituting ‘ordinary*
21 *property or property described in sec-*
22 *tion 1231(b)’ for ‘ordinary property’,*
23 *and*

1 “(III) by substituting ‘controlled
2 foreign corporation’ for ‘taxpayer’ each
3 place it appears, and

4 “(ii) is clearly identified as such in ac-
5 cordance with section 1221(a)(7).

6 “(B) *TREATMENT OF DEALER ACTIVITIES*
7 *UNDER PARAGRAPH (1)(C).*—Commodities with
8 respect to which gains and losses are not taken
9 into account under paragraph (2)(C) in com-
10 puting a controlled foreign corporation’s foreign
11 personal holding company income shall not be
12 taken into account in applying the substantially
13 all test under paragraph (1)(C)(ii) to such cor-
14 poration.

15 “(C) *REGULATIONS.*—The Secretary shall
16 prescribe such regulations as are appropriate to
17 carry out the purposes of paragraph (1)(C) in
18 the case of transactions involving related par-
19 ties.”.

20 (c) *MODIFICATION OF EXCEPTION FOR DEALERS.*—
21 Clause (i) of section 954(c)(2)(C) is amended by inserting
22 “and transactions involving physical settlement” after “(in-
23 cluding hedging transactions”.

1 (d) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to transactions entered into after Decem-*
3 *ber 31, 2004.*

4 ***Subtitle B—International Tax***
5 ***Simplification***

6 ***SEC. 211. REPEAL OF FOREIGN PERSONAL HOLDING COM-***
7 ***PANY RULES AND FOREIGN INVESTMENT***
8 ***COMPANY RULES.***

9 (a) *GENERAL RULE.*—*The following provisions are*
10 *hereby repealed:*

11 (1) *Part III of subchapter G of chapter 1 (relat-*
12 *ing to foreign personal holding companies).*

13 (2) *Section 1246 (relating to gain on foreign in-*
14 *vestment company stock).*

15 (3) *Section 1247 (relating to election by foreign*
16 *investment companies to distribute income currently).*

17 (b) *EXEMPTION OF FOREIGN CORPORATIONS FROM*
18 *PERSONAL HOLDING COMPANY RULES.*—

19 (1) *IN GENERAL.*—*Subsection (c) of section 542*
20 *(relating to exceptions) is amended—*

21 (A) *by striking paragraph (5) and inserting*
22 *the following:*

23 “(5) *a foreign corporation,*”

1 (B) by striking paragraphs (7) and (10)
2 and by redesignating paragraphs (8) and (9) as
3 paragraphs (7) and (8), respectively,

4 (C) by inserting “and” at the end of para-
5 graph (7) (as so redesignated), and

6 (D) by striking “; and” at the end of para-
7 graph (8) (as so redesignated) and inserting a
8 period.

9 (2) *TREATMENT OF INCOME FROM PERSONAL*
10 *SERVICE CONTRACTS.*—Paragraph (1) of section
11 954(c) is amended by adding at the end the following
12 new subparagraph:

13 “(I) *PERSONAL SERVICE CONTRACTS.*—

14 “(i) Amounts received under a contract
15 under which the corporation is to furnish
16 personal services if—

17 “(I) some person other than the
18 corporation has the right to designate
19 (by name or by description) the indi-
20 vidual who is to perform the services,
21 or

22 “(II) the individual who is to per-
23 form the services is designated (by
24 name or by description) in the con-
25 tract, and

1 “(ii) amounts received from the sale or
2 other disposition of such a contract.

3 This subparagraph shall apply with respect to
4 amounts received for services under a particular
5 contract only if at some time during the taxable
6 year 25 percent or more in value of the out-
7 standing stock of the corporation is owned, di-
8 rectly or indirectly, by or for the individual who
9 has performed, is to perform, or may be des-
10 ignated (by name or by description) as the one
11 to perform, such services.”.

12 (c) CONFORMING AMENDMENTS.—

13 (1) Section 1(h) is amended—

14 (A) in paragraph (10), by inserting “and”
15 at the end of subparagraph (F), by striking sub-
16 paragraph (G), and by redesignating subpara-
17 graph (H) as subparagraph (G), and

18 (B) by striking “a foreign personal holding
19 company (as defined in section 552), a foreign
20 investment company (as defined in section
21 1246(b)), or” in paragraph (11)(C)(iii).

22 (2) Section 163(e)(3)(B), as amended by section
23 453(a) of this Act, is amended by striking “which is
24 a foreign personal holding company (as defined in
25 section 552), a controlled foreign corporation (as de-

1 *fined in section 957), or” and inserting “which is a*
2 *controlled foreign corporation (as defined in section*
3 *957) or”.*

4 (3) *Paragraph (2) of section 171(c) is*
5 *amended—*

6 (A) *by striking “, or by a foreign personal*
7 *holding company, as defined in section 552”,*
8 *and*

9 (B) *by striking “, or foreign personal hold-*
10 *ing company”.*

11 (4) *Paragraph (2) of section 245(a) is amended*
12 *by striking “foreign personal holding company or”.*

13 (5) *Section 267(a)(3)(B), as amended by section*
14 *453(a) of this Act, is amended by striking “to a for-*
15 *foreign personal holding company (as defined in section*
16 *552), a controlled foreign corporation (as defined in*
17 *section 957), or” and inserting “to a controlled for-*
18 *foreign corporation (as defined in section 957) or”.*

19 (6) *Section 312 is amended by striking sub-*
20 *section (j).*

21 (7) *Subsection (m) of section 312 is amended by*
22 *striking “, a foreign investment company (within the*
23 *meaning of section 1246(b)), or a foreign personal*
24 *holding company (within the meaning of section*
25 *552)”.*

1 (8) *Subsection (e) of section 443 is amended by*
2 *striking paragraph (3) and by redesignating para-*
3 *graphs (4) and (5) as paragraphs (3) and (4), respec-*
4 *tively.*

5 (9) *Subparagraph (B) of section 465(c)(7) is*
6 *amended by adding “or” at the end of clause (i), by*
7 *striking clause (ii), and by redesignating clause (iii)*
8 *as clause (ii).*

9 (10) *Paragraph (1) of section 543(b) is amended*
10 *by inserting “and” at the end of subparagraph (A),*
11 *by striking “, and” at the end of subparagraph (B)*
12 *and inserting a period, and by striking subparagraph*
13 *(C).*

14 (11) *Paragraph (1) of section 562(b) is amended*
15 *by striking “or a foreign personal holding company*
16 *described in section 552”.*

17 (12) *Section 563 is amended—*

18 (A) *by striking subsection (c),*

19 (B) *by redesignating subsection (d) as sub-*
20 *section (c), and*

21 (C) *by striking “subsection (a), (b), or (c)”*
22 *in subsection (c) (as so redesignated) and insert-*
23 *ing “subsection (a) or (b)”.*

24 (13) *Subsection (d) of section 751 is amended by*
25 *adding “and” at the end of paragraph (2), by strik-*

1 *ing paragraph (3), by redesignating paragraph (4) as*
2 *paragraph (3), and by striking “paragraph (1), (2),*
3 *or (3)” in paragraph (3) (as so redesignated) and in-*
4 *serting “paragraph (1) or (2)”.*

5 *(14) Paragraph (2) of section 864(d) is amended*
6 *by striking subparagraph (A) and by redesignating*
7 *subparagraphs (B) and (C) as subparagraphs (A)*
8 *and (B), respectively.*

9 *(15)(A) Subparagraph (A) of section 898(b)(1) is*
10 *amended to read as follows:*

11 *“(A) which is treated as a controlled foreign*
12 *corporation for any purpose under subpart F of*
13 *part III of this subchapter, and”.*

14 *(B) Subparagraph (B) of section 898(b)(2) is*
15 *amended by striking “and sections 551(f) and 554,*
16 *whichever are applicable,”.*

17 *(C) Paragraph (3) of section 898(b) is amended*
18 *to read as follows:*

19 *“(3) UNITED STATES SHAREHOLDER.—The term*
20 *‘United States shareholder’ has the meaning given to*
21 *such term by section 951(b), except that, in the case*
22 *of a foreign corporation having related person insur-*
23 *ance income (as defined in section 953(c)(2)), the Sec-*
24 *retary may treat any person as a United States*
25 *shareholder for purposes of this section if such person*

1 *is treated as a United States shareholder under sec-*
2 *tion 953(c)(1).”.*

3 *(D) Subsection (c) of section 898 is amended to*
4 *read as follows:*

5 *“(c) DETERMINATION OF REQUIRED YEAR.—*

6 *“(1) IN GENERAL.—The required year is—*

7 *“(A) the majority U.S. shareholder year, or*

8 *“(B) if there is no majority U.S. share-*
9 *holder year, the taxable year prescribed under*
10 *regulations.*

11 *“(2) 1-MONTH DEFERRAL ALLOWED.—A specified*
12 *foreign corporation may elect, in lieu of the taxable*
13 *year under paragraph (1)(A), a taxable year begin-*
14 *ning 1 month earlier than the majority U.S. share-*
15 *holder year.*

16 *“(3) MAJORITY U.S. SHAREHOLDER YEAR.—*

17 *“(A) IN GENERAL.—For purposes of this*
18 *subsection, the term ‘majority U.S. shareholder*
19 *year’ means the taxable year (if any) which, on*
20 *each testing day, constituted the taxable year*
21 *of—*

22 *“(i) each United States shareholder de-*
23 *scribed in subsection (b)(2)(A), and*

24 *“(ii) each United States shareholder*
25 *not described in clause (i) whose stock was*

1 *treated as owned under subsection (b)(2)(B)*
2 *by any shareholder described in such clause.*

3 “(B) *TESTING DAY.*—*The testing days shall*
4 *be—*

5 “(i) *the first day of the corporation’s*
6 *taxable year (determined without regard to*
7 *this section), or*

8 “(ii) *the days during such representa-*
9 *tive period as the Secretary may pre-*
10 *scribe.”.*

11 (16) *Clause (ii) of section 904(d)(2)(A) is*
12 *amended to read as follows:*

13 “(i) *CERTAIN AMOUNTS INCLUDED.*—
14 *Except as provided in clause (iii), the term*
15 *‘passive income’ includes, except as pro-*
16 *vided in subparagraph (E)(iii) or para-*
17 *graph (3)(I), any amount includible in*
18 *gross income under section 1293 (relating to*
19 *certain passive foreign investment compa-*
20 *nies).”.*

21 (17)(A) *Subparagraph (A) of section 904(g)(1),*
22 *as redesignated by section 204, is amended by adding*
23 *“or” at the end of clause (i), by striking clause (ii),*
24 *and by redesignating clause (iii) as clause (ii).*

1 (B) *The paragraph heading of paragraph (2) of*
2 *section 904(g), as so redesignated, is amended by*
3 *striking “FOREIGN PERSONAL HOLDING OR”.*

4 (18) *Section 951 is amended by striking sub-*
5 *sections (c) and (d) and by redesignating subsections*
6 *(e) and (f) as subsections (c) and (d), respectively.*

7 (19) *Paragraph (3) of section 989(b) is amended*
8 *by striking “, 551(a).”.*

9 (20) *Paragraph (5) of section 1014(b) is amend-*
10 *ed by inserting “and before January 1, 2005,” after*
11 *“August 26, 1937.”.*

12 (21) *Subsection (a) of section 1016 is amended*
13 *by striking paragraph (13).*

14 (22)(A) *Paragraph (3) of section 1212(a) is*
15 *amended to read as follows:*

16 “(3) *SPECIAL RULES ON CARRYBACKS.—A net*
17 *capital loss of a corporation shall not be carried back*
18 *under paragraph (1)(A) to a taxable year—*

19 *“(A) for which it is a regulated investment*
20 *company (as defined in section 851), or*

21 *“(B) for which it is a real estate investment*
22 *trust (as defined in section 856).”.*

23 (B) *The amendment made by subparagraph (A)*
24 *shall apply to taxable years beginning after December*
25 *31, 2004.*

1 (23) *Section 1223 is amended by striking para-*
2 *graph (10) and by redesignating the following para-*
3 *graphs accordingly.*

4 (24) *Subsection (d) of section 1248 is amended*
5 *by striking paragraph (5) and by redesignating para-*
6 *graphs (6) and (7) as paragraphs (5) and (6), respec-*
7 *tively.*

8 (25) *Paragraph (2) of section 1260(c) is amend-*
9 *ed by striking subparagraphs (H) and (I) and by re-*
10 *designating subparagraph (J) as subparagraph (H).*

11 (26)(A) *Subparagraph (F) of section 1291(b)(3)*
12 *is amended by striking “551(d), 959(a),” and insert-*
13 *ing “959(a)”.*

14 (B) *Subsection (e) of section 1291 is amended by*
15 *inserting “(as in effect on the day before the date of*
16 *the enactment of the Jumpstart Our Business*
17 *Strength (JOBS) Act)” after “section 1246”.*

18 (27) *Paragraph (2) of section 1294(a) is amend-*
19 *ed to read as follows:*

20 “(2) *ELECTION NOT PERMITTED WHERE*
21 *AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION*
22 *951.—The taxpayer may not make an election under*
23 *paragraph (1) with respect to the undistributed PFIC*
24 *earnings tax liability attributable to a qualified elect-*
25 *ing fund for the taxable year if any amount is in-*

1 *cludible in the gross income of the taxpayer under sec-*
2 *tion 951 with respect to such fund for such taxable*
3 *year.”.*

4 (28) *Section 6035 is hereby repealed.*

5 (29) *Subparagraph (D) of section 6103(e)(1) is*
6 *amended by striking clause (iv) and redesignating*
7 *clauses (v) and (vi) as clauses (iv) and (v), respec-*
8 *tively.*

9 (30) *Subparagraph (B) of section 6501(e)(1) is*
10 *amended to read as follows:*

11 “(B) *CONSTRUCTIVE DIVIDENDS.—If the*
12 *taxpayer omits from gross income an amount*
13 *properly includible therein under section 951(a),*
14 *the tax may be assessed, or a proceeding in court*
15 *for the collection of such tax may be done with-*
16 *out assessing, at any time within 6 years after*
17 *the return was filed.”.*

18 (31) *Subsection (a) of section 6679 is amended—*

19 (A) *by striking “6035, 6046, and 6046A” in*
20 *paragraph (1) and inserting “6046 and 6046A”,*
21 *and*

22 (B) *by striking paragraph (3).*

23 (32) *Sections 170(f)(10)(A), 508(d), 4947, and*
24 *4948(c)(4) are each amended by striking “556(b)(2),”*
25 *each place it appears.*

1 (33) *The table of parts for subchapter G of chap-*
2 *ter 1 is amended by striking the item relating to part*
3 *III.*

4 (34) *The table of sections for part IV of sub-*
5 *chapter P of chapter 1 is amended by striking the*
6 *items relating to sections 1246 and 1247.*

7 (35) *The table of sections for subpart A of part*
8 *III of subchapter A of chapter 61 is amended by strik-*
9 *ing the item relating to section 6035.*

10 *(d) EFFECTIVE DATES.—*

11 (1) *IN GENERAL.—Except as provided in para-*
12 *graph (2), the amendments made by this section shall*
13 *apply to taxable years of foreign corporations begin-*
14 *ning after December 31, 2004, and to taxable years*
15 *of United States shareholders with or within which*
16 *such taxable years of foreign corporations end.*

17 (2) *SUBSECTION (c)(29).—The amendments made*
18 *by subsection (c)(29) shall apply to disclosures of re-*
19 *turn or return information with respect to taxable*
20 *years beginning after December 31, 2004.*

21 **SEC. 212. EXPANSION OF DE MINIMIS RULE UNDER SUB-**

22 **PART F.**

23 (a) *IN GENERAL.—Clause (ii) of section 954(b)(3)(A)*
24 *(relating to de minimis, etc., rules) is amended by striking*
25 *“\$1,000,000” and inserting “\$5,000,000”.*

1 (b) *TECHNICAL AMENDMENTS.*—

2 (1) *Clause (ii) of section 864(d)(5)(A) is amend-*
3 *ed by striking “\$1,000,000” and inserting*
4 *“\$5,000,000”.*

5 (2) *Clause (i) of section 881(c)(5)(A) is amended*
6 *by striking “\$1,000,000” and inserting “\$5,000,000”.*

7 (c) *EFFECTIVE DATE.*—*The amendments made by this*
8 *section shall apply to taxable years of foreign corporations*
9 *beginning after December 31, 2004, and to taxable years*
10 *of United States shareholders with or within which such*
11 *taxable years of foreign corporations end.*

12 **SEC. 213. ATTRIBUTION OF STOCK OWNERSHIP THROUGH**
13 **PARTNERSHIPS TO APPLY IN DETERMINING**
14 **SECTION 902 AND 960 CREDITS.**

15 (a) *IN GENERAL.*—*Subsection (c) of section 902 is*
16 *amended by redesignating paragraph (7) as paragraph (8)*
17 *and by inserting after paragraph (6) the following new*
18 *paragraph:*

19 “(7) *CONSTRUCTIVE OWNERSHIP THROUGH*
20 *PARTNERSHIPS.*—*Stock owned, directly or indirectly,*
21 *by or for a partnership shall be considered as being*
22 *owned proportionately by its partners. Stock consid-*
23 *ered to be owned by a person by reason of the pre-*
24 *ceding sentence shall, for purposes of applying such*
25 *sentence, be treated as actually owned by such person.*

1 *The Secretary may prescribe such regulations as may*
 2 *be necessary to carry out the purposes of this para-*
 3 *graph, including rules to account for special partner-*
 4 *ship allocations of dividends, credits, and other inci-*
 5 *dents of ownership of stock in determining propor-*
 6 *tionate ownership.”.*

7 **(b) CLARIFICATION OF COMPARABLE ATTRIBUTION**
 8 **UNDER SECTION 901(b)(5).**—*Paragraph (5) of section*
 9 *901(b) is amended by striking “any individual” and insert-*
 10 *ing “any person”.*

11 **(c) EFFECTIVE DATE.**—*The amendments made by this*
 12 *section shall apply to taxes of foreign corporations for tax-*
 13 *able years of such corporations beginning after the date of*
 14 *the enactment of this Act.*

15 **SEC. 214. APPLICATION OF UNIFORM CAPITALIZATION**
 16 **RULES TO FOREIGN PERSONS.**

17 **(a) IN GENERAL.**—*Section 263A(c) (relating to excep-*
 18 *tions) is amended by adding at the end the following new*
 19 *paragraph:*

20 **“(7) FOREIGN PERSONS.**—*Except for purposes of*
 21 *applying sections 871(b)(1) and 882(a)(1), this sec-*
 22 *tion shall not apply to any taxpayer who is not a*
 23 *United States person if such taxpayer capitalizes*
 24 *costs of produced property or property acquired for*
 25 *resale by applying the method used to ascertain the*

1 *income, profit, or loss for purposes of reports or state-*
2 *ments to shareholders, partners, other proprietors, or*
3 *beneficiaries, or for credit purposes.”.*

4 *(b) EFFECTIVE DATE.—*

5 *(1) IN GENERAL.—The amendment made by sub-*
6 *section (a) shall apply to taxable years beginning*
7 *after December 31, 2004.*

8 *(2) CHANGE IN METHOD OF ACCOUNTING.—In*
9 *the case of any taxpayer required by the amendment*
10 *made by this section to change its method of account-*
11 *ing for its first taxable year beginning after December*
12 *31, 2004—*

13 *(A) such change shall be treated as initiated*
14 *by the taxpayer,*

15 *(B) such change shall be treated as made*
16 *with the consent of the Secretary of the Treasury,*
17 *and*

18 *(C) the net amount of the adjustments re-*
19 *quired to be taken into account by the taxpayer*
20 *under section 481 of the Internal Revenue Code*
21 *of 1986 shall be taken into account in such first*
22 *year.*

1 **SEC. 215. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**
2 **FROM CERTAIN FOREIGN CORPORATIONS.**

3 (a) *IN GENERAL.*—Paragraph (2) of section 871(i) (re-
4 lating to tax not to apply to certain interest and dividends)
5 is amended by adding at the end the following new subpara-
6 graph:

7 “(D) Dividends paid by a foreign corpora-
8 tion which are treated under section
9 861(a)(2)(B) as income from sources within the
10 United States.”.

11 (b) *EFFECTIVE DATE.*—The amendment made by this
12 section shall apply to payments made after December 31,
13 2004.

14 **SEC. 216. REPEAL OF SPECIAL CAPITAL GAINS TAX ON**
15 **ALIENS PRESENT IN THE UNITED STATES**
16 **FOR 183 DAYS OR MORE.**

17 (a) *IN GENERAL.*—Subsection (a) of section 871 is
18 amended by striking paragraph (2) and by redesignating
19 paragraph (3) as paragraph (2).

20 (b) *CONFORMING AMENDMENT.*—Section 1441(g) is
21 amended is amended by striking “section 871(a)(3)” and
22 inserting “section 871(a)(2)”.

23 (c) *EFFECTIVE DATE.*—The amendments made by this
24 section shall apply to taxable years beginning after Decem-
25 ber 31, 2003.

1 ***Subtitle C—Additional***
2 ***International Tax Provisions***

3 ***SEC. 221. ACTIVE LEASING INCOME FROM AIRCRAFT AND***
4 ***VESSELS.***

5 (a) *IN GENERAL.*—Section 954(c)(2) is amended by
6 adding at the end the following new subparagraph:

7 “(D) *CERTAIN RENTS, ETC.*—

8 “(i) *IN GENERAL.*—Foreign personal
9 holding company income shall not include
10 qualified leasing income derived from or in
11 connection with the leasing or rental of any
12 aircraft or vessel.

13 “(ii) *QUALIFIED LEASING INCOME.*—

14 For purposes of this subparagraph, the term
15 ‘qualified leasing income’ means rents and
16 gains derived in the active conduct of a
17 trade or business of leasing with respect to
18 which the controlled foreign corporation
19 conducts substantial activity, but only if—

20 “(I) the leased property is used by
21 the lessee or other end-user in foreign
22 commerce and predominantly outside
23 the United States, and

1 “(II) the lessee or other end-user
2 is not a related person (as defined in
3 subsection (d)(3)).

4 Any amount not treated as foreign personal
5 holding income under this subparagraph
6 shall not be treated as foreign base company
7 shipping income.”.

8 (b) *CONFORMING AMENDMENT.*—Section 954(c)(1)(B)
9 is amended by inserting “or (2)(D)” after “paragraph
10 (2)(A)”.

11 (c) *EFFECTIVE DATE.*—The amendments made by this
12 section shall apply to taxable years of foreign corporations
13 beginning after December 31, 2005, and to taxable years
14 of United States shareholders with or within which such
15 taxable years of foreign corporations end.

16 **SEC. 222. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN**
17 **RELATED CONTROLLED FOREIGN CORPORA-**
18 **TIONS UNDER FOREIGN PERSONAL HOLDING**
19 **COMPANY INCOME RULES.**

20 (a) *IN GENERAL.*—Subsection (c) of section 954, as
21 amended by this Act, is amended by adding after para-
22 graph (4) the following new paragraph:

23 “(5) *LOOK-THRU IN THE CASE OF RELATED CON-*
24 *TROLLED FOREIGN CORPORATIONS.*—For purposes of
25 this subsection, dividends, interest, rents, and royal-

1 *ties received or accrued from a controlled foreign cor-*
2 *poration which is a related person (as defined in sub-*
3 *section (b)(9)) shall not be treated as foreign personal*
4 *holding company income to the extent attributable or*
5 *properly allocable (determined under rules similar to*
6 *the rules of subparagraphs (C) and (D) of section*
7 *904(d)(3)) to income of the related person which is*
8 *not subpart F income (as defined in section 952). For*
9 *purposes of this paragraph, interest shall include fac-*
10 *toring income which is treated as income equivalent*
11 *to interest for purposes of paragraph (1)(E). The Sec-*
12 *retary shall prescribe such regulations as may be ap-*
13 *propriate to prevent the abuse of the purposes of this*
14 *paragraph.”.*

15 *(b) EFFECTIVE DATE.—The amendment made by this*
16 *section shall apply to taxable years of foreign corporations*
17 *beginning after December 31, 2004, and to taxable years*
18 *of United States shareholders with or within which such*
19 *taxable years of foreign corporations end.*

20 **SEC. 223. LOOK-THRU TREATMENT FOR SALES OF PART-**
21 **nership Interests.**

22 *(a) IN GENERAL.—Section 954(c) (defining foreign*
23 *personal holding company income), as amended by this Act,*
24 *is amended by adding after paragraph (5) the following*
25 *new paragraph:*

1 “(6) *LOOK-THRU RULE FOR CERTAIN PARTNER-*
2 *SHIP SALES.*—

3 “(A) *IN GENERAL.*—*In the case of any sale*
4 *by a controlled foreign corporation of an interest*
5 *in a partnership with respect to which such cor-*
6 *poration is a 25-percent owner, such corporation*
7 *shall be treated for purposes of this subsection as*
8 *selling the proportionate share of the assets of the*
9 *partnership attributable to such interest. The*
10 *Secretary shall prescribe such regulations as*
11 *may be appropriate to prevent abuse of the pur-*
12 *poses of this paragraph, including regulations*
13 *providing for coordination of this paragraph*
14 *with the provisions of subchapter K.*

15 “(B) *25-PERCENT OWNER.*—*For purposes of*
16 *this paragraph, the term ‘25-percent owner’*
17 *means a controlled foreign corporation which*
18 *owns directly 25 percent or more of the capital*
19 *or profits interest in a partnership. For purposes*
20 *of the preceding sentence, if a controlled foreign*
21 *corporation is a shareholder or partner of a cor-*
22 *poration or partnership, the controlled foreign*
23 *corporation shall be treated as owning directly*
24 *its proportionate share of any such capital or*

1 *profits interest held directly or indirectly by such*
2 *corporation or partnership”.*

3 **(b) EFFECTIVE DATE.**—*The amendment made by this*
4 *section shall apply to taxable years of foreign corporations*
5 *beginning after December 31, 2004, and to taxable years*
6 *of United States shareholders with or within which such*
7 *taxable years of foreign corporations end.*

8 **SEC. 224. ELECTION NOT TO USE AVERAGE EXCHANGE**
9 **RATE FOR FOREIGN TAX PAID OTHER THAN**
10 **IN FUNCTIONAL CURRENCY.**

11 **(a) IN GENERAL.**—*Paragraph (1) of section 986(a)*
12 *(relating to determination of foreign taxes and foreign cor-*
13 *poration’s earnings and profits) is amended by redesign-*
14 *ating subparagraph (D) as subparagraph (E) and by in-*
15 *serting after subparagraph (C) the following new subpara-*
16 *graph:*

17 **“(D) ELECTIVE EXCEPTION FOR TAXES**
18 **PAID OTHER THAN IN FUNCTIONAL CURRENCY.—**

19 **“(i) IN GENERAL.**—*At the election of*
20 *the taxpayer, subparagraph (A) shall not*
21 *apply to any foreign income taxes the li-*
22 *ability for which is denominated in any*
23 *currency other than in the taxpayer’s func-*
24 *tional currency.*

1 “(ii) *APPLICATION TO QUALIFIED*
2 *BUSINESS UNITS.*—*An election under this*
3 *subparagraph may apply to foreign income*
4 *taxes attributable to a qualified business*
5 *unit in accordance with regulations pre-*
6 *scribed by the Secretary.*

7 “(iii) *ELECTION.*—*Any such election*
8 *shall apply to the taxable year for which*
9 *made and all subsequent taxable years un-*
10 *less revoked with the consent of the Sec-*
11 *retary.”.*

12 (b) *EFFECTIVE DATE.*—*The amendments made by this*
13 *section shall apply to taxable years beginning after Decem-*
14 *ber 31, 2004.*

15 **SEC. 225. TREATMENT OF INCOME TAX BASE DIFFERENCES.**

16 (a) *IN GENERAL.*—*Paragraph (2) of section 904(d) is*
17 *amended by redesignating subparagraphs (H) and (I) as*
18 *subparagraphs (I) and (J), respectively, and by inserting*
19 *after subparagraph (G) the following new subparagraph:*

20 “(H) *TREATMENT OF INCOME TAX BASE*
21 *DIFFERENCES.*—

22 “(i) *IN GENERAL.*—*A taxpayer may*
23 *elect to treat tax imposed under the law of*
24 *a foreign country or possession of the*
25 *United States on an amount which does not*

1 *constitute income under United States tax*
2 *principles as tax imposed on income de-*
3 *scribed in subparagraph (C) or (I) of para-*
4 *graph (1).*

5 “(ii) *ELECTION IRREVOCABLE.—Any*
6 *such election shall apply to the taxable year*
7 *for which made and all subsequent taxable*
8 *years unless revoked with the consent of the*
9 *Secretary.”.*

10 **(b) EFFECTIVE DATE.—***The amendments made by this*
11 *section shall apply to taxable years ending after the date*
12 *of the enactment of this Act.*

13 **SEC. 226. MODIFICATION OF EXCEPTIONS UNDER SUBPART**
14 **F FOR ACTIVE FINANCING.**

15 **(a) IN GENERAL.—***Section 954(h)(3) is amended by*
16 *adding at the end the following:*

17 “(E) *DIRECT CONDUCT OF ACTIVITIES.—*
18 *For purposes of subparagraph (A)(ii)(II), an ac-*
19 *tivity shall be treated as conducted directly by*
20 *an eligible controlled foreign corporation or*
21 *qualified business unit in its home country if the*
22 *activity is performed by employees of a related*
23 *person and—*

24 “(i) *the related person is an eligible*
25 *controlled foreign corporation the home*

1 country of which is the same as the home
2 country of the corporation or unit to which
3 subparagraph (A)(ii)(II) is being applied,

4 “(ii) the activity is performed in the
5 home country of the related person, and

6 “(iii) the related person is compensated
7 on an arm’s-length basis for the perform-
8 ance of the activity by its employees and
9 such compensation is treated as earned by
10 such person in its home country for pur-
11 poses of the home country’s tax laws.”.

12 (b) *EFFECTIVE DATE.*—The amendment made by this
13 section shall apply to taxable years of such foreign corpora-
14 tions beginning after December 31, 2004, and to taxable
15 years of United States shareholders with or within which
16 such taxable years of such foreign corporations end.

17 **SEC. 227. UNITED STATES PROPERTY NOT TO INCLUDE**
18 **CERTAIN ASSETS OF CONTROLLED FOREIGN**
19 **CORPORATION.**

20 (a) *IN GENERAL.*—Section 956(c)(2) (relating to ex-
21 ceptions from property treated as United States property)
22 is amended by striking “and” at the end of subparagraph
23 (J), by striking the period at the end of subparagraph (K)
24 and inserting a semicolon, and by adding at the end the
25 following new subparagraphs:

1 “(L) securities acquired and held by a con-
2 trolled foreign corporation in the ordinary course
3 of its business as a dealer in securities if—

4 “(i) the dealer accounts for the securi-
5 ties as securities held primarily for sale to
6 customers in the ordinary course of busi-
7 ness, and

8 “(ii) the dealer disposes of the securi-
9 ties (or such securities mature while held by
10 the dealer) within a period consistent with
11 the holding of securities for sale to cus-
12 tomers in the ordinary course of business;
13 and

14 “(M) an obligation of a United States per-
15 son which—

16 “(i) is not a domestic corporation, and

17 “(ii) is not—

18 “(I) a United States shareholder
19 (as defined in section 951(b)) of the
20 controlled foreign corporation, or

21 “(II) a partnership, estate, or
22 trust in which the controlled foreign
23 corporation, or any related person (as
24 defined in section 954(d)(3)), is a
25 partner, beneficiary, or trustee imme-

1 diately after the acquisition of any ob-
2 ligation of such partnership, estate, or
3 trust by the controlled foreign corpora-
4 tion.”.

5 (b) *CONFORMING AMENDMENT.*—Section 956(c)(2) is
6 amended by striking “and (K)” in the last sentence and
7 inserting “, (K), and (L)”.

8 (c) *EFFECTIVE DATE.*—The amendments made by this
9 section shall apply to taxable years of foreign corporations
10 beginning after December 31, 2004, and to taxable years
11 of United States shareholders with or within which such
12 taxable years of foreign corporations end.

13 **SEC. 228. PROVIDE EQUAL TREATMENT FOR INTEREST PAID**
14 **BY FOREIGN PARTNERSHIPS AND FOREIGN**
15 **CORPORATIONS.**

16 (a) *IN GENERAL.*—Paragraph (1) of section 861(a) is
17 amended by striking “and” at the end of subparagraph (A),
18 by striking the period at the end of subparagraph (B) and
19 inserting “, and”, and by adding at the end the following
20 new subparagraph:

21 “(C) in the case of a foreign partnership,
22 which is predominantly engaged in the active
23 conduct of a trade or business outside the United
24 States, any interest not paid by a trade or busi-
25 ness engaged in by the partnership in the United

1 *States and not allocable to income which is effec-*
 2 *tively connected (or treated as effectively con-*
 3 *ected) with the conduct of a trade or business*
 4 *in the United States.”.*

5 **(b) EFFECTIVE DATE.**—*The amendments made by this*
 6 *section shall apply to taxable years beginning after Decem-*
 7 *ber 31, 2003.*

8 **SEC. 229. CLARIFICATION OF TREATMENT OF CERTAIN**
 9 **TRANSFERS OF INTANGIBLE PROPERTY.**

10 **(a) IN GENERAL.**—*Subparagraph (C) of section*
 11 *367(d)(2) is amended by adding at the end the following*
 12 *new sentence: “For purposes of applying section 904(d),*
 13 *any such amount shall be treated in the same manner as*
 14 *if such amount were a royalty.”.*

15 **(b) EFFECTIVE DATE.**—*The amendment made by this*
 16 *section shall apply to amounts treated as received pursuant*
 17 *to section 367(d)(2) of the Internal Revenue Code of 1986*
 18 *on or after August 5, 1997.*

19 **SEC. 230. MODIFICATION OF THE TREATMENT OF CERTAIN**
 20 **REIT DISTRIBUTIONS ATTRIBUTABLE TO**
 21 **GAIN FROM SALES OR EXCHANGES OF**
 22 **UNITED STATES REAL PROPERTY INTERESTS.**

23 **(a) IN GENERAL.**—*Paragraph (1) of section 897(h)*
 24 *(relating to look-through of distributions) is amended by*
 25 *adding at the end the following new sentence: “Notwith-*

1 *standing the preceding sentence, any distribution by a*
2 *REIT with respect to any class of stock which is regularly*
3 *traded on an established securities market located in the*
4 *United States shall not be treated as gain recognized from*
5 *the sale or exchange of a United States real property inter-*
6 *est if the shareholder did not own more than 5 percent of*
7 *such class of stock at any time during the taxable year.”.*

8 (b) *CONFORMING AMENDMENT.—Paragraph (3) of sec-*
9 *tion 857(b) (relating to capital gains) is amended by add-*
10 *ing at the end the following new subparagraph:*

11 “(F) *CERTAIN DISTRIBUTIONS.—In the case*
12 *of a shareholder of a real estate investment trust*
13 *to whom section 897 does not apply by reason of*
14 *the second sentence of section 897(h)(1), the*
15 *amount which would be included in computing*
16 *long-term capital gains for such shareholder*
17 *under subparagraph (B) or (D) (without regard*
18 *to this subparagraph)—*

19 “(i) *shall not be included in computing*
20 *such shareholder’s long-term capital gains,*
21 *and*

22 “(ii) *shall be included in such share-*
23 *holder’s gross income as a dividend from the*
24 *real estate investment trust.”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to taxable years beginning after the date*
3 *of the enactment of this Act.*

4 **SEC. 231. TOLL TAX ON EXCESS QUALIFIED FOREIGN DIS-**
5 **TRIBUTION AMOUNT.**

6 (a) *IN GENERAL.*—*Subpart F of part III of subchapter*
7 *N of chapter 1 is amended by adding at the end the fol-*
8 *lowing new section:*

9 **“SEC. 965. TOLL TAX IMPOSED ON EXCESS QUALIFIED FOR-**
10 **EIGN DISTRIBUTION AMOUNT.**

11 “(a) *TOLL TAX IMPOSED ON EXCESS QUALIFIED FOR-*
12 *EIGN DISTRIBUTION AMOUNT.*—*If a corporation elects the*
13 *application of this section, a tax shall be imposed on the*
14 *taxpayer in an amount equal to 5.25 percent of—*

15 “(1) *the taxpayer’s excess qualified foreign dis-*
16 *tribution amount, and*

17 “(2) *the amount determined under section 78*
18 *which is attributable to such excess qualified foreign*
19 *distribution amount.*

20 *Such tax shall be imposed in lieu of the tax imposed under*
21 *section 11 or 55 on the amounts described in paragraphs*
22 *(1) and (2) for the taxable year.*

23 “(b) *EXCESS QUALIFIED FOREIGN DISTRIBUTION*
24 *AMOUNT.*—*For purposes of this section—*

1 “(1) *IN GENERAL.*—*The term ‘excess qualified*
2 *foreign distribution amount’ means the excess (if any)*
3 *of—*

4 “(A) *the aggregate dividends received by the*
5 *taxpayer during the taxable year which are—*

6 “(i) *from 1 or more corporations which*
7 *are controlled foreign corporations in which*
8 *the taxpayer is a United States shareholder*
9 *on the date such dividends are paid, and*

10 “(ii) *described in a domestic reinvest-*
11 *ment plan which—*

12 “(I) *is approved by the taxpayer’s*
13 *president, chief executive officer, or*
14 *comparable official before the payment*
15 *of such dividends and subsequently ap-*
16 *proved by the taxpayer’s board of di-*
17 *rectors, management committee, execu-*
18 *tive committee, or similar body, and*

19 “(II) *provides for the reinvestment*
20 *of such dividends in the United States*
21 *(other than as payment for executive*
22 *compensation), including as a source*
23 *for the funding of worker hiring and*
24 *training, infrastructure, research and*
25 *development, capital investments, or*

1 *the financial stabilization of the cor-*
2 *poration for the purposes of job reten-*
3 *tion or creation, over*

4 *“(B) the base dividend amount.*

5 *“(2) BASE DIVIDEND AMOUNT.—The term ‘base*
6 *dividend amount’ means an amount designated under*
7 *subsection (c)(7), but not less than the average*
8 *amount of dividends received during the fixed base*
9 *period from 1 or more corporations which are con-*
10 *trolled foreign corporations in which the taxpayer is*
11 *a United States shareholder on the date such divi-*
12 *dends are paid.*

13 *“(3) FIXED BASE PERIOD.—*

14 *“(A) IN GENERAL.—The term ‘fixed base pe-*
15 *riod’ means each of 3 taxable years which are*
16 *among the 5 most recent taxable years of the tax-*
17 *payer ending on or before December 31, 2002,*
18 *determined by disregarding—*

19 *“(i) the 1 taxable year for which the*
20 *taxpayer had the highest amount of divi-*
21 *dends from 1 or more corporations which*
22 *are controlled foreign corporations relative*
23 *to the other 4 taxable years, and*

24 *“(ii) the 1 taxable year for which the*
25 *taxpayer had the lowest amount of divi-*

1 *dends from such corporations relative to the*
2 *other 4 taxable years.*

3 “(B) *SHORTER PERIOD.*—*If the taxpayer*
4 *has fewer than 5 taxable years ending on or be-*
5 *fore December 31, 2002, then in lieu of applying*
6 *subparagraph (A), the fixed base period shall in-*
7 *clude all the taxable years of the taxpayer ending*
8 *on or before December 31, 2002.*

9 “(c) *DEFINITIONS AND SPECIAL RULES.*—*For pur-*
10 *poses of this section—*

11 “(1) *DIVIDENDS.*—*The term ‘dividend’ has the*
12 *meaning given such term by section 316, except that*
13 *the term shall include amounts described in section*
14 *951(a)(1)(B), but shall not include amounts described*
15 *in sections 78 and 959.*

16 “(2) *CONTROLLED FOREIGN CORPORATIONS AND*
17 *UNITED STATES SHAREHOLDERS.*—*The term ‘con-*
18 *trolled foreign corporation’ has the meaning given*
19 *such term by section 957(a) and the term ‘United*
20 *States shareholder’ has the meaning given such term*
21 *by section 951(b).*

22 “(3) *FOREIGN TAX CREDITS.*—*The amount of*
23 *any income, war, profits, or excess profit taxes paid*
24 *(or deemed paid under sections 902 and 960) or ac-*
25 *crued by the taxpayer with respect to the excess quali-*

1 *fied foreign distribution amount for which a credit*
2 *would be allowable under section 901 in the absence*
3 *of this section, shall be reduced by 85 percent. No de-*
4 *duction shall be allowed under this chapter for the*
5 *portion of any tax for which credit is not allowable*
6 *by reason of the preceding sentence.*

7 “(4) *FOREIGN TAX CREDIT LIMITATION.—For*
8 *purposes of section 904, there shall be disregarded 85*
9 *percent of—*

10 “(A) *the excess qualified foreign distribution*
11 *amount,*

12 “(B) *the amount determined under section*
13 *78 which is attributable to such excess qualified*
14 *foreign distribution amount, and*

15 “(C) *the amounts (including assets, gross*
16 *income, and other relevant bases of apportion-*
17 *ment) which are attributable to the excess quali-*
18 *fied foreign distribution amount which would,*
19 *determined without regard to this section, be*
20 *used to apportion the expenses, losses, and deduc-*
21 *tions of the taxpayer under section 861 and 864*
22 *in determining its taxable income from sources*
23 *without the United States.*

24 *For purposes of applying subparagraph (C), the prin-*
25 *ciples of section 864(e)(3)(A) shall apply.*

1 “(5) *TREATMENT OF ACQUISITIONS AND DISPOSI-*
2 *TIONS.—Rules similar to the rules of section 41(f)(3)*
3 *shall apply in the case of acquisitions or dispositions*
4 *of controlled foreign corporations occurring on or*
5 *after the first day of the earliest taxable year taken*
6 *into account in determining the fixed base period.*

7 “(6) *TREATMENT OF CONSOLIDATED GROUPS.—*
8 *Members of an affiliated group of corporations filing*
9 *a consolidated return under section 1501 shall be*
10 *treated as a single taxpayer for purposes of this sec-*
11 *tion.*

12 “(7) *DESIGNATION OF DIVIDENDS.—Subject to*
13 *subsection (b)(2), the taxpayer shall designate the*
14 *particular dividends received during the taxable year*
15 *from 1 or more corporations which are controlled for-*
16 *foreign corporations in which it is a United States*
17 *shareholder which are dividends excluded from the ex-*
18 *cess qualified foreign distribution amount. The total*
19 *amount of such designated dividends shall equal the*
20 *base dividend amount.*

21 “(8) *TREATMENT OF EXPENSES, LOSSES, AND*
22 *DEDUCTIONS.—Any expenses, losses, or deductions of*
23 *the taxpayer allowable under subchapter B—*

24 “(A) *shall not be applied to reduce the*
25 *amounts described in subsection (a)(1), and*

1 “(B) shall be applied to reduce other income
2 of the taxpayer (determined without regard to
3 the amounts described in subsection (a)(1)).

4 “(d) ELECTION.—

5 “(1) IN GENERAL.—An election under this sec-
6 tion shall be made on the taxpayer’s timely filed in-
7 come tax return for the first taxable year (determined
8 by taking extensions into account) ending 120 days or
9 more after the date of the enactment of this section,
10 and, once made, may be revoked only with the consent
11 of the Secretary.

12 “(2) ALL CONTROLLED FOREIGN CORPORA-
13 TIONS.—The election shall apply to all corporations
14 which are controlled foreign corporations in which the
15 taxpayer is a United States shareholder during the
16 taxable year.

17 “(3) CONSOLIDATED GROUPS.—If a taxpayer is
18 a member of an affiliated group of corporations filing
19 a consolidated return under section 1501 for the tax-
20 able year, an election under this section shall be made
21 by the common parent of the affiliated group which
22 includes the taxpayer and shall apply to all members
23 of the affiliated group.

24 “(e) REGULATIONS.—The Secretary shall prescribe
25 such regulations as may be necessary and appropriate to

1 carry out the purposes of this section, including regulations
 2 under section 55 and regulations addressing corporations
 3 which, during the fixed base period or thereafter, join or
 4 leave an affiliated group of corporations filing a consoli-
 5 dated return.”.

6 (b) *CONFORMING AMENDMENT.*—The table of sections
 7 for subpart F of part III of subchapter N of chapter 1 is
 8 amended by adding at the end the following new item:

“Sec. 965. Toll tax imposed on excess qualified foreign distribution
 amount.”.

9 (c) *EFFECTIVE DATE.*—The amendments made by this
 10 section shall apply only to the first taxable year of the elect-
 11 ing taxpayer ending 120 days or more after the date of the
 12 enactment of this Act.

13 **SEC. 232. EXCLUSION OF INCOME DERIVED FROM CERTAIN**
 14 **WAGERS ON HORSE RACES AND DOG RACES**
 15 **FROM GROSS INCOME OF NONRESIDENT**
 16 **ALIEN INDIVIDUALS.**

17 (a) *IN GENERAL.*—Subsection (b) of section 872 (relat-
 18 ing to exclusions) is amended by redesignating paragraphs
 19 (5), (6), and (7) as paragraphs (6), (7), and (8), respec-
 20 tively, and inserting after paragraph (4) the following new
 21 paragraph:

22 “(5) *INCOME DERIVED FROM WAGERING TRANS-*
 23 *ACTIONS IN CERTAIN PARIMUTUEL POOLS.*—Gross in-
 24 come derived by a nonresident alien individual from

1 *a legal wagering transaction initiated outside the*
 2 *United States in a parimutuel pool with respect to a*
 3 *live horse race or dog race in the United States.”.*

4 *(b) CONFORMING AMENDMENT.—Section 883(a)(4) is*
 5 *amended by striking “(5), (6), and (7)” and inserting “(6),*
 6 *(7), and (8)”.*

7 *(c) EFFECTIVE DATE.—The amendments made by this*
 8 *section shall apply to wagers made after the date of the en-*
 9 *actment of this Act.*

10 **SEC. 233. LIMITATION OF WITHHOLDING TAX FOR PUERTO**
 11 **RICO CORPORATIONS.**

12 *(a) IN GENERAL.—Subsection (b) of section 881 is*
 13 *amended by redesignating paragraph (2) as paragraph (3)*
 14 *and by inserting after paragraph (1) the following new*
 15 *paragraph:*

16 *“(2) COMMONWEALTH OF PUERTO RICO.—If*
 17 *dividends are received during a taxable year by a*
 18 *corporation—*

19 *“(A) created or organized in, or under the*
 20 *law of, the Commonwealth of Puerto Rico, and*

21 *“(B) with respect to which the requirements*
 22 *of subparagraphs (A), (B), and (C) of paragraph*
 23 *(1) are met for the taxable year,*

24 *subsection (a) shall be applied for such taxable year*
 25 *by substituting ‘10 percent’ for ‘30 percent’.”.*

1 (b) *WITHHOLDING.*—*Subsection (c) of section 1442*
2 *(relating to withholding of tax on foreign corporations) is*
3 *amended—*

4 (1) *by striking “For purposes” and inserting the*
5 *following:*

6 “*(1) GUAM, AMERICAN SAMOA, THE NORTHERN*
7 *MARIANA ISLANDS, AND THE VIRGIN ISLANDS.—For*
8 *purposes”, and*

9 (2) *by adding at the end the following new para-*
10 *graph:*

11 “*(2) COMMONWEALTH OF PUERTO RICO.—If*
12 *dividends are received during a taxable year by a*
13 *corporation—*

14 “*(A) created or organized in, or under the*
15 *law of, the Commonwealth of Puerto Rico, and*

16 “*(B) with respect to which the requirements*
17 *of subparagraphs (A), (B), and (C) of section*
18 *881(b)(1) are met for the taxable year,*

19 *subsection (a) shall be applied for such taxable year*
20 *by substituting ‘10 percent’ for ‘30 percent’.”.*

21 (b) *CONFORMING AMENDMENTS.*—

22 (1) *Subsection (b) of section 881 is amended by*
23 *striking “GUAM AND VIRGIN ISLANDS CORPORA-*
24 *TIONS” in the heading and inserting “POSSESSIONS”.*

1 (2) Paragraph (1) of section 881(b) is amended
2 by striking “IN GENERAL” in the heading and insert-
3 ing “GUAM, AMERICAN SAMOA, THE NORTHERN MAR-
4 IANA ISLANDS, AND THE VIRGIN ISLANDS”.

5 (c) *EFFECTIVE DATE.*—The amendments made by this
6 section shall apply to dividends paid after the date of the
7 enactment of this Act.

8 **SEC. 234. REPORT ON WTO DISPUTE SETTLEMENT PANELS**
9 **AND THE APPELLATE BODY.**

10 Not later than March 31, 2004, the Secretary of Com-
11 merce, in consultation with the United States Trade Rep-
12 resentative, shall transmit a report to the Committee on Fi-
13 nance of the Senate and the Committee on Ways and Means
14 of the House of Representatives, regarding whether dispute
15 settlement panels and the Appellate Body of the World
16 Trade Organization have—

17 (1) added to or diminished the rights of the
18 United States by imposing obligations or restrictions
19 on the use of antidumping, countervailing, and safe-
20 guard measures not agreed to under the Agreement on
21 Implementation of Article VI of the General Agree-
22 ment on Tariffs and Trade of 1994, the Agreement on
23 Subsidies and Countervailing Measures, and the
24 Agreement on Safeguards;

1 (2) *appropriately applied the standard of review*
2 *contained in Article 17.6 of the Agreement on Imple-*
3 *mentation of Article VI of the General Agreement on*
4 *Tariffs and Trade of 1994; or*

5 (3) *exceeded their authority or terms of reference*
6 *under the Agreements referred to in paragraph (1).*

7 **SEC. 235. STUDY OF IMPACT OF INTERNATIONAL TAX LAWS**
8 **ON TAXPAYERS OTHER THAN LARGE COR-**
9 **PORATIONS.**

10 (a) *STUDY.*—*The Secretary of the Treasury or the Sec-*
11 *retary's delegate shall conduct a study of the impact of Fed-*
12 *eral international tax rules on taxpayers other than large*
13 *corporations, including the burdens placed on such tax-*
14 *payers in complying with such rules.*

15 (b) *REPORT.*—*Not later than 180 days after the date*
16 *of the enactment of this Act, the Secretary shall report to*
17 *the Committee on Finance of the Senate and the Committee*
18 *on Ways and Means of the House of Representatives the*
19 *results of the study conducted under subsection (a), includ-*
20 *ing any recommendations for legislative or administrative*
21 *changes to reduce the compliance burden on taxpayers other*
22 *than large corporations and for such other purposes as the*
23 *Secretary determines appropriate.*

1 **SEC. 236. DELAY IN EFFECTIVE DATE OF FINAL REGULA-**
2 **TIONS GOVERNING EXCLUSION OF INCOME**
3 **FROM INTERNATIONAL OPERATION OF SHIPS**
4 **OR AIRCRAFT.**

5 *Notwithstanding the provisions of Treasury regulation*
6 *§ 1.883-5, the final regulations issued by the Secretary of*
7 *the Treasury relating to income derived by foreign corpora-*
8 *tions from the international operation of ships or aircraft*
9 *(Treasury regulations § 1.883-1 through § 1.883-5) shall*
10 *apply to taxable years of a foreign corporation seeking*
11 *qualified foreign corporation status beginning after Decem-*
12 *ber 31, 2004.*

13 **SEC. 237. INTEREST PAYMENTS DEDUCTIBLE WHERE DIS-**
14 **QUALIFIED GUARANTEE HAS NO ECONOMIC**
15 **EFFECT.**

16 *(a) IN GENERAL.—Section 163(j)(6)(D)(ii) (relating*
17 *to exceptions to disqualified guarantee) is amended—*

18 *(1) by striking “or” at the end of subclause (I),*

19 *(2) by striking the period at the end of subclause*
20 *(II) and inserting “, or”,*

21 *(3) by inserting after subclause (II) the following*
22 *new subclause:*

23 *“(III) in the case of a guarantee*
24 *by a foreign person, to the extent of the*
25 *amount that the taxpayer establishes to*
26 *the satisfaction of the Secretary that*

1 *the taxpayer could have borrowed from*
2 *an unrelated person without the guar-*
3 *antee.”.*

4 *(b) EFFECTIVE DATE.—The amendments made by this*
5 *section shall apply to guarantees issued on or after the date*
6 *of the enactment of this Act.*

7 **TITLE III—DOMESTIC MANUFAC-**
8 **TURING AND BUSINESS PRO-**
9 **VISIONS**

10 **Subtitle A—General Provisions**

11 **SEC. 301. EXPANSION OF QUALIFIED SMALL-ISSUE BOND**
12 **PROGRAM.**

13 *(a) IN GENERAL.—Subparagraph (F) of section*
14 *144(a)(4) (relating to \$10,000,000 limit in certain cases)*
15 *is amended to read as follows:*

16 *“(F) ADDITIONAL CAPITAL EXPENDITURES*
17 *NOT TAKEN INTO ACCOUNT.—With respect to any*
18 *issue, in addition to any capital expenditure de-*
19 *scribed in subparagraph (C), capital expendi-*
20 *tures of not to exceed \$10,000,000 shall not be*
21 *taken into account for purposes of applying sub-*
22 *paragraph (A)(ii).”.*

23 *(b) EFFECTIVE DATE.—The amendment made by this*
24 *section shall apply to bonds issued after the date of the en-*
25 *actment of this Act.*

1 **SEC. 302. EXPENSING OF BROADBAND INTERNET ACCESS**
 2 **EXPENDITURES.**

3 (a) *IN GENERAL.*—Part VI of subchapter B of chapter
 4 1 (relating to itemized deductions for individuals and cor-
 5 porations) is amended by inserting after section 190 the fol-
 6 lowing new section:

7 **“SEC. 191. BROADBAND EXPENDITURES.**

8 **“(a) TREATMENT OF EXPENDITURES.**—

9 (1) *IN GENERAL.*—A taxpayer may elect to
 10 treat any qualified broadband expenditure which is
 11 paid or incurred by the taxpayer as an expense which
 12 is not chargeable to capital account. Any expenditure
 13 which is so treated shall be allowed as a deduction.

14 (2) *ELECTION.*—An election under paragraph
 15 (1) shall be made at such time and in such manner
 16 as the Secretary may prescribe by regulation.

17 **“(b) QUALIFIED BROADBAND EXPENDITURES.**—For
 18 purposes of this section—

19 (1) *IN GENERAL.*—The term ‘qualified
 20 broadband expenditure’ means, with respect to any
 21 taxable year, any direct or indirect costs incurred
 22 and properly taken into account with respect to—

23 (A) the purchase or installation of quali-
 24 fied equipment (including any upgrades thereto),
 25 and

1 “(B) *the connection of such qualified equip-*
2 *ment to any qualified subscriber.*

3 “(2) *CERTAIN SATELLITE EXPENDITURES EX-*
4 *CLUDED.—Such term shall not include any costs in-*
5 *curring with respect to the launching of any satellite*
6 *equipment.*

7 “(3) *LEASED EQUIPMENT.—Such term shall in-*
8 *clude so much of the purchase price paid by the lessor*
9 *of qualified equipment subject to a lease described in*
10 *subsection (c)(2)(B) as is attributable to expenditures*
11 *incurred by the lessee which would otherwise be de-*
12 *scribed in paragraph (1).*

13 “(c) *WHEN EXPENDITURES TAKEN INTO ACCOUNT.—*
14 *For purposes of this section—*

15 “(1) *IN GENERAL.—Qualified broadband expend-*
16 *itures with respect to qualified equipment shall be*
17 *taken into account with respect to the first taxable*
18 *year in which—*

19 “(A) *current generation broadband services*
20 *are provided through such equipment to qualified*
21 *subscribers, or*

22 “(B) *next generation broadband services are*
23 *provided through such equipment to qualified*
24 *subscribers.*

25 “(2) *LIMITATION.—*

1 “(A) *IN GENERAL.*—*Qualified expenditures*
2 *shall be taken into account under paragraph (1)*
3 *only with respect to qualified equipment—*

4 “(i) *the original use of which com-*
5 *mences with the taxpayer, and*

6 “(ii) *which is placed in service, after*
7 *the date of the enactment of this Act.*

8 “(B) *SALE-LEASEBACKS.*—*For purposes of*
9 *subparagraph (A), if property—*

10 “(i) *is originally placed in service*
11 *after the date of the enactment of this Act*
12 *by any person, and*

13 “(ii) *sold and leased back by such per-*
14 *son within 3 months after the date such*
15 *property was originally placed in service,*
16 *such property shall be treated as originally*
17 *placed in service not earlier than the date on*
18 *which such property is used under the leaseback*
19 *referred to in clause (ii).*

20 “(d) *SPECIAL ALLOCATION RULES.*—

21 “(1) *CURRENT GENERATION BROADBAND SERV-*
22 *ICES.*—*For purposes of determining the amount of*
23 *qualified broadband expenditures under subsection*
24 *(a)(1) with respect to qualified equipment through*
25 *which current generation broadband services are pro-*

1 *vided, if the qualified equipment is capable of serving*
2 *both qualified subscribers and other subscribers, the*
3 *qualified broadband expenditures shall be multiplied*
4 *by a fraction—*

5 *“(A) the numerator of which is the sum of*
6 *the number of potential qualified subscribers*
7 *within the rural areas and the underserved areas*
8 *which the equipment is capable of serving with*
9 *current generation broadband services, and*

10 *“(B) the denominator of which is the total*
11 *potential subscriber population of the area which*
12 *the equipment is capable of serving with current*
13 *generation broadband services.*

14 *“(2) NEXT GENERATION BROADBAND SERV-*
15 *ICES.—For purposes of determining the amount of*
16 *qualified broadband expenditures under subsection*
17 *(a)(1) with respect to qualified equipment through*
18 *which next generation broadband services are pro-*
19 *vided, if the qualified equipment is capable of serving*
20 *both qualified subscribers and other subscribers, the*
21 *qualified expenditures shall be multiplied by a*
22 *fraction—*

23 *“(A) the numerator of which is the sum*
24 *of—*

1 “(i) the number of potential qualified
2 subscribers within the rural areas and un-
3 derserved areas, plus

4 “(ii) the number of potential qualified
5 subscribers within the area consisting only
6 of residential subscribers not described in
7 clause (i),

8 which the equipment is capable of serving with
9 next generation broadband services, and

10 “(B) the denominator of which is the total
11 potential subscriber population of the area which
12 the equipment is capable of serving with next
13 generation broadband services.

14 “(e) *DEFINITIONS.*—For purposes of this section—

15 “(1) *ANTENNA.*—The term ‘antenna’ means any
16 device used to transmit or receive signals through the
17 electromagnetic spectrum, including satellite equip-
18 ment.

19 “(2) *CABLE OPERATOR.*—The term ‘cable oper-
20 ator’ has the meaning given such term by section
21 602(5) of the Communications Act of 1934 (47 U.S.C.
22 522(5)).

23 “(3) *COMMERCIAL MOBILE SERVICE CARRIER.*—
24 The term ‘commercial mobile service carrier’ means
25 any person authorized to provide commercial mobile

1 *radio service as defined in section 20.3 of title 47,*
2 *Code of Federal Regulations.*

3 “(4) *CURRENT GENERATION BROADBAND SERV-*
4 *ICE.—The term ‘current generation broadband serv-*
5 *ice’ means the transmission of signals at a rate of at*
6 *least 1,000,000 bits per second to the subscriber and*
7 *at least 128,000 bits per second from the subscriber.*

8 “(5) *MULTIPLEXING OR DEMULTIPLEXING.—The*
9 *term ‘multiplexing’ means the transmission of 2 or*
10 *more signals over a single channel, and the term*
11 *‘demultiplexing’ means the separation of 2 or more*
12 *signals previously combined by compatible multi-*
13 *plexing equipment.*

14 “(6) *NEXT GENERATION BROADBAND SERVICE.—*
15 *The term ‘next generation broadband service’ means*
16 *the transmission of signals at a rate of at least*
17 *22,000,000 bits per second to the subscriber and at*
18 *least 5,000,000 bits per second from the subscriber.*

19 “(7) *NONRESIDENTIAL SUBSCRIBER.—The term*
20 *‘nonresidential subscriber’ means any person who*
21 *purchases broadband services which are delivered to*
22 *the permanent place of business of such person.*

23 “(8) *OPEN VIDEO SYSTEM OPERATOR.—The term*
24 *‘open video system operator’ means any person au-*

1 *thorized to provide service under section 653 of the*
2 *Communications Act of 1934 (47 U.S.C. 573).*

3 “(9) *OTHER WIRELESS CARRIER.*—*The term*
4 *‘other wireless carrier’ means any person (other than*
5 *a telecommunications carrier, commercial mobile*
6 *service carrier, cable operator, open video system op-*
7 *erator, or satellite carrier) providing current genera-*
8 *tion broadband services or next generation broadband*
9 *service to subscribers through the radio transmission*
10 *of energy.*

11 “(10) *PACKET SWITCHING.*—*The term ‘packet*
12 *switching’ means controlling or routing the path of*
13 *any digitized transmission signal which is assembled*
14 *into packets or cells.*

15 “(11) *PROVIDER.*—*The term ‘provider’ means,*
16 *with respect to any qualified equipment—*

17 “(A) *a cable operator,*

18 “(B) *a commercial mobile service carrier,*

19 “(C) *an open video system operator,*

20 “(D) *a satellite carrier,*

21 “(E) *a telecommunications carrier, or*

22 “(F) *any other wireless carrier,*

23 *providing current generation broadband services or*
24 *next generation broadband services to subscribers*
25 *through such qualified equipment.*

1 “(12) *PROVISION OF SERVICES.*—A provider
2 shall be treated as providing services to 1 or more
3 subscribers if—

4 “(A) such a subscriber has been passed by
5 the provider’s equipment and can be connected to
6 such equipment for a standard connection fee,

7 “(B) the provider is physically able to de-
8 liver current generation broadband services or
9 next generation broadband services, as applica-
10 ble, to such a subscriber without making more
11 than an insignificant investment with respect to
12 such subscriber,

13 “(C) the provider has made reasonable ef-
14 forts to make such subscribers aware of the avail-
15 ability of such services,

16 “(D) such services have been purchased by
17 1 or more such subscribers, and

18 “(E) such services are made available to
19 such subscribers at average prices comparable to
20 those at which the provider makes available
21 similar services in any areas in which the pro-
22 vider makes available such services.

23 “(13) *QUALIFIED EQUIPMENT.*—

24 “(A) *IN GENERAL.*—The term ‘qualified
25 equipment’ means equipment which provides

1 *current generation broadband services or next*
2 *generation broadband services—*

3 “(i) *at least a majority of the time*
4 *during periods of maximum demand to*
5 *each subscriber who is utilizing such serv-*
6 *ices, and*

7 “(ii) *in a manner substantially the*
8 *same as such services are provided by the*
9 *provider to subscribers through equipment*
10 *with respect to which no deduction is al-*
11 *lowed under subsection (a)(1).*

12 “(B) *ONLY CERTAIN INVESTMENT TAKEN*
13 *INTO ACCOUNT.—Except as provided in subpara-*
14 *graph (C) or (D), equipment shall be taken into*
15 *account under subparagraph (A) only to the ex-*
16 *tent it—*

17 “(i) *extends from the last point of*
18 *switching to the outside of the unit, build-*
19 *ing, dwelling, or office owned or leased by*
20 *a subscriber in the case of a telecommuni-*
21 *cations carrier,*

22 “(ii) *extends from the customer side of*
23 *the mobile telephone switching office to a*
24 *transmission/receive antenna (including*
25 *such antenna) owned or leased by a sub-*

1 *scriber in the case of a commercial mobile*
2 *service carrier,*

3 *“(iii) extends from the customer side of*
4 *the headend to the outside of the unit, build-*
5 *ing, dwelling, or office owned or leased by*
6 *a subscriber in the case of a cable operator*
7 *or open video system operator, or*

8 *“(iv) extends from a transmission/re-*
9 *ceive antenna (including such antenna)*
10 *which transmits and receives signals to or*
11 *from multiple subscribers, to a trans-*
12 *mission/receive antenna (including such an-*
13 *tenna) on the outside of the unit, building,*
14 *dwelling, or office owned or leased by a sub-*
15 *scriber in the case of a satellite carrier or*
16 *other wireless carrier, unless such other*
17 *wireless carrier is also a telecommuni-*
18 *cations carrier.*

19 *“(C) PACKET SWITCHING EQUIPMENT.—*
20 *Packet switching equipment, regardless of loca-*
21 *tion, shall be taken into account under subpara-*
22 *graph (A) only if it is deployed in connection*
23 *with equipment described in subparagraph (B)*
24 *and is uniquely designed to perform the function*
25 *of packet switching for current generation*

1 *broadband services or next generation broadband*
2 *services, but only if such packet switching is the*
3 *last in a series of such functions performed in*
4 *the transmission of a signal to a subscriber or*
5 *the first in a series of such functions performed*
6 *in the transmission of a signal from a sub-*
7 *scriber.*

8 “(D) *MULTIPLEXING AND DEMULTIPLEXING*
9 *EQUIPMENT.—Multiplexing and demultiplexing*
10 *equipment shall be taken into account under sub-*
11 *paragraph (A) only to the extent it is deployed*
12 *in connection with equipment described in sub-*
13 *paragraph (B) and is uniquely designed to per-*
14 *form the function of multiplexing and*
15 *demultiplexing packets or cells of data and mak-*
16 *ing associated application adaptations, but only if*
17 *such multiplexing or demultiplexing equipment*
18 *is located between packet switching equipment*
19 *described in subparagraph (C) and the sub-*
20 *scriber’s premises.*

21 “(14) *QUALIFIED SUBSCRIBER.—The term*
22 *‘qualified subscriber’ means—*

23 “(A) *with respect to the provision of current*
24 *generation broadband services—*

1 “(i) any nonresidential subscriber
2 maintaining a permanent place of business
3 in a rural area or underserved area, or

4 “(ii) any residential subscriber resid-
5 ing in a dwelling located in a rural area or
6 underserved area which is not a saturated
7 market, and

8 “(B) with respect to the provision of next
9 generation broadband services—

10 “(i) any nonresidential subscriber
11 maintaining a permanent place of business
12 in a rural area or underserved area, or

13 “(ii) any residential subscriber.

14 “(15) *RESIDENTIAL SUBSCRIBER*.—The term
15 ‘residential subscriber’ means any individual who
16 purchases broadband services which are delivered to
17 such individual’s dwelling.

18 “(16) *RURAL AREA*.—The term ‘rural area’
19 means any census tract which—

20 “(A) is not within 10 miles of any incor-
21 porated or census designated place containing
22 more than 25,000 people, and

23 “(B) is not within a county or county
24 equivalent which has an overall population den-

1 *sity of more than 500 people per square mile of*
2 *land.*

3 “(17) *RURAL SUBSCRIBER.*—*The term ‘rural*
4 *subscriber’ means any residential subscriber residing*
5 *in a dwelling located in a rural area or nonresiden-*
6 *tial subscriber maintaining a permanent place of*
7 *business located in a rural area.*

8 “(18) *SATELLITE CARRIER.*—*The term ‘satellite*
9 *carrier’ means any person using the facilities of a*
10 *satellite or satellite service licensed by the Federal*
11 *Communications Commission and operating in the*
12 *Fixed-Satellite Service under part 25 of title 47 of the*
13 *Code of Federal Regulations or the Direct Broadcast*
14 *Satellite Service under part 100 of title 47 of such*
15 *Code to establish and operate a channel of commu-*
16 *nications for distribution of signals, and owning or*
17 *leasing a capacity or service on a satellite in order*
18 *to provide such point-to-multipoint distribution.*

19 “(19) *SATURATED MARKET.*—*The term ‘satu-*
20 *rated market’ means any census tract in which, as of*
21 *the date of the enactment of this section—*

22 “(A) *current generation broadband services*
23 *have been provided by a single provider to 85*
24 *percent or more of the total number of potential*

1 *residential subscribers residing in dwellings lo-*
2 *cated within such census tract, and*

3 “(B) *such services can be utilized—*

4 “(i) *at least a majority of the time*
5 *during periods of maximum demand by*
6 *each such subscriber who is utilizing such*
7 *services, and*

8 “(ii) *in a manner substantially the*
9 *same as such services are provided by the*
10 *provider to subscribers through equipment*
11 *with respect to which no deduction is al-*
12 *lowed under subsection (a)(1).*

13 “(20) *SUBSCRIBER.—The term ‘subscriber’*
14 *means any person who purchases current generation*
15 *broadband services or next generation broadband serv-*
16 *ices.*

17 “(21) *TELECOMMUNICATIONS CARRIER.—The*
18 *term ‘telecommunications carrier’ has the meaning*
19 *given such term by section 3(44) of the Communica-*
20 *tions Act of 1934 (47 U.S.C. 153(44)), but—*

21 “(A) *includes all members of an affiliated*
22 *group of which a telecommunications carrier is*
23 *a member, and*

24 “(B) *does not include a commercial mobile*
25 *service carrier.*

1 “(22) *TOTAL POTENTIAL SUBSCRIBER POPU-*
2 *LATION.—The term ‘total potential subscriber popu-*
3 *lation’ means, with respect to any area and based on*
4 *the most recent census data, the total number of po-*
5 *tential residential subscribers residing in dwellings*
6 *located in such area and potential nonresidential sub-*
7 *scribers maintaining permanent places of business lo-*
8 *cated in such area.*

9 “(23) *UNDERSERVED AREA.—The term ‘under-*
10 *served area’ means—*

11 “(A) *any census tract which is located in—*

12 “(i) *an empowerment zone or enter-*
13 *prise community designated under section*
14 *1391, or*

15 “(ii) *the District of Columbia Enter-*
16 *prise Zone established under section 1400,*
17 *or*

18 “(B) *any census tract—*

19 “(i) *the poverty level of which is at*
20 *least 30 percent (based on the most recent*
21 *census data), and*

22 “(ii) *the median family income of*
23 *which does not exceed—*

24 “(I) *in the case of a census tract*
25 *located in a metropolitan statistical*

1 area, 70 percent of the greater of the
2 metropolitan area median family in-
3 come or the statewide median family
4 income, and

5 “(II) in the case of a census tract
6 located in a nonmetropolitan statis-
7 tical area, 70 percent of the nonmetro-
8 politan statewide median family in-
9 come.

10 “(24) *UNDERSERVED SUBSCRIBER.*—The term
11 ‘underserved subscriber’ means any residential sub-
12 scriber residing in a dwelling located in an under-
13 served area or nonresidential subscriber maintaining
14 a permanent place of business located in an under-
15 served area.

16 “(f) *SPECIAL RULES.*—

17 “(1) *PROPERTY USED OUTSIDE THE UNITED*
18 *STATES, ETC., NOT QUALIFIED.*—No expenditures
19 shall be taken into account under subsection (a)(1)
20 with respect to the portion of the cost of any property
21 referred to in section 50(b) or with respect to the por-
22 tion of the cost of any property specified in an elec-
23 tion under section 179.

24 “(2) *BASIS REDUCTION.*—

1 “(A) *IN GENERAL.*—For purposes of this
2 title, the basis of any property shall be reduced
3 by the portion of the cost of such property taken
4 into account under subsection (a)(1).

5 “(B) *ORDINARY INCOME RECAPTURE.*—For
6 purposes of section 1245, the amount of the de-
7 duction allowable under subsection (a)(1) with
8 respect to any property which is of a character
9 subject to the allowance for depreciation shall be
10 treated as a deduction allowed for depreciation
11 under section 167.

12 “(3) *COORDINATION WITH SECTION 38.*—No cred-
13 it shall be allowed under section 38 with respect to
14 any amount for which a deduction is allowed under
15 subsection (a)(1).”.

16 (b) *SPECIAL RULE FOR MUTUAL OR COOPERATIVE*
17 *TELEPHONE COMPANIES.*—Section 512(b) (relating to
18 modifications) is amended by adding at the end the fol-
19 lowing new paragraph:

20 “(18) *SPECIAL RULE FOR MUTUAL OR COOPERA-*
21 *TIVE TELEPHONE COMPANIES.*—A mutual or coopera-
22 tive telephone company which for the taxable year
23 satisfies the requirements of section 501(c)(12)(A)
24 may elect to reduce its unrelated business taxable in-
25 come for such year, if any, by an amount that does

1 *not exceed the qualified broadband expenditures which*
2 *would be taken into account under section 191 for*
3 *such year by such company if such company was not*
4 *exempt from taxation. Any amount which is allowed*
5 *as a deduction under this paragraph shall not be al-*
6 *lowed as a deduction under section 191 and the basis*
7 *of any property to which this paragraph applies shall*
8 *be reduced under section 1016(a)(29).”.*

9 (c) *CONFORMING AMENDMENTS.*—

10 (1) *Section 263(a)(1) (relating to capital ex-*
11 *penditures) is amended by striking “or” at the end of*
12 *subparagraph (G), by striking the period at the end*
13 *of subparagraph (H) and inserting “, or”, and by*
14 *adding at the end the following new subparagraph:*

15 “(I) *expenditures for which a deduction is*
16 *allowed under section 191.”.*

17 (2) *Section 1016(a) of such Code is amended by*
18 *striking “and” at the end of paragraph (27), by strik-*
19 *ing the period at the end of paragraph (28) and in-*
20 *serting “, and”, and by adding at the end the fol-*
21 *lowing new paragraph:*

22 “(29) *to the extent provided in section*
23 *191(f)(2).”.*

24 (3) *The table of sections for part VI of sub-*
25 *chapter A of chapter 1 of such Code is amended by*

1 *inserting after the item relating to section 190 the fol-*
2 *lowing new item:*

 “Sec. 191. *Broadband expenditures.*”.

3 *(d) DESIGNATION OF CENSUS TRACTS.—*

4 *(1) IN GENERAL.—The Secretary of the Treasury*
5 *shall, not later than 90 days after the date of the en-*
6 *actment of this Act, designate and publish those cen-*
7 *sus tracts meeting the criteria described in para-*
8 *graphs (16), (22), and (23) of section 191(e) of the In-*
9 *ternal Revenue Code of 1986 (as added by this sec-*
10 *tion). In making such designations, the Secretary of*
11 *the Treasury shall consult with such other depart-*
12 *ments and agencies as the Secretary determines ap-*
13 *propriate.*

14 *(2) SATURATED MARKET.—*

15 *(A) IN GENERAL.—For purposes of desig-*
16 *nating and publishing those census tracts meet-*
17 *ing the criteria described in subsection (e)(19) of*
18 *such section 191—*

19 *(i) the Secretary of the Treasury shall*
20 *prescribe not later than 30 days after the*
21 *date of the enactment of this Act the form*
22 *upon which any provider which takes the*
23 *position that it meets such criteria with re-*
24 *spect to any census tract shall submit a list*
25 *of such census tracts (and any other infor-*

1 *mation required by the Secretary) not later*
2 *than 60 days after the date of the publica-*
3 *tion of such form, and*

4 *(ii) the Secretary of the Treasury shall*
5 *publish an aggregate list of such census*
6 *tracts and the applicable providers not later*
7 *than 30 days after the last date such sub-*
8 *missions are allowed under clause (i).*

9 *(B) NO SUBSEQUENT LISTS REQUIRED.—*
10 *The Secretary of the Treasury shall not be re-*
11 *quired to publish any list of census tracts meet-*
12 *ing such criteria subsequent to the list described*
13 *in subparagraph (A)(ii).*

14 *(e) OTHER REGULATORY MATTERS.—*

15 *(1) PROHIBITION.—No Federal or State agency*
16 *or instrumentality shall adopt regulations or rate-*
17 *making procedures that would have the effect of elimi-*
18 *nating or reducing any deduction or portion thereof*
19 *allowed under section 191 of the Internal Revenue*
20 *Code of 1986 (as added by this section) or otherwise*
21 *subverting the purpose of this section.*

22 *(2) TREASURY REGULATORY AUTHORITY.—It is*
23 *the intent of Congress in providing the election to de-*
24 *duct qualified broadband expenditures under section*
25 *191 of the Internal Revenue Code of 1986 (as added*

1 *by this section) to provide incentives for the purchase,*
2 *installation, and connection of equipment and facili-*
3 *ties offering expanded broadband access to the Inter-*
4 *net for users in certain low income and rural areas*
5 *of the United States, as well as to residential users*
6 *nationwide, in a manner that maintains competitive*
7 *neutrality among the various classes of providers of*
8 *broadband services. Accordingly, the Secretary of the*
9 *Treasury shall prescribe such regulations as may be*
10 *necessary or appropriate to carry out the purposes of*
11 *section 191 of such Code, including—*

12 *(A) regulations to determine how and when*
13 *a taxpayer that incurs qualified broadband ex-*
14 *penditures satisfies the requirements of section*
15 *191 of such Code to provide broadband services,*
16 *and*

17 *(B) regulations describing the information,*
18 *records, and data taxpayers are required to pro-*
19 *vide the Secretary to substantiate compliance*
20 *with the requirements of section 191 of such*
21 *Code.*

22 *(f) EFFECTIVE DATE.—The amendments made by this*
23 *section shall apply to expenditures incurred after the date*
24 *of the enactment of this Act and before the date which is*
25 *12 months after the date of the enactment of this Act.*

1 **SEC. 303. EXEMPTION OF NATURAL AGING PROCESS IN DE-**
 2 **TERMINATION OF PRODUCTION PERIOD FOR**
 3 **DISTILLED SPIRITS UNDER SECTION 263A.**

4 (a) *IN GENERAL.*—Section 263A(f) of the Internal
 5 Revenue Code of 1986 (relating to general exceptions) is
 6 amended by adding at the end the following new paragraph:

7 “(5) *EXEMPTION OF NATURAL AGING PROCESS IN*
 8 *DETERMINATION OF PRODUCTION PERIOD FOR DIS-*
 9 *TILLED SPIRITS.*—For purposes of this subsection, the
 10 production period for distilled spirits shall be deter-
 11 mined without regard to any period allocated to the
 12 natural aging process.”

13 (b) *EFFECTIVE DATE.*—The amendment made by this
 14 section shall apply to production periods beginning after
 15 the date of the enactment of this Act.

16 **SEC. 304. MODIFICATION OF ACTIVE BUSINESS DEFINITION**
 17 **UNDER SECTION 355.**

18 (a) *IN GENERAL.*—Section 355(b) (defining active con-
 19 duct of a trade or business) is amended by adding at the
 20 end the following new paragraph:

21 “(3) *SPECIAL RULES RELATING TO ACTIVE BUSI-*
 22 *NESS REQUIREMENT.*—

23 “(A) *IN GENERAL.*—For purposes of deter-
 24 mining whether a corporation meets the require-
 25 ment of paragraph (2)(A), all members of such
 26 corporation’s separate affiliated group shall be

1 *treated as one corporation. For purposes of the*
2 *preceding sentence, a corporation's separate af-*
3 *iliated group is the affiliated group which would*
4 *be determined under section 1504(a) if such cor-*
5 *poration were the common parent and section*
6 *1504(b) did not apply.*

7 “(B) *CONTROL.*—*For purposes of para-*
8 *graph (2)(D), all distributee corporations which*
9 *are members of the same affiliated group (as de-*
10 *fined in section 1504(a) without regard to sec-*
11 *tion 1504(b)) shall be treated as one distributee*
12 *corporation.”.*

13 ***(b) CONFORMING AMENDMENTS.***—

14 (1) *Subparagraph (A) of section 355(b)(2) is*
15 *amended to read as follows:*

16 “(A) *it is engaged in the active conduct of*
17 *a trade or business,”.*

18 (2) *Section 355(b)(2) is amended by striking the*
19 *last sentence.*

20 ***(c) EFFECTIVE DATE.***—

21 (1) *IN GENERAL.*—*The amendments made by*
22 *this section shall apply—*

23 (A) *to distributions after the date of the en-*
24 *actment of this Act, and*

1 (B) for purposes of determining the contin-
2 ued qualification under section 355(b)(2)(A) of
3 the Internal Revenue Code of 1986 (as amended
4 by subsection (b)(1)) of distributions made before
5 such date, as a result of an acquisition, disposi-
6 tion, or other restructuring after such date.

7 (2) *TRANSITION RULE.*—The amendments made
8 by this section shall not apply to any distribution
9 pursuant to a transaction which is—

10 (A) made pursuant to an agreement which
11 was binding on such date of enactment and at
12 all times thereafter,

13 (B) described in a ruling request submitted
14 to the Internal Revenue Service on or before such
15 date, or

16 (C) described on or before such date in a
17 public announcement or in a filing with the Se-
18 curities and Exchange Commission.

19 (3) *ELECTION TO HAVE AMENDMENTS APPLY.*—
20 Paragraph (2) shall not apply if the distributing cor-
21 poration elects not to have such paragraph apply to
22 distributions of such corporation. Any such election,
23 once made, shall be irrevocable.

1 **SEC. 305. MODIFIED TAXATION OF IMPORTED ARCHERY**
2 **PRODUCTS.**

3 (a) *BOWS.*—Paragraph (1) of section 4161(b) (relating
4 to bows) is amended to read as follows:

5 “(1) *BOWS.*—

6 “(A) *IN GENERAL.*—There is hereby im-
7 posed on the sale by the manufacturer, producer,
8 or importer of any bow which has a peak draw
9 weight of 30 pounds or more, a tax equal to 11
10 percent of the price for which so sold.

11 “(B) *ARCHERY EQUIPMENT.*—There is here-
12 by imposed on the sale by the manufacturer, pro-
13 ducer, or importer—

14 “(i) of any part or accessory suitable
15 for inclusion in or attachment to a bow de-
16 scribed in subparagraph (A), and

17 “(ii) of any quiver or broadhead suit-
18 able for use with an arrow described in
19 paragraph (2),

20 a tax equal to 11 percent of the price for which
21 so sold.”.

22 (b) *ARROWS.*—Subsection (b) of section 4161 (relating
23 to bows and arrows, etc.) is amended by redesignating para-
24 graph (3) as paragraph (4) and inserting after paragraph
25 (2) the following:

26 “(3) *ARROWS.*—

1 “(A) *IN GENERAL.*—*There is hereby im-*
2 *posed on the sale by the manufacturer, producer,*
3 *or importer of any arrow, a tax equal to 12 per-*
4 *cent of the price for which so sold.*

5 “(B) *EXCEPTION.*—*In the case of any arrow*
6 *of which the shaft or any other component has*
7 *been previously taxed under paragraph (1) or*
8 *(2)—*

9 “(i) *section 6416(b)(3) shall not apply,*
10 *and*

11 “(ii) *the tax imposed by subparagraph*
12 *(A) shall be an amount equal to the excess*
13 *(if any) of—*

14 “(I) *the amount of tax imposed by*
15 *this paragraph (determined without re-*
16 *gard to this subparagraph), over*

17 “(II) *the amount of tax paid with*
18 *respect to the tax imposed under para-*
19 *graph (1) or (2) on such shaft or com-*
20 *ponent.*

21 “(C) *ARROW.*—*For purposes of this para-*
22 *graph, the term ‘arrow’ means any shaft de-*
23 *scribed in paragraph (2) to which additional*
24 *components are attached.”.*

1 (c) *CONFORMING AMENDMENTS.*—Section 4161(b)(2)
2 *is amended—*

3 (1) *by inserting “(other than broadheads)” after*
4 *“point”, and*

5 (2) *by striking “ARROWS.—” in the heading and*
6 *inserting “ARROW COMPONENTS.—”.*

7 (d) *EFFECTIVE DATE.*—*The amendments made by this*
8 *section shall apply to articles sold by the manufacturer,*
9 *producer, or importer after the date which is 30 days after*
10 *the date of the enactment of this Act.*

11 **SEC. 306. MODIFICATION TO COOPERATIVE MARKETING**
12 **RULES TO INCLUDE VALUE ADDED PROC-**
13 **ESSING INVOLVING ANIMALS.**

14 (a) *IN GENERAL.*—*Section 1388 (relating to defini-*
15 *tions and special rules) is amended by adding at the end*
16 *the following new subsection:*

17 “(k) *COOPERATIVE MARKETING INCLUDES VALUE-*
18 *ADDED PROCESSING INVOLVING ANIMALS.*—*For purposes*
19 *of section 521 and this subchapter, the marketing of the*
20 *products of members or other producers shall include the*
21 *feeding of such products to cattle, hogs, fish, chickens, or*
22 *other animals and the sale of the resulting animals or ani-*
23 *mal products.”.*

24 (b) *CONFORMING AMENDMENT.*—*Section 521(b) is*
25 *amended by adding at the end the following new paragraph:*

1 “(7) *CROSS REFERENCE.*—

“For treatment of value-added processing involving animals, see section 1388(k).”.

2 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 3 *section shall apply to taxable years beginning after the date*
 4 *of the enactment of this Act.*

5 **SEC. 307. EXTENSION OF DECLARATORY JUDGMENT PROCE-**
 6 **DURES TO FARMERS’ COOPERATIVE ORGANI-**
 7 **ZATIONS.**

8 (a) *IN GENERAL.*—*Section 7428(a)(1) (relating to de-*
 9 *claratory judgments of tax exempt organizations) is amend-*
 10 *ed by striking “or” at the end of subparagraph (B) and*
 11 *by adding at the end the following new subparagraph:*

12 “(D) *with respect to the initial classifica-*
 13 *tion or continuing classification of a cooperative*
 14 *as an organization described in section 521(b)*
 15 *which is exempt from tax under section 521(a),*
 16 *or”.*

17 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 18 *section shall apply with respect to pleadings filed after the*
 19 *date of the enactment of this Act.*

20 **SEC. 308. TEMPORARY SUSPENSION OF PERSONAL HOLD-**
 21 **ING COMPANY TAX.**

22 (a) *IN GENERAL.*—*Section 541 (relating to imposition*
 23 *of personal holding company tax) is amended by adding*
 24 *at the end the following new sentence: “The preceding sen-*

1 tence shall not apply with respect to any taxable year to
 2 which section 1(h)(11) (as in effect on the date of the enact-
 3 ment of this sentence) applies.”.

4 (b) *COORDINATION WITH ACCUMULATED EARNINGS*
 5 *TAX.*—Section 532(b) is amended by adding at the end the
 6 following flush sentence:

7 “Paragraph (1) shall not apply to any taxable year to
 8 which section 541 does not apply.”

9 (c) *EFFECTIVE DATE.*—The amendments made by this
 10 section shall apply to taxable years beginning after Decem-
 11 ber 31, 2003.

12 **SEC. 309. INCREASE IN SECTION 179 EXPENSING.**

13 (a) *IN GENERAL.*—Section 179(b)(2) (relating to re-
 14 duction in limitation) is amended by inserting “50 percent
 15 of” before “the amount”.

16 (b) *EFFECTIVE DATE.*—The amendment made by this
 17 section shall apply to taxable years beginning after Decem-
 18 ber 31, 2002.

19 **SEC. 310. FIVE-YEAR CARRYBACK OF NET OPERATING**
 20 **LOSSES.**

21 (a) *IN GENERAL.*—Subparagraph (H) of section
 22 172(b)(1) is amended—

23 (1) by inserting “5-YEAR CARRYBACK OF CER-
 24 TAIN LOSSES.—” after “(H)”, and

1 (2) by striking “or 2002” and inserting “, 2002,
2 or 2003”.

3 (b) *RULES RELATING TO CERTAIN EXTENDED NET*
4 *OPERATING LOSSES.*—Section 172 is amended by redesignig-
5 *nating subsection (k) as subsection (l) and by inserting*
6 *after subsection (j) the following new subsection:*

7 “(k) *RULES RELATING TO CERTAIN EXTENDED NET*
8 *OPERATING LOSSES.*—*In the case of a taxpayer which has*
9 *a net operating loss for any taxable year ending during*
10 *2003 and does not make an election under subsection (j),*
11 *such taxpayer shall be treated as having made an election*
12 *under paragraphs (4)(E) and (2)(C)(iii) of section 168(k)*
13 *with respect to all classes of property for such taxable year.*

14 (c) *TEMPORARY SUSPENSION OF 90 PERCENT LIMIT*
15 *ON CERTAIN NOL CARRYOVERS.*—Section
16 *56(d)(1)(A)(ii)(I) (relating to general rule defining alter-*
17 *native tax net operating loss deduction) is amended—*

18 (1) by striking “or 2002” and inserting “, 2002,
19 or 2003”, and

20 (2) by striking “and 2002” and inserting “,
21 2002, and 2003”.

22 (d) *TECHNICAL CORRECTIONS.*—

23 (1) Subparagraph (H) of section 172(b)(1) is
24 amended by striking “a taxpayer which has”.

1 (2) *Section 102(c)(2) of the Job Creation and*
2 *Worker Assistance Act of 2002 (Public Law 107–147)*
3 *is amended by striking “before January 1, 2003” and*
4 *inserting “after December 31, 1990”.*

5 (3)(A) *Subclause (I) of section 56(d)(1)(A)(i) is*
6 *amended by striking “attributable to carryovers”.*

7 (B) *Subclause (I) of section 56(d)(1)(A)(ii) is*
8 *amended—*

9 (i) *by striking “for taxable years” and in-*
10 *serting “from taxable years”, and*

11 (ii) *by striking “carryforwards” and insert-*
12 *ing “carryovers”.*

13 (e) *EFFECTIVE DATES.—*

14 (1) *IN GENERAL.—Except as provided in para-*
15 *graph (2), the amendments made by this section shall*
16 *apply to net operating losses for taxable years ending*
17 *after December 31, 2002.*

18 (2) *TECHNICAL CORRECTIONS.—The amend-*
19 *ments made by subsection (d) shall take effect as if*
20 *included in the amendments made by section 102 of*
21 *the Job Creation and Worker Assistance Act of 2002.*

22 (3) *ELECTION.—In the case of a net operating*
23 *loss for a taxable year ending during 2003—*

24 (A) *any election made under section*
25 *172(b)(3) of such Code may (notwithstanding*

1 *such section) be revoked before November 15,*
2 *2004, and*

3 *(B) any election made under section 172(j)*
4 *of such Code shall (notwithstanding such section)*
5 *be treated as timely made if made before Novem-*
6 *ber 15, 2004.*

7 (4) *SPECIAL RULE FOR TAXPAYERS WITH TAX-*
8 *ABLE YEARS ENDING DURING JANUARY.—Any tax-*
9 *payer which has a taxable year ending during Janu-*
10 *ary may elect under this paragraph to apply section*
11 *172(b)(1)(H) of the Internal Revenue Code of 1986*
12 *(as amended by this section) to its taxable year end-*
13 *ing in 2004 rather than its taxable year ending in*
14 *2003. If such election is made, then section 172(k) of*
15 *such Code (as added by this section) shall be applied*
16 *to the taxpayer's taxable year ending in 2004. Such*
17 *election shall be made in such manner and at such*
18 *time as may be prescribed by the Secretary of the*
19 *Treasury. Such election, once made, shall be irrev-*
20 *ocable.*

21 **SEC. 311. EXTENSION AND MODIFICATION OF RESEARCH**

22 **CREDIT.**

23 (a) *EXTENSION.—*

1 (1) *IN GENERAL.*—Section 41(h)(1)(B) (relating
2 to termination) is amended by striking “June 30,
3 2004” and inserting “December 31, 2005”.

4 (2) *CONFORMING AMENDMENT.*—Section
5 45C(b)(1)(D) is amended by striking “June 30, 2004”
6 and inserting “December 31, 2005”.

7 (b) *INCREASE IN RATES OF ALTERNATIVE INCRE-*
8 *MENTAL CREDIT.*—Subparagraph (A) of section 41(c)(4)
9 (relating to election of alternative incremental credit) is
10 amended—

11 (1) by striking “2.65 percent” and inserting “3
12 percent”,

13 (2) by striking “3.2 percent” and inserting “4
14 percent”, and

15 (3) by striking “3.75 percent” and inserting “5
16 percent”.

17 (c) *ALTERNATIVE SIMPLIFIED CREDIT FOR QUALIFIED*
18 *RESEARCH EXPENSES.*—

19 (1) *IN GENERAL.*—Subsection (c) of section 41
20 (relating to base amount) is amended by redesignig-
21 nating paragraphs (5) and (6) as paragraphs (6) and
22 (7), respectively, and by inserting after paragraph (4)
23 the following new paragraph:

24 “(5) *ELECTION OF ALTERNATIVE SIMPLIFIED*
25 *CREDIT.*—

1 “(A) *IN GENERAL.*—*At the election of the*
2 *taxpayer, the credit determined under subsection*
3 *(a)(1) shall be equal to 12 percent of so much of*
4 *the qualified research expenses for the taxable*
5 *year as exceeds 50 percent of the average quali-*
6 *fied research expenses for the 3 taxable years pre-*
7 *ceding the taxable year for which the credit is*
8 *being determined.*

9 “(B) *SPECIAL RULE IN CASE OF NO QUALI-*
10 *FIED RESEARCH EXPENSES IN ANY OF 3 PRE-*
11 *CEDING TAXABLE YEARS.*—

12 “(i) *TAXPAYERS TO WHICH SUBPARA-*
13 *GRAPH APPLIES.*—*The credit under this*
14 *paragraph shall be determined under this*
15 *subparagraph if the taxpayer has no quali-*
16 *fied research expenses in any 1 of the 3 tax-*
17 *able years preceding the taxable year for*
18 *which the credit is being determined.*

19 “(ii) *CREDIT RATE.*—*The credit deter-*
20 *mined under this subparagraph shall be*
21 *equal to 6 percent of the qualified research*
22 *expenses for the taxable year.*

23 “(C) *ELECTION.*—*An election under this*
24 *paragraph shall apply to the taxable year for*
25 *which made and all succeeding taxable years un-*

1 *less revoked with the consent of the Secretary. An*
 2 *election under this paragraph may not be made*
 3 *for any taxable year to which an election under*
 4 *paragraph (4) applies.”*

5 (2) *COORDINATION WITH ELECTION OF ALTER-*
 6 *NATIVE INCREMENTAL CREDIT.—*

7 (A) *IN GENERAL.—Section 41(c)(4)(B) (re-*
 8 *lating to election) is amended by adding at the*
 9 *end the following: “An election under this para-*
 10 *graph may not be made for any taxable year to*
 11 *which an election under paragraph (5) applies.”*

12 (B) *TRANSITION RULE.—In the case of an*
 13 *election under section 41(c)(4) of the Internal*
 14 *Revenue Code of 1986 which applies to the tax-*
 15 *able year which includes the date of the enact-*
 16 *ment of this Act, such election shall be treated as*
 17 *revoked with the consent of the Secretary of the*
 18 *Treasury if the taxpayer makes an election*
 19 *under section 41(c)(5) of such Code (as added by*
 20 *paragraph (1)) for such year.*

21 (f) *EFFECTIVE DATES.—*

22 (1) *SUBSECTION (a).—The amendments made by*
 23 *subsection (a) shall apply to amounts paid or in-*
 24 *curring after the date of the enactment of this Act.*

1 (2) *SUBSECTIONS (b) AND (c).*—*The amendments*
 2 *made by subsections (b) and (c) shall apply to taxable*
 3 *years beginning after December 31, 2004.*

4 **SEC. 312. EXPANSION OF RESEARCH CREDIT.**

5 (a) *CREDIT FOR EXPENSES ATTRIBUTABLE TO CER-*
 6 *TAIN COLLABORATIVE RESEARCH CONSORTIA.*—

7 (1) *IN GENERAL.*—*Section 41(a) (relating to*
 8 *credit for increasing research activities) is amended*
 9 *by striking “and” at the end of paragraph (1), by*
 10 *striking the period at the end of paragraph (2) and*
 11 *inserting “, and”, and by adding at the end the fol-*
 12 *lowing new paragraph:*

13 “(3) 20 percent of the amounts paid or incurred
 14 by the taxpayer in carrying on any trade or business
 15 of the taxpayer during the taxable year (including as
 16 contributions) to a research consortium.”.

17 (2) *RESEARCH CONSORTIUM DEFINED.*—*Section*
 18 *41(f) (relating to special rules) is amended by adding*
 19 *at the end the following new paragraph:*

20 “(6) *RESEARCH CONSORTIUM.*—

21 “(A) *IN GENERAL.*—*The term ‘research con-*
 22 *sortium’ means any organization—*

23 “(i) *which is—*

24 “(I) *described in section 501(c)(3)*
 25 *or 501(c)(6) and is exempt from tax*

1 *under section 501(a) and is organized*
2 *and operated primarily to conduct re-*
3 *search, or*

4 *“(II) organized and operated pri-*
5 *marily to conduct research in the pub-*
6 *lic interest (within the meaning of sec-*
7 *tion 501(c)(3)),*

8 *“(ii) which is not a private founda-*
9 *tion,*

10 *“(iii) to which at least 5 unrelated*
11 *persons paid or incurred during the cal-*
12 *endar year in which the taxable year of the*
13 *organization begins amounts (including as*
14 *contributions) to such organization for re-*
15 *search, and*

16 *“(iv) to which no single person paid or*
17 *incurred (including as contributions) dur-*
18 *ing such calendar year an amount equal to*
19 *more than 50 percent of the total amounts*
20 *received by such organization during such*
21 *calendar year for research.*

22 *“(B) TREATMENT OF PERSONS.—All per-*
23 *sons treated as a single employer under sub-*
24 *section (a) or (b) of section 52 shall be treated*
25 *as related persons for purposes of subparagraph*

1 (A)(iii) and as a single person for purposes of
2 subparagraph (A)(iv).”.

3 (3) CONFORMING AMENDMENT.—Section
4 41(b)(3)(C) is amended by inserting “(other than a
5 research consortium)” after “organization”.

6 (b) REPEAL OF LIMITATION ON CONTRACT RESEARCH
7 EXPENSES PAID TO SMALL BUSINESSES, UNIVERSITIES,
8 AND FEDERAL LABORATORIES.—Section 41(b)(3) (relating
9 to contract research expenses) is amended by adding at the
10 end the following new subparagraph:

11 “(D) AMOUNTS PAID TO ELIGIBLE SMALL
12 BUSINESSES, UNIVERSITIES, AND FEDERAL LAB-
13 ORATORIES.—

14 “(i) IN GENERAL.—In the case of
15 amounts paid by the taxpayer to—

16 “(I) an eligible small business,

17 “(II) an institution of higher edu-
18 cation (as defined in section 3304(f)),

19 or

20 “(III) an organization which is a
21 Federal laboratory,

22 for qualified research, subparagraph (A)
23 shall be applied by substituting ‘100 per-
24 cent’ for ‘65 percent’.

1 “(ii) *ELIGIBLE SMALL BUSINESS.*—For
2 purposes of this subparagraph, the term ‘eli-
3 gible small business’ means a small business
4 with respect to which the taxpayer does not
5 own (within the meaning of section 318) 50
6 percent or more of—

7 “(I) in the case of a corporation,
8 the outstanding stock of the corpora-
9 tion (either by vote or value), and

10 “(II) in the case of a small busi-
11 ness which is not a corporation, the
12 capital and profits interests of the
13 small business.

14 “(iii) *SMALL BUSINESS.*—For purposes
15 of this subparagraph—

16 “(I) *IN GENERAL.*—The term
17 ‘small business’ means, with respect to
18 any calendar year, any person if the
19 annual average number of employees
20 employed by such person during either
21 of the 2 preceding calendar years was
22 500 or fewer. For purposes of the pre-
23 ceding sentence, a preceding calendar
24 year may be taken into account only if

1 *the person was in existence throughout*
2 *the year.*

3 “(II) *STARTUPS, CONTROLLED*
4 *GROUPS, AND PREDECESSORS.—Rules*
5 *similar to the rules of subparagraphs*
6 *(B) and (D) of section 220(c)(4) shall*
7 *apply for purposes of this clause.*

8 “(iv) *FEDERAL LABORATORY.—For*
9 *purposes of this subparagraph, the term*
10 *‘Federal laboratory’ has the meaning given*
11 *such term by section 4(6) of the Stevenson-*
12 *Wydler Technology Innovation Act of 1980*
13 *(15 U.S.C. 3703(6)), as in effect on the date*
14 *of the enactment of the Jumpstart Our*
15 *Business Strength (JOBS) Act.”.*

16 *(c) EFFECTIVE DATE.—The amendments made by this*
17 *section shall apply to amounts paid or incurred after De-*
18 *cember 31, 2004.*

19 **SEC. 313. MANUFACTURER’S JOBS CREDIT.**

20 *(a) IN GENERAL.—Subpart D of part IV of subchapter*
21 *A of chapter 1 (relating to business-related credits), as*
22 *amended by this Act, is amended by adding at the end the*
23 *following:*

1 **“SEC. 45S. MANUFACTURER’S JOBS CREDIT.**

2 “(a) *GENERAL RULE.*—For purposes of section 38, in
3 the case of an eligible taxpayer, the manufacturer’s jobs
4 credit determined under this section is an amount equal
5 to 50 percent of the lesser of the following:

6 “(1) *The excess of the W–2 wages paid by the*
7 *taxpayer during the taxable year over the W–2 wages*
8 *paid by the taxpayer during the preceding taxable*
9 *year.*

10 “(2) *The W–2 wages paid by the taxpayer dur-*
11 *ing the taxable year to any employee who is an eligi-*
12 *ble TAA recipient (as defined in section 35(c)(2)) for*
13 *any month during such taxable year.*

14 “(3) *22.4 percent of the W–2 wages paid by the*
15 *taxpayer during the taxable year.*

16 “(b) *LIMITATION.*—

17 “(1) *IN GENERAL.*—If there is an excess de-
18 scribed in paragraph (2)(A) for any taxable year, the
19 amount of credit determined under subsection (a)
20 (without regard to this subsection)—

21 “(A) *if the value of domestic production de-*
22 *termined under section 199(g)(2) for the taxable*
23 *year does not exceed such value for the preceding*
24 *taxable year, shall be zero, and*

1 “(B) if subparagraph (A) does not apply,
2 shall be reduced (but not below zero) by the ap-
3 plicable percentage of such amount.

4 “(2) *APPLICABLE PERCENTAGE.*—For purposes
5 of paragraph (1), the term ‘applicable percentage’
6 means, with respect to any taxable year, the percent-
7 age equal to a fraction—

8 “(A) the numerator of which is the excess (if
9 any) of the modified value of worldwide produc-
10 tion of the taxpayer for the taxable year over
11 such modified value for the preceding taxable
12 year, and

13 “(B) the denominator of which is the excess
14 (if any) of the value of worldwide production of
15 the taxpayer for the taxable year over such value
16 for the preceding taxable year.

17 “(3) *DEFINITIONS.*—For purposes of this
18 subsection—

19 “(A) *VALUE OF WORLDWIDE PRODUC-*
20 *TION.*—The value of worldwide production for
21 any taxable year shall be determined under sec-
22 tion 199(g)(4).

23 “(B) *MODIFIED VALUE.*—The term ‘modi-
24 fied value of worldwide production’ means the
25 value of worldwide production determined by not

1 *taking into account any item taken into account*
2 *in determining the value of domestic production*
3 *under section 199(g)(2).*

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

6 “(1) *which has domestic production gross re-*
7 *ceipts for the taxable year and the preceding taxable*
8 *year, and*

9 “(2) *which is not treated at any time during the*
10 *taxable year as an inverted domestic corporation*
11 *under section 7874.*

12 “(d) *DEFINITIONS AND SPECIAL RULE.*—*For purposes*
13 *of this section—*

14 “(1) *IN GENERAL.*—*Any term used in this sec-*
15 *tion which is also used in section 199 shall have the*
16 *meaning given such term by section 199.*

17 “(2) *SPECIAL RULE FOR W-2 WAGES.*—*Notwith-*
18 *standing paragraph (1), the amount of W-2 wages*
19 *taken into account with respect to any employee for*
20 *any taxable year shall not exceed \$50,000.*

21 “(e) *CERTAIN RULES MADE APPLICABLE.*—*For pur-*
22 *poses of this section, rules similar to the rules of section*
23 *52 shall apply.*

24 “(f) *TERMINATION.*—*This section shall not apply to*
25 *any taxable year beginning after December 31, 2005.”.*

1 (b) *CREDIT TO BE PART OF GENERAL BUSINESS*
 2 *CREDIT.*—Section 38(b) (relating to current year business
 3 credit), as amended by this Act, is amended by striking
 4 “plus” at the end of paragraph (29), by striking the period
 5 at the end of paragraph (30) and inserting “, plus”, and
 6 by adding at the end the following:

7 “(31) the manufacturer’s jobs credit determined
 8 under section 45S.”.

9 (c) *CLERICAL AMENDMENT.*—The table of sections for
 10 subpart D of part IV of subchapter A of chapter 1, as
 11 amended by this Act, is amended by adding at the end the
 12 following:

 “Sec. 45S. Manufacturer’s jobs credit.”.

13 (d) *EFFECTIVE DATE.*—The amendments made by this
 14 section shall apply to taxable years beginning after Decem-
 15 ber 31, 2003.

16 **SEC. 314. BROWNFIELDS DEMONSTRATION PROGRAM FOR**
 17 **QUALIFIED GREEN BUILDING AND SUSTAIN-**
 18 **ABLE DESIGN PROJECTS.**

19 (a) *TREATMENT AS EXEMPT FACILITY BOND.*—Sub-
 20 section (a) of section 142 (relating to the definition of ex-
 21 empt facility bond) is amended by striking “or” at the end
 22 of paragraph (12), by striking the period at the end of para-
 23 graph (13) and inserting “, or”, and by inserting at the
 24 end the following new paragraph:

1 “(14) qualified green building and sustainable
2 design projects.”.

3 (b) *QUALIFIED GREEN BUILDING AND SUSTAINABLE*
4 *DESIGN PROJECTS.*—Section 142 (relating to exempt facil-
5 *ity bonds*) is amended by adding at the end thereof the fol-
6 *lowing new subsection:*

7 “(1) *QUALIFIED GREEN BUILDING AND SUSTAINABLE*
8 *DESIGN PROJECTS.*—

9 “(1) *IN GENERAL.*—For purposes of subsection
10 (a)(14), the term ‘qualified green building and sus-
11 *tainable design project*’ means any project which is
12 *designated by the Secretary, after consultation with*
13 *the Administrator of the Environmental Protection*
14 *Agency, as a qualified green building and sustainable*
15 *design project and which meets the requirements of*
16 *clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).*

17 “(2) *DESIGNATIONS.*—

18 “(A) *IN GENERAL.*—Within 60 days after
19 *the end of the application period described in*
20 *paragraph (3)(A), the Secretary, after consulta-*
21 *tion with the Administrator of the Environ-*
22 *mental Protection Agency, shall designate quali-*
23 *fied green building and sustainable design*
24 *projects. At least one of the projects designated*
25 *shall be located in, or within a 10-mile radius*

1 *of, an empowerment zone as designated pursuant*
2 *to section 1391, and at least one of the projects*
3 *designated shall be located in a rural State. No*
4 *more than one project shall be designated in a*
5 *State. A project shall not be designated if such*
6 *project includes a stadium or arena for profes-*
7 *sional sports exhibitions or games.*

8 “(B) *MINIMUM CONSERVATION AND TECH-*
9 *NOLOGY INNOVATION OBJECTIVES.—The Sec-*
10 *retary, after consultation with the Administrator*
11 *of the Environmental Protection Agency, shall*
12 *ensure that, in the aggregate, the projects des-*
13 *ignated shall—*

14 “(i) *reduce electric consumption by*
15 *more than 150 megawatts annually as com-*
16 *pared to conventional generation,*

17 “(ii) *reduce daily sulfur dioxide emis-*
18 *sions by at least 10 tons compared to coal*
19 *generation power,*

20 “(iii) *expand by 75 percent the domes-*
21 *tic solar photovoltaic market in the United*
22 *States (measured in megawatts) as com-*
23 *pared to the expansion of that market from*
24 *2001 to 2002, and*

1 “(iv) use at least 25 megawatts of fuel
2 cell energy generation.

3 “(3) *LIMITED DESIGNATIONS.*—A project may
4 not be designated under this subsection unless—

5 “(A) the project is nominated by a State or
6 local government within 180 days of the enact-
7 ment of this subsection, and

8 “(B) such State or local government pro-
9 vides written assurances that the project will sat-
10 isfy the eligibility criteria described in para-
11 graph (4).

12 “(4) *APPLICATION.*—

13 “(A) *IN GENERAL.*—A project may not be
14 designated under this subsection unless the appli-
15 cation for such designation includes a project
16 proposal which describes the energy efficiency,
17 renewable energy, and sustainable design fea-
18 tures of the project and demonstrates that the
19 project satisfies the following eligibility criteria:

20 “(i) *GREEN BUILDING AND SUSTAIN-*
21 *ABLE DESIGN.*—At least 75 percent of the
22 square footage of commercial buildings
23 which are part of the project is registered
24 for United States Green Building Council’s
25 LEED certification and is reasonably ex-

1 pected (at the time of the designation) to re-
2 ceive such certification. For purposes of de-
3 termining LEED certification as required
4 under this clause, points shall be credited by
5 using the following:

6 “(I) For wood products, certifi-
7 cation under the Sustainable Forestry
8 Initiative Program and the American
9 Tree Farm System.

10 “(II) For renewable wood prod-
11 ucts, as credited for recycled content
12 otherwise provided under LEED cer-
13 tification.

14 “(III) For composite wood prod-
15 ucts, certification under standards es-
16 tablished by the American National
17 Standards Institute, or such other vol-
18 untary standards as published in the
19 Federal Register by the Administrator
20 of the Environmental Protection Agen-
21 cy.

22 “(ii) BROWNFIELD REDEVELOP-
23 MENT.—The project includes a brownfield
24 site as defined by section 101(39) of the
25 Comprehensive Environmental Response,

1 *Compensation, and Liability Act of 1980*
2 *(42 U.S.C. 9601), including a site described*
3 *in subparagraph (D)(ii)(II)(aa) thereof.*

4 “(iii) *STATE AND LOCAL SUPPORT.—*
5 *The project receives specific State or local*
6 *government resources which will support the*
7 *project in an amount equal to at least*
8 *\$5,000,000. For purposes of the preceding*
9 *sentence, the term ‘resources’ includes tax*
10 *abatement benefits and contributions in*
11 *kind.*

12 “(iv) *SIZE.—The project includes at*
13 *least one of the following:*

14 “(I) *At least 1,000,000 square feet*
15 *of building.*

16 “(II) *At least 20 acres.*

17 “(v) *USE OF TAX BENEFIT.—The*
18 *project proposal includes a description of*
19 *the net benefit of the tax-exempt financing*
20 *provided under this subsection which will be*
21 *allocated for financing of one or more of the*
22 *following:*

23 “(I) *The purchase, construction,*
24 *integration, or other use of energy effi-*

1 *ciency, renewable energy, and sustain-*
2 *able design features of the project.*

3 “(II) *Compliance with certifi-*
4 *cation standards cited under clause (i).*

5 “(III) *The purchase, remediation,*
6 *and foundation construction and prep-*
7 *aration of the brownfields site.*

8 “(vi) *PROHIBITED FACILITIES.—An*
9 *issue shall not be treated as an issue de-*
10 *scribed in subsection (a)(14) if any proceeds*
11 *of such issue are used to provide any facil-*
12 *ity the principal business of which is the*
13 *sale of food or alcoholic beverages for con-*
14 *sumption on the premises.*

15 “(vii) *EMPLOYMENT.—The project is*
16 *projected to provide permanent employment*
17 *of at least 1,500 full time equivalents (150*
18 *full time equivalents in rural States) when*
19 *completed and construction employment of*
20 *at least 1,000 full time equivalents (100 full*
21 *time equivalents in rural States).*

22 *The application shall include an independent*
23 *analysis which describes the project’s economic*
24 *impact, including the amount of projected em-*
25 *ployment.*

1 “(B) *PROJECT DESCRIPTION.*—*Each appli-*
2 *cation described in subparagraph (A) shall con-*
3 *tain for each project a description of—*

4 “(i) *the amount of electric consump-*
5 *tion reduced as compared to conventional*
6 *construction,*

7 “(ii) *the amount of sulfur dioxide*
8 *daily emissions reduced compared to coal*
9 *generation,*

10 “(iii) *the amount of the gross installed*
11 *capacity of the project’s solar photovoltaic*
12 *capacity measured in megawatts, and*

13 “(iv) *the amount, in megawatts, of the*
14 *project’s fuel cell energy generation.*

15 “(5) *CERTIFICATION OF USE OF TAX BENEFIT.*—
16 *No later than 30 days after the completion of the*
17 *project, each project must certify to the Secretary that*
18 *the net benefit of the tax-exempt financing was used*
19 *for the purposes described in paragraph (4).*

20 “(6) *DEFINITIONS.*—*For purposes of this*
21 *subsection—*

22 “(A) *RURAL STATE.*—*The term ‘rural State’*
23 *means any State which has—*

24 “(i) *a population of less than*
25 *4,500,000 according to the 2000 census,*

1 “(ii) a population density of less than
2 150 people per square mile according to the
3 2000 census, and

4 “(iii) increased in population by less
5 than half the rate of the national increase
6 between the 1990 and 2000 censuses.

7 “(B) LOCAL GOVERNMENT.—The term ‘local
8 government’ has the meaning given such term by
9 section 1393(a)(5).

10 “(C) NET BENEFIT OF TAX-EXEMPT FINANC-
11 ING.—The term ‘net benefit of tax-exempt financ-
12 ing’ means the present value of the interest sav-
13 ings (determined by a calculation established by
14 the Secretary) which result from the tax-exempt
15 status of the bonds.

16 “(7) AGGREGATE FACE AMOUNT OF TAX-EXEMPT
17 FINANCING.—

18 “(A) IN GENERAL.—An issue shall not be
19 treated as an issue described in subsection
20 (a)(14) if the aggregate face amount of bonds
21 issued by the State or local government pursuant
22 thereto for a project (when added to the aggre-
23 gate face amount of bonds previously so issued
24 for such project) exceeds an amount designated
25 by the Secretary as part of the designation.

1 “(B) *LIMITATION ON AMOUNT OF BONDS.*—
2 *The Secretary may not allocate authority to*
3 *issue qualified green building and sustainable*
4 *design project bonds in an aggregate face amount*
5 *exceeding \$2,000,000,000.*

6 “(8) *TERMINATION.*—*Subsection (a)(14) shall*
7 *not apply with respect to any bond issued after Sep-*
8 *tember 30, 2009.*

9 “(9) *TREATMENT OF CURRENT REFUNDING*
10 *BONDS.*—*Paragraphs (7)(B) and (8) shall not apply*
11 *to any bond (or series of bonds) issued to refund a*
12 *bond issued under subsection (a)(14) before October 1,*
13 *2009, if—*

14 “(A) *the average maturity date of the issue*
15 *of which the refunding bond is a part is not later*
16 *than the average maturity date of the bonds to*
17 *be refunded by such issue,*

18 “(B) *the amount of the refunding bond does*
19 *not exceed the outstanding amount of the re-*
20 *funded bond, and*

21 “(C) *the net proceeds of the refunding bond*
22 *are used to redeem the refunded bond not later*
23 *than 90 days after the date of the issuance of the*
24 *refunding bond.*

1 *For purposes of subparagraph (A), average maturity shall*
2 *be determined in accordance with section 147(b)(2)(A).”.*

3 (c) *EXEMPTION FROM GENERAL STATE VOLUME*
4 *CAPS.—Paragraph (3) of section 146(g) (relating to excep-*
5 *tion for certain bonds) is amended—*

6 (1) *by striking “or (13)” and inserting “(13), or*
7 *(14)”, and*

8 (2) *by striking “and qualified public educational*
9 *facilities” and inserting “qualified public educational*
10 *facilities, and qualified green building and sustain-*
11 *able design projects”.*

12 (d) *ACCOUNTABILITY.—Each issuer shall maintain, on*
13 *behalf of each project, an interest bearing reserve account*
14 *equal to 1 percent of the net proceeds of any bond issued*
15 *under this section for such project. Not later than 5 years*
16 *after the date of issuance, the Secretary of the Treasury,*
17 *after consultation with the Administrator of the Environ-*
18 *mental Protection Agency, shall determine whether the*
19 *project financed with such bonds has substantially complied*
20 *with the terms and conditions described in section 142(l)(4)*
21 *of the Internal Revenue Code of 1986 (as added by this sec-*
22 *tion). If the Secretary, after such consultation, certifies that*
23 *the project has substantially complied with such terms and*
24 *conditions and meets the commitments set forth in the ap-*
25 *plication for such project described in section 142(l)(4) of*

1 *such Code, amounts in the reserve account, including all*
 2 *interest, shall be released to the project. If the Secretary de-*
 3 *termines that the project has not substantially complied*
 4 *with such terms and conditions, amounts in the reserve ac-*
 5 *count, including all interest, shall be paid to the United*
 6 *States Treasury.*

7 *(e) EFFECTIVE DATE.—The amendments made by this*
 8 *section shall apply to bonds issued after December 31, 2004.*

9 ***Subtitle B—Manufacturing***
 10 ***Relating to Films***

11 ***SEC. 321. SPECIAL RULES FOR CERTAIN FILM AND TELE-***
 12 ***VISION PRODUCTIONS.***

13 *(a) IN GENERAL.—Part VI of subchapter B of chapter*
 14 *1 is amended by inserting after section 180 the following*
 15 *new section:*

16 ***“SEC. 181. TREATMENT OF QUALIFIED FILM AND TELE-***
 17 ***VISION PRODUCTIONS.***

18 *“(a) ELECTION TO TREAT CERTAIN COSTS OF QUALI-*
 19 *FIED FILM AND TELEVISION PRODUCTIONS AS EX-*
 20 *PENSES.—*

21 *“(1) IN GENERAL.—A taxpayer may elect to*
 22 *treat the cost of any qualified film or television pro-*
 23 *duction as an expense which is not chargeable to cap-*
 24 *ital account. Any cost so treated shall be allowed as*
 25 *a deduction.*

1 “(2) *DOLLAR LIMITATION.*—

2 “(A) *IN GENERAL.*—*The aggregate cost*
3 *which may be taken into account under para-*
4 *graph (1) with respect to each qualified film or*
5 *television production shall not exceed*
6 *\$15,000,000.*

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

12 “(i) *a low-income community under*
13 *section 45D, or*

14 “(ii) *a distressed county or isolated*
15 *area of distress by the Delta Regional Au-*
16 *thority established under section 2009aa-1*
17 *of title 7, United States Code,*

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

20 “(b) *AMORTIZATION OF REMAINING COSTS.*—

21 “(1) *IN GENERAL.*—*If an election is made under*
22 *subsection (a) with respect to any qualified film or*
23 *television production, that portion of the basis of such*
24 *production in excess of the amount taken into account*
25 *under subsection (a) shall be allowed as a deduction*

1 *ratably over the 36-month period beginning with the*
2 *month in which such production is placed in service.*

3 “(2) *NO OTHER DEDUCTION OR AMORTIZATION*
4 *DEDUCTION ALLOWABLE.—With respect to the basis of*
5 *any qualified film or television production described*
6 *in paragraph (1), no other depreciation or amortiza-*
7 *tion deduction shall be allowable.*

8 “(c) *ELECTION.—*

9 “(1) *IN GENERAL.—An election under subsection*
10 *(a) with respect to any qualified film or television*
11 *production shall be made in such manner as pre-*
12 *scribed by the Secretary and by the due date (includ-*
13 *ing extensions) for filing the taxpayer’s return of tax*
14 *under this chapter for the taxable year in which costs*
15 *of the production are first incurred.*

16 “(2) *REVOCAION OF ELECTION.—Any election*
17 *made under subsection (a) may not be revoked with-*
18 *out the consent of the Secretary.*

19 “(d) *QUALIFIED FILM OR TELEVISION PRODUCTION.—*
20 *For purposes of this section—*

21 “(1) *IN GENERAL.—The term ‘qualified film or*
22 *television production’ means any production described*
23 *in paragraph (2) if 75 percent of the total compensa-*
24 *tion of the production is qualified compensation.*

25 “(2) *PRODUCTION.—*

1 “(A) *IN GENERAL.*—A production is de-
2 scribed in this paragraph if such production is
3 property described in section 168(f)(3). For pur-
4 poses of a television series, only the first 44 epi-
5 sodes of such series may be taken into account.

6 “(B) *EXCEPTION.*—A production is not de-
7 scribed in this paragraph if records are required
8 under section 2257 of title 18, United States
9 Code, to be maintained with respect to any per-
10 former in such production.

11 “(3) *QUALIFIED COMPENSATION.*—For purposes
12 of paragraph (1)—

13 “(A) *IN GENERAL.*—The term ‘qualified
14 compensation’ means compensation for services
15 performed in the United States by actors, direc-
16 tors, producers, and other relevant production
17 personnel.

18 “(B) *PARTICIPATIONS AND RESIDUALS EX-*
19 *CLUDED.*—The term ‘compensation’ does not in-
20 clude participations and residuals (as defined in
21 section 167(g)(7)(B)).

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

1 “(f) *TERMINATION.*—*This section shall not apply to*
 2 *qualified film and television productions commencing after*
 3 *December 31, 2008.*”.

4 (b) *CONFORMING AMENDMENT.*—*The table of sections*
 5 *for part VI of subchapter B of chapter 1 is amended by*
 6 *inserting after the item relating to section 180 the following*
 7 *new item:*

“*Sec. 181. Treatment of qualified film and television productions.*”.

8 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 9 *section shall apply to qualified film and television produc-*
 10 *tions (as defined in section 181(d)(1) of the Internal Rev-*
 11 *enue Code of 1986, as added by this section) commencing*
 12 *after the date of the enactment of this Act.*

13 **SEC. 322. MODIFICATION OF APPLICATION OF INCOME**
 14 **FORECAST METHOD OF DEPRECIATION.**

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

18 “(7) *TREATMENT OF PARTICIPATIONS AND RE-*
 19 *SIDUALS.*—

20 “(A) *IN GENERAL.*—*For purposes of deter-*
 21 *mining the depreciation deduction allowable*
 22 *with respect to a property under this subsection,*
 23 *the taxpayer may include participations and re-*
 24 *siduals with respect to such property in the ad-*
 25 *justed basis of such property for the taxable year*

1 *in which the property is placed in service, but*
2 *only to the extent that such participations and*
3 *residuals relate to income estimated (for pur-*
4 *poses of this subsection) to be earned in connec-*
5 *tion with the property before the close of the 10th*
6 *taxable year referred to in paragraph (1)(A).*

7 “(B) *PARTICIPATIONS AND RESIDUALS.—*
8 *For purposes of this paragraph, the term ‘par-*
9 *ticipations and residuals’ means, with respect to*
10 *any property, costs the amount of which by con-*
11 *tract varies with the amount of income earned in*
12 *connection with such property.*

13 “(C) *SPECIAL RULES RELATING TO RE-*
14 *COMPUTATION YEARS.—If the adjusted basis of*
15 *any property is determined under this para-*
16 *graph, paragraph (4) shall be applied by sub-*
17 *stituting ‘for each taxable year in such period’*
18 *for ‘for such period’.*

19 “(D) *OTHER SPECIAL RULES.—*

20 “(i) *PARTICIPATIONS AND RESIDU-*
21 *ALS.—Notwithstanding subparagraph (A),*
22 *the taxpayer may exclude participations*
23 *and residuals from the adjusted basis of*
24 *such property and deduct such participa-*

1 *tions and residuals in the taxable year that*
 2 *such participations and residuals are paid.*

3 “(ii) *COORDINATION WITH OTHER*
 4 *RULES.—Deductions computed in accord-*
 5 *ance with this paragraph shall be allowable*
 6 *notwithstanding paragraph (1)(B) or sec-*
 7 *tions 263, 263A, 404, 419, or 461(h).*

8 “(E) *AUTHORITY TO MAKE ADJUST-*
 9 *MENTS.—The Secretary shall prescribe appro-*
 10 *priate adjustments to the basis of property and*
 11 *to the look-back method for the additional*
 12 *amounts allowable as a deduction solely by rea-*
 13 *son of this paragraph.”.*

14 (b) *DETERMINATION OF INCOME.—Section 167(g)(5)*
 15 *(relating to special rules) is amended by redesignating sub-*
 16 *paragraphs (E) and (F) as subparagraphs (F) and (G), re-*
 17 *spectively, and inserting after subparagraph (D) the fol-*
 18 *lowing new subparagraph:*

19 “(E) *TREATMENT OF DISTRIBUTION*
 20 *COSTS.—For purposes of this subsection, the in-*
 21 *come with respect to any property shall be the*
 22 *taxpayer’s gross income from such property.”.*

23 (c) *EFFECTIVE DATE.—The amendments made by this*
 24 *section shall apply to property placed in service after the*
 25 *date of the enactment of this Act.*

1 **Subtitle C—Manufacturing**
2 **Relating to Timber**

3 **SEC. 331. EXPENSING OF CERTAIN REFORESTATION EX-**
4 **PENDITURES.**

5 (a) *IN GENERAL.*—So much of subsection (b) of section
6 194 (relating to amortization of reforestation expenditures)
7 as precedes paragraph (2) is amended to read as follows:

8 “(b) *TREATMENT AS EXPENSES.*—

9 “(1) *ELECTION TO TREAT CERTAIN REFOREST-*
10 *ATION EXPENDITURES AS EXPENSES.*—

11 “(A) *IN GENERAL.*—In the case of any
12 qualified timber property with respect to which
13 the taxpayer has made (in accordance with regu-
14 lations prescribed by the Secretary) an election
15 under this subsection, the taxpayer shall treat re-
16 forestation expenditures which are paid or in-
17 curred during the taxable year with respect to
18 such property as an expense which is not charge-
19 able to capital account. The reforestation expend-
20 itures so treated shall be allowed as a deduction.

21 “(B) *DOLLAR LIMITATION.*—The aggregate
22 amount of reforestation expenditures which may
23 be taken into account under subparagraph (A)
24 with respect to each qualified timber property for
25 any taxable year shall not exceed \$10,000

1 (\$5,000 in the case of a separate return by a
2 married individual (as defined in section
3 7703)).”.

4 **(b) NET AMORTIZABLE BASIS.**—Section 194(c)(2) (de-
5 fining amortizable basis) is amended by inserting “which
6 have not been taken into account under subsection (b)” after
7 “expenditures”.

8 **(c) CONFORMING AMENDMENTS.**—

9 (1) Section 194(b) is amended by striking para-
10 graphs (3) and (4).

11 (2) Section 194(b)(2) is amended by striking
12 “paragraph (1)” both places it appears and inserting
13 “paragraph (1)(B)”.

14 (3) Section 194(c) is amended by striking para-
15 graph (4) and inserting the following new para-
16 graphs:

17 “(4) **TREATMENT OF TRUSTS AND ESTATES.**—

18 “(A) **IN GENERAL.**—Except as provided in
19 subparagraph (B), this section shall not apply to
20 trusts and estates.

21 “(B) **AMORTIZATION DEDUCTION ALLOWED**
22 **TO ESTATES.**—The benefit of the deduction for
23 amortization provided by subsection (a) shall be
24 allowed to estates in the same manner as in the
25 case of an individual. The allowable deduction

1 shall be apportioned between the income bene-
2 ficiary and the fiduciary under regulations pre-
3 scribed by the Secretary. Any amount so appor-
4 tioned to a beneficiary shall be taken into ac-
5 count for purposes of determining the amount al-
6 lowable as a deduction under subsection (a) to
7 such beneficiary.

8 “(5) *APPLICATION WITH OTHER DEDUCTIONS.*—
9 No deduction shall be allowed under any other provi-
10 sion of this chapter with respect to any expenditure
11 with respect to which a deduction is allowed or allow-
12 able under this section to the taxpayer.”.

13 (4) The heading for section 194 is amended by
14 striking “**AMORTIZATION**” and inserting “**TREAT-**
15 **MENT**”.

16 (5) The item relating to section 194 in the table
17 of sections for part VI of subchapter B of chapter 1
18 is amended by striking “Amortization” and inserting
19 “Treatment”.

20 (d) *REPEAL OF REFORESTATION CREDIT.*—

21 (1) *IN GENERAL.*—Section 46 (relating to
22 amount of credit) is amended—

23 (A) by adding “and” at the end of para-
24 graph (1),

1 (B) by striking “, and” at the end of para-
2 graph (2) and inserting a period, and

3 (C) by striking paragraph (3).

4 (2) *CONFORMING AMENDMENTS.*—

5 (A) Section 48 is amended—

6 (i) by striking subsection (b),

7 (ii) by striking “this subsection” in
8 paragraph (5) of subsection (a) and insert-
9 ing “subsection (a)”, and

10 (iii) by redesignating such paragraph
11 (5) as subsection (b).

12 (B) The heading for section 48 is amended
13 by striking “; **REFORESTATION CREDIT**”.

14 (C) The item relating to section 48 in the
15 table of sections for subpart E of part IV of sub-
16 chapter A of chapter 1 is amended by striking “,
17 reforestation credit”.

18 (D) Section 50(c)(3) is amended by striking
19 “or reforestation credit”.

20 (e) *EFFECTIVE DATE.*—The amendments made by this
21 section shall apply with respect to expenditures paid or in-
22 curred after the date of the enactment of this Act.

1 **SEC. 332. ELECTION TO TREAT CUTTING OF TIMBER AS A**
2 **SALE OR EXCHANGE.**

3 *Any election under section 631(a) of the Internal Rev-*
4 *enue Code of 1986 made for a taxable year ending on or*
5 *before the date of the enactment of this Act may be revoked*
6 *by the taxpayer for any taxable year ending after such date.*
7 *For purposes of determining whether the taxpayer may*
8 *make a further election under such section, such election*
9 *(and any revocation under this section) shall not be taken*
10 *into account.*

11 **SEC. 333. CAPITAL GAIN TREATMENT UNDER SECTION**
12 **631(b) TO APPLY TO OUTRIGHT SALES BY**
13 **LANDOWNERS.**

14 *(a) IN GENERAL.—The first sentence of section 631(b)*
15 *(relating to disposal of timber with a retained economic in-*
16 *terest) is amended by striking “retains an economic interest*
17 *in such timber” and inserting “either retains an economic*
18 *interest in such timber or makes an outright sale of such*
19 *timber”.*

20 *(b) CONFORMING AMENDMENTS.—*

21 *(1) The third sentence of section 631(b) is*
22 *amended by striking “The date of disposal” and in-*
23 *serting “In the case of disposal of timber with a re-*
24 *tained economic interest, the date of disposal”.*

25 *(2) The heading for section 631(b) is amended by*
26 *striking “WITH A RETAINED ECONOMIC INTEREST”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to sales after the date of the enactment*
3 *of this Act.*

4 **SEC. 334. MODIFICATION OF SAFE HARBOR RULES FOR TIM-**
5 **BER REITS.**

6 (a) *EXPANSION OF PROHIBITED TRANSACTION SAFE*
7 *HARBOR.*—*Section 857(b)(6) (relating to income from pro-*
8 *hibited transactions) is amended by redesignating subpara-*
9 *graphs (D) and (E) as subparagraphs (E) and (F), respec-*
10 *tively, and by inserting after subparagraph (C) the fol-*
11 *lowing new subparagraph:*

12 “(D) *CERTAIN SALES NOT TO CONSTITUTE*
13 *PROHIBITED TRANSACTIONS.*—*For purposes of*
14 *this part, the term ‘prohibited transaction’ does*
15 *not include a sale of property which is a real es-*
16 *tate asset (as defined in section 856(c)(5)(B))*
17 *if—*

18 “(i) *the trust held the property for not*
19 *less than 4 years in connection with the*
20 *trade or business of producing timber,*

21 “(ii) *the aggregate expenditures made*
22 *by the trust, or a partner of the trust, dur-*
23 *ing the 4-year period preceding the date of*
24 *sale which—*

1 “(I) are includible in the basis of
2 the property (other than timberland
3 acquisition expenditures), and

4 “(II) are directly related to oper-
5 ation of the property for the produc-
6 tion of timber or for the preservation of
7 the property for use as timberland,
8 do not exceed 30 percent of the net selling
9 price of the property,

10 “(iii) the aggregate expenditures made
11 by the trust, or a partner of the trust, dur-
12 ing the 4-year period preceding the date of
13 sale which—

14 “(I) are includible in the basis of
15 the property (other than timberland
16 acquisition expenditures), and

17 “(II) are not directly related to
18 operation of the property for the pro-
19 duction of timber, or for the preserva-
20 tion of the property for use as
21 timberland,
22 do not exceed 5 percent of the net selling
23 price of the property,

24 “(iv)(I) during the taxable year the
25 trust does not make more than 7 sales of

1 *property (other than sales of foreclosure*
2 *property or sales to which section 1033 ap-*
3 *plies), or*

4 *“(II) the aggregate adjusted bases (as*
5 *determined for purposes of computing earn-*
6 *ings and profits) of property (other than*
7 *sales of foreclosure property or sales to*
8 *which section 1033 applies) sold during the*
9 *taxable year does not exceed 10 percent of*
10 *the aggregate bases (as so determined) of all*
11 *of the assets of the trust as of the beginning*
12 *of the taxable year,*

13 *“(v) in the case that the requirement of*
14 *clause (iv)(I) is not satisfied, substantially*
15 *all of the marketing expenditures with re-*
16 *spect to the property were made through an*
17 *independent contractor (as defined in sec-*
18 *tion 856(d)(3)) from whom the trust itself*
19 *does not derive or receive any income, and*

20 *“(vi) the sales price of the property*
21 *sold by the trust is not based in whole or in*
22 *part on income or profits, including income*
23 *or profits derived from the sale or operation*
24 *of such property.”.*

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

4 **TITLE IV—ADDITIONAL**
 5 **PROVISIONS**
 6 **Subtitle A—Provisions Designed To**
 7 **Curtail Tax Shelters**

8 **SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**
 9 **TRINE.**

10 (a) *IN GENERAL.*—*Section 7701 is amended by redес-*
 11 *ignating subsection (n) as subsection (o) and by inserting*
 12 *after subsection (m) the following new subsection:*

13 “(n) *CLARIFICATION OF ECONOMIC SUBSTANCE DOC-*
 14 *TRINE; ETC.*—

15 “(1) *GENERAL RULES.*—

16 “(A) *IN GENERAL.*—*In any case in which a*
 17 *court determines that the economic substance*
 18 *doctrine is relevant for purposes of this title to*
 19 *a transaction (or series of transactions), such*
 20 *transaction (or series of transactions) shall have*
 21 *economic substance only if the requirements of*
 22 *this paragraph are met.*

23 “(B) *DEFINITION OF ECONOMIC SUB-*
 24 *STANCE.*—*For purposes of subparagraph (A)—*

1 “(i) *IN GENERAL.*—*A transaction has*
2 *economic substance only if—*

3 “(I) *the transaction changes in a*
4 *meaningful way (apart from Federal*
5 *tax effects) the taxpayer’s economic po-*
6 *sition, and*

7 “(II) *the taxpayer has a substan-*
8 *tial nontax purpose for entering into*
9 *such transaction and the transaction is*
10 *a reasonable means of accomplishing*
11 *such purpose.*

12 *In applying subclause (II), a purpose of*
13 *achieving a financial accounting benefit*
14 *shall not be taken into account in deter-*
15 *mining whether a transaction has a sub-*
16 *stantial nontax purpose if the origin of such*
17 *financial accounting benefit is a reduction*
18 *of income tax.*

19 “(ii) *SPECIAL RULE WHERE TAXPAYER*
20 *RELIES ON PROFIT POTENTIAL.*—*A trans-*
21 *action shall not be treated as having eco-*
22 *nomics substance by reason of having a po-*
23 *tential for profit unless—*

24 “(I) *the present value of the rea-*
25 *sonably expected pre-tax profit from*

1 *the transaction is substantial in rela-*
2 *tion to the present value of the expected*
3 *net tax benefits that would be allowed*
4 *if the transaction were respected, and*

5 *“(II) the reasonably expected pre-*
6 *tax profit from the transaction exceeds*
7 *a risk-free rate of return.*

8 *“(C) TREATMENT OF FEES AND FOREIGN*
9 *TAXES.—Fees and other transaction expenses*
10 *and foreign taxes shall be taken into account as*
11 *expenses in determining pre-tax profit under*
12 *subparagraph (B)(ii).*

13 *“(2) SPECIAL RULES FOR TRANSACTIONS WITH*
14 *TAX-INDIFFERENT PARTIES.—*

15 *“(A) SPECIAL RULES FOR FINANCING*
16 *TRANSACTIONS.—The form of a transaction*
17 *which is in substance the borrowing of money or*
18 *the acquisition of financial capital directly or*
19 *indirectly from a tax-indifferent party shall not*
20 *be respected if the present value of the deductions*
21 *to be claimed with respect to the transaction is*
22 *substantially in excess of the present value of the*
23 *anticipated economic returns of the person lend-*
24 *ing the money or providing the financial capital.*
25 *A public offering shall be treated as a borrowing,*

1 or an acquisition of financial capital, from a
2 tax-indifferent party if it is reasonably expected
3 that at least 50 percent of the offering will be
4 placed with tax-indifferent parties.

5 “(B) *ARTIFICIAL INCOME SHIFTING AND*
6 *BASIS ADJUSTMENTS.*—The form of a trans-
7 action with a tax-indifferent party shall not be
8 respected if—

9 “(i) it results in an allocation of in-
10 come or gain to the tax-indifferent party in
11 excess of such party’s economic income or
12 gain, or

13 “(ii) it results in a basis adjustment or
14 shifting of basis on account of overstating
15 the income or gain of the tax-indifferent
16 party.

17 “(3) *DEFINITIONS AND SPECIAL RULES.*—For
18 purposes of this subsection—

19 “(A) *ECONOMIC SUBSTANCE DOCTRINE.*—
20 The term ‘economic substance doctrine’ means
21 the common law doctrine under which tax bene-
22 fits under subtitle A with respect to a trans-
23 action are not allowable if the transaction does
24 not have economic substance or lacks a business
25 purpose.

1 “(B) *TAX-INDIFFERENT PARTY.*—*The term*
2 *‘tax-indifferent party’ means any person or enti-*
3 *ty not subject to tax imposed by subtitle A. A*
4 *person shall be treated as a tax-indifferent party*
5 *with respect to a transaction if the items taken*
6 *into account with respect to the transaction have*
7 *no substantial impact on such person’s liability*
8 *under subtitle A.*

9 “(C) *EXCEPTION FOR PERSONAL TRANS-*
10 *ACTIONS OF INDIVIDUALS.*—*In the case of an in-*
11 *dividual, this subsection shall apply only to*
12 *transactions entered into in connection with a*
13 *trade or business or an activity engaged in for*
14 *the production of income.*

15 “(D) *TREATMENT OF LESSORS.*—*In apply-*
16 *ing paragraph (1)(B)(ii) to the lessor of tangible*
17 *property subject to a lease—*

18 “(i) *the expected net tax benefits with*
19 *respect to the leased property shall not in-*
20 *clude the benefits of—*

21 “(I) *depreciation,*

22 “(II) *any tax credit, or*

23 “(III) *any other deduction as pro-*
24 *vided in guidance by the Secretary,*
25 *and*

1 “(ii) subclause (II) of paragraph
2 (1)(B)(ii) shall be disregarded in deter-
3 mining whether any of such benefits are al-
4 lowable.

5 “(4) OTHER COMMON LAW DOCTRINES NOT AF-
6 FECTED.—Except as specifically provided in this sub-
7 section, the provisions of this subsection shall not be
8 construed as altering or supplanting any other rule of
9 law, and the requirements of this subsection shall be
10 construed as being in addition to any such other rule
11 of law.

12 “(5) REGULATIONS.—The Secretary shall pre-
13 scribe such regulations as may be necessary or appro-
14 priate to carry out the purposes of this subsection.
15 Such regulations may include exemptions from the
16 application of this subsection.”.

17 (b) EFFECTIVE DATE.—The amendments made by this
18 section shall apply to transactions entered into after the
19 date of the enactment of this Act.

20 **SEC. 402. PENALTY FOR FAILING TO DISCLOSE REPORT-**
21 **ABLE TRANSACTION.**

22 (a) IN GENERAL.—Part I of subchapter B of chapter
23 68 (relating to assessable penalties) is amended by inserting
24 after section 6707 the following new section:

1 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**
2 **ABLE TRANSACTION INFORMATION WITH RE-**
3 **TURN OR STATEMENT.**

4 “(a) *IMPOSITION OF PENALTY.*—*Any person who fails*
5 *to include on any return or statement any information with*
6 *respect to a reportable transaction which is required under*
7 *section 6011 to be included with such return or statement*
8 *shall pay a penalty in the amount determined under sub-*
9 *section (b).*

10 “(b) *AMOUNT OF PENALTY.*—

11 “(1) *IN GENERAL.*—*Except as provided in para-*
12 *graphs (2) and (3), the amount of the penalty under*
13 *subsection (a) shall be \$50,000.*

14 “(2) *LISTED TRANSACTION.*—*The amount of the*
15 *penalty under subsection (a) with respect to a listed*
16 *transaction shall be \$100,000.*

17 “(3) *INCREASE IN PENALTY FOR LARGE ENTITIES*
18 *AND HIGH NET WORTH INDIVIDUALS.*—

19 “(A) *IN GENERAL.*—*In the case of a failure*
20 *under subsection (a) by—*

21 “(i) *a large entity, or*

22 “(ii) *a high net worth individual,*

23 *the penalty under paragraph (1) or (2) shall be*
24 *twice the amount determined without regard to*
25 *this paragraph.*

1 “(B) *LARGE ENTITY*.—For purposes of sub-
2 paragraph (A), the term ‘large entity’ means,
3 with respect to any taxable year, a person (other
4 than a natural person) with gross receipts in ex-
5 cess of \$10,000,000 for the taxable year in which
6 the reportable transaction occurs or the pre-
7 ceding taxable year. Rules similar to the rules of
8 paragraph (2) and subparagraphs (B), (C), and
9 (D) of paragraph (3) of section 448(c) shall
10 apply for purposes of this subparagraph.

11 “(C) *HIGH NET WORTH INDIVIDUAL*.—For
12 purposes of subparagraph (A), the term ‘high net
13 worth individual’ means, with respect to a re-
14 portable transaction, a natural person whose net
15 worth exceeds \$2,000,000 immediately before the
16 transaction.

17 “(c) *DEFINITIONS*.—For purposes of this section—

18 “(1) *REPORTABLE TRANSACTION*.—The term ‘re-
19 portable transaction’ means any transaction with re-
20 spect to which information is required to be included
21 with a return or statement because, as determined
22 under regulations prescribed under section 6011, such
23 transaction is of a type which the Secretary deter-
24 mines as having a potential for tax avoidance or eva-
25 sion.

1 “(2) *LISTED TRANSACTION.*—*Except as provided*
2 *in regulations, the term ‘listed transaction’ means a*
3 *reportable transaction which is the same as, or sub-*
4 *stantially similar to, a transaction specifically identi-*
5 *fied by the Secretary as a tax avoidance transaction*
6 *for purposes of section 6011.*

7 “(d) *AUTHORITY TO RESCIND PENALTY.*—

8 “(1) *IN GENERAL.*—*The Commissioner of Inter-*
9 *nal Revenue may rescind all or any portion of any*
10 *penalty imposed by this section with respect to any*
11 *violation if—*

12 “(A) *the violation is with respect to a re-*
13 *portable transaction other than a listed trans-*
14 *action,*

15 “(B) *the person on whom the penalty is im-*
16 *posed has a history of complying with the re-*
17 *quirements of this title,*

18 “(C) *it is shown that the violation is due to*
19 *an unintentional mistake of fact;*

20 “(D) *imposing the penalty would be against*
21 *equity and good conscience, and*

22 “(E) *rescinding the penalty would promote*
23 *compliance with the requirements of this title*
24 *and effective tax administration.*

1 “(2) *DISCRETION.*—*The exercise of authority*
2 *under paragraph (1) shall be at the sole discretion of*
3 *the Commissioner and may be delegated only to the*
4 *head of the Office of Tax Shelter Analysis. The Com-*
5 *missioner, in the Commissioner’s sole discretion, may*
6 *establish a procedure to determine if a penalty should*
7 *be referred to the Commissioner or the head of such*
8 *Office for a determination under paragraph (1).*

9 “(3) *NO APPEAL.*—*Notwithstanding any other*
10 *provision of law, any determination under this sub-*
11 *section may not be reviewed in any administrative or*
12 *judicial proceeding.*

13 “(4) *RECORDS.*—*If a penalty is rescinded under*
14 *paragraph (1), the Commissioner shall place in the*
15 *file in the Office of the Commissioner the opinion of*
16 *the Commissioner or the head of the Office of Tax*
17 *Shelter Analysis with respect to the determination,*
18 *including—*

19 “(A) *the facts and circumstances of the*
20 *transaction,*

21 “(B) *the reasons for the rescission, and*

22 “(C) *the amount of the penalty rescinded.*

23 “(5) *REPORT.*—*The Commissioner shall each*
24 *year report to the Committee on Ways and Means of*

1 *the House of Representatives and the Committee on*
2 *Finance of the Senate—*

3 *“(A) a summary of the total number and*
4 *aggregate amount of penalties imposed, and re-*
5 *scinded, under this section, and*

6 *“(B) a description of each penalty rescinded*
7 *under this subsection and the reasons therefor.*

8 *“(e) PENALTY REPORTED TO SEC.—In the case of a*
9 *person—*

10 *“(1) which is required to file periodic reports*
11 *under section 13 or 15(d) of the Securities Exchange*
12 *Act of 1934 or is required to be consolidated with an-*
13 *other person for purposes of such reports, and*

14 *“(2) which—*

15 *“(A) is required to pay a penalty under*
16 *this section with respect to a listed transaction,*

17 *“(B) is required to pay a penalty under sec-*
18 *tion 6662A with respect to any reportable trans-*
19 *action at a rate prescribed under section*
20 *6662A(c), or*

21 *“(C) is required to pay a penalty under sec-*
22 *tion 6662B with respect to any noneconomic*
23 *substance transaction,*

24 *the requirement to pay such penalty shall be disclosed in*
25 *such reports filed by such person for such periods as the*

1 *Secretary shall specify. Failure to make a disclosure in ac-*
 2 *cordance with the preceding sentence shall be treated as a*
 3 *failure to which the penalty under subsection (b)(2) applies.*

4 “(f) *COORDINATION WITH OTHER PENALTIES.—The*
 5 *penalty imposed by this section is in addition to any pen-*
 6 *alty imposed under this title.”.*

7 (b) *DISCLOSURE BY SECRETARY.—*

8 (1) *IN GENERAL.—Section 6103 is amended by*
 9 *redesignating subsection (q) as subsection (r) and by*
 10 *inserting after subsection (p) the following new sub-*
 11 *section:*

12 “(q) *DISCLOSURE RELATING TO PAYMENTS OF CER-*
 13 *TAIN PENALTIES.—Notwithstanding any other provision of*
 14 *this section, the Secretary shall make public the name of*
 15 *any person required to pay a penalty described in section*
 16 *6707A(e)(2) and the amount of the penalty.”.*

17 (2) *RECORDS.—Section 6103(p)(3)(A) is amend-*
 18 *ed by striking “or (n)” and inserting “(n), or (q)”.*

19 (c) *CONFORMING AMENDMENT.—The table of sections*
 20 *for part I of subchapter B of chapter 68 is amended by*
 21 *inserting after the item relating to section 6707 the fol-*
 22 *lowing:*

“Sec. 6707A. *Penalty for failure to include reportable transaction information with return or statement.”.*

1 (d) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to returns and statements the due date*
 3 *for which is after the date of the enactment of this Act.*

4 **SEC. 403. ACCURACY-RELATED PENALTY FOR LISTED**
 5 **TRANSACTIONS AND OTHER REPORTABLE**
 6 **TRANSACTIONS HAVING A SIGNIFICANT TAX**
 7 **AVOIDANCE PURPOSE.**

8 (a) *IN GENERAL.*—*Subchapter A of chapter 68 is*
 9 *amended by inserting after section 6662 the following new*
 10 *section:*

11 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY**
 12 **ON UNDERSTATEMENTS WITH RESPECT TO**
 13 **REPORTABLE TRANSACTIONS.**

14 “(a) *IMPOSITION OF PENALTY.*—*If a taxpayer has a*
 15 *reportable transaction understatement for any taxable year,*
 16 *there shall be added to the tax an amount equal to 20 per-*
 17 *cent of the amount of such understatement.*

18 “(b) *REPORTABLE TRANSACTION UNDERSTATE-*
 19 *MENT.*—*For purposes of this section—*

20 “(1) *IN GENERAL.*—*The term ‘reportable trans-*
 21 *action understatement’ means the sum of—*

22 “(A) *the product of—*

23 “(i) *the amount of the increase (if any)*
 24 *in taxable income which results from a dif-*
 25 *ference between the proper tax treatment of*

1 *an item to which this section applies and*
 2 *the taxpayer’s treatment of such item (as*
 3 *shown on the taxpayer’s return of tax), and*
 4 *“(ii) the highest rate of tax imposed by*
 5 *section 1 (section 11 in the case of a tax-*
 6 *payer which is a corporation), and*
 7 *“(B) the amount of the decrease (if any) in*
 8 *the aggregate amount of credits determined*
 9 *under subtitle A which results from a difference*
 10 *between the taxpayer’s treatment of an item to*
 11 *which this section applies (as shown on the tax-*
 12 *payer’s return of tax) and the proper tax treat-*
 13 *ment of such item.*

14 *For purposes of subparagraph (A), any reduction of*
 15 *the excess of deductions allowed for the taxable year*
 16 *over gross income for such year, and any reduction*
 17 *in the amount of capital losses which would (without*
 18 *regard to section 1211) be allowed for such year, shall*
 19 *be treated as an increase in taxable income.*

20 *“(2) ITEMS TO WHICH SECTION APPLIES.—This*
 21 *section shall apply to any item which is attributable*
 22 *to—*

23 *“(A) any listed transaction, and*

24 *“(B) any reportable transaction (other than*
 25 *a listed transaction) if a significant purpose of*

1 *such transaction is the avoidance or evasion of*
2 *Federal income tax.*

3 “(c) *HIGHER PENALTY FOR NONDISCLOSED LISTED*
4 *AND OTHER AVOIDANCE TRANSACTIONS.*—

5 “(1) *IN GENERAL.*—*Subsection (a) shall be ap-*
6 *plied by substituting ‘30 percent’ for ‘20 percent’ with*
7 *respect to the portion of any reportable transaction*
8 *understatement with respect to which the requirement*
9 *of section 6664(d)(2)(A) is not met.*

10 “(2) *RULES APPLICABLE TO ASSERTION AND*
11 *COMPROMISE OF PENALTY.*—

12 “(A) *IN GENERAL.*—*Only upon the ap-*
13 *proval by the Chief Counsel for the Internal Rev-*
14 *enue Service or the Chief Counsel’s delegate at*
15 *the national office of the Internal Revenue Serv-*
16 *ice may a penalty to which paragraph (1) ap-*
17 *plies be included in a 1st letter of proposed defi-*
18 *ciency which allows the taxpayer an opportunity*
19 *for administrative review in the Internal Rev-*
20 *enue Service Office of Appeals. If such a letter is*
21 *provided to the taxpayer, only the Commissioner*
22 *of Internal Revenue may compromise all or any*
23 *portion of such penalty.*

24 “(B) *APPLICABLE RULES.*—*The rules of*
25 *paragraphs (2), (3), (4), and (5) of section*

1 6707A(d) shall apply for purposes of subpara-
2 graph (A).

3 “(d) *DEFINITIONS OF REPORTABLE AND LISTED*
4 *TRANSACTIONS.*—For purposes of this section, the terms ‘re-
5 *portable transaction*’ and ‘*listed transaction*’ have the re-
6 *spective meanings given to such terms by section 6707A(c).*

7 “(e) *SPECIAL RULES.*—

8 “(1) *COORDINATION WITH PENALTIES, ETC., ON*
9 *OTHER UNDERSTATEMENTS.*—In the case of an under-
10 *statement (as defined in section 6662(d)(2))—*

11 “(A) *the amount of such understatement*
12 *(determined without regard to this paragraph)*
13 *shall be increased by the aggregate amount of re-*
14 *portable transaction understatements and non-*
15 *economic substance transaction understatements*
16 *for purposes of determining whether such under-*
17 *statement is a substantial understatement under*
18 *section 6662(d)(1), and*

19 “(B) *the addition to tax under section*
20 *6662(a) shall apply only to the excess of the*
21 *amount of the substantial understatement (if*
22 *any) after the application of subparagraph (A)*
23 *over the aggregate amount of reportable trans-*
24 *action understatements and noneconomic sub-*
25 *stance transaction understatements.*

1 “(2) *COORDINATION WITH OTHER PENALTIES.*—

2 “(A) *APPLICATION OF FRAUD PENALTY.*—

3 *References to an underpayment in section 6663*
4 *shall be treated as including references to a re-*
5 *portable transaction understatement and a non-*
6 *economic substance transaction understatement.*

7 “(B) *NO DOUBLE PENALTY.*—*This section*
8 *shall not apply to any portion of an understate-*
9 *ment on which a penalty is imposed under sec-*
10 *tion 6662B or 6663.*

11 “(3) *SPECIAL RULE FOR AMENDED RETURNS.*—

12 *Except as provided in regulations, in no event shall*
13 *any tax treatment included with an amendment or*
14 *supplement to a return of tax be taken into account*
15 *in determining the amount of any reportable trans-*
16 *action understatement or noneconomic substance*
17 *transaction understatement if the amendment or sup-*
18 *plement is filed after the earlier of the date the tax-*
19 *payer is first contacted by the Secretary regarding the*
20 *examination of the return or such other date as is*
21 *specified by the Secretary.*

22 “(4) *NONECONOMIC SUBSTANCE TRANS-*
23 *ACTION UNDERSTATEMENT.*—*For purposes of this*
24 *subsection, the term ‘noneconomic substance*

1 *transaction understatement*’ has the meaning
2 given such term by section 6662B(c).

3 “(5) *CROSS REFERENCE.*—

**“For reporting of section 6662A(c) penalty to the
Securities and Exchange Commission, see section
6707A(e).”.**

4 (b) *DETERMINATION OF OTHER UNDERSTATE-*
5 *MENTS.*—Subparagraph (A) of section 6662(d)(2) is
6 *amended by adding at the end the following flush sentence:*

7 *“The excess under the preceding sentence shall be*
8 *determined without regard to items to which sec-*
9 *tion 6662A applies and without regard to items*
10 *with respect to which a penalty is imposed by*
11 *section 6662B.”.*

12 (c) *REASONABLE CAUSE EXCEPTION.*—

13 (1) *IN GENERAL.*—Section 6664 is amended by
14 *adding at the end the following new subsection:*

15 “(d) *REASONABLE CAUSE EXCEPTION FOR REPORT-*
16 *ABLE TRANSACTION UNDERSTATEMENTS.*—

17 (1) *IN GENERAL.*—No penalty shall be imposed
18 under section 6662A with respect to any portion of a
19 reportable transaction understatement if it is shown
20 that there was a reasonable cause for such portion
21 and that the taxpayer acted in good faith with respect
22 to such portion.

1 “(2) *SPECIAL RULES.*—Paragraph (1) shall not
2 *apply to any reportable transaction understatement*
3 *unless—*

4 “(A) *the relevant facts affecting the tax*
5 *treatment of the item are adequately disclosed in*
6 *accordance with the regulations prescribed under*
7 *section 6011,*

8 “(B) *there is or was substantial authority*
9 *for such treatment, and*

10 “(C) *the taxpayer reasonably believed that*
11 *such treatment was more likely than not the*
12 *proper treatment.*

13 *A taxpayer failing to adequately disclose in accord-*
14 *ance with section 6011 shall be treated as meeting the*
15 *requirements of subparagraph (A) if the penalty for*
16 *such failure was rescinded under section 6707A(d).*

17 “(3) *RULES RELATING TO REASONABLE BE-*
18 *LIEF.*—*For purposes of paragraph (2)(C)—*

19 “(A) *IN GENERAL.*—*A taxpayer shall be*
20 *treated as having a reasonable belief with respect*
21 *to the tax treatment of an item only if such*
22 *belief—*

23 “(i) *is based on the facts and law that*
24 *exist at the time the return of tax which in-*
25 *cludes such tax treatment is filed, and*

1 “(ii) relates solely to the taxpayer’s
2 chances of success on the merits of such
3 treatment and does not take into account
4 the possibility that a return will not be au-
5 dited, such treatment will not be raised on
6 audit, or such treatment will be resolved
7 through settlement if it is raised.

8 “(B) CERTAIN OPINIONS MAY NOT BE RE-
9 LIED UPON.—

10 “(i) IN GENERAL.—An opinion of a
11 tax advisor may not be relied upon to estab-
12 lish the reasonable belief of a taxpayer if—

13 “(I) the tax advisor is described
14 in clause (ii), or

15 “(II) the opinion is described in
16 clause (iii).

17 “(ii) DISQUALIFIED TAX ADVISORS.—A
18 tax advisor is described in this clause if the
19 tax advisor—

20 “(I) is a material advisor (within
21 the meaning of section 6111(b)(1)) who
22 participates in the organization, man-
23 agement, promotion, or sale of the
24 transaction or who is related (within
25 the meaning of section 267(b) or

1 707(b)(1)) to any person who so par-
2 ticipates,

3 “(II) is compensated directly or
4 indirectly by a material advisor with
5 respect to the transaction,

6 “(III) has a fee arrangement with
7 respect to the transaction which is con-
8 tingent on all or part of the intended
9 tax benefits from the transaction being
10 sustained,

11 “(IV) has an arrangement with
12 respect to the transaction which pro-
13 vides that contractual disputes between
14 the taxpayer and the advisor are to be
15 settled by arbitration or which limits
16 damages by reference to fees paid to the
17 advisor for such transaction, or

18 “(V) as determined under regula-
19 tions prescribed by the Secretary, has a
20 disqualifying financial interest with
21 respect to the transaction.

22 “(iii) *DISQUALIFIED OPINIONS.*—For
23 purposes of clause (i), an opinion is dis-
24 qualified if the opinion—

1 “(I) is based on unreasonable fac-
2 tual or legal assumptions (including
3 assumptions as to future events),

4 “(II) unreasonably relies on rep-
5 resentations, statements, findings, or
6 agreements of the taxpayer or any
7 other person,

8 “(III) does not identify and con-
9 sider all relevant facts,

10 “(IV) is not signed by all individ-
11 uals who are principal authors of the
12 opinion, or

13 “(V) fails to meet any other re-
14 quirement as the Secretary may pre-
15 scribe.”.

16 (2) *CONFORMING AMENDMENT.*—The heading for
17 subsection (c) of section 6664 is amended by inserting
18 “FOR UNDERPAYMENTS” after “EXCEPTION”.

19 (d) *CONFORMING AMENDMENTS.*—

20 (1) Subparagraph (C) of section 461(i)(3) is
21 amended by striking “section 6662(d)(2)(C)(iii)” and
22 inserting “section 1274(b)(3)(C)”.

23 (2) Paragraph (3) of section 1274(b) is
24 amended—

1 (A) by striking “(as defined in section
2 6662(d)(2)(C)(iii))” in subparagraph (B)(i), and

3 (B) by adding at the end the following new
4 subparagraph:

5 “(C) *TAX SHELTER*.—For purposes of sub-
6 paragraph (B), the term ‘tax shelter’ means—

7 “(i) a partnership or other entity,

8 “(ii) any investment plan or arrange-
9 ment, or

10 “(iii) any other plan or arrangement,
11 if a significant purpose of such partnership, en-
12 tity, plan, or arrangement is the avoidance or
13 evasion of Federal income tax.”.

14 (3) Section 6662(d)(2) is amended by striking
15 subparagraphs (C) and (D).

16 (4) Section 6664(c)(1) is amended by striking
17 “this part” and inserting “section 6662 or 6663”.

18 (5) Subsection (b) of section 7525 is amended by
19 striking “section 6662(d)(2)(C)(iii)” and inserting
20 “section 1274(b)(3)(C)”.

21 (6)(A) The heading for section 6662 is amended
22 to read as follows:

1 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
 2 **ON UNDERPAYMENTS.”.**

3 (B) *The table of sections for part II of sub-*
 4 *chapter A of chapter 68 is amended by striking the*
 5 *item relating to section 6662 and inserting the fol-*
 6 *lowing new items:*

“Sec. 6662. Imposition of accuracy-related penalty on underpay-
 ments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatement
 with respect to reportable transactions.”.

7 (e) *EFFECTIVE DATE.*—*The amendments made by this*
 8 *section shall apply to taxable years ending after the date*
 9 *of the enactment of this Act.*

10 **SEC. 404. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
 11 **UTABLE TO TRANSACTIONS LACKING ECO-**
 12 **NOMIC SUBSTANCE, ETC.**

13 (a) *IN GENERAL.*—*Subchapter A of chapter 68 is*
 14 *amended by inserting after section 6662A the following new*
 15 *section:*

16 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
 17 **UTABLE TO TRANSACTIONS LACKING ECO-**
 18 **NOMIC SUBSTANCE, ETC.**

19 “(a) *IMPOSITION OF PENALTY.*—*If a taxpayer has an*
 20 *noneconomic substance transaction understatement for any*
 21 *taxable year, there shall be added to the tax an amount*
 22 *equal to 40 percent of the amount of such understatement.*

1 “(b) *REDUCTION OF PENALTY FOR DISCLOSED TRANS-*
2 *ACTIONS.*—*Subsection (a) shall be applied by substituting*
3 *‘20 percent’ for ‘40 percent’ with respect to the portion of*
4 *any noneconomic substance transaction understatement*
5 *with respect to which the relevant facts affecting the tax*
6 *treatment of the item are adequately disclosed in the return*
7 *or a statement attached to the return.*

8 “(c) *NONECONOMIC SUBSTANCE TRANSACTION UNDER-*
9 *STATEMENT.*—*For purposes of this section—*

10 “(1) *IN GENERAL.*—*The term ‘noneconomic sub-*
11 *stance transaction understatement’ means any*
12 *amount which would be an understatement under sec-*
13 *tion 6662A(b)(1) if section 6662A were applied by*
14 *taking into account items attributable to noneconomic*
15 *substance transactions rather than items to which sec-*
16 *tion 6662A would apply without regard to this para-*
17 *graph.*

18 “(2) *NONECONOMIC SUBSTANCE TRANSACTION.*—
19 *The term ‘noneconomic substance transaction’ means*
20 *any transaction if—*

21 “(A) *there is a lack of economic substance*
22 *(within the meaning of section 7701(n)(1)) for*
23 *the transaction giving rise to the claimed benefit*
24 *or the transaction was not respected under sec-*
25 *tion 7701(n)(2), or*

1 “(B) *the transaction fails to meet the re-*
2 *quirements of any similar rule of law.*”

3 “(d) *RULES APPLICABLE TO COMPROMISE OF PEN-*
4 *ALTY.—*”

5 “(1) *IN GENERAL.—If the 1st letter of proposed*
6 *deficiency which allows the taxpayer an opportunity*
7 *for administrative review in the Internal Revenue*
8 *Service Office of Appeals has been sent with respect*
9 *to a penalty to which this section applies, only the*
10 *Commissioner of Internal Revenue may compromise*
11 *all or any portion of such penalty.*”

12 “(2) *APPLICABLE RULES.—The rules of para-*
13 *graphs (2), (3), (4), and (5) of section 6707A(d) shall*
14 *apply for purposes of paragraph (1).*”

15 “(e) *COORDINATION WITH OTHER PENALTIES.—Ex-*
16 *cept as otherwise provided in this part, the penalty imposed*
17 *by this section shall be in addition to any other penalty*
18 *imposed by this title.*”

19 “(f) *CROSS REFERENCES.—*”

 “(1) ***For coordination of penalty with understatement***
 under section 6662 and other special rules, see
 section 6662A(e).

 “(2) ***For reporting of penalty imposed under this***
 section to the Securities and Exchange Commission,
 see section 6707A(e).”

20 “(b) *CLERICAL AMENDMENT.—The table of sections for*
21 *part II of subchapter A of chapter 68 is amended by insert-*

1 *ing after the item relating to section 6662A the following*
 2 *new item:*

*“Sec. 6662B. Penalty for understatements attributable to trans-
 actions lacking economic substance, etc.”.*

3 *(c) EFFECTIVE DATE.—The amendments made by this*
 4 *section shall apply to transactions entered into after the*
 5 *date of the enactment of this Act.*

6 **SEC. 405. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**
 7 **MENT PENALTY FOR NONREPORTABLE**
 8 **TRANSACTIONS.**

9 *(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-*
 10 *TIONS.—Section 6662(d)(1)(B) (relating to special rule for*
 11 *corporations) is amended to read as follows:*

12 *“(B) SPECIAL RULE FOR CORPORATIONS.—*
 13 *In the case of a corporation other than an S cor-*
 14 *poration or a personal holding company (as de-*
 15 *defined in section 542), there is a substantial un-*
 16 *derstatement of income tax for any taxable year*
 17 *if the amount of the understatement for the tax-*
 18 *able year exceeds the lesser of—*

19 *“(i) 10 percent of the tax required to*
 20 *be shown on the return for the taxable year*
 21 *(or, if greater, \$10,000), or*

22 *“(ii) \$10,000,000.”.*

23 *(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER*
 24 *DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—*

1 (1) *IN GENERAL.*—Section 6662(d)(2)(B)(i) (re-
2 lating to substantial authority) is amended to read as
3 follows:

4 “(i) the tax treatment of any item by
5 the taxpayer if the taxpayer had reasonable
6 belief that the tax treatment was more likely
7 than not the proper treatment, or”.

8 (2) *CONFORMING AMENDMENT.*—Section 6662(d)
9 is amended by adding at the end the following new
10 paragraph:

11 “(3) *SECRETARIAL LIST.*—For purposes of this
12 subsection, section 6664(d)(2), and section 6694(a)(1),
13 the Secretary may prescribe a list of positions for
14 which the Secretary believes there is not substantial
15 authority or there is no reasonable belief that the tax
16 treatment is more likely than not the proper tax
17 treatment. Such list (and any revisions thereof) shall
18 be published in the Federal Register or the Internal
19 Revenue Bulletin.”.

20 (c) *EFFECTIVE DATE.*—The amendments made by this
21 section shall apply to taxable years beginning after the date
22 of the enactment of this Act.

1 **SEC. 406. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
2 **PRIVILEGES RELATING TO TAXPAYER COM-**
3 **MUNICATIONS.**

4 (a) *IN GENERAL.*—Section 7525(b) (relating to section
5 not to apply to communications regarding corporate tax
6 shelters) is amended to read as follows:

7 “(b) *SECTION NOT TO APPLY TO COMMUNICATIONS*
8 *REGARDING TAX SHELTERS.*—The privilege under sub-
9 section (a) shall not apply to any written communication
10 which is—

11 “(1) *between a federally authorized tax practi-*
12 *tioner and—*

13 “(A) *any person,*

14 “(B) *any director, officer, employee, agent,*
15 *or representative of the person, or*

16 “(C) *any other person holding a capital or*
17 *profits interest in the person, and*

18 “(2) *in connection with the promotion of the di-*
19 *rect or indirect participation of the person in any tax*
20 *shelter (as defined in section 1274(b)(3)(C)).”.*

21 (b) *EFFECTIVE DATE.*—The amendment made by this
22 section shall apply to communications made on or after the
23 date of the enactment of this Act.

24 **SEC. 407. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

25 (a) *IN GENERAL.*—Section 6111 (relating to registra-
26 tion of tax shelters) is amended to read as follows:

1 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

2 “(a) *IN GENERAL.*—*Each material advisor with re-*
3 *spect to any reportable transaction shall make a return (in*
4 *such form as the Secretary may prescribe) setting forth—*

5 “(1) *information identifying and describing the*
6 *transaction,*

7 “(2) *information describing any potential tax*
8 *benefits expected to result from the transaction, and*

9 “(3) *such other information as the Secretary*
10 *may prescribe.*

11 *Such return shall be filed not later than the date specified*
12 *by the Secretary.*

13 “(b) *DEFINITIONS.*—*For purposes of this section—*

14 “(1) *MATERIAL ADVISOR.*—

15 “(A) *IN GENERAL.*—*The term ‘material ad-*
16 *visor’ means any person—*

17 “(i) *who provides any material aid,*
18 *assistance, or advice with respect to orga-*
19 *nizing, managing, promoting, selling, im-*
20 *plementing, insuring, or carrying out any*
21 *reportable transaction, and*

22 “(ii) *who directly or indirectly derives*
23 *gross income in excess of the threshold*
24 *amount for such aid, assistance, or advice.*

25 “(B) *THRESHOLD AMOUNT.*—*For purposes*
26 *of subparagraph (A), the threshold amount is—*

1 “(i) \$50,000 in the case of a reportable
2 transaction substantially all of the tax bene-
3 fits from which are provided to natural per-
4 sons, and

5 “(ii) \$250,000 in any other case.

6 “(2) *REPORTABLE TRANSACTION*.—The term ‘re-
7 portable transaction’ has the meaning given to such
8 term by section 6707A(c).

9 “(c) *REGULATIONS*.—The Secretary may prescribe reg-
10 ulations which provide—

11 “(1) that only 1 person shall be required to meet
12 the requirements of subsection (a) in cases in which
13 2 or more persons would otherwise be required to meet
14 such requirements,

15 “(2) exemptions from the requirements of this
16 section, and

17 “(3) such rules as may be necessary or appro-
18 priate to carry out the purposes of this section.”.

19 (b) *CONFORMING AMENDMENTS*.—

20 (1) The item relating to section 6111 in the table
21 of sections for subchapter B of chapter 61 is amended
22 to read as follows:

 “Sec. 6111. Disclosure of reportable transactions.”.

23 (2)(A) So much of section 6112 as precedes sub-
24 section (c) thereof is amended to read as follows:

1 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
2 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

3 “(a) *IN GENERAL.*—Each material advisor (as defined
4 in section 6111) with respect to any reportable transaction
5 (as defined in section 6707A(c)) shall maintain, in such
6 manner as the Secretary may by regulations prescribe, a
7 list—

8 “(1) identifying each person with respect to
9 whom such advisor acted as such a material advisor
10 with respect to such transaction, and

11 “(2) containing such other information as the
12 Secretary may by regulations require.

13 *This section shall apply without regard to whether a mate-*
14 *rial advisor is required to file a return under section 6111*
15 *with respect to such transaction.”.*

16 (B) *Section 6112 is amended by redesignating*
17 *subsection (c) as subsection (b).*

18 (C) *Section 6112(b), as redesignated by subpara-*
19 *graph (B), is amended—*

20 (i) *by inserting “written” before “request”*
21 *in paragraph (1)(A), and*

22 (ii) *by striking “shall prescribe” in para-*
23 *graph (2) and inserting “may prescribe”.*

24 (D) *The item relating to section 6112 in the*
25 *table of sections for subchapter B of chapter 61 is*
26 *amended to read as follows:*

“Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.”.

1 (3)(A) *The heading for section 6708 is amended*
2 *to read as follows:*

3 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
4 **WITH RESPECT TO REPORTABLE TRANS-**
5 **ACTIONS.”.**

6 (B) *The item relating to section 6708 in the*
7 *table of sections for part I of subchapter B of chapter*
8 *68 is amended to read as follows:*

“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”.

9 (c) *REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM*
10 *OF CONFIDENTIALITY.—Subparagraph (A) of section*
11 *6112(b)(1), as redesignated by subsection (b)(2)(B), is*
12 *amended by adding at the end the following new flush sen-*
13 *tence:*

14 *“For purposes of this section, the identity of any per-*
15 *son on such list shall not be privileged.”.*

16 (d) *EFFECTIVE DATE.—*

17 (1) *IN GENERAL.—Except as provided in para-*
18 *graph (2), the amendments made by this section shall*
19 *apply to transactions with respect to which material*
20 *aid, assistance, or advice referred to in section*
21 *6111(b)(1)(A)(i) of the Internal Revenue Code of 1986*
22 *(as added by this section) is provided after the date*
23 *of the enactment of this Act.*

1 (2) *NO CLAIM OF CONFIDENTIALITY AGAINST DIS-*
2 *CLOSURE.—The amendment made by subsection (c)*
3 *shall take effect as if included in the amendments*
4 *made by section 142 of the Deficit Reduction Act of*
5 *1984.*

6 **SEC. 408. MODIFICATIONS TO PENALTY FOR FAILURE TO**
7 **REGISTER TAX SHELTERS.**

8 (a) *IN GENERAL.—Section 6707 (relating to failure to*
9 *furnish information regarding tax shelters) is amended to*
10 *read as follows:*

11 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
12 **ING REPORTABLE TRANSACTIONS.**

13 “(a) *IN GENERAL.—If a person who is required to file*
14 *a return under section 6111(a) with respect to any report-*
15 *able transaction—*

16 “(1) *fails to file such return on or before the date*
17 *prescribed therefor, or*

18 “(2) *files false or incomplete information with*
19 *the Secretary with respect to such transaction,*
20 *such person shall pay a penalty with respect to such return*
21 *in the amount determined under subsection (b).*

22 “(b) *AMOUNT OF PENALTY.—*

23 “(1) *IN GENERAL.—Except as provided in para-*
24 *graph (2), the penalty imposed under subsection (a)*
25 *with respect to any failure shall be \$50,000.*

1 “(2) *LISTED TRANSACTIONS.*—*The penalty im-*
2 *posed under subsection (a) with respect to any listed*
3 *transaction shall be an amount equal to the greater*
4 *of—*

5 “(A) \$200,000, or

6 “(B) 50 percent of the gross income derived
7 *by such person with respect to aid, assistance, or*
8 *advice which is provided with respect to the list-*
9 *ed transaction before the date the return includ-*
10 *ing the transaction is filed under section 6111.*

11 *Subparagraph (B) shall be applied by substituting*
12 *‘75 percent’ for ‘50 percent’ in the case of an inten-*
13 *tional failure or act described in subsection (a).*

14 “(c) *CERTAIN RULES TO APPLY.*—*The provisions of*
15 *section 6707A(d) shall apply to any penalty imposed under*
16 *this section.*

17 “(d) *REPORTABLE AND LISTED TRANSACTIONS.*—*The*
18 *terms ‘reportable transaction’ and ‘listed transaction’ have*
19 *the respective meanings given to such terms by section*
20 *6707A(c).”.*

21 (b) *CLERICAL AMENDMENT.*—*The item relating to sec-*
22 *tion 6707 in the table of sections for part I of subchapter*
23 *B of chapter 68 is amended by striking “tax shelters” and*
24 *inserting “reportable transactions”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to returns the due date for which is after*
3 *the date of the enactment of this Act.*

4 **SEC. 409. MODIFICATION OF PENALTY FOR FAILURE TO**
5 **MAINTAIN LISTS OF INVESTORS.**

6 (a) *IN GENERAL.*—*Subsection (a) of section 6708 is*
7 *amended to read as follows:*

8 “(a) *IMPOSITION OF PENALTY.*—

9 “(1) *IN GENERAL.*—*If any person who is re-*
10 *quired to maintain a list under section 6112(a) fails*
11 *to make such list available upon written request to*
12 *the Secretary in accordance with section*
13 *6112(b)(1)(A) within 20 business days after the date*
14 *of the Secretary’s request, such person shall pay a*
15 *penalty of \$10,000 for each day of such failure after*
16 *such 20th day.*

17 “(2) *REASONABLE CAUSE EXCEPTION.*—*No pen-*
18 *alty shall be imposed by paragraph (1) with respect*
19 *to the failure on any day if such failure is due to rea-*
20 *sonable cause.”.*

21 (b) *EFFECTIVE DATE.*—*The amendment made by this*
22 *section shall apply to requests made after the date of the*
23 *enactment of this Act.*

1 **SEC. 410. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
2 **CONDUCT RELATED TO TAX SHELTERS AND**
3 **REPORTABLE TRANSACTIONS.**

4 (a) *IN GENERAL.*—Section 7408 (relating to action to
5 enjoin promoters of abusive tax shelters, etc.) is amended
6 by redesignating subsection (c) as subsection (d) and by
7 striking subsections (a) and (b) and inserting the following
8 new subsections:

9 “(a) *AUTHORITY TO SEEK INJUNCTION.*—A civil ac-
10 tion in the name of the United States to enjoin any person
11 from further engaging in specified conduct may be com-
12 menced at the request of the Secretary. Any action under
13 this section shall be brought in the district court of the
14 United States for the district in which such person resides,
15 has his principal place of business, or has engaged in speci-
16 fied conduct. The court may exercise its jurisdiction over
17 such action (as provided in section 7402(a)) separate and
18 apart from any other action brought by the United States
19 against such person.

20 “(b) *ADJUDICATION AND DECREE.*—In any action
21 under subsection (a), if the court finds—

22 “(1) that the person has engaged in any specified
23 conduct, and

24 “(2) that injunctive relief is appropriate to pre-
25 vent recurrence of such conduct,

1 *the court may enjoin such person from engaging in such*
2 *conduct or in any other activity subject to penalty under*
3 *this title.*

4 “(c) *SPECIFIED CONDUCT.*—*For purposes of this sec-*
5 *tion, the term ‘specified conduct’ means any action, or fail-*
6 *ure to take action, which is—*

7 “(1) *subject to penalty under section 6700, 6701,*
8 *6707, or 6708, or*

9 “(2) *in violation of any requirement under regu-*
10 *lations issued under section 320 of title 31, United*
11 *States Code.”.*

12 (b) *CONFORMING AMENDMENTS.*—

13 (1) *The heading for section 7408 is amended to*
14 *read as follows:*

15 “**SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
16 **LATED TO TAX SHELTERS AND REPORTABLE**
17 **TRANSACTIONS.”.**

18 (2) *The table of sections for subchapter A of*
19 *chapter 67 is amended by striking the item relating*
20 *to section 7408 and inserting the following new item:*

“*Sec. 7408. Actions to enjoin specified conduct related to tax shelters and re-*
portable transactions.”.

21 (c) *EFFECTIVE DATE.*—*The amendment made by this*
22 *section shall take effect on the day after the date of the en-*
23 *actment of this Act.*

1 **SEC. 411. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY**
2 **INCOME TAX RETURN PREPARER.**

3 (a) *STANDARDS CONFORMED TO TAXPAYER STAND-*
4 *ARDS.—Section 6694(a) (relating to understatements due to*
5 *unrealistic positions) is amended—*

6 (1) *by striking “realistic possibility of being sus-*
7 *tained on its merits” in paragraph (1) and inserting*
8 *“reasonable belief that the tax treatment in such posi-*
9 *tion was more likely than not the proper treatment”,*

10 (2) *by striking “or was frivolous” in paragraph*
11 *(3) and inserting “or there was no reasonable basis*
12 *for the tax treatment of such position”, and*

13 (3) *by striking “UNREALISTIC” in the heading*
14 *and inserting “IMPROPER”.*

15 (b) *AMOUNT OF PENALTY.—Section 6694 is*
16 *amended—*

17 (1) *by striking “\$250” in subsection (a) and in-*
18 *serting “\$1,000”, and*

19 (2) *by striking “\$1,000” in subsection (b) and*
20 *inserting “\$5,000”.*

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

1 **SEC. 412. PENALTY ON FAILURE TO REPORT INTERESTS IN**
2 **FOREIGN FINANCIAL ACCOUNTS.**

3 (a) *IN GENERAL.*—Section 5321(a)(5) of title 31,
4 *United States Code*, is amended to read as follows:

5 “(5) *FOREIGN FINANCIAL AGENCY TRANSACTION*
6 *VIOLATION.*—

7 “(A) *PENALTY AUTHORIZED.*—*The Sec-*
8 *retary of the Treasury may impose a civil money*
9 *penalty on any person who violates, or causes*
10 *any violation of, any provision of section 5314.*

11 “(B) *AMOUNT OF PENALTY.*—

12 “(i) *IN GENERAL.*—*Except as provided*
13 *in subparagraph (C), the amount of any*
14 *civil penalty imposed under subparagraph*
15 *(A) shall not exceed \$10,000.*

16 “(ii) *REASONABLE CAUSE EXCEP-*
17 *TION.*—*No penalty shall be imposed under*
18 *subparagraph (A) with respect to any viola-*
19 *tion if—*

20 “(I) *such violation was due to*
21 *reasonable cause, and*

22 “(II) *the amount of the trans-*
23 *action or the balance in the account at*
24 *the time of the transaction was prop-*
25 *erly reported.*

1 “(C) *WILLFUL VIOLATIONS.*—*In the case of*
2 *any person willfully violating, or willfully caus-*
3 *ing any violation of, any provision of section*
4 *5314—*

5 “(i) *the maximum penalty under sub-*
6 *paragraph (B)(i) shall be increased to the*
7 *greater of—*

8 “(I) *\$100,000, or*

9 “(II) *50 percent of the amount de-*
10 *termined under subparagraph (D), and*

11 “(ii) *subparagraph (B)(ii) shall not*
12 *apply.*

13 “(D) *AMOUNT.*—*The amount determined*
14 *under this subparagraph is—*

15 “(i) *in the case of a violation involving*
16 *a transaction, the amount of the trans-*
17 *action, or*

18 “(ii) *in the case of a violation involv-*
19 *ing a failure to report the existence of an*
20 *account or any identifying information re-*
21 *quired to be provided with respect to an ac-*
22 *count, the balance in the account at the*
23 *time of the violation.”.*

1 (b) *EFFECTIVE DATE.*—*The amendment made by this*
2 *section shall apply to violations occurring after the date of*
3 *the enactment of this Act.*

4 **SEC. 413. FRIVOLOUS TAX SUBMISSIONS.**

5 (a) *CIVIL PENALTIES.*—*Section 6702 is amended to*
6 *read as follows:*

7 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

8 “(a) *CIVIL PENALTY FOR FRIVOLOUS TAX RE-*
9 *TURNS.*—*A person shall pay a penalty of \$5,000 if—*

10 “(1) *such person files what purports to be a re-*
11 *turn of a tax imposed by this title but which—*

12 “(A) *does not contain information on which*
13 *the substantial correctness of the self-assessment*
14 *may be judged, or*

15 “(B) *contains information that on its face*
16 *indicates that the self-assessment is substantially*
17 *incorrect; and*

18 “(2) *the conduct referred to in paragraph (1)—*

19 “(A) *is based on a position which the Sec-*
20 *retary has identified as frivolous under sub-*
21 *section (c), or*

22 “(B) *reflects a desire to delay or impede the*
23 *administration of Federal tax laws.*

24 “(b) *CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUB-*
25 *MISSIONS.*—

1 “(1) *IMPOSITION OF PENALTY.*—*Except as pro-*
2 *vided in paragraph (3), any person who submits a*
3 *specified frivolous submission shall pay a penalty of*
4 *\$5,000.*

5 “(2) *SPECIFIED FRIVOLOUS SUBMISSION.*—*For*
6 *purposes of this section—*

7 “(A) *SPECIFIED FRIVOLOUS SUBMISSION.*—
8 *The term ‘specified frivolous submission’ means*
9 *a specified submission if any portion of such*
10 *submission—*

11 *“(i) is based on a position which the*
12 *Secretary has identified as frivolous under*
13 *subsection (c), or*

14 *“(ii) reflects a desire to delay or im-*
15 *pede the administration of Federal tax*
16 *laws.*

17 “(B) *SPECIFIED SUBMISSION.*—*The term*
18 *‘specified submission’ means—*

19 *“(i) a request for a hearing under—*

20 *“(I) section 6320 (relating to no-*
21 *tice and opportunity for hearing upon*
22 *filing of notice of lien), or*

23 *“(II) section 6330 (relating to no-*
24 *tice and opportunity for hearing before*
25 *levy), and*

1 “(ii) an application under—

2 “(I) section 6159 (relating to
3 agreements for payment of tax liability
4 in installments),

5 “(II) section 7122 (relating to
6 compromises), or

7 “(III) section 7811 (relating to
8 taxpayer assistance orders).

9 “(3) *OPPORTUNITY TO WITHDRAW SUBMIS-*
10 *SION.—If the Secretary provides a person with notice*
11 *that a submission is a specified frivolous submission*
12 *and such person withdraws such submission within*
13 *30 days after such notice, the penalty imposed under*
14 *paragraph (1) shall not apply with respect to such*
15 *submission.*

16 “(c) *LISTING OF FRIVOLOUS POSITIONS.—The Sec-*
17 *retary shall prescribe (and periodically revise) a list of posi-*
18 *tions which the Secretary has identified as being frivolous*
19 *for purposes of this subsection. The Secretary shall not in-*
20 *clude in such list any position that the Secretary deter-*
21 *mines meets the requirement of section*
22 *6662(d)(2)(B)(ii)(II).*

23 “(d) *REDUCTION OF PENALTY.—The Secretary may*
24 *reduce the amount of any penalty imposed under this sec-*
25 *tion if the Secretary determines that such reduction would*

1 *promote compliance with and administration of the Federal*
2 *tax laws.*

3 “(e) *PENALTIES IN ADDITION TO OTHER PEN-*
4 *ALTIES.—The penalties imposed by this section shall be in*
5 *addition to any other penalty provided by law.”.*

6 (b) *TREATMENT OF FRIVOLOUS REQUESTS FOR HEAR-*
7 *INGS BEFORE LEVY.—*

8 (1) *FRIVOLOUS REQUESTS DISREGARDED.—Sec-*
9 *tion 6330 (relating to notice and opportunity for*
10 *hearing before levy) is amended by adding at the end*
11 *the following new subsection:*

12 “(g) *FRIVOLOUS REQUESTS FOR HEARING, ETC.—Not-*
13 *withstanding any other provision of this section, if the Sec-*
14 *retary determines that any portion of a request for a hear-*
15 *ing under this section or section 6320 meets the requirement*
16 *of clause (i) or (ii) of section 6702(b)(2)(A), then the Sec-*
17 *retary may treat such portion as if it were never submitted*
18 *and such portion shall not be subject to any further admin-*
19 *istrative or judicial review.”.*

20 (2) *PRECLUSION FROM RAISING FRIVOLOUS*
21 *ISSUES AT HEARING.—Section 6330(c)(4) is*
22 *amended—*

23 (A) *by striking “(A)” and inserting*
24 *“(A)(i)”;*

25 (B) *by striking “(B)” and inserting “(ii)”;*

1 (C) by striking the period at the end of the
2 first sentence and inserting “; or”; and

3 (D) by inserting after subparagraph (A)(ii)
4 (as so redesignated) the following:

5 “(B) the issue meets the requirement of
6 clause (i) or (ii) of section 6702(b)(2)(A).”.

7 (3) STATEMENT OF GROUNDS.—Section
8 6330(b)(1) is amended by striking “under subsection
9 (a)(3)(B)” and inserting “in writing under subsection
10 (a)(3)(B) and states the grounds for the requested
11 hearing”.

12 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEAR-
13 INGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is
14 amended—

15 (1) in subsection (b)(1), by striking “under sub-
16 section (a)(3)(B)” and inserting “in writing under
17 subsection (a)(3)(B) and states the grounds for the re-
18 quested hearing”, and

19 (2) in subsection (c), by striking “and (e)” and
20 inserting “(e), and (g)”.

21 (d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR
22 OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-
23 MENTS.—Section 7122 is amended by adding at the end
24 the following new subsection:

1 “(e) *FRIVOLOUS SUBMISSIONS, ETC.*—Notwith-
2 *standing any other provision of this section, if the Secretary*
3 *determines that any portion of an application for an offer-*
4 *in-compromise or installment agreement submitted under*
5 *this section or section 6159 meets the requirement of clause*
6 *(i) or (ii) of section 6702(b)(2)(A), then the Secretary may*
7 *treat such portion as if it were never submitted and such*
8 *portion shall not be subject to any further administrative*
9 *or judicial review.”.*

10 (e) *CLERICAL AMENDMENT.*—*The table of sections for*
11 *part I of subchapter B of chapter 68 is amended by striking*
12 *the item relating to section 6702 and inserting the following*
13 *new item:*

“Sec. 6702. Frivolous tax submissions.”.

14 (f) *EFFECTIVE DATE.*—*The amendments made by this*
15 *section shall apply to submissions made and issues raised*
16 *after the date on which the Secretary first prescribes a list*
17 *under section 6702(c) of the Internal Revenue Code of 1986,*
18 *as amended by subsection (a).*

19 **SEC. 414. REGULATION OF INDIVIDUALS PRACTICING BE-**
20 **FORE THE DEPARTMENT OF TREASURY.**

21 (a) *CENSURE; IMPOSITION OF PENALTY.*—

22 (1) *IN GENERAL.*—*Section 330(b) of title 31,*
23 *United States Code, is amended—*

24 (A) *by inserting “, or censure,” after “De-*
25 *partment”, and*

1 (B) by adding at the end the following new
2 flush sentence:

3 *“The Secretary may impose a monetary penalty on any*
4 *representative described in the preceding sentence. If the*
5 *representative was acting on behalf of an employer or any*
6 *firm or other entity in connection with the conduct giving*
7 *rise to such penalty, the Secretary may impose a monetary*
8 *penalty on such employer, firm, or entity if it knew, or*
9 *reasonably should have known, of such conduct. Such pen-*
10 *alty shall not exceed the gross income derived (or to be de-*
11 *rived) from the conduct giving rise to the penalty and may*
12 *be in addition to, or in lieu of, any suspension, disbarment,*
13 *or censure of the representative.”.*

14 (2) *EFFECTIVE DATE.*—*The amendments made*
15 *by this subsection shall apply to actions taken after*
16 *the date of the enactment of this Act.*

17 (b) *TAX SHELTER OPINIONS, ETC.*—*Section 330 of*
18 *such title 31 is amended by adding at the end the following*
19 *new subsection:*

20 *“(d) Nothing in this section or in any other provision*
21 *of law shall be construed to limit the authority of the Sec-*
22 *retary of the Treasury to impose standards applicable to*
23 *the rendering of written advice with respect to any entity,*
24 *transaction plan or arrangement, or other plan or arrange-*

1 *ment, which is of a type which the Secretary determines*
 2 *as having a potential for tax avoidance or evasion.”.*

3 **SEC. 415. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-**
 4 **TERS.**

5 *(a) PENALTY FOR PROMOTING ABUSIVE TAX SHEL-*
 6 *TERS.—Section 6700 (relating to promoting abusive tax*
 7 *shelters, etc.) is amended—*

8 *(1) by redesignating subsections (b) and (c) as*
 9 *subsections (d) and (e), respectively,*

10 *(2) by striking “a penalty” and all that follows*
 11 *through the period in the first sentence of subsection*
 12 *(a) and inserting “a penalty determined under sub-*
 13 *section (b)”, and*

14 *(3) by inserting after subsection (a) the following*
 15 *new subsections:*

16 *“(b) AMOUNT OF PENALTY; CALCULATION OF PEN-*
 17 *ALTY; LIABILITY FOR PENALTY.—*

18 *“(1) AMOUNT OF PENALTY.—The amount of the*
 19 *penalty imposed by subsection (a) shall not exceed*
 20 *100 percent of the gross income derived (or to be de-*
 21 *derived) from such activity by the person or persons*
 22 *subject to such penalty.*

23 *“(2) CALCULATION OF PENALTY.—The penalty*
 24 *amount determined under paragraph (1) shall be cal-*
 25 *culated with respect to each instance of an activity*

1 described in subsection (a), each instance in which in-
2 come was derived by the person or persons subject to
3 such penalty, and each person who participated in
4 such an activity.

5 “(3) *LIABILITY FOR PENALTY.*—If more than 1
6 person is liable under subsection (a) with respect to
7 such activity, all such persons shall be jointly and
8 severally liable for the penalty under such subsection.

9 “(c) *PENALTY NOT DEDUCTIBLE.*—The payment of
10 any penalty imposed under this section or the payment of
11 any amount to settle or avoid the imposition of such pen-
12 alty shall not be deductible by the person who is subject
13 to such penalty or who makes such payment.”.

14 (b) *EFFECTIVE DATE.*—The amendments made by this
15 section shall apply to activities after the date of the enact-
16 ment of this Act.

17 **SEC. 416. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**
18 **FOR WHICH REQUIRED LISTED TRANS-**
19 **ACTIONS NOT REPORTED.**

20 (a) *IN GENERAL.*—Section 6501(c) (relating to excep-
21 tions) is amended by adding at the end the following new
22 paragraph:

23 “(10) *LISTED TRANSACTIONS.*—If a taxpayer
24 fails to include on any return or statement for any
25 taxable year any information with respect to a listed

1 *transaction (as defined in section 6707A(c)(2)) which*
 2 *is required under section 6011 to be included with*
 3 *such return or statement, the time for assessment of*
 4 *any tax imposed by this title with respect to such*
 5 *transaction shall not expire before the date which is*
 6 *1 year after the earlier of—*

7 *“(A) the date on which the Secretary is fur-*
 8 *nished the information so required; or*

9 *“(B) the date that a material advisor (as*
 10 *defined in section 6111) meets the requirements*
 11 *of section 6112 with respect to a request by the*
 12 *Secretary under section 6112(b) relating to such*
 13 *transaction with respect to such taxpayer.”.*

14 *(b) EFFECTIVE DATE.—The amendment made by this*
 15 *section shall apply to taxable years with respect to which*
 16 *the period for assessing a deficiency did not expire before*
 17 *the date of the enactment of this Act.*

18 **SEC. 417. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
 19 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**
 20 **CLOSED REPORTABLE AND NONECONOMIC**
 21 **SUBSTANCE TRANSACTIONS.**

22 *(a) IN GENERAL.—Section 163 (relating to deduction*
 23 *for interest) is amended by redesignating subsection (m) as*
 24 *subsection (n) and by inserting after subsection (l) the fol-*
 25 *lowing new subsection:*

1 “(m) *INTEREST ON UNPAID TAXES ATTRIBUTABLE TO*
 2 *NONDISCLOSED REPORTABLE TRANSACTIONS AND NON-*
 3 *ECONOMIC SUBSTANCE TRANSACTIONS.*—*No deduction shall*
 4 *be allowed under this chapter for any interest paid or ac-*
 5 *crued under section 6601 on any underpayment of tax*
 6 *which is attributable to—*

7 “(1) *the portion of any reportable transaction*
 8 *understatement (as defined in section 6662A(b)) with*
 9 *respect to which the requirement of section*
 10 *6664(d)(2)(A) is not met, or*

11 “(2) *any noneconomic substance transaction un-*
 12 *derstatement (as defined in section 6662B(c)).”.*

13 “(b) *EFFECTIVE DATE.*—*The amendments made by this*
 14 *section shall apply to transactions in taxable years begin-*
 15 *ning after the date of the enactment of this Act.*

16 **SEC. 418. AUTHORIZATION OF APPROPRIATIONS FOR TAX**
 17 **LAW ENFORCEMENT.**

18 *There is authorized to be appropriated \$300,000,000*
 19 *for each fiscal year beginning after September 30, 2003, for*
 20 *the purpose of carrying out tax law enforcement to combat*
 21 *tax avoidance transactions and other tax shelters, including*
 22 *the use of offshore financial accounts to conceal taxable in-*
 23 *come.*

1 **SEC. 419. PENALTY FOR AIDING AND ABETTING THE UN-**
2 **DERSTATEMENT OF TAX LIABILITY.**

3 (a) *IN GENERAL.*—Section 6701(a) (relating to im-
4 position of penalty) is amended—

5 (1) by inserting “the tax liability or” after “re-
6 spect to,” in paragraph (1),

7 (2) by inserting “aid, assistance, procurement,
8 or advice with respect to such” before “portion” both
9 places it appears in paragraphs (2) and (3), and

10 (3) by inserting “instance of aid, assistance, pro-
11 curement, or advice or each such” before “document”
12 in the matter following paragraph (3).

13 (b) *AMOUNT OF PENALTY.*—Subsection (b) of section
14 6701 (relating to penalties for aiding and abetting under-
15 statement of tax liability) is amended to read as follows:

16 “(b) *AMOUNT OF PENALTY; CALCULATION OF PEN-*
17 *ALTY; LIABILITY FOR PENALTY.*—

18 “(1) *AMOUNT OF PENALTY.*—The amount of the
19 penalty imposed by subsection (a) shall not exceed
20 100 percent of the gross income derived (or to be de-
21 rived) from such aid, assistance, procurement, or ad-
22 vice provided by the person or persons subject to such
23 penalty.

24 “(2) *CALCULATION OF PENALTY.*—The penalty
25 amount determined under paragraph (1) shall be cal-
26 culated with respect to each instance of aid, assist-

1 *ance, procurement, or advice described in subsection*
2 *(a), each instance in which income was derived by the*
3 *person or persons subject to such penalty, and each*
4 *person who made such an understatement of the li-*
5 *ability for tax.*

6 *“(3) LIABILITY FOR PENALTY.—If more than 1*
7 *person is liable under subsection (a) with respect to*
8 *providing such aid, assistance, procurement, or ad-*
9 *vice, all such persons shall be jointly and severally*
10 *liable for the penalty under such subsection.”.*

11 *(c) PENALTY NOT DEDUCTIBLE.—Section 6701 is*
12 *amended by adding at the end the following new subsection:*

13 *“(g) PENALTY NOT DEDUCTIBLE.—The payment of*
14 *any penalty imposed under this section or the payment of*
15 *any amount to settle or avoid the imposition of such pen-*
16 *alty shall not be deductible by the person who is subject*
17 *to such penalty or who makes such payment.”.*

18 *(d) EFFECTIVE DATE.—The amendments made by this*
19 *section shall apply to activities after the date of the enact-*
20 *ment of this Act.*

21 **SEC. 420. STUDY ON INFORMATION SHARING AMONG LAW**
22 **ENFORCEMENT AGENCIES.**

23 *(a) STUDY.—The Secretary of the Treasury shall,*
24 *jointly with the Attorney General, the Securities and Ex-*
25 *change Commission, and the Commissioner of Internal Rev-*

1 enue, study the effectiveness of, and ways to improve, the
 2 sharing of information related to the promotion of prohib-
 3 ited tax shelters or tax avoidance schemes and other poten-
 4 tial violations of Federal laws.

5 (b) *REPORT.*—The Secretary shall, not later than 1
 6 year after the date of the enactment of this Act, report to
 7 the appropriate committees of the Congress the results of
 8 the study under subsection (a), including any recommenda-
 9 tions for legislation.

10 ***Subtitle B—Other Corporate***
 11 ***Governance Provisions***

12 ***SEC. 421. AFFIRMATION OF CONSOLIDATED RETURN REGU-***
 13 ***LATION AUTHORITY.***

14 (a) *IN GENERAL.*—Section 1502 (relating to consoli-
 15 dated return regulations) is amended by adding at the end
 16 the following new sentence: “In prescribing such regula-
 17 tions, the Secretary may prescribe rules applicable to cor-
 18 porations filing consolidated returns under section 1501
 19 that are different from other provisions of this title that
 20 would apply if such corporations filed separate returns.”.

21 (b) *RESULT NOT OVERTURNED.*—Notwithstanding
 22 subsection (a), the Internal Revenue Code of 1986 shall be
 23 construed by treating Treasury regulation §1.1502-
 24 20(c)(1)(iii) (as in effect on January 1, 2001) as being in-

1 *applicable to the type of factual situation in 255 F.3d 1357*
2 *(Fed. Cir. 2001).*

3 (c) *EFFECTIVE DATE.*—*The provisions of this section*
4 *shall apply to taxable years beginning before, on, or after*
5 *the date of the enactment of this Act.*

6 **SEC. 422. DECLARATION BY CHIEF EXECUTIVE OFFICER RE-**
7 **LATING TO FEDERAL ANNUAL INCOME TAX**
8 **RETURN OF A CORPORATION.**

9 (a) *IN GENERAL.*—*The Federal annual tax return of*
10 *a corporation with respect to income shall also include a*
11 *declaration signed by the chief executive officer of such cor-*
12 *poration (or other such officer of the corporation as the Sec-*
13 *retary of the Treasury may designate if the corporation does*
14 *not have a chief executive officer), under penalties of per-*
15 *jury, that the corporation has in place processes and proce-*
16 *dures to ensure that such return complies with the Internal*
17 *Revenue Code of 1986 and that the chief executive officer*
18 *was provided reasonable assurance of the accuracy of all*
19 *material aspects of such return. The preceding sentence*
20 *shall not apply to any return of a regulated investment*
21 *company (within the meaning of section 851 of such Code).*

22 (b) *EFFECTIVE DATE.*—*This section shall apply to the*
23 *Federal annual tax return of a corporation with respect to*
24 *income for taxable years ending after the date of the enact-*
25 *ment of this Act.*

1 **SEC. 423. DENIAL OF DEDUCTION FOR CERTAIN FINES, PEN-**
2 **ALTIES, AND OTHER AMOUNTS.**

3 (a) *IN GENERAL.*—Subsection (f) of section 162 (relat-
4 *ing to trade or business expenses*) is amended to read as
5 *follows:*

6 “(f) *FINES, PENALTIES, AND OTHER AMOUNTS.*—

7 “(1) *IN GENERAL.*—Except as provided in para-
8 *graph (2), no deduction otherwise allowable shall be*
9 *allowed under this chapter for any amount paid or*
10 *incurred (whether by suit, agreement, or otherwise)*
11 *to, or at the direction of, a government or entity de-*
12 *scribed in paragraph (4) in relation to the violation*
13 *of any law or the investigation or inquiry by such*
14 *government or entity into the potential violation of*
15 *any law.*

16 “(2) *EXCEPTION FOR AMOUNTS CONSTITUTING*
17 *RESTITUTION.*—Paragraph (1) shall not apply to any
18 *amount which the taxpayer establishes constitutes res-*
19 *titution (including remediation of property) for dam-*
20 *age or harm caused by or which may be caused by*
21 *the violation of any law or the potential violation of*
22 *any law. This paragraph shall not apply to any*
23 *amount paid or incurred as reimbursement to the*
24 *government or entity for the costs of any investigation*
25 *or litigation.*

1 “(3) *EXCEPTION FOR AMOUNTS PAID OR IN-*
2 *CURRED AS THE RESULT OF CERTAIN COURT OR-*
3 *DEERS.—Paragraph (1) shall not apply to any*
4 *amount paid or incurred by order of a court in a suit*
5 *in which no government or entity described in para-*
6 *graph (4) is a party.*

7 “(4) *CERTAIN NONGOVERNMENTAL REGULATORY*
8 *ENTITIES.—An entity is described in this paragraph*
9 *if it is—*

10 “(A) *a nongovernmental entity which exer-*
11 *cises self-regulatory powers (including imposing*
12 *sanctions) in connection with a qualified board*
13 *or exchange (as defined in section 1256(g)(7)), or*

14 “(B) *to the extent provided in regulations,*
15 *a nongovernmental entity which exercises self-*
16 *regulatory powers (including imposing sanc-*
17 *tions) as part of performing an essential govern-*
18 *mental function.*

19 “(5) *EXCEPTION FOR TAXES DUE.—Paragraph*
20 *(1) shall not apply to any amount paid or incurred*
21 *as taxes due.”.*

22 “(b) *EFFECTIVE DATE.—The amendment made by this*
23 *section shall apply to amounts paid or incurred after April*
24 *27, 2003, except that such amendment shall not apply to*
25 *amounts paid or incurred under any binding order or*

1 *agreement entered into on or before April 27, 2003. Such*
 2 *exception shall not apply to an order or agreement requir-*
 3 *ing court approval unless the approval was obtained on or*
 4 *before April 27, 2003.*

5 **SEC. 424. DISALLOWANCE OF DEDUCTION FOR PUNITIVE**
 6 **DAMAGES.**

7 *(a) DISALLOWANCE OF DEDUCTION.—*

8 *(1) IN GENERAL.—Section 162(g) (relating to*
 9 *treble damage payments under the antitrust laws) is*
 10 *amended—*

11 *(A) by redesignating paragraphs (1) and*
 12 *(2) as subparagraphs (A) and (B), respectively,*
 13 *(B) by striking “If” and inserting:*

14 *“(1) TREBLE DAMAGES.—If”, and*

15 *(C) by adding at the end the following new*
 16 *paragraph:*

17 *“(2) PUNITIVE DAMAGES.—No deduction shall be*
 18 *allowed under this chapter for any amount paid or*
 19 *incurred for punitive damages in connection with*
 20 *any judgment in, or settlement of, any action. This*
 21 *paragraph shall not apply to punitive damages de-*
 22 *scribed in section 104(c).”.*

23 *(2) CONFORMING AMENDMENT.—The heading for*
 24 *section 162(g) is amended by inserting “OR PUNITIVE*
 25 *DAMAGES” after “LAWS”.*

1 (b) *INCLUSION IN INCOME OF PUNITIVE DAMAGES*
2 *PAID BY INSURER OR OTHERWISE.*—

3 (1) *IN GENERAL.*—*Part II of subchapter B of*
4 *chapter 1 (relating to items specifically included in*
5 *gross income) is amended by adding at the end the*
6 *following new section:*

7 **“SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSUR-**
8 **ANCE OR OTHERWISE.**

9 “*Gross income shall include any amount paid to or*
10 *on behalf of a taxpayer as insurance or otherwise by reason*
11 *of the taxpayer’s liability (or agreement) to pay punitive*
12 *damages.*”.

13 (2) *REPORTING REQUIREMENTS.*—*Section 6041*
14 *(relating to information at source) is amended by*
15 *adding at the end the following new subsection:*

16 “(f) *SECTION TO APPLY TO PUNITIVE DAMAGES COM-*
17 *PENSATION.*—*This section shall apply to payments by a*
18 *person to or on behalf of another person as insurance or*
19 *otherwise by reason of the other person’s liability (or agree-*
20 *ment) to pay punitive damages.*”.

21 (3) *CONFORMING AMENDMENT.*—*The table of sec-*
22 *tions for part II of subchapter B of chapter 1 is*
23 *amended by adding at the end the following new item:*

“*Sec. 91. Punitive damages compensated by insurance or otherwise.*”.

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to damages paid or incurred on or after*
 3 *the date of the enactment of this Act.*

4 **SEC. 425. INCREASE IN CRIMINAL MONETARY PENALTY LIM-**
 5 **ITATION FOR THE UNDERPAYMENT OR OVER-**
 6 **PAYMENT OF TAX DUE TO FRAUD.**

7 (a) *IN GENERAL.*—*Section 7206 (relating to fraud and*
 8 *false statements) is amended—*

9 (1) *by striking “Any person who—” and insert-*
 10 *ing “(a) IN GENERAL.—Any person who—”, and*

11 (2) *by adding at the end the following new sub-*
 12 *section:*

13 “(b) *INCREASE IN MONETARY LIMITATION FOR UN-*
 14 *DERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—*
 15 *If any portion of any underpayment (as defined in section*
 16 *6664(a)) or overpayment (as defined in section 6401(a)) of*
 17 *tax required to be shown on a return is attributable to*
 18 *fraudulent action described in subsection (a), the applicable*
 19 *dollar amount under subsection (a) shall in no event be less*
 20 *than an amount equal to such portion. A rule similar to*
 21 *the rule under section 6663(b) shall apply for purposes of*
 22 *determining the portion so attributable.”.*

23 (b) *INCREASE IN PENALTIES.*—

24 (1) *ATTEMPT TO EVADE OR DEFEAT TAX.*—*Sec-*
 25 *tion 7201 is amended—*

1 (A) by striking “\$100,000” and inserting
2 “\$250,000”,

3 (B) by striking “\$500,000” and inserting
4 “\$1,000,000”, and

5 (C) by striking “5 years” and inserting “10
6 years”.

7 (2) *WILLFUL FAILURE TO FILE RETURN, SUPPLY*
8 *INFORMATION, OR PAY TAX.*—Section 7203 is
9 amended—

10 (A) in the first sentence—

11 (i) by striking “misdemeanor” and in-
12 serting “felony”, and

13 (ii) by striking “1 year” and inserting
14 “10 years”, and

15 (B) by striking the third sentence.

16 (3) *FRAUD AND FALSE STATEMENTS.*—Section
17 7206(a) (as redesignated by subsection (a)) is
18 amended—

19 (A) by striking “\$100,000” and inserting
20 “\$250,000”,

21 (B) by striking “\$500,000” and inserting
22 “\$1,000,000”, and

23 (C) by striking “3 years” and inserting “5
24 years”.

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to underpayments and overpayments at-*
 3 *tributable to actions occurring after the date of the enact-*
 4 *ment of this Act.*

5 ***Subtitle C—Enron-Related Tax***
 6 ***Shelter Provisions***

7 ***SEC. 431. LIMITATION ON TRANSFER OR IMPORTATION OF***
 8 ***BUILT-IN LOSSES.***

9 (a) *IN GENERAL.*—*Section 362 (relating to basis to*
 10 *corporations) is amended by adding at the end the following*
 11 *new subsection:*

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

13 “(1) *LIMITATION ON IMPORTATION OF BUILT-IN*
 14 *LOSSES.*—

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

23 “(B) *PROPERTY DESCRIBED.*—*For purposes*
 24 *of subparagraph (A), property is described in*
 25 *this subparagraph if—*

1 “(i) gain or loss with respect to such
2 property is not subject to tax under this
3 subtitle in the hands of the transferor imme-
4 diately before the transfer, and

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

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

14 “(C) *IMPORTATION OF NET BUILT-IN*
15 *LOSS.—For purposes of subparagraph (A), there*
16 *is an importation of a net built-in loss in a*
17 *transaction if the transferee’s aggregate adjusted*
18 *bases of property described in subparagraph (B)*
19 *which is transferred in such transaction would*
20 *(but for this paragraph) exceed the fair market*
21 *value of such property immediately after such*
22 *transaction.*

23 “(2) *LIMITATION ON TRANSFER OF BUILT-IN*
24 *LOSSES IN SECTION 351 TRANSACTIONS.—*

25 “(A) *IN GENERAL.—If—*

1 “(i) property is transferred by a trans-
2 feror in any transaction which is described
3 in subsection (a) and which is not described
4 in paragraph (1) of this subsection, and

5 “(ii) the transferee’s aggregate adjusted
6 bases of such property so transferred would
7 (but for this paragraph) exceed the fair
8 market value of such property immediately
9 after such transaction,

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

15 “(B) ALLOCATION OF BASIS REDUCTION.—

16 The aggregate reduction in basis by reason of
17 subparagraph (A) shall be allocated among the
18 property so transferred in proportion to their re-
19 spective built-in losses immediately before the
20 transaction.

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

1 *erty to which subparagraph (A) does not apply*
2 *by reason of the preceding sentence, the trans-*
3 *feror's basis in the stock received for such prop-*
4 *erty shall not exceed its fair market value imme-*
5 *diately after the transfer.”.*

6 (b) *COMPARABLE TREATMENT WHERE LIQUIDA-*
7 *TION.—Paragraph (1) of section 334(b) (relating to liquida-*
8 *tion of subsidiary) is amended to read as follows:*

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

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

21 *“(B) in any case in which the liquidating*
22 *corporation is a foreign corporation, the cor-*
23 *porate distributee is a domestic corporation, and*
24 *the corporate distributee's aggregate adjusted*
25 *bases of property described in section*

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

5 (c) *EFFECTIVE DATES.*—

6 (1) *IN GENERAL.*—The amendment made by sub-
7 section (a) shall apply to transactions after December
8 31, 2003.

9 (2) *LIQUIDATIONS.*—The amendment made by
10 subsection (b) shall apply to liquidations after Decem-
11 ber 31, 2003.

12 **SEC. 432. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
13 **STOCK HELD BY PARTNERSHIP IN COR-**
14 **PORATE PARTNER.**

15 (a) *IN GENERAL.*—Section 755 is amended by adding
16 at the end the following new subsection:

17 “(c) *NO ALLOCATION OF BASIS DECREASE TO STOCK*
18 *OF CORPORATE PARTNER.*—In making an allocation under
19 subsection (a) of any decrease in the adjusted basis of part-
20 nership property under section 734(b)—

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

1 “(2) any amount not allocable to stock by reason
2 of paragraph (1) shall be allocated under subsection
3 (a) to other partnership property in such manner as
4 the Secretary may prescribe.

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

10 (b) *EFFECTIVE DATE.*—The amendment made by this
11 section shall apply to distributions after February 13, 2003.

12 **SEC. 433. REPEAL OF SPECIAL RULES FOR FASITS.**

13 (a) *IN GENERAL.*—Part V of subchapter M of chapter
14 1 (relating to financial asset securitization investment
15 trusts) is hereby repealed.

16 (b) *CONFORMING AMENDMENTS.*—

17 (1) Paragraph (6) of section 56(g) is amended by
18 striking “REMIC, or FASIT” and inserting “or
19 REMIC”.

20 (2) Clause (ii) of section 382(l)(4)(B) is amended
21 by striking “a REMIC to which part IV of subchapter
22 M applies, or a FASIT to which part V of subchapter
23 M applies,” and inserting “or a REMIC to which
24 part IV of subchapter M applies,”.

1 (3) Paragraph (1) of section 582(c) is amended
2 by striking “, and any regular interest in a FASIT,”.

3 (4) Subparagraph (E) of section 856(c)(5) is
4 amended by striking the last sentence.

5 (5)(A) Section 860G(a)(1) is amended by adding
6 at the end the following new sentence: “An interest
7 shall not fail to qualify as a regular interest solely be-
8 cause the specified principal amount of the regular
9 interest (or the amount of interest accrued on the reg-
10 ular interest) can be reduced as a result of the non-
11 occurrence of 1 or more contingent payments with re-
12 spect to any reverse mortgage loan held by the
13 REMIC if, on the startup day for the REMIC, the
14 sponsor reasonably believes that all principal and in-
15 terest due under the regular interest will be paid at
16 or prior to the liquidation of the REMIC.”.

17 (B) The last sentence of section 860G(a)(3) is
18 amended by inserting “, and any reverse mortgage
19 loan (and each balance increase on such loan meeting
20 the requirements of subparagraph (A)(iii)) shall be
21 treated as an obligation secured by an interest in real
22 property” before the period at the end.

23 (6) Paragraph (3) of section 860G(a) is amended
24 by adding “and” at the end of subparagraph (B), by

1 *striking “, and” at the end of subparagraph (C) and*
2 *inserting a period, and by striking subparagraph (D).*

3 *(7) Section 860G(a)(3), as amended by para-*
4 *graph (6), is amended by adding at the end the fol-*
5 *lowing new sentence: “For purposes of subparagraph*
6 *(A), if more than 50 percent of the obligations trans-*
7 *ferred to, or purchased by, the REMIC are originated*
8 *by the United States or any State (or any political*
9 *subdivision, agency, or instrumentality of the United*
10 *States or any State) and are principally secured by*
11 *an interest in real property, then each obligation*
12 *transferred to, or purchased by, the REMIC shall be*
13 *treated as secured by an interest in real property.”.*

14 *(8)(A) Section 860G(a)(3)(A) is amended by*
15 *striking “or” at the end of clause (i), by inserting*
16 *“or” at the end of clause (ii), and by inserting after*
17 *clause (ii) the following new clause:*

18 *“(iii) represents an increase in the*
19 *principal amount under the original terms*
20 *of an obligation described in clause (i) or*
21 *(ii) if such increase—*

22 *“(I) is attributable to an advance*
23 *made to the obligor pursuant to the*
24 *original terms of the obligation,*

1 “(II) occurs after the startup day,
2 and

3 “(III) is purchased by the REMIC
4 pursuant to a fixed price contract in
5 effect on the startup day.”.

6 (B) Section 860G(a)(7)(B) is amended to read as
7 follows:

8 “(B) QUALIFIED RESERVE FUND.—For pur-
9 poses of subparagraph (A), the term ‘qualified
10 reserve fund’ means any reasonably required re-
11 serve to—

12 “(i) provide for full payment of ex-
13 penses of the REMIC or amounts due on
14 regular interests in the event of defaults on
15 qualified mortgages or lower than expected
16 returns on cash flow investments, or

17 “(ii) provide a source of funds for the
18 purchase of obligations described in clause
19 (ii) or (iii) of paragraph (3)(A).

20 The aggregate fair market value of the assets held
21 in any such reserve shall not exceed 50 percent
22 of the aggregate fair market value of all of the
23 assets of the REMIC on the startup day, and the
24 amount of any such reserve shall be promptly
25 and appropriately reduced to the extent the

1 *amount held in such reserve is no longer reason-*
2 *ably required for purposes specified in clause (i)*
3 *or (ii) of this subparagraph.”.*

4 (9) *Subparagraph (C) of section 1202(e)(4) is*
5 *amended by striking “REMIC, or FASIT” and in-*
6 *serting “or REMIC”.*

7 (10) *Clause (xi) of section 7701(a)(19)(C) is*
8 *amended—*

9 (A) *by striking “and any regular interest in*
10 *a FASIT,” and*

11 (B) *by striking “or FASIT” each place it*
12 *appears.*

13 (11) *Subparagraph (A) of section 7701(i)(2) is*
14 *amended by striking “or a FASIT”.*

15 (12) *The table of parts for subchapter M of chap-*
16 *ter 1 is amended by striking the item relating to part*
17 *V.*

18 (c) *EFFECTIVE DATE.—*

19 (1) *IN GENERAL.—Except as provided in para-*
20 *graph (2), the amendments made by this section shall*
21 *take effect on February 14, 2003.*

22 (2) *EXCEPTION FOR EXISTING FASITS.—Para-*
23 *graph (1) shall not apply to any FASIT in existence*
24 *on the date of the enactment of this Act to the extent*
25 *that regular interests issued by the FASIT before such*

1 *date continue to remain outstanding in accordance*
 2 *with the original terms of issuance.*

3 **SEC. 434. EXPANDED DISALLOWANCE OF DEDUCTION FOR**
 4 ***INTEREST ON CONVERTIBLE DEBT.***

5 *(a) IN GENERAL.—Paragraph (2) of section 163(l) is*
 6 *amended by inserting “or equity held by the issuer (or any*
 7 *related party) in any other person” after “or a related*
 8 *party”.*

9 *(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQ-*
 10 *UITY OF PERSONS OTHER THAN ISSUER AND RELATED*
 11 *PARTIES.—Section 163(l) is amended by redesignating*
 12 *paragraphs (4) and (5) as paragraphs (5) and (6) and by*
 13 *inserting after paragraph (3) the following new paragraph:*

14 *“(4) CAPITALIZATION ALLOWED WITH RESPECT*
 15 *TO EQUITY OF PERSONS OTHER THAN ISSUER AND*
 16 *RELATED PARTIES.—If the disqualified debt instru-*
 17 *ment of a corporation is payable in equity held by the*
 18 *issuer (or any related party) in any other person*
 19 *(other than a related party), the basis of such equity*
 20 *shall be increased by the amount not allowed as a de-*
 21 *duction by reason of paragraph (1) with respect to*
 22 *the instrument.”.*

23 *(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED*
 24 *BY DEALERS IN SECURITIES.—Section 163(l), as amended*
 25 *by subsection (b), is amended by redesignating paragraphs*

1 (5) and (6) as paragraphs (6) and (7) and by inserting
2 after paragraph (4) the following new paragraph:

3 “(5) *EXCEPTION FOR CERTAIN INSTRUMENTS*
4 *ISSUED BY DEALERS IN SECURITIES.*—For purposes
5 of this subsection, the term ‘disqualified debt instru-
6 ment’ does not include indebtedness issued by a dealer
7 in securities (or a related party) which is payable in,
8 or by reference to, equity (other than equity of the
9 issuer or a related party) held by such dealer in its
10 capacity as a dealer in securities. For purposes of
11 this paragraph, the term ‘dealer in securities’ has the
12 meaning given such term by section 475.”.

13 (d) *CONFORMING AMENDMENTS.*—Paragraph (3) of
14 section 163(l) is amended—

15 (1) by striking “or a related party” in the mate-
16 rial preceding subparagraph (A) and inserting “or
17 any other person”, and

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

20 (e) *EFFECTIVE DATE.*—The amendments made by this
21 section shall apply to debt instruments issued after Feb-
22 ruary 13, 2003.

1 **SEC. 435. EXPANDED AUTHORITY TO DISALLOW TAX BENE-**
2 **FITS UNDER SECTION 269.**

3 (a) *IN GENERAL.*—Subsection (a) of section 269 (relat-
4 ing to acquisitions made to evade or avoid income tax) is
5 amended to read as follows:

6 “(a) *IN GENERAL.*—If—

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

9 “(B) any corporation acquires, directly or indi-
10 rectly, property of another corporation and the basis
11 of such property, in the hands of the acquiring cor-
12 poration, is determined by reference to the basis in
13 the hands of the transferor corporation, and

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

17 then the Secretary may disallow such deduction, credit, or
18 other allowance. For purposes of paragraph (1)(A), control
19 means the ownership of stock possessing at least 50 percent
20 of the total combined voting power of all classes of stock
21 entitled to vote or at least 50 percent of the total value of
22 all shares of all classes of stock of the corporation.”.

23 (b) *EFFECTIVE DATE.*—The amendment made by this
24 section shall apply to stock and property acquired after
25 February 13, 2003.

1 **SEC. 436. MODIFICATION OF INTERACTION BETWEEN SUB-**
2 **PART F AND PASSIVE FOREIGN INVESTMENT**
3 **COMPANY RULES.**

4 (a) *LIMITATION ON EXCEPTION FROM PFIC RULES*
5 *FOR UNITED STATES SHAREHOLDERS OF CONTROLLED*
6 *FOREIGN CORPORATIONS.*—Paragraph (2) of section
7 1297(e) (relating to passive foreign investment company)
8 is amended by adding at the end the following flush sen-
9 tence:

10 “Such term shall not include any period if the
11 earning of subpart F income by such corporation
12 during such period would result in only a remote
13 likelihood of an inclusion in gross income under
14 section 951(a)(1)(A)(i).”

15 (b) *EFFECTIVE DATE.*—The amendment made by this
16 section shall apply to taxable years of controlled foreign cor-
17 porations beginning after February 13, 2003, and to tax-
18 able years of United States shareholders with or within
19 which such taxable years of controlled foreign corporations
20 end.

1 ***Subtitle D—Provisions to***
2 ***Discourage Expatriation***

3 **SEC. 441. TAX TREATMENT OF INVERTED CORPORATE ENTI-**
4 **TIES.**

5 (a) *IN GENERAL.*—Subchapter C of chapter 80 (relat-
6 *ing to provisions affecting more than one subtitle) is*
7 *amended by adding at the end the following new section:*

8 **“SEC. 7874. RULES RELATING TO INVERTED CORPORATE**
9 **ENTITIES.**

10 “(a) *INVERTED CORPORATIONS TREATED AS DOMES-*
11 *TIC CORPORATIONS.*—

12 “(1) *IN GENERAL.*—If a foreign incorporated en-
13 *tity is treated as an inverted domestic corporation,*
14 *then, notwithstanding section 7701(a)(4), such entity*
15 *shall be treated for purposes of this title as a domestic*
16 *corporation.*

17 “(2) *INVERTED DOMESTIC CORPORATION.*—For
18 *purposes of this section, a foreign incorporated entity*
19 *shall be treated as an inverted domestic corporation*
20 *if, pursuant to a plan (or a series of related trans-*
21 *actions)—*

22 “(A) *the entity completes after March 20,*
23 *2002, the direct or indirect acquisition of sub-*
24 *stantially all of the properties held directly or*
25 *indirectly by a domestic corporation or substan-*

1 *tially all of the properties constituting a trade or*
2 *business of a domestic partnership,*

3 “(B) *after the acquisition at least 80 per-*
4 *cent of the stock (by vote or value) of the entity*
5 *is held—*

6 “(i) *in the case of an acquisition with*
7 *respect to a domestic corporation, by former*
8 *shareholders of the domestic corporation by*
9 *reason of holding stock in the domestic cor-*
10 *poration, or*

11 “(ii) *in the case of an acquisition with*
12 *respect to a domestic partnership, by former*
13 *partners of the domestic partnership by rea-*
14 *son of holding a capital or profits interest*
15 *in the domestic partnership, and*

16 “(C) *the expanded affiliated group which*
17 *after the acquisition includes the entity does not*
18 *have substantial business activities in the foreign*
19 *country in which or under the law of which the*
20 *entity is created or organized when compared to*
21 *the total business activities of such expanded af-*
22 *filiated group.*

23 *Except as provided in regulations, an acquisition of*
24 *properties of a domestic corporation shall not be*
25 *treated as described in subparagraph (A) if none of*

1 *the corporation's stock was readily tradeable on an es-*
2 *tablished securities market at any time during the 4-*
3 *year period ending on the date of the acquisition.*

4 *“(b) PRESERVATION OF DOMESTIC TAX BASE IN CER-*
5 *TAIN INVERSION TRANSACTIONS TO WHICH SUBSECTION*
6 *(a) DOES NOT APPLY.—*

7 *“(1) IN GENERAL.—If a foreign incorporated en-*
8 *tity would be treated as an inverted domestic corpora-*
9 *tion with respect to an acquired entity if either—*

10 *“(A) subsection (a)(2)(A) were applied by*
11 *substituting ‘after December 31, 1996, and on or*
12 *before March 20, 2002’ for ‘after March 20, 2002’*
13 *and subsection (a)(2)(B) were applied by sub-*
14 *stituting ‘more than 50 percent’ for ‘at least 80*
15 *percent’, or*

16 *“(B) subsection (a)(2)(B) were applied by*
17 *substituting ‘more than 50 percent’ for ‘at least*
18 *80 percent’,*

19 *then the rules of subsection (c) shall apply to any in-*
20 *version gain of the acquired entity during the appli-*
21 *cable period and the rules of subsection (d) shall*
22 *apply to any related party transaction of the ac-*
23 *quired entity during the applicable period. This sub-*
24 *section shall not apply for any taxable year if sub-*

1 *section (a) applies to such foreign incorporated entity*
2 *for such taxable year.*

3 *“(2) ACQUIRED ENTITY.—For purposes of this*
4 *section—*

5 *“(A) IN GENERAL.—The term ‘acquired en-*
6 *tity’ means the domestic corporation or partner-*
7 *ship substantially all of the properties of which*
8 *are directly or indirectly acquired in an acquisi-*
9 *tion described in subsection (a)(2)(A) to which*
10 *this subsection applies.*

11 *“(B) AGGREGATION RULES.—Any domestic*
12 *person bearing a relationship described in sec-*
13 *tion 267(b) or 707(b) to an acquired entity shall*
14 *be treated as an acquired entity with respect to*
15 *the acquisition described in subparagraph (A).*

16 *“(3) APPLICABLE PERIOD.—For purposes of this*
17 *section—*

18 *“(A) IN GENERAL.—The term ‘applicable*
19 *period’ means the period—*

20 *“(i) beginning on the first date prop-*
21 *erties are acquired as part of the acquisi-*
22 *tion described in subsection (a)(2)(A) to*
23 *which this subsection applies, and*

1 “(ii) ending on the date which is 10
2 years after the last date properties are ac-
3 quired as part of such acquisition.

4 “(B) SPECIAL RULE FOR INVERSIONS OC-
5 CURRING BEFORE MARCH 21, 2002.—In the case
6 of any acquired entity to which paragraph
7 (1)(A) applies, the applicable period shall be the
8 10-year period beginning on January 1, 2003.

9 “(c) TAX ON INVERSION GAINS MAY NOT BE OFF-
10 SET.—If subsection (b) applies—

11 “(1) IN GENERAL.—The taxable income of an ac-
12 quired entity (or any expanded affiliated group which
13 includes such entity) for any taxable year which in-
14 cludes any portion of the applicable period shall in
15 no event be less than the inversion gain of the entity
16 for the taxable year.

17 “(2) CREDITS NOT ALLOWED AGAINST TAX ON IN-
18 VERSION GAIN.—Credits shall be allowed against the
19 tax imposed by this chapter on an acquired entity for
20 any taxable year described in paragraph (1) only to
21 the extent such tax exceeds the product of—

22 “(A) the amount of the inversion gain for
23 the taxable year, and

24 “(B) the highest rate of tax specified in sec-
25 tion 11(b)(1).

1 *For purposes of determining the credit allowed by sec-*
2 *tion 901 inversion gain shall be treated as from*
3 *sources within the United States.*

4 “(3) *SPECIAL RULES FOR PARTNERSHIPS.—In*
5 *the case of an acquired entity which is a*
6 *partnership—*

7 “(A) *the limitations of this subsection shall*
8 *apply at the partner rather than the partnership*
9 *level,*

10 “(B) *the inversion gain of any partner for*
11 *any taxable year shall be equal to the sum of—*

12 “(i) *the partner’s distributive share of*
13 *inversion gain of the partnership for such*
14 *taxable year, plus*

15 “(ii) *income or gain required to be rec-*
16 *ognized for the taxable year by the partner*
17 *under section 367(a), 741, or 1001, or*
18 *under any other provision of chapter 1, by*
19 *reason of the transfer during the applicable*
20 *period of any partnership interest of the*
21 *partner in such partnership to the foreign*
22 *incorporated entity, and*

23 “(C) *the highest rate of tax specified in the*
24 *rate schedule applicable to the partner under*

1 *chapter 1 shall be substituted for the rate of tax*
2 *under paragraph (2)(B).*

3 “(4) *INVERSION GAIN.*—*For purposes of this sec-*
4 *tion, the term ‘inversion gain’ means any income or*
5 *gain required to be recognized under section 304,*
6 *311(b), 367, 1001, or 1248, or under any other provi-*
7 *sion of chapter 1, by reason of the transfer during the*
8 *applicable period of stock or other properties by an*
9 *acquired entity—*

10 “(A) *as part of the acquisition described in*
11 *subsection (a)(2)(A) to which subsection (b) ap-*
12 *plies, or*

13 “(B) *after such acquisition to a foreign re-*
14 *lated person.*

15 *The Secretary may provide that income or gain from*
16 *the sale of inventories or other transactions in the or-*
17 *inary course of a trade or business shall not be treat-*
18 *ed as inversion gain under subparagraph (B) to the*
19 *extent the Secretary determines such treatment would*
20 *not be inconsistent with the purposes of this section.*

21 “(5) *COORDINATION WITH SECTION 172 AND MIN-*
22 *IMUM TAX.*—*Rules similar to the rules of paragraphs*
23 *(3) and (4) of section 860E(a) shall apply for pur-*
24 *poses of this section.*

25 “(6) *STATUTE OF LIMITATIONS.*—

1 “(A) *IN GENERAL.*—*The statutory period*
2 *for the assessment of any deficiency attributable*
3 *to the inversion gain of any taxpayer for any*
4 *pre-inversion year shall not expire before the ex-*
5 *piration of 3 years from the date the Secretary*
6 *is notified by the taxpayer (in such manner as*
7 *the Secretary may prescribe) of the acquisition*
8 *described in subsection (a)(2)(A) to which such*
9 *gain relates and such deficiency may be assessed*
10 *before the expiration of such 3-year period not-*
11 *withstanding the provisions of any other law or*
12 *rule of law which would otherwise prevent such*
13 *assessment.*

14 “(B) *PRE-INVERSION YEAR.*—*For purposes*
15 *of subparagraph (A), the term ‘pre-inversion*
16 *year’ means any taxable year if—*

17 “(i) *any portion of the applicable pe-*
18 *riod is included in such taxable year, and*

19 “(ii) *such year ends before the taxable*
20 *year in which the acquisition described in*
21 *subsection (a)(2)(A) is completed.*

22 “(d) *SPECIAL RULES APPLICABLE TO ACQUIRED EN-*
23 *TITIES TO WHICH SUBSECTION (b) APPLIES.*—

1 “(1) *INCREASES IN ACCURACY-RELATED PEN-*
2 *ALTIES.—In the case of any underpayment of tax of*
3 *an acquired entity to which subsection (b) applies—*

4 “(A) *section 6662(a) shall be applied with*
5 *respect to such underpayment by substituting ‘30*
6 *percent’ for ‘20 percent’, and*

7 “(B) *if such underpayment is attributable*
8 *to one or more gross valuation understatements,*
9 *the increase in the rate of penalty under section*
10 *6662(h) shall be to 50 percent rather than 40*
11 *percent.*

12 “(2) *MODIFICATIONS OF LIMITATION ON INTER-*
13 *EST DEDUCTION.—In the case of an acquired entity*
14 *to which subsection (b) applies, section 163(j) shall be*
15 *applied—*

16 “(A) *without regard to paragraph (2)(A)(ii)*
17 *thereof, and*

18 “(B) *by substituting ‘25 percent’ for ‘50*
19 *percent’ each place it appears in paragraph*
20 *(2)(B) thereof.*

21 “(e) *OTHER DEFINITIONS AND SPECIAL RULES.—For*
22 *purposes of this section—*

23 “(1) *RULES FOR APPLICATION OF SUBSECTION*
24 *(a)(2).—In applying subsection (a)(2) for purposes of*

1 *subsections (a) and (b), the following rules shall*
2 *apply:*

3 “(A) *CERTAIN STOCK DISREGARDED.—*

4 *There shall not be taken into account in deter-*
5 *mining ownership for purposes of subsection*
6 *(a)(2)(B)—*

7 “(i) *stock held by members of the ex-*
8 *panded affiliated group which includes the*
9 *foreign incorporated entity, or*

10 “(ii) *stock of such entity which is sold*
11 *in a public offering or private placement re-*
12 *lated to the acquisition described in sub-*
13 *section (a)(2)(A).*

14 “(B) *PLAN DEEMED IN CERTAIN CASES.—If*
15 *a foreign incorporated entity acquires directly or*
16 *indirectly substantially all of the properties of a*
17 *domestic corporation or partnership during the*
18 *4-year period beginning on the date which is 2*
19 *years before the ownership requirements of sub-*
20 *section (a)(2)(B) are met with respect to such do-*
21 *mestic corporation or partnership, such actions*
22 *shall be treated as pursuant to a plan.*

23 “(C) *CERTAIN TRANSFERS DISREGARDED.—*

24 *The transfer of properties or liabilities (includ-*
25 *ing by contribution or distribution) shall be dis-*

1 *regarded if such transfers are part of a plan a*
2 *principal purpose of which is to avoid the pur-*
3 *poses of this section.*

4 “(D) *SPECIAL RULE FOR RELATED PART-*
5 *NERSHIPS.—For purposes of applying subsection*
6 *(a)(2) to the acquisition of a domestic partner-*
7 *ship, except as provided in regulations, all part-*
8 *nerships which are under common control (with-*
9 *in the meaning of section 482) shall be treated*
10 *as 1 partnership.*

11 “(E) *TREATMENT OF CERTAIN RIGHTS.—*
12 *The Secretary shall prescribe such regulations as*
13 *may be necessary—*

14 “(i) *to treat warrants, options, con-*
15 *tracts to acquire stock, convertible debt in-*
16 *struments, and other similar interests as*
17 *stock, and*

18 “(ii) *to treat stock as not stock.*

19 “(2) *EXPANDED AFFILIATED GROUP.—The term*
20 *‘expanded affiliated group’ means an affiliated group*
21 *as defined in section 1504(a) but without regard to*
22 *section 1504(b)(3), except that section 1504(a) shall*
23 *be applied by substituting ‘more than 50 percent’ for*
24 *‘at least 80 percent’ each place it appears.*

1 “(3) *FOREIGN INCORPORATED ENTITY.*—*The*
2 *term ‘foreign incorporated entity’ means any entity*
3 *which is, or but for subsection (a)(1) would be, treated*
4 *as a foreign corporation for purposes of this title.*

5 “(4) *FOREIGN RELATED PERSON.*—*The term ‘for-*
6 *ign related person’ means, with respect to any ac-*
7 *quired entity, a foreign person which—*

8 “(A) *bears a relationship to such entity de-*
9 *scribed in section 267(b) or 707(b), or*

10 “(B) *is under the same common control*
11 *(within the meaning of section 482) as such enti-*
12 *ty.*

13 “(5) *SUBSEQUENT ACQUISITIONS BY UNRELATED*
14 *DOMESTIC CORPORATIONS.*—

15 “(A) *IN GENERAL.*—*Subject to such condi-*
16 *tions, limitations, and exceptions as the Sec-*
17 *retary may prescribe, if, after an acquisition de-*
18 *scribed in subsection (a)(2)(A) to which sub-*
19 *section (b) applies, a domestic corporation stock*
20 *of which is traded on an established securities*
21 *market acquires directly or indirectly any prop-*
22 *erties of one or more acquired entities in a*
23 *transaction with respect to which the require-*
24 *ments of subparagraph (B) are met, this section*

1 *shall cease to apply to any such acquired entity*
2 *with respect to which such requirements are met.*

3 “(B) *REQUIREMENTS.*—*The requirements of*
4 *the subparagraph are met with respect to a*
5 *transaction involving any acquisition described*
6 *in subparagraph (A) if—*

7 “(i) *before such transaction the domes-*
8 *tic corporation did not have a relationship*
9 *described in section 267(b) or 707(b), and*
10 *was not under common control (within the*
11 *meaning of section 482), with the acquired*
12 *entity, or any member of an expanded af-*
13 *filiated group including such entity, and*

14 “(ii) *after such transaction, such ac-*
15 *quired entity—*

16 “(I) *is a member of the same ex-*
17 *anded affiliated group which includes*
18 *the domestic corporation or has such a*
19 *relationship or is under such common*
20 *control with any member of such*
21 *group, and*

22 “(II) *is not a member of, and does*
23 *not have such a relationship and is not*
24 *under such common control with any*
25 *member of, the expanded affiliated*

1 *group which before such acquisition in-*
2 *cluded such entity.*

3 “(f) *REGULATIONS.*—*The Secretary shall provide such*
4 *regulations as are necessary to carry out this section, in-*
5 *cluding regulations providing for such adjustments to the*
6 *application of this section as are necessary to prevent the*
7 *avoidance of the purposes of this section, including the*
8 *avoidance of such purposes through—*

9 “(1) *the use of related persons, pass-thru or other*
10 *noncorporate entities, or other intermediaries, or*

11 “(2) *transactions designed to have persons cease*
12 *to be (or not become) members of expanded affiliated*
13 *groups or related persons.”.*

14 (b) *INFORMATION REPORTING.*—*The Secretary of the*
15 *Treasury shall exercise the Secretary’s authority under the*
16 *Internal Revenue Code of 1986 to require entities involved*
17 *in transactions to which section 7874 of such Code (as*
18 *added by subsection (a)) applies to report to the Secretary,*
19 *shareholders, partners, and such other persons as the Sec-*
20 *retary may prescribe such information as is necessary to*
21 *ensure the proper tax treatment of such transactions.*

22 (c) *CONFORMING AMENDMENT.*—*The table of sections*
23 *for subchapter C of chapter 80 is amended by adding at*
24 *the end the following new item:*

 “Sec. 7874. *Rules relating to inverted corporate entities.*”.

1 (d) *TRANSITION RULE FOR CERTAIN REGULATED IN-*
2 *VESTMENT COMPANIES AND UNIT INVESTMENT TRUSTS.*—
3 *Notwithstanding section 7874 of the Internal Revenue Code*
4 *of 1986 (as added by subsection (a)), a regulated investment*
5 *company, or other pooled fund or trust specified by the Sec-*
6 *retary of the Treasury, may elect to recognize gain by rea-*
7 *son of section 367(a) of such Code with respect to a trans-*
8 *action under which a foreign incorporated entity is treated*
9 *as an inverted domestic corporation under section 7874(a)*
10 *of such Code by reason of an acquisition completed after*
11 *March 20, 2002, and before January 1, 2004.*

12 (e) *DISCLOSURE OF CORPORATE EXPATRIATION*
13 *TRANSACTIONS.*—

14 (1) *IN GENERAL.*—*Section 14 of the Securities*
15 *Exchange Act of 1934 (15 U.S.C. 78n) is amended by*
16 *adding at the end the following new subsection:*

17 “(i) *PROXY SOLICITATIONS IN CONNECTION WITH*
18 *CORPORATE EXPATRIATION TRANSACTIONS.*—

19 “(1) *DISCLOSURE TO SHAREHOLDERS OF EF-*
20 *FECTS OF CORPORATE EXPATRIATION TRANS-*
21 *ACTION.*—*The Commission shall, by rule, require that*
22 *each domestic issuer shall prominently disclose, not*
23 *later than 5 business days before any shareholder vote*
24 *relating to a corporate expatriation transaction, as a*

1 *separate and distinct document accompanying each*
2 *proxy statement relating to the transaction—*

3 “(A) *the number of employees of the domes-*
4 *tic issuer that would be located in the new for-*
5 *ign jurisdiction of incorporation or organiza-*
6 *tion of that issuer upon completion of the cor-*
7 *porate expatriation transaction;*

8 “(B) *how the rights of holders of the securi-*
9 *ties of the domestic issuer would be impacted by*
10 *a completed corporate expatriation transaction,*
11 *and any differences in such rights before and*
12 *after a completed corporate expatriation trans-*
13 *action; and*

14 “(C) *that, as a result of a completed cor-*
15 *porate expatriation transaction, any taxable*
16 *holder of the securities of the domestic issuer*
17 *shall be subject to the taxation of any capital*
18 *gains realized with respect to such securities,*
19 *and the amount of any such capital gains tax*
20 *that would apply as a result of the transaction.*

21 “(2) *DEFINITIONS.—In this subsection, the fol-*
22 *lowing definitions shall apply:*

23 “(A) *CORPORATE EXPATRIATION TRANS-*
24 *ACTION.—The term ‘corporate expatriation*
25 *transaction’ means any transaction, or series of*

1 *related transactions, described in subsection (a)*
2 *or (b) of section 7874 of the Internal Revenue*
3 *Code of 1986.*

4 “(A) *DOMESTIC ISSUER.*—*The term ‘domes-*
5 *tic issuer’ means an issuer created or organized*
6 *in the United States or under the law of the*
7 *United States or of any State.”*

8 (2) *EFFECTIVE DATE.*—*Section 14(i) of the Secu-*
9 *rities Exchange Act of 1934 (as added by this sub-*
10 *section) shall apply with respect to corporate expa-*
11 *triation transactions (as defined in that section 14(i))*
12 *proposed on and after the date of enactment of this*
13 *Act.*

14 **SEC. 442. IMPOSITION OF MARK-TO-MARKET TAX ON INDI-**
15 **VIDUALS WHO EXPATRIATE.**

16 (a) *IN GENERAL.*—*Subpart A of part II of subchapter*
17 *N of chapter 1 is amended by inserting after section 877*
18 *the following new section:*

19 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

20 “(a) *GENERAL RULES.*—*For purposes of this*
21 *subtitle—*

22 “(1) *MARK TO MARKET.*—*Except as provided in*
23 *subsections (d) and (f), all property of a covered expa-*
24 *triate to whom this section applies shall be treated as*

1 *sold on the day before the expatriation date for its*
2 *fair market value.*

3 “(2) *RECOGNITION OF GAIN OR LOSS.—In the*
4 *case of any sale under paragraph (1)—*

5 “(A) *notwithstanding any other provision of*
6 *this title, any gain arising from such sale shall*
7 *be taken into account for the taxable year of the*
8 *sale, and*

9 “(B) *any loss arising from such sale shall*
10 *be taken into account for the taxable year of the*
11 *sale to the extent otherwise provided by this title,*
12 *except that section 1091 shall not apply to any*
13 *such loss.*

14 *Proper adjustment shall be made in the amount of*
15 *any gain or loss subsequently realized for gain or loss*
16 *taken into account under the preceding sentence.*

17 “(3) *EXCLUSION FOR CERTAIN GAIN.—*

18 “(A) *IN GENERAL.—The amount which, but*
19 *for this paragraph, would be includible in the*
20 *gross income of any individual by reason of this*
21 *section shall be reduced (but not below zero) by*
22 *\$600,000. For purposes of this paragraph, allo-*
23 *cable expatriation gain taken into account under*
24 *subsection (f)(2) shall be treated in the same*

1 *manner as an amount required to be includible*
2 *in gross income.*

3 “(B) *COST-OF-LIVING ADJUSTMENT.*—

4 “(i) *IN GENERAL.*—*In the case of an*
5 *expatriation date occurring in any calendar*
6 *year after 2004, the \$600,000 amount under*
7 *subparagraph (A) shall be increased by an*
8 *amount equal to—*

9 “(I) *such dollar amount, multi-*
10 *plied by*

11 “(II) *the cost-of-living adjustment*
12 *determined under section 1(f)(3) for*
13 *such calendar year, determined by sub-*
14 *stituting ‘calendar year 2003’ for ‘cal-*
15 *endar year 1992’ in subparagraph (B)*
16 *thereof.*

17 “(ii) *ROUNDING RULES.*—*If any*
18 *amount after adjustment under clause (i) is*
19 *not a multiple of \$1,000, such amount shall*
20 *be rounded to the next lower multiple of*
21 *\$1,000.*

22 “(4) *ELECTION TO CONTINUE TO BE TAXED AS*
23 *UNITED STATES CITIZEN.*—

24 “(A) *IN GENERAL.*—*If a covered expatriate*
25 *elects the application of this paragraph—*

1 “(i) *this section (other than this para-*
2 *graph and subsection (i)) shall not apply to*
3 *the expatriate, but*

4 “(ii) *in the case of property to which*
5 *this section would apply but for such elec-*
6 *tion, the expatriate shall be subject to tax*
7 *under this title in the same manner as if*
8 *the individual were a United States citizen.*

9 “(B) *REQUIREMENTS.—Subparagraph (A)*
10 *shall not apply to an individual unless the*
11 *individual—*

12 “(i) *provides security for payment of*
13 *tax in such form and manner, and in such*
14 *amount, as the Secretary may require,*

15 “(ii) *consents to the waiver of any*
16 *right of the individual under any treaty of*
17 *the United States which would preclude as-*
18 *essment or collection of any tax which may*
19 *be imposed by reason of this paragraph,*
20 *and*

21 “(iii) *complies with such other require-*
22 *ments as the Secretary may prescribe.*

23 “(C) *ELECTION.—An election under sub-*
24 *paragraph (A) shall apply to all property to*
25 *which this section would apply but for the elec-*

1 tion and, once made, shall be irrevocable. Such
2 election shall also apply to property the basis of
3 which is determined in whole or in part by ref-
4 erence to the property with respect to which the
5 election was made.

6 “(b) *ELECTION TO DEFER TAX.*—

7 “(1) *IN GENERAL.*—If the taxpayer elects the ap-
8 plication of this subsection with respect to any prop-
9 erty treated as sold by reason of subsection (a), the
10 payment of the additional tax attributable to such
11 property shall be postponed until the due date of the
12 return for the taxable year in which such property is
13 disposed of (or, in the case of property disposed of in
14 a transaction in which gain is not recognized in
15 whole or in part, until such other date as the Sec-
16 retary may prescribe).

17 “(2) *DETERMINATION OF TAX WITH RESPECT TO*
18 *PROPERTY.*—For purposes of paragraph (1), the addi-
19 tional tax attributable to any property is an amount
20 which bears the same ratio to the additional tax im-
21 posed by this chapter for the taxable year solely by
22 reason of subsection (a) as the gain taken into ac-
23 count under subsection (a) with respect to such prop-
24 erty bears to the total gain taken into account under

1 *subsection (a) with respect to all property to which*
2 *subsection (a) applies.*

3 “(3) *TERMINATION OF POSTPONEMENT.—No tax*
4 *may be postponed under this subsection later than the*
5 *due date for the return of tax imposed by this chapter*
6 *for the taxable year which includes the date of death*
7 *of the expatriate (or, if earlier, the time that the secu-*
8 *rity provided with respect to the property fails to*
9 *meet the requirements of paragraph (4), unless the*
10 *taxpayer corrects such failure within the time speci-*
11 *fied by the Secretary).*

12 “(4) *SECURITY.—*

13 “(A) *IN GENERAL.—No election may be*
14 *made under paragraph (1) with respect to any*
15 *property unless adequate security is provided to*
16 *the Secretary with respect to such property.*

17 “(B) *ADEQUATE SECURITY.—For purposes*
18 *of subparagraph (A), security with respect to*
19 *any property shall be treated as adequate secu-*
20 *rity if—*

21 “(i) *it is a bond in an amount equal*
22 *to the deferred tax amount under paragraph*
23 *(2) for the property, or*

1 “(ii) the taxpayer otherwise establishes
2 to the satisfaction of the Secretary that the
3 security is adequate.

4 “(5) *WAIVER OF CERTAIN RIGHTS.*—No election
5 may be made under paragraph (1) unless the tax-
6 payer consents to the waiver of any right under any
7 treaty of the United States which would preclude as-
8 sessment or collection of any tax imposed by reason
9 of this section.

10 “(6) *ELECTIONS.*—An election under paragraph
11 (1) shall only apply to property described in the elec-
12 tion and, once made, is irrevocable. An election may
13 be made under paragraph (1) with respect to an in-
14 terest in a trust with respect to which gain is re-
15 quired to be recognized under subsection (f)(1).

16 “(7) *INTEREST.*—For purposes of section 6601—

17 “(A) the last date for the payment of tax
18 shall be determined without regard to the election
19 under this subsection, and

20 “(B) section 6621(a)(2) shall be applied by
21 substituting ‘5 percentage points’ for ‘3 percent-
22 age points’ in subparagraph (B) thereof.

23 “(c) *COVERED EXPATRIATE.*—For purposes of this
24 section—

1 “(1) *IN GENERAL.*—*Except as provided in para-*
2 *graph (2), the term ‘covered expatriate’ means an ex-*
3 *patriate.*

4 “(2) *EXCEPTIONS.*—*An individual shall not be*
5 *treated as a covered expatriate if—*

6 “(A) *the individual—*

7 “(i) *became at birth a citizen of the*
8 *United States and a citizen of another*
9 *country and, as of the expatriation date,*
10 *continues to be a citizen of, and is taxed as*
11 *a resident of, such other country, and*

12 “(ii) *has not been a resident of the*
13 *United States (as defined in section*
14 *7701(b)(1)(A)(ii)) during the 5 taxable*
15 *years ending with the taxable year during*
16 *which the expatriation date occurs, or*

17 “(B)(i) *the individual’s relinquishment of*
18 *United States citizenship occurs before such indi-*
19 *vidual attains age 18½, and*

20 “(ii) *the individual has been a resident of*
21 *the United States (as so defined) for not more*
22 *than 5 taxable years before the date of relin-*
23 *quishment.*

24 “(d) *EXEMPT PROPERTY; SPECIAL RULES FOR PEN-*
25 *SION PLANS.*—

1 “(1) *EXEMPT PROPERTY.*—*This section shall not*
2 *apply to the following:*

3 “(A) *UNITED STATES REAL PROPERTY IN-*
4 *TERESTS.*—*Any United States real property in-*
5 *terest (as defined in section 897(c)(1)), other*
6 *than stock of a United States real property hold-*
7 *ing corporation which does not, on the day before*
8 *the expatriation date, meet the requirements of*
9 *section 897(c)(2).*

10 “(B) *SPECIFIED PROPERTY.*—*Any property*
11 *or interest in property not described in subpara-*
12 *graph (A) which the Secretary specifies in regu-*
13 *lations.*

14 “(2) *SPECIAL RULES FOR CERTAIN RETIREMENT*
15 *PLANS.*—

16 “(A) *IN GENERAL.*—*If a covered expatriate*
17 *holds on the day before the expatriation date any*
18 *interest in a retirement plan to which this para-*
19 *graph applies—*

20 “(i) *such interest shall not be treated*
21 *as sold for purposes of subsection (a)(1), but*

22 “(ii) *an amount equal to the present*
23 *value of the expatriate’s nonforfeitable ac-*
24 *crued benefit shall be treated as having been*

1 *received by such individual on such date as*
2 *a distribution under the plan.*

3 “(B) *TREATMENT OF SUBSEQUENT DIS-*
4 *TRIBUTIONS.—In the case of any distribution on*
5 *or after the expatriation date to or on behalf of*
6 *the covered expatriate from a plan from which*
7 *the expatriate was treated as receiving a dis-*
8 *tribution under subparagraph (A), the amount*
9 *otherwise includible in gross income by reason of*
10 *the subsequent distribution shall be reduced by*
11 *the excess of the amount includible in gross in-*
12 *come under subparagraph (A) over any portion*
13 *of such amount to which this subparagraph pre-*
14 *viously applied.*

15 “(C) *TREATMENT OF SUBSEQUENT DIS-*
16 *TRIBUTIONS BY PLAN.—For purposes of this title,*
17 *a retirement plan to which this paragraph ap-*
18 *plies, and any person acting on the plan’s behalf,*
19 *shall treat any subsequent distribution described*
20 *in subparagraph (B) in the same manner as*
21 *such distribution would be treated without re-*
22 *gard to this paragraph.*

23 “(D) *APPLICABLE PLANS.—This paragraph*
24 *shall apply to—*

1 “(i) any qualified retirement plan (as
2 defined in section 4974(c)),

3 “(ii) an eligible deferred compensation
4 plan (as defined in section 457(b)) of an el-
5 igible employer described in section
6 457(e)(1)(A), and

7 “(iii) to the extent provided in regula-
8 tions, any foreign pension plan or similar
9 retirement arrangements or programs.

10 “(e) DEFINITIONS.—For purposes of this section—

11 “(1) EXPATRIATE.—The term ‘expatriate’
12 means—

13 “(A) any United States citizen who relin-
14 quishes citizenship, and

15 “(B) any long-term resident of the United
16 States who—

17 “(i) ceases to be a lawful permanent
18 resident of the United States (within the
19 meaning of section 7701(b)(6)), or

20 “(ii) commences to be treated as a resi-
21 dent of a foreign country under the provi-
22 sions of a tax treaty between the United
23 States and the foreign country and who
24 does not waive the benefits of such treaty

1 *applicable to residents of the foreign coun-*
2 *try.*

3 “(2) *EXPATRIATION DATE.*—*The term ‘expatria-*
4 *tion date’ means—*

5 “(A) *the date an individual relinquishes*
6 *United States citizenship, or*

7 “(B) *in the case of a long-term resident of*
8 *the United States, the date of the event described*
9 *in clause (i) or (ii) of paragraph (1)(B).*

10 “(3) *RELINQUISHMENT OF CITIZENSHIP.*—*A cit-*
11 *izen shall be treated as relinquishing United States*
12 *citizenship on the earliest of—*

13 “(A) *the date the individual renounces such*
14 *individual’s United States nationality before a*
15 *diplomatic or consular officer of the United*
16 *States pursuant to paragraph (5) of section*
17 *349(a) of the Immigration and Nationality Act*
18 *(8 U.S.C. 1481(a)(5)),*

19 “(B) *the date the individual furnishes to the*
20 *United States Department of State a signed*
21 *statement of voluntary relinquishment of United*
22 *States nationality confirming the performance of*
23 *an act of expatriation specified in paragraph*
24 *(1), (2), (3), or (4) of section 349(a) of the Im-*

1 *migration and Nationality Act (8 U.S.C.*
2 *1481(a)(1)–(4)),*

3 *“(C) the date the United States Department*
4 *of State issues to the individual a certificate of*
5 *loss of nationality, or*

6 *“(D) the date a court of the United States*
7 *cancels a naturalized citizen’s certificate of natu-*
8 *ralization.*

9 *Subparagraph (A) or (B) shall not apply to any in-*
10 *dividual unless the renunciation or voluntary relin-*
11 *quishment is subsequently approved by the issuance to*
12 *the individual of a certificate of loss of nationality by*
13 *the United States Department of State.*

14 *“(4) LONG-TERM RESIDENT.—The term ‘long-*
15 *term resident’ has the meaning given to such term by*
16 *section 877(e)(2).*

17 *“(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES’*
18 *INTERESTS IN TRUST.—*

19 *“(1) IN GENERAL.—Except as provided in para-*
20 *graph (2), if an individual is determined under para-*
21 *graph (3) to hold an interest in a trust on the day*
22 *before the expatriation date—*

23 *“(A) the individual shall not be treated as*
24 *having sold such interest,*

1 “(B) such interest shall be treated as a sep-
2 arate share in the trust, and

3 “(C)(i) such separate share shall be treated
4 as a separate trust consisting of the assets allo-
5 cable to such share,

6 “(ii) the separate trust shall be treated as
7 having sold its assets on the day before the expa-
8 triation date for their fair market value and as
9 having distributed all of its assets to the indi-
10 vidual as of such time, and

11 “(iii) the individual shall be treated as hav-
12 ing recontributed the assets to the separate trust.

13 Subsection (a)(2) shall apply to any income, gain, or
14 loss of the individual arising from a distribution de-
15 scribed in subparagraph (C)(ii). In determining the
16 amount of such distribution, proper adjustments shall
17 be made for liabilities of the trust allocable to an in-
18 dividual’s share in the trust.

19 “(2) SPECIAL RULES FOR INTERESTS IN QUALI-
20 FIED TRUSTS.—

21 “(A) IN GENERAL.—If the trust interest de-
22 scribed in paragraph (1) is an interest in a
23 qualified trust—

24 “(i) paragraph (1) and subsection (a)
25 shall not apply, and

1 “(i) in addition to any other tax im-
2 posed by this title, there is hereby imposed
3 on each distribution with respect to such in-
4 terest a tax in the amount determined
5 under subparagraph (B).

6 “(B) AMOUNT OF TAX.—The amount of tax
7 under subparagraph (A)(i) shall be equal to the
8 lesser of—

9 “(i) the highest rate of tax imposed by
10 section 1(e) for the taxable year which in-
11 cludes the day before the expatriation date,
12 multiplied by the amount of the distribu-
13 tion, or

14 “(ii) the balance in the deferred tax ac-
15 count immediately before the distribution
16 determined without regard to any increases
17 under subparagraph (C)(i) after the 30th
18 day preceding the distribution.

19 “(C) DEFERRED TAX ACCOUNT.—For pur-
20 poses of subparagraph (B)(i)—

21 “(i) OPENING BALANCE.—The opening
22 balance in a deferred tax account with re-
23 spect to any trust interest is an amount
24 equal to the tax which would have been im-
25 posed on the allocable expatriation gain

1 *with respect to the trust interest if such*
2 *gain had been included in gross income*
3 *under subsection (a).*

4 “(ii) *INCREASE FOR INTEREST.—The*
5 *balance in the deferred tax account shall be*
6 *increased by the amount of interest deter-*
7 *mined (on the balance in the account at the*
8 *time the interest accrues), for periods after*
9 *the 90th day after the expatriation date, by*
10 *using the rates and method applicable*
11 *under section 6621 for underpayments of*
12 *tax for such periods, except that section*
13 *6621(a)(2) shall be applied by substituting*
14 *‘5 percentage points’ for ‘3 percentage*
15 *points’ in subparagraph (B) thereof.*

16 “(iii) *DECREASE FOR TAXES PRE-*
17 *VIOUSLY PAID.—The balance in the tax de-*
18 *ferred account shall be reduced—*

19 “(I) *by the amount of taxes im-*
20 *posed by subparagraph (A) on any dis-*
21 *tribution to the person holding the*
22 *trust interest, and*

23 “(II) *in the case of a person hold-*
24 *ing a nonvested interest, to the extent*
25 *provided in regulations, by the amount*

1 of taxes imposed by subparagraph (A)
2 on distributions from the trust with re-
3 spect to nonvested interests not held by
4 such person.

5 “(D) *ALLOCABLE EXPATRIATION GAIN.*—For
6 purposes of this paragraph, the allocable expa-
7 triation gain with respect to any beneficiary’s
8 interest in a trust is the amount of gain which
9 would be allocable to such beneficiary’s vested
10 and nonvested interests in the trust if the bene-
11 ficiary held directly all assets allocable to such
12 interests.

13 “(E) *TAX DEDUCTED AND WITHHELD.*—

14 “(i) *IN GENERAL.*—The tax imposed by
15 subparagraph (A)(i) shall be deducted and
16 withheld by the trustees from the distribu-
17 tion to which it relates.

18 “(ii) *EXCEPTION WHERE FAILURE TO*
19 *WAIVE TREATY RIGHTS.*—If an amount may
20 not be deducted and withheld under clause
21 (i) by reason of the distributee failing to
22 waive any treaty right with respect to such
23 distribution—

24 “(I) the tax imposed by subpara-
25 graph (A)(i) shall be imposed on the

1 *trust and each trustee shall be person-*
2 *ally liable for the amount of such tax,*
3 *and*

4 “(II) *any other beneficiary of the*
5 *trust shall be entitled to recover from*
6 *the distributee the amount of such tax*
7 *imposed on the other beneficiary.*

8 “(F) *DISPOSITION.—If a trust ceases to be*
9 *a qualified trust at any time, a covered expa-*
10 *triate disposes of an interest in a qualified trust,*
11 *or a covered expatriate holding an interest in a*
12 *qualified trust dies, then, in lieu of the tax im-*
13 *posed by subparagraph (A)(ii), there is hereby*
14 *imposed a tax equal to the lesser of—*

15 “(i) *the tax determined under para-*
16 *graph (1) as if the day before the expatria-*
17 *tion date were the date of such cessation,*
18 *disposition, or death, whichever is applica-*
19 *ble, or*

20 “(ii) *the balance in the tax deferred ac-*
21 *count immediately before such date.*

22 *Such tax shall be imposed on the trust and each*
23 *trustee shall be personally liable for the amount*
24 *of such tax and any other beneficiary of the trust*
25 *shall be entitled to recover from the covered expa-*

1 *triate or the estate the amount of such tax im-*
2 *posed on the other beneficiary.*

3 “(G) *DEFINITIONS AND SPECIAL RULES.—*

4 *For purposes of this paragraph—*

5 “(i) *QUALIFIED TRUST.—The term*
6 *‘qualified trust’ means a trust which is de-*
7 *scribed in section 7701(a)(30)(E).*

8 “(ii) *VESTED INTEREST.—The term*
9 *‘vested interest’ means any interest which,*
10 *as of the day before the expatriation date, is*
11 *vested in the beneficiary.*

12 “(iii) *NONVESTED INTEREST.—The*
13 *term ‘nonvested interest’ means, with re-*
14 *spect to any beneficiary, any interest in a*
15 *trust which is not a vested interest. Such*
16 *interest shall be determined by assuming the*
17 *maximum exercise of discretion in favor of*
18 *the beneficiary and the occurrence of all*
19 *contingencies in favor of the beneficiary.*

20 “(iv) *ADJUSTMENTS.—The Secretary*
21 *may provide for such adjustments to the*
22 *bases of assets in a trust or a deferred tax*
23 *account, and the timing of such adjust-*
24 *ments, in order to ensure that gain is taxed*
25 *only once.*

1 “(v) *COORDINATION WITH RETIREMENT*
2 *PLAN RULES.*—*This subsection shall not*
3 *apply to an interest in a trust which is*
4 *part of a retirement plan to which sub-*
5 *section (d)(2) applies.*

6 “(3) *DETERMINATION OF BENEFICIARIES’ INTER-*
7 *EST IN TRUST.*—

8 “(A) *DETERMINATIONS UNDER PARAGRAPH*
9 *(1).*—*For purposes of paragraph (1), a bene-*
10 *ficiary’s interest in a trust shall be based upon*
11 *all relevant facts and circumstances, including*
12 *the terms of the trust instrument and any letter*
13 *of wishes or similar document, historical pat-*
14 *terns of trust distributions, and the existence of*
15 *and functions performed by a trust protector or*
16 *any similar adviser.*

17 “(B) *OTHER DETERMINATIONS.*—*For pur-*
18 *poses of this section—*

19 “(i) *CONSTRUCTIVE OWNERSHIP.*—*If a*
20 *beneficiary of a trust is a corporation, part-*
21 *nership, trust, or estate, the shareholders,*
22 *partners, or beneficiaries shall be deemed to*
23 *be the trust beneficiaries for purposes of this*
24 *section.*

1 “(ii) *TAXPAYER RETURN POSITION.*—A
2 *taxpayer shall clearly indicate on its in-*
3 *come tax return—*

4 “(I) *the methodology used to de-*
5 *termine that taxpayer’s trust interest*
6 *under this section, and*

7 “(II) *if the taxpayer knows (or*
8 *has reason to know) that any other*
9 *beneficiary of such trust is using a dif-*
10 *ferent methodology to determine such*
11 *beneficiary’s trust interest under this*
12 *section.*

13 “(g) *TERMINATION OF DEFERRALS, ETC.*—*In the case*
14 *of any covered expatriate, notwithstanding any other provi-*
15 *sion of this title—*

16 “(1) *any period during which recognition of in-*
17 *come or gain is deferred shall terminate on the day*
18 *before the expatriation date, and*

19 “(2) *any extension of time for payment of tax*
20 *shall cease to apply on the day before the expatriation*
21 *date and the unpaid portion of such tax shall be due*
22 *and payable at the time and in the manner pre-*
23 *scribed by the Secretary.*

24 “(h) *IMPOSITION OF TENTATIVE TAX.*—

1 “(1) *IN GENERAL.*—If an individual is required
2 to include any amount in gross income under sub-
3 section (a) for any taxable year, there is hereby im-
4 posed, immediately before the expatriation date, a tax
5 in an amount equal to the amount of tax which
6 would be imposed if the taxable year were a short tax-
7 able year ending on the expatriation date.

8 “(2) *DUE DATE.*—The due date for any tax im-
9 posed by paragraph (1) shall be the 90th day after the
10 expatriation date.

11 “(3) *TREATMENT OF TAX.*—Any tax paid under
12 paragraph (1) shall be treated as a payment of the
13 tax imposed by this chapter for the taxable year to
14 which subsection (a) applies.

15 “(4) *DEFERRAL OF TAX.*—The provisions of sub-
16 section (b) shall apply to the tax imposed by this sub-
17 section to the extent attributable to gain includible in
18 gross income by reason of this section.

19 “(i) *SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.*—

20 “(1) *IMPOSITION OF LIEN.*—

21 “(A) *IN GENERAL.*—If a covered expatriate
22 makes an election under subsection (a)(4) or (b)
23 which results in the deferral of any tax imposed
24 by reason of subsection (a), the deferred amount
25 (including any interest, additional amount, ad-

1 *dition to tax, assessable penalty, and costs at-*
2 *tributable to the deferred amount) shall be a lien*
3 *in favor of the United States on all property of*
4 *the expatriate located in the United States (with-*
5 *out regard to whether this section applies to the*
6 *property).*

7 “(B) *DEFERRED AMOUNT.*—*For purposes of*
8 *this subsection, the deferred amount is the*
9 *amount of the increase in the covered expatri-*
10 *ate’s income tax which, but for the election under*
11 *subsection (a)(4) or (b), would have occurred by*
12 *reason of this section for the taxable year includ-*
13 *ing the expatriation date.*

14 “(2) *PERIOD OF LIEN.*—*The lien imposed by this*
15 *subsection shall arise on the expatriation date and*
16 *continue until—*

17 “(A) *the liability for tax by reason of this*
18 *section is satisfied or has become unenforceable*
19 *by reason of lapse of time, or*

20 “(B) *it is established to the satisfaction of*
21 *the Secretary that no further tax liability may*
22 *arise by reason of this section.*

23 “(3) *CERTAIN RULES APPLY.*—*The rules set forth*
24 *in paragraphs (1), (3), and (4) of section 6324A(d)*
25 *shall apply with respect to the lien imposed by this*

1 *subsection as if it were a lien imposed by section*
2 *6324A.*

3 “(j) *REGULATIONS.*—*The Secretary shall prescribe*
4 *such regulations as may be necessary or appropriate to*
5 *carry out the purposes of this section.*”.

6 (b) *INCLUSION IN INCOME OF GIFTS AND BEQUESTS*
7 *RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS*
8 *FROM EXPATRIATES.*—*Section 102 (relating to gifts, etc.*
9 *not included in gross income) is amended by adding at the*
10 *end the following new subsection:*

11 “(d) *GIFTS AND INHERITANCES FROM COVERED EX-*
12 *PATRIATES.*—

13 “(1) *IN GENERAL.*—*Subsection (a) shall not ex-*
14 *clude from gross income the value of any property ac-*
15 *quired by gift, bequest, devise, or inheritance from a*
16 *covered expatriate after the expatriation date. For*
17 *purposes of this subsection, any term used in this sub-*
18 *section which is also used in section 877A shall have*
19 *the same meaning as when used in section 877A.*

20 “(2) *EXCEPTIONS FOR TRANSFERS OTHERWISE*
21 *SUBJECT TO ESTATE OR GIFT TAX.*—*Paragraph (1)*
22 *shall not apply to any property if either—*

23 “(A) *the gift, bequest, devise, or inheritance*
24 *is—*

1 “(i) shown on a timely filed return of
2 tax imposed by chapter 12 as a taxable gift
3 by the covered expatriate, or

4 “(ii) included in the gross estate of the
5 covered expatriate for purposes of chapter
6 11 and shown on a timely filed return of
7 tax imposed by chapter 11 of the estate of
8 the covered expatriate, or

9 “(B) no such return was timely filed but no
10 such return would have been required to be filed
11 even if the covered expatriate were a citizen or
12 long-term resident of the United States.”.

13 (c) *DEFINITION OF TERMINATION OF UNITED STATES*
14 *CITIZENSHIP.*—Section 7701(a) is amended by adding at
15 *the end the following new paragraph:*

16 “(48) *TERMINATION OF UNITED STATES CITIZEN-*
17 *SHIP.*—

18 “(A) *IN GENERAL.*—An individual shall not
19 cease to be treated as a United States citizen be-
20 fore the date on which the individual’s citizen-
21 ship is treated as relinquished under section
22 877A(e)(3).

23 “(B) *DUAL CITIZENS.*—Under regulations
24 prescribed by the Secretary, subparagraph (A)
25 shall not apply to an individual who became at

1 *birth a citizen of the United States and a citizen*
2 *of another country.”.*

3 (d) *INELIGIBILITY FOR VISA OR ADMISSION TO*
4 *UNITED STATES.—*

5 (1) *IN GENERAL.—Section 212(a)(10)(E) of the*
6 *Immigration and Nationality Act (8 U.S.C.*
7 *1182(a)(10)(E)) is amended to read as follows:*

8 “(E) *FORMER CITIZENS NOT IN COMPLI-*
9 *ANCE WITH EXPATRIATION REVENUE PROVI-*
10 *SIONS.—Any alien who is a former citizen of the*
11 *United States who relinquishes United States*
12 *citizenship (within the meaning of section*
13 *877A(e)(3) of the Internal Revenue Code of 1986)*
14 *and who is not in compliance with section 877A*
15 *of such Code (relating to expatriation).”.*

16 (2) *AVAILABILITY OF INFORMATION.—*

17 (A) *IN GENERAL.—Section 6103(l) (relating*
18 *to disclosure of returns and return information*
19 *for purposes other than tax administration) is*
20 *amended by adding at the end the following new*
21 *paragraph:*

22 “(19) *DISCLOSURE TO DENY VISA OR ADMISSION*
23 *TO CERTAIN EXPATRIATES.—Upon written request of*
24 *the Attorney General or the Attorney General’s dele-*
25 *gate, the Secretary shall disclose whether an indi-*

1 *vidual is in compliance with section 877A (and if not*
2 *in compliance, any items of noncompliance) to offi-*
3 *cers and employees of the Federal agency responsible*
4 *for administering section 212(a)(10)(E) of the Immi-*
5 *gration and Nationality Act solely for the purpose of,*
6 *and to the extent necessary in, administering such*
7 *section 212(a)(10)(E).”.*

8 (B) *SAFEGUARDS.—*

9 (i) *TECHNICAL AMENDMENTS.—Para-*
10 *graph (4) of section 6103(p) of the Internal*
11 *Revenue Code of 1986, as amended by sec-*
12 *tion 202(b)(2)(B) of the Trade Act of 2002*
13 *(Public Law 107–210; 116 Stat. 961), is*
14 *amended by striking “or (17)” after “any*
15 *other person described in subsection (l)(16)”*
16 *each place it appears and inserting “or*
17 *(18)”.*

18 (ii) *CONFORMING AMENDMENTS.—Sec-*
19 *tion 6103(p)(4) (relating to safeguards), as*
20 *amended by clause (i), is amended by strik-*
21 *ing “or (18)” after “any other person de-*
22 *scribed in subsection (l)(16)” each place it*
23 *appears and inserting “(18), or (19)”.*

24 (3) *EFFECTIVE DATES.—*

1 (A) *IN GENERAL.*—*Except as provided in*
2 *subparagraph (B), the amendments made by this*
3 *subsection shall apply to individuals who relin-*
4 *quish United States citizenship on or after the*
5 *date of the enactment of this Act.*

6 (B) *TECHNICAL AMENDMENTS.*—*The*
7 *amendments made by paragraph (2)(B)(i) shall*
8 *take effect as if included in the amendments*
9 *made by section 202(b)(2)(B) of the Trade Act of*
10 *2002 (Public Law 107–210; 116 Stat. 961).*

11 (e) *CONFORMING AMENDMENTS.*—

12 (1) *Section 877 is amended by adding at the end*
13 *the following new subsection:*

14 “(g) *APPLICATION.*—*This section shall not apply to an*
15 *expatriate (as defined in section 877A(e)) whose expatria-*
16 *tion date (as so defined) occurs on or after January 1,*
17 *2004.”.*

18 (2) *Section 2107 is amended by adding at the*
19 *end the following new subsection:*

20 “(f) *APPLICATION.*—*This section shall not apply to*
21 *any expatriate subject to section 877A.”.*

22 (3) *Section 2501(a)(3) is amended by adding at*
23 *the end the following new subparagraph:*

1 “(F) *APPLICATION.*—*This paragraph shall*
2 *not apply to any expatriate subject to section*
3 *877A.*”.

4 (4)(A) *Paragraph (1) of section 6039G(d) is*
5 *amended by inserting “or 877A” after “section 877”.*

6 (B) *The second sentence of section 6039G(e) is*
7 *amended by inserting “or who relinquishes United*
8 *States citizenship (within the meaning of section*
9 *877A(e)(3))” after “877(a)”.*

10 (C) *Section 6039G(f) is amended by inserting*
11 *“or 877A(e)(2)(B)” after “877(e)(1)”.*

12 (f) *CLERICAL AMENDMENT.*—*The table of sections for*
13 *subpart A of part II of subchapter N of chapter 1 is amend-*
14 *ed by inserting after the item relating to section 877 the*
15 *following new item:*

“*Sec. 877A. Tax responsibilities of expatriation.*”.

16 (g) *EFFECTIVE DATE.*—

17 (1) *IN GENERAL.*—*Except as provided in this*
18 *subsection, the amendments made by this section shall*
19 *apply to expatriates (within the meaning of section*
20 *877A(e) of the Internal Revenue Code of 1986, as*
21 *added by this section) whose expatriation date (as so*
22 *defined) occurs on or after January 1, 2004.*

23 (2) *GIFTS AND BEQUESTS.*—*Section 102(d) of*
24 *the Internal Revenue Code of 1986 (as added by sub-*
25 *section (b)) shall apply to gifts and bequests received*

1 *on or after January 1, 2004, from an individual or*
 2 *the estate of an individual whose expatriation date*
 3 *(as so defined) occurs after such date.*

4 (3) *DUE DATE FOR TENTATIVE TAX.—The due*
 5 *date under section 877A(h)(2) of the Internal Revenue*
 6 *Code of 1986, as added by this section, shall in no*
 7 *event occur before the 90th day after the date of the*
 8 *enactment of this Act.*

9 **SEC. 443. EXCISE TAX ON STOCK COMPENSATION OF INSID-**
 10 **ERS IN INVERTED CORPORATIONS.**

11 (a) *IN GENERAL.—Subtitle D is amended by adding*
 12 *at the end the following new chapter:*

13 **“CHAPTER 48—STOCK COMPENSATION OF**
 14 **INSIDERS IN INVERTED CORPORATIONS**

“Sec. 5000A. Stock compensation of insiders in inverted corpora-
tions entities.

15 **“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN IN-**
 16 **VERTED CORPORATIONS.**

17 (a) *IMPOSITION OF TAX.—In the case of an indi-*
 18 *vidual who is a disqualified individual with respect to any*
 19 *inverted corporation, there is hereby imposed on such per-*
 20 *son a tax equal to 20 percent of the value (determined under*
 21 *subsection (b)) of the specified stock compensation held (di-*
 22 *rectly or indirectly) by or for the benefit of such individual*
 23 *or a member of such individual’s family (as defined in sec-*
 24 *tion 267) at any time during the 12-month period begin-*

1 *ning on the date which is 6 months before the inversion*
2 *date.*

3 “(b) *VALUE.—For purposes of subsection (a)—*

4 “(1) *IN GENERAL.—The value of specified stock*
5 *compensation shall be—*

6 “(A) *in the case of a stock option (or other*
7 *similar right) or any stock appreciation right,*
8 *the fair value of such option or right, and*

9 “(B) *in any other case, the fair market*
10 *value of such compensation.*

11 “(2) *DATE FOR DETERMINING VALUE.—The de-*
12 *termination of value shall be made—*

13 “(A) *in the case of specified stock compensa-*
14 *tion held on the inversion date, on such date,*

15 “(B) *in the case of such compensation which*
16 *is canceled during the 6 months before the inver-*
17 *sion date, on the day before such cancellation,*
18 *and*

19 “(C) *in the case of such compensation which*
20 *is granted after the inversion date, on the date*
21 *such compensation is granted.*

22 “(c) *TAX TO APPLY ONLY IF SHAREHOLDER GAIN*
23 *RECOGNIZED.—Subsection (a) shall apply to any disquali-*
24 *fied individual with respect to an inverted corporation only*
25 *if gain (if any) on any stock in such corporation is recog-*

1 nized in whole or part by any shareholder by reason of the
2 acquisition referred to in section 7874(a)(2)(A) (determined
3 by substituting ‘July 10, 2002’ for ‘March 20, 2002’) with
4 respect to such corporation.

5 “(d) *EXCEPTION WHERE GAIN RECOGNIZED ON COM-*
6 *PENSATION.*—Subsection (a) shall not apply to—

7 “(1) any stock option which is exercised on the
8 inversion date or during the 6-month period before
9 such date and to the stock acquired in such exercise,
10 if income is recognized under section 83 on or before
11 the inversion date with respect to the stock acquired
12 pursuant to such exercise, and

13 “(2) any specified stock compensation which is
14 exercised, sold, exchanged, distributed, cashed out, or
15 otherwise paid during such period in a transaction in
16 which gain or loss is recognized in full.

17 “(e) *DEFINITIONS.*—For purposes of this section—

18 “(1) *DISQUALIFIED INDIVIDUAL.*—The term ‘dis-
19 qualified individual’ means, with respect to a cor-
20 poration, any individual who, at any time during the
21 12-month period beginning on the date which is 6
22 months before the inversion date—

23 “(A) is subject to the requirements of section
24 16(a) of the Securities Exchange Act of 1934
25 with respect to such corporation, or

1 “(B) would be subject to such requirements
2 if such corporation were an issuer of equity secu-
3 rities referred to in such section.

4 “(2) *INVERTED CORPORATION; INVERSION*
5 *DATE.*—

6 “(A) *INVERTED CORPORATION.*—The term
7 ‘inverted corporation’ means any corporation to
8 which subsection (a) or (b) of section 7874 ap-
9 plies determined—

10 “(i) by substituting ‘July 10, 2002’ for
11 ‘March 20, 2002’ in section 7874(a)(2)(A),
12 and

13 “(ii) without regard to subsection
14 (b)(1)(A).

15 Such term includes any predecessor or successor
16 of such a corporation.

17 “(B) *INVERSION DATE.*—The term ‘inver-
18 sion date’ means, with respect to a corporation,
19 the date on which the corporation first becomes
20 an inverted corporation.

21 “(3) *SPECIFIED STOCK COMPENSATION.*—

22 “(A) *IN GENERAL.*—The term ‘specified
23 stock compensation’ means payment (or right to
24 payment) granted by the inverted corporation
25 (or by any member of the expanded affiliated

1 *group which includes such corporation) to any*
2 *person in connection with the performance of*
3 *services by a disqualified individual for such cor-*
4 *poration or member if the value of such payment*
5 *or right is based on (or determined by reference*
6 *to) the value (or change in value) of stock in*
7 *such corporation (or any such member).*

8 “(B) *EXCEPTIONS.*—*Such term shall not*
9 *include—*

10 “(i) *any option to which part II of*
11 *subchapter D of chapter 1 applies, or*

12 “(ii) *any payment or right to payment*
13 *from a plan referred to in section*
14 *280G(b)(6).*

15 “(4) *EXPANDED AFFILIATED GROUP.*—*The term*
16 *‘expanded affiliated group’ means an affiliated group*
17 *(as defined in section 1504(a) without regard to sec-*
18 *tion 1504(b)(3)); except that section 1504(a) shall be*
19 *applied by substituting ‘more than 50 percent’ for ‘at*
20 *least 80 percent’ each place it appears.*

21 “(f) *SPECIAL RULES.*—*For purposes of this section—*

22 “(1) *CANCELLATION OF RESTRICTION.*—*The can-*
23 *cancellation of a restriction which by its terms will never*
24 *lapse shall be treated as a grant.*

1 “(2) *PAYMENT OR REIMBURSEMENT OF TAX BY*
2 *CORPORATION TREATED AS SPECIFIED STOCK COM-*
3 *PENSATION.—Any payment of the tax imposed by this*
4 *section directly or indirectly by the inverted corpora-*
5 *tion or by any member of the expanded affiliated*
6 *group which includes such corporation—*

7 “(A) *shall be treated as specified stock com-*
8 *pensation, and*

9 “(B) *shall not be allowed as a deduction*
10 *under any provision of chapter 1.*

11 “(3) *CERTAIN RESTRICTIONS IGNORED.—Wheth-*
12 *er there is specified stock compensation, and the value*
13 *thereof, shall be determined without regard to any re-*
14 *striction other than a restriction which by its terms*
15 *will never lapse.*

16 “(4) *PROPERTY TRANSFERS.—Any transfer of*
17 *property shall be treated as a payment and any right*
18 *to a transfer of property shall be treated as a right*
19 *to a payment.*

20 “(5) *OTHER ADMINISTRATIVE PROVISIONS.—For*
21 *purposes of subtitle F, any tax imposed by this sec-*
22 *tion shall be treated as a tax imposed by subtitle A.*

23 “(g) *REGULATIONS.—The Secretary shall prescribe*
24 *such regulations as may be necessary or appropriate to*
25 *carry out the purposes of this section.”.*

1 **(b) DENIAL OF DEDUCTION.**—

2 **(1) IN GENERAL.**—*Paragraph (6) of section*
3 *275(a) is amended by inserting “48,” after “46,”.*

4 **(2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-**
5 **PENSATION REDUCED BY PAYMENT OF EXCISE TAX ON**
6 **SPECIFIED STOCK COMPENSATION.**—*Paragraph (4) of*
7 *section 162(m) is amended by adding at the end the*
8 *following new subparagraph:*

9 **“(G) COORDINATION WITH EXCISE TAX ON**
10 **SPECIFIED STOCK COMPENSATION.**—*The dollar*
11 *limitation contained in paragraph (1) with re-*
12 *spect to any covered employee shall be reduced*
13 *(but not below zero) by the amount of any pay-*
14 *ment (with respect to such employee) of the tax*
15 *imposed by section 5000A directly or indirectly*
16 *by the inverted corporation (as defined in such*
17 *section) or by any member of the expanded affili-*
18 *ated group (as defined in such section) which in-*
19 *cludes such corporation.”.*

20 **(c) CONFORMING AMENDMENTS.**—

21 **(1)** *The last sentence of section 3121(v)(2)(A) is*
22 *amended by inserting before the period “or to any*
23 *specified stock compensation (as defined in section*
24 *5000A) on which tax is imposed by section 5000A”.*

1 (2) *The table of chapters for subtitle D is amend-*
2 *ed by adding at the end the following new item:*

“Chapter 48. Stock compensation of insiders in inverted corpora-
tions.”.

3 (d) *EFFECTIVE DATE.*—*The amendments made by this*
4 *section shall take effect on July 11, 2002; except that periods*
5 *before such date shall not be taken into account in applying*
6 *the periods in subsections (a) and (e)(1) of section 5000A*
7 *of the Internal Revenue Code of 1986, as added by this sec-*
8 *tion.*

9 **SEC. 444. REINSURANCE OF UNITED STATES RISKS IN FOR-**
10 **EIGN JURISDICTIONS.**

11 (a) *IN GENERAL.*—*Section 845(a) (relating to alloca-*
12 *tion in case of reinsurance agreement involving tax avoid-*
13 *ance or evasion) is amended by striking “source and char-*
14 *acter” and inserting “amount, source, or character”.*

15 (b) *EFFECTIVE DATE.*—*The amendments made by this*
16 *section shall apply to any risk reinsured after April 11,*
17 *2002.*

18 **SEC. 445. REPORTING OF TAXABLE MERGERS AND ACQUI-**
19 **TIONS.**

20 (a) *IN GENERAL.*—*Subpart B of part III of subchapter*
21 *A of chapter 61 is amended by inserting after section 6043*
22 *the following new section:*

1 **“SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.**

2 “(a) *IN GENERAL.*—*The acquiring corporation in any*
3 *taxable acquisition shall make a return (according to the*
4 *forms or regulations prescribed by the Secretary) setting*
5 *forth—*

6 “(1) *a description of the acquisition,*

7 “(2) *the name and address of each shareholder of*
8 *the acquired corporation who is required to recognize*
9 *gain (if any) as a result of the acquisition,*

10 “(3) *the amount of money and the fair market*
11 *value of other property transferred to each such share-*
12 *holder as part of such acquisition, and*

13 “(4) *such other information as the Secretary*
14 *may prescribe.*

15 *To the extent provided by the Secretary, the requirements*
16 *of this section applicable to the acquiring corporation shall*
17 *be applicable to the acquired corporation and not to the*
18 *acquiring corporation.*

19 “(b) *NOMINEE REPORTING.*—*Any person who holds*
20 *stock as a nominee for another person shall furnish in the*
21 *manner prescribed by the Secretary to such other person*
22 *the information provided by the corporation under sub-*
23 *section (d).*

24 “(c) *TAXABLE ACQUISITION.*—*For purposes of this sec-*
25 *tion, the term ‘taxable acquisition’ means any acquisition*
26 *by a corporation of stock in or property of another corpora-*

1 *tion if any shareholder of the acquired corporation is re-*
2 *quired to recognize gain (if any) as a result of such acquisi-*
3 *tion.*

4 “(d) *STATEMENTS TO BE FURNISHED TO SHARE-*
5 *HOLDERS.*—*Every person required to make a return under*
6 *subsection (a) shall furnish to each shareholder whose name*
7 *is required to be set forth in such return a written statement*
8 *showing—*

9 “(1) *the name, address, and phone number of the*
10 *information contact of the person required to make*
11 *such return,*

12 “(2) *the information required to be shown on*
13 *such return with respect to such shareholder, and*

14 “(3) *such other information as the Secretary*
15 *may prescribe.*

16 *The written statement required under the preceding sen-*
17 *tence shall be furnished to the shareholder on or before Jan-*
18 *uary 31 of the year following the calendar year during*
19 *which the taxable acquisition occurred.”.*

20 (b) *ASSESSABLE PENALTIES.*—

21 (1) *Subparagraph (B) of section 6724(d)(1) (de-*
22 *fining information return) is amended by redesignig-*
23 *nating clauses (ii) through (xviii) as clauses (iii)*
24 *through (xix), respectively, and by inserting after*
25 *clause (i) the following new clause:*

1 “(ii) section 6043A(a) (relating to re-
2 turns relating to taxable mergers and acqui-
3 sitions),”.

4 (2) Paragraph (2) of section 6724(d) (relating to
5 definitions) is amended by redesignating subpara-
6 graphs (F) through (BB) as subparagraphs (G)
7 through (CC), respectively, and by inserting after sub-
8 paragraph (E) the following new subparagraph:

9 “(F) subsections (b) and (d) of section
10 6043A (relating to returns relating to taxable
11 mergers and acquisitions).”.

12 (c) CLERICAL AMENDMENT.—The table of sections for
13 subpart B of part III of subchapter A of chapter 61 is
14 amended by inserting after the item relating to section 6043
15 the following new item:

 “Sec. 6043A. Returns relating to taxable mergers and acqui-
 sitions.”.

16 (d) EFFECTIVE DATE.—The amendments made by this
17 section shall apply to acquisitions after the date of the en-
18 actment of this Act.

19 **Subtitle E—International Tax**

20 **SEC. 451. CLARIFICATION OF BANKING BUSINESS FOR PUR-** 21 **POSES OF DETERMINING INVESTMENT OF** 22 **EARNINGS IN UNITED STATES PROPERTY.**

23 (a) IN GENERAL.—Subparagraph (A) of section
24 956(c)(2) is amended to read as follows:

1 “(A) obligations of the United States,
2 money, or deposits with persons described in
3 paragraph (4);”.

4 (b) *ELIGIBLE PERSONS.*—Section 956(c) (relating to
5 exceptions to definition of United States property) is
6 amended by adding at the end the following new paragraph:

7 “(4) *FINANCIAL SERVICES PROVIDERS.*—

8 “(A) *IN GENERAL.*—For purposes of para-
9 graph (2)(A), a person is described in this para-
10 graph if at least 80 percent of the person’s in-
11 come is income described in section
12 904(d)(2)(C)(ii) (and the regulations thereunder)
13 which is derived from persons who are not re-
14 lated persons.

15 “(B) *SPECIAL RULES.*—For purposes of
16 subparagraph (A)—

17 “(i) all related persons shall be treated
18 as 1 person in applying the 80-percent test,
19 and

20 “(ii) there shall be disregarded any
21 item of income or gain from a transaction
22 or series of transactions a principal purpose
23 of which is the qualification of a person as
24 a person described in this paragraph.

1 “(C) *RELATED PERSON*.—For purposes of
2 this paragraph, the term ‘related person’ has the
3 meaning given such term by section 954(d)(3).”.

4 (c) *EFFECTIVE DATE*.—The amendments made by this
5 section shall take effect on the date of the enactment of this
6 Act.

7 **SEC. 452. PROHIBITION ON NONRECOGNITION OF GAIN**
8 **THROUGH COMPLETE LIQUIDATION OF**
9 **HOLDING COMPANY.**

10 (a) *IN GENERAL*.—Section 332 is amended by adding
11 at the end the following new subsection:

12 “(d) *RECOGNITION OF GAIN ON LIQUIDATION OF CER-*
13 *TAIN HOLDING COMPANIES*.—

14 “(1) *IN GENERAL*.—In the case of any distribu-
15 tion to a foreign corporation in complete liquidation
16 of an applicable holding company—

17 “(A) subsection (a) and section 331 shall
18 not apply to such distribution, and

19 “(B) such distribution shall be treated as a
20 distribution to which section 301 applies.

21 “(2) *APPLICABLE HOLDING COMPANY*.—For pur-
22 poses of this subsection—

23 “(A) *IN GENERAL*.—The term ‘applicable
24 holding company’ means any domestic
25 corporation—

1 “(i) which is a common parent of an
2 affiliated group,

3 “(ii) stock of which is directly owned
4 by the distributee foreign corporation,

5 “(iii) substantially all of the assets of
6 which consist of stock in other members of
7 such affiliated group, and

8 “(iv) which has not been in existence
9 at all times during the 5 years immediately
10 preceding the date of the liquidation.

11 “(B) *AFFILIATED GROUP*.—For purposes of
12 this subsection, the term ‘affiliated group’ has the
13 meaning given such term by section 1504(a)
14 (without regard to paragraphs (2) and (4) of
15 section 1504(b)).

16 “(3) *COORDINATION WITH SUBPART F*.—If the
17 distributee of a distribution described in paragraph
18 (1) is a controlled foreign corporation (as defined in
19 section 957), then notwithstanding paragraph (1) or
20 subsection (a), such distribution shall be treated as a
21 distribution to which section 331 applies.

22 “(4) *REGULATIONS*.—The Secretary shall pro-
23 vide such regulations as appropriate to prevent the
24 abuse of this subsection, including regulations which
25 provide, for the purposes of clause (iv) of paragraph

1 (2)(A), that a corporation is not in existence for any
 2 period unless it is engaged in the active conduct of a
 3 trade or business or owns a significant ownership in-
 4 terest in another corporation so engaged.”.

5 (b) *EFFECTIVE DATE.*—The amendment made by this
 6 section shall apply to distributions in complete liquidation
 7 occurring on or after the date of the enactment of this Act.

8 **SEC. 453. PREVENTION OF MISMATCHING OF INTEREST**
 9 **AND ORIGINAL ISSUE DISCOUNT DEDUC-**
 10 **TIONS AND INCOME INCLUSIONS IN TRANS-**
 11 **ACTIONS WITH RELATED FOREIGN PERSONS.**

12 (a) *ORIGINAL ISSUE DISCOUNT.*—Section 163(e)(3)
 13 (relating to special rule for original issue discount on obli-
 14 gation held by related foreign person) is amended by redес-
 15 ignating subparagraph (B) as subparagraph (C) and by in-
 16 serting after subparagraph (A) the following new subpara-
 17 graph:

18 “(B) *SPECIAL RULE FOR CERTAIN FOREIGN*
 19 *ENTITIES.*—

20 “(i) *IN GENERAL.*—In the case of any
 21 debt instrument having original issue dis-
 22 count which is held by a related foreign per-
 23 son which is a foreign personal holding
 24 company (as defined in section 552), a con-
 25 trolled foreign corporation (as defined in

1 *section 957), or a passive foreign investment*
2 *company (as defined in section 1297), a de-*
3 *duction shall be allowable to the issuer with*
4 *respect to such original issue discount for*
5 *any taxable year before the taxable year in*
6 *which paid only to the extent such original*
7 *issue discount (reduced by properly allow-*
8 *able deductions and qualified deficits under*
9 *section 952(c)(1)(B)) is includible during*
10 *such prior taxable year in the gross income*
11 *of a United States person who owns (within*
12 *the meaning of section 958(a)) stock in such*
13 *corporation.*

14 “(ii) *SECRETARIAL AUTHORITY.—The*
15 *Secretary may by regulation exempt trans-*
16 *actions from the application of clause (i),*
17 *including any transaction which is entered*
18 *into by a payor in the ordinary course of*
19 *a trade or business in which the payor is*
20 *predominantly engaged.”.*

21 (b) *INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—*

22 *Section 267(a)(3) is amended—*

23 (1) *by striking “The Secretary” and inserting:*

24 “(A) *IN GENERAL.—The Secretary”, and*

1 (2) *by adding at the end the following new sub-*
2 *paragraph:*

3 “(B) *SPECIAL RULE FOR CERTAIN FOREIGN*
4 *ENTITIES.—*

5 “(i) *IN GENERAL.—Notwithstanding*
6 *subparagraph (A), in the case of any item*
7 *payable to a foreign personal holding com-*
8 *pany (as defined in section 552), a con-*
9 *trolled foreign corporation (as defined in*
10 *section 957), or a passive foreign investment*
11 *company (as defined in section 1297), a de-*
12 *duction shall be allowable to the payor with*
13 *respect to such amount for any taxable year*
14 *before the taxable year in which paid only*
15 *to the extent that an amount attributable to*
16 *such item (reduced by properly allowable*
17 *deductions and qualified deficits under sec-*
18 *tion 952(c)(1)(B)) is includible during such*
19 *prior taxable year in the gross income of a*
20 *United States person who owns (within the*
21 *meaning of section 958(a)) stock in such*
22 *corporation.*

23 “(ii) *SECRETARIAL AUTHORITY.—The*
24 *Secretary may by regulation exempt trans-*
25 *actions from the application of clause (i),*

1 including any transaction which is entered
2 into by a payor in the ordinary course of
3 a trade or business in which the payor is
4 predominantly engaged and in which the
5 payment of the accrued amounts occurs
6 within 8½ months after accrual or within
7 such other period as the Secretary may pre-
8 scribe.”.

9 (c) *EFFECTIVE DATE.*—The amendments made by this
10 section shall apply to payments accrued on or after the date
11 of the enactment of this Act.

12 **SEC. 454. EFFECTIVELY CONNECTED INCOME TO INCLUDE**
13 **CERTAIN FOREIGN SOURCE INCOME.**

14 (a) *IN GENERAL.*—Section 864(c)(4)(B) (relating to
15 treatment of income from sources without the United States
16 as effectively connected income) is amended by adding at
17 the end the following new flush sentence:

18 “Any income or gain which is equivalent to any
19 item of income or gain described in clause (i),
20 (ii), or (iii) shall be treated in the same manner
21 as such item for purposes of this subparagraph.”.

22 (b) *EFFECTIVE DATE.*—The amendment made by this
23 section shall apply to taxable years beginning after the date
24 of the enactment of this Act.

1 **SEC. 455. RECAPTURE OF OVERALL FOREIGN LOSSES ON**
2 **SALE OF CONTROLLED FOREIGN CORPORA-**
3 **TION.**

4 (a) *IN GENERAL.*—Section 904(f)(3) (relating to dis-
5 positions) is amending by adding at the end the following
6 new subparagraph:

7 “(D) *APPLICATION TO CERTAIN DISPOSI-*
8 *TIONS OF STOCK IN CONTROLLED FOREIGN COR-*
9 *PORATION.*—

10 “(i) *IN GENERAL.*—This paragraph
11 shall apply to an applicable disposition in
12 the same manner as if it were a disposition
13 of property described in subparagraph (A),
14 except that the exception contained in sub-
15 paragraph (C)(i) shall not apply.

16 “(ii) *APPLICABLE DISPOSITION.*—For
17 purposes of clause (i), the term ‘applicable
18 disposition’ means any disposition of any
19 share of stock in a controlled foreign cor-
20 poration in a transaction or series of trans-
21 actions if, immediately before such trans-
22 action or series of transactions, the tax-
23 payer owned more than 50 percent (by vote
24 or value) of the stock of the controlled for-
25 eign corporation.

1 “(iii) *EXCEPTION.*—A disposition shall
2 *not be treated as an applicable disposition*
3 *under clause (ii) if it is part of a trans-*
4 *action or series of transactions—*

5 “(I) *to which section 351 or 721*
6 *applies, or under which the transferor*
7 *receives stock in a foreign corporation*
8 *in exchange for the stock in the con-*
9 *trolled foreign corporation and the*
10 *stock received is exchanged basis prop-*
11 *erty (as defined in section*
12 *7701(a)(44)), and*

13 “(II) *immediately after which, the*
14 *transferor owns (by vote or value) at*
15 *least the same percentage of stock in*
16 *the controlled foreign corporation (or,*
17 *if the controlled foreign corporation is*
18 *not in existence after such transaction*
19 *or series of transactions, in another*
20 *foreign corporation stock in which was*
21 *received by the transferor in exchange*
22 *for stock in the controlled foreign cor-*
23 *poration) as the percentage of stock in*
24 *the controlled foreign corporation*
25 *which the taxpayer owned immediately*

1 *before such transaction or series of*
 2 *transactions.*

3 *Clause (i) shall apply to any gain recog-*
 4 *nized on any disposition to which this*
 5 *clause applies.*

6 “(iv) *CONTROLLED FOREIGN CORPORA-*
 7 *TION.—For purposes of this subparagraph,*
 8 *the term ‘controlled foreign corporation’ has*
 9 *the meaning given such term by section 957.*

10 “(v) *STOCK OWNERSHIP.—For pur-*
 11 *poses of this subparagraph, ownership of*
 12 *stock shall be determined under the rules of*
 13 *subsections (a) and (b) of section 958.*

14 (b) *EFFECTIVE DATE.—The amendment made by this*
 15 *section shall apply to dispositions after the date of the en-*
 16 *actment of this Act.*

17 **SEC. 456. MINIMUM HOLDING PERIOD FOR FOREIGN TAX**

18 **CREDIT ON WITHHOLDING TAXES ON INCOME**

19 **OTHER THAN DIVIDENDS.**

20 (a) *IN GENERAL.—Section 901 is amended by redesi-*
 21 *gnating subsection (l) as subsection (m) and by inserting*
 22 *after subsection (k) the following new subsection:*

23 “(l) *MINIMUM HOLDING PERIOD FOR WITHHOLDING*
 24 *TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS*
 25 *ETC.—*

1 “(1) *IN GENERAL.*—*In no event shall a credit be*
2 *allowed under subsection (a) for any withholding tax*
3 *(as defined in subsection (k)) on any item of income*
4 *or gain with respect to any property if—*

5 “(A) *such property is held by the recipient*
6 *of the item for 15 days or less during the 30-day*
7 *period beginning on the date which is 15 days*
8 *before the date on which the right to receive pay-*
9 *ment of such item arises, or*

10 “(B) *to the extent that the recipient of the*
11 *item is under an obligation (whether pursuant to*
12 *a short sale or otherwise) to make related pay-*
13 *ments with respect to positions in substantially*
14 *similar or related property.*

15 *This paragraph shall not apply to any dividend to*
16 *which subsection (k) applies.*

17 “(2) *EXCEPTION FOR TAXES PAID BY DEAL-*
18 *ERS.*—

19 “(A) *IN GENERAL.*—*Paragraph (1) shall*
20 *not apply to any qualified tax with respect to*
21 *any property held in the active conduct in a for-*
22 *foreign country of a business as a dealer in such*
23 *property.*

24 “(B) *QUALIFIED TAX.*—*For purposes of sub-*
25 *paragraph (A), the term ‘qualified tax’ means a*

1 tax paid to a foreign country (other than the for-
2 eign country referred to in subparagraph (A))
3 if—

4 “(i) the item to which such tax is at-
5 tributable is subject to taxation on a net
6 basis by the country referred to in subpara-
7 graph (A), and

8 “(ii) such country allows a credit
9 against its net basis tax for the full amount
10 of the tax paid to such other foreign coun-
11 try.

12 “(C) DEALER.—For purposes of subpara-
13 graph (A), the term ‘dealer’ means—

14 “(i) with respect to a security, any
15 person to whom paragraphs (1) and (2) of
16 subsection (k) would not apply by reason of
17 paragraph (4) thereof if such security were
18 stock, and

19 “(ii) with respect to any other prop-
20 erty, any person with respect to whom such
21 property is described in section 1221(a)(1).

22 “(D) REGULATIONS.—The Secretary may
23 prescribe such regulations as may be appropriate
24 to carry out this paragraph, including regula-
25 tions to prevent the abuse of the exception pro-

1 *vided by this paragraph and to treat other taxes*
2 *as qualified taxes.*

3 “(3) *EXCEPTIONS.*—*The Secretary may by regu-*
4 *lation provide that paragraph (1) shall not apply to*
5 *property where the Secretary determines that the ap-*
6 *plication of paragraph (1) to such property is not*
7 *necessary to carry out the purposes of this subsection.*

8 “(4) *CERTAIN RULES TO APPLY.*—*Rules similar*
9 *to the rules of paragraphs (5), (6), and (7) of sub-*
10 *section (k) shall apply for purposes of this subsection.*

11 “(5) *DETERMINATION OF HOLDING PERIOD.*—
12 *Holding periods shall be determined for purposes of*
13 *this subsection without regard to section 1235 or any*
14 *similar rule.”.*

15 (b) *CONFORMING AMENDMENT.*—*The heading of sub-*
16 *section (k) of section 901 is amended by inserting “ON DIVI-*
17 *DENDS” after “TAXES”.*

18 (c) *EFFECTIVE DATE.*—*The amendments made by this*
19 *section shall apply to amounts paid or accrued more than*
20 *30 days after the date of the enactment of this Act.*

1 **Subtitle F—Other Revenue**
2 **Provisions**

3 **PART I—FINANCIAL INSTRUMENTS**

4 **SEC. 461. TREATMENT OF STRIPPED INTERESTS IN BOND**
5 **AND PREFERRED STOCK FUNDS, ETC.**

6 (a) *IN GENERAL.*—Section 1286 (relating to tax treat-
7 ment of stripped bonds) is amended by redesignating sub-
8 section (f) as subsection (g) and by inserting after sub-
9 section (e) the following new subsection:

10 “(f) *TREATMENT OF STRIPPED INTERESTS IN BOND*
11 *AND PREFERRED STOCK FUNDS, ETC.*—In the case of an
12 account or entity substantially all of the assets of which
13 consist of bonds, preferred stock, or a combination thereof,
14 the Secretary may by regulations provide that rules similar
15 to the rules of this section and 305(e), as appropriate, shall
16 apply to interests in such account or entity to which (but
17 for this subsection) this section or section 305(e), as the case
18 may be, would not apply.”.

19 (b) *CROSS REFERENCE.*—Subsection (e) of section 305
20 is amended by adding at the end the following new para-
21 graph:

1 “(7) *CROSS REFERENCE.*—

“*For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).*”.

2 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 3 *section shall apply to purchases and dispositions after the*
 4 *date of the enactment of this Act.*

5 **SEC. 462. APPLICATION OF EARNINGS STRIPPING RULES TO**
 6 **PARTNERS WHICH ARE C CORPORATIONS.**

7 (a) *IN GENERAL.*—*Section 163(j) (relating to limita-*
 8 *tion on deduction for interest on certain indebtedness) is*
 9 *amended by redesignating paragraph (8) as paragraph (9)*
 10 *and by inserting after paragraph (7) the following new*
 11 *paragraph:*

12 “(8) *ALLOCATIONS TO CERTAIN CORPORATE*
 13 *PARTNERS.*—*If a C corporation is a partner in a*
 14 *partnership—*

15 “(A) *the corporation’s allocable share of in-*
 16 *debtedness and interest income of the partnership*
 17 *shall be taken into account in applying this sub-*
 18 *section to the corporation, and*

19 “(B) *if a deduction is not disallowed under*
 20 *this subsection with respect to any interest ex-*
 21 *penditure of the partnership, this subsection shall be*
 22 *applied separately in determining whether a de-*
 23 *duction is allowable to the corporation with re-*

1 *spect to the corporation’s allocable share of such*
2 *interest expense.”.*

3 **(b) EFFECTIVE DATE.**—*The amendments made by this*
4 *section shall apply to taxable years beginning after the date*
5 *of the enactment of this Act.*

6 **SEC. 463. RECOGNITION OF CANCELLATION OF INDEBTED-**
7 **NESS INCOME REALIZED ON SATISFACTION**
8 **OF DEBT WITH PARTNERSHIP INTEREST.**

9 **(a) IN GENERAL.**—*Paragraph (8) of section 108(e) (re-*
10 *lating to general rules for discharge of indebtedness (includ-*
11 *ing discharges not in title 11 cases or insolvency)) is*
12 *amended to read as follows:*

13 **“(8) INDEBTEDNESS SATISFIED BY CORPORATE**
14 **STOCK OR PARTNERSHIP INTEREST.**—*For purposes of*
15 *determining income of a debtor from discharge of in-*
16 *debtedness, if—*

17 **“(A) a debtor corporation transfers stock, or**

18 **“(B) a debtor partnership transfers a cap-**

19 **ital or profits interest in such partnership,**

20 *to a creditor in satisfaction of its recourse or non-*

21 *recourse indebtedness, such corporation or partnership*

22 *shall be treated as having satisfied the indebtedness*

23 *with an amount of money equal to the fair market*

24 *value of the stock or interest. In the case of any part-*

25 *nership, any discharge of indebtedness income recog-*

1 nized under this paragraph shall be included in the
2 distributive shares of taxpayers which were the part-
3 ners in the partnership immediately before such dis-
4 charge.”.

5 (b) *EFFECTIVE DATE.*—The amendment made by this
6 section shall apply with respect to cancellations of indebted-
7 ness occurring on or after the date of the enactment of this
8 Act.

9 **SEC. 464. MODIFICATION OF STRADDLE RULES.**

10 (a) *RULES RELATING TO IDENTIFIED STRADDLES.*—

11 (1) *IN GENERAL.*—Subparagraph (A) of section
12 1092(a)(2) (relating to special rule for identified
13 straddles) is amended to read as follows:

14 “(A) *IN GENERAL.*—In the case of any
15 straddle which is an identified straddle—

16 “(i) paragraph (1) shall not apply
17 with respect to identified positions com-
18 prising the identified straddle,

19 “(ii) if there is any loss with respect to
20 any identified position of the identified
21 straddle, the basis of each of the identified
22 offsetting positions in the identified straddle
23 shall be increased by an amount which
24 bears the same ratio to the loss as the unrec-
25 ognized gain with respect to such offsetting

1 *position bears to the aggregate unrecognized*
2 *gain with respect to all such offsetting posi-*
3 *tions, and*

4 *“(iii) any loss described in clause (ii)*
5 *shall not otherwise be taken into account for*
6 *purposes of this title.”.*

7 (2) *IDENTIFIED STRADDLE.—Section*
8 *1092(a)(2)(B) (defining identified straddle) is*
9 *amended—*

10 *(A) by striking clause (ii) and inserting the*
11 *following:*

12 *“(ii) to the extent provided by regula-*
13 *tions, the value of each position of which (in*
14 *the hands of the taxpayer immediately be-*
15 *fore the creation of the straddle) is not less*
16 *than the basis of such position in the hands*
17 *of the taxpayer at the time the straddle is*
18 *created, and”, and*

19 *(B) by adding at the end the following new*
20 *flush sentence:*

21 *“The Secretary shall prescribe regulations which*
22 *specify the proper methods for clearly identifying*
23 *a straddle as an identified straddle (and the po-*
24 *sitions comprising such straddle), which specify*
25 *the rules for the application of this section for a*

1 taxpayer which fails to properly identify the po-
2 sitions of an identified straddle, and which
3 specify the ordering rules in cases where a tax-
4 payer disposes of less than an entire position
5 which is part of an identified straddle.”.

6 (3) *UNRECOGNIZED GAIN.*—Section 1092(a)(3)
7 (defining unrecognized gain) is amended by redesignig-
8 nating subparagraph (B) as subparagraph (C) and
9 by inserting after subparagraph (A) the following new
10 subparagraph:

11 “(B) *SPECIAL RULE FOR IDENTIFIED*
12 *STRADDLES.*—For purposes of paragraph
13 (2)(A)(ii), the unrecognized gain with respect to
14 any identified offsetting position shall be the ex-
15 cess of the fair market value of the position at
16 the time of the determination over the fair mar-
17 ket value of the position at the time the taxpayer
18 identified the position as a position in an identi-
19 fied straddle.”.

20 (4) *CONFORMING AMENDMENT.*—Section
21 1092(c)(2) is amended by striking subparagraph (B)
22 and by redesignating subparagraph (C) as subpara-
23 graph (B).

1 (b) *PHYSICALLY SETTLED POSITIONS.*—Section
2 1092(d) (relating to definitions and special rules) is amend-
3 ed by adding at the end the following new paragraph:

4 “(8) *SPECIAL RULES FOR PHYSICALLY SETTLED*
5 *POSITIONS.*—For purposes of subsection (a), if a tax-
6 payer settles a position which is part of a straddle by
7 delivering property to which the position relates (and
8 such position, if terminated, would result in a real-
9 ization of a loss), then such taxpayer shall be treated
10 as if such taxpayer—

11 “(A) terminated the position for its fair
12 market value immediately before the settlement,
13 and

14 “(B) sold the property so delivered by the
15 taxpayer at its fair market value.”.

16 (c) *REPEAL OF STOCK EXCEPTION.*—

17 (1) *IN GENERAL.*—Paragraph (3) of section
18 1092(d) (relating to definitions and special rules) is
19 amended to read as follows:

20 “(3) *SPECIAL RULES FOR STOCK.*—For purposes
21 of paragraph (1)—

22 “(A) *IN GENERAL.*—The term ‘personal
23 property’ includes—

24 “(i) any stock which is a part of a
25 straddle at least 1 of the offsetting positions

1 *of which is a position with respect to such*
2 *stock or substantially similar or related*
3 *property, or*

4 *“(ii) any stock of a corporation formed*
5 *or availed of to take positions in personal*
6 *property which offset positions taken by any*
7 *shareholder.*

8 *“(B) RULE FOR APPLICATION.—For pur-*
9 *poses of determining whether subsection (e) ap-*
10 *plies to any transaction with respect to stock de-*
11 *scribed in subparagraph (A)(ii), all includible*
12 *corporations of an affiliated group (within the*
13 *meaning of section 1504(a)) shall be treated as*
14 *1 taxpayer.”.*

15 (2) *CONFORMING AMENDMENT.—Section*
16 *1258(d)(1) is amended by striking “; except that the*
17 *term ‘personal property’ shall include stock”.*

18 (d) *MODIFICATIONS OF QUALIFIED COVERED CALL*
19 *EXCEPTION.—*

20 (1) *MARKETS ON WHICH OPTIONS MAY BE TRAD-*
21 *ED.—*

22 (A) *IN GENERAL.—Section 1092(c)(4)(B)(i)*
23 *is amended by striking “or other market which*
24 *the Secretary determines has rules adequate to*
25 *carry out the purposes of this paragraph”.*

1 (B) *REGULATIONS.*—Section 1092(c)(4)(H)
2 is amended by adding at the end the following
3 new sentence: “Such regulations shall not add
4 any exchange or market not described in sub-
5 paragraph (B)(i) to the exchanges or markets on
6 which qualified covered call options may be trad-
7 ed.”

8 (2) *HOLDING PERIOD FOR DIVIDEND EXCLU-*
9 *SION.*—The last sentence of section 246(c) is amended
10 by inserting: “, other than a qualified covered call op-
11 tion to which section 1092(f) applies” before the pe-
12 riod at the end.

13 (e) *EFFECTIVE DATE.*—The amendments made by this
14 section shall apply to positions established on or after the
15 date of the enactment of this Act.

16 **SEC. 465. DENIAL OF INSTALLMENT SALE TREATMENT FOR**
17 **ALL READILY TRADEABLE DEBT.**

18 (a) *IN GENERAL.*—Section 453(f)(4)(B) (relating to
19 purchaser evidences of indebtedness payable on demand or
20 readily tradeable) is amended by striking “is issued by a
21 corporation or a government or political subdivision thereof
22 and”.

23 (b) *EFFECTIVE DATE.*—The amendment made by this
24 section shall apply to sales occurring on or after the date
25 of the enactment of this Act.

1 **PART II—CORPORATIONS AND PARTNERSHIPS**2 **SEC. 466. MODIFICATION OF TREATMENT OF TRANSFERS**3 **TO CREDITORS IN DIVISIVE REORGANIZA-**4 **TIONS.**

5 (a) *IN GENERAL.*—Section 361(b)(3) (relating to treat-
6 ment of transfers to creditors) is amended by adding at the
7 end the following new sentence: “In the case of a reorganiza-
8 tion described in section 368(a)(1)(D) with respect to which
9 stock or securities of the corporation to which the assets are
10 transferred are distributed in a transaction which qualifies
11 under section 355, this paragraph shall apply only to the
12 extent that the sum of the money and the fair market value
13 of other property transferred to such creditors does not ex-
14 ceed the adjusted bases of such assets transferred.”.

15 (b) *LIABILITIES IN EXCESS OF BASIS.*—Section
16 357(c)(1)(B) is amended by inserting “with respect to
17 which stock or securities of the corporation to which the as-
18 sets are transferred are distributed in a transaction which
19 qualifies under section 355” after “section 368(a)(1)(D)”.

20 (c) *EFFECTIVE DATE.*—The amendments made by this
21 section shall apply to transfers of money or other property,
22 or liabilities assumed, in connection with a reorganization
23 occurring on or after the date of the enactment of this Act.

1 **SEC. 467. CLARIFICATION OF DEFINITION OF NON-**
2 **QUALIFIED PREFERRED STOCK.**

3 (a) *IN GENERAL.*—Section 351(g)(3)(A) is amended
4 by adding at the end the following: “Stock shall not be treat-
5 ed as participating in corporate growth to any significant
6 extent unless there is a real and meaningful likelihood of
7 the shareholder actually participating in the earnings and
8 growth of the corporation.”.

9 (b) *EFFECTIVE DATE.*—The amendment made by this
10 section shall apply to transactions after May 14, 2003.

11 **SEC. 468. MODIFICATION OF DEFINITION OF CONTROLLED**
12 **GROUP OF CORPORATIONS.**

13 (a) *IN GENERAL.*—Section 1563(a)(2) (relating to
14 brother-sister controlled group) is amended by striking
15 “possessing—” and all that follows through “(B)” and in-
16 serting “possessing”.

17 (b) *APPLICATION OF EXISTING RULES TO OTHER*
18 *CODE PROVISIONS.*—Section 1563(f) (relating to other defi-
19 nitions and rules) is amended by adding at the end the
20 following new paragraph:

21 “(5) *BROTHER-SISTER CONTROLLED GROUP DEF-*
22 *INITION FOR PROVISIONS OTHER THAN THIS PART.*—

23 “(A) *IN GENERAL.*—Except as specifically
24 provided in an applicable provision, subsection
25 (a)(2) shall be applied to an applicable provision
26 as if it read as follows:

1 “(2) *BROTHER-SISTER CONTROLLED GROUP.*—
2 *Two or more corporations if 5 or fewer persons who*
3 *are individuals, estates, or trusts own (within the*
4 *meaning of subsection (d)(2) stock possessing—*

5 “(A) *at least 80 percent of the total com-*
6 *bined voting power of all classes of stock entitled*
7 *to vote, or at least 80 percent of the total value*
8 *of shares of all classes of stock, of each corpora-*
9 *tion, and*

10 “(B) *more than 50 percent of the total com-*
11 *bined voting power of all classes of stock entitled*
12 *to vote or more than 50 percent of the total value*
13 *of shares of all classes of stock of each corpora-*
14 *tion, taking into account the stock ownership of*
15 *each such person only to the extent such stock*
16 *ownership is identical with respect to each such*
17 *corporation.’*

18 “(B) *APPLICABLE PROVISION.*—*For pur-*
19 *poses of this paragraph, an applicable provision*
20 *is any provision of law (other than this part)*
21 *which incorporates the definition of controlled*
22 *group of corporations under subsection (a).’.*

23 (c) *EFFECTIVE DATE.*—*The amendments made by this*
24 *section shall apply to taxable years beginning after the date*
25 *of the enactment of this Act.*

1 **SEC. 469. MANDATORY BASIS ADJUSTMENTS IN CONNEC-**
2 **TION WITH PARTNERSHIP DISTRIBUTIONS**
3 **AND TRANSFERS OF PARTNERSHIP INTER-**
4 **ESTS.**

5 (a) *IN GENERAL.*—Section 754 is repealed.

6 (b) *ADJUSTMENT TO BASIS OF UNDISTRIBUTED PART-*
7 *NERSHIP PROPERTY.*—Section 734 is amended—

8 (1) *by striking “, with respect to which the elec-*
9 *tion provided in section 754 is in effect,” in the mat-*
10 *ter preceding paragraph (1) of subsection (b),*

11 (2) *by striking “(as adjusted by section 732(d))”*
12 *both places it appears in subsection (b),*

13 (3) *by striking the last sentence of subsection (b),*

14 (4) *by striking subsection (a) and by redesign-*
15 *ating subsections (b) and (c) as subsections (a) and*
16 *(b), respectively, and*

17 (5) *by striking “OPTIONAL” in the heading.*

18 (c) *ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-*
19 *ERTY.*—Section 743 is amended—

20 (1) *by striking “with respect to which the elec-*
21 *tion provided in section 754 is in effect” in the mat-*
22 *ter preceding paragraph (1) of subsection (b),*

23 (2) *by striking subsection (a) and by redesign-*
24 *ating subsections (b) and (c) as subsections (a) and*
25 *(b), respectively,*

1 (3) *by adding at the end the following new sub-*
2 *section:*

3 “(c) *ELECTION TO ADJUST BASIS FOR TRANSFERS*
4 *UPON DEATH OF PARTNER.*—Subsection (a) shall not
5 *apply and no adjustments shall be made in the case of any*
6 *transfer of an interest in a partnership upon the death of*
7 *a partner unless an election to do so is made by the partner-*
8 *ship. Such an election shall apply with respect to all such*
9 *transfers of interests in the partnership. Any election under*
10 *section 754 in effect on the date of the enactment of this*
11 *subsection shall constitute an election made under this sub-*
12 *section. Such election may be revoked by the partnership,*
13 *subject to such limitations as may be provided by regula-*
14 *tions prescribed by the Secretary.”, and*

15 (4) *by striking “OPTIONAL” in the heading.*

16 (d) *CONFORMING AMENDMENTS.*—

17 (1) *Subsection (d) of section 732 is repealed.*

18 (2) *Section 755(a) is amended—*

19 (A) *by striking “section 734(b) (relating to*
20 *the optional adjustment” and inserting “section*
21 *734(a) (relating to the adjustment”, and*

22 (B) *by striking “section 743(b) (relating to*
23 *the optional adjustment” and inserting “section*
24 *743(a) (relating to the adjustment”.*

1 (3) *Section 755(c), as added by this Act, is*
2 *amended by striking “section 734(b)” and inserting*
3 *“section 734(a)”.*

4 (4) *Section 761(e)(2) is amended by striking*
5 *“optional”.*

6 (5) *Section 774(a) is amended by striking*
7 *“743(b)” both places it appears and inserting*
8 *“743(a)”.*

9 (6) *The item relating to section 734 in the table*
10 *of sections for subpart B of part II of subchapter K*
11 *of chapter 1 is amended by striking “Optional”.*

12 (7) *The item relating to section 743 in the table*
13 *of sections for subpart C of part II of subchapter K*
14 *of chapter 1 is amended by striking “Optional”.*

15 (e) *EFFECTIVE DATES.—*

16 (1) *IN GENERAL.—Except as provided in para-*
17 *graph (2), the amendments made by this section shall*
18 *apply to transfers and distributions made after the*
19 *date of the enactment of this Act.*

20 (2) *REPEAL OF SECTION 732(d).—The amend-*
21 *ments made by subsections (b)(2) and (d)(1) shall*
22 *apply to—*

23 (A) *except as provided in subparagraph*

24 (B), *transfers made after the date of the enact-*
25 *ment of this Act, and*

1 (B) in the case of any transfer made on or
2 before such date to which section 732(d) applies,
3 distributions made after the date which is 2
4 years after such date of enactment.

5 **PART III—DEPRECIATION AND AMORTIZATION**

6 **SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES**
7 **TO SPORTS FRANCHISES.**

8 (a) *IN GENERAL.*—Section 197(e) (relating to excep-
9 tions to definition of section 197 intangible) is amended
10 by striking paragraph (6) and by redesignating paragraphs
11 (7) and (8) as paragraphs (6) and (7), respectively.

12 (b) *CONFORMING AMENDMENTS.*—

13 (1)(A) Section 1056 (relating to basis limitation
14 for player contracts transferred in connection with
15 the sale of a franchise) is repealed.

16 (B) The table of sections for part IV of sub-
17 chapter O of chapter 1 is amended by striking the
18 item relating to section 1056.

19 (2) Section 1245(a) (relating to gain from dis-
20 position of certain depreciable property) is amended
21 by striking paragraph (4).

22 (3) Section 1253 (relating to transfers of fran-
23 chises, trademarks, and trade names) is amended by
24 striking subsection (e).

25 (c) *EFFECTIVE DATES.*—

1 (1) *IN GENERAL.*—*Except as provided in para-*
 2 *graph (2), the amendments made by this section shall*
 3 *apply to property acquired after the date of the enact-*
 4 *ment of this Act.*

5 (2) *SECTION 1245.*—*The amendment made by*
 6 *subsection (b)(2) shall apply to franchises acquired*
 7 *after the date of the enactment of this Act.*

8 **SEC. 472. CLASS LIVES FOR UTILITY GRADING COSTS.**

9 (a) *GAS UTILITY PROPERTY.*—*Section 168(e)(3)(E)*
 10 *(defining 15-year property) is amended by striking “and”*
 11 *at the end of clause (ii), by striking the period at the end*
 12 *of clause (iii) and inserting “, and”, and by adding at the*
 13 *end the following new clause:*

14 “(iv) *initial clearing and grading land*
 15 *improvements with respect to gas utility*
 16 *property.”.*

17 (b) *ELECTRIC UTILITY PROPERTY.*—*Section 168(e)(3)*
 18 *is amended by adding at the end the following new subpara-*
 19 *graph:*

20 “(F) *20-YEAR PROPERTY.*—*The term ‘20-*
 21 *year property’ means initial clearing and grad-*
 22 *ing land improvements with respect to any elec-*
 23 *tric utility transmission and distribution*
 24 *plant.”.*

1 (c) *CONFORMING AMENDMENTS.*—*The table contained*
 2 *in section 168(g)(3)(B) is amended—*

3 (1) *by inserting “or (E)(iv)” after “(E)(iii)”*,
 4 *and*

5 (2) *by adding at the end the following new item:*

“*(F)* 25”.

6 (d) *EFFECTIVE DATE.*—*The amendments made by this*
 7 *section shall apply to property placed in service after the*
 8 *date of the enactment of this Act.*

9 **SEC. 473. EXPANSION OF LIMITATION ON DEPRECIATION**
 10 **OF CERTAIN PASSENGER AUTOMOBILES.**

11 (a) *IN GENERAL.*—*Section 179(b) of the Internal Rev-*
 12 *enue Code of 1986 (relating to limitations) is amended by*
 13 *adding at the end the following new paragraph:*

14 “(6) *LIMITATION ON COST TAKEN INTO ACCOUNT*
 15 *FOR CERTAIN PASSENGER VEHICLES.—*

16 “(A) *IN GENERAL.*—*The cost of any sport*
 17 *utility vehicle for any taxable year which may*
 18 *be taken into account under this section shall not*
 19 *exceed \$25,000.*

20 “(B) *SPORT UTILITY VEHICLE.*—*For pur-*
 21 *poses of subparagraph (A)—*

22 “(i) *IN GENERAL.*—*The term ‘sport*
 23 *utility vehicle’ means any 4-wheeled*
 24 *vehicle—*

1 “(I) which is primarily designed
2 or which can be used to carry pas-
3 sengers over public streets, roads, or
4 highways (except any vehicle operated
5 exclusively on a rail or rails),

6 “(II) which is not subject to sec-
7 tion 280F, and

8 “(III) which is rated at not more
9 than 14,000 pounds gross vehicle
10 weight.

11 “(ii) *CERTAIN VEHICLES EXCLUDED.*—
12 Such term does not include any vehicle
13 which—

14 “(I) is designed to have a seating
15 capacity of more than 9 persons behind
16 the driver’s seat,

17 “(II) is equipped with a cargo
18 area of at least 6 feet in interior length
19 which is an open area or is designed
20 for use as an open area but is enclosed
21 by a cap and is not readily accessible
22 directly from the passenger compart-
23 ment, or

24 “(III) has an integral enclosure,
25 fully enclosing the driver compartment

1 *and load carrying device, does not have*
2 *seating rearward of the driver's seat,*
3 *and has no body section protruding*
4 *more than 30 inches ahead of the lead-*
5 *ing edge of the windshield.”.*

6 *(b) EFFECTIVE DATE.—The amendment made by this*
7 *section shall apply to property placed in service after the*
8 *date of the enactment of this Act.*

9 **SEC. 474. CONSISTENT AMORTIZATION OF PERIODS FOR IN-**
10 **TANGIBLES.**

11 *(a) START-UP EXPENDITURES.—*

12 *(1) ALLOWANCE OF DEDUCTION.—Paragraph (1)*
13 *of section 195(b) (relating to start-up expenditures) is*
14 *amended to read as follows:*

15 *“(1) ALLOWANCE OF DEDUCTION.—If a taxpayer*
16 *elects the application of this subsection with respect to*
17 *any start-up expenditures—*

18 *“(A) the taxpayer shall be allowed a deduc-*
19 *tion for the taxable year in which the active*
20 *trade or business begins in an amount equal to*
21 *the lesser of—*

22 *“(i) the amount of start-up expendi-*
23 *tures with respect to the active trade or*
24 *business, or*

1 “(ii) \$5,000, reduced (but not below
2 zero) by the amount by which such start-up
3 expenditures exceed \$50,000, and

4 “(B) the remainder of such start-up expend-
5 itures shall be allowed as a deduction ratably
6 over the 180-month period beginning with the
7 month in which the active trade or business be-
8 gins.”.

9 (2) CONFORMING AMENDMENT.—Subsection (b)
10 of section 195 is amended by striking “AMORTIZE”
11 and inserting “DEDUCT” in the heading.

12 (b) ORGANIZATIONAL EXPENDITURES.—Subsection (a)
13 of section 248 (relating to organizational expenditures) is
14 amended to read as follows:

15 “(a) ELECTION TO DEDUCT.—If a corporation elects
16 the application of this subsection (in accordance with regu-
17 lations prescribed by the Secretary) with respect to any or-
18 ganizational expenditures—

19 “(1) the corporation shall be allowed a deduction
20 for the taxable year in which the corporation begins
21 business in an amount equal to the lesser of—

22 “(A) the amount of organizational expendi-
23 tures with respect to the taxpayer, or

1 “(B) \$5,000, reduced (but not below zero) by
2 the amount by which such organizational ex-
3 penditures exceed \$50,000, and

4 “(2) the remainder of such organizational ex-
5 penditures shall be allowed as a deduction ratably
6 over the 180-month period beginning with the month
7 in which the corporation begins business.”.

8 (c) *TREATMENT OF ORGANIZATIONAL AND SYNDICA-*
9 *TION FEES OR PARTNERSHIPS.—*

10 (1) *IN GENERAL.—*Section 709(b) (relating to
11 amortization of organization fees) is amended by re-
12 designating paragraph (2) as paragraph (3) and by
13 amending paragraph (1) to read as follows:

14 “(1) *ALLOWANCE OF DEDUCTION.—*If a taxpayer
15 elects the application of this subsection (in accordance
16 with regulations prescribed by the Secretary) with re-
17 spect to any organizational expenses—

18 “(A) the taxpayer shall be allowed a deduc-
19 tion for the taxable year in which the partner-
20 ship begins business in an amount equal to the
21 lesser of—

22 “(i) the amount of organizational ex-
23 penses with respect to the partnership, or

1 “(ii) \$5,000, reduced (but not below
2 zero) by the amount by which such organi-
3 zational expenses exceed \$50,000, and

4 “(B) the remainder of such organizational
5 expenses shall be allowed as a deduction ratably
6 over the 180-month period beginning with the
7 month in which the partnership begins business.

8 “(2) *DISPOSITIONS BEFORE CLOSE OF AMORTI-*
9 *ZATION PERIOD.*—*In any case in which a partnership*
10 *is liquidated before the end of the period to which*
11 *paragraph (1)(B) applies, any deferred expenses at-*
12 *tributable to the partnership which were not allowed*
13 *as a deduction by reason of this section may be de-*
14 *ducted to the extent allowable under section 165.”.*

15 (2) *CONFORMING AMENDMENT.*—*Subsection (b)*
16 *of section 709 is amended by striking “AMORTIZA-*
17 *TION” and inserting “DEDUCTION” in the heading.*

18 (d) *EFFECTIVE DATE.*—*The amendments made by this*
19 *section shall apply to amounts paid or incurred after the*
20 *date of the enactment of this Act.*

21 **SEC. 475. REFORM OF TAX TREATMENT OF LEASING OPER-**
22 **ATIONS.**

23 (a) *CLARIFICATION OF RECOVERY PERIOD FOR TAX-*
24 *EXEMPT USE PROPERTY SUBJECT TO LEASE.*—*Subpara-*
25 *graph (A) of section 168(g)(3) (relating to special rules for*

1 *determining class life) is amended by inserting “(notwith-*
2 *standing any other subparagraph of this paragraph)” after*
3 *“shall”.*

4 *(b) LIMITATION ON DEPRECIATION PERIOD FOR SOFT-*
5 *WARE LEASED TO TAX-EXEMPT ENTITY.—Paragraph (1)*
6 *of section 167(f) is amended by adding at the end the fol-*
7 *lowing new subparagraph:*

8 *“(C) TAX-EXEMPT USE PROPERTY SUBJECT*
9 *TO LEASE.—In the case of computer software*
10 *which would be tax-exempt use property as de-*
11 *finied in subsection (h) of section 168 if such sec-*
12 *tion applied to computer software, the useful life*
13 *under subparagraph (A) shall not be less than*
14 *125 percent of the lease term (within the mean-*
15 *ing of section 168(i)(3)).”*

16 *(c) LEASE TERM TO INCLUDE RELATED SERVICE*
17 *CONTRACTS.—Subparagraph (A) of section 168(i)(3) (relat-*
18 *ing to lease term) is amended by striking “and” at the end*
19 *of clause (i), by redesignating clause (ii) as clause (iii), and*
20 *by inserting after clause (i) the following new clause:*

21 *“(ii) the term of a lease shall include*
22 *the term of any service contract or similar*
23 *arrangement (whether or not treated as a*
24 *lease under section 7701(e))—*

1 “(I) which is part of the same
2 transaction (or series of related trans-
3 actions) which includes the lease, and

4 “(II) which is with respect to the
5 property subject to the lease or substan-
6 tially similar property, and”.

7 (d) *EFFECTIVE DATE.*—The amendments made by this
8 section shall apply to leases entered into after December 31,
9 2003.

10 **SEC. 476. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
11 **PROPERTY USED BY GOVERNMENTS OR**
12 **OTHER TAX-EXEMPT ENTITIES.**

13 (a) *IN GENERAL.*—Subpart C of part II of subchapter
14 E of chapter 1 (relating to taxable year for which deduc-
15 tions taken) is amended by adding at the end the following
16 new section:

17 **“SEC. 470. LIMITATIONS ON LOSSES FROM TAX-EXEMPT USE**
18 **PROPERTY.**

19 “(a) *LIMITATION ON LOSSES.*—Except as otherwise
20 provided in this section, a tax-exempt use loss for any tax-
21 able year shall not be allowed.

22 “(b) *DISALLOWED LOSS CARRIED TO NEXT YEAR.*—
23 Any tax-exempt use loss with respect to any tax-exempt use
24 property which is disallowed under subsection (a) for any

1 *taxable year shall be treated as a deduction with respect*
2 *to such property in the next taxable year.*

3 “(c) *DEFINITIONS.*—*For purposes of this section—*

4 “(1) *TAX-EXEMPT USE LOSS.*—*The term ‘tax-ex-*
5 *empt use loss’ means, with respect to any taxable*
6 *year, the amount (if any) by which—*

7 “(A) *the sum of—*

8 “(i) *the aggregate deductions (other*
9 *than interest) directly allocable to a tax-ex-*
10 *empt use property, plus*

11 “(ii) *the aggregate deductions for inter-*
12 *est properly allocable to such property, ex-*
13 *ceed*

14 “(B) *the aggregate income from such prop-*
15 *erty.*

16 “(2) *TAX-EXEMPT USE PROPERTY.*—*The term*
17 *‘tax-exempt use property’ has the meaning given to*
18 *such term by section 168(h) (without regard to para-*
19 *graph (1)(C) or (3) thereof and determined as if*
20 *property described in section 167(f)(1)(B) were tan-*
21 *gible property). Such term shall not include property*
22 *with respect to which the credit under section 42 is*
23 *allowed and which, but for this sentence, would be*
24 *tax-exempt property solely by reason of section*
25 *168(h)(6).*

1 “(d) *EXCEPTION FOR CERTAIN LEASES.*—*This section*
2 *shall not apply to any lease of property which meets the*
3 *requirements of all of the following paragraphs:*

4 “(1) *PROPERTY NOT FINANCED WITH TAX-EX-*
5 *EMPT BONDS OR FEDERAL FUNDS.*—*A lease of prop-*
6 *erty meets the requirements of this paragraph if no*
7 *part of the property was financed (directly or indi-*
8 *rectly) from—*

9 “(A) *the proceeds of an obligation the inter-*
10 *est on which is exempt from tax under section*
11 *103(a) and which (or any refunding bond of*
12 *which) is outstanding when the lease is entered*
13 *into, or*

14 “(B) *Federal funds.*

15 *The Secretary may by regulations provide for a de*
16 *minimis exception from this paragraph.*

17 “(2) *AVAILABILITY OF FUNDS.*—

18 “(A) *IN GENERAL.*—*A lease of property*
19 *meets the requirements of this paragraph if (at*
20 *any time during the lease term) not more than*
21 *an allowable amount of funds are—*

22 “(i) *subject to any arrangement re-*
23 *ferred to in subparagraph (B), or*

24 “(ii) *set aside or expected to be set*
25 *aside,*

1 to or for the benefit of the lessor or a lender, or
2 to or for the benefit of the lessee to satisfy the les-
3 see's obligations or options under the lease.
4 Funds shall be treated as described in clause (ii)
5 only if a reasonable person would conclude,
6 based on the facts and circumstances, that such
7 funds are so described.

8 “(B) *ARRANGEMENTS.*—The arrangements
9 referred to in this subparagraph are—

10 “(i) a defeasance arrangement, a loan
11 by the lessee to the lessor or a lender, a de-
12 posit arrangement, a letter of credit
13 collateralized with cash or cash equivalents,
14 a payment undertaking agreement, a lease
15 prepayment, a sinking fund arrangement,
16 or any similar arrangement (whether or not
17 such arrangement provides credit support),
18 and

19 “(ii) any other arrangement identified
20 by the Secretary in regulations.

21 “(C) *ALLOWABLE AMOUNT.*—

22 “(i) *IN GENERAL.*—Except as otherwise
23 provided in this subparagraph, the term ‘al-
24 lowable amount’ means an amount equal to
25 20 percent of the lessor’s adjusted basis in

1 the property at the time the lease is entered
2 into.

3 “(ii) *HIGHER AMOUNT PERMITTED IN*
4 *CERTAIN CASES.—To the extent provided in*
5 *regulations, a higher percentage shall be*
6 *permitted under clause (i) where necessary*
7 *because of the credit-worthiness of the lessee.*
8 *In no event may such regulations permit a*
9 *percentage of more than 50 percent.*

10 “(iii) *OPTION TO PURCHASE.—If*
11 *under the lease the lessee has the option to*
12 *purchase the property for a fixed price or*
13 *for other than the fair market value of the*
14 *property (determined at the time of exer-*
15 *cise), the allowable amount at the time such*
16 *option may be exercised may not exceed 50*
17 *percent of the price at which such option*
18 *may be exercised.*

19 “(iv) *NO ALLOWABLE AMOUNT FOR*
20 *CERTAIN ARRANGEMENTS.—The allowable*
21 *amount shall be zero in the case of any ar-*
22 *rangement which involves—*

23 “(I) *a loan from the lessee to the*
24 *lessor or a lender,*

1 “(II) any deposit, letter of credit,
2 or payment undertaking agreement in-
3 volving a lender, or

4 “(III) any credit support made
5 available to the lessor in which a lend-
6 er (if any) does not have a claim which
7 is senior to the lessor.

8 For purposes of subclause (I), the term
9 ‘loan’ shall not include any amount treated
10 as a loan under section 467 with respect to
11 a section 467 rental agreement.

12 “(3) LESSOR MUST MAKE SUBSTANTIAL EQUITY
13 INVESTMENT.—A lease of property meets the require-
14 ments of this paragraph if—

15 “(A) the lessor—

16 “(i) has at the time the lease is entered
17 into an unconditional at-risk equity invest-
18 ment (as determined by the Secretary) in
19 the property of at least 20 percent of the les-
20 sor’s adjusted basis in the property as of
21 that time, and

22 “(ii) maintains such investment
23 throughout the term of the lease, and

24 “(B) the fair market value of the property
25 at the end of the lease term is reasonably ex-

1 pected to be equal to at least 20 percent of such
2 basis.

3 Subparagraphs (A)(ii) and (B) shall not apply if the
4 lease term is described in section 168(h)(1)(C)(ii), or
5 in the case of qualified technological equipment, is de-
6 scribed in section 168(h)(3). For purposes of subpara-
7 graph (B), the fair market value at the end of the
8 lease term shall be reduced to the extent that a person
9 other than the lessor bears a risk of loss in the value
10 of the property.

11 “(4) LESSEE MAY NOT BEAR MORE THAN MINI-
12 MAL RISK OF LOSS.—

13 “(A) IN GENERAL.—A lease of property
14 meets the requirements of this paragraph if there
15 is no arrangement under which more than a
16 minimal risk of loss (as determined under regu-
17 lations) in the value of the property is borne by
18 the lessee.

19 “(B) CERTAIN ARRANGEMENTS FAIL RE-
20 QUIREMENT.—In no event will the requirements
21 of this paragraph be met if there is any arrange-
22 ment under which the lessee bears—

23 “(i) any portion of the loss that would
24 occur if the fair market value of the leased
25 property were 25 percent less than its rea-

1 sonably expected fair market value at the
2 time the lease is terminated, or

3 “(ii) more than 50 percent of the loss
4 that would occur if the fair market value of
5 the leased property at the time the lease is
6 terminated were zero.

7 “(5) *PROPERTY WITH MORE THAN 7-YEAR CLASS*
8 *LIFE.*—*In the case of a lease—*

9 “(A) of property with a class life (as de-
10 fined in section 168(i)(1)) of more than 7 years,
11 and

12 “(B) under which the lessee has the option
13 to purchase the property,
14 the lease meets the requirements of this paragraph
15 only if the purchase price under the option equals the
16 fair market value of the property (determined at the
17 time of exercise).

18 “(6) *REGULATORY REQUIREMENTS.*—*A lease of*
19 *property meets the requirements of this paragraph if*
20 *such lease of property meets such requirements as the*
21 *Secretary may prescribe by regulations.*

22 “(e) *SPECIAL RULES.*—

23 “(1) *TREATMENT OF FORMER TAX-EXEMPT USE*
24 *PROPERTY.*—

1 “(A) *IN GENERAL.*—*In the case of any*
2 *former tax-exempt use property—*

3 “(i) *any deduction allowable under*
4 *subsection (b) with respect to such property*
5 *for any taxable year shall be allowed only*
6 *to the extent of any net income (without re-*
7 *gard to such deduction) from such property*
8 *for such taxable year, and*

9 “(ii) *any portion of such unused de-*
10 *duction remaining after application of*
11 *clause (i) shall be treated as allowable*
12 *under subsection (b) with respect to such*
13 *property in the next taxable year.*

14 “(B) *FORMER TAX-EXEMPT USE PROP-*
15 *ERTY.*—*For purposes of this subsection, the term*
16 *‘former tax-exempt use property’ means any*
17 *property which—*

18 “(i) *is not tax-exempt use property for*
19 *the taxable year, but*

20 “(ii) *was tax-exempt use property for*
21 *any prior taxable year.*

22 “(2) *DISPOSITION OF ENTIRE INTEREST IN*
23 *PROPERTY.*—*If during the taxable year a taxpayer*
24 *disposes of the taxpayer’s entire interest in tax-ex-*
25 *empt use property (or former tax-exempt use prop-*

1 *erty), rules similar to the rules of section 469(g) shall*
2 *apply for purposes of this section.*

3 *“(3) COORDINATION WITH SECTION 469.—This*
4 *section shall be applied before the application of sec-*
5 *tion 469.*

6 *“(f) OTHER DEFINITIONS.—For purposes of this*
7 *section—*

8 *“(1) RELATED PARTIES.—The terms ‘lessor’, ‘les-*
9 *see’, and ‘lender’ include any related party (within*
10 *the meaning of section 197(f)(9)(C)(i)).*

11 *“(2) LEASE TERM.—The term ‘lease term’ has*
12 *the meaning given to such term by section 168(i)(3).*

13 *“(3) LENDER.—The term ‘lender’ means, with*
14 *respect to any lease, a person that makes a loan to*
15 *the lessor which is secured (or economically similar to*
16 *being secured) by the lease or the leased property.*

17 *“(4) LOAN.—The term ‘loan’ includes any simi-*
18 *lar arrangement.*

19 *“(g) REGULATIONS.—The Secretary shall prescribe*
20 *such regulations as may be necessary or appropriate to*
21 *carry out the purposes of this section, including regulation*
22 *which—*

23 *“(1) allow in appropriate cases the aggregation*
24 *of property subject to the same lease, and*

1 “(2) provide for the determination of the alloca-
2 tion of interest expense for purposes of this section.”

3 (b) *CONFORMING AMENDMENT.*—*The table of sections*
4 *for subpart C of part II of subchapter E of chapter 1 is*
5 *amended by adding at the end the following new item:*

 “Sec. 470. *Limitations on losses from tax-exempt use property.*”

6 (c) *EFFECTIVE DATES.*—

7 (1) *IN GENERAL.*—*The amendments made by*
8 *this section shall apply to leases entered into after No-*
9 *vember 18, 2003.*

10 (2) *LEASES TO FOREIGN ENTITIES.*—*In the case*
11 *of tax-exempt use property leased to a tax-exempt en-*
12 *tity which is a foreign person or entity, the amend-*
13 *ments made by this section shall apply to taxable*
14 *years beginning after January 31, 2004, with respect*
15 *to leases entered into on or before November 18, 2003.*

16 **PART IV—ADMINISTRATIVE PROVISIONS**

17 **SEC. 481. CLARIFICATION OF RULES FOR PAYMENT OF ESTI-**
18 **MATED TAX FOR CERTAIN DEEMED ASSET**
19 **SALES.**

20 (a) *IN GENERAL.*—*Paragraph (13) of section 338(h)*
21 *(relating to tax on deemed sale not taken into account for*
22 *estimated tax purposes) is amended by adding at the end*
23 *the following: “The preceding sentence shall not apply with*
24 *respect to a qualified stock purchase for which an election*
25 *is made under paragraph (10).”.*

1 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
2 *section (a) shall apply to transactions occurring after the*
3 *date of the enactment of this Act.*

4 **SEC. 482. EXTENSION OF IRS USER FEES.**

5 (a) *IN GENERAL.*—*Section 7528(c) (relating to termi-*
6 *nation) is amended by striking “December 31, 2004” and*
7 *inserting “September 30, 2013”.*

8 (b) *EFFECTIVE DATE.*—*The amendment made by this*
9 *section shall apply to requests after the date of the enact-*
10 *ment of this Act.*

11 **SEC. 483. DOUBLING OF CERTAIN PENALTIES, FINES, AND**
12 **INTEREST ON UNDERPAYMENTS RELATED TO**
13 **CERTAIN OFFSHORE FINANCIAL ARRANGE-**
14 **MENT.**

15 (a) *DETERMINATION OF PENALTY.*—

16 (1) *IN GENERAL.*—*Notwithstanding any other*
17 *provision of law, in the case of an applicable*
18 *taxpayer—*

19 (A) *the determination as to whether any in-*
20 *terest or applicable penalty is to be imposed with*
21 *respect to any arrangement to which any initia-*
22 *tive described in paragraph (2) applied, or to*
23 *any underpayment of Federal income tax attrib-*
24 *utable to items arising in connection with any*
25 *arrangement described in paragraph (2), shall be*

1 *made without regard to section 6664 of the Inter-*
2 *nal Revenue Code of 1986, and*

3 *(B) if any such interest or applicable pen-*
4 *alty is imposed, the amount of such interest or*
5 *penalty shall be equal to twice that determined*
6 *without regard to this section.*

7 (2) *APPLICABLE TAXPAYER.*—*For purposes of*
8 *this subsection, the term “applicable taxpayer” means*
9 *a taxpayer eligible to participate in—*

10 *(A) the Department of the Treasury’s Off-*
11 *shore Voluntary Compliance Initiative, or*

12 *(B) the Department of the Treasury’s vol-*
13 *untary disclosure initiative which applies to the*
14 *taxpayer by reason of the taxpayer’s under-*
15 *reporting of United States income tax liability*
16 *through financial arrangements which rely on*
17 *the use of offshore arrangements which were the*
18 *subject of the initiative described in subpara-*
19 *graph (A).*

20 (b) *DEFINITIONS AND RULES.*—*For purposes of this*
21 *section—*

22 (1) *APPLICABLE PENALTY.*—*The term “applica-*
23 *ble penalty” means any penalty, addition to tax, or*
24 *fine imposed under chapter 68 of the Internal Rev-*
25 *enue Code of 1986.*

1 (2) *VOLUNTARY OFFSHORE COMPLIANCE INITIA-*
2 *TIVE.*—*The term “Voluntary Offshore Compliance*
3 *Initiative” means the program established by the De-*
4 *partment of the Treasury in January of 2003 under*
5 *which any taxpayer was eligible to voluntarily dis-*
6 *close previously undisclosed income on assets placed*
7 *in offshore accounts and accessed through credit card*
8 *and other financial arrangements.*

9 (3) *PARTICIPATION.*—*A taxpayer shall be treated*
10 *as having participated in the Voluntary Offshore*
11 *Compliance Initiative if the taxpayer submitted the*
12 *request in a timely manner and all information re-*
13 *quested by the Secretary of the Treasury or his dele-*
14 *gate within a reasonable period of time following the*
15 *request.*

16 (c) *EFFECTIVE DATE.*—*The provisions of this section*
17 *shall apply to interest, penalties, additions to tax, and fines*
18 *with respect to any taxable year if as of the date of the*
19 *enactment of this Act, the assessment of any tax, penalty,*
20 *or interest with respect to such taxable year is not prevented*
21 *by the operation of any law or rule of law.*

22 **SEC. 484. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALL-**
23 **MENT AGREEMENTS.**

24 (a) *IN GENERAL.*—

1 (1) *Section 6159(a) (relating to authorization of*
2 *agreements) is amended—*

3 (A) *by striking “satisfy liability for pay-*
4 *ment of” and inserting “make payment on”, and*

5 (B) *by inserting “full or partial” after “fa-*
6 *cilitate”.*

7 (2) *Section 6159(c) (relating to Secretary re-*
8 *quired to enter into installment agreements in certain*
9 *cases) is amended in the matter preceding paragraph*
10 *(1) by inserting “full” before “payment”.*

11 (b) *REQUIREMENT TO REVIEW PARTIAL PAYMENT*
12 *AGREEMENTS EVERY TWO YEARS.—Section 6159, as*
13 *amended by this Act, is amended by redesignating sub-*
14 *sections (d), (e), and (f) as subsections (e), (f), and (g), re-*
15 *spectively, and inserting after subsection (c) the following*
16 *new subsection:*

17 “(d) *SECRETARY REQUIRED TO REVIEW INSTALL-*
18 *MENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO*
19 *YEARS.—In the case of an agreement entered into by the*
20 *Secretary under subsection (a) for partial collection of a*
21 *tax liability, the Secretary shall review the agreement at*
22 *least once every 2 years.”.*

23 (c) *EFFECTIVE DATE.—The amendments made by this*
24 *section shall apply to agreements entered into on or after*
25 *the date of the enactment of this Act.*

1 **SEC. 485. EXTENSION OF CUSTOMS USER FEES.**

2 *Section 13031(j)(3) of the Consolidated Omnibus*
3 *Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is*
4 *amended by striking “March 1, 2005” and inserting “Sep-*
5 *tember 30, 2013”.*

6 **SEC. 486. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
7 **TEREST ON POTENTIAL UNDERPAYMENTS.**

8 *(a) IN GENERAL.—Subchapter A of chapter 67 (relat-*
9 *ing to interest on underpayments) is amended by adding*
10 *at the end the following new section:*

11 **“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
12 **TEREST ON POTENTIAL UNDERPAYMENTS,**
13 **ETC.**

14 *“(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN*
15 *AS PAYMENT OF TAX.—A taxpayer may make a cash de-*
16 *posit with the Secretary which may be used by the Sec-*
17 *retary to pay any tax imposed under subtitle A or B or*
18 *chapter 41, 42, 43, or 44 which has not been assessed at*
19 *the time of the deposit. Such a deposit shall be made in*
20 *such manner as the Secretary shall prescribe.*

21 *“(b) NO INTEREST IMPOSED.—To the extent that such*
22 *deposit is used by the Secretary to pay tax, for purposes*
23 *of section 6601 (relating to interest on underpayments), the*
24 *tax shall be treated as paid when the deposit is made.*

25 *“(c) RETURN OF DEPOSIT.—Except in a case where*
26 *the Secretary determines that collection of tax is in jeop-*

1 ardy, the Secretary shall return to the taxpayer any
2 amount of the deposit (to the extent not used for a payment
3 of tax) which the taxpayer requests in writing.

4 “(d) PAYMENT OF INTEREST.—

5 “(1) IN GENERAL.—For purposes of section 6611
6 (relating to interest on overpayments), a deposit
7 which is returned to a taxpayer shall be treated as a
8 payment of tax for any period to the extent (and only
9 to the extent) attributable to a disputable tax for such
10 period. Under regulations prescribed by the Secretary,
11 rules similar to the rules of section 6611(b)(2) shall
12 apply.

13 “(2) DISPUTABLE TAX.—

14 “(A) IN GENERAL.—For purposes of this
15 section, the term ‘disputable tax’ means the
16 amount of tax specified at the time of the deposit
17 as the taxpayer’s reasonable estimate of the max-
18 imum amount of any tax attributable to disput-
19 able items.

20 “(B) SAFE HARBOR BASED ON 30-DAY LET-
21 TER.—In the case of a taxpayer who has been
22 issued a 30-day letter, the maximum amount of
23 tax under subparagraph (A) shall not be less
24 than the amount of the proposed deficiency speci-
25 fied in such letter.

1 “(3) *OTHER DEFINITIONS.*—For purposes of
2 *paragraph (2)*—

3 “(A) *DISPUTABLE ITEM.*—The term ‘disput-
4 *able item*’ means any item of income, gain, loss,
5 *deduction, or credit if the taxpayer—*

6 “(i) *has a reasonable basis for its*
7 *treatment of such item, and*

8 “(ii) *reasonably believes that the Sec-*
9 *retary also has a reasonable basis for dis-*
10 *allowing the taxpayer’s treatment of such*
11 *item.*

12 “(B) *30-DAY LETTER.*—The term ‘30-day
13 *letter*’ means the first letter of proposed defi-
14 *ciency which allows the taxpayer an opportunity*
15 *for administrative review in the Internal Rev-*
16 *enue Service Office of Appeals.*

17 “(4) *RATE OF INTEREST.*—The rate of interest
18 *allowable under this subsection shall be the Federal*
19 *short-term rate determined under section 6621(b),*
20 *compounded daily.*

21 “(e) *USE OF DEPOSITS.*—

22 “(1) *PAYMENT OF TAX.*—Except as otherwise
23 *provided by the taxpayer, deposits shall be treated as*
24 *used for the payment of tax in the order deposited.*

1 “(2) *RETURNS OF DEPOSITS.*—*Deposits shall be*
2 *treated as returned to the taxpayer on a last-in, first-*
3 *out basis.*”.

4 (b) *CLERICAL AMENDMENT.*—*The table of sections for*
5 *subchapter A of chapter 67 is amended by adding at the*
6 *end the following new item:*

“Sec. 6603. Deposits made to suspend running of interest on poten-
tial underpayments, etc.”.

7 (c) *EFFECTIVE DATE.*—

8 (1) *IN GENERAL.*—*The amendments made by*
9 *this section shall apply to deposits made after the*
10 *date of the enactment of this Act.*

11 (2) *COORDINATION WITH DEPOSITS MADE UNDER*
12 *REVENUE PROCEDURE 84–58.*—*In the case of an*
13 *amount held by the Secretary of the Treasury or his*
14 *delegate on the date of the enactment of this Act as*
15 *a deposit in the nature of a cash bond deposit pursu-*
16 *ant to Revenue Procedure 84–58, the date that the*
17 *taxpayer identifies such amount as a deposit made*
18 *pursuant to section 6603 of the Internal Revenue*
19 *Code (as added by this Act) shall be treated as the*
20 *date such amount is deposited for purposes of such*
21 *section 6603.*

22 **SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.**

23 (a) *CONTRACT REQUIREMENTS.*—

1 (1) *IN GENERAL.*—Subchapter A of chapter 64
2 (relating to collection) is amended by adding at the
3 end the following new section:

4 **“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.**

5 “(a) *IN GENERAL.*—Nothing in any provision of law
6 shall be construed to prevent the Secretary from entering
7 into a qualified tax collection contract.

8 “(b) *QUALIFIED TAX COLLECTION CONTRACT.*—For
9 purposes of this section, the term ‘qualified tax collection
10 contract’ means any contract which—

11 “(1) is for the services of any person (other than
12 an officer or employee of the Treasury Department)—

13 “(A) to locate and contact any taxpayer
14 specified by the Secretary,

15 “(B) to request full payment from such tax-
16 payer of an amount of Federal tax specified by
17 the Secretary and, if such request cannot be met
18 by the taxpayer, to offer the taxpayer an install-
19 ment agreement providing for full payment of
20 such amount during a period not to exceed 3
21 years, and

22 “(C) to obtain financial information speci-
23 fied by the Secretary with respect to such tax-
24 payer,

1 “(2) prohibits each person providing such serv-
2 ices under such contract from committing any act or
3 omission which employees of the Internal Revenue
4 Service are prohibited from committing in the per-
5 formance of similar services,

6 “(3) prohibits subcontractors from—

7 “(A) having contacts with taxpayers,

8 “(B) providing quality assurance services,

9 and

10 “(C) composing debt collection notices, and

11 “(4) permits subcontractors to perform other
12 services only with the approval of the Secretary.

13 “(c) FEES AND EXPENSES.—The Secretary may retain
14 and use—

15 “(1) an amount not in excess of 25 percent of the
16 amount collected under any qualified tax collection
17 contract for the costs of services performed under such
18 contract, and

19 “(2) an amount not in excess of 25 percent of
20 such amount collected for collection enforcement ac-
21 tivities of the Internal Revenue Service.

22 The Secretary shall keep adequate records regarding
23 amounts so retained and used. The amount credited as paid
24 by any taxpayer shall be determined without regard to this
25 subsection.

1 “(d) *NO FEDERAL LIABILITY.*—*The United States*
2 *shall not be liable for any act or omission of any person*
3 *performing services under a qualified tax collection con-*
4 *tract.*

5 “(e) *APPLICATION OF FAIR DEBT COLLECTION PRAC-*
6 *TICES ACT.*—*The provisions of the Fair Debt Collection*
7 *Practices Act (15 U.S.C. 1692 et seq.) shall apply to any*
8 *qualified tax collection contract, except to the extent super-*
9 *seded by section 6304, section 7602(c), or by any other pro-*
10 *vision of this title.*

11 “(f) *APPLICATION OF SECTION.*—*In no event may the*
12 *term of any qualified tax collection contract extend beyond*
13 *the date which is 5 years after the date of the enactment*
14 *of this section.*

15 “(g) *CROSS REFERENCES.*—

16 “(1) *For damages for certain unauthorized col-*
17 *lection actions by persons performing services under*
18 *a qualified tax collection contract, see section 7433A.*

19 “(2) *For application of Taxpayer Assistance Or-*
20 *ders to persons performing services under a qualified*
21 *tax collection contract, see section 7811(a)(4).”.*

22 “(2) *CONFORMING AMENDMENTS.*—

23 “(A) *Section 7809(a) is amended by insert-*
24 *ing “6306,” before “7651”.*

1 (B) *The table of sections for subchapter A of*
 2 *chapter 64 is amended by adding at the end the*
 3 *following new item:*

 “*Sec. 6306. Qualified Tax Collection Contracts.*”.

4 (b) *CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED*
 5 *COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES*
 6 *UNDER QUALIFIED TAX COLLECTION CONTRACTS.—*

7 (1) *IN GENERAL.—Subchapter B of chapter 76*
 8 *(relating to proceedings by taxpayers and third par-*
 9 *ties) is amended by inserting after section 7433 the*
 10 *following new section:*

11 **“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED**
 12 **COLLECTION ACTIONS BY PERSONS PER-**
 13 **FORMING SERVICES UNDER QUALIFIED TAX**
 14 **COLLECTION CONTRACTS.**

15 “(a) *IN GENERAL.—Subject to the modifications pro-*
 16 *vided by subsection (b), section 7433 shall apply to the acts*
 17 *and omissions of any person performing services under a*
 18 *qualified tax collection contract (as defined in section*
 19 *6306(b)) to the same extent and in the same manner as*
 20 *if such person were an employee of the Internal Revenue*
 21 *Service.*

22 “(b) *MODIFICATIONS.—For purposes of subsection*
 23 *(a)—*

24 “(1) *Any civil action brought under section 7433*
 25 *by reason of this section shall be brought against the*

1 *person who entered into the qualified tax collection*
2 *contract with the Secretary and shall not be brought*
3 *against the United States.*

4 “(2) *Such person and not the United States shall*
5 *be liable for any damages and costs determined in*
6 *such civil action.*”

7 “(3) *Such civil action shall not be an exclusive*
8 *remedy with respect to such person.*”

9 “(4) *Subsections (c), (d)(1), and (e) of section*
10 *7433 shall not apply.*”

11 (2) *CLERICAL AMENDMENT.—The table of sec-*
12 *tions for subchapter B of chapter 76 is amended by*
13 *inserting after the item relating to section 7433 the*
14 *following new item:*

“Sec. 7433A. *Civil damages for certain unauthorized collection ac-*
tions by persons performing services under a quali-
fied tax collection contract.”

15 (c) *APPLICATION OF TAXPAYER ASSISTANCE ORDERS*
16 *TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED*
17 *TAX COLLECTION CONTRACT.—Section 7811 (relating to*
18 *taxpayer assistance orders) is amended by adding at the*
19 *end the following new subsection:*

20 “(g) *APPLICATION TO PERSONS PERFORMING SERV-*
21 *ICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—*
22 *Any order issued or action taken by the National Taxpayer*
23 *Advocate pursuant to this section shall apply to persons*
24 *performing services under a qualified tax collection contract*

1 *(as defined in section 6306(b)) to the same extent and in*
2 *the same manner as such order or action applies to the Sec-*
3 *retary.”.*

4 *(d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT MIS-*
5 *CONDUCT TO PERFORM UNDER CONTRACT.—Section 1203*
6 *of the Internal Revenue Service Restructuring Act of 1998*
7 *(relating to termination of employment for misconduct) is*
8 *amended by adding at the end the following new subsection:*

9 *“(e) INDIVIDUALS PERFORMING SERVICES UNDER A*
10 *QUALIFIED TAX COLLECTION CONTRACT.—An individual*
11 *shall cease to be permitted to perform any services under*
12 *any qualified tax collection contract (as defined in section*
13 *6306(b) of the Internal Revenue Code of 1986) if there is*
14 *a final determination by the Secretary of the Treasury*
15 *under such contract that such individual committed any*
16 *act or omission described under subsection (b) in connection*
17 *with the performance of such services.”.*

18 *(e) BIENNIAL REPORT.—The Secretary of the Treasury*
19 *shall biennially submit (beginning in 2005) to the Com-*
20 *mittee on Finance of the Senate and the Committee on*
21 *Ways and Means of the House of Representatives a report*
22 *with respect to qualified tax collection contracts under sec-*
23 *tion 6306 of the Internal Revenue Code of 1986 (as added*
24 *by this section) which includes—*

25 *(1) a complete cost benefit analysis,*

1 (2) *the impact of such contracts on collection en-*
2 *forcement staff levels in the Internal Revenue Service,*

3 (3) *the amounts collected and the collection costs*
4 *incurred (directly and indirectly),*

5 (4) *an evaluation of contractor performance,*

6 (5) *a disclosure safeguard report in a form simi-*
7 *lar to that required under section 6103(p)(5) of such*
8 *Code, and*

9 (6) *a measurement plan which includes a com-*
10 *parison of the best practices used by the private col-*
11 *lectors with the Internal Revenue Service's own collec-*
12 *tion techniques) and mechanisms to identify and cap-*
13 *ture information on successful collection techniques*
14 *used by the contractors which could be adopted by the*
15 *Internal Revenue Service.*

16 (f) *EFFECTIVE DATE.*—*The amendments made to this*
17 *section shall take effect on the date of the enactment of this*
18 *Act.*

19 **SEC. 488. WHISTLEBLOWER REFORMS.**

20 (a) *IN GENERAL.*—*Section 7623 (relating to expenses*
21 *of detection of underpayments and fraud, etc.) is*
22 *amended—*

23 (1) *by striking “The Secretary” and inserting*
24 “*(a) IN GENERAL.—The Secretary*”,

1 (2) *by striking “and” at the end of paragraph*
2 *(1) and inserting “or”,*

3 (3) *by striking “(other than interest)”, and*

4 (4) *by adding at the end the following new sub-*
5 *sections:*

6 “(b) *AWARDS TO WHISTLEBLOWERS.—*

7 “(1) *IN GENERAL.—If the Secretary proceeds*
8 *with any administrative or judicial action described*
9 *in subsection (a) based on information brought to the*
10 *Secretary’s attention by an individual, such indi-*
11 *vidual shall, subject to paragraph (2), receive as an*
12 *award at least 15 percent but not more than 30 per-*
13 *cent of the collected proceeds (including penalties, in-*
14 *terest, additions to tax, and additional amounts) re-*
15 *sulting from the action (including any related ac-*
16 *tions) or from any settlement in response to such ac-*
17 *tion. The determination of the amount of such award*
18 *by the Whistleblower Office shall depend upon the ex-*
19 *tent to which the individual substantially contributed*
20 *to such action.*

21 “(2) *AWARD IN CASE OF LESS SUBSTANTIAL*
22 *CONTRIBUTION.—*

23 “(A) *IN GENERAL.—In the event the action*
24 *described in paragraph (1) is one which the*
25 *Whistleblower Office determines to be based prin-*

1 *cipally on disclosures of specific allegations*
2 *(other than information provided by the indi-*
3 *vidual described in paragraph (1)) resulting*
4 *from a judicial or administrative hearing, from*
5 *a governmental report, hearing, audit, or inves-*
6 *tigation, or from the news media, the Whistle-*
7 *blower Office may award such sums as it con-*
8 *siders appropriate, but in no case more than 10*
9 *percent of the collected proceeds (including pen-*
10 *alties, interest, additions to tax, and additional*
11 *amounts) resulting from the action (including*
12 *any related actions) or from any settlement in*
13 *response to such action, taking into account the*
14 *significance of the individual's information and*
15 *the role of such individual and any legal rep-*
16 *resentative of such individual in contributing to*
17 *such action.*

18 *“(B) NONAPPLICATION OF PARAGRAPH*
19 *WHERE INDIVIDUAL IS ORIGINAL SOURCE OF IN-*
20 *FORMATION.—Subparagraph (A) shall not apply*
21 *if the information resulting in the initiation of*
22 *the action described in paragraph (1) was origi-*
23 *nally provided by the individual described in*
24 *paragraph (1).*

1 “(3) *APPEAL OF AWARD DETERMINATION.*—Any
2 *determination regarding an award under paragraph*
3 *(1) or (2) shall be subject to the filing by the indi-*
4 *vidual described in such paragraph of a petition for*
5 *review with the Tax Court under rules similar to the*
6 *rules under section 7463 (without regard to the*
7 *amount in dispute) and such review shall be subject*
8 *to the rules under section 7461(b)(1).*

9 “(4) *APPLICATION OF THIS SUBSECTION.*—This
10 *subsection shall apply with respect to any action—*

11 “(A) *against any taxpayer, but in the case*
12 *of any individual, only if such individual’s gross*
13 *income exceeds \$200,000 for any taxable year*
14 *subject to such action, and*

15 “(B) *if the tax, penalties, interest, additions*
16 *to tax, and additional amounts in dispute exceed*
17 *\$20,000.*

18 “(5) *ADDITIONAL RULES.*—

19 “(A) *NO CONTRACT NECESSARY.*—No con-
20 *tract with the Internal Revenue Service is nec-*
21 *essary for any individual to receive an award*
22 *under this subsection.*

23 “(B) *REPRESENTATION.*—Any individual
24 *described in paragraph (1) or (2) may be rep-*
25 *resented by counsel.*

1 “(C) *AWARD NOT SUBJECT TO INDIVIDUAL*
2 *ALTERNATIVE MINIMUM TAX.—No award received*
3 *under this subsection shall be included in gross*
4 *income for purposes of determining alternative*
5 *minimum taxable income.*

6 “(c) *WHISTLEBLOWER OFFICE.—*

7 “(1) *IN GENERAL.—There is established in the*
8 *Internal Revenue Service an office to be known as the*
9 *‘Whistleblower Office’ which—*

10 “(A) *shall analyze information received*
11 *from any individual described in subsection (b)*
12 *and either investigate the matter itself or assign*
13 *it to the appropriate Internal Revenue Service*
14 *office,*

15 “(B) *shall monitor any action taken with*
16 *respect to such matter,*

17 “(C) *shall inform such individual that it*
18 *has accepted the individual’s information for*
19 *further review,*

20 “(D) *may require such individual and any*
21 *legal representative of such individual to not dis-*
22 *close any information so provided,*

23 “(E) *may ask for additional assistance from*
24 *such individual or any legal representative of*
25 *such individual, and*

1 “(F) shall determine the amount to be
2 awarded to such individual under subsection (b).

3 “(2) *FUNDING FOR OFFICE.*—From the amounts
4 available for expenditure under subsection (a), the
5 Whistleblower Office shall be credited with an amount
6 equal to the awards made under subsection (b). These
7 funds shall be used to maintain the Whistleblower Of-
8 fice and also to reimburse other Internal Revenue
9 Service offices for related costs, such as costs of inves-
10 tigation and collection.

11 “(3) *REQUEST FOR ASSISTANCE.*—

12 “(A) *IN GENERAL.*—Any assistance re-
13 quested under paragraph (1)(E) shall be under
14 the direction and control of the Whistleblower Of-
15 fice or the office assigned to investigate the mat-
16 ter under subparagraph (A). To the extent the
17 disclosure of any returns or return information
18 to the individual or legal representative is re-
19 quired for the performance of such assistance,
20 such disclosure shall be pursuant to a contract
21 entered into between the Secretary and the re-
22 cipients of such disclosure subject to section
23 6103(n).

24 “(B) *FUNDING OF ASSISTANCE.*—From the
25 funds made available to the Whistleblower Office

1 under paragraph (2), the Whistleblower Office
2 may reimburse the costs incurred by any legal
3 representative in providing assistance described
4 in subparagraph (A).”.

5 (b) *EFFECTIVE DATE.*—The amendments made by this
6 section shall apply to information provided on or after the
7 date of the enactment of this Act.

8 **SEC. 489. PROTECTION OF OVERTIME PAY.**

9 Section 13 of the Fair Labor Standards Act of 1938
10 (29 U.S.C. 213) is amended by adding at the end the fol-
11 lowing:

12 “(k)(1) The Secretary shall not promulgate any rule
13 under subsection (a)(1) that exempts from the overtime pay
14 provisions of section 7 any employee who earns less than
15 \$23,660 per year.

16 “(2) The Secretary shall not promulgate any rule
17 under subsection (a)(1) concerning the right to overtime
18 pay that is not as protective, or more protective, of the over-
19 time pay rights of employees in the occupations or job clas-
20 sifications described in paragraph (3) as the protections
21 provided for such employees under the regulations in effect
22 under such subsection on March 31, 2003.

23 “(3) The occupations or job classifications described in
24 this paragraph are as follows:

25 “(A) Any worker paid on an hourly basis.

- 1 “(B) *Blue collar workers.*
- 2 “(C) *Any worker provided overtime under a col-*
- 3 *lective bargaining agreement.*
- 4 “(D) *Team leaders.*
- 5 “(E) *Computer programmers.*
- 6 “(F) *Registered nurses.*
- 7 “(G) *Licensed practical nurses.*
- 8 “(H) *Nurse midwives.*
- 9 “(I) *Nursery school teachers.*
- 10 “(J) *Oil and gas pipeline workers.*
- 11 “(K) *Oil and gas field workers.*
- 12 “(L) *Oil and gas platform workers.*
- 13 “(M) *Refinery workers.*
- 14 “(N) *Steel workers.*
- 15 “(O) *Shipyard and ship scrapping workers.*
- 16 “(P) *Teachers.*
- 17 “(Q) *Technicians.*
- 18 “(R) *Journalists.*
- 19 “(S) *Chefs.*
- 20 “(T) *Cooks.*
- 21 “(U) *Police officers.*
- 22 “(V) *Firefighters.*
- 23 “(W) *Fire sergeants.*
- 24 “(X) *Police sergeants.*
- 25 “(Y) *Emergency medical technicians.*

- 1 “(Z) Paramedics.
- 2 “(AA) Waste disposal workers.
- 3 “(BB) Day care workers.
- 4 “(CC) Maintenance employees.
- 5 “(DD) Production line employees.
- 6 “(EE) Construction employees.
- 7 “(FF) Carpenters.
- 8 “(GG) Mechanics.
- 9 “(HH) Plumbers.
- 10 “(II) Iron workers.
- 11 “(JJ) Craftsmen.
- 12 “(KK) Operating engineers.
- 13 “(LL) Laborers.
- 14 “(MM) Painters.
- 15 “(NN) Cement masons.
- 16 “(OO) Stone and brick masons.
- 17 “(PP) Sheet metal workers.
- 18 “(QQ) Utility workers.
- 19 “(RR) Longshoremen.
- 20 “(SS) Stationary engineers.
- 21 “(TT) Welders.
- 22 “(UU) Boilermakers.
- 23 “(VV) Funeral directors.
- 24 “(WW) Athletic trainers.
- 25 “(XX) Outside sales employees.

1 “(YY) *Inside sales employees.*

2 “(ZZ) *Grocery store managers.*

3 “(AAA) *Financial services industry workers.*

4 “(BBB) *Route drivers.*

5 “(CCC) *Assistant retail managers.*

6 “(4) *Any portion of a rule promulgated under sub-*
7 *section (a)(1) after March 31, 2003, that modifies the over-*
8 *time pay provisions of section 7 in a manner that is incon-*
9 *sistent with paragraphs (2) and (3) shall have no force or*
10 *effect as it relates to the occupation or job classification in-*
11 *volved.”.*

12 **SEC. 490. PROTECTION OF OVERTIME PAY.**

13 *Section 13 of the Fair Labor Standards Act of 1938*
14 *(29 U.S.C. 213) is amended by adding at the end the fol-*
15 *lowing:*

16 “(k) *Notwithstanding the provisions of subchapter II*
17 *of chapter 5 and chapter 7 of title 5, United States Code*
18 *(commonly referred to as the Administrative Procedures*
19 *Act) or any other provision of law, any portion of the final*
20 *rule promulgated on April 23, 2004, revising part 541 of*
21 *title 29, Code of Federal Regulations, that exempts from the*
22 *overtime pay provisions of section 7 any employee who*
23 *would not otherwise be exempt if the regulations in effect*
24 *on March 31, 2003 remained in effect, shall have no force*
25 *or effect and that portion of such regulations (as in effect*

1 on March 31, 2003) that would prevent such employee from
 2 being exempt shall remain in effect. Notwithstanding the
 3 preceding sentence, the increased salary requirements pro-
 4 vided for in such final rule at section 541.600 of such title
 5 29, shall remain in effect.”.

6 **PART V—MISCELLANEOUS PROVISIONS**

7 **SEC. 491. ADDITION OF VACCINES AGAINST HEPATITIS A TO**
 8 **LIST OF TAXABLE VACCINES.**

9 (a) *IN GENERAL.*—Section 4132(a)(1) (defining tax-
 10 able vaccine) is amended by redesignating subparagraphs
 11 (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and
 12 (M), respectively, and by inserting after subparagraph (H)
 13 the following new subparagraph:

14 “(I) Any vaccine against hepatitis A.”.

15 (b) *CONFORMING AMENDMENT.*—Section
 16 9510(c)(1)(A) is amended by striking “October 18, 2000”
 17 and inserting “the date of the enactment of the Jumpstart
 18 Our Business Strength (JOBS) Act”.

19 (c) *EFFECTIVE DATE.*—

20 (1) *SALES, ETC.*—The amendments made by this
 21 section shall apply to sales and uses on or after the
 22 first day of the first month which begins more than
 23 4 weeks after the date of the enactment of this Act.

24 (2) *DELIVERIES.*—For purposes of paragraph
 25 (1) and section 4131 of the Internal Revenue Code of

1 1986, in the case of sales on or before the effective date
2 described in such paragraph for which delivery is
3 made after such date, the delivery date shall be con-
4 sidered the sale date.

5 **SEC. 492. RECOGNITION OF GAIN FROM THE SALE OF A**
6 **PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-**
7 **KIND EXCHANGE WITHIN 5 YEARS OF SALE.**

8 (a) *IN GENERAL.*—Section 121(d) (relating to special
9 rules for exclusion of gain from sale of principal residence)
10 is amended by adding at the end the following new para-
11 graph:

12 “(10) *PROPERTY ACQUIRED IN LIKE-KIND EX-*
13 *CHANGE.*—If a taxpayer acquired property in an ex-
14 change to which section 1031 applied, subsection (a)
15 shall not apply to the sale or exchange of such prop-
16 erty if it occurs during the 5-year period beginning
17 with the date of the acquisition of such property.”.

18 (b) *EFFECTIVE DATE.*—The amendment made by this
19 section shall apply to sales or exchanges after the date of
20 the enactment of this Act.

1 **SEC. 493. MODIFICATION OF EXEMPTION FROM TAX FOR**
2 **SMALL PROPERTY AND CASUALTY INSUR-**
3 **ANCE COMPANIES.**

4 (a) *PREMIUMS AS PERCENTAGE OF GROSS RECEIPTS*
5 *INCREASED.*—Section 501(c)(15)(A)(i)(II) is amended by
6 striking “50 percent” and inserting “60 percent”.

7 (b) *LIMITATION ON NET WRITTEN PREMIUMS IN-*
8 *CREASED.*—Section 831(b)(2) (relating to companies to
9 which this subsection applies) is amended—

10 (1) by striking “\$1,200,000” and inserting
11 “\$1,890,000”, and

12 (2) by adding at the end the following new sub-
13 paragraph:

14 “(C) *INFLATION ADJUSTMENTS.*—

15 “(i) *IN GENERAL.*—In the case of any
16 taxable year beginning in a calendar year
17 after 2005, the dollar amount in subpara-
18 graph (A)(i) shall be increased by an
19 amount equal to—

20 “(I) such dollar amount, multi-
21 plied by

22 “(II) the cost-of-living adjustment
23 determined under section 1(f)(3) for
24 the calendar year in which the taxable
25 year begins, by substituting ‘calendar

1 year 2004' for 'calendar year 1992' in
2 subparagraph (B) thereof.

3 “(ii) *ROUNDING.*—If the amount in
4 subparagraph (A)(i) as increased under
5 clause (i) is not a multiple of \$10,000, such
6 amount shall be rounded to the nearest mul-
7 tiple of \$10,000.”.

8 (c) *EFFECTIVE DATE.*—

9 (1) *IN GENERAL.*—Except as provided in para-
10 graph (2), the amendments made by this section shall
11 apply to taxable years beginning after December 31,
12 2004.

13 (2) *TRANSITION RULE FOR COMPANIES IN RE-*
14 *CEIVERSHIP OR LIQUIDATION.*—In the case of a com-
15 pany or association which—

16 (A) for the taxable year which includes
17 April 1, 2004, meets the requirements of section
18 501(c)(15)(A) of the Internal Revenue Code of
19 1986, as in effect for the last taxable year begin-
20 ning before January 1, 2004, and

21 (B) on April 1, 2004, is in a receivership,
22 liquidation, or similar proceeding under the su-
23 pervision of a State court,

24 the amendments made by this section shall apply to
25 taxable years beginning after the earlier of the date

1 *such proceeding ends (or, if later, December 31, 2004)*
 2 *or December 31, 2007.*

3 **SEC. 494. TREATMENT OF CHARITABLE CONTRIBUTIONS OF**
 4 **PATENTS AND SIMILAR PROPERTY.**

5 (a) *IN GENERAL.*—Section 170(e)(1)(B) (relating to
 6 *certain contributions of ordinary income and capital gain*
 7 *property) is amended by striking “or” at the end of clause*
 8 *(i), by adding “or” at the end of clause (ii), and by insert-*
 9 *ing after clause (ii) the following new clause:*

10 *“(iii) of any patent, copyright, trade-*
 11 *mark, trade name, trade secret, know-how,*
 12 *software (other than software described in*
 13 *section 197(e)(3)(A)(i)), or similar prop-*
 14 *erty, or applications or registrations of such*
 15 *property.”.*

16 (b) *ADDITIONAL DEDUCTION FOR CERTAIN CONTRIBU-*
 17 *TIONS OF PATENTS AND SIMILAR PROPERTY.*—Section
 18 *170(e) is amended by adding at the end the following new*
 19 *paragraph:*

20 *“(7) ADDITIONAL DEDUCTION FOR CERTAIN CON-*
 21 *TRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.—*

22 *“(A) IN GENERAL.*—*In the case of a chari-*
 23 *table contribution of any property described in*
 24 *paragraph (1)(B)(iii) (other than copyrights de-*
 25 *scribed in section 1221(a)(3) or 1231(b)(1)(C) or*

1 *property contributed to or for the use of an orga-*
 2 *nization described in paragraph (1)(B)(ii), if—*

3 *“(i) the lesser of—*

4 *“(I) 5 percent of the fair market*
 5 *value of such property (determined at*
 6 *the time of such contribution), or*

7 *“(II) \$1,000,000, exceeds*

8 *“(ii) the amount of such contribution*
 9 *as determined under paragraph (1),*

10 *then the amount of the charitable contribution of*
 11 *such property otherwise taken into account*
 12 *under this section shall equal the amount deter-*
 13 *mined under clause (i).”.*

14 *(c) CERTAIN DONEE INCOME FROM INTELLECTUAL*
 15 *PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CON-*
 16 *TRIBUTION.—Section 170 is amended by redesignating sub-*
 17 *section (m) as subsection (n) and by inserting after sub-*
 18 *section (l) the following new subsection:*

19 *“(m) CERTAIN DONEE INCOME FROM INTELLECTUAL*
 20 *PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CON-*
 21 *TRIBUTION.—*

22 *“(1) TREATMENT AS ADDITIONAL CONTRIBU-*
 23 *TION.—In the case of a taxpayer who makes a quali-*
 24 *fied intellectual property contribution, the deduction*
 25 *allowed under subsection (a) for each taxable year of*

1 *the taxpayer ending on or after the date of such con-*
2 *tribution shall be increased (subject to the limitations*
3 *under subsection (b)) by the applicable percentage of*
4 *qualified donee income with respect to such contribu-*
5 *tion which is properly allocable to such year under*
6 *this subsection.*

7 “(2) *QUALIFIED DONEE INCOME.—For purposes*
8 *of this subsection, the term ‘qualified donee income’*
9 *means any net income received by or accrued to the*
10 *donee which is properly allocable to the qualified in-*
11 *tellectual property.*

12 “(3) *ALLOCATION OF QUALIFIED DONEE INCOME*
13 *TO TAXABLE YEARS OF DONOR.—For purposes of this*
14 *subsection, qualified donee income shall be treated as*
15 *properly allocable to a taxable year of the donor if*
16 *such income is received by or accrued to the donee for*
17 *the taxable year of the donee which ends within or*
18 *with such taxable year of the donor.*

19 “(4) *10-YEAR LIMITATION.—Income shall not be*
20 *treated as properly allocable to qualified intellectual*
21 *property for purposes of this subsection if such income*
22 *is received by or accrued to the donee after the 10-*
23 *year period beginning on the date of the contribution*
24 *of such property.*

1 “(5) *BENEFIT LIMITED TO LIFE OF INTELLEC-*
 2 *TUAL PROPERTY.—Income shall not be treated as*
 3 *properly allocable to qualified intellectual property*
 4 *for purposes of this subsection if such income is re-*
 5 *ceived by or accrued to the donee after the expiration*
 6 *of the legal life of such property.*

7 “(6) *APPLICABLE PERCENTAGE.—For purposes*
 8 *of this subsection, the term ‘applicable percentage’*
 9 *means the percentage determined under the following*
 10 *table which corresponds to a taxable year of the donor*
 11 *ending on or after the date of the qualified intellectual*
 12 *property contribution:*

**“Taxable Year of Donor End- Applicable Percentage:
 ing On or After Date of
 Contribution:**

<i>1st or 2d</i>	<i>100</i>
<i>3rd</i>	<i>90</i>
<i>4th</i>	<i>80</i>
<i>5th</i>	<i>70</i>
<i>6th</i>	<i>60</i>
<i>7th</i>	<i>50</i>
<i>8th</i>	<i>40</i>
<i>9th</i>	<i>30</i>
<i>10th</i>	<i>20</i>
<i>11th or 12th</i>	<i>10.</i>

13 “(7) *QUALIFIED INTELLECTUAL PROPERTY CON-*
 14 *TRIBUTION.—For purposes of this subsection, the term*
 15 *‘qualified intellectual property contribution’ means*
 16 *any charitable contribution of qualified intellectual*
 17 *property—*

18 “(A) *the amount of which taken into ac-*
 19 *count under this section—*

1 “(i) is reduced by reason of subsection
2 (e)(1), or

3 “(ii) determined under subsection
4 (e)(7), and

5 “(B) with respect to which the donor in-
6 forms the donee at the time of such contribution
7 that the donor intends to treat such contribution
8 as a qualified intellectual property contribution
9 for purposes of this subsection and section
10 6050L.

11 “(8) *QUALIFIED INTELLECTUAL PROPERTY.*—For
12 purposes of this subsection, the term ‘qualified intel-
13 lectual property’ means property described in sub-
14 section (e)(1)(B)(iii) (other than copyrights described
15 in section 1221(a)(3) or 1231(b)(1)(C) or property
16 contributed to or for the use of an organization de-
17 scribed in subsection (e)(1)(B)(ii)).

18 “(9) *OTHER SPECIAL RULES.*—

19 “(A) *APPLICATION OF LIMITATIONS ON*
20 *CHARITABLE CONTRIBUTIONS.*—Any increase
21 under this subsection of the deduction provided
22 under subparagraph (a) shall be treated for pur-
23 poses of subsection (b) as a deduction which is
24 attributable to a charitable contribution to the
25 donee to which such increase relates.

1 “(B) *NET INCOME DETERMINED BY*
2 *DONEE.—The net income taken into account*
3 *under paragraph (2) shall not exceed the amount*
4 *of such income reported under section*
5 *6050L(b)(1).*

6 “(C) *DEDUCTION LIMITED TO 12 TAXABLE*
7 *YEARS.—Except as may be provided under sub-*
8 *paragraph (D)(i), this subsection shall not apply*
9 *with respect to any qualified intellectual prop-*
10 *erty contribution for any taxable year of the*
11 *donor after the 12th taxable year of the donor*
12 *which ends on or after the date of such contribu-*
13 *tion.*

14 “(D) *REGULATIONS.—The Secretary may*
15 *issue regulations or other guidance to carry out*
16 *the purposes of this subsection, including regula-*
17 *tions or guidance—*

18 “(i) *modifying the application of this*
19 *subsection in the case of a donor or donee*
20 *with a short taxable year, and*

21 “(ii) *providing for the determination*
22 *of an amount to be treated as net income of*
23 *the donee which is properly allocable to*
24 *qualified intellectual property in the case of*
25 *a donee who uses such property to further*

1 a purpose or function constituting the basis
2 of the donee's exemption under section 501
3 (or, in the case of a governmental unit, any
4 purpose described in section 170(c)) and
5 does not possess a right to receive any pay-
6 ment from a third party with respect to
7 such property.”.

8 (d) *REPORTING REQUIREMENTS.*—Section 6050L (re-
9 lating to returns relating to certain dispositions of donated
10 property) is amended to read as follows:

11 **“SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED**
12 **PROPERTY.**

13 “(a) *DISPOSITIONS OF DONATED PROPERTY.*—

14 “(1) *IN GENERAL.*—If the donee of any chari-
15 table deduction property sells, exchanges, or otherwise
16 disposes of such property within 2 years after its re-
17 ceipt, the donee shall make a return (in accordance
18 with forms and regulations prescribed by the Sec-
19 retary) showing—

20 “(A) the name, address, and TIN of the
21 donor,

22 “(B) a description of the property,

23 “(C) the date of the contribution,

24 “(D) the amount received on the disposi-
25 tion, and

1 “(E) the date of such disposition.

2 “(2) *DEFINITIONS.*—For purposes of this
3 subsection—

4 “(A) *CHARITABLE DEDUCTION PROPERTY.*—
5 The term ‘charitable deduction property’ means
6 any property (other than publicly traded securi-
7 ties) contributed in a contribution for which a
8 deduction was claimed under section 170 if the
9 claimed value of such property (plus the claimed
10 value of all similar items of property donated by
11 the donor to 1 or more donees) exceeds \$5,000.

12 “(B) *PUBLICLY TRADED SECURITIES.*—The
13 term ‘publicly traded securities’ means securities
14 for which (as of the date of the contribution)
15 market quotations are readily available on an es-
16 tablished securities market.

17 “(b) *QUALIFIED INTELLECTUAL PROPERTY CONTRIBU-*
18 *TIONS.*—

19 “(1) *IN GENERAL.*—Each donee with respect to a
20 qualified intellectual property contribution shall make
21 a return (at such time and in such form and manner
22 as the Secretary may by regulations prescribe) with
23 respect to each specified taxable year of the donee
24 showing—

1 “(A) *the name, address, and TIN of the*
2 *donor,*

3 “(B) *a description of the qualified intellec-*
4 *tual property contributed,*

5 “(C) *the date of the contribution, and*

6 “(D) *the amount of net income of the donee*
7 *for the taxable year which is properly allocable*
8 *to the qualified intellectual property (determined*
9 *without regard to paragraph (9)(B) of section*
10 *170(m) and with the modifications described in*
11 *paragraphs (4) and (5) of such section).*

12 “(2) *DEFINITIONS.—For purposes of this*
13 *subsection—*

14 “(A) *IN GENERAL.—Terms used in this sub-*
15 *section which are also used in section 170(m)*
16 *have the respective meanings given such terms in*
17 *such section.*

18 “(B) *SPECIFIED TAXABLE YEAR.—The term*
19 *‘specified taxable year’ means, with respect to*
20 *any qualified intellectual property contribution,*
21 *any taxable year of the donee any portion of*
22 *which is part of the 10-year period beginning on*
23 *the date of such contribution.*

24 “(c) *STATEMENT TO BE FURNISHED TO DONORS.—*
25 *Every person making a return under subsection (a) or (b)*

1 *shall furnish a copy of such return to the donor at such*
 2 *time and in such manner as the Secretary may by regula-*
 3 *tions prescribe.”.*

4 *(e) PROCESSING FEE.—Section 170, as amended by*
 5 *subsection (b), is amended by redesignating subsection (n)*
 6 *as subsection (o) and by inserting after subsection (m) the*
 7 *following new subsection:*

8 *“(n) PROCESSING FEE.—In the case of a deduction al-*
 9 *lowed for any taxable year under this section with respect*
 10 *to a charitable contribution of any property described in*
 11 *subsection (e)(1)(B)(iii) (other than copyrights described in*
 12 *section 1221(a)(3) or 1231(b)(1)(C) or property contributed*
 13 *to or for the use of an organization described in subsection*
 14 *(e)(1)(B)(ii)), the taxpayer shall include, with the tax-*
 15 *payer’s return of tax including such deduction, a fee equal*
 16 *to 1 percent of the amount of such deduction. Such fee shall*
 17 *be credited by the Secretary to the operations of the Exempt*
 18 *Organizations unit within the Internal Revenue Service.”.*

19 *(f) MODIFICATION OF SUBSTANTIAL VALUATIONS*
 20 *MISSTATEMENT PENALTY FOR CHARITABLE CONTRIBU-*
 21 *TIONS OF PROPERTY.—*

22 *(1) SUBSTANTIAL MISSTATEMENTS.—Section*
 23 *6662(e)(1)(A) (relating to substantial valuation*
 24 *misstatements under chapter 1) is amended by insert-*
 25 *ing “(50 percent or more in the case of a charitable*

1 *contribution of any property described in section*
2 *170(e)(1)(B)(iii))” after “200 percent or more”.*

3 (2) **GROSS MISSTATEMENTS.**—*Section*
4 *6662(h)(2)(A) (defining gross valuation*
5 *misstatements) is amended by striking clause (ii) and*
6 *inserting the following new clauses:*

7 “(ii) ‘100 percent or more’ for ‘50 per-

8 cent or more’,

9 “(iii) ‘25 percent or less’ for ‘50 per-

10 cent or less’, and”.

11 (g) **ANTI-ABUSE RULES.**—*The Secretary of the*
12 *Treasury—*

13 (1) *may prescribe such regulations or other guid-*
14 *ance as may be necessary or appropriate to prevent*
15 *the avoidance of the purposes of paragraphs*
16 *(1)(B)(iii) and (7) of section 170(e) of the Internal*
17 *Revenue Code of 1986 (as added by subsections (a)*
18 *and (b)), including preventing—*

19 (A) *the circumvention of the reduction of*
20 *the charitable deduction by embedding or bun-*
21 *dling the patent or similar property as part of*
22 *a charitable contribution of property that in-*
23 *cludes the patent or similar property,*

24 (B) *the manipulation of the basis of the*
25 *property to increase the amount of the charitable*

1 deduction through the use of related persons,
2 pass-thru entities, or other intermediaries, or
3 through the use of any provision of law or regula-
4 tion (including the consolidated return regula-
5 tions), and

6 (C) a donor from changing the form of the
7 patent or similar property to property of a form
8 for which different deduction rules would apply,
9 and

10 (2) shall prescribe guidance on appraisal stand-
11 ards for contributions of property described in section
12 170(e)(1)(B)(iii) of the Internal Revenue Code of
13 1986 (as added by this section).

14 (h) *EFFECTIVE DATE.*—The amendments made by this
15 section shall apply to contributions made after the date of
16 the enactment of this Act.

17 **SEC. 495. INCREASE IN AGE OF MINOR CHILDREN WHOSE**

18 **UNEARNED INCOME IS TAXED AS IF PARENT'S**

19 **INCOME.**

20 (a) *IN GENERAL.*—Section 1(g)(2)(A) (relating to
21 child to whom subsection applies) is amended by striking
22 “age 14” and inserting “age 18”.

23 (b) *EFFECTIVE DATE.*—The amendment made by this
24 section shall apply to taxable years beginning after Decem-
25 ber 31, 2003.

1 **SEC. 496. HOLDING PERIOD FOR PREFERRED STOCK.**

2 (a) *IN GENERAL.*—Section 1(h)(11)(B)(iii)(I) is
3 amended to read as follows:

4 “(I) with respect to which the
5 holding period requirements of section
6 246(c) are not met, determined by sub-
7 stituting ‘60 days’ for ‘45’ days each
8 place it appears, by substituting ‘120-
9 day’ for ‘90-day’ each place it appears,
10 and by substituting ‘120 days’ for ‘90
11 days’ and ‘240-day’ for ‘180-day’ in
12 paragraph (2).”

13 (b) *EFFECTIVE DATE.*—The amendments made by this
14 section shall apply to taxable years beginning after the date
15 of the enactment of this Act.

16 **SEC. 497. SUBSTANTIAL PRESENCE TEST REQUIRED TO DE-**
17 **TERMINE BONA FIDE RESIDENCE IN UNITED**
18 **STATES POSSESSIONS.**

19 (a) *SUBSTANTIAL PRESENCE TEST.*—

20 (1) *IN GENERAL.*—Subpart D of part III of sub-
21 chapter N of chapter 1 (relating to possessions of the
22 United States) is amended by adding at the end the
23 following new section:

24 **“SEC. 937. BONA FIDE RESIDENT.**

25 “For purposes of this subpart, section 865(g)(3), sec-
26 tion 876, section 881(b), paragraphs (2) and (3) of section

1 901(b), section 957(c), section 3401(a)(8)(C), and section
 2 7654(a), the term ‘bona fide resident’ means a person who
 3 satisfies a test, determined by the Secretary, similar to the
 4 substantial presence test under section 7701(b)(3) with re-
 5 spect to Guam, American Samoa, the Northern Mariana
 6 Islands, Puerto Rico, or the Virgin Islands, as the case may
 7 be.”.

8 (2) *CONFORMING AMENDMENTS.*—

9 (A) *The following provisions are amended*
 10 *by striking “during the entire taxable year” and*
 11 *inserting “for the taxable year”:*

12 (i) *Paragraph (3) of section 865(g).*

13 (ii) *Subsection (a) of section 876(a).*

14 (iii) *Paragraphs (2) and (3) of section*
 15 *901(b).*

16 (iv) *Subsection (a) of section 931.*

17 (v) *Paragraphs (1) and (2) of section*
 18 *933.*

19 (B) *Section 931(d) is amended by striking*
 20 *paragraph (3).*

21 (C) *Section 932 is amended by striking “at*
 22 *the close of the taxable year” and inserting “for*
 23 *the taxable year” each place it appears.*

24 (3) *CLERICAL AMENDMENT.*—*The table of sec-*
 25 *tions of subpart D of part III of subchapter N of*

1 *chapter 1 is amended by adding at the end the fol-*
2 *lowing new item:*

“Sec. 937. Bona fide resident.”.

3 *(b) REPORTING REQUIREMENTS FOR BONA FIDE*
4 *RESIDENTS OF THE VIRGIN ISLANDS.—Paragraph (2) of*
5 *section 932(c) (relating to treatment of Virgin Islands resi-*
6 *dents) is amended to read as follows:*

7 *“(2) FILING REQUIREMENTS.—*

8 *“(A) IN GENERAL.—Notwithstanding para-*
9 *graph (4), each individual to whom this sub-*
10 *section applies for the taxable year shall file an*
11 *income tax return for the taxable year with—*

12 *“(i) the Virgin Islands, and*

13 *“(ii) the United States.*

14 *“(B) FILING FEE.—The Secretary shall*
15 *charge a processing fee with respect to the return*
16 *filed under subparagraph (A)(ii) of an amount*
17 *appropriate to cover the administrative costs of*
18 *the requirements of subparagraph (A)(ii) and the*
19 *enforcement of the purposes of subparagraph*
20 *(A)(ii).”.*

21 *(c) PENALTIES.—*

22 *(1) IN GENERAL.—Part I of subchapter B of*
23 *chapter 68 is amended by adding at the end the fol-*
24 *lowing new section:*

1 **“SEC. 6717. FAILURE OF VIRGIN ISLANDS RESIDENTS TO**
2 **FILE RETURNS WITH THE UNITED STATES.**

3 “(a) *PENALTY AUTHORIZED.*—*The Secretary may im-*
4 *pose a civil money penalty on any person who violates, or*
5 *causes any violation of, the requirements of section*
6 *932(c)(2)(A)(ii).*

7 “(b) *AMOUNT OF PENALTY.*—

8 “(1) *IN GENERAL.*—*Except as provided in sub-*
9 *section (c), the amount of any civil penalty imposed*
10 *under subsection (a) shall not exceed \$5,000.*

11 “(2) *REASONABLE CAUSE EXCEPTION.*—*No pen-*
12 *alty shall be imposed under subsection (a) with re-*
13 *spect to any violation if such violation was due to*
14 *reasonable cause and the taxpayer acted in good faith.*

15 “(c) *WILLFUL VIOLATIONS.*—*In the case of any person*
16 *willfully violating, or willfully causing any violation of,*
17 *any requirement of section 932(c)(2)(A)(ii)—*

18 “(1) *the maximum penalty under subsection*
19 *(b)(1) shall be increased to \$25,000 and*

20 *“(2) subsection (b)(2) shall not apply.”.*

21 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
22 *tions for Part I of subchapter B of chapter 68 is*
23 *amended by adding at the end the following new item:*

“*Sec. 6717. Failure of Virgin Islands residents to file returns with*
the United States.”.

1 (d) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to taxable years ending after the date*
3 *of the enactment of this Act.*

4 **TITLE V—PROTECTION OF**
5 **UNITED STATES WORKERS**
6 **FROM COMPETITION OF FOR-**
7 **EIGN WORKFORCES**

8 **SEC. 501. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**
9 **CONTRACTS.**

10 (a) *LIMITATIONS.*—

11 (1) *IN GENERAL.*—*The Office of Federal Procure-*
12 *ment Policy Act (41 U.S.C. 403 et seq.) is amended*
13 *by adding at the end the following new section:*

14 **“SEC. 42. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**
15 **CONTRACTS.**

16 **“(a) CONVERSIONS TO CONTRACTOR PERFORMANCE OF**
17 *FEDERAL ACTIVITIES.*—*An activity or function of an exec-*
18 *utive agency that is converted to contractor performance*
19 *under Office of Management and Budget Circular A-76*
20 *may not be performed by the contractor or any subcon-*
21 *tractor at a location outside the United States except to the*
22 *extent that such activity or function was previously per-*
23 *formed by Federal Government employees outside the*
24 *United States.*

1 “(b) *OTHER FEDERAL CONTRACTS.*—(1) *A contract*
2 *that is entered into by the head of an executive agency may*
3 *not be performed outside the United States except to meet*
4 *a requirement of the executive agency for the contract to*
5 *be performed specifically at a location outside the United*
6 *States.*

7 “(2) *The prohibition in paragraph (1) does not apply*
8 *in the case of a contract of an executive agency if—*

9 “(A) *the President determines in writing that it*
10 *is necessary in the national security interests of the*
11 *United States for the contract to be performed outside*
12 *the United States; or*

13 “(B) *the head of such executive agency makes a*
14 *determination and reports such determination on a*
15 *timely basis to the Director of the Office of Manage-*
16 *ment and Budget that—*

17 “(i) *the property or services needed by the*
18 *executive agency are available only by means of*
19 *performance of the contract outside the United*
20 *States; and*

21 “(ii) *no property or services available by*
22 *means of performance of the contract inside the*
23 *United States would satisfy the executive agen-*
24 *cy’s need.*

1 “(3) Paragraph (1) does not apply to the performance
2 of a contract outside the United States under the exception
3 provided in subsection (a).

4 “(c) STATE CONTRACTS.—(1) Except as provided in
5 paragraph (2), funds appropriated for financial assistance
6 for a State may not be disbursed to or for such State during
7 a fiscal year unless the chief executive of that State has
8 transmitted to the Administrator for Federal Procurement
9 Policy, not later than April 1 of the preceding fiscal year,
10 a written certification that none of such funds will be ex-
11 pended for the performance outside the United States of con-
12 tracts entered into by such State.

13 “(2) The prohibition on disbursement of funds to or
14 for a State under paragraph (1) does not apply with respect
15 to the performance of a State contract outside the United
16 States if—

17 “(A) the chief executive of such State—

18 “(i) determines that the property or services
19 needed by the State are available only by means
20 of performance of the contract outside the United
21 States and no property or services available by
22 means of performance of the contract inside the
23 United States would satisfy the State’s need; and

24 “(ii) transmits a notification of such deter-
25 mination to the head of the executive agency of

1 *the United States that administers the authority*
2 *under which such funds are disbursed to or for*
3 *the State; and*

4 “(B) *the head of the executive agency receiving*
5 *the notification of such determination—*

6 “(i) *confirms that the facts warrant the de-*
7 *termination;*

8 “(ii) *approves the determination; and*

9 “(iii) *transmits a notification of the ap-*
10 *proval of the determination to the Director of the*
11 *Office of Management and Budget.*

12 “(3) *In this subsection, the term ‘State’ means each*
13 *of the several States of the United States, the District of*
14 *Columbia, the Commonwealth of Puerto Rico, the Common-*
15 *wealth of the Northern Mariana Islands, the Virgin Islands,*
16 *Guam, American Samoa, and the Trust Territory of the*
17 *Pacific Islands.*

18 “(d) *Subsections (b) and (c) shall not apply to pro-*
19 *urement covered by the World Trade Organization Govern-*
20 *ment Procurement Agreement.*

21 “(e) *NATIONAL SECURITY EXEMPTION.—Subsection*
22 *(b) shall not apply to any procurement for national secu-*
23 *rity purposes entered into by—*

24 “(1) *the Department of Defense or any agency or*
25 *entity thereof;*

1 “(2) *the Department of the Army, the Department*
2 *of the Navy, the Department of the Air Force,*
3 *or any agency or entity of any of the military departments;*

4 “(3) *the Department of Homeland Security;*

5 “(4) *the Department of Energy or any agency or*
6 *entity thereof, with respect to the national security*
7 *programs of that Department; or*

8 “(5) *any element of the intelligence community.*

9 “(f) *RESPONSIBILITIES OF OMB.—The Director of the*
10 *Office of Management and Budget shall—*

11 “(1) *maintain—*

12 “(A) *the waivers granted under subsection*
13 *(b)(2), together with the determinations and cer-*
14 *tifications on which such waivers were based;*
15 *and*

16 “(B) *the notifications received under sub-*
17 *section (c)(2)(B)(iii); and*

18 “(2) *submit to Congress promptly after the end*
19 *of each quarter of each fiscal year a report that sets*
20 *forth—*

21 “(A) *the waivers that were granted under*
22 *subsection (b)(2) during such quarter; and*
23

1 “(B) the notifications that were received
2 under subsection (c)(2)(B)(iii) during such quar-
3 ter.

4 “(g) ANNUAL GAO REVIEW.—The Comptroller Gen-
5 eral shall—

6 “(1) review, each fiscal year, the waivers granted
7 during such fiscal year under subsection (b)(2) and
8 the disbursements of funds authorized pursuant to the
9 exceptions in subsections (c)(2) and (e); and

10 “(2) promptly after the end of such fiscal year,
11 transmit to Congress a report containing a list of the
12 contracts covered by such waivers and exception to-
13 gether with a brief description of the performance of
14 each such contract to the maximum extent feasible
15 outside the United States.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions in section 1(b) of such Act is amended by add-
18 ing at the end the following new item:

“Sec. 42. Limitations on off-shore performance of contracts.”.

19 (b) INAPPLICABILITY TO STATES DURING FIRST TWO
20 FISCAL YEARS.—Section 42(c) of the Office of Federal Pro-
21 curement Policy Act (as added by subsection (a)) shall not
22 apply to disbursements of funds to a State during the fiscal
23 year in which this Act is enacted and the next fiscal year.

1 **SEC. 502. REPEAL OF SUPERSEDED LAW.**

2 Section 647 of the Transportation, Treasury, and
3 Independent Agencies Appropriations Act, 2004 (division
4 F of Public Law 108–199) is amended by striking sub-
5 section (e).

6 **SEC. 503. EFFECTIVE DATE AND APPLICABILITY.**

7 (a) *IN GENERAL.*—This title and the amendments
8 made by this title shall take effect 30 days after the Sec-
9 retary of Commerce certifies that the amendments made by
10 this title will not result in the loss of more jobs than it
11 will protect and will not cause harm to the United States
12 economy. The initial certification shall be made by the Sec-
13 retary of Commerce no later than 90 days after the enact-
14 ment of this Act. Such certification must be renewed on or
15 before January 1 of each year in order for the amendments
16 made by this title to be in effect for that year.

17 (b) *CONSISTENCY WITH INTERNATIONAL AGREE-*
18 *MENTS.*—The provisions of this title shall not apply to the
19 extent that they may be inconsistent with obligations under
20 international agreements. Within 90 days of this legisla-
21 tion, the Office of Management and Budget, in consultation
22 with the Office of the United States Trade Representative,
23 shall develop guidelines for the implementation of this pro-
24 vision.

1 **TITLE VI—OTHER PROVISIONS**
2 **Subtitle A—Provisions Relating to**
3 **Housing**

4 **SEC. 601. TREATMENT OF QUALIFIED MORTGAGE BONDS.**

5 (a) *YEAR HOLIDAY.*—Section 143(a)(2)(A)(iv) of the
6 *Internal Revenue Code of 1986 shall not apply to amounts*
7 *received during the 1-year period beginning on the date of*
8 *the enactment of this Act with respect to any bond out-*
9 *standing on such date.*

10 (b) *REPEAL OF REQUIRED USE OF CERTAIN PRIN-*
11 *CIPAL REPAYMENTS ON MORTGAGE SUBSIDY BOND*
12 *FINANCINGS TO REDEEM BONDS.*—

13 (1) *IN GENERAL.*—Subparagraph (A) of section
14 *143(a)(2) (defining qualified mortgage issue) is*
15 *amended by adding “and” at the end of clause (ii),*
16 *by striking “, and” at the end of clause (iii) and in-*
17 *serting a period, and by striking clause (iv) and the*
18 *last sentence.*

19 (2) *CONFORMING AMENDMENT.*—Clause (ii) of
20 *section 143(a)(2)(D) is amended by striking “(and*
21 *clause (iv) of subparagraph (A))”.*

22 (3) *EFFECTIVE DATE.*—The amendments made
23 *by this subsection shall apply to bonds originally*
24 *issued after the date of the enactment of this Act.*

1 **SEC. 602. PREMIUMS FOR MORTGAGE INSURANCE.**

2 (a) *IN GENERAL.*—Paragraph (3) of section 163(h)
3 (relating to qualified residence interest) is amended by add-
4 ing after subparagraph (D) the following new subpara-
5 graph:

6 “(E) *MORTGAGE INSURANCE PREMIUMS*
7 *TREATED AS INTEREST.*—

8 “(i) *IN GENERAL.*—Premiums paid or
9 accrued for qualified mortgage insurance by
10 a taxpayer during the taxable year in con-
11 nection with acquisition indebtedness with
12 respect to a qualified residence of the tax-
13 payer shall be treated for purposes of this
14 subsection as qualified residence interest.

15 “(ii) *PHASEOUT.*—The amount other-
16 wise allowable as a deduction under clause
17 (i) shall be reduced (but not below zero) by
18 10 percent of such amount for each \$1,000
19 (\$500 in the case of a married individual
20 filing a separate return) (or fraction there-
21 of) that the taxpayer’s adjusted gross in-
22 come for the taxable year exceeds \$100,000
23 (\$50,000 in the case of a married indi-
24 vidual filing a separate return).”.

25 (b) *DEFINITION AND SPECIAL RULES.*—Paragraph (4)
26 of section 163(h) (relating to other definitions and special

1 *rules) is amended by adding at the end the following new*
2 *subparagraphs:*

3 “(E) *QUALIFIED MORTGAGE INSURANCE.*—

4 *The term ‘qualified mortgage insurance’*
5 *means—*

6 “(i) *the Home Loan Guaranty Pro-*
7 *gram of the Department of Veterans Affairs,*
8 *and mortgage insurance provided by the*
9 *Federal Housing Administration or the*
10 *Rural Housing Administration, and*

11 “(ii) *private mortgage insurance (as*
12 *defined by section 2 of the Homeowners*
13 *Protection Act of 1998 (12 U.S.C. 4901), as*
14 *in effect on the date of the enactment of this*
15 *subparagraph).*

16 “(F) *SPECIAL RULES FOR PREPAID QUALI-*
17 *FIED MORTGAGE INSURANCE.*—*Any amount paid*
18 *by the taxpayer for qualified mortgage insurance*
19 *that is properly allocable to any mortgage the*
20 *payment of which extends to periods that are*
21 *after the close of the taxable year in which such*
22 *amount is paid shall be chargeable to capital ac-*
23 *count and shall be treated as paid in such peri-*
24 *ods to which so allocated. No deduction shall be*
25 *allowed for the unamortized balance of such ac-*

1 *count if such mortgage is satisfied before the end*
 2 *of its term. The preceding sentences shall not*
 3 *apply to amounts paid for qualified mortgage*
 4 *insurance provided by the Department of Vet-*
 5 *erans Affairs or the Rural Housing Administra-*
 6 *tion.”.*

7 *(c) INFORMATION RETURNS RELATING TO MORTGAGE*
 8 *INSURANCE.—Section 6050H (relating to returns relating*
 9 *to mortgage interest received in trade or business from indi-*
 10 *viduals) is amended by adding at the end the following new*
 11 *subsection:*

12 *“(h) RETURNS RELATING TO MORTGAGE INSURANCE*
 13 *PREMIUMS.—*

14 *“(1) IN GENERAL.—The Secretary may pre-*
 15 *scribe, by regulations, that any person who, in the*
 16 *course of a trade or business, receives from any indi-*
 17 *vidual premiums for mortgage insurance aggregating*
 18 *\$600 or more for any calendar year, shall make a re-*
 19 *turn with respect to each such individual. Such re-*
 20 *turn shall be in such form, shall be made at such*
 21 *time, and shall contain such information as the Sec-*
 22 *retary may prescribe.*

23 *“(2) STATEMENT TO BE FURNISHED TO INDIVID-*
 24 *UALS WITH RESPECT TO WHOM INFORMATION IS RE-*
 25 *QUIRED.—Every person required to make a return*

1 *under paragraph (1) shall furnish to each individual*
2 *with respect to whom a return is made a written*
3 *statement showing such information as the Secretary*
4 *may prescribe. Such written statement shall be fur-*
5 *nished on or before January 31 of the year following*
6 *the calendar year for which the return under para-*
7 *graph (1) was required to be made.*

8 *“(3) SPECIAL RULES.—For purposes of this*
9 *subsection—*

10 *“(A) rules similar to the rules of subsection*
11 *(c) shall apply, and*

12 *“(B) the term ‘mortgage insurance’*
13 *means—*

14 *“(i) the Home Loan Guaranty Pro-*
15 *gram of the Department of Veterans Affairs,*
16 *and mortgage insurance provided by the*
17 *Federal Housing Administration or the*
18 *Rural Housing Administration, and*

19 *“(ii) private mortgage insurance (as*
20 *defined by section 2 of the Homeowners*
21 *Protection Act of 1998 (12 U.S.C. 4901), as*
22 *in effect on the date of the enactment of this*
23 *subparagraph).”.*

24 *(d) EFFECTIVE DATE.—The amendments made by this*
25 *section shall apply to amounts paid or accrued in taxable*

1 *years beginning after December 31, 2004, and ending before*
 2 *January 1, 2006.*

3 **SEC. 603. INCREASE IN HISTORIC REHABILITATION CREDIT**
 4 **FOR CERTAIN LOW-INCOME HOUSING FOR**
 5 **THE ELDERLY.**

6 *(a) IN GENERAL.—Section 47 (relating to rehabilita-*
 7 *tion credit) is amended by adding at the end the following*
 8 *new subsection:*

9 *“(e) SPECIAL RULE REGARDING CERTAIN HISTORIC*
 10 *STRUCTURES.—In the case of any qualified rehabilitation*
 11 *expenditure with respect to any certified historic*
 12 *structure—*

13 *“(1) which is placed in service after the date of*
 14 *the enactment of this subsection,*

15 *“(2) which is part of a qualified low-income*
 16 *building with respect to which a credit under section*
 17 *42 is allowed, and*

18 *“(3) substantially all of the residential rental*
 19 *units of which are used for tenants who have attained*
 20 *the age of 65,*

21 *subsection (a)(2) shall be applied by substituting ‘25 per-*
 22 *cent’ for ‘20 percent.’”.*

23 *(b) APPLICATION OF MACRS.—The Internal Revenue*
 24 *Code of 1986 shall be applied and administered as if para-*
 25 *graph (4)(X) of section 251(d) of the Tax Reform Act of*

1 1986 as applied to the amendments made by section 201
 2 of such Act had not been enacted with respect to any prop-
 3 erty described in such paragraph and placed in service after
 4 the date of the enactment of this Act.

5 (c) *EFFECTIVE DATE.*—The amendment made by sub-
 6 section (a) shall apply to property placed in service after
 7 the date of the enactment of this Act.

8 **Subtitle B—Provisions Relating to** 9 **Bonds**

10 **SEC. 611. EXPANSION OF NEW YORK LIBERTY ZONE TAX** 11 **BENEFITS.**

12 (a) *ADDITIONAL EXTENSION OF TAX-EXEMPT BOND*
 13 *FINANCING.*—Section 1400L(d)(2)(D), as amended by this
 14 Act, is amended by striking “2006” and inserting “2010”.

15 (b) *EXTENSION OF ADVANCE REFUNDINGS.*—Section
 16 1400L(e)(1) is amended by striking “2005” and inserting
 17 “2006”.

18 **SEC. 612. MODIFICATIONS OF TREATMENT OF QUALIFIED** 19 **ZONE ACADEMY BONDS.**

20 (a) *PROCEEDS OF BONDS MAY BE USED FOR CON-*
 21 *STRUCTION AND LAND ACQUISITION.*—Paragraph (5) of
 22 section 1397E(d) (defining qualified purpose) is amended—
 23 (1) by striking “rehabilitating or repairing” in
 24 subparagraph (A) and inserting “constructing, reha-
 25 bilitating, or repairing”, and

1 (2) by redesignating subparagraphs (B), (C),
2 and (D) as subparagraphs (C), (D), and (E), respec-
3 tively, and by inserting after subparagraph (A) the
4 following:

5 “(B) acquiring the land on which the facil-
6 ity is to be constructed.”.

7 (b) *EFFECTIVE DATE.*—The amendments made by this
8 section shall apply to obligations issued after December 31,
9 2003.

10 **SEC. 613. MODIFICATIONS OF AUTHORITY OF INDIAN TRIB-**
11 **AL GOVERNMENTS TO ISSUE TAX-EXEMPT**
12 **BONDS.**

13 (a) *IN GENERAL.*—Paragraph (1) of section 7871(c)
14 (relating to Indian tribal governments treated as States for
15 certain purposes) is amended to read as follows:

16 “(1) *IN GENERAL.*—Subsection (a) of section 103
17 shall apply to any obligation issued by an Indian
18 tribal government (or subdivision thereof) only if—

19 “(A) such obligation—

20 “(i) is part of an issue 95 percent or
21 more of the net proceeds of which are to be
22 used to finance any facility located on an
23 Indian reservation, and

24 “(ii) is issued before January 1, 2006,

25 or

1 “(B) such obligation is part of an issue sub-
2 stantially all of the proceeds of which are to be
3 used in the exercise of any essential govern-
4 mental function.”.

5 (b) *SPECIAL RULES AND DEFINITIONS.*—Subsection
6 (c) of section 7871 is amended by inserting at the end the
7 following new paragraph:

8 “(4) *SPECIAL RULES AND DEFINITIONS.*—

9 “(A) *EXCLUSION OF GAMING.*—An obliga-
10 tion described in subparagraph (A) or (B) of
11 paragraph (1) may not be used to finance any
12 portion of a building in which class II or III
13 gaming (as defined in section 4 of the Indian
14 Gaming Regulatory Act (25 U.S.C. 2702)) is
15 conducted or housed.

16 “(B) *INDIAN RESERVATION.*—For purposes
17 of paragraph (1), the term ‘Indian reservation’
18 means—

19 “(i) a reservation, as defined in section
20 4(10) of the Indian Child Welfare Act of
21 1978 (25 U.S.C. 1903(10)), and

22 “(ii) lands held under the provisions of
23 the Alaska Native Claims Settlement Act
24 (43 U.S.C. 1601 et seq.) by a Native cor-

1 poration as defined in section 3(m) of such
2 Act (43 U.S.C. 1602(m)).”.

3 (c) *EFFECTIVE DATE.*—The amendments made by this
4 section shall apply to obligations issued after the date of
5 the enactment of this Act.

6 **SEC. 614. DEFINITION OF MANUFACTURING FACILITY FOR**
7 **SMALL ISSUE BONDS.**

8 (a) *IN GENERAL.*—Section 144(a)(12) (relating to ter-
9 mination dates) is amended by striking subparagraph (C)
10 and inserting the following new subparagraphs:

11 “(C) *MANUFACTURING FACILITY.*—For pur-
12 poses of this paragraph, the term ‘manufacturing
13 facility’ means any facility which is used in—

14 “(i) the manufacture of tangible per-
15 sonal property (including processing which
16 results in a change in the condition of such
17 property),

18 “(ii) the manufacture or development
19 of any software product or process if—

20 “(I) it takes more than 6 months
21 to manufacture or develop such prod-
22 uct,

23 “(II) the manufacture or develop-
24 ment could not with due diligence be

1 *reasonably expected to occur in less*
2 *than 6 months, and*

3 “(III) *the software product or*
4 *process comprises programs, routines,*
5 *and attendant documentation devel-*
6 *oped and maintained for use in com-*
7 *puter and telecommunications tech-*
8 *nology, or*

9 “(iii) *the manufacture or development*
10 *of any biobased product or bioenergy if—*

11 “(I) *it takes more than 6 months*
12 *to manufacture or develop, and*

13 “(II) *the manufacture or develop-*
14 *ment could not with due diligence be*
15 *reasonably expected to occur in less*
16 *than 6 months.*

17 “(D) *RELATED FACILITIES.—For purposes*
18 *of subparagraph (C), the term ‘manufacturing*
19 *facility’ includes a facility which is directly and*
20 *functionally related to a manufacturing facility*
21 *(determined without regard to subparagraph*
22 *(C)) if—*

23 “(i) *such facility, including an office*
24 *facility and a research and development fa-*

1 *cility, is located on the same site as the*
 2 *manufacturing facility, and*

3 “(ii) *not more than 40 percent of the*
 4 *net proceeds of the issue are used to provide*
 5 *such facility.*

6 “(E) *OTHER DEFINITIONS.—For purposes*
 7 *of subparagraph (C)(iii)—*

8 “(i) *BIOBASED PRODUCT.—The term*
 9 *‘biobased product’ means a commercial or*
 10 *industrial product (other than food or feed)*
 11 *which utilizes biological products or renew-*
 12 *able domestic agricultural (plant, animal,*
 13 *and marine) or forestry materials.*

14 “(ii) *BIOENERGY.—The term ‘bio-*
 15 *energy’ means biomass used in the produc-*
 16 *tion of energy, including liquid, solid, or*
 17 *gaseous fuels, electricity, and heat.”.*

18 (b) *EFFECTIVE DATE.—The amendment made by this*
 19 *section shall apply to obligations issued after the date of*
 20 *the enactment of this Act.*

21 **SEC. 615. CONSERVATION BONDS.**

22 (a) *TAX-EXEMPT BOND FINANCING.—*

23 (1) *IN GENERAL.—For purposes of the Internal*
 24 *Revenue Code of 1986, any qualified forest conserva-*

1 *tion bond shall be treated as an exempt facility bond*
2 *under section 142 of such Code.*

3 (2) *QUALIFIED FOREST CONSERVATION BOND.—*

4 *For purposes of this section, the term “qualified forest*
5 *conservation bond” means any bond issued as part of*
6 *an issue if—*

7 (A) *95 percent or more of the net proceeds*
8 *(as defined in section 150(a)(3) of such Code) of*
9 *such issue are to be used for qualified project*
10 *costs,*

11 (B) *such bond is issued for a qualified orga-*
12 *nization, and*

13 (C) *such bond is issued before December 31,*
14 *2006.*

15 (3) *LIMITATION ON AGGREGATE AMOUNT*
16 *ISSUED.—*

17 (A) *IN GENERAL.—The maximum aggregate*
18 *face amount of bonds which may be issued under*
19 *this subsection shall not exceed \$1,500,000,000*
20 *for all projects (excluding refunding bonds).*

21 (B) *ALLOCATION OF LIMITATION.—The lim-*
22 *itation described in subparagraph (A) shall be*
23 *allocated by the Secretary of the Treasury among*
24 *qualified organizations based on criteria estab-*
25 *lished by the Secretary not later than 180 days*

1 *after the date of the enactment of this section,*
2 *after consultation with the Chief of the Forest*
3 *Service.*

4 (4) *QUALIFIED PROJECT COSTS.*—*For purposes*
5 *of this subsection, the term “qualified project costs”*
6 *means the sum of—*

7 (A) *the cost of acquisition by the qualified*
8 *organization from an unrelated person of forests*
9 *and forest land which at the time of acquisition*
10 *or immediately thereafter are subject to a con-*
11 *servation restriction described in subsection*
12 *(c)(2),*

13 (B) *capitalized interest on the qualified for-*
14 *est conservation bonds for the 3-year period be-*
15 *ginning on the date of issuance of such bonds,*
16 *and*

17 (C) *credit enhancement fees which constitute*
18 *qualified guarantee fees (within the meaning of*
19 *section 148 of such Code).*

20 (5) *SPECIAL RULES.*—*In applying the Internal*
21 *Revenue Code of 1986 to any qualified forest con-*
22 *servation bond, the following modifications shall*
23 *apply:*

24 (A) *Section 146 of such Code (relating to*
25 *volume cap) shall not apply.*

1 (B) For purposes of section 147(b) of such
2 Code (relating to maturity may not exceed 120
3 percent of economic life), the land and standing
4 timber acquired with proceeds of qualified forest
5 conservation bonds shall have an economic life of
6 35 years.

7 (C) Subsections (c) and (d) of section 147
8 of such Code (relating to limitations on acquisi-
9 tion of land and existing property) shall not
10 apply.

11 (D) Section 57(a)(5) of such Code (relating
12 to tax-exempt interest) shall not apply to interest
13 on qualified forest conservation bonds.

14 (6) TREATMENT OF CURRENT REFUNDING
15 BONDS.—Paragraphs (2)(C) and (3) shall not apply
16 to any bond (or series of bonds) issued to refund a
17 qualified forest conservation bond issued before De-
18 cember 31, 2006, if—

19 (A) the average maturity date of the issue
20 of which the refunding bond is a part is not later
21 than the average maturity date of the bonds to
22 be refunded by such issue,

23 (B) the amount of the refunding bond does
24 not exceed the outstanding amount of the re-
25 funded bond, and

1 (C) the net proceeds of the refunding bond
2 are used to redeem the refunded bond not later
3 than 90 days after the date of the issuance of the
4 refunding bond.

5 For purposes of subparagraph (A), average maturity
6 shall be determined in accordance with section
7 147(b)(2)(A) of such Code.

8 (7) *EFFECTIVE DATE.*—This subsection shall
9 apply to obligations issued on or after the date which
10 is 180 days after the enactment of this Act.

11 (b) *ITEMS FROM QUALIFIED HARVESTING ACTIVITIES*
12 *NOT SUBJECT TO TAX OR TAKEN INTO ACCOUNT.*—

13 (1) *IN GENERAL.*—Income, gains, deductions,
14 losses, or credits from a qualified harvesting activity
15 conducted by a qualified organization shall not be
16 subject to tax or taken into account under subtitle A
17 of the Internal Revenue Code of 1986.

18 (2) *LIMITATION.*—The amount of income ex-
19 cluded from gross income under paragraph (1) for
20 any taxable year shall not exceed the amount used by
21 the qualified organization to make debt service pay-
22 ments during such taxable year for qualified forest
23 conservation bonds.

24 (3) *QUALIFIED HARVESTING ACTIVITY.*—For
25 purposes of paragraph (1)—

1 (A) *IN GENERAL.*—*The term “qualified har-*
2 *vesting activity” means the sale, lease, or har-*
3 *vesting, of standing timber—*

4 (i) *on land owned by a qualified orga-*
5 *nization which was acquired with proceeds*
6 *of qualified forest conservation bonds,*

7 (ii) *with respect to which a written ac-*
8 *knowledgement has been obtained by the*
9 *qualified organization from the State or*
10 *local governments with jurisdiction over*
11 *such land that the acquisition lessens the*
12 *burdens of such government with respect to*
13 *such land, and*

14 (iii) *pursuant to a qualified conserva-*
15 *tion plan adopted by the qualified organiza-*
16 *tion.*

17 (B) *EXCEPTIONS.*—

18 (i) *CESSATION AS QUALIFIED ORGANI-*
19 *ZATION.*—*The term “qualified harvesting*
20 *activity” shall not include any sale, lease,*
21 *or harvesting for any period during which*
22 *the organization ceases to qualify as a*
23 *qualified organization.*

24 (ii) *EXCEEDING LIMITS ON HAR-*
25 *VESTING.*—*The term “qualified harvesting*

1 *activity” shall not include any sale, lease,*
2 *or harvesting of standing timber on land*
3 *acquired with proceeds of qualified forest*
4 *conservation bonds to the extent that—*

5 (I) *the average annual area of*
6 *timber harvested from such land ex-*
7 *ceeds 2.5 percent of the total area of*
8 *such land or,*

9 (II) *the quantity of timber re-*
10 *moved from such land exceeds the*
11 *quantity which can be removed from*
12 *such land annually in perpetuity on a*
13 *sustained-yield basis with respect to*
14 *such land.*

15 *The limitations under subclauses (I) and*
16 *(II) shall not apply to post-fire restoration*
17 *and rehabilitation or sanitation harvesting*
18 *of timber stands which are substantially*
19 *damaged by fire, windthrow, or other catas-*
20 *trophes, or which are in imminent danger*
21 *from insect or disease attack.*

22 (4) *TERMINATION.—This subsection shall not*
23 *apply to any qualified harvesting activity of a quali-*
24 *fied organization occurring after the date on which*
25 *there is no outstanding qualified forest conservation*

1 *bond with respect to such qualified organization or*
2 *any such bond ceases to be a tax-exempt bond.*

3 (5) *PARTIAL RECAPTURE OF BENEFITS IF HAR-*
4 *VESTING LIMIT EXCEEDED.—If, as of the date that*
5 *this subsection ceases to apply under paragraph (3),*
6 *the average annual area of timber harvested from the*
7 *land exceeds the requirement of paragraph*
8 *(3)(B)(ii)(I), the tax imposed by chapter 1 of the In-*
9 *ternal Revenue Code of 1986 shall be increased, under*
10 *rules prescribed by the Secretary of the Treasury, by*
11 *the sum of the tax benefits attributable to such excess*
12 *and interest at the underpayment rate under section*
13 *6621 of such Code for the period of the underpayment.*

14 (c) *DEFINITIONS.—For purposes of this section—*

15 (1) *QUALIFIED CONSERVATION PLAN.—The term*
16 *“qualified conservation plan” means a multiple land*
17 *use program or plan which—*

18 (A) *is designed and administered primarily*
19 *for the purposes of protecting and enhancing*
20 *wildlife and fish, timber, scenic attributes, recre-*
21 *ation, and soil and water quality of the forest*
22 *and forest land,*

23 (B) *mandates that conservation of forest*
24 *and forest land is the single-most significant use*
25 *of the forest and forest land, and*

1 (C) requires that timber harvesting be con-
2 sistent with—

3 (i) restoring and maintaining reference
4 conditions for the region's ecotype,

5 (ii) restoring and maintaining a rep-
6 resentative sample of young, mid, and late
7 successional forest age classes,

8 (iii) maintaining or restoring the re-
9 sources' ecological health for purposes of
10 preventing damage from fire, insect, or dis-
11 ease,

12 (iv) maintaining or enhancing wildlife
13 or fish habitat, or

14 (v) enhancing research opportunities
15 in sustainable renewable resource uses.

16 (2) CONSERVATION RESTRICTION.—The conserva-
17 tion restriction described in this paragraph is a re-
18 striction which—

19 (A) is granted in perpetuity to an unrelated
20 person which is described in section 170(h)(3) of
21 such Code and which, in the case of a nongovern-
22 mental unit, is organized and operated for con-
23 servation purposes,

24 (B) meets the requirements of clause (ii) or
25 (iii)(II) of section 170(h)(4)(A) of such Code,

1 (C) obligates the qualified organization to
2 pay the costs incurred by the holder of the con-
3 servation restriction in monitoring compliance
4 with such restriction, and

5 (D) requires an increasing level of conserva-
6 tion benefits to be provided whenever cir-
7 cumstances allow it.

8 (3) *QUALIFIED ORGANIZATION.*—The term
9 “qualified organization” means an organization—

10 (A) which is a nonprofit organization sub-
11 stantially all the activities of which are chari-
12 table, scientific, or educational, including ac-
13 quiring, protecting, restoring, managing, and de-
14 veloping forest lands and other renewable re-
15 sources for the long-term charitable, educational,
16 scientific and public benefit,

17 (B) more than half of the value of the prop-
18 erty of which consists of forests and forest land
19 acquired with the proceeds from qualified forest
20 conservation bonds,

21 (C) which periodically conducts educational
22 programs designed to inform the public of envi-
23 ronmentally sensitive forestry management and
24 conservation techniques,

1 (D) which has at all times a board of
2 directors—

3 (i) at least 20 percent of the members
4 of which represent the holders of the con-
5 servation restriction described in paragraph
6 (2),

7 (ii) at least 20 percent of the members
8 of which are public officials, and

9 (iii) not more than one-third of the
10 members of which are individuals who are
11 or were at any time within 5 years before
12 the beginning of a term of membership on
13 the board, an employee of, independent con-
14 tractor with respect to, officer of, director of,
15 or held a material financial interest in, a
16 commercial forest products enterprise with
17 which the qualified organization has a con-
18 tractual or other financial arrangement,

19 (E) the bylaws of which require at least
20 two-thirds of the members of the board of direc-
21 tors to vote affirmatively to approve the qualified
22 conservation plan and any change thereto, and

23 (F) upon dissolution, is required to dedicate
24 its assets to—

1 (i) an organization described in section
 2 501(c)(3) of such Code which is organized
 3 and operated for conservation purposes, or
 4 (ii) a governmental unit described in
 5 section 170(c)(1) of such Code.

6 (4) *UNRELATED PERSON*.—The term “unrelated
 7 person” means a person who is not a related person.

8 (5) *RELATED PERSON*.—A person shall be treat-
 9 ed as related to another person if—

10 (A) such person bears a relationship to such
 11 other person described in section 267(b) (deter-
 12 mined without regard to paragraph (9) thereof),
 13 or 707(b)(1), of such Code, determined by sub-
 14 stituting “25 percent” for “50 percent” each
 15 place it appears therein, and

16 (B) in the case such other person is a non-
 17 profit organization, if such person controls di-
 18 rectly or indirectly more than 25 percent of the
 19 governing body of such organization.

20 **SEC. 616. INDIAN SCHOOL CONSTRUCTION.**

21 (a) *DEFINITIONS*.—In this section:

22 (1) *BUREAU*.—The term “Bureau” means the
 23 Bureau of Indian Affairs of the Department.

24 (2) *DEPARTMENT*.—The term “Department”
 25 means the Department of the Interior.

1 (3) *ESCROW ACCOUNT.*—The term “escrow ac-
2 count” means the tribal school modernization escrow
3 account established under subsection (b)(6)(B)(i).

4 (4) *INDIAN.*—The term “Indian” means any in-
5 dividual who is a member of an Indian tribe.

6 (5) *INDIAN TRIBE.*—

7 (A) *IN GENERAL.*—The term “Indian tribe”
8 has the meaning given the term “Indian tribal
9 government” by section 7701(a)(40) of the Inter-
10 nal Revenue Code of 1986 (including the appli-
11 cation of section 7871(d) of that Code).

12 (B) *INCLUSION.*—The term “Indian tribe”
13 includes a consortium of Indian tribes approved
14 by the Secretary.

15 (6) *SECRETARY.*—The term “Secretary” means
16 the Secretary of the Interior.

17 (7) *TRIBAL SCHOOL.*—The term “tribal school”
18 means an elementary school, secondary school, or dor-
19 mitory that—

20 (A) is operated by a tribal organization or
21 the Bureau for the education of Indian children;
22 and

23 (B) under a contract, a grant, or an agree-
24 ment, or for a Bureau-operated school, receives

1 *financial assistance to pay the costs of operation*
2 *from funds made available under—*

3 *(i) section 102, 103(a), or 208 of the*
4 *Indian Self-Determination and Education*
5 *Assistance Act (25 U.S.C. 450f, 450h(a),*
6 *458d); or*

7 *(ii) the Tribally Controlled Schools Act*
8 *of 1988 (25 U.S.C. 2501 et seq.).*

9 **(b) ISSUANCE OF BONDS.—**

10 **(1) IN GENERAL.—***The Secretary shall establish*
11 *a pilot program under which eligible Indian tribes*
12 *may issue qualified tribal school modernization bonds*
13 *to provide funding for the construction, rehabilita-*
14 *tion, or repair of tribal schools (including the advance*
15 *planning and design of tribal schools).*

16 **(2) ELIGIBILITY.—**

17 **(A) IN GENERAL.—***To be eligible to issue*
18 *any qualified tribal school modernization bond*
19 *under the program under paragraph (1), an In-*
20 *Indian tribe shall—*

21 *(i) prepare and submit to the Sec-*
22 *retary a plan of construction that meets the*
23 *requirements of subparagraph (B);*

24 *(ii) provide for quarterly and final in-*
25 *spection of the project by the Bureau; and*

1 (iii) pledge that the facilities financed
2 by the bond will be used primarily for ele-
3 mentary and secondary educational pur-
4 poses for not less than the period during
5 which the bond remains outstanding.

6 (B) *PLAN OF CONSTRUCTION.*—A plan of
7 construction referred to in subparagraph (A)(i)
8 meets the requirements of this subparagraph if
9 the plan—

10 (i) contains a description of the con-
11 struction to be carried out with funding
12 provided under a qualified tribal school
13 modernization bond;

14 (ii) demonstrates that a comprehensive
15 survey has been completed to determine the
16 construction needs of the tribal school in-
17 volved;

18 (iii) contains assurances that funding
19 under the bond will be used only for the ac-
20 tivities described in the plan;

21 (iv) contains a response to the evalua-
22 tion criteria contained in *Instructions and*
23 *Application for Replacement School Con-*
24 *struction, Revision 6, dated February 6,*
25 *1999; and*

1 (v) contains any other reasonable and
2 related information determined to be appro-
3 priate by the Secretary.

4 (C) *PRIORITY.*—In determining whether an
5 Indian tribe is eligible to participate in the pro-
6 gram under this subsection, the Secretary shall
7 give priority to an Indian tribe that, as dem-
8 onstrated by the relevant plans of construction,
9 will fund projects—

10 (i) described in the *Education Facili-*
11 *ties Replacement Construction Priorities*
12 *List, as of fiscal year 2000, of the Bureau*
13 *(65 Fed. Reg. 4623);*

14 (ii) described in any subsequent prior-
15 ities list published in the *Federal Register*;
16 or

17 (iii) that meet the criteria for ranking
18 schools as described in *Instructions and Ap-*
19 *plication for Replacement School Construc-*
20 *tion, Revision 6, dated February 6, 1999.*

21 (D) *ADVANCE PLANNING AND DESIGN FUND-*
22 *ING.*—

23 (i) *IN GENERAL.*—An Indian tribe
24 may propose in the plan of construction of
25 the Indian tribe to receive advance plan-

1 *ning and design funding from the escrow*
2 *account.*

3 *(ii) CONDITIONS ON ALLOCATION OF*
4 *FUNDS.—As a condition to the allocation to*
5 *an Indian tribe of advance planning and*
6 *design funds from the escrow account under*
7 *clause (i), the Indian tribe shall agree—*

8 *(I) to issue qualified tribal school*
9 *modernization bonds after the date of*
10 *receipt of the funds; and*

11 *(II) as a condition of each bond*
12 *issuance, that the Indian tribe will de-*
13 *posit into the escrow account, or a*
14 *fund managed by the trustee as de-*
15 *scribed in paragraph (4)(C), an*
16 *amount equal to the amount of funds*
17 *received from the escrow account.*

18 *(3) PERMISSIBLE ACTIVITIES.—In addition to*
19 *the use of funds permitted under paragraph (1), an*
20 *Indian tribe may use amounts received through the*
21 *issuance of a qualified tribal school modernization*
22 *bond—*

23 *(A) to enter into and make payments under*
24 *contracts with licensed and bonded architects,*
25 *engineers, and construction firms—*

1 (i) to determine the needs of the tribal
2 school; and

3 (ii) for the design and engineering of
4 the tribal school;

5 (B) enter into and make payments under
6 contracts with financial advisers, underwriters,
7 attorneys, trustees, and other professionals who
8 would be able to provide assistance to the Indian
9 tribe in issuing bonds; and

10 (C) carry out other activities determined to
11 be appropriate by the Secretary.

12 (4) BOND TRUSTEE.—

13 (A) IN GENERAL.—Notwithstanding any
14 other provision of law, any qualified tribal
15 school modernization bond issued by an Indian
16 tribe under this subsection shall be subject to a
17 trust agreement between the Indian tribe and a
18 trustee.

19 (B) TRUSTEE.—Any bank or trust company
20 that meets requirements established by the Sec-
21 retary may be designated as a trustee under sub-
22 paragraph (A).

23 (C) CONTENT OF TRUST AGREEMENT.—A
24 trust agreement entered into by an Indian tribe
25 under this paragraph shall specify that the trust-

1 *ee, with respect to any bond issued under this*
2 *subsection, shall—*

3 *(i) act as a repository for the proceeds*
4 *of the bond;*

5 *(ii) make payments to bondholders;*

6 *(iii) receive, as a condition to the*
7 *issuance of the bond, a transfer of funds*
8 *from the escrow account, or from other*
9 *funds furnished by or on behalf of the In-*
10 *dian tribe, in an amount that (including*
11 *interest earnings from the investment of the*
12 *funds in obligations of, or fully guaranteed*
13 *by, the United States, or from other invest-*
14 *ments authorized by paragraph (10)) will*
15 *produce funds sufficient to timely pay in*
16 *full the entire principal amount of the bond*
17 *on the stated maturity date of the bond;*

18 *(iv) invest the funds transferred under*
19 *clause (iii) in an investment described in*
20 *that clause; and*

21 *(v)(I) hold and invest the funds trans-*
22 *ferred under clause (iii) in a segregated*
23 *fund or account under the agreement; and*

1 (ii) use the fund or account solely for
2 payment of the costs of items described in
3 paragraph (3).

4 (D) REQUIREMENTS FOR MAKING DIRECT
5 PAYMENTS.—

6 (i) PAYMENTS.—

7 (I) IN GENERAL.—Notwith-
8 standing any other provision of law,
9 the trustee shall make any payment re-
10 ferred to in subparagraph (C)(v) in ac-
11 cordance with such requirements as the
12 Indian tribe shall prescribe in the trust
13 agreement entered into under subpara-
14 graph (C).

15 (II) INSPECTION.—Before making
16 a payment for a project to a contractor
17 under subparagraph (C)(v), to ensure
18 completion of the project, the trustee
19 shall require an inspection of the
20 project by—

21 (aa) a local financial institu-
22 tion; or

23 (bb) an independent inspect-
24 ing architect or engineer.

1 (ii) *CONTRACTS.*—*Each contract re-*
2 *ferred to in paragraph (3) shall specify, or*
3 *be renegotiated to specify, that payments*
4 *under the contract shall be made in accord-*
5 *ance with this paragraph.*

6 (5) *PAYMENTS OF PRINCIPAL AND INTEREST.*—

7 (A) *PRINCIPAL.*—

8 (i) *IN GENERAL.*—*No principal pay-*
9 *ment on any qualified tribal school mod-*
10 *ernization bond shall be required under this*
11 *subsection until the final, stated date on*
12 *which the bond reaches maturity.*

13 (ii) *MATURITY; OUTSTANDING PRIN-*
14 *CIPAL.*—*With respect to a qualified tribal*
15 *school modernization bond issued under this*
16 *subsection—*

17 (I) *the bond shall reach maturity*
18 *not later than 15 years after the date*
19 *of issuance of the bond; and*

20 (II) *on the date on which the bond*
21 *reaches maturity, the entire out-*
22 *standing principal under the bond*
23 *shall become due and payable.*

24 (B) *INTEREST.*—*There shall be awarded a*
25 *tax credit under section 1400M of the Internal*

1 *Revenue Code of 1986 in lieu of interest on a*
2 *qualified tribal school modernization bond issued*
3 *under this subsection.*

4 (6) *BOND GUARANTEES.—*

5 (A) *IN GENERAL.—Payment of the prin-*
6 *cipal portion of a qualified tribal school mod-*
7 *ernization bond issued under this subsection*
8 *shall be guaranteed solely by amounts deposited*
9 *with each respective bond trustee as described in*
10 *paragraph (4)(C)(iii).*

11 (B) *ESTABLISHMENT OF ACCOUNT.—*

12 (i) *IN GENERAL.—Notwithstanding*
13 *any other provision of law, the Secretary*
14 *may—*

15 (I) *establish a tribal school mod-*
16 *ernization escrow account; and*

17 (II) *beginning in fiscal year 2005,*
18 *from amounts made available for*
19 *school replacement under the construc-*
20 *tion account of the Bureau, deposit not*
21 *more than \$30,000,000 for each fiscal*
22 *year into the escrow account.*

23 (ii) *TRANSFERS OF EXCESS PRO-*
24 *CEEDS.—Excess proceeds held under any*
25 *trust agreement that are not needed for any*

1 of the purposes described in clauses (iii)
2 and (v) of paragraph (4)(C) shall be trans-
3 ferred, from time to time, by the trustee for
4 deposit into the escrow account.

5 (iii) *PAYMENTS.*—The Secretary shall
6 use any amounts deposited in the escrow ac-
7 count under clauses (i) and (ii)—

8 (I) to make payments to trustees
9 appointed and acting in accordance
10 with paragraph (4); or

11 (II) to make payments described
12 in paragraph (2)(D).

13 (7) *LIMITATIONS.*—

14 (A) *OBLIGATION TO REPAY.*—

15 (i) *IN GENERAL.*—Notwithstanding
16 any other provision of law, the principal
17 amount on any qualified tribal school mod-
18 ernization bond issued under this subsection
19 shall be repaid only to the extent of any
20 escrowed funds provided under paragraph
21 (4)(C)(iii).

22 (ii) *NO GUARANTEE.*—No qualified
23 tribal school modernization bond issued by
24 an Indian tribe under this subsection shall
25 be an obligation of, and no payment of the

1 *principal of such a bond shall be guaran-*
2 *teed by—*

3 *(I) the United States;*

4 *(II) the Indian tribe; or*

5 *(III) the tribal school for which*
6 *the bond was issued.*

7 *(B) LAND AND FACILITIES.—No land or fa-*
8 *cility purchased or improved with amounts de-*
9 *ived from a qualified tribal school moderniza-*
10 *tion bond issued under this subsection shall be*
11 *mortgaged or used as collateral for the bond.*

12 *(8) SALE OF BONDS.—A qualified tribal school*
13 *modernization bond may be sold at a purchase price*
14 *equal to, in excess of, or at a discount from, the par*
15 *amount of the bond.*

16 *(9) TREATMENT OF TRUST AGREEMENT EARN-*
17 *INGS.—No amount earned through the investment of*
18 *funds under the control of a trustee under any trust*
19 *agreement described in paragraph (4) shall be subject*
20 *to Federal income taxation.*

21 *(10) INVESTMENT OF SINKING FUNDS.—A sink-*
22 *ing fund established for the purpose of the payment*
23 *of principal on a qualified tribal school moderniza-*
24 *tion bond issued under this subsection shall be in-*
25 *vested in—*

1 (A) obligations issued by or guaranteed by
2 the United States; or

3 (B) such other assets as the Secretary of the
4 Treasury may by regulation allow.

5 (c) *EXPANSION OF INCENTIVES FOR TRIBAL*
6 *SCHOOLS.*—Chapter 1 is amended by adding at the end the
7 following new subchapter:

8 **“Subchapter Z—Tribal School Modernization**
9 **Provisions**

“Sec. 1400M. Credit to holders of qualified tribal school modernization bonds.

10 **“SEC. 1400M. CREDIT TO HOLDERS OF QUALIFIED TRIBAL**
11 **SCHOOL MODERNIZATION BONDS.**

12 “(a) *ALLOWANCE OF CREDIT.*—In the case of a tax-
13 payer who holds a qualified tribal school modernization
14 bond on a credit allowance date of such bond which occurs
15 during the taxable year, there shall be allowed as a credit
16 against the tax imposed by this chapter for such taxable
17 year an amount equal to the sum of the credits determined
18 under subsection (b) with respect to credit allowance dates
19 during such year on which the taxpayer holds such bond.

20 “(b) *AMOUNT OF CREDIT.*—

21 “(1) *IN GENERAL.*—The amount of the credit de-
22 termined under this subsection with respect to any
23 credit allowance date for a qualified tribal school

1 *modernization bond is 25 percent of the annual credit*
2 *determined with respect to such bond.*

3 “(2) *ANNUAL CREDIT.*—*The annual credit deter-*
4 *mined with respect to any qualified tribal school*
5 *modernization bond is the product of—*

6 “(A) *the applicable credit rate, multiplied*
7 *by*

8 “(B) *the outstanding face amount of the*
9 *bond.*

10 “(3) *APPLICABLE CREDIT RATE.*—*For purposes*
11 *of paragraph (1), the applicable credit rate with re-*
12 *spect to an issue is the rate equal to an average mar-*
13 *ket yield (as of the date of sale of the issue) on out-*
14 *standing long-term corporate obligations (as deter-*
15 *mined by the Secretary).*

16 “(4) *SPECIAL RULE FOR ISSUANCE AND REDEMP-*
17 *TION.*—*In the case of a bond which is issued during*
18 *the 3-month period ending on a credit allowance date,*
19 *the amount of the credit determined under this sub-*
20 *section with respect to such credit allowance date*
21 *shall be a ratable portion of the credit otherwise deter-*
22 *mined based on the portion of the 3-month period*
23 *during which the bond is outstanding. A similar rule*
24 *shall apply when the bond is redeemed.*

25 “(c) *LIMITATION BASED ON AMOUNT OF TAX.*—

1 “(1) *IN GENERAL.*—*The credit allowed under*
2 *subsection (a) for any taxable year shall not exceed*
3 *the excess of—*

4 “(A) *the sum of the regular tax liability (as*
5 *defined in section 26(b)) plus the tax imposed by*
6 *section 55, over*

7 “(B) *the sum of the credits allowable under*
8 *part IV of subchapter A (other than subpart C*
9 *thereof, relating to refundable credits).*

10 “(2) *CARRYOVER OF UNUSED CREDIT.*—*If the*
11 *credit allowable under subsection (a) exceeds the limi-*
12 *tation imposed by paragraph (1) for such taxable*
13 *year, such excess shall be carried to the succeeding*
14 *taxable year and added to the credit allowable under*
15 *subsection (a) for such taxable year.*

16 “(d) *QUALIFIED TRIBAL SCHOOL MODERNIZATION*
17 *BOND; OTHER DEFINITIONS.*—*For purposes of this*
18 *section—*

19 “(1) *QUALIFIED TRIBAL SCHOOL MODERNIZA-*
20 *TION BOND.*—

21 “(A) *IN GENERAL.*—*The term ‘qualified*
22 *tribal school modernization bond’ means, subject*
23 *to subparagraph (B), any bond issued as part of*
24 *an issue under section 616(b) of the Jumpstart*

1 *Our Business Strength (JOBS) Act, as in effect*
2 *on the date of the enactment of this section, if—*

3 *“(i) 95 percent or more of the proceeds*
4 *of such issue are to be used for the construc-*
5 *tion, rehabilitation, or repair of a school fa-*
6 *ility funded by the Bureau of Indian Af-*
7 *airs of the Department of the Interior or*
8 *for the acquisition of land on which such a*
9 *facility is to be constructed with part of the*
10 *proceeds of such issue,*

11 *“(ii) the bond is issued by an Indian*
12 *tribe,*

13 *“(iii) the issuer designates such bond*
14 *for purposes of this section, and*

15 *“(iv) the term of each bond which is*
16 *part of such issue does not exceed 15 years.*

17 *“(B) NATIONAL LIMITATION ON AMOUNT OF*
18 *BONDS DESIGNATED.—*

19 *“(i) NATIONAL LIMITATION.—There is*
20 *a national qualified tribal school mod-*
21 *ernization bond limitation for each cal-*
22 *endar year. Such limitation is—*

23 *“(I) \$200,000,000 for 2005,*

24 *“(II) \$200,000,000 for 2006, and*

25 *“(III) zero after 2006.*

1 “(ii) *ALLOCATION OF LIMITATION.*—
2 *The national qualified tribal school mod-*
3 *ernization bond limitation shall be allocated*
4 *to Indian tribes by the Secretary of the In-*
5 *terior subject to the provisions of section*
6 *616 of the Jumpstart Our Business*
7 *Strength (JOBS) Act, as in effect on the*
8 *date of the enactment of this section.*

9 “(iii) *DESIGNATION SUBJECT TO LIM-*
10 *TATION AMOUNT.*—*The maximum aggregate*
11 *face amount of bonds issued during any cal-*
12 *endar year which may be designated under*
13 *subsection (d)(1) with respect to any Indian*
14 *tribe shall not exceed the limitation amount*
15 *allocated to such government under clause*
16 *(ii) for such calendar year.*

17 “(iv) *CARRYOVER OF UNUSED LIMITA-*
18 *TION.*—*If for any calendar year—*

19 “(I) *the limitation amount under*
20 *this subparagraph, exceeds*

21 “(II) *the amount of qualified trib-*
22 *al school modernization bonds issued*
23 *during such year,*

24 *the limitation amount under this subpara-*
25 *graph for the following calendar year shall*

1 *be increased by the amount of such excess.*

2 *The preceding sentence shall not apply if*

3 *such following calendar year is after 2012.*

4 “(2) *CREDIT ALLOWANCE DATE.*—*The term*
5 *‘credit allowance date’ means—*

6 “(A) *March 15,*

7 “(B) *June 15,*

8 “(C) *September 15, and*

9 “(D) *December 15.*

10 *Such term includes the last day on which the bond is*
11 *outstanding.*

12 “(3) *BOND.*—*The term ‘bond’ includes any obli-*
13 *gation.*

14 “(4) *TRIBE.*—*The term ‘tribe’ has the meaning*
15 *given the term ‘Indian tribal government’ by section*
16 *7701(a)(40), including the application of section*
17 *7871(d). Such term includes any consortium of tribes*
18 *approved by the Secretary of the Interior.*

19 “(e) *CREDIT INCLUDED IN GROSS INCOME.*—*Gross in-*
20 *come includes the amount of the credit allowed to the tax-*
21 *payer under this section (determined without regard to sub-*
22 *section (c)) and the amount so included shall be treated as*
23 *interest income.*

24 “(f) *BONDS HELD BY REGULATED INVESTMENT COM-*
25 *PANIES.*—*If any qualified tribal school modernization bond*

1 *is held by a regulated investment company, the credit deter-*
2 *mined under subsection (a) shall be allowed to shareholders*
3 *of such company under procedures prescribed by the Sec-*
4 *retary.*

5 “(g) *TREATMENT FOR ESTIMATED TAX PURPOSES.—*
6 *Solely for purposes of sections 6654 and 6655, the credit*
7 *allowed by this section to a taxpayer by reason of holding*
8 *a qualified tribal school modernization bonds on a credit*
9 *allowance date shall be treated as if it were a payment of*
10 *estimated tax made by the taxpayer on such date.*

11 “(h) *CREDIT TREATED AS ALLOWED UNDER PART IV*
12 *OF SUBCHAPTER A.—For purposes of subtitle F, the credit*
13 *allowed by this section shall be treated as a credit allowable*
14 *under part IV of subchapter A of this chapter.*

15 “(i) *REPORTING.—Issuers of qualified tribal school*
16 *modernization bonds shall submit reports similar to the re-*
17 *ports required under section 149(e).”.*

18 “(d) *CONFORMING AMENDMENT.—The table of sub-*
19 *chapters for chapter 1 is amended by adding at the end*
20 *the following new item:*

“SUBCHAPTER Z. Tribal school modernization provisions.”.

21 “(e) *ADDITIONAL PROVISIONS.—*

22 “(1) *SOVEREIGN IMMUNITY.—This section and the*
23 *amendments made by this section shall not be con-*
24 *strued to impact, limit, or affect the sovereign immu-*

1 *nity of the Federal Government or any State or tribal*
2 *government.*

3 (2) *APPLICATION.—This section and the amend-*
4 *ments made by this section shall take effect on the*
5 *date of the enactment of this Act with respect to bonds*
6 *issued after December 31, 2004, regardless of the sta-*
7 *tus of regulations promulgated thereunder.*

8 ***Subtitle C—Provisions Relating to***
9 ***Depreciation***

10 ***SEC. 621. SPECIAL PLACED IN SERVICE RULE FOR BONUS***
11 ***DEPRECIATION PROPERTY.***

12 (a) *IN GENERAL.—Section 168(k)(2)(D) (relating to*
13 *special rules) is amended by adding at the end the following*
14 *new clause:*

15 “(iii) *SYNDICATION.—For purposes of*
16 *subparagraph (A)(ii), if—*

17 “(I) *property is originally placed*
18 *in service after September 10, 2001, by*
19 *the lessor of such property,*

20 “(II) *such property is sold by*
21 *such lessor or any subsequent pur-*
22 *chaser within 3 months after the date*
23 *so placed in service (or, in the case of*
24 *multiple units of property subject to*
25 *the same lease, within 3 months after*

1 the date the final unit is placed in
2 service, so long as the period between
3 the time the first unit is placed in
4 service and the time the last unit is
5 placed in service does not exceed 12
6 months), and

7 “(III) the user of such property
8 after the last sale during such 3-month
9 period remains the same as when such
10 property was originally placed in serv-
11 ice,

12 such property shall be treated as originally
13 placed in service not earlier than the date
14 of such last sale, so long as no previous
15 owner of such property elects the applica-
16 tion of this subsection with respect to such
17 property.”.

18 (b) *EFFECTIVE DATE.*—The amendment made by this
19 section shall apply to sales after the date of the enactment
20 of this Act.

21 **SEC. 622. MODIFICATION OF DEPRECIATION ALLOWANCE**
22 **FOR AIRCRAFT.**

23 (a) *AIRCRAFT TREATED AS QUALIFIED PROPERTY.*—

24 (1) *IN GENERAL.*—Paragraph (2) of section
25 168(k) is amended by redesignating subparagraphs

1 (C) through (F) as subparagraphs (D) through (G),
 2 respectively, and by inserting after subparagraph (B)
 3 the following new subparagraph:

4 “(C) *CERTAIN AIRCRAFT.*—The term ‘quali-
 5 fied property’ includes property—

6 “(i) which meets the requirements of
 7 clauses (ii) and (iii) of subparagraph (A),

8 “(ii) which is an aircraft which is not
 9 a transportation property (as defined in
 10 subparagraph (B)(iii)) other than for agri-
 11 cultural or firefighting purposes,

12 “(iii) which is purchased and on which
 13 such purchaser, at the time of the contract
 14 for purchase, has made a nonrefundable de-
 15 posit of the lesser of—

16 “(I) 10 percent of the cost, or

17 “(II) \$100,000, and

18 “(iv) which has—

19 “(I) an estimated production pe-
 20 riod exceeding 4 months, and

21 “(II) a cost exceeding \$200,000.”.

22 (2) *PLACED IN SERVICE DATE.*—Clause (iv) of
 23 section 168(k)(2)(A) is amended by striking “sub-
 24 paragraph (B)” and inserting “subparagraphs (B)
 25 and (C)”.

1 **(b) CONFORMING AMENDMENTS.**—

2 (1) *Section 168(k)(2)(B) is amended by adding*
3 *at the end the following new clause:*

4 “(iv) *APPLICATION OF SUBPARA-*
5 *GRAPH.—This subparagraph shall not*
6 *apply to any property which is described in*
7 *subparagraph (C).”.*

8 (2) *Section 168(k)(4)(A)(ii) is amended by strik-*
9 *ing “paragraph (2)(C)” and inserting “paragraph*
10 *(2)(D)”.*

11 (3) *Section 168(k)(4)(B)(iii) is amended by in-*
12 *serting “and paragraph (2)(C)” after “of this para-*
13 *graph)”.*

14 (4) *Section 168(k)(4)(C) is amended by striking*
15 *“subparagraphs (B) and (D)” and inserting “sub-*
16 *paragraphs (B), (C), and (E)”.*

17 (5) *Section 168(k)(4)(D) is amended by striking*
18 *“Paragraph (2)(E)” and inserting “Paragraph*
19 *(2)(F)”.*

20 **(c) EFFECTIVE DATE.**—*The amendments made by this*
21 *section shall apply to taxable years beginning after the date*
22 *of the enactment of this Act.*

1 **SEC. 623. MODIFICATION OF CLASS LIFE FOR CERTAIN**
2 **TRACK FACILITIES.**

3 (a) *7-YEAR PROPERTY.*—Subparagraph (C) of section
4 168(e)(3) (relating to classification of certain property) is
5 amended by redesignating clause (ii) as clause (iii) and by
6 inserting after clause (i) the following new clause:

7 “(ii) any motorsports entertainment
8 complex, and”.

9 (b) *DEFINITION.*—Section 168(i) (relating to defini-
10 tions and special rules) is amended by adding at the end
11 the following new paragraph:

12 “(15) *MOTORSPORTS ENTERTAINMENT COM-*
13 *PLEX.*—

14 “(A) *IN GENERAL.*—The term ‘motorsports
15 entertainment complex’ means a racing track fa-
16 cility which—

17 “(i) is permanently situated on land,
18 and

19 “(ii) during the 36-month period fol-
20 lowing the first day of the month in which
21 the asset is placed in service, is scheduled to
22 host 1 or more racing events for automobiles
23 (of any type), trucks, or motorcycles which
24 are open to the public for the price of ad-
25 mission.

1 “(B) *ANCILLARY AND SUPPORT FACILI-*
2 *TIES.*—Such term shall include, if owned by the
3 *complex and provided for the benefit of patrons*
4 *of the complex—*

5 “(i) *ancillary grounds and facilities*
6 *and land improvements in support of the*
7 *complex’s activities (including parking lots,*
8 *sidewalks, waterways, bridges, fences, and*
9 *landscaping),*

10 “(ii) *support facilities (including food*
11 *and beverage retailing, souvenir vending,*
12 *and other nonlodging accommodations), and*

13 “(iii) *appurtenances associated with*
14 *such facilities and related attractions and*
15 *amusements (including ticket booths, race*
16 *track surfaces, suites and hospitality facili-*
17 *ties, grandstands and viewing structures,*
18 *props, walls, facilities that support the de-*
19 *livery of entertainment services, other spe-*
20 *cial purpose structures, facades, shop inte-*
21 *riors, and buildings).*

22 “(C) *EXCEPTION.*—Such term shall not in-
23 *clude any transportation equipment, administra-*
24 *tive services assets, warehouses, administrative*
25 *buildings, hotels, or motels.”.*

1 (c) *EFFECTIVE DATE.*—

2 (1) *IN GENERAL.*—*The amendments made by*
3 *this section shall apply to any property placed in*
4 *service after the date of the enactment of this Act and*
5 *before January 1, 2008.*

6 (2) *NO INFERENCE.*—*Nothing in the amend-*
7 *ments made by this section shall be construed to affect*
8 *the treatment of expenses incurred on or before the*
9 *date of the enactment of this Act.*

10 **SEC. 624. MINIMUM TAX RELIEF FOR CERTAIN TAXPAYERS.**

11 (a) *ELECTION TO INCREASE MINIMUM TAX CREDIT*
12 *LIMITATION IN LIEU OF BONUS DEPRECIATION.*—

13 (1) *IN GENERAL.*—*Section 53 (relating to credit*
14 *for prior year minimum tax liability) is amended by*
15 *adding at the end the following new subsection:*

16 “(e) *ADDITIONAL CREDIT IN LIEU OF BONUS DEP-*
17 *CIATION.*—

18 “(1) *IN GENERAL.*—*In the case of a corporation*
19 *making an election under this subsection for a taxable*
20 *year, the limitation under subsection (c) shall be in-*
21 *creased by an amount equal to 50 percent of the*
22 *bonus depreciation amount.*

23 “(2) *BONUS DEPRECIATION AMOUNT.*—*For pur-*
24 *poses of paragraph (1), the bonus depreciation*

1 amount for any taxable year is an amount (not in
2 excess of \$25,000,000) equal to the product of—

3 “(A) 30 percent, and

4 “(B) the excess (if any) of—

5 “(i) the aggregate amount of deprecia-
6 tion which would be determined under sec-
7 tion 168 for property placed in service dur-
8 ing such taxable year if no election under
9 this subsection were made, over

10 “(ii) the aggregate allowance for depre-
11 ciation allowable with respect to such prop-
12 erty placed in service for such taxable year.

13 “(3) *AGGREGATION RULE.*—All members of the
14 same controlled group of corporations shall be treated
15 as 1 corporation for purposes of this subsection.

16 “(4) *ELECTION.*—Sections 168(k) (other than
17 paragraph (2)(F) thereof) shall not apply to any
18 property placed in service during a taxable year by
19 a corporation making an election under this sub-
20 section for such taxable year. An election under this
21 subsection may only be revoked with the consent of the
22 Secretary.

23 “(5) *CREDIT REFUNDABLE.*—The aggregate in-
24 crease in the credit allowed by this section for any
25 taxable year by reason of this subsection shall for pur-

1 poses of this title (other than subsection (b)(2) of this
2 section) be treated as a credit allowed to the taxpayer
3 under subpart C.”.

4 (2) *CONFORMING AMENDMENTS.*—Subsection (k)
5 of section 168 is amended by adding at the end the
6 following new paragraph:

7 “(5) *CROSS REFERENCE.*—For an election to
8 claim certain minimum tax credits in lieu of the al-
9 lowance determined under this subsection, see section
10 53(e).”.

11 (3) *EFFECTIVE DATE.*—The amendments made
12 by this subsection shall apply to taxable years ending
13 after December 31, 2003.

14 (b) *USE OF GENERAL BUSINESS CREDITS AGAINST*
15 *ALTERNATIVE MINIMUM TAX.*—

16 (1) *IN GENERAL.*—Section 38(c) (relating to lim-
17 itations based on amount of tax) is amended by redес-
18 ignating paragraph (4) as paragraph (5) and by in-
19 serting after paragraph (3) the following new para-
20 graph:

21 “(4) *SPECIAL RULE FOR 2004.*—Notwithstanding
22 the preceding provisions of this paragraph, in the
23 case of any taxable year beginning in 2004, the credit
24 allowed under subsection (a) shall not exceed the
25 greater of—

1 “(A) *the amount determined under this sub-*
2 *section without regard to this paragraph, or*

3 “(B) *50 percent of the lesser of—*

4 “(i) *the amount which would be deter-*
5 *mined under this subsection if the tentative*
6 *minimum tax were treated as being zero in*
7 *applying paragraph (1) to such credit, or*

8 “(ii) *the amount of the current year*
9 *business credit.”.*

10 (2) *EFFECTIVE DATE.—The amendments made*
11 *by this subsection shall apply to taxable years begin-*
12 *ning in 2004.*

13 ***Subtitle D—Expansion of Business***
14 ***Credit***

15 ***SEC. 631. NEW MARKETS TAX CREDIT FOR NATIVE AMER-***
16 ***ICAN RESERVATIONS.***

17 (a) *IN GENERAL.—Subpart D of part IV of subchapter*
18 *A of chapter 1 (relating to business related credits) is*
19 *amended by redesignating sections 45E and 45F as sections*
20 *45F and 45G, respectively, and by inserting after section*
21 *45D the following new section:*

22 ***“SEC. 45E. NEW MARKETS TAX CREDIT FOR NATIVE AMER-***
23 ***ICAN RESERVATIONS.***

24 “(a) *ALLOWANCE OF CREDIT.—*

1 “(1) *IN GENERAL.*—For purposes of section 38,
2 in the case of a taxpayer who holds a qualified equity
3 investment on a credit allowance date of such invest-
4 ment which occurs during the taxable year, the Native
5 American new markets tax credit determined under
6 this section for such taxable year is an amount equal
7 to the applicable percentage of the amount paid to the
8 reservation development entity for such investment at
9 its original issue.

10 “(2) *APPLICABLE PERCENTAGE.*—For purposes
11 of paragraph (1), the applicable percentage is—

12 “(A) 5 percent with respect to the first 3
13 credit allowance dates, and

14 “(B) 6 percent with respect to the remain-
15 der of the credit allowance dates.

16 “(3) *CREDIT ALLOWANCE DATE.*—For purposes
17 of paragraph (1), the term ‘credit allowance date’
18 means, with respect to any qualified equity
19 investment—

20 “(A) the date on which such investment is
21 initially made, and

22 “(B) each of the 6 anniversary dates of such
23 date thereafter.

24 “(b) *QUALIFIED EQUITY INVESTMENT.*—For purposes
25 of this section—

1 “(1) *IN GENERAL.*—The term ‘qualified equity
2 investment’ means any equity investment in a res-
3 ervation development entity if—

4 “(A) such investment is acquired by the tax-
5 payer at its original issue (directly or through
6 an underwriter) solely in exchange for cash,

7 “(B) substantially all of such cash is used
8 by the reservation development entity to make
9 qualified low-income reservation investments,
10 and

11 “(C) such investment is designated for pur-
12 poses of this section by the reservation develop-
13 ment entity.

14 Such term shall not include any equity investment
15 issued by a reservation development entity more than
16 5 years after the date that such entity receives an al-
17 location under subsection (f). Any allocation not used
18 within such 5-year period may be reallocated by the
19 Secretary under subsection (f).

20 “(2) *LIMITATION.*—The maximum amount of eq-
21 uity investments issued by a reservation development
22 entity which may be designated under paragraph
23 (1)(C) by such entity shall not exceed the portion of
24 the limitation amount allocated under subsection (f)
25 to such entity.

1 “(3) *SAFE HARBOR FOR DETERMINING USE OF*
2 *CASH.*—*The requirement of paragraph (1)(B) shall be*
3 *treated as met if at least 85 percent of the aggregate*
4 *gross assets of the reservation development entity are*
5 *invested in qualified low-income reservation invest-*
6 *ments.*

7 “(4) *TREATMENT OF SUBSEQUENT PUR-*
8 *CHASERS.*—*The term ‘qualified equity investment’ in-*
9 *cludes any equity investment which would (but for*
10 *paragraph (1)(A)) be a qualified equity investment in*
11 *the hands of the taxpayer if such investment was a*
12 *qualified equity investment in the hands of a prior*
13 *holder.*

14 “(5) *REDEMPTIONS.*—*A rule similar to the rule*
15 *of section 1202(c)(3) shall apply for purposes of this*
16 *subsection.*

17 “(6) *EQUITY INVESTMENT.*—*The term ‘equity in-*
18 *vestment’ means—*

19 “(A) *any stock (other than nonqualified*
20 *preferred stock as defined in section 351(g)(2))*
21 *in an entity which is a corporation, and*

22 “(B) *any capital interest in an entity*
23 *which is a partnership.*

24 “(c) *RESERVATION DEVELOPMENT ENTITY.*—*For pur-*
25 *poses of this section—*

1 “(1) *IN GENERAL.*—The term ‘reservation devel-
2 opment entity’ means any domestic corporation or
3 partnership if—

4 “(A) the primary mission of the entity is
5 serving, or providing investment capital for, low-
6 income reservations,

7 “(B) the entity maintains accountability to
8 residents of low-income reservations through
9 their representation on any governing board of
10 the entity or on any advisory board to the enti-
11 ty, and

12 “(C) the entity is certified by the Secretary
13 for purposes of this section as being a reservation
14 development entity.

15 “(2) *EXCEPTION.*—For purposes of subparagraph
16 (C) of paragraph (1), the Secretary shall not certify
17 an entity as a reservation development entity if such
18 entity is also certified as a qualified community de-
19 velopment entity under section 45D(c).

20 “(d) *QUALIFIED LOW-INCOME RESERVATION INVEST-*
21 *MENTS.*—For purposes of this section—

22 “(1) *IN GENERAL.*—The term ‘qualified low-in-
23 come reservation investment’ means—

1 “(A) any capital or equity investment in,
2 or loan to, any qualified active low-income res-
3 ervation business,

4 “(B) the purchase from another reservation
5 development entity of any loan made by such en-
6 tity which is a qualified low-income reservation
7 investment,

8 “(C) financial counseling and other services
9 specified in regulations prescribed by the Sec-
10 retary to businesses located in, and residents of,
11 low-income reservations, and

12 “(D) any equity investment in, or loan to,
13 any reservation development entity.

14 “(2) QUALIFIED ACTIVE LOW-INCOME RESERVA-
15 TION BUSINESS.—

16 “(A) IN GENERAL.—For purposes of para-
17 graph (1), the term ‘qualified active low-income
18 reservation business’ means, with respect to any
19 taxable year, any corporation (including a non-
20 profit corporation) or partnership if for such
21 year—

22 “(i) at least 50 percent of the total
23 gross income of such entity is derived from
24 the active conduct of a qualified business
25 within any low-income reservation,

1 “(ii) a substantial portion of the use of
2 the tangible property of such entity (wheth-
3 er owned or leased) is within any low-in-
4 come reservation,

5 “(iii) a substantial portion of the serv-
6 ices performed for such entity by its em-
7 ployees are performed in any low-income
8 reservation,

9 “(iv) less than 5 percent of the average
10 of the aggregate unadjusted bases of the
11 property of such entity is attributable to
12 collectibles (as defined in section 408(m)(2))
13 other than collectibles that are held pri-
14 marily for sale to customers in the ordinary
15 course of such business, and

16 “(v) less than 5 percent of the average
17 of the aggregate unadjusted bases of the
18 property of such entity is attributable to
19 nonqualified financial property (as defined
20 in section 1397C(e)).

21 “(B) PROPRIETORSHIP.—Such term shall
22 include any business carried on by an indi-
23 vidual as a proprietor if such business would
24 meet the requirements of subparagraph (A) were
25 it incorporated.

1 “(C) *PORTIONS OF BUSINESS MAY BE*
2 *QUALIFIED ACTIVE LOW-INCOME RESERVATION*
3 *BUSINESS.*—*The term ‘qualified active low-in-*
4 *come reservation business’ includes any trades or*
5 *businesses which would qualify as a qualified ac-*
6 *tive low-income reservation business if such*
7 *trades or businesses were separately incor-*
8 *porated.*

9 “(3) *QUALIFIED BUSINESS.*—*For purposes of*
10 *this subsection, the term ‘qualified business’ has the*
11 *meaning given to such term by section 45D(d)(3).*

12 “(e) *LOW-INCOME RESERVATION.*—*For purposes of*
13 *this section, the term ‘low-income reservation’ means any*
14 *Indian reservation (as defined in section 168(j)(6)) which*
15 *has a poverty rate of at least 40 percent.*

16 “(f) *NATIONAL LIMITATION ON AMOUNT OF INVEST-*
17 *MENTS DESIGNATED.*—

18 “(1) *IN GENERAL.*—*There is a Native American*
19 *new markets tax credit limitation of \$50,000,000 for*
20 *each of calendar years 2004 through 2007.*

21 “(2) *ALLOCATION OF LIMITATION.*—*The limita-*
22 *tion under paragraph (1) shall be allocated by the*
23 *Secretary among reservation development entities se-*
24 *lected by the Secretary. In making allocations under*

1 *the preceding sentence, the Secretary shall give pri-*
2 *ority to any entity—*

3 *“(A) with a record of having successfully*
4 *provided capital or technical assistance to dis-*
5 *advantaged businesses or communities, or*

6 *“(B) which intends to satisfy the require-*
7 *ment under subsection (b)(1)(B) by making*
8 *qualified low-income reservation investments in*
9 *1 or more businesses in which persons unrelated*
10 *to such entity (within the meaning of section*
11 *267(b) or 707(b)(1)) hold the majority equity in-*
12 *terest.*

13 *“(3) CARRYOVER OF UNUSED LIMITATION.—If*
14 *the Native American new markets tax credit limita-*
15 *tion for any calendar year exceeds the aggregate*
16 *amount allocated under paragraph (2) for such year,*
17 *such limitation for the succeeding calendar year shall*
18 *be increased by the amount of such excess. No amount*
19 *may be carried under the preceding sentence to any*
20 *calendar year after 2014.*

21 *“(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—*

22 *“(1) IN GENERAL.—If, at any time during the 7-*
23 *year period beginning on the date of the original*
24 *issue of a qualified equity investment in a reservation*
25 *development entity, there is a recapture event with re-*

1 *spect to such investment, then the tax imposed by this*
2 *chapter for the taxable year in which such event oc-*
3 *curs shall be increased by the credit recapture*
4 *amount.*

5 *“(2) CREDIT RECAPTURE AMOUNT.—For pur-*
6 *poses of paragraph (1), the credit recapture amount*
7 *is an amount equal to the sum of—*

8 *“(A) the aggregate decrease in the credits*
9 *allowed to the taxpayer under section 38 for all*
10 *prior taxable years which would have resulted if*
11 *no credit had been determined under this section*
12 *with respect to such investment, plus*

13 *“(B) interest at the underpayment rate es-*
14 *tablished under section 6621 on the amount de-*
15 *termined under subparagraph (A) for each prior*
16 *taxable year for the period beginning on the due*
17 *date for filing the return for the prior taxable*
18 *year involved.*

19 *No deduction shall be allowed under this chapter for*
20 *interest described in subparagraph (B).*

21 *“(3) RECAPTURE EVENT.—For purposes of para-*
22 *graph (1), there is a recapture event with respect to*
23 *an equity investment in a reservation development*
24 *entity if—*

1 “(A) *such entity ceases to be a reservation*
2 *development entity,*

3 “(B) *the proceeds of the investment cease to*
4 *be used as required of subsection (b)(1)(B), or*

5 “(C) *such investment is redeemed by such*
6 *entity.*

7 “(4) *SPECIAL RULES.—*

8 “(A) *TAX BENEFIT RULE.—The tax for the*
9 *taxable year shall be increased under paragraph*
10 *(1) only with respect to credits allowed by reason*
11 *of this section which were used to reduce tax li-*
12 *ability. In the case of credits not so used to re-*
13 *duce tax liability, the carryforwards and*
14 *carrybacks under section 39 shall be appro-*
15 *priately adjusted.*

16 “(B) *NO CREDITS AGAINST TAX.—Any in-*
17 *crease in tax under this subsection shall not be*
18 *treated as a tax imposed by this chapter for pur-*
19 *poses of determining the amount of any credit*
20 *under this chapter or for purposes of section 55.*

21 “(h) *BASIS REDUCTION.—The basis of any qualified*
22 *equity investment shall be reduced by the amount of any*
23 *credit determined under this section with respect to such*
24 *investment. This subsection shall not apply for purposes of*
25 *sections 1202, 1400B, and 1400F.*

1 “(i) *REGULATIONS.*—*The Secretary shall prescribe*
2 *such regulations as may be appropriate to carry out this*
3 *section, including regulations—*

4 “(1) *which limit the credit for investments which*
5 *are directly or indirectly subsidized by other Federal*
6 *tax benefits (including the credit under section 42*
7 *and the exclusion from gross income under section*
8 *103),*

9 “(2) *which prevent the abuse of the purposes of*
10 *this section,*

11 “(3) *which provide rules for determining whether*
12 *the requirement of subsection (b)(1)(B) is treated as*
13 *met,*

14 “(4) *which impose appropriate reporting re-*
15 *quirements, and*

16 “(5) *which apply the provisions of this section to*
17 *newly formed entities.”.*

18 (b) *CREDIT MADE PART OF GENERAL BUSINESS*

19 *CREDIT.*—

20 (1) *IN GENERAL.*—*Subsection (b) of section 38 is*
21 *amended by redesignating paragraphs (14) and (15)*
22 *as paragraphs (15) and (16), respectively, and by in-*
23 *serting after paragraph (13) the following new para-*
24 *graph:*

1 “(14) the Native American new markets tax
2 credit determined under section 45E(a),”.

3 (2) *LIMITATION ON CARRYBACK.*—Subsection (d)
4 of section 39 is amended by redesignating paragraph
5 (10) as paragraph (11) and by inserting after para-
6 graph (9) the following new paragraph:

7 “(10) *NO CARRYBACK OF NATIVE AMERICAN NEW*
8 *MARKETS TAX CREDIT BEFORE JANUARY 1, 2004.*—No
9 portion of the unused business credit for any taxable
10 year which is attributable to the credit under section
11 45E may be carried back to a taxable year ending be-
12 fore January 1, 2004.”.

13 (c) *DEDUCTION FOR UNUSED CREDIT.*—Subsection (c)
14 of section 196 is amended by redesignating paragraph (10)
15 as paragraph (11), by striking “and” at the end of para-
16 graph (9), and by inserting after paragraph (9) the fol-
17 lowing new paragraph:

18 “(10) the Native American new markets tax
19 credit determined under section 45E(a), and”.

20 (d) *CONFORMING AMENDMENTS.*—

21 (1) Section 38(b)(15), as redesignated by sub-
22 section (b)(1), is amended—

23 (A) by striking “45E(c)” and inserting
24 “45F(c)”, and

1 (B) by striking “45E(a)” and inserting
2 “45F(a)”.

3 (2) Section 38(b)(16), as redesignated by sub-
4 section (b)(1), is amended by striking “45F(a)” and
5 inserting “45G(a)”.

6 (3) Section 39(d)(11), as redesignated by sub-
7 section (b)(2), is amended by striking “section 45E”
8 and inserting “section 45F”.

9 (4) Section 196(c)(11), as redesignated by sub-
10 section (c), is amended by striking “45E(a)” and in-
11 serting “45F(a)”.

12 (5) Section 1016(a)(28) is amended—

13 (A) by striking “under section 45F” and in-
14 serting “under section 45G”, and

15 (B) by striking “section 45F(f)(1)” and in-
16 serting “section 45G(f)(1)”.

17 (e) *CLERICAL AMENDMENT.*—The table of sections for
18 subpart D of part IV of subchapter A of chapter 1 is amend-
19 ed by striking the items relating to sections 45E and 45F
20 and inserting the following:

“Sec. 45E. New markets tax credit for Native American reserva-
tions.

“Sec. 45F. Small employer pension plan startup costs.

“Sec. 45G. Employer-provided child care credit.”.

21 (e) *EFFECTIVE DATE.*—The amendments made by this
22 section shall apply to investments made after December 31,
23 2003.

1 (f) *GUIDANCE ON ALLOCATION OF NATIONAL LIMITA-*
2 *TION.—Not later than 120 days after the date of the enact-*
3 *ment of this Act, the Secretary of the Treasury or the Sec-*
4 *retary’s delegate shall issue guidance which specifies—*

5 (1) *how entities shall apply for an allocation*
6 *under section 45E(f)(2) of the Internal Revenue Code*
7 *of 1986, as added by this section;*

8 (2) *the competitive procedure through which such*
9 *allocations are made; and*

10 (3) *the actions that such Secretary or delegate*
11 *shall take to ensure that such allocations are properly*
12 *made to appropriate entities.*

13 (g) *AUDIT AND REPORT.—Not later than January 31*
14 *of 2007 and 2010, the Comptroller General of the United*
15 *States shall, pursuant to an audit of the Native American*
16 *new markets tax credit program established under section*
17 *45E of the Internal Revenue Code of 1986 (as added by*
18 *subsection (a)), report to Congress on such program, includ-*
19 *ing all reservation development entities that receive an allo-*
20 *cation under the Native American new markets credit under*
21 *such section.*

22 (h) *GRANTS IN COORDINATION WITH CREDIT.—*

23 (1) *IN GENERAL.—The Secretary of the Treasury*
24 *is authorized to award a grant of not more than*
25 *\$1,000,000 to the First Nations Oweesta Corporation.*

1 (2) *USE OF FUNDS.*—*The grant awarded under*
2 *paragraph (1) may be used—*

3 (A) *to enhance the capacity of people living*
4 *on low-income reservations (within the meaning*
5 *of section 45E(e) of the Internal Revenue Code of*
6 *1986, as added by this section) to access, apply,*
7 *control, create, leverage, utilize, and retain the*
8 *financial benefits to such low-income reservations*
9 *which are attributable to qualified low-income*
10 *reservation investments (within the meaning of*
11 *section 45E(d) of such Code), and*

12 (B) *to provide access to appropriate finan-*
13 *cial capital for the development of such low-in-*
14 *come reservations.*

15 (3) *AUTHORIZATION OF APPROPRIATIONS.*—
16 *There are authorized to be appropriated \$1,000,000*
17 *for fiscal years 2004 through 2014 to carry out the*
18 *provisions of this subsection.*

19 **SEC. 632. READY RESERVE-NATIONAL GUARD EMPLOYEE**
20 **CREDIT AND READY RESERVE-NATIONAL**
21 **GUARD REPLACEMENT EMPLOYEE CREDIT.**

22 (a) *READY RESERVE-NATIONAL GUARD CREDIT.*—

23 (1) *IN GENERAL.*—*Subpart D of part IV of sub-*
24 *chapter A of chapter 1 (relating to business-related*

1 *credits), as amended by this Act, is amended by add-*
2 *ing at the end the following:*

3 **“SEC. 45H. READY RESERVE-NATIONAL GUARD EMPLOYEE**
4 **CREDIT.**

5 “(a) *GENERAL RULE.—For purposes of section 38, the*
6 *Ready Reserve-National Guard employee credit determined*
7 *under this section for any taxable year with respect to each*
8 *Ready Reserve-National Guard employee of an employer is*
9 *an amount equal to 50 percent of the lesser of—*

10 “(1) *the actual compensation amount with re-*
11 *spect to such employee for such taxable year, or*

12 “(2) *\$30,000.*

13 “(b) *DEFINITION OF ACTUAL COMPENSATION*
14 *AMOUNT.—For purposes of this section, the term ‘actual*
15 *compensation amount’ means the amount of compensation*
16 *paid or incurred by an employer with respect to a Ready*
17 *Reserve-National Guard employee on any day when the em-*
18 *ployee was absent from employment for the purpose of per-*
19 *forming qualified active duty.*

20 “(c) *LIMITATIONS.—No credit shall be allowed with re-*
21 *spect to any day that a Ready Reserve-National Guard em-*
22 *ployee who performs qualified active duty was not scheduled*
23 *to work (for reason other than to participate in qualified*
24 *active duty).*

1 “(d) *DEFINITIONS AND SPECIAL RULES.*—*For pur-*
2 *poses of this section—*

3 “(1) *QUALIFIED ACTIVE DUTY.*—*The term ‘quali-*
4 *fied active duty’ means—*

5 “(A) *active duty, other than the training*
6 *duty specified in section 10147 of title 10,*
7 *United States Code (relating to training require-*
8 *ments for the Ready Reserve), or section 502(a)*
9 *of title 32, United States Code (relating to re-*
10 *quired drills and field exercises for the National*
11 *Guard), in connection with which an employee is*
12 *entitled to reemployment rights and other bene-*
13 *fits or to a leave of absence from employment*
14 *under chapter 43 of title 38, United States Code,*
15 *and*

16 “(B) *hospitalization incident to such duty.*

17 “(2) *COMPENSATION.*—*The term ‘compensation’*
18 *means any remuneration for employment, whether in*
19 *cash or in kind, which is paid or incurred by a tax-*
20 *payer and which is deductible from the taxpayer’s*
21 *gross income under section 162(a)(1).*

22 “(3) *READY RESERVE-NATIONAL GUARD EM-*
23 *PLOYEE.*—*The term ‘Ready Reserve-National Guard*
24 *employee’ means an employee who is a member of the*
25 *Ready Reserve of a reserve component of an Armed*

1 *Force of the United States as described in sections*
2 *10142 and 10101 of title 10, United States Code.*

3 “(4) *CERTAIN RULES TO APPLY.—Rules similar*
4 *to the rules of section 52 shall apply.*

5 “(e) *PORTION OF CREDIT REFUNDABLE.—*

6 “(1) *IN GENERAL.—In the case of an employer*
7 *of a qualified first responder, the aggregate credits al-*
8 *lowed to a taxpayer under subpart C shall be in-*
9 *creased by the lesser of—*

10 “(A) *the credit which would be allowed*
11 *under this section without regard to this sub-*
12 *section and the limitation under section 38(c), or*

13 “(B) *the amount by which the aggregate*
14 *amount of credits allowed by this subpart (deter-*
15 *mined without regard to this subsection) would*
16 *increase if the limitation imposed by section*
17 *38(c) for any taxable year were increased by the*
18 *amount of employer payroll taxes imposed on the*
19 *taxpayer during the calendar year in which the*
20 *taxable year begins.*

21 *The amount of the credit allowed under this sub-*
22 *section shall not be treated as a credit allowed under*
23 *this subpart and shall reduce the amount of the credit*
24 *otherwise allowable under subsection (a) without re-*
25 *gard to section 38(c).*

1 “(2) *EMPLOYER PAYROLL TAXES.*—*For purposes*
2 *of this subsection—*

3 “(A) *IN GENERAL.*—*The term ‘employer*
4 *payroll taxes’ means the taxes imposed by—*

5 “(i) *section 3111(b), and*

6 “(ii) *sections 3211(a) and 3221(a) (de-*
7 *termined at a rate equal to the rate under*
8 *section 3111(b)).*

9 “(B) *SPECIAL RULE.*—*A rule similar to the*
10 *rule of section 24(d)(2)(C) shall apply for pur-*
11 *poses of subparagraph (A).*

12 “(3) *QUALIFIED FIRST RESPONDER.*—*For pur-*
13 *poses of this subsection, the term ‘qualified first re-*
14 *sponder’ means any person who is—*

15 “(A) *employed as a law enforcement offi-*
16 *cial, a firefighter, or a paramedic, and*

17 “(B) *a Ready Reserve-National Guard em-*
18 *ployee.’’.*

19 “(2) *CREDIT TO BE PART OF GENERAL BUSINESS*
20 *CREDIT.*—*Subsection (b) of section 38 (relating to*
21 *general business credit), as amended by this Act, is*
22 *amended by striking “plus” at the end of paragraph*
23 *(15), by striking the period at the end of paragraph*
24 *(16) and inserting “, plus”, and by adding at the end*
25 *the following:*

1 “(17) the Ready Reserve-National Guard em-
2 ployee credit determined under section 45H(a).”.

3 (3) *DENIAL OF DOUBLE BENEFIT.*—Section
4 280C(a) (relating to rule for employment credits) is
5 amended by inserting “45H(a),” after “45A(a),”.

6 (4) *CONFORMING AMENDMENT.*—The table of sec-
7 tions for subpart D of part IV of subchapter A of
8 chapter 1, as amended by this Act, is amended by in-
9 serting after the item relating to section 45G the fol-
10 lowing:

 “Sec. 45H. Ready Reserve-National Guard employee credit.”.

11 (5) *EFFECTIVE DATE.*—The amendments made
12 by this subsection shall apply to amounts paid or in-
13 curred after September 30, 2004, in taxable years
14 ending after such date.

15 (b) *READY RESERVE-NATIONAL GUARD REPLACEMENT*
16 *EMPLOYEE CREDIT.*—

17 (1) *IN GENERAL.*—Subpart B of part IV of sub-
18 chapter A of chapter 1 (relating to foreign tax credit,
19 etc.), as amended by this Act, is amended by adding
20 after section 30C the following new section:

21 “**SEC. 30D. READY RESERVE-NATIONAL GUARD REPLACE-**
22 **MENT EMPLOYEE CREDIT.**

23 “(a) *ALLOWANCE OF CREDIT.*—

24 “(1) *IN GENERAL.*—In the case of an eligible tax-
25 payer, there shall be allowed as a credit against the

1 *tax imposed by this chapter for the taxable year the*
2 *sum of the employment credits for each qualified re-*
3 *placement employee under this section.*

4 “(2) *EMPLOYMENT CREDIT.*—*The employment*
5 *credit with respect to a qualified replacement em-*
6 *ployee of the taxpayer for any taxable year is equal*
7 *to 50 percent of the lesser of—*

8 “(A) *the individual’s qualified compensa-*
9 *tion attributable to service rendered as a quali-*
10 *fied replacement employee, or*

11 “(B) *\$12,000.*

12 “(b) *QUALIFIED COMPENSATION.*—*The term ‘qualified*
13 *compensation’ means—*

14 “(1) *compensation which is normally contingent*
15 *on the qualified replacement employee’s presence for*
16 *work and which is deductible from the taxpayer’s*
17 *gross income under section 162(a)(1),*

18 “(2) *compensation which is not characterized by*
19 *the taxpayer as vacation or holiday pay, or as sick*
20 *leave or pay, or as any other form of pay for a non-*
21 *specific leave of absence, and*

22 “(3) *group health plan costs (if any) with respect*
23 *to the qualified replacement employee.*

24 “(c) *QUALIFIED REPLACEMENT EMPLOYEE.*—*For pur-*
25 *poses of this section—*

1 “(1) *IN GENERAL.*—The term ‘qualified replace-
2 ment employee’ means an individual who is hired to
3 replace a Ready Reserve-National Guard employee or
4 a Ready Reserve-National Guard self-employed tax-
5 payer, but only with respect to the period during
6 which such Ready Reserve-National Guard employee
7 or Ready Reserve-National Guard self-employed tax-
8 payer participates in qualified active duty, including
9 time spent in travel status.

10 “(2) *READY RESERVE-NATIONAL GUARD EM-*
11 *PLOYEE.*—The term ‘Ready Reserve-National Guard
12 employee’ has the meaning given such term by section
13 45H(d)(3).

14 “(3) *READY RESERVE-NATIONAL GUARD SELF-*
15 *EMPLOYED TAXPAYER.*—The term ‘Ready Reserve-Na-
16 tional Guard self-employed taxpayer’ means a tax-
17 payer who—

18 “(A) has net earnings from self-employment
19 (as defined in section 1402(a)) for the taxable
20 year, and

21 “(B) is a member of the Ready Reserve of
22 a reserve component of an Armed Force of the
23 United States as described in section 10142 and
24 10101 of title 10, United States Code.

1 “(d) *COORDINATION WITH OTHER CREDITS.*—The
2 *amount of credit otherwise allowable under sections 51(a)*
3 *and 1396(a) with respect to any employee shall be reduced*
4 *by the credit allowed by this section with respect to such*
5 *employee.*

6 “(e) *LIMITATIONS.*—

7 “(1) *APPLICATION WITH OTHER CREDITS.*—The
8 *credit allowed under subsection (a) for any taxable*
9 *year shall not exceed the excess (if any) of—*

10 “(A) *the regular tax for the taxable year re-*
11 *duced by the sum of the credits allowable under*
12 *subpart A and sections 27, 29, and 30, over*

13 “(B) *the tentative minimum tax for the tax-*
14 *able year.*

15 “(2) *DISALLOWANCE FOR FAILURE TO COMPLY*
16 *WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF*
17 *MEMBERS OF THE RESERVE COMPONENTS OF THE*
18 *ARMED FORCES OF THE UNITED STATES.*—No credit
19 *shall be allowed under subsection (a) to a taxpayer*
20 *for—*

21 “(A) *any taxable year, beginning after the*
22 *date of the enactment of this section, in which*
23 *the taxpayer is under a final order, judgment, or*
24 *other process issued or required by a district*
25 *court of the United States under section 4323 of*

1 title 38 of the United States Code with respect to
2 a violation of chapter 43 of such title, and

3 “(B) the 2 succeeding taxable years.

4 “(f) GENERAL DEFINITIONS AND SPECIAL RULES.—
5 For purposes of this section—

6 “(1) ELIGIBLE TAXPAYER.—The term ‘eligible
7 taxpayer’ means a small business employer or a
8 Ready Reserve-National Guard self-employed tax-
9 payer.

10 “(2) SMALL BUSINESS EMPLOYER.—

11 “(A) IN GENERAL.—The term ‘small busi-
12 ness employer’ means, with respect to any tax-
13 able year, any employer who employed an aver-
14 age of 50 or fewer employees on business days
15 during such taxable year.

16 “(B) CONTROLLED GROUPS.—For purposes
17 of subparagraph (A), all persons treated as a
18 single employer under subsection (b), (c), (m), or
19 (o) of section 414 shall be treated as a single em-
20 ployer.

21 “(3) QUALIFIED ACTIVE DUTY.—The term ‘quali-
22 fied active duty’ has the meaning given such term by
23 section 45H(d)(1).

24 “(4) SPECIAL RULES FOR CERTAIN MANUFAC-
25 TURERS.—

1 “(A) *IN GENERAL.*—*In the case of any*
2 *qualified manufacturer—*

3 “(i) *subsection (a)(2)(B) shall be ap-*
4 *plied by substituting ‘\$20,000’ for ‘\$12,000’,*
5 *and*

6 “(ii) *paragraph (2)(A) of this sub-*
7 *section shall be applied by substituting ‘100’*
8 *for ‘50’.*

9 “(B) *QUALIFIED MANUFACTURER.*—*For*
10 *purposes of this paragraph, the term ‘qualified*
11 *manufacturer’ means any person if—*

12 “(i) *the primary business of such per-*
13 *son is classified in sector 31, 32, or 33 of*
14 *the North American Industrial Classifica-*
15 *tion System, and*

16 “(ii) *all of such person’s facilities*
17 *which are used for production in such busi-*
18 *ness are located in the United States.*

19 “(5) *CARRYBACK AND CARRYFORWARD AL-*
20 *LOWED.—*

21 “(A) *IN GENERAL.*—*If the credit allowable*
22 *under subsection (a) for a taxable year exceeds*
23 *the amount of the limitation under subsection*
24 *(e)(1) for such taxable year (in this paragraph*
25 *referred to as the ‘unused credit year’), such ex-*

1 *cess shall be a credit carryback to each of the 3*
2 *taxable years preceding the unused credit year*
3 *and a credit carryforward to each of the 20 tax-*
4 *able years following the unused credit year.*

5 “(B) *RULES.*—*Rules similar to the rules of*
6 *section 39 shall apply with respect to the credit*
7 *carryback and credit carryforward under sub-*
8 *paragraph (A).*

9 “(6) *CERTAIN RULES TO APPLY.*—*Rules similar*
10 *to the rules of subsections (c), (d), and (e) of section*
11 *52 shall apply.”.*

12 (2) *NO DEDUCTION FOR COMPENSATION TAKEN*
13 *INTO ACCOUNT FOR CREDIT.*—*Section 280C(a) (relat-*
14 *ing to rule for employment credits), as amended by*
15 *this Act, is amended—*

16 (A) *by inserting “or compensation” after*
17 *“salaries”, and*

18 (B) *by inserting “30D,” before “45A(a),”.*

19 (3) *CONFORMING AMENDMENT.*—*Section*
20 *55(c)(2), as amended by this Act, is amended by in-*
21 *serting “30D(e)(1),” after “30C(e),”.*

22 (4) *CLERICAL AMENDMENT.*—*The table of sec-*
23 *tions for subpart B of part IV of subchapter A of*
24 *chapter 1, as amended by this Act, is amended by*

1 *adding after the item relating to section 30C the fol-*
 2 *lowing new item:*

“Sec. 30D. Credit for replacement of activated military reservists.”.

3 (5) *EFFECTIVE DATE.*—*The amendments made*
 4 *by this subsection shall apply to amounts paid or in-*
 5 *curring after September 30, 2004, in taxable years*
 6 *ending after such date.*

7 (c) *APPLICATION OF ANNUAL EXCLUSION LIMIT*
 8 *UNDER SECTION 911 TO HOUSING COSTS.*—

9 (1) *IN GENERAL.*—*Section 911(c) (relating to*
 10 *housing cost amount) is amended by adding at the*
 11 *end the following new paragraph:*

12 “*(4) LIMIT ON EXCLUSION FOR EMPLOYER PRO-*
 13 *VIDED HOUSING COSTS.*—*The housing cost amount for*
 14 *any individual for any taxable year attributable to*
 15 *employer provided amounts shall not exceed the excess*
 16 *(if any) of—*

17 “*(A) the product of—*

18 “*(i) the exclusion amount determined*
 19 *under subsection (b)(2)(D) for the taxable*
 20 *year, and*

21 “*(ii) a fraction equal to the number of*
 22 *days of the taxable year within the applica-*
 23 *ble period described in subparagraph (A) or*
 24 *(B) of subsection (d)(1) divided by the num-*
 25 *ber of days in the taxable year, over*

1 “(B) the foreign earned income of the indi-
2 vidual excluded under subsection (a)(1) for the
3 taxable year.”

4 (2) CONFORMING AMENDMENT.—Section
5 911(c)(1) is amended by striking “The” and inserting
6 “Except as provided in paragraph (4), the”.

7 (3) EFFECTIVE DATE.—The amendments made
8 by this subsection shall apply to taxable years begin-
9 ning after December 31, 2003.

10 **SEC. 633. RURAL INVESTMENT TAX CREDIT.**

11 (a) IN GENERAL.—Subpart D of part IV of subchapter
12 A of chapter 1 (relating to business related credits) is
13 amended by adding at the end the following:

14 **“SEC. 42A. RURAL INVESTMENT CREDIT.**

15 “(a) IN GENERAL.—For purposes of section 38, the
16 amount of the rural investment credit determined under
17 this section for any taxable year in the credit period shall
18 be an amount equal to the applicable percentage of the eligi-
19 ble basis of each qualified rural investment building.

20 “(b) APPLICABLE PERCENTAGE: 70 PERCENT
21 PRESENT VALUE CREDIT FOR NEW BUILDINGS; 30 PER-
22 CENT PRESENT VALUE CREDIT FOR EXISTING BUILD-
23 INGS.—For purposes of this section—

1 “(1) *IN GENERAL.*—The term ‘applicable per-
2 centage’ means the appropriate percentage prescribed
3 by the Secretary for the earlier of—

4 “(A) *the first month of the credit period*
5 *with respect to a rural investment building, or*

6 “(B) *at the election of the taxpayer, the*
7 *month in which the taxpayer and the rural in-*
8 *vestment credit agency enter into an agreement*
9 *with respect to such building (which is binding*
10 *on such agency, the taxpayer, and all successors*
11 *in interest) as to the rural investment credit dol-*
12 *lar amount to be allocated to such building.*

13 *A month may be elected under subparagraph (B) only*
14 *if the election is made not later than the 5th day after*
15 *the close of such month. Such an election, once made,*
16 *shall be irrevocable.*

17 “(2) *METHOD OF PRESCRIBING PERCENTAGES.*—
18 *The percentages prescribed by the Secretary for any*
19 *month shall be percentages which will yield over a 10-*
20 *year period amounts of credit under subsection (a)*
21 *which have a present value equal to—*

22 “(A) *70 percent of the eligible basis of a*
23 *new building, and*

24 “(B) *30 percent of the eligible basis of an*
25 *existing building.*

1 “(3) *METHOD OF DISCOUNTING.*—*The present*
2 *value under paragraph (2) shall be determined—*

3 “(A) *as of the last day of the 1st year of the*
4 *10-year period referred to in paragraph (2),*

5 “(B) *by using a discount rate equal to 72*
6 *percent of the average of the annual Federal*
7 *mid-term rate and the annual Federal long-term*
8 *rate applicable under section 1274(d)(1) to the*
9 *month applicable under subparagraph (A) or (B)*
10 *of paragraph (1) and compounded annually, and*

11 “(C) *by assuming that the credit allowable*
12 *under this section for any year is received on the*
13 *last day of such year.*

14 “(c) *ELIGIBLE BASIS; QUALIFIED RURAL INVESTMENT*
15 *BUILDING.*—*For purposes of this section—*

16 “(1) *ELIGIBLE BASIS.*—

17 “(A) *IN GENERAL.*—*The eligible basis of*
18 *any qualified rural investment building for any*
19 *taxable year shall be determined under rules*
20 *similar to the rules under section 42(d), except*
21 *that—*

22 “(i) *the determination of the adjusted*
23 *basis of any building shall be made as of*
24 *the beginning of the credit period, and*

1 “(ii) such basis shall include develop-
2 ment costs properly attributable to such
3 building.

4 “(B) DEVELOPMENT COSTS.—For purposes
5 of subparagraph (A)(ii), the term ‘development
6 costs’ includes—

7 “(i) site preparation costs,

8 “(ii) State and local impact fees,

9 “(iii) reasonable development costs,

10 “(iv) professional fees related to basis
11 items,

12 “(v) construction financing costs re-
13 lated to basis items other than land, and

14 “(vi) on-site and adjacent improve-
15 ments required by State and local govern-
16 ments.

17 “(2) QUALIFIED RURAL INVESTMENT BUILD-
18 ING.—The term ‘qualified rural investment building’
19 means any building which is part of a qualified rural
20 investment project at all times during the period—

21 “(A) beginning on the 1st day in the com-
22 pliance period on which such building is part of
23 such an investment project, and

24 “(B) ending on the last day of the compli-
25 ance period with respect to such building.

1 “(d) *REHABILITATION EXPENDITURES TREATED AS*
 2 *SEPARATE NEW BUILDING.*—*Rehabilitation expenditures*
 3 *paid or incurred by the taxpayer with respect to any build-*
 4 *ing shall be treated for purposes of this section as a separate*
 5 *new building under the rules of section 42(e).*

6 “(e) *DEFINITION AND SPECIAL RULES RELATING TO*
 7 *CREDIT PERIOD.*—

8 “(1) *CREDIT PERIOD DEFINED.*—*For purposes of*
 9 *this section, the term ‘credit period’ means, with re-*
 10 *spect to any building, the period of 10 taxable years*
 11 *beginning with the taxable year in which the building*
 12 *is first placed in service.*

13 “(2) *SPECIAL RULE FOR 1ST YEAR OF CREDIT*
 14 *PERIOD.*—

15 “(A) *IN GENERAL.*—*The credit allowable*
 16 *under subsection (a) with respect to any building*
 17 *for the 1st taxable year of the credit period shall*
 18 *be determined by multiplying such credit by the*
 19 *fraction—*

20 “(i) *the numerator of which is the*
 21 *number of full months of such year during*
 22 *which such building was in service, and*

23 “(ii) *the denominator of which is 12.*

24 “(B) *DISALLOWED 1ST YEAR CREDIT AL-*
 25 *LOWED IN 11TH YEAR.*—*Any reduction by reason*

1 *of subparagraph (A) in the credit allowable*
2 *(without regard to subparagraph (A)) for the 1st*
3 *taxable year of the credit period shall be allow-*
4 *able under subsection (a) for the 1st taxable year*
5 *following the credit period.*

6 “(3) *CREDIT PERIOD FOR EXISTING BUILDINGS*
7 *NOT TO BEGIN BEFORE REHABILITATION CREDIT AL-*
8 *LOWED.—The credit period for an existing building*
9 *shall not begin before the 1st taxable year of the credit*
10 *period for rehabilitation expenditures with respect to*
11 *the building.*

12 “(f) *QUALIFIED RURAL INVESTMENT PROJECT; QUALI-*
13 *FYING COUNTY.—For purposes of this section—*

14 “(1) *QUALIFIED RURAL INVESTMENT PROJECT.—*
15 *The term ‘qualified rural investment project’ means*
16 *any investment project of 1 or more qualified rural*
17 *investment buildings located in a qualifying county*
18 *(and, if necessary to the project, any contiguous coun-*
19 *ty) and selected by the State according to its qualified*
20 *rural investment plan.*

21 “(2) *QUALIFYING COUNTY.—The term ‘qualifying*
22 *county’ means any county which—*

23 “(A) *is outside a metropolitan statistical*
24 *area (defined as such by the Office of Manage-*
25 *ment and Budget), and*

1 “(B) during the 20-year period ending with
2 the year in which the most recent census was
3 conducted, has a net out-migration of inhab-
4 itants from the county of at least 10 percent of
5 the population of the county at the beginning of
6 such period.

7 “(g) *LIMITATION ON AGGREGATE CREDIT ALLOWABLE*
8 *WITH RESPECT TO INVESTMENT PROJECTS LOCATED IN A*
9 *STATE.—*

10 “(1) *CREDIT MAY NOT EXCEED CREDIT AMOUNT*
11 *ALLOCATED TO BUILDING.—The amount of the credit*
12 *determined under this section for any taxable year*
13 *with respect to any building shall not exceed the rural*
14 *investment credit dollar amount allocated to such*
15 *building under rules similar to the rules of section*
16 *42(h)(1).*

17 “(2) *ALLOCATED CREDIT AMOUNT TO APPLY TO*
18 *ALL TAXABLE YEARS ENDING DURING OR AFTER*
19 *CREDIT ALLOCATION YEAR.—Any rural investment*
20 *credit dollar amount allocated to any building for*
21 *any calendar year—*

22 “(A) shall apply to such building for all
23 taxable years in the credit period ending during
24 or after such calendar year, and

1 “(B) shall reduce the aggregate rural invest-
2 ment credit dollar amount of the allocating agen-
3 cy only for such calendar year.

4 “(3) RURAL INVESTMENT CREDIT DOLLAR
5 AMOUNT FOR AGENCIES.—

6 “(A) IN GENERAL.—The aggregate rural in-
7 vestment credit dollar amount which a rural in-
8 vestment credit agency may allocate for any cal-
9 endar year is the portion of the State rural in-
10 vestment credit ceiling allocated under this para-
11 graph for such calendar year to such agency.

12 “(B) STATE CEILING INITIALLY ALLOCATED
13 TO STATE RURAL INVESTMENT CREDIT AGEN-
14 CIES.—Except as provided in subparagraphs (D)
15 and (E), the State rural investment credit ceil-
16 ing for each calendar year shall be allocated to
17 the rural investment credit agency of such State.
18 If there is more than 1 rural investment credit
19 agency of a State, all such agencies shall be
20 treated as a single agency.

21 “(C) STATE RURAL INVESTMENT CREDIT
22 CEILING.—The State rural investment credit
23 ceiling applicable to any State and any calendar
24 year shall be an amount equal to the sum of—

1 “(i) the unused State rural investment
2 credit ceiling (if any) of such State for the
3 preceding calendar year,

4 “(ii) \$185,000 for each qualifying
5 county in the State,

6 “(iii) the amount of State rural invest-
7 ment credit ceiling returned in the calendar
8 year, plus

9 “(iv) the amount (if any) allocated
10 under subparagraph (D) to such State by
11 the Secretary.

12 For purposes of clause (i), the unused State
13 rural investment credit ceiling for any calendar
14 year is the excess (if any) of the sum of the
15 amounts described in clauses (ii) through (iv)
16 over the aggregate rural investment credit dollar
17 amount allocated for such year. For purposes of
18 clause (iii), the amount of State rural invest-
19 ment credit ceiling returned in the calendar year
20 equals the rural investment credit dollar amount
21 previously allocated within the State to any in-
22 vestment project which fails to meet the 10 per-
23 cent test under section 42(h)(1)(E)(ii) on a date
24 after the close of the calendar year in which the
25 allocation was made or which does not become a

1 *qualified rural investment project within the pe-*
2 *riod required by this section or the terms of the*
3 *allocation or to any investment project with re-*
4 *spect to which an allocation is canceled by mu-*
5 *tual consent of the rural investment credit agen-*
6 *cy and the allocation recipient.*

7 “(D) *UNUSED RURAL INVESTMENT CREDIT*
8 *CARRYOVERS ALLOCATED AMONG CERTAIN*
9 *STATES.—*

10 “(i) *IN GENERAL.—The unused rural*
11 *investment credit carryover of a State for*
12 *any calendar year shall be assigned to the*
13 *Secretary for allocation among qualified*
14 *States for the succeeding calendar year.*

15 “(ii) *UNUSED RURAL INVESTMENT*
16 *CREDIT CARRYOVER.—For purposes of this*
17 *subparagraph, the unused rural investment*
18 *credit carryover of a State for any calendar*
19 *year is the excess (if any) of the unused*
20 *State rural investment credit ceiling for*
21 *such year (as defined in subparagraph*
22 *(C)(i)) over the excess (if any) of—*

23 “(I) *the unused State rural in-*
24 *vestment credit ceiling for the year*
25 *preceding such year, over*

1 “(II) *the aggregate rural invest-*
2 *ment credit dollar amount allocated for*
3 *such year.*

4 “(iii) *FORMULA FOR ALLOCATION OF*
5 *UNUSED RURAL INVESTMENT CREDIT*
6 *CARRYOVERS AMONG QUALIFIED STATES.—*

7 *The amount allocated under this subpara-*
8 *graph to a qualified State for any calendar*
9 *year shall be the amount determined by the*
10 *Secretary to bear the same ratio to the ag-*
11 *gregate unused rural investment credit*
12 *carryovers of all States for the preceding*
13 *calendar year as such State’s population for*
14 *the calendar year bears to the population of*
15 *all qualified States for the calendar year.*
16 *For purposes of the preceding sentence, pop-*
17 *ulation shall be determined in accordance*
18 *with section 146(j).*

19 “(iv) *QUALIFIED STATE.—For pur-*
20 *poses of this subparagraph, the term ‘quali-*
21 *fied State’ means, with respect to a cal-*
22 *endar year, any State—*

23 “(I) *which allocated its entire*
24 *State rural investment credit ceiling*
25 *for the preceding calendar year, and*

1 “(II) for which a request is made
2 (not later than May 1 of the calendar
3 year) to receive an allocation under
4 clause (iii).

5 “(E) STATE MAY PROVIDE FOR DIFFERENT
6 ALLOCATION.—Rules similar to the rules of sec-
7 tion 146(e) (other than paragraph (2)(B) there-
8 of) shall apply for purposes of this paragraph.

9 “(F) POPULATION.—For purposes of this
10 paragraph, population shall be determined in ac-
11 cordance with section 146(j).

12 “(G) COST-OF-LIVING ADJUSTMENT.—

13 “(i) IN GENERAL.—In the case of a
14 calendar year after 2005, the \$185,000
15 amount in subparagraph (C) shall be in-
16 creased by an amount equal to—

17 “(I) such dollar amount, multi-
18 plied by

19 “(II) the cost-of-living adjustment
20 determined under section 1(f)(3) for
21 such calendar year by substituting ‘cal-
22 endar year 2004’ for ‘calendar year
23 1992’ in subparagraph (B) thereof.

24 “(ii) ROUNDING.—Any increase under
25 clause (i) which is not a multiple of \$5,000

1 *shall be rounded to the next lowest multiple*
2 *of \$5,000.*

3 “(4) *PORTION OF STATE CEILING SET-ASIDE FOR*
4 *CERTAIN INVESTMENT PROJECTS INVOLVING QUALI-*
5 *FIED NONPROFIT ORGANIZATIONS.—*

6 “(A) *IN GENERAL.—At least 10 percent of*
7 *the State rural investment credit ceiling for any*
8 *State for any calendar year shall be allocated to*
9 *qualified rural investment projects described in*
10 *subparagraph (B).*

11 “(B) *INVESTMENT PROJECTS INVOLVING*
12 *QUALIFIED NONPROFIT ORGANIZATIONS.—For*
13 *purposes of subparagraph (A), a qualified rural*
14 *investment project is described in this subpara-*
15 *graph if a qualified nonprofit organization is to*
16 *materially participate (within the meaning of*
17 *section 469(h)) in the development and operation*
18 *of the investment project throughout the compli-*
19 *ance period.*

20 “(C) *QUALIFIED NONPROFIT ORGANIZA-*
21 *TION.—For purposes of this paragraph, the term*
22 *‘qualified nonprofit organization’ means any or-*
23 *ganization if—*

1 “(i) such organization is described in
2 any paragraph of section 501(c) and is ex-
3 empt from tax under section 501(a),

4 “(ii) such organization is determined
5 by the State rural investment credit agency
6 not to be affiliated with or controlled by a
7 for-profit organization; and

8 “(iii) 1 of the exempt purposes of such
9 organization includes the fostering of rural
10 investment.

11 “(D) *TREATMENT OF CERTAIN SUBSIDI-*
12 *ARIES.*—

13 “(i) *IN GENERAL.*—For purposes of
14 this paragraph, a qualified nonprofit orga-
15 nization shall be treated as satisfying the
16 ownership and material participation test
17 of subparagraph (B) if any qualified cor-
18 poration in which such organization holds
19 stock satisfies such test.

20 “(ii) *QUALIFIED CORPORATION.*—For
21 purposes of clause (i), the term ‘qualified
22 corporation’ means any corporation if 100
23 percent of the stock of such corporation is
24 held by 1 or more qualified nonprofit orga-

1 nizations at all times during the period
2 such corporation is in existence.

3 “(E) STATE MAY NOT OVERRIDE SET-
4 ASIDE.—Nothing in subparagraph (F) of para-
5 graph (3) shall be construed to permit a State
6 not to comply with subparagraph (A) of this
7 paragraph.

8 “(F) CREDITS FOR QUALIFIED NONPROFIT
9 ORGANIZATIONS.—

10 “(i) ALLOWANCE OF CREDIT.—Any
11 credit which would be allowable under sub-
12 section (a) with respect to a qualified rural
13 investment building of a qualified nonprofit
14 organization if such organization were not
15 exempt from tax under this chapter shall be
16 treated as a credit allowable under subpart
17 C to such organization.

18 “(ii) USE OF CREDIT.—A qualified
19 nonprofit organization may assign, trade,
20 sell, or otherwise transfer any credit allow-
21 able to such organization under subpara-
22 graph (A) to any taxpayer.

23 “(iii) CREDIT NOT INCOME.—A trans-
24 fer under subparagraph (B) of any credit

1 *allowable under subparagraph (A) shall not*
2 *result in income for purposes of section 511.*

3 “(5) *SPECIAL RULES.—*

4 “(A) *BUILDING MUST BE LOCATED WITHIN*
5 *JURISDICTION OF CREDIT AGENCY.—A rural in-*
6 *vestment credit agency may allocate its aggregate*
7 *rural investment credit dollar amount only to*
8 *buildings located in the jurisdiction of the gov-*
9 *ernmental unit of which such agency is a part.*

10 “(B) *AGENCY ALLOCATIONS IN EXCESS OF*
11 *LIMIT.—If the aggregate rural investment credit*
12 *dollar amounts allocated by a rural investment*
13 *credit agency for any calendar year exceed the*
14 *portion of the State rural investment credit ceil-*
15 *ing allocated to such agency for such calendar*
16 *year, the rural investment credit dollar amounts*
17 *so allocated shall be reduced (to the extent of*
18 *such excess) for buildings in the reverse of the*
19 *order in which the allocations of such amounts*
20 *were made.*

21 “(C) *CREDIT REDUCED IF ALLOCATED*
22 *CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT*
23 *WHICH WOULD BE ALLOWABLE WITHOUT RE-*
24 *GARD TO SALES CONVENTION, ETC.—*

1 “(i) *IN GENERAL.*—*The amount of the*
2 *credit determined under this section with*
3 *respect to any building shall not exceed the*
4 *clause (ii) percentage of the amount of the*
5 *credit which would (but for this subpara-*
6 *graph) be determined under this section*
7 *with respect to such building.*

8 “(ii) *DETERMINATION OF PERCENT-*
9 *AGE.*—*For purposes of clause (i), the clause*
10 *(ii) percentage with respect to any building*
11 *is the percentage which—*

12 “(I) *the rural investment credit*
13 *dollar amount allocated to such build-*
14 *ing bears to*

15 “(II) *the credit amount deter-*
16 *mined in accordance with clause (iii).*

17 “(iii) *DETERMINATION OF CREDIT*
18 *AMOUNT.*—*The credit amount determined in*
19 *accordance with this clause is the amount of*
20 *the credit which would (but for this sub-*
21 *paragraph) be determined under this section*
22 *with respect to the building if this section*
23 *were applied without regard to paragraph*
24 *(2)(A) of subsection (e).*

1 “(D) *RURAL INVESTMENT CREDIT AGENCY*
2 *TO SPECIFY APPLICABLE PERCENTAGE AND MAX-*
3 *IMUM ELIGIBLE BASIS.*—*In allocating a rural*
4 *investment credit dollar amount to any building,*
5 *the rural investment credit agency shall specify*
6 *the applicable percentage and the maximum eli-*
7 *gible basis which may be taken into account*
8 *under this section with respect to such building.*
9 *The applicable percentage and maximum eligible*
10 *basis so specified shall not exceed the applicable*
11 *percentage and eligible basis determined under*
12 *this section without regard to this subsection.*

13 “(6) *OTHER DEFINITIONS.*—*For purposes of this*
14 *subsection—*

15 “(A) *RURAL INVESTMENT CREDIT AGEN-*
16 *CY.*—*The term ‘rural investment credit agency’*
17 *means any agency authorized to carry out this*
18 *subsection.*

19 “(B) *POSSESSIONS TREATED AS STATES.*—
20 *The term ‘State’ includes a possession of the*
21 *United States.*

22 “(7) *PORTION OF STATE CEILING SET-ASIDE FOR*
23 *QUALIFIED RURAL SMALL BUSINESS INVESTMENT*
24 *CREDITS.*—*Not more than 10 percent of the State*
25 *rural investment credit ceiling for any State for any*

1 *calendar year may be allocated to qualified rural*
2 *small business investment credits under section 42B.*

3 “(h) *DEFINITIONS AND SPECIAL RULES.—For pur-*
4 *poses of this section—*

5 “(1) *COMPLIANCE PERIOD.—The term ‘compli-*
6 *ance period’ means, with respect to any building, the*
7 *period of 10 taxable years beginning with the 1st tax-*
8 *able year of the credit period with respect thereto.*

9 “(2) *NEW BUILDING.—The term ‘new building’*
10 *means a building the original use of which begins*
11 *with the taxpayer.*

12 “(3) *EXISTING BUILDING.—The term ‘existing*
13 *building’ means any building which is not a new*
14 *building.*

15 “(4) *APPLICATION TO ESTATES AND TRUSTS.—In*
16 *the case of an estate or trust, the amount of the credit*
17 *determined under subsection (a) and any increase in*
18 *tax under subsection (i) shall be apportioned between*
19 *the estate or trust and the beneficiaries on the basis*
20 *of the income of the estate or trust allocable to each.*

21 “(i) *RECAPTURE OF CREDIT.—If—*

22 “(1) *as of the close of any taxable year in the*
23 *compliance period, the amount of the eligible basis of*
24 *any building with respect to the taxpayer is less than*

1 “(2) *the amount of such basis as of the close of*
2 *the preceding taxable year,*
3 *then the taxpayer’s tax under this chapter for the tax-*
4 *able year shall be increased by the credit recapture*
5 *amount determined under rules similar to the rules of*
6 *section 42(j).*

7 “(j) *CERTIFICATIONS AND OTHER REPORTS TO SEC-*
8 *RETARY.—*

9 “(1) *CERTIFICATION WITH RESPECT TO 1ST YEAR*
10 *OF CREDIT PERIOD.—Following the close of the 1st*
11 *taxable year in the credit period with respect to any*
12 *qualified rural investment building, the taxpayer*
13 *shall certify to the Secretary (at such time and in*
14 *such form and in such manner as the Secretary pre-*
15 *scribes)—*

16 “(A) *the taxable year, and calendar year, in*
17 *which such building was first placed in service,*

18 “(B) *the eligible basis of such building as of*
19 *the beginning of the credit period,*

20 “(C) *the maximum applicable percentage*
21 *and eligible basis permitted to be taken into ac-*
22 *count by the appropriate rural investment credit*
23 *agency under subsection (g),*

1 “(D) the election made under subsection (f)
2 with respect to the qualified rural investment
3 project of which such building is a part, and

4 “(E) such other information as the Sec-
5 retary may require.

6 *In the case of a failure to make the certification re-*
7 *quired by the preceding sentence on the date pre-*
8 *scribed therefor, unless it is shown that such failure*
9 *is due to reasonable cause and not to willful neglect,*
10 *no credit shall be allowable by reason of subsection (a)*
11 *with respect to such building for any taxable year*
12 *ending before such certification is made.*

13 “(2) ANNUAL REPORTS TO THE SECRETARY.—
14 *The Secretary may require taxpayers to submit an*
15 *information return (at such time and in such form*
16 *and manner as the Secretary prescribes) for each tax-*
17 *able year setting forth—*

18 “(A) the eligible basis for the taxable year
19 of each qualified rural investment building of the
20 taxpayer,

21 “(B) the information described in para-
22 graph (1)(C) for the taxable year, and

23 “(C) such other information as the Sec-
24 retary may require.

1 *The penalty under section 6652(j) shall apply to any*
2 *failure to submit the return required by the Secretary*
3 *under the preceding sentence on the date prescribed*
4 *therefor.*

5 “(3) *ANNUAL REPORTS FROM RURAL INVEST-*
6 *MENT CREDIT AGENCIES.—Each agency which allo-*
7 *cates any rural investment credit amount to any*
8 *building for any calendar year shall submit to the*
9 *Secretary (at such time and in such manner as the*
10 *Secretary shall prescribe) an annual report*
11 *specifying—*

12 “(A) *the amount of rural investment credit*
13 *amount allocated to each building for such year,*

14 “(B) *sufficient information to identify each*
15 *such building and the taxpayer with respect*
16 *thereto, and*

17 “(C) *such other information as the Sec-*
18 *retary may require.*

19 *The penalty under section 6652(j) shall apply to any*
20 *failure to submit the report required by the preceding*
21 *sentence on the date prescribed therefor.*

22 “(k) *RESPONSIBILITIES OF RURAL INVESTMENT*
23 *CREDIT AGENCIES.—*

24 “(1) *PLANS FOR ALLOCATION OF CREDIT AMONG*
25 *INVESTMENT PROJECTS.—*

1 “(A) *IN GENERAL.*—*Notwithstanding any*
2 *other provision of this section, the rural invest-*
3 *ment credit dollar amount with respect to any*
4 *building shall be zero unless—*

5 “(i) *such amount was allocated pursu-*
6 *ant to a qualified rural investment plan of*
7 *the agency which is approved by the govern-*
8 *mental unit (in accordance with rules simi-*
9 *lar to the rules of section 147(f)(2) (other*
10 *than subparagraph (B)(ii) thereof)) of*
11 *which such agency is a part,*

12 “(ii) *such agency notifies the chief ex-*
13 *ecutive officer (or the equivalent) of the local*
14 *jurisdiction within which the building is lo-*
15 *located of such investment project and pro-*
16 *vides such individual a reasonable oppor-*
17 *tunity to comment on the investment*
18 *project,*

19 “(iii) *a comprehensive market study of*
20 *the development needs of individuals in the*
21 *qualifying county to be served by the invest-*
22 *ment project is conducted before the credit*
23 *allocation is made and at the developer’s ex-*
24 *penditure by a disinterested party who is ap-*
25 *proved by such agency, and*

1 “(iv) a written explanation is avail-
2 able to the general public for any allocation
3 of a rural investment credit dollar amount
4 which is not made in accordance with es-
5 tablished priorities and selection criteria of
6 the rural investment credit agency.

7 “(B) QUALIFIED RURAL INVESTMENT
8 PLAN.—For purposes of this section, the term
9 ‘qualified rural investment plan’ means any
10 plan—

11 “(i) which sets forth selection criteria
12 to be used to determine priorities of the
13 rural investment credit agency which are
14 appropriate to qualifying counties,

15 “(ii) which also gives preference in al-
16 locating rural investment credit dollar
17 amounts among selected investment projects
18 to—

19 “(I) investment projects that tar-
20 get those small rural counties with con-
21 sistently high rates of net out-migra-
22 tion,

23 “(II) investment projects that link
24 the economic development and job cre-
25 ation efforts of 2 or more small rural

1 *counties with high rates of net out-mi-*
2 *gration, and*

3 *“(III) investment projects that*
4 *link the economic development and job*
5 *creation efforts of 1 or more small*
6 *rural counties in the State with high*
7 *rates of net out-migration to related ef-*
8 *forts in regions of such State experi-*
9 *encing economic growth, and*

10 *“(iii) which provides a procedure that*
11 *the agency (or an agent or other private*
12 *contractor of such agency) will follow in*
13 *monitoring for noncompliance with the pro-*
14 *visions of this section and in notifying the*
15 *Internal Revenue Service of such non-*
16 *compliance which such agency becomes*
17 *aware of and in monitoring for noncompli-*
18 *ance through regular site visits.*

19 *“(C) CERTAIN SELECTION CRITERIA MUST*
20 *BE USED.—The selection criteria set forth in a*
21 *qualified rural investment plan must include—*

22 *“(i) investment project location,*

23 *“(ii) technology and transportation in-*
24 *frastructure needs, and*

25 *“(iii) private development trends.*

1 “(2) *CREDIT ALLOCATED TO BUILDING NOT TO*
2 *EXCEED AMOUNT NECESSARY TO ASSURE INVESTMENT*
3 *PROJECT FEASIBILITY.*—

4 “(A) *IN GENERAL.*—*The rural investment*
5 *credit dollar amount allocated to an investment*
6 *project shall not exceed the amount the rural in-*
7 *vestment credit agency determines is necessary*
8 *for the financial feasibility of the investment*
9 *project and its viability as a qualified rural in-*
10 *vestment project throughout the compliance pe-*
11 *riod.*

12 “(B) *AGENCY EVALUATION.*—*In making the*
13 *determination under subparagraph (A), the*
14 *rural investment credit agency shall consider—*

15 “(i) *the sources and uses of funds and*
16 *the total financing planned for the invest-*
17 *ment project,*

18 “(ii) *any proceeds or receipts expected*
19 *to be generated by reason of tax benefits,*

20 “(iii) *the percentage of the rural in-*
21 *vestment credit dollar amount used for in-*
22 *vestment project costs other than the cost of*
23 *intermediaries, and*

1 “(iv) the reasonableness of the develop-
2 mental and operational costs of the invest-
3 ment project.

4 Clause (iii) shall not be applied so as to impede
5 the development of investment projects in hard-
6 to-develop areas.

7 “(C) DETERMINATION MADE WHEN CREDIT
8 AMOUNT APPLIED FOR AND WHEN BUILDING
9 PLACED IN SERVICE.—

10 “(i) IN GENERAL.—A determination
11 under subparagraph (A) shall be made as of
12 each of the following times:

13 “(I) The application for the rural
14 investment credit dollar amount.

15 “(II) The allocation of the rural
16 investment credit dollar amount.

17 “(III) The date the building is
18 first placed in service.

19 “(ii) CERTIFICATION AS TO AMOUNT OF
20 OTHER SUBSIDIES.—Prior to each deter-
21 mination under clause (i), the taxpayer
22 shall certify to the rural investment credit
23 agency the full extent of all Federal, State,
24 and local subsidies which apply (or which

1 the taxpayer expects to apply) with respect
2 to the building.

3 “(l) *REGULATIONS.*—The Secretary shall prescribe
4 such regulations as may be necessary or appropriate to
5 carry out the purposes of this section, including
6 regulations—

7 “(1) dealing with—

8 “(A) investment projects which include
9 more than 1 building or only a portion of a
10 building,

11 “(B) buildings which are sold in portions,

12 “(2) providing for the application of this section
13 to short taxable years,

14 “(3) preventing the avoidance of the rules of this
15 section, and

16 “(4) providing the opportunity for rural invest-
17 ment credit agencies to correct administrative errors
18 and omissions with respect to allocations and record
19 keeping within a reasonable period after their dis-
20 covery, taking into account the availability of regula-
21 tions and other administrative guidance from the Sec-
22 retary.”.

23 (b) *CURRENT YEAR BUSINESS CREDIT CALCULA-*
24 *TION.*—Section 38(b) (relating to current year business
25 credit), as amended by this Act, is amended by striking

1 “plus” at the end of paragraph (16), by striking the period
2 at the end of paragraph (17) and inserting “, plus”, and
3 by adding at the end the following:

4 “(18) the rural investment credit determined
5 under section 42A(a).”.

6 (c) *LIMITATION ON CARRYBACK.*—Subsection (d) of
7 section 39 (relating to carryback and carryforward of un-
8 used credits), as amended by this Act, is amended by adding
9 at the end the following:

10 “(12) *NO CARRYBACK OF RURAL INVESTMENT*
11 *CREDIT BEFORE EFFECTIVE DATE.*—No portion of the
12 unused business credit for any taxable year which is
13 attributable to the rural investment credit determined
14 under section 42A may be carried back to a taxable
15 year beginning before the date of the enactment of the
16 *Jumpstart Our Business Strength (JOBS) Act.*”.

17 (d) *CONFORMING AMENDMENTS.*—

18 (1) Section 55(c)(1) is amended by inserting “or
19 subsection (i) or (j) of section 42A” after “section 42”.

20 (2) Subsections (i)(c)(3), (i)(c)(6)(B)(i), and
21 (k)(1) of section 469 are each amended by inserting
22 “or 42A” after “section 42”.

23 (3) Section 772(a) is amended by striking “and”
24 at the end of paragraph (10), by redesignating para-

1 *graph (11) as paragraph (12), and by inserting after*
 2 *paragraph (10) the following:*

3 “(11) the rural investment credit determined
 4 under section 42A, and”.

5 (4) Section 774(b)(4) is amended by inserting “,
 6 42A(i),” after “section 42(j)”.

7 (e) *CLERICAL AMENDMENT.*—The table of sections for
 8 subpart D of part IV of subchapter A of chapter 1 is amend-
 9 ed by inserting after the item relating to section 42 the fol-
 10 lowing:

“Sec. 42A. Rural investment credit.”.

11 (f) *EFFECTIVE DATE.*—The amendments made by this
 12 section shall apply to expenditures made in taxable years
 13 beginning after the date of the enactment of this Act.

14 **SEC. 634. QUALIFIED RURAL SMALL BUSINESS INVESTMENT**
 15 **CREDIT.**

16 (a) *IN GENERAL.*—Subpart D of part IV of subchapter
 17 A of chapter 1 (relating to business related credits), as
 18 amended by this Act, is amended by adding at the end the
 19 following:

20 **“SEC. 42B. QUALIFIED RURAL SMALL BUSINESS INVEST-**
 21 **MENT CREDIT.**

22 “(a) *IN GENERAL.*—For purposes of section 38, in the
 23 case of a qualified rural small business, the amount of the
 24 qualified rural small business investment credit determined
 25 under this section for any taxable year is equal to 30 per-

1 *cent of the qualified expenditures for the taxable year of*
2 *such business.*

3 “(b) *DOLLAR LIMITATION.*—

4 “(1) *IN GENERAL.*—*The credit allowable under*
5 *subsection (a) for any taxable year shall not exceed*
6 *the lesser of—*

7 “(A) *\$5,000, or*

8 “(B) *the amount when added to the aggre-*
9 *gate credits allowable to the taxpayer under sub-*
10 *section (a) for all preceding taxable years does*
11 *not exceed \$25,000.*

12 “(2) *NO DOUBLE CREDIT ALLOWED.*—*In the case*
13 *of any qualified rural small business which places in*
14 *service a qualified rural investment building with re-*
15 *spect to which a rural investment credit is allowed*
16 *under section 42A for any taxable year, paragraph*
17 *(1)(A) shall be applied with respect to such taxable*
18 *year by substituting ‘zero’ for ‘\$5,000’.*

19 “(c) *QUALIFIED RURAL SMALL BUSINESS.*—*For pur-*
20 *poses of this section, the term ‘qualified rural small busi-*
21 *ness’ means any person if such person—*

22 “(1) *employed not more than 5 full-time employ-*
23 *ees during the taxable year,*

24 “(2) *materially and substantially participates in*
25 *management,*

1 “(3) is located in a qualifying county, and

2 “(4) submitted a qualified business plan with re-
3 spect to which the rural investment credit agency
4 with jurisdiction over such qualifying county has al-
5 located a portion of the State rural investment ceiling
6 for such taxable year under section 42A(g)(7).

7 For purposes of paragraph (1), an employee shall be consid-
8 ered full-time if such employee is employed at least 30 hours
9 per week for 20 or more calendar weeks in the taxable year.

10 “(d) *QUALIFIED EXPENDITURES.*—For purposes of
11 this section—

12 “(1) *IN GENERAL.*—The term ‘qualified expendi-
13 tures’ means expenditures normally associated with
14 starting or expanding a business and included in a
15 qualified business plan, including costs for capital,
16 plant and equipment, inventory expenses, and wages,
17 but not including interest costs.

18 “(2) *ONLY CERTAIN EXPENDITURES INCLUDED*
19 *FOR EXISTING BUSINESSES.*—In the case of a quali-
20 fied rural small business with respect to which a cred-
21 it under subsection (a) was allowed for a preceding
22 taxable year, such term shall include only so much of
23 the expenditures described in paragraph (1) for the
24 taxable year as exceed the aggregate of such expendi-
25 tures for the preceding taxable year.

1 “(e) *QUALIFIED BUSINESS PLAN.*—For purposes of
2 this section, the term ‘qualified business plan’ means a busi-
3 ness plan which—

4 “(1) has been approved by the rural investment
5 credit agency with jurisdiction over the qualifying
6 county in which the qualified rural small business is
7 located pursuant to such agency’s rural investment
8 plan, and

9 “(2) meets such requirements as the agency may
10 specify.

11 “(f) *DENIAL OF DOUBLE BENEFIT.*—In the case of the
12 amount of the credit determined under this section—

13 “(1) no deduction or credit shall be allowed for
14 such amount under any other provision of this chap-
15 ter, and

16 “(2) no increase in the adjusted basis of any
17 property shall result from such amount.

18 “(g) *DEFINITIONS AND SPECIAL RULES.*—For pur-
19 poses of this section—

20 “(1) any term which is used in this section
21 which is used in section 42A shall have the meaning
22 given such term by section 42A, and

23 “(2) rules similar to the rules under subsections
24 (j)(2), (j)(3), and (k) of section 42A shall apply.”.

1 (b) *CURRENT YEAR BUSINESS CREDIT CALCULA-*
2 *TION.*—Section 38(b) (relating to current year business
3 credit), as amended by this Act, is amended by striking
4 “plus” at the end of paragraph (17), by striking the period
5 at the end of paragraph (18) and inserting “, plus”, and
6 by adding at the end the following:

7 “(19) the qualified rural small business invest-
8 ment credit determined under section 42B(a).”.

9 (c) *LIMITATION ON CARRYBACK.*—Subsection (d) of
10 section 39 (relating to carryback and carryforward of un-
11 used credits), as amended by this Act, is amended by adding
12 at the end the following:

13 “(13) *NO CARRYBACK OF QUALIFIED RURAL*
14 *SMALL BUSINESS INVESTMENT CREDIT BEFORE EF-*
15 *FECTIVE DATE.*—No portion of the unused business
16 credit for any taxable year which is attributable to
17 the qualified rural small business investment credit
18 determined under section 42B may be carried back to
19 a taxable year beginning before the date of the enact-
20 ment of the *Jumpstart Our Business Strength*
21 *(JOBS) Act.*”.

22 (d) *CLERICAL AMENDMENT.*—The table of sections for
23 subpart D of part IV of subchapter A of chapter 1, as
24 amended by this Act, is amended by inserting after the item
25 relating to section 42A the following:

“Sec. 42B. Qualified rural small business investment credit.”.

1 (e) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to expenditures made in taxable years*
3 *beginning after the date of the enactment of this Act.*

4 **SEC. 635. CREDIT FOR MAINTENANCE OF RAILROAD TRACK.**

5 (a) *IN GENERAL.*—*Subpart D of part IV of subchapter*
6 *A of chapter 1 (relating to business-related credits), as*
7 *amended by this Act, is amended by adding at the end the*
8 *following new section:*

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

10 “(a) *GENERAL RULE.*—*For purposes of section 38, the*
11 *railroad track maintenance credit determined under this*
12 *section for the taxable year is an amount equal to 30 per-*
13 *cent of the qualified railroad track maintenance expendi-*
14 *tures paid or incurred by an eligible taxpayer during the*
15 *taxable year.*

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

19 “(1) \$3,500, and

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

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

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

1 “(2) *any person who transports property using*
2 *the rail facilities of a person described in paragraph*
3 *(1) or who furnishes railroad-related property or serv-*
4 *ices to such a person.*

5 “(d) *QUALIFIED RAILROAD TRACK MAINTENANCE EX-*
6 *PENDITURES.—For purposes of this section, the term ‘quali-*
7 *fied railroad track maintenance expenditures’ means ex-*
8 *penditures (whether or not otherwise chargeable to capital*
9 *account) for maintaining railroad track (including road-*
10 *bed, bridges, and related track structures) owned or leased*
11 *as of January 1, 2005, by a Class II or Class III railroad.*

12 “(e) *OTHER DEFINITIONS AND SPECIAL RULES.—*

13 “(1) *CLASS II OR CLASS III RAILROAD.—For*
14 *purposes of this section, the terms ‘Class II railroad’*
15 *and ‘Class III railroad’ have the meanings given such*
16 *terms by the Surface Transportation Board.*

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

20 “(3) *BASIS ADJUSTMENT.—For purposes of this*
21 *subtitle, if a credit is allowed under this section with*
22 *respect to any railroad track, the basis of such track*
23 *shall be reduced by the amount of the credit so al-*
24 *lowed.*

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

5 (b) *LIMITATION ON CARRYBACK.*—*Section 39(d) (relat-*
6 *ing to transition rules), as amended by this Act, is amended*
7 *by adding at the end the following new paragraph:*

8 “(14) *NO CARRYBACK OF RAILROAD TRACK MAIN-*
9 *TENANCE CREDIT BEFORE EFFECTIVE DATE.*—*No por-*
10 *tion of the unused business credit for any taxable year*
11 *which is attributable to the railroad track mainte-*
12 *nance credit determined under section 45I may be*
13 *carried to a taxable year beginning before January 1,*
14 *2005.*”.

15 (c) *CONFORMING AMENDMENTS.*—

16 (1) *Section 38(b) (relating to general business*
17 *credit), as amended by this Act, is amended by strik-*
18 *ing “plus” at the end of paragraph (18), by striking*
19 *the period at the end of paragraph (19) and inserting*
20 *“, plus”, and by adding at the end the following new*
21 *paragraph:*

22 “(20) *the railroad track maintenance credit de-*
23 *termined under section 45I(a).*”.

24 (2) *Subsection (a) of section 1016, as amended*
25 *by this Act, is amended by striking “and” at the end*

1 of paragraph (28), by striking the period at the end
 2 of paragraph (29) and inserting “, and”, and by add-
 3 ing at the end the following new paragraph:

4 “(30) in the case of railroad track with respect
 5 to which a credit was allowed under section 45I, to
 6 the extent provided in section 45I(e)(3).”.

7 (d) *CLERICAL AMENDMENT.*—The table of sections for
 8 subpart D of part IV of subchapter A of chapter 1, as
 9 amended by this Act, is amended by inserting after the item
 10 relating to section 45H the following new item:

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

11 (e) *EFFECTIVE DATE.*—The amendments made by this
 12 section shall apply to taxable years beginning after Decem-
 13 ber 31, 2004.

14 **SEC. 636. RAILROAD REVITALIZATION AND SECURITY IN-**
 15 **VESTMENT CREDIT.**

16 (a) *RAILROAD REVITALIZATION AND SECURITY IN-*
 17 *VESTMENT CREDIT.*—

18 (1) *IN GENERAL.*—Subpart D of part IV of sub-
 19 chapter A of chapter 1 (relating to business-related
 20 credits), as amended by this Act, is amended by add-
 21 ing at the end the following new section:

22 **“SEC. 45J. RAILROAD REVITALIZATION AND SECURITY IN-**
 23 **VESTMENT CREDIT.**

24 “(a) *GENERAL RULE.*—For purposes of section 38, the
 25 railroad revitalization and security investment credit deter-

1 *mined under this section for the taxable year is the amount*
2 *equal to 50 percent of the qualified project expenditures*
3 *paid or incurred by the taxpayer during the taxable year.*

4 “(b) *QUALIFIED PROJECT EXPENDITURES.*—

5 “(1) *IN GENERAL.*—*For purposes of this section,*
6 *the term ‘qualified project expenditures’ means, with*
7 *respect to any project for intercity passenger rail*
8 *transportation (as defined under section 24102 of title*
9 *49, United States Code) which is included in a State*
10 *rail plan, expenditures (whether or not otherwise*
11 *chargeable to capital account) for—*

12 “(A) *planning,*

13 “(B) *environmental review and environ-*
14 *mental impact mitigation,*

15 “(C) *track and track structure rehabilita-*
16 *tion, relocation, improvement, and development,*

17 “(D) *railroad safety and security improve-*
18 *ments,*

19 “(E) *communications and signaling im-*
20 *provements,*

21 “(F) *intercity passenger rail equipment ac-*
22 *quisition, and*

23 “(G) *rail station and intermodal facilities*
24 *development.*

1 “(2) *EXCEPTIONS.*—*An expenditure shall not be*
2 *treated as a qualified project expenditure unless all*
3 *persons which conduct rail operations over the infra-*
4 *structure with respect to which such an expenditure*
5 *is made—*

6 “(A) *are employers for purposes of the Rail-*
7 *road Retirement Act of 1974 and are carriers for*
8 *purposes of the Railway Labor Act (unless such*
9 *a person is an operator with respect to commuter*
10 *rail passenger transportation (as defined in sec-*
11 *tion 24102(4) of title 49, United States Code) of*
12 *a State or local government authority (as such*
13 *terms are defined in section 5302 of such title)*
14 *eligible to receive financial assistance under sec-*
15 *tion 5307 of such title, a contractor performing*
16 *services in connection with the operations with*
17 *respect to commuter rail passenger transpor-*
18 *tation (as so defined), or the Alaska Railroad or*
19 *its contractors),*

20 “(B) *provide assurances to the State that*
21 *any collective bargaining agreements with such a*
22 *person’s employees (including terms regulating*
23 *the contracting of work) will remain in full force*
24 *and effect according to the terms of the agree-*

1 *ments for work performed for such a person on*
2 *the railroad transportation corridor, and*

3 “(C) *comply with the protective agreements*
4 *established under section 504 of the Railroad Re-*
5 *vitalization and Regulatory Reform Act of 1976*
6 *with respect to employees affected by actions*
7 *taken in connection with the project.*

8 “(c) *LIMITATION.—*

9 “(1) *IN GENERAL.—The amount of the credit al-*
10 *lowed under subsection (a) for any taxable year with*
11 *respect to any project for which qualified project ex-*
12 *penditures are made shall not exceed the limitation*
13 *allocated to such project under this subsection for the*
14 *calendar year in which the taxable year begins.*

15 “(2) *STATE LIMITATION.—*

16 “(A) *IN GENERAL.—There is a State rail-*
17 *road revitalization and security investment cred-*
18 *it limitation for each calendar year. Such limi-*
19 *tation is the amount which bears the same ratio*
20 *to \$165,000,000 as the allocation number for*
21 *such State bears to the allocation number for all*
22 *States.*

23 “(B) *ALLOCATION NUMBER.—For purposes*
24 *of subparagraph (A), the allocation number is,*

1 with respect to any State, the sum of the fol-
2 lowing:

3 “(i) The number of railroad and public
4 road at grade crossings on intercity pas-
5 senger rail routes within the State.

6 “(ii) The number of intercity passenger
7 train miles within the State.

8 “(iii) The number of intercity embar-
9 kations and disembarkations for each pas-
10 senger within the State.

11 “(3) *UNUSED CREDIT CARRYOVERS ALLOCATED*
12 *AMONG CERTAIN STATES.*—

13 “(A) *IN GENERAL.*—The unused credit car-
14 ryover for all States for any calendar year shall
15 be reallocated to each qualified State in an
16 amount which bears the same ratio to the unused
17 credit carryover for all States for the calendar as
18 the allocation number for such qualified State
19 bears to the allocation number for all qualified
20 States.

21 “(B) *UNUSED CREDIT CARRYOVER.*—For
22 purposes of this paragraph, the term ‘unused
23 credit carryover’ means, with respect to any
24 State, the excess of the State limitation (deter-
25 mined under paragraph (2)) for the calendar

1 year over the amount allocated by the State
2 under paragraph (4) for such calendar year.

3 “(C) *QUALIFIED STATES.*—For purposes of
4 this paragraph, the term ‘qualified State’ means
5 any State—

6 “(i) which allocated its entire State
7 limitation amount under paragraph (4) for
8 the calendar year, and

9 “(ii) for which a request is made to re-
10 ceive an allocation under this paragraph.

11 “(4) *ALLOCATION WITHIN STATES.*—Each State
12 shall allocate the limitation amount allocated to such
13 State under paragraphs (2) and (3) to projects for
14 intercity passenger rail transportation which are in-
15 cluded in the State rail plan of such State.

16 “(5) *NEW YORK CITY RAIL PROJECTS.*—

17 “(A) *IN GENERAL.*—In addition to the
18 amounts allocated under paragraph (2), the Sec-
19 retary shall allocate a limitation of \$200,000,000
20 to New York City, New York, for qualified
21 project expenditures within the New York Lib-
22 erty Zone (as defined in section 1400L(h)) for
23 the period described in subsection (h).

1 “(B) *ALLOCATION AMONG PROJECTS.*—Of
2 *the limitation allocated under subparagraph*
3 *(A)*—

4 “(i) \$100,000,000 shall be allocated to
5 *projects designated by the Mayor of New*
6 *York City, New York, and*

7 “(ii) \$100,000,000 shall be allocated to
8 *projects designated by the Governor of New*
9 *York.*

10 “(C) *SPECIAL RULE REGARDING QUALIFIED*
11 *PROJECT EXPENDITURES.*—For purposes of this
12 *paragraph, a qualified project expenditure shall*
13 *include any expenditure for improvements to*
14 *subway systems, for commuter rail systems, for*
15 *rail links to airports, and for public infrastruc-*
16 *ture improvements in the vicinity of rail or sub-*
17 *way stations.*

18 “(d) *STATE RAIL PLAN.*—For purposes of this section,
19 *the term ‘State rail plan’ means a plan prepared and*
20 *maintained in accordance with chapter 225 of title 49,*
21 *United States Code.*

22 “(e) *BASIS ADJUSTMENT.*—For purposes of this sub-
23 *title, if a credit is allowed under this section with respect*
24 *to any property, the basis of such property shall be reduced*
25 *by the amount of the credit so allowed.*

1 “(f) *NO DOUBLE BENEFIT.*—No credit shall be allowed
2 under this section with respect to any expenditures for
3 which a credit is allowed under section 45I.

4 “(g) *CREDIT TRANSFERABILITY.*—Any credit allow-
5 able under this section may be transferred (but not more
6 than once) if—

7 “(1) the credit exceeds the tax liability of the
8 taxpayer for the taxable year, or

9 “(2) the taxpayer is not subject to any tax im-
10 posed by this chapter by reason of having a tax-ex-
11 empt status.

12 “(h) *APPLICATION OF SECTION.*—This section shall
13 apply to qualified project expenditures paid or incurred
14 during taxable years beginning after December 31, 2004,
15 and before January 1, 2008.”.

16 (2) *LIMITATION ON CARRYBACK.*—Section 39(d)
17 (relating to transition rules), as amended by this Act,
18 is amended by adding at the end the following new
19 paragraph:

20 “(15) *NO CARRYBACK OF SECTION 45J CREDIT*
21 *BEFORE EFFECTIVE DATE.*—No portion of the unused
22 business credit for any taxable year which is attrib-
23 utable to the credit determined under section 45J(a)
24 may be carried back to any taxable year beginning
25 before January 1, 2005.”.

1 (3) *CONFORMING AMENDMENTS.*—

2 (A) *Section 38(b) (relating to general busi-*
3 *ness credit), as amended by this Act, is amended*
4 *by striking “plus” at the end of paragraph (19),*
5 *by striking the period at the end of paragraph*
6 *(20) and inserting “, plus”, and by adding at*
7 *the end the following new paragraph:*

8 *“(21) the railroad revitalization and security in-*
9 *vestment credit determined under section 45J(a).”.*

10 (B) *Subsection (a) of section 1016, as*
11 *amended by this Act, is amended by striking*
12 *“and” at the end of paragraph (29), by striking*
13 *the period at the end of paragraph (30) and in-*
14 *serting “, and”, and by adding at the end the*
15 *following new paragraph:*

16 *“(31) in the case of property with respect to*
17 *which a credit was allowed under section 45J, to the*
18 *extent provided in section 45J(e).”.*

19 (4) *CLERICAL AMENDMENT.*—*The table of sec-*
20 *tions for subpart D of part IV of subchapter A of*
21 *chapter 1, as amended by this Act, is amended by in-*
22 *serting after the item relating to section 45I the fol-*
23 *lowing new item:*

“Sec. 45J. Railroad revitalization and security investment credit.”.

1 (5) *EFFECTIVE DATE.*—*The amendments made*
 2 *by this section shall apply to taxable years beginning*
 3 *after December 31, 2004.*

4 (b) *STATE RAIL PLANS.*—

5 (1) *IN GENERAL.*—*Part B of subtitle V of title*
 6 *49, United States Code, is amended by adding at the*
 7 *end the following:*

8 **“CHAPTER 225—STATE RAIL PLANS**

 “*Sec.*

 “22501. *Authority.*

 “22502. *Purposes.*

 “22503. *Transparency; coordination.*

 “22504. *Content.*

 “22505. *Approval.*

 “22506. *Definitions.*

9 **“§ 22501. Authority**

10 “(a) *IN GENERAL.*—*Each State may prepare and*
 11 *maintain a State rail plan in accordance with the provi-*
 12 *sions of this chapter.*

13 “(b) *REQUIREMENTS.*—*For the preparation and peri-*
 14 *odic revision of a State rail plan, a State shall—*

15 “(1) *establish or designate a State rail transpor-*
 16 *tation authority to prepare, maintain, coordinate,*
 17 *and administer the plan;*

18 “(2) *establish or designate a State rail plan ap-*
 19 *proval authority to approve the plan;*

1 “(3) make the State’s approved plan available to
2 the public and transmit a copy to the Secretary of
3 Transportation; and

4 “(4) revise the plan no less frequently than once
5 every 5 years.

6 **“§ 22502. Purposes**

7 “(a) *PURPOSES.*—The purposes of a State rail plan
8 are as follows:

9 “(1) To set forth State policy involving freight
10 and passenger rail transportation, including com-
11 muter rail operations, in the State.

12 “(2) To present priorities and strategies to en-
13 hance rail service in the State that benefits the public.

14 “(3) To serve as the basis for Federal and State
15 rail investments within the State.

16 “(b) *CONTENT.*—The State rail plan shall establish the
17 period covered by such plan.

18 “(c) *CONSISTENCY WITH STATE TRANSPORTATION EF-*
19 *FORTS.*—A State rail plan shall be consistent with the State
20 transportation planning goals and programs and shall set
21 forth rail transportation’s role within the State transpor-
22 tation system.

23 **“§ 22503. Transparency; coordination**

24 “(a) *PREPARATION.*—A State shall provide adequate
25 and reasonable notice and opportunity for comment and

1 *other input on a proposed State rail plan under this chap-*
2 *ter to the following:*

3 “(1) *The public.*

4 “(2) *Rail carriers.*

5 “(3) *Commuter and transit authorities operating*
6 *in, or affected by rail operations within, the State.*

7 “(4) *Units of local government.*

8 “(5) *Other parties interested in the preparation*
9 *and review of the State rail plan.*

10 “(b) *INTERGOVERNMENTAL COORDINATION.—A State*
11 *shall review the freight and passenger rail service activities*
12 *and initiatives of regional planning agencies, regional*
13 *transportation authorities, and municipalities within the*
14 *State, or in the region in which the State is located, while*
15 *preparing the plan, and shall include any recommendations*
16 *made by such agencies, authorities, and municipalities as*
17 *deemed appropriate by the State.*

18 **“§22504. Content**

19 “(a) *IN GENERAL.—Each State rail plan shall contain*
20 *the following:*

21 “(1) *An inventory of the existing overall rail*
22 *transportation system and rail services and facilities*
23 *within the State and an analysis of the role of rail*
24 *transportation within the State’s surface transpor-*
25 *tation system.*

1 “(2) *A comprehensive review of all rail lines*
2 *within the State, including proposed high speed rail*
3 *corridors and significant rail line segments not cur-*
4 *rently in service.*

5 “(3) *A statement of the State’s passenger rail*
6 *service objectives, including minimum service levels,*
7 *for intercity passenger rail transportation routes in*
8 *the State.*

9 “(4) *A general analysis of rail’s transportation,*
10 *economic, and environmental impacts in the State,*
11 *including congestion mitigation, trade and economic*
12 *development, air quality, land-use, energy-use, and*
13 *community impacts.*

14 “(5) *A long-range rail investment program for*
15 *current and future freight and passenger infrastruc-*
16 *ture in the State that meets the requirements of sub-*
17 *section (b).*

18 “(6) *A statement of public financing issues for*
19 *rail projects and service in the State, including a list*
20 *of current and prospective public capital and oper-*
21 *ating funding resources, public subsidies, State tax-*
22 *ation, and other financial policies relating to rail in-*
23 *frastructure development.*

1 “(7) *An identification of rail infrastructure*
2 *issues within the State that reflects consultation with*
3 *all relevant stake holders.*

4 “(8) *A review of major passenger and freight*
5 *intermodal rail connections and facilities within the*
6 *State, including seaports, and prioritized options to*
7 *maximize service integration and efficiency between*
8 *rail and other modes of transportation within the*
9 *State.*

10 “(9) *A review of publicly funded projects within*
11 *the State to improve rail transportation safety and*
12 *security, including all major projects funded under*
13 *section 130 of title 23.*

14 “(10) *A performance evaluation of passenger rail*
15 *services operating in the State, including possible im-*
16 *provements in those services, and a description of*
17 *strategies to achieve those improvements.*

18 “(11) *A compilation of studies and reports on*
19 *high-speed rail corridor development within the State*
20 *not included in a previous plan under this chapter,*
21 *and a plan for funding any recommended develop-*
22 *ment of such corridors in the State.*

23 “(12) *A statement that the State satisfies the*
24 *conditions set forth in section 22102.*

1 “(b) *LONG-RANGE SERVICE AND INVESTMENT PRO-*
2 *GRAM.*—

3 “(1) *PROGRAM CONTENT.*—*A long-range rail in-*
4 *vestment program included in a State rail plan*
5 *under subsection (a)(5) shall include the following*
6 *matters:*

7 “(A) *Two lists for rail capital projects, 1*
8 *list for freight rail capital projects and 1 list for*
9 *intercity passenger rail capital projects.*

10 “(B) *A detailed funding plan for the*
11 *projects.*

12 “(2) *PROJECT LIST CONTENT.*—*The lists of*
13 *freight and intercity passenger rail capital projects*
14 *shall contain—*

15 “(A) *a description of the anticipated public*
16 *and private benefits of each such project; and*

17 “(B) *a statement of the correlation*
18 *between—*

19 “(i) *public funding contributions for*
20 *the projects; and*

21 “(ii) *the public benefits.*

22 “(3) *CONSIDERATIONS FOR PROJECT LIST.*—*In*
23 *preparing the list of freight and intercity passenger*
24 *rail capital projects, a State rail transportation au-*

1 *thority shall take into consideration the following*
2 *matters:*

3 *“(A) Contributions made by non-Federal*
4 *and non-State sources through user fees, match-*
5 *ing funds, or other private capital involvement.*

6 *“(B) Rail capacity and congestion effects.*

7 *“(C) Effects to highway, aviation, and mar-*
8 *itime capacity, congestion, or safety.*

9 *“(D) Regional balance.*

10 *“(E) Environmental impact.*

11 *“(F) Economic and employment impacts.*

12 *“(G) Projected ridership and other service*
13 *measures for passenger rail projects.*

14 **“§ 22505. Approval**

15 *“The State rail plan approval authority established or*
16 *designated under section 22501(b)(2) may approve a State*
17 *rail plan for the purposes of this chapter if—*

18 *“(1) the plan meets all of the requirements appli-*
19 *cable to State plans under this chapter;*

20 *“(2) for each ready-to-commence project listed on*
21 *the ranked list of freight and intercity passenger rail*
22 *capital improvement projects under the plan—*

23 *“(A) the project meets all safety and envi-*
24 *ronmental requirements, including those pre-*
25 *scribed under the National Environmental Pol-*

1 *icy Act of 1969 (42 U.S.C. 4331 et seq.) that are*
2 *applicable to the project under law; and*

3 *“(B) the State has entered into an agree-*
4 *ment with any owner of rail infrastructure or*
5 *right-of-way directly affected by the project that*
6 *provides for the State to proceed with the project*
7 *and includes assurances regarding capacity and*
8 *compensation for use of such infrastructure or*
9 *right-of-way, if applicable; and*

10 *“(3) the content of the plan is coordinated with*
11 *State transportation plans developed pursuant to sec-*
12 *tion 135 of title 23.*

13 **“§ 22506. Definitions**

14 *“In this chapter:*

15 *“(1) PRIVATE BENEFIT.—The term ‘private*
16 *benefit’—*

17 *“(A) means a benefit accrued to a person or*
18 *private entity, other than the National Railroad*
19 *Passenger Corporation, that directly improves*
20 *the economic and competitive condition of that*
21 *person or entity through improved assets, cost re-*
22 *ductions, service improvements, or other means;*
23 *and*

24 *“(B) shall be determined on a project-by-*
25 *project basis, based upon an agreement between*

1 *the State and the affected persons or private en-*
2 *tities.*

3 “(2) *PUBLIC BENEFIT.*—*The term ‘public*
4 *benefit’—*

5 “(A) *means a benefit accrued to the public*
6 *in the form of enhanced mobility of people or*
7 *goods, environmental protection or enhancement,*
8 *congestion mitigation, enhanced trade and eco-*
9 *nomi c development, improved air quality or*
10 *land use, more efficient energy use, enhanced*
11 *public safety or security, reduction of public ex-*
12 *penditures due to improved transportation effi-*
13 *ciency or infrastructure preservation, and other*
14 *positive community effects; and*

15 “(B) *shall be determined on a project-by-*
16 *project basis, based upon an agreement between*
17 *the State and the persons or private entities in-*
18 *volved in the project.*

19 “(3) *STATE.*—*The term ‘State’ means any of the*
20 *50 States and the District of Columbia.*

21 “(4) *STATE RAIL TRANSPORTATION AUTHOR-*
22 *ITY.*—*The term ‘State rail transportation authority’*
23 *means the State agency or official responsible under*
24 *the direction of the Chief Executive of the State or a*
25 *State law for preparation, maintenance, coordina-*

1 *tion, and administration of the State rail plan under*
 2 *this chapter.”.*

3 (2) *CLERICAL AMENDMENT.—The table of chap-*
 4 *ters at the beginning of subtitle V of title 49, United*
 5 *States Code, is amended by inserting after the item*
 6 *relating to chapter 223 the following:*

“225. STATE RAIL PLANS.....22501.”.

7 **SEC. 637. MODIFICATION OF TARGETED AREAS DES-**
 8 **IGNATED FOR NEW MARKETS TAX CREDIT.**

9 (a) *IN GENERAL.—Paragraph (2) of section 45D(e) is*
 10 *amended to read as follows:*

11 “(2) *TARGETED POPULATIONS.—The Secretary*
 12 *shall prescribe regulations under which 1 or more tar-*
 13 *geted populations (within the meaning of section*
 14 *103(20) of the Riegle Community Development and*
 15 *Regulatory Improvement Act of 1994 (12 U.S.C.*
 16 *4702(20))) may be treated as low-income commu-*
 17 *nities. Such regulations shall include procedures for*
 18 *determining which entities are qualified active low-*
 19 *income community businesses with respect to such*
 20 *populations.”.*

21 (b) *EFFECTIVE DATE.—The amendment made by this*
 22 *section shall apply to designations made by the Secretary*
 23 *of the Treasury after the date of the enactment of this Act.*

1 **SEC. 638. MODIFICATION OF INCOME REQUIREMENT FOR**
2 **CENSUS TRACTS WITHIN HIGH MIGRATION**
3 **RURAL COUNTIES.**

4 (a) *IN GENERAL.*—Section 45D(e) (relating to low-in-
5 come community) is amended by adding at the end the fol-
6 lowing new paragraph:

7 “(4) *MODIFICATION OF INCOME REQUIREMENT*
8 *FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL*
9 *COUNTIES.*—

10 “(A) *IN GENERAL.*—In the case of a popu-
11 lation census tract located within a high migra-
12 tion rural county, paragraph (1)(B)(i) shall be
13 applied by substituting ‘85 percent’ for ‘80 per-
14 cent’.

15 “(B) *HIGH MIGRATION RURAL COUNTY.*—
16 For purposes of this paragraph, the term ‘high
17 migration rural county’ means any county
18 which, during the 20-year period ending with the
19 year in which the most recent census was con-
20 ducted, has a net out-migration of inhabitants
21 from the county of at least 10 percent of the pop-
22 ulation of the county at the beginning of such pe-
23 riod.”.

24 (b) *EFFECTIVE DATE.*—The amendment made by this
25 section shall take effect as if included in the amendment

1 *made by section 121(a) of the Community Renewal Tax Re-*
 2 *lief Act of 2000.*

3 **SEC. 639. CREDIT FOR INVESTMENT IN TECHNOLOGY TO**
 4 **MAKE MOTION PICTURES MORE ACCESSIBLE**
 5 **TO THE DEAF AND HARD OF HEARING.**

6 *(a) IN GENERAL.—*

7 *(1) ALLOWANCE OF CREDIT.—Subpart D of part*
 8 *IV of subchapter A of chapter 1 (relating to business*
 9 *related credits), as amended by this Act, is amended*
 10 *by adding at the end the following new section:*

11 **“SEC. 45T. EXPENDITURES TO PROVIDE ACCESS TO MOTION**
 12 **PICTURES FOR THE DEAF AND HARD OF**
 13 **HEARING.**

14 *“(a) GENERAL RULE.—For purposes of section 38, in*
 15 *the case of an eligible taxpayer, the motion picture accessi-*
 16 *bility credit for any taxable year shall be an amount equal*
 17 *to 50 percent of the qualified expenditures made by the eli-*
 18 *gible taxpayer during the taxable year.*

19 *“(b) ELIGIBLE TAXPAYER.—For purposes of this sec-*
 20 *tion, the term ‘eligible taxpayer’ means a taxpayer who is*
 21 *in the business of—*

22 *“(1) showing motion pictures to the public in*
 23 *theaters, or*

24 *“(2) producing or distributing such motion pic-*
 25 *tures.*

1 “(c) *QUALIFIED EXPENDITURES.*—For purposes of
2 this section, the term ‘qualified expenditures’ means
3 amounts paid or incurred by the taxpayer for the purpose
4 of making motion pictures accessible to individuals who are
5 deaf or hard of hearing through the use of captioning tech-
6 nology.

7 “(d) *BASIS ADJUSTMENT.*—For purposes of this sub-
8 title, if a credit is allowed under this section with respect
9 to any property, the basis of such property shall be reduced
10 by the amount of the credit so allowed.

11 “(e) *NO DOUBLE BENEFIT.*—In the case of the credit
12 determined under this section, no deduction or credit shall
13 be allowed for such amount under any other provision of
14 this chapter.”.

15 (2) *CONFORMING AMENDMENTS.*—

16 (A) Section 38(b) (relating to general busi-
17 ness credit), as amended by this Act, is amended
18 by striking “plus” at the end of paragraph (30),
19 by striking the period at the end of paragraph
20 (31) and inserting “, plus”, and by adding at
21 the end the following new paragraph:

22 “(32) the motion picture accessibility credit de-
23 termined under section 45T(a).”.

24 (B) Subsection (a) of section 1016, as
25 amended by this Act, is amended by striking

1 “and” at the end of paragraph (38), by striking
2 the period at the end of paragraph (39) and in-
3 serting “, and”, and by adding at the end the
4 following new paragraph:

5 “(40) in the case of property with respect to
6 which a credit was allowed under section 45T, to the
7 extent provided in section 45T(d).”.

8 (b) *LIMITATION ON CARRYBACK.*—Section 39(d) (relat-
9 ing to transition rules) is amended by adding at the end
10 the following new paragraph:

11 “(16) *NO CARRYBACK OF MOTION PICTURE AC-*
12 *CESSIBILITY CREDIT BEFORE EFFECTIVE DATE.*—No
13 portion of the unused business credit for any taxable
14 year which is attributable to the motion picture acces-
15 sibility credit determined under section 45T may be
16 carried to a taxable year beginning before January 1,
17 2004.”.

18 (c) *CLERICAL AMENDMENT.*—The table of sections for
19 subpart D of part IV of subchapter A of chapter 1, as
20 amended by this Act, is amended by inserting after the item
21 relating to section 45S the following new item:

 “Sec. 45T. Expenditures to provide access to motion pictures for the
 deaf and hard of hearing.”.

22 (d) *EFFECTIVE DATE.*—The amendments made by this
23 section shall apply to taxable years beginning after Decem-
24 ber 31, 2003.

1 **Subtitle E—Miscellaneous**
2 **Provisions**

3 **SEC. 641. EXCLUSION OF GAIN OR LOSS ON SALE OR EX-**
4 **CHANGE OF CERTAIN BROWNFIELD SITES**
5 **FROM UNRELATED BUSINESS TAXABLE IN-**
6 **COME.**

7 (a) *IN GENERAL.*—Subsection (b) of section 512 (relat-
8 *ing to unrelated business taxable income*), as amended by
9 *this Act*, is amended by adding at the end the following
10 *new paragraph*:

11 “(19) *TREATMENT OF GAIN OR LOSS ON SALE OR*
12 *EXCHANGE OF CERTAIN BROWNFIELD SITES.*—

13 “(A) *IN GENERAL.*—Notwithstanding para-
14 *graph (5)(B)*, there shall be excluded any gain or
15 *loss from the qualified sale, exchange, or other*
16 *disposition of any qualifying brownfield prop-*
17 *erty by an eligible taxpayer.*

18 “(B) *ELIGIBLE TAXPAYER.*—For purposes of
19 *this paragraph*—

20 “(i) *IN GENERAL.*—The term ‘eligible
21 *taxpayer*’ means, with respect to a property,
22 *any organization exempt from tax under*
23 *section 501(a) which*—

1 “(I) acquires from an unrelated
2 person a qualifying brownfield prop-
3 erty, and

4 “(II) pays or incurs eligible reme-
5 diation expenditures with respect to
6 such property in an amount which ex-
7 ceeds the greater of \$550,000 or 12 per-
8 cent of the fair market value of the
9 property at the time such property was
10 acquired by the eligible taxpayer, de-
11 termined as if there was not a presence
12 of a hazardous substance, pollutant, or
13 contaminant on the property which is
14 complicating the expansion, redevelop-
15 ment, or reuse of the property.

16 “(ii) *EXCEPTION.*—Such term shall not
17 include any organization which is—

18 “(I) potentially liable under sec-
19 tion 107 of the Comprehensive Envi-
20 ronmental Response, Compensation,
21 and Liability Act of 1980 with respect
22 to the qualifying brownfield property,

23 “(II) affiliated with any other
24 person which is so potentially liable
25 through any direct or indirect familial

1 *relationship or any contractual, cor-*
2 *porate, or financial relationship (other*
3 *than a contractual, corporate, or fi-*
4 *nancial relationship which is created*
5 *by the instruments by which title to*
6 *any qualifying brownfield property is*
7 *conveyed or financed or by a contract*
8 *of sale of goods or services), or*

9 *“(III) the result of a reorganiza-*
10 *tion of a business entity which was so*
11 *potentially liable.*

12 *“(C) QUALIFYING BROWNFIELD PROP-*
13 *ERTY.—For purposes of this paragraph—*

14 *“(i) IN GENERAL.—The term ‘quali-*
15 *fying brownfield property’ means any real*
16 *property which is certified, before the tax-*
17 *payer incurs any eligible remediation ex-*
18 *penditures (other than to obtain a Phase I*
19 *environmental site assessment), by an ap-*
20 *propriate State agency (within the meaning*
21 *of section 198(c)(4)) in the State in which*
22 *such property is located as a brownfield site*
23 *within the meaning of section 101(39) of the*
24 *Comprehensive Environmental Response,*
25 *Compensation, and Liability Act of 1980*

1 *(as in effect on the date of the enactment of*
2 *this paragraph).*

3 “(ii) *REQUEST FOR CERTIFICATION.*—
4 *Any request by an eligible taxpayer for a*
5 *certification described in clause (i) shall in-*
6 *clude a sworn statement by the eligible tax-*
7 *payer and supporting documentation of the*
8 *presence of a hazardous substance, pollut-*
9 *ant, or contaminant on the property which*
10 *is complicating the expansion, redevelop-*
11 *ment, or reuse of the property given the*
12 *property’s reasonably anticipated future*
13 *land uses or capacity for uses of the prop-*
14 *erty (including a Phase I environmental*
15 *site assessment and, if applicable, evidence*
16 *of the property’s presence on a local, State,*
17 *or Federal list of brownfields or contami-*
18 *nated property) and other environmental*
19 *assessments prepared or obtained by the*
20 *taxpayer.*

21 “(D) *QUALIFIED SALE, EXCHANGE, OR*
22 *OTHER DISPOSITION.*—*For purposes of this*
23 *paragraph—*

1 “(i) *IN GENERAL.*—A sale, exchange, or
2 *other disposition of property shall be con-*
3 *sidered as qualified if—*

4 “(I) *such property is transferred*
5 *by the eligible taxpayer to an unrelated*
6 *person, and*

7 “(II) *within 1 year of such trans-*
8 *fer the eligible taxpayer has received a*
9 *certification from the Environmental*
10 *Protection Agency or an appropriate*
11 *State agency (within the meaning of*
12 *section 198(c)(4)) in the State in*
13 *which such property is located that, as*
14 *a result of the eligible taxpayer’s reme-*
15 *diation actions, such property would*
16 *not be treated as a qualifying*
17 *brownfield property in the hands of the*
18 *transferee.*

19 *For purposes of subclause (II), before*
20 *issuing such certification, the Environ-*
21 *mental Protection Agency or appropriate*
22 *State agency shall respond to comments re-*
23 *ceived pursuant to clause (ii)(V) in the*
24 *same form and manner as required under*
25 *section 117(b) of the Comprehensive Envi-*

1 *ronmental Response, Compensation, and Li-*
2 *ability Act of 1980 (as in effect on the date*
3 *of the enactment of this paragraph).*

4 “(i) *REQUEST FOR CERTIFICATION.—*
5 *Any request by an eligible taxpayer for a*
6 *certification described in clause (i) shall be*
7 *made not later than the date of the transfer*
8 *and shall include a sworn statement by the*
9 *eligible taxpayer certifying the following:*

10 “(I) *Remedial actions which com-*
11 *ply with all applicable or relevant and*
12 *appropriate requirements (consistent*
13 *with section 121(d) of the Comprehen-*
14 *sive Environmental Response, Com-*
15 *ensation, and Liability Act of 1980)*
16 *have been substantially completed, such*
17 *that there are no hazardous substances,*
18 *pollutants, or contaminants which*
19 *complicate the expansion, redevelop-*
20 *ment, or reuse of the property given the*
21 *property’s reasonably anticipated fu-*
22 *ture land uses or capacity for uses of*
23 *the property.*

24 “(II) *The reasonably anticipated*
25 *future land uses or capacity for uses of*

1 *the property are more economically*
2 *productive or environmentally bene-*
3 *ficial than the uses of the property in*
4 *existence on the date of the certification*
5 *described in subparagraph (C)(i). For*
6 *purposes of the preceding sentence, use*
7 *of property as a landfill or other haz-*
8 *ardous waste facility shall not be con-*
9 *sidered more economically productive*
10 *or environmentally beneficial.*

11 *“(III) A remediation plan has*
12 *been implemented to bring the property*
13 *into compliance with all applicable*
14 *local, State, and Federal environ-*
15 *mental laws, regulations, and stand-*
16 *ards and to ensure that the remedi-*
17 *ation protects human health and the*
18 *environment.*

19 *“(IV) The remediation plan de-*
20 *scribed in subclause (III), including*
21 *any physical improvements required to*
22 *remediate the property, is either com-*
23 *plete or substantially complete, and, if*
24 *substantially complete, sufficient moni-*
25 *toring, funding, institutional controls,*

1 *and financial assurances have been put*
2 *in place to ensure the complete remedi-*
3 *ation of the property in accordance*
4 *with the remediation plan as soon as*
5 *is reasonably practicable after the sale,*
6 *exchange, or other disposition of such*
7 *property.*

8 *“(V) Public notice and the oppor-*
9 *tunity for comment on the request for*
10 *certification was completed before the*
11 *date of such request. Such notice and*
12 *opportunity for comment shall be in*
13 *the same form and manner as required*
14 *for public participation required under*
15 *section 117(a) of the Comprehensive*
16 *Environmental Response, Compensa-*
17 *tion, and Liability Act of 1980 (as in*
18 *effect on the date of the enactment of*
19 *this paragraph). For purposes of this*
20 *subclause, public notice shall include,*
21 *at a minimum, publication in a major*
22 *local newspaper of general circulation.*

23 *“(iii) ATTACHMENT TO TAX RE-*
24 *TURNS.—A copy of each of the requests for*
25 *certification described in clause (ii) of sub-*

1 *paragraph (C) and this subparagraph shall*
2 *be included in the tax return of the eligible*
3 *taxpayer (and, where applicable, of the*
4 *qualifying partnership) for the taxable year*
5 *during which the transfer occurs.*

6 *“(iv) SUBSTANTIAL COMPLETION.—For*
7 *purposes of this subparagraph, a remedial*
8 *action is substantially complete when any*
9 *necessary physical construction is complete,*
10 *all immediate threats have been eliminated,*
11 *and all long-term threats are under control.*

12 *“(E) ELIGIBLE REMEDIATION EXPENDI-*
13 *TURES.—For purposes of this paragraph—*

14 *“(i) IN GENERAL.—The term ‘eligible*
15 *remediation expenditures’ means, with re-*
16 *spect to any qualifying brownfield property,*
17 *any amount paid or incurred by the eligible*
18 *taxpayer to an unrelated third person to ob-*
19 *tain a Phase I environmental site assess-*
20 *ment of the property, and any amount so*
21 *paid or incurred after the date of the certifi-*
22 *cation described in subparagraph (C)(i) for*
23 *goods and services necessary to obtain a cer-*
24 *tification described in subparagraph (D)(i)*

1 with respect to such property, including
2 expenditures—

3 “(I) to manage, remove, control,
4 contain, abate, or otherwise remediate
5 a hazardous substance, pollutant, or
6 contaminant on the property,

7 “(II) to obtain a Phase II envi-
8 ronmental site assessment of the prop-
9 erty, including any expenditure to
10 monitor, sample, study, assess, or oth-
11 erwise evaluate the release, threat of re-
12 lease, or presence of a hazardous sub-
13 stance, pollutant, or contaminant on
14 the property,

15 “(III) to obtain environmental
16 regulatory certifications and approvals
17 required to manage the remediation
18 and monitoring of the hazardous sub-
19 stance, pollutant, or contaminant on
20 the property, and

21 “(IV) regardless of whether it is
22 necessary to obtain a certification de-
23 scribed in subparagraph (D)(i)(II), to
24 obtain remediation cost-cap or stop-
25 loss coverage, re-opener or regulatory

1 *action coverage, or similar coverage*
2 *under environmental insurance poli-*
3 *cies, or financial guarantees required*
4 *to manage such remediation and moni-*
5 *toring.*

6 “(ii) *EXCEPTIONS.—Such term shall*
7 *not include—*

8 “(I) *any portion of the purchase*
9 *price paid or incurred by the eligible*
10 *taxpayer to acquire the qualifying*
11 *brownfield property,*

12 “(II) *environmental insurance*
13 *costs paid or incurred to obtain legal*
14 *defense coverage, owner/operator liabil-*
15 *ity coverage, lender liability coverage,*
16 *professional liability coverage, or simi-*
17 *lar types of coverage,*

18 “(III) *any amount paid or in-*
19 *curring to the extent such amount is re-*
20 *imbursed, funded, or otherwise sub-*
21 *sidized by grants provided by the*
22 *United States, a State, or a political*
23 *subdivision of a State for use in con-*
24 *nection with the property, proceeds of*
25 *an issue of State or local government*

1 *obligations used to provide financing*
2 *for the property the interest of which is*
3 *exempt from tax under section 103, or*
4 *subsidized financing provided (directly*
5 *or indirectly) under a Federal, State,*
6 *or local program provided in connec-*
7 *tion with the property, or*

8 *“(IV) any expenditure paid or in-*
9 *curring before the date of the enactment*
10 *of this paragraph.*

11 *For purposes of subclause (III), the Sec-*
12 *retary may issue guidance regarding the*
13 *treatment of government-provided funds for*
14 *purposes of determining eligible remediation*
15 *expenditures.*

16 *“(F) DETERMINATION OF GAIN OR LOSS.—*
17 *For purposes of this paragraph, the determina-*
18 *tion of gain or loss shall not include an amount*
19 *treated as gain which is ordinary income with*
20 *respect to section 1245 or section 1250 property,*
21 *including amounts deducted as section 198 ex-*
22 *penses which are subject to the recapture rules of*
23 *section 198(e), if the taxpayer had deducted such*
24 *amounts in the computation of its unrelated*
25 *business taxable income.*

1 “(G) *SPECIAL RULES FOR PARTNER-*
2 *SHIPS.—*

3 “(i) *IN GENERAL.—In the case of an*
4 *eligible taxpayer which is a partner of a*
5 *qualifying partnership which acquires, re-*
6 *mediates, and sells, exchanges, or otherwise*
7 *disposes of a qualifying brownfield prop-*
8 *erty, this paragraph shall apply to the eligi-*
9 *ble taxpayer’s distributive share of the*
10 *qualifying partnership’s gain or loss from*
11 *the sale, exchange, or other disposition of*
12 *such property.*

13 “(ii) *QUALIFYING PARTNERSHIP.—The*
14 *term ‘qualifying partnership’ means a part-*
15 *nership which—*

16 “(I) *has a partnership agreement*
17 *which satisfies the requirements of sec-*
18 *tion 514(c)(9)(B)(vi) at all times be-*
19 *ginning on the date of the first certifi-*
20 *cation received by the partnership*
21 *under subparagraph (C)(i),*

22 “(II) *satisfies the requirements of*
23 *subparagraphs (B)(i), (C), (D), and*
24 *(E), if ‘qualified partnership’ is sub-*
25 *stituted for ‘eligible taxpayer’ each*

1 place it appears therein (except sub-
2 paragraph (D)(iii)), and

3 “(III) is not an organization
4 which would be prevented from consti-
5 tuting an eligible taxpayer by reason
6 of subparagraph (B)(ii).

7 “(iii) *REQUIREMENT THAT TAX-EX-*
8 *EMPT PARTNER BE A PARTNER SINCE FIRST*
9 *CERTIFICATION.*—This paragraph shall
10 apply with respect to any eligible taxpayer
11 which is a partner of a partnership which
12 acquires, remediates, and sells, exchanges, or
13 otherwise disposes of a qualifying
14 brownfield property only if such eligible
15 taxpayer was a partner of the qualifying
16 partnership at all times beginning on the
17 date of the first certification received by the
18 partnership under subparagraph (C)(i) and
19 ending on the date of the sale, exchange, or
20 other disposition of the property by the
21 partnership.

22 “(iv) *REGULATIONS.*—The Secretary
23 shall prescribe such regulations as are nec-
24 essary to prevent abuse of the requirements

1 of this subparagraph, including abuse
2 through—

3 “(I) the use of special allocations
4 of gains or losses, or

5 “(II) changes in ownership of
6 partnership interests held by eligible
7 taxpayers.

8 “(H) *SPECIAL RULES FOR MULTIPLE PROP-*
9 *ERTIES.—*

10 “(i) *IN GENERAL.—*An eligible tax-
11 payer or a qualifying partnership of which
12 the eligible taxpayer is a partner may make
13 a 1-time election to apply this paragraph to
14 more than 1 qualifying brownfield property
15 by averaging the eligible remediation ex-
16 penditures for all such properties acquired
17 during the election period. If the eligible
18 taxpayer or qualifying partnership makes
19 such an election, the election shall apply to
20 all qualified sales, exchanges, or other dis-
21 positions of qualifying brownfield properties
22 the acquisition and transfer of which occur
23 during the period for which the election re-
24 mains in effect.

1 “(ii) *ELECTION.*—An election under
2 *clause (i) shall be made with the eligible*
3 *taxpayer’s or qualifying partnership’s time-*
4 *ly filed tax return (including extensions) for*
5 *the first taxable year for which the taxpayer*
6 *or qualifying partnership intends to have*
7 *the election apply. An election under clause*
8 *(i) is effective for the period—*

9 “(I) *beginning on the date which*
10 *is the first day of the taxable year of*
11 *the return in which the election is in-*
12 *cluded or a later day in such taxable*
13 *year selected by the eligible taxpayer or*
14 *qualifying partnership, and*

15 “(II) *ending on the date which is*
16 *the earliest of a date of revocation se-*
17 *lected by the eligible taxpayer or quali-*
18 *fying partnership, the date which is 8*
19 *years after the date described in sub-*
20 *clause (I), or, in the case of an election*
21 *by a qualifying partnership of which*
22 *the eligible taxpayer is a partner, the*
23 *date of the termination of the quali-*
24 *fying partnership.*

1 “(iii) *REVOCATION.*—An eligible tax-
2 payer or qualifying partnership may revoke
3 an election under clause (i)(II) by filing a
4 statement of revocation with a timely filed
5 tax return (including extensions). A revoca-
6 tion is effective as of the first day of the
7 taxable year of the return in which the rev-
8 ocation is included or a later day in such
9 taxable year selected by the eligible taxpayer
10 or qualifying partnership. Once an eligible
11 taxpayer or qualifying partnership revokes
12 the election, the eligible taxpayer or quali-
13 fying partnership is ineligible to make an-
14 other election under clause (i) with respect
15 to any qualifying brownfield property sub-
16 ject to the revoked election.

17 “(I) *RECAPTURE.*—If an eligible taxpayer
18 excludes gain or loss from a sale, exchange, or
19 other disposition of property to which an election
20 under subparagraph (H) applies, and such prop-
21 erty fails to satisfy the requirements of this
22 paragraph, the unrelated business taxable income
23 of the eligible taxpayer for the taxable year in
24 which such failure occurs shall be determined by
25 including any previously excluded gain or loss

1 *from such sale, exchange, or other disposition al-*
2 *locable to such taxpayer, and interest shall be de-*
3 *termined at the overpayment rate established*
4 *under section 6621 on any resulting tax for the*
5 *period beginning with the due date of the return*
6 *for the taxable year during which such sale, ex-*
7 *change, or other disposition occurred, and ending*
8 *on the date of payment of the tax.*

9 “(J) *RELATED PERSONS.*—*For purposes of*
10 *this paragraph, a person shall be treated as re-*
11 *lated to another person if—*

12 “(i) *such person bears a relationship to*
13 *such other person described in section*
14 *267(b) (determined without regard to para-*
15 *graph (9) thereof), or section 707(b)(1), de-*
16 *termined by substituting ‘25 percent’ for ‘50*
17 *percent’ each place it appears therein, and*

18 “(ii) *in the case such other person is a*
19 *nonprofit organization, if such person con-*
20 *trols directly or indirectly more than 25*
21 *percent of the governing body of such orga-*
22 *nization.”*

23 (b) *EXCLUSION FROM DEFINITION OF DEBT-FINANCED*
24 *PROPERTY.*—*Section 514(b)(1) (defining debt-financed*
25 *property) is amended by striking “or” at the end of sub-*

1 paragraph (C), by striking the period at the end of subpara-
2 graph (D) and inserting “; or”, and by inserting after sub-
3 paragraph (D) the following new subparagraph:

4 “(E) any property the gain or loss from the
5 sale, exchange, or other disposition of which
6 would be excluded by reason of the provisions of
7 section 512(b)(19) in computing the gross income
8 of any unrelated trade or business.”.

9 (c) *SAVINGS CLAUSE*.—Nothing in the amendments
10 made by this section shall affect any duty, liability, or other
11 requirement imposed under any other Federal or State law.
12 Notwithstanding section 128(b) of the Comprehensive Envi-
13 ronmental Response, Compensation, and Liability Act of
14 1980, a certification provided by the Environmental Protec-
15 tion Agency or an appropriate State agency (within the
16 meaning of section 198(c)(4) of the Internal Revenue Code
17 of 1986) shall not affect the liability of any person under
18 section 107(a) of such Act.

19 (d) *EFFECTIVE DATE*.—The amendments made by this
20 section shall apply to any gain or loss on the sale, exchange,
21 or other disposition of any property acquired by the tax-
22 payer after December 31, 2004.

1 **SEC. 642. MODIFICATION OF UNRELATED BUSINESS IN-**
2 **COME LIMITATION ON INVESTMENT IN CER-**
3 **TAIN DEBT-FINANCED PROPERTIES.**

4 (a) *IN GENERAL.*—Section 514(c)(6) (relating to ac-
5 quisition indebtedness) is amended—

6 (1) by striking “include an obligation” and in-
7 serting “include—

8 “(A) an obligation”,

9 (2) by striking the period at the end and insert-
10 ing “, or”, and

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

12 “(B) indebtedness incurred by a small busi-
13 ness investment company licensed under the
14 Small Business Investment Act of 1958 which is
15 evidenced by a debenture—

16 “(i) issued by such company under sec-
17 tion 303(a) of such Act, and

18 “(ii) held or guaranteed by the Small
19 Business Administration.”.

20 (b) *EFFECTIVE DATE.*—The amendments made by this
21 section shall apply to acquisitions made on or after the date
22 of the enactment of this Act.

23 **SEC. 643. CIVIL RIGHTS TAX RELIEF.**

24 (a) *DEDUCTION ALLOWED WHETHER OR NOT TAX-*
25 *PAYER ITEMIZES OTHER DEDUCTIONS.*—Subsection (a) of

1 *section 62 (defining adjusted gross income) is amended by*
2 *inserting after paragraph (18) the following new item:*

3 “(19) *COSTS INVOLVING DISCRIMINATION SUITS,*
4 *ETC.—Any deduction allowable under this chapter for*
5 *attorney fees and court costs paid by, or on behalf of,*
6 *the taxpayer in connection with any action involving*
7 *a claim of unlawful discrimination (as defined in*
8 *subsection (e)) or a claim of a violation of subchapter*
9 *III of chapter 37 of title 31, United States Code or*
10 *a claim made under section 1862(b)(3)(A) of the So-*
11 *cial Security Act (42 U.S.C. 1395y(b)(3)(A)). The*
12 *preceding sentence shall not apply to any deduction*
13 *in excess of the amount includible in the taxpayer’s*
14 *gross income for the taxable year on account of a*
15 *judgment or settlement (whether by suit or agreement*
16 *and whether as lump sum or periodic payments) re-*
17 *sulting from such claim.”.*

18 **(b) UNLAWFUL DISCRIMINATION DEFINED.**—*Section*
19 *62 is amended by adding at the end the following new sub-*
20 *section:*

21 “(e) **UNLAWFUL DISCRIMINATION DEFINED.**—*For pur-*
22 *poses of subsection (a)(19), the term ‘unlawful discrimina-*
23 *tion’ means an act that is unlawful under any of the fol-*
24 *lowing:*

1 “(1) *Section 302 of the Civil Rights Act of 1991*
2 *(2 U.S.C. 1202).*

3 “(2) *Section 201, 202, 203, 204, 205, 206, or 207*
4 *of the Congressional Accountability Act of 1995 (2*
5 *U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).*

6 “(3) *The National Labor Relations Act (29*
7 *U.S.C. 151 et seq.).*

8 “(4) *The Fair Labor Standards Act of 1938 (29*
9 *U.S.C. 201 et seq.).*

10 “(5) *Section 4 or 15 of the Age Discrimination*
11 *in Employment Act of 1967 (29 U.S.C. 623 or 633a).*

12 “(6) *Section 501 or 504 of the Rehabilitation Act*
13 *of 1973 (29 U.S.C. 791 or 794).*

14 “(7) *Section 510 of the Employee Retirement In-*
15 *come Security Act of 1974 (29 U.S.C. 1140).*

16 “(8) *Title IX of the Education Amendments of*
17 *1972 (29 U.S.C. 1681 et seq.).*

18 “(9) *The Employee Polygraph Protection Act of*
19 *1988 (29 U.S.C. 201 et seq.).*

20 “(10) *The Worker Adjustment and Retraining*
21 *Notification Act (29 U.S.C. 2102 et seq.).*

22 “(11) *Section 105 of the Family and Medical*
23 *Leave Act of 1993 (29 U.S.C. 2615).*

1 “(12) Chapter 43 of title 38, United States Code
2 *(relating to employment and reemployment rights of*
3 *members of the uniformed services).*

4 “(13) Section 1977, 1979, or 1980 of the Revised
5 *Statutes (42 U.S.C. 1981, 1983, or 1985).*

6 “(14) Section 703, 704, or 717 of the Civil
7 *Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or*
8 *2000e–16).*

9 “(15) Section 804, 805, 806, 808, or 818 of the
10 *Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608,*
11 *or 3617).*

12 “(16) Section 102, 202, 302, or 503 of the Amer-
13 *icans with Disabilities Act of 1990 (42 U.S.C. 12112,*
14 *12132, 12182, or 12203).*

15 “(17) Any provision of Federal law (popularly
16 *known as whistleblower protection provisions) prohib-*
17 *iting the discharge of an employee, the discrimination*
18 *against an employee, or any other form of retaliation*
19 *or reprisal against an employee for asserting rights or*
20 *taking other actions permitted under Federal law.*

21 “(18) Any provision of Federal, State, or local
22 *law, or common law claims permitted under Federal,*
23 *State, or local law—*

24 “(i) providing for the enforcement of
25 *civil rights, or*

1 “(ii) regulating any aspect of the em-
2 ployment relationship, including claims for
3 wages, compensation, or benefits, or prohib-
4 iting the discharge of an employee, the dis-
5 crimination against an employee, or any
6 other form of retaliation or reprisal against
7 an employee for asserting rights or taking
8 other actions permitted by law.”.

9 (c) *EFFECTIVE DATE.*—The amendments made by this
10 section shall apply to fees and costs paid after December
11 31, 2002, with respect to any judgment or settlement occur-
12 ring after such date.

13 **SEC. 644. EXCLUSION FOR PAYMENTS TO INDIVIDUALS**
14 **UNDER NATIONAL HEALTH SERVICE CORPS**
15 **LOAN REPAYMENT PROGRAM AND CERTAIN**
16 **STATE LOAN REPAYMENT PROGRAMS.**

17 (a) *IN GENERAL.*—Section 108(f) (relating to student
18 loans) is amended by adding at the end the following new
19 paragraph:

20 “(4) *PAYMENTS UNDER NATIONAL HEALTH SERV-*
21 *ICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN*
22 *STATE LOAN REPAYMENT PROGRAMS.*—In the case of
23 an individual, gross income shall not include any
24 amount received under section 338B(g) of the Public

1 *Health Service Act or under a State program de-*
2 *scribed in section 338I of such Act.”.*

3 (b) *TREATMENT FOR PURPOSES OF EMPLOYMENT*
4 *TAXES.—Each of the following provisions is amended by*
5 *inserting “108(f)(4),” after “74(c),”:*

6 (1) *Section 3121(a)(20).*

7 (2) *Section 3231(e)(5).*

8 (3) *Section 3306(b)(16).*

9 (4) *Section 3401(a)(19).*

10 (5) *Section 209(a)(17) of the Social Security*
11 *Act.*

12 (c) *EFFECTIVE DATE.—The amendments made by this*
13 *section shall apply to amounts received by an individual*
14 *in taxable years beginning after December 31, 2003.*

15 **SEC. 645. CERTAIN EXPENSES OF RURAL LETTER CAR-**
16 **RIERS.**

17 (a) *IN GENERAL.—Section 162(o) (relating to treat-*
18 *ment of certain reimbursed expenses of rural mail carriers)*
19 *is amended by redesignating paragraph (2) as paragraph*
20 *(3) and by inserting after paragraph (1) the following:*

21 “(2) *SPECIAL RULE WHERE EXPENSES EXCEED*
22 *REIMBURSEMENTS.—Notwithstanding paragraph*
23 *(1)(A), if the expenses incurred by an employee for*
24 *the use of a vehicle in performing services described*
25 *in paragraph (1) exceed the qualified reimbursements*

1 *for such expenses, such excess shall be taken into ac-*
2 *count in computing the miscellaneous itemized deduc-*
3 *tions of the employee under section 67.”.*

4 **(b) CONFORMING AMENDMENT.**—*The heading for sec-*
5 *tion 162(o) is amended by striking “REIMBURSED”.*

6 **(c) EFFECTIVE DATE.**—*The amendments made by this*
7 *section shall apply to taxable years beginning after Decem-*
8 *ber 31, 2003.*

9 **SEC. 646. METHOD OF ACCOUNTING FOR NAVAL SHIP-**
10 **BUILDERS.**

11 **(a) IN GENERAL.**—*In the case of a qualified naval*
12 *ship contract, the taxable income of such contract during*
13 *the 5-taxable year period beginning with the taxable year*
14 *in which the contract commencement date occurs shall be*
15 *determined under a method identical to the method used*
16 *in the case of a qualified ship contract (as defined in section*
17 *10203(b)(2)(B) of the Revenue Act of 1987).*

18 **(b) RECAPTURE OF TAX BENEFIT.**—*In the case of a*
19 *qualified naval ship contract to which subsection (a) ap-*
20 *plies, the taxpayer’s tax imposed by chapter 1 of the Inter-*
21 *nal Revenue Code of 1986 for the first taxable year fol-*
22 *lowing the 5-taxable year period described in subsection (a)*
23 *shall be increased by the excess (if any) of—*

1 (1) *the amount of tax which would have been im-*
2 *posed during such period if this section had not been*
3 *enacted, over*

4 (2) *the amount of tax so imposed during such*
5 *period.*

6 (c) *QUALIFIED NAVAL SHIP CONTRACT.*—*For purposes*
7 *of this section—*

8 (1) *IN GENERAL.*—*The term “qualified naval*
9 *ship contract” means any contract or portion thereof*
10 *that is for the construction in the United States of 1*
11 *ship or submarine for the Federal Government if the*
12 *taxpayer reasonably expects the acceptance date will*
13 *occur no later than 9 years after the construction*
14 *commencement date.*

15 (2) *ACCEPTANCE DATE.*—*The term “acceptance*
16 *date” means the date 1 year after the date on which*
17 *the Federal Government issues a letter of acceptance*
18 *or other similar document for the ship or submarine.*

19 (3) *CONSTRUCTION COMMENCEMENT DATE.*—*The*
20 *term “construction commencement date” means the*
21 *date on which the physical fabrication of any section*
22 *or component of the ship or submarine begins.*

23 (d) *EFFECTIVE DATE.*—*This section shall apply to*
24 *contracts for ships or submarines with respect to which the*

1 *construction commencement date occurs after the date of the*
2 *enactment of this Act.*

3 **SEC. 647. SUSPENSION OF POLICYHOLDERS SURPLUS AC-**
4 **COUNT PROVISIONS.**

5 *(a) DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-*
6 *1984 POLICYHOLDERS SURPLUS ACCOUNT.—Section 815*
7 *(relating to distributions to shareholders from pre-1984 pol-*
8 *icyholders surplus account) is amended by adding at the*
9 *end the following:*

10 *“(g) SPECIAL RULES APPLICABLE DURING 2004 AND*
11 *2005.—In the case of any taxable year of a stock life insur-*
12 *ance company beginning after December 31, 2003, and be-*
13 *fore January 1, 2006—*

14 *“(1) the amount under subsection (a)(2) for such*
15 *taxable year shall be treated as zero, and*

16 *“(2) notwithstanding subsection (b), in deter-*
17 *mining any subtractions from an account under sub-*
18 *sections (c)(3) and (d)(3), any distribution to share-*
19 *holders during such taxable year shall be treated as*
20 *made first out of the policyholders surplus account,*
21 *then out of the shareholders surplus account, and fi-*
22 *nally out of other accounts.”.*

23 *(b) EFFECTIVE DATE.—The amendment made by this*
24 *section shall apply to taxable years beginning after Decem-*
25 *ber 31, 2003.*

1 **SEC. 648. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**
2 **TIVES WITHOUT REDUCING PATRONAGE DIVI-**
3 **DENDS.**

4 (a) *IN GENERAL.*—Subsection (a) of section 1388 (re-
5 lating to patronage dividend defined) is amended by adding
6 at the end the following new sentence: “For purposes of
7 paragraph (3), net earnings shall not be reduced by
8 amounts paid during the year as dividends on capital stock
9 or other proprietary capital interests of the organization
10 to the extent that the articles of incorporation or bylaws
11 of such organization or other contract with patrons provide
12 that such dividends are in addition to amounts otherwise
13 payable to patrons which are derived from business done
14 with or for patrons during the taxable year.”.

15 (b) *EFFECTIVE DATE.*—The amendment made by this
16 section shall apply to distributions in taxable years begin-
17 ning after the date of the enactment of this Act.

18 **SEC. 649. SPECIAL RULES FOR LIVESTOCK SOLD ON AC-**
19 **COUNT OF WEATHER-RELATED CONDITIONS.**

20 (a) *REPLACEMENT OF LIVESTOCK WITH OTHER FARM*
21 *PROPERTY.*—Subsection (f) of section 1033 (relating to in-
22 voluntary conversions) is amended—

23 (1) by inserting “drought, flood, or other weath-
24 er-related conditions, or” after “because of”,

1 (2) by inserting “in the case of soil contamina-
2 tion or other environmental contamination” after
3 “including real property”, and

4 (3) by striking “WHERE THERE HAS BEEN EN-
5 VIRONMENTAL CONTAMINATION” in the heading and
6 inserting “IN CERTAIN CASES”.

7 (b) *EXTENSION OF REPLACEMENT PERIOD OF INVOL-*
8 *UNTARILY CONVERTED LIVESTOCK.*—Subsection (e) of sec-
9 tion 1033 (relating to involuntary conversions) is
10 amended—

11 (1) by striking “CONDITIONS.—For purposes”
12 and inserting “CONDITIONS.—

13 “(1) *IN GENERAL.*—For purposes”, and

14 (2) by adding at the end the following new para-
15 graph:

16 “(2) *EXTENSION OF REPLACEMENT PERIOD.*—

17 “(A) *IN GENERAL.*—In the case of drought,
18 flood, or other weather-related conditions de-
19 scribed in paragraph (1) which result in the
20 area being designated as eligible for assistance
21 by the Federal Government, subsection (a)(2)(B)
22 shall be applied with respect to any converted
23 property by substituting ‘4 years’ for ‘2 years’.

24 “(B) *FURTHER EXTENSION BY SEC-*
25 *RETARY.*—The Secretary may extend on a re-

1 gional basis the period for replacement under
 2 this section (after the application of subpara-
 3 graph (A)) for such additional time as the Sec-
 4 retary determines appropriate if the weather-re-
 5 lated conditions which resulted in such applica-
 6 tion continue for more than 3 years.”.

7 (c) *INCOME INCLUSION RULES.*—Section 451(e) (relat-
 8 ing to special rule for proceeds from livestock sold on ac-
 9 count of drought, flood, or other weather-related conditions)
 10 is amended by adding at the end the following new para-
 11 graph:

12 “(3) *SPECIAL ELECTION RULES.*—If section
 13 1033(e)(2) applies to a sale or exchange of livestock
 14 described in paragraph (1), the election under para-
 15 graph (1) shall be deemed valid if made during the
 16 replacement period described in such section.”.

17 (d) *EFFECTIVE DATE.*—The amendments made by this
 18 section shall apply to taxable years beginning after Decem-
 19 ber 31, 2001.

20 **SEC. 650. MOTOR VEHICLE DEALER TRANSITIONAL ASSIST-**
 21 **ANCE.**

22 (a) *IN GENERAL.*—For purposes of subtitle A of the
 23 Internal Revenue Code of 1986, in the case of a taxpayer
 24 who elects the application of this section and who was a
 25 party to a motor vehicle sales and service agreement with

1 *a motor vehicle manufacturer who announced in December*
2 *2000 that it would phase-out the motor vehicle brand to*
3 *which such agreement relates—*

4 *(1) amounts received by such taxpayer from such*
5 *manufacturer on account of the termination of such*
6 *agreement (hereafter in this section referred to as*
7 *“termination payment”) are considered to be received*
8 *for property used in the trade or business of a motor*
9 *vehicle retail sales and service dealership, and*

10 *(2) to the extent such termination payment is re-*
11 *invested in property used in a motor vehicle retail*
12 *sales and service dealership located within the United*
13 *States, such property shall qualify as like-kind re-*
14 *placement property to which section 1031 of the In-*
15 *ternal Revenue Code of 1986 shall apply with the fol-*
16 *lowing modifications:*

17 *(A) Such section shall be applied without*
18 *regard to subparagraphs (A) and (B)(ii) of sub-*
19 *section (a)(3).*

20 *(B) The period described in section*
21 *1031(a)(3)(B) of such Code shall be applied by*
22 *substituting “2 years” for “180 days”.*

23 *(b) RULES FOR ELECTION.—*

24 *(1) FORM OF ELECTION.—The taxpayer shall*
25 *make an election under this section in such form and*

1 manner as the Secretary of the Treasury may pre-
2 scribe and shall include in such election the amount
3 of the termination payment received, the identifica-
4 tion of the replacement property purchased, and such
5 other information as the Secretary may prescribe.

6 (2) *ELECTION ON AMENDED RETURN.*—The Sec-
7 retary of the Treasury shall permit an election under
8 this section on an amended tax return for taxable
9 years beginning before the date of the enactment of
10 this Act.

11 (c) *STATUTE OF LIMITATIONS.*—Notwithstanding the
12 provisions of any other law or rule of law, the statutory
13 period for the assessment for any deficiency attributable to
14 any termination payment gain shall be extended until 3
15 years after the date the Secretary of the Treasury is notified
16 by the taxpayer of the like-kind replacement property or
17 an intention not to replace.

18 (d) *EFFECTIVE DATE.*—This section shall apply to
19 amounts received after December 12, 2000, in taxable years
20 ending after such date.

21 **SEC. 651. EXPANSION OF DESIGNATED RENEWAL COMMU-**
22 **NITY AREA BASED ON 2000 CENSUS DATA.**

23 (a) *RENEWAL COMMUNITIES.*—Section 1400E (relat-
24 ing to designation of renewal communities) is amended by
25 adding at the end the following new subsection:

1 “(g) *EXPANSION OF DESIGNATED AREAS.*—

2 “(1) *EXPANSION BASED ON 2000 CENSUS.*—*At*
3 *the request of the nominating entity with respect to*
4 *a renewal community, the Secretary of Housing and*
5 *Urban Development may expand the area of a re-*
6 *newal community to include any census tract—*

7 “(A) *which, at the time such community*
8 *was nominated, met the requirements of this sec-*
9 *tion for inclusion in such community but for the*
10 *failure of such tract to meet 1 or more of the*
11 *population and poverty rate requirements of this*
12 *section using 1990 census data, and*

13 “(B) *which meets all failed population and*
14 *poverty rate requirements of this section using*
15 *2000 census data.*

16 “(2) *EXPANSION TO CERTAIN AREAS WHICH DO*
17 *NOT MEET POPULATION REQUIREMENTS.*—

18 “(A) *IN GENERAL.*—*At the request of 1 or*
19 *more local governments and the State or States*
20 *in which an area described in subparagraph (B)*
21 *is located, the Secretary of Housing and Urban*
22 *Development may expand a designated area to*
23 *include such area.*

24 “(B) *AREA.*—*An area is described in this*
25 *subparagraph if—*

1 “(i) the area is adjacent to at least 1
2 other area designated as a renewal commu-
3 nity,

4 “(ii) the area has a population less
5 than the population required under sub-
6 section (c)(2)(C), and

7 “(iii)(I) the area meets the require-
8 ments of subparagraphs (A) and (B) of sub-
9 section (c)(2) and subparagraph (A) of sub-
10 section (c)(3), or

11 “(II) the area contains a population of
12 less than 100 people.

13 “(3) *APPLICABILITY.*—Any expansion of a re-
14 newal community under this section shall take effect
15 as provided in subsection (b).”.

16 (b) *EFFECTIVE DATE.*—The amendment made by this
17 subsection shall take effect as if included in the amendments
18 made by section 101 of the Community Renewal Tax Relief
19 Act of 2000.

20 **SEC. 652. REDUCTION OF HOLDING PERIOD TO 12 MONTHS**
21 **FOR PURPOSES OF DETERMINING WHETHER**
22 **HORSES ARE SECTION 1231 ASSETS.**

23 (a) *IN GENERAL.*—Subparagraph (A) of section
24 1231(b)(3) (relating to definition of property used in the
25 trade or business) is amended by striking “and horses”.

1 (b) *EFFECTIVE DATE.*—*The amendment made by this*
2 *section shall apply to taxable years beginning after Decem-*
3 *ber 31, 2003.*

4 **SEC. 653. BLUE RIBBON COMMISSION ON COMPREHENSIVE**
5 **TAX REFORM.**

6 (a) *ESTABLISHMENT.*—

7 (1) *IN GENERAL.*—*There is established the “Blue*
8 *Ribbon Commission on Comprehensive Tax Reform”*
9 *(in this section referred to as the “Commission”).*

10 (2) *MEMBERSHIP.*—

11 (A) *COMPOSITION.*—*The Commission shall*
12 *be composed of 17 members of whom—*

13 (i) *3 shall be appointed by the major-*
14 *ity leader of the Senate;*

15 (ii) *3 shall be appointed by the minor-*
16 *ity leader of the Senate;*

17 (iii) *3 shall be appointed by the Speak-*
18 *er of the House of Representatives;*

19 (iv) *3 shall be appointed by the minor-*
20 *ity leader of the House of Representatives;*
21 *and*

22 (v) *5 shall be appointed by the Presi-*
23 *dent, of which no more than 3 shall be of*
24 *the same party as the President.*

1 (B) *FEDERAL EMPLOYEES.*—*The members*
2 *of the Commission may be employees or former*
3 *employees of the Federal Government.*

4 (C) *DATE.*—*The appointments of the mem-*
5 *bers of the Commission shall be made not later*
6 *than October 30, 2004.*

7 (3) *PERIOD OF APPOINTMENT; VACANCIES.*—
8 *Members shall be appointed for the life of the Com-*
9 *mission. Any vacancy in the Commission shall not af-*
10 *fect its powers, but shall be filled in the same manner*
11 *as the original appointment.*

12 (4) *INITIAL MEETING.*—*Not later than 30 days*
13 *after the date on which all members of the Commis-*
14 *sion have been appointed, the Commission shall hold*
15 *its first meeting.*

16 (5) *MEETINGS.*—*The Commission shall meet at*
17 *the call of the Chairman.*

18 (6) *QUORUM.*—*A majority of the members of the*
19 *Commission shall constitute a quorum, but a lesser*
20 *number of members may hold hearings.*

21 (7) *CHAIRMAN AND VICE CHAIRMAN.*—*The Presi-*
22 *dent shall select a Chairman and Vice Chairman*
23 *from among its members.*

24 (b) *DUTIES OF THE COMMISSION.*—

1 (1) *STUDY.*—*The Commission shall conduct a*
2 *thorough study of all matters relating to a com-*
3 *prehensive reform of the Federal tax system, including*
4 *the reform of the Internal Revenue Code of 1986 and*
5 *the implementation (if appropriate) of other types of*
6 *tax systems.*

7 (2) *RECOMMENDATIONS.*—*The Commission shall*
8 *develop recommendations on how to comprehensively*
9 *reform the Federal tax system in a manner that gen-*
10 *erates appropriate revenue for the Federal Govern-*
11 *ment.*

12 (3) *REPORT.*—*Not later than 18 months after the*
13 *date on which all initial members of the commission*
14 *have been appointed pursuant to subsection (a)(2),*
15 *the Commission shall submit a report to the President*
16 *and Congress which shall contain a detailed state-*
17 *ment of the findings and conclusions of the Commis-*
18 *sion, together with its recommendations for such legis-*
19 *lation and administrative actions as it considers ap-*
20 *propriate.*

21 (c) *POWERS OF THE COMMISSION.*—

22 (1) *HEARINGS.*—*The Commission may hold such*
23 *hearings, sit and act at such times and places, take*
24 *such testimony, and receive such evidence as the Com-*
25 *mission considers advisable to carry out this Act.*

1 (2) *INFORMATION FROM FEDERAL AGENCIES.*—

2 *The Commission may secure directly from any Fed-*
3 *eral department or agency such information as the*
4 *Commission considers necessary to carry out this Act.*
5 *Upon request of the Chairman of the Commission, the*
6 *head of such department or agency shall furnish such*
7 *information to the Commission.*

8 (3) *POSTAL SERVICES.*—*The Commission may*
9 *use the United States mails in the same manner and*
10 *under the same conditions as other departments and*
11 *agencies of the Federal Government.*

12 (4) *GIFTS.*—*The Commission may accept, use,*
13 *and dispose of gifts or donations of services or prop-*
14 *erty.*

15 (d) *COMMISSION PERSONNEL MATTERS.*—

16 (1) *COMPENSATION OF MEMBERS.*—*Each mem-*
17 *ber of the Commission who is not an officer or em-*
18 *ployee of the Federal Government shall be com-*
19 *pensated at a rate equal to the daily equivalent of the*
20 *annual rate of basic pay prescribed for level IV of the*
21 *Executive Schedule under section 5315 of title 5,*
22 *United States Code, for each day (including travel*
23 *time) during which such member is engaged in the*
24 *performance of the duties of the Commission. All*
25 *members of the Commission who are officers or em-*

1 *ployees of the United States shall serve without com-*
2 *ensation in addition to that received for their serv-*
3 *ices as officers or employees of the United States.*

4 (2) *TRAVEL EXPENSES.*—*The members of the*
5 *Commission shall be allowed travel expenses, includ-*
6 *ing per diem in lieu of subsistence, at rates author-*
7 *ized for employees of agencies under subchapter I of*
8 *chapter 57 of title 5, United States Code, while away*
9 *from their homes or regular places of business in the*
10 *performance of services for the Commission.*

11 (3) *STAFF.*—

12 (A) *IN GENERAL.*—*The Chairman of the*
13 *Commission may, without regard to the civil*
14 *service laws and regulations, appoint and termi-*
15 *nate an executive director and such other addi-*
16 *tional personnel as may be necessary to enable*
17 *the Commission to perform its duties. The em-*
18 *ployment of an executive director shall be subject*
19 *to confirmation by the Commission.*

20 (B) *COMPENSATION.*—*The Chairman of the*
21 *Commission may fix the compensation of the ex-*
22 *ecutive director and other personnel without re-*
23 *gard to chapter 51 and subchapter III of chapter*
24 *53 of title 5, United States Code, relating to clas-*
25 *sification of positions and General Schedule pay*

1 *rates, except that the rate of pay for the executive*
2 *director and other personnel may not exceed the*
3 *rate payable for level V of the Executive Schedule*
4 *under section 5316 of such title.*

5 (4) *DETAIL OF GOVERNMENT EMPLOYEES.—Any*
6 *Federal Government employee may be detailed to the*
7 *Commission without reimbursement, and such detail*
8 *shall be without interruption or loss of civil service*
9 *status or privilege.*

10 (5) *PROCUREMENT OF TEMPORARY AND INTER-*
11 *MITTENT SERVICES.—The Chairman of the Commis-*
12 *sion may procure temporary and intermittent services*
13 *under section 3109(b) of title 5, United States Code,*
14 *at rates for individuals which do not exceed the daily*
15 *equivalent of the annual rate of basic pay prescribed*
16 *for level V of the Executive Schedule under section*
17 *5316 of such title.*

18 (e) *TERMINATION OF THE COMMISSION.—The Com-*
19 *mission shall terminate 90 days after the date on which*
20 *the Commission submits its report under subsection (b).*

21 (f) *AUTHORIZATION OF APPROPRIATIONS.—There are*
22 *authorized to be appropriated such sums as are necessary*
23 *to the Commission to carry out this section.*

1 **SEC. 654. TREATMENT OF DISTRIBUTIONS BY ESOPS WITH**
2 **RESPECT TO S CORPORATION STOCK.**

3 (a) *IN GENERAL.*—Section 4975(d) of the Internal
4 Revenue Code of 1986 is amended by adding at the end
5 the following new flush sentences:

6 “A plan shall not be treated as violating the requirements
7 of section 401, 409, or subsection (e)(7), or as engaging in
8 a prohibited transaction for purposes of paragraph (3),
9 merely by reason of any distribution described in section
10 1368(a) with respect to S corporation stock which con-
11 stitutes qualifying employer securities if the distribution is,
12 in accordance with the plan provisions, used to make pay-
13 ments on a loan described in paragraph (3) the proceeds
14 of which were used to acquire the qualifying employer secu-
15 rities (whether or not allocated to participants). The pre-
16 ceding sentence shall not apply in the case of a distribution
17 which is paid with respect to any employer security which
18 is allocated to a participant unless the plan provides that
19 employer securities with a fair market value of not less than
20 the amount of such distribution are allocated to such partici-
21 ipant for the year which (but for the preceding sentence)
22 such distribution would have been allocated to such partici-
23 pant.”

24 (b) *EFFECTIVE DATE.*—The amendment made by this
25 section shall take effect on January 1, 1998.

1 **SEC. 655. CLARIFICATION OF WORKING CAPITAL FOR REA-**
2 **SONABLY ANTICIPATED NEEDS OF A BUSI-**
3 **NESS FOR PURPOSES OF ACCUMULATED**
4 **EARNINGS TAX.**

5 (a) *IN GENERAL.*—Section 537(b) (relating to special
6 rules) is amended by adding at the end the following new
7 paragraph:

8 “(6) *WORKING CAPITAL.*—The reasonably antici-
9 pated needs of a business for any taxable year shall
10 include working capital for the business in an
11 amount which is not less than the sum of the cost of
12 goods, operating expenses, taxes, and interest expense
13 which the business incurred during the preceding tax-
14 able year. Any amounts incurred as part of a plan
15 a principal purpose of which is to increase the limi-
16 tation under this subsection shall not be taken into
17 account.”.

18 (b) *EFFECTIVE DATE.*—The amendment made by this
19 section shall apply to taxable years beginning after Decem-
20 ber 31, 2003, and before January 1, 2009.

21 **SEC. 656. TAX TREATMENT OF STATE OWNERSHIP OF RAIL-**
22 **ROAD REAL ESTATE INVESTMENT TRUST.**

23 (a) *IN GENERAL.*—If a State owns all of the out-
24 standing stock of a corporation which is a real estate invest-
25 ment trust, which is a non-operating class III railroad, and
26 substantially all of the activities of which consist of the

1 *ownership, leasing, and operation by such corporation of*
2 *facilities, equipment, and other property used by the cor-*
3 *poration or other persons in railroad transportation, then,*
4 *for purposes of section 115 of the Internal Revenue Code*
5 *of 1986—*

6 (1) *income derived from such activities by the*
7 *corporation shall be treated as accruing to the State,*
8 *and*

9 (2) *such activities shall be treated as the exercise*
10 *of an essential governmental function of the State to*
11 *the extent such activities are of a type which are an*
12 *essential government function (within the meaning of*
13 *section 115 of such Code).*

14 (b) *GAIN OR LOSS NOT RECOGNIZED ON CONVER-*
15 *SION.—Notwithstanding section 337(d) of the Internal Rev-*
16 *enue Code of 1986—*

17 (1) *no gain or loss shall be recognized under sec-*
18 *tion 336 or 337 of such Code, and*

19 (2) *no change in basis of the property of such*
20 *corporation shall occur,*

21 *because of any change of status of the corporation to a tax-*
22 *exempt entity by reason of the application of subsection (a).*

23 (c) *TAX-EXEMPT FINANCING.—Any obligation issued*
24 *by an entity described in subsection (a) shall be treated as*
25 *an obligation of the State for purposes of applying section*

1 103 and part IV of subchapter B of chapter 1 of the Internal
2 Revenue Code of 1986.

3 (d) DEFINITIONS.—For purposes of this section—

4 (1) REAL ESTATE INVESTMENT TRUST.—The
5 term “real estate investment trust” has the meaning
6 given such term by section 856(a) of the Internal Rev-
7 enue Code of 1986.

8 (2) NON-OPERATING CLASS III RAILROAD.—The
9 term “non-operating class III railroad” has the
10 meaning given such term by part A of subtitle IV of
11 title 49, United States Code (49 U.S.C. 10101 et seq.)
12 and the regulations thereunder.

13 (3) STATE.—The term “State” includes—

14 (A) the District of Columbia and any pos-
15 session of the United States, and

16 (B) any authority, agency, or public cor-
17 poration of a State.

18 (e) APPLICABILITY.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), this section shall apply on and after the
21 date on which a State becomes the owner of all of the
22 outstanding stock of a corporation described in sub-
23 section (a).

24 (2) EXCEPTION.—This section shall not apply to
25 any State which—

1 (A) becomes the owner of all of the voting
2 stock of a corporation described in subsection (a)
3 after December 31, 2003, or

4 (B) becomes the owner of all of the out-
5 standing stock of a corporation described in sub-
6 section (a) after December 31, 2005.

7 **SEC. 657. CLARIFICATION OF CONTRIBUTION IN AID OF**
8 **CONSTRUCTION FOR WATER AND SEWERAGE**
9 **DISPOSAL UTILITIES.**

10 (a) *IN GENERAL.*—Subparagraph (A) of section
11 118(c)(3) (relating to definitions) is amended to read as
12 follows:

13 “(A) *CONTRIBUTION IN AID OF CONSTRU-*
14 *CTION.*—The term ‘contribution in aid of con-15 *struction’ shall be defined by regulations pre-*
16 *scribed by the Secretary, except that such term—*

17 “(i) shall include amounts paid as cus-

18 *tomer connection fees (including amounts*
19 *paid to connect the customer’s water service*
20 *line or sewer lateral line to the utility’s dis-*
21 *tribution or collection system or extend a*
22 *main water or sewer line to provide service*
23 *to a customer), and*

1 “(ii) shall not include amounts paid as
2 service charges for starting or stopping serv-
3 ices.”.

4 (b) *EFFECTIVE DATE.*—The amendment made by sub-
5 section (a) shall apply to contributions made after the date
6 of the enactment of this Act.

7 **SEC. 658. CREDIT FOR PURCHASE AND INSTALLATION OF**
8 **AGRICULTURAL WATER CONSERVATION SYS-**
9 **TEMS.**

10 (a) *IN GENERAL.*—Subpart B of part IV of subchapter
11 A of chapter 1 (relating to foreign tax credit, etc.) is amend-
12 ed by adding at the end the following new section:

13 **“SEC. 30B. PURCHASE AND INSTALLATION OF AGRICUL-**
14 **TURAL WATER CONSERVATION SYSTEMS.**

15 “(a) *ALLOWANCE OF CREDIT.*—In the case of an eligi-
16 ble taxpayer, there shall be allowed as a credit against the
17 tax imposed by this chapter for the taxable year an amount
18 equal to 30 percent of the water conservation system ex-
19 penses paid or incurred by the taxpayer during such year.

20 “(b) *LIMITATIONS.*—The credit allowed by subsection
21 (a) with respect to any acre of land which is served by a
22 water conservation system shall not exceed the excess of—
23 “(1) \$500, over

1 “(2) the amount of credit allowed under this sec-
2 tion with respect to such acre for all prior taxable
3 years.

4 “(c) *DEFINITIONS.*—For purposes of this section—

5 “(1) *ELIGIBLE TAXPAYER.*—The term ‘eligible
6 taxpayer’ means any taxpayer if—

7 “(A) at least 50 percent of such taxpayer’s
8 gross income is normally derived from farm
9 land, and

10 “(B) such taxpayer complies with all Fed-
11 eral, State, and local water rights and environ-
12 mental laws.

13 “(2) *WATER CONSERVATION SYSTEM EX-*
14 *PENSES.*—

15 “(A) *IN GENERAL.*—The term ‘water con-
16 servation system expenses’ means expenses for the
17 purchase and installation of a water conserva-
18 tion system but only if—

19 “(i) the land served by the water con-
20 servation system is entirely in a county or
21 county-equivalent area which has received,
22 in the taxable year the expenses were paid
23 or incurred or in any of the 3 preceding
24 taxable years, a primary-county designa-

1 *tion due to drought by the Secretary of Ag-*
2 *riculture, and*

3 *“(ii) such system is certified as saving*
4 *at least 5 percent more irrigation water*
5 *than the irrigation system which was used*
6 *on such land immediately prior to the in-*
7 *stallation of such water conservation sys-*
8 *tem.*

9 *For purposes of clause (ii), irrigation water sav-*
10 *ings shall be determined and certified under reg-*
11 *ulations prescribed jointly by the Natural Re-*
12 *sources Conservation Service of the Department*
13 *of Agriculture and the Bureau of Reclamation of*
14 *the Department of the Interior. Such regulations*
15 *shall include a list of individuals or organiza-*
16 *tions qualified to make such certification.*

17 *“(B) WATER CONSERVATION SYSTEM.—The*
18 *term ‘water conservation system’ means, with re-*
19 *spect to farm land—*

20 *“(i) new or replacement irrigation*
21 *equipment and machinery, including sprin-*
22 *klers, pipes, siphons, nozzles, pumps, mo-*
23 *tors, and engines, and*

24 *“(ii) computer systems for irrigation*
25 *and water management.*

1 “(C) *FARM LAND.*—*The term ‘farm land’*
2 *means land used in a trade or business by the*
3 *taxpayer or a tenant of the taxpayer for—*

4 “(i) *the production of crops, fruits, or*
5 *other agricultural products,*

6 “(ii) *the raising, harvesting, or grow-*
7 *ing of trees, or*

8 “(iii) *the sustenance of livestock.*

9 “(d) *YEAR EXPENDITURE MADE.*—*For purposes of*
10 *this section, an expenditure with respect to a water con-*
11 *servation system shall be treated as made when the original*
12 *installation of the system is completed.*

13 “(e) *LIMITATION BASED ON AMOUNT OF TAX.*—

14 “(1) *LIABILITY FOR TAX.*—*The credit allowable*
15 *under subsection (a) for any taxable year shall not*
16 *exceed the excess (if any) of—*

17 “(A) *the regular tax for the taxable year, re-*
18 *duced by the sum of the credits allowable under*
19 *subpart A and the preceding sections of this sub-*
20 *part, over*

21 “(B) *the tentative minimum tax for the tax-*
22 *able year.*

23 “(2) *CARRYFORWARD OF UNUSED CREDIT.*—*If*
24 *the amount of the credit allowable under subsection*
25 *(a) for any taxable year exceeds the limitation under*

1 *paragraph (1) for the taxable year, the excess shall be*
2 *carried to the succeeding taxable year and added to*
3 *the amount allowable as a credit under subsection (a)*
4 *for such succeeding taxable year.*

5 “(f) *DENIAL OF DOUBLE BENEFIT.*—*No deduction*
6 *shall be allowed under this chapter with respect to any ex-*
7 *pense which is taken into account in determining the credit*
8 *under this section, and any increase in the basis of any*
9 *property which would (but for this subsection) result from*
10 *such expense shall be reduced by the amount of credit al-*
11 *lowed under this section for such expense.*

12 “(g) *TERMINATION.*—*This section shall not apply to*
13 *amounts paid or incurred with respect any water conserva-*
14 *tion system the installation of which is completed after De-*
15 *cember 31, 2006.”.*

16 “(b) *TECHNICAL AMENDMENT.*—*Subsection (a) of sec-*
17 *tion 1016, as amended by this Act, is amended by striking*
18 *“and” at the end of paragraph (30), by striking the period*
19 *at the end of paragraph (31) and inserting “; and”, and*
20 *by adding at the end the following new paragraph:*

21 “(32) *to the extent provided in section 30B(f), in*
22 *the case of amounts with respect to which a credit has*
23 *been allowed under section 30B.”.*

1 (c) *CLERICAL AMENDMENT.*—*The table of sections for*
 2 *subpart B of part IV of subchapter A of chapter 1 is amend-*
 3 *ed by adding at the end the following new item:*

“Sec. 30B. Purchase and installation of agricultural water con-
servation systems.”.

4 (d) *EFFECTIVE DATE.*—*The amendments made by this*
 5 *section shall apply to amounts paid or incurred after the*
 6 *date of the enactment of this Act with respect any water*
 7 *conservation system the installation of which is completed*
 8 *after December 31, 2004.*

9 **SEC. 659. MODIFICATION OF INVOLUNTARY CONVERSION**
 10 **RULES FOR BUSINESSES AFFECTED BY THE**
 11 **SEPTEMBER 11TH TERRORIST ATTACKS.**

12 (a) *IN GENERAL.*—*Subsection (g) of section 1400L is*
 13 *amended to read as follows:*

14 “*(g) MODIFICATION OF RULES APPLICABLE TO NON-*
 15 *RECOGNITION OF GAIN.*—*In the case of property which is*
 16 *compulsorily or involuntarily converted as a result of the*
 17 *terrorist attacks on September 11, 2001, in the New York*
 18 *Liberty Zone—*

19 “*(1) which was held by a corporation which is*
 20 *a member of an affiliated group filing a consolidated*
 21 *return, such corporation shall be treated as satisfying*
 22 *the purchase requirement of section 1033(a)(2) with*
 23 *respect to such property to the extent such require-*
 24 *ment is satisfied by another member of the group, and*

1 “(2) notwithstanding subsections (g) and (h) of
2 section 1033, clause (i) of section 1033(a)(2)(B) shall
3 be applied by substituting ‘5 years’ for ‘2 years’ with
4 respect to property which is compulsorily or involun-
5 tarily converted as a result of the terrorist attacks on
6 September 11, 2001, in the New York Liberty Zone
7 but only if substantially all of the use of the replace-
8 ment property is in the City of New York, New
9 York.”.

10 (b) *EFFECTIVE DATE.*—The amendments made by this
11 Act shall apply to involuntary conversions occurring on or
12 after September 11, 2001.

13 **SEC. 660. REPEAL OF APPLICATION OF BELOW-MARKET**
14 **LOAN RULES TO AMOUNTS PAID TO CERTAIN**
15 **CONTINUING CARE FACILITIES.**

16 (a) *IN GENERAL.*—Section 7872(c)(1) (relating to
17 below-market loans to which section applies) is amended—

18 (1) by striking subparagraph (F), and

19 (2) by striking “(C), or (F)” in subparagraph
20 (E) and inserting “or (C)”.

21 (b) *FULL EXCEPTION.*—Section 7872(g) (relating to
22 exception for certain loans to qualified continuing care fa-
23 cilities) is amended—

24 (1) by striking “made by a lender to a qualified
25 continuing care facility pursuant to a continuing

1 *care contract” in paragraph (1) and inserting “owed*
2 *by a facility which on the last day of such year is*
3 *a qualified continuing care facility, if such loan was*
4 *made pursuant to a continuing care contract and”,*

5 *(2) by striking “increased personal care services*
6 *or” in paragraph (3)(C),*

7 *(3) by adding at the end of paragraph (3) the*
8 *following new flush sentence:*

9 *“The Secretary shall issue guidance which limits such*
10 *term to contracts which provide to an individual or*
11 *individual’s spouse only facilities, care, and services*
12 *described in this paragraph which are customarily of-*
13 *fered by continuing care facilities.”,*

14 *(4) by inserting “independent living unit” after*
15 *“all of the” in paragraph (4)(A)(i),*

16 *(5) by striking paragraphs (2) and (5),*

17 *(6) by redesignating paragraphs (3) and (4) as*
18 *paragraphs (2) and (3), respectively, and*

19 *(7) by striking “CERTAIN” in the heading there-*
20 *of.*

21 *(c) EFFECTIVE DATE.—The amendments made by this*
22 *section shall apply to calendar years beginning after 2004.*

1 **SEC. 661. GOLD, SILVER, PLATINUM, AND PALLADIUM**
2 **TREATED IN THE SAME MANNER AS STOCKS**
3 **AND BONDS FOR MAXIMUM CAPITAL GAINS**
4 **RATE FOR INDIVIDUALS.**

5 (a) *IN GENERAL.*—Section 1(h)(5) (relating to defini-
6 tion of collectibles gain and loss) is amended—

7 (1) by striking “(as defined in section 408(m)
8 without regard to paragraph (3) thereof)” in subpara-
9 graph (A) thereof, and

10 (2) by adding at the end the following new sub-
11 paragraph:

12 “(C) *COLLECTIBLE.*—For purposes of this
13 paragraph, the term ‘collectible’ has the meaning
14 given such term by section 408(m), except that
15 in applying paragraph (3)(B) thereof the deter-
16 mination of whether any bullion is excluded
17 from treatment as a collectible shall be made
18 without regard to the person who is in physical
19 possession of the bullion.”

20 (b) *EFFECTIVE DATE.*—The amendments made by sub-
21 section (a) shall apply to taxable years beginning after De-
22 cember 31, 2003.

1 **SEC. 662. INCLUSION OF PRIMARY AND SECONDARY MED-**
2 **ICAL STRATEGIES FOR CHILDREN AND**
3 **ADULTS WITH SICKLE CELL DISEASE AS MED-**
4 **ICAL ASSISTANCE UNDER THE MEDICAID**
5 **PROGRAM.**

6 *(a) OPTIONAL MEDICAL ASSISTANCE.—*

7 *(1) IN GENERAL.—Section 1905 of the Social Se-*
8 *curity Act (42 U.S.C. 1396d) is amended—*

9 *(A) in subsection (a)—*

10 *(i) by striking “and” at the end of*
11 *paragraph (26);*

12 *(ii) by redesignating paragraph (27)*
13 *as paragraph (28); and*

14 *(iii) by inserting after paragraph (26),*
15 *the following:*

16 *“(27) subject to subsection (x), primary and sec-*
17 *ondary medical strategies and treatment and services*
18 *for individuals who have Sickle Cell Disease; and”;*
19 *and*

20 *(B) by adding at the end the following:*

21 *“(x) For purposes of subsection (a)(27), the strategies,*
22 *treatment, and services described in that subsection include*
23 *the following:*

24 *“(1) Chronic blood transfusion (with*
25 *deferoxamine chelation) to prevent stroke in individ-*

1 *uals with Sickle Cell Disease who have been identified*
2 *as being at high risk for stroke.*

3 *“(2) Genetic counseling and testing for individ-*
4 *uals with Sickle Cell Disease or the sickle cell trait*
5 *to allow health care professionals to treat such indi-*
6 *viduals and to prevent symptoms of Sickle Cell Dis-*
7 *ease.*

8 *“(3) Other treatment and services to prevent in-*
9 *dividuals who have Sickle Cell Disease and who have*
10 *had a stroke from having another stroke.”.*

11 *(2) RULE OF CONSTRUCTION.—Nothing in sub-*
12 *sections (a)(27) or (x) of section 1905 of the Social*
13 *Security Act (42 U.S.C. 1396d), as added by para-*
14 *graph (1), shall be construed as implying that a State*
15 *medicaid program under title XIX of such Act could*
16 *not have treated, prior to the date of enactment of this*
17 *Act, any of the primary and secondary medical strat-*
18 *egies and treatment and services described in such*
19 *subsections as medical assistance under such pro-*
20 *gram, including as early and periodic screening, di-*
21 *agnostic, and treatment services under section 1905(r)*
22 *of such Act.*

23 *(b) FEDERAL REIMBURSEMENT FOR EDUCATION AND*
24 *OTHER SERVICES RELATED TO THE PREVENTION AND*
25 *TREATMENT OF SICKLE CELL DISEASE.—Section*

1 1903(a)(3) of the Social Security Act (42 U.S.C.
2 1396b(a)(3)) is amended—

3 (1) in subparagraph (D), by striking “plus” at
4 the end and inserting “and”; and

5 (2) by adding at the end the following:

6 “(E) 50 percent of the sums expended with
7 respect to costs incurred during such quarter as
8 are attributable to providing—

9 “(i) services to identify and educate in-
10 dividuals who are likely to be eligible for
11 medical assistance under this title and who
12 have Sickle Cell Disease or who are carriers
13 of the sickle cell gene, including education
14 regarding how to identify such individuals;
15 or

16 “(ii) education regarding the risks of
17 stroke and other complications, as well as
18 the prevention of stroke and other complica-
19 tions, in individuals who are likely to be el-
20 igible for medical assistance under this title
21 and who have Sickle Cell Disease; plus”.

22 (c) DEMONSTRATION PROGRAM FOR THE DEVELOP-
23 MENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS
24 FOR THE PREVENTION AND TREATMENT OF SICKLE CELL
25 DISEASE.—

1 (1) *AUTHORITY TO CONDUCT DEMONSTRATION*
2 *PROGRAM.*—

3 (A) *IN GENERAL.*—*The Administrator,*
4 *through the Bureau of Primary Health Care and*
5 *the Maternal and Child Health Bureau, shall*
6 *conduct a demonstration program by making*
7 *grants to up to 40 eligible entities for each fiscal*
8 *year in which the program is conducted under*
9 *this section for the purpose of developing and es-*
10 *tablishing systemic mechanisms to improve the*
11 *prevention and treatment of Sickle Cell Disease,*
12 *including through—*

13 (i) *the coordination of service delivery*
14 *for individuals with Sickle Cell Disease;*

15 (ii) *genetic counseling and testing;*

16 (iii) *bundling of technical services re-*
17 *lated to the prevention and treatment of*
18 *Sickle Cell Disease;*

19 (iv) *training of health professionals;*
20 *and*

21 (v) *identifying and establishing other*
22 *efforts related to the expansion and coordi-*
23 *nation of education, treatment, and con-*
24 *tinuity of care programs for individuals*
25 *with Sickle Cell Disease.*

1 (B) GRANT AWARD REQUIREMENTS.—

2 (i) GEOGRAPHIC DIVERSITY.—The Ad-
3 ministrators shall, to the extent practicable,
4 award grants under this section to eligible
5 entities located in different regions of the
6 United States.

7 (ii) PRIORITY.—In awarding grants
8 under this subsection, the Administrator
9 shall give priority to awarding grants to el-
10 igible entities that are—

11 (I) Federally-qualified health cen-
12 ters that have a partnership or other
13 arrangement with a comprehensive
14 Sickle Cell Disease treatment center
15 that does not receive funds from the
16 National Institutes of Health; or

17 (II) Federally-qualified health
18 centers that intend to develop a part-
19 nership or other arrangement with a
20 comprehensive Sickle Cell Disease
21 treatment center that does not receive
22 funds from the National Institutes of
23 Health.

24 (2) ADDITIONAL REQUIREMENTS.—An eligible
25 entity awarded a grant under this subsection shall

1 *use funds made available under the grant to carry*
2 *out, in addition to the activities described in para-*
3 *graph (1)(A), the following activities:*

4 *(A) To facilitate and coordinate the delivery*
5 *of education, treatment, and continuity of care*
6 *for individuals with Sickle Cell Disease under—*

7 *(i) the entity’s collaborative agreement*
8 *with a community-based Sickle Cell Disease*
9 *organization or a nonprofit entity that*
10 *works with individuals who have Sickle Cell*
11 *Disease;*

12 *(ii) the Sickle Cell Disease newborn*
13 *screening program for the State in which*
14 *the entity is located; and*

15 *(iii) the maternal and child health*
16 *program under title V of the Social Secu-*
17 *rity Act (42 U.S.C. 701 et seq.) for the*
18 *State in which the entity is located.*

19 *(B) To train nursing and other health staff*
20 *who provide care for individuals with Sickle Cell*
21 *Disease.*

22 *(C) To enter into a partnership with adult*
23 *or pediatric hematologists in the region and*
24 *other regional experts in Sickle Cell Disease at*

1 *tertiary and academic health centers and State*
2 *and county health offices.*

3 *(D) To identify and secure resources for en-*
4 *sureing reimbursement under the medicaid pro-*
5 *gram, State children's health insurance program,*
6 *and other health programs for the prevention*
7 *and treatment of Sickle Cell Disease.*

8 (3) *NATIONAL COORDINATING CENTER.—*

9 *(A) ESTABLISHMENT.—The Administrator*
10 *shall enter into a contract with an entity to*
11 *serve as the National Coordinating Center for the*
12 *demonstration program conducted under this*
13 *subsection.*

14 *(B) ACTIVITIES DESCRIBED.—The National*
15 *Coordinating Center shall—*

16 *(i) collect, coordinate, monitor, and*
17 *distribute data, best practices, and findings*
18 *regarding the activities funded under grants*
19 *made to eligible entities under the dem-*
20 *onstration program;*

21 *(ii) develop a model protocol for eligi-*
22 *ble entities with respect to the prevention*
23 *and treatment of Sickle Cell Disease;*

1 (iii) develop educational materials re-
2 garding the prevention and treatment of
3 Sickle Cell Disease; and

4 (iv) prepare and submit to Congress a
5 final report that includes recommendations
6 regarding the effectiveness of the demonstra-
7 tion program conducted under this sub-
8 section and such direct outcome measures
9 as—

10 (I) the number and type of health
11 care resources utilized (such as emer-
12 gency room visits, hospital visits,
13 length of stay, and physician visits for
14 individuals with Sickle Cell Disease);
15 and

16 (II) the number of individuals
17 that were tested and subsequently re-
18 ceived genetic counseling for the sickle
19 cell trait.

20 (4) *APPLICATION.*—An eligible entity desiring a
21 grant under this subsection shall submit an applica-
22 tion to the Administrator at such time, in such man-
23 ner, and containing such information as the Admin-
24 istrator may require.

25 (5) *DEFINITIONS.*—In this subsection:

1 (A) *ADMINISTRATOR*.—The term “Adminis-
2 trator” means the Administrator of the Health
3 Resources and Services Administration.

4 (B) *ELIGIBLE ENTITY*.—The term “eligible
5 entity” means a Federally-qualified health cen-
6 ter, a nonprofit hospital or clinic, or a univer-
7 sity health center that provides primary health
8 care, that—

9 (i) has a collaborative agreement with
10 a community-based Sickle Cell Disease or-
11 ganization or a nonprofit entity with expe-
12 rience in working with individuals who
13 have Sickle Cell Disease; and

14 (ii) demonstrates to the Administrator
15 that either the Federally-qualified health
16 center, the nonprofit hospital or clinic, the
17 university health center, the organization or
18 entity described in clause (i), or the experts
19 described in paragraph (2)(C), has at least
20 5 years of experience in working with indi-
21 viduals who have Sickle Cell Disease.

22 (C) *FEDERALLY-QUALIFIED HEALTH CEN-*
23 *TER*.—The term “Federally-qualified health cen-
24 ter” has the meaning given that term in section

1 *1905(l)(2)(B) of the Social Security Act (42*
 2 *U.S.C. 1396d(l)(2)(B)).*

3 (6) *AUTHORIZATION OF APPROPRIATIONS.—*
 4 *There is authorized to be appropriated to carry out*
 5 *this subsection, \$10,000,000 for each of fiscal years*
 6 *2005 through 2009.*

7 (d) *EFFECTIVE DATE.—The amendments made by*
 8 *subsections (a) and (b) take effect on the date of enactment*
 9 *of this Act and apply to medical assistance and services*
 10 *provided under title XIX of the Social Security Act (42*
 11 *U.S.C. 1396 et seq.) on or after that date.*

12 ***Subtitle F—Revenue Provisions***

13 ***PART I—GENERAL REVENUE PROVISIONS***

14 ***SEC. 661A. TREASURY REGULATIONS ON FOREIGN TAX*** 15 ***CREDIT.***

16 *Section 901, as amended by this Act, is amended by*
 17 *redesignating subsection (m) as subsection (n) and by in-*
 18 *serting after subsection (l) the following new subsection:*

19 *“(m) REGULATIONS.—The Secretary may prescribe*
 20 *regulations disallowing a credit under subsection (a) for all*
 21 *or a portion of any foreign tax, or allocating a foreign tax*
 22 *among 2 or more persons, in cases where the foreign tax*
 23 *is imposed on any person in respect of income of another*
 24 *person or in other cases involving the inappropriate separa-*
 25 *tion of the foreign tax from the related foreign income.”.*

1 **SEC. 662B. FREEZE OF PROVISIONS REGARDING SUSPEN-**
2 **SION OF INTEREST WHERE SECRETARY FAILS**
3 **TO CONTACT TAXPAYER.**

4 (a) *IN GENERAL.*—Section 6404(g) (relating to sus-
5 pension of interest and certain penalties where Secretary
6 fails to contact taxpayer) is amended by striking “1-year
7 period (18-month period in the case of taxable years begin-
8 ning before January 1, 2004)” both places it appears and
9 inserting “18-month period”.

10 (b) *EXCEPTION FOR GROSS MISSTATEMENT.*—Section
11 6404(g)(2) (relating to exceptions) is amended by striking
12 “or” at the end of subparagraph (C), by redesignating sub-
13 paragraph (D) as subparagraph (E), and by inserting after
14 subparagraph (C) the following new subparagraph:

15 “(D) any interest, penalty, addition to tax,
16 or additional amount with respect to any gross
17 misstatement; or”.

18 (c) *EXCEPTION FOR LISTED AND REPORTABLE TRANS-*
19 *ACTIONS.*—Section 6404(g)(2) (relating to exceptions), as
20 amended by subsection (b), is amended by striking “or” at
21 the end of subparagraph (D), by redesignating subpara-
22 graph (E) as subparagraph (F), and by inserting after sub-
23 paragraph (D) the following new subparagraph:

24 “(E) any interest, penalty, addition to tax,
25 or additional amount with respect to any report-

1 able transaction or listed transaction (as defined
2 in 6707A(c)); or”.

3 (d) *EFFECTIVE DATES.*—

4 (1) *IN GENERAL.*—Except as provided in para-
5 graph (2), the amendments made by this section shall
6 apply to taxable years beginning after December 31,
7 2003.

8 (2) *EXCEPTION FOR REPORTABLE OR LISTED*
9 *TRANSACTIONS.*—The amendments made by sub-
10 section (c) shall apply with respect to interest accru-
11 ing after May 5, 2004.

12 **PART II—PENSION AND DEFERRED**

13 **COMPENSATION**

14 **SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COM-**
15 **PENSATION PLANS.**

16 (a) *IN GENERAL.*—Subpart A of part I of subchapter
17 D of chapter 1 is amended by adding at the end the fol-
18 lowing new section:

19 **“SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED**
20 **COMPENSATION UNDER NONQUALIFIED DE-**
21 **FERRED COMPENSATION PLANS.**

22 **“(a) RULES RELATING TO CONSTRUCTIVE RECEIPT.**—

23 **“(1) IN GENERAL.**—

1 “(A) *GROSS INCOME INCLUSION.*—*If at any*
2 *time during a taxable year a nonqualified de-*
3 *ferred compensation plan—*

4 “(i) *fails to meet the requirements of*
5 *paragraphs (2), (3), (4), and (5), or*

6 “(ii) *is not operated in accordance*
7 *with such requirements,*

8 *all compensation deferred under the plan for the*
9 *taxable year and all preceding taxable years*
10 *shall be includible in gross income for the taxable*
11 *year to the extent not subject to a substantial*
12 *risk of forfeiture and not previously included in*
13 *gross income.*

14 “(B) *INTEREST AND ADDITIONAL TAX PAY-*
15 *ABLE WITH RESPECT TO PREVIOUSLY DEFERRED*
16 *COMPENSATION.*—

17 “(i) *IN GENERAL.*—*If compensation is*
18 *required to be included in gross income*
19 *under subparagraph (A) for a taxable year,*
20 *the tax imposed by this chapter for the tax-*
21 *able year of inclusion shall be increased by*
22 *the sum of—*

23 “(I) *the amount of interest deter-*
24 *mined under clause (ii), and*

1 “(II) an amount equal to 10 per-
2 cent of the compensation which is re-
3 quired to be included in gross income.

4 “(i) *INTEREST.*—For purposes of
5 clause (i), the interest determined under
6 this clause for any taxable year is the
7 amount of interest at the underpayment
8 rate on the underpayments that would have
9 occurred had the deferred compensation been
10 includible in gross income for the taxable
11 year in which first deferred or, if later, the
12 first taxable year in which such deferred
13 compensation is not subject to a substantial
14 risk of forfeiture.

15 “(2) *DISTRIBUTIONS.*—

16 “(A) *IN GENERAL.*—The requirements of
17 this paragraph are met if the plan provides that
18 compensation deferred under the plan may not
19 be distributed earlier than—

20 “(i) except as provided in subpara-
21 graph (B)(i), separation from service (as
22 determined by the Secretary),

23 “(ii) the date the participant becomes
24 disabled (within the meaning of subpara-
25 graph (C)),

1 “(iii) death,

2 “(iv) a specified time (or pursuant to
3 a fixed schedule) specified under the plan as
4 of the date of the deferral of such compensa-
5 tion,

6 “(v) to the extent provided by the Sec-
7 retary, a change in the ownership or effec-
8 tive control of the corporation, or in the
9 ownership of a substantial portion of the as-
10 sets of the corporation, or

11 “(vi) the occurrence of an unforeseeable
12 emergency.

13 “(B) SPECIAL RULES.—

14 “(i) SEPARATION FROM SERVICE OF
15 SPECIFIED EMPLOYEES.—In the case of
16 specified employees, the requirement of sub-
17 paragraph (A)(i) is met only if distribu-
18 tions may not be made earlier than 6
19 months after the date of separation from
20 service. For purposes of the preceding sen-
21 tence, a specified employee is a key em-
22 ployee (as defined in section 416(i)) of a
23 corporation the stock in which is publicly
24 traded on an established securities market
25 or otherwise.

1 “(ii) *CHANGES IN OWNERSHIP OR CON-*
2 *TROL.—In the case of a participant who is*
3 *subject to the requirements of section 16(a)*
4 *of the Securities Exchange Act of 1934, the*
5 *requirement of subparagraph (A)(v) is met*
6 *only if distributions may not be made ear-*
7 *lier than 1 year after the date of the change*
8 *in ownership or effective control.*

9 “(iii) *UNFORESEEABLE EMERGENCY.—*
10 *For purposes of subparagraph (A)(vi)—*

11 “(I) *IN GENERAL.—The term ‘un-*
12 *foreseeable emergency’ means a severe*
13 *financial hardship to the participant*
14 *or beneficiary resulting from a sudden*
15 *and unexpected illness or accident of*
16 *the participant or beneficiary, the par-*
17 *ticipant’s or beneficiary’s spouse, or*
18 *the participant’s or beneficiary’s de-*
19 *pendent (as defined in section 152(a)),*
20 *loss of the participant’s or beneficiary’s*
21 *property due to casualty, or other*
22 *similar extraordinary and unforesee-*
23 *able circumstances arising as a result*
24 *of events beyond the control of the par-*
25 *ticipant or beneficiary.*

1 “(II) *LIMITATION ON DISTRIBUTIONS.*—*The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant’s or beneficiary’s assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).*

2 “(C) *DISABLED.*—*For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—*

3 “*(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result*

1 *in death or can be expected to last for a*
2 *continuous period of not less than 12*
3 *months, or*

4 “(ii) is, by reason of any medically de-
5 *terminable physical or mental impairment*
6 *which can be expected to result in death or*
7 *can be expected to last for a continuous pe-*
8 *riod of not less than 12 months, receiving*
9 *income replacement benefits for a period of*
10 *not less than 3 months under an accident*
11 *and health plan covering employees of the*
12 *participant’s employer.*

13 “(3) *INVESTMENT OPTIONS.*—*The requirements*
14 *of this paragraph are met if the plan provides that*
15 *the investment options a participant may elect under*
16 *the plan—*

17 “(A) *are comparable to the investment op-*
18 *tions which a participant may elect under the*
19 *defined contribution plan of the employer*
20 *which—*

21 “(i) *meets the requirement of section*
22 *401(a) and includes a trust exempt from*
23 *taxation under section 501(a), and*

24 “(ii) *has the fewest investment options,*
25 *or*

1 “(B) if there is no such defined contribution
2 plan, meet such requirements as the Secretary
3 may prescribe (including requirements limiting
4 such options to permissible investment options
5 specified by the Secretary).

6 “(4) ACCELERATION OF BENEFITS.—The require-
7 ments of this paragraph are met if the plan does not
8 permit the acceleration of the time or schedule of any
9 payment under the plan, except as provided by the
10 Secretary in regulations.

11 “(5) ELECTIONS.—

12 “(A) IN GENERAL.—The requirements of
13 this paragraph are met if the requirements of
14 subparagraphs (B) and (C) are met.

15 “(B) INITIAL DEFERRAL DECISION.—The
16 requirements of this subparagraph are met if the
17 plan provides that compensation for services per-
18 formed during a taxable year may be deferred at
19 the participant’s election only if the election to
20 defer such compensation is made during the pre-
21 ceding taxable year or at such other time as pro-
22 vided in regulations. In the case of the first year
23 in which a participant becomes eligible to par-
24 ticipate in the plan, such election may be made
25 with respect to services to be performed subse-

1 *quent to the election within 30 days after the*
2 *date the participant becomes eligible to partici-*
3 *pate in such plan.*

4 *“(C) CHANGES IN TIME AND FORM OF DIS-*
5 *TRIBUTION.—The requirements of this subpara-*
6 *graph are met if, in the case of a plan which*
7 *permits under a subsequent election a delay in*
8 *a payment or a change in the form of*
9 *payment—*

10 *“(i) the plan requires that such election*
11 *may not take effect until at least 12 months*
12 *after the date on which the election is made,*

13 *“(ii) in the case an election related to*
14 *a payment not described in clause (i), (iii),*
15 *or (vi) of paragraph (2)(A), the plan re-*
16 *quires that the first payment with respect to*
17 *which such election is made be deferred for*
18 *a period of not less than 5 years from the*
19 *date such payment would otherwise have*
20 *been made, and*

21 *“(iii) the plan requires that any elec-*
22 *tion related to a payment described in*
23 *paragraph (2)(A)(iv) may not be made less*
24 *than 12 months prior to the date of the first*
25 *scheduled payment under such paragraph.*

1 *A plan shall be treated as failing to meet the re-*
2 *quirements of this subparagraph if the plan per-*
3 *mits more than 1 subsequent election to delay*
4 *any payment.*

5 “(b) *RULES RELATING TO FUNDING.—*

6 “(1) *OFFSHORE PROPERTY IN A TRUST.—In the*
7 *case of assets set aside (directly or indirectly) in a*
8 *trust (or other arrangement determined by the Sec-*
9 *retary) for purposes of paying deferred compensation*
10 *under a nonqualified deferred compensation plan,*
11 *such assets shall be treated for purposes of section 83*
12 *as property transferred in connection with the per-*
13 *formance of services whether or not such assets are*
14 *available to satisfy claims of general creditors—*

15 “(A) *at the time set aside if such assets are*
16 *located outside of the United States, or*

17 “(B) *at the time transferred if such assets*
18 *are subsequently transferred outside of the*
19 *United States.*

20 *This paragraph shall not apply to assets located in*
21 *a foreign jurisdiction if substantially all of the serv-*
22 *ices to which the nonqualified deferred compensation*
23 *relates are performed in such jurisdiction.*

24 “(2) *EMPLOYER’S FINANCIAL HEALTH.—In the*
25 *case of a nonqualified deferred compensation plan,*

1 *there is a transfer of property within the meaning of*
2 *section 83 as of the earlier of—*

3 “(A) *the date on which the plan first pro-*
4 *vides that assets will become restricted to the*
5 *provision of benefits under the plan in connec-*
6 *tion with a change in the employer’s financial*
7 *health, or*

8 “(B) *the date on which assets are so re-*
9 *stricted.*

10 “(3) *INCOME INCLUSION FOR OFFSHORE TRUSTS*
11 *AND EMPLOYER’S FINANCIAL HEALTH.—For each tax-*
12 *able year that assets treated as transferred under this*
13 *subsection remain set aside in a trust or other ar-*
14 *rangement subject to paragraph (1) or (2), any in-*
15 *crease in value in, or earnings with respect to, such*
16 *assets shall be treated as an additional transfer of*
17 *property under this subsection (to the extent not pre-*
18 *viously included in income).*

19 “(4) *INTEREST ON TAX LIABILITY PAYABLE WITH*
20 *RESPECT TO TRANSFERRED PROPERTY.—*

21 “(A) *IN GENERAL.—If amounts are re-*
22 *quired to be included in gross income by reason*
23 *of paragraph (1) or (2) for a taxable year, the*
24 *tax imposed by this chapter for such taxable year*
25 *shall be increased by the sum of—*

1 “(i) the amount of interest determined
2 under subparagraph (B), and

3 “(ii) an amount equal to 10 percent of
4 the amounts required to be included in gross
5 income.

6 “(B) INTEREST.—For purposes of subpara-
7 graph (A), the interest determined under this
8 subparagraph for any taxable year is the
9 amount of interest at the underpayment rate on
10 the underpayments that would have occurred had
11 the amounts so required to be included in gross
12 income by paragraph (1) or (2) been includible
13 in gross income for the taxable year in which
14 first deferred or, if later, the first taxable year in
15 which such amounts are not subject to a substan-
16 tial risk of forfeiture.

17 “(c) NO INFERENCE ON EARLIER INCOME INCLU-
18 SION.—Nothing in this section shall be construed to prevent
19 the inclusion of amounts in gross income under any other
20 provision of this chapter or any other rule of law earlier
21 than the time provided in this section. Any amount in-
22 cluded in gross income under this section shall not be re-
23 quired to be included in gross income under any other pro-
24 vision of this chapter or any other rule of law later than
25 the time provided in this section.

1 “(d) *OTHER DEFINITIONS AND SPECIAL RULES.—For*
2 *purposes of this section—*

3 “(1) *NONQUALIFIED DEFERRED COMPENSATION*
4 *PLAN.—The term ‘nonqualified deferred compensation*
5 *plan’ means any plan that provides for the deferral*
6 *of compensation, other than—*

7 “(A) *a qualified employer plan, and*

8 “(B) *any bona fide vacation leave, sick*
9 *leave, compensatory time, disability pay, or*
10 *death benefit plan.*

11 “(2) *QUALIFIED EMPLOYER PLAN.—The term*
12 *‘qualified employer plan’ means—*

13 “(A) *any plan, contract, pension, account,*
14 *or trust described in subparagraph (A) or (B) of*
15 *section 219(g)(5), and*

16 “(B) *any eligible deferred compensation*
17 *plan (within the meaning of section 457(b)) of*
18 *an employer described in section 457(e)(1)(A).*

19 “(3) *PLAN INCLUDES ARRANGEMENTS, ETC.—The*
20 *term ‘plan’ includes any agreement or arrangement,*
21 *including an agreement or arrangement that includes*
22 *one person.*

23 “(4) *SUBSTANTIAL RISK OF FORFEITURE.—The*
24 *rights of a person to compensation are subject to a*
25 *substantial risk of forfeiture if such person’s rights to*

1 *such compensation are conditioned upon the future*
2 *performance of substantial services by any individual.*

3 “(5) *TREATMENT OF EARNINGS.*—*References to*
4 *deferred compensation shall be treated as including*
5 *references to income (whether actual or notional) at-*
6 *tributable to such compensation or such income.*

7 “(6) *EXCEPTION FOR NONELECTIVE DEFERRED*
8 *COMPENSATION.*—*This section shall not apply to any*
9 *nonelective deferred compensation to which section*
10 *457 does not apply by reason of section 457(e)(12),*
11 *but only if such compensation is provided under a*
12 *nonqualified deferred compensation plan which was*
13 *in existence on May 1, 2004, and which was pro-*
14 *viding nonelective deferred compensation described in*
15 *section 457(e)(12) on such date. If, after May 1, 2004,*
16 *a plan described in the preceding sentence adopts a*
17 *plan amendment which provides a material change*
18 *in the classes of individuals eligible to participate in*
19 *the plan, this paragraph shall not apply to any non-*
20 *elective deferred compensation provided under the*
21 *plan on or after the date of the adoption of the*
22 *amendment.*

23 “(e) *REGULATIONS.*—*The Secretary shall prescribe*
24 *such regulations as may be necessary or appropriate to*

1 carry out the purposes of this section, including
2 regulations—

3 “(1) providing for the determination of amounts
4 of deferral in the case of a nonqualified deferred com-
5 pensation plan which is a defined benefit plan,

6 “(2) relating to changes in the ownership and
7 control of a corporation or assets of a corporation for
8 purposes of subsection (a)(2)(A)(v),

9 “(3) exempting arrangements from the applica-
10 tion of subsection (b) if such arrangements will not
11 result in an improper deferral of United States tax
12 and will not result in assets being effectively beyond
13 the reach of creditors,

14 “(4) defining financial health for purposes of
15 subsection (b)(2), and

16 “(5) disregarding a substantial risk of forfeiture
17 in cases where necessary to carry out the purposes of
18 this section.”.

19 (b) *APPLICATION OF GOLDEN PARACHUTE PAYMENT*
20 *PROVISIONS.*—Section 280G of such Code (relating to gold-
21 en parachute payments) is amended by redesignating sub-
22 section (e) as subsection (f) and by inserting after subsection
23 (d) the following new subsection:

24 “(e) *SPECIAL RULES FOR CERTAIN PAYMENTS FROM*
25 *NONQUALIFIED DEFERRED COMPENSATION PLANS.*—

1 “(1) *IN GENERAL.*—Notwithstanding any other
2 *provision of this section, an applicable payment shall*
3 *be treated as an excess parachute payment for pur-*
4 *poses of this section and section 4999.*

5 “(2) *COORDINATION WITH OTHER PAYMENTS.*—

6 “(A) *APPLICABLE PAYMENTS WHICH ARE*
7 *PARACHUTE PAYMENTS.*—*If any applicable pay-*
8 *ment is a parachute payment (determined with-*
9 *out regard to subsection (b)(2)(A)(ii))—*

10 “(i) *except as provided in paragraph*
11 *(4), this section shall be applied to such*
12 *payment in the same manner as if this sub-*
13 *section had not been enacted, and*

14 “(ii) *if such application results in an*
15 *excess parachute payment, any tax under*
16 *section 4999 on the excess parachute pay-*
17 *ment shall be in addition to the tax im-*
18 *posed by reason of paragraph (1).*

19 “(B) *APPLICABLE PAYMENTS WHICH ARE*
20 *NOT PARACHUTE PAYMENTS.*—*An applicable*
21 *payment not described in subparagraph (A)*
22 *shall be taken into account in determining*
23 *whether any payment described in subparagraph*
24 *(A) or any payment which is not an applicable*

1 *payment is a parachute payment under sub-*
2 *section (b)(2).*

3 “(3) *APPLICABLE PAYMENT.*—*For purposes of*
4 *this subsection, the term ‘applicable payment’ means*
5 *any distribution (including any distribution treated*
6 *as a parachute payment without regard to this sub-*
7 *section) from a nonqualified deferred compensation*
8 *plan (as defined in section 409A(d)) which is made—*

9 “(A) *to a participant who is subject to the*
10 *requirements of section 16(a) of the Securities*
11 *Exchange Act of 1934, and*

12 “(B) *during the 1-year period following a*
13 *change in the ownership or effective control of*
14 *the corporation or in the ownership of a substan-*
15 *tial portion of the assets of the corporation.*

16 *Such terms shall not include any distribution by rea-*
17 *son of the death of the participant or the participant*
18 *becoming disabled (within the meaning of section*
19 *409A(a)(2)(C)).*

20 “(4) *NO DOUBLE COUNTING.*—*Under regulations,*
21 *proper adjustments shall be made in the application*
22 *of this subsection to prevent a deduction from being*
23 *disallowed more than once.”.*

24 *(c) W-2 FORMS.—*

1 (1) *IN GENERAL.*—Subsection (a) of section 6051
 2 (relating to receipts for employees) is amended by
 3 striking “and” at the end of paragraph (11), by strik-
 4 ing the period at the end of paragraph (12) and in-
 5 serting “, and”, and by inserting after paragraph
 6 (12) the following new paragraph:

7 “(13) the total amount of deferrals under a non-
 8 qualified deferred compensation plan (within the
 9 meaning of section 409A(d)).”.

10 (2) *THRESHOLD.*—Subsection (a) of section 6051
 11 is amended by adding at the end the following: “In
 12 the case of the amounts required to be shown by para-
 13 graph (13), the Secretary may (by regulation) estab-
 14 lish a minimum amount of deferrals below which
 15 paragraph (13) does not apply.”.

16 (d) *CONFORMING AND CLERICAL AMENDMENTS.*—

17 (1) Section 414(b) is amended by inserting
 18 “409A,” after “408(p),”.

19 (2) Section 414(c) is amended by inserting
 20 “409A,” after “408(p),”.

21 (3) The table of sections for such subpart A is
 22 amended by adding at the end the following new item:

 “Sec. 409A. Inclusion in gross income of deferred compensation
 under nonqualified deferred compensation plans.”.

23 (e) *EFFECTIVE DATE.*—

1 (1) *IN GENERAL.*—*The amendments made by*
2 *this section shall apply to amounts deferred in tax-*
3 *able years beginning after December 31, 2004.*

4 (2) *EARNINGS ATTRIBUTABLE TO AMOUNT PRE-*
5 *VIOUSLY DEFERRED.*—*The amendments made by this*
6 *section shall apply to earnings on deferred compensa-*
7 *tion only to the extent that such amendments apply*
8 *to such compensation.*

9 (f) *GUIDANCE RELATING TO CHANGE OF OWNERSHIP*
10 *OR CONTROL.*—*Not later than 90 days after the date of the*
11 *enactment of this Act, the Secretary of the Treasury shall*
12 *issue guidance on what constitutes a change in ownership*
13 *or effective control for purposes of section 409A of the Inter-*
14 *nal Revenue Code of 1986, as added by this section.*

15 (g) *GUIDANCE RELATING TO TERMINATION OF CER-*
16 *TAIN EXISTING ARRANGEMENTS.*—*Not later than 90 days*
17 *after the date of the enactment of this Act, the Secretary*
18 *of the Treasury shall issue guidance providing a limited*
19 *period during which an individual participating in a non-*
20 *qualified deferred compensation plan adopted on or before*
21 *December 31, 2004, may, without violating the require-*
22 *ments of paragraphs (2), (3), (4), and (5) of section 409A(a)*
23 *of the Internal Revenue Code of 1986 (as added by this sec-*
24 *tion), terminate participation or cancel an outstanding de-*
25 *ferral election with regard to amounts earned after Decem-*

1 ber 31, 2004, if such amounts are includible in income as
2 earned.

3 **SEC. 672. PROHIBITION ON DEFERRAL OF GAIN FROM THE**
4 **EXERCISE OF STOCK OPTIONS AND RE-**
5 **STRICTED STOCK GAINS THROUGH DE-**
6 **FERRED COMPENSATION ARRANGEMENTS.**

7 (a) *IN GENERAL.*—Section 83 (relating to property
8 transferred in connection with performance of services) is
9 amending by adding at the end the following new sub-
10 section:

11 “(i) *PROHIBITION ON ADDITIONAL DEFERRAL*
12 *THROUGH DEFERRED COMPENSATION ARRANGEMENTS.*—

13 *If a taxpayer exchanges—*

14 “(1) *an option to purchase employer securities—*

15 “(A) *to which subsection (a) applies, or*

16 “(B) *which is described in subsection (e)(3),*

17 *or*

18 “(2) *employer securities or any other property*

19 *based on employer securities transferred to the tax-*

20 *payer,*

21 *for a right to receive future payments, then, notwith-*

22 *standing any other provision of this title, there shall be in-*

23 *cluded in gross income for the taxable year of the exchange*

24 *an amount equal to the present value of such right (or such*

25 *other amount as the Secretary may by regulations specify).*

1 *For purposes of this subsection, the term ‘employer securi-*
2 *ties’ includes any security issued by the employer.”.*

3 (b) *CONTROLLED GROUP RULES.*—Section 414(t)(2) is
4 *amended by inserting “83(i),” after “79,”.*

5 (c) *EFFECTIVE DATE.*—The amendments made by this
6 *section shall apply to any exchange after December 31,*
7 *2004.*

8 **SEC. 673. INCREASE IN WITHHOLDING FROM SUPPLE-**
9 **MENTAL WAGE PAYMENTS IN EXCESS OF**
10 **\$1,000,000.**

11 (a) *IN GENERAL.*—If an employer elects under Treas-
12 *ury Regulation 31.3402(g)–1 to determine the amount to*
13 *be deducted and withheld from any supplemental wage pay-*
14 *ment by using a flat percentage rate, the rate to be used*
15 *in determining the amount to be so deducted and withheld*
16 *shall not be less than 28 percent (or the corresponding rate*
17 *in effect under section 1(i)(2) of the Internal Revenue Code*
18 *of 1986 for taxable years beginning in the calendar year*
19 *in which the payment is made).*

20 (b) *SPECIAL RULE FOR LARGE PAYMENTS.*—

21 (1) *IN GENERAL.*—Notwithstanding subsection
22 (a), if the supplemental wage payment, when added
23 to all such payments previously made by the employer
24 to the employee during the calendar year, exceeds
25 \$1,000,000, the rate used with respect to such excess

1 *shall be equal to the maximum rate of tax in effect*
 2 *under section 1 of such Code for taxable years begin-*
 3 *ning in such calendar year.*

4 (2) *AGGREGATION.*—*All persons treated as a sin-*
 5 *gle employer under subsection (a) or (b) of section 52*
 6 *of the Internal Revenue Code of 1986 shall be treated*
 7 *as a single employer for purposes of this subsection.*

8 (c) *CONFORMING AMENDMENT.*—*Section 13273 of the*
 9 *Revenue Reconciliation Act of 1993 (Public Law 103–66)*
 10 *is repealed.*

11 (d) *EFFECTIVE DATE.*—*The provisions of, and the*
 12 *amendment made by, this section shall apply to payments*
 13 *made after December 31, 2003.*

14 **SEC. 674. TREATMENT OF SALE OF STOCK ACQUIRED PUR-**
 15 **SUANT TO EXERCISE OF STOCK OPTIONS TO**
 16 **COMPLY WITH CONFLICT-OF-INTEREST RE-**
 17 **QUIREMENTS.**

18 (a) *IN GENERAL.*—*Section 421 of the Internal Revenue*
 19 *Code of 1986 (relating to general rules for certain stock op-*
 20 *tions) is amended by adding at the end the following new*
 21 *subsection:*

22 “(d) *CERTAIN SALES TO COMPLY WITH CONFLICT-OF-*
 23 *INTEREST REQUIREMENTS.*—*If—*

24 “(1) *a share of stock is transferred to an eligible*
 25 *person (as defined in section 1043(b)(1)) pursuant to*

1 *such person's exercise of an option to which this part*
2 *applies, and*

3 *“(2) such share is disposed of by such person*
4 *pursuant to a certificate of divestiture (as defined in*
5 *section 1043(b)(2)),*

6 *such disposition shall be treated as meeting the require-*
7 *ments of section 422(a)(1) or 423(a)(1), whichever is appli-*
8 *cable.”*

9 *(b) EFFECTIVE DATE.—The amendment made by this*
10 *section shall apply to sales after the date of the enactment*
11 *of this Act.*

12 **SEC. 675. APPLICATION OF BASIS RULES TO EMPLOYER**
13 **AND EMPLOYEE CONTRIBUTIONS ON BEHALF**
14 **OF NONRESIDENT ALIENS.**

15 *(a) IN GENERAL.—Section 72 (relating to annuities*
16 *and certain proceeds of endowment and life insurance con-*
17 *tracts) is amended by redesignating subsection (w) as sub-*
18 *section (x) and by inserting after subsection (v) the fol-*
19 *lowing new subsection:*

20 *“(w) APPLICATION OF BASIS RULES TO EMPLOYER*
21 *AND EMPLOYEE CONTRIBUTIONS MADE ON BEHALF OF*
22 *NONRESIDENT ALIENS.—*

23 *“(1) IN GENERAL.—Notwithstanding any other*
24 *provision of this section, for purposes of determining*
25 *the portion of any distribution which is includible in*

1 *gross income of a distributee who is a citizen or resi-*
2 *dent of the United States, the investment in the con-*
3 *tract shall not include any applicable nontaxable con-*
4 *tributions.*

5 “(2) *APPLICABLE NONTAXABLE CONTRIBUTION.*—
6 *For purposes of this subsection, the term ‘applicable*
7 *nontaxable contribution’ means any employer or em-*
8 *ployee contribution—*

9 “(A) *which was made with respect to com-*
10 *pen-sation for labor or personal services by an*
11 *employee who, at the time the services were per-*
12 *formed, was a nonresident alien for purposes of*
13 *the laws of the United States in effect at such*
14 *time, but only if such compensation is treated as*
15 *from sources without the United States, and*

16 “(B) *which was not subject to income tax*
17 *under the laws of the United States or any for-*
18 *ign country.*

19 “(3) *REGULATIONS.*—*The Secretary shall pre-*
20 *scribe such regulations as may be necessary to carry*
21 *out the provisions of this subsection, including regula-*
22 *tions treating contributions as not subject to tax*
23 *under the laws of any foreign country where appro-*
24 *priate to carry out the purposes of this subsection.”.*

1 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to distributions on or after the date of*
 3 *the enactment of this Act.*

4 **TITLE VII—EXTENSIONS OF**
 5 **CERTAIN EXPIRING PROVISIONS**
 6 **Subtitle A—Extensions**

7 **SEC. 701. PARITY IN THE APPLICATION OF CERTAIN LIMITS**
 8 **TO MENTAL HEALTH BENEFITS.**

9 (a) *IN GENERAL.*—*Section 9812(f) is amended—*

10 (1) *by striking “and” at the end of paragraph*

11 (1), *and*

12 (2) *by striking paragraph (2) and inserting the*
 13 *following new paragraphs:*

14 “(2) *on or after January 1, 2004, and before the*
 15 *date of the enactment of the Jumpstart Our Business*
 16 *Strength (JOBS) Act, and*

17 “(3) *after December 31, 2005.*”.

18 (b) *ERISA.*—*Section 712(f) of the Employee Retire-*
 19 *ment Income Security Act of 1974 (29 U.S.C. 1185a(f)) is*
 20 *amended by striking “on or after December 31, 2004” and*
 21 *inserting “after December 31, 2005”.*

22 (c) *PHSA.*—*Section 2705(f) of the Public Health Serv-*
 23 *ice Act (42 U.S.C. 300gg-5(f)) is amended by striking “on*
 24 *or after December 31, 2004” and inserting “after December*
 25 *31, 2005”.*

1 (d) *EFFECTIVE DATES.*—

2 (1) *SUBSECTION (a).*—*The amendments made by*
 3 *subsection (a) shall apply to benefits for services fur-*
 4 *nished on or after December 31, 2003.*

5 (2) *SUBSECTIONS (b) AND (c).*—*The amendments*
 6 *made by subsections (b) and (c) shall apply to bene-*
 7 *fits for services furnished on or after December 31,*
 8 *2004.*

9 **SEC. 702. MODIFICATIONS TO WORK OPPORTUNITY CREDIT**
 10 **AND WELFARE-TO-WORK CREDIT.**

11 (a) *PERMANENT EXTENSION OF CREDIT.*—

12 (1) *IN GENERAL.*—*Section 51(c) is amended by*
 13 *striking paragraph (4).*

14 (2) *LONG-TERM FAMILY ASSISTANCE RECIPI-*
 15 *ENTS.*—

16 (A) *IN GENERAL.*—*Section 51A is amended*
 17 *by striking subsection (f).*

18 (B) *CONFORMING AMENDMENTS.*—

19 (i) *The heading for section 51A is*
 20 *amended by striking “TEMPORARY”.*

21 (ii) *The item relating to section 51A in*
 22 *the table of sections for subpart F of part IV*
 23 *of subchapter A of chapter 1 is amended by*
 24 *striking “Temporary incentives” and insert-*
 25 *ing “Incentives”.*

1 (b) *ELIGIBILITY OF EX-FELONS DETERMINED WITH-*
 2 *OUT REGARD TO FAMILY INCOME.*—Paragraph (4) of sec-
 3 *tion 51(d) is amended by adding “and” at the end of sub-*
 4 *paragraph (A), by striking “, and” at the end of subpara-*
 5 *graph (B) and inserting a period, and by striking all that*
 6 *follows subparagraph (B).*

7 (c) *INCREASE IN MAXIMUM AGE FOR ELIGIBILITY OF*
 8 *FOOD STAMP RECIPIENTS.*—Clause (i) of section
 9 *51(d)(8)(A) is amended by striking “25” and inserting*
 10 *“40”.*

11 (d) *INCREASE IN MAXIMUM AGE FOR DESIGNATED*
 12 *COMMUNITY RESIDENTS.*—

13 (1) *IN GENERAL.*—Paragraph (5) of section
 14 *51(d) is amended to read as follows:*

15 “(5) *DESIGNATED COMMUNITY RESIDENTS.*—

16 “(A) *IN GENERAL.*—The term ‘designated
 17 *community resident’ means any individual who*
 18 *is certified by the designated local agency—*

19 “(i) *as having attained age 18 but not*
 20 *age 40 on the hiring date, and*

21 “(ii) *as having his principal place of*
 22 *abode within an empowerment zone, enter-*
 23 *prise community, or renewal community.*

24 “(B) *INDIVIDUAL MUST CONTINUE TO RE-*
 25 *SIDE IN ZONE OR COMMUNITY.*—*In the case of a*

1 *designated community resident, the term ‘quali-*
2 *fied wages’ shall not include wages paid or in-*
3 *curring for services performed while the individ-*
4 *ual’s principal place of abode is outside an em-*
5 *powerment zone, enterprise community, or re-*
6 *newal community.’”*

7 (2) *CONFORMING AMENDMENT.*—Subparagraph
8 (D) of section 51(d)(1) is amended to read as follows:

9 “(D) a designated community resident,”.

10 (e) *EFFECTIVE DATES.*—

11 (1) *EXTENSION OF CREDITS.*—The amendments
12 made by subsection (a) shall apply to individuals who
13 begin work for the employer after December 31, 2003.

14 (2) *MODIFICATIONS.*—The amendments made by
15 subsections (b), (c), and (d) shall apply to individuals
16 who begin work for the employer after December 31,
17 2004.

18 **SEC. 703. CONSOLIDATION OF WORK OPPORTUNITY CREDIT**

19 **WITH WELFARE-TO-WORK CREDIT.**

20 (a) *IN GENERAL.*—Paragraph (1) of section 51(d) is
21 amended by striking “or” at the end of subparagraph (G),
22 by striking the period at the end of subparagraph (H) and
23 inserting “, or”, and by adding at the end the following
24 new subparagraph:

1 “(I) a long-term family assistance recipi-
2 ent.”

3 (b) *LONG-TERM FAMILY ASSISTANCE RECIPIENT.*—
4 Subsection (d) of section 51 is amended by redesignating
5 paragraphs (10) through (12) as paragraphs (11) through
6 (13), respectively, and by inserting after paragraph (9) the
7 following new paragraph:

8 “(10) *LONG-TERM FAMILY ASSISTANCE RECIPI-*
9 *ENT.*—The term ‘long-term family assistance recipi-

10 ent’ means any individual who is certified by the des-

11 ignated local agency—

12 “(A) as being a member of a family receiv-

13 ing assistance under a IV–A program (as defined

14 in paragraph (2)(B)) for at least the 18-month

15 period ending on the hiring date,

16 “(B)(i) as being a member of a family re-

17 ceiving such assistance for 18 months beginning

18 after August 5, 1997, and

19 “(ii) as having a hiring date which is not

20 more than 2 years after the end of the earliest

21 such 18-month period, or

22 “(C)(i) as being a member of a family

23 which ceased to be eligible for such assistance by

24 reason of any limitation imposed by Federal or

1 *State law on the maximum period such assist-*
 2 *ance is payable to a family, and*

3 “(i) *as having a hiring date which is not*
 4 *more than 2 years after the date of such ces-*
 5 *sation.*”

6 (c) *INCREASED CREDIT FOR EMPLOYMENT OF LONG-*
 7 *TERM FAMILY ASSISTANCE RECIPIENTS.—Section 51 is*
 8 *amended by inserting after subsection (d) the following new*
 9 *subsection:*

10 “(e) *CREDIT FOR EMPLOYMENT OF LONG-TERM FAM-*
 11 *ILY ASSISTANCE RECIPIENTS.—*

12 “(1) *IN GENERAL.—With respect to the employ-*
 13 *ment of a long-term family assistance recipient—*

14 “(A) *the amount of the work opportunity*
 15 *credit determined under this section for the tax-*
 16 *able year shall include 50 percent of the qualified*
 17 *second-year wages for such year, and*

18 “(B) *in lieu of applying subsection (b)(3),*
 19 *the amount of the qualified first-year wages, and*
 20 *the amount of qualified second-year wages, which*
 21 *may be taken into account with respect to such*
 22 *a recipient shall not exceed \$10,000 per year.*

23 “(2) *QUALIFIED SECOND-YEAR WAGES.—For*
 24 *purposes of this subsection, the term ‘qualified second-*
 25 *year wages’ means qualified wages—*

1 “(A) which are paid to a long-term family
2 assistance recipient, and

3 “(B) which are attributable to service ren-
4 dered during the 1-year period beginning on the
5 day after the last day of the 1-year period with
6 respect to such recipient determined under sub-
7 section (b)(2).

8 “(3) *SPECIAL RULES FOR AGRICULTURAL AND*
9 *RAILWAY LABOR.*—If such recipient is an employee to
10 whom subparagraph (A) or (B) of subsection (h)(1)
11 applies, rules similar to the rules of such subpara-
12 graphs shall apply except that—

13 “(A) such subparagraph (A) shall be ap-
14 plied by substituting ‘\$10,000’ for ‘\$6,000’, and

15 “(B) such subparagraph (B) shall be ap-
16 plied by substituting ‘\$833.33’ for ‘\$500.’”

17 (d) *REPEAL OF SEPARATE WELFARE-TO-WORK CRED-*
18 *IT.*—

19 (1) *IN GENERAL.*—Section 51A is hereby re-
20 pealed.

21 (2) *CLERICAL AMENDMENT.*—The table of sec-
22 tions for subpart F of part IV of subchapter A of
23 chapter 1 is amended by striking the item relating to
24 section 51A.

1 (e) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to individuals who begin work for the*
3 *employer after December 31, 2004.*

4 **SEC. 704. QUALIFIED ZONE ACADEMY BONDS.**

5 (a) *IN GENERAL.*—*Paragraph (1) of section 1397E(e)*
6 *is amended by striking “and 2003” and inserting “2003,*
7 *2004, and 2005”.*

8 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
9 *section (a) shall apply to obligations issued after December*
10 *31, 2003.*

11 **SEC. 705. COVER OVER OF TAX ON DISTILLED SPIRITS.**

12 (a) *IN GENERAL.*—*Paragraph (1) of section 7652(f) is*
13 *amended by striking “January 1, 2004” and inserting*
14 *“January 1, 2006”.*

15 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
16 *section (a) shall apply to articles brought into the United*
17 *States after December 31, 2003.*

18 **SEC. 706. DEDUCTION FOR CORPORATE DONATIONS OF SCI-**
19 **ENTIFIC PROPERTY AND COMPUTER TECH-**
20 **NOLOGY.**

21 (a) *SCIENTIFIC PROPERTY USED FOR RESEARCH.*—

22 (1) *IN GENERAL.*—*Clause (ii) of section*
23 *170(e)(4)(B) (defining qualified research contribu-*
24 *tions) is amended by inserting “or assembled” after*
25 *“constructed”.*

1 (2) *CONFORMING AMENDMENT.*—*Clause (iii) of*
2 *section 170(e)(4)(B) is amended by inserting “or as-*
3 *sembling” after “construction”.*

4 (b) *COMPUTER TECHNOLOGY AND EQUIPMENT FOR*
5 *EDUCATIONAL PURPOSES.*—

6 (1) *IN GENERAL.*—*Clause (ii) of section*
7 *170(e)(6)(B) is amended by inserting “or assembled”*
8 *after “constructed” and “or assembling” after “con-*
9 *struction”.*

10 (2) *SPECIAL RULE EXTENDED.*—*Section*
11 *170(e)(6)(G) is amended by striking “2003” and in-*
12 *serting “2005”.*

13 (3) *CONFORMING AMENDMENTS.*—*Subparagraph*
14 *(D) of section 170(e)(6) is amended by inserting “or*
15 *assembled” after “constructed” and “or assembling”*
16 *after “construction”.*

17 (c) *EFFECTIVE DATE.*—*The amendments made by this*
18 *section shall apply to contributions made in taxable years*
19 *beginning after December 31, 2003.*

20 **SEC. 707. DEDUCTION FOR CERTAIN EXPENSES OF SCHOOL**
21 **TEACHERS.**

22 (a) *IN GENERAL.*—*Subparagraph (D) of section*
23 *62(a)(2) is amended by striking “or 2003” and inserting*
24 *“, 2003, 2004, or 2005”.*

1 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
2 *section (a) shall apply to expenses paid or incurred in tax-*
3 *able years beginning after December 31, 2003.*

4 **SEC. 708. EXPENSING OF ENVIRONMENTAL REMEDIATION**
5 **COSTS.**

6 (a) *EXTENSION OF TERMINATION DATE.*—*Subsection*
7 *(h) of section 198 is amended by striking “December 31,*
8 *2003” and inserting “December 31, 2005”.*

9 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
10 *section (a) shall apply to expenditures paid or incurred*
11 *after December 31, 2003.*

12 **SEC. 709. EXPANSION OF CERTAIN NEW YORK LIBERTY**
13 **ZONE BENEFITS.**

14 (a) *EXTENSION OF TAX-EXEMPT BOND FINANCING.*—
15 *Subparagraph (D) of section 1400L(d)(2) is amended by*
16 *striking “2005” and inserting “2006”.*

17 (b) *CLARIFICATION OF BONDS ELIGIBLE FOR ADVANCE*
18 *REFUNDING.*—*Section 1400L(e)(2)(B) (relating to bonds*
19 *described) is amended by striking “, or” and inserting “or*
20 *the Municipal Assistance Corporation, or”.*

21 (c) *ELECTION OUT TECHNICAL AMENDMENT.*—*Sub-*
22 *section (c) of section 1400L is amended by adding at the*
23 *end the following new paragraph:*

1 “(5) *ELECTION OUT.*—For purposes of this sub-
2 section, rules similar to the rules of section
3 168(k)(2)(C)(iii) shall apply.”.

4 (d) *EFFECTIVE DATE.*—The amendments made by sub-
5 sections (b) and (c) shall take effect as if included in the
6 amendments made by section 301 of the Job Creation and
7 Worker Assistance Act of 2002.

8 **SEC. 710. REPEAL OF REDUCTION OF DEDUCTIONS FOR MU-**
9 **TUAL LIFE INSURANCE COMPANIES.**

10 (a) *IN GENERAL.*—Section 809 of the Internal Revenue
11 Code of 1986 (relating to reductions in certain deduction
12 of mutual life insurance companies) is hereby repealed.

13 (b) *CONFORMING AMENDMENTS.*—

14 (1) Subsections (a)(2)(B) and (b)(1)(B) of sec-
15 tion 807 of such Code are each amended by striking
16 “the sum of (i)” and by striking “plus (ii) any excess
17 described in section 809(a)(2) for the taxable year,”.

18 (2)(A) The last sentence of section 807(d)(1) of
19 such Code is amended by striking “section
20 809(b)(4)(B)” and inserting “paragraph (6)”.

21 (B) Subsection (d) of section 807 of such Code is
22 amended by adding at the end the following new
23 paragraph:

24 “(6) *STATUTORY RESERVES.*—The term ‘statu-
25 tory reserves’ means the aggregate amount set forth in

1 *the annual statement with respect to items described*
2 *in section 807(c). Such term shall not include any re-*
3 *serve attributable to a deferred and uncollected pre-*
4 *mium if the establishment of such reserve is not per-*
5 *mitted under section 811(c).”*

6 (3) *Subsection (c) of section 808 of such Code is*
7 *amended to read as follows:*

8 “(c) *AMOUNT OF DEDUCTION.*—*The deduction for pol-*
9 *icyholder dividends for any taxable year shall be an amount*
10 *equal to the policyholder dividends paid or accrued during*
11 *the taxable year.”*

12 (4) *Subparagraph (A) of section 812(b)(3) of*
13 *such Code is amended by striking “sections 808 and*
14 *809” and inserting “section 808”.*

15 (5) *Subsection (c) of section 817 of such Code is*
16 *amended by striking “(other than section 809)”.*

17 (6) *Subsection (c) of section 842 of such Code is*
18 *amended by striking paragraph (3) and by redesign-*
19 *ating paragraph (4) as paragraph (3).*

20 (7) *The table of sections for subpart C of part I*
21 *of subchapter L of chapter 1 of such Code is amended*
22 *by striking the item relating to section 809.*

23 (c) *EFFECTIVE DATE.*—*The amendments made by this*
24 *section shall apply to taxable years beginning after Decem-*
25 *ber 31, 2003.*

1 **SEC. 711. TAX INCENTIVES FOR INVESTMENT IN THE DIS-**
2 **TRICT OF COLUMBIA.**

3 (a) *DESIGNATION OF ZONE.*—Subsection (f) of section
4 1400 is amended by striking “December 31, 2003” both
5 places it appears and inserting “December 31, 2005”.

6 (b) *TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.*—
7 Subsection (b) of section 1400A is amended by striking “De-
8 cember 31, 2003” and inserting “December 31, 2005”.

9 (c) *ZERO PERCENT CAPITAL GAINS RATE.*—

10 (1) *IN GENERAL.*—Subsection (b) of section
11 1400B is amended by striking “January 1, 2004”
12 each place it appears and inserting “January 1,
13 2006”.

14 (2) *CONFORMING AMENDMENTS.*—

15 (A) Section 1400B(e)(2) is amended—

16 (i) by striking “December 31, 2008”
17 and inserting “December 31, 2010”, and

18 (ii) by striking “2008” in the heading
19 and inserting “2010”.

20 (B) Section 1400B(g)(2) is amended by
21 striking “December 31, 2008” and inserting “De-
22 cember 31, 2010”.

23 (C) Section 1400F(d) is amended by strik-
24 ing “December 31, 2008” and inserting “Decem-
25 ber 31, 2010”.

1 (d) *FIRST-TIME HOMEBUYER CREDIT*.—Subsection (i)
 2 of section 1400C is amended by striking “January 1, 2004”
 3 and inserting “January 1, 2006”.

4 (e) *EFFECTIVE DATES*.—

5 (1) *IN GENERAL*.—Except as provided in para-
 6 graph (2), the amendments made by this section shall
 7 take effect on January 1, 2004.

8 (2) *TAX-EXEMPT ECONOMIC DEVELOPMENT*
 9 *BONDS*.—The amendment made by subsection (b)
 10 shall apply to obligations issued after the date of the
 11 enactment of this Act.

12 **SEC. 712. DISCLOSURE OF TAX INFORMATION TO FACILI-**
 13 **TATE COMBINED EMPLOYMENT TAX REPORT-**
 14 **ING.**

15 (a) *IN GENERAL*.—Paragraph (5) of section 6103(d)
 16 (relating to disclosure to State tax officials and State and
 17 local law enforcement agencies) is amended to read as fol-
 18 lows:

19 “(5) *DISCLOSURE FOR COMBINED EMPLOYMENT*
 20 *TAX REPORTING*.—The Secretary may disclose tax-
 21 payer identity information and signatures to any
 22 agency, body, or commission of any State for the pur-
 23 pose of carrying out with such agency, body, or com-
 24 mission a combined Federal and State employment
 25 tax reporting program approved by the Secretary.

1 Subsections (a)(2) and (p)(4) and sections 7213 and
 2 7213A shall not apply with respect to disclosures or
 3 inspections made pursuant to this paragraph.”.

4 (b) *EFFECTIVE DATE.*—The amendment made by this
 5 section shall take effect on the date of the enactment of this
 6 Act.

7 **SEC. 713. ALLOWANCE OF NONREFUNDABLE PERSONAL**
 8 **CREDITS AGAINST REGULAR AND MINIMUM**
 9 **TAX LIABILITY.**

10 (a) *IN GENERAL.*—Paragraph (2) of section 26(a) is
 11 amended—

12 (1) by striking “RULE FOR 2000, 2001, 2002, AND
 13 2003.—” and inserting “RULE FOR TAXABLE YEARS
 14 2000 THROUGH 2004.—”, and

15 (2) by striking “or 2003” and inserting “2003,
 16 or 2004”.

17 (b) *CONFORMING PROVISIONS.*—

18 (1) Section 904(i), as redesignated by this Act,
 19 is amended by striking “or 2003” and inserting
 20 “2003, or 2004”.

21 (2) The amendments made by sections 201(b),
 22 202(f), and 618(b) of the Economic Growth and Tax
 23 Relief Reconciliation Act of 2001 shall not apply to
 24 taxable years beginning during 2004.

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to taxable years beginning after Decem-*
3 *ber 31, 2003.*

4 **SEC. 714. CREDIT FOR ELECTRICITY PRODUCED FROM CER-**
5 **TAIN RENEWABLE RESOURCES.**

6 (a) *IN GENERAL.*—*Subparagraphs (A), (B), and (C)*
7 *of section 45(c)(3) are each amended by striking “January*
8 *1, 2004” and inserting “January 1, 2005”.*

9 (b) *EFFECTIVE DATE.*—*The amendments made by sub-*
10 *section (a) shall apply to facilities placed in service after*
11 *December 31, 2003.*

12 **SEC. 715. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLE-**
13 **TION FOR OIL AND NATURAL GAS PRODUCED**
14 **FROM MARGINAL PROPERTIES.**

15 (a) *IN GENERAL.*—*Subparagraph (H) of section*
16 *613A(c)(6) is amended by striking “January 1, 2004” and*
17 *inserting “January 1, 2005”.*

18 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
19 *section (a) shall apply to taxable years beginning after De-*
20 *cember 31, 2003.*

21 **SEC. 716. INDIAN EMPLOYMENT TAX CREDIT.**

22 Section 45A(f) (relating to termination) is amended
23 by striking “December 31, 2004” and inserting “December
24 31, 2005”.

1 **SEC. 717. ACCELERATED DEPRECIATION FOR BUSINESS**
2 **PROPERTY ON INDIAN RESERVATION.**

3 *Section 168(j)(8) (relating to termination) is amended*
4 *by striking “December 31, 2004” and inserting “December*
5 *31, 2005”.*

6 **SEC. 718. DISCLOSURE OF RETURN INFORMATION RELAT-**
7 **ING TO STUDENT LOANS.**

8 *Section 6103(l)(13)(D) (relating to termination) is*
9 *amended by striking “December 31, 2004” and inserting*
10 *“December 31, 2005”.*

11 **SEC. 719. EXTENSION OF TRANSFERS OF EXCESS PENSION**
12 **ASSETS TO RETIREE HEALTH ACCOUNTS.**

13 *(a) AMENDMENTS OF ERISA.—*

14 *(1) Section 101(e)(3) of the Employee Retirement*
15 *Income Security Act of 1974 (29 U.S.C. 1021(e)(3))*
16 *is amended by striking “Pension Funding Equity Act*
17 *of 2004” and inserting “Jumpstart Our Business*
18 *Strength (JOBS) Act”.*

19 *(2) Section 403(c)(1) of such Act (29 U.S.C.*
20 *1103(c)(1)) is amended by striking “Pension Funding*
21 *Equity Act of 2004” and inserting “Jumpstart Our*
22 *Business Strength (JOBS) Act”.*

23 *(3) Paragraph (13) of section 408(b) of such Act*
24 *(29 U.S.C. 1108(b)(3)) is amended by striking “Pen-*
25 *sion Funding Equity Act of 2004” and inserting*
26 *“Jumpstart Our Business Strength (JOBS) Act”.*

1 **(b) MINIMUM COST REQUIREMENTS.—**

2 **(1) IN GENERAL.—***Section 420(c)(3)(E) is*
3 *amended by adding at the end the following new*
4 *clause:*

5 **“(ii) INSIGNIFICANT COST REDUCTIONS**
6 **PERMITTED.—**

7 **“(I) IN GENERAL.—***An eligible*
8 *employer shall not be treated as failing*
9 *to meet the requirements of this para-*
10 *graph for any taxable year if, in lieu*
11 *of any reduction of retiree health cov-*
12 *erage permitted under the regulations*
13 *prescribed under clause (i), the em-*
14 *ployer reduces applicable employer cost*
15 *by an amount not in excess of the re-*
16 *duction in costs which would have oc-*
17 *curred if the employer had made the*
18 *maximum permissible reduction in re-*
19 *tiree health coverage under such regu-*
20 *lations. In applying such regulations*
21 *to any subsequent taxable year, any re-*
22 *duction in applicable employer cost*
23 *under this clause shall be treated as if*
24 *it were an equivalent reduction in re-*
25 *tiree health coverage.*

1 “(II) *ELIGIBLE EMPLOYER.*—For
2 purposes of subclause (I), an employer
3 shall be treated as an eligible employer
4 for any taxable year if, for the pre-
5 ceding taxable year, the qualified cur-
6 rent retiree health liabilities of the em-
7 ployer were at least 5 percent of the
8 gross receipts of the employer. For pur-
9 poses of this subclause, the rules of
10 paragraphs (2), (3)(B), and (3)(C) of
11 section 448(c) shall apply in deter-
12 mining the amount of an employer’s
13 gross receipts.”.

14 (2) *CONFORMING AMENDMENT.*—Section
15 420(c)(3)(E) is amended by striking “The Secretary”
16 and inserting:

17 “(i) *IN GENERAL.*—The Secretary”.

18 (3) *EFFECTIVE DATE.*—The amendments made
19 by this subsection shall apply to taxable years ending
20 after the date of the enactment of this Act.

21 **SEC. 720. ELIMINATION OF PHASEOUT OF CREDIT FOR**
22 **QUALIFIED ELECTRIC VEHICLES.**

23 (a) *IN GENERAL.*—Section 30(b) is amended by strik-
24 ing paragraph (2) and by redesignating paragraph (3) as
25 paragraph (2).

1 (b) *CONFORMING AMENDMENTS.*—

2 (1) *Section 53(d)(1)(B)(iii) is amended by strik-*
 3 *ing “section 30(b)(3)(B)” and inserting “section*
 4 *30(b)(2)(B)”.*

5 (2) *Section 55(c)(2) is amended by striking*
 6 *“30(b)(3)” and inserting “30(b)(2)”.*

7 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 8 *section shall apply to property placed in service after De-*
 9 *cember 31, 2003.*

10 **SEC. 721. ELIMINATION OF PHASEOUT FOR DEDUCTION**
 11 **FOR CLEAN-FUEL VEHICLE PROPERTY.**

12 (a) *IN GENERAL.*—*Paragraph (1) of section 179A(b)*
 13 *is amended to read as follows:*

14 “(1) *QUALIFIED CLEAN-FUEL VEHICLE PROP-*
 15 *ERTY.*—*The cost which may be taken into account*
 16 *under subsection (a)(1)(A) with respect to any motor*
 17 *vehicle shall not exceed—*

18 “(A) *in the case of a motor vehicle not de-*
 19 *scribed in subparagraph (B) or (C), \$2,000,*

20 “(B) *in the case of any truck or van with*
 21 *a gross vehicle weight rating greater than 10,000*
 22 *pounds but not greater than 26,000 pounds,*
 23 *\$5,000, or*

24 “(C) *\$50,000 in the case of—*

1 “(i) a truck or van with a gross vehicle
2 weight rating greater than 26,000 pounds,
3 or

4 “(ii) any bus which has a seating ca-
5 pacity of at least 20 adults (not including
6 the driver).”.

7 (b) *EFFECTIVE DATE.*—The amendment made by sub-
8 section (a) shall apply to property placed in service after
9 December 31, 2003.

10 **Subtitle B—Revenue Provisions**

11 **SEC. 731. DONATIONS OF MOTOR VEHICLES, BOATS, AND** 12 **AIRPLANES.**

13 (a) *IN GENERAL.*—Subsection (f) of section 170 (relat-
14 ing to disallowance of deduction in certain cases and spe-
15 cial rules) is amended by adding at the end the following
16 new paragraph:

17 “(11) *CONTRIBUTIONS OF USED MOTOR VEHI-*
18 *CLES, BOATS, AND AIRPLANES.*—

19 “(A) *IN GENERAL.*—In the case of a con-
20 tribution of a qualified vehicle in excess of
21 \$500—

22 “(i) paragraph (8) shall not apply and
23 no deduction shall be allowed under sub-
24 section (a) for such contribution unless the
25 taxpayer substantiates the contribution by a

1 *contemporaneous written acknowledgement*
2 *of the contribution by the donee organiza-*
3 *tion that meets the requirements of subpara-*
4 *graph (B) and includes the acknowledge-*
5 *ment with the taxpayer's return of tax*
6 *which includes the deduction, and*

7 “(ii) *if the organization sells the vehi-*
8 *cle without any significant intervening use*
9 *or material improvement of such vehicle by*
10 *the organization, the amount of the deduc-*
11 *tion allowed under subsection (a) shall not*
12 *exceed the gross proceeds received from such*
13 *sale.*

14 “(B) *CONTENT OF ACKNOWLEDGEMENT.—*
15 *An acknowledgement meets the requirements of*
16 *this subparagraph if it includes the following in-*
17 *formation:*

18 “(i) *The name and taxpayer identi-*
19 *fication number of the donor.*

20 “(ii) *The vehicle identification number*
21 *or similar number.*

22 “(iii) *In the case of a qualified vehicle*
23 *to which subparagraph (A)(ii) applies and*
24 *which is sold by the donee organization—*

1 “(I) a certification that the vehi-
2 cle was sold in an arm’s length trans-
3 action between unrelated parties,

4 “(II) the gross proceeds from the
5 sale, and

6 “(III) that the deductible amount
7 may not exceed the amount of such
8 gross proceeds.

9 “(iv) In the case of a qualified vehicle
10 to which subparagraph (A)(ii) does not
11 apply—

12 “(I) a certification of the intended
13 use or material improvement of the ve-
14 hicle and the intended duration of such
15 use, and

16 “(II) a certification that the vehi-
17 cle would not be transferred in ex-
18 change for money, other property, or
19 services before completion of such use
20 or improvement.

21 “(C) CONTEMPORANEOUS.—For purposes of
22 subparagraph (A), an acknowledgement shall be
23 considered to be contemporaneous if the donee or-
24 ganization provides it within 30 days of—

25 “(i) the sale of the qualified vehicle, or

1 “(ii) in the case of an acknowledge-
2 ment including a certification described in
3 subparagraph (B)(iv), the contribution of
4 the qualified vehicle.

5 “(D) INFORMATION TO SECRETARY.—A
6 donee organization required to provide an ac-
7 knowledgement under this paragraph shall pro-
8 vide to the Secretary the information contained
9 in the acknowledgement. Such information shall
10 be provided at such time and in such manner as
11 the Secretary may prescribe.

12 “(E) QUALIFIED VEHICLE.—For purposes of
13 this paragraph, the term ‘qualified vehicle’
14 means any—

15 “(i) self-propelled vehicle manufactured
16 primarily for use on public streets, roads,
17 and highways,

18 “(ii) boat, or

19 “(iii) airplane.

20 Such term shall not include any property which
21 is described in section 1221(a)(1).

22 “(F) REGULATIONS OR OTHER GUIDANCE.—
23 The Secretary shall prescribe such regulations or
24 other guidance as may be necessary to carry out
25 the purposes of this paragraph.”.

1 (b) *PENALTY FOR FRAUDULENT ACKNOWLEDG-*
2 *MENTS.—*

3 (1) *IN GENERAL.—Part I of subchapter B of*
4 *chapter 68 (relating to assessable penalties), as*
5 *amended by section 882(c) of this Act, is amended*
6 *adding at the end the following new section:*

7 **“SEC. 6720A. FRAUDULENT ACKNOWLEDGMENTS WITH RE-**
8 **SPECT TO DONATIONS OF MOTOR VEHICLES,**
9 **BOATS, AND AIRPLANES.**

10 *“Any donee organization required under section*
11 *170(f)(11)(A) to furnish a contemporaneous written ac-*
12 *knowledgment to a donor which knowingly furnishes a false*
13 *or fraudulent acknowledgment, or which knowingly fails to*
14 *furnish such acknowledgment in the manner, at the time,*
15 *and showing the information required under section*
16 *170(f)(11), or regulations prescribed thereunder, shall for*
17 *each such act, or for each such failure, be subject to a pen-*
18 *alty equal to—*

19 *“(1) in the case of an acknowledgment with re-*
20 *spect to a qualified vehicle to which section*
21 *170(f)(11)(A)(ii) applies, the greater of the value of*
22 *the tax benefit to the donor or the gross proceeds from*
23 *the sale of such vehicle, and*

24 *“(2) in the case of an acknowledgment with re-*
25 *spect to any other qualified vehicle to which section*

1 170(f)(11) applies, the greater of the value of the tax
2 benefit to the donor or \$5,000.”.

3 (2) *CONFORMING AMENDMENT.*—The table of sec-
4 tions for part I of subchapter B of chapter 68, as
5 amended by section 882(c) of this Act, is amended by
6 adding at the end the following new item:

“Sec. 6720A. *Fraudulent acknowledgments with respect to dona-
tions of motor vehicles, boats, and airplanes.*”.

7 (c) *EFFECTIVE DATE.*—The amendments made by this
8 section shall apply to contributions after June 30, 2004.

9 **SEC. 732. ADDITION OF VACCINES AGAINST INFLUENZA TO**
10 **LIST OF TAXABLE VACCINES.**

11 (a) *IN GENERAL.*—Section 4132(a)(1) (defining tax-
12 able vaccine), as amended by this Act, is amended adding
13 at the end the following new subparagraph:

14 “(N) *Any trivalent vaccine against influ-*
15 *enza.*”.

16 (b) *EFFECTIVE DATE.*—

17 (1) *SALES, ETC.*—The amendment made by this
18 section shall apply to sales and uses on or after the
19 later of—

20 (A) *the first day of the first month which*
21 *begins more than 4 weeks after the date of the en-*
22 *actment of this Act, or*

23 (B) *the date on which the Secretary of*
24 *Health and Human Services lists any vaccine*

1 *against influenza for purposes of compensation*
 2 *for any vaccine-related injury or death through*
 3 *the Vaccine Injury Compensation Trust Fund.*

4 (2) *DELIVERIES.*—*For purposes of paragraph*
 5 *(1) and section 4131 of the Internal Revenue Code of*
 6 *1986, in the case of sales on or before the effective date*
 7 *described in such paragraph for which delivery is*
 8 *made after such date, the delivery date shall be con-*
 9 *sidered the sale date.*

10 **SEC. 733. TREATMENT OF CONTINGENT PAYMENT CON-**
 11 **VERTIBLE DEBT INSTRUMENTS.**

12 (a) *IN GENERAL.*—*Section 1275(d) (relating to regula-*
 13 *tion authority) is amended—*

14 (1) *by striking “The Secretary” and inserting*
 15 *the following:*

16 “(1) *IN GENERAL.*—*The Secretary”, and*

17 (2) *by adding at the end the following new para-*
 18 *graph:*

19 “(2) *TREATMENT OF CONTINGENT PAYMENT CON-*
 20 *VERTIBLE DEBT.*—

21 “(A) *IN GENERAL.*—*In the case of a debt in-*
 22 *strument which—*

23 “(i) *is convertible into stock of the*
 24 *issuing corporation, into stock or debt of a*
 25 *related party (within the meaning of section*

1 267(b) or 707(b)(1)), or into cash or other
2 property in an amount equal to the approx-
3 imate value of such stock or debt, and

4 “(ii) provides for contingent payments,
5 any regulations which require original issue dis-
6 count to be determined by reference to the com-
7 parable yield of a noncontingent fixed rate debt
8 instrument shall be applied as requiring that
9 such comparable yield be determined by reference
10 to a noncontingent fixed rate debt instrument
11 which is convertible into stock.

12 “(B) SPECIAL RULE.—For purposes of sub-
13 paragraph (A), the comparable yield shall be de-
14 termined without taking into account the yield
15 resulting from the conversion of a debt instru-
16 ment into stock.”.

17 (b) CROSS REFERENCE.—Section 163(e)(6) (relating
18 to cross references) is amended by adding at the end the
19 following:

20 “For the treatment of contingent payment con-
21 vertible debt, see section 1275(d)(2).”.

22 (c) EFFECTIVE DATE.—The amendments made by this
23 section shall apply to debt instruments issued after the date
24 of the enactment of this Act.

1 **SEC. 734. MODIFICATION OF CONTINUING LEVY ON PAY-**
 2 **MENTS TO FEDERAL VENDERS.**

3 (a) *IN GENERAL.*—Section 6331(h) (relating to con-
 4 tinuing levy on certain payments) is amended by adding
 5 at the end the following new paragraph:

6 “(3) *INCREASE IN LEVY FOR CERTAIN PAY-*
 7 *MENTS.*—Paragraph (1) shall be applied by sub-
 8 stituting ‘100 percent’ for ‘15 percent’ in the case of
 9 any specified payment due to a vendor of goods or
 10 services sold or leased to the Federal Government.”.

11 (b) *EFFECTIVE DATE.*—The amendment made by this
 12 section shall take effect on the date of the enactment of this
 13 Act.

14 **TITLE VIII—ENERGY TAX**
 15 **INCENTIVES**

16 **SEC. 800. SHORT TITLE.**

17 This title may be cited as the “Energy Tax Incentives
 18 Act”.

19 **Subtitle A—Renewable Electricity**
 20 **Production Tax Credit**

21 **SEC. 801. EXTENSION AND EXPANSION OF CREDIT FOR**
 22 **ELECTRICITY PRODUCED FROM CERTAIN RE-**
 23 **NEWABLE RESOURCES.**

24 (a) *EXPANSION OF QUALIFIED ENERGY RE-*
 25 *SOURCES.*—Subsection (c) of section 45 (relating to elec-

1 *tricity produced from certain renewable resources) is*
 2 *amended to read as follows:*

3 “(c) *QUALIFIED ENERGY RESOURCES.*—*For purposes*
 4 *of this section—*

5 “(1) *IN GENERAL.*—*The term ‘qualified energy*
 6 *resources’ means—*

7 “(A) *wind,*

8 “(B) *closed-loop biomass,*

9 “(C) *open-loop biomass,*

10 “(D) *geothermal energy,*

11 “(E) *solar energy,*

12 “(F) *small irrigation power,*

13 “(G) *biosolids and sludge, and*

14 “(H) *municipal solid waste.*

15 “(2) *CLOSED-LOOP BIOMASS.*—*The term ‘closed-*
 16 *loop biomass’ means any organic material from a*
 17 *plant which is planted exclusively for purposes of*
 18 *being used at a qualified facility to produce elec-*
 19 *tricity.*

20 “(3) *OPEN-LOOP BIOMASS.*—

21 “(A) *IN GENERAL.*—*The term ‘open-loop*
 22 *biomass’ means—*

23 “(i) *any agricultural livestock waste*
 24 *nutrients, or*

1 “(i) any solid, nonhazardous, cel-
2 lulosic waste material which is segregated
3 from other waste materials and which is de-
4 rived from—

5 “(I) any of the following forest-re-
6 lated resources: mill and harvesting
7 residues, precommercial thinnings,
8 slash, and brush; but not including
9 spent chemicals from pulp manufac-
10 turing,

11 “(II) solid wood waste materials,
12 including waste pallets, crates,
13 dunnage, manufacturing and construc-
14 tion wood wastes (other than pressure-
15 treated, chemically-treated, or painted
16 wood wastes), and landscape or right-
17 of-way tree trimmings, but not includ-
18 ing municipal solid waste, gas derived
19 from the biodegradation of solid waste,
20 or paper which is commonly recycled,
21 or

22 “(III) agriculture sources, includ-
23 ing orchard tree crops, vineyard,
24 grain, legumes, sugar, and other crop
25 by-products or residues.

1 “(B) *AGRICULTURAL LIVESTOCK WASTE NU-*
2 *TRIENTS.—*

3 “(i) *IN GENERAL.—The term ‘agricul-*
4 *tural livestock waste nutrients’ means agri-*
5 *cultural livestock manure and litter, includ-*
6 *ing wood shavings, straw, rice hulls, and*
7 *other bedding material for the disposition of*
8 *manure.*

9 “(ii) *AGRICULTURAL LIVESTOCK.—The*
10 *term ‘agricultural livestock’ includes bovine,*
11 *swine, poultry, and sheep.*

12 “(C) *EXCEPTIONS.—The term ‘open-loop*
13 *biomass’ does not include—*

14 “(i) *closed-loop biomass, or*

15 “(ii) *biomass burned in conjunction*
16 *with fossil fuel (cofiring) beyond such fossil*
17 *fuel required for startup and flame sta-*
18 *bilization.*

19 “(4) *GEOHERMAL ENERGY.—The term ‘geo-*
20 *thermal energy’ means energy derived from a geo-*
21 *thermal deposit (within the meaning of section*
22 *613(e)(2)).*

23 “(5) *SMALL IRRIGATION POWER.—The term*
24 *‘small irrigation power’ means power—*

1 “(A) generated without any dam or im-
2 poundment of water through an irrigation sys-
3 tem canal or ditch, and

4 “(B) the installed capacity of which is less
5 than 5 megawatts.

6 “(6) *BIOSOLIDS AND SLUDGE*.—The term ‘bio-
7 solids and sludge’ means the residue or solids removed
8 in the treatment of commercial, industrial, or munic-
9 ipal wastewater.

10 “(7) *MUNICIPAL SOLID WASTE*.—The term ‘mu-
11 nicipal solid waste’ has the meaning given the term
12 ‘solid waste’ under section 2(27) of the Solid Waste
13 Disposal Act (42 U.S.C. 6903).”.

14 (b) *EXTENSION AND EXPANSION OF QUALIFIED FA-*
15 *CILITIES*.—

16 (1) *IN GENERAL*.—Section 45 is amended by re-
17 designating subsection (d) as subsection (e) and by
18 inserting after subsection (c) the following new sub-
19 section:

20 “(d) *QUALIFIED FACILITIES*.—For purposes of this
21 section—

22 “(1) *WIND FACILITY*.—In the case of a facility
23 using wind to produce electricity, the term ‘qualified
24 facility’ means any facility owned by the taxpayer

1 *which is originally placed in service after December*
2 *31, 1993, and before January 1, 2007.*

3 “(2) *CLOSED-LOOP BIOMASS FACILITY.*—

4 “(A) *IN GENERAL.*—*In the case of a facility*
5 *using closed-loop biomass to produce electricity,*
6 *the term ‘qualified facility’ means any facility—*

7 “(i) *owned by the taxpayer which is*
8 *originally placed in service after December*
9 *31, 1992, and before January 1, 2007, or*

10 “(ii) *owned by the taxpayer which be-*
11 *fore January 1, 2007, is originally placed*
12 *in service and modified to use closed-loop*
13 *biomass to co-fire with coal, with other bio-*
14 *mass, or with both, but only if the modifica-*
15 *tion is approved under the Biomass Power*
16 *for Rural Development Programs or is part*
17 *of a pilot project of the Commodity Credit*
18 *Corporation as described in 65 Fed. Reg.*
19 *63052.*

20 “(B) *SPECIAL RULES.*—*In the case of a*
21 *qualified facility described in subparagraph*
22 *(A)(ii)—*

23 “(i) *the 10-year period referred to in*
24 *subsection (a) shall be treated as beginning*
25 *no earlier than January 1, 2005,*

1 “(ii) the amount of the credit deter-
2 mined under subsection (a) with respect to
3 the facility shall be an amount equal to the
4 amount determined without regard to this
5 clause multiplied by the ratio of the thermal
6 content of the closed-loop biomass used in
7 such facility to the thermal content of all
8 fuels used in such facility, and

9 “(iii) if the owner of such facility is
10 not the producer of the electricity, the per-
11 son eligible for the credit allowable under
12 subsection (a) shall be the lessee or the oper-
13 ator of such facility.

14 “(3) OPEN-LOOP BIOMASS FACILITY.—

15 “(A) IN GENERAL.—In the case of a facility
16 using open-loop biomass to produce electricity
17 for grid sale in excess of its internal require-
18 ments, the term ‘qualified facility’ means any fa-
19 cility owned by the taxpayer which—

20 “(i) in the case of a facility using agri-
21 cultural livestock waste nutrients, is origi-
22 nally placed in service after December 31,
23 2004, and before January 1, 2007, and

1 “(ii) in the case of any other facility,
2 is originally placed in service before Janu-
3 ary 1, 2005.

4 “(B) *SPECIAL RULES FOR PREEFFECTIVE*
5 *DATE FACILITIES.*—*In the case of any facility*
6 *described in subparagraph (A)(ii) which is*
7 *placed in service before January 1, 2005—*

8 “(i) subsection (a)(1) shall be applied
9 by substituting ‘1.2 cents’ for ‘1.5 cents’,
10 and

11 “(ii) the 5-year period beginning on
12 January 1, 2005, shall be substituted for the
13 10-year period in subsection (a)(2)(A)(ii).

14 “(C) *CREDIT ELIGIBILITY.*—*In the case of*
15 *any facility described in subparagraph (A), if*
16 *the owner of such facility is not the producer of*
17 *the electricity, the person eligible for the credit*
18 *allowable under subsection (a) shall be the lessee*
19 *or the operator of such facility.*

20 “(4) *GEOTHERMAL OR SOLAR ENERGY FACIL-*
21 *ITY.*—*In the case of a facility using geothermal or*
22 *solar energy to produce electricity, the term ‘qualified*
23 *facility’ means any facility owned by the taxpayer*
24 *which is originally placed in service after December*
25 *31, 2004, and before January 1, 2007. Such term*

1 shall not include any property described in section
2 48(a)(3) the basis of which is taken into account by
3 the taxpayer for purposes of determining the energy
4 credit under section 48.

5 “(5) *SMALL IRRIGATION POWER FACILITY.*—*In*
6 *the case of a facility using small irrigation power to*
7 *produce electricity, the term ‘qualified facility’ means*
8 *any facility owned by the taxpayer which is origi-*
9 *nally placed in service after December 31, 2004, and*
10 *before January 1, 2007.*

11 “(6) *BIOSOLIDS AND SLUDGE FACILITY.*—*In the*
12 *case of a facility using waste heat from the inciner-*
13 *ation of biosolids and sludge to produce electricity,*
14 *the term ‘qualified facility’ means any facility owned*
15 *by the taxpayer which is originally placed in service*
16 *after December 31, 2004, and before January 1, 2007.*
17 *Such term shall not include any property described in*
18 *section 48(a)(3) the basis of which is taken into ac-*
19 *count for purposes of the energy credit under section*
20 *46.*

21 “(7) *MUNICIPAL SOLID WASTE FACILITY.*—

22 “(A) *IN GENERAL.*—*In the case of a facility*
23 *or unit incinerating municipal solid waste to*
24 *produce electricity, the term ‘qualified facility’*
25 *means any facility or unit owned by the tax-*

1 *payer which is originally placed in service after*
2 *December 31, 2004, and before January 1, 2007.*

3 “(B) *SPECIAL RULE.*—*In the case of any fa-*
4 *ility or unit described in subparagraph (A), the*
5 *5-year period beginning on the date the facility*
6 *or unit was originally placed in service shall be*
7 *substituted for the 10-year period in subsection*
8 *(a)(2)(A)(ii).*

9 “(C) *CREDIT ELIGIBILITY.*—*In the case of*
10 *any qualified facility described in subparagraph*
11 *(A), if the owner of such facility is not the pro-*
12 *ducer of the electricity, the person eligible for the*
13 *credit allowable under subsection (a) shall be the*
14 *lessee or the operator of such facility.”*

15 (2) *NO CREDIT FOR CERTAIN PRODUCTION.*—*Sec-*
16 *tion 45(e) (relating to definitions and special rules),*
17 *as redesignated by paragraph (1), is amended by*
18 *striking paragraph (6) and inserting the following*
19 *new paragraph:*

20 “(6) *OPERATIONS INCONSISTENT WITH SOLID*
21 *WASTE DISPOSAL ACT.*—*In the case of a qualified fa-*
22 *ility described in subsection (d)(6)(A), subsection (a)*
23 *shall not apply to electricity produced at such facility*
24 *during any taxable year if, during a portion of such*
25 *year, there is a certification in effect by the Adminis-*

1 *trator of the Environmental Protection Agency that*
2 *such facility was permitted to operate in a manner*
3 *inconsistent with section 4003(d) of the Solid Waste*
4 *Disposal Act (42 U.S.C. 6943(d)).”.*

5 (3) *CONFORMING AMENDMENT.—Section 45(e),*
6 *as so redesignated, is amended by striking “subsection*
7 *(c)(3)(A)” in paragraph (7)(A)(i) and inserting “sub-*
8 *section (d)(1)”.*

9 (c) *CREDIT RATE FOR ELECTRICITY PRODUCED FROM*
10 *NEW FACILITIES.—*

11 (1) *IN GENERAL.—Section 45(a) is amended by*
12 *adding at the end the following new flush sentence:*
13 *“In the case of electricity produced after December 31, 2004,*
14 *at any qualified facility originally placed in service after*
15 *such date, paragraph (1) shall be applied by substituting*
16 *‘1.8 cents’ for ‘1.5 cents’.”.*

17 (2) *NEW RATE NOT SUBJECT TO INFLATION AD-*
18 *JUSTMENT.—Section 45(b)(2) (relating to credit and*
19 *phaseout adjustment based on inflation) is amended*
20 *by adding at the end the following new sentence:*
21 *“This paragraph shall not apply to any amount*
22 *which is substituted for the 1.5 cent amount in sub-*
23 *section (a) by reason of any provision of this sec-*
24 *tion.”.*

1 (d) *ELIMINATION OF CERTAIN CREDIT REDUC-*
2 *TIONS.*—Section 45(b)(3)(A) (relating to credit reduced for
3 grants, tax-exempt bonds, subsidized energy financing, and
4 other credits) is amended—

5 (1) by striking clause (ii),

6 (2) by redesignating clauses (iii) and (iv) as
7 clauses (ii) and (iii),

8 (3) by inserting “(other than proceeds of an issue
9 of State or local government obligations the interest
10 on which is exempt from tax under section 103, or
11 any loan, debt, or other obligation incurred under
12 subchapter I of chapter 31 of title 7 of the Rural Elec-
13 trification Act of 1936 (7 U.S.C. 901 et seq.), as in
14 effect on the date of the enactment of the Energy Tax
15 Incentives Act)” after “project” in clause (ii) (as so
16 redesignated),

17 (4) by adding at the end the following new sen-
18 tence: “This paragraph shall not apply with respect
19 to any facility described in subsection (d)(2)(A)(ii).”,
20 and

21 (5) by striking “TAX-EXEMPT BONDS,” in the
22 heading and inserting “CERTAIN”.

23 (e) *TREATMENT OF PERSONS NOT ABLE TO USE EN-*
24 *TIRE CREDIT.*—Section 45(e) (relating to definitions and

1 *special rules), as redesignated by subsection (b)(1), is*
2 *amended by adding at the end the following new paragraph:*

3 “(8) *TREATMENT OF PERSONS NOT ABLE TO USE*
4 *ENTIRE CREDIT.—*

5 “(A) *ALLOWANCE OF CREDIT.—*

6 “(i) *IN GENERAL.—Except as otherwise*
7 *provided in this subsection—*

8 “(I) *any credit allowable under*
9 *subsection (a) with respect to a quali-*
10 *fied facility owned by a person de-*
11 *scribed in clause (ii) may be trans-*
12 *ferred or used as provided in this*
13 *paragraph, and*

14 “(II) *the determination as to*
15 *whether the credit is allowable shall be*
16 *made without regard to the tax-exempt*
17 *status of the person.*

18 “(ii) *PERSONS DESCRIBED.—A person*
19 *is described in this clause if the person is—*

20 “(I) *an organization described in*
21 *section 501(c)(12)(C) and exempt from*
22 *tax under section 501(a),*

23 “(II) *an organization described in*
24 *section 1381(a)(2)(C),*

1 “(III) a public utility (as defined
2 in section 136(c)(2)(B)), which is ex-
3 empt from income tax under this sub-
4 title,

5 “(IV) any State or political sub-
6 division thereof, the District of Colum-
7 bia, any possession of the United
8 States, or any agency or instrumen-
9 tality of any of the foregoing,

10 “(V) any Indian tribal govern-
11 ment (within the meaning of section
12 7871) or any agency or instrumen-
13 tality thereof, or

14 “(VI) the Tennessee Valley Au-
15 thority.

16 “(B) TRANSFER OF CREDIT.—

17 “(i) IN GENERAL.—A person described
18 in subclause (I), (II), (III), (IV), or (V) of
19 subparagraph (A)(i) may transfer any
20 credit to which subparagraph (A)(i) applies
21 through an assignment to any other person
22 not described in subparagraph (A)(i). Such
23 transfer may be revoked only with the con-
24 sent of the Secretary.

1 “(ii) *REGULATIONS.—The Secretary*
2 *shall prescribe such regulations as necessary*
3 *to ensure that any credit described in clause*
4 *(i) is assigned once and not reassigned by*
5 *such other person.*

6 “(iii) *TRANSFER PROCEEDS TREATED*
7 *AS ARISING FROM ESSENTIAL GOVERNMENT*
8 *FUNCTION.—Any proceeds derived by a per-*
9 *son described in subclause (III), (IV), or (V)*
10 *of subparagraph (A)(ii) from the transfer of*
11 *any credit under clause (i) shall be treated*
12 *as arising from the exercise of an essential*
13 *government function.*

14 “(C) *USE OF CREDIT AS AN OFFSET.—Not-*
15 *withstanding any other provision of law, in the*
16 *case of a person described in subclause (I), (II),*
17 *or (V) of subparagraph (A)(ii), any credit to*
18 *which subparagraph (A)(i) applies may be ap-*
19 *plied by such person, to the extent provided by*
20 *the Secretary of Agriculture, as a prepayment of*
21 *any loan, debt, or other obligation the entity has*
22 *incurred under subchapter I of chapter 31 of title*
23 *7 of the Rural Electrification Act of 1936 (7*
24 *U.S.C. 901 et seq.), as in effect on the date of the*
25 *enactment of the Energy Tax Incentives Act.*

1 “(D) *USE BY TVA.*—

2 “(i) *IN GENERAL.*—*Notwithstanding*
3 *any other provision of law, in the case of a*
4 *person described in subparagraph*
5 *(A)(i)(VI), any credit to which subpara-*
6 *graph (A)(i) applies may be applied as a*
7 *credit against the payments required to be*
8 *made in any fiscal year under section*
9 *15d(e) of the Tennessee Valley Authority Act*
10 *of 1933 (16 U.S.C. 831n-4(e)) as an annual*
11 *return on the appropriations investment*
12 *and an annual repayment sum.*

13 “(ii) *TREATMENT OF CREDITS.*—*The*
14 *aggregate amount of credits described in*
15 *subparagraph (A)(i) with respect to such*
16 *person shall be treated in the same manner*
17 *and to the same extent as if such credits*
18 *were a payment in cash and shall be ap-*
19 *plied first against the annual return on the*
20 *appropriations investment.*

21 “(iii) *CREDIT CARRYOVER.*—*With re-*
22 *spect to any fiscal year, if the aggregate*
23 *amount of credits described subparagraph*
24 *(A)(i) with respect to such person exceeds*
25 *the aggregate amount of payment obliga-*

1 *tions described in clause (i), the excess*
2 *amount shall remain available for applica-*
3 *tion as credits against the amounts of such*
4 *payment obligations in succeeding fiscal*
5 *years in the same manner as described in*
6 *this subparagraph.*

7 *“(E) CREDIT NOT INCOME.—Any transfer*
8 *under subparagraph (B) or use under subpara-*
9 *graph (C) of any credit to which subparagraph*
10 *(A)(i) applies shall not be treated as income for*
11 *purposes of section 501(c)(12).*

12 *“(F) TREATMENT OF UNRELATED PER-*
13 *SONS.—For purposes of subsection (a)(2)(B),*
14 *sales of electricity among and between persons*
15 *described in subparagraph (A)(ii) shall be treat-*
16 *ed as sales between unrelated parties.”.*

17 *(f) EFFECTIVE DATES.—*

18 *(1) IN GENERAL.—Except as otherwise provided*
19 *in this subsection, the amendments made by this sec-*
20 *tion shall apply to electricity produced and sold after*
21 *December 31, 2004, in taxable years ending after such*
22 *date.*

23 *(2) CERTAIN BIOMASS FACILITIES.—With respect*
24 *to any facility described in section 45(d)(3)(A)(ii) of*
25 *the Internal Revenue Code of 1986, as added by sub-*

1 *section (b)(1), which is placed in service before the*
2 *date of the enactment of this Act, the amendments*
3 *made by this section shall apply to electricity pro-*
4 *duced and sold after December 31, 2004, in taxable*
5 *years ending after such date.*

6 (3) *CREDIT RATE FOR NEW FACILITIES.—The*
7 *amendments made by subsection (c) shall apply to*
8 *electricity produced and sold after December 31, 2004,*
9 *in taxable years ending after such date.*

10 (4) *NONAPPLICATION OF AMENDMENTS TO*
11 *PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—*
12 *The amendments made by this section shall not apply*
13 *with respect to any poultry waste facility (within the*
14 *meaning of section 45(c)(3)(C), as in effect on Decem-*
15 *ber 31, 2004) placed in service on or before such date.*

16 ***Subtitle B—Alternative Motor***
17 ***Vehicles and Fuels Incentives***

18 **SEC. 811. ALTERNATIVE MOTOR VEHICLE CREDIT.**

19 (a) *IN GENERAL.—Subpart B of part IV of subchapter*
20 *A of chapter 1 (relating to foreign tax credit, etc.), as*
21 *amended by this Act, is amended by adding at the end the*
22 *following new section:*

1 **“SEC. 30C. ALTERNATIVE MOTOR VEHICLE CREDIT.**

2 “(a) *ALLOWANCE OF CREDIT.*—*There shall be allowed*
3 *as a credit against the tax imposed by this chapter for the*
4 *taxable year an amount equal to the sum of—*

5 “(1) *the new qualified fuel cell motor vehicle*
6 *credit determined under subsection (b),*

7 “(2) *the new qualified hybrid motor vehicle cred-*
8 *it determined under subsection (c), and*

9 “(3) *the new qualified alternative fuel motor ve-*
10 *hicle credit determined under subsection (d).*

11 “(b) *NEW QUALIFIED FUEL CELL MOTOR VEHICLE*
12 *CREDIT.*—

13 “(1) *IN GENERAL.*—*For purposes of subsection*
14 *(a), the new qualified fuel cell motor vehicle credit de-*
15 *termined under this subsection with respect to a new*
16 *qualified fuel cell motor vehicle placed in service by*
17 *the taxpayer during the taxable year is—*

18 “(A) *\$4,000, if such vehicle has a gross ve-*
19 *hicle weight rating of not more than 8,500*
20 *pounds,*

21 “(B) *\$10,000, if such vehicle has a gross ve-*
22 *hicle weight rating of more than 8,500 pounds*
23 *but not more than 14,000 pounds,*

24 “(C) *\$20,000, if such vehicle has a gross ve-*
25 *hicle weight rating of more than 14,000 pounds*
26 *but not more than 26,000 pounds, and*

1 “(D) \$40,000, if such vehicle has a gross ve-
2 hicle weight rating of more than 26,000 pounds.

3 “(2) INCREASE FOR FUEL EFFICIENCY.—

4 “(A) IN GENERAL.—The amount determined
5 under paragraph (1)(A) with respect to a new
6 qualified fuel cell motor vehicle which is a pas-
7 senger automobile or light truck shall be in-
8 creased by—

9 “(i) \$1,000, if such vehicle achieves at
10 least 150 percent but less than 175 percent
11 of the 2002 model year city fuel economy,

12 “(ii) \$1,500, if such vehicle achieves at
13 least 175 percent but less than 200 percent
14 of the 2002 model year city fuel economy,

15 “(iii) \$2,000, if such vehicle achieves
16 at least 200 percent but less than 225 per-
17 cent of the 2002 model year city fuel econ-
18 omy,

19 “(iv) \$2,500, if such vehicle achieves at
20 least 225 percent but less than 250 percent
21 of the 2002 model year city fuel economy,

22 “(v) \$3,000, if such vehicle achieves at
23 least 250 percent but less than 275 percent
24 of the 2002 model year city fuel economy,

1 “(vi) \$3,500, if such vehicle achieves at
 2 least 275 percent but less than 300 percent
 3 of the 2002 model year city fuel economy,
 4 and

5 “(vii) \$4,000, if such vehicle achieves
 6 at least 300 percent of the 2002 model year
 7 city fuel economy.

8 “(B) 2002 MODEL YEAR CITY FUEL ECON-
 9 OMY.—For purposes of subparagraph (A), the
 10 2002 model year city fuel economy with respect
 11 to a vehicle shall be determined in accordance
 12 with the following tables:

13 “(i) In the case of a passenger auto-
 14 mobile:

“If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

15 “(ii) In the case of a light truck:

“If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg

<i>“If vehicle inertia weight class is:</i>	<i>The 2002 model year city fuel economy is:</i>
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

1 “(C) *VEHICLE INERTIA WEIGHT CLASS.*—

2 *For purposes of subparagraph (B), the term ‘ve-*
 3 *hicle inertia weight class’ has the same meaning*
 4 *as when defined in regulations prescribed by the*
 5 *Administrator of the Environmental Protection*
 6 *Agency for purposes of the administration of title*
 7 *II of the Clean Air Act (42 U.S.C. 7521 et seq.).*

8 “(3) *NEW QUALIFIED FUEL CELL MOTOR VEHI-*
 9 *CLE.*—*For purposes of this subsection, the term ‘new*
 10 *qualified fuel cell motor vehicle’ means a motor*
 11 *vehicle—*

12 “(A) *which is propelled by power derived*
 13 *from 1 or more cells which convert chemical en-*
 14 *ergy directly into electricity by combining oxy-*
 15 *gen with hydrogen fuel which is stored on board*
 16 *the vehicle in any form and may or may not re-*
 17 *quire reformation prior to use,*

18 “(B) *which, in the case of a passenger auto-*
 19 *mobile or light truck—*

1 “(i) for 2002 and later model vehicles,
2 has received a certificate of conformity
3 under the Clean Air Act and meets or ex-
4 ceeds the equivalent qualifying California
5 low emission vehicle standard under section
6 243(e)(2) of the Clean Air Act for that make
7 and model year, and

8 “(ii) for 2004 and later model vehicles,
9 has received a certificate that such vehicle
10 meets or exceeds the Bin 5 Tier II emission
11 level established in regulations prescribed by
12 the Administrator of the Environmental
13 Protection Agency under section 202(i) of
14 the Clean Air Act for that make and model
15 year vehicle,

16 “(C) the original use of which commences
17 with the taxpayer,

18 “(D) which is acquired for use or lease by
19 the taxpayer and not for resale, and

20 “(E) which is made by a manufacturer.

21 “(c) NEW QUALIFIED HYBRID MOTOR VEHICLE CRED-

22 IT.—

23 “(1) IN GENERAL.—For purposes of subsection
24 (a), the new qualified hybrid motor vehicle credit de-
25 termined under this subsection with respect to a new

1 *qualified hybrid motor vehicle placed in service by the*
 2 *taxpayer during the taxable year is the credit amount*
 3 *determined under paragraph (2).*

4 *“(2) CREDIT AMOUNT.—*

5 *“(A) IN GENERAL.—The credit amount de-*
 6 *termined under this paragraph shall be deter-*
 7 *mined in accordance with the following tables:*

8 *“(i) In the case of a new qualified hy-*
 9 *brid motor vehicle which is a passenger*
 10 *automobile, medium duty passenger vehicle,*
 11 *or light truck and which provides the fol-*
 12 *lowing percentage of the maximum avail-*
 13 *able power:*

“If percentage of the maximum available power is:

<i>available power is:</i>	<i>The credit amount is:</i>
<i>At least 4 percent but less than 10 percent</i>	<i>\$250</i>
<i>At least 10 percent but less than 20 percent</i>	<i>\$500</i>
<i>At least 20 percent but less than 30 percent</i>	<i>\$750</i>
<i>At least 30 percent</i>	<i>\$1,000.</i>

14 *“(ii) In the case of a new qualified hy-*
 15 *brid motor vehicle which is a heavy duty*
 16 *hybrid motor vehicle and which provides the*
 17 *following percentage of the maximum avail-*
 18 *able power:*

19 *“(I) If such vehicle has a gross ve-*
 20 *hicle weight rating of not more than*
 21 *14,000 pounds:*

“If percentage of the maximum available power is:

<i>available power is:</i>	<i>The credit amount is:</i>
<i>At least 20 percent but less than 30 percent</i>	<i>\$1,000</i>

“If percentage of the maximum available power is:

The credit amount is:

At least 30 percent but less than 40 percent	\$1,750
At least 40 percent but less than 50 percent	\$2,000
At least 50 percent but less than 60 percent	\$2,250
At least 60 percent	\$2,500.

1 “(II) If such vehicle has a gross
2 vehicle weight rating of more than
3 14,000 but not more than 26,000
4 pounds:

“If percentage of the maximum available power is:

The credit amount is:

At least 20 percent but less than 30 percent	\$4,000
At least 30 percent but less than 40 percent	\$4,500
At least 40 percent but less than 50 percent	\$5,000
At least 50 percent but less than 60 percent	\$5,500
At least 60 percent	\$6,000.

5 “(III) If such vehicle has a gross
6 vehicle weight rating of more than
7 26,000 pounds:

“If percentage of the maximum available power is:

The credit amount is:

At least 20 percent but less than 30 percent	\$6,000
At least 30 percent but less than 40 percent	\$7,000
At least 40 percent but less than 50 percent	\$8,000
At least 50 percent but less than 60 percent	\$9,000
At least 60 percent	\$10,000.

8 “(B) INCREASE FOR FUEL EFFICIENCY.—

9 “(i) AMOUNT.—The amount deter-
10 mined under subparagraph (A)(i) with re-
11 spect to a new qualified hybrid motor vehi-
12 cle which is a passenger automobile or light
13 truck shall be increased by—

14 “(I) \$500, if such vehicle achieves
15 at least 125 percent but less than 150

1 *percent of the 2002 model year city*
2 *fuel economy,*

3 “(II) \$1,000, if such vehicle
4 achieves at least 150 percent but less
5 than 175 percent of the 2002 model
6 year city fuel economy,

7 “(III) \$1,500, if such vehicle
8 achieves at least 175 percent but less
9 than 200 percent of the 2002 model
10 year city fuel economy,

11 “(IV) \$2,000, if such vehicle
12 achieves at least 200 percent but less
13 than 225 percent of the 2002 model
14 year city fuel economy,

15 “(V) \$2,500, if such vehicle
16 achieves at least 225 percent but less
17 than 250 percent of the 2002 model
18 year city fuel economy, and

19 “(VI) \$3,000, if such vehicle
20 achieves at least 250 percent of the
21 2002 model year city fuel economy.

22 “(i) 2002 MODEL YEAR CITY FUEL
23 ECONOMY.—For purposes of clause (i), the
24 2002 model year city fuel economy with re-
25 spect to a vehicle shall be determined on a

1 gasoline gallon equivalent basis as deter-
2 mined by the Administrator of the Environ-
3 mental Protection Agency using the tables
4 provided in subsection (b)(2)(B) with re-
5 spect to such vehicle.

6 “(C) INCREASE FOR ACCELERATED EMIS-
7 SIONS PERFORMANCE.—The amount determined
8 under subparagraph (A)(ii) with respect to an
9 applicable heavy duty hybrid motor vehicle shall
10 be increased by the increased credit amount de-
11 termined in accordance with the following tables:

12 “(i) In the case of a vehicle which has
13 a gross vehicle weight rating of not more
14 than 14,000 pounds:

“If the model year is:	The increased credit amount is:
2004	\$2,500
2005	\$2,000
2006	\$1,500.

15 “(ii) In the case of a vehicle which has
16 a gross vehicle weight rating of more than
17 14,000 pounds but not more than 26,000
18 pounds:

“If the model year is:	The increased credit amount is:
2004	\$6,500
2005	\$5,250
2006	\$4,000.

19 “(iii) In the case of a vehicle which has
20 a gross vehicle weight rating of more than
21 26,000 pounds:

<i>If the model year is:</i>	<i>The increased credit amount is:</i>
2004	\$10,000
2005	\$8,000
2006	\$6,000.

1 “(D) *DEFINITIONS RELATING TO CREDIT*
2 *AMOUNT.—*

3 “(i) *APPLICABLE HEAVY DUTY HYBRID*
4 *MOTOR VEHICLE.—For purposes of subpara-*
5 *graph (C), the term ‘applicable heavy duty*
6 *hybrid motor vehicle’ means a heavy duty*
7 *hybrid motor vehicle which is powered by*
8 *an internal combustion or heat engine*
9 *which is certified as meeting the emission*
10 *standards set in the regulations prescribed*
11 *by the Administrator of the Environmental*
12 *Protection Agency for 2007 and later model*
13 *year diesel heavy duty engines, or for 2008*
14 *and later model year ottocycle heavy duty*
15 *engines, as applicable.*

16 “(ii) *MAXIMUM AVAILABLE POWER.—*

17 “(I) *PASSENGER AUTOMOBILE,*
18 *MEDIUM DUTY PASSENGER VEHICLE,*
19 *OR LIGHT TRUCK.—For purposes of*
20 *subparagraph (A)(i), the term ‘max-*
21 *imum available power’ means the max-*
22 *imum power available from the re-*
23 *chargeable energy storage system, dur-*

1 *ing a standard 10 second pulse power*
2 *or equivalent test, divided by such*
3 *maximum power and the SAE net*
4 *power of the heat engine.*

5 *“(II) HEAVY DUTY HYBRID MOTOR*
6 *VEHICLE.—For purposes of subpara-*
7 *graph (A)(ii), the term ‘maximum*
8 *available power’ means the maximum*
9 *power available from the rechargeable*
10 *energy storage system, during a stand-*
11 *ard 10 second pulse power or equiva-*
12 *lent test, divided by the vehicle’s total*
13 *traction power. The term ‘total trac-*
14 *tion power’ means the sum of the peak*
15 *power from the rechargeable energy*
16 *storage system and the heat engine*
17 *peak power of the vehicle, except that if*
18 *such storage system is the sole means*
19 *by which the vehicle can be driven, the*
20 *total traction power is the peak power*
21 *of such storage system.*

22 *“(3) NEW QUALIFIED HYBRID MOTOR VEHI-*
23 *CLE.—For purposes of this subsection—*

24 *“(A) IN GENERAL.—The term ‘new qualified*
25 *hybrid motor vehicle’ means a motor vehicle—*

1 “(i) which draws propulsion energy
2 from onboard sources of stored energy which
3 are both—

4 “(I) an internal combustion or
5 heat engine using consumable fuel, and

6 “(II) a rechargeable energy stor-
7 age system,

8 “(ii) which, in the case of a passenger
9 automobile, medium duty passenger vehicle,
10 or light truck—

11 “(I) for 2002 and later model ve-
12 hicles, has received a certificate of con-
13 formity under the Clean Air Act and
14 meets or exceeds the equivalent quali-
15 fying California low emission vehicle
16 standard under section 243(e)(2) of the
17 Clean Air Act for that make and model
18 year, and

19 “(II) for 2004 and later model ve-
20 hicles, has received a certificate that
21 such vehicle meets or exceeds the Bin 5
22 Tier II emission level established in
23 regulations prescribed by the Adminis-
24 trator of the Environmental Protection
25 Agency under section 202(i) of the

1 *Clean Air Act for that make and model*
2 *year vehicle,*

3 “(iii) *which, in the case of a heavy*
4 *duty hybrid motor vehicle, has an internal*
5 *combustion or heat engine which has re-*
6 *ceived a certificate of conformity under the*
7 *Clean Air Act as meeting the emission*
8 *standards set in the regulations prescribed*
9 *by the Administrator of the Environmental*
10 *Protection Agency for 2004 through 2007*
11 *model year diesel heavy duty engines or*
12 *ottocycle heavy duty engines, as applicable,*

13 “(iv) *the original use of which com-*
14 *mences with the taxpayer,*

15 “(v) *which is acquired for use or lease*
16 *by the taxpayer and not for resale, and*

17 “(vi) *which is made by a manufac-*
18 *turer.*

19 “(B) *CONSUMABLE FUEL.—For purposes of*
20 *subparagraph (A)(i)(I), the term ‘consumable*
21 *fuel’ means any solid, liquid, or gaseous matter*
22 *which releases energy when consumed by an aux-*
23 *iliary power unit.*

24 “(4) *HEAVY DUTY HYBRID MOTOR VEHICLE.—*
25 *For purposes of this subsection, the term ‘heavy duty*

1 *hybrid motor vehicle’ means a new qualified hybrid*
2 *motor vehicle which has a gross vehicle weight rating*
3 *of more than 8,500 pounds. Such term does not in-*
4 *clude a medium duty passenger vehicle.*

5 *“(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VE-*
6 *HICLE CREDIT.—*

7 *“(1) ALLOWANCE OF CREDIT.—Except as pro-*
8 *vided in paragraph (5), the new qualified alternative*
9 *fuel motor vehicle credit determined under this sub-*
10 *section is an amount equal to the applicable percent-*
11 *age of the incremental cost of any new qualified alter-*
12 *native fuel motor vehicle placed in service by the tax-*
13 *payer during the taxable year.*

14 *“(2) APPLICABLE PERCENTAGE.—For purposes*
15 *of paragraph (1), the applicable percentage with re-*
16 *spect to any new qualified alternative fuel motor vehi-*
17 *cle is—*

18 *“(A) 40 percent, plus*

19 *“(B) 30 percent, if such vehicle—*

20 *“(i) has received a certificate of con-*
21 *formity under the Clean Air Act and meets*
22 *or exceeds the most stringent standard*
23 *available for certification under the Clean*
24 *Air Act for that make and model year vehi-*
25 *cle (other than a zero emission standard), or*

1 “(ii) has received an order certifying
2 the vehicle as meeting the same require-
3 ments as vehicles which may be sold or
4 leased in California and meets or exceeds
5 the most stringent standard available for
6 certification under the State laws of Cali-
7 fornia (enacted in accordance with a waiver
8 granted under section 209(b) of the Clean
9 Air Act) for that make and model year vehi-
10 cle (other than a zero emission standard).

11 For purposes of the preceding sentence, in the case of
12 any new qualified alternative fuel motor vehicle
13 which weighs more than 14,000 pounds gross vehicle
14 weight rating, the most stringent standard available
15 shall be such standard available for certification on
16 the date of the enactment of the Energy Tax Incen-
17 tives Act.

18 “(3) INCREMENTAL COST.—For purposes of this
19 subsection, the incremental cost of any new qualified
20 alternative fuel motor vehicle is equal to the amount
21 of the excess of the manufacturer’s suggested retail
22 price for such vehicle over such price for a gasoline
23 or diesel fuel motor vehicle of the same model, to the
24 extent such amount does not exceed—

1 “(A) \$5,000, if such vehicle has a gross ve-
2 hicle weight rating of not more than 8,500
3 pounds,

4 “(B) \$10,000, if such vehicle has a gross ve-
5 hicle weight rating of more than 8,500 pounds
6 but not more than 14,000 pounds,

7 “(C) \$25,000, if such vehicle has a gross ve-
8 hicle weight rating of more than 14,000 pounds
9 but not more than 26,000 pounds, and

10 “(D) \$40,000, if such vehicle has a gross ve-
11 hicle weight rating of more than 26,000 pounds.

12 “(4) *NEW QUALIFIED ALTERNATIVE FUEL MOTOR*
13 *VEHICLE.—For purposes of this subsection—*

14 “(A) *IN GENERAL.—The term ‘new qualified*
15 *alternative fuel motor vehicle’ means any motor*
16 *vehicle—*

17 “(i) *which is only capable of operating*
18 *on an alternative fuel,*

19 “(ii) *the original use of which com-*
20 *mences with the taxpayer,*

21 “(iii) *which is acquired by the tax-*
22 *payer for use or lease, but not for resale,*
23 *and*

24 “(iv) *which is made by a manufac-*
25 *turer.*

1 “(B) *ALTERNATIVE FUEL*.—The term ‘alter-
2 *native fuel*’ means compressed natural gas, lique-
3 *fied natural gas, liquefied petroleum gas, hydro-*
4 *gen, and any liquid at least 85 percent of the*
5 *volume of which consists of methanol.*

6 “(5) *CREDIT FOR MIXED-FUEL VEHICLES*.—

7 “(A) *IN GENERAL*.—In the case of a mixed-
8 *fuel vehicle placed in service by the taxpayer*
9 *during the taxable year, the credit determined*
10 *under this subsection is an amount equal to—*

11 “(i) *in the case of a 75/25 mixed-fuel*
12 *vehicle, 70 percent of the credit which would*
13 *have been allowed under this subsection if*
14 *such vehicle was a qualified alternative fuel*
15 *motor vehicle, and*

16 “(ii) *in the case of a 90/10 mixed-fuel*
17 *vehicle, 90 percent of the credit which would*
18 *have been allowed under this subsection if*
19 *such vehicle was a qualified alternative fuel*
20 *motor vehicle.*

21 “(B) *MIXED-FUEL VEHICLE*.—For purposes
22 *of this subsection, the term ‘mixed-fuel vehicle’*
23 *means any motor vehicle described in subpara-*
24 *graph (C) or (D) of paragraph (3), which—*

1 “(i) is certified by the manufacturer as
2 being able to perform efficiently in normal
3 operation on a combination of an alter-
4 native fuel and a petroleum-based fuel,

5 “(ii) either—

6 “(I) has received a certificate of
7 conformity under the Clean Air Act, or

8 “(II) has received an order certi-
9 fying the vehicle as meeting the same
10 requirements as vehicles which may be
11 sold or leased in California and meets
12 or exceeds the low emission vehicle
13 standard under section 88.105–94 of
14 title 40, Code of Federal Regulations,
15 for that make and model year vehicle,

16 “(iii) the original use of which com-
17 mences with the taxpayer,

18 “(iv) which is acquired by the tax-
19 payer for use or lease, but not for resale,
20 and

21 “(v) which is made by a manufacturer.

22 “(C) 75/25 MIXED-FUEL VEHICLE.—For
23 purposes of this subsection, the term ‘75/25
24 mixed-fuel vehicle’ means a mixed-fuel vehicle
25 which operates using at least 75 percent alter-

1 *native fuel and not more than 25 percent petro-*
2 *leum-based fuel.*

3 “(D) 90/10 MIXED-FUEL VEHICLE.—For
4 purposes of this subsection, the term ‘90/10
5 mixed-fuel vehicle’ means a mixed-fuel vehicle
6 which operates using at least 90 percent alter-
7 native fuel and not more than 10 percent petro-
8 leum-based fuel.

9 “(e) APPLICATION WITH OTHER CREDITS.—The credit
10 allowed under subsection (a) for any taxable year shall not
11 exceed the excess (if any) of—

12 “(1) the regular tax for the taxable year reduced
13 by the sum of the credits allowable under subpart A
14 and sections 27, 29, and 30, over

15 “(2) the tentative minimum tax for the taxable
16 year.

17 “(f) OTHER DEFINITIONS AND SPECIAL RULES.—For
18 purposes of this section—

19 “(1) MOTOR VEHICLE.—The term ‘motor vehicle’
20 has the meaning given such term by section 30(c)(2).

21 “(2) CITY FUEL ECONOMY.—The city fuel econ-
22 omy with respect to any vehicle shall be measured in
23 a manner which is substantially similar to the man-
24 ner city fuel economy is measured in accordance with
25 procedures under part 600 of subchapter Q of chapter

1 *I of title 40, Code of Federal Regulations, as in effect*
2 *on the date of the enactment of this section.*

3 “(3) *OTHER TERMS.*—*The terms ‘automobile’,*
4 *‘passenger automobile’, ‘medium duty passenger vehi-*
5 *cle’, ‘light truck’, and ‘manufacturer’ have the mean-*
6 *ings given such terms in regulations prescribed by the*
7 *Administrator of the Environmental Protection Agen-*
8 *cy for purposes of the administration of title II of the*
9 *Clean Air Act (42 U.S.C. 7521 et seq.).*

10 “(4) *REDUCTION IN BASIS.*—*For purposes of this*
11 *subtitle, the basis of any property for which a credit*
12 *is allowable under subsection (a) shall be reduced by*
13 *the amount of such credit so allowed (determined*
14 *without regard to subsection (e)).*

15 “(5) *NO DOUBLE BENEFIT.*—*The amount of any*
16 *deduction or other credit allowable under this*
17 *chapter—*

18 “(A) *for any incremental cost taken into ac-*
19 *count in computing the amount of the credit de-*
20 *termined under subsection (d) shall be reduced*
21 *by the amount of such credit attributable to such*
22 *cost, and*

23 “(B) *with respect to a vehicle described*
24 *under subsection (b) or (c), shall be reduced by*

1 *the amount of credit allowed under subsection*
2 *(a) for such vehicle for the taxable year.*

3 “(6) *PROPERTY USED BY TAX-EXEMPT ENTI-*
4 *TIES.—In the case of a credit amount which is allow-*
5 *able with respect to a motor vehicle which is acquired*
6 *by an entity exempt from tax under this chapter, the*
7 *person which sells or leases such vehicle to the entity*
8 *shall be treated as the taxpayer with respect to the ve-*
9 *hicle for purposes of this section and the credit shall*
10 *be allowed to such person, but only if the person*
11 *clearly discloses to the entity at the time of any sale*
12 *or lease the specific amount of any credit otherwise*
13 *allowable to the entity under this section.*

14 “(7) *RECAPTURE.—The Secretary shall, by regu-*
15 *lations, provide for recapturing the benefit of any*
16 *credit allowable under subsection (a) with respect to*
17 *any property which ceases to be property eligible for*
18 *such credit (including recapture in the case of a lease*
19 *period of less than the economic life of a vehicle).*

20 “(8) *PROPERTY USED OUTSIDE UNITED STATES,*
21 *ETC., NOT QUALIFIED.—No credit shall be allowed*
22 *under subsection (a) with respect to any property re-*
23 *ferred to in section 50(b) or with respect to the por-*
24 *tion of the cost of any property taken into account*
25 *under section 179.*

1 “(9) *ELECTION TO NOT TAKE CREDIT.*—No credit
2 shall be allowed under subsection (a) for any vehicle
3 if the taxpayer elects to not have this section apply
4 to such vehicle.

5 “(10) *CARRYBACK AND CARRYFORWARD AL-*
6 *LOWED.*—

7 “(A) *IN GENERAL.*—If the credit allowable
8 under subsection (a) for a taxable year exceeds
9 the amount of the limitation under subsection (e)
10 for such taxable year (in this paragraph referred
11 to as the ‘unused credit year’), such excess shall
12 be a credit carryback to each of the 3 taxable
13 years preceding the unused credit year and a
14 credit carryforward to each of the 20 taxable
15 years following the unused credit year, except
16 that no excess may be carried to a taxable year
17 beginning before January 1, 2005.

18 “(B) *RULES.*—Rules similar to the rules of
19 section 39 shall apply with respect to the credit
20 carryback and credit carryforward under sub-
21 paragraph (A).

22 “(11) *INTERACTION WITH AIR QUALITY AND*
23 *MOTOR VEHICLE SAFETY STANDARDS.*—Unless other-
24 wise provided in this section, a motor vehicle shall

1 *not be considered eligible for a credit under this sec-*
2 *tion unless such vehicle is in compliance with—*

3 *“(A) the applicable provisions of the Clean*
4 *Air Act for the applicable make and model year*
5 *of the vehicle (or applicable air quality provi-*
6 *sions of State law in the case of a State which*
7 *has adopted such provision under a waiver*
8 *under section 209(b) of the Clean Air Act), and*

9 *“(B) the motor vehicle safety provisions of*
10 *sections 30101 through 30169 of title 49, United*
11 *States Code.*

12 *“(g) REGULATIONS.—*

13 *“(1) IN GENERAL.—Except as provided in para-*
14 *graph (2), the Secretary shall promulgate such regula-*
15 *tions as necessary to carry out the provisions of this*
16 *section.*

17 *“(2) COORDINATION IN PRESCRIPTION OF CER-*
18 *TAIN REGULATIONS.—The Secretary of the Treasury,*
19 *in coordination with the Secretary of Transportation*
20 *and the Administrator of the Environmental Protec-*
21 *tion Agency, shall prescribe such regulations as nec-*
22 *essary to determine whether a motor vehicle meets the*
23 *requirements to be eligible for a credit under this sec-*
24 *tion.*

1 “(h) *TERMINATION.*—*This section shall not apply to*
2 *any property purchased after—*

3 “(1) *in the case of a new qualified fuel cell motor*
4 *vehicle (as described in subsection (b)), December 31,*
5 *2011, and*

6 “(2) *in the case of any other property, December*
7 *31, 2006.”.*

8 (b) *CONFORMING AMENDMENTS.*—

9 (1) *Section 1016(a) is amended by striking*
10 *“and” at the end of paragraph (31), by striking the*
11 *period at the end of paragraph (32) and inserting “,*
12 *and”, and by adding at the end the following new*
13 *paragraph:*

14 “(33) *to the extent provided in section*
15 *30C(f)(4).”.*

16 (2) *Section 55(c)(2), as amended by this Act, is*
17 *amended by inserting “30C(e),” after “30(b)(2).”.*

18 (3) *Section 6501(m) is amended by inserting*
19 *“30C(f)(9),” after “30(d)(4).”.*

20 (4) *The table of sections for subpart B of part IV*
21 *of subchapter A of chapter 1, as amended by this Act,*
22 *is amended by inserting after the item relating to sec-*
23 *tion 30B the following new item:*

“*Sec. 30C. Alternative motor vehicle credit.*”.

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to property placed in service after De-*
 3 *cember 31, 2004, in taxable years ending after such date.*

4 **SEC. 812. MODIFICATION OF CREDIT FOR QUALIFIED ELEC-**
 5 **TRIC VEHICLES.**

6 (a) *AMOUNT OF CREDIT.*—

7 (1) *IN GENERAL.*—*Section 30(a) (relating to al-*
 8 *lowance of credit) is amended by striking “10 percent*
 9 *of”.*

10 (2) *LIMITATION OF CREDIT ACCORDING TO TYPE*
 11 *OF VEHICLE.*—*Paragraph (1) of section 30(b) (relat-*
 12 *ing to limitations) is amended to read as follows:*

13 “(1) *LIMITATION ACCORDING TO TYPE OF VEHI-*
 14 *CLE.*—*The amount of the credit allowed under sub-*
 15 *section (a) for any vehicle shall not exceed the greatest*
 16 *of the following amounts applicable to such vehicle:*

17 “(A) *In the case of a vehicle with a gross*
 18 *vehicle weight rating not exceeding 8,500*
 19 *pounds—*

20 “(i) *except as provided in clause (ii) or*
 21 *(iii), \$3,500,*

22 “(ii) *\$6,000, if such vehicle is—*

23 “(I) *capable of a driving range of*
 24 *at least 100 miles on a single charge of*
 25 *the vehicle’s rechargeable batteries as*

1 *measured pursuant to the urban dyna-*
2 *meter schedules under appendix I to*
3 *part 86 of title 40, Code of Federal*
4 *Regulations, or*

5 *“(II) capable of a payload capaci-*
6 *ty of at least 1,000 pounds, and*

7 *“(iii) if such vehicle is a low-speed ve-*
8 *hicle which conforms to Standard 500 pre-*
9 *scribed by the Secretary of Transportation*
10 *(49 C.F.R. 571.500), as in effect on the date*
11 *of the enactment of the Energy Tax Incen-*
12 *tives Act, the lesser of—*

13 *“(I) 10 percent of the manufactur-*
14 *er’s suggested retail price of the vehicle,*
15 *or*

16 *“(II) \$1,500.*

17 *“(B) In the case of a vehicle with a gross*
18 *vehicle weight rating exceeding 8,500 but not ex-*
19 *ceeding 14,000 pounds, \$10,000.*

20 *“(C) In the case of a vehicle with a gross*
21 *vehicle weight rating exceeding 14,000 but not*
22 *exceeding 26,000 pounds, \$20,000.*

23 *“(D) In the case of a vehicle with a gross*
24 *vehicle weight rating exceeding 26,000 pounds,*
25 *\$40,000.”.*

1 **(b) QUALIFIED BATTERY ELECTRIC VEHICLE.—**

2 **(1) IN GENERAL.—***Section 30(c)(1)(A) (defining*
3 *qualified electric vehicle) is amended to read as fol-*
4 *lows:*

5 **“(A) which is—**

6 **“(i) operated solely by use of a battery**
7 **or battery pack, or**

8 **“(ii) powered primarily through the**
9 **use of an electric battery or battery pack**
10 **using a flywheel or capacitor which stores**
11 **energy produced by an electric motor**
12 **through regenerative braking to assist in ve-**
13 **hicle operation,”.**

14 **(2) LEASED VEHICLES.—***Section 30(c)(1)(C) is*
15 *amended by inserting “or lease” after “use”.*

16 **(3) CONFORMING AMENDMENTS.—**

17 **(A) Subsections (a), (b)(2), and (c) of sec-**
18 **tion 30 are each amended by inserting “battery”**
19 **after “qualified” each place it appears.**

20 **(B) The heading of subsection (c) of section**
21 **30 is amended by inserting “BATTERY” after**
22 **“QUALIFIED”.**

23 **(C) The heading of section 30 is amended**
24 **by inserting “BATTERY” after “QUALIFIED”.**

1 (D) *The item relating to section 30 in the*
2 *table of sections for subpart B of part IV of sub-*
3 *chapter A of chapter 1 is amended by inserting*
4 *“battery” after “qualified”.*

5 (E) *Section 179A(c)(3) is amended by in-*
6 *serting “battery” before “electric”.*

7 (F) *The heading of paragraph (3) of section*
8 *179A(c) is amended by inserting “BATTERY” be-*
9 *fore “ELECTRIC”.*

10 (c) *ADDITIONAL SPECIAL RULES.—Section 30(d) (re-*
11 *lating to special rules) is amended by adding at the end*
12 *the following new paragraphs:*

13 “(5) *NO DOUBLE BENEFIT.—The amount of any*
14 *deduction or other credit allowable under this chapter*
15 *for any cost taken into account in computing the*
16 *amount of the credit determined under subsection (a)*
17 *shall be reduced by the amount of such credit attrib-*
18 *utable to such cost.*

19 “(6) *PROPERTY USED BY TAX-EXEMPT ENTI-*
20 *TIES.—In the case of a credit amount which is allow-*
21 *able with respect to a vehicle which is acquired by an*
22 *entity exempt from tax under this chapter, the person*
23 *which sells or leases such vehicle to the entity shall be*
24 *treated as the taxpayer with respect to the vehicle for*
25 *purposes of this section and the credit shall be allowed*

1 to such person, but only if the person clearly discloses
2 to the entity at the time of any sale or lease the spe-
3 cific amount of any credit otherwise allowable to the
4 entity under this section.

5 “(7) CARRYBACK AND CARRYFORWARD AL-
6 LOWED.—

7 “(A) IN GENERAL.—If the credit allowable
8 under subsection (a) for a taxable year exceeds
9 the amount of the limitation under subsection
10 (b)(2) for such taxable year (in this paragraph
11 referred to as the ‘unused credit year’), such ex-
12 cess shall be a credit carryback to each of the 3
13 taxable years preceding the unused credit year
14 and a credit carryforward to each of the 20 tax-
15 able years following the unused credit year, ex-
16 cept that no excess may be carried to a taxable
17 year beginning before January 1, 2005.

18 “(B) RULES.—Rules similar to the rules of
19 section 39 shall apply with respect to the credit
20 carryback and credit carryforward under sub-
21 paragraph (A).”.

22 “(d) EFFECTIVE DATE.—The amendments made by this
23 section shall apply to property placed in service after De-
24 cember 31, 2004, in taxable years ending after such date.

1 **SEC. 813. CREDIT FOR INSTALLATION OF ALTERNATIVE**
2 **FUELING STATIONS.**

3 (a) *IN GENERAL.*—Subpart B of part IV of subchapter
4 A of chapter 1 (relating to foreign tax credit, etc.), as
5 amended by this Act, is amended by adding at the end the
6 following new section:

7 **“SEC. 30D. CLEAN-FUEL VEHICLE REFUELING PROPERTY**
8 **CREDIT.**

9 “(a) *CREDIT ALLOWED.*—There shall be allowed as a
10 credit against the tax imposed by this chapter for the tax-
11 able year an amount equal to 50 percent of the amount
12 paid or incurred by the taxpayer during the taxable year
13 for the installation of qualified clean-fuel vehicle refueling
14 property.

15 “(b) *LIMITATION.*—The credit allowed under sub-
16 section (a)—

17 “(1) *with respect to any retail clean-fuel vehicle*
18 *refueling property, shall not exceed \$30,000, and*

19 “(2) *with respect to any residential clean-fuel ve-*
20 *hicle refueling property, shall not exceed \$1,000.*

21 “(c) *YEAR CREDIT ALLOWED.*—Notwithstanding sub-
22 section (a), no credit shall be allowed under subsection (a)
23 with respect to any qualified clean-fuel vehicle refueling
24 property before the taxable year in which the property is
25 placed in service by the taxpayer.

26 “(d) *DEFINITIONS.*—For purposes of this section—

1 “(1) *QUALIFIED CLEAN-FUEL VEHICLE REFUEL-*
2 *ING PROPERTY.*—*The term ‘qualified clean-fuel vehicle*
3 *refueling property’ has the same meaning given such*
4 *term by section 179A(d).*

5 “(2) *RESIDENTIAL CLEAN-FUEL VEHICLE RE-*
6 *FUELING PROPERTY.*—*The term ‘residential clean-fuel*
7 *vehicle refueling property’ means qualified clean-fuel*
8 *vehicle refueling property which is installed on prop-*
9 *erty which is used as the principal residence (within*
10 *the meaning of section 121) of the taxpayer.*

11 “(3) *RETAIL CLEAN-FUEL VEHICLE REFUELING*
12 *PROPERTY.*—*The term ‘retail clean-fuel vehicle refuel-*
13 *ing property’ means qualified clean-fuel vehicle refuel-*
14 *ing property which is installed on property (other*
15 *than property described in paragraph (2)) used in a*
16 *trade or business of the taxpayer.*

17 “(e) *APPLICATION WITH OTHER CREDITS.*—*The credit*
18 *allowed under subsection (a) for any taxable year shall not*
19 *exceed the excess (if any) of—*

20 “(1) *the regular tax for the taxable year reduced*
21 *by the sum of the credits allowable under subpart A*
22 *and sections 27, 29, 30, and 30C, over*

23 “(2) *the tentative minimum tax for the taxable*
24 *year.*

1 “(f) *BASIS REDUCTION.*—For purposes of this title, the
2 basis of any property shall be reduced by the portion of
3 the cost of such property taken into account under sub-
4 section (a).

5 “(g) *NO DOUBLE BENEFIT.*—

6 “(1) *COORDINATION WITH OTHER DEDUCTIONS*
7 *AND CREDITS.*—Except as provided in paragraph (2),
8 the amount of any deduction or other credit allowable
9 under this chapter for any cost taken into account in
10 computing the amount of the credit determined under
11 subsection (a) shall be reduced by the amount of such
12 credit attributable to such cost.

13 “(2) *NO DEDUCTION ALLOWED UNDER SECTION*
14 *179A.*—No deduction shall be allowed under section
15 179A with respect to any property with respect to
16 which a credit is allowed under subsection (a).

17 “(h) *REFUELING PROPERTY INSTALLED FOR TAX-EX-*
18 *EMPT ENTITIES.*—In the case of qualified clean-fuel vehicle
19 refueling property installed on property owned or used by
20 an entity exempt from tax under this chapter, the person
21 which installs such refueling property for the entity shall
22 be treated as the taxpayer with respect to the refueling prop-
23 erty for purposes of this section (and such refueling prop-
24 erty shall be treated as retail clean-fuel vehicle refueling
25 property) and the credit shall be allowed to such person,

1 *but only if the person clearly discloses to the entity in any*
2 *installation contract the specific amount of the credit allow-*
3 *able under this section.*

4 “(i) *CARRYFORWARD ALLOWED.*—

5 “(1) *IN GENERAL.*—*If the credit allowable under*
6 *subsection (a) for a taxable year exceeds the amount*
7 *of the limitation under subsection (e) for such taxable*
8 *year, such excess shall be a credit carryforward to*
9 *each of the 20 taxable years following such taxable*
10 *year.*

11 “(2) *RULES.*—*Rules similar to the rules of sec-*
12 *tion 39 shall apply with respect to the credit*
13 *carryforward under paragraph (1).*

14 “(j) *SPECIAL RULES.*—*Rules similar to the rules of*
15 *paragraphs (4) and (5) of section 179A(e) shall apply.*

16 “(k) *REGULATIONS.*—*The Secretary shall prescribe*
17 *such regulations as necessary to carry out the provisions*
18 *of this section.*

19 “(l) *TERMINATION.*—*This section shall not apply to*
20 *any property placed in service—*

21 “(1) *in the case of property relating to hydrogen,*
22 *after December 31, 2011, and*

23 “(2) *in the case of any other property, after De-*
24 *cember 31, 2007.”.*

1 (b) *MODIFICATIONS TO EXTENSION OF DEDUCTION*
2 *FOR CERTAIN REFUELING PROPERTY.*—Subsection (f) of
3 *section 179A is amended to read as follows:*

4 “(f) *TERMINATION.*—This section shall not apply to
5 *any property placed in service—*

6 “(1) *in the case of property relating to hydrogen,*
7 *after December 31, 2011, and*

8 “(2) *in the case of any other property, after De-*
9 *cember 31, 2007.”.*

10 (c) *INCENTIVE FOR PRODUCTION OF HYDROGEN AT*
11 *QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROP-*
12 *ERTY.*—Section 179A(d) (*defining qualified clean-fuel vehi-*
13 *cle refueling property*) is amended by adding at the end
14 *the following new flush sentence:*

15 *“In the case of clean-burning fuel which is hydrogen pro-*
16 *duced from another clean-burning fuel, paragraph (3)(A)*
17 *shall be applied by substituting ‘production, storage, or dis-*
18 *persing’ for ‘storage or dispensing’ both places it appears.”.*

19 (d) *CONFORMING AMENDMENTS.*—

20 (1) *Section 1016(a), as amended by this Act, is*
21 *amended by striking “and” at the end of paragraph*
22 *(32), by striking the period at the end of paragraph*
23 *(33) and inserting “, and”, and by adding at the end*
24 *the following new paragraph:*

25 “(34) *to the extent provided in section 30D(f).”.*

1 (2) *Section 55(c)(2), as amended by this Act, is*
 2 *amended by inserting “30D(e),” after “30C(e),”.*

3 (3) *The table of sections for subpart B of part IV*
 4 *of subchapter A of chapter 1, as amended by this Act,*
 5 *is amended by inserting after the item relating to sec-*
 6 *tion 30C the following new item:*

“Sec. 30D. Clean-fuel vehicle refueling property credit.”.

7 (e) *EFFECTIVE DATE.—The amendments made by this*
 8 *section shall apply to property placed in service after De-*
 9 *cember 31, 2004, in taxable years ending after such date.*

10 **SEC. 814. CREDIT FOR RETAIL SALE OF ALTERNATIVE**
 11 **FUELS AS MOTOR VEHICLE FUEL.**

12 (a) *IN GENERAL.—Subpart D of part IV of subchapter*
 13 *A of chapter 1 (relating to business related credits) is*
 14 *amended by inserting after section 40 the following new sec-*
 15 *tion:*

16 **“SEC. 40A. CREDIT FOR RETAIL SALE OF ALTERNATIVE**
 17 **FUELS AS MOTOR VEHICLE FUEL.**

18 “(a) *GENERAL RULE.—For purposes of section 38, the*
 19 *alternative fuel retail sales credit for any taxable year is*
 20 *the applicable amount for each gasoline gallon equivalent*
 21 *of alternative fuel sold at retail by the taxpayer during such*
 22 *year as a fuel to propel any qualified motor vehicle.*

23 “(b) *DEFINITIONS.—For purposes of this section—*

1 “(1) *APPLICABLE AMOUNT.*—*The term ‘applica-*
 2 *ble amount’ means the amount determined in accord-*
 3 *ance with the following table:*

<i>“In the case of any taxable year ending in—</i>	<i>The applicable amount is—</i>
<i>2005 and 2006</i>	<i>50 cents.</i>

4 “(2) *ALTERNATIVE FUEL.*—*The term ‘alternative*
 5 *fuel’ means compressed natural gas, liquefied natural*
 6 *gas, liquefied petroleum gas, hydrogen, or any liquid*
 7 *at least 85 percent of the volume of which consists of*
 8 *methanol or ethanol.*

9 “(3) *GASOLINE GALLON EQUIVALENT.*—*The term*
 10 *‘gasoline gallon equivalent’ means, with respect to*
 11 *any alternative fuel, the amount (determined by the*
 12 *Secretary) of such fuel having a Btu content of*
 13 *114,000.*

14 “(4) *QUALIFIED MOTOR VEHICLE.*—*The term*
 15 *‘qualified motor vehicle’ means any motor vehicle (as*
 16 *defined in section 30(c)(2)) which meets any applica-*
 17 *ble Federal or State emissions standards with respect*
 18 *to each fuel by which such vehicle is designed to be*
 19 *propelled.*

20 “(5) *SOLD AT RETAIL.*—

21 “(A) *IN GENERAL.*—*The term ‘sold at retail’*
 22 *means the sale, for a purpose other than resale,*
 23 *after manufacture, production, or importation.*

1 “(B) *USE TREATED AS SALE.*—If any per-
2 son uses alternative fuel (including any use after
3 importation) as a fuel to propel any new quali-
4 fied alternative fuel motor vehicle (as defined in
5 section 30C(d)(4)) before such fuel is sold at re-
6 tail, then such use shall be treated in the same
7 manner as if such fuel were sold at retail as a
8 fuel to propel such a vehicle by such person.

9 “(c) *NO DOUBLE BENEFIT.*—The amount of any de-
10 duction or other credit allowable under this chapter for any
11 fuel taken into account in computing the amount of the
12 credit determined under subsection (a) shall be reduced by
13 the amount of such credit attributable to such fuel.

14 “(d) *PASS-THRU IN THE CASE OF ESTATES AND*
15 *TRUSTS.*—Under regulations prescribed by the Secretary,
16 rules similar to the rules of subsection (d) of section 52 shall
17 apply.

18 “(e) *TERMINATION.*—This section shall not apply to
19 any fuel sold at retail after December 31, 2006.”.

20 “(b) *CREDIT TREATED AS BUSINESS CREDIT.*—Section
21 38(b) (relating to current year business credit) is amended
22 by striking “plus” at the end of paragraph (20), by striking
23 the period at the end of paragraph (21) and inserting “,
24 plus”, and by adding at the end the following new para-
25 graph:

1 “(22) the alternative fuel retail sales credit deter-
2 mined under section 40A(a).”.

3 (c) *LIMITATION ON CARRYBACK.*—

4 (1) *IN GENERAL.*—Subsection (d) of section 39,
5 as amended by this Act, is amended to read as fol-
6 lows:

7 “(d) *TRANSITIONAL RULE.*—No portion of the unused
8 business credit for any taxable year which is attributable
9 to a credit specified in section 38(b) may be carried back
10 to any taxable year before the first taxable year for which
11 such specified credit is allowable.”.

12 (2) *EFFECTIVE DATE.*—The amendment made by
13 paragraph (1) shall apply with respect to taxable
14 years beginning after December 31, 2003.

15 (d) *CLERICAL AMENDMENT.*—The table of sections for
16 subpart D of part IV of subchapter A of chapter 1 is amend-
17 ed by inserting after the item relating to section 40 the fol-
18 lowing new item:

 “Sec. 40A. Credit for retail sale of alternative fuels as motor vehicle fuel.”.

19 (e) *EFFECTIVE DATE.*—Except as otherwise provided,
20 the amendments made by this section shall apply to fuel
21 sold at retail after December 31, 2004, in taxable years end-
22 ing after such date.

23 **SEC. 815. SMALL ETHANOL PRODUCER CREDIT.**

24 (a) *ALLOCATION OF ALCOHOL FUELS CREDIT TO PA-*
25 *TRONS OF A COOPERATIVE.*—Section 40(g) (relating to defi-

1 *itions and special rules for eligible small ethanol producer*
2 *credit) is amended by adding at the end the following new*
3 *paragraph:*

4 “(6) *ALLOCATION OF SMALL ETHANOL PRO-*
5 *DUCER CREDIT TO PATRONS OF COOPERATIVE.—*

6 “(A) *ELECTION TO ALLOCATE.—*

7 “(i) *IN GENERAL.—In the case of a co-*
8 *operative organization described in section*
9 *1381(a), any portion of the credit deter-*
10 *mined under subsection (a)(3) for the tax-*
11 *able year may, at the election of the organi-*
12 *zation, be apportioned pro rata among pa-*
13 *trons of the organization on the basis of the*
14 *quantity or value of business done with or*
15 *for such patrons for the taxable year.*

16 “(ii) *FORM AND EFFECT OF ELEC-*
17 *TION.—An election under clause (i) for any*
18 *taxable year shall be made on a timely filed*
19 *return for such year. Such election, once*
20 *made, shall be irrevocable for such taxable*
21 *year.*

22 “(B) *TREATMENT OF ORGANIZATIONS AND*
23 *PATRONS.—The amount of the credit apportioned*
24 *to patrons under subparagraph (A)—*

1 “(i) shall not be included in the
2 amount determined under subsection (a)
3 with respect to the organization for the tax-
4 able year, and

5 “(ii) shall be included in the amount
6 determined under subsection (a) for the tax-
7 able year of each patron for which the pa-
8 tronage dividends for the taxable year de-
9 scribed in subparagraph (A) are included in
10 gross income.

11 “(C) *SPECIAL RULES FOR DECREASE IN*
12 *CREDITS FOR TAXABLE YEAR.*—If the amount of
13 the credit of a cooperative organization deter-
14 mined under subsection (a)(3) for a taxable year
15 is less than the amount of such credit shown on
16 the return of the cooperative organization for
17 such year, an amount equal to the excess of—

18 “(i) such reduction, over

19 “(ii) the amount not apportioned to
20 such patrons under subparagraph (A) for
21 the taxable year,

22 shall be treated as an increase in tax imposed by
23 this chapter on the organization. Such increase
24 shall not be treated as tax imposed by this chap-
25 ter for purposes of determining the amount of

1 *any credit under this chapter or for purposes of*
2 *section 55.”.*

3 **(b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER**
4 **CREDIT.—**

5 **(1) DEFINITION OF SMALL ETHANOL PRO-**
6 **DUCER.—***Section 40(g) (relating to definitions and*
7 *special rules for eligible small ethanol producer cred-*
8 *it) is amended by striking “30,000,000” each place it*
9 *appears and inserting “60,000,000”.*

10 **(2) SMALL ETHANOL PRODUCER CREDIT NOT A**
11 **PASSIVE ACTIVITY CREDIT.—***Clause (i) of section*
12 *469(d)(2)(A) is amended by striking “subpart D” and*
13 *inserting “subpart D, other than section 40(a)(3),”.*

14 **(3) SMALL ETHANOL PRODUCER CREDIT NOT**
15 **ADDED BACK TO INCOME UNDER SECTION 87.—***Sec-*
16 *tion 87 (relating to income inclusion of alcohol fuel*
17 *credit) is amended to read as follows:*

18 **“SEC. 87. ALCOHOL FUEL CREDIT.**

19 *“Gross income includes an amount equal to the sum*
20 *of—*

21 *“(1) the amount of the alcohol mixture credit de-*
22 *termined with respect to the taxpayer for the taxable*
23 *year under section 40(a)(1), and*

1 “(2) the alcohol credit determined with respect to
2 the taxpayer for the taxable year under section
3 40(a)(2).”.

4 (c) *CONFORMING AMENDMENT.*—Section 1388 (relat-
5 ing to definitions and special rules for cooperative organi-
6 zations), as amended by this Act, is amended by adding
7 at the end the following new subsection:

8 “(l) *CROSS REFERENCE.*—For provisions relating to
9 the apportionment of the alcohol fuels credit between cooper-
10 ative organizations and their patrons, see section
11 40(g)(6).”.

12 (d) *EFFECTIVE DATE.*—The amendments made by this
13 section shall apply to taxable years ending after the date
14 of the enactment of this Act.

15 **Subtitle C—Conservation and**
16 **Energy Efficiency Provisions**

17 **SEC. 821. CREDIT FOR CONSTRUCTION OF NEW ENERGY EF-**
18 **FICIENT HOME.**

19 (a) *IN GENERAL.*—Subpart D of part IV of subchapter
20 A of chapter 1 (relating to business related credits), as
21 amended by this Act, is amended by adding at the end the
22 following new section:

23 **“SEC. 45K. NEW ENERGY EFFICIENT HOME CREDIT.**

24 “(a) *IN GENERAL.*—For purposes of section 38, in the
25 case of an eligible contractor, the credit determined under

1 *this section for the taxable year is an amount equal to the*
2 *aggregate adjusted bases of all energy efficient property in-*
3 *stalled in a qualifying new home during construction of*
4 *such home.*

5 “(b) *LIMITATIONS.*—

6 “(1) *MAXIMUM CREDIT.*—

7 “(A) *IN GENERAL.*—*The credit allowed by*
8 *this section with respect to a qualifying new*
9 *home shall not exceed—*

10 “(i) *in the case of a 30-percent home,*
11 *\$1,000, and*

12 “(ii) *in the case of a 50-percent home,*
13 *\$2,000.*

14 “(B) *30- OR 50-PERCENT HOME.*—*For pur-*
15 *poses of subparagraph (A)—*

16 “(i) *30-PERCENT HOME.*—*The term*
17 *‘30-percent home’ means—*

18 “(I) *a qualifying new home which*
19 *is certified to have a projected level of*
20 *annual heating and cooling energy*
21 *consumption, measured in terms of av-*
22 *erage annual energy cost to the home-*
23 *owner, which is at least 30 percent less*
24 *than the annual level of heating and*
25 *cooling energy consumption of a quali-*

1 *ifying new home constructed in accord-*
2 *ance with the latest standards of chap-*
3 *ter 4 of the International Energy Con-*
4 *servation Code approved by the De-*
5 *partment of Energy before the con-*
6 *struction of such qualifying new home*
7 *and any applicable Federal minimum*
8 *efficiency standards for equipment, or*

9 *“(II) in the case of a qualifying*
10 *new home which is a manufactured*
11 *home, a home which meets the applica-*
12 *ble standards required by the Adminis-*
13 *trator of the Environmental Protection*
14 *Agency under the Energy Star Labeled*
15 *Homes program.*

16 *“(ii) 50-PERCENT HOME.—The term*
17 *‘50-percent home’ means a qualifying new*
18 *home which would be described in clause*
19 *(i)(I) if 50 percent were substituted for 30*
20 *percent.*

21 *“(C) PRIOR CREDIT AMOUNTS ON SAME*
22 *HOME TAKEN INTO ACCOUNT.—The amount of*
23 *the credit otherwise allowable for the taxable*
24 *year with respect to a qualifying new home*
25 *under clause (i) or (ii) of subparagraph (A) shall*

1 *be reduced by the sum of the credits allowed*
2 *under subsection (a) to any taxpayer with re-*
3 *spect to the home for all preceding taxable years.*

4 “(2) *COORDINATION WITH CERTAIN CREDITS.—*
5 *For purposes of this section—*

6 “(A) *the basis of any property referred to in*
7 *subsection (a) shall be reduced by that portion of*
8 *the basis of any property which is attributable to*
9 *the rehabilitation credit (as determined under*
10 *section 47(a)) or to the energy credit (as deter-*
11 *mined under section 48(a)), and*

12 “(B) *expenditures taken into account under*
13 *section 25D, 47, or 48(a) shall not be taken into*
14 *account under this section.*

15 “(3) *PROVIDER LIMITATION.—Any eligible con-*
16 *tractor who directly or indirectly provides the guar-*
17 *antee of energy savings under a guarantee-based*
18 *method of certification described in subsection*
19 *(d)(1)(D) shall not be eligible to receive the credit al-*
20 *lowed by this section.*

21 “(c) *DEFINITIONS.—For purposes of this section—*

22 “(1) *ELIGIBLE CONTRACTOR.—The term ‘eligible*
23 *contractor’ means—*

24 “(A) *the person who constructed the quali-*
25 *fying new home, or*

1 “(B) in the case of a qualifying new home
2 which is a manufactured home, the manufac-
3 tured home producer of such home.

4 If more than 1 person is described in subparagraph
5 (A) or (B) with respect to any qualifying new home,
6 such term means the person designated as such by the
7 owner of such home.

8 “(2) *ENERGY EFFICIENT PROPERTY.*—The term
9 ‘energy efficient property’ means any energy efficient
10 building envelope component, and any energy effi-
11 cient heating or cooling equipment or system which
12 can, individually or in combination with other com-
13 ponents, meet the requirements of this section.

14 “(3) *QUALIFYING NEW HOME.*—

15 “(A) *IN GENERAL.*—The term ‘qualifying
16 new home’ means a dwelling—

17 “(i) located in the United States,

18 “(ii) the construction of which is sub-
19 stantially completed after December 31,
20 2004, and

21 “(iii) the first use of which after con-
22 struction is as a principal residence (within
23 the meaning of section 121).

24 “(B) *MANUFACTURED HOME INCLUDED.*—

25 The term ‘qualifying new home’ includes a man-

1 *ufactured home conforming to Federal Manufac-*
2 *tured Home Construction and Safety Standards*
3 *(24 C.F.R. 3280).*

4 “(4) CONSTRUCTION.—*The term ‘construction’*
5 *includes reconstruction and rehabilitation.*

6 “(5) BUILDING ENVELOPE COMPONENT.—*The*
7 *term ‘building envelope component’ means—*

8 “(A) *any insulation material or system*
9 *which is specifically and primarily designed to*
10 *reduce the heat loss or gain of a qualifying new*
11 *home when installed in or on such home,*

12 “(B) *exterior windows (including skylights),*
13 *and*

14 “(C) *exterior doors.*

15 “(d) CERTIFICATION.—

16 “(1) METHOD OF CERTIFICATION.—

17 “(A) IN GENERAL.—*A certification de-*
18 *scribed in subsection (b)(1)(B) shall be deter-*
19 *mined either by a component-based method, a*
20 *performance-based method, or a guarantee-based*
21 *method, or, in the case of a qualifying new home*
22 *which is a manufactured home, by a method pre-*
23 *scribed by the Administrator of the Environ-*
24 *mental Protection Agency under the Energy Star*
25 *Labeled Homes program.*

1 “(B) *COMPONENT-BASED METHOD.*—A com-
2 ponent-based method is a method which uses the
3 applicable technical energy efficiency specifica-
4 tions or ratings (including product labeling re-
5 quirements) for the energy efficient building en-
6 velope component or energy efficient heating or
7 cooling equipment. The Secretary shall, in con-
8 sultation with the Administrator of the Environ-
9 mental Protection Agency, develop prescriptive
10 component-based packages which are equivalent
11 in energy performance to properties which qual-
12 ify under subparagraph (C).

13 “(C) *PERFORMANCE-BASED METHOD.*—

14 “(i) *IN GENERAL.*—A performance-
15 based method is a method which calculates
16 projected energy usage and cost reductions
17 in the qualifying new home in relation to a
18 new home—

19 “(I) heated by the same fuel type,

20 and

21 “(II) constructed in accordance
22 with the latest standards of chapter 4
23 of the International Energy Conserva-
24 tion Code approved by the Department
25 of Energy before the construction of

1 *such qualifying new home and any ap-*
2 *plicable Federal minimum efficiency*
3 *standards for equipment.*

4 “(ii) *COMPUTER SOFTWARE.—Com-*
5 *puter software shall be used in support of a*
6 *performance-based method certification*
7 *under clause (i). Such software shall meet*
8 *procedures and methods for calculating en-*
9 *ergy and cost savings in regulations pro-*
10 *mulgated by the Secretary of Energy.*

11 “(D) *GUARANTEE-BASED METHOD.—*

12 “(i) *IN GENERAL.—A guarantee-based*
13 *method is a method which guarantees in*
14 *writing to the homeowner energy savings of*
15 *either 30 percent or 50 percent over the*
16 *2000 International Energy Conservation*
17 *Code for heating and cooling costs. The*
18 *guarantee shall be provided for a minimum*
19 *of 2 years and shall fully reimburse the*
20 *homeowner any heating and cooling costs in*
21 *excess of the guaranteed amount.*

22 “(ii) *COMPUTER SOFTWARE.—Com-*
23 *puter software shall be selected by the pro-*
24 *vider to support the guarantee-based method*
25 *certification under clause (i). Such software*

1 *shall meet procedures and methods for cal-*
2 *culating energy and cost savings in regula-*
3 *tions promulgated by the Secretary of En-*
4 *ergy.*

5 “(2) *PROVIDER.*—*A certification described in*
6 *subsection (b)(1)(B) shall be provided by—*

7 “(A) *in the case of a component-based meth-*
8 *od, a local building regulatory authority, a util-*
9 *ity, or a home energy rating organization,*

10 “(B) *in the case of a performance-based*
11 *method or a guarantee-based method, an indi-*
12 *vidual recognized by an organization designated*
13 *by the Secretary for such purposes, or*

14 “(C) *in the case of a qualifying new home*
15 *which is a manufactured home, a manufactured*
16 *home primary inspection agency.*

17 “(3) *FORM.*—

18 “(A) *IN GENERAL.*—*A certification de-*
19 *scribed in subsection (b)(1)(B) shall be made in*
20 *writing in a manner which specifies in readily*
21 *verifiable fashion the energy efficient building*
22 *envelope components and energy efficient heating*
23 *or cooling equipment installed and their respec-*
24 *tive rated energy efficiency performance, and*

1 “(i) in the case of a performance-based
2 method, accompanied by a written analysis
3 documenting the proper application of a
4 permissible energy performance calculation
5 method to the specific circumstances of such
6 qualifying new home, and

7 “(ii) in the case of a qualifying new
8 home which is a manufactured home, ac-
9 companied by such documentation as re-
10 quired by the Administrator of the Environ-
11 mental Protection Agency under the Energy
12 Star Labeled Homes program.

13 “(B) *FORM PROVIDED TO BUYER.*—A form
14 documenting the energy efficient building enve-
15 lope components and energy efficient heating or
16 cooling equipment installed and their rated en-
17 ergy efficiency performance shall be provided to
18 the buyer of the qualifying new home. The form
19 shall include labeled R-value for insulation prod-
20 ucts, NFRC-labeled U-factor and solar heat gain
21 coefficient for windows, skylights, and doors, la-
22 beled annual fuel utilization efficiency (AFUE)
23 ratings for furnaces and boilers, labeled heating
24 seasonal performance factor (HSPF) ratings for
25 electric heat pumps, and labeled seasonal energy

1 *efficiency ratio (SEER) ratings for air condi-*
2 *tioners.*

3 “(C) *RATINGS LABEL AFFIXED IN DWELL-*
4 *ING.—A permanent label documenting the rat-*
5 *ings in subparagraph (B) shall be affixed to the*
6 *front of the electrical distribution panel of the*
7 *qualifying new home, or shall be otherwise per-*
8 *manently displayed in a readily inspectable lo-*
9 *cation in such home.*

10 “(4) *REGULATIONS.—*

11 “(A) *IN GENERAL.—In prescribing regula-*
12 *tions under this subsection for performance-based*
13 *and guarantee-based certification methods, the*
14 *Secretary shall prescribe procedures for calcu-*
15 *lating annual energy usage and cost reductions*
16 *for heating and cooling and for the reporting of*
17 *the results. Such regulations shall—*

18 “(i) *provide that any calculation pro-*
19 *cedures be fuel neutral such that the same*
20 *energy efficiency measures allow a quali-*
21 *fying new home to be eligible for the credit*
22 *under this section regardless of whether such*
23 *home uses a gas or oil furnace or boiler or*
24 *an electric heat pump, and*

1 “(i) require that any computer soft-
2 ware allow for the printing of the Federal
3 tax forms necessary for the credit under this
4 section and for the printing of forms for
5 disclosure to the homebuyer.

6 “(B) PROVIDERS.—For purposes of para-
7 graph (2)(B), the Secretary shall establish re-
8 quirements for the designation of individuals
9 based on the requirements for energy consultants
10 and home energy raters specified by the Mort-
11 gage Industry National Home Energy Rating
12 Standards.

13 “(e) APPLICATION.—Subsection (a) shall apply to
14 qualifying new homes the construction of which is substan-
15 tially completed after December 31, 2004, and purchased
16 during the period beginning on such date and ending on—

17 “(1) in the case of any 30-percent home, Decem-
18 ber 31, 2005, and

19 “(2) in the case of any 50-percent home, Decem-
20 ber 31, 2007.”.

21 (b) CREDIT MADE PART OF GENERAL BUSINESS
22 CREDIT.—Section 38(b) (relating to current year business
23 credit), as amended by this Act, is amended by striking
24 “plus” at the end of paragraph (21), by striking the period

1 *at the end of paragraph (22) and inserting “, plus”, and*
2 *by adding at the end the following new paragraph:*

3 “(23) the new energy efficient home credit deter-
4 mined under section 45K(a).”.

5 (c) *DENIAL OF DOUBLE BENEFIT.*—Section 280C (re-
6 *lating to certain expenses for which credits are allowable)*
7 *is amended by adding at the end the following new sub-*
8 *section:*

9 “(d) *NEW ENERGY EFFICIENT HOME EXPENSES.*—No
10 *deduction shall be allowed for that portion of expenses for*
11 *a qualifying new home otherwise allowable as a deduction*
12 *for the taxable year which is equal to the amount of the*
13 *credit determined for such taxable year under section*
14 *45K(a).”.*

15 (d) *DEDUCTION FOR CERTAIN UNUSED BUSINESS*
16 *CREDITS.*—Section 196(c) (*defining qualified business cred-*
17 *its*), *as amended by this Act, is amended by striking “and”*
18 *at the end of paragraph (10), by striking the period at the*
19 *end of paragraph (11) and inserting “, and”, and by add-*
20 *ing after paragraph (11) the following new paragraph:*

21 “(12) the new energy efficient home credit deter-
22 mined under section 45K(a).”.

23 (e) *CLERICAL AMENDMENT.*—*The table of sections for*
24 *subpart D of part IV of subchapter A of chapter 1, as*

1 *amended by this Act, is amended by adding at the end the*
 2 *following new item:*

“Sec. 45K. New energy efficient home credit.”.

3 (f) *EFFECTIVE DATE.*—*The amendments made by this*
 4 *section shall apply to homes the construction of which is*
 5 *substantially completed after December 31, 2004.*

6 **SEC. 822. CREDIT FOR ENERGY EFFICIENT APPLIANCES.**

7 (a) *IN GENERAL.*—*Subpart D of part IV of subchapter*
 8 *A of chapter 1 (relating to business-related credits), as*
 9 *amended by this Act, is amended by adding at the end the*
 10 *following new section:*

11 **“SEC. 45L. ENERGY EFFICIENT APPLIANCE CREDIT.**

12 *“(a) ALLOWANCE OF CREDIT.—*

13 *“(1) IN GENERAL.—For purposes of section 38,*
 14 *the energy efficient appliance credit determined under*
 15 *this section for the taxable year is an amount equal*
 16 *to the sum of the amounts determined under para-*
 17 *graph (2) for qualified energy efficient appliances*
 18 *produced by the taxpayer during the calendar year*
 19 *ending with or within the taxable year.*

20 *“(2) AMOUNT.—The amount determined under*
 21 *this paragraph for any category described in sub-*
 22 *section (b)(2)(B) shall be the product of the applicable*
 23 *amount for appliances in the category and the eligible*
 24 *production for the category.*

1 “(b) *APPLICABLE AMOUNT; ELIGIBLE PRODUCTION.*—

2 *For purposes of subsection (a)—*

3 “(1) *APPLICABLE AMOUNT.*—*The applicable*
4 *amount is—*

5 “(A) \$50, *in the case of—*

6 “(i) *a clothes washer which is manu-*
7 *factured with at least a 1.42 MEF, or*

8 “(ii) *a refrigerator which consumes at*
9 *least 10 percent less kilowatt hours per year*
10 *than the energy conservation standards for*
11 *refrigerators promulgated by the Depart-*
12 *ment of Energy and effective on July 1,*
13 *2001,*

14 “(B) \$100, *in the case of—*

15 “(i) *a clothes washer which is manu-*
16 *factured with at least a 1.50 MEF, or*

17 “(ii) *a refrigerator which consumes at*
18 *least 15 percent (20 percent in the case of*
19 *a refrigerator manufactured after 2006) less*
20 *kilowatt hours per year than such energy*
21 *conservation standards, and*

22 “(C) \$150, *in the case of a refrigerator*
23 *manufactured before 2007 which consumes at*
24 *least 20 percent less kilowatt hours per year than*
25 *such energy conservation standards.*

1 “(2) *ELIGIBLE PRODUCTION.*—

2 “(A) *IN GENERAL.*—*The eligible production*
3 *of each category of qualified energy efficient ap-*
4 *pliances is the excess of—*

5 “(i) *the number of appliances in such*
6 *category which are produced by the tax-*
7 *payer during such calendar year, over*

8 “(ii) *the average number of appliances*
9 *in such category which were produced by*
10 *the taxpayer during calendar years 2001,*
11 *2002, and 2003.*

12 “(B) *CATEGORIES.*—*For purposes of sub-*
13 *paragraph (A), the categories are—*

14 “(i) *clothes washers described in para-*
15 *graph (1)(A)(i),*

16 “(ii) *clothes washers described in para-*
17 *graph (1)(B)(i),*

18 “(iii) *refrigerators described in para-*
19 *graph (1)(A)(ii),*

20 “(iv) *refrigerators described in para-*
21 *graph (1)(B)(ii), and*

22 “(v) *refrigerators described in para-*
23 *graph (1)(C).*

24 “(c) *LIMITATION ON MAXIMUM CREDIT.*—

1 “(1) *IN GENERAL.*—*The amount of credit al-*
2 *lowed under subsection (a) with respect to a taxpayer*
3 *for all taxable years shall not exceed \$60,000,000, of*
4 *which not more than \$30,000,000 may be allowed*
5 *with respect to the credit determined by using the ap-*
6 *plicable amount under subsection (b)(1)(A).*

7 “(2) *LIMITATION BASED ON GROSS RECEIPTS.*—
8 *The credit allowed under subsection (a) with respect*
9 *to a taxpayer for the taxable year shall not exceed an*
10 *amount equal to 2 percent of the average annual gross*
11 *receipts of the taxpayer for the 3 taxable years pre-*
12 *ceding the taxable year in which the credit is deter-*
13 *mined.*

14 “(3) *GROSS RECEIPTS.*—*For purposes of this*
15 *subsection, the rules of paragraphs (2) and (3) of sec-*
16 *tion 448(c) shall apply.*

17 “(d) *DEFINITIONS.*—*For purposes of this section—*

18 “(1) *QUALIFIED ENERGY EFFICIENT APPLI-*
19 *ANCE.*—*The term ‘qualified energy efficient appliance’*
20 *means—*

21 “(A) *a clothes washer described in subpara-*
22 *graph (A)(i) or (B)(i) of subsection (b)(1), or*

23 “(B) *a refrigerator described in subpara-*
24 *graph (A)(ii), (B)(ii), or (C) of subsection (b)(1).*

1 “(2) *CLOTHES WASHER.*—*The term ‘clothes*
2 *washer’ means a residential clothes washer, including*
3 *a residential style coin operated washer.*

4 “(3) *REFRIGERATOR.*—*The term ‘refrigerator’*
5 *means an automatic defrost refrigerator-freezer which*
6 *has an internal volume of at least 16.5 cubic feet.*

7 “(4) *MEF.*—*The term ‘MEF’ means Modified*
8 *Energy Factor (as determined by the Secretary of En-*
9 *ergy).*

10 “(e) *SPECIAL RULES.*—

11 “(1) *IN GENERAL.*—*Rules similar to the rules of*
12 *subsections (c), (d), and (e) of section 52 shall apply*
13 *for purposes of this section.*

14 “(2) *AGGREGATION RULES.*—*All persons treated*
15 *as a single employer under subsection (a) or (b) of*
16 *section 52 or subsection (m) or (o) of section 414 shall*
17 *be treated as 1 person for purposes of subsection (a).*

18 “(f) *VERIFICATION.*—*The taxpayer shall submit such*
19 *information or certification as the Secretary, in consulta-*
20 *tion with the Secretary of Energy, determines necessary to*
21 *claim the credit amount under subsection (a).*

22 “(g) *TERMINATION.*—*This section shall not apply—*

23 “(1) *with respect to refrigerators described in*
24 *subsection (b)(1)(A)(ii) produced after December 31,*
25 *2005, and*

1 “(2) with respect to all other qualified energy ef-
2 ficient appliances produced after December 31,
3 2007.”.

4 **(b) CREDIT MADE PART OF GENERAL BUSINESS**
5 *CREDIT.*—Section 38(b) (relating to current year business
6 credit), as amended by this Act, is amended by striking
7 “plus” at the end of paragraph (22), by striking the period
8 at the end of paragraph (23) and inserting “, plus”, and
9 by adding at the end the following new paragraph:

10 “(24) the energy efficient appliance credit deter-
11 mined under section 45L(a).”.

12 **(c) CLERICAL AMENDMENT.**—The table of sections for
13 subpart D of part IV of subchapter A of chapter 1, as
14 amended by this Act, is amended by adding at the end the
15 following new item:

 “Sec. 45L. Energy efficient appliance credit.”.

16 **(d) EFFECTIVE DATE.**—The amendments made by this
17 section shall apply to appliances produced after December
18 31, 2004, in taxable years ending after such date.

19 **SEC. 823. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT**
20 **PROPERTY.**

21 **(a) IN GENERAL.**—Subpart A of part IV of subchapter
22 A of chapter 1 (relating to nonrefundable personal credits)
23 is amended by inserting after section 25B the following new
24 section:

1 **“SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.**

2 “(a) *ALLOWANCE OF CREDIT.*—*In the case of an indi-*
3 *vidual, there shall be allowed as a credit against the tax*
4 *imposed by this chapter for the taxable year an amount*
5 *equal to the sum of—*

6 “(1) *15 percent of the qualified photovoltaic*
7 *property expenditures made by the taxpayer during*
8 *such year,*

9 “(2) *15 percent of the qualified solar water heat-*
10 *ing property expenditures made by the taxpayer dur-*
11 *ing such year,*

12 “(3) *30 percent of the qualified fuel cell property*
13 *expenditures made by the taxpayer during such year,*

14 “(4) *30 percent of the qualified wind energy*
15 *property expenditures made by the taxpayer during*
16 *such year, and*

17 “(5) *the sum of the qualified Tier 2 energy effi-*
18 *cient building property expenditures made by the tax-*
19 *payer during such year.*

20 “(b) *LIMITATIONS.*—

21 “(1) *MAXIMUM CREDIT.*—*The credit allowed*
22 *under subsection (a) shall not exceed—*

23 “(A) *\$2,000 for property described in para-*
24 *graph (1), (2), or (5) of subsection (d),*

25 “(B) *\$500 for each 0.5 kilowatt of capacity*
26 *of property described in subsection (d)(4), and*

1 “(C) for property described in subsection
2 (d)(6)—

3 “(i) \$150 for each electric heat pump
4 water heater,

5 “(ii) \$125 for each advanced natural
6 gas, oil, propane furnace, or hot water boiler,
7 er,

8 “(iii) \$150 for each advanced natural
9 gas, oil, or propane water heater,

10 “(iv) \$50 for each natural gas, oil, or
11 propane water heater,

12 “(v) \$50 for an advanced main air cir-
13 culating fan,

14 “(vi) \$150 for each advanced combina-
15 tion space and water heating system,

16 “(vii) \$50 for each combination space
17 and water heating system, and

18 “(viii) \$250 for each geothermal heat
19 pump.

20 “(2) SAFETY CERTIFICATIONS.—No credit shall
21 be allowed under this section for an item of property
22 unless—

23 “(A) in the case of solar water heating
24 property, such property is certified for perform-
25 ance and safety by the non-profit Solar Rating

1 *Certification Corporation or a comparable entity*
2 *endorsed by the government of the State in which*
3 *such property is installed,*

4 *“(B) in the case of a photovoltaic property,*
5 *a fuel cell property, or a wind energy property,*
6 *such property meets appropriate fire and electric*
7 *code requirements, and*

8 *“(C) in the case of property described in*
9 *subsection (d)(6), such property meets the per-*
10 *formance and quality standards, and the certifi-*
11 *cation requirements (if any), which—*

12 *“(i) have been prescribed by the Sec-*
13 *retary by regulations (after consultation*
14 *with the Secretary of Energy or the Admin-*
15 *istrator of the Environmental Protection*
16 *Agency, as appropriate),*

17 *“(ii) in the case of the energy efficiency*
18 *ratio (EER) for property described in sub-*
19 *section (d)(6)(B)(viii)—*

20 *“(I) require measurements to be*
21 *based on published data which is tested*
22 *by manufacturers at 95 degrees Fahr-*
23 *enheit, and*

24 *“(II) do not require ratings to be*
25 *based on certified data of the Air Con-*

1 *ditioning and Refrigeration Institute,*
2 *and*

3 *“(iii) are in effect at the time of the*
4 *acquisition of the property.*

5 *“(c) CARRYFORWARD OF UNUSED CREDIT.—If the*
6 *credit allowable under subsection (a) exceeds the limitation*
7 *imposed by section 26(a) for such taxable year reduced by*
8 *the sum of the credits allowable under this subpart (other*
9 *than this section and section 25D), such excess shall be car-*
10 *ried to the succeeding taxable year and added to the credit*
11 *allowable under subsection (a) for such succeeding taxable*
12 *year.*

13 *“(d) DEFINITIONS.—For purposes of this section—*

14 *“(1) QUALIFIED SOLAR WATER HEATING PROP-*
15 *ERTY EXPENDITURE.—The term ‘qualified solar water*
16 *heating property expenditure’ means an expenditure*
17 *for property to heat water for use in a dwelling unit*
18 *located in the United States and used as a residence*
19 *by the taxpayer if at least half of the energy used by*
20 *such property for such purpose is derived from the*
21 *sun.*

22 *“(2) QUALIFIED PHOTOVOLTAIC PROPERTY EX-*
23 *PENDITURE.—The term ‘qualified photovoltaic prop-*
24 *erty expenditure’ means an expenditure for property*
25 *which uses solar energy to generate electricity for use*

1 *in a dwelling unit located in the United States and*
2 *used as a residence by the taxpayer.*

3 “(3) *SOLAR PANELS.*—*No expenditure relating to*
4 *a solar panel or other property installed as a roof (or*
5 *portion thereof) shall fail to be treated as property de-*
6 *scribed in paragraph (1) or (2) solely because it con-*
7 *stitutes a structural component of the structure on*
8 *which it is installed.*

9 “(4) *QUALIFIED FUEL CELL PROPERTY EXPENDI-*
10 *TURE.*—*The term ‘qualified fuel cell property expend-*
11 *iture’ means an expenditure for qualified fuel cell*
12 *property (as defined in section 48(a)(4)) installed on*
13 *or in connection with a dwelling unit located in the*
14 *United States and used as a principal residence*
15 *(within the meaning of section 121) by the taxpayer.*

16 “(5) *QUALIFIED WIND ENERGY PROPERTY EX-*
17 *PENDITURE.*—*The term ‘qualified wind energy prop-*
18 *erty expenditure’ means an expenditure for property*
19 *which uses wind energy to generate electricity for use*
20 *in a dwelling unit located in the United States and*
21 *used as a residence by the taxpayer.*

22 “(6) *QUALIFIED TIER 2 ENERGY EFFICIENT*
23 *BUILDING PROPERTY EXPENDITURE.*—

24 “(A) *IN GENERAL.*—*The term ‘qualified*
25 *Tier 2 energy efficient building property expend-*

1 *iture’ means an expenditure for any Tier 2 en-*
2 *ergy efficient building property.*

3 “(B) *TIER 2 ENERGY EFFICIENT BUILDING*
4 *PROPERTY.—The term ‘Tier 2 energy efficient*
5 *building property’ means—*

6 “(i) *an electric heat pump water heater*
7 *which yields an energy factor of at least 1.7*
8 *in the standard Department of Energy test*
9 *procedure,*

10 “(ii) *an advanced natural gas, oil,*
11 *propane furnace, or hot water boiler which*
12 *achieves at least 95 percent annual fuel uti-*
13 *lization efficiency (AFUE),*

14 “(iii) *an advanced natural gas, oil, or*
15 *propane water heater which has an energy*
16 *factor of at least 0.80 in the standard De-*
17 *partment of Energy test procedure,*

18 “(iv) *a natural gas, oil, or propane*
19 *water heater which has an energy factor of*
20 *at least 0.65 but less than 0.80 in the stand-*
21 *ard Department of Energy test procedure,*

22 “(v) *an advanced main air circulating*
23 *fan used in a new natural gas, propane, or*
24 *oil-fired furnace, including main air circu-*
25 *lating fans that use a brushless permanent*

1 *magnet motor or another type of motor*
2 *which achieves similar or higher efficiency*
3 *at half and full speed, as determined by the*
4 *Secretary,*

5 “(vi) *an advanced combination space*
6 *and water heating system which has a com-*
7 *combined energy factor of at least 0.80 and a*
8 *combined annual fuel utilization efficiency*
9 *(AFUE) of at least 78 percent in the stand-*
10 *ard Department of Energy test procedure,*

11 “(vii) *a combination space and water*
12 *heating system which has a combined en-*
13 *ergy factor of at least 0.65 but less than*
14 *0.80 and a combined annual fuel utilization*
15 *efficiency (AFUE) of at least 78 percent in*
16 *the standard Department of Energy test*
17 *procedure, and*

18 “(viii) *a geothermal heat pump which*
19 *has an energy efficiency ratio (EER) of at*
20 *least 21.*

21 “(7) *LABOR COSTS.—Expenditures for labor*
22 *costs properly allocable to the onsite preparation, as-*
23 *sembly, or original installation of the property de-*
24 *scribed in paragraph (1), (2), (4), (5), or (6) and for*
25 *pipng or wiring to interconnect such property to the*

1 *dwelling unit shall be taken into account for purposes*
2 *of this section.*

3 “(8) *SWIMMING POOLS, ETC., USED AS STORAGE*
4 *MEDIUM.—Expenditures which are properly allocable*
5 *to a swimming pool, hot tub, or any other energy*
6 *storage medium which has a function other than the*
7 *function of such storage shall not be taken into ac-*
8 *count for purposes of this section.*

9 “(e) *SPECIAL RULES.—For purposes of this section—*

10 “(1) *DOLLAR AMOUNTS IN CASE OF JOINT OCCU-*
11 *PANCY.—In the case of any dwelling unit which is*
12 *jointly occupied and used during any calendar year*
13 *as a residence by 2 or more individuals the following*
14 *rules shall apply:*

15 “(A) *The amount of the credit allowable,*
16 *under subsection (a) by reason of expenditures*
17 *(as the case may be) made during such calendar*
18 *year by any of such individuals with respect to*
19 *such dwelling unit shall be determined by treat-*
20 *ing all of such individuals as 1 taxpayer whose*
21 *taxable year is such calendar year.*

22 “(B) *There shall be allowable, with respect*
23 *to such expenditures to each of such individuals,*
24 *a credit under subsection (a) for the taxable year*
25 *in which such calendar year ends in an amount*

1 *which bears the same ratio to the amount deter-*
2 *mined under subparagraph (A) as the amount of*
3 *such expenditures made by such individual dur-*
4 *ing such calendar year bears to the aggregate of*
5 *such expenditures made by all of such individ-*
6 *uals during such calendar year.*

7 “(2) *TENANT-STOCKHOLDER IN COOPERATIVE*
8 *HOUSING CORPORATION.—In the case of an indi-*
9 *vidual who is a tenant-stockholder (as defined in sec-*
10 *tion 216) in a cooperative housing corporation (as de-*
11 *finied in such section), such individual shall be treated*
12 *as having made his tenant-stockholder’s proportionate*
13 *share (as defined in section 216(b)(3)) of any expend-*
14 *itures of such corporation.*

15 “(3) *CONDOMINIUMS.—*

16 “(A) *IN GENERAL.—In the case of an indi-*
17 *vidual who is a member of a condominium man-*
18 *agement association with respect to a condo-*
19 *minium which the individual owns, such indi-*
20 *vidual shall be treated as having made the indi-*
21 *vidual’s proportionate share of any expenditures*
22 *of such association.*

23 “(B) *CONDOMINIUM MANAGEMENT ASSOCIA-*
24 *TION.—For purposes of this paragraph, the term*
25 *‘condominium management association’ means*

1 *an organization which meets the requirements of*
2 *paragraph (1) of section 528(c) (other than sub-*
3 *paragraph (E) thereof) with respect to a condo-*
4 *minium project substantially all of the units of*
5 *which are used as residences.*

6 “(4) *ALLOCATION IN CERTAIN CASES.—Except in*
7 *the case of qualified wind energy property expendi-*
8 *tures, if less than 80 percent of the use of an item is*
9 *for nonbusiness purposes, only that portion of the ex-*
10 *penditures for such item which is properly allocable*
11 *to use for nonbusiness purposes shall be taken into ac-*
12 *count.*

13 “(5) *WHEN EXPENDITURE MADE; AMOUNT OF*
14 *EXPENDITURE.—*

15 “(A) *IN GENERAL.—Except as provided in*
16 *subparagraph (B), an expenditure with respect*
17 *to an item shall be treated as made when the*
18 *original installation of the item is completed.*

19 “(B) *EXPENDITURES PART OF BUILDING*
20 *CONSTRUCTION.—In the case of an expenditure*
21 *in connection with the construction or recon-*
22 *struction of a structure, such expenditure shall be*
23 *treated as made when the original use of the con-*
24 *structed or reconstructed structure by the tax-*
25 *payer begins.*

1 “(C) *AMOUNT.*—*The amount of any expend-*
2 *iture shall be the cost thereof.*

3 “(6) *PROPERTY FINANCED BY SUBSIDIZED EN-*
4 *ERGY FINANCING.*—*For purposes of determining the*
5 *amount of expenditures made by any individual with*
6 *respect to any dwelling unit, there shall not be taken*
7 *into account expenditures which are made from sub-*
8 *sidized energy financing (as defined in section*
9 *48(a)(5)(C)).*

10 “(f) *BASIS ADJUSTMENTS.*—*For purposes of this sub-*
11 *title, if a credit is allowed under this section for any ex-*
12 *penditure with respect to any property, the increase in the*
13 *basis of such property which would (but for this subsection)*
14 *result from such expenditure shall be reduced by the amount*
15 *of the credit so allowed.*

16 “(g) *TERMINATION.*—*The credit allowed under this*
17 *section shall not apply to expenditures after December 31,*
18 *2007.”.*

19 “(b) *CREDIT ALLOWED AGAINST REGULAR TAX AND*
20 *ALTERNATIVE MINIMUM TAX.*—

21 “(1) *IN GENERAL.*—*Section 25C(b), as added by*
22 *subsection (a), is amended by adding at the end the*
23 *following new paragraph:*

1 “(3) *LIMITATION BASED ON AMOUNT OF TAX.*—

2 *The credit allowed under subsection (a) for the tax-*
3 *able year shall not exceed the excess of—*

4 “(A) *the sum of the regular tax liability (as*
5 *defined in section 26(b)) plus the tax imposed by*
6 *section 55, over*

7 “(B) *the sum of the credits allowable under*
8 *this subpart (other than this section and section*
9 *25D) and section 27 for the taxable year.*”.

10 (2) *CONFORMING AMENDMENTS.*—

11 (A) *Section 25C(c), as added by subsection*
12 *(a), is amended by striking “section 26(a) for*
13 *such taxable year reduced by the sum of the cred-*
14 *its allowable under this subpart (other than this*
15 *section and section 25D)” and inserting “sub-*
16 *section (b)(3)”.*

17 (B) *Section 23(b)(4)(B) is amended by in-*
18 *serting “and section 25C” after “this section”.*

19 (C) *Section 24(b)(3)(B) is amended by*
20 *striking “23 and 25B” and inserting “23, 25B,*
21 *and 25C”.*

22 (D) *Section 25(e)(1)(C) is amended by in-*
23 *serting “25C,” after “25B,”.*

1 (E) Section 25B(g)(2) is amended by strik-
2 ing “section 23” and inserting “sections 23 and
3 25C”.

4 (F) Section 26(a)(1) is amended by striking
5 “and 25B” and inserting “25B, and 25C”.

6 (G) Section 904(i), as redesignated and
7 amended by this Act, is amended by striking
8 “and 25B” and inserting “25B, and 25C”.

9 (H) Section 1400C(d) is amended by strik-
10 ing “and 25B” and inserting “25B, and 25C”.

11 (c) *ADDITIONAL CONFORMING AMENDMENTS.*—

12 (1) Section 1016(a), as amended by this Act, is
13 amended by striking “and” at the end of paragraph
14 (33), by striking the period at the end of paragraph
15 (34) and inserting “, and”, and by adding at the end
16 the following new paragraph:

17 “(35) to the extent provided in section 25C(f), in
18 the case of amounts with respect to which a credit has
19 been allowed under section 25C.”.

20 (2) The table of sections for subpart A of part IV
21 of subchapter A of chapter 1 is amended by inserting
22 after the item relating to section 25B the following
23 new item:

 “Sec. 25C. Residential energy efficient property.”.

24 (d) *EFFECTIVE DATES.*—

1 (1) *IN GENERAL.*—*Except as provided by para-*
2 *graph (2), the amendments made by this section shall*
3 *apply to expenditures after December 31, 2004, in*
4 *taxable years ending after such date.*

5 (2) *SUBSECTION (b).*—*The amendments made by*
6 *subsection (b) shall apply to taxable years beginning*
7 *after December 31, 2004.*

8 **SEC. 824. CREDIT FOR BUSINESS INSTALLATION OF QUALI-**
9 **FIED FUEL CELLS AND STATIONARY MICRO-**
10 **TURBINE POWER PLANTS.**

11 (a) *IN GENERAL.*—*Section 48(a)(3)(A) (defining en-*
12 *ergy property) is amended by striking “or” at the end of*
13 *clause (i), by adding “or” at the end of clause (ii), and*
14 *by inserting after clause (ii) the following new clause:*

15 “(iii) *qualified fuel cell property or*
16 *qualified microturbine property,*”.

17 (b) *QUALIFIED FUEL CELL PROPERTY; QUALIFIED*
18 *MICROTURBINE PROPERTY.*—*Section 48(a) (relating to en-*
19 *ergy credit) is amended by redesignating paragraphs (4)*
20 *and (5) as paragraphs (5) and (6), respectively, and by*
21 *inserting after paragraph (3) the following new paragraph:*

22 “(4) *QUALIFIED FUEL CELL PROPERTY; QUALI-*
23 *FIED MICROTURBINE PROPERTY.*—*For purposes of*
24 *this subsection—*

25 “(A) *QUALIFIED FUEL CELL PROPERTY.*—

1 “(i) *IN GENERAL.*—The term ‘qualified
2 fuel cell property’ means a fuel cell power
3 plant which—

4 “(I) generates at least 0.5 kilowatt
5 of electricity using an electrochemical
6 process, and

7 “(II) has an electricity-only gen-
8 eration efficiency greater than 30 per-
9 cent.

10 “(ii) *LIMITATION.*—In the case of
11 qualified fuel cell property placed in service
12 during the taxable year, the credit otherwise
13 determined under paragraph (1) for such
14 year with respect to such property shall not
15 exceed an amount equal to \$500 for each 0.5
16 kilowatt of capacity of such property.

17 “(iii) *FUEL CELL POWER PLANT.*—The
18 term ‘fuel cell power plant’ means an inte-
19 grated system comprised of a fuel cell stack
20 assembly and associated balance of plant
21 components which converts a fuel into elec-
22 tricity using electrochemical means.

23 “(iv) *TERMINATION.*—The term ‘quali-
24 fied fuel cell property’ shall not include any

1 *property placed in service after December*
2 *31, 2007.*

3 “(B) *QUALIFIED MICROTURBINE PROP-*
4 *ERTY.—*

5 “(i) *IN GENERAL.—The term ‘qualified*
6 *microturbine property’ means a stationary*
7 *microturbine power plant which—*

8 “(I) *has a capacity of less than*
9 *2,000 kilowatts, and*

10 “(II) *has an electricity-only gen-*
11 *eration efficiency of not less than 26*
12 *percent at International Standard Or-*
13 *ganization conditions.*

14 “(ii) *LIMITATION.—In the case of*
15 *qualified microturbine property placed in*
16 *service during the taxable year, the credit*
17 *otherwise determined under paragraph (1)*
18 *for such year with respect to such property*
19 *shall not exceed an amount equal \$200 for*
20 *each kilowatt of capacity of such property.*

21 “(iii) *STATIONARY MICROTURBINE*
22 *POWER PLANT.—The term ‘stationary*
23 *microturbine power plant’ means an inte-*
24 *grated system comprised of a gas turbine*
25 *engine, a combustor, a recuperator or regen-*

1 erator, a generator or alternator, and asso-
2 ciated balance of plant components which
3 converts a fuel into electricity and thermal
4 energy. Such term also includes all sec-
5 ondary components located between the ex-
6 isting infrastructure for fuel delivery and
7 the existing infrastructure for power dis-
8 tribution, including equipment and controls
9 for meeting relevant power standards, such
10 as voltage, frequency, and power factors.

11 “(iv) *TERMINATION*.—The term ‘quali-
12 fied microturbine property’ shall not in-
13 clude any property placed in service after
14 December 31, 2006.”.

15 (c) *ENERGY PERCENTAGE*.—Section 48(a)(2)(A) (re-
16 lating to energy percentage) is amended to read as follows:

17 “(A) *IN GENERAL*.—The energy percentage
18 is—

19 “(i) in the case of qualified fuel cell
20 property, 30 percent, and

21 “(ii) in the case of any other energy
22 property, 10 percent.”.

23 (d) *CONFORMING AMENDMENTS*.—

1 (A) Section 29(b)(3)(A)(i)(III) is amended
 2 by striking “section 48(a)(4)(C)” and inserting
 3 “section 48(a)(5)(C)”.

4 (B) Section 48(a)(1) is amended by insert-
 5 ing “except as provided in subparagraph (A)(ii)
 6 or (B)(ii) of paragraph (4),” before “the energy”.

7 (e) *EFFECTIVE DATE.*—The amendments made by this
 8 section shall apply to property placed in service after De-
 9 cember 31, 2004, in taxable years ending after such date,
 10 under rules similar to the rules of section 48(m) of the In-
 11 ternal Revenue Code of 1986 (as in effect on the day before
 12 the date of the enactment of the Revenue Reconciliation Act
 13 of 1990).

14 **SEC. 825. ENERGY EFFICIENT COMMERCIAL BUILDINGS DE-**
 15 **DUCTION.**

16 (a) *IN GENERAL.*—Part VI of subchapter B of chapter
 17 1 (relating to itemized deductions for individuals and cor-
 18 porations) is amended by inserting after section 179A the
 19 following new section:

20 **“SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS**
 21 **DEDUCTION.**

22 “(a) *IN GENERAL.*—There shall be allowed as a deduc-
 23 tion for the taxable year in which a building is placed in
 24 service by a taxpayer, an amount equal to the energy effi-
 25 cient commercial building property expenditures made by

1 *such taxpayer with respect to the construction or recon-*
2 *struction of such building for the taxable year or any pre-*
3 *ceding taxable year.*

4 “(b) *MAXIMUM AMOUNT OF DEDUCTION.*—*The amount*
5 *of energy efficient commercial building property expendi-*
6 *tures taken into account under subsection (a) shall not ex-*
7 *ceed an amount equal to the product of—*

8 “(1) *\$2.25, and*

9 “(2) *the square footage of the building with re-*
10 *spect to which the expenditures are made.*

11 “(c) *ENERGY EFFICIENT COMMERCIAL BUILDING*
12 *PROPERTY EXPENDITURES.*—*For purposes of this section—*

13 “(1) *IN GENERAL.*—*The term ‘energy efficient*
14 *commercial building property expenditures’ means*
15 *amounts paid or incurred for energy efficient prop-*
16 *erty installed on or in connection with the construc-*
17 *tion or reconstruction of a building—*

18 “(A) *for which depreciation is allowable*
19 *under section 167,*

20 “(B) *which is located in the United States,*
21 *and*

22 “(C) *which is the type of structure to which*
23 *the Standard 90.1–2001 of the American Society*
24 *of Heating, Refrigerating, and Air Conditioning*

1 *Engineers and the Illuminating Engineering So-*
2 *ciety of North America is applicable.*

3 *Such term includes expenditures for labor costs prop-*
4 *erly allocable to the onsite preparation, assembly, or*
5 *original installation of the property.*

6 “(2) *ENERGY EFFICIENT PROPERTY.*—*For pur-*
7 *poses of paragraph (1)—*

8 “(A) *IN GENERAL.*—*The term ‘energy effi-*
9 *cient property’ means any property which re-*
10 *duces total annual energy and power costs with*
11 *respect to the lighting, heating, cooling, ventila-*
12 *tion, and hot water supply systems of the build-*
13 *ing by 50 percent or more in comparison to a*
14 *building which meets the minimum requirements*
15 *of Standard 90.1–2001 of the American Society*
16 *of Heating, Refrigerating, and Air Conditioning*
17 *Engineers and the Illuminating Engineering So-*
18 *ciety of North America, using methods of cal-*
19 *culatation described in subparagraph (B) and cer-*
20 *tified by qualified individuals as provided under*
21 *paragraph (5).*

22 “(B) *METHODS OF CALCULATION.*—*The*
23 *Secretary, in consultation with the Secretary of*
24 *Energy, shall promulgate regulations which de-*

1 *scribe in detail methods for calculating and*
2 *verifying energy and power costs.*

3 “(C) *COMPUTER SOFTWARE.*—

4 “(i) *IN GENERAL.*—*Any calculation de-*
5 *scribed in subparagraph (B) shall be pre-*
6 *pared by qualified computer software.*

7 “(ii) *QUALIFIED COMPUTER SOFT-*
8 *WARE.*—*For purposes of this subparagraph,*
9 *the term ‘qualified computer software’*
10 *means software—*

11 “(I) *for which the software de-*
12 *signer has certified that the software*
13 *meets all procedures and detailed meth-*
14 *ods for calculating energy and power*
15 *costs as required by the Secretary,*

16 “(II) *which provides such forms*
17 *as required to be filed by the Secretary*
18 *in connection with energy efficiency of*
19 *property and the deduction allowed*
20 *under this section, and*

21 “(III) *which provides a notice*
22 *form which summarizes the energy effi-*
23 *ciency features of the building and its*
24 *projected annual energy costs.*

1 “(3) *ALLOCATION OF DEDUCTION FOR PUBLIC*
2 *PROPERTY.*—*In the case of energy efficient commer-*
3 *cial building property expenditures made by a public*
4 *entity with respect to the construction or reconstruc-*
5 *tion of a public building, the Secretary shall promul-*
6 *gate regulations under which the value of the deduc-*
7 *tion with respect to such expenditures which would be*
8 *allowable to the public entity under this section (de-*
9 *termined without regard to the tax-exempt status of*
10 *such entity) may be allocated to the person primarily*
11 *responsible for designing the energy efficient property.*
12 *Such person shall be treated as the taxpayer for pur-*
13 *poses of this section.*

14 “(4) *NOTICE TO OWNER.*—*Any qualified indi-*
15 *vidual providing a certification under paragraph (5)*
16 *shall provide an explanation to the owner of the*
17 *building regarding the energy efficiency features of*
18 *the building and its projected annual energy costs as*
19 *provided in the notice under paragraph*
20 *(2)(C)(i)(III).*

21 “(5) *CERTIFICATION.*—

22 “(A) *IN GENERAL.*—*The Secretary shall*
23 *prescribe procedures for the inspection and test-*
24 *ing for compliance of buildings by qualified in-*

1 *dividuals described in subparagraph (B). Such*
2 *procedures shall be—*

3 “(i) *comparable, given the difference*
4 *between commercial and residential build-*
5 *ings, to the requirements in the Mortgage*
6 *Industry National Home Energy Rating*
7 *Standards, and*

8 “(ii) *fuel neutral such that the same*
9 *energy efficiency measures allow a building*
10 *to be eligible for the credit under this sec-*
11 *tion regardless of whether such building uses*
12 *a gas or oil furnace or boiler or an electric*
13 *heat pump.*

14 “(B) *QUALIFIED INDIVIDUALS.—Individ-*
15 *uals qualified to determine compliance shall be*
16 *only those individuals who are recognized by an*
17 *organization certified by the Secretary for such*
18 *purposes. The Secretary may qualify a home en-*
19 *ergy ratings organization, a local building regu-*
20 *latory authority, a State or local energy office,*
21 *a utility, or any other organization which meets*
22 *the requirements prescribed under this para-*
23 *graph.*

24 “(C) *PROFICIENCY OF QUALIFIED INDIVID-*
25 *UALS.—The Secretary shall consult with non-*

1 *profit organizations and State agencies with ex-*
2 *pertise in energy efficiency calculations and in-*
3 *spections to develop proficiency tests and train-*
4 *ing programs to qualify individuals to determine*
5 *compliance.*

6 “(d) *BASIS REDUCTION.*—*For purposes of this subtitle,*
7 *if a deduction is allowed under this section with respect*
8 *to any energy efficient property, the basis of such property*
9 *shall be reduced by the amount of the deduction so allowed.*

10 “(e) *INTERIM RULES FOR LIGHTING SYSTEMS.*—*Until*
11 *such time as the Secretary issues final regulations under*
12 *subsection (c)(2)(B) with respect to property which is part*
13 *of a lighting system—*

14 “(1) *IN GENERAL.*—*The lighting system target*
15 *under subsection (d)(1)(A)(ii) shall be a reduction in*
16 *lighting power density of 25 percent (50 percent in*
17 *the case of a warehouse) of the minimum require-*
18 *ments in Table 9.3.1.1 or Table 9.3.1.2 (not including*
19 *additional interior lighting power allowances) of*
20 *Standard 90.1–2001.*

21 “(2) *REDUCTION IN CREDIT IF REDUCTION LESS*
22 *THAN 40 PERCENT.*—

23 “(A) *IN GENERAL.*—*If, with respect to the*
24 *lighting system of any building other than a*
25 *warehouse, the reduction of lighting power den-*

1 *sity of the lighting system is not at least 40 per-*
2 *cent, only the applicable percentage of the*
3 *amount of credit otherwise allowable under this*
4 *section with respect to such property shall be al-*
5 *lowed.*

6 “(B) *APPLICABLE PERCENTAGE.*—*For pur-*
7 *poses of subparagraph (A), the applicable per-*
8 *centage is the number of percentage points (not*
9 *greater than 100) equal to the sum of—*

10 “(i) 50, and

11 “(ii) *the amount which bears the same*
12 *ratio to 50 as the excess of the reduction of*
13 *lighting power density of the lighting sys-*
14 *tem over 25 percentage points bears to 15.*

15 “(C) *EXCEPTIONS.*—*This subsection shall*
16 *not apply to any system—*

17 “(i) *the controls and circuiting of*
18 *which do not comply fully with the manda-*
19 *tory and prescriptive requirements of*
20 *Standard 90.1–2001 and which do not in-*
21 *clude provision for bilevel switching in all*
22 *occupancies except hotel and motel guest*
23 *rooms, store rooms, restrooms, and public*
24 *lobbies, or*

1 “(ii) which does not meet the min-
2 imum requirements for calculated lighting
3 levels as set forth in the *Illuminating Engi-
4 neering Society of North America Lighting
5 Handbook, Performance and Application,
6 Ninth Edition, 2000.*

7 “(f) *REGULATIONS.*—*The Secretary shall promulgate*
8 *such regulations as necessary to take into account new tech-*
9 *nologies regarding energy efficiency and renewable energy*
10 *for purposes of determining energy efficiency and savings*
11 *under this section.*

12 “(g) *TERMINATION.*—*This section shall not apply with*
13 *respect to any energy efficient commercial building prop-*
14 *erty expenditures in connection with a building the con-*
15 *struction of which is not completed on or before December*
16 *31, 2009.”.*

17 (b) *CONFORMING AMENDMENTS.*—

18 (1) *Section 1016(a), as amended by this Act, is*
19 *amended by striking “and” at the end of paragraph*
20 *(34), by striking the period at the end of paragraph*
21 *(35) and inserting “, and”, and by adding at the end*
22 *the following new paragraph:*

23 “(36) *to the extent provided in section*
24 *179B(d).”.*

1 (2) Section 1245(a) is amended by inserting
2 “179B,” after “179A,” both places it appears in
3 paragraphs (2)(C) and (3)(C).

4 (3) Section 1250(b)(3) is amended by inserting
5 before the period at the end of the first sentence “or
6 by section 179B”.

7 (4) Section 263(a)(1), as amended by this Act, is
8 amended by striking “or” at the end of subparagraph
9 (H), by striking the period at the end of subpara-
10 graph (I) and inserting “, or”, and by inserting after
11 subparagraph (I) the following new subparagraph:

12 “(J) expenditures for which a deduction is
13 allowed under section 179B.”.

14 (5) Section 312(k)(3)(B) is amended by striking
15 “or 179A” each place it appears in the heading and
16 text and inserting “, 179A, or 179B”.

17 (c) *CLERICAL AMENDMENT.*—The table of sections for
18 part VI of subchapter B of chapter 1 is amended by insert-
19 ing after section 179A the following new item:

 “Sec. 179B. Energy efficient commercial buildings deduction.”.

20 (d) *EFFECTIVE DATE.*—The amendments made by this
21 section shall apply to taxable years beginning after Decem-
22 ber 31, 2004.

1 **SEC. 826. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR**
2 **DEPRECIATION OF QUALIFIED ENERGY MAN-**
3 **AGEMENT DEVICES.**

4 (a) *IN GENERAL.*—Section 168(e)(3)(A) (defining 3-
5 year property) is amended by striking “and” at the end
6 of clause (ii), by striking the period at the end of clause
7 (iii) and inserting “, and”, and by adding at the end the
8 following new clause:

9 “(iv) any qualified energy manage-
10 ment device.”

11 (b) *DEFINITION OF QUALIFIED ENERGY MANAGEMENT*
12 *DEVICE.*—Section 168(i) (relating to definitions and spe-
13 cial rules), as amended by this Act, is amended by inserting
14 at the end the following new paragraph:

15 “(17) *QUALIFIED ENERGY MANAGEMENT DE-*
16 *VICE.*—

17 “(A) *IN GENERAL.*—The term ‘qualified en-
18 ergy management device’ means any energy
19 management device which is placed in service be-
20 fore January 1, 2008, by a taxpayer who is a
21 supplier of electric energy or a provider of elec-
22 tric energy services.

23 “(B) *ENERGY MANAGEMENT DEVICE.*—For
24 purposes of subparagraph (A), the term ‘energy
25 management device’ means any meter or meter-
26 ing device which is used by the taxpayer—

1 “(i) to measure and record electricity
2 usage data on a time-differentiated basis in
3 at least 4 separate time segments per day,
4 and

5 “(ii) to provide such data on at least
6 a monthly basis to both consumers and the
7 taxpayer.”.

8 (c) *ALTERNATIVE SYSTEM.*—The table contained in
9 section 168(g)(3)(B) is amended by inserting after the item
10 relating to subparagraph (A)(iii) the following:

 “(A)(iv) 20”.

11 (d) *EFFECTIVE DATE.*—The amendments made by this
12 section shall apply to property placed in service after De-
13 cember 31, 2004, in taxable years ending after such date.

14 **SEC. 827. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR**
15 **DEPRECIATION OF QUALIFIED WATER SUB-**
16 **METERING DEVICES.**

17 (a) *IN GENERAL.*—Section 168(e)(3)(A) (defining 3-
18 year property), as amended by this Act, is amended by
19 striking “and” at the end of clause (iii), by striking the
20 period at the end of clause (iv) and inserting “, and”, and
21 by adding at the end the following new clause:

22 “(v) any qualified water submetering
23 device.”.

24 (b) *DEFINITION OF QUALIFIED WATER SUBMETERING*
25 *DEVICE.*—Section 168(i) (relating to definitions and spe-

1 cial rules), as amended by this Act, is amended by inserting
2 at the end the following new paragraph:

3 “(16) *QUALIFIED WATER SUBMETERING DE-*
4 *VICE.*—

5 “(A) *IN GENERAL.*—*The term ‘qualified*
6 *water submetering device’ means any water sub-*
7 *metering device which is placed in service before*
8 *January 1, 2008, by a taxpayer who is an eligi-*
9 *ble resupplier with respect to the unit for which*
10 *the device is placed in service.*

11 “(B) *WATER SUBMETERING DEVICE.*—*For*
12 *purposes of this paragraph, the term ‘water sub-*
13 *metering device’ means any submetering device*
14 *which is used by the taxpayer—*

15 “(i) *to measure and record water usage*
16 *data, and*

17 “(ii) *to provide such data on at least*
18 *a monthly basis to both consumers and the*
19 *taxpayer.*

20 “(C) *ELIGIBLE RESUPPLIER.*—*For purposes*
21 *of subparagraph (A), the term ‘eligible resup-*
22 *plier’ means any taxpayer who purchases and*
23 *installs qualified water submetering devices in*
24 *every unit in any multi-unit property.”.*

1 (c) *ALTERNATIVE SYSTEM.*—The table contained in
 2 section 168(g)(3)(B), as amended by this Act, is amended
 3 by inserting after the item relating to subparagraph (A)(iv)
 4 the following:

“*(A)(v)* 20”.

5 (d) *EFFECTIVE DATE.*—The amendments made by this
 6 section shall apply to property placed in service after De-
 7 cember 31, 2004, in taxable years ending after such date.

8 **SEC. 828. ENERGY CREDIT FOR COMBINED HEAT AND**
 9 **POWER SYSTEM PROPERTY.**

10 (a) *IN GENERAL.*—Section 48(a)(3)(A) (defining en-
 11 ergy property), as amended by this Act, is amended by
 12 striking “or” at the end of clause (ii), by adding “or” at
 13 the end of clause (iii), and by inserting after clause (iii)
 14 the following new clause:

15 “(iv) combined heat and power system
 16 property.”.

17 (b) *COMBINED HEAT AND POWER SYSTEM PROP-*
 18 *ERTY.*—Section 48 (relating to energy credit; reforestation
 19 credit), as amended by this Act, is amended by adding at
 20 the end the following new subsection:

21 “(d) *COMBINED HEAT AND POWER SYSTEM PROP-*
 22 *ERTY.*—For purposes of subsection (a)(3)(A)(iv)—

23 “(1) *COMBINED HEAT AND POWER SYSTEM PROP-*
 24 *ERTY.*—The term ‘combined heat and power system
 25 property’ means property comprising a system—

1 “(A) which uses the same energy source for
2 the simultaneous or sequential generation of elec-
3 trical power, mechanical shaft power, or both, in
4 combination with the generation of steam or
5 other forms of useful thermal energy (including
6 heating and cooling applications),

7 “(B) which has an electrical capacity of not
8 more than 15 megawatts or a mechanical energy
9 capacity of not more than 2,000 horsepower or
10 an equivalent combination of electrical and me-
11 chanical energy capacities,

12 “(C) which produces—

13 “(i) at least 20 percent of its total use-
14 ful energy in the form of thermal energy
15 which is not used to produce electrical or
16 mechanical power (or combination thereof),
17 and

18 “(ii) at least 20 percent of its total
19 useful energy in the form of electrical or me-
20 chanical power (or combination thereof),

21 “(D) the energy efficiency percentage of
22 which exceeds 60 percent, and

23 “(E) which is placed in service before Janu-
24 ary 1, 2007.

25 “(2) SPECIAL RULES.—

1 “(A) *ENERGY EFFICIENCY PERCENTAGE.*—
2 *For purposes of this subsection, the energy effi-*
3 *ciency percentage of a system is the fraction—*

4 “(i) *the numerator of which is the total*
5 *useful electrical, thermal, and mechanical*
6 *power produced by the system at normal*
7 *operating rates, and expected to be con-*
8 *sumed in its normal application, and*

9 “(ii) *the denominator of which is the*
10 *lower heating value of the fuel sources for*
11 *the system.*

12 “(B) *DETERMINATIONS MADE ON BTU*
13 *BASIS.*—*The energy efficiency percentage and the*
14 *percentages under paragraph (1)(C) shall be de-*
15 *termined on a Btu basis.*

16 “(C) *INPUT AND OUTPUT PROPERTY NOT IN-*
17 *CLUDED.*—*The term ‘combined heat and power*
18 *system property’ does not include property used*
19 *to transport the energy source to the facility or*
20 *to distribute energy produced by the facility.*

21 “(D) *PUBLIC UTILITY PROPERTY.*—

22 “(i) *ACCOUNTING RULE FOR PUBLIC*
23 *UTILITY PROPERTY.*—*If the combined heat*
24 *and power system property is public utility*
25 *property (as defined in section 168(i)(10)),*

1 the taxpayer may only claim the credit
2 under subsection (a) if, with respect to such
3 property, the taxpayer uses a normalization
4 method of accounting.

5 “(ii) CERTAIN EXCEPTION NOT TO
6 APPLY.—The matter in subsection (a)(3)
7 which follows subparagraph (D) thereof
8 shall not apply to combined heat and power
9 system property.

10 “(3) SYSTEMS USING BAGASSE.—If a system is
11 designed to use bagasse for at least 90 percent of the
12 energy source—

13 “(A) paragraph (1)(D) shall not apply, but

14 “(B) the amount of credit determined under
15 subsection (a) with respect to such system shall
16 not exceed the amount which bears the same
17 ratio to such amount of credit (determined with-
18 out regard to this paragraph) as the energy effi-
19 ciency percentage of such system bears to 60 per-
20 cent.”.

21 “(c) EFFECTIVE DATE.—The amendments made by this
22 subsection shall apply to periods after December 31, 2004,
23 in taxable years ending after such date, under rules similar
24 to the rules of section 48(m) of the Internal Revenue Code

1 of 1986 (as in effect on the day before the date of the enact-
2 ment of the Revenue Reconciliation Act of 1990).

3 **SEC. 829. CREDIT FOR ENERGY EFFICIENCY IMPROVE-**
4 **MENTS TO EXISTING HOMES.**

5 (a) *IN GENERAL.*—Subpart A of part IV of subchapter
6 A of chapter 1 (relating to nonrefundable personal credits),
7 as amended by this Act, is amended by inserting after sec-
8 tion 25C the following new section:

9 **“SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXIST-**
10 **ING HOMES.**

11 “(a) *ALLOWANCE OF CREDIT.*—In the case of an indi-
12 vidual, there shall be allowed as a credit against the tax
13 imposed by this chapter for the taxable year an amount
14 equal to 10 percent of the amount paid or incurred by the
15 taxpayer for qualified energy efficiency improvements in-
16 stalled during such taxable year.

17 “(b) *LIMITATION.*—The credit allowed by this section
18 with respect to a dwelling for any taxable year shall not
19 exceed \$300, reduced (but not below zero) by the sum of
20 the credits allowed under subsection (a) to the taxpayer
21 with respect to the dwelling for all preceding taxable years.

22 “(c) *CARRYFORWARD OF UNUSED CREDIT.*—If the
23 credit allowable under subsection (a) exceeds the limitation
24 imposed by section 26(a) for such taxable year reduced by
25 the sum of the credits allowable under this subpart (other

1 *than this section) for such taxable year, such excess shall*
2 *be carried to the succeeding taxable year and added to the*
3 *credit allowable under subsection (a) for such succeeding*
4 *taxable year.*

5 “(d) *QUALIFIED ENERGY EFFICIENCY IMPROVE-*
6 *MENTS.—For purposes of this section, the term ‘qualified*
7 *energy efficiency improvements’ means any energy efficient*
8 *building envelope component which is certified to meet or*
9 *exceed the latest prescriptive criteria for such component*
10 *in the International Energy Conservation Code approved*
11 *by the Department of Energy before the installation of such*
12 *component, or any combination of energy efficiency meas-*
13 *ures which are certified as achieving at least a 30 percent*
14 *reduction in heating and cooling energy usage for the dwell-*
15 *ing (as measured in terms of energy cost to the taxpayer),*
16 *if—*

17 “(1) *such component or combination of measures*
18 *is installed in or on a dwelling which—*

19 “(A) *is located in the United States,*

20 “(B) *has not been treated as a qualifying*
21 *new home for purposes of any credit allowed*
22 *under section 45K, and*

23 “(C) *is owned and used by the taxpayer as*
24 *the taxpayer’s principal residence (within the*
25 *meaning of section 121),*

1 “(2) *the original use of such component or com-*
2 *ination of measures commences with the taxpayer,*
3 *and*

4 “(3) *such component or combination of measures*
5 *reasonably can be expected to remain in use for at*
6 *least 5 years.*

7 “(e) *CERTIFICATION.—*

8 “(1) *METHODS OF CERTIFICATION.—*

9 “(A) *COMPONENT-BASED METHOD.—The*
10 *certification described in subsection (d) for any*
11 *component described in such subsection shall be*
12 *determined on the basis of applicable energy effi-*
13 *ciency ratings (including product labeling re-*
14 *quirements) for affected building envelope compo-*
15 *nents.*

16 “(B) *PERFORMANCE-BASED METHOD.—*

17 “(i) *IN GENERAL.—The certification*
18 *described in subsection (d) for any combina-*
19 *tion of measures described in such sub-*
20 *section shall be—*

21 “(I) *determined by comparing the*
22 *projected heating and cooling energy*
23 *usage for the dwelling to such usage for*
24 *such dwelling in its original condition,*
25 *and*

1 “(II) accompanied by a written
2 analysis documenting the proper ap-
3 plication of a permissible energy per-
4 formance calculation method to the
5 specific circumstances of such dwelling.

6 “(ii) *COMPUTER SOFTWARE*.—Com-
7 puter software shall be used in support of a
8 performance-based method certification
9 under clause (i). Such software shall meet
10 procedures and methods for calculating en-
11 ergy and cost savings in regulations pro-
12 mulgated by the Secretary of Energy.

13 “(2) *PROVIDER*.—A certification described in
14 subsection (d) shall be provided by—

15 “(A) in the case of the method described in
16 paragraph (1)(A), a third party, such as a local
17 building regulatory authority, a utility, a manu-
18 factured home primary inspection agency, or a
19 home energy rating organization, or

20 “(B) in the case of the method described in
21 paragraph (1)(B), an individual recognized by
22 an organization designated by the Secretary for
23 such purposes.

24 “(3) *FORM*.—A certification described in sub-
25 section (d) shall be made in writing on forms which

1 *specify in readily inspectable fashion the energy effi-*
2 *cient components and other measures and their re-*
3 *spective efficiency ratings, and which include a per-*
4 *manent label affixed to the electrical distribution*
5 *panel of the dwelling.*

6 “(4) *REGULATIONS.*—

7 “(A) *IN GENERAL.*—*In prescribing regula-*
8 *tions under this subsection for certification meth-*
9 *ods described in paragraph (1)(B), the Secretary,*
10 *after examining the requirements for energy con-*
11 *sultants and home energy ratings providers spec-*
12 *ified by the Mortgage Industry National Home*
13 *Energy Rating Standards, shall prescribe proce-*
14 *dures for calculating annual energy usage and*
15 *cost reductions for heating and cooling and for*
16 *the reporting of the results. Such regulations*
17 *shall—*

18 “(i) *provide that any calculation pro-*
19 *cedures be fuel neutral such that the same*
20 *energy efficiency measures allow a dwelling*
21 *to be eligible for the credit under this sec-*
22 *tion regardless of whether such dwelling uses*
23 *a gas or oil furnace or boiler or an electric*
24 *heat pump, and*

1 “(ii) require that any computer soft-
2 ware allow for the printing of the Federal
3 tax forms necessary for the credit under this
4 section and for the printing of forms for
5 disclosure to the owner of the dwelling.

6 “(B) PROVIDERS.—For purposes of para-
7 graph (2)(B), the Secretary shall establish re-
8 quirements for the designation of individuals
9 based on the requirements for energy consultants
10 and home energy raters specified by the Mort-
11 gage Industry National Home Energy Rating
12 Standards.

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

15 “(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCU-
16 PANCY.—In the case of any dwelling unit which is
17 jointly occupied and used during any calendar year
18 as a residence by 2 or more individuals the following
19 rules shall apply:

20 “(A) The amount of the credit allowable
21 under subsection (a) by reason of expenditures
22 for the qualified energy efficiency improvements
23 made during such calendar year by any of such
24 individuals with respect to such dwelling unit
25 shall be determined by treating all of such indi-

1 *viduals as 1 taxpayer whose taxable year is such*
2 *calendar year.*

3 “(B) *There shall be allowable, with respect*
4 *to such expenditures to each of such individuals,*
5 *a credit under subsection (a) for the taxable year*
6 *in which such calendar year ends in an amount*
7 *which bears the same ratio to the amount deter-*
8 *mined under subparagraph (A) as the amount of*
9 *such expenditures made by such individual dur-*
10 *ing such calendar year bears to the aggregate of*
11 *such expenditures made by all of such individ-*
12 *uals during such calendar year.*

13 “(2) *TENANT-STOCKHOLDER IN COOPERATIVE*
14 *HOUSING CORPORATION.—In the case of an indi-*
15 *vidual who is a tenant-stockholder (as defined in sec-*
16 *tion 216) in a cooperative housing corporation (as de-*
17 *finied in such section), such individual shall be treated*
18 *as having paid his tenant-stockholder’s proportionate*
19 *share (as defined in section 216(b)(3)) of the cost of*
20 *qualified energy efficiency improvements made by*
21 *such corporation.*

22 “(3) *CONDOMINIUMS.—*

23 “(A) *IN GENERAL.—In the case of an indi-*
24 *vidual who is a member of a condominium man-*
25 *agement association with respect to a condo-*

1 *minium which the individual owns, such indi-*
2 *vidual shall be treated as having paid the indi-*
3 *vidual's proportionate share of the cost of quali-*
4 *fied energy efficiency improvements made by*
5 *such association.*

6 “(B) *CONDOMINIUM MANAGEMENT ASSOCIA-*
7 *TION.—For purposes of this paragraph, the term*
8 *‘condominium management association’ means*
9 *an organization which meets the requirements of*
10 *paragraph (1) of section 528(c) (other than sub-*
11 *paragraph (E) thereof) with respect to a condo-*
12 *minium project substantially all of the units of*
13 *which are used as residences.*

14 “(4) *BUILDING ENVELOPE COMPONENT.—The*
15 *term ‘building envelope component’ means—*

16 “(A) *any insulation material or system*
17 *which is specifically and primarily designed to*
18 *reduce the heat loss or gain or a dwelling when*
19 *installed in or on such dwelling,*

20 “(B) *exterior windows (including skylights),*
21 *and*

22 “(C) *exterior doors.*

23 “(5) *MANUFACTURED HOMES INCLUDED.—For*
24 *purposes of this section, the term ‘dwelling’ includes*
25 *a manufactured home which conforms to Federal*

1 *Manufactured Home Construction and Safety Stand-*
2 *ards (24 C.F.R. 3280).*

3 “(g) *BASIS ADJUSTMENT.*—*For purposes of this sub-*
4 *title, if a credit is allowed under this section for any ex-*
5 *penditure with respect to any property, the increase in the*
6 *basis of such property which would (but for this subsection)*
7 *result from such expenditure shall be reduced by the amount*
8 *of the credit so allowed.*

9 “(h) *TERMINATION.*—*Subsection (a) shall not apply to*
10 *qualified energy efficiency improvements installed after De-*
11 *cember 31, 2006.”*

12 (b) *CREDIT ALLOWED AGAINST REGULAR TAX AND*
13 *ALTERNATIVE MINIMUM TAX.*—

14 (1) *IN GENERAL.*—*Section 25D(b), as added by*
15 *subsection (a), is amended—*

16 (A) *by striking “The credit” and inserting*
17 *the following:*

18 “(1) *DOLLAR AMOUNT.*—*The credit”, and*

19 (B) *by adding at the end the following new*
20 *paragraph:*

21 “(2) *LIMITATION BASED ON AMOUNT OF TAX.*—

22 *The credit allowed under subsection (a) for the tax-*
23 *able year shall not exceed the excess of—*

1 “(A) the sum of the regular tax liability (as
2 defined in section 26(b)) plus the tax imposed by
3 section 55, over

4 “(B) the sum of the credits allowable under
5 this subpart (other than this section) and section
6 27 for the taxable year.”.

7 (2) CONFORMING AMENDMENTS.—

8 (A) Section 25D(c), as added by subsection
9 (a), is amended by striking “section 26(a) for
10 such taxable year reduced by the sum of the cred-
11 its allowable under this subpart (other than this
12 section)” and inserting “subsection (b)(2)”.

13 (B) Section 23(b)(4)(B), as amended by this
14 Act, is amended by striking “section 25C” and
15 inserting “sections 25C and 25D”.

16 (C) Section 24(b)(3)(B), as amended by this
17 Act, is amended by striking “and 25C” and in-
18 serting “25C, and 25D”.

19 (D) Section 25(e)(1)(C), as amended by this
20 Act, is amended by inserting “25D,” after
21 “25C,”.

22 (E) Section 25B(g)(2), as amended by this
23 Act, is amended by striking “23 and 25C” and
24 inserting “23, 25C, and 25D”.

1 (F) Section 26(a)(1), as amended by this
2 Act, is amended by striking “and 25C” and in-
3 serting “25C, and 25D”.

4 (G) Section 904(i), as redesignated and
5 amended by this Act, is amended by striking
6 “and 25C” and inserting “25C, and 25D”.

7 (H) Section 1400C(d), as amended by this
8 Act, is amended by striking “and 25C” and in-
9 serting “25C, and 25D”.

10 (c) *ADDITIONAL CONFORMING AMENDMENTS.*—

11 (1) Section 1016(a), as amended by this Act, is
12 amended by striking “and” at the end of paragraph
13 (35), by striking the period at the end of paragraph
14 (36) and inserting “; and”, and by adding at the end
15 the following new paragraph:

16 “(37) to the extent provided in section 25D(g), in
17 the case of amounts with respect to which a credit has
18 been allowed under section 25D.”.

19 (2) The table of sections for subpart A of part IV
20 of subchapter A of chapter 1, as amended by this Act,
21 is amended by inserting after the item relating to sec-
22 tion 25C the following new item:

 “Sec. 25D. Energy efficiency improvements to existing homes.”.

23 (d) *EFFECTIVE DATES.*—

24 (1) *IN GENERAL.*—Except as provided by para-
25 graph (2), the amendments made by this section shall

1 *apply to property installed after December 31, 2004,*
 2 *in taxable years ending after such date.*

3 (2) *SUBSECTION (b).—The amendments made by*
 4 *subsection (b) shall apply to taxable years beginning*
 5 *after December 31, 2004.*

6 ***Subtitle D—Clean Coal Incentives***

7 ***PART I—CREDIT FOR EMISSION REDUCTIONS*** 8 ***AND EFFICIENCY IMPROVEMENTS IN EXIST-*** 9 ***ING COAL-BASED ELECTRICITY GENERATION*** 10 ***FACILITIES***

11 ***SEC. 831. CREDIT FOR PRODUCTION FROM A QUALIFYING*** 12 ***CLEAN COAL TECHNOLOGY UNIT.***

13 (a) *CREDIT FOR PRODUCTION FROM A QUALIFYING*
 14 *CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV*
 15 *of subchapter A of chapter 1 (relating to business related*
 16 *credits), as amended by this Act, is amended by adding at*
 17 *the end the following new section:*

18 ***“SEC. 45M. CREDIT FOR PRODUCTION FROM A QUALIFYING*** 19 ***CLEAN COAL TECHNOLOGY UNIT.***

20 “(a) *GENERAL RULE.—For purposes of section 38, the*
 21 *qualifying clean coal technology production credit of any*
 22 *taxpayer for any taxable year is equal to—*

23 “(1) *the applicable amount of clean coal tech-*
 24 *nology production credit, multiplied by*

25 “(2) *the applicable percentage of the sum of—*

1 “(A) the kilowatt hours of electricity, plus

2 “(B) each 3,413 Btu of fuels or chemicals,
3 produced by the taxpayer during such taxable year at
4 a qualifying clean coal technology unit, but only if
5 such production occurs during the 10-year period be-
6 ginning on the date the unit was returned to service
7 after becoming a qualifying clean coal technology
8 unit.

9 “(b) *APPLICABLE AMOUNT.*—

10 “(1) *IN GENERAL.*—For purposes of this section,
11 the applicable amount of clean coal technology pro-
12 duction credit is equal to \$0.0034.

13 “(2) *INFLATION ADJUSTMENT.*—For calendar
14 years after 2005, the applicable amount of clean coal
15 technology production credit shall be adjusted by mul-
16 tiplying such amount by the inflation adjustment fac-
17 tor for the calendar year in which the amount is ap-
18 plied. If any amount as increased under the pre-
19 ceding sentence is not a multiple of 0.01 cent, such
20 amount shall be rounded to the nearest multiple of
21 0.01 cent.

22 “(c) *APPLICABLE PERCENTAGE.*—For purposes of this
23 section, with respect to any qualifying clean coal technology
24 unit, the applicable percentage is the percentage equal to
25 the ratio which the portion of the national megawatt capaci-

1 *ity limitation allocated to the taxpayer with respect to such*
2 *unit under subsection (e) bears to the total megawatt capac-*
3 *ity of such unit.*

4 “(d) *DEFINITIONS AND SPECIAL RULES.—For pur-*
5 *poses of this section—*

6 “(1) *QUALIFYING CLEAN COAL TECHNOLOGY*
7 *UNIT.—The term ‘qualifying clean coal technology*
8 *unit’ means a clean coal technology unit of the tax-*
9 *payer which—*

10 “(A) *on January 1, 2005—*

11 “(i) *was a coal-based electricity gener-*
12 *ating steam generator-turbine unit which*
13 *was not a clean coal technology unit, and*

14 “(ii) *had a nameplate capacity rating*
15 *of not more than 300 megawatts,*

16 “(B) *becomes a clean coal technology unit*
17 *as the result of the retrofitting, repowering, or*
18 *replacement of the unit with clean coal tech-*
19 *nology during the 10-year period beginning on*
20 *January 1, 2005,*

21 “(C) *is not receiving nor is scheduled to re-*
22 *ceive funding under the Clean Coal Technology*
23 *Program, the Power Plant Improvement Initia-*
24 *tive, or the Clean Coal Power Initiative admin-*
25 *istered by the Secretary of Energy, and*

1 “(D) receives an allocation of a portion of
2 the national megawatt capacity limitation under
3 subsection (e).

4 “(2) *CLEAN COAL TECHNOLOGY UNIT.*—The term
5 ‘clean coal technology unit’ means a unit which—

6 “(A) uses clean coal technology, including
7 advanced pulverized coal or atmospheric fluid-
8 ized bed combustion, pressurized fluidized bed
9 combustion, integrated gasification combined
10 cycle, or any other technology, for the production
11 of electricity,

12 “(B) uses an input of at least 75 percent
13 coal to produce at least 50 percent of its thermal
14 output as electricity,

15 “(C) has a design net heat rate of at least
16 500 less than that of such unit as described in
17 paragraph (1)(A),

18 “(D) has a maximum design net heat rate
19 of not more than 9,500, and

20 “(E) meets the pollution control require-
21 ments of paragraph (3).

22 “(3) *POLLUTION CONTROL REQUIREMENTS.*—

23 “(A) *IN GENERAL.*—A unit meets the re-
24 quirements of this paragraph if—

1 “(i) its emissions of sulfur dioxide, ni-
2 trogen oxide, or particulates meet the lower
3 of the emission levels for each such emission
4 specified in—

5 “(I) subparagraph (B), or

6 “(II) the new source performance
7 standards of the Clean Air Act (42
8 U.S.C. 7411) which are in effect for the
9 category of source at the time of the
10 retrofitting, repowering, or replacement
11 of the unit, and

12 “(ii) its emissions do not exceed any
13 relevant emission level specified by regula-
14 tion pursuant to the hazardous air pollut-
15 ant requirements of the Clean Air Act (42
16 U.S.C. 7412) in effect at the time of the ret-
17 rofitting, repowering, or replacement.

18 “(B) SPECIFIC LEVELS.—The levels speci-
19 fied in this subparagraph are—

20 “(i) in the case of sulfur dioxide emis-
21 sions, 50 percent of the sulfur dioxide emis-
22 sion levels specified in the new source per-
23 formance standards of the Clean Air Act
24 (42 U.S.C. 7411) in effect on the date of the

1 enactment of this section for the category of
2 source,

3 “(ii) in the case of nitrogen oxide
4 emissions—

5 “(I) 0.1 pound per million Btu of
6 heat input if the unit is not a cyclone-
7 fired boiler, and

8 “(II) if the unit is a cyclone-fired
9 boiler, 15 percent of the uncontrolled
10 nitrogen oxide emissions from such
11 boilers, and

12 “(iii) in the case of particulate emis-
13 sions, 0.02 pound per million Btu of heat
14 input.

15 “(4) *DESIGN NET HEAT RATE.*—The design net
16 heat rate with respect to any unit, measured in Btu
17 per kilowatt hour (HHV)—

18 “(A) shall be based on the design annual
19 heat input to and the design annual net elec-
20 trical power, fuels, and chemicals output from
21 such unit (determined without regard to such
22 unit’s co-generation of steam),

23 “(B) shall be adjusted for the heat content
24 of the design coal to be used by the unit if it is

1 *less than 12,000 Btu per pound according to the*
2 *following formula:*

3 *Design net heat rate = Unit net heat rate × [1 –*
4 *{((12,000-design coal heat content, Btu per pound)/*
5 *1,000) × 0.013}],*

6 “(C) shall be corrected for the site reference
7 conditions of—

8 “(i) elevation above sea level of 500
9 feet,

10 “(ii) air pressure of 14.4 pounds per
11 square inch absolute (psia),

12 “(iii) temperature, dry bulb of 63°F,

13 “(iv) temperature, wet bulb of 54°F,

14 and

15 “(v) relative humidity of 55 percent,

16 and

17 “(D) if carbon capture controls have been
18 installed with respect to any qualifying unit and
19 such controls remove at least 50 percent of the
20 unit’s carbon dioxide emissions, shall be adjusted
21 up to the design heat rate level which would have
22 resulted without the installation of such controls.

23 “(5) HHV.—The term ‘HHV’ means higher
24 heating value.

1 “(6) *APPLICATION OF CERTAIN RULES.*—*The*
2 *rules of paragraphs (3), (4), and (5) of section 45(e)*
3 *shall apply.*

4 “(7) *INFLATION ADJUSTMENT FACTOR.*—

5 “(A) *IN GENERAL.*—*The term ‘inflation ad-*
6 *justment factor’ means, with respect to a cal-*
7 *endar year, a fraction the numerator of which is*
8 *the GDP implicit price deflator for the preceding*
9 *calendar year and the denominator of which is*
10 *the GDP implicit price deflator for the calendar*
11 *year 2003.*

12 “(B) *GDP IMPLICIT PRICE DEFLATOR.*—

13 *The term ‘GDP implicit price deflator’ means,*
14 *for any calendar year, the most recent revision*
15 *of the implicit price deflator for the gross domes-*
16 *tic product as of June 30 of such calendar year*
17 *as computed by the Department of Commerce be-*
18 *fore October 1 of such calendar year.*

19 “(8) *NONCOMPLIANCE WITH POLLUTION LAWS.*—

20 *For purposes of this section, a unit which is not in*
21 *compliance with the applicable State and Federal pol-*
22 *lution prevention, control, and permit requirements*
23 *for any period of time shall not be considered to be*
24 *a qualifying clean coal technology unit during such*
25 *period.*

1 “(e) NATIONAL LIMITATION ON THE AGGREGATE CA-
2 PACITY OF QUALIFYING CLEAN COAL TECHNOLOGY
3 UNITS.—

4 “(1) IN GENERAL.—For purposes of this section,
5 the national megawatt capacity limitation for quali-
6 fying clean coal technology units is 4,000 megawatts.

7 “(2) ALLOCATION OF LIMITATION.—The Sec-
8 retary shall allocate the national megawatt capacity
9 limitation for qualifying clean coal technology units
10 in such manner as the Secretary may prescribe under
11 the regulations under paragraph (3).

12 “(3) REGULATIONS.—Not later than 6 months
13 after the date of the enactment of this section, the Sec-
14 retary shall prescribe such regulations as may be nec-
15 essary or appropriate—

16 “(A) to carry out the purposes of this sub-
17 section,

18 “(B) to limit the capacity of any qualifying
19 clean coal technology unit to which this section
20 applies so that the megawatt capacity allocated
21 to any unit under this subsection does not exceed
22 300 megawatts and the combined megawatt ca-
23 pacity allocated to all such units when all such
24 units are placed in service during the 10-year

1 *period described in subsection (d)(1)(B), does not*
2 *exceed 4,000 megawatts,*

3 *“(C) to provide a certification process under*
4 *which the Secretary, in consultation with the*
5 *Secretary of Energy, shall approve and allocate*
6 *the national megawatt capacity limitation—*

7 *“(i) to encourage that units with the*
8 *highest thermal efficiencies, when adjusted*
9 *for the heat content of the design coal and*
10 *site reference conditions described in sub-*
11 *section (d)(4)(C), and environmental per-*
12 *formance, be placed in service as soon as*
13 *possible, and*

14 *“(ii) to allocate capacity to taxpayers*
15 *which have a definite and credible plan for*
16 *placing into commercial operation a quali-*
17 *fying clean coal technology unit,*
18 *including—*

19 *“(I) a site,*

20 *“(II) contractual commitments for*
21 *procurement and construction or, in*
22 *the case of regulated utilities, the*
23 *agreement of the State utility commis-*
24 *sion,*

1 “(III) filings for all necessary
2 preconstruction approvals,

3 “(IV) a demonstrated record of
4 having successfully completed com-
5 parable projects on a timely basis, and

6 “(V) such other factors that the
7 Secretary determines are appropriate,

8 “(D) to allocate the national megawatt ca-
9 pacity limitation to a portion of the capacity of
10 a qualifying clean coal technology unit if the
11 Secretary determines that such an allocation
12 would maximize the amount of efficient produc-
13 tion encouraged with the available tax credits,

14 “(E) to set progress requirements and con-
15 ditional approvals so that capacity allocations
16 for clean coal technology units which become un-
17 likely to meet the necessary conditions for quali-
18 fying can be reallocated by the Secretary to other
19 clean coal technology units, and

20 “(F) to provide taxpayers with opportuni-
21 ties to correct administrative errors and omis-
22 sions with respect to allocations and record keep-
23 ing within a reasonable period after discovery,
24 taking into account the availability of regula-

1 *tions and other administrative guidance from*
 2 *the Secretary.”.*

3 *(b) CREDIT TREATED AS BUSINESS CREDIT.—Section*
 4 *38(b) (relating to current year business credit), as amended*
 5 *by this Act, is amended by striking “plus” at the end of*
 6 *paragraph (23), by striking the period at the end of para-*
 7 *graph (24) and inserting “, plus”, and by adding at the*
 8 *end the following new paragraph:*

9 *“(25) the qualifying clean coal technology pro-*
 10 *duction credit determined under section 45M(a).”.*

11 *(c) CLERICAL AMENDMENT.—The table of sections for*
 12 *subpart D of part IV of subchapter A of chapter 1, as*
 13 *amended by this Act, is amended by adding at the end the*
 14 *following new item:*

“Sec. 45M. Credit for production from a qualifying clean coal technology unit.”.

15 *(d) EFFECTIVE DATE.—The amendments made by this*
 16 *section shall apply to production after December 31, 2004,*
 17 *in taxable years ending after such date.*

18 **PART II—INCENTIVES FOR EARLY COMMERCIAL**
 19 **APPLICATIONS OF ADVANCED CLEAN COAL**
 20 **TECHNOLOGIES**

21 **SEC. 832. CREDIT FOR INVESTMENT IN QUALIFYING AD-**
 22 **VANCED CLEAN COAL TECHNOLOGY.**

23 *(a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN*
 24 *COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating to*
 25 *amount of credit), as amended by this Act, is amended by*

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

4 “(3) the qualifying advanced clean coal tech-
5 nology unit credit.”.

6 (b) *AMOUNT OF QUALIFYING ADVANCED CLEAN COAL*
7 *TECHNOLOGY UNIT CREDIT.*—Subpart E of part IV of sub-
8 chapter A of chapter 1 (relating to rules for computing in-
9 vestment credit) is amended by inserting after section 48
10 the following new section:

11 **“SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECH-**
12 **NOLOGY UNIT CREDIT.**

13 “(a) *IN GENERAL.*—For purposes of section 46, the
14 qualifying advanced clean coal technology unit credit for
15 any taxable year is an amount equal to 10 percent of the
16 applicable percentage of the qualified investment in a quali-
17 fying advanced clean coal technology unit for such taxable
18 year.

19 “(b) *QUALIFYING ADVANCED CLEAN COAL TECH-*
20 *NOLOGY UNIT.*—

21 “(1) *IN GENERAL.*—For purposes of subsection
22 (a), the term ‘qualifying advanced clean coal tech-
23 nology unit’ means an advanced clean coal technology
24 unit of the taxpayer—

1 “(A)(i) in the case of a unit first placed in
2 service after December 31, 2004, the original use
3 of which commences with the taxpayer, or

4 “(ii) in the case of the retrofitting or
5 repowering of a unit first placed in service before
6 January 1, 2005, the retrofitting or repowering
7 of which is completed by the taxpayer after such
8 date, or

9 “(B) which is depreciable under section 167,

10 “(C) which has a useful life of not less than
11 4 years,

12 “(D) which is located in the United States,

13 “(E) which is not receiving nor is scheduled
14 to receive funding under the Clean Coal Tech-
15 nology Program, the Power Plant Improvement
16 Initiative, or the Clean Coal Power Initiative
17 administered by the Secretary of Energy,

18 “(F) which is not a qualifying clean coal
19 technology unit, and

20 “(G) which receives an allocation of a por-
21 tion of the national megawatt capacity limita-
22 tion under subsection (f).

23 “(2) SPECIAL RULE FOR SALE-LEASEBACKS.—

24 For purposes of subparagraph (A) of paragraph (1),
25 in the case of a unit which—

1 “(A) is originally placed in service by a
2 person, and

3 “(B) is sold and leased back by such person,
4 or is leased to such person, within 3 months after
5 the date such unit was originally placed in serv-
6 ice, for a period of not less than 12 years,
7 such unit shall be treated as originally placed in serv-
8 ice not earlier than the date on which such unit is
9 used under the leaseback (or lease) referred to in sub-
10 paragraph (B). The preceding sentence shall not
11 apply to any property if the lessee and lessor of such
12 property make an election under this sentence. Such
13 an election, once made, may be revoked only with the
14 consent of the Secretary.

15 “(3) NONCOMPLIANCE WITH POLLUTION LAWS.—
16 For purposes of this subsection, a unit which is not
17 in compliance with the applicable State and Federal
18 pollution prevention, control, and permit require-
19 ments for any period of time shall not be considered
20 to be a qualifying advanced clean coal technology
21 unit during such period.

22 “(c) APPLICABLE PERCENTAGE.—For purposes of this
23 section, with respect to any qualifying advanced clean coal
24 technology unit, the applicable percentage is the percentage
25 equal to the ratio which the portion of the national mega-

1 *watt capacity limitation allocated to the taxpayer with re-*
2 *spect to such unit under subsection (f) bears to the total*
3 *megawatt capacity of such unit.*

4 “(d) *ADVANCED CLEAN COAL TECHNOLOGY UNIT.*—
5 *For purposes of this section—*

6 “(1) *IN GENERAL.*—*The term ‘advanced clean*
7 *coal technology unit’ means a new, retrofit, or*
8 *repowering unit of the taxpayer which—*

9 “(A) *is—*

10 “(i) *an eligible advanced pulverized*
11 *coal or atmospheric fluidized bed combus-*
12 *tion technology unit,*

13 “(ii) *an eligible pressurized fluidized*
14 *bed combustion technology unit,*

15 “(iii) *an eligible integrated gasifi-*
16 *cation combined cycle technology unit, or*

17 “(iv) *an eligible other technology unit,*
18 *and*

19 “(B) *meets the carbon emission rate require-*
20 *ments of paragraph (6).*

21 “(2) *ELIGIBLE ADVANCED PULVERIZED COAL OR*
22 *ATMOSPHERIC FLUIDIZED BED COMBUSTION TECH-*
23 *NOLOGY UNIT.*—*The term ‘eligible advanced pulver-*
24 *ized coal or atmospheric fluidized bed combustion*
25 *technology unit’ means a clean coal technology unit*

1 *using advanced pulverized coal or atmospheric fluid-*
2 *ized bed combustion technology which—*

3 *“(A) is placed in service after December 31,*
4 *2004, and before January 1, 2013, and*

5 *“(B) has a design net heat rate of not more*
6 *than 8,500 (8,900 in the case of units placed in*
7 *service before 2009).*

8 *“(3) ELIGIBLE PRESSURIZED FLUIDIZED BED*
9 *COMBUSTION TECHNOLOGY UNIT.—The term ‘eligible*
10 *pressurized fluidized bed combustion technology unit’*
11 *means a clean coal technology unit using pressurized*
12 *fluidized bed combustion technology which—*

13 *“(A) is placed in service after December 31,*
14 *2004, and before January 1, 2017, and*

15 *“(B) has a design net heat rate of not more*
16 *than 7,720 (8,900 in the case of units placed in*
17 *service before 2009, and 8,500 in the case of*
18 *units placed in service after 2008 and before*
19 *2013).*

20 *“(4) ELIGIBLE INTEGRATED GASIFICATION COM-*
21 *BINED CYCLE TECHNOLOGY UNIT.—The term ‘eligible*
22 *integrated gasification combined cycle technology*
23 *unit’ means a clean coal technology unit using inte-*
24 *grated gasification combined cycle technology, with or*
25 *without fuel or chemical co-production, which—*

1 “(A) is placed in service after December 31,
2 2004, and before January 1, 2017,

3 “(B) has a design net heat rate of not more
4 than 7,720 (8,900 in the case of units placed in
5 service before 2009, and 8,500 in the case of
6 units placed in service after 2008 and before
7 2013), and

8 “(C) has a net thermal efficiency (HHV)
9 using coal with fuel or chemical co-production of
10 not less than 44.2 percent (38.4 percent in the
11 case of units placed in service before 2009, and
12 40.2 percent in the case of units placed in service
13 after 2008 and before 2013).

14 “(5) *ELIGIBLE OTHER TECHNOLOGY UNIT*.—*The*
15 *term ‘eligible other technology unit’ means a clean*
16 *coal technology unit using any other technology for*
17 *the production of electricity which is placed in service*
18 *after December 31, 2004, and before January 1, 2017.*

19 “(6) *CARBON EMISSION RATE REQUIREMENTS*.—

20 “(A) *IN GENERAL*.—*Except as provided in*
21 *subparagraph (B), a unit meets the requirements*
22 *of this paragraph if—*

23 “(i) *in the case of a unit using design*
24 *coal with a heat content of not more than*
25 *9,000 Btu per pound, the carbon emission*

1 rate is less than 0.60 pound of carbon per
2 kilowatt hour, and

3 “(ii) in the case of a unit using design
4 coal with a heat content of more than 9,000
5 Btu per pound, the carbon emission rate is
6 less than 0.54 pound of carbon per kilowatt
7 hour.

8 “(B) *ELIGIBLE OTHER TECHNOLOGY*
9 *UNIT.*—In the case of an eligible other technology
10 unit, subparagraph (A) shall be applied by sub-
11 stituting ‘0.51’ and ‘0.459’ for ‘0.60’ and ‘0.54’,
12 respectively.

13 “(e) *GENERAL DEFINITIONS.*—Any term used in this
14 section which is also used in section 45M shall have the
15 meaning given such term in section 45M.

16 “(f) *NATIONAL LIMITATION ON THE AGGREGATE CA-*
17 *PACITY OF ADVANCED CLEAN COAL TECHNOLOGY UNITS.*—

18 “(1) *IN GENERAL.*—For purposes of subsection
19 (b)(1)(G), the national megawatt capacity limitation
20 is—

21 “(A) for qualifying advanced clean coal
22 technology units using advanced pulverized coal
23 or atmospheric fluidized bed combustion tech-
24 nology, not more than 1,000 megawatts (not

1 *more than 500 megawatts in the case of units*
2 *placed in service before 2009),*

3 “(B) *for such units using pressurized fluid-*
4 *ized bed combustion technology, not more than*
5 *500 megawatts (not more than 250 megawatts in*
6 *the case of units placed in service before 2009),*

7 “(C) *for such units using integrated gasifi-*
8 *cation combined cycle technology, with or with-*
9 *out fuel or chemical co-production, not more*
10 *than 2,000 megawatts (not more than 1,000*
11 *megawatts in the case of units placed in service*
12 *before 2009), and*

13 “(D) *for such units using other technology*
14 *for the production of electricity, not more than*
15 *500 megawatts (not more than 250 megawatts in*
16 *the case of units placed in service before 2009).*

17 “(2) *ALLOCATION OF LIMITATION.—The Sec-*
18 *retary shall allocate the national megawatt capacity*
19 *limitation for qualifying advanced clean coal tech-*
20 *nology units in such manner as the Secretary may*
21 *prescribe under the regulations under paragraph (3).*

22 “(3) *REGULATIONS.—Not later than 6 months*
23 *after the date of the enactment of this section, the Sec-*
24 *retary shall prescribe such regulations as may be nec-*
25 *essary or appropriate—*

1 “(A) to carry out the purposes of this sub-
2 section and section 45N,

3 “(B) to limit the capacity of any qualifying
4 advanced clean coal technology unit to which
5 this section applies so that the combined mega-
6 watt capacity of all such units to which this sec-
7 tion applies does not exceed 4,000 megawatts,

8 “(C) to provide a certification process de-
9 scribed in section 45M(e)(3)(C),

10 “(D) to carry out the purposes described in
11 subparagraphs (D), (E), and (F) of section
12 45M(e)(3), and

13 “(E) to reallocate capacity which is not al-
14 located to any technology described in subpara-
15 graphs (A) through (D) of paragraph (1) because
16 an insufficient number of qualifying units re-
17 quest an allocation for such technology, to an-
18 other technology described in such subparagraphs
19 in order to maximize the amount of energy effi-
20 cient production encouraged with the available
21 tax credits.

22 “(4) SELECTION CRITERIA.—For purposes of this
23 subsection, the selection criteria for allocating the na-
24 tional megawatt capacity limitation to qualifying ad-
25 vanced clean coal technology units—

1 “(A) shall be established by the Secretary of
2 Energy as part of a competitive solicitation,

3 “(B) shall include primary criteria of min-
4 imum design net heat rate, maximum design
5 thermal efficiency, environmental performance,
6 and lowest cost to the Government, and

7 “(C) shall include supplemental criteria as
8 determined appropriate by the Secretary of En-
9 ergy.

10 “(g) *QUALIFIED INVESTMENT*.—For purposes of sub-
11 section (a), the term ‘qualified investment’ means, with re-
12 spect to any taxable year, the basis of a qualifying advanced
13 clean coal technology unit placed in service by the taxpayer
14 during such taxable year (in the case of a unit described
15 in subsection (b)(1)(A)(ii), only that portion of the basis
16 of such unit which is properly attributable to the retro-
17 fitting or repowering of such unit).

18 “(h) *QUALIFIED PROGRESS EXPENDITURES*.—

19 “(1) *INCREASE IN QUALIFIED INVESTMENT*.—In
20 the case of a taxpayer who has made an election
21 under paragraph (5), the amount of the qualified in-
22 vestment of such taxpayer for the taxable year (deter-
23 mined under subsection (g) without regard to this
24 subsection) shall be increased by an amount equal to
25 the aggregate of each qualified progress expenditure

1 *for the taxable year with respect to progress expendi-*
2 *ture property.*

3 “(2) *PROGRESS EXPENDITURE PROPERTY DE-*
4 *FINED.—For purposes of this subsection, the term*
5 *‘progress expenditure property’ means any property*
6 *being constructed by or for the taxpayer and which it*
7 *is reasonable to believe will qualify as a qualifying*
8 *advanced clean coal technology unit which is being*
9 *constructed by or for the taxpayer when it is placed*
10 *in service.*

11 “(3) *QUALIFIED PROGRESS EXPENDITURES DE-*
12 *FINED.—For purposes of this subsection—*

13 “(A) *SELF-CONSTRUCTED PROPERTY.—In*
14 *the case of any self-constructed property, the*
15 *term ‘qualified progress expenditures’ means the*
16 *amount which, for purposes of this subpart, is*
17 *properly chargeable (during such taxable year)*
18 *to capital account with respect to such property.*

19 “(B) *NONSELF-CONSTRUCTED PROPERTY.—*
20 *In the case of nonself-constructed property, the*
21 *term ‘qualified progress expenditures’ means the*
22 *amount paid during the taxable year to another*
23 *person for the construction of such property.*

24 “(4) *OTHER DEFINITIONS.—For purposes of this*
25 *subsection—*

1 “(A) *SELF-CONSTRUCTED PROPERTY*.—The
2 term ‘self-constructed property’ means property
3 for which it is reasonable to believe that more
4 than half of the construction expenditures will be
5 made directly by the taxpayer.

6 “(B) *NONSELF-CONSTRUCTED PROPERTY*.—
7 The term ‘nonself-constructed property’ means
8 property which is not self-constructed property.

9 “(C) *CONSTRUCTION, ETC.*—The term ‘con-
10 struction’ includes reconstruction and erection,
11 and the term ‘constructed’ includes reconstructed
12 and erected.

13 “(D) *ONLY CONSTRUCTION OF QUALIFYING*
14 *ADVANCED CLEAN COAL TECHNOLOGY UNIT TO*
15 *BE TAKEN INTO ACCOUNT*.—Construction shall be
16 taken into account only if, for purposes of this
17 subpart, expenditures therefor are properly
18 chargeable to capital account with respect to the
19 property.

20 “(5) *ELECTION*.—An election under this sub-
21 section may be made at such time and in such man-
22 ner as the Secretary may by regulations prescribe.
23 Such an election shall apply to the taxable year for
24 which made and to all subsequent taxable years. Such

1 *an election, once made, may not be revoked except*
2 *with the consent of the Secretary.*

3 “(i) *COORDINATION WITH OTHER CREDITS.—This*
4 *section shall not apply to any property with respect to*
5 *which the rehabilitation credit under section 47 or the en-*
6 *ergy credit under section 48 is allowed unless the taxpayer*
7 *elects to waive the application of such credit to such prop-*
8 *erty.”.*

9 (c) *RECAPTURE.—Section 50(a) (relating to other spe-*
10 *cial rules) is amended by adding at the end the following*
11 *new paragraph:*

12 “(6) *SPECIAL RULES RELATING TO QUALIFYING*
13 *ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For*
14 *purposes of applying this subsection in the case of*
15 *any credit allowable by reason of section 48A, the fol-*
16 *lowing rules shall apply:*

17 “(A) *GENERAL RULE.—In lieu of the*
18 *amount of the increase in tax under paragraph*
19 *(1), the increase in tax shall be an amount equal*
20 *to the investment tax credit allowed under sec-*
21 *tion 38 for all prior taxable years with respect*
22 *to a qualifying advanced clean coal technology*
23 *unit (as defined by section 48A(b)(1)) multiplied*
24 *by a fraction the numerator of which is the num-*
25 *ber of years remaining to fully depreciate under*

1 *this title the qualifying advanced clean coal tech-*
2 *nology unit disposed of, and the denominator of*
3 *which is the total number of years over which*
4 *such unit would otherwise have been subject to*
5 *depreciation. For purposes of the preceding sen-*
6 *tence, the year of disposition of the qualifying*
7 *advanced clean coal technology unit shall be*
8 *treated as a year of remaining depreciation.*

9 “(B) *PROPERTY CEASES TO QUALIFY FOR*
10 *PROGRESS EXPENDITURES.—Rules similar to the*
11 *rules of paragraph (2) shall apply in the case of*
12 *qualified progress expenditures for a qualifying*
13 *advanced clean coal technology unit under sec-*
14 *tion 48A, except that the amount of the increase*
15 *in tax under subparagraph (A) of this para-*
16 *graph shall be substituted for the amount de-*
17 *scribed in such paragraph (2).*

18 “(C) *APPLICATION OF PARAGRAPH.—This*
19 *paragraph shall be applied separately with re-*
20 *spect to the credit allowed under section 38 re-*
21 *garding a qualifying advanced clean coal tech-*
22 *nology unit.”.*

23 (d) *TECHNICAL AMENDMENTS.—*

24 (1) *Section 49(a)(1)(C) is amended by striking*
25 “and” *at the end of clause (ii), by striking the period*

1 at the end of clause (iii) and inserting “, and”, and
2 by adding at the end the following new clause:

3 “(iv) the portion of the basis of any
4 qualifying advanced clean coal technology
5 unit attributable to any qualified invest-
6 ment (as defined by section 48A(g)).”.

7 (2) Section 50(a)(4) is amended by striking
8 “and (2)” and inserting “, (2), and (6)”.

9 (3) Section 50(c) is amended by adding at the
10 end the following new paragraph:

11 “(6) *NONAPPLICATION.*—Paragraphs (1) and (2)
12 shall not apply to any qualifying advanced clean coal
13 technology unit credit under section 48A.”.

14 (4) The table of sections for subpart E of part IV
15 of subchapter A of chapter 1 is amended by inserting
16 after the item relating to section 48 the following new
17 item:

 “Sec. 48A. *Qualifying advanced clean coal technology unit credit.*”.

18 (e) *EFFECTIVE DATE.*—The amendments made by this
19 section shall apply to periods after December 31, 2004,
20 under rules similar to the rules of section 48(m) of the In-
21 ternal Revenue Code of 1986 (as in effect on the day before
22 the date of the enactment of the Revenue Reconciliation Act
23 of 1990).

1 **SEC. 833. CREDIT FOR PRODUCTION FROM A QUALIFYING**
2 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

3 (a) *IN GENERAL.*—Subpart D of part IV of subchapter
4 A of chapter 1 (relating to business related credits), as
5 amended by this Act, is amended by adding at the end the
6 following new section:

7 **“SEC. 45N. CREDIT FOR PRODUCTION FROM A QUALIFYING**
8 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

9 “(a) *GENERAL RULE.*—For purposes of section 38, the
10 qualifying advanced clean coal technology production credit
11 of any taxpayer for any taxable year is equal to—

12 “(1) the applicable amount of advanced clean
13 coal technology production credit, multiplied by

14 “(2) the applicable percentage (as determined
15 under section 48A(c)) of the sum of—

16 “(A) the kilowatt hours of electricity, plus

17 “(B) each 3,413 Btu of fuels or chemicals,
18 produced by the taxpayer during such taxable year at
19 a qualifying advanced clean coal technology unit, but
20 only if such production occurs during the 10-year pe-
21 riod beginning on the date the unit was originally
22 placed in service (or returned to service after becom-
23 ing a qualifying advanced clean coal technology
24 unit).

25 “(b) *APPLICABLE AMOUNT.*—For purposes of this
26 section—

1 “(1) *IN GENERAL.*—*Except as provided in para-*
 2 *graph (2), the applicable amount of advanced clean*
 3 *coal technology production credit with respect to pro-*
 4 *duction from a qualifying advanced clean coal tech-*
 5 *nology unit shall be determined as follows:*

6 “(A) *If the qualifying advanced clean coal*
 7 *technology unit is producing electricity only:*

8 “(i) *In the case of a unit originally*
 9 *placed in service before 2009, if—*

<i>“The design net heat rate is:</i>	<i>The applicable amount is:</i>	
	<i>For 1st 5 years of such service</i>	<i>For 2d 5 years of such service</i>
<i>Not more than 8,500</i>	<i>\$.0060</i>	<i>\$.0038</i>
<i>More than 8,500 but not more than 8,750</i>	<i>\$.0025</i>	<i>\$.0010</i>
<i>More than 8,750 but less than 8,900</i>	<i>\$.0010</i>	<i>\$.0010.</i>

10 “(ii) *In the case of a unit originally*
 11 *placed in service after 2008 and before*
 12 *2013, if—*

<i>“The design net heat rate is:</i>	<i>The applicable amount is:</i>	
	<i>For 1st 5 years of such service</i>	<i>For 2d 5 years of such service</i>
<i>Not more than 7,770</i>	<i>\$.0105</i>	<i>\$.0090</i>
<i>More than 7,770 but not more than 8,125</i>	<i>\$.0085</i>	<i>\$.0068</i>
<i>More than 8,125 but less than 8,500</i>	<i>\$.0075</i>	<i>\$.0055.</i>

13 “(iii) *In the case of a unit originally*
 14 *placed in service after 2012 and before*
 15 *2017, if—*

<i>“The design net heat rate is:</i>	<i>The applicable amount is:</i>	
	<i>For 1st 5 years of such service</i>	<i>For 2d 5 years of such service</i>
<i>Not more than 7,380</i>	<i>\$.0140</i>	<i>\$.0115</i>
<i>More than 7,380 but not more than 7,720</i>	<i>\$.0120</i>	<i>\$.0090.</i>

1 “(B) If the qualifying advanced clean coal
2 technology unit is producing fuel or chemicals:

3 “(i) In the case of a unit originally
4 placed in service before 2009, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 40.2 percent	\$.0060	\$.0038
Less than 40.2 but not less than 39 percent	\$.0025	\$.0010
Less than 39 but not less than 38.4 percent	\$.0010	\$.0010.

5 “(ii) In the case of a unit originally
6 placed in service after 2008 and before
7 2013, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 43.9 percent	\$.0105	\$.0090
Less than 43.9 but not less than 42 percent	\$.0085	\$.0068
Less than 42 but not less than 40.2 percent	\$.0075	\$.0055.

8 “(iii) In the case of a unit originally
9 placed in service after 2012 and before
10 2017, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 46.3 percent	\$.0140	\$.0115
Less than 46.3 but not less than 44.2 percent	\$.0120	\$.0090.

11 “(2) SPECIAL RULE FOR UNITS QUALIFYING FOR
12 GREATER APPLICABLE AMOUNT WHEN PLACED IN
13 SERVICE.—If, at the time a qualifying advanced clean
14 coal technology unit is placed in service, production

1 *from the unit would be entitled to a greater applica-*
2 *ble amount if such unit had been placed in service at*
3 *a later date, the applicable amount for such unit shall*
4 *be such greater amount.*

5 *“(c) INFLATION ADJUSTMENT.—For calendar years*
6 *after 2005, each dollar amount in subsection (b)(1) shall*
7 *be adjusted by multiplying such amount by the inflation*
8 *adjustment factor for the calendar year in which the*
9 *amount is applied. If any amount as increased under the*
10 *preceding sentence is not a multiple of 0.01 cent, such*
11 *amount shall be rounded to the nearest multiple of 0.01*
12 *cent.*

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

15 *“(1) IN GENERAL.—Any term used in this sec-*
16 *tion which is also used in section 45M or 48A shall*
17 *have the meaning given such term in such section.*

18 *“(2) APPLICABLE RULES.—The rules of para-*
19 *graphs (3), (4), and (5) of section 45(e) shall apply.”.*

20 *(b) CREDIT TREATED AS BUSINESS CREDIT.—Section*
21 *38(b) (relating to current year business credit), as amended*
22 *by this Act, is amended by striking “plus” at the end of*
23 *paragraph (24), by striking the period at the end of para-*
24 *graph (25) and inserting “, plus”, and by adding at the*
25 *end the following new paragraph:*

1 “(26) the qualifying advanced clean coal tech-
2 nology production credit determined under section
3 45N(a).”.

4 (c) *DENIAL OF DOUBLE BENEFIT.*—Section 29(d) (re-
5 lating to other definitions and special rules) is amended
6 by adding at the end the following new paragraph:

7 “(9) *DENIAL OF DOUBLE BENEFIT.*—This section
8 shall not apply with respect to any qualified fuel the
9 production of which may be taken into account for
10 purposes of determining the credit under section
11 45N.”.

12 (d) *CLERICAL AMENDMENT.*—The table of sections for
13 subpart D of part IV of subchapter A of chapter 1, as
14 amended by this Act, is amended by adding at the end the
15 following new item:

 “Sec. 45N. Credit for production from a qualifying advanced clean coal technology
 unit.”.

16 (e) *EFFECTIVE DATE.*—The amendments made by this
17 section shall apply to production after December 31, 2004,
18 in taxable years ending after such date.

1 **PART III—TREATMENT OF PERSONS NOT ABLE**
2 **TO USE ENTIRE CREDIT**

3 **SEC. 834. TREATMENT OF PERSONS NOT ABLE TO USE EN-**
4 **TIRE CREDIT.**

5 (a) *IN GENERAL.*—Section 45M, as added by this Act,
6 is amended by adding at the end the following new sub-
7 section:

8 “(f) *TREATMENT OF PERSON NOT ABLE TO USE EN-*
9 *TIRE CREDIT.*—

10 “(1) *ALLOWANCE OF CREDITS.*—

11 “(A) *IN GENERAL.*—Any credit allowable
12 under this section, section 45N, or section 48A
13 with respect to a facility owned by a person de-
14 scribed in subparagraph (B) may be transferred
15 or used as provided in this subsection, and the
16 determination as to whether the credit is allow-
17 able shall be made without regard to the tax-ex-
18 empt status of the person.

19 “(B) *PERSONS DESCRIBED.*—A person is
20 described in this subparagraph if the person is—

21 “(i) an organization described in sec-
22 tion 501(c)(12)(C) and exempt from tax
23 under section 501(a),

24 “(ii) an organization described in sec-
25 tion 1381(a)(2)(C),

1 “(iii) a public utility (as defined in
2 section 136(c)(2)(B)),

3 “(iv) any State or political subdivision
4 thereof, the District of Columbia, or any
5 agency or instrumentality of any of the
6 foregoing,

7 “(v) any Indian tribal government
8 (within the meaning of section 7871) or any
9 agency or instrumentality thereof, or

10 “(vi) the Tennessee Valley Authority.

11 “(2) TRANSFER OF CREDIT.—

12 “(A) IN GENERAL.—A person described in
13 clause (i), (ii), (iii), (iv), or (v) of paragraph
14 (1)(B) may transfer any credit to which para-
15 graph (1)(A) applies through an assignment to
16 any other person not described in paragraph
17 (1)(B). Such transfer may be revoked only with
18 the consent of the Secretary.

19 “(B) REGULATIONS.—The Secretary shall
20 prescribe such regulations as necessary to ensure
21 that any credit described in subparagraph (A) is
22 claimed once and not reassigned by such other
23 person.

24 “(C) TRANSFER PROCEEDS TREATED AS
25 ARISING FROM ESSENTIAL GOVERNMENT FUNC-

1 TION.—Any proceeds derived by a person de-
2 scribed in clause (iii), (iv), or (v) of paragraph
3 (1)(B) from the transfer of any credit under sub-
4 paragraph (A) shall be treated as arising from
5 the exercise of an essential government function.

6 “(3) USE OF CREDIT AS AN OFFSET.—Notwith-
7 standing any other provision of law, in the case of a
8 person described in clause (i), (ii), or (v) of para-
9 graph (1)(B), any credit to which paragraph (1)(A)
10 applies may be applied by such person, to the extent
11 provided by the Secretary of Agriculture, as a pre-
12 payment of any loan, debt, or other obligation the en-
13 tity has incurred under subchapter I of chapter 31 of
14 title 7 of the Rural Electrification Act of 1936 (7
15 U.S.C. 901 et seq.), as in effect on the date of the en-
16 actment of this section.

17 “(4) USE BY TVA.—

18 “(A) IN GENERAL.—Notwithstanding any
19 other provision of law, in the case of a person de-
20 scribed in paragraph (1)(B)(vi), any credit to
21 which paragraph (1)(A) applies may be applied
22 as a credit against the payments required to be
23 made in any fiscal year under section 15d(e) of
24 the Tennessee Valley Authority Act of 1933 (16
25 U.S.C. 831n-4(e)) as an annual return on the

1 *appropriations investment and an annual re-*
2 *payment sum.*

3 “(B) *TREATMENT OF CREDITS.*—*The aggre-*
4 *gate amount of credits described in paragraph*
5 *(1)(A) with respect to such person shall be treat-*
6 *ed in the same manner and to the same extent*
7 *as if such credits were a payment in cash and*
8 *shall be applied first against the annual return*
9 *on the appropriations investment.*

10 “(C) *CREDIT CARRYOVER.*—*With respect to*
11 *any fiscal year, if the aggregate amount of cred-*
12 *its described paragraph (1)(A) with respect to*
13 *such person exceeds the aggregate amount of pay-*
14 *ment obligations described in subparagraph (A),*
15 *the excess amount shall remain available for ap-*
16 *plication as credits against the amounts of such*
17 *payment obligations in succeeding fiscal years in*
18 *the same manner as described in this paragraph.*

19 “(5) *CREDIT NOT INCOME.*—*Any transfer under*
20 *paragraph (2) or use under paragraph (3) of any*
21 *credit to which paragraph (1)(A) applies shall not be*
22 *treated as income for purposes of section 501(c)(12).*

23 “(6) *TREATMENT OF UNRELATED PERSONS.*—
24 *For purposes of this subsection, transfers among and*
25 *between persons described in clauses (i), (ii), (iii),*

1 *(iv), and (v) of paragraph (1)(B) shall be treated as*
 2 *transfers between unrelated parties.”.*

3 *(b) EFFECTIVE DATE.—The amendment made by this*
 4 *section shall apply to production after December 31, 2004,*
 5 *in taxable years ending after such date.*

6 ***Subtitle E—Oil and Gas Provisions***

7 ***SEC. 841. OIL AND GAS FROM MARGINAL WELLS.***

8 *(a) IN GENERAL.—Subpart D of part IV of subchapter*
 9 *A of chapter 1 (relating to business credits), as amended*
 10 *by this Act, is amended by adding at the end the following*
 11 *new section:*

12 ***“SEC. 450. CREDIT FOR PRODUCING OIL AND GAS FROM*** 13 ***MARGINAL WELLS.***

14 *“(a) GENERAL RULE.—For purposes of section 38, the*
 15 *marginal well production credit for any taxable year is an*
 16 *amount equal to the product of—*

17 *“(1) the credit amount, and*

18 *“(2) the qualified crude oil production and the*
 19 *qualified natural gas production which is attributable*
 20 *to the taxpayer.*

21 *“(b) CREDIT AMOUNT.—For purposes of this section—*

22 *“(1) IN GENERAL.—The credit amount is—*

23 *“(A) \$3 per barrel of qualified crude oil*
 24 *production, and*

1 “(B) 50 cents per 1,000 cubic feet of quali-
2 fied natural gas production.

3 “(2) REDUCTION AS OIL AND GAS PRICES IN-
4 CREASE.—

5 “(A) IN GENERAL.—The \$3 and 50 cents
6 amounts under paragraph (1) shall each be re-
7 duced (but not below zero) by an amount which
8 bears the same ratio to such amount (determined
9 without regard to this paragraph) as—

10 “(i) the excess (if any) of the applica-
11 ble reference price over \$15 (\$1.67 for quali-
12 fied natural gas production), bears to

13 “(ii) \$3 (\$0.33 for qualified natural
14 gas production).

15 The applicable reference price for a taxable year
16 is the reference price of the calendar year pre-
17 ceding the calendar year in which the taxable
18 year begins.

19 “(B) INFLATION ADJUSTMENT.—

20 “(i) IN GENERAL.—In the case of any
21 taxable year beginning in a calendar year
22 after 2005, each of the dollar amounts con-
23 tained in subparagraph (A) shall be in-
24 creased to an amount equal to such dollar

1 *amount multiplied by the inflation adjust-*
2 *ment factor for such calendar year.*

3 “(ii) *INFLATION ADJUSTMENT FAC-*
4 *TOR.—For purposes of clause (i)—*

5 “(I) *IN GENERAL.—The term ‘in-*
6 *flation adjustment factor’ means, with*
7 *respect to a calendar year, a fraction*
8 *the numerator of which is the GDP im-*
9 *PLICIT price deflator for the preceding*
10 *calendar year and the denominator of*
11 *which is the GDP implicit price*
12 *deflator for the calendar year 2004.*

13 “(II) *GDP IMPLICIT PRICE*
14 *DEFLATOR.—The term ‘GDP implicit*
15 *price deflator’ means, for any calendar*
16 *year, the most recent revision of the*
17 *implicit price deflator for the gross do-*
18 *mestic product as of June 30 of such*
19 *calendar year as computed by the De-*
20 *partment of Commerce before October 1*
21 *of such calendar year.*

22 “(C) *REFERENCE PRICE.—For purposes of*
23 *this paragraph, the term ‘reference price’ means,*
24 *with respect to any calendar year—*

1 “(i) in the case of qualified crude oil
2 production, the reference price determined
3 under section 29(d)(2)(C), and

4 “(ii) in the case of qualified natural
5 gas production, the Secretary’s estimate of
6 the annual average wellhead price per 1,000
7 cubic feet for all domestic natural gas.

8 “(c) *QUALIFIED CRUDE OIL AND NATURAL GAS PRO-*
9 *DUCTION.—For purposes of this section—*

10 “(1) *IN GENERAL.—The terms ‘qualified crude*
11 *oil production’ and ‘qualified natural gas production’*
12 *mean domestic crude oil or domestic natural gas*
13 *which is produced from a qualified marginal well.*

14 “(2) *LIMITATION ON AMOUNT OF PRODUCTION*
15 *WHICH MAY QUALIFY.—*

16 “(A) *IN GENERAL.—Crude oil or natural*
17 *gas produced during any taxable year from any*
18 *well shall not be treated as qualified crude oil*
19 *production or qualified natural gas production*
20 *to the extent production from the well during the*
21 *taxable year exceeds 1,095 barrels or barrel*
22 *equivalents.*

23 “(B) *PROPORTIONATE REDUCTIONS.—*

24 “(i) *SHORT TAXABLE YEARS.—In the*
25 *case of a short taxable year, the limitations*

1 *under this paragraph shall be proportion-*
2 *ately reduced to reflect the ratio which the*
3 *number of days in such taxable year bears*
4 *to 365.*

5 “(ii) *WELLS NOT IN PRODUCTION EN-*
6 *TIRE YEAR.—In the case of a well which is*
7 *not capable of production during each day*
8 *of a taxable year, the limitations under this*
9 *paragraph applicable to the well shall be*
10 *proportionately reduced to reflect the ratio*
11 *which the number of days of production*
12 *bears to the total number of days in the tax-*
13 *able year.*

14 “(3) *NONCOMPLIANCE WITH POLLUTION LAWS.—*
15 *Production from any well during any period in*
16 *which such well is not in compliance with applicable*
17 *Federal pollution prevention, control, and permit re-*
18 *quirements shall not be treated as qualified crude oil*
19 *production or qualified natural gas production.*

20 “(4) *DEFINITIONS.—*

21 “(A) *QUALIFIED MARGINAL WELL.—The*
22 *term ‘qualified marginal well’ means a domestic*
23 *well—*

1 “(i) the production from which during
2 the taxable year is treated as marginal pro-
3 duction under section 613A(c)(6), or

4 “(ii) which, during the taxable year—

5 “(I) has average daily production
6 of not more than 25 barrel equivalents,
7 and

8 “(II) produces water at a rate not
9 less than 95 percent of total well efflu-
10 ent.

11 “(B) CRUDE OIL, ETC.—The terms ‘crude
12 oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have
13 the meanings given such terms by section
14 613A(e).

15 “(C) BARREL EQUIVALENT.—The term ‘bar-
16 rel equivalent’ means, with respect to natural
17 gas, a conversion ratio of 6,000 cubic feet of
18 natural gas to 1 barrel of crude oil.

19 “(D) DOMESTIC NATURAL GAS.—The term
20 ‘domestic natural gas’ does not include Alaska
21 natural gas (as defined in section 45Q(c)(1)).

22 “(d) OTHER RULES.—

23 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
24 PAYER.—In the case of a qualified marginal well in
25 which there is more than 1 owner of operating inter-

1 *ests in the well and the crude oil or natural gas pro-*
2 *duction exceeds the limitation under subsection (c)(2),*
3 *qualifying crude oil production or qualifying natural*
4 *gas production attributable to the taxpayer shall be*
5 *determined on the basis of the ratio which taxpayer's*
6 *revenue interest in the production bears to the aggre-*
7 *gate of the revenue interests of all operating interest*
8 *owners in the production.*

9 *“(2) OPERATING INTEREST REQUIRED.—Any*
10 *credit under this section may be claimed only on pro-*
11 *duction which is attributable to the holder of an oper-*
12 *ating interest.*

13 *“(3) PRODUCTION FROM NONCONVENTIONAL*
14 *SOURCES EXCLUDED.—In the case of production from*
15 *a qualified marginal well which is eligible for the*
16 *credit allowed under section 29 for the taxable year,*
17 *no credit shall be allowable under this section unless*
18 *the taxpayer elects not to claim the credit under sec-*
19 *tion 29 with respect to the well.”.*

20 *(b) CREDIT TREATED AS BUSINESS CREDIT.—Section*
21 *38(b) (relating to current year business credit), as amended*
22 *by this Act, is amended by striking “plus” at the end of*
23 *paragraph (25), by striking the period at the end of para-*
24 *graph (26) and inserting “, plus”, and by adding at the*
25 *end the following new paragraph:*

1 *this Act, is amended by adding at the end the following*
2 *new paragraph:*

3 “(18) *NATURAL GAS GATHERING LINE.*—*The*
4 *term ‘natural gas gathering line’ means—*

5 “(A) *the pipe, equipment, and appur-*
6 *tenances used to deliver natural gas from the*
7 *wellhead or a commonpoint to the point at which*
8 *such gas first reaches—*

9 “(i) *a gas processing plant,*

10 “(ii) *an interconnection with a trans-*
11 *mission pipeline certificated by the Federal*
12 *Energy Regulatory Commission as an*
13 *interstate transmission pipeline,*

14 “(iii) *an interconnection with an*
15 *intrastate transmission pipeline, or*

16 “(iv) *a direct interconnection with a*
17 *local distribution company, a gas storage*
18 *facility, or an industrial consumer, or*

19 “(B) *any other pipe, equipment, or appur-*
20 *tenances determined to be a gathering line by the*
21 *Federal Energy Regulatory Commission.*

22 “(c) *ALTERNATIVE SYSTEM.*—*The table contained in*
23 *section 168(g)(3)(B) (relating to special rule for certain*
24 *property assigned to classes) is amended by inserting after*

1 *the item relating to subparagraph (C)(i) the following new*
 2 *item:*

“(C)(iii) 14”.

3 (d) *EFFECTIVE DATE.*—*The amendments made by this*
 4 *section shall apply to property placed in service after De-*
 5 *cember 31, 2004, in taxable years ending after such date.*

6 **SEC. 843. EXPENSING OF CAPITAL COSTS INCURRED IN**
 7 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
 8 **TION AGENCY SULFUR REGULATIONS.**

9 (a) *IN GENERAL.*—*Part VI of subchapter B of chapter*
 10 *1 (relating to itemized deductions for individuals and cor-*
 11 *porations), as amended by this Act, is amended by inserting*
 12 *after section 179B the following new section:*

13 **“SEC. 179C. DEDUCTION FOR CAPITAL COSTS INCURRED IN**
 14 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
 15 **TION AGENCY SULFUR REGULATIONS.**

16 “(a) *TREATMENT AS EXPENSES.*—*A small business re-*
 17 *finer (as defined in section 45I(c)(1)) may elect to treat*
 18 *75 percent of qualified capital costs (as defined in section*
 19 *45I(c)(2)) which are paid or incurred by the taxpayer dur-*
 20 *ing the taxable year as expenses which are not chargeable*
 21 *to capital account. Any cost so treated shall be allowed as*
 22 *a deduction for the taxable year in which paid or incurred.*

23 “(b) *REDUCED PERCENTAGE.*—*In the case of a small*
 24 *business refiner with average daily domestic refinery runs*
 25 *for the 1-year period ending on December 31, 2002, in ex-*

1 *cess of 155,000 barrels, the number of percentage points de-*
2 *scribed in subsection (a) shall be reduced (not below zero)*
3 *by the product of such number (before the application of*
4 *this subsection) and the ratio of such excess to 50,000 bar-*
5 *rels. For purposes of calculating such average daily domes-*
6 *tic refinery runs, only refineries of the refiner or a related*
7 *person (within the meaning of section 613A(d)(3)) on April*
8 *1, 2003, shall be taken into account.*

9 “(c) *BASIS REDUCTION.*—

10 “(1) *IN GENERAL.*—*For purposes of this title, the*
11 *basis of any property shall be reduced by the portion*
12 *of the cost of such property taken into account under*
13 *subsection (a).*

14 “(2) *ORDINARY INCOME RECAPTURE.*—*For pur-*
15 *poses of section 1245, the amount of the deduction al-*
16 *lowable under subsection (a) with respect to any*
17 *property which is of a character subject to the allow-*
18 *ance for depreciation shall be treated as a deduction*
19 *allowed for depreciation under section 167.*

20 “(d) *COORDINATION WITH OTHER PROVISIONS.*—*Sec-*
21 *tion 280B shall not apply to amounts which are treated*
22 *as expenses under this section.”.*

23 “(b) *CONFORMING AMENDMENTS.*—

24 “(1) *Section 263(a)(1), as amended by this Act, is*
25 *amended by striking “or” at the end of subparagraph*

1 (I), by striking the period at the end of subparagraph
2 (J) and inserting “; or”, and by adding at the end
3 the following new subparagraph:

4 “(K) expenditures for which a deduction is
5 allowed under section 179C.”.

6 (2) Section 263A(c)(3) is amended by inserting
7 “179C,” after “section”.

8 (3) Section 312(k)(3)(B), as amended by this
9 Act, is amended by striking “or 179B” each place it
10 appears in the heading and text and inserting “179B,
11 or 179C”.

12 (4) Section 1016(a), as amended by this Act, is
13 amended by striking “and” at the end of paragraph
14 (36), by striking the period at the end of paragraph
15 (37) and inserting “, and”, and by adding at the end
16 the following new paragraph:

17 “(38) to the extent provided in section 179C(c).”

18 (5) Paragraphs (2)(C) and (3)(C) of section
19 1245(a), as amended by this Act, are each amended
20 by inserting “179C,” after “179B,”.

21 (6) The table of sections for part VI of sub-
22 chapter B of chapter 1, as amended by this Act, is
23 amended by inserting after the item relating to sec-
24 tion 179B the following new item:

 “Sec. 179C. Deduction for capital costs incurred in complying
 with Environmental Protection Agency sulfur regu-
 lations.”.

1 (c) *EFFECTIVE DATE.*—*The amendment made by this*
 2 *section shall apply to expenses paid or incurred after De-*
 3 *cember 31, 2002, in taxable years ending after such date.*

4 **SEC. 844. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**
 5 **SEL FUEL.**

6 (a) *IN GENERAL.*—*Subpart D of part IV of subchapter*
 7 *A of chapter 1 (relating to business-related credits), as*
 8 *amended by this Act, is amended by adding at the end the*
 9 *following new section:*

10 **“SEC. 45P. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**
 11 **SEL FUEL.**

12 “(a) *IN GENERAL.*—*For purposes of section 38, the*
 13 *amount of the low sulfur diesel fuel production credit deter-*
 14 *mined under this section with respect to any facility of a*
 15 *small business refiner is an amount equal to 5 cents for*
 16 *each gallon of low sulfur diesel fuel produced during the*
 17 *taxable year by such small business refiner at such facility.*

18 “(b) *MAXIMUM CREDIT.*—

19 “(1) *IN GENERAL.*—*The aggregate credit deter-*
 20 *mined under subsection (a) for any taxable year with*
 21 *respect to any facility shall not exceed—*

22 “(A) *25 percent of the qualified capital costs*
 23 *incurred by the small business refiner with re-*
 24 *spect to such facility, reduced by*

1 “(B) the aggregate credits determined under
2 this section for all prior taxable years with re-
3 spect to such facility.

4 “(2) *REDUCED PERCENTAGE.*—In the case of a
5 small business refiner with average daily domestic re-
6 finery runs for the 1-year period ending on December
7 31, 2002, in excess of 155,000 barrels, the number of
8 percentage points described in paragraph (1) shall be
9 reduced (not below zero) by the product of such num-
10 ber (before the application of this paragraph) and the
11 ratio of such excess to 50,000 barrels. For purposes of
12 calculating such average daily domestic refinery runs,
13 only refineries of the refiner or a related person
14 (within the meaning of section 613A(d)(3)) on April
15 1, 2003, shall be taken into account.

16 “(c) *DEFINITIONS AND SPECIAL RULE.*—For purposes
17 of this section—

18 “(1) *SMALL BUSINESS REFINER.*—The term
19 ‘small business refiner’ means, with respect to any
20 taxable year, a refiner of crude oil—

21 “(A) with respect to which not more than
22 1,500 individuals are engaged in the refinery op-
23 erations of the business on any day during such
24 taxable year, and

1 “(B) *the average daily domestic refinery*
2 *run or average retained production of which for*
3 *all facilities of the taxpayer for the 1-year period*
4 *ending on December 31, 2002, did not exceed*
5 *205,000 barrels.*

6 *For purposes of calculating such average daily domes-*
7 *tic refinery run or retained production, only refin-*
8 *eries of the refiner or a related person (within the*
9 *meaning of section 613A(d)(3)) on April 1, 2003,*
10 *shall be taken into account.*

11 “(2) *QUALIFIED CAPITAL COSTS.—The term*
12 *‘qualified capital costs’ means, with respect to any fa-*
13 *ility, those costs paid or incurred during the appli-*
14 *cable period for compliance with the applicable EPA*
15 *regulations with respect to such facility, including ex-*
16 *penditures for the construction of new process oper-*
17 *ation units or the dismantling and reconstruction of*
18 *existing process units to be used in the production of*
19 *low sulfur diesel fuel, associated adjacent or offsite*
20 *equipment (including tankage, catalyst, and power*
21 *supply), engineering, construction period interest,*
22 *and sitework.*

23 “(3) *APPLICABLE EPA REGULATIONS.—The term*
24 *‘applicable EPA regulations’ means the Highway*

1 *Diesel Fuel Sulfur Control Requirements of the Envi-*
2 *ronmental Protection Agency.*

3 “(4) *APPLICABLE PERIOD.*—*The term ‘applicable*
4 *period’ means, with respect to any facility, the period*
5 *beginning on January 1, 2003, and ending on the*
6 *earlier of the date which is 1 year after the date on*
7 *which the taxpayer must comply with the applicable*
8 *EPA regulations with respect to such facility or De-*
9 *cember 31, 2009.*

10 “(5) *LOW SULFUR DIESEL FUEL.*—*The term ‘low*
11 *sulfur diesel fuel’ means diesel fuel with a sulfur con-*
12 *tent of 15 parts per million or less.*

13 “(6) *SPECIAL RULE FOR DETERMINATION OF RE-*
14 *FINERY RUNS.*—*Refinery runs shall be determined*
15 *under rules similar to the rules under section*
16 *613A(d)(4).*

17 “(d) *REDUCTION IN BASIS.*—*For purposes of this sub-*
18 *title, if a credit is determined under this section for any*
19 *expenditure with respect to any property, the increase in*
20 *basis of such property which would (but for this subsection)*
21 *result from such expenditure shall be reduced by the amount*
22 *of the credit so determined.*

23 “(e) *CERTIFICATION.*—

24 “(1) *REQUIRED.*—*No credit shall be allowed un-*
25 *less, not later than the date which is 30 months after*

1 *the first day of the first taxable year in which the low*
2 *sulfur diesel fuel production credit is allowed with re-*
3 *spect to a facility, the small business refiner obtains*
4 *certification from the Secretary, after consultation*
5 *with the Administrator of the Environmental Protec-*
6 *tion Agency, that the taxpayer's qualified capital*
7 *costs with respect to such facility will result in com-*
8 *pliance with the applicable EPA regulations.*

9 “(2) *CONTENTS OF APPLICATION.*—*An applica-*
10 *tion for certification shall include relevant informa-*
11 *tion regarding unit capacities and operating charac-*
12 *teristics sufficient for the Secretary, after consultation*
13 *with the Administrator of the Environmental Protec-*
14 *tion Agency, to determine that such qualified capital*
15 *costs are necessary for compliance with the applicable*
16 *EPA regulations.*

17 “(3) *REVIEW PERIOD.*—*Any application shall be*
18 *reviewed and notice of certification, if applicable,*
19 *shall be made within 60 days of receipt of such appli-*
20 *cation. In the event the Secretary does not notify the*
21 *taxpayer of the results of such certification within*
22 *such period, the taxpayer may presume the certifi-*
23 *cation to be issued until so notified.*

24 “(4) *STATUTE OF LIMITATIONS.*—*With respect to*
25 *the credit allowed under this section—*

1 “(A) *the statutory period for the assessment*
2 *of any deficiency attributable to such credit shall*
3 *not expire before the end of the 3-year period*
4 *ending on the date that the review period de-*
5 *scribed in paragraph (3) ends with respect to the*
6 *taxpayer, and*

7 “(B) *such deficiency may be assessed before*
8 *the expiration of such 3-year period notwith-*
9 *standing the provisions of any other law or rule*
10 *of law which would otherwise prevent such as-*
11 *essment.*

12 “(f) *COOPERATIVE ORGANIZATIONS.—*

13 “(1) *APPORTIONMENT OF CREDIT.—*

14 “(A) *IN GENERAL.—In the case of a cooper-*
15 *ative organization described in section 1381(a),*
16 *any portion of the credit determined under sub-*
17 *section (a) for the taxable year may, at the elec-*
18 *tion of the organization, be apportioned among*
19 *patrons eligible to share in patronage dividends*
20 *on the basis of the quantity or value of business*
21 *done with or for such patrons for the taxable*
22 *year.*

23 “(B) *FORM AND EFFECT OF ELECTION.—An*
24 *election under subparagraph (A) for any taxable*
25 *year shall be made on a timely filed return for*

1 *such year. Such election, once made, shall be ir-*
2 *revocable for such taxable year.*

3 “(2) *TREATMENT OF ORGANIZATIONS AND PA-*
4 *TRONS.—*

5 “(A) *ORGANIZATIONS.—The amount of the*
6 *credit not apportioned to patrons pursuant to*
7 *paragraph (1) shall be included in the amount*
8 *determined under subsection (a) for the taxable*
9 *year of the organization.*

10 “(B) *PATRONS.—The amount of the credit*
11 *apportioned to patrons pursuant to paragraph*
12 *(1) shall be included in the amount determined*
13 *under subsection (a) for the first taxable year of*
14 *each patron ending on or after the last day of*
15 *the payment period (as defined in section*
16 *1382(d)) for the taxable year of the organization*
17 *or, if earlier, for the taxable year of each patron*
18 *ending on or after the date on which the patron*
19 *receives notice from the cooperative of the appor-*
20 *tionment.*

21 “(3) *SPECIAL RULE.—If for any reason the tax*
22 *imposed with respect to any patron of a cooperative*
23 *organization would, but for this paragraph, be in-*
24 *creased by any amount by reason of a credit appor-*
25 *tioned to such patron under this subsection—*

1 “(A) the amount of such increase in tax
2 shall not be imposed on such patron, and

3 “(B) the tax imposed by this chapter on
4 such organization shall be increased by such
5 amount.

6 *The increase under subparagraph (B) shall not be*
7 *treated as tax imposed by this chapter for purposes*
8 *of determining the amount of any credit under this*
9 *chapter or for purposes of section 55.”.*

10 (b) *CREDIT MADE PART OF GENERAL BUSINESS*

11 *CREDIT.*—*Subsection (b) of section 38 (relating to general*
12 *business credit), as amended by this Act, is amended by*
13 *striking “plus” at the end of paragraph (26), by striking*
14 *the period at the end of paragraph (27) and inserting “,*
15 *plus”, and by adding at the end the following new para-*
16 *graph:*

17 “(28) in the case of a small business refiner, the
18 low sulfur diesel fuel production credit determined
19 under section 45P(a).”.

20 (c) *DENIAL OF DOUBLE BENEFIT.*—*Section 280C (re-*
21 *lating to certain expenses for which credits are allowable)*
22 *is amended by adding after subsection (d) the following new*
23 *subsection:*

24 “(e) *LOW SULFUR DIESEL FUEL PRODUCTION CRED-*
25 *IT.*—*No deduction shall be allowed for that portion of the*

1 *expenses otherwise allowable as a deduction for the taxable*
 2 *year which is equal to the amount of the credit determined*
 3 *for the taxable year under section 45P(a).”.*

4 *(d) BASIS ADJUSTMENT.—Section 1016(a) (relating to*
 5 *adjustments to basis), as amended by this Act, is amended*
 6 *by striking “and” at the end of paragraph (37), by striking*
 7 *the period at the end of paragraph (38) and inserting “,*
 8 *and”, and by adding at the end the following new para-*
 9 *graph:*

10 *“(39) in the case of a facility with respect to*
 11 *which a credit was allowed under section 45P, to the*
 12 *extent provided in section 45P(d).”.*

13 *(e) CLERICAL AMENDMENT.—The table of sections for*
 14 *subpart D of part IV of subchapter A of chapter 1, as*
 15 *amended by this Act, is amended by adding at the end the*
 16 *following new item:*

“Sec. 45P. Credit for production of low sulfur diesel fuel.”.

17 *(f) EFFECTIVE DATE.—The amendments made by this*
 18 *section shall apply to expenses paid or incurred after De-*
 19 *cember 31, 2002, in taxable years ending after such date.*

20 **SEC. 845. DETERMINATION OF SMALL REFINER EXCEPTION**
 21 **TO OIL DEPLETION DEDUCTION.**

22 *(a) IN GENERAL.—Paragraph (4) of section 613A(d)*
 23 *(relating to limitations on application of subsection (c)) is*
 24 *amended to read as follows:*

1 “(h) *AMORTIZATION OF DELAY RENTAL PAYMENTS*
2 *FOR DOMESTIC OIL AND GAS WELLS.*—

3 “(1) *IN GENERAL.*—*Any delay rental payment*
4 *paid or incurred in connection with the development*
5 *of oil or gas wells within the United States (as de-*
6 *finied in section 638) shall be allowed as a deduction*
7 *ratably over the 24-month period beginning on the*
8 *date that such payment was paid or incurred.*

9 “(2) *HALF-YEAR CONVENTION.*—*For purposes of*
10 *paragraph (1), any payment paid or incurred during*
11 *the taxable year shall be treated as paid or incurred*
12 *on the mid-point of such taxable year.*

13 “(3) *EXCLUSIVE METHOD.*—*Except as provided*
14 *in this subsection, no depreciation or amortization*
15 *deduction shall be allowed with respect to such pay-*
16 *ments.*

17 “(4) *TREATMENT UPON ABANDONMENT.*—*If any*
18 *property to which a delay rental payment relates is*
19 *retired or abandoned during the 24-month period de-*
20 *scribed in paragraph (1), no deduction shall be al-*
21 *lowed on account of such retirement or abandonment*
22 *and the amortization deduction under this subsection*
23 *shall continue with respect to such payment.*

24 “(5) *DELAY RENTAL PAYMENTS.*—*For purposes*
25 *of this subsection, the term ‘delay rental payment’*

1 means an amount paid for the privilege of deferring
2 development of an oil or gas well under an oil or gas
3 lease.”.

4 (b) *EFFECTIVE DATE.*—The amendments made by this
5 section shall apply to amounts paid or incurred in taxable
6 years beginning after December 31, 2004.

7 **SEC. 848. AMORTIZATION OF GEOLOGICAL AND GEO-**
8 **PHYSICAL EXPENDITURES.**

9 (a) *IN GENERAL.*—Section 167 (relating to depreci-
10 ation), as amended by this Act, is amended by redesignating
11 subsection (i) as subsection (j) and by inserting after sub-
12 section (h) the following new subsection:

13 “(i) *AMORTIZATION OF GEOLOGICAL AND GEO-*
14 *PHYSICAL EXPENDITURES.*—

15 “(1) *IN GENERAL.*—Any geological and geo-
16 physical expenses paid or incurred in connection with
17 the exploration for, or development of, oil or gas with-
18 in the United States (as defined in section 638) shall
19 be allowed as a deduction ratably over the 24-month
20 period beginning on the date that such expense was
21 paid or incurred.

22 “(2) *SPECIAL RULES.*—For purposes of this sub-
23 section, rules similar to the rules of paragraphs (2),
24 (3), and (4) of subsection (h) shall apply.”.

1 (b) *CONFORMING AMENDMENT.*—Section 263A(c)(3) is
2 amended by inserting “167(h), 167(i),” after “under sec-
3 tion”.

4 (c) *EFFECTIVE DATE.*—The amendments made by this
5 section shall apply to costs paid or incurred in taxable
6 years beginning after December 31, 2004.

7 **SEC. 849. EXTENSION AND MODIFICATION OF CREDIT FOR**
8 **PRODUCING FUEL FROM A NONCONVEN-**
9 **TIONAL SOURCE.**

10 (a) *IN GENERAL.*—Section 29 (relating to credit for
11 producing fuel from a nonconventional source) is amended
12 by adding at the end the following new subsection:

13 “(h) *EXTENSION FOR OTHER FACILITIES.*—

14 “(1) *OIL AND GAS.*—In the case of a well or fa-
15 cility for producing qualified fuels described in sub-
16 paragraph (A) or (B) of subsection (c)(1) which was
17 drilled or placed in service after December 31, 2004,
18 and before January 1, 2007, notwithstanding sub-
19 section (f), this section shall apply with respect to
20 such fuels produced at such well or facility before the
21 close of the 3-year period beginning on the date that
22 such well is drilled or such facility is placed in serv-
23 ice.

24 “(2) *FACILITIES PRODUCING FUELS FROM AGRI-*
25 *CULTURAL AND ANIMAL WASTE.*—

1 “(A) *IN GENERAL.*—*In the case of a facility*
2 *for producing liquid, gaseous, or solid fuels from*
3 *qualified agricultural and animal wastes, in-*
4 *cluding such fuels when used as feedstocks, which*
5 *was placed in service after December 31, 2004,*
6 *and before January 1, 2007, this section shall*
7 *apply with respect to fuel produced at such facil-*
8 *ity before the close of the 3-year period beginning*
9 *on the date such facility is placed in service.*

10 “(B) *QUALIFIED AGRICULTURAL AND ANI-*
11 *MAL WASTE.*—*For purposes of this paragraph,*
12 *the term ‘qualified agricultural and animal*
13 *waste’ means agriculture and animal waste, in-*
14 *cluding by-products, packaging, and any mate-*
15 *rials associated with the processing, feeding, sell-*
16 *ing, transporting, or disposal of agricultural or*
17 *animal products or wastes.*

18 “(3) *WELLS PRODUCING VISCOUS OIL.*—

19 “(A) *IN GENERAL.*—*In the case of a well for*
20 *producing viscous oil which was placed in serv-*
21 *ice after December 31, 2004, and before January*
22 *1, 2007, this section shall apply with respect to*
23 *fuel produced at such well before the close of the*
24 *3-year period beginning on the date such well is*
25 *placed in service.*

1 “(B) *VISCOUS OIL*.—The term ‘viscous oil’
2 means heavy oil, as defined in section
3 613A(c)(6), except that—

4 “(i) ‘22 degrees’ shall be substituted for
5 ‘20 degrees’ in applying subparagraph (F)
6 thereof, and

7 “(ii) in all cases, the oil gravity shall
8 be measured from the initial well-head sam-
9 ples, drill cuttings, or down hole samples.

10 “(C) *WAIVER OF UNRELATED PERSON RE-*
11 *QUIREMENT*.—In the case of viscous oil, the re-
12 quirement under subsection (a)(2)(A) of a sale to
13 an unrelated person shall not apply to any sale
14 to the extent that the viscous oil is not consumed
15 in the immediate vicinity of the wellhead.

16 “(4) *FACILITIES PRODUCING REFINED COAL*.—

17 “(A) *IN GENERAL*.—In the case of a facility
18 described in subparagraph (C) for producing re-
19 fined coal which was placed in service after De-
20 cember 31, 2004, and before January 1, 2007,
21 this section shall apply with respect to fuel pro-
22 duced at such facility before the close of the 5-
23 year period beginning on the date such facility
24 is placed in service.

1 “(B) *REFINED COAL*.—For purposes of this
2 paragraph, the term ‘refined coal’ means a fuel
3 which is a liquid, gaseous, or solid synthetic fuel
4 produced from coal (including lignite) or high
5 carbon fly ash, including such fuel used as a
6 feedstock.

7 “(C) *COVERED FACILITIES*.—

8 “(i) *IN GENERAL*.—A facility is de-
9 scribed in this subparagraph if such facility
10 produces refined coal using a technology
11 which results in—

12 “(I) a qualified emission reduc-
13 tion, and

14 “(II) a qualified enhanced value.

15 “(ii) *QUALIFIED EMISSION REDUC-*
16 *TION*.—For purposes of this subparagraph,
17 the term ‘qualified emission reduction’
18 means a reduction of at least 20 percent of
19 the emissions of nitrogen oxide and either
20 sulfur dioxide or mercury released when
21 burning the refined coal (excluding any di-
22 lution caused by materials combined or
23 added during the production process), as
24 compared to the emissions released when
25 burning the feedstock coal or comparable

1 coal predominantly available in the market-
2 place as of January 1, 2004.

3 “(iii) *QUALIFIED ENHANCED VALUE.*—
4 For purposes of this subparagraph, the term
5 ‘qualified enhanced value’ means an in-
6 crease of at least 50 percent in the market
7 value of the refined coal (excluding any in-
8 crease caused by materials combined or
9 added during the production process), as
10 compared to the value of the feedstock coal.

11 “(iv) *QUALIFYING ADVANCED CLEAN*
12 *COAL TECHNOLOGY UNITS EXCLUDED.*—A
13 facility described in this subparagraph shall
14 not include a qualifying advanced clean
15 coal technology unit (as defined in section
16 48A(b)).

17 “(5) *COALMINE GAS.*—

18 “(A) *IN GENERAL.*—This section shall apply
19 to coalmine gas—

20 “(i) captured or extracted by the tax-
21 payer during the period beginning after De-
22 cember 31, 2004, and ending before Janu-
23 ary 1, 2007, and

1 “(ii) utilized as a fuel source or sold by
2 or on behalf of the taxpayer to an unrelated
3 person during such period.

4 “(B) COALMINE GAS.—For purposes of this
5 paragraph, the term ‘coalmine gas’ means any
6 methane gas which is—

7 “(i) liberated during or as a result of
8 coal mining operations, or

9 “(ii) extracted up to 10 years in ad-
10 vance of coal mining operations as part of
11 a specific plan to mine a coal deposit.

12 “(C) SPECIAL RULE FOR ADVANCED EX-
13 TRACTION.—In the case of coalmine gas which is
14 captured in advance of coal mining operations,
15 the credit under subsection (a) shall be allowed
16 only after the date the coal extraction occurs in
17 the immediate area where the coalmine gas was
18 removed.

19 “(D) NONCOMPLIANCE WITH POLLUTION
20 LAWS.—This paragraph shall not apply to the
21 capture or extraction of coalmine gas from coal
22 mining operations with respect to any period in
23 which such coal mining operations are not in
24 compliance with applicable State and Federal

1 *pollution prevention, control, and permit re-*
2 *quirements.*

3 “(6) *SPECIAL RULES.—In determining the*
4 *amount of credit allowable under this section solely*
5 *by reason of this subsection—*

6 “(A) *FUELS TREATED AS QUALIFIED*
7 *FUELS.—Any fuel described in paragraph (2),*
8 *(3), (4), or (5) shall be treated as a qualified fuel*
9 *for purposes of this section.*

10 “(B) *DAILY LIMIT.—The amount of quali-*
11 *fied fuels described in subparagraph (A) or*
12 *(B)(i) of subsection (c)(1) sold during any tax-*
13 *able year which may be taken into account by*
14 *reason of this subsection with respect to any*
15 *project shall not exceed an average barrel-of-oil*
16 *equivalent of 200,000 cubic feet of natural gas*
17 *per day. Days before the date the project is*
18 *placed in service shall not be taken into account*
19 *in determining such average.*

20 “(C) *EXTENSION PERIOD TO COMMENCE*
21 *WITH UNADJUSTED CREDIT AMOUNT AND NEW*
22 *PHASEOUT ADJUSTMENT.—For purposes of ap-*
23 *plying subsection (b)(2), in the case of fuels sold*
24 *after 2003—*

1 “(i) paragraphs (1)(A) and (2) of sub-
2 section (b) shall be applied by substituting
3 ‘\$35.00’ for ‘\$23.50’, and

4 “(ii) subparagraph (B) of subsection
5 (d)(2) shall be applied by substituting
6 ‘2002’ for ‘1979’ in determining such dollar
7 amounts.”.

8 (b) *EXTENSION FOR CERTAIN FUEL PRODUCED AT EX-*
9 *ISTING FACILITIES.—*

10 (1) *EXTENSION.—*Section 29(f)(2) (relating to
11 application of section) is amended by inserting
12 “(January 1, 2006, in the case of any coke, coke gas,
13 or natural gas and byproducts produced by coal gas-
14 ification from lignite in a facility described in para-
15 graph (1)(B))” after “January 1, 2003”.

16 (2) *USE OF CREDIT AS AN OFFSET.—*Section 29,
17 as amended by subsection (a), is amended by adding
18 the end the following new subsection:

19 “(i) *USE OF CREDIT AS AN OFFSET.—*

20 “(1) *IN GENERAL.—*Any credit allowable under
21 subsection (a) with respect to any natural gas and
22 byproducts produced by coal gasification from lignite
23 in a facility described in paragraph (1)(B) of sub-
24 section (f) owned by a person described in section

1 1381(a)(2)(C) or subsidiaries of such person may be
2 used as provided in paragraph (2).

3 “(2) *USE OF CREDIT AS AN OFFSET.*—Notwith-
4 standing any other provision of law, in the case of a
5 person described in paragraph (1), any credit to
6 which paragraph (1) applies may be applied by such
7 person—

8 “(A) to the extent provided by the Secretary
9 of Agriculture, as a prepayment of any loan,
10 debt, or other obligation the entity has incurred
11 under subchapter I of chapter 31 of title 7 of the
12 Rural Electrification Act of 1936 (7 U.S.C. 901
13 et seq.), as in effect on the date of the enactment
14 of the Energy Tax Incentives Act of 2003, and

15 “(B) to the extent provided by the Secretary
16 of Energy, as a prepayment not to exceed 50 per-
17 cent of any obligation the person has incurred
18 pursuant to an asset purchase agreement entered
19 into with the Secretary and dated October 7,
20 1988.

21 “(3) *CREDIT NOT INCOME.*—Any use under
22 paragraph (2) of any credit to which paragraph (1)
23 applies shall not be treated as income for purposes of
24 this title.

1 “(4) *TREATMENT OF UNRELATED PERSONS.—*
2 *For purposes of subsection (a)(2)(A), sales of qualified*
3 *fuels among and between persons described in para-*
4 *graph (1) shall be treated as sales between unrelated*
5 *parties.”.*

6 *(c) TREATMENT AS BUSINESS CREDIT.—*

7 (1) *CREDIT MOVED TO SUBPART RELATING TO*
8 *BUSINESS RELATED CREDITS.—The Internal Revenue*
9 *Code of 1986, as amended by this Act, is amended by*
10 *redesignating section 29, as amended by this Act, as*
11 *section 45R and by moving section 45R (as so reded-*
12 *ignated) from subpart B of part IV of subchapter A*
13 *of chapter 1 to the end of subpart D of part IV of sub-*
14 *chapter A of chapter 1.*

15 (2) *CREDIT TREATED AS BUSINESS CREDIT.—*
16 *Section 38(b), as amended by this Act, is amended by*
17 *striking “plus” at the end of paragraph (29), by*
18 *striking the period at the end of paragraph (30) and*
19 *inserting “, plus”, and by adding at the end the fol-*
20 *lowing:*

21 “(31) *the nonconventional source production*
22 *credit determined under section 45R(a).”.*

23 (3) *CONFORMING AMENDMENTS.—*

1 (A) Section 30(b)(2)(A), as redesignated by
2 this Act, is amended by striking “sections 27 and
3 29” and inserting “section 27”.

4 (B) Sections 43(b)(2) and 613A(c)(6)(C) are
5 each amended by striking “section 29(d)(2)(C)”
6 and inserting “section 45R(d)(2)(C)”.

7 (C) Section 45R(a), as redesignated by
8 paragraph (1), is amended by striking “At the
9 election of the taxpayer, there shall be allowed as
10 a credit against the tax imposed by this chapter
11 for the taxable year” and inserting “For pur-
12 poses of section 38, if the taxpayer elects to have
13 this section apply, the nonconventional source
14 production credit determined under this section
15 for the taxable year is”.

16 (D) Section 45R(b), as so redesignated, is
17 amended by striking paragraph (6).

18 (E) Section 53(d)(1)(B)(iii) is amended by
19 striking “under section 29” and all that follows
20 through “or not allowed”.

21 (F) Section 55(c)(2) is amended by striking
22 “29(b)(6),”.

23 (G) Subsection (a) of section 772, as
24 amended by this Act, is amended by striking
25 paragraph (10) and by redesignating para-

1 *graphs (11) and (12) as paragraphs (10) and*
2 *(11), respectively.*

3 *(H) Paragraph (5) of section 772(d) is*
4 *amended by striking “the foreign tax credit, and*
5 *the credit allowable under section 29” and in-*
6 *serting “and the foreign tax credit”.*

7 *(I) The table of sections for subpart B of*
8 *part IV of subchapter A of chapter 1 is amended*
9 *by striking the item relating to section 29.*

10 *(J) The table of sections for subpart D of*
11 *part IV of subchapter A of chapter 1, as amend-*
12 *ed by this Act, is amended by inserting after the*
13 *item relating to section 45Q the following new*
14 *item:*

*“Sec. 45R. Credit for producing fuel from a nonconventional
source.”.*

15 *(d) STUDY OF COALBED METHANE.—*

16 *(1) IN GENERAL.—The Secretary of the Treasury*
17 *shall conduct a study regarding the effect of section*
18 *45R of the Internal Revenue Code of 1986 on the pro-*
19 *duction of coalbed methane.*

20 *(2) CONTENTS OF STUDY.—The study under*
21 *paragraph (1) shall estimate the total amount of cred-*
22 *its under section 45R of the Internal Revenue Code of*
23 *1986 claimed annually and in the aggregate which*
24 *are related to the production of coalbed methane since*

1 *the date of the enactment of such section 45R. Such*
2 *study shall report the annual value of such credits al-*
3 *lowable for coalbed methane compared to the average*
4 *annual wellhead price of natural gas (per thousand*
5 *cubic feet of natural gas). Such study shall also esti-*
6 *mate the incremental increase in production of coal-*
7 *bed methane which has resulted from the enactment of*
8 *such section 45R, and the cost to the Federal Govern-*
9 *ment, in terms of the net tax benefits claimed, per*
10 *thousand cubic feet of incremental coalbed methane*
11 *produced annually and in the aggregate since such*
12 *enactment.*

13 *(e) EFFECTIVE DATES.—*

14 *(1) IN GENERAL.—Except as provided in para-*
15 *graph (2), the amendments made by this section shall*
16 *apply to fuel sold after December 31, 2004, in taxable*
17 *years ending after such date.*

18 *(2) EXISTING FACILITIES.—The amendments*
19 *made by subsection (b) shall apply to fuel sold after*
20 *December 31, 2002, in taxable years ending after such*
21 *date.*

22 *(3) TREATMENT AS BUSINESS CREDIT.—The*
23 *amendments made by subsection (c) shall apply to*
24 *taxable years ending after December 31, 2003.*

1 **SEC. 850. NATURAL GAS DISTRIBUTION LINES TREATED AS**
 2 **15-YEAR PROPERTY.**

3 (a) *IN GENERAL.*—Section 168(e)(3)(E) (defining 15-
 4 year property), as amended by this Act, is amended by
 5 striking “and” at the end of clause (iii), by striking the
 6 period at the end of clause (iv) and by inserting “, and”,
 7 and by adding at the end the following new clause:

8 “(v) any natural gas distribution
 9 line.”.

10 (b) *ALTERNATIVE SYSTEM.*—The table contained in
 11 section 168(g)(3)(B) (relating to special rule for certain
 12 property assigned to classes), as amended by this Act, is
 13 amended by adding after the item relating to subparagraph
 14 (E)(iii) the following new item:

“(E)(v) 35”.

15 (c) *EFFECTIVE DATE.*—The amendments made by this
 16 section shall apply to property placed in service after De-
 17 cember 31, 2004, in taxable years ending after such date.

18 **SEC. 851. CREDIT FOR ALASKA NATURAL GAS.**

19 (a) *IN GENERAL.*—Subpart D of part IV of subchapter
 20 A of chapter 1 (relating to business related credits), as
 21 amended by this Act, is amended by adding at the end the
 22 following new section:

1 **“SEC. 45Q. ALASKA NATURAL GAS.**

2 “(a) *IN GENERAL.*—For purposes of section 38, the
3 Alaska natural gas credit for any taxable year is an
4 amount equal to the product of—

5 “(1) the credit amount, and

6 “(2) Alaska natural gas the production of which
7 is attributable to the taxpayer.

8 “(b) *CREDIT AMOUNT.*—For purposes of this section—

9 “(1) *IN GENERAL.*—The credit amount is \$0.52
10 per 1,000,000 Btu of Alaska natural gas.

11 “(2) *REDUCTION AS GAS PRICES INCREASE.*—

12 “(A) *IN GENERAL.*—The dollar amount
13 under paragraph (1) shall be reduced (but not
14 below zero) by an amount which bears the same
15 ratio to such amount (determined without regard
16 to this paragraph) as—

17 “(i) the excess (if any) of the applica-
18 ble reference price over \$0.83, bears to

19 “(ii) \$0.52.

20 “(B) *APPLICABLE REFERENCE PRICE.*—For
21 purposes of this paragraph—

22 “(i) *IN GENERAL.*—The applicable ref-
23 erence price for any calendar month in a
24 taxable year is the reference price for the
25 calendar month in which production occurs.

1 “(i) *REFERENCE PRICE.*—*The term*
2 *‘reference price’ means, with respect to any*
3 *calendar month, a published market price*
4 *for natural gas in United States dollars per*
5 *1,000,000 Btu (reduced by any gas trans-*
6 *portation costs and gas processing costs as*
7 *determined by the appropriate national reg-*
8 *ulatory body for natural gas transpor-*
9 *tation) as determined under regulations by*
10 *the Secretary.*

11 “(C) *INFLATION ADJUSTMENT.*—

12 “(i) *IN GENERAL.*—*In the case of any*
13 *taxable year beginning in a calendar year*
14 *after 2005, each of the dollar amounts con-*
15 *tained in paragraph (1) and subparagraph*
16 *(A) of this paragraph shall be increased to*
17 *an amount equal to such dollar amount*
18 *multiplied by the inflation adjustment fac-*
19 *tor for such calendar year.*

20 “(ii) *INFLATION ADJUSTMENT FAC-*
21 *TOR.*—*For purposes of clause (i)—*

22 “(I) *IN GENERAL.*—*The term ‘in-*
23 *flation adjustment factor’ means, with*
24 *respect to a calendar year, a fraction*
25 *the numerator of which is the GDP im-*

1 *PLICIT price deflator for the preceding*
2 *calendar year and the denominator of*
3 *which is the GDP implicit price*
4 *deflator for the calendar year 2004.*

5 “(II) *GDP IMPLICIT PRICE*
6 *DEFLATOR.*—*The term ‘GDP implicit*
7 *price deflator’ means, for any calendar*
8 *year, the most recent revision of the*
9 *implicit price deflator for the gross do-*
10 *mestic product as of June 30 of such*
11 *calendar year as computed by the De-*
12 *partment of Commerce before October 1*
13 *of such calendar year.*

14 “(c) *ALASKA NATURAL GAS.*—*For purposes of this*
15 *section—*

16 “(1) *IN GENERAL.*—*The term ‘Alaska natural*
17 *gas’ means natural gas entering the Alaska natural*
18 *gas pipeline (as defined in section 168(i)(19) (deter-*
19 *mined without regard to subparagraph (B) thereof))*
20 *which is produced from a well—*

21 “(A) *located in the area of the State of*
22 *Alaska lying north of 64 degrees North latitude,*
23 *determined by excluding the area of the Alaska*
24 *National Wildlife Refuge (including the conti-*

1 *mental shelf thereof within the meaning of section*
2 *638(1)), and*

3 *“(B) pursuant to the applicable State and*
4 *Federal pollution prevention, control, and permit*
5 *requirements from such area (including the con-*
6 *tinental shelf thereof within the meaning of sec-*
7 *tion 638(1)).*

8 *“(2) NATURAL GAS.—The term ‘natural gas’ has*
9 *the meaning given such term by section 613A(e)(2).*

10 *“(d) SPECIAL RULES.—For purposes of this section—*

11 *“(1) PRODUCTION ATTRIBUTABLE TO THE TAX-*
12 *PAYER.—*

13 *“(A) IN GENERAL.—In the case of a well in*
14 *which there is more than 1 person or entity—*

15 *“(i) entitled to production of Alaska*
16 *natural gas, or*

17 *“(ii) at the election of such person or*
18 *entity, entitled to the value of production as*
19 *either an operating interest owner or a roy-*
20 *alty interest owner,*

21 *the portion of such production attributable to*
22 *such person or entity shall be determined on the*
23 *basis of the ratio which the person’s or entity’s*
24 *interest in the production or the value of produc-*
25 *tion bears to the aggregate of the interests of all*

1 *such persons or entities. Production otherwise at-*
2 *tributable to a United States tax-exempt person*
3 *or entity by reason of a royalty interest shall be*
4 *attributable to such person or entity with respect*
5 *to whom royalty-in-value production remains or*
6 *to whom royalty-in-kind production is sold.*

7 “(B) *PARTNERSHIP PROPERTIES.*—*In the*
8 *case of a partnership, for purposes of applying*
9 *subparagraph (A), production shall be attrib-*
10 *utable to its partners based on each partner’s*
11 *distributive share of Alaska natural gas which is*
12 *produced from partnership properties and attrib-*
13 *utable to the partnership or its partners under*
14 *subparagraph (A).*

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

19 “(e) *APPLICATION OF SECTION.*—*This section shall*
20 *apply to Alaska natural gas during the period—*

21 “(1) *beginning with the later of—*

22 “(A) *January 1, 2010, or*

23 “(B) *the initial date for the interstate*
24 *transportation of such Alaska natural gas, and*

1 “(2) ending with the date which is 25 years after
2 the date described in paragraph (1).”.

3 (b) *CREDIT TREATED AS BUSINESS CREDIT.*—Section
4 38(b) (relating to current year business credit), as amended
5 by this Act, is amended by striking “plus” at the end of
6 paragraph (27), by striking the period at the end of para-
7 graph (28) and inserting “, plus”, and by adding at the
8 end the following new paragraph:

9 “(29) The Alaska natural gas credit determined
10 under section 45Q(a).”.

11 (c) *ALLOWING CREDIT AGAINST ENTIRE REGULAR*
12 *TAX AND MINIMUM TAX.*—

13 (1) *IN GENERAL.*—Section 38(c) (relating to lim-
14 itation based on amount of tax), as amended by this
15 Act, is amended by redesignating paragraph (5) as
16 paragraph (6) and by inserting after paragraph (4)
17 the following new paragraph:

18 “(5) *SPECIAL RULES FOR ALASKA NATURAL GAS*
19 *CREDIT.*—

20 “(A) *IN GENERAL.*—In the case of the Alas-
21 ka natural gas credit—

22 “(i) this section and section 39 shall be
23 applied separately with respect to the cred-
24 it, and

1 “(ii) in applying paragraph (1) to the
2 credit—

3 “(I) the amounts in subpara-
4 graphs (A) and (B) thereof shall be
5 treated as being zero, and

6 “(II) the limitation under para-
7 graph (1) (as modified by subclause
8 (I)) shall be reduced by the credit al-
9 lowed under subsection (a) for the tax-
10 able year (other than the Alaska nat-
11 ural gas credit).

12 “(B) ALASKA NATURAL GAS CREDIT.—For
13 purposes of this subsection, the term ‘Alaska nat-
14 ural gas credit’ means the credit allowable under
15 subsection (a) by reason of section 45Q(a).”.

16 (2) CONFORMING AMENDMENTS.—Subclause (II)
17 of section 38(c)(2)(A)(ii), as amended by this Act,
18 subclause (II) of section 38(c)(3)(A)(ii), as amended
19 by this Act, and subclause (II) of section
20 38(c)(4)(A)(ii), as added by this Act, are each amend-
21 ed by inserting “or the Alaska natural gas credit”
22 after “specified credits”.

23 (d) CLERICAL AMENDMENT.—The table of sections for
24 subpart D of part IV of subchapter A of chapter 1, as

1 *amended by this Act, is amended by adding at the end the*
 2 *following new item:*

“Sec. 45Q. Alaska natural gas.”.

3 **SEC. 852. CERTAIN ALASKA NATURAL GAS PIPELINE PROP-**
 4 **ERTY TREATED AS 7-YEAR PROPERTY.**

5 (a) *IN GENERAL.*—Section 168(e)(3)(C) (defining 7-
 6 year property), as amended by this Act, is amended by
 7 striking “and” at the end of clause (iii), by redesignating
 8 clause (iv) as clause (v), and by inserting after clause (iii)
 9 the following new clause:

10 “(iv) any Alaska natural gas pipeline,
 11 and”.

12 (b) *ALASKA NATURAL GAS PIPELINE.*—Section 168(i)
 13 (relating to definitions and special rules), as amended by
 14 this Act, is amended by adding at the end the following
 15 new paragraph:

16 “(19) *ALASKA NATURAL GAS PIPELINE.*—The
 17 term ‘Alaska natural gas pipeline’ means the natural
 18 gas pipeline system located in the State of Alaska
 19 which—

20 “(A) has a capacity of more than
 21 500,000,000,000 Btu of natural gas per day, and

22 “(B) is—

23 “(i) placed in service after December
 24 31, 2012, or

1 “(ii) treated as placed in service on
2 January 1, 2013, if the taxpayer who places
3 such system in service before January 1,
4 2013, elects such treatment.

5 Such term includes the pipe, trunk lines, related
6 equipment, and appurtenances used to carry natural
7 gas, but does not include any gas processing plant.”.

8 (c) *ALTERNATIVE SYSTEM.*—The table contained in
9 section 168(g)(3)(B) (relating to special rule for certain
10 property assigned to classes), as amended by this Act, is
11 amended by inserting after the item relating to subpara-
12 graph (C)(iii) the following new item:

 “(C)(iv) 22”.

13 (d) *EFFECTIVE DATE.*—The amendments made by this
14 section shall apply to property placed in service after De-
15 cember 31, 2004.

16 **SEC. 853. EXTENSION OF ENHANCED OIL RECOVERY CRED-**
17 **IT TO CERTAIN ALASKA FACILITIES.**

18 (a) *IN GENERAL.*—Section 43(c)(1) (defining qualified
19 enhanced oil recovery costs) is amended by adding at the
20 end the following new subparagraph:

21 “(D) Any amount which is paid or in-
22 curred during the taxable year to construct a gas
23 treatment plant which—

24 “(i) is located in the area of the United
25 States (within the meaning of section

1 638(1)) lying north of 64 degrees North lati-
2 tude,

3 “(ii) prepares Alaska natural gas (as
4 defined in section 45Q(c)(1)) for transpor-
5 tation through a pipeline with a capacity of
6 at least 2,000,000,000,000 Btu of natural
7 gas per day, and

8 “(iii) produces carbon dioxide which is
9 injected into hydrocarbon-bearing geological
10 formations.”.

11 (b) *EFFECTIVE DATE.*—The amendment made by this
12 section shall apply to costs paid or incurred in taxable
13 years beginning after December 31, 2004.

14 **SEC. 854. ARBITRAGE RULES NOT TO APPLY TO PREPAY-**
15 **MENTS FOR NATURAL GAS.**

16 (a) *IN GENERAL.*—Section 148(b) (relating to higher
17 yielding investments) is amended by adding at the end the
18 following new paragraph:

19 “(4) *SAFE HARBOR FOR PREPAID NATURAL*
20 *GAS.*—

21 “(A) *IN GENERAL.*—The term ‘investment-
22 type property’ does not include a prepayment
23 under a qualified natural gas supply contract.

24 “(B) *QUALIFIED NATURAL GAS SUPPLY*
25 *CONTRACT.*—For purposes of this paragraph, the

1 term ‘qualified natural gas supply contract’
2 means any contract to acquire natural gas for
3 resale by or for a utility owned by a govern-
4 mental unit if the amount of gas permitted to be
5 acquired under the contract for the utility dur-
6 ing any year does not exceed the sum of—

7 “(i) the annual average amount during
8 the testing period of natural gas purchased
9 (other than for resale) by customers of such
10 utility who are located within the service
11 area of such utility, and

12 “(ii) the amount of natural gas to be
13 used to transport the prepaid natural gas to
14 the utility during such year.

15 “(C) NATURAL GAS USED TO GENERATE
16 ELECTRICITY.—Natural gas used to generate
17 electricity shall be taken into account in deter-
18 mining the average under subparagraph
19 (B)(i)—

20 “(i) only if the electricity is generated
21 by a utility owned by a governmental unit,
22 and

23 “(ii) only to the extent that the elec-
24 tricity is sold (other than for resale) to cus-

1 *tomers of such utility who are located with-*
2 *in the service area of such utility.*

3 *“(D) ADJUSTMENTS FOR CHANGES IN CUS-*
4 *TOMER BASE.—*

5 *“(i) NEW BUSINESS CUSTOMERS.—If—*

6 *“(I) after the close of the testing*
7 *period and before the date of issuance*
8 *of the issue, the utility owned by a gov-*
9 *ernmental unit enters into a contract*
10 *to supply natural gas (other than for*
11 *resale) for use by a business at a prop-*
12 *erty within the service area of such*
13 *utility, and*

14 *“(II) the utility did not supply*
15 *natural gas to such property during*
16 *the testing period or the ratable*
17 *amount of natural gas to be supplied*
18 *under the contract is significantly*
19 *greater than the ratable amount of gas*
20 *supplied to such property during the*
21 *testing period,*

22 *then a contract shall not fail to be treated*
23 *as a qualified natural gas supply contract*
24 *by reason of supplying the additional nat-*

1 *ural gas under the contract referred to in*
2 *subclause (I).*

3 “(ii) *OVERALL LIMITATION.*—*The aver-*
4 *age under subparagraph (B)(i) shall not ex-*
5 *ceed the annual amount of natural gas rea-*
6 *sonably expected to be purchased (other*
7 *than for resale) by persons who are located*
8 *within the service area of such utility and*
9 *who, as of the date of issuance of the issue,*
10 *are customers of such utility.*

11 “(E) *RULING REQUESTS.*—*The Secretary*
12 *may increase the average under subparagraph*
13 *(B)(i) for any period if the utility owned by the*
14 *governmental unit establishes to the satisfaction*
15 *of the Secretary that, based on objective evidence*
16 *of growth in natural gas consumption or popu-*
17 *lation, such average would otherwise be insuffi-*
18 *cient for such period.*

19 “(F) *ADJUSTMENT FOR NATURAL GAS OTH-*
20 *ERWISE ON HAND.*—

21 “(i) *IN GENERAL.*—*The amount other-*
22 *wise permitted to be acquired under the*
23 *contract for any period shall be reduced*
24 *by—*

1 “(I) the applicable share of nat-
2 ural gas held by the utility on the date
3 of issuance of the issue, and

4 “(II) the natural gas (not taken
5 into account under subclause (I))
6 which the utility has a right to acquire
7 during such period (determined as of
8 the date of issuance of the issue).

9 “(ii) *APPLICABLE SHARE*.—For pur-
10 poses of clause (i), the term ‘applicable
11 share’ means, with respect to any period,
12 the natural gas allocable to such period if
13 the gas were allocated ratably over the pe-
14 riod to which the prepayment relates.

15 “(G) *INTENTIONAL ACTS*.—Subparagraph
16 (A) shall cease to apply to any issue if the util-
17 ity owned by the governmental unit engages in
18 any intentional act to render the volume of nat-
19 ural gas acquired by such prepayment to be in
20 excess of the sum of—

21 “(i) the amount of natural gas needed
22 (other than for resale) by customers of such
23 utility who are located within the service
24 area of such utility, and

1 “(ii) the amount of natural gas used to
2 transport such natural gas to the utility.

3 “(H) TESTING PERIOD.—For purposes of
4 this paragraph, the term ‘testing period’ means,
5 with respect to an issue, the most recent 5 cal-
6 endar years ending before the date of issuance of
7 the issue.

8 “(I) SERVICE AREA.—For purposes of this
9 paragraph, the service area of a utility owned by
10 a governmental unit shall be comprised of—

11 “(i) any area throughout which such
12 utility provided at all times during the test-
13 ing period—

14 “(I) in the case of a natural gas
15 utility, natural gas transmission or
16 distribution services, and

17 “(II) in the case of an electric
18 utility, electricity distribution services,

19 “(ii) any area within a county contig-
20 uous to the area described in clause (i) in
21 which retail customers of such utility are lo-
22 cated if such area is not also served by an-
23 other utility providing natural gas or elec-
24 tricity services, as the case may be, and

1 “(iii) any area recognized as the serv-
2 ice area of such utility under State or Fed-
3 eral law.”.

4 (b) *PRIVATE LOAN FINANCING TEST NOT TO APPLY*
5 *TO PREPAYMENTS FOR NATURAL GAS.*—Section 141(c)(2)
6 (providing exceptions to the private loan financing test) is
7 amended by striking “or” at the end of subparagraph (A),
8 by striking the period at the end of subparagraph (B) and
9 inserting “, or”, and by adding at the end the following
10 new subparagraph:

11 “(C) is a qualified natural gas supply con-
12 tract (as defined in section 148(b)(4)).”.

13 (c) *CONFORMING AMENDMENT.*—Section 141(d) is
14 amended by adding at the end the following new paragraph:

15 “(7) *EXCEPTION FOR QUALIFIED ELECTRIC AND*
16 *NATURAL GAS SUPPLY CONTRACTS.*—The term ‘non-
17 governmental output property’ shall not include any
18 contract for the prepayment of electricity or natural
19 gas which is not investment property under section
20 148(b)(2).”.

21 (d) *EFFECTIVE DATE.*—The amendment made by this
22 section shall apply to obligations issued after December 31,
23 2004.

1 ***Subtitle F—Electric Utility***
2 ***Restructuring Provisions***

3 ***SEC. 855. MODIFICATIONS TO SPECIAL RULES FOR NU-***
4 ***CLEAR DECOMMISSIONING COSTS.***

5 *(a) REPEAL OF LIMITATION ON DEPOSITS INTO FUND*
6 *BASED ON COST OF SERVICE; CONTRIBUTIONS AFTER*
7 *FUNDING PERIOD.—Subsection (b) of section 468A (relat-*
8 *ing to special rules for nuclear decommissioning costs) is*
9 *amended to read as follows:*

10 *“(b) LIMITATION ON AMOUNTS PAID INTO FUND.—The*
11 *amount which a taxpayer may pay into the Fund for any*
12 *taxable year shall not exceed the ruling amount applicable*
13 *to such taxable year.”.*

14 *(b) CLARIFICATION OF TREATMENT OF FUND TRANS-*
15 *FERS.—Section 468A(e) (relating to Nuclear Decommis-*
16 *sioning Reserve Fund) is amended by adding at the end*
17 *the following new paragraph:*

18 *“(8) TREATMENT OF FUND TRANSFERS.—If, in*
19 *connection with the transfer of the taxpayer’s interest*
20 *in a nuclear power plant, the taxpayer transfers the*
21 *Fund with respect to such power plant to the trans-*
22 *feree of such interest and the transferee elects to con-*
23 *tinue the application of this section to such Fund—*

1 “(A) the transfer of such Fund shall not
2 cause such Fund to be disqualified from the ap-
3 plication of this section, and

4 “(B) no amount shall be treated as distrib-
5 uted from such Fund, or be includable in gross
6 income, by reason of such transfer.”.

7 (c) *TREATMENT OF CERTAIN DECOMMISSIONING*
8 *COSTS.*—

9 (1) *IN GENERAL.*—Section 468A is amended by
10 redesignating subsections (f) and (g) as subsections
11 (g) and (h), respectively, and by inserting after sub-
12 section (e) the following new subsection:

13 “(f) *TRANSFERS INTO QUALIFIED FUNDS.*—

14 “(1) *IN GENERAL.*—Notwithstanding subsection
15 (b), any taxpayer maintaining a Fund to which this
16 section applies with respect to a nuclear power plant
17 may transfer into such Fund not more than an
18 amount equal to the present value of the excess of the
19 total nuclear decommissioning costs with respect to
20 such nuclear power plant over the portion of such
21 costs taken into account in determining the ruling
22 amount in effect immediately before the transfer.

23 “(2) *DEDUCTION FOR AMOUNTS TRANS-*
24 *FERRED.*—

1 “(A) *IN GENERAL.*—*Except as provided in*
2 *subparagraph (C), the deduction allowed by sub-*
3 *section (a) for any transfer permitted by this*
4 *subsection shall be allowed ratably over the re-*
5 *maining estimated useful life (within the mean-*
6 *ing of subsection (d)(2)(A)) of the nuclear power*
7 *plant beginning with the taxable year during*
8 *which the transfer is made.*

9 “(B) *DENIAL OF DEDUCTION FOR PRE-*
10 *VIOUSLY DEDUCTED AMOUNTS.*—*No deduction*
11 *shall be allowed for any transfer under this sub-*
12 *section of an amount for which a deduction was*
13 *previously allowed or a corresponding amount*
14 *was not included in gross income. For purposes*
15 *of the preceding sentence, a ratable portion of*
16 *each transfer shall be treated as being from pre-*
17 *viously deducted or excluded amounts to the ex-*
18 *tent thereof.*

19 “(C) *TRANSFERS OF QUALIFIED FUNDS.*—
20 *If—*

21 “(i) *any transfer permitted by this*
22 *subsection is made to any Fund to which*
23 *this section applies, and*

24 “(ii) *such Fund is transferred there-*
25 *after,*

1 *any deduction under this subsection for taxable*
2 *years ending after the date that such Fund is*
3 *transferred shall be allowed to the transferee and*
4 *not the transferor. The preceding sentence shall*
5 *not apply if the transferor is an entity exempt*
6 *from tax under this chapter.*

7 “(D) *SPECIAL RULES.—*

8 “(i) *GAIN OR LOSS NOT RECOG-*
9 *NIZED.—No gain or loss shall be recognized*
10 *on any transfer permitted by this sub-*
11 *section.*

12 “(ii) *TRANSFERS OF APPRECIATED*
13 *PROPERTY.—If appreciated property is*
14 *transferred in a transfer permitted by this*
15 *subsection, the amount of the deduction*
16 *shall not exceed the adjusted basis of such*
17 *property.*

18 “(3) *NEW RULING AMOUNT REQUIRED.—Para-*
19 *graph (1) shall not apply to any transfer unless the*
20 *taxpayer requests from the Secretary a new schedule*
21 *of ruling amounts in connection with such transfer.*

22 “(4) *NO BASIS IN QUALIFIED FUNDS.—Notwith-*
23 *standing any other provision of law, the taxpayer’s*
24 *basis in any Fund to which this section applies shall*

1 *not be increased by reason of any transfer permitted*
2 *by this subsection.”.*

3 (2) *NEW RULING AMOUNT TO TAKE INTO AC-*
4 *COUNT TOTAL COSTS.—Subparagraph (A) of section*
5 *468A(d)(2) (defining ruling amount) is amended to*
6 *read as follows:*

7 “(A) *fund the total nuclear decommis-*
8 *sioning costs with respect to such power plant*
9 *over the estimated useful life of such power plant,*
10 *and”.*

11 (d) *TECHNICAL AMENDMENT.—Section 468A(e)(2) (re-*
12 *lating to taxation of Fund) is amended—*

13 (1) *by striking “rate set forth in subparagraph*
14 *(B)” in subparagraph (A) and inserting “rate of 20*
15 *percent”,*

16 (2) *by striking subparagraph (B), and*

17 (3) *by redesignating subparagraphs (C) and (D)*
18 *as subparagraphs (B) and (C), respectively.*

19 (e) *EFFECTIVE DATE.—The amendments made by this*
20 *section shall apply to taxable years beginning after Decem-*
21 *ber 31, 2004.*

22 **SEC. 856. TREATMENT OF CERTAIN INCOME OF COOPERA-**
23 **TIVES.**

24 (a) *INCOME FROM OPEN ACCESS AND NUCLEAR DE-*
25 *COMMISSIONING TRANSACTIONS.—*

1 (1) *IN GENERAL.*—Section 501(c)(12)(C) (relat-
2 ing to list of exempt organizations) is amended by
3 striking “or” at the end of clause (i), by striking
4 clause (ii), and by adding at the end the following
5 new clauses:

6 “(ii) from any open access transaction
7 (other than income received or accrued di-
8 rectly or indirectly from a member),

9 “(iii) from any nuclear decommis-
10 sioning transaction,

11 “(iv) from any asset exchange or con-
12 version transaction, or

13 “(v) from the prepayment of any loan,
14 debt, or obligation made, insured, or guar-
15 anteed under the Rural Electrification Act
16 of 1936.”.

17 (2) *DEFINITIONS AND SPECIAL RULES.*—Section
18 501(c)(12) is amended by adding at the end the fol-
19 lowing new subparagraphs:

20 “(E) For purposes of subparagraph
21 (C)(i)—

22 “(i) The term ‘open access transaction’
23 means any transaction meeting the open ac-
24 cess requirements of any of the following

1 *subclauses with respect to a mutual or coop-*
2 *erative electric company:*

3 “(I) *The provision or sale of elec-*
4 *tric transmission service or ancillary*
5 *services meets the open access require-*
6 *ments of this subclause only if such*
7 *services are provided on a nondiscrim-*
8 *inatory open access basis pursuant to*
9 *an open access transmission tariff filed*
10 *with and approved by FERC, includ-*
11 *ing an acceptable reciprocity tariff, or*
12 *under a regional transmission organi-*
13 *zation agreement approved by FERC.*

14 “(II) *The provision or sale of elec-*
15 *tric energy distribution services or an-*
16 *cillary services meets the open access*
17 *requirements of this subclause only if*
18 *such services are provided on a non-*
19 *discriminatory open access basis to*
20 *end-users served by distribution facili-*
21 *ties owned by the mutual or coopera-*
22 *tive electric company (or its members).*

23 “(III) *The delivery or sale of elec-*
24 *tric energy generated by a generation*
25 *facility meets the open access require-*

1 *ments of this subclause only if such fa-*
2 *cility is directly connected to distribu-*
3 *tion facilities owned by the mutual or*
4 *cooperative electric company (or its*
5 *members) which owns the generation*
6 *facility, and such distribution facilities*
7 *meet the open access requirements of*
8 *subclause (II).*

9 *“(ii) Clause (i)(I) shall apply in the*
10 *case of a voluntarily filed tariff only if the*
11 *mutual or cooperative electric company files*
12 *a report with FERC within 90 days after*
13 *the date of the enactment of this subpara-*
14 *graph relating to whether or not such com-*
15 *pany will join a regional transmission or-*
16 *ganization.*

17 *“(iii) A mutual or cooperative electric*
18 *company shall be treated as meeting the*
19 *open access requirements of clause (i)(I) if*
20 *a regional transmission organization con-*
21 *trols the transmission facilities.*

22 *“(iv) References to FERC in this sub-*
23 *paragraph shall be treated as including ref-*
24 *erences to the Public Utility Commission of*
25 *Texas with respect to any ERCOT utility*

1 *(as defined in section 212(k)(2)(B) of the*
2 *Federal Power Act (16 U.S.C.*
3 *824k(k)(2)(B))) or references to the Rural*
4 *Utilities Service with respect to any other*
5 *facility not subject to FERC jurisdiction.*

6 “(v) For purposes of this
7 subparagraph—

8 “(I) The term ‘transmission facil-
9 ity’ means an electric output facility
10 (other than a generation facility)
11 which operates at an electric voltage of
12 69 kilovolts or greater. To the extent
13 provided in regulations, such term in-
14 cludes any output facility which
15 FERC determines is a transmission fa-
16 cility under standards applied by
17 FERC under the Federal Power Act
18 (as in effect on the date of the enact-
19 ment of the Energy Tax Incentives
20 Act).

21 “(II) The term ‘regional trans-
22 mission organization’ includes an
23 independent system operator.

1 “(III) *The term ‘FERC’ means*
2 *the Federal Energy Regulatory Com-*
3 *mission.*

4 “(F) *The term ‘nuclear decommissioning*
5 *transaction’ means—*

6 “(i) *any transfer into a trust, fund, or*
7 *instrument established to pay any nuclear*
8 *decommissioning costs if the transfer is in*
9 *connection with the transfer of the mutual*
10 *or cooperative electric company’s interest in*
11 *a nuclear power plant or nuclear power*
12 *plant unit,*

13 “(ii) *any distribution from any trust,*
14 *fund, or instrument established to pay any*
15 *nuclear decommissioning costs, or*

16 “(iii) *any earnings from any trust,*
17 *fund, or instrument established to pay any*
18 *nuclear decommissioning costs.*

19 “(G) *The term ‘asset exchange or conversion*
20 *transaction’ means any voluntary exchange or*
21 *involuntary conversion of any property related*
22 *to generating, transmitting, distributing, or sell-*
23 *ing electric energy by a mutual or cooperative*
24 *electric company, the gain from which qualifies*
25 *for deferred recognition under section 1031 or*

1 1033, but only if the replacement property ac-
2 quired by such company pursuant to such sec-
3 tion constitutes property which is used, or to be
4 used, for—

5 “(i) generating, transmitting, distrib-
6 uting, or selling electric energy, or

7 “(ii) producing, transmitting, distrib-
8 uting, or selling natural gas.”.

9 (b) *TREATMENT OF INCOME FROM LOAD LOSS TRANS-*
10 *ACTIONS.*—Section 501(c)(12), as amended by subsection
11 (a)(2), is amended by adding after subparagraph (G) the
12 following new subparagraph:

13 “(H)(i) In the case of a mutual or coopera-
14 tive electric company described in this para-
15 graph or an organization described in section
16 1381(a)(2)(C), income received or accrued from a
17 load loss transaction shall be treated as an
18 amount collected from members for the sole pur-
19 pose of meeting losses and expenses.

20 “(ii) For purposes of clause (i), the term
21 ‘load loss transaction’ means any wholesale or
22 retail sale of electric energy (other than to mem-
23 bers) to the extent that the aggregate sales during
24 the recovery period do not exceed the load loss
25 mitigation sales limit for such period.

1 “(iii) For purposes of clause (ii), the load
2 loss mitigation sales limit for the recovery period
3 is the sum of the annual load losses for each year
4 of such period.

5 “(iv) For purposes of clause (iii), a mutual
6 or cooperative electric company’s annual load
7 loss for each year of the recovery period is the
8 amount (if any) by which—

9 “(I) the megawatt hours of electric en-
10 ergy sold during such year to members of
11 such electric company are less than

12 “(II) the megawatt hours of electric en-
13 ergy sold during the base year to such mem-
14 bers.

15 “(v) For purposes of clause (iv)(II), the
16 term ‘base year’ means—

17 “(I) the calendar year preceding the
18 start-up year, or

19 “(II) at the election of the electric com-
20 pany, the second or third calendar years
21 preceding the start-up year.

22 “(vi) For purposes of this subparagraph, the
23 recovery period is the 7-year period beginning
24 with the start-up year.

1 “(vii) For purposes of this subparagraph,
2 the start-up year is the calendar year which in-
3 cludes January 1, 2005, or, if later, at the elec-
4 tion of the mutual or cooperative electric
5 company—

6 “(I) the first year that such electric
7 company offers nondiscriminatory open ac-
8 cess, or

9 “(II) the first year in which at least 10
10 percent of such electric company’s sales are
11 not to members of such electric company.

12 “(viii) A company shall not fail to be treat-
13 ed as a mutual or cooperative company for pur-
14 poses of this paragraph or as a corporation oper-
15 ating on a cooperative basis for purposes of sec-
16 tion 1381(a)(2)(C) by reason of the treatment
17 under clause (i).

18 “(ix) In the case of a mutual or cooperative
19 electric company, income from any open access
20 transaction received, or accrued, indirectly from
21 a member shall be treated as an amount collected
22 from members for the sole purpose of meeting
23 losses and expenses.”.

24 (c) *EXCEPTION FROM UNRELATED BUSINESS TAX-*
25 *ABLE INCOME.*—Section 512(b) (relating to modifications),

1 *as amended by this Act, is amended by adding at the end*
 2 *the following new paragraph:*

3 “(20) *TREATMENT OF MUTUAL OR COOPERATIVE*
 4 *ELECTRIC COMPANIES.*—*In the case of a mutual or*
 5 *cooperative electric company described in section*
 6 *501(c)(12), there shall be excluded income which is*
 7 *treated as member income under subparagraph (H)*
 8 *thereof.”.*

9 (d) *CROSS REFERENCE.*—*Section 1381 is amended by*
 10 *adding at the end the following new subsection:*

11 “(c) *CROSS REFERENCE.*—

**“For treatment of income from load loss trans-
 actions of organizations described in subsection
 (a)(2)(C), see section 501(c)(12)(H).”.**

12 (e) *EFFECTIVE DATE.*—*The amendments made by this*
 13 *section shall apply to taxable years beginning after Decem-*
 14 *ber 31, 2004.*

15 **SEC. 857. SALES OR DISPOSITIONS TO IMPLEMENT FED-**
 16 **ERAL ENERGY REGULATORY COMMISSION OR**
 17 **STATE ELECTRIC RESTRUCTURING POLICY.**

18 (a) *IN GENERAL.*—*Section 451 (relating to general*
 19 *rule for taxable year of inclusion) is amended by adding*
 20 *at the end the following new subsection:*

21 “(i) *SPECIAL RULE FOR SALES OR DISPOSITIONS TO*
 22 *IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION*
 23 *OR STATE ELECTRIC RESTRUCTURING POLICY.*—

1 “(1) *IN GENERAL.*—*For purposes of this subtitle,*
2 *if a taxpayer elects the application of this subsection*
3 *to a qualifying electric transmission transaction in*
4 *any taxable year—*

5 “(A) *any ordinary income derived from*
6 *such transaction which would be required to be*
7 *recognized under section 1245 or 1250 for such*
8 *taxable year (determined without regard to this*
9 *subsection), and*

10 “(B) *any income derived from such trans-*
11 *action in excess of such ordinary income which*
12 *is required to be included in gross income for*
13 *such taxable year (determined without regard to*
14 *this subsection),*
15 *shall be so recognized and included ratably over the*
16 *8-taxable year period beginning with such taxable*
17 *year.*

18 “(2) *QUALIFYING ELECTRIC TRANSMISSION*
19 *TRANSACTION.*—*For purposes of this subsection, the*
20 *term ‘qualifying electric transmission transaction’*
21 *means any sale or other disposition before January 1,*
22 *2008, of—*

23 “(A) *property used by the taxpayer in the*
24 *trade or business of providing electric trans-*
25 *mission services, or*

1 “(B) any stock or partnership interest in a
2 corporation or partnership, as the case may be,
3 whose principal trade or business consists of pro-
4 viding electric transmission services,
5 but only if such sale or disposition is to an inde-
6 pendent transmission company.

7 “(3) *INDEPENDENT TRANSMISSION COMPANY.*—
8 For purposes of this subsection, the term ‘independent
9 transmission company’ means—

10 “(A) a regional transmission organization
11 approved by the Federal Energy Regulatory
12 Commission,

13 “(B) a person—

14 “(i) who the Federal Energy Regu-
15 latory Commission determines in its au-
16 thorization of the transaction under section
17 203 of the Federal Power Act (16 U.S.C.
18 824b) is not a market participant within
19 the meaning of such Commission’s rules ap-
20 plicable to regional transmission organiza-
21 tions, and

22 “(ii) whose transmission facilities to
23 which the election under this subsection ap-
24 plies are under the operational control of a
25 Federal Energy Regulatory Commission-ap-

1 *proved regional transmission organization*
2 *before the close of the period specified in*
3 *such authorization, but not later than Jan-*
4 *uary 1, 2008, or*

5 “(C) *in the case of facilities subject to the*
6 *exclusive jurisdiction of the Public Utility Com-*
7 *mission of Texas, a person which is approved by*
8 *that Commission as consistent with Texas State*
9 *law regarding an independent transmission or-*
10 *ganization.*

11 “(4) *ELECTION.—An election under paragraph*
12 *(1), once made, shall be irrevocable.*

13 “(5) *NONAPPLICATION OF INSTALLMENT SALES*
14 *TREATMENT.—Section 453 shall not apply to any*
15 *qualifying electric transmission transaction with re-*
16 *spect to which an election to apply this subsection is*
17 *made.”.*

18 “(b) *EFFECTIVE DATE.—The amendment made by this*
19 *section shall apply to transactions occurring after December*
20 *31, 2004.*

21 ***Subtitle G—Volumetric Ethanol***
22 ***Excise Tax Credit***

23 ***SEC. 860. SHORT TITLE.***

24 *This subtitle may be cited as the “Volumetric Ethanol*
25 *Excise Tax Credit (VEETC) Act of 2004”.*

1 **SEC. 861. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT**
2 **AND EXTENSION OF ALCOHOL FUELS INCOME**
3 **TAX CREDIT.**

4 (a) *IN GENERAL.*—Subchapter B of chapter 65 (relat-
5 ing to rules of special application) is amended by inserting
6 after section 6425 the following new section:

7 **“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL**
8 **MIXTURES.**

9 “(a) *ALLOWANCE OF CREDITS.*—There shall be allowed
10 as a credit against the tax imposed by section 4081 an
11 amount equal to the sum of—

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

13 “(2) the biodiesel mixture credit.

14 “(b) *ALCOHOL FUEL MIXTURE CREDIT.*—

15 “(1) *IN GENERAL.*—For purposes of this section,
16 the alcohol fuel mixture credit is the product of the
17 applicable amount and the number of gallons of alco-
18 hol used by the taxpayer in producing any alcohol
19 fuel mixture for sale or use in a trade or business of
20 the taxpayer.

21 “(2) *APPLICABLE AMOUNT.*—For purposes of this
22 subsection—

23 “(A) *IN GENERAL.*—Except as provided in
24 subparagraph (B), the applicable amount is 52
25 cents (51 cents in the case of any sale or use
26 after 2004).

1 “(B) *MIXTURES NOT CONTAINING ETH-*
2 *ANOL.—In the case of an alcohol fuel mixture in*
3 *which none of the alcohol consists of ethanol, the*
4 *applicable amount is 60 cents.*

5 “(3) *ALCOHOL FUEL MIXTURE.—For purposes of*
6 *this subsection, the term ‘alcohol fuel mixture’ means*
7 *a mixture of alcohol and a taxable fuel which—*

8 “(A) *is sold by the taxpayer producing such*
9 *mixture to any person for use as a fuel,*

10 “(B) *is used as a fuel by the taxpayer pro-*
11 *ducing such mixture, or*

12 “(C) *is removed from the refinery by a per-*
13 *son producing such mixture.*

14 “(4) *OTHER DEFINITIONS.—For purposes of this*
15 *subsection—*

16 “(A) *ALCOHOL.—The term ‘alcohol’ includes*
17 *methanol and ethanol but does not include—*

18 “(i) *alcohol produced from petroleum,*
19 *natural gas, or coal (including peat), or*

20 “(ii) *alcohol with a proof of less than*
21 *190 (determined without regard to any*
22 *added denaturants).*

23 *Such term also includes an alcohol gallon equiv-*
24 *alent of ethyl tertiary butyl ether or other ethers*
25 *produced from such alcohol.*

1 “(B) *TAXABLE FUEL*.—The term ‘taxable
2 fuel’ has the meaning given such term by section
3 4083(a)(1).

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

7 “(c) *BIODIESEL MIXTURE CREDIT*.—

8 “(1) *IN GENERAL*.—For purposes of this section,
9 the biodiesel mixture credit is the product of the ap-
10 plicable amount and the number of gallons of bio-
11 diesel used by the taxpayer in producing any bio-
12 diesel mixture for sale or use in a trade or business
13 of the taxpayer.

14 “(2) *APPLICABLE AMOUNT*.—For purposes of this
15 subsection—

16 “(A) *IN GENERAL*.—Except as provided in
17 subparagraph (B), the applicable amount is 50
18 cents.

19 “(B) *AMOUNT FOR AGRI-BIODIESEL*.—In
20 the case of any biodiesel which is agri-biodiesel,
21 the applicable amount is \$1.00.

22 “(3) *BIODIESEL MIXTURE*.—For purposes of this
23 section, the term ‘biodiesel mixture’ means a mixture
24 of biodiesel and diesel fuel (as defined in section

1 4083(a)(3)), determined without regard to any use of
2 kerosene, which—

3 “(A) is sold by the taxpayer producing such
4 mixture to any person for use as a fuel,

5 “(B) is used as a fuel by the taxpayer pro-
6 ducing such mixture, or

7 “(C) is removed from the refinery by a per-
8 son producing such mixture.

9 “(4) CERTIFICATION FOR BIODIESEL.—No credit
10 shall be allowed under this section unless the taxpayer
11 obtains a certification (in such form and manner as
12 prescribed by the Secretary) from the producer of the
13 biodiesel which identifies the product produced and
14 the percentage of biodiesel and agri-biodiesel in the
15 product.

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

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

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

23 “(1) IMPOSITION OF TAX.—If—

24 “(A) any credit was determined under this
25 section with respect to alcohol or biodiesel used

1 *in the production of any alcohol fuel mixture or*
2 *biodiesel mixture, respectively, and*

3 “(B) any person—

4 “(i) separates the alcohol or biodiesel
5 *from the mixture, or*

6 “(ii) without separation, uses the mix-
7 *ture other than as a fuel,*

8 *then there is hereby imposed on such person a*
9 *tax equal to the product of the applicable*
10 *amount and the number of gallons of such alco-*
11 *hol or biodiesel.*

12 “(2) *APPLICABLE LAWS.*—*All provisions of law,*
13 *including penalties, shall, insofar as applicable and*
14 *not inconsistent with this section, apply in respect of*
15 *any tax imposed under paragraph (1) as if such tax*
16 *were imposed by section 4081 and not by this section.*

17 “(e) *COORDINATION WITH EXEMPTION FROM EXCISE*
18 *TAX.*—*Rules similar to the rules under section 40(c) shall*
19 *apply for purposes of this section.”.*

20 (b) *REGISTRATION REQUIREMENT.*—*Section*
21 *4101(a)(1) (relating to registration), as amended by sec-*
22 *tions 871 and 880 of this Act, is amended by inserting “and*
23 *every person producing or importing biodiesel (as defined*
24 *in section 40A(d)(1)) or alcohol (as defined in section*
25 *6426(b)(4)(A))” after “4081”.*

1 (c) *ADDITIONAL AMENDMENTS.*—

2 (1) *Section 40(c) is amended by striking “sub-*
3 *section (b)(2), (k), or (m) of section 4041, section*
4 *4081(c), or section 4091(c)” and inserting “section*
5 *4041(b)(2), section 6426, or section 6427(e)”.*

6 (2) *Paragraph (4) of section 40(d) is amended to*
7 *read as follows:*

8 “*(4) VOLUME OF ALCOHOL.—For purposes of de-*
9 *termining under subsection (a) the number of gallons*
10 *of alcohol with respect to which a credit is allowable*
11 *under subsection (a), the volume of alcohol shall in-*
12 *clude the volume of any denaturant (including gaso-*
13 *line) which is added under any formulas approved by*
14 *the Secretary to the extent that such denaturants do*
15 *not exceed 5 percent of the volume of such alcohol (in-*
16 *cluding denaturants).”.*

17 (3) *Section 40(e)(1) is amended—*

18 (A) *by striking “2007” in subparagraph*
19 *(A) and inserting “2010”, and*

20 (B) *by striking “2008” in subparagraph*
21 *(B) and inserting “2011”.*

22 (4) *Section 40(h) is amended—*

23 (A) *by striking “2007” in paragraph (1)*
24 *and inserting “2010”, and*

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

4 (5) Section 4041(b)(2)(B) is amended by striking
5 “a substance other than petroleum or natural gas”
6 and inserting “coal (including peat)”.

7 (6) Section 4041 is amended by striking sub-
8 section (k).

9 (7) Section 4081 is amended by striking sub-
10 section (c).

11 (8) Paragraph (2) of section 4083(a) is amended
12 to read as follows:

13 “(2) *GASOLINE*.—The term ‘gasoline’—

14 “(A) includes any gasoline blend, other than
15 qualified methanol or ethanol fuel (as defined in
16 section 4041(b)(2)(B)), partially exempt meth-
17 anol or ethanol fuel (as defined in section
18 4041(m)(2)), or a denatured alcohol, and

19 “(B) includes, to the extent prescribed in
20 regulations—

21 “(i) any gasoline blend stock, and

22 “(ii) any product commonly used as
23 an additive in gasoline (other than alcohol).

1 *For purposes of subparagraph (B)(i), the term ‘gasoline blend stock’ means any petroleum product component of gasoline.’.*

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

6 *“(e) ALCOHOL OR BIODIESEL USED TO PRODUCE AL-*
 7 *COHOL FUEL AND BIODIESEL MIXTURES OR USED AS*
 8 *FUELS.—Except as provided in subsection (k)—*

9 *“(1) USED TO PRODUCE A MIXTURE.—If any*
 10 *person produces a mixture described in section 6426*
 11 *in such person’s trade or business, the Secretary shall*
 12 *pay (without interest) to such person an amount*
 13 *equal to the alcohol fuel mixture credit or the biodiesel*
 14 *mixture credit with respect to such mixture.*

15 *“(2) USED AS FUEL.—If alcohol (as defined in*
 16 *section 40(d)(1)) or biodiesel (as defined in section*
 17 *40A(d)(1)) or agri-biodiesel (as defined in section*
 18 *40A(d)(2)) which is not in a mixture described in sec-*
 19 *tion 6426—*

20 *“(A) is used by any person as a fuel in a*
 21 *trade or business, or*

22 *“(B) is sold by any person at retail to an-*
 23 *other person and placed in the fuel tank of such*
 24 *person’s vehicle,*

1 *the Secretary shall pay (without interest) to such per-*
2 *son an amount equal to the alcohol credit (as deter-*
3 *mined under section 40(b)(2)) or the biodiesel credit*
4 *(as determined under section 40A(b)(2)) with respect*
5 *to such fuel.*

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

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

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

16 *“(B) any biodiesel mixture (as defined in*
17 *section 6426(c)(3)) or biodiesel (as so defined) or*
18 *agri-biodiesel (as so defined) sold or used after*
19 *December 31, 2006.”.*

20 *(10) Section 6427(i)(3) is amended—*

21 *(A) by striking “subsection (f)” both places*
22 *it appears in subparagraph (A) and inserting*
23 *“subsection (e)(1)”,*

24 *(B) by striking “gasoline, diesel fuel, or ker-*
25 *osene used to produce a qualified alcohol mixture*

1 *(as defined in section 4081(c)(3))*” in subpara-
2 *graph (A) and inserting “a mixture described in*
3 *section 6426”,*

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

6 *“In the case of an electronic claim, this subpara-*
7 *graph shall be applied without regard to clause*
8 *(i).”*,

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

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

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

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

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

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

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

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

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

7 (13) The table of sections for subchapter B of
8 chapter 65 is amended by inserting after the item re-
9 lating to section 6425 the following new item:

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

10 (14) *TARIFF SCHEDULE.*—Headings 9901.00.50
11 and 9901.00.52 of the Harmonized Tariff Schedule of
12 the United States (19 U.S.C. 3007) are each amended
13 in the effective period column by striking “10/1/2007”
14 each place it appears and inserting “1/1/2011”.

15 (d) *EFFECTIVE DATES.*—

16 (1) *IN GENERAL.*—Except as otherwise provided
17 in this subsection, the amendments made by this sec-
18 tion shall apply to fuel sold or used after September
19 30, 2004.

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

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

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

3 (4) **REPEAL OF GENERAL FUND RETENTION OF**
4 **CERTAIN ALCOHOL FUELS TAXES.**—The amendments
5 made by subsection (c)(12) shall apply to fuel sold or
6 used after September 30, 2003.

7 (e) **FORMAT FOR FILING.**—The Secretary of the Treas-
8 ury shall describe the electronic format for filing claims de-
9 scribed in section 6427(i)(3)(B) of the Internal Revenue
10 Code of 1986 (as amended by subsection (c)(10)(C)) not
11 later than September 30, 2004.

12 **SEC. 862. BIODIESEL INCOME TAX CREDIT.**

13 (a) **IN GENERAL.**—Subpart D of part IV of subchapter
14 A of chapter 1 (relating to business related credits), as
15 amended by this Act, is amended by inserting after section
16 40A the following new section:

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

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

21 “(1) the biodiesel mixture credit, plus

22 “(2) the biodiesel credit.

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

25 “(1) **BIODIESEL MIXTURE CREDIT.**—

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

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

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

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

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

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

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

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

5 “(2) *BIODIESEL CREDIT.*—

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(A) *MIXTURES.*—*If—*

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

14 “(ii) *any person—*

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

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

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

23 “(B) *BIODIESEL.*—*If—*

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

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

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

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

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

22 “(b) *CREDIT TREATED AS PART OF GENERAL BUSI-*
23 *NESS CREDIT.*—Section 38(b) (relating to current year
24 business credit), as amended by this Act, is amended by
25 striking “plus” at the end of paragraph (28), by striking

1 *the period at the end of paragraph (29) and inserting “,*
2 *plus”, and by adding at the end the following new para-*
3 *graph:*

4 “(30) *the biodiesel fuels credit determined under*
5 *section 40B(a).”.*

6 (c) *CONFORMING AMENDMENTS.—*

7 (1)(A) *Section 87, as amended by this Act, is*
8 *amended—*

9 (i) *by striking “and” at the end of para-*
10 *graph (1),*

11 (ii) *by striking the period at the end of*
12 *paragraph (2) and inserting “, and”,*

13 (iii) *by adding at the end the following new*
14 *paragraph:*

15 “(3) *the biodiesel fuels credit determined with re-*
16 *spect to the taxpayer for the taxable year under sec-*
17 *tion 40B(a).”, and*

18 (iv) *by striking “**FUEL CREDIT**” in the heading*
19 *and inserting “**AND BIODIESEL FUELS CREDITS**”.*

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

24 (2) *Section 196(c), as amended by this Act, is*
25 *amended by striking “and” at the end of paragraph*

1 (11), by striking the period at the end of paragraph
 2 (12) and inserting “, and”, and by adding at the end
 3 the following new paragraph:

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

6 (3) The table of sections for subpart D of part
 7 IV of subchapter A of chapter 1 is amended by adding
 8 after the item relating to section 40 the following new
 9 item:

 “Sec. 40B. Biodiesel used as fuel.”.

10 (d) *EFFECTIVE DATE.*—The amendments made by this
 11 section shall apply to fuel produced, and sold or used, after
 12 September 30, 2004, in taxable years ending after such date.

13 **Subtitle H—Fuel Fraud Prevention**

14 **SEC. 870. SHORT TITLE.**

15 This subtitle may be cited as the “Fuel Fraud Preven-
 16 tion Act of 2004”.

17 **PART I—AVIATION JET FUEL**

18 **SEC. 871. TAXATION OF AVIATION-GRADE KEROSENE.**

19 (a) *RATE OF TAX.*—

20 (1) *IN GENERAL.*—Subparagraph (A) of section
 21 4081(a)(2) is amended by striking “and” at the end
 22 of clause (ii), by striking the period at the end of
 23 clause (iii) and inserting “, and”, and by adding at
 24 the end the following new clause:

1 “(iv) in the case of aviation-grade ker-
2 osene, 21.8 cents per gallon.”.

3 (2) *COMMERCIAL AVIATION.*—Paragraph (2) of
4 section 4081(a) is amended by adding at the end the
5 following new subparagraph:

6 “(C) *TAXES IMPOSED ON FUEL USED IN*
7 *COMMERCIAL AVIATION.*—In the case of aviation-
8 grade kerosene which is removed from any refin-
9 ery or terminal directly into the fuel tank of an
10 aircraft for use in commercial aviation, the rate
11 of tax under subparagraph (A)(iv) shall be 4.3
12 cents per gallon.”.

13 (3) *NONTAXABLE USES.*—

14 (A) *IN GENERAL.*—Section 4082 is amended
15 by redesignating subsections (e) and (f) as sub-
16 sections (f) and (g), respectively, and by insert-
17 ing after subsection (d) the following new sub-
18 section:

19 “(e) *AVIATION-GRADE KEROSENE.*—In the case of
20 aviation-grade kerosene which is exempt from the tax im-
21 posed by section 4041(c) (other than by reason of a prior
22 imposition of tax) and which is removed from any refinery
23 or terminal directly into the fuel tank of an aircraft, the
24 rate of tax under section 4081(a)(2)(A)(iv) shall be zero.”.

25 (B) *CONFORMING AMENDMENTS.*—

1 (i) *Subsection (b) of section 4082 is*
 2 *amended by adding at the end the following*
 3 *new flush sentence: “The term ‘nontaxable*
 4 *use’ does not include the use of aviation-*
 5 *grade kerosene in an aircraft.”.*

6 (ii) *Section 4082(d) is amended by*
 7 *striking paragraph (1) and by redesign-*
 8 *ating paragraphs (2) and (3) as para-*
 9 *graphs (1) and (2), respectively.*

10 (4) *NONAIRCRAFT USE OF AVIATION-GRADE KER-*
 11 *OSENE.—*

12 (A) *IN GENERAL.—Subparagraph (B) of*
 13 *section 4041(a)(1) is amended by adding at the*
 14 *end the following new sentence: “This subpara-*
 15 *graph shall not apply to aviation-grade ker-*
 16 *osene.”.*

17 (B) *CONFORMING AMENDMENT.—The head-*
 18 *ing for paragraph (1) of section 4041(a) is*
 19 *amended by inserting “AND KEROSENE” after*
 20 *“DIESEL FUEL”.*

21 (b) *COMMERCIAL AVIATION.—Section 4083 is amended*
 22 *redesignating subsections (b) and (c) as subsections (c) and*
 23 *(d), respectively, and by inserting after subsection (a) the*
 24 *following new subsection:*

1 “(b) *COMMERCIAL AVIATION.*—For purposes of this
2 subpart, the term ‘commercial aviation’ means any use of
3 an aircraft in a business of transporting persons or prop-
4 erty for compensation or hire by air, unless properly allo-
5 cable to any transportation exempt from the taxes imposed
6 by section 4261 and 4271 by reason of section 4281 or 4282
7 or by reason of section 4261(h).”.

8 (c) *REFUNDS.*—

9 (1) *IN GENERAL.*—Paragraph (4) of section
10 6427(l) is amended to read as follows:

11 “(4) *REFUNDS FOR AVIATION-GRADE KER-*
12 *OSENE.*—

13 “(A) *NO REFUND OF CERTAIN TAXES ON*
14 *FUEL USED IN COMMERCIAL AVIATION.*—In the
15 case of aviation-grade kerosene used in commer-
16 cial aviation (as defined in section 4083(b))
17 (other than supplies for vessels or aircraft within
18 the meaning of section 4221(d)(3)), paragraph
19 (1) shall not apply to so much of the tax imposed
20 by section 4081 as is attributable to—

21 “(i) the Leaking Underground Storage
22 Tank Trust Fund financing rate imposed
23 by such section, and

1 “(i) so much of the rate of tax speci-
2 fied in section 4081(a)(2)(A)(iv) as does not
3 exceed 4.3 cents per gallon.

4 “(B) PAYMENT TO ULTIMATE, REGISTERED
5 VENDOR.—With respect to aviation-grade ker-
6 osene, if the ultimate purchaser of such kerosene
7 waives (at such time and in such form and man-
8 ner as the Secretary shall prescribe) the right to
9 payment under paragraph (1) and assigns such
10 right to the ultimate vendor, then the Secretary
11 shall pay the amount which would be paid under
12 paragraph (1) to such ultimate vendor, but only
13 if such ultimate vendor—

14 “(i) is registered under section 4101,
15 and

16 “(ii) meets the requirements of sub-
17 paragraph (A), (B), or (D) of section
18 6416(a)(1).”.

19 (2) TIME FOR FILING CLAIMS.—Subparagraph
20 (A) of section 6427(i)(4) is amended—

21 (A) by striking “subsection (l)(5)” both
22 places it appears and inserting “paragraph
23 (4)(B) or (5) of subsection (l)”, and

24 (B) by striking “the preceding sentence”
25 and inserting “subsection (l)(5)”.

1 (3) *CONFORMING AMENDMENT.*—Subparagraph
 2 (B) of section 6427(l)(2) is amended to read as fol-
 3 lows:

4 “(B) in the case of aviation-grade
 5 kerosene—

6 “(i) any use which is exempt from the
 7 tax imposed by section 4041(c) other than
 8 by reason of a prior imposition of tax, or

9 “(ii) any use in commercial aviation
 10 (within the meaning of section 4083(b)).”.

11 (d) *REPEAL OF PRIOR TAXATION OF AVIATION*
 12 *FUEL.*—

13 (1) *IN GENERAL.*—Part III of subchapter A of
 14 chapter 32 is amended by striking subpart B and by
 15 redesignating subpart C as subpart B.

16 (2) *CONFORMING AMENDMENTS.*—

17 (A) Section 4041(c) is amended to read as
 18 follows:

19 “(c) *AVIATION-GRADE KEROSENE.*—

20 “(1) *IN GENERAL.*—There is hereby imposed a
 21 tax upon aviation-grade kerosene—

22 “(A) sold by any person to an owner, lessee,
 23 or other operator of an aircraft for use in such
 24 aircraft, or

1 “(B) used by any person in an aircraft un-
2 less there was a taxable sale of such fuel under
3 subparagraph (A).

4 “(2) EXEMPTION FOR PREVIOUSLY TAXED
5 FUEL.—No tax shall be imposed by this subsection on
6 the sale or use of any aviation-grade kerosene if tax
7 was imposed on such liquid under section 4081 and
8 the tax thereon was not credited or refunded.

9 “(3) RATE OF TAX.—The rate of tax imposed by
10 this subsection shall be the rate of tax specified in sec-
11 tion 4081(a)(2)(A)(iv) which is in effect at the time
12 of such sale or use.”.

13 (B) Section 4041(d)(2) is amended by strik-
14 ing “section 4091” and inserting “section 4081”.

15 (C) Section 4041 is amended by striking
16 subsection (e).

17 (D) Section 4041 is amended by striking
18 subsection (i).

19 (E) Section 4041(m)(1) is amended to read
20 as follows:

21 “(1) IN GENERAL.—In the case of the sale or use
22 of any partially exempt methanol or ethanol fuel, the
23 rate of the tax imposed by subsection (a)(2) shall be—

24 “(A) after September 30, 1997, and before
25 September 30, 2009—

1 “(i) in the case of fuel none of the alco-
2 hol in which consists of ethanol, 9.15 cents
3 per gallon, and

4 “(ii) in any other case, 11.3 cents per
5 gallon, and

6 “(B) after September 30, 2009—

7 “(i) in the case of fuel none of the alco-
8 hol in which consists of ethanol, 2.15 cents
9 per gallon, and

10 “(ii) in any other case, 4.3 cents per
11 gallon.”.

12 (F) Sections 4101(a), 4103, 4221(a), and
13 6206 are each amended by striking “, 4081, or
14 4091” and inserting “or 4081”.

15 (G) Section 6416(b)(2) is amended by strik-
16 ing “4091 or”.

17 (H) Section 6416(b)(3) is amended by strik-
18 ing “or 4091” each place it appears.

19 (I) Section 6416(d) is amended by striking
20 “or to the tax imposed by section 4091 in the
21 case of refunds described in section 4091(d)”.

22 (J) Section 6427 is amended by striking
23 subsection (f).

1 (K) Section 6427(j)(1) is amended by strik-
2 ing “, 4081, and 4091” and inserting “and
3 4081”.

4 (L)(i) Section 6427(l)(1) is amended to
5 read as follows:

6 “(1) IN GENERAL.—Except as otherwise provided
7 in this subsection and in subsection (k), if any diesel
8 fuel or kerosene on which tax has been imposed by
9 section 4041 or 4081 is used by any person in a non-
10 taxable use, the Secretary shall pay (without interest)
11 to the ultimate purchaser of such fuel an amount
12 equal to the aggregate amount of tax imposed on such
13 fuel under section 4041 or 4081, as the case may be,
14 reduced by any refund paid to the ultimate vendor
15 under paragraph (4)(B).”.

16 (ii) Paragraph (5)(B) of section 6427(l) is
17 amended by striking “Paragraph (1)(A) shall
18 not apply to kerosene” and inserting “Para-
19 graph (1) shall not apply to kerosene (other than
20 aviation-grade kerosene)”.

21 (M) Subparagraph (B) of section
22 6724(d)(1), as amended by this Act, is amended
23 by striking clause (xvi) and by redesignating
24 clauses (xvii), (xviii), and (xix) as clauses (xvi),
25 (xvii), and (xviii), respectively.

1 (N) Paragraph (2) of section 6724(d), as
2 amended by this Act, is amended by striking
3 subparagraph (X) and by redesignating subpara-
4 graphs (Y), (Z), (AA), (BB), and (CC) as sub-
5 paragraphs (X), (Y), (Z), (AA), and (BB), re-
6 spectively.

7 (O) Paragraph (1) of section 9502(b) is
8 amended by adding “and” at the end of subpara-
9 graph (B) and by striking subparagraphs (C)
10 and (D) and inserting the following new sub-
11 paragraph:

12 “(C) section 4081 with respect to aviation
13 gasoline and aviation-grade kerosene, and”.

14 (P) The last sentence of section 9502(b) is
15 amended to read as follows:

16 “*There shall not be taken into account under paragraph*
17 *(1) so much of the taxes imposed by section 4081 as are*
18 *determined at the rate specified in section 4081(a)(2)(B).*”.

19 (Q) Subsection (b) of section 9508 is
20 amended by striking paragraph (3) and by re-
21 designating paragraphs (4) and (5) as para-
22 graphs (3) and (4), respectively.

23 (R) Section 9508(c)(2)(A) is amended by
24 striking “sections 4081 and 4091” and inserting
25 “section 4081”.

1 (S) *The table of subparts for part III of*
 2 *subchapter A of chapter 32 is amended to read*
 3 *as follows:*

 “Subpart A. *Motor and aviation fuels.*
 “Subpart B. *Special provisions applicable to fuels tax.*”.

4 (T) *The heading for subpart A of part III*
 5 *of subchapter A of chapter 32 is amended to read*
 6 *as follows:*

7 **“Subpart A—Motor and Aviation Fuels”.**

8 (U) *The heading for subpart B of part III*
 9 *of subchapter A of chapter 32 is amended to read*
 10 *as follows:*

11 **“Subpart B—Special Provisions Applicable to Fuels**
 12 **Tax”.**

13 (e) *EFFECTIVE DATE.—The amendments made by this*
 14 *section shall apply to aviation-grade kerosene removed, en-*
 15 *tered, or sold after September 30, 2004.*

16 (f) *FLOOR STOCKS TAX.—*

17 (1) *IN GENERAL.—There is hereby imposed on*
 18 *aviation-grade kerosene held on October 1, 2004, by*
 19 *any person a tax equal to—*

20 (A) *the tax which would have been imposed*
 21 *before such date on such kerosene had the amend-*
 22 *ments made by this section been in effect at all*
 23 *times before such date, reduced by*

1 (B) *the tax imposed before such date under*
2 *section 4091 of the Internal Revenue Code of*
3 *1986, as in effect on the day before the date of*
4 *the enactment of this Act.*

5 (2) *LIABILITY FOR TAX AND METHOD OF PAY-*
6 *MENT.—*

7 (A) *LIABILITY FOR TAX.—The person hold-*
8 *ing the kerosene on October 1, 2004, to which the*
9 *tax imposed by paragraph (1) applies shall be*
10 *liable for such tax.*

11 (B) *METHOD AND TIME FOR PAYMENT.—*
12 *The tax imposed by paragraph (1) shall be paid*
13 *at such time and in such manner as the Sec-*
14 *retary of the Treasury shall prescribe, including*
15 *the nonapplication of such tax on de minimis*
16 *amounts of kerosene.*

17 (3) *TRANSFER OF FLOOR STOCK TAX REVENUES*
18 *TO TRUST FUNDS.—For purposes of determining the*
19 *amount transferred to any trust fund, the tax im-*
20 *posed by this subsection shall be treated as imposed*
21 *by section 4081 of the Internal Revenue Code of*
22 *1986—*

23 (A) *at the Leaking Underground Storage*
24 *Tank Trust Fund financing rate under such sec-*
25 *tion to the extent of 0.1 cents per gallon, and*

1 (B) at the rate under section
2 4081(a)(2)(A)(iv) to the extent of the remainder.

3 (4) HELD BY A PERSON.—For purposes of this
4 section, kerosene shall be considered as held by a per-
5 son if title thereto has passed to such person (whether
6 or not delivery to the person has been made).

7 (5) OTHER LAWS APPLICABLE.—All provisions of
8 law, including penalties, applicable with respect to
9 the tax imposed by section 4081 of such Code shall,
10 insofar as applicable and not inconsistent with the
11 provisions of this subsection, apply with respect to the
12 floor stock tax imposed by paragraph (1) to the same
13 extent as if such tax were imposed by such section.

14 **SEC. 872. TRANSFER OF CERTAIN AMOUNTS FROM THE AIR-**
15 **PORT AND AIRWAY TRUST FUND TO THE**
16 **HIGHWAY TRUST FUND TO REFLECT HIGH-**
17 **WAY USE OF JET FUEL.**

18 (a) IN GENERAL.—Section 9502(d) is amended by
19 adding at the end the following new paragraph:

20 “(7) TRANSFERS FROM THE TRUST FUND TO
21 THE HIGHWAY TRUST FUND.—

22 “(A) IN GENERAL.—The Secretary shall pay
23 annually from the Airport and Airway Trust
24 Fund into the Highway Trust Fund an amount
25 (as determined by him) equivalent to amounts

1 *received in the Airport and Airway Trust Fund*
2 *which are attributable to fuel that is used pri-*
3 *marily for highway transportation purposes.*

4 “(B) AMOUNTS TRANSFERRED TO MASS
5 TRANSIT ACCOUNT.—*The Secretary shall transfer*
6 *11 percent of the amounts paid into the High-*
7 *way Trust Fund under subparagraph (A) to the*
8 *Mass Transit Account established under section*
9 *9503(e).”.*

10 (b) *CONFORMING AMENDMENTS.—*

11 (1) *Subsection (a) of section 9503 is amended—*

12 (A) *by striking “appropriated or credited”*
13 *and inserting “paid, appropriated, or credited”,*
14 *and*

15 (B) *by striking “or section 9602(b)” and in-*
16 *serting “, section 9502(d)(7), or section 9602(b)”.*

17 (2) *Subsection (e)(1) of section 9503 is amended*
18 *by striking “or section 9602(b)” and inserting “, sec-*
19 *tion 9502(d)(7), or section 9602(b)”.*

20 (c) *EFFECTIVE DATE.—The amendments made by this*
21 *section shall take effect on October 1, 2004.*

PART II—DYED FUEL**SEC. 873. DYE INJECTION EQUIPMENT.**

(a) *IN GENERAL.*—Section 4082(a)(2) (relating to exemptions for diesel fuel and kerosene) is amended by inserting “by mechanical injection” after “indelibly dyed”.

(b) *DYE INJECTOR SECURITY.*—Not later than June 30, 2004, the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a), and such regulations shall include standards for making such systems tamper resistant.

(c) *PENALTY FOR TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.*—

(1) *IN GENERAL.*—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding after section 6715 the following new section:

“SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.

“(a) IMPOSITION OF PENALTY.—

“(1) TAMPERING.—If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, then such person shall pay a penalty in addition to the tax (if any).

1 “(2) *FAILURE TO MAINTAIN SECURITY REQUIRE-*
2 *MENTS.—If any operator of a mechanical dye injec-*
3 *tion system used to indelibly dye fuel for purposes of*
4 *section 4082 fails to maintain the security standards*
5 *for such system as established by the Secretary, then*
6 *such operator shall pay a penalty.*

7 “(b) *AMOUNT OF PENALTY.—The amount of the pen-*
8 *alty under subsection (a) shall be—*

9 “(1) *for each violation described in paragraph*
10 *(1), the greater of—*

11 “(A) *\$25,000, or*

12 “(B) *\$10 for each gallon of fuel involved,*
13 *and*

14 “(2) *for each—*

15 “(A) *failure to maintain security standards*
16 *described in paragraph (2), \$1,000, and*

17 “(B) *failure to correct a violation described*
18 *in paragraph (2), \$1,000 per day for each day*
19 *after which such violation was discovered or such*
20 *person should have reasonably known of such*
21 *violation.*

22 “(c) *JOINT AND SEVERAL LIABILITY.—*

23 “(1) *IN GENERAL.—If a penalty is imposed*
24 *under this section on any business entity, each officer,*
25 *employee, or agent of such entity or other contracting*

1 *party who willfully participated in any act giving*
 2 *rise to such penalty shall be jointly and severally lia-*
 3 *ble with such entity for such penalty.*

4 “(2) *AFFILIATED GROUPS.*—*If a business entity*
 5 *described in paragraph (1) is part of an affiliated*
 6 *group (as defined in section 1504(a)), the parent cor-*
 7 *poration of such entity shall be jointly and severally*
 8 *liable with such entity for the penalty imposed under*
 9 *this section.”.*

10 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
 11 *tions for part I of subchapter B of chapter 68 is*
 12 *amended by adding after the item related to section*
 13 *6715 the following new item:*

“*Sec. 6715A. Tampering with or failing to maintain security re-*
quirements for mechanical dye injection systems.”.

14 (d) *EFFECTIVE DATE.*—*The amendments made by*
 15 *subsections (a) and (c) shall take effect 180 days after the*
 16 *date on which the Secretary issues the regulations described*
 17 *in subsection (b).*

18 **SEC. 874. ELIMINATION OF ADMINISTRATIVE REVIEW FOR**
 19 **TAXABLE USE OF DYED FUEL.**

20 (a) *IN GENERAL.*—*Section 6715 is amended by insert-*
 21 *ing at the end the following new subsection:*

22 “(e) *NO ADMINISTRATIVE APPEAL FOR THIRD AND*
 23 *SUBSEQUENT VIOLATIONS.*—*In the case of any person who*
 24 *is found to be subject to the penalty under this section after*

1 *a chemical analysis of such fuel and who has been penalized*
2 *under this section at least twice after the date of the enact-*
3 *ment of this subsection, no administrative appeal or review*
4 *shall be allowed with respect to such finding except in the*
5 *case of a claim regarding—*

6 “(1) *fraud or mistake in the chemical analysis,*
7 *or*
8 “(2) *mathematical calculation of the amount of*
9 *the penalty.*”.

10 (b) *EFFECTIVE DATE.*—*The amendment made by this*
11 *section shall apply to penalties assessed after the date of*
12 *the enactment of this Act.*

13 **SEC. 875. PENALTY ON UNTAXED CHEMICALLY ALTERED**
14 **DYED FUEL MIXTURES.**

15 (a) *IN GENERAL.*—*Section 6715(a) (relating to dyed*
16 *fuel sold for use or used in taxable use, etc.) is amended*
17 *by striking “or” in paragraph (2), by inserting “or” at the*
18 *end of paragraph (3), and by inserting after paragraph (3)*
19 *the following new paragraph:*

20 “(4) *any person who has knowledge that a dyed*
21 *fuel which has been altered as described in paragraph*
22 *(3) sells or holds for sale such fuel for any use which*
23 *the person knows or has reason to know is not a non-*
24 *taxable use of such fuel.*”.

1 (b) *CONFORMING AMENDMENT.*—Section 6715(a)(3) is
2 amended by striking “alters, or attempts to alter,” and in-
3 serting “alters, chemically or otherwise, or attempts to so
4 alter,”.

5 (c) *EFFECTIVE DATE.*—The amendments made by this
6 section shall take effect on the date of the enactment of this
7 Act.

8 **SEC. 876. TERMINATION OF DYED DIESEL USE BY INTER-**
9 **CITY BUSES.**

10 (a) *IN GENERAL.*—Paragraph (3) of section 4082(b)
11 (relating to nontaxable use) is amended to read as follows:

12 “(3) any use described in section
13 4041(a)(1)(C)(iii)(II).”.

14 (b) *ULTIMATE VENDOR REFUND.*—Subsection (b) of
15 section 6427 is amended by adding at the end the following
16 new paragraph:

17 “(4) *REFUNDS FOR USE OF DIESEL FUEL IN*
18 *CERTAIN INTERCITY BUSES.*—

19 “(A) *IN GENERAL.*—With respect to any
20 fuel to which paragraph (2)(A) applies, if the ul-
21 timate purchaser of such fuel waives (at such
22 time and in such form and manner as the Sec-
23 retary shall prescribe) the right to payment
24 under paragraph (1) and assigns such right to
25 the ultimate vendor, then the Secretary shall pay

1 *the amount which would be paid under para-*
 2 *graph (1) to such ultimate vendor, but only if*
 3 *such ultimate vendor—*

4 *“(i) is registered under section 4101,*
 5 *and*

6 *“(ii) meets the requirements of sub-*
 7 *paragraph (A), (B), or (D) of section*
 8 *6416(a)(1).*

9 *“(B) CREDIT CARDS.—For purposes of this*
 10 *paragraph, if the sale of such fuel is made by*
 11 *means of a credit card, the person extending*
 12 *credit to the ultimate purchaser shall be deemed*
 13 *to be the ultimate vendor.”.*

14 (c) *PAYMENT OF REFUNDS.—Subparagraph (A) of sec-*
 15 *tion 6427(i)(4), as amended by this Act, is amended by in-*
 16 *serting “subsections (b)(4) and” after “filed under”.*

17 (d) *EFFECTIVE DATE.—The amendments made by this*
 18 *section shall apply to fuel sold after September 30, 2004.*

19 **PART III—MODIFICATION OF INSPECTION OF**
 20 **RECORDS PROVISIONS**

21 **SEC. 877. AUTHORITY TO INSPECT ON-SITE RECORDS.**

22 (a) *IN GENERAL.—Section 4083(d)(1)(A) (relating to*
 23 *administrative authority), as amended by this Act, is*
 24 *amended by striking “and” at the end of clause (i) and*
 25 *by inserting after clause (ii) the following new clause:*

1 “(iii) inspecting any books and records
2 and any shipping papers pertaining to such
3 fuel, and”.

4 (b) *EFFECTIVE DATE.*—The amendments made by this
5 section shall take effect on the date of the enactment of this
6 Act.

7 **SEC. 878. ASSESSABLE PENALTY FOR REFUSAL OF ENTRY.**

8 (a) *IN GENERAL.*—Part I of subchapter B of chapter
9 68 (relating to assessable penalties), as amended by this
10 Act, is amended by adding at the end the following new
11 section:

12 **“SEC. 6717. REFUSAL OF ENTRY.**

13 “(a) *IN GENERAL.*—In addition to any other penalty
14 provided by law, any person who refuses to admit entry
15 or refuses to permit any other action by the Secretary au-
16 thorized by section 4083(d)(1) shall pay a penalty of \$1,000
17 for such refusal.

18 “(b) *JOINT AND SEVERAL LIABILITY.*—

19 “(1) *IN GENERAL.*—If a penalty is imposed
20 under this section on any business entity, each officer,
21 employee, or agent of such entity or other contracting
22 party who willfully participated in any act giving
23 rise to such penalty shall be jointly and severally lia-
24 ble with such entity for such penalty.

1 “(2) *AFFILIATED GROUPS.*—If a business entity
2 described in paragraph (1) is part of an affiliated
3 group (as defined in section 1504(a)), the parent cor-
4 poration of such entity shall be jointly and severally
5 liable with such entity for the penalty imposed under
6 this section.

7 “(c) *REASONABLE CAUSE EXCEPTION.*—No penalty
8 shall be imposed under this section with respect to any fail-
9 ure if it is shown that such failure is due to reasonable
10 cause.”.

11 (b) *CONFORMING AMENDMENTS.*—

12 (1) Section 4083(d)(3), as amended by this Act,
13 is amended—

14 (A) by striking “*ENTRY.—The penalty*” and
15 inserting: “*ENTRY.—*

16 “*(A) FORFEITURE.—The penalty*”, and

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

19 “*(B) ASSESSABLE PENALTY.—For addi-*
20 *tional assessable penalty for the refusal to admit*
21 *entry or other refusal to permit an action by the*
22 *Secretary authorized by paragraph (1), see sec-*
23 *tion 6717.”.*

1 (2) *The table of sections for part I of subchapter*
 2 *B of chapter 68, as amended by this Act, is amended*
 3 *by adding at the end the following new item:*

“Sec. 6717. Refusal of entry.”.

4 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 5 *section shall take effect on October 1, 2004.*

6 ***PART IV—REGISTRATION AND REPORTING***
 7 ***REQUIREMENTS***

8 ***SEC. 879. REGISTRATION OF PIPELINE OR VESSEL OPERA-***
 9 ***TORS REQUIRED FOR EXEMPTION OF BULK***
 10 ***TRANSFERS TO REGISTERED TERMINALS OR***
 11 ***REFINERIES.***

12 (a) *IN GENERAL.*—*Section 4081(a)(1)(B) (relating to*
 13 *exemption for bulk transfers to registered terminals or refin-*
 14 *eries) is amended—*

15 (1) *by inserting “by pipeline or vessel” after*
 16 *“transferred in bulk”, and*

17 (2) *by inserting “, the operator of such pipeline*
 18 *or vessel,” after “the taxable fuel”.*

19 (b) *CIVIL PENALTY FOR CARRYING TAXABLE FUELS*
 20 *BY NONREGISTERED PIPELINES OR VESSELS.*—

21 (1) *IN GENERAL.*—*Part I of subchapter B of*
 22 *chapter 68 (relating to assessable penalties), as*
 23 *amended by this Act, is amended by adding at the*
 24 *end the following new section:*

1 **“SEC. 6718. CARRYING TAXABLE FUELS BY NONREGISTERED**
 2 **PIPELINES OR VESSELS.**

3 “(a) *IMPOSITION OF PENALTY.*—If any person know-
 4 *ingly transfers any taxable fuel (as defined in section*
 5 *4083(a)(1)) in bulk pursuant to section 4081(a)(1)(B) to*
 6 *an unregistered, such person shall pay a penalty in addi-*
 7 *tion to the tax (if any).*

8 “(b) *AMOUNT OF PENALTY.*—

9 “(1) *IN GENERAL.*—Except as provided in para-
 10 *graph (2), the amount of the penalty under subsection*
 11 *(a) on each act shall be an amount equal to the great-*
 12 *er of—*

13 “(A) \$10,000, or

14 “(B) \$1 per gallon.

15 “(2) *MULTIPLE VIOLATIONS.*—In determining
 16 *the penalty under subsection (a) on any person, para-*
 17 *graph (1) shall be applied by increasing the amount*
 18 *in paragraph (1) by the product of such amount and*
 19 *the number of prior penalties (if any) imposed by this*
 20 *section on such person (or a related person or any*
 21 *predecessor of such person or related person).*

22 “(c) *JOINT AND SEVERAL LIABILITY.*—

23 “(1) *IN GENERAL.*—If a penalty is imposed
 24 *under this section on any business entity, each officer,*
 25 *employee, or agent of such entity or other contracting*
 26 *party who willfully participated in any act giving*

1 *rise to such penalty shall be jointly and severally lia-*
2 *ble with such entity for such penalty.*

3 “(2) *AFFILIATED GROUPS.*—*If a business entity*
4 *described in paragraph (1) is part of an affiliated*
5 *group (as defined in section 1504(a)), the parent cor-*
6 *poration of such entity shall be jointly and severally*
7 *liable with such entity for the penalty imposed under*
8 *this section.*

9 “(d) *REASONABLE CAUSE EXCEPTION.*—*No penalty*
10 *shall be imposed under this section with respect to any fail-*
11 *ure if it is shown that such failure is due to reasonable*
12 *cause.”.*

13 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
14 *tions for part I of subchapter B of chapter 68, as*
15 *amended by this Act, is amended by adding at the*
16 *end the following new item:*

*“Sec. 6718. Carrying taxable fuels by nonregistered pipelines or
vessels.”.*

17 (c) *PUBLICATION OF REGISTERED PERSONS.*—*Not*
18 *later than June 30, 2004, the Secretary of the Treasury*
19 *shall publish a list of persons required to be registered under*
20 *section 4101 of the Internal Revenue Code of 1986.*

21 (d) *EFFECTIVE DATE.*—*The amendments made by*
22 *subsections (a) and (b) shall take effect on October 1, 2004.*

1 **SEC. 880. DISPLAY OF REGISTRATION.**

2 (a) *IN GENERAL.*—Subsection (a) of section 4101 (re-
3 lating to registration) is amended—

4 (1) by striking “Every” and inserting the fol-
5 lowing:

6 “(1) *IN GENERAL.*—Every”, and

7 (2) by adding at the end the following new para-
8 graph:

9 “(2) *DISPLAY OF REGISTRATION.*—Every oper-
10 ator of a vessel required by the Secretary to register
11 under this section shall display proof of registration
12 through an electronic identification device prescribed
13 by the Secretary on each vessel used by such operator
14 to transport any taxable fuel.”.

15 (b) *CIVIL PENALTY FOR FAILURE TO DISPLAY REG-*
16 *ISTRATION.*—

17 (1) *IN GENERAL.*—Part I of subchapter B of
18 chapter 68 (relating to assessable penalties), as
19 amended by this Act, is amended by adding at the
20 end the following new section:

21 **“SEC. 6719. FAILURE TO DISPLAY REGISTRATION OF VES-**
22 **SEL.**

23 “(a) *FAILURE TO DISPLAY REGISTRATION.*—Every
24 operator of a vessel who fails to display proof of registration
25 pursuant to section 4101(a)(2) shall pay a penalty of \$500
26 for each such failure. With respect to any vessel, only one

1 *penalty shall be imposed by this section during any cal-*
 2 *endar month.*

3 “(b) *MULTIPLE VIOLATIONS.*—*In determining the pen-*
 4 *alty under subsection (a) on any person, subsection (a) shall*
 5 *be applied by increasing the amount in subsection (a) by*
 6 *the product of such amount and the number of prior pen-*
 7 *alties (if any) imposed by this section on such person (or*
 8 *a related person or any predecessor of such person or related*
 9 *person).*

10 “(c) *REASONABLE CAUSE EXCEPTION.*—*No penalty*
 11 *shall be imposed under this section with respect to any fail-*
 12 *ure if it is shown that such failure is due to reasonable*
 13 *cause.”.*

14 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
 15 *tions for part I of subchapter B of chapter 68, as*
 16 *amended by this Act, is amended by adding at the*
 17 *end the following new item:*

“Sec. 6719. Failure to display registration of vessel.”.

18 “(c) *EFFECTIVE DATE.*—*The amendments made by this*
 19 *section shall take effect on October 1, 2004.*

20 **SEC. 881. REGISTRATION OF PERSONS WITHIN FOREIGN**
 21 **TRADE ZONES, ETC.**

22 “(a) *IN GENERAL.*—*Section 4101(a), as amended by*
 23 *this Act, is amended by redesignating paragraph (2) as*
 24 *paragraph (3), and by inserting after paragraph (1) the*
 25 *following new paragraph:*

1 “(2) *REGISTRATION OF PERSONS WITHIN FOR-*
 2 *EIGN TRADE ZONES, ETC.*—*The Secretary shall re-*
 3 *quire registration by any person which—*

4 “(A) *operates a terminal or refinery within*
 5 *a foreign trade zone or within a customs bonded*
 6 *storage facility, or*

7 “(B) *holds an inventory position with re-*
 8 *spect to a taxable fuel in such a terminal.*”.

9 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 10 *section shall take effect on October 1, 2004.*

11 **SEC. 882. PENALTIES FOR FAILURE TO REGISTER AND FAIL-**
 12 **URE TO REPORT.**

13 (a) *INCREASED PENALTY.*—*Subsection (a) of section*
 14 *7272 (relating to penalty for failure to register) is amended*
 15 *by inserting “(\$10,000 in the case of a failure to register*
 16 *under section 4101)” after “\$50”.*

17 (b) *INCREASED CRIMINAL PENALTY.*—*Section 7232*
 18 *(relating to failure to register under section 4101, false rep-*
 19 *resentations of registration status, etc.) is amended by strik-*
 20 *ing “\$5,000” and inserting “\$10,000”.*

21 (c) *ASSESSABLE PENALTY FOR FAILURE TO REG-*
 22 *ISTER.*—

23 (1) *IN GENERAL.*—*Part I of subchapter B of*
 24 *chapter 68 (relating to assessable penalties), as*

1 amended by this Act, is amended by adding at the
2 end the following new section:

3 **“SEC. 6720. FAILURE TO REGISTER.**

4 “(a) *FAILURE TO REGISTER.*—Every person who is re-
5 quired to register under section 4101 and fails to do so shall
6 pay a penalty in addition to the tax (if any).

7 “(b) *AMOUNT OF PENALTY.*—The amount of the pen-
8 alty under subsection (a) shall be—

9 “(1) \$10,000 for each initial failure to register,
10 and

11 “(2) \$1,000 for each day thereafter such person
12 fails to register.

13 “(c) *REASONABLE CAUSE EXCEPTION.*—No penalty
14 shall be imposed under this section with respect to any fail-
15 ure if it is shown that such failure is due to reasonable
16 cause.”.

17 (2) *CLERICAL AMENDMENT.*—The table of sec-
18 tions for part I of subchapter B of chapter 68, as
19 amended by this Act, is amended by adding at the
20 end the following new item:

 “Sec. 6720. Failure to register.”.

21 (d) *ASSESSABLE PENALTY FOR FAILURE TO RE-*
22 *PORT.*—

23 (1) *IN GENERAL.*—Part II of subchapter B of
24 chapter 68 (relating to assessable penalties) is amend-
25 ed by adding at the end the following new section:

1 **“SEC. 6725. FAILURE TO REPORT INFORMATION UNDER**
2 **SECTION 4101.**

3 “(a) *IN GENERAL.*—*In the case of each failure de-*
4 *scribed in subsection (b) by any person with respect to a*
5 *vessel or facility, such person shall pay a penalty of \$10,000*
6 *in addition to the tax (if any).*

7 “(b) *FAILURES SUBJECT TO PENALTY.*—*For purposes*
8 *of subsection (a), the failures described in this subsection*
9 *are—*

10 “(1) *any failure to make a report under section*
11 *4101(d) on or before the date prescribed therefor, and*

12 “(2) *any failure to include all of the information*
13 *required to be shown on such report or the inclusion*
14 *of incorrect information.*

15 “(c) *REASONABLE CAUSE EXCEPTION.*—*No penalty*
16 *shall be imposed under this section with respect to any fail-*
17 *ure if it is shown that such failure is due to reasonable*
18 *cause.”*

19 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
20 *tions for part II of subchapter B of chapter 68 is*
21 *amended by adding at the end the following new item:*

“*Sec. 6725. Failure to report information under section 4101.*”

22 (e) *EFFECTIVE DATE.*—*The amendments made by this*
23 *section shall apply to failures pending or occurring after*
24 *September 30, 2004.*

1 **SEC. 883. INFORMATION REPORTING FOR PERSONS CLAIM-**
2 **ING CERTAIN TAX BENEFITS.**

3 (a) *IN GENERAL.*—Subpart C of part III of subchapter
4 A of chapter 32 is amended by adding at the end the fol-
5 lowing new section:

6 **“SEC. 4104. INFORMATION REPORTING FOR PERSONS**
7 **CLAIMING CERTAIN TAX BENEFITS.**

8 “(a) *IN GENERAL.*—The Secretary shall require any
9 person claiming tax benefits—

10 “(1) under the provisions of section 34, 40, and
11 40B to file a return at the time such person claims
12 such benefits (in such manner as the Secretary may
13 prescribe), and

14 “(2) under the provisions of section 4041(b)(2),
15 6426, or 6427(e) to file a monthly return (in such
16 manner as the Secretary may prescribe).

17 “(b) *CONTENTS OF RETURN.*—Any return filed under
18 this section shall provide such information relating to such
19 benefits and the coordination of such benefits as the Sec-
20 retary may require to ensure the proper administration and
21 use of such benefits.

22 “(c) *ENFORCEMENT.*—With respect to any person de-
23 scribed in subsection (a) and subject to registration require-
24 ments under this title, rules similar to rules of section
25 4222(c) shall apply with respect to any requirement under
26 this section.”.

1 (b) *CONFORMING AMENDMENT.*—*The table of sections*
 2 *for subpart C of part III of subchapter A of chapter 32*
 3 *is amended by adding at the end the following new item:*

 “*Sec. 4104. Information reporting for persons claiming certain tax benefits.*”.

4 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 5 *section shall take effect on October 1, 2004.*

6 **PART V—IMPORTS**

7 **SEC. 884. TAX AT POINT OF ENTRY WHERE IMPORTER NOT**
 8 **REGISTERED.**

9 (a) *TAX AT POINT OF ENTRY WHERE IMPORTER NOT*
 10 *REGISTERED.*—

11 (1) *IN GENERAL.*—*Subpart C of part III of sub-*
 12 *chapter A of chapter 31, as amended by this Act, is*
 13 *amended by adding at the end the following new sec-*
 14 *tion:*

15 **“SEC. 4105. TAX AT ENTRY WHERE IMPORTER NOT REG-**
 16 **ISTERED.**

17 “(a) *IN GENERAL.*—*Any tax imposed under this part*
 18 *on any person not registered under section 4101 for the*
 19 *entry of a fuel into the United States shall be imposed at*
 20 *the time and point of entry.*

21 “(b) *ENFORCEMENT OF ASSESSMENT.*—*If any person*
 22 *liable for any tax described under subsection (a) has not*
 23 *paid the tax or posted a bond, the Secretary may—*

24 “(1) *seize the fuel on which the tax is due, or*

25 “(2) *detain any vehicle transporting such fuel,*

1 *until such tax is paid or such bond is filed.*

2 “(c) *LEVY OF FUEL.*—*If no tax has been paid or no*
3 *bond has been filed within 5 days from the date the Sec-*
4 *retary seized fuel pursuant to subsection (b), the Secretary*
5 *may sell such fuel as provided under section 6336.”.*

6 (2) *CONFORMING AMENDMENT.*—*The table of sec-*
7 *tions for subpart C of part III of subchapter A of*
8 *chapter 31 of the Internal Revenue Code of 1986, as*
9 *amended by section 5245 of this Act, is amended by*
10 *adding after the last item the following new item:*

“Sec. 4105. Tax at entry where importer not registered.”.

11 (b) *DENIAL OF ENTRY WHERE TAX NOT PAID.*—*The*
12 *Secretary of Homeland Security is authorized to deny entry*
13 *into the United States of any shipment of a fuel which is*
14 *taxable under section 4081 of the Internal Revenue Code*
15 *of 1986 if the person entering such shipment fails to pay*
16 *the tax imposed under such section or post a bond in ac-*
17 *cordance with the provisions of section 4105 of such Code.*

18 (c) *EFFECTIVE DATE.*—*The amendments made by this*
19 *section shall take effect on the date of the enactment of this*
20 *Act.*

21 **SEC. 885. RECONCILIATION OF ON-LOADED CARGO TO EN-**
22 **TERED CARGO.**

23 (a) *IN GENERAL.*—*Subsection (a) of section 343 of the*
24 *Trade Act of 2002 is amended by inserting at the end the*
25 *following new paragraph:*

1 “(4) *IN GENERAL.*—Subject to paragraphs (2)
2 and (3), not later than 1 year after the enactment of
3 this paragraph, the Secretary of Homeland Security,
4 together with the Secretary of the Treasury, shall pro-
5 mulgate regulations providing for the transmission to
6 the Internal Revenue Service, through an electronic
7 data interchange system, of information pertaining to
8 cargo of taxable fuels (as defined in section 4083 of
9 the Internal Revenue Code of 1986) destined for im-
10 portation into the United States prior to such impor-
11 tation.”.

12 (b) *EFFECTIVE DATE.*—The amendment made by this
13 section shall take effect on the date of the enactment of this
14 Act.

15 **PART VI—MISCELLANEOUS PROVISIONS**

16 **SEC. 886. TAX ON SALE OF DIESEL FUEL WHETHER SUIT-**
17 **ABLE FOR USE OR NOT IN A DIESEL-POW-**
18 **ERED VEHICLE OR TRAIN.**

19 (a) *IN GENERAL.*—Section 4083(a)(3) is amended—
20 (1) by striking “The term” and inserting the fol-
21 lowing:

22 “(A) *IN GENERAL.*—The term”, and

23 (2) by inserting at the end the following new
24 subparagraph:

1 “(B) *LIQUID SOLD AS DIESEL FUEL.*—The
 2 term ‘diesel fuel’ includes any liquid which is
 3 sold as or offered for sale as a fuel in a diesel-
 4 powered highway vehicle or a diesel-powered
 5 train.”.

6 (b) *CONFORMING AMENDMENTS.*—

7 (1) Section 40B(b)(1)(B), as added by this Act,
 8 is amended by striking “4083(a)(3)” and inserting
 9 “4083(a)(3)(A)”.

10 (2) Section 6426(c)(3), as added by this Act, is
 11 amended by striking “4083(a)(3)” and inserting
 12 “4083(a)(3)(A)”.

13 (c) *EFFECTIVE DATE.*—The amendments made by this
 14 section shall take effect on the date of the enactment of this
 15 Act.

16 **SEC. 887. MODIFICATION OF ULTIMATE VENDOR REFUND**
 17 **CLAIMS WITH RESPECT TO FARMING.**

18 (a) *IN GENERAL.*—

19 (1) *REFUNDS.*—Section 6427(l) is amended by
 20 adding at the end the following new paragraph:

21 “(6) *REGISTERED VENDORS PERMITTED TO AD-*
 22 *MINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL*
 23 *FUEL AND KEROSENE SOLD TO FARMERS.*—

24 “(A) *IN GENERAL.*—In the case of diesel fuel
 25 or kerosene used on a farm for farming purposes

1 *(within the meaning of section 6420(c)), para-*
2 *graph (1) shall not apply to the aggregate*
3 *amount of such diesel fuel or kerosene if such*
4 *amount does not exceed 500 gallons (as deter-*
5 *mined under subsection (i)(5)(A)(iii)).*

6 “(B) *PAYMENT TO ULTIMATE VENDOR.*—*The*
7 *amount which would (but for subparagraph (A))*
8 *have been paid under paragraph (1) with respect*
9 *to any fuel shall be paid to the ultimate vendor*
10 *of such fuel, if such vendor—*

11 *“(i) is registered under section 4101,*

12 *and*

13 *“(ii) meets the requirements of sub-*
14 *paragraph (A), (B), or (D) of section*
15 *6416(a)(1).”.*

16 (2) *FILING OF CLAIMS.*—*Section 6427(i) is*
17 *amended by inserting at the end the following new*
18 *paragraph:*

19 “(5) *SPECIAL RULE FOR VENDOR REFUNDS WITH*
20 *RESPECT TO FARMERS.*—

21 “(A) *IN GENERAL.*—*A claim may be filed*
22 *under subsection (l)(6) by any person with re-*
23 *spect to fuel sold by such person for any*
24 *period—*

1 “(i) for which \$200 or more (\$100 or
2 more in the case of kerosene) is payable
3 under subsection (l)(6),

4 “(ii) which is not less than 1 week,
5 and

6 “(iii) which is for not more than 500
7 gallons for each farmer for which there is a
8 claim.

9 Notwithstanding subsection (l)(1), paragraph
10 (3)(B) shall apply to claims filed under the pre-
11 ceding sentence.

12 “(B) TIME FOR FILING CLAIM.—No claim
13 filed under this paragraph shall be allowed un-
14 less filed on or before the last day of the first
15 quarter following the earliest quarter included in
16 the claim.”.

17 (3) CONFORMING AMENDMENTS.—

18 (A) Section 6427(l)(5)(A) is amended to
19 read as follows:

20 “(A) IN GENERAL.—Paragraph (1) shall
21 not apply to diesel fuel or kerosene used by a
22 State or local government.”.

23 (B) The heading for section 6427(l)(5) is
24 amended by striking “FARMERS AND”.

1 (b) *EFFECTIVE DATE.*—*The amendment made by this*
2 *section shall apply to fuels sold for nontaxable use after the*
3 *date of the enactment of this Act.*

4 **SEC. 888. TAXABLE FUEL REFUNDS FOR CERTAIN ULTIMATE**
5 **VENDORS.**

6 (a) *IN GENERAL.*—*Paragraph (4) of section 6416(a)*
7 *(relating to abatements, credits, and refunds) is amended*
8 *to read as follows:*

9 “(4) *REGISTERED ULTIMATE VENDOR TO ADMIN-*
10 *ISTER CREDITS AND REFUNDS OF GASOLINE TAX.*—

11 “(A) *IN GENERAL.*—*For purposes of this*
12 *subsection, if an ultimate vendor purchases any*
13 *gasoline on which tax imposed by section 4081*
14 *has been paid and sells such gasoline to an ulti-*
15 *mate purchaser described in subparagraph (C)*
16 *or (D) of subsection (b)(2) (and such gasoline is*
17 *for a use described in such subparagraph), such*
18 *ultimate vendor shall be treated as the person*
19 *(and the only person) who paid such tax, but*
20 *only if such ultimate vendor is registered under*
21 *section 4101. For purposes of this subparagraph,*
22 *if the sale of gasoline is made by means of a*
23 *credit card, the person extending the credit to the*
24 *ultimate purchaser shall be deemed to be the ulti-*
25 *mate vendor.*

1 “(B) *TIMING OF CLAIMS.*—*The procedure*
2 *and timing of any claim under subparagraph*
3 *(A) shall be the same as for claims under section*
4 *6427(i)(4), except that the rules of section*
5 *6427(i)(3)(B) regarding electronic claims shall*
6 *not apply unless the ultimate vendor has cer-*
7 *tified to the Secretary for the most recent quarter*
8 *of the taxable year that all ultimate purchasers*
9 *of the vendor are certified and entitled to a re-*
10 *fund under subparagraph (C) or (D) of sub-*
11 *section (b)(2).”.*

12 (b) *CREDIT CARD PURCHASES OF DIESEL FUEL OR*
13 *KEROSENE BY STATE AND LOCAL GOVERNMENTS.*—*Section*
14 *6427(l)(5)(C) (relating to nontaxable uses of diesel fuel, ker-*
15 *osene, and aviation fuel), as amended by this Act, is amend-*
16 *ed by adding at the end the following new sentence: “For*
17 *purposes of this subparagraph, if the sale of diesel fuel or*
18 *kerosene is made by means of a credit card, the person ex-*
19 *tending the credit to the ultimate purchaser shall be deemed*
20 *to be the ultimate vendor.”.*

21 (c) *EFFECTIVE DATE.*—*The amendments made by this*
22 *section shall take effect on October 1, 2004.*

1 **SEC. 889. TWO-PARTY EXCHANGES.**

2 (a) *IN GENERAL.*—Subpart C of part III of subchapter
3 A of chapter 32, as amended by this Act, is amended by
4 adding at the end the following new section:

5 **“SEC. 4106. TWO-PARTY EXCHANGES.**

6 “(a) *IN GENERAL.*—In a two-party exchange, the de-
7 livering person shall not be liable for the tax imposed under
8 of section 4081(a)(1)(A)(vi).

9 “(b) *TWO-PARTY EXCHANGE.*—The term ‘two-party
10 exchange’ means a transaction, other than a sale, in which
11 taxable fuel is transferred from a delivering person reg-
12 istered under section 4101 as a taxable fuel registrant to
13 a receiving person who is so registered where all of the fol-
14 lowing occur:

15 “(1) The transaction includes a transfer from the
16 delivering person, who holds the inventory position
17 for taxable fuel in the terminal as reflected in the
18 records of the terminal operator.

19 “(2) The exchange transaction occurs before or
20 contemporaneous with completion of removal across
21 the rack from the terminal by the receiving person.

22 “(3) The terminal operator in its books and
23 records treats the receiving person as the person that
24 removes the product across the terminal rack for pur-
25 poses of reporting the transaction to the Secretary.

1 “(4) *The transaction is the subject of a written*
2 *contract.*”.

3 (b) *CONFORMING AMENDMENT.*—*The table of sections*
4 *for subpart C of part III of subchapter A of chapter 32,*
5 *as amended by of this Act, is amended by adding after the*
6 *last item the following new item:*

“*Sec. 4106. Two-party exchanges.*”.

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

10 **SEC. 890. MODIFICATIONS OF TAX ON USE OF CERTAIN VE-**
11 **HICLES.**

12 (a) *NO PRORATION OF TAX UNLESS VEHICLE IS DE-*
13 *STROYED OR STOLEN.*—

14 (1) *IN GENERAL.*—*Section 4481(c) (relating to*
15 *proration of tax) is amended to read as follows:*

16 “(c) *PRORATION OF TAX WHERE VEHICLE SOLD, DE-*
17 *STROYED, OR STOLEN.*—

18 “(1) *IN GENERAL.*—*If in any taxable period a*
19 *highway motor vehicle is sold, destroyed, or stolen be-*
20 *fore the first day of the last month in such period and*
21 *not subsequently used during such taxable period, the*
22 *tax shall be reckoned proportionately from the first*
23 *day of the month in such period in which the first use*
24 *of such highway motor vehicle occurs to and including*

1 *the last day of the month in which such highway*
2 *motor vehicle was sold, destroyed, or stolen.*

3 “(2) *DESTROYED.*—*For purposes of paragraph*
4 *(1), a highway motor vehicle is destroyed if such vehi-*
5 *cle is damaged by reason of an accident or other cas-*
6 *ualty to such an extent that it is not economic to re-*
7 *build.”.*

8 (2) *CONFORMING AMENDMENTS.*—

9 (A) *Section 6156 (relating to installment*
10 *payment of tax on use of highway motor vehi-*
11 *cles) is repealed.*

12 (B) *The table of sections for subchapter A of*
13 *chapter 62 is amended by striking the item relat-*
14 *ing to section 6156.*

15 (b) *DISPLAY OF TAX CERTIFICATE.*—*Paragraph (2) of*
16 *section 4481(d) (relating to one tax liability for period) is*
17 *amended to read as follows:*

18 “(2) *DISPLAY OF TAX CERTIFICATE.*—*Under reg-*
19 *ulations by the Secretary, every taxpayer which pays*
20 *the tax imposed under this section with respect to a*
21 *highway motor vehicle shall, not later than 1 month*
22 *after the due date of the return of tax with respect to*
23 *each taxable period, receive and display on such vehi-*
24 *cle an electronic identification device prescribed by*
25 *the Secretary.”.*

1 (c) *ELECTRONIC FILING.*—Section 4481, is amended
2 by redesignating subsection (e) as subsection (f) and by in-
3 serting after subsection (d) the following new subsection:

4 “(e) *ELECTRONIC FILING.*—Any taxpayer who files a
5 return under this section with respect to 25 or more vehicles
6 for any taxable period shall file such return electronically.”.

7 (d) *REPEAL OF REDUCTION IN TAX FOR CERTAIN*
8 *TRUCKS.*—Section 4483 of the Internal Revenue Code of
9 1986 is amended by striking subsection (f).

10 (e) *EFFECTIVE DATES.*—

11 (1) *IN GENERAL.*—Except as provided in para-
12 graph (2), the amendments made by this section shall
13 apply to taxable periods beginning after the date of
14 the enactment of this Act.

15 (2) *REGULATIONS REGARDING DISPLAY OF TAX*
16 *CERTIFICATE.*—The Secretary of the Treasury shall
17 issue regulations required under section 4481(d)(2) of
18 the Internal Revenue Code of 1986 (as added by sub-
19 section (b)) not later than October 1, 2005.

20 **SEC. 891. DEDICATION OF REVENUES FROM CERTAIN PEN-**
21 **ALTIES TO THE HIGHWAY TRUST FUND.**

22 (a) *IN GENERAL.*—Subsection (b) of section 9503 (re-
23 lating to transfer to Highway Trust Fund of amounts
24 equivalent to certain taxes), is amended by redesignating

1 paragraph (5) as paragraph (6) and inserting after para-
2 graph (4) the following new paragraph:

3 “(5) *CERTAIN PENALTIES.*—There are hereby ap-
4 propriated to the Highway Trust Fund amounts
5 equivalent to the penalties assessed under sections
6 6715, 6715A, 6717, 6718, 6719, 6720, 6725, 7232,
7 and 7272 (but only with regard to penalties under
8 such section related to failure to register under section
9 4101).”.

10 (b) *CONFORMING AMENDMENTS.*—

11 (1) The heading of subsection (b) of section 9503
12 is amended by inserting “AND PENALTIES” after
13 “TAXES”.

14 (2) The heading of paragraph (1) of section
15 9503(b) is amended by striking “IN GENERAL” and
16 inserting “CERTAIN TAXES”.

17 (c) *EFFECTIVE DATE.*—The amendments made by this
18 section shall apply to penalties assessed after October 1,
19 2004.

20 **SEC. 892. NONAPPLICATION OF EXPORT EXEMPTION TO DE-**
21 **LIVERY OF FUEL TO MOTOR VEHICLES RE-**
22 **MOVED FROM UNITED STATES.**

23 (a) *IN GENERAL.*—Section 4221(d)(2) (defining ex-
24 port) is amended by adding at the end the following new
25 sentence: “Such term does not include the delivery of a tax-

1 *able fuel (as defined in section 4083(a)(1)) into a fuel tank*
 2 *of a motor vehicle which is shipped or driven out of the*
 3 *United States.”.*

4 *(b) CONFORMING AMENDMENTS.—*

5 *(1) Section 4041(g) (relating to other exemp-*
 6 *tions) is amended by adding at the end the following*
 7 *new sentence: “Paragraph (3) shall not apply to the*
 8 *sale for delivery of a liquid into a fuel tank of a*
 9 *motor vehicle which is shipped or driven out of the*
 10 *United States.”.*

11 *(2) Clause (iv) of section 4081(a)(1)(A) (relating*
 12 *to tax on removal, entry, or sale) is amended by in-*
 13 *serting “or at a duty-free sales enterprise (as defined*
 14 *in section 555(b)(8) of the Tariff Act of 1930)” after*
 15 *“section 4101”.*

16 *(c) EFFECTIVE DATE.—The amendments made by this*
 17 *section shall apply to sales or deliveries made after the date*
 18 *of the enactment of this Act.*

19 **PART VII—TOTAL ACCOUNTABILITY**

20 **SEC. 893. TOTAL ACCOUNTABILITY.**

21 *(a) TAXATION OF REPORTABLE LIQUIDS.—*

22 *(1) IN GENERAL.—Section 4081(a), as amended*
 23 *by this Act, is amended—*

24 *(A) by inserting “or reportable liquid” after*
 25 *“taxable fuel” each place it appears, and*

1 (B) by inserting “such liquid” after “such
2 fuel” in paragraph (1)(A)(iv).

3 (2) *RATE OF TAX.*—Subparagraph (A) of section
4 4081(a)(2), as amended by this Act, is amended by
5 striking “and” at the end of clause (iii), by striking
6 the period at the end of clause (iv) and inserting “,
7 and”, and by adding at the end the following new
8 clause:

9 “(v) in the case of reportable liquids,
10 the rate determined under section
11 4083(c)(2).”.

12 (3) *EXEMPTION.*—Section 4081(a)(1) is amended
13 by adding at the end the following new subparagraph:

14 “(C) *EXEMPTION FOR REGISTERED TRANS-*
15 *FERS OF REPORTABLE LIQUIDS.*—The tax im-
16 posed by this paragraph shall not apply to any
17 removal, entry, or sale of a reportable liquid if—

18 “(i) such removal, entry, or sale is to
19 a registered person who certifies that such
20 liquid will not be used as a fuel or in the
21 production of a fuel, or

22 “(ii) the sale is to the ultimate pur-
23 chaser of such liquid.”.

24 (4) *REPORTABLE LIQUIDS.*—Section 4083, as
25 amended by this Act, is amended by redesignating

1 *subsections (c) and (d) (as redesignated by this Act)*
2 *as subsections (d) and (e), respectively, and by insert-*
3 *ing after subsection (b) the following new section:*

4 *“(c) REPORTABLE LIQUID.—For purposes of this*
5 *subpart—*

6 *“(1) IN GENERAL.—The term ‘reportable liquid’*
7 *means any petroleum-based liquid other than a tax-*
8 *able fuel.*

9 *“(2) TAXATION.—*

10 *“(A) GASOLINE BLEND STOCKS AND ADDI-*
11 *TIVES.—Gasoline blend stocks and additives*
12 *which are reportable liquids (as defined in para-*
13 *graph (1)) shall be subject to the rate of tax*
14 *under clause (i) of section 4081(a)(2)(A).*

15 *“(B) OTHER REPORTABLE LIQUIDS.—Any*
16 *reportable liquid (as defined in paragraph (1))*
17 *not described in subparagraph (A) shall be sub-*
18 *ject to the rate of tax under clause (iii) of section*
19 *4081(a)(2)(A).”.*

20 *(5) CONFORMING AMENDMENTS.—*

21 *(A) Section 4081(e) is amended by inserting*
22 *“or reportable liquid” after “taxable fuel”.*

23 *(B) Section 4083(d) (relating to certain use*
24 *defined as removal), as redesignated by para-*

1 *graph (4), is amended by inserting “or report-*
2 *able liquid” after “taxable fuel”.*

3 *(C) Section 4083(e)(1) (relating to adminis-*
4 *trative authority), as redesignated by paragraph*
5 *(4), is amended—*

6 *(i) in subparagraph (A)—*

7 *(I) by inserting “or reportable liq-*
8 *uid” after “taxable fuel”, and*

9 *(II) by inserting “or such liquid”*
10 *after “such fuel” each place it appears,*
11 *and*

12 *(ii) in subparagraph (B), by inserting*
13 *“or any reportable liquid” after “any tax-*
14 *able fuel”.*

15 *(D) Section 4101(a)(2), as added by this*
16 *Act, is amended by inserting “or a reportable*
17 *liquid” after “taxable fuel”.*

18 *(E) Section 4101(a)(3), as added and redес-*
19 *ignated by this Act, is amended by inserting “or*
20 *any reportable liquid” before the period at the*
21 *end.*

22 *(F) Section 4102 is amended by inserting*
23 *“or any reportable liquid” before the period at*
24 *the end.*

1 (G)(i) Section 6718, as added by this Act,
2 is amended—

3 (I) in subsection (a), by inserting “or
4 any reportable liquid (as defined in section
5 4083(c)(1))” after “section 4083(a)(1)”,
6 and

7 (II) in the heading, by inserting “OR
8 REPORTABLE LIQUIDS” after “TAXABLE
9 FUEL”.

10 (ii) The item relating to section 6718 in
11 table of sections for part I of subchapter B of
12 chapter 68, as added by this Act, is amended by
13 inserting “or reportable liquids” after “taxable
14 fuels”.

15 (H) Section 6427(h) is amended to read as
16 follows:

17 “(h) GASOLINE BLEND STOCKS OR ADDITIVES AND
18 REPORTABLE LIQUIDS.—Except as provided in subsection
19 (k)—

20 “(1) if any gasoline blend stock or additive
21 (within the meaning of section 4083(a)(2)) is not
22 used by any person to produce gasoline and such per-
23 son establishes that the ultimate use of such gasoline
24 blend stock or additive is not to produce gasoline, or

1 “(2) if any reportable liquid (within the mean-
2 ing of section 4083(c)(1)) is not used by any person
3 to produce a taxable fuel and such person establishes
4 that the ultimate use of such reportable liquid is not
5 to produce a taxable fuel,
6 then the Secretary shall pay (without interest) to such per-
7 son an amount equal to the aggregate amount of the tax
8 imposed on such person with respect to such gasoline blend
9 stock or additive or such reportable liquid.”.

10 (I) Section 7232, as amended by this Act,
11 is amended by inserting “or reportable liquid
12 (within the meaning of section 4083(c)(1))” after
13 “section 4083”.

14 (J) Section 343 of the Trade Act of 2002, as
15 amended by this Act, is amended by inserting
16 “and reportable liquids (as defined in section
17 4083(c)(1) of such Code)” after “Internal Rev-
18 enue Code of 1986”.

19 (b) *DYED DIESEL*.—Section 4082(a) is amended by
20 striking “and” at the end of paragraph (2), by striking the
21 period at the end of paragraph (3) and inserting “and”,
22 and by inserting after paragraph (3) the following new
23 paragraph:

24 “(4) which is removed, entered, or sold by a per-
25 son registered under section 4101.”.

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to reportable liquids (as defined in sec-*
 3 *tion 4083(c) of the Internal Revenue Code) and fuel sold*
 4 *or used after September 30, 2004.*

5 **SEC. 894. EXCISE TAX REPORTING.**

6 (a) *IN GENERAL.*—*Part II of subchapter A of chapter*
 7 *61 is amended by adding at the end the following new sub-*
 8 *part:*

9 “*SUBPART E—EXCISE TAX REPORTING*

10 “**SEC. 6025. RETURNS RELATING TO FUEL TAXES.**

11 “(a) *IN GENERAL.*—*The Secretary shall require any*
 12 *person liable for the tax imposed under Part III of sub-*
 13 *chapter A of chapter 32 to file a return of such tax on a*
 14 *monthly basis. Not earlier than January 1, 2005, such fil-*
 15 *ings shall be in electronic form as prescribed by the Sec-*
 16 *retary.*

17 “(b) *INFORMATION INCLUDED WITH RETURN.*—*The*
 18 *Secretary shall require any person filing a return under*
 19 *subsection (a) to provide information regarding any refined*
 20 *product (whether or not such product is taxable under this*
 21 *title) removed from a terminal during the period for which*
 22 *such return applies.”.*

23 (b) *CONFORMING AMENDMENT.*—*The table of parts for*
 24 *subchapter A of chapter 61 is amended by adding at the*
 25 *end the following new item:*

 “*Subpart E—Excise Tax Reporting*”.

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to fuel sold or used after September 30,*
 3 *2004.*

4 **SEC. 895. INFORMATION REPORTING.**

5 (a) *IN GENERAL.*—*Section 4101(d) is amended by*
 6 *adding at the end the following new flush sentence:*
 7 *“The Secretary shall require reporting under the previous*
 8 *sentence with respect to taxable fuels removed, entered, or*
 9 *transferred from any refinery, pipeline, or vessel which is*
 10 *registered under this section. Any person who is required*
 11 *to report under this subsection and who has 25 or more*
 12 *reportable transactions in a month shall file such report*
 13 *in electronic format.”.*

14 (b) *EFFECTIVE DATE.*—*The amendment made by this*
 15 *section shall apply on October 1, 2004.*

16 ***Subtitle I—Mobile Machinery***

17 **SEC. 896. TREATMENT OF MOBILE MACHINERY.**

18 (a) *TREATMENT OF MOBILE MACHINERY AS HIGHWAY*
 19 *VEHICLE.*—

20 (1) *IN GENERAL.*—*Section 7701(a) (relating to*
 21 *definitions) is amended by adding at the end the fol-*
 22 *lowing new paragraph:*

23 “(48) *TREATMENT OF MOBILE MACHINERY AS*
 24 *HIGHWAY VEHICLE.*—

1 “(A) *IN GENERAL.*—A vehicle described in
2 subparagraph (B) shall be treated as a highway
3 vehicle.

4 “(B) *MOBILE MACHINERY.*—A vehicle is de-
5 scribed in this subparagraph if such vehicle con-
6 sists of a chassis—

7 “(i) to which there has been perma-
8 nently mounted (by welding, bolting, riv-
9 eting, or other means) machinery or equip-
10 ment to perform a construction, manufac-
11 turing, processing, farming, mining, drill-
12 ing, timbering, or similar operation if the
13 operation of the machinery or equipment is
14 unrelated to transportation on or off the
15 public highways,

16 “(ii) which has been specially designed
17 to serve only as a mobile carriage and
18 mount (and a power source, where applica-
19 ble) for the particular machinery or equip-
20 ment involved, whether or not such machin-
21 ery or equipment is in operation, and

22 “(iii) which, by reason of such special
23 design, could not, without substantial struc-
24 tural modification, be used as a component
25 of a vehicle designed to perform a function

1 of transporting any load other than that
2 particular machinery or equipment or simi-
3 lar machinery or equipment requiring such
4 a specially designed chassis.”.

5 (2) *EFFECTIVE DATE.*—*The amendment made by*
6 *this subsection shall take effect on the day after the*
7 *date of the enactment of this Act.*

8 (b) *ELIGIBILITY FOR REFUND IN CASE OF LIMITED*
9 *USE OF VEHICLE ON HIGHWAYS.*—

10 (1) *RETAIL SALES AND TIRE TAXES.*—

11 (A) *IN GENERAL.*—*Section 6416(b) (relat-*
12 *ing to special cases in which tax payments con-*
13 *sidered overpayments) is amended by adding at*
14 *the end the following new paragraph:*

15 “(7) *MOBILE MACHINERY.*—

16 “(A) *IN GENERAL.*—*If the tax imposed by*
17 *section 4051 or 4071 has been paid with respect*
18 *to any vehicle described in section*
19 *7701(a)(48)(B) which meets the use-based test for*
20 *each of the first 2 12-month periods after such*
21 *payment, 50 percent of such tax shall be consid-*
22 *ered an overpayment for each such period.*

23 “(B) *USE-BASED TEST.*—*For purposes of*
24 *subparagraph (A), the use-based test is met if the*

1 *use of the vehicle on public highways was less*
2 *than 5,000 miles during any 12-month period.*

3 “(C) *SPECIAL RULE FOR USE BY CERTAIN*
4 *TAX-EXEMPT ORGANIZATIONS.—For purposes of*
5 *subparagraph (A), the use-based test shall be de-*
6 *termined without regard to any use in a vehicle*
7 *by an organization which is described in section*
8 *501(c) and exempt from tax under section*
9 *501(a).”.*

10 (B) *EFFECTIVE DATE.—The amendment*
11 *made by this paragraph shall take effect on the*
12 *day after the date of the enactment of this Act.*

13 (2) *FUEL TAXES.—*

14 (A) *IN GENERAL.—Section 6421(e)(2) (de-*
15 *fining off-highway business use) is amended by*
16 *adding at the end the following new subpara-*
17 *graph:*

18 “(C) *USES IN MOBILE MACHINERY.—*

19 “(i) *IN GENERAL.—The term ‘off-high-*
20 *way business use’ shall include any use in*
21 *a vehicle described in section*
22 *7701(a)(48)(B) which meets the use-based*
23 *test.*

24 “(ii) *USE-BASED TEST.—For purposes*
25 *of clause (i), the use-based test is met if the*

1 *use of the vehicle on public highways was*
2 *less than 5,000 miles during the taxpayer's*
3 *taxable year.*

4 “(iii) *SPECIAL RULE FOR USE BY CER-*
5 *TAIN TAX-EXEMPT ORGANIZATIONS.—For*
6 *purposes of clause (i), the use-based test*
7 *shall be determined without regard to any*
8 *use in a vehicle by an organization which*
9 *is described in section 501(c) and exempt*
10 *from tax under section 501(a).”.*

11 *(B) ANNUAL REFUND OF TAX PAID.—Sec-*
12 *tion 6427(i)(2) (relating to exceptions) is amend-*
13 *ed by adding at the end the following new sub-*
14 *paragraph:*

15 “(C) *NONAPPLICATION OF PARAGRAPH.—*
16 *This paragraph shall not apply to any fuel used*
17 *in any off-highway business use described in sec-*
18 *tion 6421(e)(2)(C).”.*

19 *(C) EFFECTIVE DATE.—The amendments*
20 *made by this paragraph shall apply to taxable*
21 *years beginning after the date of the enactment*
22 *of this Act.*

23 *(3) CONFORMING AMENDMENT FOR TAX-EXEMPT*
24 *USERS WITH RESPECT TO USE TAX.—*

1 (A) *IN GENERAL.*—Section 4483(d)(1) (re-
 2 lating to suspension of tax) is amended by add-
 3 ing at the end the following new subparagraph:

4 “(C) *SPECIAL RULE FOR USE BY CERTAIN*
 5 *TAX-EXEMPT ORGANIZATIONS.*—Subparagraph
 6 (A) shall be determined without regard to any
 7 use in a vehicle by an organization which is de-
 8 scribed in section 501(c) and exempt from tax
 9 under section 501(a).”.

10 (B) *EFFECTIVE DATE.*—The amendment
 11 made by this paragraph shall take effect on the
 12 day after the date of the enactment of this Act.

13 **Subtitle J—Additional Provisions**

14 **SEC. 897. STUDY OF EFFECTIVENESS OF CERTAIN PROVI-** 15 **SIONS BY GAO.**

16 (a) *STUDY.*—The Comptroller General of the United
 17 States shall undertake an ongoing analysis of—

18 (1) *the effectiveness of the alternative motor vehi-*
 19 *cles and fuel incentives provisions under subtitle B*
 20 *and the conservation and energy efficiency provisions*
 21 *under subtitle C, and*

22 (2) *the recipients of the tax benefits contained in*
 23 *such provisions, including an identification of such*
 24 *recipients by income and other appropriate measure-*
 25 *ments.*

1 *Such analysis shall quantify the effectiveness of such provi-*
2 *sions by examining and comparing the Federal Govern-*
3 *ment's forgone revenue to the aggregate amount of energy*
4 *actually conserved and tangible environmental benefits*
5 *gained as a result of such provisions.*

6 (b) *REPORTS.*—*The Comptroller General of the United*
7 *States shall report the analysis required under subsection*
8 *(a) to Congress not later than December 31, 2004, and an-*
9 *nually thereafter.*

10 **SEC. 898. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES**
11 **ON RAILROADS AND INLAND WATERWAY**
12 **TRANSPORTATION WHICH REMAIN IN GEN-**
13 **ERAL FUND.**

14 (a) *TAXES ON TRAINS.*—

15 (1) *IN GENERAL.*—*Subparagraph (A) of section*
16 *4041(a)(1) is amended by striking “or a diesel-pow-*
17 *ered train” each place it appears and by striking “or*
18 *train”.*

19 (2) *CONFORMING AMENDMENTS.*—

20 (A) *Subparagraph (C) of section 4041(a)(1)*
21 *is amended by striking clause (ii) and by redес-*
22 *ignating clause (iii) as clause (ii).*

23 (B) *Subparagraph (C) of section 4041(b)(1)*
24 *is amended by striking all that follows “section*
25 *6421(e)(2)” and inserting a period.*

1 (C) Subsection (d) of section 4041 is
2 amended by redesignating paragraph (3) as
3 paragraph (4) and by inserting after paragraph
4 (2) the following new paragraph:

5 “(3) *DIESEL FUEL USED IN TRAINS.*—There is
6 hereby imposed a tax of 0.1 cent per gallon on any
7 liquid other than gasoline (as defined in section
8 4083)—

9 “(A) sold by any person to an owner, lessee,
10 or other operator of a diesel-powered train for
11 use as a fuel in such train, or

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

15 No tax shall be imposed by this paragraph on the sale
16 or use of any liquid if tax was imposed on such liq-
17 uid under section 4081.”

18 (D) Subsection (f) of section 4082 is amend-
19 ed by striking “section 4041(a)(1)” and inserting
20 “subsections (d)(3) and (a)(1) of section 4041,
21 respectively”.

22 (E) Paragraph (3) of section 4083(a) is
23 amended by striking “or a diesel-powered train”.

24 (F) Paragraph (3) of section 6421(f) is
25 amended to read as follows:

1 “(3) *GASOLINE USED IN TRAINS.*—*In the case of*
2 *gasoline used as a fuel in a train, this section shall*
3 *not apply with respect to the Leaking Underground*
4 *Storage Tank Trust Fund financing rate under sec-*
5 *tion 4081.”*

6 (G) *Paragraph (3) of section 6427(l) is*
7 *amended to read as follows:*

8 “(3) *REFUND OF CERTAIN TAXES ON FUEL USED*
9 *IN DIESEL-POWERED TRAINS.*—*For purposes of this*
10 *subsection, the term ‘nontaxable use’ includes fuel*
11 *used in a diesel-powered train. The preceding sentence*
12 *shall not apply to the tax imposed by section 4041(d)*
13 *and the Leaking Underground Storage Tank Trust*
14 *Fund financing rate under section 4081 except with*
15 *respect to fuel sold for exclusive use by a State or any*
16 *political subdivision thereof.”*

17 (b) *FUEL USED ON INLAND WATERWAYS.*—

18 (1) *IN GENERAL.*—*Paragraph (1) of section*
19 *4042(b) is amended by adding “and” at the end of*
20 *subparagraph (A), by striking “, and” at the end of*
21 *subparagraph (B) and inserting a period, and by*
22 *striking subparagraph (C).*

23 (2) *CONFORMING AMENDMENT.*—*Paragraph (2)*
24 *of section 4042(b) is amended by striking subpara-*
25 *graph (C).*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall take effect on October 1, 2004.*

3 **SEC. 899. DISTRIBUTIONS FROM PUBLICLY TRADED PART-**
4 **NERSHIPS TREATED AS QUALIFYING INCOME**
5 **OF REGULATED INVESTMENT COMPANIES.**

6 (a) *IN GENERAL.*—*Paragraph (2) of section 851(b)*
7 *(defining regulated investment company) is amended to*
8 *read as follows:*

9 “(2) at least 90 percent of its gross income is de-
10 *rived from—*

11 “(A) *dividends, interest, payments with re-*
12 *spect to securities loans (as defined in section*
13 *512(a)(5)), and gains from the sale or other dis-*
14 *position of stock or securities (as defined in sec-*
15 *tion 2(a)(36) of the Investment Company Act of*
16 *1940, as amended) or foreign currencies, or other*
17 *income (including but not limited to gains from*
18 *options, futures or forward contracts) derived*
19 *with respect to its business of investing in such*
20 *stock, securities, or currencies, and*

21 “(B) *distributions or other income derived*
22 *from an interest in a qualified publicly traded*
23 *partnership (as defined in subsection (h)); and”*

24 (b) *SOURCE FLOW-THROUGH RULE NOT TO APPLY.*—
25 *The last sentence of section 851(b) is amended by inserting*

1 “(other than a qualified publicly traded partnership as de-
2 fined in subsection (h))” after “derived from a partner-
3 ship”.

4 (c) *LIMITATION ON OWNERSHIP.*—Subsection (c) of
5 section 851 is amended by redesignating paragraph (5) as
6 paragraph (6) and inserting after paragraph (4) the fol-
7 lowing new paragraph:

8 “(5) The term ‘outstanding voting securities of
9 such issuer’ shall include the equity securities of a
10 qualified publicly traded partnership (as defined in
11 subsection (h)).”.

12 (d) *DEFINITION OF QUALIFIED PUBLICLY TRADED*
13 *PARTNERSHIP.*—Section 851 is amended by adding at the
14 end the following new subsection:

15 “(h) *QUALIFIED PUBLICLY TRADED PARTNERSHIP.*—
16 For purposes of this section, the term ‘qualified publicly
17 traded partnership’ means a publicly traded partnership
18 described in section 7704(b) other than a partnership which
19 would satisfy the gross income requirements of section
20 7704(c)(2) if qualifying income included only income de-
21 scribed in subsection (b)(2)(A).”.

22 (e) *DEFINITION OF QUALIFYING INCOME.*—Section
23 7704(d)(4) is amended by striking “section 851(b)(2)” and
24 inserting “section 851(b)(2)(A)”.

1 (f) *LIMITATION ON COMPOSITION OF ASSETS.*—Sub-
2 *paragraph (B) of section 851(b)(3) is amended to read as*
3 *follows:*

4 “(B) *not more than 25 percent of the value*
5 *of its total assets is invested in—*

6 “(i) *the securities (other than Govern-*
7 *ment securities or the securities of other reg-*
8 *ulated investment companies) of any one*
9 *issuer,*

10 “(ii) *the securities (other than the secu-*
11 *rities of other regulated investment compa-*
12 *nies) of two or more issuers which the tax-*
13 *payer controls and which are determined,*
14 *under regulations prescribed by the Sec-*
15 *retary, to be engaged in the same or similar*
16 *trades or businesses or related trades or*
17 *businesses, or*

18 “(iii) *the securities of one or more*
19 *qualified publicly traded partnerships (as*
20 *defined in subsection (h)).”.*

21 (g) *APPLICATION OF SPECIAL PASSIVE ACTIVITY RULE*
22 *TO REGULATED INVESTMENT COMPANIES.*—Subsection (k)
23 *of section 469 (relating to separate application of section*
24 *in case of publicly traded partnerships) is amended by add-*
25 *ing at the end the following new paragraph:*

1 “(4) *APPLICATION TO REGULATED INVESTMENT*
 2 *COMPANIES.*—*For purposes of this section, a regulated*
 3 *investment company (as defined in section 851) hold-*
 4 *ing an interest in a qualified publicly traded partner-*
 5 *ship (as defined in section 851(h)) shall be treated as*
 6 *a taxpayer described in subsection (a)(2) with respect*
 7 *to items attributable to such interest.”.*

8 *(h) EFFECTIVE DATE.*—*The amendments made by this*
 9 *section shall apply to taxable years beginning after the date*
 10 *of the enactment of this Act.*

11 **SEC. 899A. CERTAIN BUSINESS RELATED CREDITS AL-**
 12 **LOWED AGAINST REGULAR AND MINIMUM**
 13 **TAX.**

14 *(a) IN GENERAL.*—*Subsection (c) of section 38 (relat-*
 15 *ing to limitation based on amount of tax) is amended by*
 16 *redesignating paragraph (4) as paragraph (5) and by in-*
 17 *serting after paragraph (3) the following new paragraph:*

18 “(4) *SPECIAL RULES FOR SPECIFIED CREDITS.*—

19 “(A) *IN GENERAL.*—*In the case of specified*
 20 *credits—*

21 “(i) *this section and section 39 shall be*
 22 *applied separately with respect to such*
 23 *credits, and*

24 “(ii) *in applying paragraph (1) to*
 25 *such credits—*

1 “(I) the tentative minimum tax
2 shall be treated as being zero, and

3 “(II) the limitation under para-
4 graph (1) (as modified by subclause
5 (I)) shall be reduced by the credit al-
6 lowed under subsection (a) for the tax-
7 able year (other than the specified
8 credits).

9 “(B) SPECIFIED CREDITS.—For purposes of
10 this subsection, the term ‘specified credits’
11 includes—

12 “(i) for taxable years beginning after
13 December 31, 2004, the credit determined
14 under section 40, and

15 “(ii) the credit determined under sec-
16 tion 45 to the extent that such credit is at-
17 tributable to electricity produced—

18 “(I) at a facility which is origi-
19 nally placed in service after the date of
20 the enactment of this paragraph, and

21 “(II) during the 4-year period be-
22 ginning on the date that such facility
23 was originally placed in service.”.

24 (b) CONFORMING AMENDMENTS.—Paragraph
25 (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) are each

1 amended by inserting “or the specified credits” after “em-
2 ployee credit”.

3 (c) *EFFECTIVE DATE.*—*Except as otherwise provided,*
4 *the amendments made by this section shall apply to taxable*
5 *years ending after the date of the enactment of this Act.*

6 **SEC. 899B. CREDIT FOR QUALIFYING POLLUTION CONTROL**
7 **EQUIPMENT.**

8 (a) *ALLOWANCE OF QUALIFYING POLLUTION CONTROL*
9 *EQUIPMENT CREDIT.*—*Section 46 (relating to amount of*
10 *credit), as amended by this Act, is amended by striking*
11 *“and” at the end of paragraph (2), by striking the period*
12 *at the end of paragraph (3) and inserting “, and”, and*
13 *by adding at the end the following new paragraph:*

14 “(4) *the qualifying pollution control equipment*
15 *credit.*”.

16 (b) *AMOUNT OF QUALIFYING POLLUTION CONTROL*
17 *EQUIPMENT CREDIT.*—*Subpart E of part IV of subchapter*
18 *A of chapter 1 (relating to rules for computing investment*
19 *credit), as amended by this Act, is amended by inserting*
20 *after section 48A the following new section:*

21 **“SEC. 48B. QUALIFYING POLLUTION CONTROL EQUIPMENT**
22 **CREDIT.**

23 “(a) *IN GENERAL.*—*For purposes of section 46, the*
24 *qualifying pollution control equipment credit for any tax-*
25 *able year is an amount equal to 15 percent of the basis*

1 of the qualifying pollution control equipment placed in
2 service at a qualifying facility during such taxable year.

3 “(b) *QUALIFYING POLLUTION CONTROL EQUIP-*
4 *MENT.*—For purposes of this section, the term ‘qualifying
5 pollution control equipment’ means any technology in-
6 stalled in or on a qualifying facility to reduce air emissions
7 of any pollutant regulated by the Environmental Protection
8 Agency under the Clean Air Act, including thermal
9 oxidizers, regenerative thermal oxidizers, scrubber systems,
10 evaporative control systems, vapor recovery systems, flair
11 systems, bag houses, cyclones, continuous emissions moni-
12 toring systems, and low nitric oxide burners.

13 “(c) *QUALIFYING FACILITY.*—For purposes of this sec-
14 tion, the term ‘qualifying facility’ means any facility which
15 produces not less than 1,000,000 gallons of ethanol during
16 the taxable year.

17 “(d) *SPECIAL RULE FOR CERTAIN SUBSIDIZED PROP-*
18 *ERTY.*—Rules similar to section 48(a)(4) shall apply for
19 purposes of this section.

20 “(e) *CERTAIN QUALIFIED PROGRESS EXPENDITURES*
21 *RULES MADE APPLICABLE.*—Rules similar to the rules of
22 subsections (c)(4) and (d) of section 46 (as in effect on the
23 day before the enactment of the Revenue Reconciliation Act
24 of 1990) shall apply for purposes of this subsection.”.

1 (c) *RECAPTURE OF CREDIT WHERE EMISSIONS RE-*
 2 *DUCTION OFFSET IS SOLD.*—Paragraph (1) of section 50(a)
 3 *is amended by redesignating subparagraph (B) as subpara-*
 4 *graph (C) and by inserting after subparagraph (A) the fol-*
 5 *lowing new subparagraph:*

6 “(B) *SPECIAL RULE FOR QUALIFYING POL-*
 7 *LUTION CONTROL EQUIPMENT.*—For purposes of
 8 *subparagraph (A), any investment property*
 9 *which is qualifying pollution control equipment*
 10 *(as defined in section 48B(b)) shall cease to be*
 11 *investment credit property with respect to a tax-*
 12 *payer if such taxpayer receives a payment in ex-*
 13 *change for a credit for emission reductions at-*
 14 *tributable to such qualifying pollution control*
 15 *equipment for purposes of an offset requirement*
 16 *under part D of title I of the Clean Air Act.”.*

17 (d) *SPECIAL RULE FOR BASIS REDUCTION; RECAP-*
 18 *TURE OF CREDIT.*—Paragraph (3) of section 50(c) (relating
 19 *to basis adjustment to investment credit property), as*
 20 *amended by this Act, is amended by inserting “or quali-*
 21 *fying pollution control equipment credit” after “energy*
 22 *credit”.*

23 (e) *EFFECTIVE DATE.*—The amendments made by this
 24 *section shall apply to property placed in service after De-*
 25 *cember 31, 2003, in taxable years ending after such date,*

1 *under rules similar to the rules of section 48(m) of the In-*
 2 *ternal Revenue Code of 1986 (as in effect on the day before*
 3 *the date of the enactment of the Revenue Reconciliation Act*
 4 *of 1990).*

5 **SEC. 899C. ELECTRIC TRANSMISSION PROPERTY TREATED**
 6 **AS 15-YEAR PROPERTY.**

7 (a) *IN GENERAL.*—Subparagraph (E) of section
 8 168(e)(3) (relating to classification of certain property), as
 9 amended by this Act, is amended by striking “and” at the
 10 end of clause (iii), by striking the period at the end of clause
 11 (iv) and by inserting “, and”, and by adding at the end
 12 the following new clause:

13 “(v) any section 1245 property (as de-
 14 fined in section 1245(a)(3)) used in the
 15 transmission at 69 or more kilovolts of elec-
 16 tricity for sale the original use of which
 17 commences with the taxpayer after the date
 18 of the enactment of this clause.”.

19 (b) *ALTERNATIVE SYSTEM.*—The table contained in
 20 section 168(g)(3)(B) is amended by inserting after the item
 21 relating to subparagraph (E)(iv) the following:

“(E)(v) 30”.

22 (c) *EFFECTIVE DATE.*—The amendments made by this
 23 section shall apply to property placed in service after the
 24 date of the enactment of this Act, and prior to July 1, 2006.

1 **TITLE IX—HOMESTEAD**
2 **PRESERVATION ACT**

3 **SEC. 901. SHORT TITLE.**

4 *This title may be cited as the “Homestead Preservation*
5 *Act”.*

6 **SEC. 902. MORTGAGE PAYMENT ASSISTANCE.**

7 *(a) ESTABLISHMENT OF PROGRAM.—The Secretary of*
8 *Housing and Urban Development (referred to in this section*
9 *as the “Secretary”) shall establish a program under which*
10 *the Secretary shall award low-interest loans to eligible indi-*
11 *viduals to enable such individuals to continue to make*
12 *mortgage payments with respect to the primary residences*
13 *of such individuals.*

14 *(b) ELIGIBILITY.—To be eligible to receive a loan*
15 *under the program established under subsection (a), an in-*
16 *dividual shall be—*

17 *(1) an individual that is a worker adversely af-*
18 *ected by international economic activity, as deter-*
19 *mined by the Secretary;*

20 *(2) a borrower under a loan which requires the*
21 *individual to make monthly mortgage payments with*
22 *respect to the primary place of residence of the indi-*
23 *vidual; and*

24 *(3) enrolled in a training or assistance program.*

25 *(c) LOAN REQUIREMENTS.—*

1 (1) *IN GENERAL.*—A loan provided to an eligible
2 individual under this section shall—

3 (A) be for a period of not to exceed 12
4 months;

5 (B) be for an amount that does not exceed
6 the sum of—

7 (i) the amount of the monthly mort-
8 gage payment owed by the individual; and

9 (ii) the number of months for which
10 the loan is provided;

11 (C) have an applicable rate of interest that
12 equals 4 percent;

13 (D) require repayment as provided for in
14 subsection (d); and

15 (E) be subject to such other terms and con-
16 ditions as the Secretary determines appropriate.

17 (2) *ACCOUNT.*—A loan awarded to an individual
18 under this section shall be deposited into an account
19 from which a monthly mortgage payment will be
20 made in accordance with the terms and conditions of
21 such loan.

22 (d) *REPAYMENT.*—

23 (1) *IN GENERAL.*—An individual to which a
24 loan has been awarded under this section shall be re-

1 *quired to begin making repayments on the loan on the*
2 *earlier of—*

3 *(A) the date on which the individual has*
4 *been employed on a full-time basis for 6 consecu-*
5 *tive months; or*

6 *(B) the date that is 1 year after the date on*
7 *which the loan has been approved under this sec-*
8 *tion.*

9 *(2) REPAYMENT PERIOD AND AMOUNT.—*

10 *(A) REPAYMENT PERIOD.—A loan awarded*
11 *under this section shall be repaid on a monthly*
12 *basis over the 5-year period beginning on the*
13 *date determined under paragraph (1).*

14 *(B) AMOUNT.—The amount of the monthly*
15 *payment described in subparagraph (A) shall be*
16 *determined by dividing the total amount pro-*
17 *vided under the loan (plus interest) by 60.*

18 *(C) RULE OF CONSTRUCTION.—Nothing in*
19 *this paragraph shall be construed to prohibit an*
20 *individual from—*

21 *(i) paying off a loan awarded under*
22 *this section in less than 5 years; or*

23 *(ii) from paying a monthly amount*
24 *under such loan in excess of the monthly*

1 *amount determined under subparagraph*
2 *(B) with respect to the loan.*

3 (e) *REGULATIONS.*—*Not later than 6 weeks after the*
4 *date of enactment of this section, the Secretary shall pro-*
5 *mulgate regulations necessary to carry out this section, in-*
6 *cluding regulations that permit an individual to certify*
7 *that the individual is an eligible individual under sub-*
8 *section (b).*

9 (f) *AUTHORIZATION OF APPROPRIATIONS.*—*There is*
10 *authorized to be appropriated to carry out this section,*
11 *\$10,000,000 for each of fiscal years 2005 through 2009.*

12 **TITLE X—OFFICE OF FEDERAL**
13 **PROCUREMENT POLICY ACT**
14 **IMPROVEMENTS**

15 **SEC. 1001. REPORT ON ACQUISITIONS OF GOODS FROM**
16 **FOREIGN SOURCES.**

17 (a) *REPORT.*—*The Office of Federal Procurement Pol-*
18 *icy Act (41 U.S.C. 403 et seq.), as amended by this Act,*
19 *is further amended by adding at the end the following new*
20 *section:*

21 **“SEC. 43. REPORT ON ACQUISITIONS OF GOODS FROM FOR-**
22 **EIGN SOURCES.**

23 “(a) *Not later than 60 days after the end of each fiscal*
24 *year, the head of each executive agency shall submit to Con-*
25 *gress a report on the acquisitions that were made of articles,*

1 *materials, or supplies by such executive agency in that fis-*
2 *cal year from entities that manufacture the articles, mate-*
3 *rials, or supplies outside the United States.*

4 “(b) *The report for a fiscal year under subsection (a)*
5 *shall separately indicate the following information:*

6 “(1) *The dollar value of any articles, materials,*
7 *or supplies that were manufactured outside the*
8 *United States.*

9 “(2) *An itemized list of all waivers granted with*
10 *respect to such articles, materials, or supplies under*
11 *the Buy American Act (41 U.S.C. 10a et seq.).*

12 “(3) *A summary of—*

13 “(A) *the total procurement funds expended*
14 *on articles, materials, and supplies manufac-*
15 *tured inside the United States; and*

16 “(B) *the total procurement funds expended*
17 *on articles, materials, and supplies manufac-*
18 *tured outside the United States.*

19 “(c) *The head of each executive agency submitting a*
20 *report under subsection (a) shall make the report publicly*
21 *available by posting on an Internet website.*

22 “(d) *Subsection (a) shall not apply to any procure-*
23 *ment for national security purposes entered into by—*

24 “(1) *the Department of Defense or any agency or*
25 *entity thereof;*

1 “(2) *the Department of the Army, the Depart-*
2 *ment of the Navy, the Department of the Air Force,*
3 *or any agency or entity of any of the military depart-*
4 *ments;*

5 “(3) *the Department of Homeland Security;*

6 “(4) *the Department of Energy or any agency or*
7 *entity thereof, with respect to the national security*
8 *programs of that Department; or*

9 “(5) *any element of the intelligence commu-*
10 *nity.”.*

11 (b) *CLERICAL AMENDMENT.—The table of contents in*
12 *section 1(b) of the Office of Federal Procurement Policy Act*
13 *is amended by adding at the end the following new item:*

 “*Sec. 43. Report on acquisitions of goods from foreign sources.”.*

14 (c) *COMMERCE DEPARTMENT REPORT.—Not later*
15 *than 60 days after the end of each fiscal year ending after*
16 *the date of the enactment of this Act, the Secretary of Com-*
17 *merce shall submit to Congress and make publicly available*
18 *by posting on an Internet website a report on the acquisi-*
19 *tions by foreign governments of articles, materials, or sup-*
20 *plies that were manufactured or extracted in the United*
21 *States in that fiscal year. Such report shall indicate the*
22 *dollar value of such articles, materials, or supplies.*

1 **TITLE XI—PROVISIONS**
2 **RELATING TO TOBACCO**
3 **Subtitle A—Family Smoking**
4 **Prevention and Tobacco Control**

5 **SEC. 1101. SHORT TITLE.**

6 *This subtitle may be cited as the “Family Smoking*
7 *Prevention and Tobacco Control Act”.*

8 **SEC. 1102. FINDINGS.**

9 *The Congress finds the following:*

10 (1) *The use of tobacco products by the Nation’s*
11 *children is a pediatric disease of considerable propor-*
12 *tions that results in new generations of tobacco-de-*
13 *pendent children and adults.*

14 (2) *A consensus exists within the scientific and*
15 *medical communities that tobacco products are inher-*
16 *ently dangerous and cause cancer, heart disease, and*
17 *other serious adverse health effects.*

18 (3) *Nicotine is an addictive drug.*

19 (4) *Virtually all new users of tobacco products*
20 *are under the minimum legal age to purchase such*
21 *products.*

22 (5) *Tobacco advertising and marketing con-*
23 *tribute significantly to the use of nicotine-containing*
24 *tobacco products by adolescents.*

1 (6) *Because past efforts to restrict advertising*
2 *and marketing of tobacco products have failed ade-*
3 *quately to curb tobacco use by adolescents, comprehen-*
4 *sive restrictions on the sale, promotion, and distribu-*
5 *tion of such products are needed.*

6 (7) *Federal and State governments have lacked*
7 *the legal and regulatory authority and resources they*
8 *need to address comprehensively the public health and*
9 *societal problems caused by the use of tobacco prod-*
10 *ucts.*

11 (8) *Federal and State public health officials, the*
12 *public health community, and the public at large rec-*
13 *ognize that the tobacco industry should be subject to*
14 *ongoing oversight.*

15 (9) *Under article I, section 8 of the Constitution,*
16 *the Congress is vested with the responsibility for regu-*
17 *lating interstate commerce and commerce with Indian*
18 *tribes.*

19 (10) *The sale, distribution, marketing, adver-*
20 *tising, and use of tobacco products are activities in*
21 *and substantially affecting interstate commerce be-*
22 *cause they are sold, marketed, advertised, and distrib-*
23 *uted in interstate commerce on a nationwide basis,*
24 *and have a substantial effect on the Nation's economy.*

1 (11) *The sale, distribution, marketing, adver-*
2 *tising, and use of such products substantially affect*
3 *interstate commerce through the health care and other*
4 *costs attributable to the use of tobacco products.*

5 (12) *It is in the public interest for Congress to*
6 *enact legislation that provides the Food and Drug Ad-*
7 *ministration with the authority to regulate tobacco*
8 *products and the advertising and promotion of such*
9 *products. The benefits to the American people from*
10 *enacting such legislation would be significant in*
11 *human and economic terms.*

12 (13) *Tobacco use is the foremost preventable*
13 *cause of premature death in America. It causes over*
14 *400,000 deaths in the United States each year and*
15 *approximately 8,600,000 Americans have chronic ill-*
16 *nesses related to smoking.*

17 (14) *Reducing the use of tobacco by minors by*
18 *50 percent would prevent well over 6,500,000 of to-*
19 *day's children from becoming regular, daily smokers,*
20 *saving over 2,000,000 of them from premature death*
21 *due to tobacco induced disease. Such a reduction in*
22 *youth smoking would also result in approximately*
23 *\$75,000,000,000 in savings attributable to reduced*
24 *health care costs.*

1 (15) *Advertising, marketing, and promotion of*
2 *tobacco products have been especially directed to at-*
3 *tract young persons to use tobacco products and these*
4 *efforts have resulted in increased use of such products*
5 *by youth. Past efforts to oversee these activities have*
6 *not been successful in adequately preventing such in-*
7 *creased use.*

8 (16) *In 2001, the tobacco industry spent more*
9 *than \$11,000,000,000 to attract new users, retain cur-*
10 *rent users, increase current consumption, and gen-*
11 *erate favorable long-term attitudes toward smoking*
12 *and tobacco use.*

13 (17) *Tobacco product advertising often*
14 *misleadingly portrays the use of tobacco as socially*
15 *acceptable and healthful to minors.*

16 (18) *Tobacco product advertising is regularly*
17 *seen by persons under the age of 18, and persons*
18 *under the age of 18 are regularly exposed to tobacco*
19 *product promotional efforts.*

20 (19) *Through advertisements during and spon-*
21 *sorship of sporting events, tobacco has become strongly*
22 *associated with sports and has become portrayed as*
23 *an integral part of sports and the healthy lifestyle as-*
24 *sociated with rigorous sporting activity.*

1 (20) *Children are exposed to substantial and un-*
2 *avoidable tobacco advertising that leads to favorable*
3 *beliefs about tobacco use, plays a role in leading*
4 *young people to overestimate the prevalence of tobacco*
5 *use, and increases the number of young people who*
6 *begin to use tobacco.*

7 (21) *The use of tobacco products in motion pic-*
8 *tures and other mass media glamorizes its use for*
9 *young people and encourages them to use tobacco*
10 *products.*

11 (22) *Tobacco advertising expands the size of the*
12 *tobacco market by increasing consumption of tobacco*
13 *products including tobacco use by young people.*

14 (23) *Children are more influenced by tobacco ad-*
15 *vertising than adults, they smoke the most advertised*
16 *brands.*

17 (24) *Tobacco company documents indicate that*
18 *young people are an important and often crucial seg-*
19 *ment of the tobacco market. Children, who tend to be*
20 *more price-sensitive than adults, are influenced by*
21 *advertising and promotion practices that result in*
22 *drastically reduced cigarette prices.*

23 (25) *Comprehensive advertising restrictions will*
24 *have a positive effect on the smoking rates of young*
25 *people.*

1 (26) *Restrictions on advertising are necessary to*
2 *prevent unrestricted tobacco advertising from under-*
3 *mining legislation prohibiting access to young people*
4 *and providing for education about tobacco use.*

5 (27) *International experience shows that adver-*
6 *tising regulations that are stringent and comprehen-*
7 *sive have a greater impact on overall tobacco use and*
8 *young people's use than weaker or less comprehensive*
9 *ones.*

10 (28) *Text only requirements, although not as*
11 *stringent as a ban, will help reduce underage use of*
12 *tobacco products while preserving the informational*
13 *function of advertising.*

14 (29) *It is in the public interest for Congress to*
15 *adopt legislation to address the public health crisis*
16 *created by actions of the tobacco industry.*

17 (30) *The final regulations promulgated by the*
18 *Secretary of Health and Human Services in the Au-*
19 *gust 28, 1996, issue of the Federal Register (61 Fed.*
20 *Reg. 44615–44618) for inclusion as part 897 of title*
21 *21, Code of Federal Regulations, are consistent with*
22 *the First Amendment to the United States Constitu-*
23 *tion and with the standards set forth in the amend-*
24 *ments made by this subtitle for the regulation of to-*
25 *bacco products by the Food and Drug Administration*

1 *and the restriction on the sale and distribution, in-*
2 *cluding access to and the advertising and promotion*
3 *of, tobacco products contained in such regulations are*
4 *substantially related to accomplishing the public*
5 *health goals of this subtitle.*

6 *(31) The regulations described in paragraph (30)*
7 *will directly and materially advance the Federal Gov-*
8 *ernment's substantial interest in reducing the number*
9 *of children and adolescents who use cigarettes and*
10 *smokeless tobacco and in preventing the life-threat-*
11 *ening health consequences associated with tobacco use.*
12 *An overwhelming majority of Americans who use to-*
13 *bacco products begin using such products while they*
14 *are minors and become addicted to the nicotine in*
15 *those products before reaching the age of 18. Tobacco*
16 *advertising and promotion plays a crucial role in the*
17 *decision of these minors to begin using tobacco prod-*
18 *ucts. Less restrictive and less comprehensive ap-*
19 *proaches have not and will not be effective in reduc-*
20 *ing the problems addressed by such regulations. The*
21 *reasonable restrictions on the advertising and pro-*
22 *motion of tobacco products contained in such regula-*
23 *tions will lead to a significant decrease in the number*
24 *of minors using and becoming addicted to those prod-*
25 *ucts.*

1 (32) *The regulations described in paragraph (30)*
2 *impose no more extensive restrictions on communica-*
3 *tion by tobacco manufacturers and sellers than are*
4 *necessary to reduce the number of children and ado-*
5 *lescents who use cigarettes and smokeless tobacco and*
6 *to prevent the life-threatening health consequences as-*
7 *sociated with tobacco use. Such regulations are nar-*
8 *rowly tailored to restrict those advertising and pro-*
9 *motional practices which are most likely to be seen or*
10 *heard by youth and most likely to entice them into*
11 *tobacco use, while affording tobacco manufacturers*
12 *and sellers ample opportunity to convey information*
13 *about their products to adult consumers.*

14 (33) *Tobacco dependence is a chronic disease, one*
15 *that typically requires repeated interventions to*
16 *achieve long-term or permanent abstinence.*

17 (34) *Because the only known safe alternative to*
18 *smoking is cessation, interventions should target all*
19 *smokers to help them quit completely.*

20 (35) *Tobacco products have been used to facili-*
21 *tate and finance criminal activities both domestically*
22 *and internationally. Illicit trade of tobacco products*
23 *has been linked to organized crime and terrorist*
24 *groups.*

1 (36) *It is essential that the Food and Drug Ad-*
2 *ministration review products sold or distributed for*
3 *use to reduce risks or exposures associated with to-*
4 *bacco products and that it be empowered to review*
5 *any advertising and labeling for such products. It is*
6 *also essential that manufacturers, prior to marketing*
7 *such products, be required to demonstrate that such*
8 *products will meet a series of rigorous criteria, and*
9 *will benefit the health of the population as a whole,*
10 *taking into account both users of tobacco products*
11 *and persons who do not currently use tobacco prod-*
12 *ucts.*

13 (37) *Unless tobacco products that purport to re-*
14 *duce the risks to the public of tobacco use actually re-*
15 *duce such risks, those products can cause substantial*
16 *harm to the public health to the extent that the indi-*
17 *viduals, who would otherwise not consume tobacco*
18 *products or would consume such products less, use to-*
19 *bacco products purporting to reduce risk. Those who*
20 *use products sold or distributed as modified risk prod-*
21 *ucts that do not in fact reduce risk, rather than quit-*
22 *ting or reducing their use of tobacco products, have*
23 *a substantially increased likelihood of suffering dis-*
24 *ability and premature death. The costs to society of*
25 *the widespread use of products sold or distributed as*

1 *modified risk products that do not in fact reduce risk*
2 *or that increase risk include thousands of unnecessary*
3 *deaths and injuries and huge costs to our health care*
4 *system.*

5 *(38) As the National Cancer Institute has found,*
6 *many smokers mistakenly believe that “low tar” and*
7 *“light” cigarettes cause fewer health problems than*
8 *other cigarettes. As the National Cancer Institute has*
9 *also found, mistaken beliefs about the health con-*
10 *sequences of smoking “low tar” and “light” cigarettes*
11 *can reduce the motivation to quit smoking entirely*
12 *and thereby lead to disease and death.*

13 *(39) Recent studies have demonstrated that there*
14 *has been no reduction in risk on a population-wide*
15 *basis from “low tar” and “light” cigarettes and such*
16 *products may actually increase the risk of tobacco*
17 *use.*

18 *(40) The dangers of products sold or distributed*
19 *as modified risk tobacco products that do not in fact*
20 *reduce risk are so high that there is a compelling gov-*
21 *ernmental interest in insuring that statements about*
22 *modified risk tobacco products are complete, accurate,*
23 *and relate to the overall disease risk of the product.*

24 *(41) As the Federal Trade Commission has*
25 *found, consumers have misinterpreted advertisements*

1 *in which one product is claimed to be less harmful*
2 *than a comparable product, even in the presence of*
3 *disclosures and advisories intended to provide clari-*
4 *fication.*

5 *(42) Permitting manufacturers to make unsub-*
6 *stantiated statements concerning modified risk to-*
7 *bacco products, whether express or implied, even if ac-*
8 *companied by disclaimers would be detrimental to the*
9 *public health.*

10 *(43) The only way to effectively protect the pub-*
11 *lic health from the dangers of unsubstantiated modi-*
12 *fied risk tobacco products is to empower the Food and*
13 *Drug Administration to require that products that to-*
14 *bacco manufacturers sold or distributed for risk re-*
15 *duction be approved in advance of marketing, and to*
16 *require that the evidence relied on to support ap-*
17 *proval of these products is rigorous.*

18 **SEC. 1103. PURPOSE.**

19 *The purposes of this subtitle are—*

20 *(1) to provide authority to the Food and Drug*
21 *Administration to regulate tobacco products under the*
22 *Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301*
23 *et seq.), by recognizing it as the primary Federal reg-*
24 *ulatory authority with respect to the manufacture,*
25 *marketing, and distribution of tobacco products;*

1 (2) *to ensure that the Food and Drug Adminis-*
2 *tration has the authority to address issues of par-*
3 *ticular concern to public health officials, especially*
4 *the use of tobacco by young people and dependence on*
5 *tobacco;*

6 (3) *to authorize the Food and Drug Administra-*
7 *tion to set national standards controlling the manu-*
8 *facture of tobacco products and the identity, public*
9 *disclosure, and amount of ingredients used in such*
10 *products;*

11 (4) *to provide new and flexible enforcement au-*
12 *thority to ensure that there is effective oversight of the*
13 *tobacco industry's efforts to develop, introduce, and*
14 *promote less harmful tobacco products;*

15 (5) *to vest the Food and Drug Administration*
16 *with the authority to regulate the levels of tar, nico-*
17 *tine, and other harmful components of tobacco prod-*
18 *ucts;*

19 (6) *in order to ensure that consumers are better*
20 *informed, to require tobacco product manufacturers to*
21 *disclose research which has not previously been made*
22 *available, as well as research generated in the future,*
23 *relating to the health and dependency effects or safety*
24 *of tobacco products;*

1 (7) to continue to permit the sale of tobacco
2 products to adults in conjunction with measures to
3 ensure that they are not sold or accessible to underage
4 purchasers;

5 (8) to impose appropriate regulatory controls on
6 the tobacco industry;

7 (9) to promote cessation to reduce disease risk
8 and the social costs associated with tobacco related
9 diseases; and

10 (10) to strengthen legislation against illicit trade
11 in tobacco products.

12 **SEC. 1104. SCOPE AND EFFECT.**

13 (a) *INTENDED EFFECT.*—Nothing in this subtitle (or
14 an amendment made by this subtitle) shall be construed
15 to—

16 (1) establish a precedent with regard to any
17 other industry, situation, circumstance, or legal ac-
18 tion; or

19 (2) affect any action pending in Federal, State,
20 or Tribal court, or any agreement, consent decree, or
21 contract of any kind.

22 (b) *AGRICULTURAL ACTIVITIES.*—The provisions of
23 this subtitle (or an amendment made by this subtitle) which
24 authorize the Secretary to take certain actions with regard
25 to tobacco and tobacco products shall not be construed to

1 *affect any authority of the Secretary of Agriculture under*
 2 *existing law regarding the growing, cultivation, or curing*
 3 *of raw tobacco.*

4 **SEC. 1105. SEVERABILITY.**

5 *If any provision of this subtitle, the amendments made*
 6 *by this subtitle, or the application of any provision of this*
 7 *subtitle to any person or circumstance is held to be invalid,*
 8 *the remainder of this subtitle, the amendments made by this*
 9 *subtitle, and the application of the provisions of this subtitle*
 10 *to any other person or circumstance shall not be affected*
 11 *and shall continue to be enforced to the fullest extent pos-*
 12 *sible.*

13 **CHAPTER 1—AUTHORITY OF THE FOOD**
 14 **AND DRUG ADMINISTRATION**

15 **SEC. 1111. AMENDMENT OF FEDERAL FOOD, DRUG, AND**
 16 **COSMETIC ACT.**

17 *(a) DEFINITION OF TOBACCO PRODUCTS.—Section*
 18 *201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.*
 19 *321) is amended by adding at the end the following:*

20 *“(nn)(1) The term ‘tobacco product’ means any prod-*
 21 *uct made or derived from tobacco that is intended for*
 22 *human consumption, including any component, part, or ac-*
 23 *cessory of a tobacco product (except for raw materials other*
 24 *than tobacco used in manufacturing a component, part, or*
 25 *accessory of a tobacco product).*

1 “(2) *The term ‘tobacco product’ does not mean—*

2 “(A) *a product in the form of conventional food*
3 *(including water and chewing gum), a product rep-*
4 *resented for use as or for use in a conventional food,*
5 *or a product that is intended for ingestion in capsule,*
6 *tablet, softgel, or liquid form; or*

7 “(B) *an article that is approved or is regulated*
8 *as a drug by the Food and Drug Administration.*

9 “(3) *The products described in paragraph (2)(A) shall*
10 *be subject to chapter IV or chapter V of this Act and the*
11 *articles described in paragraph (2)(B) shall be subject to*
12 *chapter V of this Act.*

13 “(4) *A tobacco product may not be marketed in com-*
14 *bination with any other article or product regulated under*
15 *this Act (including a drug, biologic, food, cosmetics, medical*
16 *device, or a dietary supplement).”.*

17 ***(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—***
18 ***The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301***
19 ***et seq.) is amended—***

20 ***(1) by redesignating chapter IX as chapter X;***

21 ***(2) by redesignating sections 901 through 907 as***
22 ***sections 1001 through 1007; and***

23 ***(3) by inserting after section 803 the following:***

1 **“CHAPTER IX—TOBACCO**
2 **PRODUCTS**

3 **“SEC. 900. DEFINITIONS.**

4 *“In this chapter:*

5 *“(1) ADDITIVE.—The term ‘additive’ means any*
6 *substance the intended use of which results or may*
7 *reasonably be expected to result, directly or indirectly,*
8 *in its becoming a component or otherwise affecting*
9 *the characteristic of any tobacco product (including*
10 *any substances intended for use as a flavoring, color-*
11 *ing or in producing, manufacturing, packing, proc-*
12 *essing, preparing, treating, packaging, transporting,*
13 *or holding), except that such term does not include to-*
14 *bacco or a pesticide chemical residue in or on raw to-*
15 *bacco or a pesticide chemical.*

16 *“(2) BRAND.—The term ‘brand’ means a variety*
17 *of tobacco product distinguished by the tobacco used,*
18 *tar content, nicotine content, flavoring used, size, fil-*
19 *tration, or packaging, logo, registered trademark or*
20 *brand name, identifiable pattern of colors, or any*
21 *combination of such attributes.*

22 *“(3) CIGARETTE.—The term ‘cigarette’ has the*
23 *meaning given that term by section 3(1) of the Fed-*
24 *eral Cigarette Labeling and Advertising Act (15*
25 *U.S.C. 1332(1)), but also includes tobacco, in any*

1 *form, that is functional in the product, which, because*
2 *of its appearance, the type of tobacco used in the*
3 *filler, or its packaging and labeling, is likely to be of-*
4 *fered to, or purchased by, consumers as a cigarette or*
5 *as roll-your-own tobacco.*

6 “(4) *CIGARETTE TOBACCO.*—*The term ‘cigarette*
7 *tobacco’ means any product that consists of loose to-*
8 *bacco that is intended for use by consumers in a ciga-*
9 *rette. Unless otherwise stated, the requirements for*
10 *cigarettes shall also apply to cigarette tobacco.*

11 “(5) *COMMERCE.*—*The term ‘commerce’ has the*
12 *meaning given that term by section 3(2) of the Fed-*
13 *eral Cigarette Labeling and Advertising Act (15*
14 *U.S.C. 1332(2)).*

15 “(6) *COUNTERFEIT TOBACCO PRODUCT.*—*The*
16 *term ‘counterfeit tobacco product’ means a tobacco*
17 *product (or the container or labeling of such a prod-*
18 *uct) that, without authorization, bears the trademark,*
19 *trade name, or other identifying mark, imprint or de-*
20 *vice, or any likeness thereof, of a tobacco product list-*
21 *ed in a registration under section 905(i)(1).*

22 “(7) *DISTRIBUTOR.*—*The term ‘distributor’ as*
23 *regards a tobacco product means any person who fur-*
24 *thers the distribution of a tobacco product, whether*
25 *domestic or imported, at any point from the original*

1 *place of manufacture to the person who sells or dis-*
2 *tributes the product to individuals for personal con-*
3 *sumption. Common carriers are not considered dis-*
4 *tributors for purposes of this chapter.*

5 “(8) *ILLICIT TRADE.*—*The term ‘illicit trade’*
6 *means any practice or conduct prohibited by law*
7 *which relates to production, shipment, receipt, posses-*
8 *sion, distribution, sale, or purchase of tobacco prod-*
9 *ucts including any practice or conduct intended to fa-*
10 *cilitate such activity.*

11 “(9) *INDIAN TRIBE.*—*The term ‘Indian tribe’ has*
12 *the meaning given such term in section 4(e) of the In-*
13 *dian Self Determination and Education Assistance*
14 *Act (25 U.S.C. 450b(e)).*

15 “(10) *LITTLE CIGAR.*—*The term ‘little cigar’ has*
16 *the meaning given that term by section 3(7) of the*
17 *Federal Cigarette Labeling and Advertising Act (15*
18 *U.S.C. 1332(7)).*

19 “(11) *NICOTINE.*—*The term ‘nicotine’ means the*
20 *chemical substance named 3-(1-Methyl-2-pyrrolidinyl)*
21 *pyridine or C[10]H[14]N[2], including any salt or*
22 *complex of nicotine.*

23 “(12) *PACKAGE.*—*The term ‘package’ means a*
24 *pack, box, carton, or container of any kind or, if no*
25 *other container, any wrapping (including cellophane),*

1 *in which a tobacco product is offered for sale, sold, or*
2 *otherwise distributed to consumers.*

3 “(13) *RETAILER.*—*The term ‘retailer’ means any*
4 *person who sells tobacco products to individuals for*
5 *personal consumption, or who operates a facility*
6 *where self-service displays of tobacco products are per-*
7 *mitted.*

8 “(14) *ROLL-YOUR-OWN TOBACCO.*—*The term*
9 *‘roll-your-own tobacco’ means any tobacco which, be-*
10 *cause of its appearance, type, packaging, or labeling,*
11 *is suitable for use and likely to be offered to, or pur-*
12 *chased by, consumers as tobacco for making cigarettes.*

13 “(15) *SMOKE CONSTITUENT.*—*The term ‘smoke*
14 *constituent’ means any chemical or chemical com-*
15 *ponent in mainstream or sidestream tobacco smoke*
16 *that either transfers from any component of the ciga-*
17 *rette to the smoke or that is formed by the combustion*
18 *or heating of tobacco, additives, or other component of*
19 *the tobacco product.*

20 “(16) *SMOKELESS TOBACCO.*—*The term ‘smoke-*
21 *less tobacco’ means any tobacco product that consists*
22 *of cut, ground, powdered, or leaf tobacco and that is*
23 *intended to be placed in the oral or nasal cavity.*

24 “(17) *STATE.*—*The term ‘State’ means any*
25 *State of the United States and, for purposes of this*

1 *chapter, includes the District of Columbia, the Com-*
2 *monwealth of Puerto Rico, Guam, the Virgin Islands,*
3 *American Samoa, Wake Island, Midway Islands,*
4 *Kingman Reef, Johnston Atoll, the Northern Mariana*
5 *Islands, and any other trust territory or possession of*
6 *the United States.*

7 “(18) *TOBACCO PRODUCT MANUFACTURER.*—
8 *Term ‘tobacco product manufacturer’ means any per-*
9 *son, including any repacker or relabeler, who—*

10 “(A) *manufactures, fabricates, assembles,*
11 *processes, or labels a tobacco product; or*

12 “(B) *imports a finished cigarette or smoke-*
13 *less tobacco product for sale or distribution in*
14 *the United States.*

15 “(19) *UNITED STATES.*—*The term ‘United*
16 *States’ means the 50 States of the United States of*
17 *America and the District of Columbia, the Common-*
18 *wealth of Puerto Rico, Guam, the Virgin Islands,*
19 *American Samoa, Wake Island, Midway Islands,*
20 *Kingman Reef, Johnston Atoll, the Northern Mariana*
21 *Islands, and any other trust territory or possession of*
22 *the United States.*

1 **“SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.**

2 “(a) *IN GENERAL.*—Tobacco products shall be regu-
3 lated by the Secretary under this chapter and shall not be
4 subject to the provisions of chapter V, unless—

5 “(1) *such products are intended for use in the di-*
6 *agnosis, cure, mitigation, treatment, or prevention of*
7 *disease (within the meaning of section 201(g)(1)(B)*
8 *or section 201(h)(2)); or*

9 “(2) *a claim is made for such products under*
10 *section 201(g)(1)(C) or 201(h)(3);*
11 *other than modified risk tobacco products approved in*
12 *accordance with section 911.*

13 “(b) *APPLICABILITY.*—This chapter shall apply to all
14 tobacco products subject to the regulations referred to in sec-
15 tion 1112 of the Family Smoking Prevention and Tobacco
16 Control Act, and to any other tobacco products that the Sec-
17 retary by regulation deems to be subject to this chapter.

18 “(c) *SCOPE.*—

19 “(1) *IN GENERAL.*—Nothing in this chapter, or
20 any policy issued or regulation promulgated there-
21 under, or the Family Smoking Prevention and To-
22 bacco Control Act, shall be construed to affect the Sec-
23 retary’s authority over, or the regulation of, products
24 under this Act that are not tobacco products under
25 chapter V or any other chapter.

26 “(2) *LIMITATION OF AUTHORITY.*—

1 “(A) *IN GENERAL.*—*The provisions of this*
2 *chapter shall not apply to tobacco leaf that is not*
3 *in the possession of a manufacturer of tobacco*
4 *products, or to the producers of tobacco leaf, in-*
5 *cluding tobacco growers, tobacco warehouses, and*
6 *tobacco grower cooperatives, nor shall any em-*
7 *ployee of the Food and Drug Administration*
8 *have any authority to enter onto a farm owned*
9 *by a producer of tobacco leaf without the written*
10 *consent of such producer.*

11 “(B) *EXCEPTION.*—*Notwithstanding any*
12 *other provision of this subparagraph, if a pro-*
13 *ducer of tobacco leaf is also a tobacco product*
14 *manufacturer or controlled by a tobacco product*
15 *manufacturer, the producer shall be subject to*
16 *this chapter in the producer’s capacity as a*
17 *manufacturer.*

18 “(C) *RULE OF CONSTRUCTION.*—*Nothing in*
19 *this chapter shall be construed to grant the Sec-*
20 *retary authority to promulgate regulations on*
21 *any matter that involves the production of to-*
22 *bacco leaf or a producer thereof, other than ac-*
23 *tivities by a manufacturer affecting production.*

1 **“SEC. 902. ADULTERATED TOBACCO PRODUCTS.**

2 *“A tobacco product shall be deemed to be adulterated*
3 *if—*

4 *“(1) it consists in whole or in part of any filthy,*
5 *putrid, or decomposed substance, or is otherwise con-*
6 *taminated by any added poisonous or added delete-*
7 *rious substance that may render the product injurious*
8 *to health;*

9 *“(2) it has been prepared, packed, or held under*
10 *insanitary conditions whereby it may have been con-*
11 *taminated with filth, or whereby it may have been*
12 *rendered injurious to health;*

13 *“(3) its package is composed, in whole or in*
14 *part, of any poisonous or deleterious substance which*
15 *may render the contents injurious to health;*

16 *“(4) it is, or purports to be or is represented as,*
17 *a tobacco product which is subject to a tobacco prod-*
18 *uct standard established under section 907 unless such*
19 *tobacco product is in all respects in conformity with*
20 *such standard;*

21 *“(5)(A) it is required by section 910(a) to have*
22 *premarket approval and does not have an approved*
23 *application in effect;*

24 *“(B) it is in violation of the order approving*
25 *such an application; or*

1 “(6) *the methods used in, or the facilities or con-*
2 *trols used for, its manufacture, packing or storage are*
3 *not in conformity with applicable requirements under*
4 *section 906(e)(1) or an applicable condition pre-*
5 *scribed by an order under section 906(e)(2); or*

6 “(7) *it is in violation of section 911.*

7 **“SEC. 903. MISBRANDED TOBACCO PRODUCTS.**

8 “(a) *IN GENERAL.—A tobacco product shall be deemed*
9 *to be misbranded—*

10 “(1) *if its labeling is false or misleading in any*
11 *particular;*

12 “(2) *if in package form unless it bears a label*
13 *containing—*

14 “(A) *the name and place of business of the*
15 *tobacco product manufacturer, packer, or dis-*
16 *tributor;*

17 “(B) *an accurate statement of the quantity*
18 *of the contents in terms of weight, measure, or*
19 *numerical count;*

20 “(C) *an accurate statement of the percent-*
21 *age of the tobacco used in the product that is do-*
22 *mestically grown tobacco and the percentage that*
23 *is foreign grown tobacco; and*

24 “(D) *the statement required under section*
25 *921(a),*

1 *except that under subparagraph (B) reasonable vari-*
2 *ations shall be permitted, and exemptions as to small*
3 *packages shall be established, by regulations pre-*
4 *scribed by the Secretary;*

5 *“(3) if any word, statement, or other informa-*
6 *tion required by or under authority of this chapter to*
7 *appear on the label or labeling is not prominently*
8 *placed thereon with such conspicuousness (as com-*
9 *pared with other words, statements or designs in the*
10 *labeling) and in such terms as to render it likely to*
11 *be read and understood by the ordinary individual*
12 *under customary conditions of purchase and use;*

13 *“(4) if it has an established name, unless its*
14 *label bears, to the exclusion of any other nonpropri-*
15 *etary name, its established name prominently printed*
16 *in type as required by the Secretary by regulation;*

17 *“(5) if the Secretary has issued regulations re-*
18 *quiring that its labeling bear adequate directions for*
19 *use, or adequate warnings against use by children,*
20 *that are necessary for the protection of users unless its*
21 *labeling conforms in all respects to such regulations;*

22 *“(6) if it was manufactured, prepared, propa-*
23 *gated, compounded, or processed in any State in an*
24 *establishment not duly registered under section*
25 *905(b), 905(c), 905(d), or 905(h), if it was not in-*

1 *cluded in a list required by section 905(i), if a notice*
2 *or other information respecting it was not provided*
3 *as required by such section or section 905(j), or if it*
4 *does not bear such symbols from the uniform system*
5 *for identification of tobacco products prescribed under*
6 *section 905(e) as the Secretary by regulation requires;*

7 *“(7) if, in the case of any tobacco product dis-*
8 *tributed or offered for sale in any State—*

9 *“(A) its advertising is false or misleading*
10 *in any particular; or*

11 *“(B) it is sold or distributed in violation of*
12 *regulations prescribed under section 906(d);*

13 *“(8) unless, in the case of any tobacco product*
14 *distributed or offered for sale in any State, the manu-*
15 *facturer, packer, or distributor thereof includes in all*
16 *advertisements and other descriptive printed matter*
17 *issued or caused to be issued by the manufacturer,*
18 *packer, or distributor with respect to that tobacco*
19 *product—*

20 *“(A) a true statement of the tobacco prod-*
21 *uct’s established name as described in paragraph*
22 *(4), printed prominently; and*

23 *“(B) a brief statement of—*

1 “(i) the uses of the tobacco product and
2 relevant warnings, precautions, side effects,
3 and contraindications; and

4 “(ii) in the case of specific tobacco
5 products made subject to a finding by the
6 Secretary after notice and opportunity for
7 comment that such action is appropriate to
8 protect the public health, a full description
9 of the components of such tobacco product or
10 the formula showing quantitatively each in-
11 gredient of such tobacco product to the ex-
12 tent required in regulations which shall be
13 issued by the Secretary after an oppor-
14 tunity for a hearing;

15 “(9) if it is a tobacco product subject to a to-
16 bacco product standard established under section 907,
17 unless it bears such labeling as may be prescribed in
18 such tobacco product standard; or

19 “(10) if there was a failure or refusal—

20 “(A) to comply with any requirement pre-
21 scribed under section 904 or 908; or

22 “(B) to furnish any material or informa-
23 tion required under section 909.

24 “(b) *PRIOR APPROVAL OF LABEL STATEMENTS.*—The
25 Secretary may, by regulation, require prior approval of

1 *statements made on the label of a tobacco product. No regu-*
2 *lation issued under this subsection may require prior ap-*
3 *proval by the Secretary of the content of any advertisement,*
4 *except for modified risk tobacco products as provided in sec-*
5 *tion 911. No advertisement of a tobacco product published*
6 *after the date of enactment of the Family Smoking Preven-*
7 *tion and Tobacco Control Act shall, with respect to the lan-*
8 *guage of label statements as prescribed under section 4 of*
9 *the Cigarette Labeling and Advertising Act and section 3*
10 *of the Comprehensive Smokeless Tobacco Health Education*
11 *Act of 1986 or the regulations issued under such sections,*
12 *be subject to the provisions of sections 12 through 15 of the*
13 *Federal Trade Commission Act (15 U.S.C. 52 through 55).*

14 **“SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE**
15 **SECRETARY.**

16 *“(a) REQUIREMENT.—Not later than 6 months after*
17 *the date of enactment of the Family Smoking Prevention*
18 *and Tobacco Control Act, each tobacco product manufac-*
19 *turer or importer, or agents thereof, shall submit to the Sec-*
20 *retary the following information:*

21 *“(1) A listing of all ingredients, including to-*
22 *bacco, substances, compounds, and additives that are,*
23 *as of such date, added by the manufacturer to the to-*
24 *bacco, paper, filter, or other part of each tobacco*

1 *product by brand and by quantity in each brand and*
2 *subbrand.*

3 “(2) *A description of the content, delivery, and*
4 *form of nicotine in each tobacco product measured in*
5 *milligrams of nicotine in accordance with regulations*
6 *promulgated by the Secretary in accordance with sec-*
7 *tion 4(a)(4) of the Federal Cigarette Labeling and*
8 *Advertising Act.*

9 “(3) *A listing of all constituents, including*
10 *smoke constituents as applicable, identified by the*
11 *Secretary as harmful or potentially harmful to health*
12 *in each tobacco product, and as applicable in the*
13 *smoke of each tobacco product, by brand and by*
14 *quantity in each brand and subbrand. Effective be-*
15 *ginning 2 years after the date of enactment of this*
16 *chapter, the manufacturer, importer, or agent shall*
17 *comply with regulations promulgated under section*
18 *915 in reporting information under this paragraph,*
19 *where applicable.*

20 “(4) *All documents developed after the date of*
21 *enactment of the Family Smoking Prevention and To-*
22 *bacco Control Act that relate to health, toxicological,*
23 *behavioral, or physiologic effects of current or future*
24 *tobacco products, their constituents (including smoke*
25 *constituents), ingredients, components, and additives.*

1 “(b) *DATA SUBMISSION.*—*At the request of the Sec-*
2 *retary, each tobacco product manufacturer or importer of*
3 *tobacco products, or agents thereof, shall submit the fol-*
4 *lowing:*

5 “(1) *Any or all documents (including underlying*
6 *scientific information) relating to research activities,*
7 *and research findings, conducted, supported, or pos-*
8 *sessed by the manufacturer (or agents thereof) on the*
9 *health, toxicological, behavioral, or physiologic effects*
10 *of tobacco products and their constituents (including*
11 *smoke constituents), ingredients, components, and ad-*
12 *ditives.*

13 “(2) *Any or all documents (including underlying*
14 *scientific information) relating to research activities,*
15 *and research findings, conducted, supported, or pos-*
16 *sessed by the manufacturer (or agents thereof) that re-*
17 *late to the issue of whether a reduction in risk to*
18 *health from tobacco products can occur upon the em-*
19 *ployment of technology available or known to the*
20 *manufacturer.*

21 “(3) *Any or all documents (including underlying*
22 *scientific or financial information) relating to mar-*
23 *keting research involving the use of tobacco products*
24 *or marketing practices and the effectiveness of such*

1 *practices used by tobacco manufacturers and distribu-*
2 *tors.*

3 *An importer of a tobacco product not manufactured in the*
4 *United States shall supply the information required of a*
5 *tobacco product manufacturer under this subsection.*

6 “(c) *TIME FOR SUBMISSION.*—

7 “(1) *IN GENERAL.*—*At least 90 days prior to the*
8 *delivery for introduction into interstate commerce of*
9 *a tobacco product not on the market on the date of*
10 *enactment of the Family Smoking Prevention and To-*
11 *bacco Control Act, the manufacturer of such product*
12 *shall provide the information required under sub-*
13 *section (a).*

14 “(2) *DISCLOSURE OF ADDITIVE.*—*If at any time*
15 *a tobacco product manufacturer adds to its tobacco*
16 *products a new tobacco additive or increases the*
17 *quantity of an existing tobacco additive, the manufac-*
18 *turer shall, except as provided in paragraph (3), at*
19 *least 90 days prior to such action so advise the Sec-*
20 *retary in writing.*

21 “(3) *DISCLOSURE OF OTHER ACTIONS.*—*If at*
22 *any time a tobacco product manufacturer eliminates*
23 *or decreases an existing additive, or adds or increases*
24 *an additive that has by regulation been designated by*
25 *the Secretary as an additive that is not a human or*

1 *animal carcinogen, or otherwise harmful to health*
2 *under intended conditions of use, the manufacturer*
3 *shall within 60 days of such action so advise the Sec-*
4 *retary in writing.*

5 *“(d) DATA LIST.—*

6 *“(1) IN GENERAL.—Not later than 3 years after*
7 *the date of enactment of the Family Smoking Preven-*
8 *tion and Tobacco Control Act, and annually there-*
9 *after, the Secretary shall publish in a format that is*
10 *understandable and not misleading to a lay person,*
11 *and place on public display (in a manner determined*
12 *by the Secretary) the list established under subsection*
13 *(e).*

14 *“(2) CONSUMER RESEARCH.—The Secretary*
15 *shall conduct periodic consumer research to ensure*
16 *that the list published under paragraph (1) is not*
17 *misleading to lay persons. Not later than 5 years*
18 *after the date of enactment of the Family Smoking*
19 *Prevention and Tobacco Control Act, the Secretary*
20 *shall submit to the appropriate committees of Con-*
21 *gress a report on the results of such research, together*
22 *with recommendations on whether such publication*
23 *should be continued or modified.*

24 *“(e) DATA COLLECTION.—Not later than 12 months*
25 *after the date of enactment of the Family Smoking Preven-*

1 *tion and Tobacco Control Act, the Secretary shall establish*
2 *a list of harmful and potentially harmful constituents, in-*
3 *cluding smoke constituents, to health in each tobacco prod-*
4 *uct by brand and by quantity in each brand and subbrand.*
5 *The Secretary shall publish a public notice requesting the*
6 *submission by interested persons of scientific and other in-*
7 *formation concerning the harmful and potentially harmful*
8 *constituents in tobacco products and tobacco smoke.*

9 **“SEC. 905. ANNUAL REGISTRATION.**

10 *“(a) DEFINITIONS.—In this section:*

11 *“(1) MANUFACTURE, PREPARATION,*
12 *COMPOUNDING, OR PROCESSING.—The term ‘manufac-*
13 *ture, preparation, compounding, or processing’ shall*
14 *include repackaging or otherwise changing the con-*
15 *tainer, wrapper, or labeling of any tobacco product*
16 *package in furtherance of the distribution of the to-*
17 *bacco product from the original place of manufacture*
18 *to the person who makes final delivery or sale to the*
19 *ultimate consumer or user.*

20 *“(2) NAME.—The term ‘name’ shall include in*
21 *the case of a partnership the name of each partner*
22 *and, in the case of a corporation, the name of each*
23 *corporate officer and director, and the State of incor-*
24 *poration.*

1 “(b) *REGISTRATION BY OWNERS AND OPERATORS.*—
2 *On or before December 31 of each year every person who*
3 *owns or operates any establishment in any State engaged*
4 *in the manufacture, preparation, compounding, or proc-*
5 *essing of a tobacco product or tobacco products shall register*
6 *with the Secretary the name, places of business, and all such*
7 *establishments of that person.*

8 “(c) *REGISTRATION OF NEW OWNERS AND OPERA-*
9 *TORS.*—*Every person upon first engaging in the manufac-*
10 *ture, preparation, compounding, or processing of a tobacco*
11 *product or tobacco products in any establishment owned or*
12 *operated in any State by that person shall immediately reg-*
13 *ister with the Secretary that person’s name, place of busi-*
14 *ness, and such establishment.*

15 “(d) *REGISTRATION OF ADDED ESTABLISHMENTS.*—
16 *Every person required to register under subsection (b) or*
17 *(c) shall immediately register with the Secretary any addi-*
18 *tional establishment which that person owns or operates in*
19 *any State and in which that person begins the manufacture,*
20 *preparation, compounding, or processing of a tobacco prod-*
21 *uct or tobacco products.*

22 “(e) *UNIFORM PRODUCT IDENTIFICATION SYSTEM.*—
23 *The Secretary may by regulation prescribe a uniform sys-*
24 *tem for the identification of tobacco products and may re-*
25 *quire that persons who are required to list such tobacco*

1 *products under subsection (i) shall list such tobacco prod-*
2 *ucts in accordance with such system.*

3 “(f) *PUBLIC ACCESS TO REGISTRATION INFORMA-*
4 *TION.—The Secretary shall make available for inspection,*
5 *to any person so requesting, any registration filed under*
6 *this section.*

7 “(g) *BIENNIAL INSPECTION OF REGISTERED ESTAB-*
8 *LISHMENTS.—Every establishment in any State registered*
9 *with the Secretary under this section shall be subject to in-*
10 *spection under section 704, and every such establishment*
11 *engaged in the manufacture, compounding, or processing*
12 *of a tobacco product or tobacco products shall be so in-*
13 *spected by 1 or more officers or employees duly designated*
14 *by the Secretary at least once in the 2-year period begin-*
15 *ning with the date of registration of such establishment*
16 *under this section and at least once in every successive 2-*
17 *year period thereafter.*

18 “(h) *FOREIGN ESTABLISHMENTS SHALL REGISTER.—*
19 *Any establishment within any foreign country engaged in*
20 *the manufacture, preparation, compounding, or processing*
21 *of a tobacco product or tobacco products, shall register*
22 *under this section under regulations promulgated by the*
23 *Secretary. Such regulations shall require such establishment*
24 *to provide the information required by subsection (i) of this*
25 *section and shall include provisions for registration of any*

1 *such establishment upon condition that adequate and effec-*
2 *tive means are available, by arrangement with the govern-*
3 *ment of such foreign country or otherwise, to enable the Sec-*
4 *retary to determine from time to time whether tobacco prod-*
5 *ucts manufactured, prepared, compounded, or processed in*
6 *such establishment, if imported or offered for import into*
7 *the United States, shall be refused admission on any of the*
8 *grounds set forth in section 801(a).*

9 “(i) *REGISTRATION INFORMATION.*—

10 “(1) *PRODUCT LIST.*—*Every person who reg-*
11 *isters with the Secretary under subsection (b), (c), (d),*
12 *or (h) shall, at the time of registration under any*
13 *such subsection, file with the Secretary a list of all to-*
14 *bacco products which are being manufactured, pre-*
15 *pared, compounded, or processed by that person for*
16 *commercial distribution and which has not been in-*
17 *cluded in any list of tobacco products filed by that*
18 *person with the Secretary under this paragraph or*
19 *paragraph (2) before such time of registration. Such*
20 *list shall be prepared in such form and manner as the*
21 *Secretary may prescribe and shall be accompanied*
22 *by—*

23 “(A) *in the case of a tobacco product con-*
24 *tained in the applicable list with respect to*
25 *which a tobacco product standard has been estab-*

1 *lished under section 907 or which is subject to*
2 *section 910, a reference to the authority for the*
3 *marketing of such tobacco product and a copy of*
4 *all labeling for such tobacco product;*

5 *“(B) in the case of any other tobacco prod-*
6 *uct contained in an applicable list, a copy of all*
7 *consumer information and other labeling for*
8 *such tobacco product, a representative sampling*
9 *of advertisements for such tobacco product, and,*
10 *upon request made by the Secretary for good*
11 *cause, a copy of all advertisements for a par-*
12 *ticular tobacco product; and*

13 *“(C) if the registrant filing a list has deter-*
14 *mined that a tobacco product contained in such*
15 *list is not subject to a tobacco product standard*
16 *established under section 907, a brief statement*
17 *of the basis upon which the registrant made such*
18 *determination if the Secretary requests such a*
19 *statement with respect to that particular tobacco*
20 *product.*

21 *“(2) BIENNIAL REPORT OF ANY CHANGE IN*
22 *PRODUCT LIST.—Each person who registers with the*
23 *Secretary under this section shall report to the Sec-*
24 *retary once during the month of June of each year*

1 *and once during the month of December of each year*
2 *the following:*

3 “(A) *A list of each tobacco product intro-*
4 *duced by the registrant for commercial distribu-*
5 *tion which has not been included in any list pre-*
6 *viously filed by that person with the Secretary*
7 *under this subparagraph or paragraph (1). A*
8 *list under this subparagraph shall list a tobacco*
9 *product by its established name and shall be ac-*
10 *companied by the other information required by*
11 *paragraph (1).*

12 “(B) *If since the date the registrant last*
13 *made a report under this paragraph that person*
14 *has discontinued the manufacture, preparation,*
15 *compounding, or processing for commercial dis-*
16 *tribution of a tobacco product included in a list*
17 *filed under subparagraph (A) or paragraph (1),*
18 *notice of such discontinuance, the date of such*
19 *discontinuance, and the identity of its estab-*
20 *lished name.*

21 “(C) *If since the date the registrant reported*
22 *under subparagraph (B) a notice of discontinu-*
23 *ance that person has resumed the manufacture,*
24 *preparation, compounding, or processing for*
25 *commercial distribution of the tobacco product*

1 *with respect to which such notice of discontinu-*
2 *ance was reported, notice of such resumption, the*
3 *date of such resumption, the identity of such to-*
4 *bacco product by established name, and other in-*
5 *formation required by paragraph (1), unless the*
6 *registrant has previously reported such resump-*
7 *tion to the Secretary under this subparagraph.*

8 “(D) *Any material change in any informa-*
9 *tion previously submitted under this paragraph*
10 *or paragraph (1).*

11 “(j) *REPORT PRECEDING INTRODUCTION OF CERTAIN*
12 *SUBSTANTIALLY-EQUIVALENT PRODUCTS INTO INTER-*
13 *STATE COMMERCE.—*

14 “(1) *IN GENERAL.—Each person who is required*
15 *to register under this section and who proposes to*
16 *begin the introduction or delivery for introduction*
17 *into interstate commerce for commercial distribution*
18 *of a tobacco product intended for human use that was*
19 *not commercially marketed (other than for test mar-*
20 *keting) in the United States as of June 1, 2003, shall,*
21 *at least 90 days prior to making such introduction or*
22 *delivery, report to the Secretary (in such form and*
23 *manner as the Secretary shall prescribe)—*

24 “(A) *the basis for such person’s determina-*
25 *tion that the tobacco product is substantially*

1 *equivalent, within the meaning of section 910, to*
2 *a tobacco product commercially marketed (other*
3 *than for test marketing) in the United States as*
4 *of June 1, 2003, that is in compliance with the*
5 *requirements of this Act; and*

6 *“(B) action taken by such person to comply*
7 *with the requirements under section 907 that are*
8 *applicable to the tobacco product.*

9 *“(2) APPLICATION TO CERTAIN POST JUNE 1, 2003*
10 *PRODUCTS.—A report under this subsection for a to-*
11 *bacco product that was first introduced or delivered*
12 *for introduction into interstate commerce for commer-*
13 *cial distribution in the United States after June 1,*
14 *2003, and prior to the date that is 15 months after*
15 *the date of enactment of the Family Smoking Preven-*
16 *tion and Tobacco Control Act shall be submitted to*
17 *the Secretary not later than 15 months after such*
18 *date of enactment.*

19 *“(3) EXEMPTIONS.—*

20 *“(A) IN GENERAL.—The Secretary may by*
21 *regulation, exempt from the requirements of this*
22 *subsection tobacco products that are modified by*
23 *adding or deleting a tobacco additive, or increas-*
24 *ing or decreasing the quantity of an existing to-*

1 *bacco additive, if the Secretary determines*
2 *that—*

3 “(i) *such modification would be a*
4 *minor modification of a tobacco product au-*
5 *thorized for sale under this Act;*

6 “(ii) *a report under this subsection is*
7 *not necessary to ensure that permitting the*
8 *tobacco product to be marketed would be ap-*
9 *propriate for protection of the public health;*
10 *and*

11 “(iii) *an exemption is otherwise appro-*
12 *priate.*

13 “(B) *REGULATIONS.—Not later than 9*
14 *months after the date of enactment of the Family*
15 *Smoking Prevention and Tobacco Control Act,*
16 *the Secretary shall issue regulations to imple-*
17 *ment this paragraph.*

18 **“SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL**
19 **OF TOBACCO PRODUCTS.**

20 “(a) *IN GENERAL.—Any requirement established by or*
21 *under section 902, 903, 905, or 909 applicable to a tobacco*
22 *product shall apply to such tobacco product until the appli-*
23 *cability of the requirement to the tobacco product has been*
24 *changed by action taken under section 907, section 910, sec-*
25 *tion 911, or subsection (d) of this section, and any require-*

1 *ment established by or under section 902, 903, 905, or 909*
2 *which is inconsistent with a requirement imposed on such*
3 *tobacco product under section 907, section 910, section 911,*
4 *or subsection (d) of this section shall not apply to such to-*
5 *bacco product.*

6 “(b) *INFORMATION ON PUBLIC ACCESS AND COM-*
7 *MENT.—Each notice of proposed rulemaking under section*
8 *907, 908, 909, 910, or 911 or under this section, any other*
9 *notice which is published in the Federal Register with re-*
10 *spect to any other action taken under any such section and*
11 *which states the reasons for such action, and each publica-*
12 *tion of findings required to be made in connection with*
13 *rulemaking under any such section shall set forth—*

14 “(1) *the manner in which interested persons may*
15 *examine data and other information on which the no-*
16 *tice or findings is based; and*

17 “(2) *the period within which interested persons*
18 *may present their comments on the notice or findings*
19 *(including the need therefore) orally or in writing,*
20 *which period shall be at least 60 days but may not*
21 *exceed 90 days unless the time is extended by the Sec-*
22 *retary by a notice published in the Federal Register*
23 *stating good cause therefore.*

24 “(c) *LIMITED CONFIDENTIALITY OF INFORMATION.—*
25 *Any information reported to or otherwise obtained by the*

1 *Secretary or the Secretary's representative under section*
2 *903, 904, 907, 908, 909, 910, 911, or 704, or under sub-*
3 *section (e) or (f) of this section, which is exempt from disclo-*
4 *sure under subsection (a) of section 552 of title 5, United*
5 *States Code, by reason of subsection (b)(4) of that section*
6 *shall be considered confidential and shall not be disclosed,*
7 *except that the information may be disclosed to other offi-*
8 *cers or employees concerned with carrying out this chapter,*
9 *or when relevant in any proceeding under this chapter.*

10 “(d) *RESTRICTIONS.*—

11 “(1) *IN GENERAL.*—*The Secretary may by regu-*
12 *lation require restrictions on the sale and distribution*
13 *of a tobacco product, including restrictions on the ac-*
14 *cess to, and the advertising and promotion of, the to-*
15 *bacco product, if the Secretary determines that such*
16 *regulation would be appropriate for the protection of*
17 *the public health. The Secretary may by regulation*
18 *impose restrictions on the advertising and promotion*
19 *of a tobacco product consistent with and to full extent*
20 *permitted by the first amendment to the Constitution.*
21 *The finding as to whether such regulation would be*
22 *appropriate for the protection of the public health*
23 *shall be determined with respect to the risks and bene-*
24 *fits to the population as a whole, including users and*

1 *non-users of the tobacco product, and taking into*
2 *account—*

3 “(A) *the increased or decreased likelihood*
4 *that existing users of tobacco products will stop*
5 *using such products; and*

6 “(B) *the increased or decreased likelihood*
7 *that those who do not use tobacco products will*
8 *start using such products.*

9 *No such regulation may require that the sale or dis-*
10 *tribution of a tobacco product be limited to the writ-*
11 *ten or oral authorization of a practitioner licensed by*
12 *law to prescribe medical products.*

13 “(2) *LABEL STATEMENTS.—The label of a to-*
14 *bacco product shall bear such appropriate statements*
15 *of the restrictions required by a regulation under sub-*
16 *section (a) as the Secretary may in such regulation*
17 *prescribe.*

18 “(3) *LIMITATIONS.—*

19 “(A) *IN GENERAL.—No restrictions under*
20 *paragraph (1) may—*

21 “(i) *prohibit the sale of any tobacco*
22 *product in face-to-face transactions by a*
23 *specific category of retail outlets; or*

1 “(ii) establish a minimum age of sale
2 of tobacco products to any person older than
3 18 years of age.

4 “(B) MATCHBOOKS.—For purposes of any
5 regulations issued by the Secretary, matchbooks
6 of conventional size containing not more than 20
7 paper matches, and which are customarily given
8 away for free with the purchase of tobacco prod-
9 ucts shall be considered as adult written publica-
10 tions which shall be permitted to contain adver-
11 tising. Notwithstanding the preceding sentence, if
12 the Secretary finds that such treatment of match-
13 books is not appropriate for the protection of the
14 public health, the Secretary may determine by
15 regulation that matchbooks shall not be consid-
16 ered adult written publications.

17 “(e) GOOD MANUFACTURING PRACTICE REQUIRE-
18 MENTS.—

19 “(1) METHODS, FACILITIES, AND CONTROLS TO
20 CONFORM.—

21 “(A) IN GENERAL.—The Secretary may, in
22 accordance with subparagraph (B), prescribe
23 regulations (which may differ based on the type
24 of tobacco product involved) requiring that the
25 methods used in, and the facilities and controls

1 *used for, the manufacture, pre-production design*
2 *validation (including a process to assess the per-*
3 *formance of a tobacco product), packing and*
4 *storage of a tobacco product, conform to current*
5 *good manufacturing practice, as prescribed in*
6 *such regulations, to assure that the public health*
7 *is protected and that the tobacco product is in*
8 *compliance with this chapter. Good manufac-*
9 *turing practices may include the testing of raw*
10 *tobacco for pesticide chemical residues regardless*
11 *of whether a tolerance for such chemical residues*
12 *has been established.*

13 “(B) *REQUIREMENTS.—The Secretary*
14 *shall—*

15 “(i) *before promulgating any regula-*
16 *tion under subparagraph (A), afford the To-*
17 *bacco Products Scientific Advisory Com-*
18 *mittee an opportunity to submit rec-*
19 *ommendations with respect to the regulation*
20 *proposed to be promulgated;*

21 “(ii) *before promulgating any regula-*
22 *tion under subparagraph (A), afford oppor-*
23 *tunity for an oral hearing;*

24 “(iii) *provide the advisory committee a*
25 *reasonable time to make its recommendation*

1 *with respect to proposed regulations under*
2 *subparagraph (A); and*

3 “(iv) *in establishing the effective date*
4 *of a regulation promulgated under this sub-*
5 *section, take into account the differences in*
6 *the manner in which the different types of*
7 *tobacco products have historically been pro-*
8 *duced, the financial resources of the dif-*
9 *ferent tobacco product manufacturers, and*
10 *the state of their existing manufacturing fa-*
11 *ilities, and shall provide for a reasonable*
12 *period of time for such manufacturers to*
13 *conform to good manufacturing practices.*

14 “(2) *EXEMPTIONS; VARIANCES.—*

15 “(A) *PETITION.—Any person subject to any*
16 *requirement prescribed under paragraph (1)*
17 *may petition the Secretary for a permanent or*
18 *temporary exemption or variance from such re-*
19 *quirement. Such a petition shall be submitted to*
20 *the Secretary in such form and manner as the*
21 *Secretary shall prescribe and shall—*

22 “(i) *in the case of a petition for an ex-*
23 *emption from a requirement, set forth the*
24 *basis for the petitioner’s determination that*
25 *compliance with the requirement is not re-*

1 *quired to assure that the tobacco product*
2 *will be in compliance with this chapter;*

3 “(ii) *in the case of a petition for a*
4 *variance from a requirement, set forth the*
5 *methods proposed to be used in, and the fa-*
6 *cilities and controls proposed to be used for,*
7 *the manufacture, packing, and storage of*
8 *the tobacco product in lieu of the methods,*
9 *facilities, and controls prescribed by the re-*
10 *quirement; and*

11 “(iii) *contain such other information*
12 *as the Secretary shall prescribe.*

13 “(B) *REFERRAL TO THE TOBACCO PROD-*
14 *UCTS SCIENTIFIC ADVISORY COMMITTEE.—The*
15 *Secretary may refer to the Tobacco Products Sci-*
16 *entific Advisory Committee any petition sub-*
17 *mitted under subparagraph (A). The Tobacco*
18 *Products Scientific Advisory Committee shall re-*
19 *port its recommendations to the Secretary with*
20 *respect to a petition referred to it within 60 days*
21 *after the date of the petition’s referral. Within 60*
22 *days after—*

23 “(i) *the date the petition was sub-*
24 *mitted to the Secretary under subparagraph*
25 *(A); or*

1 “(ii) the day after the petition was re-
2 ferred to the Tobacco Products Scientific
3 Advisory Committee,
4 whichever occurs later, the Secretary shall by
5 order either deny the petition or approve it.

6 “(C) APPROVAL.—The Secretary may
7 approve—

8 “(i) a petition for an exemption for a
9 tobacco product from a requirement if the
10 Secretary determines that compliance with
11 such requirement is not required to assure
12 that the tobacco product will be in compli-
13 ance with this chapter; and

14 “(ii) a petition for a variance for a to-
15 bacco product from a requirement if the
16 Secretary determines that the methods to be
17 used in, and the facilities and controls to be
18 used for, the manufacture, packing, and
19 storage of the tobacco product in lieu of the
20 methods, controls, and facilities prescribed
21 by the requirement are sufficient to assure
22 that the tobacco product will be in compli-
23 ance with this chapter.

24 “(D) CONDITIONS.—An order of the Sec-
25 retary approving a petition for a variance shall

1 *prescribe such conditions respecting the methods*
2 *used in, and the facilities and controls used for,*
3 *the manufacture, packing, and storage of the to-*
4 *bacco product to be granted the variance under*
5 *the petition as may be necessary to assure that*
6 *the tobacco product will be in compliance with*
7 *this chapter.*

8 “(E) *HEARING.*—*After the issuance of an*
9 *order under subparagraph (B) respecting a peti-*
10 *tion, the petitioner shall have an opportunity for*
11 *an informal hearing on such order.*

12 “(3) *COMPLIANCE.*—*Compliance with require-*
13 *ments under this subsection shall not be required be-*
14 *fore the period ending 3 years after the date of enact-*
15 *ment of the Family Smoking Prevention and Tobacco*
16 *Control Act.*

17 “(f) *RESEARCH AND DEVELOPMENT.*—*The Secretary*
18 *may enter into contracts for research, testing, and dem-*
19 *onstrations respecting tobacco products and may obtain to-*
20 *bacco products for research, testing, and demonstration pur-*
21 *poses without regard to section 3324(a) and (b) of title 31,*
22 *United States Code, and section 5 of title 41, United States*
23 *Code.*

24 “**SEC. 907. TOBACCO PRODUCT STANDARDS.**

25 “(a) *IN GENERAL.*—

1 “(1) *SPECIAL RULE FOR CIGARETTES.*—A ciga-
2 *rette or any of its component parts (including the to-*
3 *bacco, filter, or paper) shall not contain, as a con-*
4 *stituent (including a smoke constituent) or additive,*
5 *an artificial or natural flavor (other than tobacco or*
6 *menthol) or an herb or spice, including strawberry,*
7 *grape, orange, clove, cinnamon, pineapple, vanilla,*
8 *coconut, licorice, cocoa, chocolate, cherry, or coffee,*
9 *that is a characterizing flavor of the tobacco product*
10 *or tobacco smoke. Nothing in this subparagraph shall*
11 *be construed to limit the Secretary’s authority to take*
12 *action under this section or other sections of this Act*
13 *applicable to menthol or any artificial or natural fla-*
14 *vor, herb, or spice not specified in this paragraph.*

15 “(2) *REVISION OF TOBACCO PRODUCT STAND-*
16 *ARDS.*—*The Secretary may revise the tobacco product*
17 *standards in paragraph (1) in accordance with sub-*
18 *section (b).*

19 “(3) *TOBACCO PRODUCT STANDARDS.*—*The Sec-*
20 *retary may adopt tobacco product standards in addi-*
21 *tion to those in paragraph (1) if the Secretary finds*
22 *that a tobacco product standard is appropriate for the*
23 *protection of the public health. This finding shall be*
24 *determined with respect to the risks and benefits to*
25 *the population as a whole, including users and non-*

1 *users of the tobacco product, and taking into*
2 *account—*

3 *“(A) the increased or decreased likelihood*
4 *that existing users of tobacco products will stop*
5 *using such products; and*

6 *“(B) the increased or decreased likelihood*
7 *that those who do not use tobacco products will*
8 *start using such products.*

9 *“(4) CONTENT OF TOBACCO PRODUCT STAND-*
10 *ARDS.—A tobacco product standard established under*
11 *this section for a tobacco product—*

12 *“(A) shall include provisions that are ap-*
13 *propriate for the protection of the public health,*
14 *including provisions, where appropriate—*

15 *“(i) for the reduction of nicotine yields*
16 *of the product;*

17 *“(ii) for the reduction or elimination*
18 *of other constituents, including smoke con-*
19 *stituents, or harmful components of the*
20 *product; or*

21 *“(iii) relating to any other require-*
22 *ment under (B);*

23 *“(B) shall, where appropriate for the protec-*
24 *tion of the public health, include—*

1 “(i) provisions respecting the construc-
2 tion, components, ingredients, additives,
3 constituents, including smoke constituents,
4 and properties of the tobacco product;

5 “(ii) provisions for the testing (on a
6 sample basis or, if necessary, on an indi-
7 vidual basis) of the tobacco product;

8 “(iii) provisions for the measurement
9 of the tobacco product characteristics of the
10 tobacco product;

11 “(iv) provisions requiring that the re-
12 sults of each or of certain of the tests of the
13 tobacco product required to be made under
14 clause (ii) show that the tobacco product is
15 in conformity with the portions of the
16 standard for which the test or tests were re-
17 quired; and

18 “(v) a provision requiring that the sale
19 and distribution of the tobacco product be
20 restricted but only to the extent that the sale
21 and distribution of a tobacco product may
22 be restricted under a regulation under sec-
23 tion 906(d); and

1 “(C) shall, where appropriate, require the
2 use and prescribe the form and content of label-
3 ing for the proper use of the tobacco product.

4 “(5) *PERIODIC RE-EVALUATION OF TOBACCO*
5 *PRODUCT STANDARDS.*—*The Secretary shall provide*
6 *for periodic evaluation of tobacco product standards*
7 *established under this section to determine whether*
8 *such standards should be changed to reflect new med-*
9 *ical, scientific, or other technological data. The Sec-*
10 *retary may provide for testing under paragraph*
11 *(4)(B) by any person.*

12 “(6) *INVOLVEMENT OF OTHER AGENCIES; IN-*
13 *FORMED PERSONS.*—*In carrying out duties under this*
14 *section, the Secretary shall endeavor to—*

15 “(A) *use personnel, facilities, and other*
16 *technical support available in other Federal*
17 *agencies;*

18 “(B) *consult with other Federal agencies*
19 *concerned with standard-setting and other na-*
20 *tionally or internationally recognized standard-*
21 *setting entities; and*

22 “(C) *invite appropriate participation,*
23 *through joint or other conferences, workshops, or*
24 *other means, by informed persons representative*
25 *of scientific, professional, industry, agricultural,*

1 *or consumer organizations who in the Secretary's*
2 *judgment can make a significant contribution.*

3 “(b) *ESTABLISHMENT OF STANDARDS.*—

4 “(1) *NOTICE.*—

5 “(A) *IN GENERAL.*—*The Secretary shall*
6 *publish in the Federal Register a notice of pro-*
7 *posed rulemaking for the establishment, amend-*
8 *ment, or revocation of any tobacco product*
9 *standard.*

10 “(B) *REQUIREMENTS OF NOTICE.*—*A notice*
11 *of proposed rulemaking for the establishment or*
12 *amendment of a tobacco product standard for a*
13 *tobacco product shall—*

14 “(i) *set forth a finding with supporting*
15 *justification that the tobacco product stand-*
16 *ard is appropriate for the protection of the*
17 *public health;*

18 “(ii) *set forth proposed findings with*
19 *respect to the risk of illness or injury that*
20 *the tobacco product standard is intended to*
21 *reduce or eliminate; and*

22 “(iii) *invite interested persons to sub-*
23 *mit an existing tobacco product standard*
24 *for the tobacco product, including a draft or*

1 *proposed tobacco product standard, for con-*
2 *sideration by the Secretary.*

3 “(C) *STANDARD.*—*Upon a determination by*
4 *the Secretary that an additive, constituent (in-*
5 *cluding smoke constituent), or other component*
6 *of the product that is the subject of the proposed*
7 *tobacco product standard is harmful, it shall be*
8 *the burden of any party challenging the proposed*
9 *standard to prove that the proposed standard*
10 *will not reduce or eliminate the risk of illness or*
11 *injury.*

12 “(D) *FINDING.*—*A notice of proposed rule-*
13 *making for the revocation of a tobacco product*
14 *standard shall set forth a finding with sup-*
15 *porting justification that the tobacco product*
16 *standard is no longer appropriate for the protec-*
17 *tion of the public health.*

18 “(E) *CONSIDERATION BY SECRETARY.*—*The*
19 *Secretary shall consider all information sub-*
20 *mitted in connection with a proposed standard,*
21 *including information concerning the counter-*
22 *vailing effects of the tobacco product standard on*
23 *the health of adolescent tobacco users, adult to-*
24 *bacco users, or non-tobacco users, such as the cre-*
25 *ation of a significant demand for contraband or*

1 *other tobacco products that do not meet the re-*
2 *quirements of this chapter and the significance of*
3 *such demand, and shall issue the standard if the*
4 *Secretary determines that the standard would be*
5 *appropriate for the protection of the public*
6 *health.*

7 “(F) COMMENT.—*The Secretary shall pro-*
8 *vide for a comment period of not less than 60*
9 *days.*

10 “(2) PROMULGATION.—

11 “(A) IN GENERAL.—*After the expiration of*
12 *the period for comment on a notice of proposed*
13 *rulemaking published under paragraph (1) re-*
14 *specting a tobacco product standard and after*
15 *consideration of such comments and any report*
16 *from the Tobacco Products Scientific Advisory*
17 *Committee, the Secretary shall—*

18 “(i) *promulgate a regulation estab-*
19 *lishing a tobacco product standard and*
20 *publish in the Federal Register findings on*
21 *the matters referred to in paragraph (1); or*

22 “(ii) *publish a notice terminating the*
23 *proceeding for the development of the stand-*
24 *ard together with the reasons for such ter-*
25 *mination.*

1 “(B) *EFFECTIVE DATE.*—A regulation es-
2 *tablishing a tobacco product standard shall set*
3 *forth the date or dates upon which the standard*
4 *shall take effect, but no such regulation may take*
5 *effect before 1 year after the date of its publica-*
6 *tion unless the Secretary determines that an ear-*
7 *lier effective date is necessary for the protection*
8 *of the public health. Such date or dates shall be*
9 *established so as to minimize, consistent with the*
10 *public health, economic loss to, and disruption or*
11 *dislocation of, domestic and international trade.*

12 “(3) *POWER RESERVED TO CONGRESS.*—*Because*
13 *of the importance of a decision of the Secretary to*
14 *issue a regulation establishing a tobacco product*
15 *standard—*

16 “(A) *banning all cigarettes, all smokeless to-*
17 *bacco products, all little cigars, all cigars other*
18 *than little cigars, all pipe tobacco, or all roll*
19 *your own tobacco products; or*

20 “(B) *requiring the reduction of nicotine*
21 *yields of a tobacco product to zero,*

22 *Congress expressly reserves to itself such power.*

23 “(4) *AMENDMENT; REVOCATION.*—

24 “(A) *AUTHORITY.*—*The Secretary, upon the*
25 *Secretary’s own initiative or upon petition of an*

1 *interested person may by a regulation, promul-*
2 *gated in accordance with the requirements of*
3 *paragraphs (1) and (2)(B), amend or revoke a*
4 *tobacco product standard.*

5 “(B) *EFFECTIVE DATE.*—*The Secretary*
6 *may declare a proposed amendment of a tobacco*
7 *product standard to be effective on and after its*
8 *publication in the Federal Register and until the*
9 *effective date of any final action taken on such*
10 *amendment if the Secretary determines that*
11 *making it so effective is in the public interest.*

12 “(5) *REFERENCE TO ADVISORY COMMITTEE.*—

13 *The Secretary may—*

14 “(A) *on the Secretary’s own initiative, refer*
15 *a proposed regulation for the establishment,*
16 *amendment, or revocation of a tobacco product*
17 *standard; or*

18 “(B) *upon the request of an interested per-*
19 *son which demonstrates good cause for referral*
20 *and which is made before the expiration of the*
21 *period for submission of comments on such pro-*
22 *posed regulation,*

23 *refer such proposed regulation to the Tobacco Products Sci-*
24 *entific Advisory Committee, for a report and recommenda-*
25 *tion with respect to any matter involved in the proposed*

1 *regulation which requires the exercise of scientific judgment.*
2 *If a proposed regulation is referred under this paragraph*
3 *to the Tobacco Products Scientific Advisory Committee, the*
4 *Secretary shall provide the advisory committee with the*
5 *data and information on which such proposed regulation*
6 *is based. The Tobacco Products Scientific Advisory Com-*
7 *mittee shall, within 60 days after the referral of a proposed*
8 *regulation and after independent study of the data and in-*
9 *formation furnished to it by the Secretary and other data*
10 *and information before it, submit to the Secretary a report*
11 *and recommendation respecting such regulation, together*
12 *with all underlying data and information and a statement*
13 *of the reason or basis for the recommendation. A copy of*
14 *such report and recommendation shall be made public by*
15 *the Secretary.*

16 **“SEC. 908. NOTIFICATION AND OTHER REMEDIES.**

17 “(a) *NOTIFICATION.*—*If the Secretary determines*
18 *that—*

19 “(1) *a tobacco product which is introduced or de-*
20 *livered for introduction into interstate commerce for*
21 *commercial distribution presents an unreasonable risk*
22 *of substantial harm to the public health; and*

23 “(2) *notification under this subsection is nec-*
24 *essary to eliminate the unreasonable risk of such*
25 *harm and no more practicable means is available*

1 *under the provisions of this chapter (other than this*
2 *section) to eliminate such risk,*
3 *the Secretary may issue such order as may be necessary*
4 *to assure that adequate notification is provided in an ap-*
5 *propriate form, by the persons and means best suited under*
6 *the circumstances involved, to all persons who should prop-*
7 *erly receive such notification in order to eliminate such*
8 *risk. The Secretary may order notification by any appro-*
9 *priate means, including public service announcements. Be-*
10 *fore issuing an order under this subsection, the Secretary*
11 *shall consult with the persons who are to give notice under*
12 *the order.*

13 *“(b) NO EXEMPTION FROM OTHER LIABILITY.—Com-*
14 *pliance with an order issued under this section shall not*
15 *relieve any person from liability under Federal or State*
16 *law. In awarding damages for economic loss in an action*
17 *brought for the enforcement of any such liability, the value*
18 *to the plaintiff in such action of any remedy provided under*
19 *such order shall be taken into account.*

20 *“(c) RECALL AUTHORITY.—*

21 *“(1) IN GENERAL.—If the Secretary finds that*
22 *there is a reasonable probability that a tobacco prod-*
23 *uct contains a manufacturing or other defect not ordi-*
24 *narily contained in tobacco products on the market*
25 *that would cause serious, adverse health consequences*

1 *or death, the Secretary shall issue an order requiring*
2 *the appropriate person (including the manufacturers,*
3 *importers, distributors, or retailers of the tobacco*
4 *product) to immediately cease distribution of such to-*
5 *bacco product. The order shall provide the person sub-*
6 *ject to the order with an opportunity for an informal*
7 *hearing, to be held not later than 10 days after the*
8 *date of the issuance of the order, on the actions re-*
9 *quired by the order and on whether the order should*
10 *be amended to require a recall of such tobacco prod-*
11 *uct. If, after providing an opportunity for such a*
12 *hearing, the Secretary determines that inadequate*
13 *grounds exist to support the actions required by the*
14 *order, the Secretary shall vacate the order.*

15 *“(2) AMENDMENT OF ORDER TO REQUIRE RE-*
16 *CALL.—*

17 *“(A) IN GENERAL.—If, after providing an*
18 *opportunity for an informal hearing under*
19 *paragraph (1), the Secretary determines that the*
20 *order should be amended to include a recall of*
21 *the tobacco product with respect to which the*
22 *order was issued, the Secretary shall, except as*
23 *provided in subparagraph (B), amend the order*
24 *to require a recall. The Secretary shall specify a*
25 *timetable in which the tobacco product recall will*

1 *occur and shall require periodic reports to the*
2 *Secretary describing the progress of the recall.*

3 “(B) *NOTICE.*—*An amended order under*
4 *subparagraph (A)—*

5 “(i) *shall not include recall of a to-*
6 *bacco product from individuals; and*

7 “(ii) *shall provide for notice to persons*
8 *subject to the risks associated with the use*
9 *of such tobacco product.*

10 *In providing the notice required by clause (ii),*
11 *the Secretary may use the assistance of retailers*
12 *and other persons who distributed such tobacco*
13 *product. If a significant number of such persons*
14 *cannot be identified, the Secretary shall notify*
15 *such persons under section 705(b).*

16 “(3) *REMEDY NOT EXCLUSIVE.*—*The remedy pro-*
17 *vided by this subsection shall be in addition to rem-*
18 *edies provided by subsection (a) of this section.*

19 **“SEC. 909. RECORDS AND REPORTS ON TOBACCO PROD-**
20 **UCTS.**

21 “(a) *IN GENERAL.*—*Every person who is a tobacco*
22 *product manufacturer or importer of a tobacco product*
23 *shall establish and maintain such records, make such re-*
24 *ports, and provide such information, as the Secretary may*
25 *by regulation reasonably require to assure that such tobacco*

1 *product is not adulterated or misbranded and to otherwise*
2 *protect public health. Regulations prescribed under the pre-*
3 *ceding sentence—*

4 “(1) *may require a tobacco product manufac-*
5 *turer or importer to report to the Secretary whenever*
6 *the manufacturer or importer receives or otherwise be-*
7 *comes aware of information that reasonably suggests*
8 *that one of its marketed tobacco products may have*
9 *caused or contributed to a serious unexpected adverse*
10 *experience associated with the use of the product or*
11 *any significant increase in the frequency of a serious,*
12 *expected adverse product experience;*

13 “(2) *shall require reporting of other significant*
14 *adverse tobacco product experiences as determined by*
15 *the Secretary to be necessary to be reported;*

16 “(3) *shall not impose requirements unduly bur-*
17 *densome to a tobacco product manufacturer or im-*
18 *porter, taking into account the cost of complying with*
19 *such requirements and the need for the protection of*
20 *the public health and the implementation of this*
21 *chapter;*

22 “(4) *when prescribing the procedure for making*
23 *requests for reports or information, shall require that*
24 *each request made under such regulations for submis-*
25 *sion of a report or information to the Secretary state*

1 *the reason or purpose for such request and identify to*
2 *the fullest extent practicable such report or informa-*
3 *tion;*

4 “(5) *when requiring submission of a report or*
5 *information to the Secretary, shall state the reason or*
6 *purpose for the submission of such report or informa-*
7 *tion and identify to the fullest extent practicable such*
8 *report or information; and*

9 “(6) *may not require that the identity of any*
10 *patient or user be disclosed in records, reports, or in-*
11 *formation required under this subsection unless re-*
12 *quired for the medical welfare of an individual, to de-*
13 *termine risks to public health of a tobacco product, or*
14 *to verify a record, report, or information submitted*
15 *under this chapter.*

16 *In prescribing regulations under this subsection, the Sec-*
17 *retary shall have due regard for the professional ethics of*
18 *the medical profession and the interests of patients. The*
19 *prohibitions of paragraph (6) continue to apply to records,*
20 *reports, and information concerning any individual who*
21 *has been a patient, irrespective of whether or when he ceases*
22 *to be a patient.*

23 “(b) *REPORTS OF REMOVALS AND CORRECTIONS.—*

24 “(1) *IN GENERAL.—Except as provided in para-*
25 *graph (2), the Secretary shall by regulation require a*

1 *tobacco product manufacturer or importer of a to-*
2 *bacco product to report promptly to the Secretary any*
3 *corrective action taken or removal from the market of*
4 *a tobacco product undertaken by such manufacturer*
5 *or importer if the removal or correction was*
6 *undertaken—*

7 *“(A) to reduce a risk to health posed by the*
8 *tobacco product; or*

9 *“(B) to remedy a violation of this chapter*
10 *caused by the tobacco product which may present*
11 *a risk to health.*

12 *A tobacco product manufacturer or importer of a to-*
13 *bacco product who undertakes a corrective action or*
14 *removal from the market of a tobacco product which*
15 *is not required to be reported under this subsection*
16 *shall keep a record of such correction or removal.*

17 *“(2) EXCEPTION.—No report of the corrective ac-*
18 *tion or removal of a tobacco product may be required*
19 *under paragraph (1) if a report of the corrective ac-*
20 *tion or removal is required and has been submitted*
21 *under subsection (a).*

22 **“SEC. 910. APPLICATION FOR REVIEW OF CERTAIN TO-**
23 **BACCO PRODUCTS.**

24 *“(a) IN GENERAL.—*

1 “(1) *NEW TOBACCO PRODUCT DEFINED.*—For
2 purposes of this section the term ‘new tobacco product’
3 means—

4 “(A) any tobacco product (including those
5 products in test markets) that was not commer-
6 cially marketed in the United States as of June
7 1, 2003; or

8 “(B) any modification (including a change
9 in design, any component, any part, or any con-
10 stituent, including a smoke constituent, or in the
11 content, delivery or form of nicotine, or any
12 other additive or ingredient) of a tobacco product
13 where the modified product was commercially
14 marketed in the United States after June 1,
15 2003.

16 “(2) *PREMARKET APPROVAL REQUIRED.*—

17 “(A) *NEW PRODUCTS.*—Approval under this
18 section of an application for premarket approval
19 for any new tobacco product is required unless—

20 “(i) the manufacturer has submitted a
21 report under section 905(j); and

22 “(ii) the Secretary has issued an order
23 that the tobacco product—

24 “(I) is substantially equivalent to
25 a tobacco product commercially mar-

1 *keted (other than for test marketing) in*
2 *the United States as of June 1, 2003;*
3 *and*

4 *“(II)(aa) is in compliance with*
5 *the requirements of this Act; or*

6 *“(bb) is exempt from the require-*
7 *ments of section 905(j) pursuant to a*
8 *regulation issued under section*
9 *905(j)(3).*

10 *“(B) APPLICATION TO CERTAIN POST JUNE*
11 *1, 2003 PRODUCTS.—Subparagraph (A) shall not*
12 *apply to a tobacco product—*

13 *“(i) that was first introduced or deliv-*
14 *ered for introduction into interstate com-*
15 *merce for commercial distribution in the*
16 *United States after June 1, 2003, and prior*
17 *to the date that is 15 months after the date*
18 *of enactment of the Family Smoking Pre-*
19 *vention and Tobacco Control Act; and*

20 *“(ii) for which a report was submitted*
21 *under section 905(j) within such 15-month*
22 *period, until the Secretary issues an order*
23 *that the tobacco product is not substantially*
24 *equivalent.*

25 *“(3) SUBSTANTIALLY EQUIVALENT DEFINED.—*

1 “(A) *IN GENERAL.*—*In this section and sec-*
2 *tion 905(j), the terms ‘substantially equivalent’*
3 *or ‘substantial equivalence’ mean, with respect to*
4 *the tobacco product being compared to the predi-*
5 *cate tobacco product, that the Secretary by order*
6 *has found that the tobacco product—*

7 “(i) *has the same characteristics as the*
8 *predicate tobacco product; or*

9 “(ii) *has different characteristics and*
10 *the information submitted contains infor-*
11 *mation, including clinical data if deemed*
12 *necessary by the Secretary, that dem-*
13 *onstrates that it is not appropriate to regu-*
14 *late the product under this section because*
15 *the product does not raise different ques-*
16 *tions of public health.*

17 “(B) *CHARACTERISTICS.*—*In subparagraph*
18 *(A), the term ‘characteristics’ means the mate-*
19 *rials, ingredients, design, composition, heating*
20 *source, or other features of a tobacco product.*

21 “(C) *LIMITATION.*—*A tobacco product may*
22 *not be found to be substantially equivalent to a*
23 *predicate tobacco product that has been removed*
24 *from the market at the initiative of the Secretary*

1 *or that has been determined by a judicial order*
2 *to be misbranded or adulterated.*

3 “(4) *HEALTH INFORMATION.*—

4 “(A) *SUMMARY.*—*As part of a submission*
5 *under section 905(j) respecting a tobacco prod-*
6 *uct, the person required to file a premarket noti-*
7 *fication under such section shall provide an ade-*
8 *quate summary of any health information re-*
9 *lated to the tobacco product or state that such in-*
10 *formation will be made available upon request*
11 *by any person.*

12 “(B) *REQUIRED INFORMATION.*—*Any sum-*
13 *mary under subparagraph (A) respecting a to-*
14 *bacco product shall contain detailed information*
15 *regarding data concerning adverse health effects*
16 *and shall be made available to the public by the*
17 *Secretary within 30 days of the issuance of a de-*
18 *termination that such tobacco product is sub-*
19 *stantially equivalent to another tobacco product.*

20 “(b) *APPLICATION.*—

21 “(1) *CONTENTS.*—*An application for premarket*
22 *approval shall contain—*

23 “(A) *full reports of all information, pub-*
24 *lished or known to, or which should reasonably*
25 *be known to, the applicant, concerning investiga-*

1 *tions which have been made to show the health*
2 *risks of such tobacco product and whether such*
3 *tobacco product presents less risk than other to-*
4 *bacco products;*

5 *“(B) a full statement of the components, in-*
6 *gredients, additives, and properties, and of the*
7 *principle or principles of operation, of such to-*
8 *bacco product;*

9 *“(C) a full description of the methods used*
10 *in, and the facilities and controls used for, the*
11 *manufacture, processing, and, when relevant,*
12 *packing and installation of, such tobacco prod-*
13 *uct;*

14 *“(D) an identifying reference to any tobacco*
15 *product standard under section 907 which would*
16 *be applicable to any aspect of such tobacco prod-*
17 *uct, and either adequate information to show*
18 *that such aspect of such tobacco product fully*
19 *meets such tobacco product standard or adequate*
20 *information to justify any deviation from such*
21 *standard;*

22 *“(E) such samples of such tobacco product*
23 *and of components thereof as the Secretary may*
24 *reasonably require;*

1 “(F) specimens of the labeling proposed to
2 be used for such tobacco product; and

3 “(G) such other information relevant to the
4 subject matter of the application as the Secretary
5 may require.

6 “(2) REFERENCE TO TOBACCO PRODUCTS SCI-
7 ENTIFIC ADVISORY COMMITTEE.—Upon receipt of an
8 application meeting the requirements set forth in
9 paragraph (1), the Secretary—

10 “(A) may, on the Secretary’s own initiative;

11 or

12 “(B) may, upon the request of an applicant,
13 refer such application to the Tobacco Products Sci-
14 entific Advisory Committee for reference and for sub-
15 mission (within such period as the Secretary may es-
16 tablish) of a report and recommendation respecting
17 approval of the application, together with all under-
18 lying data and the reasons or basis for the rec-
19 ommendation.

20 “(c) ACTION ON APPLICATION.—

21 “(1) DEADLINE.—

22 “(A) IN GENERAL.—As promptly as pos-
23 sible, but in no event later than 180 days after
24 the receipt of an application under subsection
25 (b), the Secretary, after considering the report

1 *and recommendation submitted under paragraph*
2 *(2) of such subsection, shall—*

3 “(i) *issue an order approving the ap-*
4 *plication if the Secretary finds that none of*
5 *the grounds for denying approval specified*
6 *in paragraph (2) of this subsection applies;*
7 *or*

8 “(ii) *deny approval of the application*
9 *if the Secretary finds (and sets forth the*
10 *basis for such finding as part of or accom-*
11 *panying such denial) that 1 or more*
12 *grounds for denial specified in paragraph*
13 *(2) of this subsection apply.*

14 “(B) *RESTRICTIONS ON SALE AND DIS-*
15 *TRIBUTION.—An order approving an application*
16 *for a tobacco product may require as a condition*
17 *to such approval that the sale and distribution*
18 *of the tobacco product be restricted but only to*
19 *the extent that the sale and distribution of a to-*
20 *bacco product may be restricted under a regula-*
21 *tion under section 906(d).*

22 “(2) *DENIAL OF APPROVAL.—The Secretary shall*
23 *deny approval of an application for a tobacco product*
24 *if, upon the basis of the information submitted to the*
25 *Secretary as part of the application and any other*

1 *information before the Secretary with respect to such*
2 *tobacco product, the Secretary finds that—*

3 *“(A) there is a lack of a showing that per-*
4 *mitting such tobacco product to be marketed*
5 *would be appropriate for the protection of the*
6 *public health;*

7 *“(B) the methods used in, or the facilities or*
8 *controls used for, the manufacture, processing, or*
9 *packing of such tobacco product do not conform*
10 *to the requirements of section 906(e);*

11 *“(C) based on a fair evaluation of all mate-*
12 *rial facts, the proposed labeling is false or mis-*
13 *leading in any particular; or*

14 *“(D) such tobacco product is not shown to*
15 *conform in all respects to a tobacco product*
16 *standard in effect under section 907, compliance*
17 *with which is a condition to approval of the ap-*
18 *plication, and there is a lack of adequate infor-*
19 *mation to justify the deviation from such stand-*
20 *ard.*

21 *“(3) DENIAL INFORMATION.—Any denial of an*
22 *application shall, insofar as the Secretary determines*
23 *to be practicable, be accompanied by a statement in-*
24 *forming the applicant of the measures required to*
25 *place such application in approvable form (which*

1 *measures may include further research by the appli-*
2 *cant in accordance with 1 or more protocols pre-*
3 *scribed by the Secretary).*

4 “(4) *BASIS FOR FINDING.—For purposes of this*
5 *section, the finding as to whether approval of a to-*
6 *bacco product is appropriate for the protection of the*
7 *public health shall be determined with respect to the*
8 *risks and benefits to the population as a whole, in-*
9 *cluding users and nonusers of the tobacco product,*
10 *and taking into account—*

11 “(A) *the increased or decreased likelihood*
12 *that existing users of tobacco products will stop*
13 *using such products; and*

14 “(B) *the increased or decreased likelihood*
15 *that those who do not use tobacco products will*
16 *start using such products.*

17 “(5) *BASIS FOR ACTION.—*

18 “(A) *INVESTIGATIONS.—For purposes of*
19 *paragraph (2)(A), whether permitting a tobacco*
20 *product to be marketed would be appropriate for*
21 *the protection of the public health shall, when*
22 *appropriate, be determined on the basis of well-*
23 *controlled investigations, which may include 1 or*
24 *more clinical investigations by experts qualified*

1 *by training and experience to evaluate the to-*
2 *bacco product.*

3 “(B) *OTHER EVIDENCE.*—*If the Secretary*
4 *determines that there exists valid scientific evi-*
5 *dence (other than evidence derived from inves-*
6 *tigations described in subparagraph (A)) which*
7 *is sufficient to evaluate the tobacco product the*
8 *Secretary may authorize that the determination*
9 *for purposes of paragraph (2)(A) be made on the*
10 *basis of such evidence.*

11 “(d) *WITHDRAWAL AND TEMPORARY SUSPENSION.*—

12 “(1) *IN GENERAL.*—*The Secretary shall, upon*
13 *obtaining, where appropriate, advice on scientific*
14 *matters from an advisory committee, and after due*
15 *notice and opportunity for informal hearing to the*
16 *holder of an approved application for a tobacco prod-*
17 *uct, issue an order withdrawing approval of the ap-*
18 *plication if the Secretary finds—*

19 “(A) *that the continued marketing of such*
20 *tobacco product no longer is appropriate for the*
21 *protection of the public health;*

22 “(B) *that the application contained or was*
23 *accompanied by an untrue statement of a mate-*
24 *rial fact;*

25 “(C) *that the applicant—*

1 “(i) has failed to establish a system for
2 maintaining records, or has repeatedly or
3 deliberately failed to maintain records or to
4 make reports, required by an applicable reg-
5 ulation under section 909;

6 “(ii) has refused to permit access to, or
7 copying or verification of, such records as
8 required by section 704; or

9 “(iii) has not complied with the re-
10 quirements of section 905;

11 “(D) on the basis of new information before
12 the Secretary with respect to such tobacco prod-
13 uct, evaluated together with the evidence before
14 the Secretary when the application was ap-
15 proved, that the methods used in, or the facilities
16 and controls used for, the manufacture, proc-
17 essing, packing, or installation of such tobacco
18 product do not conform with the requirements of
19 section 906(e) and were not brought into con-
20 formity with such requirements within a reason-
21 able time after receipt of written notice from the
22 Secretary of nonconformity;

23 “(E) on the basis of new information before
24 the Secretary, evaluated together with the evi-
25 dence before the Secretary when the application

1 *was approved, that the labeling of such tobacco*
2 *product, based on a fair evaluation of all mate-*
3 *rial facts, is false or misleading in any par-*
4 *ticular and was not corrected within a reason-*
5 *able time after receipt of written notice from the*
6 *Secretary of such fact; or*

7 *“(F) on the basis of new information before*
8 *the Secretary, evaluated together with the evi-*
9 *dence before the Secretary when the application*
10 *was approved, that such tobacco product is not*
11 *shown to conform in all respects to a tobacco*
12 *product standard which is in effect under section*
13 *907, compliance with which was a condition to*
14 *approval of the application, and that there is a*
15 *lack of adequate information to justify the devi-*
16 *ation from such standard.*

17 *“(2) APPEAL.—The holder of an application sub-*
18 *ject to an order issued under paragraph (1) with-*
19 *drawing approval of the application may, by petition*
20 *filed on or before the 30th day after the date upon*
21 *which such holder receives notice of such withdrawal,*
22 *obtain review thereof in accordance with subsection*
23 *(e).*

24 *“(3) TEMPORARY SUSPENSION.—If, after pro-*
25 *viding an opportunity for an informal hearing, the*

1 *Secretary determines there is reasonable probability*
2 *that the continuation of distribution of a tobacco*
3 *product under an approved application would cause*
4 *serious, adverse health consequences or death, that is*
5 *greater than ordinarily caused by tobacco products on*
6 *the market, the Secretary shall by order temporarily*
7 *suspend the approval of the application approved*
8 *under this section. If the Secretary issues such an*
9 *order, the Secretary shall proceed expeditiously under*
10 *paragraph (1) to withdraw such application.*

11 “(e) *SERVICE OF ORDER.*—*An order issued by the Sec-*
12 *retary under this section shall be served—*

13 “(1) *in person by any officer or employee of the*
14 *department designated by the Secretary; or*

15 “(2) *by mailing the order by registered mail or*
16 *certified mail addressed to the applicant at the appli-*
17 *cant’s last known address in the records of the Sec-*
18 *retary.*

19 “(f) *RECORDS.*—

20 “(1) *ADDITIONAL INFORMATION.*—*In the case of*
21 *any tobacco product for which an approval of an ap-*
22 *plication filed under subsection (b) is in effect, the*
23 *applicant shall establish and maintain such records,*
24 *and make such reports to the Secretary, as the Sec-*
25 *retary may by regulation, or by order with respect to*

1 *such application, prescribe on the basis of a finding*
2 *that such records and reports are necessary in order*
3 *to enable the Secretary to determine, or facilitate a*
4 *determination of, whether there is or may be grounds*
5 *for withdrawing or temporarily suspending such ap-*
6 *proval.*

7 “(2) *ACCESS TO RECORDS.—Each person re-*
8 *quired under this section to maintain records, and*
9 *each person in charge or custody thereof, shall, upon*
10 *request of an officer or employee designated by the*
11 *Secretary, permit such officer or employee at all rea-*
12 *sonable times to have access to and copy and verify*
13 *such records.*

14 “(g) *INVESTIGATIONAL TOBACCO PRODUCT EXEMP-*
15 *TION FOR INVESTIGATIONAL USE.—The Secretary may ex-*
16 *empt tobacco products intended for investigational use from*
17 *the provisions of this chapter under such conditions as the*
18 *Secretary may by regulation prescribe.*

19 **“SEC. 911. MODIFIED RISK TOBACCO PRODUCTS.**

20 “(a) *IN GENERAL.—No person may introduce or de-*
21 *liver for introduction into interstate commerce any modi-*
22 *fied risk tobacco product unless approval of an application*
23 *filed pursuant to subsection (d) is effective with respect to*
24 *such product.*

25 “(b) *DEFINITIONS.—In this section:*

1 “(1) *MODIFIED RISK TOBACCO PRODUCT.*—*The*
2 *term ‘modified risk tobacco product’ means any to-*
3 *bacco product that is sold or distributed for use to re-*
4 *duce harm or the risk of tobacco-related disease asso-*
5 *ciated with commercially marketed tobacco products.*

6 “(2) *SOLD OR DISTRIBUTED.*—

7 “(A) *IN GENERAL.*—*With respect to a to-*
8 *bacco product, the term ‘sold or distributed for*
9 *use to reduce harm or the risk of tobacco-related*
10 *disease associated with commercially marketed*
11 *tobacco products’ means a tobacco product—*

12 “(A) *the label, labeling, or advertising*
13 *of which represents explicitly or implicitly*
14 *that—*

15 “(I) *the tobacco product presents*
16 *a lower risk of tobacco-related disease*
17 *or is less harmful than one or more*
18 *other commercially marketed tobacco*
19 *products;*

20 “(II) *the tobacco product or its*
21 *smoke contains a reduced level of a*
22 *substance or presents a reduced expo-*
23 *sure to a substance; or*

1 “(III) the tobacco product or its
2 smoke does not contain or is free of a
3 substance;

4 “(ii) the label, labeling, or advertising
5 of which uses the descriptors ‘light’, ‘mild’,
6 or ‘low’ or similar descriptors; or

7 “(iii) the tobacco product manufac-
8 turer of which has taken any action directed
9 to consumers through the media or other-
10 wise, other than by means of the tobacco
11 product’s label, labeling or advertising, after
12 the date of enactment of the Family Smok-
13 ing Prevention and Tobacco Control Act, re-
14 specting the product that would be reason-
15 ably expected to result in consumers believ-
16 ing that the tobacco product or its smoke
17 may present a lower risk of disease or is
18 less harmful than one or more commercially
19 marketed tobacco products, or presents a re-
20 duced exposure to, or does not contain or is
21 free of, a substance or substances.

22 “(B) *LIMITATION.*—No tobacco product
23 shall be considered to be ‘sold or distributed for
24 use to reduce harm or the risk of tobacco-related
25 disease associated with commercially marketed

1 tobacco products’, except as described in sub-
2 paragraph (A).

3 “(c) *TOBACCO DEPENDENCE PRODUCTS.*—A product
4 that is intended to be used for the treatment of tobacco de-
5 pendence, including smoking cessation, is not a modified
6 risk tobacco product under this section and is subject to the
7 requirements of chapter V.

8 “(d) *FILING.*—Any person may file with the Secretary
9 an application for a modified risk tobacco product. Such
10 application shall include—

11 “(1) a description of the proposed product and
12 any proposed advertising and labeling;

13 “(2) the conditions for using the product;

14 “(3) the formulation of the product;

15 “(4) sample product labels and labeling;

16 “(5) all documents (including underlying sci-
17 entific information) relating to research findings con-
18 ducted, supported, or possessed by the tobacco product
19 manufacturer relating to the effect of the product on
20 tobacco related diseases and health-related conditions,
21 including information both favorable and unfavorable
22 to the ability of the product to reduce risk or exposure
23 and relating to human health;

24 “(6) data and information on how consumers ac-
25 tually use the tobacco product; and

1 “(7) *such other information as the Secretary*
2 *may require.*

3 “(e) *PUBLIC AVAILABILITY.—The Secretary shall make*
4 *the application described in subsection (d) publicly avail-*
5 *able (except matters in the application which are trade se-*
6 *crets or otherwise confidential, commercial information)*
7 *and shall request comments by interested persons on the in-*
8 *formation contained in the application and on the label,*
9 *labeling, and advertising accompanying such application.*

10 “(f) *ADVISORY COMMITTEE.—*

11 “(1) *IN GENERAL.—The Secretary shall refer to*
12 *an advisory committee any application submitted*
13 *under this subsection.*

14 “(2) *RECOMMENDATIONS.—Not later than 60*
15 *days after the date an application is referred to an*
16 *advisory committee under paragraph (1), the advi-*
17 *sory committee shall report its recommendations on*
18 *the application to the Secretary.*

19 “(g) *APPROVAL.—*

20 “(1) *MODIFIED RISK PRODUCTS.—Except as pro-*
21 *vided in paragraph (2), the Secretary shall approve*
22 *an application for a modified risk tobacco product*
23 *filed under this section only if the Secretary deter-*
24 *mines that the applicant has demonstrated that such*
25 *product, as it is actually used by consumers, will—*

1 “(A) significantly reduce harm and the risk
2 of tobacco-related disease to individual tobacco
3 users; and

4 “(B) benefit the health of the population as
5 a whole taking into account both users of tobacco
6 products and persons who do not currently use
7 tobacco products.

8 “(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

9 “(A) IN GENERAL.—The Secretary may ap-
10 prove an application for a tobacco product that
11 has not been approved as a modified risk tobacco
12 product pursuant to paragraph (1) if the Sec-
13 retary makes the findings required under this
14 paragraph and determines that the applicant
15 has demonstrated that—

16 “(i) the approval of the application
17 would be appropriate to promote the public
18 health;

19 “(ii) any aspect of the label, labeling,
20 and advertising for such product that would
21 cause the tobacco product to be a modified
22 risk tobacco product under subsection (b)(2)
23 is limited to an explicit or implicit rep-
24 resentation that such tobacco product or its
25 smoke contains or is free of a substance or

1 *contains a reduced level of a substance, or*
2 *presents a reduced exposure to a substance*
3 *in tobacco smoke.*

4 “(iii) *scientific evidence is not avail-*
5 *able and, using the best available scientific*
6 *methods, cannot be made available without*
7 *conducting long-term epidemiological stud-*
8 *ies for an application to meet the standards*
9 *set forth in paragraph (1); and*

10 “(iv) *the scientific evidence that is*
11 *available without conducting long-term epi-*
12 *demiological studies demonstrates that a*
13 *measurable and substantial reduction in*
14 *morbidity or mortality among individual*
15 *tobacco users is anticipated in subsequent*
16 *studies.*

17 “(B) *ADDITIONAL FINDINGS REQUIRED.—In*
18 *order to approve an application under subpara-*
19 *graph (A) the Secretary must also find that the*
20 *applicant has demonstrated that—*

21 “(i) *the magnitude of the overall reduc-*
22 *tions in exposure to the substance or sub-*
23 *stances which are the subject of the applica-*
24 *tion is substantial, such substance or sub-*
25 *stances are harmful, and the product as ac-*

1 *tually used exposes consumers to the speci-*
2 *fied reduced level of the substance or sub-*
3 *stances;*

4 *“(ii) the product as actually used by*
5 *consumers will not expose them to higher*
6 *levels of other harmful substances compared*
7 *to the similar types of tobacco products then*
8 *on the market unless such increases are*
9 *minimal and the anticipated overall impact*
10 *of use of the product remains a substantial*
11 *and measurable reduction in overall mor-*
12 *bidity and mortality among individual to-*
13 *bacco users;*

14 *“(iii) testing of actual consumer per-*
15 *ception shows that, as the applicant pro-*
16 *poses to label and market the product, con-*
17 *sumers will not be misled into believing that*
18 *the product—*

19 *“(I) is or has been demonstrated*
20 *to be less harmful; or*

21 *“(II) presents or has been dem-*
22 *onstrated to present less of a risk of*
23 *disease than 1 or more other commer-*
24 *cially marketed tobacco products; and*

1 “(iv) approval of the application is ex-
2 pected to benefit the health of the population
3 as a whole taking into account both users of
4 tobacco products and persons who do not
5 currently use tobacco products.

6 “(C) CONDITIONS OF APPROVAL.—

7 “(i) IN GENERAL.—Applications ap-
8 proved under this paragraph shall be lim-
9 ited to a term of not more than 5 years, but
10 may be renewed upon a finding by the Sec-
11 retary that the requirements of this para-
12 graph continue to be satisfied based on the
13 filing of a new application.

14 “(ii) AGREEMENTS BY APPLICANT.—
15 Applications approved under this para-
16 graph shall be conditioned on the appli-
17 cant’s agreement to conduct post-market
18 surveillance and studies and to submit to
19 the Secretary the results of such surveillance
20 and studies to determine the impact of the
21 application approval on consumer percep-
22 tion, behavior, and health and to enable the
23 Secretary to review the accuracy of the de-
24 terminations upon which the approval was

1 *based in accordance with a protocol ap-*
2 *proved by the Secretary.*

3 “(iii) *ANNUAL SUBMISSION.—The re-*
4 *sults of such post-market surveillance and*
5 *studies described in clause (ii) shall be sub-*
6 *mitted annually.*

7 “(3) *BASIS.—The determinations under para-*
8 *graphs (1) and (2) shall be based on—*

9 “(A) *the scientific evidence submitted by the*
10 *applicant; and*

11 “(B) *scientific evidence and other informa-*
12 *tion that is available to the Secretary.*

13 “(4) *BENEFIT TO HEALTH OF INDIVIDUALS AND*
14 *OF POPULATION AS A WHOLE.—In making the deter-*
15 *minations under paragraphs (1) and (2), the Sec-*
16 *retary shall take into account—*

17 “(A) *the relative health risks to individuals*
18 *of the tobacco product that is the subject of the*
19 *application;*

20 “(B) *the increased or decreased likelihood*
21 *that existing users of tobacco products who would*
22 *otherwise stop using such products will switch to*
23 *the tobacco product that is the subject of the ap-*
24 *plication;*

1 “(C) *the increased or decreased likelihood*
2 *that persons who do not use tobacco products*
3 *will start using the tobacco product that is the*
4 *subject of the application;*

5 “(D) *the risks and benefits to persons from*
6 *the use of the tobacco product that is the subject*
7 *of the application as compared to the use of*
8 *products for smoking cessation approved under*
9 *chapter V to treat nicotine dependence; and*

10 “(E) *comments, data, and information sub-*
11 *mitted by interested persons.*

12 “(h) *ADDITIONAL CONDITIONS FOR APPROVAL.—*

13 “(1) *MODIFIED RISK PRODUCTS.—The Secretary*
14 *shall require for the approval of an application under*
15 *this section that any advertising or labeling con-*
16 *cerning modified risk products enable the public to*
17 *comprehend the information concerning modified risk*
18 *and to understand the relative significance of such in-*
19 *formation in the context of total health and in rela-*
20 *tion to all of the diseases and health-related condi-*
21 *tions associated with the use of tobacco products.*

22 “(2) *COMPARATIVE CLAIMS.—*

23 “(A) *IN GENERAL.—The Secretary may re-*
24 *quire for the approval of an application under*
25 *this subsection that a claim comparing a tobacco*

1 *product to 1 or more other commercially mar-*
2 *keted tobacco products shall compare the tobacco*
3 *product to a commercially marketed tobacco*
4 *product that is representative of that type of to-*
5 *bacco product on the market (for example the av-*
6 *erage value of the top 3 brands of an established*
7 *regular tobacco product).*

8 “(B) *QUANTITATIVE COMPARISONS.—The*
9 *Secretary may also require, for purposes of sub-*
10 *paragraph (A), that the percent (or fraction) of*
11 *change and identity of the reference tobacco*
12 *product and a quantitative comparison of the*
13 *amount of the substance claimed to be reduced*
14 *shall be stated in immediate proximity to the*
15 *most prominent claim.*

16 “(3) *LABEL DISCLOSURE.—*

17 “(A) *IN GENERAL.—The Secretary may re-*
18 *quire the disclosure on the label of other sub-*
19 *stances in the tobacco product, or substances that*
20 *may be produced by the consumption of that to-*
21 *bacco product, that may affect a disease or*
22 *health-related condition or may increase the risk*
23 *of other diseases or health-related conditions as-*
24 *sociated with the use of tobacco products.*

1 “(B) *CONDITIONS OF USE.*—If the condi-
2 tions of use of the tobacco product may affect the
3 risk of the product to human health, the Sec-
4 retary may require the labeling of conditions of
5 use.

6 “(4) *TIME.*—The Secretary shall limit an ap-
7 proval under subsection (g)(1) for a specified period
8 of time.

9 “(5) *ADVERTISING.*—The Secretary may require
10 that an applicant, whose application has been ap-
11 proved under this subsection, comply with require-
12 ments relating to advertising and promotion of the to-
13 bacco product.

14 “(i) *POSTMARKET SURVEILLANCE AND STUDIES.*—

15 “(1) *IN GENERAL.*—The Secretary shall require
16 that an applicant under subsection (g)(1) conduct
17 post market surveillance and studies for a tobacco
18 product for which an application has been approved
19 to determine the impact of the application approval
20 on consumer perception, behavior, and health, to en-
21 able the Secretary to review the accuracy of the deter-
22 minations upon which the approval was based, and
23 to provide information that the Secretary determines
24 is otherwise necessary regarding the use or health
25 risks involving the tobacco product. The results of

1 *post-market surveillance and studies shall be sub-*
2 *mitted to the Secretary on an annual basis.*

3 “(2) *SURVEILLANCE PROTOCOL.—Each appli-*
4 *cant required to conduct a surveillance of a tobacco*
5 *product under paragraph (1) shall, within 30 days*
6 *after receiving notice that the applicant is required to*
7 *conduct such surveillance, submit, for the approval of*
8 *the Secretary, a protocol for the required surveillance.*
9 *The Secretary, within 60 days of the receipt of such*
10 *protocol, shall determine if the principal investigator*
11 *proposed to be used in the surveillance has sufficient*
12 *qualifications and experience to conduct such surveil-*
13 *lance and if such protocol will result in collection of*
14 *the data or other information designated by the Sec-*
15 *retary as necessary to protect the public health.*

16 “(j) *WITHDRAWAL OF APPROVAL.—The Secretary,*
17 *after an opportunity for an informal hearing, shall with-*
18 *draw the approval of an application under this section if*
19 *the Secretary determines that—*

20 “(1) *the applicant, based on new information,*
21 *can no longer make the demonstrations required*
22 *under subsection (g), or the Secretary can no longer*
23 *make the determinations required under subsection*
24 *(g);*

1 “(2) *the application failed to include material*
2 *information or included any untrue statement of ma-*
3 *terial fact;*

4 “(3) *any explicit or implicit representation that*
5 *the product reduces risk or exposure is no longer*
6 *valid, including if—*

7 “(A) *a tobacco product standard is estab-*
8 *lished pursuant to section 907;*

9 “(B) *an action is taken that affects the risks*
10 *presented by other commercially marketed to-*
11 *bacco products that were compared to the prod-*
12 *uct that is the subject of the application; or*

13 “(C) *any postmarket surveillance or studies*
14 *reveal that the approval of the application is no*
15 *longer consistent with the protection of the public*
16 *health;*

17 “(4) *the applicant failed to conduct or submit*
18 *the postmarket surveillance and studies required*
19 *under subsection (g)(2)(C)(ii) or (i); or*

20 “(5) *the applicant failed to meet a condition im-*
21 *posed under subsection (h).*

22 “(k) *CHAPTER IV OR V.—A product approved in ac-*
23 *cordance with this section shall not be subject to chapter*
24 *IV or V.*

25 “(l) *IMPLEMENTING REGULATIONS OR GUIDANCE.—*

1 “(1) *SCIENTIFIC EVIDENCE.*—Not later than 2
2 *years after the date of enactment of the Family Smok-*
3 *ing Prevention and Tobacco Control Act, the Sec-*
4 *retary shall issue regulations or guidance (or any*
5 *combination thereof) on the scientific evidence re-*
6 *quired for assessment and ongoing review of modified*
7 *risk tobacco products. Such regulations or guidance*
8 *shall—*

9 “(A) *establish minimum standards for sci-*
10 *entific studies needed prior to approval to show*
11 *that a substantial reduction in morbidity or*
12 *mortality among individual tobacco users is like-*
13 *ly;*

14 “(B) *include validated biomarkers, inter-*
15 *mediate clinical endpoints, and other feasible*
16 *outcome measures, as appropriate;*

17 “(C) *establish minimum standards for post*
18 *market studies, that shall include regular and*
19 *long-term assessments of health outcomes and*
20 *mortality, intermediate clinical endpoints, con-*
21 *sumer perception of harm reduction, and the im-*
22 *pact on quitting behavior and new use of tobacco*
23 *products, as appropriate;*

1 “(D) establish minimum standards for re-
2 quired postmarket surveillance, including ongo-
3 ing assessments of consumer perception; and

4 “(E) require that data from the required
5 studies and surveillance be made available to the
6 Secretary prior to the decision on renewal of a
7 modified risk tobacco product.

8 “(2) CONSULTATION.—The regulations or guid-
9 ance issued under paragraph (1) shall be developed in
10 consultation with the Institute of Medicine, and with
11 the input of other appropriate scientific and medical
12 experts, on the design and conduct of such studies and
13 surveillance.

14 “(3) REVISION.—The regulations or guidance
15 under paragraph (1) shall be revised on a regular
16 basis as new scientific information becomes available.

17 “(4) NEW TOBACCO PRODUCTS.—Not later than
18 2 years after the date of enactment of the Family
19 Smoking Prevention and Tobacco Control Act, the
20 Secretary shall issue a regulation or guidance that
21 permits the filing of a single application for any to-
22 bacco product that is a new tobacco product under
23 section 910 and for which the applicant seeks ap-
24 proval as a modified risk tobacco product under this
25 section.

1 “(m) *DISTRIBUTORS.*—No distributor may take any
2 action, after the date of enactment of the Family Smoking
3 Prevention and Tobacco Control Act, with respect to a to-
4 bacco product that would reasonably be expected to result
5 in consumers believing that the tobacco product or its smoke
6 may present a lower risk of disease or is less harmful than
7 one or more commercially marketed tobacco products, or
8 presents a reduced exposure to, or does not contain or is
9 free of, a substance or substances.

10 **“SEC. 912. JUDICIAL REVIEW.**

11 “(a) *RIGHT TO REVIEW.*—

12 “(1) *IN GENERAL.*—Not later than 30 days
13 after—

14 “(A) the promulgation of a regulation
15 under section 907 establishing, amending, or re-
16 voking a tobacco product standard; or

17 “(B) a denial of an application for ap-
18 proval under section 910(c),

19 any person adversely affected by such regulation or
20 denial may file a petition for judicial review of such
21 regulation or denial with the United States Court of
22 Appeals for the District of Columbia or for the circuit
23 in which such person resides or has their principal
24 place of business.

25 “(2) *REQUIREMENTS.*—

1 “(A) *COPY OF PETITION.*—A copy of the pe-
2 tition filed under paragraph (1) shall be trans-
3 mitted by the clerk of the court involved to the
4 Secretary.

5 “(B) *RECORD OF PROCEEDINGS.*—On re-
6 ceipt of a petition under subparagraph (A), the
7 Secretary shall file in the court in which such
8 petition was filed—

9 “(i) the record of the proceedings on
10 which the regulation or order was based;
11 and

12 “(ii) a statement of the reasons for the
13 issuance of such a regulation or order.

14 “(C) *DEFINITION OF RECORD.*—In this sec-
15 tion, the term ‘record’ means—

16 “(i) all notices and other matter pub-
17 lished in the *Federal Register* with respect
18 to the regulation or order reviewed;

19 “(ii) all information submitted to the
20 Secretary with respect to such regulation or
21 order;

22 “(iii) proceedings of any panel or ad-
23 visory committee with respect to such regu-
24 lation or order;

1 “(iv) any hearing held with respect to
2 such regulation or order; and

3 “(v) any other information identified
4 by the Secretary, in the administrative pro-
5 ceeding held with respect to such regulation
6 or order, as being relevant to such regula-
7 tion or order.

8 “(b) *STANDARD OF REVIEW.*—Upon the filing of the
9 petition under subsection (a) for judicial review of a regula-
10 tion or order, the court shall have jurisdiction to review
11 the regulation or order in accordance with chapter 7 of title
12 5, United States Code, and to grant appropriate relief, in-
13 cluding interim relief, as provided for in such chapter. A
14 regulation or denial described in subsection (a) shall be re-
15 viewed in accordance with section 706(2)(A) of title 5,
16 United States Code.

17 “(c) *FINALITY OF JUDGMENT.*—The judgment of the
18 court affirming or setting aside, in whole or in part, any
19 regulation or order shall be final, subject to review by the
20 Supreme Court of the United States upon certiorari or cer-
21 tification, as provided in section 1254 of title 28, United
22 States Code.

23 “(d) *OTHER REMEDIES.*—The remedies provided for
24 in this section shall be in addition to, and not in lieu of,
25 any other remedies provided by law.

1 “(e) *REGULATIONS AND ORDERS MUST RECITE BASIS*
2 *IN RECORD.*—*To facilitate judicial review, a regulation or*
3 *order issued under section 906, 907, 908, 909, 910, or 916*
4 *shall contain a statement of the reasons for the issuance*
5 *of such regulation or order in the record of the proceedings*
6 *held in connection with its issuance.*

7 “**SEC. 913. EQUAL TREATMENT OF RETAIL OUTLETS.**

8 “*The Secretary shall issue regulations to require that*
9 *retail establishments for which the predominant business is*
10 *the sale of tobacco products comply with any advertising*
11 *restrictions applicable to retail establishments accessible to*
12 *individuals under the age of 18.*

13 “**SEC. 914. JURISDICTION OF AND COORDINATION WITH**
14 **THE FEDERAL TRADE COMMISSION.**

15 “(a) *JURISDICTION.*—

16 “(1) *IN GENERAL.*—*Except where expressly pro-*
17 *vided in this chapter, nothing in this chapter shall be*
18 *construed as limiting or diminishing the authority of*
19 *the Federal Trade Commission to enforce the laws*
20 *under its jurisdiction with respect to the advertising,*
21 *sale, or distribution of tobacco products.*

22 “(2) *ENFORCEMENT.*—*Any advertising that vio-*
23 *lates this chapter or a provision of the regulations re-*
24 *ferred to in section 1112 of the Family Smoking Pre-*
25 *vention and Tobacco Control Act, is an unfair or de-*

1 *ceptive act or practice under section 5(a) of the Fed-*
2 *eral Trade Commission Act (15 U.S.C. 45(a)) and*
3 *shall be considered a violation of a rule promulgated*
4 *under section 18 of that Act (15 U.S.C. 57a).*

5 “(b) *COORDINATION.*—*With respect to the requirements*
6 *of section 4 of the Federal Cigarette Labeling and Adver-*
7 *tising Act (15 U.S.C. 1333) and section 3 of the Comprehen-*
8 *sive Smokeless Tobacco Health Education Act of 1986 (15*
9 *U.S.C. 4402)—*

10 *“(1) the Chairman of the Federal Trade Com-*
11 *mission shall coordinate with the Secretary con-*
12 *cerning the enforcement of such Act as such enforce-*
13 *ment relates to unfair or deceptive acts or practices*
14 *in the advertising of cigarettes or smokeless tobacco;*
15 *and*

16 *“(2) the Secretary shall consult with the Chair-*
17 *man of such Commission in revising the label state-*
18 *ments and requirements under such sections.*

19 **“SEC. 915. CONGRESSIONAL REVIEW PROVISIONS.**

20 *“In accordance with section 801 of title 5, United*
21 *States Code, Congress shall review, and may disapprove,*
22 *any rule under this chapter that is subject to section 801.*
23 *This section and section 801 do not apply to the regulations*
24 *referred to in section 1112 of the Family Smoking Preven-*
25 *tion and Tobacco Control Act.*

1 **“SEC. 916. REGULATION REQUIREMENT.**

2 “(a) *TESTING, REPORTING, AND DISCLOSURE.*—Not
3 later than 24 months after the date of enactment of the
4 *Family Smoking Prevention and Tobacco Control Act*, the
5 Secretary, acting through the Commissioner of the Food and
6 Drug Administration, shall promulgate regulations under
7 this Act that meet the requirements of subsection (b).

8 “(b) *CONTENTS OF RULES.*—The regulations promul-
9 gated under subsection (a) shall require testing and report-
10 ing of tobacco product constituents, ingredients, and addi-
11 tives, including smoke constituents, by brand and sub-brand
12 that the Secretary determines should be tested to protect the
13 public health. The regulations may require that tobacco
14 product manufacturers, packagers, or importers make dis-
15 closures relating to the results of the testing of tar and nico-
16 tine through labels or advertising or other appropriate
17 means, and make disclosures regarding the results of the
18 testing of other constituents, including smoke constituents,
19 ingredients, or additives, that the Secretary determines
20 should be disclosed to the public to protect the public health
21 and will not mislead consumers about the risk of tobacco
22 related disease.

23 “(c) *AUTHORITY.*—The Food and Drug Administra-
24 tion shall have the authority under this chapter to conduct
25 or to require the testing, reporting, or disclosure of tobacco
26 product constituents, including smoke constituents.

1 **“SEC. 917. PRESERVATION OF STATE AND LOCAL AUTHOR-**
2 **ITY.**

3 “(a) *IN GENERAL.*—

4 “(1) *PRESERVATION.*—*Nothing in this chapter,*
5 *or rules promulgated under this chapter, shall be con-*
6 *strued to limit the authority of a Federal agency (in-*
7 *cluding the Armed Forces), a State or political sub-*
8 *division of a State, or the government of an Indian*
9 *tribe to enact, adopt, promulgate, and enforce any*
10 *law, rule, regulation, or other measure with respect to*
11 *tobacco products that is in addition to, or more strin-*
12 *gent than, requirements established under this chap-*
13 *ter, including a law, rule, regulation, or other meas-*
14 *ure relating to or prohibiting the sale, distribution,*
15 *possession, exposure to, access to, advertising and pro-*
16 *motion of, or use of tobacco products by individuals*
17 *of any age, information reporting to the State, or*
18 *measures relating to fire safety standards for tobacco*
19 *products. No provision of this chapter shall limit or*
20 *otherwise affect any State, Tribal, or local taxation of*
21 *tobacco products.*

22 “(2) *PREEMPTION OF CERTAIN STATE AND LOCAL*
23 *REQUIREMENTS.*—

24 “(A) *IN GENERAL.*—*Except as provided in*
25 *paragraph (1) and subparagraph (B), no State*
26 *or political subdivision of a State may establish*

1 *or continue in effect with respect to a tobacco*
2 *product any requirement which is different from,*
3 *or in addition to, any requirement under the*
4 *provisions of this chapter relating to tobacco*
5 *product standards, premarket approval, adulter-*
6 *ation, misbranding, labeling, registration, good*
7 *manufacturing standards, or reduced risk prod-*
8 *ucts.*

9 “(B) *EXCEPTION.*—*Subparagraph (A) does*
10 *not apply to requirements relating to the sale,*
11 *distribution, possession, information reporting to*
12 *the State, exposure to, access to, the advertising*
13 *and promotion of, or use of, tobacco products by*
14 *individuals of any age, or relating to fire safety*
15 *standards for tobacco products. Information dis-*
16 *closed to a State under subparagraph (A) that is*
17 *exempt from disclosure under section 554(b)(4)*
18 *of title 5, United States Code, shall be treated as*
19 *trade secret and confidential information by the*
20 *State.*

21 “(b) *RULE OF CONSTRUCTION REGARDING PRODUCT*
22 *LIABILITY.*—*No provision of this chapter relating to a to-*
23 *bacco product shall be construed to modify or otherwise af-*
24 *fect any action or the liability of any person under the*
25 *product liability law of any State.*

1 **“SEC. 918. TOBACCO PRODUCTS SCIENTIFIC ADVISORY**
2 **COMMITTEE.**

3 “(a) *ESTABLISHMENT.*—Not later than 1 year after the
4 date of enactment of the Family Smoking Prevention and
5 Tobacco Control Act, the Secretary shall establish a 11-
6 member advisory committee, to be known as the ‘Tobacco
7 Products Scientific Advisory Committee’.

8 “(b) *MEMBERSHIP.*—

9 “(1) *IN GENERAL.*—

10 “(A) *MEMBERS.*—The Secretary shall ap-
11 point as members of the Tobacco Products Sci-
12 entific Advisory Committee individuals who are
13 technically qualified by training and experience
14 in the medicine, medical ethics, science, or tech-
15 nology involving the manufacture, evaluation, or
16 use of tobacco products, who are of appropriately
17 diversified professional backgrounds. The com-
18 mittee shall be composed of—

19 “(i) 7 individuals who are physicians,
20 dentists, scientists, or health care profes-
21 sionals practicing in the area of oncology,
22 pulmonology, cardiology, toxicology, phar-
23 macology, addiction, or any other relevant
24 specialty;

1 “(ii) 1 individual who is an officer or
2 employee of a State or local government or
3 of the Federal Government;

4 “(iii) 1 individual as a representative
5 of the general public;

6 “(iv) 1 individual as a representative
7 of the interests in the tobacco manufac-
8 turing industry; and

9 “(v) 1 individual as a representative of
10 the interests of the tobacco growers.

11 “(B) NONVOTING MEMBERS.—The members
12 of the committee appointed under clauses (iv)
13 and (v) of subparagraph (A) shall serve as con-
14 sultants to those described in clauses (i) through
15 (iii) of subparagraph (A) and shall be nonvoting
16 representatives.

17 “(2) LIMITATION.—The Secretary may not ap-
18 point to the Advisory Committee any individual who
19 is in the regular full-time employ of the Food and
20 Drug Administration or any agency responsible for
21 the enforcement of this Act. The Secretary may ap-
22 point Federal officials as *ex officio* members.

23 “(3) CHAIRPERSON.—The Secretary shall des-
24 ignate 1 of the members of the Advisory Committee to
25 serve as chairperson.

1 “(c) *DUTIES.*—*The Tobacco Products Scientific Advi-*
2 *sory Committee shall provide advice, information, and rec-*
3 *ommendations to the Secretary—*

4 “(1) *as provided in this chapter;*

5 “(2) *on the effects of the alteration of the nicotine*
6 *yields from tobacco products;*

7 “(3) *on whether there is a threshold level below*
8 *which nicotine yields do not produce dependence on*
9 *the tobacco product involved; and*

10 “(4) *on its review of other safety, dependence, or*
11 *health issues relating to tobacco products as requested*
12 *by the Secretary.*

13 “(d) *COMPENSATION; SUPPORT; FACA.*—

14 “(1) *COMPENSATION AND TRAVEL.*—*Members of*
15 *the Advisory Committee who are not officers or em-*
16 *ployees of the United States, while attending con-*
17 *ferences or meetings of the committee or otherwise en-*
18 *gaged in its business, shall be entitled to receive com-*
19 *penetration at rates to be fixed by the Secretary, which*
20 *may not exceed the daily equivalent of the rate in ef-*
21 *fect for level 4 of the Senior Executive Schedule under*
22 *section 5382 of title 5, United States Code, for each*
23 *day (including travel time) they are so engaged; and*
24 *while so serving away from their homes or regular*
25 *places of business each member may be allowed travel*

1 *expenses, including per diem in lieu of subsistence, as*
2 *authorized by section 5703 of title 5, United States*
3 *Code, for persons in the Government service employed*
4 *intermittently.*

5 “(2) *ADMINISTRATIVE SUPPORT.*—*The Secretary*
6 *shall furnish the Advisory Committee clerical and*
7 *other assistance.*

8 “(3) *NONAPPLICATION OF FACA.*—*Section 14 of*
9 *the Federal Advisory Committee Act (5 U.S.C.*
10 *App.) does not apply to the Advisory Committee.*

11 “(e) *PROCEEDINGS OF ADVISORY PANELS AND COM-*
12 *MITTEES.*—*The Advisory Committee shall make and main-*
13 *tain a transcript of any proceeding of the panel or com-*
14 *mittee. Each such panel and committee shall delete from*
15 *any transcript made under this subsection information*
16 *which is exempt from disclosure under section 552(b) of title*
17 *5, United States Code.*

18 **“SEC. 919. DRUG PRODUCTS USED TO TREAT TOBACCO DE-**

19 **PENDENCE.**

20 *The Secretary shall consider—*

21 “(1) *at the request of the applicant, designating*
22 *nicotine replacement products as fast track research*
23 *and approval products within the meaning of section*
24 *506;*

1 “(2) direct the Commissioner to consider approv-
2 ing the extended use of nicotine replacement products
3 (such as nicotine patches, nicotine gum, and nicotine
4 lozenges) for the treatment of tobacco dependence;

5 “(3) review and consider the evidence for addi-
6 tional indications for nicotine replacement products,
7 such as for craving relief or relapse prevention; and

8 “(4) consider—

9 “(A) relieving companies of premarket bur-
10 dens under section 505 if the requirement is re-
11 dundant considering other nicotine replacement
12 therapies already on the market; and

13 “(B) time and extent applications for nico-
14 tine replacement therapies that have been ap-
15 proved by a regulatory body in a foreign country
16 and have marketing experience in such country.

17 **“SEC. 920. USER FEE.**

18 “(a) *ESTABLISHMENT OF QUARTERLY USER FEE.*—
19 The Secretary shall assess a quarterly user fee with respect
20 to every quarter of each fiscal year commencing fiscal year
21 2004, calculated in accordance with this section, upon each
22 manufacturer and importer of tobacco products subject to
23 this chapter.

24 “(b) *FUNDING OF FDA REGULATION OF TOBACCO*
25 *PRODUCTS.*—The Secretary shall make user fees collected

1 *pursuant to this section available to pay, in each fiscal*
2 *year, for the costs of the activities of the Food and Drug*
3 *Administration related to the regulation of tobacco products*
4 *under this chapter.*

5 “(c) *ASSESSMENT OF USER FEE.*—

6 “(1) *AMOUNT OF ASSESSMENT.*—*Except as pro-*
7 *vided in paragraph (4), the total user fees assessed*
8 *each year pursuant to this section shall be sufficient,*
9 *and shall not exceed what is necessary, to pay for the*
10 *costs of the activities described in subsection (b) for*
11 *each fiscal year.*

12 “(2) *ALLOCATION OF ASSESSMENT BY CLASS OF*
13 *TOBACCO PRODUCTS.*—

14 “(A) *IN GENERAL.*—*Subject to paragraph*
15 *(3), the total user fees assessed each fiscal year*
16 *with respect to each class of importers and man-*
17 *ufacturers shall be equal to an amount that is*
18 *the applicable percentage of the total costs of ac-*
19 *tivities of the Food and Drug Administration de-*
20 *scribed in subsection (b).*

21 “(B) *APPLICABLE PERCENTAGE.*—*For pur-*
22 *poses of subparagraph (A) the applicable per-*
23 *centage for a fiscal year shall be the following:*

24 “(i) *92.07 percent shall be assessed on*
25 *manufacturers and importers of cigarettes;*

1 “(ii) 0.05 percent shall be assessed on
2 manufacturers and importers of little ci-
3 gars;

4 “(iii) 7.15 percent shall be assessed on
5 manufacturers and importers of cigars other
6 than little cigars;

7 “(iv) 0.43 percent shall be assessed on
8 manufacturers and importers of snuff;

9 “(v) 0.10 percent shall be assessed on
10 manufacturers and importers of chewing to-
11 bacco;

12 “(vi) 0.06 percent shall be assessed on
13 manufacturers and importers of pipe to-
14 bacco; and

15 “(vii) 0.14 percent shall be assessed on
16 manufacturers and importers of roll-your-
17 own tobacco.

18 “(3) *DISTRIBUTION OF FEE SHARES OF MANU-
19 FACTURERS AND IMPORTERS EXEMPT FROM USER
20 FEE.*—Where a class of tobacco products is not subject
21 to a user fee under this section, the portion of the user
22 fee assigned to such class under subsection (d)(2) shall
23 be allocated by the Secretary on a pro rata basis
24 among the classes of tobacco products that are subject
25 to a user fee under this section. Such pro rata alloca-

1 *tion for each class of tobacco products that are subject*
2 *to a user fee under this section shall be the quotient*
3 *of—*

4 *“(A) the sum of the percentages assigned to*
5 *all classes of tobacco products subject to this sec-*
6 *tion; divided by*

7 *“(B) the percentage assigned to such class*
8 *under paragraph (2).*

9 *“(4) ANNUAL LIMIT ON ASSESSMENT.—The total*
10 *assessment under this section—*

11 *“(A) for fiscal year 2004 shall be*
12 *\$85,000,000;*

13 *“(B) for fiscal year 2005 shall be*
14 *\$175,000,000;*

15 *“(C) for fiscal year 2006 shall be*
16 *\$300,000,000; and*

17 *“(D) for each subsequent fiscal year, shall*
18 *not exceed the limit on the assessment imposed*
19 *during the previous fiscal year, as adjusted by*
20 *the Secretary (after notice, published in the Fed-*
21 *eral Register) to reflect the greater of—*

22 *“(i) the total percentage change that*
23 *occurred in the Consumer Price Index for*
24 *all urban consumers (all items; United*
25 *States city average) for the 12-month period*

1 *ending on June 30 of the preceding fiscal*
2 *year for which fees are being established; or*
3 “(ii) *the total percentage change for the*
4 *previous fiscal year in basic pay under the*
5 *General Schedule in accordance with section*
6 *5332 of title 5, United States Code, as ad-*
7 *justed by any locality-based comparability*
8 *payment pursuant to section 5304 of such*
9 *title for Federal employees stationed in the*
10 *District of Columbia.*

11 “(5) *TIMING OF USER FEE ASSESSMENT.*—*The*
12 *Secretary shall notify each manufacturer and im-*
13 *porter of tobacco products subject to this section of the*
14 *amount of the quarterly assessment imposed on such*
15 *manufacturer or importer under subsection (f) during*
16 *each quarter of each fiscal year. Such notifications*
17 *shall occur not earlier than 3 months prior to the end*
18 *of the quarter for which such assessment is made, and*
19 *payments of all assessments shall be made not later*
20 *than 60 days after each such notification.*

21 “(d) *DETERMINATION OF USER FEE BY COMPANY*
22 *MARKET SHARE.*—

23 “(1) *IN GENERAL.*—*The user fee to be paid by*
24 *each manufacturer or importer of a given class of to-*

1 *tobacco products shall be determined in each quarter by*
2 *multiplying—*

3 *“(A) such manufacturer’s or importer’s*
4 *market share of such class of tobacco products; by*

5 *“(B) the portion of the user fee amount for*
6 *the current quarter to be assessed on manufac-*
7 *turers and importers of such class of tobacco*
8 *products as determined under subsection (e).*

9 *“(2) NO FEE IN EXCESS OF MARKET SHARE.—*
10 *No manufacturer or importer of tobacco products*
11 *shall be required to pay a user fee in excess of the*
12 *market share of such manufacturer or importer.*

13 *“(e) DETERMINATION OF VOLUME OF DOMESTIC*
14 *SALES.—*

15 *“(1) IN GENERAL.—The calculation of gross do-*
16 *mestic volume of a class of tobacco product by a man-*
17 *ufacturer or importer, and by all manufacturers and*
18 *importers as a group, shall be made by the Secretary*
19 *using information provided by manufacturers and*
20 *importers pursuant to subsection (f), as well as any*
21 *other relevant information provided to or obtained by*
22 *the Secretary.*

23 *“(2) MEASUREMENT.—For purposes of the cal-*
24 *culations under this subsection and the information*

1 provided under subsection (f) by the Secretary, gross
2 domestic volume shall be measured by—

3 “(A) in the case of cigarettes, the number of
4 cigarettes sold;

5 “(B) in the case of little cigars, the number
6 of little cigars sold;

7 “(C) in the case of large cigars, the number
8 of cigars weighing more than 3 pounds per thou-
9 sand sold; and

10 “(D) in the case of other classes of tobacco
11 products, in terms of number of pounds, or frac-
12 tion thereof, of these products sold.

13 “(f) MEASUREMENT OF GROSS DOMESTIC VOLUME.—

14 “(1) IN GENERAL.—Each manufacturer and im-
15 porter of tobacco products shall submit to the Sec-
16 retary a certified copy of each of the returns or forms
17 described by this paragraph that are required to be
18 filed with a Government agency on the same date that
19 those returns or forms are filed, or required to be
20 filed, with such agency. The returns and forms de-
21 scribed by this paragraph are those returns and forms
22 related to the release of tobacco products into domestic
23 commerce, as defined by section 5702(k) of the Inter-
24 nal Revenue Code of 1986, and the repayment of the
25 taxes imposed under chapter 52 of such Code (ATF

1 *Form 500.24 and United States Customs Form 7501*
2 *under currently applicable regulations).*

3 “(2) *PENALTIES.*—*Any person that knowingly*
4 *fails to provide information required under this sub-*
5 *section or that provides false information under this*
6 *subsection shall be subject to the penalties described in*
7 *section 1003 of title 18, United States Code. In addi-*
8 *tion, such person may be subject to a civil penalty in*
9 *an amount not to exceed 2 percent of the value of the*
10 *kind of tobacco products manufactured or imported*
11 *by such person during the applicable quarter, as de-*
12 *termined by the Secretary.*

13 “(h) *EFFECTIVE DATE.*—*The user fees prescribed by*
14 *this section shall be assessed in fiscal year 2004, based on*
15 *domestic sales of tobacco products during fiscal year 2003*
16 *and shall be assessed in each fiscal year thereafter.”.*

17 **SEC. 1112. INTERIM FINAL RULE.**

18 (a) *CIGARETTES AND SMOKELESS TOBACCO.*—

19 (1) *IN GENERAL.*—*Not later than 30 days after*
20 *the date of enactment of this Act, the Secretary of*
21 *Health and Human Services shall publish in the Fed-*
22 *eral Register an interim final rule regarding ciga-*
23 *rettes and smokeless tobacco, which is hereby deemed*
24 *to be in compliance with the Administrative Proce-*
25 *dures Act and other applicable law.*

1 (2) *CONTENTS OF RULE.*—*Except as provided in*
2 *this subsection, the interim final rule published under*
3 *paragraph (1), shall be identical in its provisions to*
4 *part 897 of the regulations promulgated by the Sec-*
5 *retary of Health and Human Services in the August*
6 *28, 1996, issue of the Federal Register (61 Fed. Reg.,*
7 *44615–44618). Such rule shall—*

8 (A) *provide for the designation of jurisdic-*
9 *tional authority that is in accordance with this*
10 *subsection;*

11 (B) *strike Subpart C—Labeling and section*
12 *897.32(c); and*

13 (C) *become effective not later than 1 year*
14 *after the date of enactment of this Act.*

15 (3) *AMENDMENTS TO RULE.*—*Prior to making*
16 *amendments to the rule published under paragraph*
17 *(1), the Secretary shall promulgate a proposed rule in*
18 *accordance with the Administrative Procedures Act.*

19 (4) *RULE OF CONSTRUCTION.*—*Except as pro-*
20 *vided in paragraph (3), nothing in this section shall*
21 *be construed to limit the authority of the Secretary to*
22 *amend, in accordance with the Administrative Proce-*
23 *dures Act, the regulation promulgated pursuant to*
24 *this section.*

1 (b) *LIMITATION ON ADVISORY OPINIONS.*—As of the
2 date of enactment of this Act, the following documents
3 issued by the Food and Drug Administration shall not con-
4 stitute advisory opinions under section 10.85(d)(1) of title
5 21, Code of Federal Regulations, except as they apply to
6 tobacco products, and shall not be cited by the Secretary
7 of Health and Human Services or the Food and Drug Ad-
8 ministration as binding precedent:

9 (1) *The preamble to the proposed rule in the docu-*
10 *ment entitled “Regulations Restricting the Sale and*
11 *Distribution of Cigarettes and Smokeless Tobacco*
12 *Products to Protect Children and Adolescents” (60*
13 *Fed. Reg. 41314–41372 (August 11, 1995)).*

14 (2) *The document entitled “Nicotine in Ciga-*
15 *rettes and Smokeless Tobacco Products is a Drug and*
16 *These Products Are Nicotine Delivery Devices Under*
17 *the Federal Food, Drug, and Cosmetic Act” (60 Fed.*
18 *Reg. 41453–41787 (August 11, 1995)).*

19 (3) *The preamble to the final rule in the docu-*
20 *ment entitled “Regulations Restricting the Sale and*
21 *Distribution of Cigarettes and Smokeless Tobacco to*
22 *Protect Children and Adolescents” (61 Fed. Reg.*
23 *44396–44615 (August 28, 1996)).*

24 (4) *The document entitled “Nicotine in Ciga-*
25 *rettes and Smokeless Tobacco is a Drug and These*

1 *Products are Nicotine Delivery Devices Under the*
2 *Federal Food, Drug, and Cosmetic Act; Jurisdictional*
3 *Determination” (61 Fed. Reg. 44619–45318 (August*
4 *28, 1996)).*

5 **SEC. 1113. CONFORMING AND OTHER AMENDMENTS TO**
6 **GENERAL PROVISIONS.**

7 (a) *AMENDMENT OF FEDERAL FOOD, DRUG, AND COS-*
8 *METIC ACT.—Except as otherwise expressly provided, when-*
9 *ever in this section an amendment is expressed in terms*
10 *of an amendment to, or repeal of, a section or other provi-*
11 *sion, the reference is to a section or other provision of the*
12 *Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et*
13 *seq.).*

14 (b) *SECTION 301.—Section 301 (21 U.S.C. 331) is*
15 *amended—*

16 (1) *in subsection (a), by inserting “tobacco prod-*
17 *uct,” after “device,”;*

18 (2) *in subsection (b), by inserting “tobacco prod-*
19 *uct,” after “device,”;*

20 (3) *in subsection (c), by inserting “tobacco prod-*
21 *uct,” after “device,”;*

22 (4) *in subsection (e), by striking “515(f), or 519”*
23 *and inserting “515(f), 519, or 909”;*

24 (5) *in subsection (g), by inserting “tobacco prod-*
25 *uct,” after “device,”;*

1 (6) in subsection (h), by inserting “tobacco prod-
2 uct,” after “device,”;

3 (7) in subsection (j), by striking “708, or 721”
4 and inserting “708, 721, 904, 905, 906, 907, 908,
5 909, or section 921(b)”;

6 (8) in subsection (k), by inserting “tobacco prod-
7 uct,” after “device,”;

8 (9) by striking subsection (p) and inserting the
9 following:

10 “(p) The failure to register in accordance with section
11 510 or 905, the failure to provide any information required
12 by section 510(j), 510(k), 905(i), or 905(j), or the failure
13 to provide a notice required by section 510(j)(2) or
14 905(i)(2).”;

15 (10) by striking subsection (q)(1) and inserting
16 the following:

17 “(q)(1) The failure or refusal—

18 “(A) to comply with any requirement prescribed
19 under section 518, 520(g), 903(b)(8), or 908, or condi-
20 tion prescribed under section 903(b)(6)(B)(ii)(II);

21 “(B) to furnish any notification or other mate-
22 rial or information required by or under section 519,
23 520(g), 904, 909, or section 921; or

24 “(C) to comply with a requirement under section
25 522 or 913.”;

1 (11) in subsection (q)(2), by striking “device,”
2 and inserting “device or tobacco product,”;

3 (12) in subsection (r), by inserting “or tobacco
4 product” after “device” each time that it appears;
5 and

6 (13) by adding at the end the following:

7 “(aa) The sale of tobacco products in violation of
8 a no-tobacco-sale order issued under section 303(f).

9 “(bb) The introduction or delivery for introduc-
10 tion into interstate commerce of a tobacco product in
11 violation of section 911.

12 “(cc)(1) Forging, counterfeiting, simulating, or
13 falsely representing, or without proper authority
14 using any mark, stamp (including tax stamp), tag,
15 label, or other identification device upon any tobacco
16 product or container or labeling thereof so as to
17 render such tobacco product a counterfeit tobacco
18 product.

19 “(2) Making, selling, disposing of, or keeping in
20 possession, control, or custody, or concealing any
21 punch, die, plate, stone, or other item that is designed
22 to print, imprint, or reproduce the trademark, trade
23 name, or other identifying mark, imprint, or device
24 of another or any likeness of any of the foregoing
25 upon any tobacco product or container or labeling

1 *thereof so as to render such tobacco product a counter-*
2 *feit tobacco product.*

3 “(3) *The doing of any act that causes a tobacco*
4 *product to be a counterfeit tobacco product, or the sale*
5 *or dispensing, or the holding for sale or dispensing,*
6 *of a counterfeit tobacco product.*

7 “(dd) *The charitable distribution of tobacco*
8 *products.*

9 “(ee) *The failure of a manufacturer or dis-*
10 *tributor to notify the Attorney General of their knowl-*
11 *edge of tobacco products used in illicit trade.”.*

12 (c) *SECTION 303.—Section 303 (21 U.S.C. 333(f)) is*
13 *amended in subsection (f)—*

14 (1) *by striking the subsection heading and in-*
15 *serting the following:*

16 “(f) *CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—*
17 ”;

18 (2) *in paragraph (1)(A), by inserting “or to-*
19 *bacco products” after “devices”;*

20 (3) *by redesignating paragraphs (3), (4), and (5)*
21 *as paragraphs (4), (5), and (6), and inserting after*
22 *paragraph (2) the following:*

23 “(3) *If the Secretary finds that a person has*
24 *committed repeated violations of restrictions promul-*
25 *gated under section 906(d) at a particular retail out-*

1 *let then the Secretary may impose a no-tobacco-sale*
2 *order on that person prohibiting the sale of tobacco*
3 *products in that outlet. A no-tobacco-sale order may*
4 *be imposed with a civil penalty under paragraph*
5 *(1).”;*

6 *(4) in paragraph (4) as so redesignated—*

7 *(A) in subparagraph (A)—*

8 *(i) by striking “assessed” the first time*
9 *it appears and inserting “assessed, or a no-*
10 *tobacco-sale order may be imposed,”; and*

11 *(ii) by striking “penalty” and insert-*
12 *ing “penalty, or upon whom a no-tobacco-*
13 *order is to be imposed,”;*

14 *(B) in subparagraph (B)—*

15 *(i) by inserting after “penalty,” the*
16 *following: “or the period to be covered by a*
17 *no-tobacco-sale order,”; and*

18 *(ii) by adding at the end the following:*
19 *“A no-tobacco-sale order permanently pro-*
20 *hibiting an individual retail outlet from*
21 *selling tobacco products shall include provi-*
22 *sions that allow the outlet, after a specified*
23 *period of time, to request that the Secretary*
24 *compromise, modify, or terminate the*
25 *order.”; and*

1 (C) by adding at the end, the following:

2 “(D) The Secretary may compromise, mod-
3 ify, or terminate, with or without conditions,
4 any no-tobacco-sale order.”;

5 (5) in paragraph (5) as so redesignated—

6 (A) by striking “(3)(A)” as redesignated,
7 and inserting “(4)(A)”;

8 (B) by inserting “or the imposition of a no-
9 tobacco-sale order” after “penalty” the first 2
10 places it appears; and

11 (C) by striking “issued.” and inserting
12 “issued, or on which the no-tobacco-sale order
13 was imposed, as the case may be.”; and

14 (6) in paragraph (6), as so redesignated, by
15 striking “paragraph (4)” each place it appears and
16 inserting “paragraph (5)”.

17 (d) SECTION 304.—Section 304 (21 U.S.C. 334) is
18 amended—

19 (1) in subsection (a)(2)—

20 (A) by striking “and” before “(D)”;

21 (B) by striking “device.” and inserting the
22 following: “, (E) Any adulterated or misbranded
23 tobacco product.”;

24 (2) in subsection (d)(1), by inserting “tobacco
25 product,” after “device,”;

1 (3) in subsection (g)(1), by inserting “or tobacco
2 product” after “device” each place it appears; and

3 (4) in subsection (g)(2)(A), by inserting “or to-
4 bacco product” after “device” each place it appears.

5 (e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a))
6 is amended—

7 (1) by inserting “(1)” after “(a)”; and

8 (2) by adding at the end thereof the following:

9 “(2) For a tobacco product, to the extent feasible, the
10 Secretary shall contract with the States in accordance with
11 paragraph (1) to carry out inspections of retailers in con-
12 nection with the enforcement of this Act.”.

13 (f) SECTION 703.—Section 703 (21 U.S.C. 373) is
14 amended—

15 (1) by inserting “tobacco product,” after “de-
16 vice,” each place it appears; and

17 (2) by inserting “tobacco products,” after “de-
18 vices,” each place it appears.

19 (g) SECTION 704.—Section 704 (21 U.S.C. 374) is
20 amended—

21 (1) in subsection (a)(1)(A), by inserting “tobacco
22 products,” after “devices,” each place it appears;

23 (2) in subsection (a)(1)(B), by inserting “or to-
24 bacco product” after “restricted devices” each place it
25 appears; and

1 (3) in subsection (b), by inserting “tobacco prod-
2 uct,” after “device,”.

3 (h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b))
4 is amended by inserting “tobacco products,” after “de-
5 vices,”.

6 (i) SECTION 709.—Section 709 (21 U.S.C. 379) is
7 amended by inserting “or tobacco product” after “device”.

8 (j) SECTION 801.—Section 801 (21 U.S.C. 381) is
9 amended—

10 (1) in subsection (a)—

11 (A) by inserting “tobacco products,” after
12 “devices,” the first time it appears;

13 (B) by inserting “or section 905(j)” after
14 “section 510”; and

15 (C) by striking “drugs or devices” each time
16 it appears and inserting “drugs, devices, or to-
17 bacco products”;

18 (2) in subsection (e)(1), by inserting “tobacco
19 product,” after “device,”; and

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

21 “(p)(1) Not later than 2 years after the date of enact-
22 ment of the Family Smoking Prevention and Tobacco Con-
23 trol Act, and annually thereafter, the Secretary shall submit
24 to the Committee on Health, Education, Labor, and Pen-

1 *sions of the Senate and the Committee on Energy and Com-*
2 *merce of the House of Representatives, a report regarding—*

3 “(A) *the nature, extent, and destination of*
4 *United States tobacco product exports that do not*
5 *conform to tobacco product standards established pur-*
6 *suant to this Act;*

7 “(B) *the public health implications of such ex-*
8 *ports, including any evidence of a negative public*
9 *health impact; and*

10 “(C) *recommendations or assessments of policy*
11 *alternatives available to Congress and the Executive*
12 *Branch to reduce any negative public health impact*
13 *caused by such exports.*

14 “(2) *The Secretary is authorized to establish appro-*
15 *priate information disclosure requirements to carry out this*
16 *subsection.”.*

17 *(k) SECTION 1003.—Section 1003(d)(2)(C) (as redesign-*
18 *ated by section 101(a)) is amended—*

19 (1) *by striking “and” after “cosmetics,”; and*

20 (2) *inserting a comma and “and tobacco prod-*
21 *ucts” after “devices”.*

22 *(l) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER*
23 *AMENDMENTS.—The amendments made by subsection (c),*
24 *other than the amendment made by paragraph (2) of such*

1 subsection, shall take effect upon the issuance of guidance
2 by the Secretary of Health and Human Services—

3 (1) defining the term “repeated violation”, as
4 used in section 303(f) of the Federal Food, Drug, and
5 Cosmetic Act (21 U.S.C. 333(f)) as amended by sub-
6 section (c), by identifying the number of violations of
7 particular requirements over a specified period of
8 time at a particular retail outlet that constitute a re-
9 peated violation;

10 (2) providing for timely and effective notice to
11 the retailer of each alleged violation at a particular
12 retail outlet and an expedited procedure for the ad-
13 ministrative appeal of an alleged violation;

14 (3) providing that a person may not be charged
15 with a violation at a particular retail outlet unless
16 the Secretary has provided notice to the retailer of all
17 previous violations at that outlet;

18 (4) establishing a period of time during which,
19 if there are no violations by a particular retail outlet,
20 that outlet will not be considered to have been the site
21 of repeated violations when the next violation occurs;
22 and

23 (5) providing that good faith reliance on the
24 presentation of a false government issued photo-
25 graphic identification that contains the bearer’s date

1 of birth does not constitute a violation of any min-
 2 imum age requirement for the sale of tobacco products
 3 if the retailer has taken effective steps to prevent such
 4 violations, including—

5 (A) adopting and enforcing a written policy
 6 against sales to minors;

7 (B) informing its employees of all applica-
 8 ble laws;

9 (C) establishing disciplinary sanctions for
 10 employee noncompliance; and

11 (D) requiring its employees to verify age by
 12 way of photographic identification or electronic
 13 scanning device.

14 **CHAPTER 2—TOBACCO PRODUCT WARN-**
 15 **INGS; CONSTITUENT AND SMOKE CON-**
 16 **STITUENT DISCLOSURE**

17 **SEC. 1121. CIGARETTE LABEL AND ADVERTISING WARN-**
 18 **INGS.**

19 *Section 4 of the Federal Cigarette Labeling and Adver-*
 20 *tising Act (15 U.S.C. 1333) is amended to read as follows:*

21 **“SEC. 4. LABELING.**

22 **“(a) LABEL REQUIREMENTS.—**

23 **“(1) IN GENERAL.—***It shall be unlawful for any*
 24 *person to manufacture, package, sell, offer to sell, dis-*
 25 *tribute, or import for sale or distribution within the*

1 *United States any cigarettes the package of which*
2 *fails to bear, in accordance with the requirements of*
3 *this section, one of the following labels:*

4 *‘WARNING: Cigarettes are addictive’.*

5 *‘WARNING: Tobacco smoke can harm your children’.*

6 *‘WARNING: Cigarettes cause fatal lung disease’.*

7 *‘WARNING: Cigarettes cause cancer’.*

8 *‘WARNING: Cigarettes cause strokes and heart dis-*
9 *ease’.*

10 *‘WARNING: Smoking during pregnancy can harm*
11 *your baby’.*

12 *‘WARNING: Smoking can kill you’.*

13 *‘WARNING: Tobacco smoke causes fatal lung disease*
14 *in non-smokers’.*

15 *‘WARNING: Quitting smoking now greatly reduces*
16 *serious risks to your health’.*

17 *“(2) PLACEMENT; TYPOGRAPHY; ETC.—*

18 *“(A) IN GENERAL.—Each label statement*
19 *required by paragraph (1) shall be located in the*
20 *upper portion of the front and rear panels of the*
21 *package, directly on the package underneath the*
22 *cellophane or other clear wrapping. Except as*
23 *provided in subparagraph (B), each label state-*
24 *ment shall comprise at least the top 30 percent*
25 *of the front and rear panels of the package. The*

1 word ‘WARNING’ shall appear in capital letters
2 and all text shall be in conspicuous and legible
3 17-point type, unless the text of the label state-
4 ment would occupy more than 70 percent of such
5 area, in which case the text may be in a smaller
6 conspicuous and legible type size, provided that
7 at least 60 percent of such area is occupied by
8 required text. The text shall be black on a white
9 background, or white on a black background, in
10 a manner that contrasts, by typography, layout,
11 or color, with all other printed material on the
12 package, in an alternating fashion under the
13 plan submitted under subsection (b)(4).

14 “(B) *FLIP-TOP BOXES.*—For any cigarette
15 brand package manufactured or distributed be-
16 fore January 1, 2000, which employs a flip-top
17 style (if such packaging was used for that brand
18 in commerce prior to June 21, 1997), the label
19 statement required by paragraph (1) shall be lo-
20 cated on the flip-top area of the package, even if
21 such area is less than 25 percent of the area of
22 the front panel. Except as provided in this para-
23 graph, the provisions of this subsection shall
24 apply to such packages.

1 “(3) *DOES NOT APPLY TO FOREIGN DISTRIBUTION.*—*The provisions of this subsection do not apply*
2 *to a tobacco product manufacturer or distributor of*
3 *cigarettes which does not manufacture, package, or*
4 *import cigarettes for sale or distribution within the*
5 *United States.*

7 “(4) *APPLICABILITY TO RETAILERS.*—*A retailer*
8 *of cigarettes shall not be in violation of this subsection*
9 *for packaging that is supplied to the retailer by a to-*
10 *bacco product manufacturer, importer, or distributor*
11 *and is not altered by the retailer in a way that is*
12 *material to the requirements of this subsection except*
13 *that this paragraph shall not relieve a retailer of li-*
14 *ability if the retailer sells or distributes tobacco prod-*
15 *ucts that are not labeled in accordance with this sub-*
16 *section.*

17 “(b) *ADVERTISING REQUIREMENTS.*—

18 “(1) *IN GENERAL.*—*It shall be unlawful for any*
19 *tobacco product manufacturer, importer, distributor,*
20 *or retailer of cigarettes to advertise or cause to be ad-*
21 *vertised within the United States any cigarette unless*
22 *its advertising bears, in accordance with the require-*
23 *ments of this section, one of the labels specified in*
24 *subsection (a) of this section.*

1 “(2) *TYPOGRAPHY, ETC.*—Each label statement
2 required by subsection (a) of this section in cigarette
3 advertising shall comply with the standards set forth
4 in this paragraph. For press and poster advertise-
5 ments, each such statement and (where applicable)
6 any required statement relating to tar, nicotine, or
7 other constituent (including a smoke constituent)
8 yield shall comprise at least 20 percent of the area of
9 the advertisement and shall appear in a conspicuous
10 and prominent format and location at the top of each
11 advertisement within the trim area. The Secretary
12 may revise the required type sizes in such area in
13 such manner as the Secretary determines appropriate.
14 The word ‘WARNING’ shall appear in capital letters,
15 and each label statement shall appear in conspicuous
16 and legible type. The text of the label statement shall
17 be black if the background is white and white if the
18 background is black, under the plan submitted under
19 paragraph (4) of this subsection. The label statements
20 shall be enclosed by a rectangular border that is the
21 same color as the letters of the statements and that is
22 the width of the first downstroke of the capital ‘W’ of
23 the word ‘WARNING’ in the label statements. The
24 text of such label statements shall be in a typeface pro
25 rata to the following requirements: 45-point type for

1 *a whole-page broadsheet newspaper advertisement; 39-*
2 *point type for a half-page broadsheet newspaper ad-*
3 *vertisement; 39-point type for a whole-page tabloid*
4 *newspaper advertisement; 27-point type for a half-*
5 *page tabloid newspaper advertisement; 31.5-point*
6 *type for a double page spread magazine or whole-page*
7 *magazine advertisement; 22.5-point type for a 28 cen-*
8 *timeter by 3 column advertisement; and 15-point type*
9 *for a 20 centimeter by 2 column advertisement. The*
10 *label statements shall be in English, except that in the*
11 *case of—*

12 *“(A) an advertisement that appears in a*
13 *newspaper, magazine, periodical, or other publi-*
14 *cation that is not in English, the statements*
15 *shall appear in the predominant language of the*
16 *publication; and*

17 *“(B) in the case of any other advertisement*
18 *that is not in English, the statements shall ap-*
19 *pear in the same language as that principally*
20 *used in the advertisement.*

21 *“(3) MATCHBOOKS.—Notwithstanding para-*
22 *graph (2), for matchbooks (defined as containing not*
23 *more than 20 matches) customarily given away with*
24 *the purchase of tobacco products, each label statement*

1 *required by subsection (a) may be printed on the in-*
2 *side cover of the matchbook.*

3 “(4) *ADJUSTMENT BY SECRETARY.*—*The Sec-*
4 *retary may, through a rulemaking under section 553*
5 *of title 5, United States Code, adjust the format and*
6 *type sizes for the label statements required by this sec-*
7 *tion or the text, format, and type sizes of any re-*
8 *quired tar, nicotine yield, or other constituent (in-*
9 *cluding smoke constituent) disclosures, or to establish*
10 *the text, format, and type sizes for any other disclo-*
11 *sures required under the Federal Food, Drug, and*
12 *Cosmetic Act (21 U.S.C. 301 et. seq.). The text of any*
13 *such label statements or disclosures shall be required*
14 *to appear only within the 20 percent area of cigarette*
15 *advertisements provided by paragraph (2) of this sub-*
16 *section. The Secretary shall promulgate regulations*
17 *which provide for adjustments in the format and type*
18 *sizes of any text required to appear in such area to*
19 *ensure that the total text required to appear by law*
20 *will fit within such area.*

21 “(5) *MARKETING REQUIREMENTS.*—

22 “(A) *The label statements specified in sub-*
23 *section (a)(1) shall be randomly displayed in*
24 *each 12-month period, in as equal a number of*
25 *times as is possible on each brand of the product*

1 *and be randomly distributed in all areas of the*
2 *United States in which the product is marketed*
3 *in accordance with a plan submitted by the to-*
4 *bacco product manufacturer, importer, dis-*
5 *tributor, or retailer and approved by the Sec-*
6 *retary.*

7 “(B) *The label statements specified in sub-*
8 *section (a)(1) shall be rotated quarterly in alter-*
9 *ating sequence in advertisements for each brand*
10 *of cigarettes in accordance with a plan sub-*
11 *mitted by the tobacco product manufacturer, im-*
12 *porter, distributor, or retailer to, and approved*
13 *by, the Secretary.*

14 “(C) *The Secretary shall review each plan*
15 *submitted under subparagraph (B) and approve*
16 *it if the plan—*

17 “(i) *will provide for the equal distribu-*
18 *tion and display on packaging and the ro-*
19 *tation required in advertising under this*
20 *subsection; and*

21 “(ii) *assures that all of the labels re-*
22 *quired under this section will be displayed*
23 *by the tobacco product manufacturer, im-*
24 *porter, distributor, or retailer at the same*
25 *time.*

1 “(6) *APPLICABILITY TO RETAILERS.*—*This sub-*
2 *section applies to a retailer only if that retailer is re-*
3 *ponsible for or directs the label statements required*
4 *under this section except that this paragraph shall*
5 *not relieve a retailer of liability if the retailer dis-*
6 *plays, in a location open to the public, an advertise-*
7 *ment that is not labeled in accordance with the re-*
8 *quirements of this subsection.”.*

9 **SEC. 1122. AUTHORITY TO REVISE CIGARETTE WARNING**
10 **LABEL STATEMENTS.**

11 *Section 4 of the Federal Cigarette Labeling and Adver-*
12 *tising Act (15 U.S.C. 1333), as amended by section 1121,*
13 *is further amended by adding at the end the following:*

14 “(c) *CHANGE IN REQUIRED STATEMENTS.*—*The Sec-*
15 *retary may, by a rulemaking conducted under section 553*
16 *of title 5, United States Code, adjust the format, type size,*
17 *and text of any of the label requirements, require color*
18 *graphics to accompany the text, increase the required label*
19 *area from 30 percent up to 50 percent of the front and rear*
20 *panels of the package, or establish the format, type size, and*
21 *text of any other disclosures required under the Federal*
22 *Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if*
23 *the Secretary finds that such a change would promote great-*
24 *er public understanding of the risks associated with the use*
25 *of tobacco products.”.*

1 **SEC. 1123. STATE REGULATION OF CIGARETTE ADVER-**
 2 **TISING AND PROMOTION.**

3 *Section 5 of the Federal Cigarette Labeling and Adver-*
 4 *tising Act (15 U.S.C. 1334) is amended by adding at the*
 5 *end the following:*

6 “(c) *EXCEPTION.—Notwithstanding subsection (b), a*
 7 *State or locality may enact statutes and promulgate regula-*
 8 *tions, based on smoking and health, that take effect after*
 9 *the effective date of the Family Smoking Prevention and*
 10 *Tobacco Control Act, imposing specific bans or restrictions*
 11 *on the time, place, and manner, but not content, of the ad-*
 12 *vertising or promotion of any cigarettes.”*

13 **SEC. 1124. SMOKELESS TOBACCO LABELS AND ADVER-**
 14 **TISING WARNINGS.**

15 *Section 3 of the Comprehensive Smokeless Tobacco*
 16 *Health Education Act of 1986 (15 U.S.C. 4402) is amended*
 17 *to read as follows:*

18 **“SEC. 3. SMOKELESS TOBACCO WARNING.**

19 **“(a) GENERAL RULE.—**

20 **“(1) It shall be unlawful for any person to man-**
 21 **ufacture, package, sell, offer to sell, distribute, or im-**
 22 **port for sale or distribution within the United States**
 23 **any smokeless tobacco product unless the product**
 24 **package bears, in accordance with the requirements of**
 25 **this Act, one of the following labels:**

26 **‘WARNING: This product can cause mouth cancer’.**

1 *‘WARNING: This product can cause gum disease and*
2 *tooth loss’.*

3 *‘WARNING: This product is not a safe alternative to*
4 *cigarettes’.*

5 *‘WARNING: Smokeless tobacco is addictive’.*

6 *“(2) Each label statement required by paragraph*
7 *(1) shall be—*

8 *“(A) located on the 2 principal display*
9 *panels of the package, and each label statement*
10 *shall comprise at least 30 percent of each such*
11 *display panel; and*

12 *“(B) in 17-point conspicuous and legible*
13 *type and in black text on a white background, or*
14 *white text on a black background, in a manner*
15 *that contrasts by typography, layout, or color,*
16 *with all other printed material on the package,*
17 *in an alternating fashion under the plan sub-*
18 *mitted under subsection (b)(3), except that if the*
19 *text of a label statement would occupy more than*
20 *70 percent of the area specified by subparagraph*
21 *(A), such text may appear in a smaller type size,*
22 *so long as at least 60 percent of such warning*
23 *area is occupied by the label statement.*

24 *“(3) The label statements required by paragraph*
25 *(1) shall be introduced by each tobacco product manu-*

1 *facturer, packager, importer, distributor, or retailer of*
2 *smokeless tobacco products concurrently into the dis-*
3 *tribution chain of such products.*

4 “(4) *The provisions of this subsection do not*
5 *apply to a tobacco product manufacturer or dis-*
6 *tributor of any smokeless tobacco product that does*
7 *not manufacture, package, or import smokeless to-*
8 *bacco products for sale or distribution within the*
9 *United States.*

10 “(5) *A retailer of smokeless tobacco products*
11 *shall not be in violation of this subsection for pack-*
12 *aging that is supplied to the retailer by a tobacco*
13 *products manufacturer, importer, or distributor and*
14 *that is not altered by the retailer unless the retailer*
15 *offers for sale, sells, or distributes a smokeless tobacco*
16 *product that is not labeled in accordance with this*
17 *subsection.*

18 “(b) *REQUIRED LABELS.—*

19 “(1) *It shall be unlawful for any tobacco product*
20 *manufacturer, packager, importer, distributor, or re-*
21 *tailer of smokeless tobacco products to advertise or*
22 *cause to be advertised within the United States any*
23 *smokeless tobacco product unless its advertising bears,*
24 *in accordance with the requirements of this section,*
25 *one of the labels specified in subsection (a).*

1 “(2) *Each label statement required by subsection*
2 *(a) in smokeless tobacco advertising shall comply with*
3 *the standards set forth in this paragraph. For press*
4 *and poster advertisements, each such statement and*
5 *(where applicable) any required statement relating to*
6 *tar, nicotine, or other constituent yield shall—*

7 “(A) *comprise at least 20 percent of the*
8 *area of the advertisement, and the warning area*
9 *shall be delineated by a dividing line of con-*
10 *trasting color from the advertisement; and*

11 “(B) *the word ‘WARNING’ shall appear in*
12 *capital letters and each label statement shall ap-*
13 *pear in conspicuous and legible type. The text of*
14 *the label statement shall be black on a white*
15 *background, or white on a black background, in*
16 *an alternating fashion under the plan submitted*
17 *under paragraph (3).*

18 “(3)(A) *The label statements specified in sub-*
19 *section (a)(1) shall be randomly displayed in each 12-*
20 *month period, in as equal a number of times as is*
21 *possible on each brand of the product and be ran-*
22 *domly distributed in all areas of the United States in*
23 *which the product is marketed in accordance with a*
24 *plan submitted by the tobacco product manufacturer,*

1 *importer, distributor, or retailer and approved by the*
2 *Secretary.*

3 *“(B) The label statements specified in subsection*
4 *(a)(1) shall be rotated quarterly in alternating se-*
5 *quence in advertisements for each brand of smokeless*
6 *tobacco product in accordance with a plan submitted*
7 *by the tobacco product manufacturer, importer, dis-*
8 *tributor, or retailer to, and approved by, the Sec-*
9 *retary.*

10 *“(C) The Secretary shall review each plan sub-*
11 *mitted under subparagraph (B) and approve it if the*
12 *plan—*

13 *“(i) will provide for the equal distribution*
14 *and display on packaging and the rotation re-*
15 *quired in advertising under this subsection; and*

16 *“(ii) assures that all of the labels required*
17 *under this section will be displayed by the to-*
18 *bacco product manufacturer, importer, dis-*
19 *tributor, or retailer at the same time.*

20 *“(D) This paragraph applies to a retailer only*
21 *if that retailer is responsible for or directs the label*
22 *statements under this section, unless the retailer dis-*
23 *plays in a location open to the public, an advertise-*
24 *ment that is not labeled in accordance with the re-*
25 *quirements of this subsection.*

1 “(c) *TELEVISION AND RADIO ADVERTISING.—It is un-*
2 *lawful to advertise smokeless tobacco on any medium of elec-*
3 *tronic communications subject to the jurisdiction of the*
4 *Federal Communications Commission.*”.

5 **SEC. 1125. AUTHORITY TO REVISE SMOKELESS TOBACCO**
6 **PRODUCT WARNING LABEL STATEMENTS.**

7 Section 3 of the *Comprehensive Smokeless Tobacco*
8 *Health Education Act of 1986 (15 U.S.C. 4402)*, as amend-
9 *ed by section 1123*, is further amended by adding at the
10 *end the following:*

11 “(d) *AUTHORITY TO REVISE WARNING LABEL STATE-*
12 *MENTS.—The Secretary may, by a rulemaking conducted*
13 *under section 553 of title 5, United States Code, adjust the*
14 *format, type size, and text of any of the label requirements,*
15 *require color graphics to accompany the text, increase the*
16 *required label area from 30 percent up to 50 percent of the*
17 *front and rear panels of the package, or establish the format,*
18 *type size, and text of any other disclosures required under*
19 *the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301*
20 *et seq.), if the Secretary finds that such a change would*
21 *promote greater public understanding of the risks associated*
22 *with the use of smokeless tobacco products.*”.

1 **SEC. 1126. TAR, NICOTINE, AND OTHER SMOKE CON-**
2 **STITUENT DISCLOSURE TO THE PUBLIC.**

3 *Section 4(a) of the Federal Cigarette Labeling and Ad-*
4 *vertising Act (15 U.S.C. 1333 (a)), as amended by section*
5 *1121, is further amended by adding at the end the fol-*
6 *lowing:*

7 *“(4)(A) The Secretary shall, by a rulemaking*
8 *conducted under section 553 of title 5, United States*
9 *Code, determine (in the Secretary’s sole discretion)*
10 *whether cigarette and other tobacco product manufac-*
11 *turers shall be required to include in the area of each*
12 *cigarette advertisement specified by subsection (b) of*
13 *this section, or on the package label, or both, the tar*
14 *and nicotine yields of the advertised or packaged*
15 *brand. Any such disclosure shall be in accordance*
16 *with the methodology established under such regula-*
17 *tions, shall conform to the type size requirements of*
18 *subsection (b) of this section, and shall appear within*
19 *the area specified in subsection (b) of this section.*

20 *“(B) Any differences between the requirements*
21 *established by the Secretary under subparagraph (A)*
22 *and tar and nicotine yield reporting requirements es-*
23 *tablished by the Federal Trade Commission shall be*
24 *resolved by a memorandum of understanding between*
25 *the Secretary and the Federal Trade Commission.*

1 “(C) *In addition to the disclosures required by*
2 *subparagraph (A) of this paragraph, the Secretary*
3 *may, under a rulemaking conducted under section*
4 *553 of title 5, United States Code, prescribe disclosure*
5 *requirements regarding the level of any cigarette or*
6 *other tobacco product constituent including any*
7 *smoke constituent. Any such disclosure may be re-*
8 *quired if the Secretary determines that disclosure*
9 *would be of benefit to the public health, or otherwise*
10 *would increase consumer awareness of the health con-*
11 *sequences of the use of tobacco products, except that*
12 *no such prescribed disclosure shall be required on the*
13 *face of any cigarette package or advertisement. Noth-*
14 *ing in this section shall prohibit the Secretary from*
15 *requiring such prescribed disclosure through a ciga-*
16 *rette or other tobacco product package or advertise-*
17 *ment insert, or by any other means under the Federal*
18 *Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).*

19 “(D) *This paragraph applies to a retailer only*
20 *if that retailer is responsible for or directs the label*
21 *statements required under this section, except that*
22 *this paragraph shall not relieve a retailer of liability*
23 *if the retailer sells or distributes tobacco products that*
24 *are not labeled in accordance with the requirements*
25 *of this subsection.”.*

1 **CHAPTER 3—PREVENTION OF ILLICIT**
2 **TRADE IN TOBACCO PRODUCTS**

3 **SEC. 1131. LABELING, RECORDKEEPING, RECORDS INSPEC-**
4 **TION.**

5 *Chapter IX of the Federal Food, Drug, and Cosmetic*
6 *Act, as added by section 1111, is further amended by adding*
7 *at the end the following:*

8 **“SEC. 921. LABELING, RECORDKEEPING, RECORDS INSPEC-**
9 **TION.**

10 “(a) *ORIGIN LABELING.*—*The label, packaging, and*
11 *shipping containers of tobacco products for introduction or*
12 *delivery for introduction into interstate commerce shall*
13 *bear the statement ‘sale only allowed in the United States.’*

14 “(b) *REGULATIONS CONCERNING RECORDKEEPING*
15 *FOR TRACKING AND TRACING.*—

16 “(1) *IN GENERAL.*—*Not later than 9 months*
17 *after the date of enactment of the Family Smoking*
18 *Prevention and Tobacco Control Act, the Secretary*
19 *shall promulgate regulations regarding the establish-*
20 *ment and maintenance of records by any person who*
21 *manufactures, processes, transports, distributes, re-*
22 *ceives, packages, holds, exports, or imports tobacco*
23 *products.*

24 “(2) *INSPECTION.*—*In promulgating the regula-*
25 *tions described in paragraph (1), the Secretary shall*

1 *consider which records are needed for inspection to*
2 *monitor the movement of tobacco products from the*
3 *point of manufacture through distribution to retail*
4 *outlets to assist in investigating potential illicit*
5 *trade, smuggling or counterfeiting of tobacco products.*

6 *“(3) CODES.—The Secretary may require codes*
7 *on the labels of tobacco products or other designs or*
8 *devices for the purpose of tracking or tracing the to-*
9 *bacco product through the distribution system.*

10 *“(4) SIZE OF BUSINESS.—The Secretary shall*
11 *take into account the size of a business in promul-*
12 *gating regulations under this section.*

13 *“(5) RECORDKEEPING BY RETAILERS.—The Sec-*
14 *retary shall not require any retailer to maintain*
15 *records relating to individual purchasers of tobacco*
16 *products for personal consumption.*

17 *“(c) RECORDS INSPECTION.—If the Secretary has a*
18 *reasonable belief that a tobacco product is part of an illicit*
19 *trade or smuggling or is a counterfeit product, each person*
20 *who manufactures, processes, transports, distributes, re-*
21 *ceives, holds, packages, exports, or imports tobacco products*
22 *shall, at the request of an officer or employee duly des-*
23 *ignated by the Secretary, permit such officer or employee,*
24 *at reasonable times and within reasonable limits and in*
25 *a reasonable manner, upon the presentation of appropriate*

1 *credentials and a written notice to such person, to have ac-*
 2 *cess to and copy all records (including financial records)*
 3 *relating to such article that are needed to assist the Sec-*
 4 *retary in investigating potential illicit trade, smuggling or*
 5 *counterfeiting of tobacco products.*

6 “(d) *KNOWLEDGE OF ILLEGAL TRANSACTION.—If the*
 7 *manufacturer or distributor of a tobacco product has knowl-*
 8 *edge which reasonably supports the conclusion that a to-*
 9 *bacco product manufactured or distributed by such manu-*
 10 *facturer or distributor that has left the control of such per-*
 11 *son may be or has been—*

12 “(A) *imported, exported, distributed or of-*
 13 *fered for sale in interstate commerce by a person*
 14 *without paying duties or taxes required by law;*
 15 *or*

16 “(B) *imported, exported, distributed or di-*
 17 *verted for possible illicit marketing,*
 18 *the manufacturer or distributor shall promptly notify the*
 19 *Attorney General of such knowledge.*

20 “(2) *KNOWLEDGE DEFINED.—For purposes of*
 21 *this subsection, the term ‘knowledge’ as applied to a*
 22 *manufacturer or distributor means—*

23 “(A) *the actual knowledge that the manu-*
 24 *facturer or distributor had; or*

1 “(B) the knowledge which a reasonable per-
2 son would have had under like circumstances or
3 which would have been obtained upon the exer-
4 cise of due care.

5 **SEC. 1132. STUDY AND REPORT.**

6 (a) *STUDY.*—The Comptroller General of the United
7 States shall conduct a study of cross-border trade in tobacco
8 products to—

9 (1) collect data on cross-border trade in tobacco
10 products, including illicit trade and trade of counter-
11 feit tobacco products and make recommendations on
12 the monitoring of such trade;

13 (2) collect data on cross-border advertising (any
14 advertising intended to be broadcast, transmitted, or
15 distributed from the United States to another coun-
16 try) of tobacco products and make recommendations
17 on how to prevent or eliminate, and what technologies
18 could help facilitate the elimination of, cross-border
19 advertising.

20 (b) *REPORT.*—Not later than 18 months after the date
21 of enactment of this Act, the Comptroller General of the
22 United States shall submit to the Committee on Health,
23 Education, Labor, and Pensions of the Senate and the Com-
24 mittee on Energy and Commerce of the House of Represent-
25 atives a report on the study described in subsection (a).

1 ***Subtitle B—Tobacco Market***
 2 ***Transition***

3 ***SEC. 1140. SHORT TITLE OF SUBTITLE.***

4 *This subtitle may be cited as the “Tobacco Market*
 5 *Transition Act of 2004”.*

6 ***CHAPTER 1—TERMINATION OF CURRENT***
 7 ***TOBACCO PROGRAMS***

8 ***SEC. 1141. TERMINATION OF TOBACCO PRODUCTION AD-***
 9 ***JUSTMENT PROGRAMS.***

10 (a) ***TOBACCO STATISTICS.***—*The Act of January 14,*
 11 *1929 (45 Stat. 1079; 7 U.S.C. 501 et seq.) is repealed.*

12 (b) ***TOBACCO STANDARDS.***—*The Tobacco Inspection*
 13 *Act (7 U.S.C. 511 et seq.) is repealed.*

14 (c) ***TOBACCO INSPECTIONS.***—*Section 213 of the To-*
 15 *bacco Adjustment Act of 1983 (7 U.S.C. 511r) is repealed.*

16 (d) ***TOBACCO CONTROL.***—*The Act of April 25, 1936*
 17 *(commonly known as the Tobacco Control Act; 7 U.S.C. 515*
 18 *et seq.), is repealed.*

19 (e) ***COMMODITY HANDLING ORDERS.***—*Section*
 20 *8c(2)(A) of the Agricultural Adjustment Act (7 U.S.C.*
 21 *608c(2)(A)), reenacted with amendments by the Agricul-*
 22 *tural Marketing Agreement Act of 1937, is amended by*
 23 *striking “tobacco.”*

24 (f) ***PROCESSING TAX.***—*Section 9(b) of the Agricultural*
 25 *Adjustment Act (7 U.S.C. 609(b)), reenacted with amend-*

1 *ments by the Agricultural Marketing Agreement Act of*
 2 *1937, is amended—*

3 *(1) in paragraph (2), by striking “tobacco,”; and*

4 *(2) in paragraph (6)B)(i), by striking “, or, in*
 5 *the case of tobacco, is less than the fair exchange value*
 6 *by not more than 10 per centum,”.*

7 *(g) BURLEY TOBACCO IMPORT REVIEW.—Section 3 of*
 8 *Public Law 98–59 (7 U.S.C. 625) is repealed.*

9 *(h) DECLARATION OF POLICY.—Section 2 of the Agri-*
 10 *cultural Adjustment Act of 1938 (7 U.S.C. 1282) is amend-*
 11 *ed by striking “tobacco,”.*

12 *(i) DEFINITIONS.—Section 301(b) of the Agricultural*
 13 *Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—*

14 *(1) in paragraph (3)—*

15 *(A) by striking subparagraph (C); and*

16 *(B) by redesignating subparagraph (D) as*
 17 *subparagraph (C);*

18 *(2) in paragraph (6)(A), by striking “tobacco,”;*

19 *(3) in paragraph (10)—*

20 *(A) by striking subparagraph (B); and*

21 *(B) by redesignating subparagraph (C) as*
 22 *subparagraph (B);*

23 *(4) in paragraph (11)(B), by striking “and to-*
 24 *bacco”;*

25 *(5) in paragraph (12), by striking “tobacco,”;*

1 (6) *in paragraph (14)*—

2 (A) *in subparagraph (A), by striking “(A)”*;

3 *and*

4 (B) *by striking subparagraphs (B), (C), and*
5 (D);

6 (7) *by striking paragraph (15)*;

7 (8) *in paragraph (16)*—

8 (A) *by striking subparagraph (B)*; *and*

9 (B) *by redesignating subparagraph (C) as*
10 *subparagraph (B)*;

11 (9) *by striking paragraph (17)*; *and*

12 (10) *by redesignating paragraph (16) as para-*
13 *graph (15).*

14 (j) *PARITY PAYMENTS.*—*Section 303 of the Agricul-*
15 *tural Adjustment Act of 1938 (7 U.S.C. 1303) is amended*
16 *in the first sentence by striking “rice, or tobacco,” and in-*
17 *serting “or rice.”*

18 (k) *MARKETING QUOTAS.*—*Part I of subtitle B of title*
19 *III of the Agricultural Adjustment Act of 1938 (7 U.S.C.*
20 *1311 et seq.) is repealed.*

21 (l) *ADMINISTRATIVE PROVISIONS.*—*Section 361 of the*
22 *Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is*
23 *amended by striking “tobacco.”*

1 (m) *ADJUSTMENT OF QUOTAS.*—Section 371 of the Ag-
2 *ricultural Adjustment Act of 1938 (7 U.S.C. 1371) is*
3 *amended—*

4 (1) *in the first sentence of subsection (a), by*
5 *striking “rice, or tobacco” and inserting “or rice”;*
6 *and*

7 (2) *in the first sentence of subsection (b), by*
8 *striking “rice, or tobacco” and inserting “or rice”.*

9 (n) *REPORTS AND RECORDS.*—Section 373 of the Agri-
10 *cultural Adjustment Act of 1938 (7 U.S.C. 1373) is*
11 *amended—*

12 (1) *by striking “rice, or tobacco” each place it*
13 *appears in subsections (a) and (b) and inserting “or*
14 *rice”;* *and*

15 (2) *in subsection (a)—*

16 (A) *in the first sentence, by striking “all*
17 *persons engaged in the business of redrying,*
18 *prizing, or stemming tobacco for producers,”;*
19 *and*

20 (B) *in the last sentence, by striking “\$500;”*
21 *and all that follows through the period at the end*
22 *of the sentence and inserting “\$500.”.*

23 (o) *REGULATIONS.*—Section 375 of the Agricultural
24 *Adjustment Act of 1938 (7 U.S.C. 1375) is amended—*

1 (1) *in subsection (a), by striking “peanuts, or to-*
2 *bacco” and inserting “or peanuts”; and*

3 (2) *by striking subsection (c).*

4 (p) *EMINENT DOMAIN.—Section 378 of the Agricul-*
5 *tural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—*

6 (1) *in the first sentence of subsection (c), by*
7 *striking “cotton, and tobacco” and inserting “and*
8 *cotton”; and*

9 (2) *by striking subsections (d), (e), and (f).*

10 (q) *BURLEY TOBACCO FARM RECONSTITUTION.—Sec-*
11 *tion 379 of the Agricultural Adjustment Act of 1938 (7*
12 *U.S.C. 1379) is amended—*

13 (1) *in subsection (a)—*

14 (A) *by striking “(a)”; and*

15 (B) *in paragraph (6), by striking “, but*
16 *this clause (6) shall not be applicable in the case*
17 *of burley tobacco”; and*

18 (2) *by striking subsections (b) and (c).*

19 (r) *ACREAGE-POUNDAGE QUOTAS.—Section 4 of the*
20 *Act of April 16, 1955 (Public Law 89-12; 7 U.S.C. 1314c*
21 *note), is repealed.*

22 (s) *BURLEY TOBACCO ACREAGE ALLOTMENTS.—The*
23 *Act of July 12, 1952 (7 U.S.C. 1315), is repealed.*

1 (t) *TRANSFER OF ALLOTMENTS.*—Section 703 of the
2 *Food and Agriculture Act of 1965 (7 U.S.C. 1316)* is re-
3 *pealed.*

4 (u) *ADVANCE RECOURSE LOANS.*—Section 13(a)(2)(B)
5 *of the Food Security Improvements Act of 1986 (7 U.S.C.*
6 *1433c–1(a)(2)(B))* is amended by striking “*tobacco and*”.

7 (v) *TOBACCO FIELD MEASUREMENT.*—Section 1112 of
8 *the Omnibus Budget Reconciliation Act of 1987 (Public*
9 *Law 100–203)* is amended by striking subsection (c).

10 **SEC. 1142. TERMINATION OF TOBACCO PRICE SUPPORT**
11 **PROGRAM.**

12 (a) *PARITY PRICE SUPPORT.*—Section 101 of the *Agri-*
13 *cultural Act of 1949 (7 U.S.C. 1441)* is amended—

14 (1) *in the first sentence of subsection (a), by*
15 *striking “tobacco (except as otherwise provided here-*
16 *in), corn,” and inserting “corn”;*

17 (2) *by striking subsections (c), (g), (h), and (i);*

18 (3) *in subsection (d)(3)—*

19 (A) *by striking “, except tobacco,”; and*

20 (B) *by striking “and no price support shall*
21 *be made available for any crop of tobacco for*
22 *which marketing quotas have been disapproved*
23 *by producers;”; and*

24 (4) *by redesignating subsections (d) and (e) as*
25 *subsections (c) and (d), respectively.*

1 (b) *TERMINATION OF TOBACCO PRICE SUPPORT AND*
 2 *NO NET COST PROVISIONS.*—*Sections 106, 106A, and 106B*
 3 *of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445–1,*
 4 *1445–2) are repealed.*

5 (c) *DEFINITION OF BASIC AGRICULTURAL COM-*
 6 *MODITY.*—*Section 408(c) of the Agricultural Act of 1949 (7*
 7 *U.S.C. 1428(c)) is amended by striking “tobacco,”.*

8 (d) *REVIEW OF BURLEY TOBACCO IMPORTS.*—*Section*
 9 *3 of Public Law 98–59 (7 U.S.C. 625) is repealed.*

10 (e) *POWERS OF COMMODITY CREDIT CORPORATION.*—
 11 *Section 5 of the Commodity Credit Corporation Charter Act*
 12 *(15 U.S.C. 714c) is amended by inserting “(other than to-*
 13 *bacco)” after “agricultural commodities” each place it ap-*
 14 *pears.*

15 **SEC. 1143. LIABILITY.**

16 *This title and the amendments made by this title shall*
 17 *not affect the liability of any person under any provision*
 18 *of law with respect to any crop of tobacco planted before*
 19 *the effective date prescribed in section 1162.*

20 **CHAPTER 2—TOBACCO ASSISTANCE**

21 **SEC. 1151. TOBACCO ASSISTANCE.**

22 *Title III of the Agricultural Adjustment Act of 1938*
 23 *is amended by inserting after subtitle D (7 U.S.C. 1379a*
 24 *et seq.) the following:*

1 **“Subtitle E—Tobacco Assistance**

2 **“SEC. 380A. DEFINITIONS.**

3 *“In this subtitle:*

4 *“(1) ACTIVE PRODUCER OF TOBACCO.—The term*
5 *‘active producer of tobacco’ means a person that—*

6 *“(A) is actively engaged in the production*
7 *of tobacco marketed or considered planted; and*

8 *“(B) shares in the risk of producing the to-*
9 *bacco.*

10 *“(2) APPLICABLE FISCAL YEAR.—The term ‘ap-*
11 *plicable fiscal year’ means each of fiscal years 2004*
12 *through 2013.*

13 *“(3) BASE PERIOD.—The term ‘base period’*
14 *means the 1-year period ending the June 30 pre-*
15 *ceding each applicable fiscal year.*

16 *“(4) CONSIDERED PLANTED.—The term ‘consid-*
17 *ered planted’ means tobacco planted but failed to be*
18 *produced as a result of a natural disaster, as deter-*
19 *mined by the Secretary.*

20 *“(5) DEPARTMENT.—The term ‘Department’*
21 *means the Department of Agriculture.*

22 *“(6) ELIGIBLE STATE.—The term ‘eligible State’*
23 *means—*

1 “(A) *in the case of section 380O, each of the*
2 *States of Maryland, Pennsylvania, South Caro-*
3 *lina, and North Carolina; and*

4 “(B) *in the case of section 380Q, each of the*
5 *States of Alabama, Arkansas, Florida, Georgia,*
6 *Indiana, Kansas, Kentucky, Minnesota, Mis-*
7 *souri, North Carolina, Ohio, Oklahoma, South*
8 *Carolina, Tennessee, Virginia, West Virginia,*
9 *and Wisconsin.*

10 “(7) *IMPACTED COMMUNITY.—The term ‘im-*
11 *pacted community’ means a community in an eligible*
12 *State that is adversely affected by a reduction in*
13 *gross receipts from the sale of tobacco.*

14 “(8) *MARKET SHARE.—The term ‘market share’*
15 *means the share of each manufacturer or importer of*
16 *a class of tobacco product (expressed as a decimal to*
17 *the fourth place) of the total volume of domestic sales*
18 *of the class of tobacco product during the base period*
19 *for the applicable fiscal year for an assessment under*
20 *section 380T.*

21 “(9) *PRODUCTION BOARD.—The term ‘Produc-*
22 *tion Board’ means a Production Board established for*
23 *a kind of tobacco under section 380H.*

24 “(10) *QUOTA TOBACCO.—The term ‘quota to-*
25 *bacco’ means a kind of tobacco that is subject to a*

1 *farm marketing quota or farm acreage allotment for*
2 *the 2002 tobacco marketing years under a marketing*
3 *quota or allotment program established under part I*
4 *of subtitle B (as in effect before the effective date of*
5 *this subtitle).*

6 “(11) *TOBACCO.*—*The term ‘tobacco’ means each*
7 *of the following kinds of tobacco:*

8 “(A) *Flue-cured tobacco, comprising types*
9 *11, 12, 13, and 14.*

10 “(B) *Fire-cured tobacco, comprising types*
11 *22 and 23.*

12 “(C) *Dark air-cured tobacco, comprising*
13 *types 35 and 36.*

14 “(D) *Virginia sun-cured tobacco, com-*
15 *prising type 37.*

16 “(E) *Virginia fire-cured tobacco, com-*
17 *prising type 21.*

18 “(F) *Burley tobacco, comprising type 31.*

19 “(G) *Cigar-filler and cigar-binder tobacco,*
20 *comprising types 42, 43, 44, 53, 54, and 55.*

21 “(12) *TOBACCO QUALITY BOARD.*—*The term ‘To-*
22 *bacco Quality Board’ means the Tobacco Quality*
23 *Board established under section 380G.*

1 “(13) *TOBACCO QUOTA HOLDER*.—The term ‘to-
2 *bacco quota holder*’ means a person that is considered
3 *an tobacco quota holder under section 380B(b)*.

4 “(14) *TOBACCO TRUST FUND*.—The term ‘To-
5 *bacco Trust Fund*’ means the *Tobacco Trust Fund es-*
6 *tablished under section 380S*.

7 “(15) *TRADITIONAL PRODUCER OF TOBACCO*.—
8 *The term ‘traditional producer of tobacco’ means a*
9 *person that, for at least 1 of the 2000, 2001, or 2002*
10 *tobacco marketing years—*

11 “(A) *was actively engaged in the production*
12 *of tobacco marketed, or considered planted, under*
13 *a marketing quota established under part I of*
14 *subtitle B (as in effect before the effective date of*
15 *this subtitle); and*

16 “(B) *shared in the risk of producing the to-*
17 *bacco.*

18 “(16) *TRADITIONAL TOBACCO COUNTY*.—

19 “(A) *IN GENERAL*.—The term ‘*traditional*
20 *tobacco county*’ means a county in the United
21 *States that had 1 or more farms operated by tra-*
22 *ditional producers of tobacco under a marketing*
23 *quota for at least 1 of the marketing years de-*
24 *scribed in paragraph (15).*

1 “(B) *INCLUSION.*—*For the purpose of deter-*
2 *mining the crop acreage base of an active pro-*
3 *ducer of tobacco for a kind of tobacco produced*
4 *in the State of Georgia under section 380I(c)(3),*
5 *the term ‘traditional tobacco county’ includes a*
6 *county that is contiguous to a county described*
7 *in subparagraph (A).*

8 **“CHAPTER 1—PAYMENTS TO TOBACCO**
9 **QUOTA HOLDERS AND TRADITIONAL**
10 **PRODUCERS**

11 **“SEC. 380B. TRANSITION PAYMENTS TO TOBACCO QUOTA**
12 **HOLDERS.**

13 “(a) *IN GENERAL.*—*The Secretary shall make transi-*
14 *tion payments to each tobacco quota holder.*

15 “(b) *TOBACCO QUOTA HOLDER.*—

16 “(1) *IN GENERAL.*—*Except as otherwise provided*
17 *in this subsection, the Secretary shall consider a per-*
18 *son to be a tobacco quota holder under this section if*
19 *the person held, as of July 1, 2002, a basic quota or*
20 *farm acreage allotment (as applicable) for quota to-*
21 *bacco established for the 2002 tobacco marketing year*
22 *under a marketing quota program established under*
23 *part I of subtitle B (as in effect before the effective*
24 *date of this subtitle).*

1 “(2) *EFFECT OF PURCHASE CONTRACT.*—If there
2 was an agreement for the purchase of all or part of
3 a farm described in paragraph (1) as of July 1, 2002,
4 and the parties to the sale are unable to agree to the
5 disposition of eligibility for payments under this sec-
6 tion, the Secretary, taking into account any transfer
7 of quota that has been agreed to, shall provide for the
8 equitable division of the payments among the parties
9 by adjusting the determination of who is the tobacco
10 quota holder with respect to particular pounds of the
11 quota.

12 “(3) *EFFECT OF AGREEMENT FOR PERMANENT*
13 *QUOTA TRANSFER.*—If the Secretary determines that
14 there was in existence, as of July 1, 2002, an agree-
15 ment for the permanent transfer of quota, but that the
16 transfer was not completed by that date, the Secretary
17 shall consider the tobacco quota holder to be the party
18 to the agreement that, as of that date, was the owner
19 of the farm to which the quota was to be transferred.

20 “(4) *PROTECTED BASES.*—A person that owns a
21 farm with a tobacco poundage quota that is protected
22 under a conservation reserve program contract en-
23 tered into under section 1231 of the Food Security
24 Act of 1985 (16 U.S.C. 3831) shall be considered to

1 *be a tobacco quota holder with respect to the protected*
2 *poundage.*

3 “(5) *QUANTITY OF QUOTA HELD.—*

4 “(A) *IN GENERAL.—A person shall be con-*
5 *sidered a tobacco quota holder for purposes of*
6 *this section only with respect to that quantity of*
7 *quota that qualifies the person as a tobacco*
8 *quota holder.*

9 “(B) *INCLUDED QUOTA.—The determina-*
10 *tion of the tobacco poundage amount for which*
11 *the person qualifies shall—*

12 “(i) *be based on the quantity of quota*
13 *held by person on January 1, 2004;*

14 “(ii) *subject to clause (iii), not be*
15 *greater than the quantity of quota held by*
16 *the person for the 2002 crop; and*

17 “(iii) *take into account—*

18 “(I) *sales of quota that occurred*
19 *during the period beginning July 1,*
20 *2002, and ending December 31, 2004;*
21 *and*

22 “(II) *any transfers of quota that*
23 *took place after July 1, 2002.*

24 “(c) *APPLICATION.—*

1 “(1) *IN GENERAL.*—*To be eligible to receive a*
2 *payment under this section, a person shall submit to*
3 *the Secretary an application containing such infor-*
4 *mation as the Secretary may require to demonstrate*
5 *to the satisfaction of the Secretary that the person is*
6 *a tobacco quota holder.*

7 “(2) *ADMINISTRATION.*—*The application shall be*
8 *submitted within such time, in such form, and in*
9 *such manner as the Secretary may require.*

10 “(d) *BASE QUOTA LEVEL.*—

11 “(1) *IN GENERAL.*—*The Secretary shall establish*
12 *a base quota level applicable to each tobacco quota*
13 *holder, as determined under this subsection.*

14 “(2) *LEVEL.*—*The base quota level for each to-*
15 *bacco quota holder shall be equal to the quantity of*
16 *quota that qualifies a person as the tobacco quota*
17 *holder under subsection (b)(5).*

18 “(e) *PAYMENT.*—*The Secretary shall make payments*
19 *to each tobacco quota holder under subsection (b) in an*
20 *amount obtained by multiplying—*

21 “(1) *80 cents per pound for each of fiscal years*
22 *2004 through 2013; by*

23 “(2) *the base quota level established for the quota*
24 *holder under subsection (d).*

1 “(f) *TIME FOR PAYMENT.*—Subject to section 380D(c),
2 the payments to tobacco quota holders required under this
3 section shall be made by, to the maximum extent prac-
4 ticable, the date that is 180 days after the date of enactment
5 of this subtitle and each November 1 thereafter.

6 “**SEC. 380C. DIRECT PAYMENTS TO TRADITIONAL PRO-**
7 **DUCERS OF TOBACCO.**

8 “(a) *IN GENERAL.*—The Secretary shall make direct
9 payments under this section to traditional producers of to-
10 bacco.

11 “(b) *ELIGIBILITY.*—

12 “(1) *IN GENERAL.*—To be eligible to receive a
13 payment under this section, a person shall submit to
14 the Secretary an application containing such infor-
15 mation as the Secretary may require to demonstrate
16 to the satisfaction of the Secretary that the person is
17 a traditional producer of tobacco.

18 “(2) *ADMINISTRATION.*—The application shall be
19 submitted within such time, in such form, and in
20 such manner as the Secretary may require.

21 “(c) *BASE QUOTA LEVEL.*—

22 “(1) *IN GENERAL.*—The Secretary shall establish
23 a base quota level applicable to each traditional pro-
24 ducer of tobacco, as determined under this subsection.

1 “(2) *FLUE-CURED AND BURLEY TOBACCO.*—*In*
2 *the case of Flue-cured tobacco (types 11, 12, 13, and*
3 *14) and Burley tobacco (type 31), the base quota level*
4 *for each tobacco quota holder shall be equal to the ef-*
5 *fective tobacco marketing quota (irrespective of dis-*
6 *aster lease and transfers) under part I of subtitle B*
7 *(as in effect before the effective date of this subtitle)*
8 *for the 2002 marketing year for quota tobacco pro-*
9 *duced on the farm.*

10 “(3) *OTHER KINDS OF TOBACCO.*—*In the case of*
11 *each kind of tobacco other than Flue-cured tobacco*
12 *(types 11, 12, 13, and 14) and Burley tobacco (type*
13 *31), for the purpose of calculating a payment to a*
14 *traditional producer of tobacco, the base quota level*
15 *for the traditional producer of tobacco shall be the*
16 *quantity obtained by multiplying—*

17 “(A) *the basic tobacco farm acreage allot-*
18 *ment for the 2002 marketing year established by*
19 *the Secretary for quota tobacco produced on the*
20 *farm; by*

21 “(B) *the actual yield of the crop of quota to-*
22 *bacco produced on the farm.*

23 “(d) *PAYMENT.*—

24 “(1) *IN GENERAL.*—*Subject to paragraph (2), the*
25 *Secretary shall make payments to each traditional*

1 *producer of tobacco, as determined under subsection*
2 *(b), in an amount obtained by multiplying—*

3 *“(A) 40 cents per pound for each of fiscal*
4 *years 2004 through 2013; by*

5 *“(B) the base quota level established for the*
6 *traditional producer of tobacco under subsection*
7 *(c).*

8 *“(2) PAYMENT RATE.—The rate for payments to*
9 *a traditional producer of quota tobacco under para-*
10 *graph (1)(A) shall be equal to—*

11 *“(A) in the case of a person that produced*
12 *quota tobacco marketed, or considered planted,*
13 *under a marketing quota for all 3 of the 2000,*
14 *2001, and 2002 tobacco marketing years, the rate*
15 *prescribed under paragraph (1)(A) for the appli-*
16 *cable fiscal year;*

17 *“(B) in the case of a person that produced*
18 *quota tobacco marketed, or considered planted,*
19 *under a marketing quota for not more than 2 of*
20 *the 2000, 2001, and 2002 tobacco marketing*
21 *years, $\frac{2}{3}$ of the rate prescribed under paragraph*
22 *(1)(A) for the applicable fiscal year; and*

23 *“(C) in the case of a person that produced*
24 *quota tobacco marketed, or considered planted,*
25 *under a marketing quota for not more than 1 of*

1 *the 2000, 2001, and 2002 tobacco marketing*
2 *years, $\frac{1}{3}$ of the rate prescribed under paragraph*
3 *(1)(A) for the applicable fiscal year.*

4 “(e) *TIME FOR PAYMENT.*—*Subject to section 380D(c),*
5 *the payments to traditional producers of tobacco required*
6 *under this section shall be made by, to the maximum extent*
7 *practicable, the date that is 180 days after the date of enact-*
8 *ment of this subtitle and each November 1 thereafter.*

9 **“SEC. 380D. ADMINISTRATION.**

10 “(a) *RESOLUTION OF DISPUTES.*—

11 “(1) *IN GENERAL.*—*Any dispute regarding the*
12 *eligibility of a person to receive a payment under this*
13 *subtitle, or the amount of the payment, may be ap-*
14 *pealed to the county committee established under sec-*
15 *tion 8 of the Soil Conservation and Domestic Allot-*
16 *ment Act (16 U.S.C. 590h) for the county or other*
17 *area in which the farming operation of the person is*
18 *located.*

19 “(2) *NATIONAL APPEALS DIVISION.*—*Any adverse*
20 *determination of a county committee under subsection*
21 *(a) may be appealed to the National Appeals Division*
22 *established under subtitle H of the Department of Ag-*
23 *riculture Reorganization Act of 1994 (7 U.S.C. 6991*
24 *et seq.).*

1 “(b) *USE OF QUALIFIED FINANCIAL INSTITUTIONS.*—
2 *The Secretary may use qualified financial institutions to*
3 *manage assets, make payments, and otherwise carry out*
4 *this subtitle.*

5 “(c) *ADVANCED PAYMENTS.*—

6 “(1) *IN GENERAL.*—*The Secretary shall permit a*
7 *tobacco quota holder and a traditional producer of to-*
8 *bacco to elect to receive advanced payments for 2 or*
9 *more fiscal years under this chapter by selecting 1 of*
10 *4 advance payment options established by the Sec-*
11 *retary, including a lump sum payment option.*

12 “(2) *RISK.*—*A tobacco quota holder or tradi-*
13 *tional producer of tobacco that elects to receive accel-*
14 *erated payments shall bear the expense of the discount*
15 *in value for acceleration of the payments.*

16 “(3) *QUALIFIED FINANCIAL INSTITUTIONS.*—

17 “(A) *IN GENERAL.*—*The Secretary shall*
18 *provide advanced payments under this sub-*
19 *section through 1 or more qualified financial in-*
20 *stitutions designated by the Secretary.*

21 “(B) *ADMINISTRATION.*—*In providing ad-*
22 *vanced payments under this subsection, a quali-*
23 *fied financial institution shall (in accordance*
24 *with guidance issued by the Secretary)—*

1 “(i) offer the advanced payments re-
2 gardless of the location or size of the pay-
3 ments;

4 “(ii) apply updated discount rates that
5 vary only by payment term; and

6 “(iii) distribute the advanced pay-
7 ments in accordance with the option elected
8 by the tobacco quota holder or traditional
9 producer of tobacco.

10 “(4) COUNTY OFFICES.—A county office of the
11 Department may receive applications and other docu-
12 mentation necessary to receive advanced payments
13 under this subsection, on behalf of the Secretary and
14 qualified financial institutions.

15 “(d) TREATMENT OF PAYMENTS.—Payments received
16 by a tobacco quota holder or traditional producer of tobacco
17 under this chapter shall be considered received not earlier
18 than the date the tobacco quota holder or traditional pro-
19 ducer of tobacco first receives the payments.

20 **“CHAPTER 2—TOBACCO QUALITY AND**
21 **QUANTITY**

22 **“SEC. 380G. TOBACCO QUALITY BOARD.**

23 “(a) IN GENERAL.—The Secretary shall establish a
24 permanent advisory board within the Department, to be
25 known as the ‘Tobacco Quality Board’.

1 “(b) *MEMBERSHIP.*—

2 “(1) *IN GENERAL.*—*The Tobacco Quality Board*
3 *shall consist of 13 members, of which—*

4 “(A) *5 members shall be appointed by the*
5 *Secretary from nominations submitted by rep-*
6 *resentatives of tobacco producers in the United*
7 *States, including at least—*

8 “(i) *1 representative of Flue-cured to-*
9 *bacco producers;*

10 “(ii) *1 representative of Burley tobacco*
11 *producers; and*

12 “(iii) *1 representative of dark fire-*
13 *cured tobacco producers;*

14 “(B) *5 members shall be appointed by the*
15 *Secretary from nominations submitted by rep-*
16 *resentatives of tobacco product manufacturers in*
17 *the United States, including at least—*

18 “(i) *1 representative of smokeless to-*
19 *bacco product manufacturers; and*

20 “(ii) *1 representative of export dealers*
21 *of tobacco; and*

22 “(C) *3 at-large members shall be appointed*
23 *by the Secretary, including at least 1 officer or*
24 *employee of the Department.*

1 “(2) *CHAIRPERSON.*—*The Secretary shall ap-*
2 *point the chairperson of the Tobacco Quality Board,*
3 *with a different member serving as chairperson of the*
4 *Tobacco Quality Board each term.*

5 “(3) *TERMS.*—*Each member of the Tobacco*
6 *Quality Board shall serve for 2-year terms, except*
7 *that the terms of the members first appointed to the*
8 *Tobacco Quality Board shall be staggered so as to es-*
9 *tablish a rotating membership of the Tobacco Quality*
10 *Board, as determined by the Secretary.*

11 “(c) *DUTIES.*—*The Tobacco Quality Board shall—*

12 “(1) *determine and describe the physical charac-*
13 *teristics of tobacco produced in the United States and*
14 *unmanufactured tobacco imported into the United*
15 *States;*

16 “(2) *assemble and evaluate, in a systematic*
17 *manner, concerns and problems with the quality of*
18 *tobacco produced in the United States, expressed by*
19 *domestic and foreign buyers and manufacturers of to-*
20 *bacco products;*

21 “(3) *review data collected by Federal agencies on*
22 *the physical and chemical integrity of tobacco pro-*
23 *duced in the United States and unmanufactured to-*
24 *bacco imported into the United States, to ensure that*
25 *tobacco being used in domestically-manufactured to-*

1 *bacco products is of the highest quality and is free*
2 *from prohibited physical and chemical agents;*

3 “(4) *investigate and communicate to the*
4 *Secretary—*

5 “(A) *conditions with respect to the produc-*
6 *tion of tobacco that discourage improvements in*
7 *the quality of tobacco produced in the United*
8 *States; and*

9 “(B) *recommendations for regulatory*
10 *changes that would address tobacco quality*
11 *issues;*

12 “(5) *conduct oversight regarding tobacco mar-*
13 *keting issues (such as opening sales dates and mar-*
14 *keting regulations) applicable to auction markets;*

15 “(6) *provide assistance to Federal agencies on*
16 *actions taken by the Federal agencies that affect the*
17 *quality or quantity of tobacco produced in the United*
18 *States;*

19 “(7) *not later than a date determined by the Sec-*
20 *retary, make recommendations to the Secretary, and*
21 *the applicable Production Board established for the*
22 *kind of tobacco, on the range of base years for the*
23 *maximum crop acreage base under section*
24 *380I(c)(3)(B), and for the maximum crop poundage*
25 *base under section 380I(d)(3)(B), for each crop of*

1 *each kind of tobacco, except that the range of base*
2 *years shall be the crop years for the 1998 through*
3 *2002 crops unless otherwise determined by the To-*
4 *bacco Quality Board; and*

5 *“(8) carry out such other related activities as are*
6 *assigned to the Tobacco Quality Board by the Sec-*
7 *retary.*

8 *“(d) ADMINISTRATION.—The Secretary shall provide*
9 *the Tobacco Quality Board with (as determined by the Sec-*
10 *retary)—*

11 *“(1) a staff that is—*

12 *“(A) experienced in the sampling and anal-*
13 *ysis of unmanufactured tobacco; and*

14 *“(B) capable of collecting data and moni-*
15 *toring tobacco production information; and*

16 *“(2) other resources and information necessary*
17 *for the Tobacco Quality Board to perform the duties*
18 *of the Tobacco Quality Board under this subtitle,*
19 *including—*

20 *“(A) information concerning acreage de-*
21 *voted to the production of each kind of tobacco;*
22 *and*

23 *“(B) international information from the*
24 *Foreign Agricultural Service.*

1 “(e) *APPLICABILITY OF FEDERAL ADVISORY COM-*
 2 *MITTEE ACT.*—*The Federal Advisory Committee Act (5*
 3 *U.S.C. App.) shall not apply to the Tobacco Quality Board.*

4 **“SEC. 380H. PRODUCTION BOARDS.**

5 “(a) *IN GENERAL.*—*The Secretary shall establish a*
 6 *permanent advisory board for each kind of tobacco, to be*
 7 *known as a ‘Production Board’.*

8 “(b) *MEMBERSHIP.*—

9 “(1) *IN GENERAL.*—*Subject to paragraph (2), a*
 10 *Production Board for a kind of tobacco shall consist*
 11 *of—*

12 “(A) *not more than 10 members appointed*
 13 *by the Secretary from nominations submitted by*
 14 *representatives of producers of that kind of to-*
 15 *bacco in the United States; and*

16 “(B) *1 officer or employee of the Depart-*
 17 *ment appointed by the Secretary.*

18 “(2) *ALLOCATION OF MEMBERSHIP.*—*In ap-*
 19 *pointing members to a Production Board established*
 20 *for a kind of tobacco, the number of members ap-*
 21 *pointed by the Secretary to represent each State shall,*
 22 *to the maximum extent practicable, bear the same*
 23 *ratio to the total number of members of the Produc-*
 24 *tion Board as—*

1 “(A) *the total volume of domestic sales of*
2 *the kind of tobacco produced in the State during*
3 *the most recent period for which data is avail-*
4 *able; bears to*

5 “(B) *the total volume of domestic sales of*
6 *the kind of tobacco produced in all States during*
7 *the most recent period for which data is avail-*
8 *able.*

9 “(3) *CHAIRPERSON.—The Secretary shall ap-*
10 *point the chairperson of a Production Board, with a*
11 *different member serving as chairperson of the Pro-*
12 *duction Board each term.*

13 “(4) *TERMS.—Each member of a Production*
14 *Board shall serve for 2-year terms, except that the*
15 *terms of the members first appointed to the Produc-*
16 *tion Board shall be staggered so as to establish a ro-*
17 *tating membership of the Production Board, as deter-*
18 *mined by the Secretary.*

19 “(c) *DUTIES.—A Production Board established for a*
20 *kind of tobacco shall—*

21 “(1) *not later than a date determined by the Sec-*
22 *retary, make recommendations to the Secretary on the*
23 *base year, within the range of base years rec-*
24 *ommended by the Tobacco Quality Board under sec-*
25 *tion 380G(c)(7), for the maximum crop acreage base*

1 *under section 380I(c)(3)(B) for each crop of each kind*
 2 *of tobacco; and*

3 “(2) *carry out such other related activities as are*
 4 *assigned to the Production Board by the Secretary.*

5 “(d) *ADMINISTRATION.—The Secretary shall provide*
 6 *each Production Board established for a kind of tobacco*
 7 *with (as determined by the Secretary)—*

8 “(1) *a staff that is knowledgeable about produc-*
 9 *tion and marketing of that kind of tobacco; and*

10 “(2) *other resources and information necessary*
 11 *for the Production Board to perform the duties of the*
 12 *Production Board under this subtitle, including infor-*
 13 *mation concerning acreage devoted to the production*
 14 *of each kind of tobacco.*

15 “(e) *APPLICABILITY OF FEDERAL ADVISORY COM-*
 16 *MITTEE ACT.—The Federal Advisory Committee Act (5*
 17 *U.S.C. App.) shall not apply to a Production Board.*

18 **“SEC. 380I. TOBACCO PRODUCTION LIMITATION PRO-**
 19 **GRAMS.**

20 “(a) *DEFINITIONS.—In this section:*

21 “(1) *CROP ACREAGE BASE.—The term ‘crop*
 22 *acreage base’ means the crop acreage base for a kind*
 23 *of tobacco for a crop for an active producer of tobacco,*
 24 *as determined by the Secretary.*

1 “(2) *CROP POUNDAGE BASE*.—The term ‘crop
2 *poundage base*’ means the crop poundage base for a
3 *kind of tobacco for a crop for an active producer of*
4 *tobacco, as determined by the Secretary.*

5 “(3) *PERMITTED ACREAGE*.—The term ‘per-
6 *mitted acreage*’ means the number of acres that may
7 *be devoted to the production of a kind of tobacco by*
8 *an active producer of tobacco, consistent with the an-*
9 *annual acreage limitation program, as determined by*
10 *the Secretary.*

11 “(4) *PERMITTED POUNDAGE*.—The term ‘per-
12 *mitted poundage*’ means the number of pounds of a
13 *kind of tobacco for a crop may be produced by an ac-*
14 *tive tobacco producer, consistent with the annual*
15 *poundage limitation program, as determined by the*
16 *Secretary.*

17 “(b) *ESTABLISHMENT*.—

18 “(1) *IN GENERAL*.—The Secretary shall establish
19 *for each crop of each kind of tobacco—*

20 “(A) *an acreage limitation program in ac-*
21 *cordance with subsection (c); or*

22 “(B) *a poundage limitation in accordance*
23 *with subsection (d).*

24 “(2) *CONSULTATION*.—The Secretary shall carry
25 *out the acreage limitation program and the poundage*

1 *limitation program for a kind of tobacco in consulta-*
2 *tion with the Tobacco Advisory Board and the appli-*
3 *cable Production Board established for that kind of*
4 *tobacco.*

5 “(3) *SUPPLY.*—*In carrying out an acreage limi-*
6 *tation program or a poundage limitation program for*
7 *a crop of a kind of tobacco, the Secretary shall deter-*
8 *mine whether the total supply of that kind of tobacco,*
9 *in the absence of the respective production limitation*
10 *program, will be excessive, taking into account the*
11 *need for an adequate carryover to maintain reason-*
12 *able and stable supplies and prices.*

13 “(4) *ANNOUNCEMENT.*—

14 “(A) *IN GENERAL.*—*Except as provided in*
15 *subparagraph (B), the Secretary shall announce*
16 *an acreage limitation program or poundage limi-*
17 *itation program for each kind of tobacco not*
18 *later than December 15 of the calendar year pre-*
19 *ceding the year in which the crop is harvested.*

20 “(B) *SPECIAL RULE FOR 2004 CROP.*—*In the*
21 *case of the 2004 crop for a kind of tobacco, the*
22 *Secretary shall announce an acreage limitation*
23 *program or poundage limitation for each kind of*
24 *tobacco as soon as practicable after the date of*

1 *the enactment of the Tobacco Market Transition*
2 *Act of 2004.*

3 “(c) *ACREAGE LIMITATION PROGRAM.*—

4 “(1) *IN GENERAL.*—*Under an acreage limitation*
5 *program for a crop of a kind of tobacco announced*
6 *under subsection (b), the limitation shall be achieved*
7 *by applying a uniform percentage reduction to the*
8 *crop acreage base for the kind of tobacco for the crop*
9 *for active producers of that kind of tobacco in each*
10 *traditional tobacco county, as determined by the Sec-*
11 *retary.*

12 “(2) *CROP ACREAGE BASES.*—

13 “(A) *IN GENERAL.*—*The crop acreage base*
14 *for an active producer of tobacco for a crop of*
15 *each kind of tobacco shall equal the number of*
16 *acres that is equal to—*

17 “(i) *in the case of the 2004 crop year,*
18 *the average of the acreage planted and con-*
19 *sidered planted by the active producer of to-*
20 *bacco to the kind of tobacco for harvest in*
21 *a traditional tobacco county in each of the*
22 *5 crop years preceding the crop year, as de-*
23 *termined and adjusted by the Secretary (in*
24 *consultation with the Tobacco Quality*

1 *Board and the applicable Production*
2 *Board); and*

3 “(ii) *in the case of each subsequent*
4 *crop year, the number of acres planted and*
5 *considered planted by the active producer of*
6 *tobacco to the kind of tobacco for harvest in*
7 *a traditional tobacco county in the pre-*
8 *ceding crop year, as determined and ad-*
9 *justed by the Secretary (in consultation*
10 *with the Tobacco Quality Board and the*
11 *applicable Production Board).*

12 “(B) *MAXIMUM CROP ACREAGE BASES.—*

13 “(i) *IN GENERAL.—The total quantity*
14 *of acreage devoted to a kind of tobacco by*
15 *active producers of tobacco during a crop*
16 *year shall not exceed the total quantity of*
17 *acreage devoted to the kind of tobacco by ac-*
18 *tive producers during a crop year deter-*
19 *mined by the Secretary.*

20 “(ii) *ADJUSTMENT.—If the active pro-*
21 *ducers of a kind of tobacco demonstrate to*
22 *the Secretary that the application of clause*
23 *(i) to a crop of a kind of tobacco will result*
24 *in unbalanced supply and demand condi-*
25 *tions, the Secretary may adjust the total*

1 *quantity of acreage that may be devoted to*
2 *the kind of tobacco by active producers dur-*
3 *ing the crop year.*

4 “(C) *SALE, LEASE, OR TRANSFER OF CROP*
5 *ACREAGE BASES.—An active producer of tobacco*
6 *shall not sell, lease, or transfer to another person*
7 *a crop acreage base established for the active pro-*
8 *ducer of tobacco under this paragraph.*

9 “(D) *REALLOCATION OF UNUSED CROP*
10 *ACREAGE BASES.—*

11 “(i) *COUNTY POOL.—If an active pro-*
12 *ducer of tobacco with a crop acreage base*
13 *for a kind of tobacco elects not to use all or*
14 *part of the crop acreage base to continue to*
15 *produce that kind of tobacco, the unused*
16 *crop acreage base shall be placed in a pool*
17 *established for the traditional tobacco coun-*
18 *ty for reallocation by the Secretary to other*
19 *producers of that kind of tobacco in the tra-*
20 *ditional tobacco county that request the*
21 *crop acreage base.*

22 “(ii) *STATE POOL.—If any crop acre-*
23 *age base for a kind of tobacco remains after*
24 *the crop acreage base is made available to*
25 *producers of that kind of tobacco in the tra-*

1 *ditional tobacco county in a State, the un-*
2 *used crop acreage base shall be placed in a*
3 *pool established for the State for realloca-*
4 *tion by the Secretary to other producers of*
5 *that kind of tobacco in a traditional tobacco*
6 *county.*

7 “(iii) *NEW PRODUCERS.*—*In reallo-*
8 *cating unused crop acreage bases for a kind*
9 *of tobacco in a traditional tobacco county*
10 *made available under each of clauses (i)*
11 *and (ii), the Secretary shall make available*
12 *to any new producers of that kind of to-*
13 *bacco in the traditional tobacco county up*
14 *to 10 percent of the crop acreage bases*
15 *available for reallocation for the kind of to-*
16 *bacco in the traditional tobacco county.*

17 “(d) *POUNDAGE LIMITATION PROGRAM.*—

18 “(1) *IN GENERAL.*—*Under a poundage limita-*
19 *tion program for a crop of a kind of tobacco, the Sec-*
20 *retary shall achieve the limitation by applying a uni-*
21 *form percentage adjustment to the crop poundage base*
22 *of an active producer of tobacco for the kind of to-*
23 *bacco in each traditional tobacco county, as deter-*
24 *mined by the Secretary.*

1 “(2) *DETERMINATION OF CROP POUNDAGE*
2 *BASES.—*

3 “(A) *2004 CROP YEAR.—The crop poundage*
4 *base for an active tobacco producer for the 2004*
5 *crop of a kind of tobacco shall equal the average*
6 *of the number of pounds of that kind of tobacco*
7 *harvested by the active tobacco producer in a*
8 *traditional tobacco county and marketed in each*
9 *of the 5 crop years preceding the crop year, as*
10 *determined by the Secretary.*

11 “(B) *SUBSEQUENT CROP YEARS.—In the*
12 *case of the 2005 and subsequent crops of each*
13 *kind of tobacco, the crop poundage base for an*
14 *active tobacco producer of a kind of tobacco shall*
15 *equal the number of pounds of that kind of to-*
16 *bacco harvested by the active tobacco producer in*
17 *a traditional tobacco county and marketed in the*
18 *preceding crop year, as determined and adjusted*
19 *by the Secretary.*

20 “(3) *MAXIMUM CROP POUNDAGE BASES.—*

21 “(A) *IN GENERAL.—The total number of*
22 *pounds devoted to a kind of tobacco by active to-*
23 *bacco producers during a crop year shall not ex-*
24 *ceed the total number of pounds devoted to the*

1 *kind of tobacco by active tobacco producers dur-*
2 *ing a crop year determined by the Secretary.*

3 “(B) *ADJUSTMENT.*—*If the active tobacco*
4 *producers of a kind of tobacco demonstrate to the*
5 *Secretary that the application of paragraph (1)*
6 *to a crop of a kind of tobacco will result in un-*
7 *balanced supply and demand conditions, the*
8 *Secretary may adjust the total number of pounds*
9 *that may be devoted to the kind of tobacco by ac-*
10 *tive tobacco producers during the crop year.*

11 “(4) *SALE, LEASE, OR TRANSFER OF CROP*
12 *POUNDAGE BASES.*—

13 “(A) *PROHIBITION.*—*An active producer of*
14 *tobacco shall not directly or indirectly sell, lease,*
15 *or transfer to another person or other legal entity*
16 *a crop poundage base established for an active*
17 *tobacco producer under this subsection.*

18 “(B) *EXCEPTION.*—*If the crop poundage*
19 *base of an active producer of tobacco for a type*
20 *of tobacco covers tobacco that was produced by*
21 *the producer in more than 1 traditional tobacco*
22 *county, the producer may elect to consolidate the*
23 *base in a single traditional tobacco county in*
24 *which the producer bore or shared in the risk of*

1 *producing a crop of that kind of tobacco for the*
2 *2002 crop year.*

3 “(5) *REALLOCATION OF UNUSED CROP POUND-*
4 *AGE BASES.—*

5 “(A) *COUNTY POOL.—If an active producer*
6 *of tobacco with a crop poundage base for a kind*
7 *of tobacco elects not to use all or part of the crop*
8 *poundage base, the unused crop poundage base*
9 *shall be placed in a pool established for the tra-*
10 *ditional tobacco county where the unused crop*
11 *poundage base was originally located for re-*
12 *allocation by the Secretary to other active pro-*
13 *ducers of tobacco of that kind of tobacco in the*
14 *traditional tobacco county, in a manner deter-*
15 *mined by the Secretary.*

16 “(B) *STATE POOL.—If any crop poundage*
17 *base for a kind of tobacco remains after the crop*
18 *poundage base is made available to producers of*
19 *that kind of tobacco in the traditional tobacco*
20 *county in a State under subparagraph (A), the*
21 *unused crop poundage base shall be placed in a*
22 *pool established for the State for reallocation by*
23 *the Secretary to other producers of that kind of*
24 *tobacco in traditional tobacco counties, in a*
25 *manner determined by the Secretary.*

1 “(C) *TRADITIONAL GROWING AREA POOL.*—
2 *If any crop poundage base for a kind of tobacco*
3 *remains after the crop poundage base is made*
4 *available to producers of that kind of tobacco*
5 *under subparagraphs (A) and (B), the unused*
6 *crop poundage base shall be placed in a pool es-*
7 *tablished for reallocation by the Secretary to*
8 *other producers of that kind of tobacco in a tra-*
9 *ditional tobacco county for that kind of tobacco.*

10 “(D) *NEW PRODUCERS.*—*In reallocating*
11 *unused crop poundage bases for a kind of tobacco*
12 *in a traditional tobacco county made available*
13 *under any of subparagraphs (A) through (C), the*
14 *Secretary shall make available to any new pro-*
15 *ducers of that kind of tobacco in the traditional*
16 *tobacco county up to 10 percent of the crop*
17 *poundage bases available for reallocation for the*
18 *kind of tobacco in the traditional tobacco county.*

19 “(e) *COMPLIANCE.*—

20 “(1) *LOANS, PURCHASES, OR PAYMENTS.*—*An*
21 *active producer of tobacco that knowingly produces a*
22 *kind of tobacco in excess of the permitted acreage or*
23 *permitted poundage, as applicable, for the kind of to-*
24 *bacco, or violates any lease or transfer requirements*
25 *of this section, shall be ineligible for any loans, pur-*

1 *chases, or payments for that crop of the kind of to-*
2 *bacco.*

3 “(2) *NO CARRYOVER.*—*An active producer of to-*
4 *bacco may not carry over permitted poundage or per-*
5 *mitted acreage, as applicable, for a crop of a kind of*
6 *tobacco, that is not produced by the producer, for pro-*
7 *duction in a subsequent crop year.*

8 “(3) *PENALTIES.*—

9 “(A) *CRIMINAL PENALTY.*—*An active pro-*
10 *ducer of tobacco that violates paragraph (1) shall*
11 *be fined not more than \$100,000 or imprisoned*
12 *not more than 2 years, or both.*

13 “(B) *CIVIL PENALTY.*—*An active producer*
14 *of tobacco that violates paragraph (2) shall be*
15 *subject to a civil penalty in an amount not to*
16 *exceed 2 percent of the value of the kind of to-*
17 *bacco produced by the producer during the appli-*
18 *cable crop year, as determined by the Secretary.*

19 “(C) *ADDITIONAL PENALTIES.*—*A civil pen-*
20 *alty under subparagraph (B) for a violation*
21 *shall be in addition to any criminal penalty*
22 *under subparagraph (A) for the violation.*

23 “(D) *JURISDICTION TO PREVENT AND RE-*
24 *STRAIN VIOLATIONS.*—*A United States district*
25 *court shall have jurisdiction to prevent and re-*

1 *strain an active producer of tobacco from pro-*
2 *ducing a kind of tobacco in excess of the per-*
3 *mitted acreage for the kind of tobacco.*

4 “(4) *COMPLIANCE WITH CONSERVATION AND AG-*
5 *RICULTURAL REQUIREMENTS.—As a condition of the*
6 *establishment of a crop acreage base or crop poundage*
7 *base, as applicable, for active producers of tobacco for*
8 *a crop of a kind of tobacco, the active producers of*
9 *tobacco shall agree, during the crop year for which the*
10 *crop acreage base or crop poundage base is*
11 *established—*

12 “(A) *to comply with applicable conservation*
13 *requirements under subtitle B of title XII of the*
14 *Food Security Act of 1985 (16 U.S.C. 3811 et*
15 *seq.);*

16 “(B) *to comply with applicable wetland*
17 *protection requirements under subtitle C of title*
18 *XII of the Act (16 U.S.C. 3821 et seq.);*

19 “(C) *to use the land of the active producer*
20 *of tobacco, in a quantity equal to the crop acre-*
21 *age base for an agricultural or conserving use,*
22 *and not for a nonagricultural commercial or in-*
23 *dustrial use, as determined by the Secretary; and*

24 “(D) *to effectively control noxious weeds*
25 *and otherwise maintain the land in accordance*

1 *with sound agricultural practices, as determined*
2 *by the Secretary, if the agricultural or con-*
3 *serving use involves the noncultivation of any*
4 *portion of the land referred to in subparagraph*
5 *(C).*

6 **“CHAPTER 3—TOBACCO COMMUNITY**
7 **ECONOMIC DEVELOPMENT GRANTS**

8 **“SEC. 3800. TOBACCO COMMUNITY ECONOMIC DEVELOP-**
9 **MENT GRANTS.**

10 *“(a) IN GENERAL.—The Secretary shall make grants*
11 *to eligible States in accordance with this section to pay the*
12 *cost of carrying out economic development initiatives in im-*
13 *pacted communities.*

14 *“(b) APPLICATION.—To be eligible to receive payments*
15 *under this section, an eligible State shall prepare and sub-*
16 *mit to the Secretary an application at such time, in such*
17 *manner, and containing such information as the Secretary*
18 *may require, including—*

19 *“(1) a description of the activities that the eligi-*
20 *ble State will carry out using amounts received under*
21 *the grant; and*

22 *“(2) a description of the State department of ag-*
23 *riculture that will administer amounts received under*
24 *the grant.*

1 “(c) *AMOUNT OF GRANT.*—From the amounts avail-
2 able to carry out this section, the Secretary shall allot—

3 “(1) \$20,000,000 to the State of Maryland;

4 “(2) \$14,000,000 to the State of Pennsylvania;

5 “(3) \$50,000,000 to the State of South Carolina;

6 and

7 “(4) \$50,000,000 to the State of North Carolina.

8 “(d) *PAYMENTS.*—An eligible State that has an appli-
9 cation approved by the Secretary under subsection (b) shall
10 be entitled to a payment under this section, in 5 equal in-
11 stallments, in an amount that is equal to its allotment
12 under subsection (c).

13 “(e) *USE OF FUNDS.*—Amounts received by an eligible
14 State under this section shall be used to carry out economic
15 development activities in impacted communities of the eligi-
16 ble State, as determined by the eligible State.

17 “(f) *TERMINATION DATE.*—The authority provided by
18 this section terminates on September 30, 2008.

19 **“CHAPTER 4—COMPETITIVE GRANTS FOR**
20 **TOBACCO RESEARCH**

21 **“SEC. 380Q. COMPETITIVE GRANTS FOR TOBACCO RE-**
22 **SEARCH.**

23 “(a) *IN GENERAL.*—Notwithstanding any other provi-
24 sion of law, the Secretary shall make competitive grants
25 under section 406 of the Agricultural Research, Extension,

1 *and Education Reform Act of 1998 (7 U.S.C. 7626) to col-*
2 *leges and universities located in eligible States to conduct*
3 *research—*

4 “(1) *to assist tobacco producers to diversify crops*
5 *or implement other means to reduce or eliminate the*
6 *reliance of the producers on the production of tobacco*
7 *or to promote alternative uses of tobacco or enhance*
8 *the quality of tobacco produced in the United States;*
9 *and*

10 “(2) *to foster and facilitate development, evalua-*
11 *tion, and implementation of economically viable new*
12 *agricultural technologies and enterprises for rural*
13 *communities.*

14 “(b) *GRANT DISTRIBUTION.—In making grants under*
15 *this section, the Secretary shall provide for an equitable dis-*
16 *tribution of the grants based on the volume of each kind*
17 *of tobacco that is produced in each eligible State, as deter-*
18 *mined by the Secretary*

19 “(c) *TERMINATION DATE.—The authority provided by*
20 *this section terminates on September 30, 2008.*

21 **“CHAPTER 5—FUNDING**

22 **“SEC. 380S. TOBACCO TRUST FUND.**

23 “(a) *ESTABLISHMENT.—There is established in the*
24 *Commodity Credit Corporation a revolving trust fund to*

1 *be used in carrying out this subtitle (referred to in this sec-*
2 *tion as the ‘Fund’), consisting of—*

3 “(1) *such amounts as are deposited in the Fund*
4 *under subsection (b);*

5 “(2) *such amounts as are necessary from the*
6 *Commodity Credit Corporation; and*

7 “(3) *any interest earned on investment of*
8 *amounts in the Fund under subsection (d).*

9 “(b) *DEPOSITS.—Revenues from assessments collected*
10 *under section 380T shall be deposited in the Fund.*

11 “(c) *EXPENDITURES.—*

12 “(1) *IN GENERAL.—Subject to paragraphs (2)*
13 *and (3) and notwithstanding any other provision of*
14 *law, in addition to any other funds that may be*
15 *available, the Secretary may use from the Fund such*
16 *amounts as the Secretary determines are necessary—*

17 “(A) *to make payments to tobacco quota*
18 *holders and traditional producers under chapter*
19 *1;*

20 “(B) *to pay necessary expenses of the To-*
21 *bacco Quality Board and Production Boards*
22 *and to carry out the acreage limitation program*
23 *under chapter 2;*

24 “(C) *to make tobacco community economic*
25 *development grants under chapter 3, in an*

1 *amount equal to \$16,800,000 for each of fiscal*
2 *years 2004 through 2008;*

3 “(D) *to make competitive grants for tobacco*
4 *research under chapter 4, in an amount equal to*
5 *\$12,000,000 for each of fiscal years 2004 through*
6 *2008;*

7 “(E) *to make grants to each association*
8 *that has entered into a loan agreement with the*
9 *Commodity Credit Corporation under section*
10 *106A or 106B of the Agricultural Act of 1949 (7*
11 *U.S.C. 1445–1, 1445–2) (as in effect before the*
12 *effective date of this subtitle) to assist the asso-*
13 *ciation to transition to alternative methods of*
14 *marketing tobacco in accordance with a plan ap-*
15 *proved by the Secretary, with the grants allo-*
16 *cated on the basis of the proportion of tobacco*
17 *marketed by each association, in an amount not*
18 *to exceed \$1,000,000 for each association for each*
19 *kind of tobacco for each of fiscal years 2004*
20 *through 2008;*

21 “(F) *to make payments to appropriate to-*
22 *bacco warehouse associations, as determined by*
23 *the Secretary, in an amount not to exceed*
24 *\$500,000 for each of fiscal years 2004 through*
25 *2008;*

1 “(G) to pay administrative costs incurred
2 by the Secretary in carrying out this subtitle;
3 and

4 “(H) to reimburse the Commodity Credit
5 Corporation for costs incurred by the Commodity
6 Credit Corporation under paragraph (2).

7 “(2) *EXPENDITURES BY COMMODITY CREDIT*
8 *CORPORATION.*—

9 “(A) *IN GENERAL.*—Subject to subpara-
10 graph (B) and notwithstanding any other provi-
11 sion of law, the Secretary shall use funds of the
12 Commodity Credit Corporation to make pay-
13 ments under paragraph (1).

14 “(B) *REIMBURSEMENT TO COMMODITY*
15 *CREDIT CORPORATION.*—Not later than January
16 1, 2013, the Commodity Credit Corporation shall
17 be reimbursed in full, with interest, for all funds
18 of the Commodity Credit Corporation expended
19 under subparagraph (A).

20 “(3) *ADMINISTRATIVE EXPENSES.*—

21 “(A) *IN GENERAL.*—An amount not to ex-
22 ceed \$20,000,000 for each fiscal year of the
23 amounts in the Fund shall be available to pay
24 the administrative expenses necessary to carry
25 out this subtitle.

1 “(B) *TERMINATION DATE.*—*The authority*
2 *provided by this paragraph terminates on Sep-*
3 *tember 30, 2013.*

4 “(d) *INVESTMENT OF AMOUNTS.*—

5 “(1) *IN GENERAL.*—*The Commodity Credit Cor-*
6 *poration shall invest such portion of the Fund as is*
7 *not, in the judgment of the Commodity Credit Cor-*
8 *poration, required to meet current withdrawals.*

9 “(2) *INTEREST-BEARING OBLIGATIONS.*—*Invest-*
10 *ments may be made only in interest-bearing obliga-*
11 *tions of the United States.*

12 “(3) *ACQUISITION OF OBLIGATIONS.*—*For the*
13 *purpose of investments under paragraph (1), obliga-*
14 *tions may be acquired—*

15 “(A) *on original issue at the issue price; or*

16 “(B) *by purchase of outstanding obligations*
17 *at the market price.*

18 “(4) *SALE OF OBLIGATIONS.*—*Any obligation ac-*
19 *quired by the Fund may be sold by the Commodity*
20 *Credit Corporation at the market price.*

21 “(5) *CREDITS TO FUND.*—*The interest on, and*
22 *the proceeds from the sale or redemption of, any obli-*
23 *gations held in the Fund shall be credited to and form*
24 *a part of the Fund.*

1 “(e) *ADMINISTRATION.*—*In administering the Fund,*
2 *the Secretary shall make payments, reimburse agencies of*
3 *the Department, and accept deposits without regard to limi-*
4 *tations on total amounts of allotments and fund transfers*
5 *under section 11 of the Commodity Credit Corporation*
6 *Charter Act (15 U.S.C. 714i).*

7 “**SEC. 380T. ASSESSMENTS.**

8 “(a) *DEFINITION OF GROSS DOMESTIC VOLUME.*—*In*
9 *this section, the term ‘gross domestic volume’ means the vol-*
10 *ume of tobacco products—*

11 “(1) *removed (as defined by section 5702 of the*
12 *Internal Revenue Code of 1986); and*

13 “(2) *not exempt from tax under chapter 52 of the*
14 *Internal Revenue Code of 1986 at the time of their re-*
15 *moval under that chapter or the Harmonized Tariff*
16 *Schedule of the United States (19 U.S.C. 1202).*

17 “(b) *ASSESSMENTS.*—*The Secretary, acting through*
18 *the Commodity Credit Corporation, shall impose quarterly*
19 *assessments, calculated in accordance with this section, on*
20 *each tobacco product manufacturer and tobacco product im-*
21 *porter that sells tobacco products in domestic commerce in*
22 *the United States.*

23 “(c) *TOBACCO TRUST FUND.*—*Assessments collected*
24 *under this section shall be deposited in the Tobacco Trust*
25 *Fund.*

1 “(d) *ASSESSMENT FOR EACH CLASS OF TOBACCO*
2 *PRODUCT.—*

3 “(1) *ALLOCATION BY CLASS OF TOBACCO PROD-*
4 *UCTS.—The percentage of the total amount to be as-*
5 *essed against, and paid by, the manufacturers and*
6 *importers of each class of tobacco product in each ap-*
7 *plicable fiscal year shall be—*

8 “(A) *for cigarette manufacturers and im-*
9 *porters, 99.409 percent;*

10 “(B) *for snuff manufacturers and import-*
11 *ers, 0.428 percent;*

12 “(C) *for chewing tobacco manufacturers and*
13 *importers, 0.098 percent;*

14 “(D) *for pipe tobacco manufacturers and*
15 *importers, 0.021 percent; and*

16 “(E) *for roll-your-own tobacco manufactur-*
17 *ers and importers, 0.044 percent.*

18 “(2) *ADJUSTMENT.—The Secretary shall adjust*
19 *the percentage of the total amount to be assessed*
20 *against, as determined under paragraph (1), and*
21 *paid by, the manufacturers and importers of each*
22 *class of tobacco product in each applicable fiscal year*
23 *by multiplying the percentage of the total amount to*
24 *be assessed, as determined under paragraph (1), by a*
25 *fraction—*

1 “(A) *the numerator of which is the total vol-*
2 *ume of domestic sales of that class of tobacco*
3 *product during the preceding applicable fiscal*
4 *year; and*

5 “(B) *the denominator of which is the total*
6 *volume of domestic sales of that class of tobacco*
7 *product during fiscal year 2003.*

8 “(3) *TOTAL ASSESSMENT.—*

9 “(A) *IN GENERAL.—The total amount to be*
10 *assessed against all manufacturers and import-*
11 *ers of all classes of tobacco product in each ap-*
12 *plicable fiscal year shall be equal to the amount*
13 *required to carry out this subtitle during the ap-*
14 *plicable fiscal year, as determined by the Sec-*
15 *retary.*

16 “(B) *ADDITIONAL AMOUNT.—*

17 “(i) *IN GENERAL.—If the amount to be*
18 *assessed after the application of paragraphs*
19 *(1) and (2) is insufficient to carry out this*
20 *subtitle during the applicable fiscal year,*
21 *the Secretary may assess such additional*
22 *amount as the Secretary determines to be*
23 *necessary to carry out this subtitle during*
24 *the applicable fiscal year.*

1 “(i) *ALLOCATION.*—*The additional*
2 *amount shall be allocated to the manufac-*
3 *turers and importers of each class of tobacco*
4 *product in the same manner and based on*
5 *the same percentages applied in deter-*
6 *mining the total amount to be assessed*
7 *under paragraph (1), as adjusted under*
8 *paragraph (2) during the applicable fiscal*
9 *year.*

10 “(4) *NOTIFICATION OF ASSESSMENTS.*—

11 “(A) *IN GENERAL.*—*The Secretary shall no-*
12 *tify all manufacturers and importers of tobacco*
13 *products of the amount of the assessment for each*
14 *quarterly payment period.*

15 “(B) *CONTENTS.*—*The notice for a quar-*
16 *terly payment period shall describe gross domes-*
17 *tic sales and market shares for the quarterly*
18 *payment period and conform with the require-*
19 *ments of subsection (i).*

20 “(5) *TIMING OF ASSESSMENT PAYMENTS.*—

21 “(A) *IN GENERAL.*—*Assessments shall be*
22 *collected at the end of each calendar year quar-*
23 *ter.*

24 “(B) *BASE PERIOD QUARTER.*—*The assess-*
25 *ment for a calendar year quarter shall cor-*

1 *respond to the base period quarter that ended at*
2 *the end of the preceding calendar year quarter.*

3 “(C) *AMOUNTS.*—*Subject to subparagraph*
4 *(D), beginning with the calendar quarter ending*
5 *on December 31 of each applicable fiscal year,*
6 *the payments over 4 calendar quarters shall be*
7 *sufficient to cover—*

8 “(i) *the payments required under*
9 *chapter 1 on November 1 of that same ap-*
10 *plicable fiscal year; and*

11 “(ii) *other expenditures from the To-*
12 *bacco Trust Fund required under section*
13 *380S during the base quarter periods cor-*
14 *responding to those 4 calendar quarters.*

15 “(D) *SPECIAL RULE.*—*In the case of pay-*
16 *ments required under chapter 1 that are due on*
17 *September 30, 2004, the assessments shall be*
18 *paid on that same date and correspond to the*
19 *first base period of 6 months.*

20 “(e) *ALLOCATION OF ASSESSMENT WITHIN EACH*
21 *CLASS OF TOBACCO PRODUCT.*—

22 “(1) *IN GENERAL.*—*The assessment for each class*
23 *of tobacco product shall be allocated on a pro rata*
24 *basis among manufacturers and importers based on*

1 *each manufacturer's or importer's share of gross do-*
2 *mestic volume.*

3 “(2) *LIMITATION.*—No manufacturer or importer
4 shall be required to pay an assessment that is based
5 on a share that is in excess of the manufacturer's or
6 importer's share of domestic volume.

7 “(f) *ALLOCATION OF TOTAL ASSESSMENTS BY MARKET*
8 *SHARE.*—The amount of the assessment for each class of
9 tobacco product to be paid by each manufacturer or im-
10 porter of the class of tobacco product under subsection (b)
11 shall be determined for each quarterly payment period by
12 multiplying—

13 “(1) *the market share of the manufacturer or im-*
14 *porter, as calculated with respect to that payment pe-*
15 *riod, of the class of tobacco product; by*

16 “(2) *the total amount of the assessment for that*
17 *quarterly payment period under subsection (d), for*
18 *the class of tobacco product.*

19 “(g) *DETERMINATION OF VOLUME OF DOMESTIC*
20 *SALES.*—

21 “(1) *IN GENERAL.*—The calculation of the vol-
22 ume of domestic sales of a class of tobacco product by
23 a manufacturer or importer, and by all manufactur-
24 ers and importers as a group, shall be made by the
25 Secretary based on information provided by the man-

1 *ufacturers and importers pursuant to subsection (h),*
2 *as well as any other relevant information provided to*
3 *or obtained by the Secretary.*

4 “(2) *GROSS DOMESTIC VOLUME.*—*The volume of*
5 *domestic sales shall be calculated based on gross do-*
6 *mestic volume.*

7 “(3) *MEASUREMENT.*—*For purposes of the cal-*
8 *culations under this subsection and the certifications*
9 *under subsection (h) by the Secretary, the volumes of*
10 *domestic sales shall be measured by—*

11 “(A) *in the case of cigarettes, the numbers*
12 *of cigarettes; and*

13 “(B) *in the case of other classes of tobacco*
14 *products, in terms of number of pounds, or frac-*
15 *tion thereof, of those products.*

16 “(h) *MEASUREMENT OF VOLUME OF DOMESTIC*
17 *SALES.*—

18 “(1) *IN GENERAL.*—*Each manufacturer and im-*
19 *porter of tobacco products shall submit to the Sec-*
20 *retary a certified copy of each of the returns or forms*
21 *described by paragraph (2) that are required to be*
22 *filed with a Federal Government agency on the same*
23 *date that those returns or forms are filed, or required*
24 *to be filed, with the agency.*

1 “(2) *RETURNS AND FORMS.*—*The returns and*
2 *forms described by this paragraph are those returns*
3 *and forms that relate to—*

4 “(A) *the removal of tobacco products into*
5 *domestic commerce (as defined by section 5702 of*
6 *the Internal Revenue Code of 1986); and*

7 “(B) *the payment of the taxes imposed*
8 *under chapter 52 of the Internal Revenue Code of*
9 *1986, including AFT Form 5000.24 and United*
10 *States Customs Form 7501 under currently ap-*
11 *plicable regulations.*

12 “(3) *PENALTIES.*—

13 “(A) *IN GENERAL.*—*Any person that know-*
14 *ingly fails to provide information required under*
15 *this subsection or that provides false information*
16 *under this subsection shall be subject to the pen-*
17 *alties described in section 1003 of title 18,*
18 *United States Code.*

19 “(B) *ADDITIONAL CIVIL PENALTY.*—*In ad-*
20 *dition, the Secretary may assess against the per-*
21 *son a civil penalty in an amount not to exceed*
22 *2 percent of the value of the kind of tobacco*
23 *products manufactured or imported by the per-*
24 *son during the applicable fiscal year, as deter-*
25 *mined by the Secretary.*

1 “(i) *ASSESSMENT NOTIFICATION; CONTENT.*—

2 “(1) *IN GENERAL.*—*The Secretary shall provide*
3 *each manufacturer or importer subject to an assess-*
4 *ment under subsection (b) with written notice setting*
5 *forth the amount to be assessed against the manufac-*
6 *turer or importer for the applicable quarterly period.*

7 “(2) *DEADLINE.*—*The notice for a quarterly pe-*
8 *riod shall be provided not later than 30 days before*
9 *the date payment is due under subsection (d)(5).*

10 “(3) *CONTENTS.*—*The notice shall include the*
11 *following information with respect to the quarterly*
12 *period used by the Secretary in calculating the*
13 *amount:*

14 “(A) *The total combined assessment for all*
15 *manufacturers and importers of tobacco prod-*
16 *ucts.*

17 “(B) *The total assessment with respect to*
18 *the class of tobacco products manufactured or*
19 *imported by the manufacturer or importer.*

20 “(C) *Any adjustments to the percentage al-*
21 *locations among the classes of tobacco products*
22 *made pursuant to subsection (d)(2).*

23 “(D) *The volume of gross sales of the appli-*
24 *cable class of tobacco product treated as made by*
25 *the manufacturer or importer for purposes of*

1 *calculating the manufacturer’s or importer’s*
2 *market share under subsection (f).*

3 “(E) *The total volume of gross sales of the*
4 *applicable class of tobacco product that the Sec-*
5 *retary treated as made by all manufacturers and*
6 *importers for purposes of calculating the manu-*
7 *facturer’s or importer’s market share under sub-*
8 *section (f).*

9 “(F) *The manufacturer’s or importer’s mar-*
10 *ket share of the applicable class of tobacco prod-*
11 *uct as determined by the Secretary under sub-*
12 *section (f).*

13 “(G) *The market share, as determined by*
14 *the Secretary under subsection (f), of each other*
15 *manufacturer and importer, for each applicable*
16 *class of tobacco product.*

17 “(j) *CHALLENGE TO ASSESSMENT.—*

18 “(1) *APPEAL TO SECRETARY.—A manufacturer*
19 *or importer subject to this section may contest an as-*
20 *essment imposed on the person under this section by*
21 *notifying the Secretary not later than 10 business*
22 *days after receiving the assessment notification re-*
23 *quired by subsection (i).*

24 “(2) *ESCROW.—The manufacturer and importer*
25 *may place into escrow, in accordance with rules pro-*

1 *mulgated by the Secretary, only the portion of the as-*
2 *essment being challenged in good faith pending final*
3 *determination of the assessment under this subsection.*

4 “(3) *INFORMATION.*—*The Secretary shall by reg-*
5 *ulation establish a procedure under which a person*
6 *contesting an assessment under this subsection may*
7 *present information to the Secretary to demonstrate*
8 *that the assessment is incorrect, including informa-*
9 *tion to demonstrate the following:*

10 “(A) *The total combined assessment imposed*
11 *by the Secretary on all manufacturers and im-*
12 *porters is excessive.*

13 “(B) *The Secretary’s allocation of the total*
14 *assessment among the classes of tobacco products*
15 *is incorrect.*

16 “(C) *The total volume of gross domestic*
17 *sales of all manufacturers and importers of the*
18 *relevant class of tobacco product calculated by*
19 *the Secretary under subsection (f) is incorrect.*

20 “(D) *The level of gross domestic sales attrib-*
21 *uted to the person by the Secretary for purposes*
22 *of calculating the person’s market share under*
23 *subsection (f) exceeds the person’s actual domes-*
24 *tic sales of that class of tobacco product.*

1 “(E) *The amount of the assessment attrib-*
2 *uted to the person by the Secretary exceeds the*
3 *person’s pro rata share based on the person’s*
4 *share of gross domestic sales.*

5 “(4) *CHALLENGE.—*

6 “(A) *IN GENERAL.—In challenging an as-*
7 *essment under this subsection, the manufacturer*
8 *or importer may use any information that is*
9 *available, including third party data on indus-*
10 *try or individual company sales volumes.*

11 “(B) *INCORRECT DETERMINATION.—The in-*
12 *formation may constitute evidence sufficient to*
13 *establish that the Secretary’s initial determina-*
14 *tion was incorrect, in which event the assessment*
15 *shall be revised so that the manufacturer or im-*
16 *porter is required only to pay the amount cor-*
17 *rectly determined.*

18 “(5) *TIME FOR REVIEW.—Not later than 30 days*
19 *after receiving notice from a manufacturer or im-*
20 *porter under paragraph (2), the Secretary shall—*

21 “(A) *decide whether the information pro-*
22 *vided to the Secretary pursuant to that para-*
23 *graph, and any other information that the Sec-*
24 *retary determines, is appropriate is sufficient to*

1 *establish that the original assessment was incor-*
2 *rect; and*

3 “(B) *make any revisions necessary to ensure*
4 *that each manufacturer and importer pays only*
5 *its correct pro rata share of total gross domestic*
6 *volume from all sources.*

7 “(6) *IMMEDIATE PAYMENT OF UNDISPUTED*
8 *AMOUNTS.—The regulations promulgated by the Sec-*
9 *retary under paragraph (2) shall provide for the im-*
10 *mediate payment by a manufacturer or importer*
11 *challenging an assessment of that portion of the as-*
12 *essment that is not in dispute.*

13 “(7) *JUDICIAL REVIEW.—*

14 “(A) *IN GENERAL.—Any manufacturer or*
15 *importer aggrieved by a determination of the*
16 *Secretary with respect to the amount of any as-*
17 *essment may seek review of the determination in*
18 *the United States District Court for the District*
19 *of Columbia or for the district in which the man-*
20 *ufacturer or importer resides or has its principal*
21 *place of business at any time following exhaus-*
22 *tion of the administrative remedies under this*
23 *subsection.*

24 “(B) *TIME LIMITS.—Administrative rem-*
25 *edies shall be deemed exhausted if no decision by*

1 *the Secretary is made within the time limits es-*
2 *ablished under paragraph (5).*

3 “(C) *EXCESSIVE ASSESSMENTS.*—*The court*
4 *shall restrain collection of the excessive portion of*
5 *any assessment or order a refund of excessive as-*
6 *sessments already paid, along with interest cal-*
7 *culated at the rate prescribed in section 3717 of*
8 *title 31, United States Code, if it finds that the*
9 *Secretary’s determination is not supported by a*
10 *preponderance of the information available to the*
11 *Secretary.*

12 “(8) *REGULATIONS.*—*Not later than 180 days*
13 *after the date of enactment of this subtitle, the Sec-*
14 *retary shall promulgate regulations to implement this*
15 *subsection (in accordance with section 301 of the To-*
16 *bacco Market Transition Act of 2004).*

17 “(k) *USE OF QUALIFIED FINANCIAL INSTITUTIONS.*—
18 *The Secretary may use qualified financial institutions to*
19 *manage assets, make payments, and otherwise carry out*
20 *this subtitle.*

21 “(l) *TERMINATION DATE.*—*The authority provided by*
22 *this section terminates on September 30, 2013.*

1 **“SEC. 380U. COMMODITY CREDIT CORPORATION.**

2 *The Secretary shall use the funds, facilities, and au-*
3 *thorities of the Commodity Credit Corporation to carry out*
4 *this subtitle, to remain available until expended.*

5 **“SEC. 380V. TRANSITION PROVISIONS.**

6 *“(a) TOBACCO STOCKS.—*

7 *“(1) IN GENERAL.—To provide for the orderly*
8 *disposition of quota tobacco held by an association*
9 *that has entered into a loan agreement with the Com-*
10 *modity Credit Corporation under section 106A or*
11 *106B of the Agricultural Act of 1949 (7 U.S.C. 1445–*
12 *1, 1445–2) (referred to in this section as an ‘associa-*
13 *tion’), loan pool stocks for each kind of tobacco held*
14 *by the association shall be disposed of in accordance*
15 *with this subsection.*

16 *“(2) ASSOCIATIONS.—For each kind of tobacco*
17 *held by an association, the proportion of loan pool*
18 *stocks for each kind of tobacco held by the association*
19 *that shall be transferred to the association shall be*
20 *equal to—*

21 *“(A) the amount of funds held by the asso-*
22 *ciation in the No Net Cost Tobacco Fund and the*
23 *No Net Cost Tobacco Account established under*
24 *sections 106A and 106B of the Agricultural Act*
25 *of 1949 (7 U.S.C. 1445–1, 1445–2), respectively,*
26 *for the kind of tobacco; divided by*

1 “(B) the average list price per pound for the
2 kind of tobacco, as determined by the Secretary.

3 “(3) *COMMODITY CREDIT CORPORATION.*—Any
4 loan pool stocks of a kind of tobacco of an association
5 that are not disposed of in accordance with para-
6 graph (2) shall be—

7 “(A) transferred by the association to the
8 Commodity Credit Corporation; and

9 “(B) disposed of in a manner determined
10 by the Secretary.

11 “(b) *NO NET COST FUNDS.*—

12 “(1) *IN GENERAL.*—Any funds in the No Net
13 Cost Tobacco Fund or the No Net Cost Tobacco Ac-
14 count of an association established under sections
15 106A and 106B of the Agricultural Act of 1949 (7
16 U.S.C. 1445–1, 1445–2), respectively, that remain
17 after the application of subsection (a) and sections
18 106A and 106B of the Agricultural Act of 1949 (7
19 U.S.C. 1445, 1445–1) (as in effect before the effective
20 date of this subtitle) shall be transferred to the asso-
21 ciation for distribution to traditional producers of to-
22 bacco in accordance with a plan approved by the Sec-
23 retary.

24 “(2) *ASSOCIATIONS WITH NO LOAN POOL*
25 *STOCKS.*—In the case of an association that does not

1 (2) by striking “*The Corporation*” and inserting
2 *the following*—

3 “(A) *IN GENERAL.—The*”; and

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

5 “(B) *TOBACCO RESEARCH AND DEVELOP-*
6 *MENT.—Subject to the availability of funds*
7 *under subsection (e)(5), the Corporation shall*
8 *provide a payment to reimburse an applicant for*
9 *research and development costs directly related to*
10 *a policy that is—*

11 “(i) *submitted to the Board and ap-*
12 *proved by the Board under section 508(h)*
13 *for reinsurance;*

14 “(ii) *if applicable, offered for sale to*
15 *producers; and*

16 “(iii) *addresses risk in the production*
17 *of tobacco.*”.

18 (b) *ASSESSMENTS.—Section 522(e) of the Federal*
19 *Crop Insurance Act (7 U.S.C. 1522(e)) is amended by add-*
20 *ing at the end the following:*

21 “(5) *TOBACCO ASSESSMENT.—*

22 “(A) *IN GENERAL.—Effective for each mar-*
23 *keting year for a kind of tobacco for which a*
24 *commodity-specific plan of insurance is offered*
25 *under this Act, subject to subparagraphs (B)*

1 through (D), each producer and purchaser of
2 that kind of tobacco shall remit to the Insurance
3 Fund established under section 516(c) a non-
4 refundable marketing assessment in an amount
5 determined by the Secretary pursuant to sub-
6 paragraphs (B) and (C).

7 “(B) *TOTAL AMOUNT.*—The total amount of
8 producer and purchaser assessments for a kind of
9 tobacco collected under this paragraph shall be
10 equal to the amount that is necessary to carry
11 out subsection (b)(1)(B).

12 “(C) *ADMINISTRATION.*—Producer and pur-
13 chaser assessments for a kind of tobacco under
14 this paragraph—

15 “(i) shall be determined in such a
16 manner that producers and purchasers
17 share equally, to the maximum extent prac-
18 ticable, in paying assessments required
19 under this paragraph; and

20 “(ii) shall not exceed 5 cents per
21 pound.

22 “(D) *TERMINATION.*—Effective beginning
23 with the 2010 crop of each kind of tobacco, the
24 Secretary may terminate the collection of assess-
25 ments for that kind of tobacco if the Secretary

1 *determines that further research and development*
2 *under subsection (b)(1)(B) would not be produc-*
3 *tive.”.*

4 (c) *INSURANCE FUND.*—*Section 516(c)(1) of the Fed-*
5 *eral Crop Insurance Act (7 U.S.C. 1516(c)(1)) is amended*
6 *by inserting “assessments for tobacco research made avail-*
7 *able under section 522(e)(5),” after “under subsection*
8 *(a)(2),”.*

9 **SEC. 1153. CONFORMING AMENDMENTS.**

10 *Section 320B(c)(1) of the Agricultural Adjustment Act*
11 *of 1938 (7 U.S.C. 1314h(c)(1)) is amended—*

12 (1) *by inserting “(A)” after “(1)”;*

13 (2) *by striking “by” at the end and inserting*
14 *“or”; and*

15 (3) *by adding at the end the following:*

16 *“(B) in the case of the 2003 marketing year, the*
17 *price support rate for the kind of tobacco involved in*
18 *effect under section 106 of the Agricultural Act of*
19 *1949 (7 U.S.C. 1445) at the time of the violation;*
20 *by”.*

21 **CHAPTER 3—IMPLEMENTATION**

22 **SEC. 1161. REGULATIONS.**

23 (a) *IN GENERAL.*—*The Secretary of Agriculture may*
24 *promulgate such regulations as are necessary to implement*
25 *this subtitle and the amendments made by this subtitle.*

1 (b) *PROCEDURE.*—*The promulgation of the regulations*
2 *and administration of this subtitle and the amendments*
3 *made by this subtitle shall be made without regard to—*

4 (1) *the notice and comment provisions of section*
5 *553 of title 5, United States Code;*

6 (2) *the Statement of Policy of the Secretary of*
7 *Agriculture effective July 24, 1971 (36 Fed. Reg.*
8 *13804), relating to notices of proposed rulemaking*
9 *and public participation in rulemaking; and*

10 (3) *chapter 35 of title 44, United States Code*
11 *(commonly known as the “Paperwork Reduction*
12 *Act”).*

13 (c) *CONGRESSIONAL REVIEW OF AGENCY RULE-*
14 *MAKING.*—*In carrying out this section, the Secretary shall*
15 *use the authority provided under section 808 of title 5,*
16 *United States Code.*

17 **SEC. 1162. EFFECTIVE DATE.**

18 *This subtitle and the amendments made by this sub-*
19 *title shall apply to the 2004 and subsequent crops of each*
20 *kind of tobacco.*

Attest:

Secretary.

108TH CONGRESS
2^D SESSION

H. R. 4520

AMENDMENT