

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# **H. R. 4520**

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## **AN ACT**

To amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad.



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## AN ACT

To amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad.

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

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

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

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

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

Sec. 1. Short title; etc.

**TITLE I—END SANCTIONS AND REDUCE CORPORATE TAX RATES  
FOR DOMESTIC MANUFACTURING AND SMALL CORPORATIONS**

Sec. 101. Repeal of exclusion for extraterritorial income.

Sec. 102. Reduced corporate income tax rate for domestic production activities  
income.

Sec. 103. Reduced corporate income tax rate for small corporations.

**TITLE II—JOB CREATION TAX INCENTIVES FOR  
MANUFACTURERS, SMALL BUSINESSES, AND FARMERS**

**Subtitle A—Small Business Expensing**

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

**Subtitle B—Depreciation**

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

Sec. 212. Modification of depreciation allowance for aircraft.

Sec. 213. Modification of placed in service rule for bonus depreciation property.

**Subtitle C—S Corporation Reform and Simplification**

Sec. 221. Members of family treated as 1 shareholder.

Sec. 222. Increase in number of eligible shareholders to 100.

Sec. 223. Expansion of bank S corporation eligible shareholders to include  
IRAs.

Sec. 224. Disregard of unexercised powers of appointment in determining po-  
tential current beneficiaries of ESBT.

Sec. 225. Transfer of suspended losses incident to divorce, etc.

- Sec. 226. Use of passive activity loss and at-risk amounts by qualified subchapter S trust income beneficiaries.
- Sec. 227. Exclusion of investment securities income from passive income test for bank S corporations.
- Sec. 228. Treatment of bank director shares.
- Sec. 229. Relief from inadvertently invalid qualified subchapter S subsidiary elections and terminations.
- Sec. 230. Information returns for qualified subchapter S subsidiaries.
- Sec. 231. Repayment of loans for qualifying employer securities.

#### Subtitle D—Alternative Minimum Tax Relief

- Sec. 241. Foreign tax credit under alternative minimum tax.
- Sec. 242. Expansion of exemption from alternative minimum tax for small corporations.
- Sec. 243. Income averaging for farmers not to increase alternative minimum tax.

#### Subtitle E—Restructuring of Incentives for Alcohol Fuels, Etc.

- Sec. 251. Reduced rates of tax on gasohol replaced with excise tax credit; repeal of other alcohol-based fuel incentives; etc.
- Sec. 252. Alcohol fuel subsidies borne by general fund.

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

- Sec. 261. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.

#### Subtitle G—Incentives to Reinvest Foreign Earnings in United States

- Sec. 271. Incentives to reinvest foreign earnings in United States.

#### Subtitle H—Other Incentive Provisions

- Sec. 281. Special rules for livestock sold on account of weather-related conditions.
- Sec. 282. Payment of dividends on stock of cooperatives without reducing patronage dividends.
- Sec. 283. Capital gain treatment under section 631(b) to apply to outright sales by landowners.
- Sec. 284. Distributions from publicly traded partnerships treated as qualifying income of regulated investment companies.
- Sec. 285. Improvements related to real estate investment trusts.
- Sec. 286. Treatment of certain dividends of regulated investment companies.
- Sec. 287. Taxation of certain settlement funds.
- Sec. 288. Expansion of human clinical trials qualifying for orphan drug credit.
- Sec. 289. Simplification of excise tax imposed on bows and arrows.
- Sec. 290. Repeal of excise tax on fishing tackle boxes.
- Sec. 291. Sonar devices suitable for finding fish.
- Sec. 292. Income tax credit to distilled spirits wholesalers for cost of carrying Federal excise taxes on bottled distilled spirits.
- Sec. 293. Suspension of occupational taxes relating to distilled spirits, wine, and beer.
- Sec. 294. Modification of unrelated business income limitation on investment in certain small business investment companies.

- Sec. 295. Election to determine taxable income from certain international shipping activities using per ton rate.
- Sec. 296. Charitable contribution deduction for certain expenses incurred in support of Native Alaskan subsistence whaling.

#### TITLE III—TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

- Sec. 301. Interest expense allocation rules.
- Sec. 302. Recharacterization of overall domestic loss.
- Sec. 303. Reduction to 2 foreign tax credit baskets.
- Sec. 304. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.
- Sec. 305. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.
- Sec. 306. Clarification of treatment of certain transfers of intangible property.
- Sec. 307. United States property not to include certain assets of controlled foreign corporation.
- Sec. 308. Election not to use average exchange rate for foreign tax paid other than in functional currency.
- Sec. 309. Repeal of withholding tax on dividends from certain foreign corporations.
- Sec. 310. Provide equal treatment for interest paid by foreign partnerships and foreign corporations.
- Sec. 311. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company income rules.
- Sec. 312. Look-thru treatment for sales of partnership interests.
- Sec. 313. Repeal of foreign personal holding company rules and foreign investment company rules.
- Sec. 314. Determination of foreign personal holding company income with respect to transactions in commodities.
- Sec. 315. Modifications to treatment of aircraft leasing and shipping income.
- Sec. 316. Modification of exceptions under subpart F for active financing.

#### TITLE IV—EXTENSION OF CERTAIN EXPIRING PROVISIONS

- Sec. 401. Allowance of nonrefundable personal credits against regular and minimum tax liability.
- Sec. 402. Extension of research credit.
- Sec. 403. Extension of credit for electricity produced from certain renewable resources.
- Sec. 404. Indian employment tax credit.
- Sec. 405. Work opportunity credit.
- Sec. 406. Welfare-to-work credit.
- Sec. 407. Certain expenses of elementary and secondary school teachers.
- Sec. 408. Extension of accelerated depreciation benefit for property on Indian reservations.
- Sec. 409. Charitable contributions of computer technology and equipment used for educational purposes.
- Sec. 410. Expensing of environmental remediation costs.
- Sec. 411. Availability of medical savings accounts.
- Sec. 412. Taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.
- Sec. 413. Qualified zone academy bonds.
- Sec. 414. District of Columbia.

- Sec. 415. Extension of certain New York Liberty Zone bond financing.
- Sec. 416. Disclosures relating to terrorist activities.
- Sec. 417. Disclosure of return information relating to student loans.
- Sec. 418. Cover over of tax on distilled spirits.
- Sec. 419. Joint review of strategic plans and budget for the Internal Revenue Service.
- Sec. 420. Parity in the application of certain limits to mental health benefits.
- Sec. 421. Combined employment tax reporting project.
- Sec. 422. Clean-fuel vehicles.

#### TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

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

#### TITLE VI—REVENUE PROVISIONS

##### Subtitle A—Provisions to Reduce Tax Avoidance Through Individual and Corporate Expatriation

- Sec. 601. Tax treatment of expatriated entities and their foreign parents.
- Sec. 602. Excise tax on stock compensation of insiders in expatriated corporations.
- Sec. 603. Reinsurance of United States risks in foreign jurisdictions.
- Sec. 604. Revision of tax rules on expatriation of individuals.
- Sec. 605. Reporting of taxable mergers and acquisitions.
- Sec. 606. Studies.

##### Subtitle B—Provisions Relating to Tax Shelters

#### PART I—TAXPAYER-RELATED PROVISIONS

- Sec. 611. Penalty for failing to disclose reportable transactions.
- Sec. 612. Accuracy-related penalty for listed transactions, other reportable transactions having a significant tax avoidance purpose, etc.
- Sec. 613. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
- Sec. 614. Statute of limitations for taxable years for which required listed transactions not reported.
- Sec. 615. Disclosure of reportable transactions.
- Sec. 616. Failure to furnish information regarding reportable transactions.
- Sec. 617. Modification of penalty for failure to maintain lists of investors.
- Sec. 618. Penalty on promoters of tax shelters.
- Sec. 619. Modifications of substantial understatement penalty for nonreportable transactions.
- Sec. 620. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
- Sec. 621. Penalty on failure to report interests in foreign financial accounts.
- Sec. 622. Regulation of individuals practicing before the Department of the Treasury.

#### PART II—OTHER PROVISIONS

- Sec. 631. Treatment of stripped interests in bond and preferred stock funds, etc.

- Sec. 632. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.
- Sec. 633. Disallowance of certain partnership loss transfers.
- Sec. 634. No reduction of basis under section 734 in stock held by partnership in corporate partner.
- Sec. 635. Repeal of special rules for FASITs.
- Sec. 636. Limitation on transfer of built-in losses on REMIC residuals.
- Sec. 637. Clarification of banking business for purposes of determining investment of earnings in United States property.
- Sec. 638. Alternative tax for certain small insurance companies.
- Sec. 639. Denial of deduction for interest on underpayments attributable to nondisclosed reportable transactions.
- Sec. 640. Clarification of rules for payment of estimated tax for certain deemed asset sales.
- Sec. 641. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale.
- Sec. 642. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.
- Sec. 643. Exclusion from gross income for interest on overpayments of income tax by individuals.
- Sec. 644. Deposits made to suspend running of interest on potential underpayments.
- Sec. 645. Partial payment of tax liability in installment agreements.
- Sec. 646. Affirmation of consolidated return regulation authority.

#### PART III—LEASING

- Sec. 647. Reform of tax treatment of certain leasing arrangements.
- Sec. 648. Limitation on deductions allocable to property used by governments or other tax-exempt entities.
- Sec. 649. Effective date.

#### Subtitle C—Reduction of Fuel Tax Evasion

- Sec. 651. Exemption from certain excise taxes for mobile machinery.
- Sec. 652. Taxation of aviation-grade kerosene.
- Sec. 653. Dye injection equipment.
- Sec. 654. Authority to inspect on-site records.
- Sec. 655. Registration of pipeline or vessel operators required for exemption of bulk transfers to registered terminals or refineries.
- Sec. 656. Display of registration.
- Sec. 657. Penalties for failure to register and failure to report.
- Sec. 658. Collection from customs bond where importer not registered.
- Sec. 659. Modifications of tax on use of certain vehicles.
- Sec. 660. Modification of ultimate vendor refund claims with respect to farming.
- Sec. 661. Dedication of revenues from certain penalties to the Highway Trust Fund.
- Sec. 662. Taxable fuel refunds for certain ultimate vendors.
- Sec. 663. Two-party exchanges.
- Sec. 664. Simplification of tax on tires.

#### Subtitle D—Nonqualified Deferred Compensation Plans

- Sec. 671. Treatment of nonqualified deferred compensation plans.



Subtitle E—Other Revenue Provisions

- Sec. 681. Qualified tax collection contracts.
- Sec. 682. Treatment of charitable contributions of patents and similar property.
- Sec. 683. Increased reporting for noncash charitable contributions.
- Sec. 684. Donations of motor vehicles, boats, and aircraft.
- Sec. 685. Extension of amortization of intangibles to sports franchises.
- Sec. 686. Modification of continuing levy on payments to Federal vendors.
- Sec. 687. Modification of straddle rules.
- Sec. 688. Addition of vaccines against hepatitis A to list of taxable vaccines.
- Sec. 689. Addition of vaccines against influenza to list of taxable vaccines.
- Sec. 690. Extension of IRS user fees.
- Sec. 691. COBRA fees.

TITLE VII—MARKET REFORM FOR TOBACCO GROWERS

- Sec. 701. Short title.
- Sec. 702. Effective date.

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

- Sec. 711. Termination of tobacco quota program and related provisions.
- Sec. 712. Termination of tobacco price support program and related provisions.
- Sec. 713. Continuation of liability and no net loss assessments to prevent losses on price support loans.

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

- Sec. 721. Definitions of active tobacco producer and quota holder.
- Sec. 722. Payments to tobacco quota holders.
- Sec. 723. Transition payments for active producers of quota tobacco.
- Sec. 724. Resolution of disputes.
- Sec. 725. Source of funds for payments.

TITLE VIII—TRADE PROVISIONS

- Sec. 801. Ceiling fans.
- Sec. 802. Certain steam generators, and certain reactor vessel heads, used in nuclear facilities.

1 **TITLE I—END SANCTIONS AND**  
2 **REDUCE CORPORATE TAX**  
3 **RATES FOR DOMESTIC MANU-**  
4 **FACTURING AND SMALL COR-**  
5 **PORATIONS**

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

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

9 (b) CONFORMING AMENDMENTS.—

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

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

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

18 (4) The second sentence of section  
19 56(g)(4)(B)(i) is amended by striking “114 or”.

20 (5) Section 275(a) is amended—

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

25 (B) by striking the last sentence.

1           (6) Paragraph (3) of section 864(e) is amend-  
2 ed—

3                   (A) by striking:

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

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

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

10                   (B) by striking subparagraph (B).

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

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

15           (c) EFFECTIVE DATE.—Except as provided in sub-  
16 section (d), the amendments made by this section shall  
17 apply to transactions after December 31, 2004.

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

19                   (1) IN GENERAL.—In the case of transactions  
20 during 2005 or 2006, the amount includible in gross  
21 income by reason of the amendments made by this  
22 section shall not exceed the applicable percentage of  
23 the amount which would have been so included but  
24 for this subsection.

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

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

6           (B) For 2006, the applicable percentage  
7 shall be 40 percent.

8           (e) REVOCATION OF ELECTION TO BE TREATED AS  
9 DOMESTIC CORPORATION.—If, during the 1-year period  
10 beginning on the date of the enactment of this Act, a cor-  
11 poration for which an election is in effect under section  
12 943(e) of the Internal Revenue Code of 1986 revokes such  
13 election, no gain or loss shall be recognized with respect  
14 to property treated as transferred under clause (ii) of sec-  
15 tion 943(e)(4)(B) of such Code to the extent such prop-  
16 erty—

17           (1) was treated as transferred under clause (i)  
18 thereof, or

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

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

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

5 (1) which is between the taxpayer and a person  
 6 who is not a related person (as defined in section  
 7 943(b)(3) of such Code, as in effect on the day be-  
 8 fore the date of the enactment of this Act), and

9 (2) which is in effect on January 14, 2002, and  
 10 at all times thereafter.

11 For purposes of this subsection, a binding contract shall  
 12 include a purchase option, renewal option, or replacement  
 13 option which is included in such contract and which is en-  
 14 forceable against the seller or lessor.

15 **SEC. 102. REDUCED CORPORATE INCOME TAX RATE FOR**  
 16 **DOMESTIC PRODUCTION ACTIVITIES IN-**  
 17 **COME.**

18 (a) LIMITATION ON TAX ON QUALIFIED PRODUCTION  
 19 ACTIVITIES INCOME.—Section 11 is amended by redesi-  
 20 gnating subsections (c) and (d) as subsections (d) and (e),  
 21 respectively, and by inserting after subsection (b) the fol-  
 22 lowing new subsection:

23 “(c) LIMITATION ON TAX ON QUALIFIED PRODUC-  
 24 TION ACTIVITIES INCOME.—

1           “(1) IN GENERAL.—If a corporation has quali-  
2           fied production activities income for any taxable  
3           year, the tax imposed by this section shall not exceed  
4           the sum of—

5                   “(A) a tax computed at the rates and in  
6                   the manner as if this subsection had not been  
7                   enacted on the taxable income reduced by the  
8                   amount of qualified production activities in-  
9                   come, plus

10                   “(B) a tax equal to 32 percent (34 percent  
11                   in the case of taxable years beginning before  
12                   January 1, 2007) of the qualified production  
13                   activities income (or, if less, taxable income).

14           “(2) QUALIFIED PRODUCTION ACTIVITIES IN-  
15           COME.—

16                   “(A) IN GENERAL.—The term ‘qualified  
17                   production activities income’ for any taxable  
18                   year means an amount equal to the excess (if  
19                   any) of—

20                           “(i) the taxpayer’s domestic produc-  
21                           tion gross receipts for such taxable year,  
22                           over

23                           “(ii) the sum of—

24                                   “(I) the cost of goods sold that  
25                                   are allocable to such receipts,

1                   “(II) other deductions, expenses,  
2                   or losses directly allocable to such re-  
3                   ceipts, and

4                   “(III) a ratable portion of other  
5                   deductions, expenses, and losses that  
6                   are not directly allocable to such re-  
7                   ceipts or another class of income.

8                   “(B) ALLOCATION METHOD.—The Sec-  
9                   retary shall prescribe rules for the proper allo-  
10                  cation of items of income, deduction, expense,  
11                  and loss for purposes of determining income at-  
12                  tributable to domestic production activities.

13                  “(3) DOMESTIC PRODUCTION GROSS RE-  
14                  CEIPTS.—For purposes of this subsection, the term  
15                  ‘domestic production gross receipts’ means the gross  
16                  receipts of the taxpayer which are derived from—

17                         “(A) any lease, rental, license, sale, ex-  
18                         change, or other disposition of—

19                                 “(i) qualifying production property  
20                                 which was manufactured, produced, grown,  
21                                 or extracted in whole or in significant part  
22                                 by the taxpayer within the United States,  
23                                 or

24                                 “(ii) any qualified film produced by  
25                                 the taxpayer, or

1           “(B) construction, engineering, or architec-  
2           tural services performed in the United States  
3           for construction projects in the United States.

4           “(4) QUALIFYING PRODUCTION PROPERTY.—  
5           For purposes of this subsection, the term ‘qualifying  
6           production property’ means—

7                   “(A) tangible personal property,

8                   “(B) any computer software, and

9                   “(C) any property described in section  
10           168(f)(4).

11           “(5) QUALIFIED FILM.—For purposes of this  
12           subsection—

13                   “(A) IN GENERAL.—The term ‘qualified  
14           film’ means any property described in section  
15           168(f)(3) if not less than 50 percent of the  
16           total compensation relating to the production of  
17           such property is compensation for services per-  
18           formed in the United States by actors, produc-  
19           tion personnel, directors, and producers.

20                   “(B) EXCEPTION.—Such term does not in-  
21           clude property with respect to which records are  
22           required to be maintained under section 2257  
23           of title 18, United States Code.

24           “(6) RELATED PERSONS.—For purposes of this  
25           subsection—



1           “(A) IN GENERAL.—The term ‘domestic  
2           production gross receipts’ shall not include any  
3           gross receipts of the taxpayer derived from  
4           property leased, licensed, or rented by the tax-  
5           payer for use by any related person.

6           “(B) RELATED PERSON.—For purposes of  
7           subparagraph (A), a person shall be treated as  
8           related to another person if such persons are  
9           treated as a single employer under subsection  
10          (a) or (b) of section 52 or subsection (m) or (o)  
11          of section 414, except that determinations  
12          under subsections (a) and (b) of section 52  
13          shall be made without regard to section  
14          1563(b).”.

15          (b) SPECIAL RULE RELATING TO ELECTION TO  
16          TREAT CUTTING OF TIMBER AS A SALE OR EXCHANGE.—  
17          In the case of a corporation, any election under section  
18          631(a) of the Internal Revenue Code of 1986 made for  
19          a taxable year ending on or before the date of the enact-  
20          ment of this Act may be revoked by the taxpayer for any  
21          taxable year ending after such date. For purposes of deter-  
22          mining whether such taxpayer may make a further elec-  
23          tion under such section, such election (and any revocation  
24          under this section) shall not be taken into account.

1 (c) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to taxable years beginning after  
 3 December 31, 2004.

4 **SEC. 103. REDUCED CORPORATE INCOME TAX RATE FOR**  
 5 **SMALL CORPORATIONS.**

6 (a) IN GENERAL.—Subsection (b) of section 11 (re-  
 7 lating to tax imposed on corporations) is amended by re-  
 8 designating paragraph (2) as paragraph (6) and by strik-  
 9 ing paragraph (1) and inserting the following new para-  
 10 graphs:

11 “(1) FOR TAXABLE YEARS BEGINNING AFTER  
 12 2012.—In the case of taxable years beginning after  
 13 2012, the amount of the tax imposed by subsection  
 14 (a) shall be determined in accordance with the fol-  
 15 lowing table:

<b>“If taxable income is:</b>	<b>The tax is:</b>
Not over \$50,000 .....	15% of taxable income.
Over \$50,000 but not over \$75,000.	\$7,500, plus 25% of the excess over \$50,000.
Over \$75,000 but not over \$20,000,000.	\$13,750, plus 32% of the excess over \$75,000.
Over \$20,000,000 .....	\$6,389,750, plus 35% of the excess over \$20,000,000.

16 “(2) FOR TAXABLE YEARS BEGINNING IN 2011  
 17 OR 2012.—In the case of taxable years beginning in  
 18 2011 or 2012, the amount of the tax imposed by  
 19 subsection (a) shall be determined in accordance  
 20 with the following table:

<b>“If taxable income is:</b>	<b>The tax is:</b>
Not over \$50,000 .....	15% of taxable income.

<b>“If taxable income is:</b>	<b>The tax is:</b>
Over \$50,000 but not over \$75,000.	\$7,500, plus 25% of the excess over \$50,000.
Over \$75,000 but not over \$5,000,000.	\$13,750, plus 32% of the excess over \$75,000.
Over \$5,000,000 but not over \$10,000,000.	\$1,589,750, plus 34% of the excess over \$5,000,000.
Over \$10,000,000 .....	\$3,289,750, plus 35% of the excess over \$10,000,000.

1           “(3) FOR TAXABLE YEARS BEGINNING IN 2008,  
 2           2009, OR 2010.—In the case of taxable years begin-  
 3           ning in 2008, 2009, or 2010, the amount of the tax  
 4           imposed by subsection (a) shall be determined in ac-  
 5           cordance with the following table:

<b>“If taxable income is:</b>	<b>The tax is:</b>
Not over \$50,000 .....	15% of taxable income.
Over \$50,000 but not over \$75,000.	\$7,500, plus 25% of the excess over \$50,000.
Over \$75,000 but not over \$1,000,000.	\$13,750, plus 32% of the excess over \$75,000.
Over \$1,000,000 but not over \$10,000,000.	\$309,750, plus 34% of the excess over \$1,000,000.
Over \$10,000,000 .....	\$3,369,750, plus 35% of the excess over \$10,000,000.

6           “(4) FOR TAXABLE YEARS BEGINNING IN 2005,  
 7           2006, OR 2007.—In the case of taxable years begin-  
 8           ning in 2005, 2006, or 2007, the amount of the tax  
 9           imposed by subsection (a) shall be determined in ac-  
 10          cordance with the following table:

<b>“If taxable income is:</b>	<b>The tax is:</b>
Not over \$50,000 .....	15% of taxable income.
Over \$50,000 but not over \$75,000.	\$7,500, plus 25% of the excess over \$50,000.
Over \$75,000 but not over \$1,000,000.	\$13,750, plus 33% of the excess over \$75,000.
Over \$1,000,000 but not over \$10,000,000.	\$319,000, plus 34% of the excess over \$1,000,000.
Over \$10,000,000 .....	\$3,379,000, plus 35% of the excess over \$10,000,000.

1           “(5) PHASEOUT OF LOWER RATES FOR CER-  
 2 TAIN TAXPAYERS.—

3           “(A) GENERAL RULE FOR YEARS BEFORE  
 4 2013.—

5           “(i) IN GENERAL.—In the case of tax-  
 6 able years beginning before 2013 with re-  
 7 spect to a corporation which has taxable  
 8 income in excess of the applicable amount  
 9 for any taxable year, the amount of tax de-  
 10 termined under paragraph (1), (2), (3) or  
 11 (4) for such taxable year shall be increased  
 12 by the lesser of (I) 5 percent of such ex-  
 13 cess, or (II) the maximum increase  
 14 amount.

15           “(ii) MAXIMUM INCREASE AMOUNT.—  
 16 For purposes of clause (i)—

<b>“In the case of any taxable year beginning during:</b>	<b>The applicable amount is:</b>	<b>The maximum increase amount is:</b>
2005, 2006, or 2007 .....	\$1,000,000	\$21,000
2008, 2009, or 2010 .....	\$1,000,000	\$30,250
2011 or 2012 .....	\$5,000,000	\$110,250.

17           “(B) HIGHER INCOME CORPORATIONS.—In  
 18 the case of a corporation which has taxable in-  
 19 come in excess of \$20,000,000 (\$15,000,000 in  
 20 the case of taxable years beginning before  
 21 2013), the amount of the tax determined under  
 22 the foregoing provisions of this subsection shall

1           be increased by an additional amount equal to  
2           the lesser of (i) 3 percent of such excess, or (ii)  
3           \$610,250 (\$100,000 in the case of taxable  
4           years beginning before 2013).”.

5           (b) CONFORMING AMENDMENTS.—

6           (1) Section 904(b)(3)(D)(ii) is amended to read  
7           as follows:

8                         “(ii) in the case of a corporation, sec-  
9                         tion 1201(a) applies to such taxable  
10                        year.”.

11           (2) Section 1201(a) is amended by striking  
12           “the last 2 sentences of section 11(b)(1)” and in-  
13           serting “section 11(b)(5)”.

14           (3) Section 1561(a) is amended—

15                         (A) by striking “the last 2 sentences of  
16                         section 11(b)(1)” and inserting “section  
17                         11(b)(5)”, and

18                         (B) by striking “such last 2 sentences”  
19                         and inserting “section 11(b)(5)”.

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

1 **TITLE II—JOB CREATION TAX IN-**  
2 **CENTIVES FOR MANUFAC-**  
3 **TURERS, SMALL BUSINESSES,**  
4 **AND FARMERS**

5 **Subtitle A—Small Business**  
6 **Expensing**

7 **SEC. 201. 2-YEAR EXTENSION OF INCREASED EXPENSING**  
8 **FOR SMALL BUSINESS.**

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

12 **Subtitle B—Depreciation**

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

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

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

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

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

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

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

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

22                   “(i) death,

23                   “(ii) a transaction to which section  
24           381(a) applies,

1           “(iii) a mere change in the form of  
2           conducting the trade or business so long as  
3           the property is retained in such trade or  
4           business as qualified leasehold improve-  
5           ment property and the taxpayer retains a  
6           substantial interest in such trade or busi-  
7           ness,

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

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



1 (c) QUALIFIED RESTAURANT PROPERTY.—Sub-  
2 section (e) of section 168 (as amended by subsection (b))  
3 is further amended by adding at the end the following new  
4 paragraph:

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

9 “(A) such improvement is placed in service  
10 more than 3 years after the date such building  
11 was first placed in service, and

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

16 (d) REQUIREMENT TO USE STRAIGHT LINE METH-  
17 OD.—

18 (1) Paragraph (3) of section 168(b) is amended  
19 by adding at the end the following new subpara-  
20 graphs:

21 “(G) Qualified leasehold improvement  
22 property described in subsection (e)(6).

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

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

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

“(E)(iv) .....	39
“(E)(v) .....	39”.

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

10   **SEC. 212. MODIFICATION OF DEPRECIATION ALLOWANCE**  
11                                   **FOR AIRCRAFT.**

12           (a) AIRCRAFT TREATED AS QUALIFIED PROP-  
13           PERTY.—

14           (1) IN GENERAL.—Paragraph (2) of section  
15           168(k) is amended by redesignating subparagraphs  
16           (C) through (F) as subparagraphs (D) through (G),  
17           respectively, and by inserting after subparagraph  
18           (B) the following new subparagraph:

19                           “(C) CERTAIN AIRCRAFT.—The term  
20                           ‘qualified property’ includes property—

21                                   “(i) which meets the requirements of  
22                                   clauses (ii) and (iii) of subparagraph (A),

23                                   “(ii) which is an aircraft which is not  
24                                   a transportation property (as defined in

1           subparagraph (B)(iii)) other than for agri-  
2           cultural or firefighting purposes,

3           “(iii) which is purchased and on which  
4           such purchaser, at the time of the contract  
5           for purchase, has made a nonrefundable  
6           deposit of the lesser of—

7                     “(I) 10 percent of the cost, or

8                     “(II) \$100,000, and

9           “(iv) which has—

10                    “(I) an estimated production pe-  
11                    riod exceeding 4 months, and

12                    “(II) a cost exceeding  
13                    \$200,000.”.

14           (2) PLACED IN SERVICE DATE.—Clause (iv) of  
15           section 168(k)(2)(A) is amended by striking “sub-  
16           paragraph (B)” and inserting “subparagraphs (B)  
17           and (C)”.

18           (b) CONFORMING AMENDMENTS.—

19           (1) Section 168(k)(2)(B) is amended by adding  
20           at the end the following new clause:

21                    “(iv) APPLICATION OF SUBPARA-  
22                    GRAPH.—This subparagraph shall not  
23                    apply to any property which is described in  
24                    subparagraph (C).”.

1           (2) Section 168(k)(4)(A)(ii) is amended by  
 2 striking “paragraph (2)(C)” and inserting “para-  
 3 graph (2)(D)”.

4           (3) Section 168(k)(4)(B)(iii) is amended by in-  
 5 serting “and paragraph (2)(C)” after “of this para-  
 6 graph)”.

7           (4) Section 168(k)(4)(C) is amended by striking  
 8 “subparagraphs (B) and (D)” and inserting “sub-  
 9 paragraphs (B), (C), and (E)”.

10           (5) Section 168(k)(4)(D) is amended by strik-  
 11 ing “Paragraph (2)(E)” and inserting “Paragraph  
 12 (2)(F)”.

13           (c) EFFECTIVE DATE.—The amendments made by  
 14 this section shall take effect as if included in the amend-  
 15 ments made by section 101 of the Job Creation and Work-  
 16 er Assistance Act of 2002.

17 **SEC. 213. MODIFICATION OF PLACED IN SERVICE RULE**  
 18 **FOR BONUS DEPRECIATION PROPERTY.**

19           (a) IN GENERAL.—Section 168(k)(2)(D) (relating to  
 20 special rules) is amended by adding at the end the fol-  
 21 lowing new clause:

22                           “(iii) SYNDICATION.—For purposes of  
 23 subparagraph (A)(ii), if—

1           “(I) property is originally placed  
2           in service after September 10, 2001,  
3           by the lessor of such property,

4           “(II) such property is sold by  
5           such lessor or any subsequent pur-  
6           chaser within 3 months after the date  
7           so placed in service (or, in the case of  
8           multiple units of property subject to  
9           the same lease, within 3 months after  
10          the date the final unit is placed in  
11          service, so long as the period between  
12          the time the first unit is placed in  
13          service and the time the last unit is  
14          placed in service does not exceed 12  
15          months), and

16          “(III) the user of such property  
17          after the last sale during such 3-  
18          month period remains the same as  
19          when such property was originally  
20          placed in service,

21          such property shall be treated as originally  
22          placed in service not earlier than the date  
23          of such last sale, so long as no previous  
24          owner of such property elects the applica-

1           tion of this subsection with respect to such  
2           property.”.

3           (b) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall take effect as if included in the amend-  
5 ments made by section 101 of the Job Creation and Work-  
6 er Assistance Act of 2002; except that the parenthetical  
7 material in section 168(k)(2)(D)(iii)(II) of the Internal  
8 Revenue Code of 1986, as added by this section, shall  
9 apply to property sold after June 4, 2004.

## 10       **Subtitle C—S Corporation Reform** 11                                   **and Simplification**

### 12       **SEC. 221. MEMBERS OF FAMILY TREATED AS 1 SHARE-** 13                                   **HOLDER.**

14           (a) **IN GENERAL.**—Paragraph (1) of section 1361(c)  
15 (relating to special rules for applying subsection (b)) is  
16 amended to read as follows:

17                                   “(1) **MEMBERS OF FAMILY TREATED AS 1**  
18                                   **SHAREHOLDER.**—

19                                   “(A) **IN GENERAL.**—For purpose of sub-  
20                                   section (b)(1)(A)—

21                                   “(i) except as provided in clause (ii),  
22                                   a husband and wife (and their estates)  
23                                   shall be treated as 1 shareholder, and

24                                   “(ii) in the case of a family with re-  
25                                   spect to which an election is in effect

1 under subparagraph (D), all members of  
2 the family shall be treated as 1 share-  
3 holder.

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

6 “(i) IN GENERAL.—The term ‘mem-  
7 bers of the family’ means the common an-  
8 cestor, lineal descendants of the common  
9 ancestor, and the spouses (or former  
10 spouses) of such lineal descendants or com-  
11 mon ancestor.

12 “(ii) COMMON ANCESTOR.—For pur-  
13 poses of this paragraph, an individual shall  
14 not be considered a common ancestor if, as  
15 of the later of the effective date of this  
16 paragraph or the time the election under  
17 section 1362(a) is made, the individual is  
18 more than 3 generations removed from the  
19 youngest generation of shareholders who  
20 would (but for this clause) be members of  
21 the family. For purposes of the preceding  
22 sentence, a spouse (or former spouse) shall  
23 be treated as being of the same generation  
24 as the individual to which such spouse is  
25 (or was) married.

1           “(C) EFFECT OF ADOPTION, ETC.—In de-  
2           termining whether any relationship specified in  
3           subparagraph (B) exists, the rules of section  
4           152(b)(2) shall apply.

5           “(D) ELECTION.—An election under sub-  
6           paragraph (A)(ii)—

7                   “(i) may, except as otherwise provided  
8                   in regulations prescribed by the Secretary,  
9                   be made by any member of the family, and

10                   “(ii) shall remain in effect until termi-  
11                   nated as provided in regulations prescribed  
12                   by the Secretary.”.

13           (b) RELIEF FROM INADVERTENT INVALID ELECTION  
14           OR TERMINATION.—Section 1362(f) (relating to inad-  
15           vertent invalid elections or terminations), as amended by  
16           section 229, is amended—

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

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

22           (c) EFFECTIVE DATES.—

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



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

4 **SEC. 222. INCREASE IN NUMBER OF ELIGIBLE SHARE-**  
5 **HOLDERS TO 100.**

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

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

12 **SEC. 223. EXPANSION OF BANK S CORPORATION ELIGIBLE**  
13 **SHAREHOLDERS TO INCLUDE IRAS.**

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

17                       “(vi) In the case of a corporation  
18                       which is a bank (as defined in section  
19                       581), a trust which constitutes an indi-  
20                       vidual retirement account under section  
21                       408(a), including one designated as a Roth  
22                       IRA under section 408A, but only to the  
23                       extent of the stock held by such trust in  
24                       such bank as of the date of the enactment  
25                       of this clause.”.

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

4 “(vi) In the case of a trust described  
5 in clause (vi) of subparagraph (A), the in-  
6 dividual for whose benefit the trust was  
7 created shall be treated as a shareholder.”.

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

15 “(16) a sale of stock held by a trust which con-  
16 stitutes an individual retirement account under sec-  
17 tion 408(a) to the individual for whose benefit such  
18 account is established if—

19 “(A) such stock is in a bank (as defined in  
20 section 581),

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

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

1           “(D) such sale is for fair market value at  
 2           the time of sale (as established by an inde-  
 3           pendent appraiser) and the terms of the sale  
 4           are otherwise at least as favorable to such trust  
 5           as the terms that would apply on a sale to an  
 6           unrelated party,

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

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

13           (d) CONFORMING AMENDMENT.—Section 512(e)(1)  
 14 is amended by inserting “1361(c)(2)(A)(vi) or” before  
 15 “1361(c)(6)”.

16           (e) EFFECTIVE DATE.—The amendments made by  
 17 this section shall take effect on the date of the enactment  
 18 of this Act.

19           **SEC. 224. DISREGARD OF UNEXERCISED POWERS OF AP-  
 20                       POINTMENT IN DETERMINING POTENTIAL  
 21                       CURRENT BENEFICIARIES OF ESBT.**

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

24           (1) by inserting “(determined without regard to  
 25           any power of appointment to the extent such power

1 remains unexercised at the end of such period)”  
2 after “of the trust” in the first sentence, and

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

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

8 **SEC. 225. TRANSFER OF SUSPENDED LOSSES INCIDENT TO**  
9 **DIVORCE, ETC.**

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

13 “(2) INDEFINITE CARRYOVER OF DISALLOWED  
14 LOSSES AND DEDUCTIONS.—

15 “(A) IN GENERAL.—Except as provided in  
16 subparagraph (B), any loss or deduction which  
17 is disallowed for any taxable year by reason of  
18 paragraph (1) shall be treated as incurred by  
19 the corporation in the succeeding taxable year  
20 with respect to that shareholder.

21 “(B) TRANSFERS OF STOCK BETWEEN  
22 SPOUSES OR INCIDENT TO DIVORCE.—In the  
23 case of any transfer described in section  
24 1041(a) of stock of an S corporation, any loss  
25 or deduction described in subparagraph (A)

1 with respect such stock shall be treated as in-  
2 curred by the corporation in the succeeding tax-  
3 able year with respect to the transferee.”

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

7 **SEC. 226. USE OF PASSIVE ACTIVITY LOSS AND AT-RISK**  
8 **AMOUNTS BY QUALIFIED SUBCHAPTER S**  
9 **TRUST INCOME BENEFICIARIES.**

10 (a) IN GENERAL.—Section 1361(d)(1) (relating to  
11 special rule for qualified subchapter S trust) is amended—

12 (1) by striking “and” at the end of subpara-  
13 graph (A),

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

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

18 “(C) for purposes of applying sections 465  
19 and 469 to the beneficiary of the trust, the dis-  
20 position of the S corporation stock by the trust  
21 shall be treated as a disposition by such bene-  
22 ficiary.”.

23 (b) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to transfers made after December  
25 31, 2004.

1 **SEC. 227. EXCLUSION OF INVESTMENT SECURITIES INCOME**  
2 **FROM PASSIVE INCOME TEST FOR BANK S**  
3 **CORPORATIONS.**

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

9 “(F) EXCEPTION FOR BANKS; ETC.—In  
10 the case of a bank (as defined in section 581),  
11 a bank holding company (within the meaning of  
12 section 2(a) of the Bank Holding Company Act  
13 of 1956 (12 U.S.C. 1841(a))), or a financial  
14 holding company (within the meaning of section  
15 2(p) of such Act), the term ‘passive investment  
16 income’ shall not include—

17 “(i) interest income earned by such  
18 bank or company, or

19 “(ii) dividends on assets required to  
20 be held by such bank or company, includ-  
21 ing stock in the Federal Reserve Bank, the  
22 Federal Home Loan Bank, or the Federal  
23 Agricultural Mortgage Bank or participa-  
24 tion certificates issued by a Federal Inter-  
25 mediate Credit Bank.”.

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

4 **SEC. 228. TREATMENT OF BANK DIRECTOR SHARES.**

5 (a) IN GENERAL.—Section 1361 (defining S corpora-  
6 tion) is amended by adding at the end the following new  
7 subsection:

8 “(f) RESTRICTED BANK DIRECTOR STOCK.—

9 “(1) IN GENERAL.—Restricted bank director  
10 stock shall not be taken into account as outstanding  
11 stock of the S corporation in applying this sub-  
12 chapter (other than section 1368(f)).

13 “(2) RESTRICTED BANK DIRECTOR STOCK.—

14 For purposes of this subsection, the term ‘restricted  
15 bank director stock’ means stock in a bank (as de-  
16 fined in section 581), a bank holding company (with-  
17 in the meaning of section 2(a) of the Bank Holding  
18 Company Act of 1956 (12 U.S.C. 1841(a))), or a fi-  
19 nancial holding company (within the meaning of sec-  
20 tion 2(p) of such Act), registered with the Federal  
21 Reserve System, if such stock—

22 “(A) is required to be held by an individual  
23 under applicable Federal or State law in order  
24 to permit such individual to serve as a director,  
25 and

1           “(B) is subject to an agreement with such  
2           bank or company (or a corporation which con-  
3           trols (within the meaning of section 368(e))  
4           such bank or company) pursuant to which the  
5           holder is required to sell back such stock (at  
6           the same price as the individual acquired such  
7           stock) upon ceasing to hold the office of direc-  
8           tor.

9           “(3) CROSS REFERENCE.—

**“For treatment of certain distributions with re-  
spect to restricted bank director stock, see section  
1368(f).”.**

10          (b) DISTRIBUTIONS.—Section 1368 (relating to dis-  
11          tributions) is amended by adding at the end the following  
12          new subsection:

13          “(f) RESTRICTED BANK DIRECTOR STOCK.—If a di-  
14          rector receives a distribution (not in part or full payment  
15          in exchange for stock) from an S corporation with respect  
16          to any restricted bank director stock (as defined in section  
17          1361(f)), the amount of such distribution—

18                 “(1) shall be includible in gross income of the  
19          director, and

20                 “(2) shall be deductible by the corporation for  
21          the taxable year of such corporation in which or with  
22          which ends the taxable year in which such amount  
23          is included in the gross income of the director.”.



1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2004.

4 **SEC. 229. RELIEF FROM INADVERTENTLY INVALID QUALI-**  
5 **FIED SUBCHAPTER S SUBSIDIARY ELECTIONS**  
6 **AND TERMINATIONS.**

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

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

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

13 (3) by amending paragraph (3)(A) to read as  
14 follows:

15 “(A) so that the corporation for which the  
16 election was made is a small business corpora-  
17 tion or a qualified subchapter S subsidiary, as  
18 the case may be, or”,

19 (4) by amending paragraph (4) to read as fol-  
20 lows:

21 “(4) the corporation for which the election was  
22 made, and each person who was a shareholder in  
23 such corporation at any time during the period spec-  
24 ified pursuant to this subsection, agrees to make  
25 such adjustments (consistent with the treatment of

1 such corporation as an S corporation or a qualified  
2 subchapter S subsidiary, as the case may be) as may  
3 be required by the Secretary with respect to such pe-  
4 riod,” and

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

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

11 **SEC. 230. INFORMATION RETURNS FOR QUALIFIED SUB-**  
12 **CHAPTER S SUBSIDIARIES.**

13 (a) IN GENERAL.—Section 1361(b)(3)(A) (relating  
14 to treatment of certain wholly owned subsidiaries) is  
15 amended by inserting “and in the case of information re-  
16 turns required under part III of subchapter A of chapter  
17 61” after “Secretary”.

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

21 **SEC. 231. REPAYMENT OF LOANS FOR QUALIFYING EM-**  
22 **PLOYER SECURITIES.**

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

1           “(7) S CORPORATION REPAYMENT OF LOANS  
2           FOR QUALIFYING EMPLOYER SECURITIES.—A plan  
3           shall not be treated as violating the requirements of  
4           section 401 or 409 or subsection (e)(7), or as engag-  
5           ing in a prohibited transaction for purposes of sub-  
6           section (d)(3), merely by reason of any distribution  
7           (as described in section 1368(a)) with respect to S  
8           corporation stock that constitutes qualifying em-  
9           ployer securities, which in accordance with the plan  
10          provisions is used to make payments on a loan de-  
11          scribed in subsection (d)(3) the proceeds of which  
12          were used to acquire such qualifying employer secu-  
13          rities (whether or not allocated to participants). The  
14          preceding sentence shall not apply in the case of a  
15          distribution which is paid with respect to any em-  
16          ployer security which is allocated to a participant  
17          unless the plan provides that employer securities  
18          with a fair market value of not less than the amount  
19          of such distribution are allocated to such participant  
20          for the year which (but for the preceding sentence)  
21          such distribution would have been allocated to such  
22          participant.”.

23          (b) EFFECTIVE DATE.—The amendment made by  
24          this section shall apply to distributions with respect to S  
25          corporation stock made after December 31, 2004.

1     **Subtitle D—Alternative Minimum**  
2                     **Tax Relief**

3     **SEC. 241. FOREIGN TAX CREDIT UNDER ALTERNATIVE MIN-**  
4                     **IMUM TAX.**

5             (a) IN GENERAL.—

6                 (1) Subsection (a) of section 59 is amended by  
7             striking paragraph (2) and by redesignating para-  
8             graphs (3) and (4) as paragraphs (2) and (3), re-  
9             spectively.

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

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

15     **SEC. 242. EXPANSION OF EXEMPTION FROM ALTERNATIVE**  
16                     **MINIMUM TAX FOR SMALL CORPORATIONS.**

17             (a) IN GENERAL.—Subparagraphs (A) and (B) of  
18             section 55(e)(1) are each amended by striking  
19             “\$7,500,000” each place it appears and inserting  
20             “\$20,000,000”.

21             (b) EFFECTIVE DATE.—The amendment made by  
22             this section shall apply to taxable years beginning after  
23             December 31, 2005.

1 **SEC. 243. INCOME AVERAGING FOR FARMERS NOT TO IN-**  
 2 **CREASE ALTERNATIVE MINIMUM TAX.**

3 (a) IN GENERAL.—Subsection (c) of section 55 (de-  
 4 fining regular tax) is amended by redesignating paragraph  
 5 (2) as paragraph (3) and by inserting after paragraph (1)  
 6 the following new paragraph:

7 “(2) COORDINATION WITH INCOME AVERAGING  
 8 FOR FARMERS.—Solely for purposes of this section,  
 9 section 1301 (relating to averaging of farm income)  
 10 shall not apply in computing the regular tax liabil-  
 11 ity.”.

12 (b) EFFECTIVE DATE.—The amendment made by  
 13 subsection (a) shall apply to taxable years beginning after  
 14 December 31, 2003.

15 **Subtitle E—Restructuring of**  
 16 **Incentives for Alcohol Fuels, Etc.**

17 **SEC. 251. REDUCED RATES OF TAX ON GASOHOL REPLACED**  
 18 **WITH EXCISE TAX CREDIT; REPEAL OF**  
 19 **OTHER ALCOHOL-BASED FUEL INCENTIVES;**  
 20 **ETC.**

21 (a) EXCISE TAX CREDIT FOR ALCOHOL FUEL MIX-  
 22 TURES.—

23 (1) IN GENERAL.—Subsection (f) of section  
 24 6427 is amended to read as follows:

25 “(f) ALCOHOL FUEL MIXTURES.—

1           “(1) IN GENERAL.—The amount of credit  
2           which would (but for section 40(c)) be determined  
3           under section 40(a)(1) for any period—

4                   “(A) shall, with respect to taxable events  
5                   occurring during such period, be treated—

6                           “(i) as a payment of the taxpayer’s li-  
7                           ability for tax imposed by section 4081,  
8                           and

9                           “(ii) as received at the time of the  
10                          taxable event, and

11                   “(B) to the extent such amount of credit  
12                   exceeds such liability for such period, shall (ex-  
13                   cept as provided in subsection (k)) be paid sub-  
14                   ject to subsection (i)(3) by the Secretary with-  
15                   out interest.

16           “(2) SPECIAL RULES.—

17                   “(A) ONLY CERTAIN ALCOHOL TAKEN  
18                   INTO ACCOUNT.—For purposes of paragraph  
19                   (1), section 40 shall be applied—

20                           “(i) by not taking into account alcohol  
21                           with a proof of less than 190, and

22                           “(ii) by treating as alcohol the alcohol  
23                           gallon equivalent of ethyl tertiary butyl  
24                           ether or other ethers produced from such  
25                           alcohol.

1           “(B) TREATMENT OF REFINERS.—For  
2 purposes of paragraph (1), in the case of a mix-  
3 ture—

4           “(i) the alcohol in which is described  
5 in subparagraph (A)(ii), and

6           “(ii) which is produced by any person  
7 at a refinery prior to any taxable event,  
8 section 40 shall be applied by treating such per-  
9 son as having sold such mixture at the time of  
10 its removal from the refinery (and only at such  
11 time) to another person for use as a fuel.

12           “(3) MIXTURES NOT USED AS FUEL.—Rules  
13 similar to the rules of subparagraphs (A) and (D)  
14 of section 40(d)(3) shall apply for purposes of this  
15 subsection.

16           “(4) TERMINATION.—This section shall apply  
17 only to periods to which section 40 applies, deter-  
18 mined by substituting in section 40(e)—

19           “(A) ‘December 31, 2010’ for ‘December  
20 31, 2007’, and

21           “(B) ‘January 1, 2011’ for ‘January 1,  
22 2008’.”

23           (2) REVISION OF RULES FOR PAYMENT OF  
24 CREDIT.—Paragraph (3) of section 6427(i) is  
25 amended to read as follows:

1           “(3) SPECIAL RULE FOR ALCOHOL MIXTURE  
2 CREDIT.—

3           “(A) IN GENERAL.—A claim may be filed  
4 under subsection (f)(1)(B) by any person for  
5 any period—

6           “(i) for which \$200 or more is pay-  
7 able under such subsection (f)(1)(B), and

8           “(ii) which is not less than 1 week.

9 In the case of an electronic claim, this subpara-  
10 graph shall be applied without regard to clause  
11 (i).

12           “(B) PAYMENT OF CLAIM.—Notwith-  
13 standing subsection (f)(1)(B), if the Secretary  
14 has not paid pursuant to a claim filed under  
15 this section within 45 days of the date of the  
16 filing of such claim (20 days in the case of an  
17 electronic claim), the claim shall be paid with  
18 interest from such date determined by using the  
19 overpayment rate and method under section  
20 6621.

21           “(C) TIME FOR FILING CLAIM.—No claim  
22 filed under this paragraph shall be allowed un-  
23 less filed on or before the last day of the first  
24 quarter following the earliest quarter included  
25 in the claim.”



1 (b) REPEAL OF OTHER INCENTIVES FOR FUEL MIX-  
2 TURES.—

3 (1) Subsection (b) of section 4041 is amended  
4 to read as follows:

5 “(b) EXEMPTION FOR OFF-HIGHWAY BUSINESS  
6 USE.—

7 “(1) IN GENERAL.—No tax shall be imposed by  
8 subsection (a) or (d)(1) on liquids sold for use or  
9 used in an off-highway business use.

10 “(2) TAX WHERE OTHER USE.—If a liquid on  
11 which no tax was imposed by reason of paragraph  
12 (1) is used otherwise than in an off-highway busi-  
13 ness use, a tax shall be imposed by paragraph  
14 (1)(B), (2)(B), or (3)(A)(ii) of subsection (a)  
15 (whichever is appropriate) and by the corresponding  
16 provision of subsection (d)(1) (if any).

17 “(3) OFF-HIGHWAY BUSINESS USE DEFINED.—  
18 For purposes of this subsection, the term ‘off-high-  
19 way business use’ has the meaning given to such  
20 term by section 6421(e)(2); except that such term  
21 shall not, for purposes of subsection (a)(1), include  
22 use in a diesel-powered train.”

23 (2) Section 4041(k) is hereby repealed.

24 (3) Section 4081(c) is hereby repealed.

25 (4) Section 4091(c) is hereby repealed.

1 (c) TRANSFERS TO HIGHWAY TRUST FUND.—

2 (1) Paragraph (4) of section 9503(b) is amend-  
3 ed by adding “or” at the end of subparagraph (C),  
4 by striking the comma at the end of subparagraph  
5 (D) and inserting a period, and by striking subpara-  
6 graphs (E) and (F).

7 (2) Paragraph (4) of section 9503(b), as  
8 amended by paragraph (1), is further amended by  
9 adding “or” at the end of subparagraph (B), by  
10 striking the comma at the end of subparagraph (C)  
11 and inserting a period, and by striking subparagraph  
12 (D).

13 (d) CONFORMING AMENDMENTS.—

14 (1) Subsection (e) of section 40 is amended to  
15 read as follows:

16 “(c) COORDINATION WITH EXCISE TAX BENE-  
17 FITS.—The amount of the credit determined under this  
18 section with respect to any alcohol shall, under regulations  
19 prescribed by the Secretary, be properly reduced to take  
20 into account the benefit provided with respect to such alco-  
21 hol under section 6427(f).”

22 (2) Subparagraph (B) of section 40(d)(4) is  
23 amended by striking “under section 4041(k) or  
24 4081(c)” and inserting “under section 6427(f)”.

25 (e) EFFECTIVE DATES.—

1           (1) IN GENERAL.—Except as provided by para-  
2           graph (2), the amendments made by this section  
3           shall apply to fuel sold or used after September 30,  
4           2004.

5           (2) SUBSECTION (c).—

6                   (A) The amendments made by subsection  
7           (c)(1) shall apply to taxes imposed after Sep-  
8           tember 30, 2003.

9                   (B) The amendments made by subsection  
10          (c)(2) shall apply to taxes imposed after Sep-  
11          tember 30, 2006.

12 **SEC. 252. ALCOHOL FUEL SUBSIDIES BORNE BY GENERAL**  
13 **FUND.**

14          (a) TRANSFERS TO FUND.—Section 9503(b)(1) is  
15 amended by adding at the end the following new flush sen-  
16 tence:

17           “For purposes of this paragraph, the amount of  
18 taxes received under section 4081 shall include any  
19 amount treated as a payment under section  
20 6427(f)(1)(A) and shall not be reduced by the  
21 amount paid under section 6427(f)(1)(B).”.

22          (b) TRANSFERS FROM FUND.—Subparagraph (A) of  
23 section 9503(c)(2) is amended by adding at the end the  
24 following new sentence: “Clauses (i)(III) and (ii) shall not  
25 apply to claims under section 6427(f)(1)(B).”

1 (c) EFFECTIVE DATE.—

2 (1) SUBSECTION (a).—The amendment made by  
3 subsection (a) shall apply to taxes received after  
4 September 30, 2004.

5 (2) SUBSECTION (b).—The amendment made by  
6 subsection (b) shall apply to amounts paid after  
7 September 30, 2004, and (to the extent related to  
8 section 34 of the Internal Revenue Code of 1986) to  
9 fuel used after such date.

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

13 **SEC. 261. EXCLUSION OF INCENTIVE STOCK OPTIONS AND**  
14 **EMPLOYEE STOCK PURCHASE PLAN STOCK**  
15 **OPTIONS FROM WAGES.**

16 (a) EXCLUSION FROM EMPLOYMENT TAXES.—

17 (1) SOCIAL SECURITY TAXES.—

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

24 “(22) remuneration on account of—

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

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

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

14           “(19) Remuneration on account of—

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

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

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

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

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

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

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

17                   “(19) remuneration on account of—

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

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

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

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

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

20 **Subtitle G—Incentives to Reinvest**  
21 **Foreign Earnings in United States**

22 **SEC. 271. INCENTIVES TO REINVEST FOREIGN EARNINGS IN**  
23 **UNITED STATES.**

24 (a) IN GENERAL.—Subpart F of part III of sub-  
25 chapter N of chapter 1 (relating to controlled foreign cor-

1 porations) is amended by adding at the end the following  
2 new section:

3 **“SEC. 965. TEMPORARY DIVIDENDS RECEIVED DEDUCTION.**

4 “(a) DEDUCTION.—

5 “(1) IN GENERAL.—In the case of a corpora-  
6 tion which is a United States shareholder, there  
7 shall be allowed as a deduction an amount equal to  
8 85 percent of the dividends which are received by  
9 such shareholder from controlled foreign corpora-  
10 tions during the election period.

11 “(2) DIVIDENDS PAID INDIRECTLY FROM CON-  
12 TROLLED FOREIGN CORPORATIONS.—If, within the  
13 election period, a United States shareholder receives  
14 a distribution from a controlled foreign corporation  
15 which is excluded from gross income under section  
16 959(a), such distribution shall be treated for pur-  
17 poses of this section as a dividend to the extent of  
18 any amount included in income by such United  
19 States shareholder under section 951(a)(1)(A) as a  
20 result of any dividend paid during the election period  
21 to—

22 “(A) such controlled foreign corporation  
23 from another controlled foreign corporation that  
24 is in a chain of ownership described in section  
25 958(a), or



1           “(B) any other controlled foreign corpora-  
2           tion in such chain of ownership, but only to the  
3           extent of distributions described in section  
4           959(b) which are made during the election pe-  
5           riod to the controlled foreign corporation from  
6           which such United States shareholder received  
7           such distribution.

8           “(b) LIMITATIONS.—

9           “(1) IN GENERAL.—The amount of dividends  
10          taken into account under subsection (a) shall not ex-  
11          ceed the greater of—

12                 “(A) \$500,000,000,

13                 “(B) the amount shown on the applicable  
14          financial statement as earnings permanently re-  
15          invested outside the United States, or

16                 “(C) in the case of an applicable financial  
17          statement which fails to show a specific amount  
18          of earnings permanently reinvested outside the  
19          United States and which shows a specific  
20          amount of tax liability attributable to such  
21          earnings, the amount of such earnings deter-  
22          mined in such manner as the Secretary may  
23          prescribe.

24          Except as provided in subparagraph (C), if there is  
25          no statement or such statement fails to show a spe-

1 cific amount of such earnings or liability, such  
2 amount shall be treated as being zero for purposes  
3 of this paragraph.

4 “(2) DIVIDENDS MUST BE EXTRAORDINARY.—

5 The amount of dividends taken into account under  
6 subsection (a) shall not exceed the excess (if any)  
7 of—

8 “(A) the dividends received during the tax-  
9 able year by such shareholder from controlled  
10 foreign corporations, over

11 “(B) the annual average for the base pe-  
12 riod years of—

13 “(i) the dividends received during  
14 each base period year by such shareholder  
15 from such corporations,

16 “(ii) the amounts includible in such  
17 shareholder’s gross income for each base  
18 period year under section 951(a)(1)(B)  
19 with respect to such corporations, and

20 “(iii) the amounts that would have  
21 been included for each base period year  
22 but for section 959(a) with respect to such  
23 corporations.

24 The amount taken into account under clause  
25 (iii) for any base period year shall not include

1 any amount which is not includible in gross in-  
2 come by reason of an amount described in  
3 clause (ii) with respect to a prior taxable year.

4 “(3) REQUIREMENT TO INVEST IN UNITED  
5 STATES.—Subsection (a) shall not apply to any divi-  
6 dend received by a United States shareholder unless  
7 the amount of the dividend is invested in the United  
8 States pursuant to a plan describing the expendi-  
9 tures to be made with such amount—

10 “(A) which, before the dividend is received,  
11 is approved by the president or chief executive  
12 officer of such shareholder, and

13 “(B) which is approved by the Board of  
14 Directors (or management committee) of such  
15 shareholder no later than its first meeting on or  
16 after the date the dividend is received.

17 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-  
18 poses of this section—

19 “(1) ELECTION PERIOD.—The term ‘election  
20 period’ means—

21 “(A) if this section applies to the tax-  
22 payer’s last taxable year beginning before the  
23 date of the enactment of this section, any 6-  
24 month or shorter period during such year which

1 is after the date of the enactment of this sec-  
2 tion and which is selected by the taxpayer, and

3 “(B) if this section applies to the tax-  
4 payer’s first taxable year beginning on or after  
5 such date, the 1st 6 months of such taxable  
6 year.

7 “(2) APPLICABLE FINANCIAL STATEMENT.—  
8 The term ‘applicable financial statement’ means the  
9 most recently audited financial statement (including  
10 notes and other documents which accompany such  
11 statement)—

12 “(A) which is certified on or before March  
13 31, 2003, as being prepared in accordance with  
14 generally accepted accounting principles, and

15 “(B) which is used for the purposes of a  
16 statement or report—

17 “(i) to creditors,

18 “(ii) to shareholders, or

19 “(iii) for any other substantial nontax  
20 purpose.

21 In the case of a corporation required to file a finan-  
22 cial statement with the Securities and Exchange  
23 Commission, such term means the most recent such  
24 statement filed on or before March 31, 2003.

1           “(3) BASE PERIOD YEARS.—The base period  
2 years are the 3 taxable years—

3           “(A) which are among the 5 most recent  
4 taxable years ending on or before March 31,  
5 2003, and

6           “(B) which are determined by dis-  
7 regarding—

8           “(i) 1 taxable year for which the sum  
9 of the amounts described in clauses (i),  
10 (ii), and (iii) of subsection (b)(2)(B) is the  
11 largest, and

12           “(ii) 1 taxable year for which such  
13 sum is the smallest.

14 Rules similar to the rules of subparagraphs (A) and  
15 (B) of section 41(f)(3) shall apply for purposes of  
16 this paragraph.

17           “(4) COORDINATION WITH DIVIDENDS RE-  
18 CEIVED DEDUCTION.—No deduction shall be allowed  
19 under section 243 or 245 for any dividend for which  
20 a deduction is allowed under this section.

21           “(d) DENIAL OF FOREIGN TAX CREDIT.—

22           “(1) IN GENERAL.—No credit shall be allowed  
23 under section 901 for any taxes paid or accrued (or  
24 treated as paid or accrued) with respect to the de-  
25 ductible portion of any dividend or of any amount

1 described in subsection (a)(2). No deduction shall be  
2 allowed under this chapter for any tax for which  
3 credit is not allowable by reason of the preceding  
4 sentence.

5 “(2) DEDUCTIBLE PORTION.—For purposes of  
6 paragraph (1), unless the taxpayer otherwise speci-  
7 fies, the deductible portion of any dividend is the  
8 amount which bears the same ratio to the amount  
9 of such dividend as the amount allowed as a deduc-  
10 tion under subsection (a) for the taxable year bears  
11 to the amount described in subsection (b)(2)(A) for  
12 such year.

13 “(e) INCREASE IN TAX ON INCLUDED AMOUNTS NOT  
14 REDUCED BY CREDITS, ETC.—

15 “(1) IN GENERAL.—Any tax under this chapter  
16 by reason of nondeductible CFC dividends shall not  
17 be treated as tax imposed by this chapter for pur-  
18 poses of determining—

19 “(A) the amount of any credit allowable  
20 under this chapter, or

21 “(B) the amount of the tax imposed by  
22 section 55.

23 Subparagraph (A) shall not apply to the credit  
24 under section 53 or to the credit under section 27(a)  
25 with respect to taxes attributable to such dividends.

1           “(2) INCLUSIONS MAY NOT BE OFFSET BY NET  
2 OPERATING LOSSES.—

3           “(A) IN GENERAL.—The taxable income of  
4 any United States shareholder for any taxable  
5 year shall in no event be less than the amount  
6 of nondeductible CFC dividends received during  
7 such year.

8           “(B) COORDINATION WITH SECTION 172.—  
9 The nondeductible CFC dividends for any tax-  
10 able year shall not be taken into account—

11           “(i) in determining under section 172  
12 the amount of any net operating loss for  
13 such taxable year, and

14           “(ii) in determining taxable income  
15 for such taxable year for purposes of the  
16 2nd sentence of section 172(b)(2).

17           “(3) NONDEDUCTIBLE CFC DIVIDENDS.—For  
18 purposes of this subsection, the term ‘nondeductible  
19 CFC dividends’ means the excess of the amount of  
20 dividends taken into account under subsection (a)  
21 over the deduction allowed under subsection (a) for  
22 such dividends.

23           “(f) ELECTION.—This section shall apply for the tax-  
24 payer’s first taxable year beginning on or after the date  
25 of the enactment of this section if the taxpayer elects its

1 application for such taxable year. The taxpayer may elect  
 2 to apply this section to the taxpayer’s last taxable year  
 3 beginning before the date of the enactment of this section  
 4 in lieu of such first taxable year.”

5 (b) ALTERNATIVE MINIMUM TAX.—Subparagraph  
 6 (C) of section 56(g)(4) is amended by adding at the end  
 7 the following new clause:

8 “(v) SPECIAL RULE FOR CERTAIN DIS-  
 9 TRIBUTIONS FROM CONTROLLED FOREIGN  
 10 CORPORATIONS.—Clause (i) shall not apply  
 11 to any deduction allowable under section  
 12 965.”.

13 (c) CLERICAL AMENDMENT.—The table of sections  
 14 for subpart F of part III of subchapter N of chapter 1  
 15 is amended by adding at the end the following new item:

“Sec. 965. Temporary dividends received deduction.”.

16 (d) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply to taxable years ending on or after  
 18 the date of the enactment of this Act.

## 19 **Subtitle H—Other Incentive** 20 **Provisions**

### 21 **SEC. 281. SPECIAL RULES FOR LIVESTOCK SOLD ON AC-** 22 **COUNT OF WEATHER-RELATED CONDITIONS.**

23 (a) RULES FOR REPLACEMENT OF INVOLUNTARILY  
 24 CONVERTED LIVESTOCK.—Subsection (e) of section 1033  
 25 (relating to involuntary conversions) is amended—



1           (1) by striking “CONDITIONS.—For purposes”  
2           and inserting “CONDITIONS.—

3           “(1) IN GENERAL.—For purposes”, and

4           (2) by adding at the end the following new  
5           paragraph:

6           “(2) EXTENSION OF REPLACEMENT PERIOD.—

7           “(A) IN GENERAL.—In the case of  
8           drought, flood, or other weather-related condi-  
9           tions described in paragraph (1) which result in  
10          the area being designated as eligible for assist-  
11          ance by the Federal Government, subsection  
12          (a)(2)(B) shall be applied with respect to any  
13          converted property by substituting ‘4 years’ for  
14          ‘2 years’.

15          “(B) FURTHER EXTENSION BY SEC-  
16          RETARY.—The Secretary may extend on a re-  
17          gional basis the period for replacement under  
18          this section (after the application of subpara-  
19          graph (A)) for such additional time as the Sec-  
20          retary determines appropriate if the weather-re-  
21          lated conditions which resulted in such applica-  
22          tion continue for more than 3 years.”.

23          (b) INCOME INCLUSION RULES.—Subsection (e) of  
24          section 451 (relating to special rule for proceeds from live-  
25          stock sold on account of drought, flood, or other weather-

1 related conditions) is amended by adding at the end the  
2 following new paragraph:

3           “(3) SPECIAL ELECTION RULES.—If section  
4           1033(e)(2) applies to a sale or exchange of livestock  
5           described in paragraph (1), the election under para-  
6           graph (1) shall be deemed valid if made during the  
7           replacement period described in such section.”.

8           (c) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to any taxable year with respect  
10 to which the due date (without regard to extensions) for  
11 the return is after December 31, 2002.

12 **SEC. 282. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**  
13 **TIVES WITHOUT REDUCING PATRONAGE**  
14 **DIVIDENDS.**

15           (a) IN GENERAL.—Subsection (a) of section 1388  
16 (relating to patronage dividend defined) is amended by  
17 adding at the end the following: “For purposes of para-  
18 graph (3), net earnings shall not be reduced by amounts  
19 paid during the year as dividends on capital stock or other  
20 proprietary capital interests of the organization to the ex-  
21 tent that the articles of incorporation or bylaws of such  
22 organization or other contract with patrons provide that  
23 such dividends are in addition to amounts otherwise pay-  
24 able to patrons which are derived from business done with  
25 or for patrons during the taxable year.”.

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

4 **SEC. 283. CAPITAL GAIN TREATMENT UNDER SECTION**  
5 **631(b) TO APPLY TO OUTRIGHT SALES BY**  
6 **LANDOWNERS.**

7 (a) IN GENERAL.—The first sentence of section  
8 631(b) (relating to disposal of timber with a retained eco-  
9 nomic interest) is amended by striking “retains an eco-  
10 nomic interest in such timber” and inserting “either re-  
11 tains an economic interest in such timber or makes an  
12 outright sale of such timber”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) The third sentence of section 631(b) is  
15 amended by striking “The date of disposal” and in-  
16 sserting “In the case of disposal of timber with a re-  
17 tained economic interest, the date of disposal”.

18 (2) The heading for section 631(b) is amended  
19 by striking “WITH A RETAINED ECONOMIC INTER-  
20 EST”.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to sales after December 31, 2004.

1 **SEC. 284. DISTRIBUTIONS FROM PUBLICLY TRADED PART-**  
2 **NERSHIPS TREATED AS QUALIFYING INCOME**  
3 **OF REGULATED INVESTMENT COMPANIES.**

4 (a) IN GENERAL.—Paragraph (2) of section 851(b)  
5 (defining regulated investment company) is amended to  
6 read as follows:

7 “(2) at least 90 percent of its gross income is  
8 derived from—

9 “(A) dividends, interest, payments with re-  
10 spect to securities loans (as defined in section  
11 512(a)(5)), and gains from the sale or other  
12 disposition of stock or securities (as defined in  
13 section 2(a)(36) of the Investment Company  
14 Act of 1940, as amended) or foreign currencies,  
15 or other income (including but not limited to  
16 gains from options, futures or forward con-  
17 tracts) derived with respect to its business of  
18 investing in such stock, securities, or currencies,  
19 and

20 “(B) distributions or other income derived  
21 from an interest in a qualified publicly traded  
22 partnership (as defined in subsection (h));  
23 and”.

24 (b) SOURCE FLOW-THROUGH RULE NOT TO  
25 APPLY.—The last sentence of section 851(b) is amended  
26 by inserting “(other than a qualified publicly traded part-

1 nership as defined in subsection (h))” after “derived from  
2 a partnership”.

3 (c) LIMITATION ON OWNERSHIP.—Subsection (c) of  
4 section 851 is amended by redesignating paragraph (5)  
5 as paragraph (6) and inserting after paragraph (4) the  
6 following new paragraph:

7 “(5) The term ‘outstanding voting securities of  
8 such issuer’ shall include the equity securities of a  
9 qualified publicly traded partnership (as defined in  
10 subsection (h)).”.

11 (d) DEFINITION OF QUALIFIED PUBLICLY TRADED  
12 PARTNERSHIP.—Section 851 is amended by adding at the  
13 end the following new subsection:

14 “(h) QUALIFIED PUBLICLY TRADED PARTNER-  
15 SHIP.—For purposes of this section, the term ‘qualified  
16 publicly traded partnership’ means a publicly traded part-  
17 nership described in section 7704(b) other than a partner-  
18 ship which would satisfy the gross income requirements  
19 of section 7704(c)(2) if qualifying income included only  
20 income described in subsection (b)(2)(A).”.

21 (e) DEFINITION OF QUALIFYING INCOME.—Section  
22 7704(d)(4) is amended by striking “section 851(b)(2)”  
23 and 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  
3 as follows:

4 “(B) not more than 25 percent of the  
5 value of its total assets is invested in—

6 “(i) the securities (other than Govern-  
7 ment securities or the securities of other  
8 regulated investment companies) of any  
9 one issuer,

10 “(ii) the securities (other than the se-  
11 curities of other regulated investment com-  
12 panies) of two or more issuers which the  
13 taxpayer controls and which are deter-  
14 mined, under regulations prescribed by the  
15 Secretary, to be engaged in the same or  
16 similar trades or businesses or related  
17 trades or 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  
22 RULE TO REGULATED INVESTMENT COMPANIES.—Sub-  
23 section (k) of section 469 (relating to separate application  
24 of section in case of publicly traded partnerships) is

1 amended by adding at the end the following new para-  
2 graph:

3           “(4) APPLICATION TO REGULATED INVEST-  
4           MENT COMPANIES.—For purposes of this section, a  
5           regulated investment company (as defined in section  
6           851) holding an interest in a qualified publicly trad-  
7           ed partnership (as defined in section 851(h)) shall  
8           be treated as a taxpayer described in subsection  
9           (a)(2) with respect to items attributable to such in-  
10          terest.”.

11          (h) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable years beginning after  
13 the date of the enactment of this Act.

14 **SEC. 285. IMPROVEMENTS RELATED TO REAL ESTATE IN-**  
15 **VESTMENT TRUSTS.**

16          (a) EXPANSION OF STRAIGHT DEBT SAFE HAR-  
17 BOR.—Section 856 (defining real estate investment trust)  
18 is amended—

19           (1) in subsection (c) by striking paragraph (7),  
20          and

21           (2) by adding at the end the following new sub-  
22          section:

23          “(m) SAFE HARBOR IN APPLYING SUBSECTION  
24          (c)(4).—

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

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

8           “(B) Any loan to an individual or an es-  
9 tate.

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

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

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



1           “(F) Any security issued by a real estate  
2 investment trust.

3           “(G) Any other arrangement as deter-  
4 mined by the Secretary.

5           “(2) SPECIAL RULES RELATING TO STRAIGHT  
6 DEBT SECURITIES.—

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

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

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

21           “(I) any such contingency does  
22 not have the effect of changing the ef-  
23 fective yield to maturity, as deter-  
24 mined under section 1272, other than  
25 a change in the annual yield to matu-

1                   rity which does not exceed the greater  
2                   of  $\frac{1}{4}$  of 1 percent or 5 percent of the  
3                   annual yield to maturity, or

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

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

16                   “(C) SPECIAL RULES RELATING TO COR-  
17                   PORATE OR PARTNERSHIP ISSUERS.—In the  
18                   case of an issuer which is a corporation or a  
19                   partnership, securities that otherwise would be  
20                   described in paragraph (1)(A) shall be consid-  
21                   ered not to be so described if the trust holding  
22                   such securities and any of its controlled taxable  
23                   REIT subsidiaries (as defined in subsection  
24                   (d)(8)(A)(iv)) hold any securities of the issuer  
25                   which—

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

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

8           “(3) LOOK-THROUGH RULE FOR PARTNERSHIP  
9           SECURITIES.—

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

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

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

20           “(B) DETERMINATION OF TRUST’S INTER-  
21           EST IN PARTNERSHIP ASSETS.—For purposes  
22           of subparagraph (A), with respect to any tax-  
23           able year beginning after the date of the enact-  
24           ment of this subparagraph—

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

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

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

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

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

1 actions) is derived from sources referred to in  
2 subsection (c)(3).

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

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

16 “(A) LIMITED RENTAL EXCEPTION.—

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

24 “(ii) RENTS MUST BE SUBSTANTIALLY  
25 COMPARABLE.—Clause (i) shall apply only

1 to the extent that the amounts paid to the  
2 trust as rents from real property (as de-  
3 fined in paragraph (1) without regard to  
4 paragraph (2)(B)) from such property are  
5 substantially comparable to such rents paid  
6 by the other tenants of the trust's property  
7 for comparable space.

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

15 “(I) at the time such lease is en-  
16 tered into,

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

20 “(III) at the time of any modi-  
21 fication of the lease between the trust  
22 and the taxable REIT subsidiary if  
23 the rent under such lease is effectively  
24 increased pursuant to such modifica-  
25 tion.

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

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

15 “(I) stock possessing more than  
16 50 percent of the total voting power  
17 of the outstanding stock of such sub-  
18 sidiary, or

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

23 “(v) CONTINUING QUALIFICATION  
24 BASED ON THIRD PARTY ACTIONS.—If the  
25 requirements of clause (i) are met at a

1 time referred to in clause (iii), such re-  
2 quirements shall continue to be treated as  
3 met so long as there is no increase in the  
4 space leased to any taxable REIT sub-  
5 sidiary of such trust or to any person de-  
6 scribed in paragraph (2)(B).

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

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

20 (d) CONFORMITY WITH GENERAL HEDGING DEFINI-  
21 TION.—Subparagraph (G) of section 856(c)(5) (relating  
22 to treatment of certain hedging instruments) is amended  
23 to read as follows:

24 “(G) TREATMENT OF CERTAIN HEDGING  
25 INSTRUMENTS.—Except to the extent provided



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

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

17          (f) SAVINGS PROVISIONS.—

18                 (1) RULES OF APPLICATION FOR FAILURE TO  
19                 SATISFY SECTION 856(c)(4).—Section 856(c) (relat-  
20                 ing to definition of real estate investment trust) is  
21                 amended by inserting after paragraph (6) the fol-  
22                 lowing new paragraph:

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

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

7                   “(i) such failure is due to the owner-  
8                   ship of assets the total value of which does  
9                   not exceed the lesser of—

10                           “(I) 1 percent of the total value  
11                           of the trust’s assets at the end of the  
12                           quarter for which such measurement  
13                           is done, and

14                                   “(II) \$10,000,000, and

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

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

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

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

17           “(ii) following the corporation, trust,  
18 or association’s identification of the failure  
19 to satisfy the requirements of such para-  
20 graph for a particular quarter, a descrip-  
21 tion of each asset that causes the corpora-  
22 tion, trust, or association to fail to satisfy  
23 the requirements of such paragraph at the  
24 close of such quarter of any taxable year is  
25 set forth in a schedule for such quarter

1 filed in accordance with regulations pre-  
2 scribed by the Secretary,

3 “(iii) the failure to meet the require-  
4 ments of such paragraph for a particular  
5 quarter is due to reasonable cause and not  
6 due to willful neglect,

7 “(iv) the corporation, trust, or asso-  
8 ciation pays a tax computed under sub-  
9 paragraph (C), and

10 “(v)(I) the corporation, trust, or asso-  
11 ciation disposes of the assets set forth on  
12 the schedule specified in clause (ii) within  
13 6 months after the last day of the quarter  
14 in which the corporation, trust or associa-  
15 tion’s identification of the failure to satisfy  
16 the requirements of such paragraph oc-  
17 curred or such other time period prescribed  
18 by the Secretary and in the manner pre-  
19 scribed by the Secretary, or

20 “(II) the requirements of such para-  
21 graph are otherwise met within the time  
22 period specified in subclause (I).

23 “(C) TAX.—For purposes of subparagraph

24 (B)(iv)—

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

8           “(ii) TAX COMPUTED.—The amount  
9 of the tax imposed by clause (i) shall be  
10 the greater of—

11                   “(I) \$50,000, or

12                   “(II) the amount determined  
13 (pursuant to regulations promulgated  
14 by the Secretary) by multiplying the  
15 net income generated by the assets  
16 described in the schedule specified in  
17 subparagraph (B)(ii) for the period  
18 specified in clause (iii) by the highest  
19 rate of tax specified in section 11.

20           “(iii) PERIOD.—For purposes of  
21 clause (ii)(II), the period described in this  
22 clause is the period beginning on the first  
23 date that the failure to satisfy the require-  
24 ments of such paragraph (4) occurs as a  
25 result of the ownership of such assets and

1 ending on the earlier of the date on which  
2 the trust disposes of such assets or the end  
3 of the first quarter when there is no longer  
4 a failure to satisfy such paragraph (4).

5 “(iv) ADMINISTRATIVE PROVISIONS.—  
6 For purposes of subtitle F, the taxes im-  
7 posed by this subparagraph shall be treat-  
8 ed as excise taxes with respect to which the  
9 deficiency procedures of such subtitle  
10 apply.”.

11 (2) MODIFICATION OF RULES OF APPLICATION  
12 FOR FAILURE TO SATISFY SECTIONS 856(c)(2) OR  
13 856(c)(3).—Paragraph (6) of section 856(c) (relat-  
14 ing to definition of real estate investment trust) is  
15 amended by striking subparagraphs (A) and (B), by  
16 redesignating subparagraph (C) as subparagraph  
17 (B), and by inserting before subparagraph (B) (as  
18 so redesignated) the following new subparagraph:

19 “(A) following the corporation, trust, or  
20 association’s identification of the failure to meet  
21 the requirements of paragraph (2) or (3), or of  
22 both such paragraphs, for any taxable year, a  
23 description of each item of its gross income de-  
24 scribed in such paragraphs is set forth in a  
25 schedule for such taxable year filed in accord-

1           ance with regulations prescribed by the Sec-  
2           retary, and”.

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

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

10                   (B) by adding at the end the following new  
11                   paragraph:

12                   “(5) ENTITIES TO WHICH PARAGRAPH AP-  
13                   PLIES.—This paragraph applies to a corporation,  
14                   trust, or association—

15                           “(A) which is not a real estate investment  
16                           trust to which the provisions of this part apply  
17                           for the taxable year due to one or more failures  
18                           to comply with one or more of the provisions of  
19                           this part (other than subsection (c)(6) or (c)(7)  
20                           of section 856),

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

23                           “(C) if such corporation, trust, or associa-  
24                           tion pays (as prescribed by the Secretary in  
25                           regulations and in the same manner as tax) a

1 penalty of \$50,000 for each failure to satisfy a  
2 provision of this part due to reasonable cause  
3 and not willful neglect.”.

4 (4) DEDUCTION OF TAX PAID FROM AMOUNT  
5 REQUIRED TO BE DISTRIBUTED.—Subparagraph (E)  
6 of section 857(b)(2) is amended by striking “(7)”  
7 and inserting “(7) of this subsection, section  
8 856(c)(7)(B)(iii), and section 856(g)(1).”.

9 (5) EXPANSION OF DEFICIENCY DIVIDEND PRO-  
10 CEDURE.—Subsection (e) of section 860 is amended  
11 by striking “or” at the end of paragraph (2), by  
12 striking the period at the end of paragraph (3) and  
13 inserting “; or”, and by adding at the end the fol-  
14 lowing new paragraph:

15 “(4) a statement by the taxpayer attached to its  
16 amendment or supplement to a return of tax for the  
17 relevant tax year.”.

18 (g) EFFECTIVE DATES.—

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

23 (2) SUBSECTIONS (c) THROUGH (f).—The  
24 amendments made by subsections (c), (d), (e), and



1 (f) shall apply to taxable years beginning after the  
2 date of the enactment of this Act.

3 **SEC. 286. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**  
4 **LATED INVESTMENT COMPANIES.**

5 (a) TREATMENT OF CERTAIN DIVIDENDS.—

6 (1) NONRESIDENT ALIEN INDIVIDUALS.—Sec-  
7 tion 871 (relating to tax on nonresident alien indi-  
8 viduals) is amended by redesignating subsection (k)  
9 as subsection (l) and by inserting after subsection (j)  
10 the following new subsection:

11 “(k) EXEMPTION FOR CERTAIN DIVIDENDS OF REG-  
12 ULATED INVESTMENT COMPANIES.—

13 “(1) INTEREST-RELATED DIVIDENDS.—

14 “(A) IN GENERAL.—Except as provided in  
15 subparagraph (B), no tax shall be imposed  
16 under paragraph (1)(A) of subsection (a) on  
17 any interest-related dividend received from a  
18 regulated investment company.

19 “(B) EXCEPTIONS.—Subparagraph (A)  
20 shall not apply—

21 “(i) to any interest-related dividend  
22 received from a regulated investment com-  
23 pany by a person to the extent such divi-  
24 dend is attributable to interest (other than  
25 interest described in subparagraph (E) (i)

1 or (iii)) received by such company on in-  
2 debtedness issued by such person or by any  
3 corporation or partnership with respect to  
4 which such person is a 10-percent share-  
5 holder,

6 “(ii) to any interest-related dividend  
7 with respect to stock of a regulated invest-  
8 ment company unless the person who  
9 would otherwise be required to deduct and  
10 withhold tax from such dividend under  
11 chapter 3 receives a statement (which  
12 meets requirements similar to the require-  
13 ments of subsection (h)(5)) that the bene-  
14 ficial owner of such stock is not a United  
15 States person, and

16 “(iii) to any interest-related dividend  
17 paid to any person within a foreign coun-  
18 try (or any interest-related dividend pay-  
19 ment addressed to, or for the account of,  
20 persons within such foreign country) dur-  
21 ing any period described in subsection  
22 (h)(6) with respect to such country.

23 Clause (iii) shall not apply to any dividend with  
24 respect to any stock which was acquired on or

1 before the date of the publication of the Sec-  
2 retary's determination under subsection (h)(6).

3 “(C) INTEREST-RELATED DIVIDEND.—For  
4 purposes of this paragraph, an interest-related  
5 dividend is any dividend (or part thereof) which  
6 is designated by the regulated investment com-  
7 pany as an interest-related dividend in a writ-  
8 ten notice mailed to its shareholders not later  
9 than 60 days after the close of its taxable year.  
10 If the aggregate amount so designated with re-  
11 spect to a taxable year of the company (includ-  
12 ing amounts so designated with respect to divi-  
13 dends paid after the close of the taxable year  
14 described in section 855) is greater than the  
15 qualified net interest income of the company for  
16 such taxable year, the portion of each distribu-  
17 tion which shall be an interest-related dividend  
18 shall be only that portion of the amounts so  
19 designated which such qualified net interest in-  
20 come bears to the aggregate amount so des-  
21 ignated.

22 “(D) QUALIFIED NET INTEREST IN-  
23 COME.—For purposes of subparagraph (C), the  
24 term ‘qualified net interest income’ means the  
25 qualified interest income of the regulated in-

1 vestment company reduced by the deductions  
2 properly allocable to such income.

3 “(E) QUALIFIED INTEREST INCOME.—For  
4 purposes of subparagraph (D), the term ‘quali-  
5 fied interest income’ means the sum of the fol-  
6 lowing amounts derived by the regulated invest-  
7 ment company from sources within the United  
8 States:

9 “(i) Any amount includible in gross  
10 income as original issue discount (within  
11 the meaning of section 1273) on an obliga-  
12 tion payable 183 days or less from the date  
13 of original issue (without regard to the pe-  
14 riod held by the company).

15 “(ii) Any interest includible in gross  
16 income (including amounts recognized as  
17 ordinary income in respect of original issue  
18 discount or market discount or acquisition  
19 discount under part V of subchapter P and  
20 such other amounts as regulations may  
21 provide) on an obligation which is in reg-  
22 istered form; except that this clause shall  
23 not apply to—

24 “(I) any interest on an obligation  
25 issued by a corporation or partnership

1 if the regulated investment company  
2 is a 10-percent shareholder in such  
3 corporation or partnership, and

4 “(II) any interest which is treat-  
5 ed as not being portfolio interest  
6 under the rules of subsection (h)(4).

7 “(iii) Any interest referred to in sub-  
8 section (i)(2)(A) (without regard to the  
9 trade or business of the regulated invest-  
10 ment company).

11 “(iv) Any interest-related dividend in-  
12 cludable in gross income with respect to  
13 stock of another regulated investment com-  
14 pany.

15 “(F) 10-PERCENT SHAREHOLDER.—For  
16 purposes of this paragraph, the term ‘10-per-  
17 cent shareholder’ has the meaning given such  
18 term by subsection (h)(3)(B).

19 “(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—

20 “(A) IN GENERAL.—Except as provided in  
21 subparagraph (B), no tax shall be imposed  
22 under paragraph (1)(A) of subsection (a) on  
23 any short-term capital gain dividend received  
24 from a regulated investment company.

1           “(B) EXCEPTION FOR ALIENS TAXABLE  
2 UNDER SUBSECTION (a)(2).—Subparagraph (A)  
3 shall not apply in the case of any nonresident  
4 alien individual subject to tax under subsection  
5 (a)(2).

6           “(C) SHORT-TERM CAPITAL GAIN DIVI-  
7 DEND.—For purposes of this paragraph, a  
8 short-term capital gain dividend is any dividend  
9 (or part thereof) which is designated by the reg-  
10 ulated investment company as a short-term cap-  
11 ital gain dividend in a written notice mailed to  
12 its shareholders not later than 60 days after the  
13 close of its taxable year. If the aggregate  
14 amount so designated with respect to a taxable  
15 year of the company (including amounts so des-  
16 ignated with respect to dividends paid after the  
17 close of the taxable year described in section  
18 855) is greater than the qualified short-term  
19 gain of the company for such taxable year, the  
20 portion of each distribution which shall be a  
21 short-term capital gain dividend shall be only  
22 that portion of the amounts so designated  
23 which such qualified short-term gain bears to  
24 the aggregate amount so designated.

1           “(D) QUALIFIED SHORT-TERM GAIN.—For  
2 purposes of subparagraph (C), the term ‘quali-  
3 fied short-term gain’ means the excess of the  
4 net short-term capital gain of the regulated in-  
5 vestment company for the taxable year over the  
6 net long-term capital loss (if any) of such com-  
7 pany for such taxable year. For purposes of this  
8 subparagraph—

9           “(i) the net short-term capital gain of  
10 the regulated investment company shall be  
11 computed by treating any short-term cap-  
12 ital gain dividend includible in gross in-  
13 come with respect to stock of another regu-  
14 lated investment company as a short-term  
15 capital gain, and

16           “(ii) the excess of the net short-term  
17 capital gain for a taxable year over the net  
18 long-term capital loss for a taxable year (to  
19 which an election under section 4982(e)(4)  
20 does not apply) shall be determined with-  
21 out regard to any net capital loss or net  
22 short-term capital loss attributable to  
23 transactions after October 31 of such year,  
24 and any such net capital loss or net short-

1 term capital loss shall be treated as arising  
2 on the 1st day of the next taxable year.

3 To the extent provided in regulations, clause  
4 (ii) shall apply also for purposes of computing  
5 the taxable income of the regulated investment  
6 company.”

7 (2) FOREIGN CORPORATIONS.—Section 881 (re-  
8 lating to tax on income of foreign corporations not  
9 connected with United States business) is amended  
10 by redesignating subsection (e) as subsection (f) and  
11 by inserting after subsection (d) the following new  
12 subsection:

13 “(e) TAX NOT TO APPLY TO CERTAIN DIVIDENDS  
14 OF REGULATED INVESTMENT COMPANIES.—

15 “(1) INTEREST-RELATED DIVIDENDS.—

16 “(A) IN GENERAL.—Except as provided in  
17 subparagraph (B), no tax shall be imposed  
18 under paragraph (1) of subsection (a) on any  
19 interest-related dividend (as defined in section  
20 871(k)(1)) received from a regulated investment  
21 company.

22 “(B) EXCEPTION.—Subparagraph (A)  
23 shall not apply—

24 “(i) to any dividend referred to in sec-  
25 tion 871(k)(1)(B), and



1           “(ii) to any interest-related dividend  
2           received by a controlled foreign corporation  
3           (within the meaning of section 957(a)) to  
4           the extent such dividend is attributable to  
5           interest received by the regulated invest-  
6           ment company from a person who is a re-  
7           lated person (within the meaning of section  
8           864(d)(4)) with respect to such controlled  
9           foreign corporation.

10           “(C) TREATMENT OF DIVIDENDS RE-  
11           CEIVED BY CONTROLLED FOREIGN CORPORA-  
12           TIONS.—The rules of subsection (c)(5)(A) shall  
13           apply to any interest-related dividend received  
14           by a controlled foreign corporation (within the  
15           meaning of section 957(a)) to the extent such  
16           dividend is attributable to interest received by  
17           the regulated investment company which is de-  
18           scribed in clause (ii) of section 871(k)(1)(E)  
19           (and not described in clause (i) or (iii) of such  
20           section).

21           “(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—  
22           No tax shall be imposed under paragraph (1) of sub-  
23           section (a) on any short-term capital gain dividend  
24           (as defined in section 871(k)(2)) received from a  
25           regulated investment company.”.

1 (3) WITHHOLDING TAXES.—

2 (A) Section 1441(c) (relating to excep-  
3 tions) is amended by adding at the end the fol-  
4 lowing new paragraph:

5 “(12) CERTAIN DIVIDENDS RECEIVED FROM  
6 REGULATED INVESTMENT COMPANIES.—

7 “(A) IN GENERAL.—No tax shall be re-  
8 quired to be deducted and withheld under sub-  
9 section (a) from any amount exempt from the  
10 tax imposed by section 871(a)(1)(A) by reason  
11 of section 871(k).

12 “(B) SPECIAL RULE.—For purposes of  
13 subparagraph (A), clause (i) of section  
14 871(k)(1)(B) shall not apply to any dividend  
15 unless the regulated investment company knows  
16 that such dividend is a dividend referred to in  
17 such clause. A similar rule shall apply with re-  
18 spect to the exception contained in section  
19 871(k)(2)(B).”.

20 (B) Section 1442(a) (relating to with-  
21 holding of tax on foreign corporations) is  
22 amended—

23 (i) by striking “and the reference in  
24 section 1441(c)(10)” and inserting “the  
25 reference in section 1441(c)(10)”, and

1                   (ii) by inserting before the period at  
2                   the end the following: “, and the references  
3                   in section 1441(c)(12) to sections 871(a)  
4                   and 871(k) shall be treated as referring to  
5                   sections 881(a) and 881(e) (except that for  
6                   purposes of applying subparagraph (A) of  
7                   section 1441(c)(12), as so modified, clause  
8                   (ii) of section 881(e)(1)(B) shall not apply  
9                   to any dividend unless the regulated invest-  
10                  ment company knows that such dividend is  
11                  a dividend referred to in such clause)”.

12           (b) ESTATE TAX TREATMENT OF INTEREST IN CER-  
13 TAIN REGULATED INVESTMENT COMPANIES.—Section  
14 2105 (relating to property without the United States for  
15 estate tax purposes) is amended by adding at the end the  
16 following new subsection:

17           “(d) STOCK IN A RIC.—

18                   “(1) IN GENERAL.—For purposes of this sub-  
19                  chapter, stock in a regulated investment company  
20                  (as defined in section 851) owned by a nonresident  
21                  not a citizen of the United States shall not be  
22                  deemed property within the United States in the  
23                  proportion that, at the end of the quarter of such in-  
24                  vestment company’s taxable year immediately pre-  
25                  ceding a decedent’s date of death (or at such other

1 time as the Secretary may designate in regulations),  
2 the assets of the investment company that were  
3 qualifying assets with respect to the decedent bore  
4 to the total assets of the investment company.

5 “(2) QUALIFYING ASSETS.—For purposes of  
6 this subsection, qualifying assets with respect to a  
7 decedent are assets that, if owned directly by the de-  
8 cedent, would have been—

9 “(A) amounts, deposits, or debt obligations  
10 described in subsection (b) of this section,

11 “(B) debt obligations described in the last  
12 sentence of section 2104(c), or

13 “(C) other property not within the United  
14 States.”

15 (c) TREATMENT OF REGULATED INVESTMENT COM-  
16 PANIES UNDER SECTION 897.—

17 (1) Paragraph (1) of section 897(h) is amended  
18 by striking “REIT” each place it appears and in-  
19 serting “qualified investment entity”.

20 (2) Paragraphs (2) and (3) of section 897(h)  
21 are amended to read as follows:

22 “(2) SALE OF STOCK IN DOMESTICALLY CON-  
23 TROLLED ENTITY NOT TAXED.—The term ‘United  
24 States real property interest’ does not include any

1 interest in a domestically controlled qualified invest-  
2 ment entity.

3 “(3) DISTRIBUTIONS BY DOMESTICALLY CON-  
4 TROLLED QUALIFIED INVESTMENT ENTITIES.—In  
5 the case of a domestically controlled qualified invest-  
6 ment entity, rules similar to the rules of subsection  
7 (d) shall apply to the foreign ownership percentage  
8 of any gain.”

9 (3) Subparagraphs (A) and (B) of section  
10 897(h)(4) are amended to read as follows:

11 “(A) QUALIFIED INVESTMENT ENTITY.—  
12 The term ‘qualified investment entity’ means  
13 any real estate investment trust and any regu-  
14 lated investment company.

15 “(B) DOMESTICALLY CONTROLLED.—The  
16 term ‘domestically controlled qualified invest-  
17 ment entity’ means any qualified investment en-  
18 tity in which at all times during the testing pe-  
19 riod less than 50 percent in value of the stock  
20 was held directly or indirectly by foreign per-  
21 sons.”

22 (4) Subparagraphs (C) and (D) of section  
23 897(h)(4) are each amended by striking “REIT”  
24 and inserting “qualified investment entity”.

1           (5) The subsection heading for subsection (h) of  
2 section 897 is amended by striking “REITS” and  
3 inserting “CERTAIN INVESTMENT ENTITIES”.

4           (d) EFFECTIVE DATE.—

5           (1) IN GENERAL.—Except as otherwise pro-  
6 vided in this subsection, the amendments made by  
7 this section shall apply to dividends with respect to  
8 taxable years of regulated investment companies be-  
9 ginning after December 31, 2004.

10           (2) ESTATE TAX TREATMENT.—The amend-  
11 ment made by subsection (b) shall apply to estates  
12 of decedents dying after December 31, 2004.

13           (3) CERTAIN OTHER PROVISIONS.—The amend-  
14 ments made by subsection (c) (other than paragraph  
15 (1) thereof) shall take effect after December 31,  
16 2004.

17 **SEC. 287. TAXATION OF CERTAIN SETTLEMENT FUNDS.**

18           (a) IN GENERAL.—Subsection (g) of section 468B  
19 (relating to clarification of taxation of certain funds) is  
20 amended to read as follows:

21           “(g) CLARIFICATION OF TAXATION OF CERTAIN  
22 FUNDS.—

23           “(1) IN GENERAL.—Except as provided in para-  
24 graph (2), nothing in any provision of law shall be  
25 construed as providing that an escrow account, set-

1       tlement fund, or similar fund is not subject to cur-  
2       rent income tax. The Secretary shall prescribe regu-  
3       lations providing for the taxation of any such ac-  
4       count or fund whether as a grantor trust or other-  
5       wise.

6               “(2) EXEMPTION FROM TAX FOR CERTAIN SET-  
7       TLEMENT FUNDS.—An escrow account, settlement  
8       fund, or similar fund shall be treated as beneficially  
9       owned by the United States and shall be exempt  
10      from taxation under this subtitle if—

11               “(A) it is established pursuant to a con-  
12      sent decree entered by a judge of a United  
13      States District Court,

14               “(B) it is created for the receipt of settle-  
15      ment payments as directed by a government en-  
16      tity for the sole purpose of resolving or satis-  
17      fying one or more claims asserting liability  
18      under the Comprehensive Environmental Re-  
19      sponse, Compensation, and Liability Act of  
20      1980,

21               “(C) the authority and control over the ex-  
22      penditure of funds therein (including the ex-  
23      penditure of contributions thereto and any net  
24      earnings thereon) is with such government enti-  
25      ty, and

1                   “(D) upon termination, any remaining  
2                   funds will be disbursed to such government en-  
3                   tity for use in accordance with applicable law.  
4                   For purposes of this paragraph, the term ‘govern-  
5                   ment entity’ means the United States, any State or  
6                   political subdivision thereof, the District of Colum-  
7                   bia, any possession of the United States, and any  
8                   agency or instrumentality of any of the foregoing.”.

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

12 **SEC. 288. EXPANSION OF HUMAN CLINICAL TRIALS QUALI-**  
13 **FYING FOR ORPHAN DRUG CREDIT.**

14                   (a) **IN GENERAL.**—Paragraph (2) of section 45C(b)  
15 (relating to qualified clinical testing expenses) is amended  
16 by adding at the end the following new subparagraph:

17                   “(C) **TREATMENT OF CERTAIN EXPENSES**  
18 **INCURRED BEFORE DESIGNATION.**—For pur-  
19 poses of subparagraph (A)(ii)(I), if a drug is  
20 designated under section 526 of the Federal  
21 Food, Drug, and Cosmetic Act not later than  
22 the due date (including extensions) for filing  
23 the return of tax under this subtitle for the tax-  
24 able year in which the application for such des-  
25 ignation of such drug was filed, such drug shall



1           be treated as having been designated on the  
2           date that such application was filed.”.

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 subsection (a) shall apply to expenses incurred after the  
5 date of the enactment of this Act.

6 **SEC. 289. SIMPLIFICATION OF EXCISE TAX IMPOSED ON**  
7 **BOWS AND ARROWS.**

8           (a) **BOWS.**—Paragraph (1) of section 4161(b) (relat-  
9 ing to bows) is amended to read as follows:

10           “(1) **BOWS.**—

11                   “(A) **IN GENERAL.**—There is hereby im-  
12 posed on the sale by the manufacturer, pro-  
13 ducer, or importer of any bow which has a peak  
14 draw weight of 30 pounds or more, a tax equal  
15 to 11 percent of the price for which so sold.

16                   “(B) **ARCHERY EQUIPMENT.**—There is  
17 hereby imposed on the sale by the manufac-  
18 turer, producer, or importer—

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

22                           “(ii) of any quiver or broadhead suit-  
23 able for use with an arrow described in  
24 paragraph (2),

1 a tax equal to 11 percent of the price for which  
2 so sold.”.

3 (b) ARROWS.—Subsection (b) of section 4161 (relat-  
4 ing to bows and arrows, etc.) is amended by redesignating  
5 paragraph (3) as paragraph (4) and inserting after para-  
6 graph (2) the following:

7 “(3) ARROWS.—

8 “(A) IN GENERAL.—There is hereby im-  
9 posed on the sale by the manufacturer, pro-  
10 ducer, or importer of any arrow, a tax equal to  
11 12 percent of the price for which so sold.

12 “(B) EXCEPTION.—In the case of any  
13 arrow of which the shaft or any other compo-  
14 nent has been previously taxed under paragraph  
15 (1) or (2)—

16 “(i) section 6416(b)(3) shall not  
17 apply, and

18 “(ii) the tax imposed by subparagraph  
19 (A) shall be an amount equal to the excess  
20 (if any) of—

21 “(I) the amount of tax imposed  
22 by this paragraph (determined with-  
23 out regard to this subparagraph), over

24 “(II) the amount of tax paid with  
25 respect to the tax imposed under

1 paragraph (1) or (2) on such shaft or  
2 component.

3 “(C) ARROW.—For purposes of this para-  
4 graph, the term ‘arrow’ means any shaft de-  
5 scribed in paragraph (2) to which additional  
6 components are attached.”.

7 (c) CONFORMING AMENDMENTS.—Section  
8 4161(b)(2) is amended—

9 (1) by inserting “(other than broadheads)”  
10 after “point”, and

11 (2) by striking “ARROWS.—” in the heading  
12 and inserting “ARROW COMPONENTS.—”.

13 (d) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to articles sold by the manufac-  
15 turer, producer, or importer after December 31, 2004.

16 **SEC. 290. REPEAL OF EXCISE TAX ON FISHING TACKLE**  
17 **BOXES.**

18 (a) REPEAL.—Paragraph (6) of section 4162(a) (de-  
19 fining sport fishing equipment) is amended by striking  
20 subparagraph (C) and by redesignating subparagraphs  
21 (D) through (J) as subparagraphs (C) through (I), respec-  
22 tively.

23 (b) EFFECTIVE DATE.—The amendments made this  
24 section shall apply to articles sold by the manufacturer,  
25 producer, or importer after December 31, 2004.

1 **SEC. 291. SONAR DEVICES SUITABLE FOR FINDING FISH.**

2 (a) NOT TREATED AS SPORT FISHING EQUIP-  
 3 MENT.—Subsection (a) of section 4162 (relating to sport  
 4 fishing equipment defined) is amended by inserting “and”  
 5 at the end of paragraph (8), by striking “, and” at the  
 6 end of paragraph (9) and inserting a period, and by strik-  
 7 ing paragraph (10).

8 (b) CONFORMING AMENDMENT.—Section 4162 is  
 9 amended by striking subsection (b) and by redesignating  
 10 subsection (c) as subsection (b).

11 (c) EFFECTIVE DATE.—The amendments made this  
 12 section shall apply to articles sold by the manufacturer,  
 13 producer, or importer after December 31, 2004.

14 **SEC. 292. INCOME TAX CREDIT TO DISTILLED SPIRITS**  
 15 **WHOLESALEERS FOR COST OF CARRYING FED-**  
 16 **ERAL EXCISE TAXES ON BOTTLED DISTILLED**  
 17 **SPIRITS.**

18 (a) IN GENERAL.—Subpart A of part I of subchapter  
 19 A of chapter 51 (relating to gallonage and occupational  
 20 taxes) is amended by adding at the end the following new  
 21 section:

22 **“SEC. 5011. INCOME TAX CREDIT FOR WHOLESALER’S AV-**  
 23 **ERAGE COST OF CARRYING EXCISE TAX.**

24 “(a) IN GENERAL.—For purposes of section 38, in  
 25 the case of an eligible wholesaler, the amount of the dis-

1 tilled spirits wholesalers credit for any taxable year is the  
2 amount equal to the product of—

3 “(1) the number of cases of bottled distilled  
4 spirits—

5 “(A) which were bottled in the United  
6 States, and

7 “(B) which are purchased by such whole-  
8 saler during the taxable year directly from the  
9 bottler of such spirits, and

10 “(2) the average tax-financing cost per case for  
11 the most recent calendar year ending before the be-  
12 ginning of such taxable year.

13 “(b) ELIGIBLE WHOLESALER.—For purposes of this  
14 section, the term ‘eligible wholesaler’ means any person  
15 who holds a permit under the Federal Alcohol Administra-  
16 tion Act as a wholesaler of distilled spirits.

17 “(c) AVERAGE TAX-FINANCING COST.—

18 “(1) IN GENERAL.—For purposes of this sec-  
19 tion, the average tax-financing cost per case for any  
20 calendar year is the amount of interest which would  
21 accrue at the deemed financing rate during a 60-day  
22 period on an amount equal to the deemed Federal  
23 excise per case.

24 “(2) DEEMED FINANCING RATE.—For purposes  
25 of paragraph (1), the deemed financing rate for any

1 calendar year is the average of the corporate over-  
2 payment rates under paragraph (1) of section  
3 6621(a) (determined without regard to the last sen-  
4 tence of such paragraph) for calendar quarters of  
5 such year.

6 “(3) DEEMED FEDERAL EXCISE TAX BASED ON  
7 CASE.—For purposes of paragraph (1), the deemed  
8 Federal excise tax per case of 12 80-proof 750ml  
9 bottles is \$22.83.

10 “(4) NUMBER OF CASES IN LOT.—For purposes  
11 of this section, the number of cases in any lot of dis-  
12 tilled spirits shall be determined by dividing the  
13 number of liters in such lot by 9.”

14 (b) CONFORMING AMENDMENTS.—

15 (1) Subsection (b) of section 38 is amended by  
16 striking “plus” at the end of paragraph (14), by  
17 striking the period at the end of paragraph (15) and  
18 inserting “, plus”, and by adding at the end the fol-  
19 lowing new paragraph:

20 “(16) in the case of an eligible wholesaler (as  
21 defined in section 5011(b)), the distilled spirits  
22 wholesalers credit determined under section  
23 5011(a).”

24 (2) Subsection (d) of section 39 (relating to  
25 carryback and carryforward of unused credits) is

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

3 “(11) NO CARRYBACK OF SECTION 5011 CREDIT  
4 BEFORE JANUARY 1, 2005.—No portion of the un-  
5 used business credit for any taxable year which is  
6 attributable to the credit determined under section  
7 5011(a) may be carried back to a taxable year be-  
8 ginning before January 1, 2005.”.

9 (3) The table of sections for subpart A of part  
10 I of subchapter A of chapter 51 is amended by add-  
11 ing at the end the following new item:

“Sec. 5011. Income tax credit for wholesaler’s average cost of car-  
rying excise tax.”.

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

15 **SEC. 293. SUSPENSION OF OCCUPATIONAL TAXES RELAT-**  
16 **ING TO DISTILLED SPIRITS, WINE, AND BEER.**

17 (a) IN GENERAL.—Subpart G of part II of sub-  
18 chapter A of chapter 51 is amended by redesignating sec-  
19 tion 5148 as section 5149 and by inserting after section  
20 5147 the following new section:

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

22 “(a) IN GENERAL.—Notwithstanding sections 5081,  
23 5091, 5111, 5121, and 5131, the rate of tax imposed  
24 under such sections for the suspension period shall be

1 zero. During such period, persons engaged in or carrying  
2 on a trade or business covered by such sections shall reg-  
3 ister under section 5141 and shall comply with the record-  
4 keeping requirements under this part.

5 “(b) SUSPENSION PERIOD.—For purposes of sub-  
6 section (a), the suspension period is the period beginning  
7 on July 1, 2004, and ending on June 30, 2007.”.

8 (b) CONFORMING AMENDMENT.—Section 5117 is  
9 amended by adding at the end the following new sub-  
10 section:

11 “(d) SPECIAL RULE DURING SUSPENSION PE-  
12 RIOD.—Except as provided in subsection (b) or by the Sec-  
13 retary, during the suspension period (as defined in section  
14 5148) it shall be unlawful for any dealer to purchase dis-  
15 tilled spirits for resale from any person other than a  
16 wholesale dealer in liquors who is required to keep records  
17 under section 5114.”.

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

“Sec. 5148. Suspension of occupational tax.

“Sec. 5149. Cross references.”.

22 (d) EFFECTIVE DATE.—The amendments made by  
23 this section shall take effect on the date of the enactment  
24 of this Act.



1 **SEC. 294. MODIFICATION OF UNRELATED BUSINESS IN-**  
2 **COME LIMITATION ON INVESTMENT IN CER-**  
3 **TAIN SMALL BUSINESS INVESTMENT COMPA-**  
4 **NIES.**

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

8 “(6) CERTAIN FEDERAL FINANCING.—

9 “(A) IN GENERAL.—For purposes of this  
10 section, the term ‘acquisition indebtedness’ does  
11 not include—

12 “(i) an obligation, to the extent that  
13 it is insured by the Federal Housing Ad-  
14 ministration, to finance the purchase, reha-  
15 bilitation, or construction of housing for  
16 low and moderate income persons, or

17 “(ii) indebtedness incurred by a small  
18 business investment company licensed  
19 under the Small Business Investment Act  
20 of 1958 and formed after the date of the  
21 enactment of the American Jobs Creation  
22 Act of 2004, if such indebtedness is evi-  
23 denced by a debenture—

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

1                   “(II) held or guaranteed by the  
2                   Small Business Administration.

3                   “(B) LIMITATION.—Subparagraph (A)(ii)  
4                   shall not apply with respect to any small busi-  
5                   ness investment company during any period  
6                   that—

7                   “(i) any organization which is exempt  
8                   from tax under this title (other than a gov-  
9                   ernmental unit) owns more than 25 per-  
10                  cent of the capital or profits interest in  
11                  such company, or

12                  “(ii) organizations which are exempt  
13                  from tax under this title (including govern-  
14                  mental units other than any agency or in-  
15                  strumentality of the United States) own, in  
16                  the aggregate, 50 percent or more of the  
17                  capital or profits interest in such com-  
18                  pany.”.

19                  (b) EFFECTIVE DATE.—The amendment made by  
20                  this section shall apply to indebtedness incurred by small  
21                  business investment companies formed after the date of  
22                  the enactment of the American Jobs Creation Act of 2004.

1 **SEC. 295. ELECTION TO DETERMINE TAXABLE INCOME**  
 2 **FROM CERTAIN INTERNATIONAL SHIPPING**  
 3 **ACTIVITIES USING PER TON RATE.**

4 (a) IN GENERAL.—Chapter 1 of the Internal Rev-  
 5 enue Code of 1986 is amended by inserting after sub-  
 6 chapter Q the following new subchapter:

7 **“Subchapter R—Election To Determine Tax-**  
 8 **able Income From Certain International**  
 9 **Shipping Activities Using per Ton Rate**

“Sec. 1352. Alternative tax on qualifying shipping activities.

“Sec. 1353. Taxable income from qualifying shipping activities.

“Sec. 1354. Qualifying shipping tax election; revocation; termi-  
 nation.

“Sec. 1355. Definitions and special rules.

“Sec. 1356. Qualifying shipping activities.

“Sec. 1357. Items not subject to regular tax; depreciation; inter-  
 est.

“Sec. 1358. Allocation of credits, income, and deductions.

“Sec. 1359. Disposition of qualifying shipping assets.

10 **“SEC. 1352. ALTERNATIVE TAX ON QUALIFYING SHIPPING**  
 11 **ACTIVITIES.**

12 “(a) IN GENERAL.—The taxable income of an elect-  
 13 ing corporation from qualifying shipping activities shall be  
 14 the amount determined under this subchapter, and the  
 15 corporate percentages of the items of income, gain, loss,  
 16 deduction, or credit of an electing corporation and of other  
 17 members of the electing group of such corporation which  
 18 would otherwise be taken into account by reason of its  
 19 qualifying shipping activities shall be taken into account  
 20 to the extent provided in section 1357.

1 “(b) **ALTERNATIVE TAX.**—The taxable income of an  
2 electing corporation from qualifying shipping activities, if  
3 otherwise taxable under section 11, 55, 882, 887, or  
4 1201(a) shall be subject to tax only under this section at  
5 the maximum rate specified in section 11(b). The income  
6 of a foreign corporation shall not be subject to tax under  
7 this subchapter to the extent its income is excludible from  
8 gross income under section 883(a)(1).

9 **“SEC. 1353. TAXABLE INCOME FROM QUALIFYING SHIPPING**  
10 **ACTIVITIES.**

11 “(a) **IN GENERAL.**—For purposes of this subchapter,  
12 the taxable income of an electing corporation from quali-  
13 fying shipping activities shall be its corporate income per-  
14 centage of the sum of the amounts determined under sub-  
15 section (b) for each qualifying vessel operated by such  
16 electing corporation or other electing entity.

17 “(b) **AMOUNTS.**—For purposes of subsection (a), the  
18 amount of taxable income of an electing entity for each  
19 qualifying vessel shall equal the product of—

20 “(1) the daily notional taxable income from the  
21 operation of the qualifying vessel in United States  
22 foreign trade, and

23 “(2) the number of days during the taxable  
24 year that the electing entity operated such vessel as  
25 a qualifying vessel in United States foreign trade.

1           “(c) DAILY NOTIONAL TAXABLE INCOME.—For pur-  
2 poses of subsection (b), the daily notional taxable income  
3 from the operation of a qualifying vessel is 40 cents for  
4 each 100 tons of the net tonnage of the vessel, up to  
5 25,000 net tons, and 20 cents for each 100 tons of the  
6 net tonnage of the vessel, in excess of 25,000 net tons.

7           “(d) MULTIPLE OPERATORS OF VESSEL.—If 2 or  
8 more persons have a joint interest in a qualifying vessel  
9 and are treated as operators of that vessel, the taxable  
10 income from the operation of such vessel for that time (as  
11 determined under this section) shall be allocated among  
12 such persons on the basis of their ownership and charter  
13 interests in such vessel or on such other basis as the Sec-  
14 retary may prescribe by regulations.

15           “(e) NONCORPORATE PERCENTAGE.—Notwith-  
16 standing any contrary provision of this subchapter, the  
17 noncorporate percentage of any item of income, gain, loss,  
18 deduction, or credit of any member of an electing group  
19 shall be taken into account for all purposes of this subtitle  
20 as if this subchapter were not in effect.

21 **“SEC. 1354. QUALIFYING SHIPPING TAX ELECTION; REV-**  
22 **OCATION; TERMINATION.**

23           “(a) IN GENERAL.—Except as provided in sub-  
24 sections (b) and (f), a qualifying shipping tax election may  
25 be made in respect of any qualifying entity.

1       “(b) CONDITION OF ELECTION.—An election may be  
2 made by a member of a controlled group under this sub-  
3 section for any taxable year only if all qualifying entities  
4 that are members of the controlled group join in the elec-  
5 tion.

6       “(c) WHEN MADE.—An election under subsection (a)  
7 may be made by a qualifying entity in such form as pre-  
8 scribed by the Secretary. Such election shall be filed with  
9 the qualifying entity’s return for the first taxable year to  
10 which the election shall apply, by the due date for such  
11 return (including any applicable extensions).

12       “(d) YEARS FOR WHICH EFFECTIVE.—An election  
13 under subsection (a) shall be effective for the taxable year  
14 of the qualifying entity for which it is made and for all  
15 succeeding taxable years of the entity, until such election  
16 is terminated under subsection (e).

17       “(e) TERMINATION.—

18               “(1) BY REVOCATION.—

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

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

23                               “(i) a revocation made during the tax-  
24 able year and on or before the 15th day of

1 the 3rd month thereof shall be effective on  
2 the 1st day of such taxable year, and

3 “(ii) a revocation made during the  
4 taxable year but after such 15th day shall  
5 be effective on the 1st day of the following  
6 taxable year.

7 “(C) REVOCATION MAY SPECIFY PROSPEC-  
8 TIVE DATE.—If the revocation specifies a date  
9 for revocation which is on or after the day on  
10 which the revocation is made, the revocation  
11 shall be effective on and after the date so speci-  
12 fied.

13 “(2) BY ENTITY CEASING TO BE QUALIFYING  
14 ENTITY.—

15 “(A) IN GENERAL.—An election under  
16 subsection (a) shall be terminated whenever (at  
17 any time on or after the 1st day of the 1st tax-  
18 able year for which the entity is an electing en-  
19 tity) such entity ceases to be a qualifying enti-  
20 ty.

21 “(B) WHEN EFFECTIVE.—Any termination  
22 under this paragraph shall be effective on and  
23 after the date of cessation.

24 “(f) ELECTION AFTER TERMINATION.—If a quali-  
25 fying entity has made an election under subsection (a) and

1 if such election has been terminated under subsection (e),  
2 such entity (and any successor entity) shall not be eligible  
3 to make an election under subsection (a) for any taxable  
4 year before its 5th taxable year which begins after the 1st  
5 taxable year for which such termination is effective, unless  
6 the Secretary consents to such election.

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

8 “(a) DEFINITIONS.—For purposes of this sub-  
9 chapter:

10 “(1) The term ‘controlled group’ means any  
11 group of trusts and business entities whose members  
12 would be treated as a single employer under the  
13 rules of section 52(a) (without regard to paragraphs  
14 (1) and (2) thereof) and section 52(b)(1).

15 “(2) The term ‘corporate income percentage’  
16 means the least aggregate share, expressed as a per-  
17 centage, of any item of income or gain of an electing  
18 corporation or electing group of which such corpora-  
19 tion is a member from qualifying shipping activities  
20 that would, but for an election in effect under this  
21 subchapter, be required to be reported on the Fed-  
22 eral income tax return of an electing corporation  
23 during any taxable period. In the case of an electing  
24 group which includes two or more electing corpora-  
25 tions, the corporate income percentage of each such



1 corporation shall be determined on the basis of such  
2 corporations' direct and indirect ownership and  
3 charter interests in qualifying vessels of the electing  
4 group or on such other basis as the Secretary may  
5 prescribe by regulations.

6 “(3) The term ‘corporate loss percentage’  
7 means the greatest aggregate share, expressed as a  
8 percentage, of any item of loss, deduction or credit  
9 of an electing corporation or electing group of which  
10 such corporation is a member from qualifying ship-  
11 ping activities that would, but for an election in ef-  
12 fect under this subchapter, be required to be re-  
13 ported on the Federal income tax return of an elect-  
14 ing corporation during any taxable period.

15 “(4) The term ‘corporate percentages’ means  
16 the corporate income percentage and the corporate  
17 loss percentage.

18 “(5) The term ‘electing corporation’ means any  
19 C corporation that is an electing entity or that  
20 would, but for an election in effect under this sub-  
21 chapter, be required to report any item of income,  
22 gain, loss, deduction, or credit of an electing entity  
23 on its Federal income tax return.

1           “(6) The term ‘electing entity’ means any quali-  
2           fying entity for which an election is in effect under  
3           this subchapter.

4           “(7) The term ‘electing group’ means a con-  
5           trolled group of which one or more members is an  
6           electing entity.

7           “(8) The term ‘noncorporate percentage’ means  
8           the difference between one hundred percent and the  
9           corporate income percentage or corporate loss per-  
10          centage, as applicable.

11          “(9) The term ‘qualifying entity’ means a trust  
12          or business entity that—

13                 “(A) operates one or more qualifying ves-  
14                 sels, and

15                 “(B) meets the shipping activity require-  
16                 ment in subsection (c).

17          “(10) The term ‘qualifying shipping assets’  
18          means any qualifying vessel and other assets which  
19          are used in core qualifying activities as described in  
20          section 1356(b).

21          “(11) The term ‘qualifying vessel’ means a self-  
22          propelled (or a combination self-propelled and non-  
23          self-propelled) United States flag vessel of not less  
24          than 10,000 deadweight tons used in the United  
25          States foreign trade.

1           “(12) The term ‘United States domestic trade’  
2 means the transportation of goods or passengers be-  
3 tween places in the United States.

4           “(13) The term ‘United States flag vessel’  
5 means any vessel documented under the laws of the  
6 United States.

7           “(14) The term ‘United States foreign trade’  
8 means the transportation of goods or passengers be-  
9 tween a place in the United States and a foreign  
10 place or between foreign places.

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

13           “(1) Except as provided in paragraph (2), an  
14 entity is treated as operating any vessel owned by,  
15 or chartered (including a time charter) to, the enti-  
16 ty.

17           “(2) An entity is treated as operating a vessel  
18 that it has chartered out on bareboat charter terms  
19 only if—

20           “(A) the vessel is temporarily surplus to  
21 the entity’s requirements and the term of the  
22 charter does not exceed three years; or

23           “(B) the vessel is bareboat chartered to a  
24 member of a controlled group which includes  
25 such entity or to an unrelated third party that

1 sub-bareboats or time charters the vessel to a  
2 member of such controlled group (including the  
3 owner).

4 “(c) SHIPPING ACTIVITY REQUIREMENT.—For pur-  
5 poses of this section, the shipping activity requirement is  
6 met for a taxable year only by an entity described in para-  
7 graph (1), (2), or (3).

8 “(1) An entity in the first taxable year of its  
9 qualifying shipping tax election if, for the preceding  
10 taxable year, the test in paragraph (4) is met.

11 “(2) An entity in the second or any subsequent  
12 taxable year of its qualifying shipping tax election if,  
13 for each of the two preceding taxable years, the test  
14 in paragraph (4) is met.

15 “(3) An entity that would be described in para-  
16 graph (1) or (2) if the test in paragraph (4) were  
17 applied on an aggregate basis to the controlled  
18 group of which such entity is a member, and vessel  
19 charters between members of the controlled group  
20 were disregarded.

21 “(4) The test in this paragraph is met if on av-  
22 erage at least 25 percent of the aggregate tonnage  
23 of qualifying vessels operated by the entity were  
24 owned by the entity or chartered to the entity on  
25 bareboat charter terms. For purposes of the pre-

1 ceding sentence, vessels chartered (including time  
2 chartered) to an entity by a member of a controlled  
3 group which includes the entity, or by a third party  
4 that bareboat charters the vessels from the entity or  
5 a member of the entity's controlled group, shall be  
6 treated as chartered to the entity on bareboat char-  
7 ter terms.

8 “(d) EFFECT OF TEMPORARILY CEASING TO OPER-  
9 ATE A QUALIFYING VESSEL.—

10 “(1) A temporary cessation by an electing enti-  
11 ty in operation of a qualifying vessel shall be dis-  
12 regarded for purposes of subsections (b) and (c) if  
13 the electing entity gives timely notice to the Sec-  
14 retary stating—

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

17 “(B) its intention to resume operating the  
18 qualifying vessel.

19 “(2) Notice shall be deemed timely if given not  
20 later than the due date (including extensions) for  
21 the electing entity's tax return (as set forth in sec-  
22 tion 6072(b)) for the taxable year in which the tem-  
23 porary cessation begins.

24 “(3) The treatment provided by paragraph (1)  
25 shall continue until the earlier of—

1           “(A) the electing entity abandoning its in-  
2           tention to resume operation of the qualifying  
3           vessel, or

4           “(B) the electing entity resuming operation  
5           of the qualifying vessel.

6           “(e) EFFECT OF TEMPORARILY OPERATING A  
7           QUALIFYING VESSEL IN THE UNITED STATES DOMESTIC  
8           TRADE.—

9           “(1) The temporary operation in the United  
10          States domestic trade of any qualifying vessel which  
11          had been used in the United States foreign trade  
12          shall be disregarded for purposes of this subchapter  
13          if the electing entity gives timely notice to the Sec-  
14          retary stating—

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

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

21           “(2) Notice shall be deemed timely if given not  
22          later than the due date (including extensions) for  
23          the electing entity’s tax return (as set forth in sec-  
24          tion 6072(b)) for the taxable year in which the tem-  
25          porary cessation begins.

1           “(3) The treatment provided by paragraph (1)  
2 shall continue until the earlier of—

3           “(A) the electing entity abandoning its in-  
4 tention to resume operations of the vessel in the  
5 United States foreign trade, or

6           “(B) the electing entity resuming operation  
7 of the vessel in the United States foreign trade.

8           “(f) EFFECT OF CHANGE IN USE.—

9           “(1) Except as provided in subsection (e), a  
10 vessel that is used other than for operations in the  
11 United States foreign trade on other than a tem-  
12 porary basis ceases to be a qualifying vessel when  
13 such use begins.

14           “(2) For purposes of this subsection, a change  
15 in use of a vessel, other than a commencement of  
16 operation in the United States domestic trade, is  
17 taken to be permanent unless there are cir-  
18 cumstances indicating that it is temporary.

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.

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

23           “(a) QUALIFYING SHIPPING ACTIVITIES.—For pur-  
24 poses of this subchapter the ‘qualifying shipping activities’  
25 of an electing entity consist of—

- 1           “(1) core qualifying activities,  
2           “(2) qualifying secondary activities, and  
3           “(3) qualifying incidental activities.

4           “(b) CORE QUALIFYING ACTIVITIES.—

- 5           “(1) The ‘core qualifying activities’ of an elect-  
6           ing entity are—

7                   “(A) its activities in operating qualifying  
8                   vessels in United States foreign trade, and

9                   “(B) other activities of the electing entity  
10                  and other members of its electing group that  
11                  are an integral part of its business of operating  
12                  qualifying vessels in United States foreign  
13                  trade, including ownership or operation of  
14                  barges, containers, chassis, and other equip-  
15                  ment that are the complement of, or used in  
16                  connection with, a qualifying vessel in United  
17                  States foreign trade, the inland haulage of  
18                  cargo shipped, or to be shipped, on qualifying  
19                  vessels in United States foreign trade, and the  
20                  provision of terminal, maintenance, repair,  
21                  logistical, or other vessel, container, or cargo-re-  
22                  lated services that are an integral part of oper-  
23                  ating qualifying vessels in United States foreign  
24                  trade.



1           “(2) ‘Core qualifying activities’ do not include  
2 the provision by an entity of facilities or services to  
3 any person, other than—

4           “(A) another member of such entity’s  
5 electing group,

6           “(B) a consignor, consignee, or other cus-  
7 tomer of such entity’s business of operating  
8 qualifying vessels in United States foreign  
9 trade, or

10           “(C) a member of an alliance, joint ven-  
11 ture, pool, partnership or similar undertaking  
12 involving the operation of qualifying vessels in  
13 United States foreign trade of which such enti-  
14 ty is a member.

15           “(c) QUALIFYING SECONDARY ACTIVITIES.—For  
16 purposes of this subsection—

17           “(1) the term ‘secondary activities’ means ac-  
18 tivities that are not core qualifying activities, and—

19           “(A) are the active management or oper-  
20 ation of vessels in the United States foreign  
21 trade,

22           “(B) the provision of vessel, container, or  
23 cargo-related facilities or services to any person,  
24 or

1           “(C) such other activities as may be pre-  
2           scribed by the Secretary pursuant to regula-  
3           tions, and

4           “(2) the ‘qualified secondary activities’ of an  
5           electing entity are its secondary activities and the  
6           secondary activities of other members of its electing  
7           group, but only to the extent that, without regard to  
8           this subchapter, the aggregate gross income derived  
9           by the electing entity and the other members of its  
10          electing group from such activities does not exceed  
11          20 percent of the aggregate gross income derived by  
12          the electing entity and the other members of its  
13          electing group from their core qualifying activities.

14          “(d) QUALIFYING INCIDENTAL ACTIVITIES.—Ship-  
15          ping-related activities carried on by an electing entity or  
16          another member of its electing group are qualified inci-  
17          dental activities of the electing entity if—

18                 “(1) incidental to its core qualifying activities,

19                 “(2) not qualifying secondary activities, and

20                 “(3) without regard to this subchapter, the ag-  
21          gregate gross income derived by the electing entity  
22          and other members of its electing group from such  
23          activities does not exceed 0.1 percent of such enti-  
24          ties’ aggregate gross income from their core quali-  
25          fying activities.

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

3 “(a) **EXCLUSION FROM GROSS INCOME.**—Gross in-  
4 come of an electing entity shall not include the corporate  
5 income percentage of—

6 “(1) income from qualifying shipping activities  
7 in the United States foreign trade,

8 “(2) income from money, bank deposits and  
9 other temporary investments which are reasonably  
10 necessary to meet the working capital requirements  
11 of qualifying shipping activities, and

12 “(3) income from money or other intangible as-  
13 sets accumulated pursuant to a plan to purchase  
14 qualifying shipping assets.

15 “(b) **ELECTING GROUP MEMBER.**—Gross income of  
16 a member of an electing group that is not an electing enti-  
17 ty shall not include the corporate income percentage of  
18 its income from qualifying shipping activities that are  
19 taken into account under this subchapter as qualifying  
20 shipping activities of an electing entity.

21 “(c) **DENIAL OF LOSSES, DEDUCTIONS, AND CRED-**  
22 **ITS.**—

23 “(1) **GENERAL RULE.**—Subject to paragraph  
24 (2), the corporate loss percentage of each item of  
25 loss, deduction (other than for interest expense), or  
26 credit of any taxpayer with respect to any activity

1 the income from which is excluded from gross in-  
2 come under this section shall be disallowed.

3 “(2) DEPRECIATION.—Notwithstanding para-  
4 graph (1), the deduction for depreciation of a quali-  
5 fying shipping asset shall be allowed in determining  
6 the adjusted basis of such asset for purposes of de-  
7 termining gain from its disposition.

8 “(A) Except as provided in subparagraph  
9 (B), the straight line method of depreciation  
10 shall apply to the corporate income percentage  
11 of qualifying shipping assets the income from  
12 operation of which is excluded from gross in-  
13 come under this section.

14 “(B) Subparagraph (A) shall not apply to  
15 any qualifying shipping asset which is subject  
16 to a charter entered into prior to the effective  
17 date of this subchapter.

18 “(3) INTEREST.—The corporate loss percentage  
19 of an electing entity’s interest expense shall be dis-  
20 allowed in the ratio that the fair market value of its  
21 qualifying vessel assets bears to the fair market  
22 value of its total assets.

23 “(d) SECTION INAPPLICABLE TO UNRELATED PER-  
24 SONS.—This section shall not apply to a taxpayer that is  
25 not a member of an electing group.

1 **“SEC. 1358. ALLOCATION OF CREDITS, INCOME, AND DE-**  
2 **DUCTIONS.**

3 “(a) **QUALIFYING SHIPPING ACTIVITIES.**—For pur-  
4 poses of this chapter, the qualifying shipping activities of  
5 an electing entity shall be treated as a separate trade or  
6 business activity from all other activities conducted by the  
7 entity.

8 “(b) **EXCLUSION OF CREDITS OR DEDUCTIONS.**—

9 “(1) No deduction shall be allowed against the  
10 taxable income of an electing corporation from quali-  
11 fying shipping activities, and no credit shall be al-  
12 lowed against the tax imposed by section 1352(b).

13 “(2) No deduction shall be allowed for any net  
14 operating loss attributable to the qualifying shipping  
15 activities of a corporation to the extent that such  
16 loss is carried forward by the corporation from a  
17 taxable year preceding the first taxable year for  
18 which such corporation was an electing corporation.

19 “(c) **TRANSACTIONS NOT AT ARM’S LENGTH.**—Sec-  
20 tion 482 shall apply in accordance with this subsection to  
21 a transaction or series of transactions—

22 “(1) as between an electing entity and another  
23 person, or

24 “(2) as between an entity’s qualifying shipping  
25 activities and other activities carried on by it.

1 **“SEC. 1359. DISPOSITION OF QUALIFYING SHIPPING AS-**  
2 **SETS.**

3 “(a) IN GENERAL.—If an electing entity sells or dis-  
4 poses of qualifying shipping assets (as defined in sub-  
5 section (c)) in an otherwise taxable transaction, at the  
6 election of the entity no gain shall be recognized if replace-  
7 ment qualifying shipping assets are acquired during the  
8 period specified in subsection (b), except to the extent that  
9 the amount realized upon such sale or disposition exceeds  
10 the cost of the replacement qualifying shipping assets.

11 “(b) PERIOD WITHIN WHICH PROPERTY MUST BE  
12 REPLACED.—The period referred to in subsection (a) shall  
13 be the period beginning one year prior to the disposition  
14 of the qualifying shipping assets and ending—

15 “(1) 3 years after the close of the first taxable  
16 year in which the gain is realized, or

17 “(2) subject to such terms and conditions as  
18 may be specified by the Secretary, on such later date  
19 as the Secretary may designate on application by the  
20 taxpayer. Such application shall be made at such  
21 time and in such manner as the Secretary may by  
22 regulations prescribe.

23 “(c) TIME FOR ASSESSMENT OF DEFICIENCY AT-  
24 TRIBUTABLE TO GAIN.—If an electing entity has made the  
25 election provided in subsection (a), then—

1           “(1) the statutory period for the assessment of  
2           any deficiency, for any taxable year in which any  
3           part of the gain is realized, attributable to such gain  
4           shall not expire prior to the expiration of 3 years  
5           from the date the Secretary is notified by the entity  
6           (in such manner as the Secretary may by regulations  
7           prescribe) of the replacement tonnage tax property  
8           or of an intention not to replace, and

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

14          “(d) BASIS OF REPLACEMENT QUALIFYING SHIP-  
15          PING ASSETS.—In the case of replacement qualifying ship-  
16          ping assets purchased by an electing entity which resulted  
17          in the nonrecognition of any part of the gain realized as  
18          the result of a sale or other disposition of qualifying ship-  
19          ping assets, the basis shall be the cost of such property  
20          decreased in the amount of the gain not so recognized;  
21          and if the property purchased consists of more than one  
22          piece of property, the basis determined under this sentence  
23          shall be allocated to the purchased properties in propor-  
24          tion to their respective costs.

1       “(e) REPLACEMENT QUALIFYING SHIPPING ASSETS  
2 MUST BE ACQUIRED FROM UNRELATED PERSON IN CER-  
3 TAIN CASES.—

4           “(1) IN GENERAL.—Subsection (a) shall not  
5 apply if the replacement qualifying shipping assets  
6 are acquired from a related person except to the ex-  
7 tent that the related person acquired the replace-  
8 ment qualifying shipping assets from an unrelated  
9 person during the period applicable under subsection  
10 (b).

11           “(2) RELATED PERSON.—For purposes of this  
12 subsection, a person is related to another person if  
13 the person bears a relationship to the other person  
14 described in section 267(b) or 707(b)(1).”.

15       (b) TECHNICAL AND CONFORMING AMENDMENT.—  
16 The second sentence of section 56(g)(4)(B)(i), as amended  
17 by this Act, is further amended by inserting “or 1357”  
18 after “section 139A”.

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



1 **SEC. 296. CHARITABLE CONTRIBUTION DEDUCTION FOR**  
2 **CERTAIN EXPENSES INCURRED IN SUPPORT**  
3 **OF NATIVE ALASKAN SUBSISTENCE WHAL-**  
4 **ING.**

5 (a) IN GENERAL.—Section 170 (relating to chari-  
6 table, etc., contributions and gifts), as amended by this  
7 Act, is amended by redesignating subsection (n) as sub-  
8 section (o) and by inserting after subsection (m) the fol-  
9 lowing new subsection:

10 “(n) EXPENSES PAID BY CERTAIN WHALING CAP-  
11 TAINS IN SUPPORT OF NATIVE ALASKAN SUBSISTENCE  
12 WHALING.—

13 “(1) IN GENERAL.—In the case of an individual  
14 who is recognized by the Alaska Eskimo Whaling  
15 Commission as a whaling captain charged with the  
16 responsibility of maintaining and carrying out sanc-  
17 tioned whaling activities and who engages in such  
18 activities during the taxable year, the amount de-  
19 scribed in paragraph (2) (to the extent such amount  
20 does not exceed \$10,000 for the taxable year) shall  
21 be treated for purposes of this section as a chari-  
22 table contribution.

23 “(2) AMOUNT DESCRIBED.—

24 “(A) IN GENERAL.—The amount described  
25 in this paragraph is the aggregate of the rea-  
26 sonable and necessary whaling expenses paid by

1 the taxpayer during the taxable year in carrying  
2 out sanctioned whaling activities.

3 “(B) WHALING EXPENSES.—For purposes  
4 of subparagraph (A), the term ‘whaling ex-  
5 penses’ includes expenses for—

6 “(i) the acquisition and maintenance  
7 of whaling boats, weapons, and gear used  
8 in sanctioned whaling activities,

9 “(ii) the supplying of food for the  
10 crew and other provisions for carrying out  
11 such activities, and

12 “(iii) storage and distribution of the  
13 catch from such activities.

14 “(3) SANCTIONED WHALING ACTIVITIES.—For  
15 purposes of this subsection, the term ‘sanctioned  
16 whaling activities’ means subsistence bowhead whale  
17 hunting activities conducted pursuant to the man-  
18 agement plan of the Alaska Eskimo Whaling Com-  
19 mission.”.

20 (b) EFFECTIVE DATE.—The amendments made by  
21 subsection (a) shall apply to contributions made after De-  
22 cember 31, 2004.

1 **TITLE III—TAX REFORM AND**  
2 **SIMPLIFICATION FOR UNITED**  
3 **STATES BUSINESSES**

4 **SEC. 301. INTEREST EXPENSE ALLOCATION RULES.**

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

9 “(f) ELECTION TO ALLOCATE INTEREST, ETC. ON  
10 WORLDWIDE BASIS.—For purposes of this subchapter, at  
11 the election of the worldwide affiliated group—

12 “(1) ALLOCATION AND APPORTIONMENT OF IN-  
13 TEREST EXPENSE.—

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

20 “(B) TREATMENT OF WORLDWIDE AFFILI-  
21 ATED GROUP.—The taxable income of the do-  
22 mestic members of a worldwide affiliated group  
23 from sources outside the United States shall be  
24 determined by allocating and apportioning the  
25 interest expense of such domestic members to

1 such income in an amount equal to the excess  
2 (if any) of—

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

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

18 “(C) WORLDWIDE AFFILIATED GROUP.—  
19 For purposes of this paragraph, the term  
20 ‘worldwide affiliated group’ means a group con-  
21 sisting of—

22 “(i) the includible members of an af-  
23 filiated group (as defined in section  
24 1504(a), determined without regard to

1 paragraphs (2) and (4) of section  
2 1504(b)), and

3 “(ii) all controlled foreign corpora-  
4 tions in which such members in the aggre-  
5 gate meet the ownership requirements of  
6 section 1504(a)(2) either directly or indi-  
7 rectly through applying paragraph (2) of  
8 section 958(a) or through applying rules  
9 similar to the rules of such paragraph to  
10 stock owned directly or indirectly by do-  
11 mestic partnerships, trusts, or estates.

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

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

1 of this subsection, except that paragraph (4) shall be  
2 applied on a worldwide affiliated group basis.

3 “(4) TREATMENT OF CERTAIN FINANCIAL IN-  
4 STITUTIONS.—

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

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

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

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

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

1           “(C) TREATMENT OF BANK AND FINAN-  
2           CIAL HOLDING COMPANIES.—To the extent pro-  
3           vided in regulations—

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

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

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

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

21           “(5) ELECTION TO EXPAND FINANCIAL INSTI-  
22           TUTION GROUP OF WORLDWIDE GROUP.—

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

1                   “(i) are members of such worldwide  
2                   affiliated group, but

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

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

12                  “(B) FINANCIAL CORPORATION.—For pur-  
13                  poses of this paragraph, the term ‘financial cor-  
14                  poration’ means any corporation if at least 80  
15                  percent of its gross income is income described  
16                  in section 904(d)(2)(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  
4 such corporation—

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

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

18           “(II) 25 percent of its average  
19 annual earnings and profits for such  
20 5-taxable-year period, or

21           “(ii) deals with any person in any  
22 manner not clearly reflecting the income of  
23 the corporation (as determined under prin-  
24 ciples similar to the principles of section  
25 482),

1 an amount of indebtedness of the electing fi-  
2 nancial institution group equal to the excess  
3 distribution or the understatement or overstate-  
4 ment of income, as the case may be, shall be re-  
5 characterized (for the taxable year and subse-  
6 quent taxable years) for purposes of this para-  
7 graph as indebtedness of the worldwide affili-  
8 ated group (excluding the electing financial in-  
9 stitution group). If a corporation has not been  
10 in existence for 5 taxable years, this subpara-  
11 graph shall be applied with respect to the pe-  
12 riod it was in existence.

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

1           “(E) DEFINITIONS RELATING TO  
2           GROUPS.—For purposes of this paragraph—

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

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

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

23                 “(i) providing for the direct allocation  
24                 of interest expense in other circumstances  
25                 where such allocation would be appropriate

1 to carry out the purposes of this sub-  
2 section,

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

6 “(iii) dealing with changes in mem-  
7 bers of any group (through acquisitions or  
8 otherwise) treated under this paragraph as  
9 an affiliated group for purposes of this  
10 subsection.

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

24 (b) EXPANSION OF REGULATORY AUTHORITY.—  
25 Paragraph (7) of section 864(e) is amended—

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

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

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

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

15           **SEC. 302. RECHARACTERIZATION OF OVERALL DOMESTIC**  
16                   **LOSS.**

17           (a) GENERAL RULE.—Section 904 is amended by re-  
18           designating subsections (g), (h), (i), (j), and (k) as sub-  
19           sections (h), (i), (j), (k), and (l) respectively, and by in-  
20           serting after subsection (f) the following new subsection:

21                   “(g) RECHARACTERIZATION OF OVERALL DOMESTIC  
22                   LOSS.—

23                   “(1) GENERAL RULE.—For purposes of this  
24                   subpart and section 936, in the case of any taxpayer  
25                   who sustains an overall domestic loss for any taxable

1 year beginning after December 31, 2006, that por-  
2 tion of the taxpayer's taxable income from sources  
3 within the United States for each succeeding taxable  
4 year which is equal to the lesser of—

5 “(A) the amount of such loss (to the extent  
6 not used under this paragraph in prior taxable  
7 years), or

8 “(B) 50 percent of the taxpayer's taxable  
9 income from sources within the United States  
10 for such succeeding taxable year,

11 shall be treated as income from sources without the  
12 United States (and not as income from sources with-  
13 in the United States).

14 “(2) OVERALL DOMESTIC LOSS DEFINED.—For  
15 purposes of this subsection—

16 “(A) IN GENERAL.—The term ‘overall do-  
17 mestic loss’ means any domestic loss to the ex-  
18 tent such loss offsets taxable income from  
19 sources without the United States for the tax-  
20 able year or for any preceding taxable year by  
21 reason of a carryback. For purposes of the pre-  
22 ceding sentence, the term ‘domestic loss’ means  
23 the amount by which the gross income for the  
24 taxable year from sources within the United  
25 States is exceeded by the sum of the deductions

1 properly apportioned or allocated thereto (deter-  
2 mined without regard to any carryback from a  
3 subsequent taxable year).

4 “(B) TAXPAYER MUST HAVE ELECTED  
5 FOREIGN TAX CREDIT FOR YEAR OF LOSS.—

6 The term ‘overall domestic loss’ shall not in-  
7 clude any loss for any taxable year unless the  
8 taxpayer chose the benefits of this subpart for  
9 such taxable year.

10 “(3) CHARACTERIZATION OF SUBSEQUENT IN-  
11 COME.—

12 “(A) IN GENERAL.—Any income from  
13 sources within the United States that is treated  
14 as income from sources without the United  
15 States under paragraph (1) shall be allocated  
16 among and increase the income categories in  
17 proportion to the loss from sources within the  
18 United States previously allocated to those in-  
19 come categories.

20 “(B) INCOME CATEGORY.—For purposes of  
21 this paragraph, the term ‘income category’ has  
22 the meaning given such term by subsection  
23 (f)(5)(E)(i).

24 “(4) COORDINATION WITH SUBSECTION (f).—  
25 The Secretary shall prescribe such regulations as

1 may be necessary to coordinate the provisions of this  
2 subsection with the provisions of subsection (f).”.

3 (b) CONFORMING AMENDMENTS.—

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

7 (2) Subparagraph (A) of section 936(a)(2) is  
8 amended by striking “section 904(f)” and inserting  
9 “subsections (f) and (g) of section 904”.

10 (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to losses for taxable years begin-  
12 ning after December 31, 2006.

13 **SEC. 303. REDUCTION TO 2 FOREIGN TAX CREDIT BASKETS.**

14 (a) IN GENERAL.—Paragraph (1) of section 904(d)  
15 (relating to separate application of section with respect to  
16 certain categories of income) is amended to read as fol-  
17 lows:

18 “(1) IN GENERAL.—The provisions of sub-  
19 sections (a), (b), and (c) and sections 902, 907, and  
20 960 shall be applied separately with respect to—

21 “(A) passive category income, and

22 “(B) general category income.”

23 (b) CATEGORIES.—Paragraph (2) of section 904(d)  
24 is amended by striking subparagraph (B), by redesignig-  
25 nating subparagraph (A) as subparagraph (B), and by in-



1 setting before subparagraph (B) (as so redesignated) the  
2 following new subparagraph:

3 “(A) CATEGORIES.—

4 “(i) PASSIVE CATEGORY INCOME.—

5 The term ‘passive category income’ means  
6 passive income and specified passive cat-  
7 egory income.

8 “(ii) GENERAL CATEGORY INCOME.—

9 The term ‘general category income’ means  
10 income other than passive category in-  
11 come.”.

12 (c) SPECIFIED PASSIVE CATEGORY INCOME.—Sub-  
13 paragraph (B) of section 904(d)(2), as so redesignated,  
14 is amended by adding at the end the following new clause:

15 “(v) SPECIFIED PASSIVE CATEGORY  
16 INCOME.—The term ‘specified passive cat-  
17 egory income’ means—

18 “(I) dividends from a DISC or  
19 former DISC (as defined in section  
20 992(a)) to the extent such dividends  
21 are treated as income from sources  
22 without the United States,

23 “(II) taxable income attributable  
24 to foreign trade income (within the  
25 meaning of section 923(b)), and

1                   “(III) distributions from a FSC  
2                   (or a former FSC) out of earnings  
3                   and profits attributable to foreign  
4                   trade income (within the meaning of  
5                   section 923(b)) or interest or carrying  
6                   charges (as defined in section  
7                   927(d)(1)) derived from a transaction  
8                   which results in foreign trade income  
9                   (as defined in section 923(b)).”.

10           (d) TREATMENT OF FINANCIAL SERVICES.—Para-  
11 graph (2) of section 904(d) is amended by striking sub-  
12 paragraph (D), by redesignating subparagraph (C) as sub-  
13 paragraph (D), and by inserting before subparagraph (D)  
14 (as so redesignated) the following new subparagraph:

15                   “(C) TREATMENT OF FINANCIAL SERVICES  
16                   INCOME AND COMPANIES.—

17                   “(i) IN GENERAL.—Financial services  
18                   income shall be treated as general category  
19                   income in the case of—

20                   “(I) a member of a financial  
21                   services group, and

22                   “(II) any other person if such  
23                   person is predominantly engaged in  
24                   the active conduct of a banking, insur-  
25                   ance, financing, or similar business.

1           “(ii) FINANCIAL SERVICES GROUP.—

2           The term ‘financial services group’ means  
3           any affiliated group (as defined in section  
4           1504(a) without regard to paragraphs (2)  
5           and (3) of section 1504(b)) which is pre-  
6           dominantly engaged in the active conduct  
7           of a banking, insurance, financing, or simi-  
8           lar business. In determining whether such  
9           a group is so engaged, there shall be taken  
10          into account only the income of members  
11          of the group that are—

12                         “(I) United States corporations,

13                         or

14                         “(II) controlled foreign corpora-  
15                         tions in which such United States cor-  
16                         porations own, directly or indirectly,  
17                         at least 80 percent of the total voting  
18                         power and value of the stock.

19           “(iii) PASS-THRU ENTITIES.—The  
20           Secretary shall by regulation specify for  
21           purposes of this subparagraph the treat-  
22           ment of financial services income received  
23           or accrued by partnerships and by other  
24           pass-thru entities which are not members  
25           of a financial services group.”.

1 (e) CONFORMING AMENDMENTS.—

2 (1) Clause (iii) of section 904(d)(2)(B) (relating  
3 to exceptions from passive income), as so redesign-  
4 nated, is amended by striking subclause (I) and by  
5 redesignating subclauses (II) and (III) as subclauses  
6 (I) and (II), respectively.

7 (2) Clause (i) of section 904(d)(2)(D) (defining  
8 financial services income), as so redesignated, is  
9 amended by adding “or” at the end of subclause (I)  
10 and by striking subclauses (II) and (III) and insert-  
11 ing the following new subclause:

12 “(II) passive income (determined  
13 without regard to subparagraph  
14 (B)(iii)(II)).”

15 (3) Section 904(d)(2)(D) (defining financial  
16 services income), as so redesignated, is amended by  
17 striking clause (iii).

18 (4) Paragraph (3) of section 904(d) is amended  
19 to read as follows:

20 “(3) LOOK-THRU IN CASE OF CONTROLLED  
21 FOREIGN CORPORATIONS.—

22 “(A) IN GENERAL.—Except as otherwise  
23 provided in this paragraph, dividends, interest,  
24 rents, and royalties received or accrued by the  
25 taxpayer from a controlled foreign corporation

1 in which the taxpayer is a United States share-  
2 holder shall not be treated as passive category  
3 income.

4 “(B) SUBPART F INCLUSIONS.—Any  
5 amount included in gross income under section  
6 951(a)(1)(A) shall be treated as passive cat-  
7 egory income to the extent the amount so in-  
8 cluded is attributable to passive category in-  
9 come.

10 “(C) INTEREST, RENTS, AND ROYAL-  
11 TIES.—Any interest, rent, or royalty which is  
12 received or accrued from a controlled foreign  
13 corporation in which the taxpayer is a United  
14 States shareholder shall be treated as passive  
15 category income to the extent it is properly allo-  
16 cable (under regulations prescribed by the Sec-  
17 retary) to passive category income of the con-  
18 trolled foreign corporation.

19 “(D) DIVIDENDS.—Any dividend paid out  
20 of the earnings and profits of any controlled  
21 foreign corporation in which the taxpayer is a  
22 United States shareholder shall be treated as  
23 passive category income in proportion to the  
24 ratio of—

1                   “(i) the portion of the earnings and  
2                   profits attributable to passive category in-  
3                   come, to

4                   “(ii) the total amount of earnings and  
5                   profits.

6                   “(E) LOOK-THRU APPLIES ONLY WHERE  
7                   SUBPART F APPLIES.—If a controlled foreign  
8                   corporation meets the requirements of section  
9                   954(b)(3)(A) (relating to de minimis rule) for  
10                  any taxable year, for purposes of this para-  
11                  graph, none of its foreign base company income  
12                  (as defined in section 954(a) without regard to  
13                  section 954(b)(5)) and none of its gross insur-  
14                  ance income (as defined in section  
15                  954(b)(3)(C)) for such taxable year shall be  
16                  treated as passive category income, except that  
17                  this sentence shall not apply to any income  
18                  which (without regard to this sentence) would  
19                  be treated as financial services income. Solely  
20                  for purposes of applying subparagraph (D),  
21                  passive income of a controlled foreign corpora-  
22                  tion shall not be treated as passive category in-  
23                  come if the requirements of section 954(b)(4)  
24                  are met with respect to such income.

1           “(F) COORDINATION WITH HIGH-TAXED  
2 INCOME PROVISIONS.—

3           “(i) In determining whether any in-  
4 come of a controlled foreign corporation is  
5 passive category income, subclause (II) of  
6 paragraph (2)(B)(iii) shall not apply.

7           “(ii) Any income of the taxpayer  
8 which is treated as passive category income  
9 under this paragraph shall be so treated  
10 notwithstanding any provision of para-  
11 graph (2); except that the determination of  
12 whether any amount is high-taxed income  
13 shall be made after the application of this  
14 paragraph.

15           “(G) DIVIDEND.—For purposes of this  
16 paragraph, the term ‘dividend’ includes any  
17 amount included in gross income in section  
18 951(a)(1)(B). Any amount included in gross in-  
19 come under section 78 to the extent attrib-  
20 utable to amounts included in gross income in  
21 section 951(a)(1)(A) shall not be treated as a  
22 dividend but shall be treated as included in  
23 gross income under section 951(a)(1)(A).

1           “(H) LOOK-THRU APPLIES TO PASSIVE  
2 FOREIGN INVESTMENT COMPANY INCLUSION.—  
3 If—

4                   “(i) a passive foreign investment com-  
5 pany is a controlled foreign corporation,  
6 and

7                   “(ii) the taxpayer is a United States  
8 shareholder in such controlled foreign cor-  
9 poration,  
10 any amount included in gross income under sec-  
11 tion 1293 shall be treated as income in a sepa-  
12 rate category to the extent such amount is at-  
13 tributable to income in such category.”.

14           (5) TREATMENT OF INCOME TAX BASE DIF-  
15 FERENCES.—Paragraph (2) of section 904(d) is  
16 amended by redesignating subparagraphs (H) and  
17 (I) as subparagraphs (I) and (J), respectively, and  
18 by inserting after subparagraph (G) the following  
19 new subparagraph:

20                   “(H) TREATMENT OF INCOME TAX BASE  
21 DIFFERENCES.—Tax imposed under the law of  
22 a foreign country or possession of the United  
23 States on an amount which does not constitute  
24 income under United States tax principles shall



1           be treated as imposed on income described in  
2           paragraph (1)(B).”

3           (6) Paragraph (2) of section 904(d) is amended  
4           by adding at the end the following new subpara-  
5           graph:

6                   “(K) TRANSITIONAL RULES FOR 2007  
7           CHANGES.—For purposes of paragraph (1)—

8                           “(i) taxes carried from any taxable  
9                           year beginning before January 1, 2007, to  
10                           any taxable year beginning on or after  
11                           such date, with respect to any item of in-  
12                           come, shall be treated as described in the  
13                           subparagraph of paragraph (1) in which  
14                           such income would be described were such  
15                           taxes paid or accrued in a taxable year be-  
16                           ginning on or after such date, and

17                           “(ii) the Secretary may by regulations  
18                           provide for the allocation of any carryback  
19                           of taxes with respect to income to such a  
20                           taxable year for purposes of allocating such  
21                           income among the separate categories in  
22                           effect for such taxable year.”.

23           (7) Section 904(j)(3)(A)(i) is amended by strik-  
24           ing “subsection (d)(2)(A)” and inserting “subsection  
25           (d)(2)(B)”.

1 (f) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2006.

4 **SEC. 304. LOOK-THRU RULES TO APPLY TO DIVIDENDS**  
5 **FROM NONCONTROLLED SECTION 902 COR-**  
6 **PORATIONS.**

7 (a) IN GENERAL.—Section 904(d)(4) (relating to  
8 look-thru rules apply to dividends from noncontrolled sec-  
9 tion 902 corporations) is amended to read as follows:

10 “(4) LOOK-THRU APPLIES TO DIVIDENDS FROM  
11 NONCONTROLLED SECTION 902 CORPORATIONS.—

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

18 “(i) the portion of earnings and prof-  
19 its attributable to income described in such  
20 subparagraph, to

21 “(ii) the total amount of earnings and  
22 profits.

23 “(B) EARNINGS AND PROFITS OF CON-  
24 TROLLED FOREIGN CORPORATIONS.—In the  
25 case of any distribution from a controlled for-

1           eign corporation to a United States share-  
2           holder, rules similar to the rules of subpara-  
3           graph (A) shall apply in determining the extent  
4           to which earnings and profits of the controlled  
5           foreign corporation which are attributable to  
6           dividends received from a noncontrolled section  
7           902 corporation may be treated as income in a  
8           separate category.

9           “(C) SPECIAL RULES.—For purposes of  
10          this paragraph—

11                 “(i) EARNINGS AND PROFITS.—

12                         “(I) IN GENERAL.—The rules of  
13                         section 316 shall apply.

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

21                         “(ii) INADEQUATE SUBSTAN-  
22                         TIATION.—If the Secretary determines that  
23                         the proper subparagraph of paragraph (1)  
24                         in which a dividend is described has not  
25                         been substantiated, such dividend shall be

1 treated as income described in paragraph  
2 (1)(A).

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

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

22 (b) CONFORMING AMENDMENTS.—

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

1           (2) Section 904(d)(2)(C)(iii) is amended by  
2 adding “and” at the end of subclause (I), by striking  
3 subclause (II), and by redesignating subclause (III)  
4 as 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 strik-  
14 ing “(D), or (E)” and inserting “or (D)”.

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

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

20 **SEC. 305. ATTRIBUTION OF STOCK OWNERSHIP THROUGH**  
21 **PARTNERSHIPS TO APPLY IN DETERMINING**  
22 **SECTION 902 AND 960 CREDITS.**

23           (a) IN GENERAL.—Subsection (c) of section 902 is  
24 amended by redesignating paragraph (7) as paragraph (8)

1 and by inserting after paragraph (6) the following new  
2 paragraph:

3           “(7) CONSTRUCTIVE OWNERSHIP THROUGH  
4 PARTNERSHIPS.—Stock owned, directly or indirectly,  
5 by or for a partnership shall be considered as being  
6 owned proportionately by its partners. Stock consid-  
7 ered to be owned by a person by reason of the pre-  
8 ceding sentence shall, for purposes of applying such  
9 sentence, be treated as actually owned by such per-  
10 son. The Secretary may prescribe such regulations  
11 as may be necessary to carry out the purposes of  
12 this paragraph, including rules to account for special  
13 partnership allocations of dividends, credits, and  
14 other incidents of ownership of stock in determining  
15 proportionate ownership.”.

16           (b) CLARIFICATION OF COMPARABLE ATTRIBUTION  
17 UNDER SECTION 901(b)(5).—Paragraph (5) of section  
18 901(b) is amended by striking “any individual” and in-  
19 serting “any person”.

20           (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to taxes of foreign corporations  
22 for taxable years of such corporations beginning after the  
23 date of the enactment of this Act.

1 **SEC. 306. CLARIFICATION OF TREATMENT OF CERTAIN**  
2 **TRANSFERS OF INTANGIBLE PROPERTY.**

3 (a) **IN GENERAL.**—Subparagraph (C) of section  
4 367(d)(2) is amended by adding at the end the following  
5 new sentence: “For purposes of applying section 904(d),  
6 any such amount shall be treated in the same manner as  
7 if such amount were a royalty.”.

8 (b) **EFFECTIVE DATE.**—The amendment made by  
9 this section shall apply to amounts treated as received pur-  
10 suant to section 367(d)(2) of the Internal Revenue Code  
11 of 1986 on or after August 5, 1997.

12 **SEC. 307. UNITED STATES PROPERTY NOT TO INCLUDE**  
13 **CERTAIN ASSETS OF CONTROLLED FOREIGN**  
14 **CORPORATION.**

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

21 “(L) securities acquired and held by a con-  
22 trolled foreign corporation in the ordinary  
23 course of its business as a dealer in securities  
24 if—

25 “(i) the dealer accounts for the securi-  
26 ties as securities held primarily for sale to

1 customers in the ordinary course of busi-  
2 ness, and

3 “(ii) the dealer disposes of the securi-  
4 ties (or such securities mature while held  
5 by the dealer) within a period consistent  
6 with the holding of securities for sale to  
7 customers in the ordinary course of busi-  
8 ness; and

9 “(M) an obligation of a United States per-  
10 son which—

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

12 “(ii) is not—

13 “(I) a United States shareholder  
14 (as defined in section 951(b)) of the  
15 controlled foreign corporation, or

16 “(II) a partnership, estate, or  
17 trust in which the controlled foreign  
18 corporation, or any related person (as  
19 defined in section 954(d)(3)), is a  
20 partner, beneficiary, or trustee imme-  
21 diately after the acquisition of any ob-  
22 ligation of such partnership, estate, or  
23 trust by the controlled foreign cor-  
24 poration.”.



1 (b) CONFORMING AMENDMENT.—Section 956(e)(2)  
2 is amended by striking “and (K)” in the last sentence and  
3 inserting “, (K), and (L)”.

4 (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to taxable years of foreign corpora-  
6 tions beginning after December 31, 2004, and to taxable  
7 years of United States shareholders with or within which  
8 such taxable years of foreign corporations end.

9 **SEC. 308. ELECTION NOT TO USE AVERAGE EXCHANGE**  
10 **RATE FOR FOREIGN TAX PAID OTHER THAN**  
11 **IN FUNCTIONAL CURRENCY.**

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

18 “(D) ELECTIVE EXCEPTION FOR TAXES  
19 PAID OTHER THAN IN FUNCTIONAL CUR-  
20 RENCY.—

21 “(i) IN GENERAL.—At the election of  
22 the taxpayer, subparagraph (A) shall not  
23 apply to any foreign income taxes the li-  
24 ability for which is denominated in any

1 currency other than in the taxpayer's func-  
2 tional currency.

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

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

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

17 **SEC. 309. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**  
18 **FROM CERTAIN FOREIGN CORPORATIONS.**

19 (a) IN GENERAL.—Paragraph (2) of section 871(i)  
20 (relating to tax not to apply to certain interest and divi-  
21 dends) is amended by adding at the end the following new  
22 subparagraph:

23 “(D) Dividends paid by a foreign corpora-  
24 tion which are treated under section

1           861(a)(2)(B) as income from sources within the  
2           United States.”.

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall apply to payments made after December  
5 31, 2004.

6 **SEC. 310. PROVIDE EQUAL TREATMENT FOR INTEREST**  
7                   **PAID BY FOREIGN PARTNERSHIPS AND FOR-**  
8                   **EIGN CORPORATIONS.**

9           (a) **IN GENERAL.**—Paragraph (1) of section 861(a)  
10 is amended by striking “and” at the end of subparagraph  
11 (A), by striking the period at the end of subparagraph  
12 (B) and inserting “, and”, and by adding at the end the  
13 following new subparagraph:

14                   “(C) in the case of a foreign partnership,  
15                   which is predominantly engaged in the active  
16                   conduct of a trade or business outside the  
17                   United States, any interest not paid by a trade  
18                   or business engaged in by the partnership in  
19                   the United States and not allocable to income  
20                   which is effectively connected (or treated as ef-  
21                   fectively connected) with the conduct of a trade  
22                   or business in the United States.”.

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

1 **SEC. 311. LOOK-THRU TREATMENT OF PAYMENTS BE-**  
2 **TWEEN RELATED CONTROLLED FOREIGN**  
3 **CORPORATIONS UNDER FOREIGN PERSONAL**  
4 **HOLDING COMPANY INCOME RULES.**

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

8 “(5) LOOK-THRU IN THE CASE OF RELATED  
9 CONTROLLED FOREIGN CORPORATIONS.—For pur-  
10 poses of this subsection, dividends, interest, rents,  
11 and royalties received or accrued from a controlled  
12 foreign corporation which is a related person (as de-  
13 fined in subsection (b)(9)) shall not be treated as  
14 foreign personal holding company income to the ex-  
15 tent attributable or properly allocable (determined  
16 under rules similar to the rules of subparagraphs  
17 (C) and (D) of section 904(d)(3)) to income of the  
18 related person which is not subpart F income (as de-  
19 fined in section 952). For purposes of this para-  
20 graph, interest shall include factoring income which  
21 is treated as income equivalent to interest for pur-  
22 poses of paragraph (1)(E). The Secretary shall pre-  
23 scribe such regulations as may be appropriate to  
24 prevent the abuse of the purposes of this para-  
25 graph.”.

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

6 **SEC. 312. LOOK-THRU TREATMENT FOR SALES OF PART-**  
7 **nership INTERESTS.**

8 (a) IN GENERAL.—Section 954(c) (defining foreign  
9 personal holding company income), as amended by this  
10 Act, is amended by adding after paragraph (5) the fol-  
11 lowing new paragraph:

12 “(6) LOOK-THRU RULE FOR CERTAIN PARTNER-  
13 SHIP SALES.—

14 “(A) IN GENERAL.—In the case of any  
15 sale by a controlled foreign corporation of an  
16 interest in a partnership with respect to which  
17 such corporation is a 25-percent owner, such  
18 corporation shall be treated for purposes of this  
19 subsection as selling the proportionate share of  
20 the assets of the partnership attributable to  
21 such interest. The Secretary shall prescribe  
22 such regulations as may be appropriate to pre-  
23 vent abuse of the purposes of this paragraph,  
24 including regulations providing for coordination

1 of this paragraph with the provisions of sub-  
2 chapter K.

3 “(B) 25-PERCENT OWNER.—For purposes  
4 of this paragraph, the term ‘25-percent owner’  
5 means a controlled foreign corporation which  
6 owns directly 25 percent or more of the capital  
7 or profits interest in a partnership. For pur-  
8 poses of the preceding sentence, if a controlled  
9 foreign corporation is a shareholder or partner  
10 of a corporation or partnership, the controlled  
11 foreign corporation shall be treated as owning  
12 directly its proportionate share of any such cap-  
13 ital or profits interest held directly or indirectly  
14 by such corporation or partnership.”.

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

20 **SEC. 313. REPEAL OF FOREIGN PERSONAL HOLDING COM-**  
21 **PANY RULES AND FOREIGN INVESTMENT**  
22 **COMPANY RULES.**

23 (a) GENERAL RULE.—The following provisions are  
24 hereby repealed:

1 (1) Part III of subchapter G of chapter 1 (re-  
2 lating to foreign personal holding companies).

3 (2) Section 1246 (relating to gain on foreign in-  
4 vestment company stock).

5 (3) Section 1247 (relating to election by foreign  
6 investment companies to distribute income cur-  
7 rently).

8 (b) EXEMPTION OF FOREIGN CORPORATIONS FROM  
9 PERSONAL HOLDING COMPANY RULES.—

10 (1) IN GENERAL.—Subsection (c) of section  
11 542 (relating to exceptions) is amended—

12 (A) by striking paragraph (5) and insert-  
13 ing the following:

14 “(5) a foreign corporation,”

15 (B) by striking paragraphs (7) and (10)  
16 and by redesignating paragraphs (8) and (9) as  
17 paragraphs (7) and (8), respectively,

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

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

23 (2) TREATMENT OF INCOME FROM PERSONAL  
24 SERVICE CONTRACTS.—Paragraph (1) of section

1 954(c) is amended by adding at the end the fol-  
2 lowing new subparagraph:

3 “(I) PERSONAL SERVICE CONTRACTS.—

4 “(i) Amounts received under a con-  
5 tract under which the corporation is to fur-  
6 nish personal services if—

7 “(I) some person other than the  
8 corporation has the right to designate  
9 (by name or by description) the indi-  
10 vidual who is to perform the services,  
11 or

12 “(II) the individual who is to per-  
13 form the services is designated (by  
14 name or by description) in the con-  
15 tract, and

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

18 This subparagraph shall apply with respect to  
19 amounts received for services under a particular  
20 contract only if at some time during the taxable  
21 year 25 percent or more in value of the out-  
22 standing stock of the corporation is owned, di-  
23 rectly or indirectly, by or for the individual who  
24 has performed, is to perform, or may be des-



1           ignated (by name or by description) as the one  
2           to perform, such services.”.

3       (c) CONFORMING AMENDMENTS.—

4           (1) Section 1(h) is amended—

5                   (A) in paragraph (10), by inserting “and”  
6                   at the end of subparagraph (F), by striking  
7                   subparagraph (G), and by redesignating sub-  
8                   paragraph (H) as subparagraph (G), and

9                   (B) by striking “a foreign personal holding  
10                   company (as defined in section 552), a foreign  
11                   investment company (as defined in section  
12                   1246(b)), or” in paragraph (11)(C)(iii).

13           (2) Section 163(e)(3)(B), as amended by sec-  
14           tion 642(a) of this Act, is amended by striking  
15           “which is a foreign personal holding company (as  
16           defined in section 552), a controlled foreign corpora-  
17           tion (as defined in section 957), or” and inserting  
18           “which is a controlled foreign corporation (as de-  
19           fined in section 957) or”.

20           (3) Paragraph (2) of section 171(e) is amend-  
21           ed—

22                   (A) by striking “, or by a foreign personal  
23                   holding company, as defined in section 552”,  
24                   and

1 (B) by striking “, or foreign personal hold-  
2 ing company”.

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

5 (5) Section 267(a)(3)(B), as amended by sec-  
6 tion 642(b) of this Act, is amended by striking “to  
7 a foreign personal holding company (as defined in  
8 section 552), a controlled foreign corporation (as de-  
9 fined in section 957), or” and inserting “to a con-  
10 trolled foreign corporation (as defined in section  
11 957) or”.

12 (6) Section 312 is amended by striking sub-  
13 section (j).

14 (7) Subsection (m) of section 312 is amended  
15 by striking “, a foreign investment company (within  
16 the meaning of section 1246(b)), or a foreign per-  
17 sonal holding company (within the meaning of sec-  
18 tion 552)”.

19 (8) Subsection (e) of section 443 is amended by  
20 striking paragraph (3) and by redesignating para-  
21 graphs (4) and (5) as paragraphs (3) and (4), re-  
22 spectively.

23 (9) Subparagraph (B) of section 465(e)(7) is  
24 amended by adding “or” at the end of clause (i), by

1 striking clause (ii), and by redesignating clause (iii)  
2 as clause (ii).

3 (10) Paragraph (1) of section 543(b) is amend-  
4 ed by inserting “and” at the end of subparagraph  
5 (A), by striking “, and” at the end of subparagraph  
6 (B) and inserting a period, and by striking subpara-  
7 graph (C).

8 (11) Paragraph (1) of section 562(b) is amend-  
9 ed by striking “or a foreign personal holding com-  
10 pany described in section 552”.

11 (12) Section 563 is amended—

12 (A) by striking subsection (e),

13 (B) by redesignating subsection (d) as sub-  
14 section (e), and

15 (C) by striking “subsection (a), (b), or (c)”  
16 in subsection (e) (as so redesignated) and in-  
17 serting “subsection (a) or (b)”.

18 (13) Subsection (d) of section 751 is amended  
19 by adding “and” at the end of paragraph (2), by  
20 striking paragraph (3), by redesignating paragraph  
21 (4) as paragraph (3), and by striking “paragraph  
22 (1), (2), or (3)” in paragraph (3) (as so redesi-  
23 gnated) and inserting “paragraph (1) or (2)”.

24 (14) Paragraph (2) of section 864(d) is amend-  
25 ed by striking subparagraph (A) and by redesi-

1 nating subparagraphs (B) and (C) as subparagraphs  
2 (A) and (B), respectively.

3 (15)(A) Subparagraph (A) of section 898(b)(1)  
4 is amended to read as follows:

5 “(A) which is treated as a controlled for-  
6 eign corporation for any purpose under subpart  
7 F of part III of this subchapter, and”.

8 (B) Subparagraph (B) of section 898(b)(2) is  
9 amended by striking “and sections 551(f) and 554,  
10 whichever are applicable,”.

11 (C) Paragraph (3) of section 898(b) is amended  
12 to read as follows:

13 “(3) UNITED STATES SHAREHOLDER.—The  
14 term ‘United States shareholder’ has the meaning  
15 given to such term by section 951(b), except that, in  
16 the case of a foreign corporation having related per-  
17 son insurance income (as defined in section  
18 953(c)(2)), the Secretary may treat any person as a  
19 United States shareholder for purposes of this sec-  
20 tion if such person is treated as a United States  
21 shareholder under section 953(c)(1).”.

22 (D) Subsection (c) of section 898 is amended to  
23 read as follows:

24 “(c) DETERMINATION OF REQUIRED YEAR.—

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

1           “(A) the majority U.S. shareholder year,  
2           or

3           “(B) if there is no majority U.S. share-  
4           holder year, the taxable year prescribed under  
5           regulations.

6           “(2) 1-MONTH DEFERRAL ALLOWED.—A speci-  
7           fied foreign corporation may elect, in lieu of the tax-  
8           able year under paragraph (1)(A), a taxable year be-  
9           ginning 1 month earlier than the majority U.S.  
10          shareholder year.

11          “(3) MAJORITY U.S. SHAREHOLDER YEAR.—

12           “(A) IN GENERAL.—For purposes of this  
13           subsection, the term ‘majority U.S. shareholder  
14           year’ means the taxable year (if any) which, on  
15           each testing day, constituted the taxable year  
16           of—

17           “(i) each United States shareholder  
18           described in subsection (b)(2)(A), and

19           “(ii) each United States shareholder  
20           not described in clause (i) whose stock was  
21           treated as owned under subsection  
22           (b)(2)(B) by any shareholder described in  
23           such clause.

24           “(B) TESTING DAY.—The testing days  
25           shall be—

1           “(i) the first day of the corporation’s  
2 taxable year (determined without regard to  
3 this section), or

4           “(ii) the days during such representa-  
5 tive period as the Secretary may pre-  
6 scribe.”.

7           (16) Clause (ii) of section 904(d)(2)(A) is  
8 amended to read as follows:

9           “(ii) CERTAIN AMOUNTS INCLUDED.—  
10 Except as provided in clause (iii), the term  
11 ‘passive income’ includes, except as pro-  
12 vided in subparagraph (E)(iii) or para-  
13 graph (3)(I), any amount includible in  
14 gross income under section 1293 (relating  
15 to certain passive foreign investment com-  
16 panies).”.

17           (17)(A) Subparagraph (A) of section 904(h)(1),  
18 as redesignated by section 302, is amended by add-  
19 ing “or” at the end of clause (i), by striking clause  
20 (ii), and by redesignating clause (iii) as clause (ii).

21           (B) The paragraph heading of paragraph (2) of  
22 section 904(h), as so redesignated, is amended by  
23 striking “FOREIGN PERSONAL HOLDING OR”.

1           (18) Section 951 is amended by striking sub-  
2 sections (c) and (d) and by redesignating subsections  
3 (e) and (f) as subsections (c) and (d), respectively.

4           (19) Paragraph (3) of section 989(b) is amend-  
5 ed by striking “, 551(a),”.

6           (20) Paragraph (5) of section 1014(b) is  
7 amended by inserting “and before January 1,  
8 2005,” after “August 26, 1937,”.

9           (21) Subsection (a) of section 1016 is amended  
10 by striking paragraph (13).

11           (22)(A) Paragraph (3) of section 1212(a) is  
12 amended to read as follows:

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

16           “(A) for which it is a regulated investment  
17 company (as defined in section 851), or

18           “(B) for which it is a real estate invest-  
19 ment trust (as defined in section 856).”.

20           (B) The amendment made by subparagraph (A)  
21 shall apply to taxable years beginning after Decem-  
22 ber 31, 2004.

23           (23) Section 1223 is amended by striking para-  
24 graph (10) and by redesignating the following para-  
25 graphs accordingly.

1           (24) Subsection (d) of section 1248 is amended  
2           by striking paragraph (5) and by redesignating  
3           paragraphs (6) and (7) as paragraphs (5) and (6),  
4           respectively.

5           (25) Paragraph (2) of section 1260(c) is  
6           amended by striking subparagraphs (H) and (I) and  
7           by redesignating subparagraph (J) as subparagraph  
8           (H).

9           (26)(A) Subparagraph (F) of section  
10          1291(b)(3) is amended by striking “551(d), 959(a),”  
11          and inserting “959(a)”.

12          (B) Subsection (e) of section 1291 is amended  
13          by inserting “(as in effect on the day before the date  
14          of the enactment of the American Jobs Creation Act  
15          of 2004)” after “section 1246”.

16          (27) Paragraph (2) of section 1294(a) is  
17          amended to read as follows:

18                 “(2) ELECTION NOT PERMITTED WHERE  
19                 AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION  
20                 951.—The taxpayer may not make an election under  
21                 paragraph (1) with respect to the undistributed  
22                 PFIC earnings tax liability attributable to a quali-  
23                 fied electing fund for the taxable year if any amount  
24                 is includible in the gross income of the taxpayer



1 under section 951 with respect to such fund for such  
2 taxable year.”.

3 (28) Section 6035 is hereby repealed.

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

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

10 “(B) CONSTRUCTIVE DIVIDENDS.—If the  
11 taxpayer omits from gross income an amount  
12 properly includible therein under section  
13 951(a), the tax may be assessed, or a pro-  
14 ceeding in court for the collection of such tax  
15 may be done without assessing, at any time  
16 within 6 years after the return was filed.”.

17 (31) Subsection (a) of section 6679 is amend-  
18 ed—

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

22 (B) by striking paragraph (3).

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

1           (33) The table of parts for subchapter G of  
2 chapter 1 is amended by striking the item relating  
3 to part 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  
9 striking the item relating to section 6035.

10 (d) EFFECTIVE DATES.—

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

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

1 **SEC. 314. DETERMINATION OF FOREIGN PERSONAL HOLD-**  
2 **ING COMPANY INCOME WITH RESPECT TO**  
3 **TRANSACTIONS IN COMMODITIES.**

4 (a) IN GENERAL.—Clauses (i) and (ii) of section  
5 954(e)(1)(C) (relating to commodity transactions) are  
6 amended to read as follows:

7 “(i) arise out of commodity hedging  
8 transactions (as defined in paragraph  
9 (4)(A)),

10 “(ii) are active business gains or  
11 losses from the sale of commodities, but  
12 only if substantially all of the controlled  
13 foreign corporation’s commodities are  
14 property described in paragraph (1), (2),  
15 or (8) of section 1221(a), or”.

16 (b) DEFINITION AND SPECIAL RULES.—Subsection  
17 (c) of section 954 is amended by adding after paragraph  
18 (3) the following new paragraph:

19 “(4) DEFINITION AND SPECIAL RULES RELAT-  
20 ING TO COMMODITY TRANSACTIONS.—

21 “(A) COMMODITY HEDGING TRANS-  
22 ACTIONS.—For purposes of paragraph  
23 (1)(C)(i), the term ‘commodity hedging trans-  
24 action’ means any transaction with respect to a  
25 commodity if such transaction—

1           “(i) is a hedging transaction as de-  
2           fined in section 1221(b)(2), determined—

3                   “(I) without regard to subpara-  
4                   graph (A)(ii) thereof,

5                   “(II) by applying subparagraph  
6                   (A)(i) thereof by substituting ‘ordi-  
7                   nary property or property described in  
8                   section 1231(b)’ for ‘ordinary prop-  
9                   erty’, and

10                  “(III) by substituting ‘controlled  
11                  foreign corporation’ for ‘taxpayer’  
12                  each place it appears, and

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

15                  “(B) TREATMENT OF DEALER ACTIVITIES  
16                  UNDER PARAGRAPH (1)(C).—Commodities with  
17                  respect to which gains and losses are not taken  
18                  into account under paragraph (2)(C) in com-  
19                  puting a controlled foreign corporation’s foreign  
20                  personal holding company income shall not be  
21                  taken into account in applying the substantially  
22                  all test under paragraph (1)(C)(ii) to such cor-  
23                  poration.

24                  “(C) REGULATIONS.—The Secretary shall  
25                  prescribe such regulations as are appropriate to

1 carry out the purposes of paragraph (1)(C) in  
2 the case of transactions involving related par-  
3 ties.”.

4 (c) MODIFICATION OF EXCEPTION FOR DEALERS.—  
5 Clause (i) of section 954(c)(2)(C) is amended by inserting  
6 “and transactions involving physical settlement” after  
7 “(including hedging transactions”.

8 (d) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to transactions entered into after  
10 December 31, 2004.

11 **SEC. 315. MODIFICATIONS TO TREATMENT OF AIRCRAFT**  
12 **LEASING AND SHIPPING INCOME.**

13 (a) ELIMINATION OF FOREIGN BASE COMPANY SHIP-  
14 PING INCOME.—Section 954 (relating to foreign base com-  
15 pany income) is amended—

16 (1) by striking paragraph (4) of subsection (a)  
17 (relating to foreign base company shipping income),  
18 and

19 (2) by striking subsection (f) (relating to for-  
20 eign base company shipping income).

21 (b) SAFE HARBOR FOR CERTAIN LEASING ACTIVI-  
22 TIES.—Subparagraph (A) of section 954(c)(2) is amended  
23 by adding at the end the following new sentence: “For  
24 purposes of the preceding sentence, rents derived from  
25 leasing an aircraft or vessel in foreign commerce shall not

1 fail to be treated as derived in the active conduct of a  
2 trade or business if, as determined under regulations pre-  
3 scribed by the Secretary, the active leasing expenses are  
4 not less than 10 percent of the profit on the lease.”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) Section 952(c)(1)(B)(iii) is amended by  
7 striking subclause (I) and redesignating subclauses  
8 (II) through (VI) as subclauses (I) through (V), re-  
9 spectively.

10 (2) Subsection (b) of section 954 is amended—

11 (A) by striking “the foreign base company  
12 shipping income,” in paragraph (5),

13 (B) by striking paragraphs (6) and (7),  
14 and

15 (C) by redesignating paragraph (8) as  
16 paragraph (6).

17 (d) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to taxable years of foreign corpora-  
19 tions beginning after December 31, 2004, and to taxable  
20 years of United States shareholders with or within which  
21 such taxable years of foreign corporations end.

22 **SEC. 316. MODIFICATION OF EXCEPTIONS UNDER SUBPART**  
23 **F FOR ACTIVE FINANCING.**

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

1           “(E) DIRECT CONDUCT OF ACTIVITIES.—  
2           For purposes of subparagraph (A)(ii)(II), an  
3           activity shall be treated as conducted directly by  
4           an eligible controlled foreign corporation or  
5           qualified business unit in its home country if  
6           the activity is performed by employees of a re-  
7           lated person and—

8                   “(i) the related person is an eligible  
9                   controlled foreign corporation the home  
10                  country of which is the same as the home  
11                  country of the corporation or unit to which  
12                  subparagraph (A)(ii)(II) is being applied,

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

15                   “(iii) the related person is com-  
16                  pensated on an arm’s-length basis for the  
17                  performance of the activity by its employ-  
18                  ees and such compensation is treated as  
19                  earned by such person in its home country  
20                  for purposes of the home country’s tax  
21                  laws.”.

22           (b) EFFECTIVE DATE.—The amendment made by  
23           this section shall apply to taxable years of such foreign  
24           corporations beginning after December 31, 2004, and to

1 taxable years of United States shareholders with or within  
2 which such taxable years of such foreign corporations end.

3 **TITLE IV—EXTENSION OF**  
4 **CERTAIN EXPIRING PROVISIONS**

5 **SEC. 401. ALLOWANCE OF NONREFUNDABLE PERSONAL**  
6 **CREDITS AGAINST REGULAR AND MINIMUM**  
7 **TAX LIABILITY.**

8 (a) IN GENERAL.—Paragraph (2) of section 26(a) is  
9 amended—

10 (1) by striking “RULE FOR 2000, 2001, 2002, AND  
11 2003.—” and inserting “RULE FOR TAXABLE YEARS  
12 2000 THROUGH 2005.—”, and

13 (2) by striking “or 2003,” and inserting “2003,  
14 2004, or 2005,”.

15 (b) CONFORMING PROVISIONS.—

16 (1) Section 904(h) is amended by striking “or  
17 2003” and inserting “2003, 2004, or 2005”.

18 (2) The amendments made by sections 201(b),  
19 202(f), and 618(b) of the Economic Growth and Tax  
20 Relief Reconciliation Act of 2001 shall not apply to  
21 taxable years beginning during 2004 or 2005.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to taxable years beginning after  
24 December 31, 2003.



1 **SEC. 402. EXTENSION OF RESEARCH CREDIT.**

2 (a) EXTENSION.—

3 (1) IN GENERAL.—Section 41(h)(1)(B) (relat-  
4 ing to termination) is amended by striking “June  
5 30, 2004” and inserting “December 31, 2005”.

6 (2) CONFORMING AMENDMENT.—Section  
7 45C(b)(1)(D) is amended by striking “June 30,  
8 2004” and inserting “December 31, 2005”.

9 (b) EFFECTIVE DATE.—The amendments made by  
10 subsection (a) shall apply to amounts paid or incurred  
11 after June 30, 2004.

12 **SEC. 403. EXTENSION OF CREDIT FOR ELECTRICITY PRO-**  
13 **DUCTION FROM CERTAIN RENEWABLE RE-**  
14 **SOURCES.**

15 (a) IN GENERAL.—Subparagraphs (A) and (B) of  
16 section 45(c)(3) (defining qualified facility) are both  
17 amended by striking “2004” and inserting “2006”.

18 (b) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to facilities placed in service after  
20 December 31, 2003.

21 **SEC. 404. INDIAN EMPLOYMENT TAX CREDIT.**

22 Section 45A(f) (relating to termination) is amended  
23 by striking “December 31, 2004” and inserting “Decem-  
24 ber 31, 2005”.

1 **SEC. 405. WORK OPPORTUNITY CREDIT.**

2 (a) IN GENERAL.—Subparagraph (B) of section  
3 51(c)(4) is amended by striking “December 31, 2003” and  
4 inserting “December 31, 2005”.

5 (b) EFFECTIVE DATE.—The amendment made by  
6 subsection (a) shall apply to individuals who begin work  
7 for the employer after December 31, 2003.

8 **SEC. 406. WELFARE-TO-WORK CREDIT.**

9 (a) IN GENERAL.—Subsection (f) of section 51A is  
10 amended by striking “December 31, 2003” and inserting  
11 “December 31, 2005”.

12 (b) EFFECTIVE DATE.—The amendment made by  
13 subsection (a) shall apply to individuals who begin work  
14 for the employer after December 31, 2003.

15 **SEC. 407. CERTAIN EXPENSES OF ELEMENTARY AND SEC-**  
16 **ONDARY SCHOOL TEACHERS.**

17 (a) IN GENERAL.—Subparagraph (D) of section  
18 62(a)(2) (relating to certain trade and business deductions  
19 of employees) is amended by striking “or 2003” and in-  
20 serting “, 2003, 2004, or 2005”.

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

1 **SEC. 408. EXTENSION OF ACCELERATED DEPRECIATION**  
2 **BENEFIT FOR PROPERTY ON INDIAN RES-**  
3 **ERVATIONS.**

4 Paragraph (8) of section 168(j) (relating to termi-  
5 nation) is amended by striking “December 31, 2004” and  
6 inserting “December 31, 2005”.

7 **SEC. 409. CHARITABLE CONTRIBUTIONS OF COMPUTER**  
8 **TECHNOLOGY AND EQUIPMENT USED FOR**  
9 **EDUCATIONAL PURPOSES.**

10 (a) **IN GENERAL.**—Subparagraph (G) of section  
11 170(e)(6) (relating to special rule for contributions of  
12 computer technology and equipment for educational pur-  
13 poses) is amended by striking “December 31, 2003” and  
14 inserting “December 31, 2005”.

15 (b) **EFFECTIVE DATE.**—The amendment made by  
16 subsection (a) shall apply to taxable years beginning after  
17 December 31, 2003.

18 **SEC. 410. EXPENSING OF ENVIRONMENTAL REMEDIATION**  
19 **COSTS.**

20 (a) **IN GENERAL.**—Subsection (h) of section 198 (re-  
21 lating to termination) is amended by striking “December  
22 31, 2003” and inserting “December 31, 2005”.

23 (b) **EFFECTIVE DATE.**—The amendments made by  
24 subsection (a) shall apply to expenditures paid or incurred  
25 after December 31, 2003.

1 **SEC. 411. AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.**

2 (a) IN GENERAL.—Paragraphs (2) and (3)(B) of sec-  
3 tion 220(i) (defining cut-off year) are each amended by  
4 striking “2003” each place it appears in the text and  
5 headings and inserting “2005”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) Paragraph (2) of section 220(j) is amend-  
8 ed—

9 (A) in the text by striking “or 2002” each  
10 place it appears and inserting “2002, or 2004”,  
11 and

12 (B) in the heading by striking “OR 2002”  
13 and inserting “2002, OR 2004”.

14 (2) Subparagraph (A) of section 220(j)(4) is  
15 amended by striking “and 2002” and inserting  
16 “2002, and 2004”.

17 (3) Subparagraph (C) of section 220(j)(2) is  
18 amended to read as follows:

19 “(C) NO LIMITATION FOR 2000 OR 2003.—  
20 The numerical limitation shall not apply for  
21 2000 or 2003.”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall take effect on January 1, 2004.

24 (d) TIME FOR FILING REPORTS, ETC.—

25 (1) The report required by section 220(j)(4) of  
26 the Internal Revenue Code of 1986 to be made on

1 August 1, 2004, shall be treated as timely if made  
2 before the close of the 90-day period beginning on  
3 the date of the enactment of this Act.

4 (2) The determination and publication required  
5 by section 220(j)(5) of such Code with respect to  
6 calendar year 2004 shall be treated as timely if  
7 made before the close of the 120-day period begin-  
8 ning on the date of the enactment of this Act. If the  
9 determination under the preceding sentence is that  
10 2004 is a cut-off year under section 220(i) of such  
11 Code, the cut-off date under such section 220(i)  
12 shall be the last day of such 120-day period.

13 **SEC. 412. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLE-**  
14 **TION FOR OIL AND NATURAL GAS PRODUCED**  
15 **FROM MARGINAL PROPERTIES.**

16 (a) IN GENERAL.—Subparagraph (H) of section  
17 613A(c)(6) is amended by striking “January 1, 2004” and  
18 inserting “January 1, 2006”.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 subsection (a) shall apply to taxable years beginning after  
21 December 31, 2003.

22 **SEC. 413. QUALIFIED ZONE ACADEMY BONDS.**

23 (a) IN GENERAL.—Paragraph (1) of section  
24 1397E(e) is amended by striking “and 2003” and insert-  
25 ing “2003, 2004, and 2005”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall apply to obligations issued after the  
3 date of the enactment of this Act.

4 **SEC. 414. DISTRICT OF COLUMBIA.**

5 (a) DISTRICT OF COLUMBIA ENTERPRISE ZONE.—  
6 Subsection (f) of section 1400 is amended by striking  
7 “December 31, 2003” both places it appears and inserting  
8 “December 31, 2005”.

9 (b) TAX-EXEMPT ECONOMIC DEVELOPMENT  
10 BONDS.—Subsection (b) of section 1400A is amended by  
11 striking “December 31, 2003” and inserting “December  
12 31, 2005”.

13 (c) ZERO PERCENT CAPITAL GAINS RATE.—

14 (1) Section 1400B is amended by striking  
15 “January 1, 2004” each place it appears and insert-  
16 ing “January 1, 2006”.

17 (2) Subsections (e)(2) and (g)(2) of section  
18 1400B are each amended by striking “2008” each  
19 place it appears in the headings and text and insert-  
20 ing “2010”.

21 (3) Subsection (d) of section 1400F is amended  
22 by striking “December 31, 2008” and inserting  
23 “December 31, 2010”.

1 (d) FIRST-TIME HOMEBUYER CREDIT.—Subsection  
2 (i) of section 1400C is amended by striking “January 1,  
3 2004” and inserting “January 1, 2006”.

4 (e) EFFECTIVE DATES.—

5 (1) IN GENERAL.—Except as otherwise pro-  
6 vided in this subsection, the amendments made by  
7 this section shall take effect on the date of the en-  
8 actment of this Act.

9 (2) TAX-EXEMPT ECONOMIC DEVELOPMENT  
10 BONDS.—The amendment made by subsection (b)  
11 shall apply to obligations issued after December 31,  
12 2003.

13 **SEC. 415. EXTENSION OF CERTAIN NEW YORK LIBERTY**  
14 **ZONE BOND FINANCING.**

15 Subparagraph (D) of section 1400L(d)(2) is amend-  
16 ed by striking “2005” and inserting “2010”.

17 **SEC. 416. DISCLOSURES RELATING TO TERRORIST ACTIVI-**  
18 **TIES.**

19 (a) IN GENERAL.—Clause (iv) of section  
20 6103(i)(3)(C) and subparagraph (E) of section 6103(i)(7)  
21 are both amended by striking “December 31, 2003” and  
22 inserting “December 31, 2005”.

23 (b) DISCLOSURE OF TAXPAYER IDENTITY TO LAW  
24 ENFORCEMENT AGENCIES INVESTIGATING TERRORISM.—

1 Subparagraph (A) of section 6103(i)(7) is amended by  
2 adding at the end the following new clause:

3                   “(v) TAXPAYER IDENTITY.—For pur-  
4                   poses of this subparagraph, a taxpayer’s  
5                   identity shall not be treated as taxpayer  
6                   return information.”.

7           (c) EFFECTIVE DATES.—

8                   (1) IN GENERAL.—The amendments made by  
9                   subsection (a) shall apply to disclosures on or after  
10                  the date of the enactment of this Act.

11                  (2) SUBSECTION (b).—The amendment made  
12                  by subsection (b) shall take effect as if included in  
13                  section 201 of the Victims of Terrorism Tax Relief  
14                  Act of 2001.

15 **SEC. 417. DISCLOSURE OF RETURN INFORMATION RELAT-**  
16 **ING TO STUDENT LOANS.**

17           Section 6103(l)(13)(D) (relating to termination) is  
18 amended by striking “December 31, 2004” and inserting  
19 “December 31, 2005”.

20 **SEC. 418. COVER OVER OF TAX ON DISTILLED SPIRITS.**

21           (a) IN GENERAL.—Paragraph (1) of section 7652(f)  
22 is amended by striking “January 1, 2004” and inserting  
23 “January 1, 2006”.



1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall apply to articles brought into the  
3 United States after December 31, 2003.

4 **SEC. 419. JOINT REVIEW OF STRATEGIC PLANS AND BUDG-**  
5 **ET FOR THE INTERNAL REVENUE SERVICE.**

6 (a) IN GENERAL.—Paragraph (2) of section 8021(f)  
7 (relating to joint reviews) is amended by striking “2004”  
8 and inserting “2005”.

9 (b) REPORT.—Subparagraph (C) of section 8022(3)  
10 (regarding reports) is amended—

11 (1) by striking “2004” and inserting “2005”,  
12 and

13 (2) by striking “with respect to—” and all that  
14 follows and inserting “with respect to the matters  
15 addressed in the joint review referred to in section  
16 8021(f)(2).”.

17 (c) TIME FOR JOINT REVIEW.—The joint review re-  
18 quired by section 8021(f)(2) of the Internal Revenue Code  
19 of 1986 to be made before June 1, 2004, shall be treated  
20 as timely if made before June 1, 2005.

21 **SEC. 420. PARITY IN THE APPLICATION OF CERTAIN LIMITS**  
22 **TO MENTAL HEALTH BENEFITS.**

23 (a) IN GENERAL.—Subsection (f) of section 9812 is  
24 amended by striking “and” at the end of paragraph (1),

1 by striking paragraph (2), and by inserting after para-  
2 graph (1) the following new paragraphs:

3           “(2) on or after January 1, 2004, and before  
4           the date of the enactment of American Jobs Cre-  
5           ation Act of 2004, and

6           “(3) after December 31, 2005.”.

7           (b) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to benefits for services furnished  
9 on or after December 31, 2003.

10 **SEC. 421. COMBINED EMPLOYMENT TAX REPORTING**  
11 **PROJECT.**

12           (a) IN GENERAL.—Paragraph (1) of section 976(b)  
13 of the Taxpayer Relief Act of 1997 (111 Stat. 898) is  
14 amended by striking “for a period ending with the date  
15 which is 5 years after the date of the enactment of this  
16 Act” and inserting “during the period ending on Decem-  
17 ber 31, 2005”.

18           (b) EFFECTIVE DATE.—The amendment made by  
19 subsection (a) shall apply to disclosures on or after the  
20 date of the enactment of this Act.

21 **SEC. 422. CLEAN-FUEL VEHICLES.**

22           (a) CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—  
23 Paragraph (2) of section 30(b) (relating to phaseout) is  
24 amended to read as follows:

1           “(2) PHASEOUT.—In the case of any qualified  
2 electric vehicle placed in service after December 31,  
3 2005, the credit otherwise allowable under sub-  
4 section (a) (determined after the application of para-  
5 graph (1)) shall be reduced by 75 percent.”.

6           (b) DEDUCTION FOR QUALIFIED CLEAN-FUEL VEHI-  
7 CLE PROPERTY.—Subparagraph (B) of section  
8 179A(b)(1) (relating to phaseout) is amended to read as  
9 follows:

10           “(B) PHASEOUT.—In the case of any  
11 qualified clean-fuel vehicle property placed in  
12 service after December 31, 2005, the limit oth-  
13 erwise applicable under subparagraph (A) shall  
14 be reduced by 75 percent.”.

15           (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to property placed in service after  
17 December 31, 2003.

1 **TITLE V—DEDUCTION OF STATE**  
2 **AND LOCAL GENERAL SALES**  
3 **TAXES**

4 **SEC. 501. DEDUCTION OF STATE AND LOCAL GENERAL**  
5 **SALES TAXES IN LIEU OF STATE AND LOCAL**  
6 **INCOME TAXES.**

7 (a) IN GENERAL.—Subsection (b) of section 164 (re-  
8 lating to definitions and special rules) is amended by add-  
9 ing at the end the following:

10 “(5) GENERAL SALES TAXES.—For purposes of  
11 subsection (a)—

12 “(A) ELECTION TO DEDUCT STATE AND  
13 LOCAL SALES TAXES IN LIEU OF STATE AND  
14 LOCAL INCOME TAXES.—

15 “(i) IN GENERAL.—At the election of  
16 the taxpayer for the taxable year, sub-  
17 section (a) shall be applied—

18 “(I) without regard to the ref-  
19 erence to State and local income  
20 taxes, and

21 “(II) as if State and local general  
22 sales taxes were referred to in a para-  
23 graph thereof.

24 “(B) DEFINITION OF GENERAL SALES  
25 TAX.—The term ‘general sales tax’ means a tax

1 imposed at one rate with respect to the sale at  
2 retail of a broad range of classes of items.

3 “(C) SPECIAL RULES FOR FOOD, ETC.—In  
4 the case of items of food, clothing, medical sup-  
5 plies, and motor vehicles—

6 “(i) the fact that the tax does not  
7 apply with respect to some or all of such  
8 items shall not be taken into account in  
9 determining whether the tax applies with  
10 respect to a broad range of classes of  
11 items, and

12 “(ii) the fact that the rate of tax ap-  
13 plicable with respect to some or all of such  
14 items is lower than the general rate of tax  
15 shall not be taken into account in deter-  
16 mining whether the tax is imposed at one  
17 rate.

18 “(D) ITEMS TAXED AT DIFFERENT  
19 RATES.—Except in the case of a lower rate of  
20 tax applicable with respect to an item described  
21 in subparagraph (C), no deduction shall be al-  
22 lowed under this paragraph for any general  
23 sales tax imposed with respect to an item at a  
24 rate other than the general rate of tax.

1           “(E) COMPENSATING USE TAXES.—A com-  
2           pensating use tax with respect to an item shall  
3           be treated as a general sales tax. For purposes  
4           of the preceding sentence, the term ‘compen-  
5           sating use tax’ means, with respect to any item,  
6           a tax which—

7                   “(i) is imposed on the use, storage, or  
8                   consumption of such item, and

9                   “(ii) is complementary to a general  
10                  sales tax, but only if a deduction is allow-  
11                  able under this paragraph with respect to  
12                  items sold at retail in the taxing jurisdic-  
13                  tion which are similar to such item.

14           “(F) SPECIAL RULE FOR MOTOR VEHI-  
15           CLES.—In the case of motor vehicles, if the rate  
16           of tax exceeds the general rate, such excess  
17           shall be disregarded and the general rate shall  
18           be treated as the rate of tax.

19           “(G) SEPARATELY STATED GENERAL  
20           SALES TAXES.—If the amount of any general  
21           sales tax is separately stated, then, to the ex-  
22           tent that the amount so stated is paid by the  
23           consumer (other than in connection with the  
24           consumer’s trade or business) to the seller, such

1 amount shall be treated as a tax imposed on,  
2 and paid by, such consumer.

3 “(H) AMOUNT OF DEDUCTION TO BE DE-  
4 TERMINED UNDER TABLES.—

5 “(i) IN GENERAL.—The amount of  
6 the deduction allowed under this para-  
7 graph shall be determined under tables  
8 prescribed by the Secretary.

9 “(ii) REQUIREMENTS FOR TABLES.—  
10 The tables prescribed under clause (i)—

11 “(I) shall reflect the provisions of  
12 this paragraph,

13 “(II) shall be based on the aver-  
14 age consumption by taxpayers on a  
15 State-by-State basis, as determined by  
16 the Secretary, taking into account fil-  
17 ing status, number of dependents, ad-  
18 justed gross income, and rates of  
19 State and local general sales taxation,  
20 and

21 “(III) need only be determined  
22 with respect to adjusted gross incomes  
23 up to the applicable amount (as deter-  
24 mined under section 68(b)).

1           “(I) APPLICATION OF PARAGRAPH.—This  
2           paragraph shall apply to taxable years begin-  
3           ning after December 31, 2003, and before Jan-  
4           uary 1, 2006.”.

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

## 8                           **TITLE VI—REVENUE** 9                           **PROVISIONS**

### 10           **Subtitle A—Provisions to Reduce** 11           **Tax Avoidance Through Indi-** 12           **vidual and Corporate Expatria-** 13           **tion**

#### 14           **SEC. 601. TAX TREATMENT OF EXPATRIATED ENTITIES AND** 15                           **THEIR FOREIGN PARENTS.**

16           (a) IN GENERAL.—Subchapter C of chapter 80 (re-  
17           lating to provisions affecting more than one subtitle) is  
18           amended by adding at the end the following new section:

#### 19           **“SEC. 7874. RULES RELATING TO EXPATRIATED ENTITIES** 20                           **AND THEIR FOREIGN PARENTS.**

21           “(a) TAX ON INVERSION GAIN OF EXPATRIATED EN-  
22           TITIES.—

23                           “(1) IN GENERAL.—The taxable income of an  
24           expatriated entity for any taxable year which in-  
25           cludes any portion of the applicable period shall in



1 no event be less than the inversion gain of the entity  
2 for the taxable year.

3 “(2) EXPATRIATED ENTITY.—For purposes of  
4 this subsection—

5 “(A) IN GENERAL.—The term ‘expatriated  
6 entity’ means—

7 “(i) the domestic corporation or part-  
8 nership referred to in subparagraph (B)(i)  
9 with respect to which a foreign corporation  
10 is a surrogate foreign corporation, and

11 “(ii) any United States person who is  
12 related (within the meaning of section  
13 267(b) or 707(b)(1)) to a domestic cor-  
14 poration or partnership described in clause  
15 (i).

16 “(B) SURROGATE FOREIGN CORPORA-  
17 TION.—A foreign corporation shall be treated  
18 as a surrogate foreign corporation if, pursuant  
19 to a plan (or a series of related transactions)—

20 “(i) the entity completes after March  
21 4, 2003, the direct or indirect acquisition  
22 of substantially all of the properties held  
23 directly or indirectly by a domestic cor-  
24 poration or substantially all of the prop-

1           erties constituting a trade or business of a  
2           domestic partnership,

3           “*(ii)* after the acquisition at least 60  
4           percent of the stock (by vote or value) of  
5           the entity is held—

6           “*(I)* in the case of an acquisition  
7           with respect to a domestic corpora-  
8           tion, by former shareholders of the  
9           domestic corporation by reason of  
10          holding stock in the domestic corpora-  
11          tion, or

12          “*(II)* in the case of an acquisition  
13          with respect to a domestic partner-  
14          ship, by former partners of the do-  
15          mestic partnership by reason of hold-  
16          ing a capital or profits interest in the  
17          domestic partnership, and

18          “*(iii)* after the acquisition the ex-  
19          panded affiliated group which includes the  
20          entity does not have substantial business  
21          activities in the foreign country in which,  
22          or under the law of which, the entity is  
23          created or organized, when compared to  
24          the total business activities of such ex-  
25          panded affiliated group.

1           An entity otherwise described in clause (i) with  
2           respect to any domestic corporation or partner-  
3           ship trade or business shall be treated as not so  
4           described if, on or before March 4, 2003, such  
5           entity acquired directly or indirectly more than  
6           half of the properties held directly or indirectly  
7           by such corporation or more than half of the  
8           properties constituting such partnership trade  
9           or business, as the case may be.

10          “(b) DEFINITIONS AND SPECIAL RULES.—

11           “(1) EXPANDED AFFILIATED GROUP.—The  
12           term ‘expanded affiliated group’ means an affiliated  
13           group as defined in section 1504(a) but without re-  
14           gard to section 1504(b)(3), except that section  
15           1504(a) shall be applied by substituting ‘more than  
16           50 percent’ for ‘at least 80 percent’ each place it ap-  
17           pears.

18           “(2) CERTAIN STOCK DISREGARDED.—There  
19           shall not be taken into account in determining own-  
20           ership under subsection (a)(2)(B)(ii)—

21           “(A) stock held by members of the ex-  
22           panded affiliated group which includes the for-  
23           eign corporation, or

1           “(B) stock of such foreign corporation  
2           which is sold in a public offering related to the  
3           acquisition described in subsection (a)(2)(B)(i).

4           “(3) PLAN DEEMED IN CERTAIN CASES.—If a  
5           foreign corporation acquires directly or indirectly  
6           substantially all of the properties of a domestic cor-  
7           poration or partnership during the 4-year period be-  
8           ginning on the date which is 2 years before the own-  
9           ership requirements of subsection (a)(2)(B)(ii) are  
10          met, such actions shall be treated as pursuant to a  
11          plan.

12          “(4) CERTAIN TRANSFERS DISREGARDED.—The  
13          transfer of properties or liabilities (including by con-  
14          tribution or distribution) shall be disregarded if such  
15          transfers are part of a plan a principal purpose of  
16          which is to avoid the purposes of this section.

17          “(5) SPECIAL RULE FOR RELATED PARTNER-  
18          SHIPS.—For purposes of applying subsection  
19          (a)(2)(B)(ii) to the acquisition of a trade or business  
20          of a domestic partnership, except as provided in reg-  
21          ulations, all partnerships which are under common  
22          control (within the meaning of section 482) shall be  
23          treated as 1 partnership.

24          “(6) REGULATIONS.—The Secretary shall pre-  
25          scribe such regulations as may be appropriate to de-

1       termine whether a corporation is a surrogate foreign  
2       corporation, including regulations—

3               “(A) to treat warrants, options, contracts  
4               to acquire stock, convertible debt interests, and  
5               other similar interests as stock, and

6               “(B) to treat stock as not stock.

7       “(c) OTHER DEFINITIONS.—For purposes of this  
8       section—

9               “(1) APPLICABLE PERIOD.—The term ‘applica-  
10       ble period’ means the period—

11               “(A) beginning on the first date properties  
12               are acquired as part of the acquisition described  
13               in subsection (a)(2)(B)(i), and

14               “(B) ending on the date which is 10 years  
15               after the last date properties are acquired as  
16               part of such acquisition.

17               “(2) INVERSION GAIN.—The term ‘inversion  
18       gain’ means the income or gain recognized by reason  
19       of the transfer during the applicable period of stock  
20       or other properties by an expatriated entity, and any  
21       income received or accrued during the applicable pe-  
22       riod by reason of a license of any property by an ex-  
23       patriated entity—

24               “(A) as part of the acquisition described in  
25       subsection (a)(2)(B)(i), or

1           “(B) after such acquisition if the transfer  
2           or license is to a foreign related person.

3           Subparagraph (B) shall not apply to property de-  
4           scribed in section 1221(a)(1) in the hands of the ex-  
5           patriated entity.

6           “(3) FOREIGN RELATED PERSON.—The term  
7           ‘foreign related person’ means, with respect to any  
8           expatriated entity, a foreign person which—

9                   “(A) is related (within the meaning of sec-  
10                   tion 267(b) or 707(b)(1)) to such entity, or

11                   “(B) is under the same common control  
12                   (within the meaning of section 482) as such en-  
13                   tity.

14           “(d) SPECIAL RULES.—

15                   “(1) CREDITS NOT ALLOWED AGAINST TAX ON  
16                   INVERSION GAIN.—Credits (other than the credit al-  
17                   lowed by section 901) shall be allowed against the  
18                   tax imposed by this chapter on an expatriated entity  
19                   for any taxable year described in subsection (a) only  
20                   to the extent such tax exceeds the product of—

21                           “(A) the amount of the inversion gain for  
22                           the taxable year, and

23                           “(B) the highest rate of tax specified in  
24                           section 11(b)(1).

1 For purposes of determining the credit allowed by  
2 section 901, inversion gain shall be treated as from  
3 sources within the United States.

4 “(2) SPECIAL RULES FOR PARTNERSHIPS.—In  
5 the case of an expatriated entity which is a partner-  
6 ship—

7 “(A) subsection (a)(1) shall apply at the  
8 partner rather than the partnership level,

9 “(B) the inversion gain of any partner for  
10 any taxable year shall be equal to the sum of—

11 “(i) the partner’s distributive share of  
12 inversion gain of the partnership for such  
13 taxable year, plus

14 “(ii) gain recognized for the taxable  
15 year by the partner by reason of the trans-  
16 fer during the applicable period of any  
17 partnership interest of the partner in such  
18 partnership to the surrogate foreign cor-  
19 poration, and

20 “(C) the highest rate of tax specified in  
21 the rate schedule applicable to the partner  
22 under this chapter shall be substituted for the  
23 rate of tax referred to in paragraph (1).

24 “(3) COORDINATION WITH SECTION 172 AND  
25 MINIMUM TAX.—Rules similar to the rules of para-

1 graphs (3) and (4) of section 860E(a) shall apply  
2 for purposes of subsection (a).

3 “(4) STATUTE OF LIMITATIONS.—

4 “(A) IN GENERAL.—The statutory period  
5 for the assessment of any deficiency attrib-  
6 utable to the inversion gain of any taxpayer for  
7 any pre-inversion year shall not expire before  
8 the expiration of 3 years from the date the Sec-  
9 retary is notified by the taxpayer (in such man-  
10 ner as the Secretary may prescribe) of the ac-  
11 quisition described in subsection (a)(2)(B)(i) to  
12 which such gain relates and such deficiency  
13 may be assessed before the expiration of such  
14 3-year period notwithstanding the provisions of  
15 any other law or rule of law which would other-  
16 wise prevent such assessment.

17 “(B) PRE-INVERSION YEAR.—For purposes  
18 of subparagraph (A), the term ‘pre-inversion  
19 year’ means any taxable year if—

20 “(i) any portion of the applicable pe-  
21 riod is included in such taxable year, and

22 “(ii) such year ends before the taxable  
23 year in which the acquisition described in  
24 subsection (a)(2)(B)(i) is completed.



1       “(e) SPECIAL RULE FOR TREATIES.—Nothing in sec-  
2 tion 894 or 7852(d) or in any other provision of law shall  
3 be construed as permitting an exemption, by reason of any  
4 treaty obligation of the United States heretofore or here-  
5 after entered into, from the provisions of this section.

6       “(f) REGULATIONS.—The Secretary shall provide  
7 such regulations as are necessary to carry out this section,  
8 including regulations providing for such adjustments to  
9 the application of this section as are necessary to prevent  
10 the avoidance of the purposes of this section, including the  
11 avoidance of such purposes through—

12               “(1) the use of related persons, pass-through or  
13 other noncorporate entities, or other intermediaries,  
14 or

15               “(2) transactions designed to have persons  
16 cease to be (or not become) members of expanded  
17 affiliated groups or related persons.”.

18       (b) CONFORMING AMENDMENT.—The table of sec-  
19 tions for subchapter C of chapter 80 is amended by adding  
20 at the end the following new item:

“Sec. 7874. Rules relating to expatriated entities and their for-  
    eign parents.”.

21       (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to taxable years ending after  
23 March 4, 2003.

1 **SEC. 602. EXCISE TAX ON STOCK COMPENSATION OF INSID-**  
 2 **ERS IN EXPATRIATED CORPORATIONS.**

3 (a) IN GENERAL.—Subtitle D is amended by insert-  
 4 ing after chapter 44 end the following new chapter:

5 **“CHAPTER 45—PROVISIONS RELATING TO**  
 6 **EXPATRIATED ENTITIES**

“Sec. 4985. Stock compensation of insiders in expatriated cor-  
 porations.

7 **“SEC. 4985. STOCK COMPENSATION OF INSIDERS IN EXPA-**  
 8 **TRIATED CORPORATIONS.**

9 “(a) IMPOSITION OF TAX.—In the case of an indi-  
 10 vidual who is a disqualified individual with respect to any  
 11 expatriated corporation, there is hereby imposed on such  
 12 person a tax equal to 15 percent of the value (determined  
 13 under subsection (b)) of the specified stock compensation  
 14 held (directly or indirectly) by or for the benefit of such  
 15 individual or a member of such individual’s family (as de-  
 16 fined in section 267) at any time during the 12-month  
 17 period beginning on the date which is 6 months before  
 18 the expatriation date.

19 “(b) VALUE.—For purposes of subsection (a)—

20 “(1) IN GENERAL.—The value of specified stock  
 21 compensation shall be—

22 “(A) in the case of a stock option (or other  
 23 similar right) or a stock appreciation right, the  
 24 fair value of such option or right, and

1           “(B) in any other case, the fair market  
2 value of such compensation.

3           “(2) DATE FOR DETERMINING VALUE.—The  
4 determination of value shall be made—

5           “(A) in the case of specified stock com-  
6 pensation held on the expatriation date, on such  
7 date,

8           “(B) in the case of such compensation  
9 which is canceled during the 6 months before  
10 the expatriation date, on the day before such  
11 cancellation, and

12           “(C) in the case of such compensation  
13 which is granted after the expatriation date, on  
14 the date such compensation is granted.

15           “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN  
16 RECOGNIZED.—Subsection (a) shall apply to any disquali-  
17 fied individual with respect to an expatriated corporation  
18 only if gain (if any) on any stock in such corporation is  
19 recognized in whole or part by any shareholder by reason  
20 of the acquisition referred to in section 7874(a)(2)(B)(i)  
21 with respect to such corporation.

22           “(d) EXCEPTION WHERE GAIN RECOGNIZED ON  
23 COMPENSATION.—Subsection (a) shall not apply to—

24           “(1) any stock option which is exercised on the  
25 expatriation date or during the 6-month period be-

1 fore such date and to the stock acquired in such ex-  
2 ercise, if income is recognized under section 83 on  
3 or before the expatriation date with respect to the  
4 stock acquired pursuant to such exercise, and

5 “(2) any other specified stock compensation  
6 which is exercised, sold, exchanged, distributed,  
7 cashed-out, or otherwise paid during such period in  
8 a transaction in which income, gain, or loss is recog-  
9 nized in full.

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

11 “(1) DISQUALIFIED INDIVIDUAL.—The term  
12 ‘disqualified individual’ means, with respect to a cor-  
13 poration, any individual who, at any time during the  
14 12-month period beginning on the date which is 6  
15 months before the expatriation date—

16 “(A) is subject to the requirements of sec-  
17 tion 16(a) of the Securities Exchange Act of  
18 1934 with respect to such corporation or any  
19 member of the expanded affiliated group which  
20 includes such corporation, or

21 “(B) would be subject to such require-  
22 ments if such corporation or member were an  
23 issuer of equity securities referred to in such  
24 section.

1           “(2) EXPATRIATED CORPORATION; EXPATRIA-  
2           TION DATE.—

3           “(A) EXPATRIATED CORPORATION.—The  
4           term ‘expatriated corporation’ means any cor-  
5           poration which is an expatriated entity (as de-  
6           fined in section 7874(a)(2)). Such term in-  
7           cludes any predecessor or successor of such a  
8           corporation.

9           “(B) EXPATRIATION DATE.—The term ‘ex-  
10          patriation date’ means, with respect to a cor-  
11          poration, the date on which the corporation  
12          first becomes an expatriated corporation.

13          “(3) SPECIFIED STOCK COMPENSATION.—

14          “(A) IN GENERAL.—The term ‘specified  
15          stock compensation’ means payment (or right  
16          to payment) granted by the expatriated cor-  
17          poration (or by any member of the expanded af-  
18          filiated group which includes such corporation)  
19          to any person in connection with the perform-  
20          ance of services by a disqualified individual for  
21          such corporation or member if the value of such  
22          payment or right is based on (or determined by  
23          reference to) the value (or change in value) of  
24          stock in such corporation (or any such mem-  
25          ber).

1           “(B) EXCEPTIONS.—Such term shall not  
2           include—

3                   “(i) any option to which part II of  
4                   subchapter D of chapter 1 applies, or

5                   “(ii) any payment or right to payment  
6                   from a plan referred to in section  
7                   280G(b)(6).

8           “(4) EXPANDED AFFILIATED GROUP.—The  
9           term ‘expanded affiliated group’ means an affiliated  
10          group (as defined in section 1504(a) without regard  
11          to section 1504(b)(3)); except that section 1504(a)  
12          shall be applied by substituting ‘more than 50 per-  
13          cent’ for ‘at least 80 percent’ each place it appears.

14          “(f) SPECIAL RULES.—For purposes of this sec-  
15          tion—

16                   “(1) CANCELLATION OF RESTRICTION.—The  
17                   cancellation of a restriction which by its terms will  
18                   never lapse shall be treated as a grant.

19                   “(2) PAYMENT OR REIMBURSEMENT OF TAX BY  
20                   CORPORATION TREATED AS SPECIFIED STOCK COM-  
21                   PENSATION.—Any payment of the tax imposed by  
22                   this section directly or indirectly by the expatriated  
23                   corporation or by any member of the expanded affili-  
24                   ated group which includes such corporation—

1           “(A) shall be treated as specified stock  
2           compensation, and

3           “(B) shall not be allowed as a deduction  
4           under any provision of chapter 1.

5           “(3) CERTAIN RESTRICTIONS IGNORED.—  
6           Whether there is specified stock compensation, and  
7           the value thereof, shall be determined without regard  
8           to any restriction other than a restriction which by  
9           its terms will never lapse.

10          “(4) PROPERTY TRANSFERS.—Any transfer of  
11          property shall be treated as a payment and any right  
12          to a transfer of property shall be treated as a right  
13          to a payment.

14          “(5) OTHER ADMINISTRATIVE PROVISIONS.—  
15          For purposes of subtitle F, any tax imposed by this  
16          section shall be treated as a tax imposed by subtitle  
17          A.

18          “(g) REGULATIONS.—The Secretary shall prescribe  
19          such regulations as may be necessary or appropriate to  
20          carry out the purposes of this section.”.

21          (b) DENIAL OF DEDUCTION.—

22                 (1) IN GENERAL.—Paragraph (6) of section  
23                 275(a) is amended by inserting “45,” before “46,”.

24                 (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-  
25                 PENSATION REDUCED BY PAYMENT OF EXCISE TAX

1 ON SPECIFIED STOCK COMPENSATION.—Paragraph  
2 (4) of section 162(m) is amended by adding at the  
3 end the following new subparagraph:

4 “(G) COORDINATION WITH EXCISE TAX ON  
5 SPECIFIED STOCK COMPENSATION.—The dollar  
6 limitation contained in paragraph (1) with re-  
7 spect to any covered employee shall be reduced  
8 (but not below zero) by the amount of any pay-  
9 ment (with respect to such employee) of the tax  
10 imposed by section 4985 directly or indirectly  
11 by the expatriated corporation (as defined in  
12 such section) or by any member of the ex-  
13 panded affiliated group (as defined in such sec-  
14 tion) which includes such corporation.”.

15 (c) CONFORMING AMENDMENTS.—

16 (1) The last sentence of section 3121(v)(2)(A)  
17 is amended by inserting before the period “or to any  
18 specified stock compensation (as defined in section  
19 4985) on which tax is imposed by section 4985”.

20 (2) The table of chapters for subtitle D is  
21 amended by inserting after the item relating to  
22 chapter 44 the following new item:

“Chapter 45. Provisions relating to expatriated entities.”.

23 (d) EFFECTIVE DATE.—The amendments made by  
24 this section shall take effect on March 4, 2003; except that  
25 periods before such date shall not be taken into account



1 in applying the periods in subsections (a) and (e)(1) of  
2 section 4985 of the Internal Revenue Code of 1986, as  
3 added by this section.

4 **SEC. 603. REINSURANCE OF UNITED STATES RISKS IN FOR-**  
5 **EIGN JURISDICTIONS.**

6 (a) **IN GENERAL.**—Section 845(a) (relating to alloca-  
7 tion in case of reinsurance agreement involving tax avoid-  
8 ance or evasion) is amended by striking “source and char-  
9 acter” and inserting “amount, source, or character”.

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

13 **SEC. 604. REVISION OF TAX RULES ON EXPATRIATION OF**  
14 **INDIVIDUALS.**

15 (a) **EXPATRIATION TO AVOID TAX.**—

16 (1) **IN GENERAL.**—Subsection (a) of section  
17 877 (relating to treatment of expatriates) is amend-  
18 ed to read as follows:

19 “(a) **TREATMENT OF EXPATRIATES.**—

20 “(1) **IN GENERAL.**—Every nonresident alien in-  
21 dividual to whom this section applies and who, with-  
22 in the 10-year period immediately preceding the  
23 close of the taxable year, lost United States citizen-  
24 ship shall be taxable for such taxable year in the  
25 manner provided in subsection (b) if the tax imposed

1 pursuant to such subsection (after any reduction in  
2 such tax under the last sentence of such subsection)  
3 exceeds the tax which, without regard to this section,  
4 is imposed pursuant to section 871.

5 “(2) INDIVIDUALS SUBJECT TO THIS SEC-  
6 TION.—This section shall apply to any individual  
7 if—

8 “(A) the average annual net income tax  
9 (as defined in section 38(c)(1)) of such indi-  
10 vidual for the period of 5 taxable years ending  
11 before the date of the loss of United States citi-  
12 zenship is greater than \$124,000,

13 “(B) the net worth of the individual as of  
14 such date is \$2,000,000 or more, or

15 “(C) such individual fails to certify under  
16 penalty of perjury that he has met the require-  
17 ments of this title for the 5 preceding taxable  
18 years or fails to submit such evidence of such  
19 compliance as the Secretary may require.

20 In the case of the loss of United States citizenship  
21 in any calendar year after 2004, such \$124,000  
22 amount shall be increased by an amount equal to  
23 such dollar amount multiplied by the cost-of-living  
24 adjustment determined under section 1(f)(3) for  
25 such calendar year by substituting ‘2003’ for ‘1992’

1 in subparagraph (B) thereof. Any increase under the  
2 preceding sentence shall be rounded to the nearest  
3 multiple of \$1,000.”.

4 (2) REVISION OF EXCEPTIONS FROM ALTER-  
5 NATIVE TAX.—Subsection (c) of section 877 (relat-  
6 ing to tax avoidance not presumed in certain cases)  
7 is amended to read as follows:

8 “(c) EXCEPTIONS.—

9 “(1) IN GENERAL.—Subparagraphs (A) and  
10 (B) of subsection (a)(2) shall not apply to an indi-  
11 vidual described in paragraph (2) or (3).

12 “(2) DUAL CITIZENS.—

13 “(A) IN GENERAL.—An individual is de-  
14 scribed in this paragraph if—

15 “(i) the individual became at birth a  
16 citizen of the United States and a citizen  
17 of another country and continues to be a  
18 citizen of such other country, and

19 “(ii) the individual has had no sub-  
20 stantial contacts with the United States.

21 “(B) SUBSTANTIAL CONTACTS.—An indi-  
22 vidual shall be treated as having no substantial  
23 contacts with the United States only if the indi-  
24 vidual—

1                   “(i) was never a resident of the  
2                   United States (as defined in section  
3                   7701(b)),

4                   “(ii) has never held a United States  
5                   passport, and

6                   “(iii) was not present in the United  
7                   States for more than 30 days during any  
8                   calendar year which is 1 of the 10 calendar  
9                   years preceding the individual’s loss of  
10                  United States citizenship.

11                  “(3) CERTAIN MINORS.—An individual is de-  
12                  scribed in this paragraph if—

13                         “(A) the individual became at birth a cit-  
14                         izen of the United States,

15                         “(B) neither parent of such individual was  
16                         a citizen of the United States at the time of  
17                         such birth,

18                         “(C) the individual’s loss of United States  
19                         citizenship occurs before such individual attains  
20                         age 18½, and

21                         “(D) the individual was not present in the  
22                         United States for more than 30 days during  
23                         any calendar year which is 1 of the 10 calendar  
24                         years preceding the individual’s loss of United  
25                         States citizenship.”.

1           (3) CONFORMING AMENDMENT.—Section  
2           2107(a) is amended to read as follows:

3           “(a) TREATMENT OF EXPATRIATES.—A tax com-  
4           puted in accordance with the table contained in section  
5           2001 is hereby imposed on the transfer of the taxable es-  
6           tate, determined as provided in section 2106, of every de-  
7           cedent nonresident not a citizen of the United States if  
8           the date of death occurs during a taxable year with respect  
9           to which the decedent is subject to tax under section  
10          877(b).”.

11          (b) SPECIAL RULES FOR DETERMINING WHEN AN  
12          INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN  
13          OR LONG-TERM RESIDENT.—Section 7701 (relating to  
14          definitions) is amended by redesignating subsection (n) as  
15          subsection (o) and by inserting after subsection (m) the  
16          following new subsection:

17          “(n) SPECIAL RULES FOR DETERMINING WHEN AN  
18          INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN  
19          OR LONG-TERM RESIDENT.—An individual who would  
20          (but for this subsection) cease to be treated as a citizen  
21          or resident of the United States shall continue to be treat-  
22          ed as a citizen or resident of the United States, as the  
23          case may be, until such individual—

24                  “(1) gives notice of an expatriating act or ter-  
25                  mination of residency (with the requisite intent to

1       relinquish citizenship or terminate residency) to the  
2       Secretary of State or the Secretary of Homeland Se-  
3       curity, and

4               “(2) provides a statement in accordance with  
5       section 6039G.”.

6       (c) PHYSICAL PRESENCE IN THE UNITED STATES  
7       FOR MORE THAN 30 DAYS.—Section 877 (relating to ex-  
8       patriation to avoid tax) is amended by adding at the end  
9       the following new subsection:

10       “(g) PHYSICAL PRESENCE.—

11               “(1) IN GENERAL.—This section shall not apply  
12       to any individual to whom this section would other-  
13       wise apply for any taxable year during the 10-year  
14       period referred to in subsection (a) in which such in-  
15       dividual is physically present in the United States at  
16       any time on more than 30 days in the calendar year  
17       ending in such taxable year, and such individual  
18       shall be treated for purposes of this title as a citizen  
19       or resident of the United States, as the case may be,  
20       for such taxable year.

21               “(2) EXCEPTION.—

22               “(A) IN GENERAL.—In the case of an indi-  
23       vidual described in any of the following sub-  
24       paragraphs of this paragraph, a day of physical  
25       presence in the United States shall be dis-

1           regarded if the individual is performing services  
2           in the United States on such day for an em-  
3           ployer. The preceding sentence shall not apply  
4           if—

5                   “(i) such employer is related (within  
6                   the meaning of section 267 and 707) to  
7                   such individual, or

8                   “(ii) such employer fails to meet such  
9                   requirements as the Secretary may pre-  
10                  scribe by regulations to prevent the avoid-  
11                  ance of the purposes of this paragraph.

12           Not more than 30 days during any calendar  
13           year may be disregarded under this subpara-  
14           graph.

15                   “(B) INDIVIDUALS WITH TIES TO OTHER  
16                   COUNTRIES.—An individual is described in this  
17                   subparagraph if—

18                   “(i) the individual becomes (not later  
19                   than the close of a reasonable period after  
20                   loss of United States citizenship or termi-  
21                   nation of residency) a citizen or resident of  
22                   the country in which—

23                   “(I) such individual was born,

1                   “(II) if such individual is mar-  
2                   ried, such individual’s spouse was  
3                   born, or

4                   “(III) either of such individual’s  
5                   parents were born, and

6                   “(ii) the individual becomes fully lia-  
7                   ble for income tax in such country.

8                   “(C) MINIMAL PRIOR PHYSICAL PRESENCE  
9                   IN THE UNITED STATES.—An individual is de-  
10                  scribed in this subparagraph if, for each year in  
11                  the 10-year period ending on the date of loss of  
12                  United States citizenship or termination of resi-  
13                  dency, the individual was physically present in  
14                  the United States for 30 days or less. The rule  
15                  of section 7701(b)(3)(D)(ii) shall apply for pur-  
16                  poses of this subparagraph.”.

17                  (d) TRANSFERS SUBJECT TO GIFT TAX.—

18                  (1) IN GENERAL.—Subsection (a) of section  
19                  2501 (relating to taxable transfers) is amended by  
20                  striking paragraph (4), by redesignating paragraph  
21                  (5) as paragraph (4), and by striking paragraph (3)  
22                  and inserting the following new paragraph:

23                  “(3) EXCEPTION.—

24                  “(A) CERTAIN INDIVIDUALS.—Paragraph  
25                  (2) shall not apply in the case of a donor to



1           whom section 877(b) applies for the taxable  
2           year which includes the date of the transfer.

3           “(B) CREDIT FOR FOREIGN GIFT TAXES.—  
4           The tax imposed by this section solely by reason  
5           of this paragraph shall be credited with the  
6           amount of any gift tax actually paid to any for-  
7           eign country in respect of any gift which is tax-  
8           able under this section solely by reason of this  
9           paragraph.”.

10          (2) TRANSFERS OF CERTAIN STOCK.—Sub-  
11          section (a) of section 2501 is amended by adding at  
12          the end the following new paragraph:

13                 “(5) TRANSFERS OF CERTAIN STOCK.—

14                         “(A) IN GENERAL.—In the case of a trans-  
15                         fer of stock in a foreign corporation described  
16                         in subparagraph (B) by a donor to whom sec-  
17                         tion 877(b) applies for the taxable year which  
18                         includes the date of the transfer—

19                                 “(i) section 2511(a) shall be applied  
20                                 without regard to whether such stock is  
21                                 situated within the United States, and

22   “(ii) the value of such stock for pur-  
23   poses of this chapter shall be its U.S.-asset  
24   value determined under subparagraph (C).

1           “(B) FOREIGN CORPORATION DE-  
2           SCRIBED.—A foreign corporation is described in  
3           this subparagraph with respect to a donor if—

4                   “(i) the donor owned (within the  
5                   meaning of section 958(a)) at the time of  
6                   such transfer 10 percent or more of the  
7                   total combined voting power of all classes  
8                   of stock entitled to vote of the foreign cor-  
9                   poration, and

10                   “(ii) such donor owned (within the  
11                   meaning of section 958(a)), or is consid-  
12                   ered to have owned (by applying the own-  
13                   ership rules of section 958(b)), at the time  
14                   of such transfer, more than 50 percent  
15                   of—

16                           “(I) the total combined voting  
17                           power of all classes of stock entitled  
18                           to vote of such corporation, or

19                           “(II) the total value of the stock  
20                           of such corporation.

21           “(C) U.S.-ASSET VALUE.—For purposes of  
22           subparagraph (A), the U.S.-asset value of stock  
23           shall be the amount which bears the same ratio  
24           to the fair market value of such stock at the  
25           time of transfer as—

1                   “(i) the fair market value (at such  
2                   time) of the assets owned by such foreign  
3                   corporation and situated in the United  
4                   States, bears to

5                   “(ii) the total fair market value (at  
6                   such time) of all assets owned by such for-  
7                   eign corporation.”.

8           (e) ENHANCED INFORMATION REPORTING FROM IN-  
9   DIVIDUALS LOSING UNITED STATES CITIZENSHIP.—

10           (1) IN GENERAL.—Subsection (a) of section  
11   6039G is amended to read as follows:

12           “(a) IN GENERAL.—Notwithstanding any other pro-  
13   vision of law, any individual to whom section 877(b) ap-  
14   plies for any taxable year shall provide a statement for  
15   such taxable year which includes the information described  
16   in subsection (b).”.

17           (2) INFORMATION TO BE PROVIDED.—Sub-  
18   section (b) of section 6039G is amended to read as  
19   follows:

20           “(b) INFORMATION TO BE PROVIDED.—Information  
21   required under subsection (a) shall include—

22           “(1) the taxpayer’s TIN,

23           “(2) the mailing address of such individual’s  
24   principal foreign residence,

1           “(3) the foreign country in which such indi-  
2           vidual is residing,

3           “(4) the foreign country of which such indi-  
4           vidual is a citizen,

5           “(5) information detailing the income, assets,  
6           and liabilities of such individual,

7           “(6) the number of days during any portion of  
8           which that the individual was physically present in  
9           the United States during the taxable year, and

10          “(7) such other information as the Secretary  
11          may prescribe.”.

12          (3) INCREASE IN PENALTY.—Subsection (d) of  
13          section 6039G is amended to read as follows:

14          “(d) PENALTY.—If—

15               “(1) an individual is required to file a state-  
16               ment under subsection (a) for any taxable year, and

17               “(2) fails to file such a statement with the Sec-  
18               retary on or before the date such statement is re-  
19               quired to be filed or fails to include all the informa-  
20               tion required to be shown on the statement or in-  
21               cludes incorrect information,

22          such individual shall pay a penalty of \$10,000 unless it  
23          is shown that such failure is due to reasonable cause and  
24          not to willful neglect.”.

1           (4) CONFORMING AMENDMENT.—Section  
2         6039G is amended by striking subsections (e), (f),  
3         and (g) and by redesignating subsections (d) and (e)  
4         as subsection (c) and (d), respectively.

5         (f) EFFECTIVE DATE.—The amendments made by  
6         this section shall apply to individuals who expatriate after  
7         June 3, 2004.

8         **SEC. 605. REPORTING OF TAXABLE MERGERS AND ACQUI-**  
9                         **TIONS.**

10         (a) IN GENERAL.—Subpart B of part III of sub-  
11         chapter A of chapter 61 is amended by inserting after sec-  
12         tion 6043 the following new section:

13         **“SEC. 6043A. RETURNS RELATING TO TAXABLE MERGERS**  
14                         **AND ACQUISITIONS.**

15         “(a) IN GENERAL.—According to the forms or regu-  
16         lations prescribed by the Secretary, the acquiring corpora-  
17         tion in any taxable acquisition shall make a return setting  
18         forth—

19                 “(1) a description of the acquisition,

20                 “(2) the name and address of each shareholder  
21         of the acquired corporation who is required to recog-  
22         nize gain (if any) as a result of the acquisition,

23                 “(3) the amount of money and the fair market  
24         value of other property transferred to each such  
25         shareholder as part of such acquisition, and

1           “(4) such other information as the Secretary  
2           may prescribe.

3 To the extent provided by the Secretary, the requirements  
4 of this section applicable to the acquiring corporation shall  
5 be applicable to the acquired corporation and not to the  
6 acquiring corporation.

7           “(b) NOMINEES.—According to the forms or regula-  
8 tions prescribed by the Secretary—

9           “(1) REPORTING.—Any person who holds stock  
10          as a nominee for another person shall furnish in the  
11          manner prescribed by the Secretary to such other  
12          person the information provided by the corporation  
13          under subsection (d).

14          “(2) REPORTING TO NOMINEES.—In the case of  
15          stock held by any person as a nominee, references in  
16          this section (other than in subsection (c)) to a share-  
17          holder shall be treated as a reference to the nomi-  
18          nee.

19          “(c) TAXABLE ACQUISITION.—For purposes of this  
20          section, the term ‘taxable acquisition’ means any acquisi-  
21          tion by a corporation of stock in or property of another  
22          corporation if any shareholder of the acquired corporation  
23          is required to recognize gain (if any) as a result of such  
24          acquisition.

1       “(d) STATEMENTS TO BE FURNISHED TO SHARE-  
2 HOLDERS.—According to the forms or regulations pre-  
3 scribed by the Secretary, every person required to make  
4 a return under subsection (a) shall furnish to each share-  
5 holder whose name is required to be set forth in such re-  
6 turn a written statement showing—

7               “(1) the name, address, and phone number of  
8 the information contact of the person required to  
9 make such return,

10              “(2) the information required to be shown on  
11 such return with respect to such shareholder, and

12              “(3) such other information as the Secretary  
13 may prescribe.

14 The written statement required under the preceding sen-  
15 tence shall be furnished to the shareholder on or before  
16 January 31 of the year following the calendar year during  
17 which the taxable acquisition occurred.”.

18       (b) ASSESSABLE PENALTIES.—

19              (1) Subparagraph (B) of section 6724(d)(1)  
20 (relating to definitions) is amended by redesignating  
21 clauses (ii) through (xviii) as clauses (iii) through  
22 (xix), respectively, and by inserting after clause (i)  
23 the following new clause:

1                   “(ii) section 6043A(a) (relating to re-  
2                   turns relating to taxable mergers and ac-  
3                   quisitions),”.

4                   (2) Paragraph (2) of section 6724(d) is amend-  
5                   ed by redesignating subparagraphs (F) through  
6                   (BB) as subparagraphs (G) through (CC), respec-  
7                   tively, and by inserting after subparagraph (E) the  
8                   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  
13                  for subpart B of part III of subchapter A of chapter 61  
14                  is amended by inserting after the item relating to section  
15                  6043 the following new item:

                  “Sec. 6043A. Returns relating to taxable mergers and acqui-  
                  sitions.”.

16                  (d) EFFECTIVE DATE.—The amendments made by  
17                  this section shall apply to acquisitions after the date of  
18                  the enactment of this Act.

19                  **SEC. 606. STUDIES.**

20                  (a) TRANSFER PRICING RULES.—The Secretary of  
21                  the Treasury or the Secretary’s delegate shall conduct a  
22                  study regarding the effectiveness of current transfer pric-  
23                  ing rules and compliance efforts in ensuring that cross-  
24                  border transfers and other related-party transactions, par-



1 ticularly transactions involving intangible assets, service  
2 contracts, or leases cannot be used improperly to shift in-  
3 come out of the United States. The study shall include  
4 a review of the contemporaneous documentation and pen-  
5 alty rules under section 6662 of the Internal Revenue  
6 Code of 1986, a review of the regulatory and administra-  
7 tive guidance implementing the principles of section 482  
8 of such Code to transactions involving intangible property  
9 and services and to cost-sharing arrangements, and an ex-  
10 amination of whether increased disclosure of cross-border  
11 transactions should be required. The study shall set forth  
12 specific recommendations to address all abuses identified  
13 in the study. Not later than June 30, 2005, such Sec-  
14 retary or delegate shall submit to the Congress a report  
15 of such study.

16 (b) INCOME TAX TREATIES.—The Secretary of the  
17 Treasury or the Secretary's delegate shall conduct a study  
18 of United States income tax treaties to identify any inap-  
19 propriate reductions in United States withholding tax that  
20 provide opportunities for shifting income out of the United  
21 States, and to evaluate whether existing anti-abuse mecha-  
22 nisms are operating properly. The study shall include spe-  
23 cific recommendations to address all inappropriate uses of  
24 tax treaties. Not later than June 30, 2005, such Secretary

1 or delegate shall submit to the Congress a report of such  
2 study.

3 (c) **IMPACT OF CORPORATE EXPATRIATION PROVI-**  
4 **SIONS.**—The Secretary of the Treasury or the Secretary’s  
5 delegate shall conduct a study of the impact of the provi-  
6 sions of this title on corporate expatriation. The study  
7 shall include such recommendations as such Secretary or  
8 delegate may have to improve the impact of such provi-  
9 sions in carrying out the purposes of this title. Not later  
10 than December 31, 2005, such Secretary or delegate shall  
11 submit to the Congress a report of such study.

## 12 **Subtitle B—Provisions Relating to** 13 **Tax Shelters**

### 14 **Part I—Taxpayer-Related Provisions**

#### 15 **SEC. 611. PENALTY FOR FAILING TO DISCLOSE REPORT-** 16 **ABLE TRANSACTIONS.**

17 (a) **IN GENERAL.**—Part I of subchapter B of chapter  
18 68 (relating to assessable penalties) is amended by insert-  
19 ing after section 6707 the following new section:

#### 20 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-** 21 **ABLE TRANSACTION INFORMATION WITH RE-** 22 **TURN.**

23 “(a) **IMPOSITION OF PENALTY.**—Any person who  
24 fails to include on any return or statement any informa-  
25 tion with respect to a reportable transaction which is re-

1 quired under section 6011 to be included with such return  
2 or statement shall pay a penalty in the amount determined  
3 under subsection (b).

4 “(b) AMOUNT OF PENALTY.—

5 “(1) IN GENERAL.—Except as provided in para-  
6 graph (2), the amount of the penalty under sub-  
7 section (a) shall be—

8 “(A) \$10,000 in the case of a natural per-  
9 son, and

10 “(B) \$50,000 in any other case.

11 “(2) LISTED TRANSACTION.—The amount of  
12 the penalty under subsection (a) with respect to a  
13 listed transaction shall be—

14 “(A) \$100,000 in the case of a natural  
15 person, and

16 “(B) \$200,000 in any other case.

17 “(c) DEFINITIONS.—For purposes of this section—

18 “(1) REPORTABLE TRANSACTION.—The term  
19 ‘reportable transaction’ means any transaction with  
20 respect to which information is required to be in-  
21 cluded with a return or statement because, as deter-  
22 mined under regulations prescribed under section  
23 6011, such transaction is of a type which the Sec-  
24 retary determines as having a potential for tax  
25 avoidance or evasion.

1           “(2) LISTED TRANSACTION.—The term ‘listed  
2 transaction’ means a reportable transaction which is  
3 the same as, or substantially similar to, a trans-  
4 action specifically identified by the Secretary as a  
5 tax avoidance transaction for purposes of section  
6 6011.

7           “(d) AUTHORITY TO RESCIND PENALTY.—

8           “(1) IN GENERAL.—The Commissioner of In-  
9 ternal 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, and

15                   “(B) rescinding the penalty would promote  
16 compliance with the requirements of this title  
17 and effective tax administration.

18           “(2) NO JUDICIAL APPEAL.—Notwithstanding  
19 any other provision of law, any determination under  
20 this subsection may not be reviewed in any judicial  
21 proceeding.

22           “(3) RECORDS.—If a penalty is rescinded under  
23 paragraph (1), the Commissioner shall place in the  
24 file in the Office of the Commissioner the opinion of  
25 the Commissioner or the head of the Office of Tax

1 Shelter Analysis with respect to the determination,  
2 including—

3 “(A) a statement of the facts and cir-  
4 cumstances relating to the violation,

5 “(B) the reasons for the rescission, and

6 “(C) the amount of the penalty rescinded.

7 “(e) COORDINATION WITH OTHER PENALTIES.—The  
8 penalty imposed by this section shall be in addition to any  
9 other penalty imposed by this title.”

10 (b) CONFORMING AMENDMENT.—The table of sec-  
11 tions for part I of subchapter B of chapter 68 is amended  
12 by inserting after the item relating to section 6707 the  
13 following:

“Sec. 6707A. Penalty for failure to include reportable transaction  
information with return.”.

14 (c) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to returns and statements the due  
16 date for which is after the date of the enactment of this  
17 Act.

18 (d) REPORT.—The Commissioner of Internal Rev-  
19 enue shall annually report to the Committee on Ways and  
20 Means of the House of Representatives and the Committee  
21 on Finance of the Senate—

22 (1) a summary of the total number and aggre-  
23 gate amount of penalties imposed, and rescinded,

1 under section 6707A of the Internal Revenue Code  
2 of 1986, and

3 (2) a description of each penalty rescinded  
4 under section 6707(c) of such Code and the reasons  
5 therefor.

6 **SEC. 612. ACCURACY-RELATED PENALTY FOR LISTED**  
7 **TRANSACTIONS, OTHER REPORTABLE TRANS-**  
8 **ACTIONS HAVING A SIGNIFICANT TAX AVOID-**  
9 **ANCE PURPOSE, ETC.**

10 (a) IN GENERAL.—Subchapter A of chapter 68 is  
11 amended by inserting after section 6662 the following new  
12 section:

13 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**  
14 **ALTY ON UNDERSTATEMENTS WITH RESPECT**  
15 **TO REPORTABLE TRANSACTIONS.**

16 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a  
17 reportable transaction understatement for any taxable  
18 year, there shall be added to the tax an amount equal to  
19 20 percent of the amount of such understatement.

20 “(b) REPORTABLE TRANSACTION UNDERSTATE-  
21 MENT.—For purposes of this section—

22 “(1) IN GENERAL.—The term ‘reportable trans-  
23 action understatement’ means the sum of—

24 “(A) the product of—

1           “(i) the amount of the increase (if  
2           any) in taxable income which results from  
3           a difference between the proper tax treat-  
4           ment of an item to which this section ap-  
5           plies and the taxpayer’s treatment of such  
6           item (as shown on the taxpayer’s return of  
7           tax), and

8           “(ii) the highest rate of tax imposed  
9           by section 1 (section 11 in the case of a  
10          taxpayer which is a corporation), and

11          “(B) the amount of the decrease (if any)  
12          in the aggregate amount of credits determined  
13          under subtitle A which results from a difference  
14          between the taxpayer’s treatment of an item to  
15          which this section applies (as shown on the tax-  
16          payer’s return of tax) and the proper tax treat-  
17          ment of such item.

18          For purposes of subparagraph (A), any reduction of  
19          the excess of deductions allowed for the taxable year  
20          over gross income for such year, and any reduction  
21          in the amount of capital losses which would (without  
22          regard to section 1211) be allowed for such year,  
23          shall be treated as an increase in taxable income.

1           “(2) ITEMS TO WHICH SECTION APPLIES.—This  
2           section shall apply to any item which is attributable  
3           to—

4                   “(A) any listed transaction, and

5                   “(B) any reportable transaction (other  
6           than a listed transaction) if a significant pur-  
7           pose of such transaction is the avoidance or  
8           evasion of Federal income tax.

9           “(c) HIGHER PENALTY FOR NONDISCLOSED TRANS-  
10          ACTIONS.—Subsection (a) shall be applied by substituting  
11          ‘30 percent’ for ‘20 percent’ with respect to the portion  
12          of any reportable transaction understatement with respect  
13          to which the requirement of section 6664(d)(2)(A) is not  
14          met.

15          “(d) DEFINITIONS OF REPORTABLE AND LISTED  
16          TRANSACTIONS.—For purposes of this section, the terms  
17          ‘reportable transaction’ and ‘listed transaction’ have the  
18          respective meanings given to such terms by section  
19          6707A(c).

20          “(e) SPECIAL RULES.—

21                   “(1) COORDINATION WITH PENALTIES, ETC.,  
22          ON OTHER UNDERSTATEMENTS.—In the case of an  
23          understatement (as defined in section 6662(d)(2))—

24                           “(A) the amount of such understatement  
25                           (determined without regard to this paragraph)



1 shall be increased by the aggregate amount of  
2 reportable transaction understatements for pur-  
3 poses of determining whether such understate-  
4 ment is a substantial understatement under  
5 section 6662(d)(1), and

6 “(B) the addition to tax under section  
7 6662(a) shall apply only to the excess of the  
8 amount of the substantial understatement (if  
9 any) after the application of subparagraph (A)  
10 over the aggregate amount of reportable trans-  
11 action understatements.

12 “(2) COORDINATION WITH OTHER PEN-  
13 ALTIES.—

14 “(A) APPLICATION OF FRAUD PENALTY.—  
15 References to an underpayment in section 6663  
16 shall be treated as including references to a re-  
17 portable transaction understatement.

18 “(B) NO DOUBLE PENALTY.—This section  
19 shall not apply to any portion of an understate-  
20 ment on which a penalty is imposed under sec-  
21 tion 6663.

22 “(3) SPECIAL RULE FOR AMENDED RE-  
23 TURNS.—Except as provided in regulations, in no  
24 event shall any tax treatment included with an  
25 amendment or supplement to a return of tax be

1 taken into account in determining the amount of any  
2 reportable transaction understatement if the amend-  
3 ment or supplement is filed after the earlier of the  
4 date the taxpayer is first contacted by the Secretary  
5 regarding the examination of the return or such  
6 other date as is specified by the Secretary.”.

7 (b) DETERMINATION OF OTHER UNDERSTATE-  
8 MENTS.—Subparagraph (A) of section 6662(d)(2) is  
9 amended by adding at the end the following flush sen-  
10 tence:

11 “The excess under the preceding sentence shall  
12 be determined without regard to items to which  
13 section 6662A applies.”.

14 (c) REASONABLE CAUSE EXCEPTION.—

15 (1) IN GENERAL.—Section 6664 is amended by  
16 adding at the end the following new subsection:

17 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-  
18 ABLE TRANSACTION UNDERSTATEMENTS.—

19 “(1) IN GENERAL.—No penalty shall be im-  
20 posed under section 6662A with respect to any por-  
21 tion of a reportable transaction understatement if it  
22 is shown that there was a reasonable cause for such  
23 portion and that the taxpayer acted in good faith  
24 with respect 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  
6 in accordance with the regulations prescribed  
7 under 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  
15 the requirements of subparagraph (A) if the penalty  
16 for such failure was rescinded under section  
17 6707A(d).

18           “(3) RULES RELATING TO REASONABLE BE-  
19 LIEF.—For purposes of paragraph (2)(C)—

20           “(A) IN GENERAL.—A taxpayer shall be  
21 treated as having a reasonable belief with re-  
22 spect to the tax treatment of an item only if  
23 such belief—

1           “(i) is based on the facts and law that  
2           exist at the time the return of tax which  
3           includes such tax treatment is filed, and

4           “(ii) relates solely to the taxpayer’s  
5           chances of success on the merits of such  
6           treatment and does not take into account  
7           the possibility that a return will not be au-  
8           dited, such treatment will not be raised on  
9           audit, or such treatment will be resolved  
10          through settlement if it is raised.

11          “(B) CERTAIN OPINIONS MAY NOT BE RE-  
12          LIED UPON.—

13           “(i) IN GENERAL.—An opinion of a  
14           tax advisor may not be relied upon to es-  
15           tablish the reasonable belief of a taxpayer  
16           if—

17                   “(I) the tax advisor is described  
18                   in clause (ii), or

19                   “(II) the opinion is described in  
20                   clause (iii).

21           “(ii) DISQUALIFIED TAX ADVISORS.—  
22           A tax advisor is described in this clause if  
23           the tax advisor—

24                   “(I) is a material advisor (within  
25                   the meaning of section 6111(b)(1))

1 and participates in the organization,  
2 management, promotion, or sale of  
3 the transaction or is related (within  
4 the meaning of section 267(b) or  
5 707(b)(1)) to any person who so par-  
6 ticipates,

7 “(II) is compensated directly or  
8 indirectly by a material advisor with  
9 respect to the transaction,

10 “(III) has a fee arrangement  
11 with respect to the transaction which  
12 is contingent on all or part of the in-  
13 tended tax benefits from the trans-  
14 action being sustained, or

15 “(IV) as determined under regu-  
16 lations prescribed by the Secretary,  
17 has a disqualifying financial interest  
18 with respect to the transaction.

19 “(iii) DISQUALIFIED OPINIONS.—For  
20 purposes of clause (i), an opinion is dis-  
21 qualified if the opinion—

22 “(I) is based on unreasonable  
23 factual or legal assumptions (includ-  
24 ing assumptions as to future events),

1                   “(II) unreasonably relies on rep-  
2                   resentations, statements, findings, or  
3                   agreements of the taxpayer or any  
4                   other person,

5                   “(III) does not identify and con-  
6                   sider all relevant facts, or

7                   “(IV) fails to meet any other re-  
8                   quirement as the Secretary may pre-  
9                   scribe.”.

10                   (2) CONFORMING AMENDMENTS.—

11                   (A) Paragraph (1) of section 6664(c) is  
12                   amended by striking “this part” and inserting  
13                   “section 6662 or 6663”.

14                   (B) The heading for subsection (c) of sec-  
15                   tion 6664 is amended by inserting “FOR UN-  
16                   DERPAYMENTS” after “EXCEPTION”.

17                   (d) REDUCTION IN PENALTY FOR SUBSTANTIAL UN-  
18                   DERSTATEMENT OF INCOME TAX NOT TO APPLY TO TAX  
19                   SHELTERS.—Subparagraph (C) of section 6662(d)(2) (re-  
20                   lating to substantial understatement of income tax) is  
21                   amended to read as follows:

22                   “(C) REDUCTION NOT TO APPLY TO TAX  
23                   SHELTERS.—

1                   “(i) IN GENERAL.—Subparagraph (B)  
2 shall not apply to any item attributable to  
3 a tax shelter.

4                   “(ii) TAX SHELTER.—For purposes of  
5 clause (i), the term ‘tax shelter’ means—

6                                 “(I) a partnership or other enti-  
7 ty,

8                                 “(II) any investment plan or ar-  
9 rangement, or

10                                “(III) any other plan or arrange-  
11 ment,

12 if a significant purpose of such partner-  
13 ship, entity, plan, or arrangement is the  
14 avoidance or evasion of Federal income  
15 tax.”.

16 (e) CONFORMING AMENDMENTS.—

17                   (1) Sections 461(i)(3)(C), 1274(b)(3), and  
18 7525(b) are each amended by striking “section  
19 6662(d)(2)(C)(iii)” and inserting “section  
20 6662(d)(2)(C)(ii)”.

21                   (2) The heading for section 6662 is amended to  
22 read as follows:

1 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**  
2 **ON UNDERPAYMENTS.”**

3 (3) 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 under-  
statements with respect to reportable trans-  
actions.”.

7 (f) **EFFECTIVE DATE.**—The amendments made by  
8 this section shall apply to taxable years ending after the  
9 date of the enactment of this Act.

10 **SEC. 613. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**  
11 **PRIVILEGES RELATING TO TAXPAYER COM-**  
12 **MUNICATIONS.**

13 (a) **IN GENERAL.**—Section 7525(b) (relating to sec-  
14 tion not to apply to communications regarding corporate  
15 tax shelters) is amended to read as follows:

16 “(b) **SECTION NOT TO APPLY TO COMMUNICATIONS**  
17 **REGARDING TAX SHELTERS.**—The privilege under sub-  
18 section (a) shall not apply to any written communication  
19 which is—

20 “(1) between a federally authorized tax practi-  
21 tioner and—

22 “(A) any person,



1           “(B) any director, officer, employee, agent,  
2           or representative of the person, or

3           “(C) any other person holding a capital or  
4           profits interest in the person, and

5           “(2) in connection with the promotion of the di-  
6           rect or indirect participation of the person in any  
7           tax shelter (as defined in section  
8           6662(d)(2)(C)(ii)).”.

9           (b) EFFECTIVE DATE.—The amendment made by  
10          this section shall apply to communications made on or  
11          after the date of the enactment of this Act.

12       **SEC. 614. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**  
13                       **FOR WHICH REQUIRED LISTED TRANS-**  
14                       **ACTIONS NOT REPORTED.**

15          (a) IN GENERAL.—Section 6501(c) (relating to ex-  
16          ceptions) is amended by adding at the end the following  
17          new paragraph:

18               “(10) LISTED TRANSACTIONS.—If a taxpayer  
19               fails to include on any return or statement for any  
20               taxable year any information with respect to a listed  
21               transaction (as defined in section 6707A(c)(2))  
22               which is required under section 6011 to be included  
23               with such return or statement, the time for assess-  
24               ment of any tax imposed by this title with respect

1 to such transaction shall not expire before the date  
2 which is 1 year after the earlier of—

3 “(A) the date on which the Secretary is  
4 furnished the information so required, or

5 “(B) the date that a material advisor (as  
6 defined in section 6111) meets the requirements  
7 of section 6112 with respect to a request by the  
8 Secretary under section 6112(b) relating to  
9 such transaction with respect to such tax-  
10 payer.”.

11 (b) EFFECTIVE DATE.—The amendment made by  
12 this section shall apply to taxable years with respect to  
13 which the period for assessing a deficiency did not expire  
14 before the date of the enactment of this Act.

15 **SEC. 615. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

16 (a) IN GENERAL.—Section 6111 (relating to registra-  
17 tion of tax shelters) is amended to read as follows:

18 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

19 “(a) IN GENERAL.—Each material advisor with re-  
20 spect to any reportable transaction shall make a return  
21 (in such form as the Secretary may prescribe) setting  
22 forth—

23 “(1) information identifying and describing the  
24 transaction,

1           “(2) information describing any potential tax  
2           benefits expected to result from the transaction, and

3           “(3) such other information as the Secretary  
4           may prescribe.

5 Such return shall be filed not later than the date specified  
6 by the Secretary.

7           “(b) DEFINITIONS.—For purposes of this section—

8           “(1) MATERIAL ADVISOR.—

9           “(A) IN GENERAL.—The term ‘material  
10          advisor’ means any person—

11           “(i) who provides any material aid,  
12           assistance, or advice with respect to orga-  
13           nizing, managing, promoting, selling, im-  
14           plementing, or carrying out any reportable  
15           transaction, and

16           “(ii) who directly or indirectly derives  
17           gross income in excess of the threshold  
18           amount (or such other amount as may be  
19           prescribed by the Secretary) for such ad-  
20           vice or assistance.

21           “(B) THRESHOLD AMOUNT.—For purposes  
22          of subparagraph (A), the threshold amount is—

23           “(i) \$50,000 in the case of a report-  
24          able transaction substantially all of the tax

1 benefits from which are provided to nat-  
2 ural persons, and

3 “(ii) \$250,000 in any other case.

4 “(2) REPORTABLE TRANSACTION.—The term  
5 ‘reportable transaction’ has the meaning given to  
6 such term by section 6707A(c).

7 “(c) REGULATIONS.—The Secretary may prescribe  
8 regulations which provide—

9 “(1) that only 1 person shall be required to  
10 meet the requirements of subsection (a) in cases in  
11 which 2 or more persons would otherwise be re-  
12 quired to meet such requirements,

13 “(2) exemptions from the requirements of this  
14 section, and

15 “(3) such rules as may be necessary or appro-  
16 priate to carry out the purposes of this section.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) The item relating to section 6111 in the  
19 table of sections for subchapter B of chapter 61 is  
20 amended to read as follows:

“Sec. 6111. Disclosure of reportable transactions.”.

21 (2) So much of section 6112 as precedes sub-  
22 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 **ETC.**

4 “(a) IN GENERAL.—Each material advisor (as de-  
5 fined in section 6111) with respect to any reportable  
6 transaction (as defined in section 6707A(c)) shall (wheth-  
7 er or not required to file a return under section 6111 with  
8 respect to such transaction) maintain (in such manner as  
9 the Secretary may by regulations prescribe) a list—

10 “(1) identifying each person with respect to  
11 whom such advisor acted as a material advisor with  
12 respect to such transaction, and

13 “(2) containing such other information as the  
14 Secretary may by regulations require.”.

15 (3) Section 6112 is amended—

16 (A) by redesignating subsection (c) as sub-  
17 section (b),

18 (B) by inserting “written” before “re-  
19 quest” in subsection (b)(1) (as so redesign-  
20 nated), and

21 (C) by striking “shall prescribe” in sub-  
22 section (b)(2) (as so redesignated) and inserting  
23 “may prescribe”.

24 (4) 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, etc.”.

1           (5)(A) The heading for section 6708 is amend-  
2           ed 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 chap-  
8           ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”.

9           (c) **EFFECTIVE DATE.**—The amendments made by  
10          this section shall apply to transactions with respect to  
11          which material aid, assistance, or advice referred to in sec-  
12          tion 6111(b)(1)(A)(i) of the Internal Revenue Code of  
13          1986 (as added by this section) is provided after the date  
14          of the enactment of this Act.

15   **SEC. 616. FAILURE TO FURNISH INFORMATION REGARDING**  
16                   **REPORTABLE TRANSACTIONS.**

17          (a) **IN GENERAL.**—Section 6707 (relating to failure  
18          to furnish information regarding tax shelters) is amended  
19          to read as follows:

1 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**  
2 **ING REPORTABLE TRANSACTIONS.**

3 “(a) IN GENERAL.—If a person who is required to  
4 file a return under section 6111(a) with respect to any  
5 reportable transaction—

6 “(1) fails to file such return on or before the  
7 date prescribed therefor, or

8 “(2) files false or incomplete information with  
9 the Secretary with respect to such transaction,

10 such person shall pay a penalty with respect to such return  
11 in the amount determined under subsection (b).

12 “(b) AMOUNT OF PENALTY.—

13 “(1) IN GENERAL.—Except as provided in para-  
14 graph (2), the penalty imposed under subsection (a)  
15 with respect to any failure shall be \$50,000.

16 “(2) LISTED TRANSACTIONS.—The penalty im-  
17 posed under subsection (a) with respect to any listed  
18 transaction shall be an amount equal to the greater  
19 of—

20 “(A) \$200,000, or

21 “(B) 50 percent of the gross income de-  
22 rived by such person with respect to aid, assist-  
23 ance, or advice which is provided with respect  
24 to the listed transaction before the date the re-  
25 turn is filed under section 6111.

1 Subparagraph (B) shall be applied by substituting  
2 ‘75 percent’ for ‘50 percent’ in the case of an inten-  
3 tional failure or act described in subsection (a).

4 “(c) RESCISSION AUTHORITY.—The provisions of  
5 section 6707A(d) (relating to authority of Commissioner  
6 to rescind penalty) shall apply to any penalty imposed  
7 under this section.

8 “(d) REPORTABLE AND LISTED TRANSACTIONS.—  
9 For purposes of this section, the terms ‘reportable trans-  
10 action’ and ‘listed transaction’ have the respective mean-  
11 ings given to such terms by section 6707A(c).”.

12 (b) CLERICAL AMENDMENT.—The item relating to  
13 section 6707 in the table of sections for part I of sub-  
14 chapter B of chapter 68 is amended by striking “tax shel-  
15 ters” and inserting “reportable transactions”.

16 (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to returns the due date for which  
18 is after the date of the enactment of this Act.

19 **SEC. 617. MODIFICATION OF PENALTY FOR FAILURE TO**  
20 **MAINTAIN LISTS OF INVESTORS.**

21 (a) IN GENERAL.—Subsection (a) of section 6708 is  
22 amended to read as follows:

23 “(a) IMPOSITION OF PENALTY.—

24 “(1) IN GENERAL.—If any person who is re-  
25 quired to maintain a list under section 6112(a) fails



1 to make such list available upon written request to  
2 the Secretary in accordance with section 6112(b)  
3 within 20 business days after the date of such re-  
4 quest, such person shall pay a penalty of \$10,000  
5 for each day of such failure after such 20th day.

6 “(2) REASONABLE CAUSE EXCEPTION.—No  
7 penalty shall be imposed by paragraph (1) with re-  
8 spect to the failure on any day if such failure is due  
9 to reasonable cause.”.

10 (b) EFFECTIVE DATE.—The amendment made by  
11 this section shall apply to requests made after the date  
12 of the enactment of this Act.

13 **SEC. 618. PENALTY ON PROMOTERS OF TAX SHELTERS.**

14 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-  
15 TERS.—Section 6700(a) is amended by adding at the end  
16 the following new sentence: “Notwithstanding the first  
17 sentence, if an activity with respect to which a penalty  
18 imposed under this subsection involves a statement de-  
19 scribed in paragraph (2)(A), the amount of the penalty  
20 shall be equal to 50 percent of the gross income derived  
21 (or to be derived) from such activity by the person on  
22 which the penalty is imposed.”

23 (b) EFFECTIVE DATE.—The amendment made by  
24 this section shall apply to activities after the date of the  
25 enactment of this Act.

1 **SEC. 619. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**  
2 **MENT PENALTY FOR NONREPORTABLE**  
3 **TRANSACTIONS.**

4 (a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-  
5 TIONS.—Section 6662(d)(1)(B) (relating to special rule  
6 for corporations) is amended to read as follows:

7 “(B) SPECIAL RULE FOR CORPORA-  
8 TIONS.—In the case of a corporation other than  
9 an S corporation or a personal holding company  
10 (as defined in section 542), there is a substan-  
11 tial understatement of income tax for any tax-  
12 able year if the amount of the understatement  
13 for the taxable year exceeds the lesser of—

14 “(i) 10 percent of the tax required to  
15 be shown on the return for the taxable  
16 year (or, if greater, \$10,000), or

17 “(ii) \$10,000,000.”.

18 (b) EFFECTIVE DATE.—The amendment made by  
19 this section shall apply to taxable years beginning after  
20 the date of the enactment of this Act.

21 **SEC. 620. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**  
22 **CONDUCT RELATED TO TAX SHELTERS AND**  
23 **REPORTABLE TRANSACTIONS.**

24 (a) IN GENERAL.—Section 7408 (relating to action  
25 to enjoin promoters of abusive tax shelters, etc.) is amend-  
26 ed by redesignating subsection (c) as subsection (d) and

1 by striking subsections (a) and (b) and inserting the fol-  
2 lowing new subsections:

3       “(a) **AUTHORITY TO SEEK INJUNCTION.**—A civil ac-  
4 tion in the name of the United States to enjoin any person  
5 from further engaging in specified conduct may be com-  
6 menced at the request of the Secretary. Any action under  
7 this section shall be brought in the district court of the  
8 United States for the district in which such person resides,  
9 has his principal place of business, or has engaged in spec-  
10 ified conduct. The court may exercise its jurisdiction over  
11 such action (as provided in section 7402(a)) separate and  
12 apart from any other action brought by the United States  
13 against such person.

14       “(b) **ADJUDICATION AND DECREE.**—In any action  
15 under subsection (a), if the court finds—

16               “(1) that the person has engaged in any speci-  
17 fied conduct, and

18               “(2) that injunctive relief is appropriate to pre-  
19 vent recurrence of such conduct,

20 the court may enjoin such person from engaging in such  
21 conduct or in any other activity subject to penalty under  
22 this title.

23       “(c) **SPECIFIED CONDUCT.**—For purposes of this  
24 section, the term ‘specified conduct’ means any action, or

1 failure to take action, subject to penalty under section  
2 6700, 6701, 6707, or 6708.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) The heading for section 7408 is amended to  
5 read as follows:

6 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**  
7 **LATED TO TAX SHELTERS AND REPORTABLE**  
8 **TRANSACTIONS.”**

9 (2) The table of sections for subchapter A of  
10 chapter 76 is amended by striking the item relating  
11 to section 7408 and inserting the following new  
12 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and  
reportable transactions.”.

13 (c) EFFECTIVE DATE.—The amendment made by  
14 this section shall take effect on the day after the date of  
15 the enactment of this Act.

16 **SEC. 621. PENALTY ON FAILURE TO REPORT INTERESTS IN**  
17 **FOREIGN FINANCIAL ACCOUNTS.**

18 (a) IN GENERAL.—Section 5321(a)(5) of title 31,  
19 United States Code, is amended to read as follows:

20 “(5) FOREIGN FINANCIAL AGENCY TRANS-  
21 ACTION VIOLATION.—

22 “(A) PENALTY AUTHORIZED.—The Sec-  
23 retary of the Treasury may impose a civil  
24 money penalty on any person who violates, or

1 causes any violation of, any provision of section  
2 5314.

3 “(B) AMOUNT OF PENALTY.—

4 “(i) IN GENERAL.—Except as pro-  
5 vided in subparagraph (C), the amount of  
6 any civil penalty imposed under subpara-  
7 graph (A) shall not exceed \$5,000.

8 “(ii) REASONABLE CAUSE EXCEP-  
9 TION.—No penalty shall be imposed under  
10 subparagraph (A) with respect to any vio-  
11 lation if—

12 “(I) such violation was due to  
13 reasonable cause, and

14 “(II) the amount of the trans-  
15 action or the balance in the account  
16 at the time of the transaction was  
17 properly reported.

18 “(C) WILLFUL VIOLATIONS.—In the case  
19 of any person willfully violating, or willfully  
20 causing any violation of, any provision of sec-  
21 tion 5314—

22 “(i) the maximum penalty under sub-  
23 paragraph (B)(i) shall be increased to the  
24 greater of—

25 “(I) \$25,000, or

1                   “(II) the amount (not exceeding  
2                   \$100,000) determined under subpara-  
3                   graph (D), and

4                   “(ii) subparagraph (B)(ii) shall not  
5                   apply.

6                   “(D) AMOUNT.—The amount determined  
7                   under this subparagraph is—

8                   “(i) in the case of a violation involving  
9                   a transaction, the amount of the trans-  
10                  action, or

11                  “(ii) in the case of a violation involv-  
12                  ing a failure to report the existence of an  
13                  account or any identifying information re-  
14                  quired to be provided with respect to an  
15                  account, the balance in the account at the  
16                  time of the violation.”.

17                  (b) EFFECTIVE DATE.—The amendment made by  
18                  this section shall apply to violations occurring after the  
19                  date of the enactment of this Act.

20                  **SEC. 622. REGULATION OF INDIVIDUALS PRACTICING BE-**  
21                  **FORE THE DEPARTMENT OF THE TREASURY.**

22                  (a) CENSURE; IMPOSITION OF PENALTY.—

23                          (1) IN GENERAL.—Section 330(b) of title 31,  
24                  United States Code, is amended—

1 (A) by inserting “, or censure,” after “De-  
2 partment”, and

3 (B) by adding at the end the following new  
4 flush sentence:

5 “The Secretary may impose a monetary penalty on any  
6 representative described in the preceding sentence. If the  
7 representative was acting on behalf of an employer or any  
8 firm or other entity in connection with the conduct giving  
9 rise to such penalty, the Secretary may impose a monetary  
10 penalty on such employer, firm, or entity if it knew, or  
11 reasonably should have known, of such conduct. Such pen-  
12 alty shall not exceed the gross income derived (or to be  
13 derived) from the conduct giving rise to the penalty. Any  
14 such penalty imposed on an individual may be in addition  
15 to, or in lieu of, any suspension, disbarment, or censure  
16 of such individual.”

17 (2) EFFECTIVE DATE.—The amendments made  
18 by this subsection shall apply to actions taken after  
19 the date of the enactment of this Act.

20 (b) TAX SHELTER OPINIONS, ETC.—Section 330 of  
21 such title 31 is amended by adding at the end the fol-  
22 lowing new subsection:

23 “(d) Nothing in this section or in any other provision  
24 of law shall be construed to limit the authority of the Sec-  
25 retary of the Treasury to impose standards applicable to

1 the rendering of written advice with respect to any entity,  
2 transaction plan or arrangement, or other plan or arrange-  
3 ment, which is of a type which the Secretary determines  
4 as having a potential for tax avoidance or evasion.”.

5 **Part II—Other Provisions**

6 **SEC. 631. TREATMENT OF STRIPPED INTERESTS IN BOND**  
7 **AND PREFERRED STOCK FUNDS, ETC.**

8 (a) IN GENERAL.—Section 1286 (relating to tax  
9 treatment of stripped bonds) is amended by redesignating  
10 subsection (f) as subsection (g) and by inserting after sub-  
11 section (e) the following new subsection:

12 “(f) TREATMENT OF STRIPPED INTERESTS IN BOND  
13 AND PREFERRED STOCK FUNDS, ETC.—In the case of an  
14 account or entity substantially all of the assets of which  
15 consist of bonds, preferred stock, or a combination thereof,  
16 the Secretary may by regulations provide that rules simi-  
17 lar to the rules of this section and 305(e), as appropriate,  
18 shall apply to interests in such account or entity to which  
19 (but for this subsection) this section or section 305(e), as  
20 the case may be, would not apply.”.

21 (b) CROSS REFERENCE.—Subsection (e) of section  
22 305 is amended by adding at the end the following new  
23 paragraph:



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  
3 this section shall apply to purchases and dispositions after  
4 the date of the enactment of this Act.

5 **SEC. 632. MINIMUM HOLDING PERIOD FOR FOREIGN TAX**  
6 **CREDIT ON WITHHOLDING TAXES ON INCOME**  
7 **OTHER THAN DIVIDENDS.**

8 (a) IN GENERAL.—Section 901 is amended by redesh-  
9 ignating subsection (l) as subsection (m) and by inserting  
10 after subsection (k) the following new subsection:

11 “(l) MINIMUM HOLDING PERIOD FOR WITHHOLDING  
12 TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS  
13 ETC.—

14 “(1) IN GENERAL.—In no event shall a credit  
15 be allowed under subsection (a) for any withholding  
16 tax (as defined in subsection (k)) on any item of in-  
17 come or gain with respect to any property if—

18 “(A) such property is held by the recipient  
19 of the item for 15 days or less during the 30-  
20 day period beginning on the date which is 15  
21 days before the date on which the right to re-  
22 ceive payment of such item arises, or

23 “(B) to the extent that the recipient of the  
24 item is under an obligation (whether pursuant

1 to a short sale or otherwise) to make related  
2 payments with respect to positions in substan-  
3 tially similar or related property.

4 This paragraph shall not apply to any dividend to  
5 which subsection (k) applies.

6 “(2) EXCEPTION FOR TAXES PAID BY DEAL-  
7 ERS.—

8 “(A) IN GENERAL.—Paragraph (1) shall  
9 not apply to any qualified tax with respect to  
10 any property held in the active conduct in a for-  
11 eign country of a business as a dealer in such  
12 property.

13 “(B) QUALIFIED TAX.—For purposes of  
14 subparagraph (A), the term ‘qualified tax’  
15 means a tax paid to a foreign country (other  
16 than the foreign country referred to in subpara-  
17 graph (A)) if—

18 “(i) the item to which such tax is at-  
19 tributable is subject to taxation on a net  
20 basis by the country referred to in sub-  
21 paragraph (A), and

22 “(ii) such country allows a credit  
23 against its net basis tax for the full  
24 amount of the tax paid to such other for-  
25 eign country.

1           “(C) DEALER.—For purposes of subpara-  
2 graph (A), the term ‘dealer’ means—

3           “(i) with respect to a security, any  
4 person to whom paragraphs (1) and (2) of  
5 subsection (k) would not apply by reason  
6 of paragraph (4) thereof if such security  
7 were stock, and

8           “(ii) with respect to any other prop-  
9 erty, any person with respect to whom  
10 such property is described in section  
11 1221(a)(1).

12           “(D) REGULATIONS.—The Secretary may  
13 prescribe such regulations as may be appro-  
14 priate to carry out this paragraph, including  
15 regulations to prevent the abuse of the excep-  
16 tion provided by this paragraph and to treat  
17 other taxes as qualified taxes.

18           “(3) EXCEPTIONS.—The Secretary may by reg-  
19 ulation provide that paragraph (1) shall not apply to  
20 property where the Secretary determines that the  
21 application of paragraph (1) to such property is not  
22 necessary to carry out the purposes of this sub-  
23 section.

24           “(4) CERTAIN RULES TO APPLY.—Rules similar  
25 to the rules of paragraphs (5), (6), and (7) of sub-

1 section (k) shall apply for purposes of this sub-  
2 section.

3 “(5) DETERMINATION OF HOLDING PERIOD.—  
4 Holding periods shall be determined for purposes of  
5 this subsection without regard to section 1235 or  
6 any similar rule.”.

7 (b) CONFORMING AMENDMENT.—The heading of  
8 subsection (k) of section 901 is amended by inserting “ON  
9 DIVIDENDS” after “TAXES”.

10 (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to amounts paid or accrued more  
12 than 30 days after the date of the enactment of this Act.

13 **SEC. 633. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS**  
14 **TRANSFERS.**

15 (a) TREATMENT OF CONTRIBUTED PROPERTY WITH  
16 BUILT-IN LOSS.—Paragraph (1) of section 704(c) is  
17 amended by striking “and” at the end of subparagraph  
18 (A), by striking the period at the end of subparagraph  
19 (B) and inserting “, and”, and by adding at the end the  
20 following:

21 “(C) if any property so contributed has a  
22 built-in loss—

23 “(i) such built-in loss shall be taken  
24 into account only in determining the

1 amount of items allocated to the contrib-  
2 uting partner, and

3 “(ii) except as provided in regulations,  
4 in determining the amount of items allo-  
5 cated to other partners, the basis of the  
6 contributed property in the hands of the  
7 partnership shall be treated as being equal  
8 to its fair market value at the time of con-  
9 tribution.

10 For purposes of subparagraph (C), the term ‘built-  
11 in loss’ means the excess of the adjusted basis of the  
12 property (determined without regard to subpara-  
13 graph (C)(ii)) over its fair market value at the time  
14 of contribution.”.

15 (b) SPECIAL RULES FOR TRANSFERS OF PARTNER-  
16 SHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN  
17 LOSS.—

18 (1) ADJUSTMENT OF PARTNERSHIP BASIS RE-  
19 QUIRED.—Subsection (a) of section 743 (relating to  
20 optional adjustment to basis of partnership prop-  
21 erty) is amended by inserting before the period “or  
22 unless the partnership has a substantial built-in loss  
23 immediately after such transfer”.

24 (2) ADJUSTMENT.—Subsection (b) of section  
25 743 is amended by inserting “or which has a sub-

1 substantial built-in loss immediately after such trans-  
2 fer” after “section 754 is in effect”.

3 (3) SUBSTANTIAL BUILT-IN LOSS.—Section 743  
4 is amended by adding at the end the following new  
5 subsection:

6 “(d) SUBSTANTIAL BUILT-IN LOSS.—

7 “(1) IN GENERAL.—For purposes of this sec-  
8 tion, a partnership has a substantial built-in loss  
9 with respect to a transfer of an interest in a part-  
10 nership if the partnership’s adjusted basis in the  
11 partnership property exceeds by more than \$250,000  
12 the fair market value of such property.

13 “(2) REGULATIONS.—The Secretary shall pre-  
14 scribe such regulations as may be appropriate to  
15 carry out the purposes of paragraph (1) and section  
16 734(d), including regulations aggregating related  
17 partnerships and disregarding property acquired by  
18 the partnership in an attempt to avoid such pur-  
19 poses.”.

20 (4) ALTERNATIVE RULES FOR ELECTING IN-  
21 VESTMENT PARTNERSHIPS.—

22 (A) IN GENERAL.—Section 743 is amended  
23 by adding at the end the following new sub-  
24 section:

1       “(e) ALTERNATIVE RULES FOR ELECTING INVEST-  
2       MENT PARTNERSHIPS.—

3               “(1) NO ADJUSTMENT OF PARTNERSHIP  
4       BASIS.—For purposes of this section, an electing in-  
5       vestment partnership shall not be treated as having  
6       a substantial built-in loss with respect to any trans-  
7       fer occurring while the election under paragraph  
8       (6)(A) is in effect.

9               “(2) LOSS DEFERRAL FOR TRANSFEREE PART-  
10       NER.—In the case of a transfer of an interest in an  
11       electing investment partnership, the transferee part-  
12       ner’s distributive share of losses (without regard to  
13       gains) from the sale or exchange of partnership  
14       property shall not be allowed except to the extent  
15       that it is established that such losses exceed the loss  
16       (if any) recognized by the transferor (or any prior  
17       transferor to the extent not fully offset by a prior  
18       disallowance under this paragraph) on the transfer  
19       of the partnership interest.

20               “(3) NO REDUCTION IN PARTNERSHIP BASIS.—  
21       Losses disallowed under paragraph (2) shall not de-  
22       crease the transferee partner’s basis in the partner-  
23       ship interest.

24               “(4) EFFECT OF TERMINATION OF PARTNER-  
25       SHIP.—This subsection shall be applied without re-

1       gard to any termination of a partnership under sec-  
2       tion 708(b)(1)(B).

3               “(5) CERTAIN BASIS REDUCTIONS TREATED AS  
4       LOSSES.—In the case of a transferee partner whose  
5       basis in property distributed by the partnership is  
6       reduced under section 732(a)(2), the amount of the  
7       loss recognized by the transferor on the transfer of  
8       the partnership interest which is taken into account  
9       under paragraph (2) shall be reduced by the amount  
10      of such basis reduction.

11              “(6) ELECTING INVESTMENT PARTNERSHIP.—  
12      For purposes of this subsection, the term ‘electing  
13      investment partnership’ means any partnership if—

14                      “(A) the partnership makes an election to  
15                      have this subsection apply,

16                      “(B) the partnership would be an invest-  
17                      ment company under section 3(a)(1)(A) of the  
18                      Investment Company Act of 1940 but for an  
19                      exemption under paragraph (1) or (7) of section  
20                      3(e) of such Act,

21                      “(C) such partnership has never been en-  
22                      gaged in a trade or business,

23                      “(D) substantially all of the assets of such  
24                      partnership are held for investment,



1           “(E) at least 95 percent of the assets con-  
2           tributed to such partnership consist of money,

3           “(F) no assets contributed to such part-  
4           nership had an adjusted basis in excess of fair  
5           market value at the time of contribution,

6           “(G) all partnership interests of such part-  
7           nership are issued by such partnership pursu-  
8           ant to a private offering and during the 24-  
9           month period beginning on the date of the first  
10          capital contribution to such partnership,

11          “(H) the partnership agreement of such  
12          partnership has substantive restrictions on each  
13          partner’s ability to cause a redemption of the  
14          partner’s interest, and

15          “(I) the partnership agreement of such  
16          partnership provides for a term that is not in  
17          excess of 15 years.

18          The election described in subparagraph (A), once  
19          made, shall be irrevocable except with the consent of  
20          the Secretary.

21          “(7) REGULATIONS.—The Secretary shall pre-  
22          scribe such regulations as may be appropriate to  
23          carry out the purposes of this subsection, including  
24          regulations for applying this subsection to tiered  
25          partnerships.”.

1 (B) INFORMATION REPORTING.—Section  
2 6031 is amended by adding at the end the fol-  
3 lowing new subsection:

4 “(f) ELECTING INVESTMENT PARTNERSHIPS.—In  
5 the case of any electing investment partnership (as defined  
6 in section 743(e)(6)), the information required under sub-  
7 section (b) to be furnished to any partner to whom section  
8 743(e)(2) applies shall include such information as is nec-  
9 essary to enable the partner to compute the amount of  
10 losses disallowed under section 743(e).”.

11 (5) CLERICAL AMENDMENTS.—

12 (A) The section heading for section 743 is  
13 amended to read as follows:

14 **“SEC. 743. SPECIAL RULES WHERE SECTION 754 ELECTION**  
15 **OR SUBSTANTIAL BUILT-IN LOSS.”**

16 (B) The table of sections for subpart C of  
17 part II of subchapter K of chapter 1 is amend-  
18 ed by striking the item relating to section 743  
19 and inserting the following new item:

“Sec. 743. Special rules where section 754 election or substantial  
built-in loss.”.

20 (c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED  
21 PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL  
22 BASIS REDUCTION.—

23 (1) ADJUSTMENT REQUIRED.—Subsection (a)  
24 of section 734 (relating to optional adjustment to

1 basis of undistributed partnership property) is  
2 amended by inserting before the period “or unless  
3 there is a substantial basis reduction”.

4 (2) ADJUSTMENT.—Subsection (b) of section  
5 734 is amended by inserting “or unless there is a  
6 substantial basis reduction” after “section 754 is in  
7 effect”.

8 (3) SUBSTANTIAL BASIS REDUCTION.—Section  
9 734 is amended by adding at the end the following  
10 new subsection:

11 “(d) SUBSTANTIAL BASIS REDUCTION.—

12 “(1) IN GENERAL.—For purposes of this sec-  
13 tion, there is a substantial basis reduction with re-  
14 spect to a distribution if the sum of the amounts de-  
15 scribed in subparagraphs (A) and (B) of subsection  
16 (b)(2) exceeds \$250,000.

17 “(2) REGULATIONS.—

“For regulations to carry out this subsection, see  
section 743(d)(2).”.

18 (4) CLERICAL AMENDMENTS.—

19 (A) The section heading for section 734 is  
20 amended to read as follows:

1 **“SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED**  
2 **PARTNERSHIP PROPERTY WHERE SECTION**  
3 **754 ELECTION OR SUBSTANTIAL BASIS RE-**  
4 **DUCTION.”**

5 (B) The table of sections for subpart B of  
6 part II of subchapter K of chapter 1 is amend-  
7 ed by striking the item relating to section 734  
8 and inserting the following new item:

“Sec. 734. Adjustment to basis of undistributed partnership prop-  
erty where section 754 election or substantial basis  
reduction.”.

9 (d) **EFFECTIVE DATES.—**

10 (1) **SUBSECTION (a).—**The amendment made  
11 by subsection (a) shall apply to contributions made  
12 after the date of the enactment of this Act.

13 (2) **SUBSECTION (b).—**

14 (A) **IN GENERAL.—**Except as provided in  
15 subparagraph (B), the amendments made by  
16 subsection (b) shall apply to transfers after the  
17 date of the enactment of this Act.

18 (B) **TRANSITION RULE.—**In the case of an  
19 electing investment partnership which is in ex-  
20 istence on June 4, 2004, section 743(e)(6)(H)  
21 of the Internal Revenue Code of 1986, as added  
22 by this section, shall not apply to such partner-  
23 ship and section 743(e)(6)(I) of such Code, as

1           so added, shall be applied by substituting “20  
2           years” for “15 years”.

3           (3) SUBSECTION (c).—The amendments made  
4           by subsection (c) shall apply to distributions after  
5           the date of the enactment of this Act.

6 **SEC. 634. NO REDUCTION OF BASIS UNDER SECTION 734 IN**  
7                           **STOCK HELD BY PARTNERSHIP IN COR-**  
8                           **PORATE PARTNER.**

9           (a) IN GENERAL.—Section 755 is amended by adding  
10          at the end the following new subsection:

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

15                 “(1) no allocation may be made to stock in a  
16                 corporation (or any person related (within the mean-  
17                 ing of sections 267(b) and 707(b)(1)) to such cor-  
18                 poration) which is a partner in the partnership, and

19                 “(2) any amount not allocable to stock by rea-  
20                 son of paragraph (1) shall be allocated under sub-  
21                 section (a) to other partnership property.

22          Gain shall be recognized to the partnership to the extent  
23          that the amount required to be allocated under paragraph  
24          (2) to other partnership property exceeds the aggregate

1 adjusted basis of such other property immediately before  
2 the allocation required by paragraph (2).”.

3 (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall apply to distributions after the date of  
5 the enactment of this Act.

6 **SEC. 635. REPEAL OF SPECIAL RULES FOR FASITS.**

7 (a) IN GENERAL.—Part V of subchapter M of chap-  
8 ter 1 (relating to financial asset securitization investment  
9 trusts) is hereby repealed.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Paragraph (6) of section 56(g) is amended  
12 by striking “REMIC, or FASIT” and inserting “or  
13 REMIC”.

14 (2) Clause (ii) of section 382(l)(4)(B) is amend-  
15 ed by striking “a REMIC to which part IV of sub-  
16 chapter M applies, or a FASIT to which part V of  
17 subchapter M applies,” and inserting “or a REMIC  
18 to which part IV of subchapter M applies,”.

19 (3) Paragraph (1) of section 582(c) is amended  
20 by striking “, and any regular interest in a  
21 FASIT,”.

22 (4) Subparagraph (E) of section 856(c)(5) is  
23 amended by striking the last sentence.

24 (5)(A) Section 860G(a)(1) is amended by add-  
25 ing at the end the following new sentence: “An inter-

1 est shall not fail to qualify as a regular interest sole-  
2 ly because the specified principal amount of the reg-  
3 ular interest (or the amount of interest accrued on  
4 the regular interest) can be reduced as a result of  
5 the nonoccurrence of 1 or more contingent payments  
6 with respect to any reverse mortgage loan held by  
7 the REMIC if, on the startup day for the REMIC,  
8 the sponsor reasonably believes that all principal and  
9 interest due under the regular interest will be paid  
10 at or prior to the liquidation of the REMIC.”.

11 (B) The last sentence of section 860G(a)(3) is  
12 amended by inserting “, and any reverse mortgage  
13 loan (and each balance increase on such loan meet-  
14 ing the requirements of subparagraph (A)(iii)) shall  
15 be treated as an obligation secured by an interest in  
16 real property” before the period at the end.

17 (6) Paragraph (3) of section 860G(a) is amend-  
18 ed by adding “and” at the end of subparagraph (B),  
19 by striking “, and” at the end of subparagraph (C)  
20 and inserting a period, and by striking subparagraph  
21 (D).

22 (7) Section 860G(a)(3), as amended by para-  
23 graph (6), is amended by adding at the end the fol-  
24 lowing new sentence: “For purposes of subparagraph  
25 (A), if more than 50 percent of the obligations

1 transferred to, or purchased by, the REMIC are  
2 originated by the United States or any State (or any  
3 political subdivision, agency, or instrumentality of  
4 the United States or any State) and are principally  
5 secured by an interest in real property, then each  
6 obligation transferred to, or purchased by, the  
7 REMIC shall be treated as secured by an interest in  
8 real property.”.

9 (8)(A) Section 860G(a)(3)(A) is amended by  
10 striking “or” at the end of clause (i), by inserting  
11 “or” at the end of clause (ii), and by inserting after  
12 clause (ii) the following new clause:

13 “(iii) represents an increase in the  
14 principal amount under the original terms  
15 of an obligation described in clause (i) or  
16 (ii) if such increase—

17 “(I) is attributable to an advance  
18 made to the obligor pursuant to the  
19 original terms of the obligation,

20 “(II) occurs after the startup  
21 day, and

22 “(III) is purchased by the  
23 REMIC pursuant to a fixed price con-  
24 tract in effect on the startup day.”.



1           (B) Section 860G(a)(7)(B) is amended to read  
2 as follows:

3           “(B) QUALIFIED RESERVE FUND.—For  
4 purposes of subparagraph (A), the term ‘quali-  
5 fied reserve fund’ means any reasonably re-  
6 quired reserve to—

7                   “(i) provide for full payment of ex-  
8 penses of the REMIC or amounts due on  
9 regular interests in the event of defaults on  
10 qualified mortgages or lower than expected  
11 returns on cash flow investments, or

12                   “(ii) provide a source of funds for the  
13 purchase of obligations described in clause  
14 (ii) or (iii) of paragraph (3)(A).

15           The aggregate fair market value of the assets  
16 held in any such reserve shall not exceed 50  
17 percent of the aggregate fair market value of all  
18 of the assets of the REMIC on the startup day,  
19 and the amount of any such reserve shall be  
20 promptly and appropriately reduced to the ex-  
21 tent the amount held in such reserve is no  
22 longer reasonably required for purposes speci-  
23 fied in clause (i) or (ii) of this subparagraph.”.

1           (9) Subparagraph (C) of section 1202(e)(4) is  
2 amended by striking “REMIC, or FASIT” and in-  
3 sserting “or REMIC”.

4           (10) Clause (xi) of section 7701(a)(19)(C) is  
5 amended—

6                 (A) by striking “and any regular interest  
7 in a FASIT,” and

8                 (B) by striking “or FASIT” each place it  
9 appears.

10           (11) Subparagraph (A) of section 7701(i)(2) is  
11 amended by striking “or a FASIT”.

12           (12) The table of parts for subchapter M of  
13 chapter 1 is amended by striking the item relating  
14 to part V.

15           (c) EFFECTIVE DATE.—

16                 (1) IN GENERAL.—Except as provided in para-  
17 graph (2), the amendments made by this section  
18 shall take effect on January 1, 2005.

19                 (2) EXCEPTION FOR EXISTING FASITS.—Para-  
20 graph (1) shall not apply to any FASIT in existence  
21 on the date of the enactment of this Act to the ex-  
22 tent that regular interests issued by the FASIT be-  
23 fore such date continue to remain outstanding in ac-  
24 cordance with the original terms of issuance.

1 **SEC. 636. LIMITATION ON TRANSFER OF BUILT-IN LOSSES**  
2 **ON REMIC RESIDUALS.**

3 (a) IN GENERAL.—Section 362 (relating to basis to  
4 corporations) is amended by adding at the end the fol-  
5 lowing new subsection:

6 “(e) LIMITATION ON TRANSFER OF BUILT-IN  
7 LOSSES ON REMIC RESIDUALS IN SECTION 351 TRANS-  
8 ACTIONS.—If—

9 “(1) a residual interest (as defined in section  
10 860G(a)(2)) in a REMIC is transferred in any  
11 transaction which is described in subsection (a), and

12 “(2) the transferee’s adjusted basis in such re-  
13 sidual interest would (but for this paragraph) exceed  
14 its fair market value immediately after such trans-  
15 action,

16 then, notwithstanding subsection (a), the transferee’s ad-  
17 justed basis in such residual interest shall not exceed its  
18 fair market value (whether or not greater than zero) im-  
19 mediately after such transaction.”.

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall apply to transactions after the date of  
22 the enactment of this Act.

1 **SEC. 637. CLARIFICATION OF BANKING BUSINESS FOR PUR-**  
2 **POSES OF DETERMINING INVESTMENT OF**  
3 **EARNINGS IN UNITED STATES PROPERTY.**

4 (a) IN GENERAL.—Subparagraph (A) of section  
5 956(c)(2) is amended to read as follows:

6 “(A) obligations of the United States,  
7 money, or deposits with persons described in  
8 paragraph (4);”.

9 (b) ELIGIBLE PERSONS.—Section 956(c) (relating to  
10 exceptions to definition of United States property) is  
11 amended by adding at the end the following new para-  
12 graph:

13 “(4) FINANCIAL SERVICES PROVIDERS.—

14 “(A) IN GENERAL.—For purposes of para-  
15 graph (2)(A), a person is described in this para-  
16 graph if at least 80 percent of the person’s in-  
17 come is from the active conduct of a banking  
18 business which is derived from persons who are  
19 not related persons.

20 “(B) SPECIAL RULES.—For purposes of  
21 subparagraph (A) all related persons shall be  
22 treated as 1 person in applying the 80-percent  
23 test.

24 “(C) RELATED PERSON.—For purposes of  
25 this paragraph, a person is a related person to  
26 another person if—

1           “(i) the related person bears a rela-  
2           tionship to such person specified in section  
3           267(b) or 707(b)(1), or

4           “(ii) such persons are members of the  
5           same controlled group of corporations (as  
6           defined in section 1563(a), except that  
7           ‘more than 50 percent’ shall be substituted  
8           for ‘at least 80 percent’ each place it ap-  
9           pears therein).”.

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

13 **SEC. 638. ALTERNATIVE TAX FOR CERTAIN SMALL INSUR-**  
14 **ANCE COMPANIES.**

15       (a) IN GENERAL.—Clause (i) of section 831(b)(2)(A)  
16 is amended by striking “\$1,200,000” and inserting  
17 “\$1,890,000”.

18       (b) INFLATION ADJUSTMENT.—Paragraph (2) of sec-  
19 tion 831(b) is amended by adding at the end the following  
20 new subparagraph:

21           “(C) INFLATION ADJUSTMENT.—In the  
22           case of any taxable year beginning in a calendar  
23           year after 2004, the \$1,890,000 amount in sub-  
24           paragraph (A) shall be increased by an amount  
25           equal to—

1                   “(i) \$1,890,000, multiplied by  
2                   “(ii) the cost-of-living adjustment de-  
3                   termined under section 1(f)(3) for such  
4                   calendar year by substituting ‘calendar  
5                   year 2003’ for ‘calendar year 1992’ in sub-  
6                   paragraph (B) thereof.

7                   If the amount as adjusted under the preceding  
8                   sentence is not a multiple of \$1,000, such  
9                   amount shall be rounded to the next lowest  
10                  multiple of \$1,000.”.

11               (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable years beginning after  
13 December 31, 2003.

14 **SEC. 639. DENIAL OF DEDUCTION FOR INTEREST ON UN-**  
15 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**  
16 **CLOSED REPORTABLE TRANSACTIONS.**

17               (a) IN GENERAL.—Section 163 (relating to deduction  
18 for interest) is amended by redesignating subsection (m)  
19 as subsection (n) and by inserting after subsection (l) the  
20 following new subsection:

21               “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE  
22 TO NONDISCLOSED REPORTABLE TRANSACTIONS.—No  
23 deduction shall be allowed under this chapter for any in-  
24 terest paid or accrued under section 6601 on any under-  
25 payment of tax which is attributable to the portion of any

1 reportable transaction understatement (as defined in sec-  
2 tion 6662A(b)) with respect to which the requirement of  
3 section 6664(d)(2)(A) is not met.”.

4 (b) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to transactions in taxable years  
6 beginning after the date of the enactment of this Act.

7 **SEC. 640. CLARIFICATION OF RULES FOR PAYMENT OF ES-**  
8 **TIMATED TAX FOR CERTAIN DEEMED ASSET**  
9 **SALES.**

10 (a) IN GENERAL.—Paragraph (13) of section 338(h)  
11 (relating to tax on deemed sale not taken into account for  
12 estimated tax purposes) is amended by adding at the end  
13 the following: “The preceding sentence shall not apply  
14 with respect to a qualified stock purchase for which an  
15 election is made under paragraph (10).”.

16 (b) EFFECTIVE DATE.—The amendment made by  
17 subsection (a) shall apply to transactions occurring after  
18 the date of the enactment of this Act.

19 **SEC. 641. RECOGNITION OF GAIN FROM THE SALE OF A**  
20 **PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-**  
21 **KIND EXCHANGE WITHIN 5 YEARS OF SALE.**

22 (a) IN GENERAL.—Section 121(d) (relating to special  
23 rules for exclusion of gain from sale of principal residence)  
24 is amended by adding at the end the following new para-  
25 graph:

1           “(10) PROPERTY ACQUIRED IN LIKE-KIND EX-  
2           CHANGE.—If a taxpayer acquired property in an ex-  
3           change to which section 1031 applied, subsection (a)  
4           shall not apply to the sale or exchange of such prop-  
5           erty if it occurs during the 5-year period beginning  
6           with the date of the acquisition of such property.”.

7           (b) EFFECTIVE DATE.—The amendment made by  
8           this section shall apply to sales or exchanges after the date  
9           of the enactment of this Act.

10 **SEC. 642. PREVENTION OF MISMATCHING OF INTEREST**  
11                           **AND ORIGINAL ISSUE DISCOUNT DEDUC-**  
12                           **TIONS AND INCOME INCLUSIONS IN TRANS-**  
13                           **ACTIONS WITH RELATED FOREIGN PERSONS.**

14           (a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3)  
15           (relating to special rule for original issue discount on obli-  
16           gation held by related foreign person) is amended by re-  
17           designating subparagraph (B) as subparagraph (C) and  
18           by inserting after subparagraph (A) the following new sub-  
19           paragraph:

20                           “(B) SPECIAL RULE FOR CERTAIN FOR-  
21                           EIGN ENTITIES.—

22                                   “(i) IN GENERAL.—In the case of any  
23                                   debt instrument having original issue dis-  
24                                   count which is held by a related foreign  
25                                   person which is a foreign personal holding



1 company (as defined in section 552), a  
2 controlled foreign corporation (as defined  
3 in section 957), or a passive foreign invest-  
4 ment company (as defined in section  
5 1297), a deduction shall be allowable to  
6 the issuer with respect to such original  
7 issue discount for any taxable year before  
8 the taxable year in which paid only to the  
9 extent such original issue discount (re-  
10 duced by properly allowable deductions and  
11 qualified deficits under section  
12 952(e)(1)(B)) is includible during such  
13 prior taxable year in the gross income of a  
14 United States person who owns (within the  
15 meaning of section 958(a)) stock in such  
16 corporation.

17 “(ii) SECRETARIAL AUTHORITY.—The  
18 Secretary may by regulation exempt trans-  
19 actions from the application of clause (i),  
20 including any transaction which is entered  
21 into by a payor in the ordinary course of  
22 a trade or business in which the payor is  
23 predominantly engaged.”.

24 (b) INTEREST AND OTHER DEDUCTIBLE  
25 AMOUNTS.—Section 267(a)(3) is amended—

1 (1) by striking “The Secretary” and inserting:

2 “(A) IN GENERAL.—The Secretary”, and

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

5 “(B) SPECIAL RULE FOR CERTAIN FOR-  
6 EIGN ENTITIES.—

7 “(i) IN GENERAL.—Notwithstanding  
8 subparagraph (A), in the case of any item  
9 payable to a foreign personal holding com-  
10 pany (as defined in section 552), a con-  
11 trolled foreign corporation (as defined in  
12 section 957), or a passive foreign invest-  
13 ment company (as defined in section  
14 1297), a deduction shall be allowable to  
15 the payor with respect to such amount for  
16 any taxable year before the taxable year in  
17 which paid only to the extent that an  
18 amount attributable to such item (reduced  
19 by properly allowable deductions and quali-  
20 fied deficits under section 952(c)(1)(B)) is  
21 includible during such prior taxable year in  
22 the gross income of a United States person  
23 who owns (within the meaning of section  
24 958(a)) stock in such corporation.

1           “(ii) SECRETARIAL AUTHORITY.—The  
2           Secretary may by regulation exempt trans-  
3           actions from the application of clause (i),  
4           including any transaction which is entered  
5           into by a payor in the ordinary course of  
6           a trade or business in which the payor is  
7           predominantly engaged and in which the  
8           payment of the accrued amounts occurs  
9           within 8½ months after accrual or within  
10          such other period as the Secretary may  
11          prescribe.”.

12          (c) EFFECTIVE DATE.—The amendments made by  
13          this section shall apply to payments accrued on or after  
14          the date of the enactment of this Act.

15      **SEC. 643. EXCLUSION FROM GROSS INCOME FOR INTEREST**  
16                              **ON OVERPAYMENTS OF INCOME TAX BY INDI-**  
17                              **VIDUALS.**

18          (a) IN GENERAL.—Part III of subchapter B of chap-  
19          ter 1 (relating to items specifically excluded from gross  
20          income) is amended by inserting after section 139A the  
21          following new section:

1 **“SEC. 139B. EXCLUSION FROM GROSS INCOME FOR INTER-**  
2 **EST ON OVERPAYMENTS OF INCOME TAX BY**  
3 **INDIVIDUALS.**

4 “(a) IN GENERAL.—In the case of an individual,  
5 gross income shall not include interest paid under section  
6 6611 on any overpayment of tax imposed by this subtitle.

7 “(b) EXCEPTION.—Subsection (a) shall not apply in  
8 the case of a failure to claim items resulting in the over-  
9 payment on the original return if the Secretary determines  
10 that the principal purpose of such failure is to take advan-  
11 tage of subsection (a).

12 “(c) SPECIAL RULE FOR DETERMINING MODIFIED  
13 ADJUSTED GROSS INCOME.—For purposes of this title,  
14 interest not included in gross income under subsection (a)  
15 shall not be treated as interest which is exempt from tax  
16 for purposes of sections 32(i)(2)(B) and 6012(d) or any  
17 computation in which interest exempt from tax under this  
18 title is added to adjusted gross income.”.

19 (b) CLERICAL AMENDMENT.—The table of sections  
20 for part III of subchapter B of chapter 1 is amended by  
21 inserting after the item relating to section 139A the fol-  
22 lowing new item:

“Sec. 139B. Exclusion from gross income for interest on over-  
payments of income tax by individuals.”.

23 (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to interest received in calendar

1 years beginning after the date of the enactment of this  
2 Act.

3 **SEC. 644. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**  
4 **TEREST ON POTENTIAL UNDERPAYMENTS.**

5 (a) IN GENERAL.—Subchapter A of chapter 67 (re-  
6 lating to interest on underpayments) is amended by add-  
7 ing at the end the following new section:

8 **“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**  
9 **TEREST ON POTENTIAL UNDERPAYMENTS,**  
10 **ETC.**

11 “(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN  
12 AS PAYMENT OF TAX.—A taxpayer may make a cash de-  
13 posit with the Secretary which may be used by the Sec-  
14 retary to pay any tax imposed under subtitle A or B or  
15 chapter 41, 42, 43, or 44 which has not been assessed  
16 at the time of the deposit. Such a deposit shall be made  
17 in such manner as the Secretary shall prescribe.

18 “(b) NO INTEREST IMPOSED.—To the extent that  
19 such deposit is used by the Secretary to pay tax, for pur-  
20 poses of section 6601 (relating to interest on underpay-  
21 ments), the tax shall be treated as paid when the deposit  
22 is made.

23 “(c) RETURN OF DEPOSIT.—Except in a case where  
24 the Secretary determines that collection of tax is in jeop-  
25 ardy, the Secretary shall return to the taxpayer any

1 amount of the deposit (to the extent not used for a pay-  
2 ment of tax) which the taxpayer requests in writing.

3 “(d) PAYMENT OF INTEREST.—

4 “(1) IN GENERAL.—For purposes of section  
5 6611 (relating to interest on overpayments), a de-  
6 posit which is returned to a taxpayer shall be treated  
7 as a payment of tax for any period to the extent  
8 (and only to the extent) attributable to a disputable  
9 tax for such period. Under regulations prescribed by  
10 the Secretary, rules similar to the rules of section  
11 6611(b)(2) shall apply.

12 “(2) DISPUTABLE TAX.—

13 “(A) IN GENERAL.—For purposes of this  
14 section, the term ‘disputable tax’ means the  
15 amount of tax specified at the time of the de-  
16 posit as the taxpayer’s reasonable estimate of  
17 the maximum amount of any tax attributable to  
18 disputable items.

19 “(B) SAFE HARBOR BASED ON 30-DAY  
20 LETTER.—In the case of a taxpayer who has  
21 been issued a 30-day letter, the maximum  
22 amount of tax under subparagraph (A) shall  
23 not be less than the amount of the proposed de-  
24 ficiency specified in such letter.

1           “(3) OTHER DEFINITIONS.—For purposes of  
2 paragraph (2)—

3           “(A) DISPUTABLE ITEM.—The term ‘dis-  
4 putable item’ means any item of income, gain,  
5 loss, 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  
24 as used for the payment of tax in the order depos-  
25 ited.

1           “(2) RETURNS OF DEPOSITS.—Deposits shall  
2           be treated as returned to the taxpayer on a last-in,  
3           first-out basis.”.

4           (b) CLERICAL AMENDMENT.—The table of sections  
5           for subchapter A of chapter 67 is amended by adding at  
6           the end the following new item:

                  “Sec. 6603. Deposits made to suspend running of interest on po-  
                  tential 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  
12          UNDER REVENUE PROCEDURE 84–58.—In the case of  
13          an amount held by the Secretary of the Treasury or  
14          his delegate on the date of the enactment of this Act  
15          as a deposit in the nature of a cash bond deposit  
16          pursuant to Revenue Procedure 84–58, the date that  
17          the taxpayer identifies such amount as a deposit  
18          made pursuant to section 6603 of the Internal Rev-  
19          enue Code (as added by this Act) shall be treated as  
20          the date such amount is deposited for purposes of  
21          such section 6603.

22       **SEC. 645. PARTIAL PAYMENT OF TAX LIABILITY IN IN-**  
23                               **STALLMENT AGREEMENTS.**

24          (a) IN GENERAL.—



1           (1) Section 6159(a) (relating to authorization  
2 of agreements) is amended—

3           (A) by striking “satisfy liability for pay-  
4 ment of” and inserting “make payment on”,  
5 and

6           (B) by inserting “full or partial” after “fa-  
7 cilitate”.

8           (2) Section 6159(e) (relating to Secretary re-  
9 quired to enter into installment agreements in cer-  
10 tain cases) is amended in the matter preceding para-  
11 graph (1) by inserting “full” before “payment”.

12       (b) REQUIREMENT TO REVIEW PARTIAL PAYMENT  
13 AGREEMENTS EVERY TWO YEARS.—Section 6159 is  
14 amended by redesignating subsections (d) and (e) as sub-  
15 sections (e) and (f), respectively, and inserting after sub-  
16 section (c) the following new subsection:

17       “(d) SECRETARY REQUIRED TO REVIEW INSTALL-  
18 MENT AGREEMENTS FOR PARTIAL COLLECTION EVERY  
19 TWO YEARS.—In the case of an agreement entered into  
20 by the Secretary under subsection (a) for partial collection  
21 of a tax liability, the Secretary shall review the agreement  
22 at least once every 2 years.”.

23       (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to agreements entered into on or  
25 after the date of the enactment of this Act.

1 **SEC. 646. AFFIRMATION OF CONSOLIDATED RETURN REGU-**  
2 **LATION AUTHORITY.**

3 (a) IN GENERAL.—Section 1502 is amended by add-  
4 ing at the end the following new sentence: “In carrying  
5 out the preceding sentence, the Secretary may prescribe  
6 rules that are different from the provisions of chapter 1  
7 that would apply if such corporations filed separate re-  
8 turns.”.

9 (b) RESULT NOT OVERTURNED.—Notwithstanding  
10 the amendment made by subsection (a), the Internal Rev-  
11 enue Code of 1986 shall be construed by treating Treasury  
12 Regulation § 1.1502-20(e)(1)(iii) (as in effect on January  
13 1, 2001) as being inapplicable to the factual situation in  
14 *Rite Aid Corporation and Subsidiary Corporations v.*  
15 *United States*, 255 F.3d 1357 (Fed. Cir. 2001).

16 (c) EFFECTIVE DATE.—This section, and the amend-  
17 ment made by this section, shall apply to taxable years  
18 beginning before, on, or after the date of the enactment  
19 of this Act.

20 **Part III—Leasing**

21 **SEC. 647. REFORM OF TAX TREATMENT OF CERTAIN LEAS-**  
22 **ING ARRANGEMENTS.**

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  
26 for determining class life) is amended by inserting “(not-

1 withstanding any other subparagraph of this paragraph)”  
2 after “shall”.

3 (b) LIMITATION ON DEPRECIATION PERIOD FOR  
4 SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Para-  
5 graph (1) of section 167(f) is amended by adding at the  
6 end the following new subparagraph:

7 “(C) TAX-EXEMPT USE PROPERTY SUB-  
8 JECT TO LEASE.—In the case of computer soft-  
9 ware which would be tax-exempt use property  
10 as defined in subsection (h) of section 168 if  
11 such section applied to computer software, the  
12 useful life under subparagraph (A) shall not be  
13 less than 125 percent of the lease term (within  
14 the meaning of section 168(i)(3)).”.

15 (c) LEASE TERM TO INCLUDE RELATED SERVICE  
16 CONTRACTS.—Subparagraph (A) of section 168(i)(3) (re-  
17 lating to lease term) is amended by striking “and” at the  
18 end of clause (i), by redesignating clause (ii) as clause  
19 (iii), and by inserting after clause (i) the following new  
20 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 sub-  
6                   stantially similar property, and”.

7           (d) **EXPANSION OF SHORT-TERM LEASE EXEMPTION**  
8 **FOR QUALIFIED TECHNOLOGICAL EQUIPMENT.**—Sub-  
9 paragraph (A) of section 168(h)(3) is amended by adding  
10 at the end the following new sentence: “Notwithstanding  
11 subsection (i)(3)(A)(i), in determining a lease term for  
12 purposes of the preceding sentence, there shall not be  
13 taken into account any option of the lessee to renew at  
14 the fair market value rent determined at the time of re-  
15 newal; except that the aggregate period not taken into ac-  
16 count by reason of this sentence shall not exceed 24  
17 months.”.

18 **SEC. 648. LIMITATION ON DEDUCTIONS ALLOCABLE TO**  
19 **PROPERTY USED BY GOVERNMENTS OR**  
20 **OTHER TAX-EXEMPT ENTITIES.**

21           (a) **IN GENERAL.**—Subpart C of part II of sub-  
22 chapter E of chapter 1 (relating to taxable year for which  
23 deductions taken) is amended by adding at the end the  
24 following new section:

1 **“SEC. 470. LIMITATION ON DEDUCTIONS ALLOCABLE TO**  
2 **PROPERTY USED BY GOVERNMENTS OR**  
3 **OTHER TAX-EXEMPT ENTITIES.**

4 “(a) **LIMITATION ON LOSSES.**—Except as otherwise  
5 provided in this section, a tax-exempt use loss for any tax-  
6 able year shall not be allowed.

7 “(b) **DISALLOWED LOSS CARRIED TO NEXT YEAR.**—  
8 Any tax-exempt use loss with respect to any tax-exempt  
9 use property which is disallowed under subsection (a) for  
10 any taxable year shall be treated as a deduction with re-  
11 spect to such property in the next taxable year.

12 “(c) **DEFINITIONS.**—For purposes of this section—

13 “(1) **TAX-EXEMPT USE LOSS.**—The term ‘tax-  
14 exempt use loss’ means, with respect to any taxable  
15 year, the amount (if any) by which—

16 “(A) the sum of—

17 “(i) the aggregate deductions (other  
18 than interest) directly allocable to a tax-ex-  
19 empt use property, plus

20 “(ii) the aggregate deductions for in-  
21 terest properly allocable to such property,  
22 exceed

23 “(B) the aggregate income from such  
24 property.

25 “(2) **TAX-EXEMPT USE PROPERTY.**—The term  
26 ‘tax-exempt use property’ has the meaning given to

1 such term by section 168(h) (without regard to  
2 paragraphs (1)(C) and (3) thereof and determined  
3 as if property described in section 167(f)(1)(B) were  
4 tangible property). Such term shall not include prop-  
5 erty which would (but for this sentence) be tax-ex-  
6 empt use property solely by reason of section  
7 168(h)(6) if any credit is allowable under section 42  
8 or 47 with respect to such property.

9 “(d) EXCEPTION FOR CERTAIN LEASES.—This sec-  
10 tion shall not apply to any lease of property which meets  
11 the requirements of all of the following paragraphs:

12 “(1) AVAILABILITY OF FUNDS.—

13 “(A) IN GENERAL.—A lease of property  
14 meets the requirements of this paragraph if (at  
15 any time during the lease term) not more than  
16 an allowable amount of funds are—

17 “(i) subject to any arrangement re-  
18 ferred to in subparagraph (B), or

19 “(ii) set aside or expected to be set  
20 aside,

21 to or for the benefit of the lessor or any lender,  
22 or to or for the benefit of the lessee to satisfy  
23 the lessee’s obligations or options under the  
24 lease. For purposes of clause (ii), funds shall be  
25 treated as set aside or expected to be set aside

1           only if a reasonable person would conclude,  
2           based on the facts and circumstances, that such  
3           funds are set aside or expected to be set aside.

4           “(B) ARRANGEMENTS.—The arrangements  
5           referred to in this subparagraph include a de-  
6           feasance arrangement, a loan by the lessee to  
7           the lessor or any lender, a deposit arrangement,  
8           a letter of credit collateralized with cash or cash  
9           equivalents, a payment undertaking agreement,  
10          prepaid rent (within the meaning of the regula-  
11          tions under section 467), a sinking fund ar-  
12          rangement, a guaranteed investment contract,  
13          financial guaranty insurance, and any similar  
14          arrangement (whether or not such arrangement  
15          provides credit support).

16          “(C) ALLOWABLE AMOUNT.—

17                 “(i) IN GENERAL.—Except as other-  
18                 wise provided in this subparagraph, the  
19                 term ‘allowable amount’ means an amount  
20                 equal to 20 percent of the lessor’s adjusted  
21                 basis in the property at the time the lease  
22                 is entered into.

23                 “(ii) HIGHER AMOUNT PERMITTED IN  
24                 CERTAIN CASES.—To the extent provided  
25                 in regulations, a higher percentage shall be

1 permitted under clause (i) where necessary  
2 because of the credit-worthiness of the les-  
3 see. In no event may such regulations per-  
4 mit a percentage of more than 50 percent.

5 “(iii) OPTION TO PURCHASE OTHER  
6 THAN AT FAIR MARKET VALUE.—If under  
7 the lease the lessee has the option to pur-  
8 chase the property for a fixed price or for  
9 other than the fair market value of the  
10 property (determined at the time of exer-  
11 cise), the allowable amount at the time  
12 such option may be exercised may not ex-  
13 ceed 50 percent of the price at which such  
14 option may be exercised.

15 “(iv) NO ALLOWABLE AMOUNT FOR  
16 CERTAIN ARRANGEMENTS.—The allowable  
17 amount shall be zero with respect to any  
18 arrangement which involves—

19 “(I) a loan from the lessee to the  
20 lessor or a lender,

21 “(II) any deposit received, letter  
22 of credit issued, or payment under-  
23 taking agreement entered into by a  
24 lender otherwise involved in the trans-  
25 action, or



1                   “(III) in the case of a trans-  
2                   action which involves a lender, any  
3                   credit support made available to the  
4                   lessor in which any such lender does  
5                   not have a claim that is senior to the  
6                   lessor.

7                   For purposes of subclause (I), the term  
8                   ‘loan’ shall not include any amount treated  
9                   as a loan under section 467 with respect to  
10                  a section 467 rental agreement.

11                  “(2) LESSOR MUST MAKE SUBSTANTIAL EQUITY  
12                  INVESTMENT.—

13                  “(A) IN GENERAL.—A lease of property  
14                  meets the requirements of this paragraph if—

15                         “(i) the lessor—

16                                 “(I) has at the time the lease is  
17                                 entered into an unconditional at-risk  
18                                 equity investment (as determined by  
19                                 the Secretary) in the property of at  
20                                 least 20 percent of the lessor’s ad-  
21                                 justed basis in the property as of that  
22                                 time, and

23                                 “(II) maintains such investment  
24                                 throughout the term of the lease, and

1           “(ii) the fair market value of the  
2           property at the end of the lease term is  
3           reasonably expected to be equal to at least  
4           20 percent of such basis.

5           “(B) RISK OF LOSS.—For purposes of  
6           clause (ii), the fair market value at the end of  
7           the lease term shall be reduced to the extent  
8           that a person other than the lessor bears a risk  
9           of loss in the value of the property.

10           “(C) PARAGRAPH NOT TO APPLY TO  
11           SHORT-TERM LEASES.—This paragraph shall  
12           not apply to any lease with a lease term of 5  
13           years or less.

14           “(3) LESSEE MAY NOT BEAR MORE THAN MINI-  
15           MAL RISK OF LOSS.—

16           “(A) IN GENERAL.—A lease of property  
17           meets the requirements of this paragraph if  
18           there is no arrangement under which the lessee  
19           bears—

20           “(i) any portion of the loss that would  
21           occur if the fair market value of the leased  
22           property were 25 percent less than its rea-  
23           sonably expected fair market value at the  
24           time the lease is terminated, or

1           “(ii) more than 50 percent of the loss  
2           that would occur if the fair market value  
3           of the leased property at the time the lease  
4           is terminated were zero.

5           “(B) EXCEPTION.—The Secretary may by  
6           regulations provide that the requirements of  
7           this paragraph are not met where the lessee  
8           bears more than a minimal risk of loss.

9           “(C) PARAGRAPH NOT TO APPLY TO  
10          SHORT-TERM LEASES.—This paragraph shall  
11          not apply to any lease with a lease term of 5  
12          years or less.

13          “(e) SPECIAL RULES.—

14                 “(1) TREATMENT OF FORMER TAX-EXEMPT  
15          USE PROPERTY.—

16                 “(A) IN GENERAL.—In the case of any  
17          former tax-exempt use property—

18                         “(i) any deduction allowable under  
19                         subsection (b) with respect to such prop-  
20                         erty for any taxable year shall be allowed  
21                         only to the extent of any net income (with-  
22                         out regard to such deduction) from such  
23                         property for such taxable year, and

24                         “(ii) any portion of such unused de-  
25                         duction remaining after application of

1 clause (i) shall be treated as a deduction  
2 allowable under subsection (b) with respect  
3 to such property in the next taxable year.

4 “(B) FORMER TAX-EXEMPT USE PROP-  
5 ERTY.—For purposes of this subsection, the  
6 term ‘former tax-exempt use property’ means  
7 any property which—

8 “(i) is not tax-exempt use property for  
9 the taxable year, but

10 “(ii) was tax-exempt use property for  
11 any prior taxable year.

12 “(2) DISPOSITION OF ENTIRE INTEREST IN  
13 PROPERTY.—If during the taxable year a taxpayer  
14 disposes of the taxpayer’s entire interest in tax-ex-  
15 empt use property (or former tax-exempt use prop-  
16 erty), rules similar to the rules of section 469(g)  
17 shall apply for purposes of this section.

18 “(3) COORDINATION WITH SECTION 469.—This  
19 section shall be applied before the application of sec-  
20 tion 469.

21 “(4) COORDINATION WITH SECTIONS 1031 AND  
22 1033.—

23 “(A) IN GENERAL.—Sections 1031(a) and  
24 1033(a) shall not apply if—

1           “(i) the exchanged or converted prop-  
2           erty is tax-exempt use property subject to  
3           a lease which was entered into before  
4           March 13, 2004, and which would not have  
5           met the requirements of subsection (d) had  
6           such requirements been in effect when the  
7           lease was entered into, or

8           “(ii) the replacement property is tax-  
9           exempt use property subject to a lease  
10          which does not meet the requirements of  
11          subsection (d).

12          “(B) ADJUSTED BASIS.—In the case of  
13          property acquired by the lessor in a transaction  
14          to which section 1031 or 1033 applies, the ad-  
15          justed basis of such property for purposes of  
16          this section shall be equal to the lesser of—

17                 “(i) the fair market value of the prop-  
18                 erty as of the beginning of the lease term,  
19                 or

20                 “(ii) the amount which would be the  
21                 lessor’s adjusted basis if such sections did  
22                 not apply to such transaction.

23          “(f) OTHER DEFINITIONS.—For purposes of this sec-  
24          tion—



1 **SEC. 649. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in this section,  
3 the amendments made by this part shall apply to leases  
4 entered into after March 12, 2004.

5 (b) EXCEPTION.—

6 (1) IN GENERAL.—The amendments made by  
7 this part shall not apply to qualified transportation  
8 property.

9 (2) QUALIFIED TRANSPORTATION PROPERTY.—  
10 For purposes of paragraph (1), the term “qualified  
11 transportation property” means domestic property  
12 subject to a lease with respect to which a formal ap-  
13 plication—

14 (A) was submitted for approval to the Fed-  
15 eral Transit Administration (an agency of the  
16 Department of Transportation) after June 30,  
17 2003, and before March 13, 2004,

18 (B) is approved by the Federal Transit Ad-  
19 ministration before January 1, 2005, and

20 (C) includes a description of such property  
21 and the value of such property.

22 (3) EXCHANGES AND CONVERSION OF TAX-EX-  
23 EMPT USE PROPERTY.—Section 470(e)(4) of the In-  
24 ternal Revenue Code of 1986, as added by this sec-  
25 tion, shall apply to property exchanged or converted  
26 after the date of the enactment of this Act.

1 **Subtitle C—Reduction of Fuel Tax**  
2 **Evasion**

3 **SEC. 651. EXEMPTION FROM CERTAIN EXCISE TAXES FOR**  
4 **MOBILE MACHINERY.**

5 (a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND  
6 TRAILERS SOLD AT RETAIL.—

7 (1) IN GENERAL.—Section 4053 (relating to ex-  
8 emptions) is amended by adding at the end the fol-  
9 lowing new paragraph:

10 “(8) MOBILE MACHINERY.—Any vehicle which  
11 consists of a chassis—

12 “(A) to which there has been permanently  
13 mounted (by welding, bolting, riveting, or other  
14 means) machinery or equipment to perform a  
15 construction, manufacturing, processing, farm-  
16 ing, mining, drilling, timbering, or similar oper-  
17 ation if the operation of the machinery or  
18 equipment is unrelated to transportation on or  
19 off the public highways,

20 “(B) which has been specially designed to  
21 serve only as a mobile carriage and mount (and  
22 a power source, where applicable) for the par-  
23 ticular machinery or equipment involved, wheth-  
24 er or not such machinery or equipment is in op-  
25 eration, and



1           “(C) which, by reason of such special de-  
2           sign, could not, without substantial structural  
3           modification, be used as a component of a vehi-  
4           cle designed to perform a function of trans-  
5           porting any load other than that particular ma-  
6           chinery or equipment or similar machinery or  
7           equipment requiring such a specially designed  
8           chassis.”.

9           (2) EFFECTIVE DATE.—The amendment made  
10          by this subsection shall take effect on the day after  
11          the date of the enactment of this Act.

12          (b) EXEMPTION FROM TAX ON USE OF CERTAIN VE-  
13          HICLES.—

14           (1) IN GENERAL.—Section 4483 (relating to ex-  
15          emptions) is amended by redesignating subsection  
16          (g) as subsection (h) and by inserting after sub-  
17          section (f) the following new subsection:

18          “(g) EXEMPTION FOR MOBILE MACHINERY.—No tax  
19          shall be imposed by section 4481 on the use of any vehicle  
20          described in section 4053(8).”.

21           (2) EFFECTIVE DATE.—The amendments made  
22          by this subsection shall take effect on the day after  
23          the date of the enactment of this Act.

24          (c) EXEMPTION FROM TAX ON TIRES.—

1           (1) IN GENERAL.—Section 4072(b)(2) is  
2 amended by adding at the end the following flush  
3 sentence: “Such term shall not include tires of a  
4 type used exclusively on vehicles described in section  
5 4053(8).”.

6           (2) EFFECTIVE DATE.—The amendment made  
7 by this subsection shall take effect on the day after  
8 the date of the enactment of this Act.

9           (d) REFUND OF FUEL TAXES.—

10           (1) IN GENERAL.—Section 6421(e)(2) (defining  
11 off-highway business use) is amended by adding at  
12 the end the following new subparagraph:

13                   “(C) USES IN MOBILE MACHINERY.—

14                           “(i) IN GENERAL.—The term ‘off-  
15 highway business use’ shall include any use  
16 in a vehicle which meets the requirements  
17 described in clause (ii).

18                           “(ii) REQUIREMENTS FOR MOBILE  
19 MACHINERY.—The requirements described  
20 in this clause are—

21                                   “(I) the design-based test, and

22                                   “(II) the use-based test.

23                           “(iii) DESIGN-BASED TEST.—For pur-  
24 poses of clause (ii)(I), the design-based

1 test is met if the vehicle consists of a chas-  
2 sis—

3 “(I) to which there has been per-  
4 manently mounted (by welding, bolt-  
5 ing, riveting, or other means) machin-  
6 ery or equipment to perform a con-  
7 struction, manufacturing, processing,  
8 farming, mining, drilling, timbering,  
9 or similar operation if the operation of  
10 the machinery or equipment is unre-  
11 lated to transportation on or off the  
12 public highways,

13 “(II) which has been specially de-  
14 signed to serve only as a mobile car-  
15 riage and mount (and a power source,  
16 where applicable) for the particular  
17 machinery or equipment involved,  
18 whether or not such machinery or  
19 equipment is in operation, and

20 “(III) which, by reason of such  
21 special design, could not, without sub-  
22 stantial structural modification, be  
23 used as a component of a vehicle de-  
24 signed to perform a function of trans-  
25 porting any load other than that par-

1            ticular machinery or equipment or  
2            similar machinery or equipment re-  
3            quiring such a specially designed chas-  
4            sis.

5            “(iv) USE-BASED TEST.—For pur-  
6            poses of clause (ii)(II), the use-based test  
7            is met if the use of the vehicle on public  
8            highways was less than 7,500 miles during  
9            the taxpayer’s taxable year.”.

10            (2) NO TAX-FREE SALES.—Subsection (b) of  
11            section 4082, as amended by section 652, is amend-  
12            ed by inserting before the period at the end “and  
13            such term shall not include any use described in sec-  
14            tion 6421(e)(2)(C)”.

15            (3) ANNUAL REFUND OF TAX PAID.—Section  
16            6427(i)(2) (relating to exceptions) is amended by  
17            adding at the end the following new subparagraph:

18            “(C) NONAPPLICATION OF PARAGRAPH.—  
19            This paragraph shall not apply to any fuel used  
20            solely in any off-highway business use described  
21            in section 6421(e)(2)(C).”.

22            (4) EFFECTIVE DATE.—The amendments made  
23            by this subsection shall apply to taxable years begin-  
24            ning after the date of the enactment of this Act.

1 **SEC. 652. TAXATION OF AVIATION-GRADE KEROSENE.**

2 (a) RATE OF TAX.—

3 (1) IN GENERAL.—Subparagraph (A) of section  
4 4081(a)(2) is amended by striking “and” at the end  
5 of clause (ii), by striking the period at the end of  
6 clause (iii) and inserting “, and”, and by adding at  
7 the end the following new clause:

8 “(iv) in the case of aviation-grade ker-  
9 osene, 21.8 cents per gallon.”.

10 (2) COMMERCIAL AVIATION.—Paragraph (2) of  
11 section 4081(a) is amended by adding at the end the  
12 following new subparagraph:

13 “(C) TAXES IMPOSED ON FUEL USED IN  
14 COMMERCIAL AVIATION.—In the case of avia-  
15 tion-grade kerosene which is removed from any  
16 refinery or terminal directly into the fuel tank  
17 of an aircraft for use in commercial aviation,  
18 the rate of tax under subparagraph (A)(iv) shall  
19 be 4.3 cents per gallon.”.

20 (3) CERTAIN REFUELER TRUCKS, TANKERS,  
21 AND TANK WAGONS TREATED AS TERMINAL.—Sub-  
22 section (a) of section 4081 is amended by adding at  
23 the end the following new paragraph:

24 “(3) CERTAIN REFUELER TRUCKS, TANKERS,  
25 AND TANK WAGONS TREATED AS TERMINAL.—

1           “(A) IN GENERAL.—In the case of avia-  
2           tion-grade kerosene which is removed from any  
3           terminal directly into the fuel tank of an air-  
4           craft (determined without regard to any re-  
5           fueller truck, tanker, or tank wagon which meets  
6           the requirements of subparagraph (B)), a re-  
7           fueller truck, tanker, or tank wagon shall be  
8           treated as part of such terminal if—

9                   “(i) such truck, tanker, or wagon  
10                   meets the requirements of subparagraph  
11                   (B) with respect to an airport, and

12                   “(ii) except in the case of exigent cir-  
13                   cumstances identified by the Secretary in  
14                   regulations, no vehicle registered for high-  
15                   way use is loaded with aviation-grade ker-  
16                   osene at such terminal.

17           “(B) REQUIREMENTS.—A refueller truck,  
18           tanker, or tank wagon meets the requirements  
19           of this subparagraph with respect to an airport  
20           if such truck, tanker, or wagon—

21                   “(i) is loaded with aviation-grade ker-  
22                   osene at such terminal located within such  
23                   airport and delivers such kerosene only  
24                   into aircraft at such airport,

1           “(ii) has storage tanks, hose, and cou-  
2           pling equipment designed and used for the  
3           purposes of fueling aircraft,

4           “(iii) is not registered for highway  
5           use, and

6           “(iv) is operated by—

7                   “(I) the terminal operator of  
8                   such terminal, or

9                   “(II) a person that makes a daily  
10                  accounting to such terminal operator  
11                  of each delivery of fuel from such  
12                  truck, tanker, or wagon.

13           “(C) REPORTING.—The Secretary shall re-  
14           quire under section 4101(d) reporting by such  
15           terminal operator of—

16                   “(i) any information obtained under  
17                   subparagraph (B)(iv)(II), and

18                   “(ii) any similar information main-  
19                  tained by such terminal operator with re-  
20                  spect to deliveries of fuel made by trucks,  
21                  tankers, or wagons operated by such ter-  
22                  minal operator.”.

23           (4) LIABILITY FOR TAX ON AVIATION-GRADE  
24           KEROSENE USED IN COMMERCIAL AVIATION.—Sub-

1 section (a) of section 4081 is amended by adding at  
2 the end the following new paragraph:

3 “(4) LIABILITY FOR TAX ON AVIATION-GRADE  
4 KEROSENE USED IN COMMERCIAL AVIATION.—For  
5 purposes of paragraph (2)(C), the person who uses  
6 the fuel for commercial aviation shall pay the tax  
7 imposed under such paragraph. For purposes of the  
8 preceding sentence, fuel shall be treated as used  
9 when such fuel is removed into the fuel tank.”.

10 (5) NONTAXABLE USES.—

11 (A) IN GENERAL.—Section 4082 is amend-  
12 ed by redesignating subsections (e) and (f) as  
13 subsections (f) and (g), respectively, and by in-  
14 serting after subsection (d) the following new  
15 subsection:

16 “(e) AVIATION-GRADE KEROSENE.—In the case of  
17 aviation-grade kerosene which is exempt from the tax im-  
18 posed by section 4041(c) (other than by reason of a prior  
19 imposition of tax) and which is removed from any refinery  
20 or terminal directly into the fuel tank of an aircraft, the  
21 rate of tax under section 4081(a)(2)(A)(iv) shall be zero.”.

22 (B) CONFORMING AMENDMENTS.—

23 (i) Subsection (b) of section 4082 is  
24 amended by adding at the end the fol-  
25 lowing new flush sentence:



1 “The term ‘nontaxable use’ does not include the use of  
2 aviation-grade kerosene in an aircraft.”.

3 (ii) Section 4082(d) is amended by  
4 striking paragraph (1) and by redesignig-  
5 nating paragraphs (2) and (3) as para-  
6 graphs (1) and (2), respectively.

7 (6) NONAIRCRAFT USE OF AVIATION-GRADE  
8 KEROSENE.—

9 (A) IN GENERAL.—Subparagraph (B) of  
10 section 4041(a)(1) is amended by adding at the  
11 end the following new sentence: “This subpara-  
12 graph shall not apply to aviation-grade ker-  
13 osene.”.

14 (B) CONFORMING AMENDMENT.—The  
15 heading for paragraph (1) of section 4041(a) is  
16 amended by inserting “AND KEROSENE” after  
17 “DIESEL FUEL”.

18 (b) COMMERCIAL AVIATION.—Section 4083 is  
19 amended by redesignating subsections (b) and (c) as sub-  
20 sections (c) and (d), respectively, and by inserting after  
21 subsection (a) the following new subsection:

22 “(b) COMMERCIAL AVIATION.—For purposes of this  
23 subpart, the term ‘commercial aviation’ means any use of  
24 an aircraft in a business of transporting persons or prop-  
25 erty for compensation or hire by air, unless properly allo-

1 cable to any transportation exempt from the taxes imposed  
2 by sections 4261 and 4271 by reason of section 4281 or  
3 4282 or by reason of section 4261(h).”.

4 (c) REFUNDS.—

5 (1) IN GENERAL.—Paragraph (4) of section  
6 6427(l) is amended to read as follows:

7 “(4) REFUNDS FOR AVIATION-GRADE KER-  
8 OSENE.—

9 “(A) NO REFUND OF CERTAIN TAXES ON  
10 FUEL USED IN COMMERCIAL AVIATION.—In the  
11 case of aviation-grade kerosene used in com-  
12 mercial aviation (as defined in section 4083(b))  
13 (other than supplies for vessels or aircraft with-  
14 in the meaning of section 4221(d)(3)), para-  
15 graph (1) shall not apply to so much of the tax  
16 imposed by section 4081 as is attributable to—

17 “(i) the Leaking Underground Stor-  
18 age Tank Trust Fund financing rate im-  
19 posed by such section, and

20 “(ii) so much of the rate of tax speci-  
21 fied in section 4081(a)(2)(A)(iv) as does  
22 not exceed 4.3 cents per gallon.

23 “(B) PAYMENT TO ULTIMATE, REG-  
24 ISTERED VENDOR.—With respect to aviation-  
25 grade kerosene, if the ultimate purchaser of

1 such kerosene waives (at such time and in such  
2 form and manner as the Secretary shall pre-  
3 scribe) the right to payment under paragraph  
4 (1) and assigns such right to the ultimate ven-  
5 dor, then the Secretary shall pay the amount  
6 which would be paid under paragraph (1) to  
7 such ultimate vendor, but only if such ultimate  
8 vendor—

9 “(i) is registered under section 4101,

10 and

11 “(ii) meets the requirements of sub-  
12 paragraph (A), (B), or (D) of section  
13 6416(a)(1).”.

14 (2) TIME FOR FILING CLAIMS.—Subparagraph  
15 (A) of section 6427(i)(4) is amended—

16 (A) by striking “subsection (l)(5)” both  
17 places it appears and inserting “paragraph  
18 (4)(B) or (5) of subsection (l)”, and

19 (B) by striking “the preceding sentence”  
20 and inserting “subsection (l)(5)”.

21 (3) CONFORMING AMENDMENT.—Subparagraph  
22 (B) of section 6427(l)(2) is amended to read as fol-  
23 lows:

24 “(B) in the case of aviation-grade ker-  
25 osene—

1                   “(i) any use which is exempt from the  
2                   tax imposed by section 4041(c) other than  
3                   by reason of a prior imposition of tax, or  
4                   “(ii) any use in commercial aviation  
5                   (within the meaning of section 4083(b)).”.

6           (d) REPEAL OF PRIOR TAXATION OF AVIATION  
7 FUEL.—

8           (1) IN GENERAL.—Part III of subchapter A of  
9           chapter 32 is amended by striking subpart B and by  
10          redesignating subpart C as subpart B.

11          (2) CONFORMING AMENDMENTS.—

12               (A) Section 4041(c) is amended to read as  
13          follows:

14          “(c) AVIATION-GRADE KEROSENE.—

15               “(1) IN GENERAL.—There is hereby imposed a  
16          tax upon aviation-grade kerosene—

17                       “(A) sold by any person to an owner, les-  
18                       see, or other operator of an aircraft for use in  
19                       such aircraft, or

20                       “(B) used by any person in an aircraft un-  
21                       less there was a taxable sale of such fuel under  
22                       subparagraph (A).

23          “(2) EXEMPTION FOR PREVIOUSLY TAXED  
24          FUEL.—No tax shall be imposed by this subsection  
25          on the sale or use of any aviation-grade kerosene if

1 tax was imposed on such liquid under section 4081  
2 and the tax thereon was not credited or refunded.

3 “(3) RATE OF TAX.—The rate of tax imposed  
4 by this subsection shall be the rate of tax specified  
5 in section 4081(a)(2)(A)(iv) which is in effect at the  
6 time of such sale or use.”.

7 (B) Section 4041(d)(2) is amended by  
8 striking “section 4091” and inserting “section  
9 4081”.

10 (C) Section 4041 is amended by striking  
11 subsection (e).

12 (D) Section 4041 is amended by striking  
13 subsection (i).

14 (E) Sections 4101(a), 4103, 4221(a), and  
15 6206 are each amended by striking “, 4081, or  
16 4091” and inserting “or 4081”.

17 (F) Section 6416(b)(2) is amended by  
18 striking “4091 or”.

19 (G) Section 6416(b)(3) is amended by  
20 striking “or 4091” each place it appears.

21 (H) Section 6416(d) is amended by strik-  
22 ing “or to the tax imposed by section 4091 in  
23 the case of refunds described in section  
24 4091(d)”.

1           (I) Section 6427(j)(1) is amended by strik-  
2           ing “, 4081, and 4091” and inserting “and  
3           4081”.

4           (J)(i) Section 6427(l)(1) is amended to  
5           read as follows:

6           “(1) IN GENERAL.—Except as otherwise pro-  
7           vided in this subsection and in subsection (k), if any  
8           diesel fuel or kerosene on which tax has been im-  
9           posed by section 4041 or 4081 is used by any person  
10          in a nontaxable use, the Secretary shall pay (without  
11          interest) to the ultimate purchaser of such fuel an  
12          amount equal to the aggregate amount of tax im-  
13          posed on such fuel under section 4041 or 4081, as  
14          the case may be, reduced by any payment made to  
15          the ultimate vendor 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  
20          than aviation-grade kerosene)”.

21          (K) Subparagraph (B) of section  
22          6724(d)(1) is amended by striking clause (xv)  
23          and by redesignating the succeeding clauses ac-  
24          cordingly.

1           (L) Paragraph (2) of section 6724(d) is  
2 amended by striking subparagraph (W) and by  
3 redesignating the succeeding subparagraphs ac-  
4 cordingly.

5           (M) Paragraph (1) of section 9502(b) is  
6 amended by adding “and” at the end of sub-  
7 paragraph (B) and by striking subparagraphs  
8 (C) and (D) and inserting the following new  
9 subparagraph:

10           “(C) section 4081 with respect to aviation  
11 gasoline and aviation-grade kerosene, and”.

12           (N) The last sentence of section 9502(b) is  
13 amended to read as follows:

14 “There shall not be taken into account under paragraph  
15 (1) so much of the taxes imposed by section 4081 as are  
16 determined at the rate specified in section  
17 4081(a)(2)(B).”.

18           (O) Subsection (b) of section 9508 is  
19 amended by striking paragraph (3) and by re-  
20 designating paragraphs (4) and (5) as para-  
21 graphs (3) and (4), respectively.

22           (P) Section 9508(c)(2)(A) is amended by  
23 striking “sections 4081 and 4091” and insert-  
24 ing “section 4081”.





1 (B) the tax imposed before such date  
2 under section 4091 of the Internal Revenue  
3 Code of 1986, as in effect on the day before the  
4 date of the enactment of this Act.

5 (2) LIABILITY FOR TAX AND METHOD OF PAY-  
6 MENT.—

7 (A) LIABILITY FOR TAX.—The person  
8 holding the kerosene on October 1, 2004, to  
9 which the tax imposed by paragraph (1) applies  
10 shall be 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 (or the Secretary's dele-  
15 gate) shall prescribe, including the nonapplica-  
16 tion of such tax on de minimis amounts of ker-  
17 osene.

18 (3) TRANSFER OF FLOOR STOCK TAX REVE-  
19 NUES TO TRUST FUNDS.—For purposes of deter-  
20 mining the amount transferred to any trust fund,  
21 the tax imposed by this subsection shall be treated  
22 as imposed by section 4081 of the Internal Revenue  
23 Code of 1986—

24 (A) at the Leaking Underground Storage  
25 Tank Trust Fund financing rate under such

1 section to the extent of 0.1 cents per gallon,  
2 and

3 (B) at the rate under section  
4 4081(a)(2)(A)(iv) to the extent of the remain-  
5 der.

6 (4) HELD BY A PERSON.—For purposes of this  
7 section, kerosene shall be considered as held by a  
8 person if title thereto has passed to such person  
9 (whether or not delivery to the person has been  
10 made).

11 (5) OTHER LAWS APPLICABLE.—All provisions  
12 of law, including penalties, applicable with respect to  
13 the tax imposed by section 4081 of such Code shall,  
14 insofar as applicable and not inconsistent with the  
15 provisions of this subsection, apply with respect to  
16 the floor stock tax imposed by paragraph (1) to the  
17 same extent as if such tax were imposed by such  
18 section.

19 **SEC. 653. DYE INJECTION EQUIPMENT.**

20 (a) IN GENERAL.—Section 4082(a)(2) (relating to  
21 exemptions for diesel fuel and kerosene) is amended by  
22 inserting “by mechanical injection” after “indelibly dyed”.

23 (b) DYE INJECTOR SECURITY.—Not later than 180  
24 days after the date of the enactment of this Act, the Sec-  
25 retary of the Treasury shall issue regulations regarding

1 mechanical dye injection systems described in the amend-  
2 ment made by subsection (a), and such regulations shall  
3 include standards for making such systems tamper resist-  
4 ant.

5 (c) PENALTY FOR TAMPERING WITH OR FAILING TO  
6 MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL  
7 DYE INJECTION SYSTEMS.—

8 (1) IN GENERAL.—Part I of subchapter B of  
9 chapter 68 (relating to assessable penalties) is  
10 amended by adding after section 6715 the following  
11 new section:

12 **“SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN**  
13 **SECURITY REQUIREMENTS FOR MECHAN-**  
14 **ICAL DYE INJECTION SYSTEMS.**

15 “(a) IMPOSITION OF PENALTY—

16 “(1) TAMPERING.—If any person tampers with  
17 a mechanical dye injection system used to indelibly  
18 dye fuel for purposes of section 4082, such person  
19 shall pay a penalty in addition to the tax (if any).

20 “(2) FAILURE TO MAINTAIN SECURITY RE-  
21 QUIREMENTS.—If any operator of a mechanical dye  
22 injection system used to indelibly dye fuel for pur-  
23 poses of section 4082 fails to maintain the security  
24 standards for such system as established by the Sec-

1       retary, then such operator shall pay a penalty in ad-  
2       dition to the tax (if any).

3       “(b) AMOUNT OF PENALTY.—The amount of the  
4       penalty under subsection (a) shall be—

5               “(1) for each violation described in paragraph  
6       (1), the greater of—

7                       “(A) \$25,000, or

8                       “(B) \$10 for each gallon of fuel involved,  
9       and

10               “(2) for each—

11                       “(A) failure to maintain security standards  
12       described in paragraph (2), \$1,000, and

13                       “(B) failure to correct a violation described  
14       in paragraph (2), \$1,000 per day for each day  
15       after which such violation was discovered or  
16       such person should have reasonably known of  
17       such violation.

18       “(c) JOINT AND SEVERAL LIABILITY.—

19               “(1) IN GENERAL.—If a penalty is imposed  
20       under this section on any business entity, each offi-  
21       cer, employee, or agent of such entity or other con-  
22       tracting party who willfully participated in any act  
23       giving rise to such penalty shall be jointly and sever-  
24       ally liable 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  
4           corporation of such entity shall be jointly and sever-  
5           ally liable with such entity for the penalty imposed  
6           under this section.”.

7           (2) CLERICAL AMENDMENT.—The table of sec-  
8           tions for part I of subchapter B of chapter 68 is  
9           amended by adding after the item related to section  
10          6715 the following new item:

                  “Sec. 6715A. Tampering with or failing to maintain security re-  
                  quirements for mechanical dye injection systems.”.

11          (d) EFFECTIVE DATE.—The amendments made by  
12          subsections (a) and (c) shall take effect on the 180th day  
13          after the date on which the Secretary issues the regula-  
14          tions described in subsection (b).

15          **SEC. 654. AUTHORITY TO INSPECT ON-SITE RECORDS.**

16          (a) IN GENERAL.—Section 4083(d)(1)(A) (relating  
17          to administrative authority), as previously amended by  
18          this Act, is amended by striking “and” at the end of clause  
19          (i) and by inserting after clause (ii) the following new  
20          clause:

21                         “(iii) inspecting any books and  
22                         records and any shipping papers pertaining  
23                         to such fuel, and”.

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

4 **SEC. 655. REGISTRATION OF PIPELINE OR VESSEL OPERA-**  
5 **TORS REQUIRED FOR EXEMPTION OF BULK**  
6 **TRANSFERS TO REGISTERED TERMINALS OR**  
7 **REFINERIES.**

8 (a) IN GENERAL.—Section 4081(a)(1)(B) (relating  
9 to exemption for bulk transfers to registered terminals or  
10 refineries) is amended—

11 (1) by inserting “by pipeline or vessel” after  
12 “transferred in bulk”, and

13 (2) by inserting “, the operator of such pipeline  
14 or vessel,” after “the taxable fuel”.

15 (b) EFFECTIVE DATE.—The amendments made by  
16 this section shall take effect on October 1, 2004.

17 (c) PUBLICATION OF REGISTERED PERSONS.—Be-  
18 ginning on July 1, 2004, the Secretary of the Treasury  
19 (or the Secretary’s delegate) shall periodically publish a  
20 current list of persons registered under section 4101 of  
21 the Internal Revenue Code of 1986 who are required to  
22 register under such section.

23 **SEC. 656. DISPLAY OF REGISTRATION.**

24 (a) IN GENERAL.—Subsection (a) of section 4101  
25 (relating to registration) is amended—

1 (1) by striking “Every” and inserting the fol-  
2 lowing:

3 “(1) IN GENERAL.—Every”, and

4 (2) by adding at the end the following new  
5 paragraph:

6 “(2) DISPLAY OF REGISTRATION.—Every oper-  
7 ator of a vessel required by the Secretary to register  
8 under this section shall display proof of registration  
9 through an electronic identification device prescribed  
10 by the Secretary on each vessel used by such oper-  
11 ator to transport any taxable fuel.”.

12 (b) CIVIL PENALTY FOR FAILURE TO DISPLAY REG-  
13 ISTRATION.—

14 (1) IN GENERAL.—Part I of subchapter B of  
15 chapter 68 (relating to assessable penalties) is  
16 amended by inserting after section 6716 the fol-  
17 lowing new section:

18 **“SEC. 6717. FAILURE TO DISPLAY TAX REGISTRATION ON**  
19 **VESSELS.**

20 “(a) FAILURE TO DISPLAY REGISTRATION.—Every  
21 operator of a vessel who fails to display proof of registra-  
22 tion pursuant to section 4101(a)(2) shall pay a penalty  
23 of \$500 for each such failure. With respect to any vessel,  
24 only one penalty shall be imposed by this section during  
25 any calendar month.

1       “(b) MULTIPLE VIOLATIONS.—In determining the  
2 penalty under subsection (a) on any person, subsection (a)  
3 shall be applied by increasing the amount in subsection  
4 (a) by the product of such amount and the aggregate num-  
5 ber of penalties (if any) imposed with respect to prior  
6 months by this section on such person (or a related person  
7 or any predecessor of such person or related person).

8       “(c) REASONABLE CAUSE EXCEPTION.—No penalty  
9 shall be imposed under this section with respect to any  
10 failure if it is shown that such failure is due to reasonable  
11 cause.”.

12           (2) CLERICAL AMENDMENT.—The table of sec-  
13 tions for part I of subchapter B of chapter 68 is  
14 amended by inserting after the item relating to sec-  
15 tion 6716 the following new item:

“Sec. 6717. Failure to display tax registration on vessels.”.

16       (c) EFFECTIVE DATES.—

17           (1) SUBSECTION (a).—The amendments made  
18 by subsection (a) shall take effect on October 1,  
19 2004.

20           (2) SUBSECTION (b).—The amendments made  
21 by subsection (b) shall apply to penalties imposed  
22 after September 30, 2004.



1 **SEC. 657. PENALTIES FOR FAILURE TO REGISTER AND**  
2 **FAILURE TO REPORT.**

3 (a) INCREASED PENALTY.—Subsection (a) of section  
4 7272 (relating to penalty for failure to register) is amend-  
5 ed by inserting “(\$10,000 in the case of a failure to reg-  
6 ister under section 4101)” after “\$50”.

7 (b) INCREASED CRIMINAL PENALTY.—Section 7232  
8 (relating to failure to register under section 4101, false  
9 representations of registration status, etc.) is amended by  
10 striking “\$5,000” and inserting “\$10,000”.

11 (c) ASSESSABLE PENALTY FOR FAILURE TO REG-  
12 ISTER.—

13 (1) IN GENERAL.—Part I of subchapter B of  
14 chapter 68 (relating to assessable penalties) is  
15 amended by inserting after section 6717 the fol-  
16 lowing new section:

17 **“SEC. 6718. FAILURE TO REGISTER.**

18 “(a) FAILURE TO REGISTER.—Every person who is  
19 required to register under section 4101 and fails to do  
20 so shall pay a penalty in addition to the tax (if any).

21 “(b) AMOUNT OF PENALTY.—The amount of the  
22 penalty under subsection (a) shall be—

23 “(1) \$10,000 for each initial failure to register,  
24 and

25 “(2) \$1,000 for each day thereafter such person  
26 fails to register.

1       “(c) REASONABLE CAUSE EXCEPTION.—No penalty  
2 shall be imposed under this section with respect to any  
3 failure if it is shown that such failure is due to reasonable  
4 cause.”.

5           (2) CLERICAL AMENDMENT.—The table of sec-  
6 tions for part I of subchapter B of chapter 68 is  
7 amended by inserting after the item relating to sec-  
8 tion 6717 the following new item:

          “Sec. 6718. Failure to register.”.

9           (d) ASSESSABLE PENALTY FOR FAILURE TO RE-  
10 PORT.—

11           (1) IN GENERAL.—Part II of subchapter B of  
12 chapter 68 (relating to assessable penalties) is  
13 amended by adding at the end the following new sec-  
14 tion:

15 **“SEC. 6725. FAILURE TO REPORT INFORMATION UNDER**  
16 **SECTION 4101.**

17           “(a) IN GENERAL.—In the case of each failure de-  
18 scribed in subsection (b) by any person with respect to  
19 a vessel or facility, such person shall pay a penalty of  
20 \$10,000 in addition to the tax (if any).

21           “(b) FAILURES SUBJECT TO PENALTY.—For pur-  
22 poses of subsection (a), the failures described in this sub-  
23 section are—

1           “(1) any failure to make a report under section  
2           4101(d) on or before the date prescribed therefor,  
3           and

4           “(2) any failure to include all of the informa-  
5           tion required to be shown on such report or the in-  
6           clusion of incorrect information.

7           “(c) REASONABLE CAUSE EXCEPTION.—No penalty  
8           shall be imposed under this section with respect to any  
9           failure if it is shown that such failure is due to reasonable  
10          cause.”.

11           (2) CLERICAL AMENDMENT.—The table of sec-  
12          tions for part II of subchapter B of chapter 68 is  
13          amended by adding at the end the following new  
14          item:

                                  “Sec. 6725. Failure to report information under section 4101.”.

15          (e) EFFECTIVE DATE.—The amendments made by  
16          this section shall apply to penalties imposed after Sep-  
17          tember 30, 2004.

18          **SEC. 658. COLLECTION FROM CUSTOMS BOND WHERE IM-**  
19                                   **PORTER NOT REGISTERED.**

20          (a) TAX AT POINT OF ENTRY WHERE IMPORTER  
21          NOT REGISTERED.—Subpart B of part III of subchapter  
22          A of chapter 32, as redesignated by section 652(d), is  
23          amended by adding after section 4103 the following new  
24          section:

1 **“SEC. 4104. COLLECTION FROM CUSTOMS BOND WHERE IM-**  
2 **PORTER NOT REGISTERED.**

3 “(a) IN GENERAL.—The importer of record shall be  
4 jointly and severally liable for the tax imposed by section  
5 4081(a)(1)(A)(iii) if, under regulations prescribed by the  
6 Secretary, any other person that is not a person who is  
7 registered under section 4101 is liable for such tax.

8 “(b) COLLECTION FROM CUSTOMS BOND.—If any  
9 tax for which any importer of record is liable under sub-  
10 section (a), or for which any importer of record that is  
11 not a person registered under section 4101 is otherwise  
12 liable, is not paid on or before the last date prescribed  
13 for payment, the Secretary may collect such tax from the  
14 Customs bond posted with respect to the importation of  
15 the taxable fuel to which the tax relates. For purposes of  
16 determining the jurisdiction of any court of the United  
17 States or any agency of the United States, any action by  
18 the Secretary described in the preceding sentence shall be  
19 treated as an action to collect the tax from a bond de-  
20 scribed in section 4101(b)(1) and not as an action to col-  
21 lect from a bond relating to the importation of merchan-  
22 dise.”.

23 (b) CONFORMING AMENDMENT.—The table of sec-  
24 tions for subpart B of part III of subchapter A of chapter  
25 32, as redesignated by section 652(d), is amended by add-

1 ing after the item related to section 4103 the following  
2 new item:

“Sec. 4104. Collection from Customs bond where importer not  
registered.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply with respect to fuel entered after  
5 September 30, 2004.

6 **SEC. 659. MODIFICATIONS OF TAX ON USE OF CERTAIN VE-**  
7 **HICLES.**

8 (a) PRORATION OF TAX WHERE VEHICLE SOLD.—

9 (1) IN GENERAL.—Subparagraph (A) of section  
10 4481(c)(2) (relating to where vehicle destroyed or  
11 stolen) is amended by striking “destroyed or stolen”  
12 both places it appears and inserting “sold, de-  
13 stroyed, or stolen”.

14 (2) CONFORMING AMENDMENT.—The heading  
15 for section 4481(c)(2) is amended by striking “DE-  
16 STROYED OR STOLEN” and inserting “SOLD, DE-  
17 STROYED, OR STOLEN”.

18 (b) REPEAL OF INSTALLMENT PAYMENT.—

19 (1) Section 6156 (relating to installment pay-  
20 ment of tax on use of highway motor vehicles) is re-  
21 pealed.

22 (2) The table of sections for subchapter A of  
23 chapter 62 is amended by striking the item relating  
24 to section 6156.

1 (c) ELECTRONIC FILING.—Section 4481 is amended  
2 by redesignating subsection (e) as subsection (f) and by  
3 inserting after subsection (d) the following new subsection:

4 “(e) ELECTRONIC FILING.—Any taxpayer who files  
5 a return under this section with respect to 25 or more  
6 vehicles for any taxable period shall file such return elec-  
7 tronically.”.

8 (d) REPEAL OF REDUCTION IN TAX FOR CERTAIN  
9 TRUCKS.—Section 4483 is amended by striking subsection  
10 (f).

11 (e) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable periods beginning after  
13 the date of the enactment of this Act.

14 **SEC. 660. MODIFICATION OF ULTIMATE VENDOR REFUND**  
15 **CLAIMS WITH RESPECT TO FARMING.**

16 (a) IN GENERAL.—

17 (1) REFUNDS.—Section 6427(l) is amended by  
18 adding at the end the following new paragraph:

19 “(6) REGISTERED VENDORS PERMITTED TO AD-  
20 MINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL  
21 FUEL AND KEROSENE SOLD TO FARMERS.—

22 “(A) IN GENERAL.—In the case of diesel  
23 fuel or kerosene used on a farm for farming  
24 purposes (within the meaning of section  
25 6420(c)), paragraph (1) shall not apply to the

1 aggregate amount of such diesel fuel or ker-  
2 osene if such amount does not exceed 250 gal-  
3 lons (as determined under subsection  
4 (i)(5)(A)(iii)).

5 “(B) PAYMENT TO ULTIMATE VENDOR.—  
6 The amount which would (but for subparagraph  
7 (A)) have been paid under paragraph (1) with  
8 respect to any fuel shall be paid to the ultimate  
9 vendor of such fuel, if such vendor—

10 “(i) is registered under section 4101,  
11 and

12 “(ii) meets the requirements of sub-  
13 paragraph (A), (B), or (D) of section  
14 6416(a)(1).”.

15 (2) FILING OF CLAIMS.—Section 6427(i) is  
16 amended by inserting at the end the following new  
17 paragraph:

18 “(5) SPECIAL RULE FOR VENDOR REFUNDS  
19 WITH RESPECT TO FARMERS.—

20 “(A) IN GENERAL.—A claim may be filed  
21 under subsection (1)(6) by any person with re-  
22 spect to fuel sold by such person for any pe-  
23 riod—

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 250  
7           gallons for each farmer for which there is  
8           a 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  
16          in 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  
2 this section shall apply to fuels sold for nontaxable use  
3 after the date of the enactment of this Act.

4 **SEC. 661. DEDICATION OF REVENUES FROM CERTAIN PEN-**  
5 **ALTIES TO THE HIGHWAY TRUST FUND.**

6 (a) IN GENERAL.—Subsection (b) of section 9503  
7 (relating to transfer to Highway Trust Fund of amounts  
8 equivalent to certain taxes) is amended by redesignating  
9 paragraph (5) as paragraph (6) and inserting after para-  
10 graph (4) the following new paragraph:

11 “(5) CERTAIN PENALTIES.—There are hereby  
12 appropriated to the Highway Trust Fund amounts  
13 equivalent to the penalties paid under sections 6715,  
14 6715A, 6717, 6718, 6725, 7232, and 7272 (but only  
15 with regard to penalties under such section related  
16 to failure to register under section 4101).”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) The heading of subsection (b) of section  
19 9503 is amended by inserting “AND PENALTIES”  
20 after “TAXES”.

21 (2) The heading of paragraph (1) of section  
22 9503(b) is amended by striking “IN GENERAL” and  
23 inserting “CERTAIN TAXES”.

1           (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to penalties assessed after October  
3 1, 2004.

4 **SEC. 662. TAXABLE FUEL REFUNDS FOR CERTAIN ULTI-**  
5 **MATE 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 AD-  
10 MINISTER CREDITS AND REFUNDS OF GASOLINE  
11 TAX.—

12                           “(A) IN GENERAL.—For purposes of this  
13 subsection, if an ultimate vendor purchases any  
14 gasoline on which tax imposed by section 4081  
15 has been paid and sells such gasoline to an ulti-  
16 mate purchaser described in subparagraph (C)  
17 or (D) of subsection (b)(2) (and such gasoline  
18 is for a use described in such subparagraph),  
19 such ultimate vendor shall be treated as the  
20 person (and the only person) who paid such tax,  
21 but only if such ultimate vendor is registered  
22 under section 4101. For purposes of this sub-  
23 paragraph, if the sale of gasoline is made by  
24 means of a credit card, the person extending

1 the credit to the ultimate purchaser shall be  
2 deemed to be the ultimate vendor.

3 “(B) TIMING OF CLAIMS.—The procedure  
4 and timing of any claim under subparagraph  
5 (A) shall be the same as for claims under sec-  
6 tion 6427(i)(4), except that the rules of section  
7 6427(i)(3)(B) regarding electronic claims shall  
8 not apply unless the ultimate vendor has cer-  
9 tified to the Secretary for the most recent quar-  
10 ter of the taxable year that all ultimate pur-  
11 chasers of the vendor covered by such claim are  
12 certified and entitled to a refund under sub-  
13 paragraph (C) or (D) of subsection (b)(2).”.

14 (b) CREDIT CARD PURCHASES OF DIESEL FUEL OR  
15 KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Sec-  
16 tion 6427(l)(5)(C) (relating to nontaxable uses of diesel  
17 fuel, kerosene, and aviation fuel) is amended by adding  
18 at the end the following new flush sentence: “For purposes  
19 of this subparagraph, if the sale of diesel fuel or kerosene  
20 is made by means of a credit card, the person extending  
21 the credit to the ultimate purchaser shall be deemed to  
22 be the ultimate vendor.”.

23 (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall take effect on October 1, 2004.

1 **SEC. 663. TWO-PARTY EXCHANGES.**

2 (a) IN GENERAL.—Subpart B of part III of sub-  
3 chapter A of chapter 32, as amended by this Act, is  
4 amended by adding after section 4104 the following new  
5 section:

6 **“SEC. 4105. TWO-PARTY EXCHANGES.**

7 “(a) IN GENERAL.—In a two-party exchange, the de-  
8 livering person shall not be liable for the tax imposed  
9 under section 4081(a)(1)(A)(ii).

10 “(b) TWO-PARTY EXCHANGE.—The term ‘two-party  
11 exchange’ means a transaction, other than a sale, in which  
12 taxable fuel is transferred from a delivering person reg-  
13 istered under section 4101 as a taxable fuel registrant fuel  
14 to a receiving person who is so registered where all of the  
15 following occur:

16 “(1) The transaction includes a transfer from  
17 the delivering person, who holds the inventory posi-  
18 tion for taxable fuel in the terminal as reflected in  
19 the records of the terminal operator.

20 “(2) The exchange transaction occurs before or  
21 contemporaneous with completion of removal across  
22 the rack from the terminal by the receiving person.

23 “(3) The terminal operator in its books and  
24 records treats the receiving person as the person  
25 that removes the taxable fuel across the terminal

1 rack for purposes of reporting the transaction to the  
2 Secretary.

3 “(4) The transaction is the subject of a written  
4 contract.”.

5 (b) CONFORMING AMENDMENT.—The table of sec-  
6 tions for subpart B of part III of subchapter A of chapter  
7 32, as amended by this Act, is amended by adding after  
8 the item relating to section 4104 the following new item:

“Sec. 4105. Two-party exchanges.”.

9 (c) EFFECTIVE DATE.—The amendment made by  
10 this section shall take effect on the date of the enactment  
11 of this Act.

12 **SEC. 664. SIMPLIFICATION OF TAX ON TIRES.**

13 (a) IN GENERAL.—Subsection (a) of section 4071 is  
14 amended to read as follows:

15 “(a) IMPOSITION AND RATE OF TAX.—There is here-  
16 by imposed on taxable tires sold by the manufacturer, pro-  
17 ducer, or importer thereof a tax at the rate of 9.4 cents  
18 (4.7 cents in the case of a biasply tire) for each 10 pounds  
19 so much of the maximum rated load capacity thereof as  
20 exceeds 3,500 pounds.”

21 (b) TAXABLE TIRE.—Section 4072 is amended by re-  
22 designating subsections (a) and (b) as subsections (b) and  
23 (c), respectively, and by inserting before subsection (b) (as  
24 so redesignated) the following new subsection:

1       “(a) TAXABLE TIRE.—For purposes of this chapter,  
2 the term ‘taxable tire’ means any tire of the type used  
3 on highway vehicles if wholly or in part made of rubber  
4 and if marked pursuant to Federal regulations for high-  
5 way use.”

6       (c) EXEMPTION FOR TIRES SOLD TO DEPARTMENT  
7 OF DEFENSE.—Section 4073 is amended to read as fol-  
8 lows:

9       **“SEC. 4073. EXEMPTIONS.**

10       “The tax imposed by section 4071 shall not apply to  
11 tires sold for the exclusive use of the Department of De-  
12 fense or the Coast Guard.”

13       (d) CONFORMING AMENDMENTS.—

14             (1) Section 4071 is amended by striking sub-  
15 section (c) and by moving subsection (e) after sub-  
16 section (b) and redesignating subsection (e) as sub-  
17 section (c).

18             (2) The item relating to section 4073 in the  
19 table of sections for part II of subchapter A of chap-  
20 ter 32 is amended to read as follows:

“Sec. 4073. Exemptions.”

21       (e) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to sales in calendar years begin-  
23 ning more than 30 days after the date of the enactment  
24 of this Act.

1     **Subtitle D—Nonqualified Deferred**  
2                     **Compensation Plans**

3     **SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COM-**  
4                     **PENSATION PLANS.**

5             (a) IN GENERAL.—Subpart A of part I of subchapter  
6 D of chapter 1 is amended by adding at the end the fol-  
7 lowing new section:

8     **“SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED**  
9                     **COMPENSATION UNDER NONQUALIFIED DE-**  
10                    **FERRED COMPENSATION PLANS.**

11            “(a) RULES RELATING TO CONSTRUCTIVE RE-  
12 CEIPT.—

13                    “(1) IN GENERAL.—

14                            “(A) GROSS INCOME INCLUSION.—In the  
15 case of a nonqualified deferred compensation  
16 plan, all compensation deferred under the plan  
17 for all taxable years (to the extent not subject  
18 to a substantial risk of forfeiture and not pre-  
19 viously included in gross income) shall be in-  
20 cludible in gross income for the taxable year  
21 unless at all times during the taxable year the  
22 plan meets the requirements of paragraphs (2),  
23 (3), and (4) and is operated in accordance with  
24 such requirements.

1           “(B) INTEREST ON TAX LIABILITY PAY-  
2 ABLE WITH RESPECT TO PREVIOUSLY DE-  
3 FERRED COMPENSATION.—

4           “(i) IN GENERAL.—If compensation is  
5 required to be included in gross income  
6 under subparagraph (A) for a taxable year,  
7 the tax imposed by this chapter for such  
8 taxable year shall be increased by the  
9 amount of interest determined under  
10 clause (ii).

11           “(ii) INTEREST.—For purposes of  
12 clause (i), the interest determined under  
13 this clause for any taxable year is the  
14 amount of interest at the underpayment  
15 rate plus 1 percentage point on the under-  
16 payments that would have occurred had  
17 the deferred compensation been includible  
18 in gross income for the taxable year in  
19 which first deferred or, if later, the first  
20 taxable year in which such deferred com-  
21 pensation is not subject to a substantial  
22 risk of forfeiture.

23           “(2) DISTRIBUTIONS.—

24           “(A) IN GENERAL.—The requirements of  
25 this paragraph are met if the plan provides that



1 compensation deferred under the plan may not  
2 be distributed earlier than—

3 “(i) separation from service as deter-  
4 mined by the Secretary (except as provided  
5 in subparagraph (B)(i)),

6 “(ii) the date the participant becomes  
7 disabled (within the meaning of subpara-  
8 graph (C)),

9 “(iii) death,

10 “(iv) a specified time (or pursuant to  
11 a fixed schedule) specified under the plan  
12 at the date of the deferral of such com-  
13 pensation,

14 “(v) to the extent provided by the  
15 Secretary, a change in the ownership or ef-  
16 fective control of the corporation, or in the  
17 ownership of a substantial portion of the  
18 assets of the corporation, or

19 “(vi) the occurrence of an unforesee-  
20 able emergency.

21 “(B) SPECIAL RULES.—

22 “(i) SPECIFIED EMPLOYEES.—In the  
23 case of specified employees, the require-  
24 ment of subparagraph (A)(i) is met only if  
25 distributions may not be made earlier than

1           6 months after the date of separation from  
2           service. For purposes of the preceding sen-  
3           tence, a specified employee is a key em-  
4           ployee (as defined in section 416(i)) of a  
5           corporation the stock in which is publicly  
6           traded on an established securities market  
7           or otherwise.

8           “(ii)       UNFORESEEABLE       EMER-  
9           GENCY.—For purposes of subparagraph  
10          (A)(vi)—

11                   “(I) IN GENERAL.—The term  
12                   ‘unforeseeable emergency’ means a se-  
13                   vere financial hardship to the partici-  
14                   pant resulting from a sudden and un-  
15                   expected illness or accident of the par-  
16                   ticipant, the participant’s spouse, or a  
17                   dependent (as defined in section  
18                   152(a)) of the participant, loss of the  
19                   participant’s property due to casualty,  
20                   or other similar extraordinary and un-  
21                   foreseeable circumstances arising as a  
22                   result of events beyond the control of  
23                   the participant.

24                   “(II) LIMITATION ON DISTRIBU-  
25                   TIONS.—The requirement of subpara-

1 graph (A)(vi) is met only if, as deter-  
2 mined under regulations of the Sec-  
3 retary, the amounts distributed with  
4 respect to an emergency do not exceed  
5 the amounts necessary to satisfy such  
6 emergency plus amounts necessary to  
7 pay taxes reasonably anticipated as a  
8 result of the distribution, after taking  
9 into account the extent to which such  
10 hardship is or may be relieved  
11 through reimbursement or compensa-  
12 tion by insurance or otherwise or by  
13 liquidation of the participant's assets  
14 (to the extent the liquidation of such  
15 assets would not itself cause severe fi-  
16 nancial hardship).

17 “(C) DISABLED.—For purposes of sub-  
18 paragraph (A)(ii), a participant shall be consid-  
19 ered disabled if the participant—

20 “(i) is unable to engage in any sub-  
21 stantial gainful activity by reason of any  
22 medically determinable physical or mental  
23 impairment which can be expected to result  
24 in death or can be expected to last for a

1 continuous period of not less than 12  
2 months, or

3 “(ii) is, by reason of any medically de-  
4 terminable physical or mental impairment  
5 which can be expected to result in death or  
6 can be expected to last for a continuous  
7 period of not less than 12 months, receiv-  
8 ing income replacement benefits for a pe-  
9 riod of not less than 3 months under an  
10 accident and health plan covering employ-  
11 ees of the participant’s employer.

12 “(3) ACCELERATION OF BENEFITS.—The re-  
13 quirements of this paragraph are met if the plan  
14 does not permit the acceleration of the time or  
15 schedule of any payment under the plan, except as  
16 provided in regulations by the Secretary.

17 “(4) ELECTIONS.—

18 “(A) IN GENERAL.—The requirements of  
19 this paragraph are met if the requirements of  
20 subparagraphs (B) and (C) are met.

21 “(B) INITIAL DEFERRAL DECISION.—The  
22 requirements of this subparagraph are met if  
23 the plan provides that compensation for services  
24 performed during a taxable year may be de-  
25 ferred at the participant’s election only if the

1 election to defer such compensation is made not  
2 later than the close of the preceding taxable  
3 year or at such other time as provided in regu-  
4 lations. In the case of the first year in which a  
5 participant becomes eligible to participate in the  
6 plan, such election may be made with respect to  
7 services to be performed subsequent to the elec-  
8 tion within 30 days after the date the partici-  
9 pant becomes eligible to participate in such  
10 plan.

11 “(C) CHANGES IN TIME AND FORM OF DIS-  
12 TRIBUTION.—The requirements of this subpara-  
13 graph are met if, in the case of a plan which  
14 permits under a subsequent election a delay in  
15 a payment or a change in the form of pay-  
16 ment—

17 “(i) the plan requires that such elec-  
18 tion may not take effect until at least 12  
19 months after the date on which the elec-  
20 tion is made,

21 “(ii) in the case an election related to  
22 a payment not described in clause (ii), (iii),  
23 or (vi) of paragraph (2)(A), the plan re-  
24 quires that the first payment with respect  
25 to which such election is made be deferred

1 for a period of not less than 5 years from  
2 the date such payment would otherwise  
3 have been made, and

4 “(iii) the plan requires that any elec-  
5 tion related to a payment described in  
6 paragraph (2)(A)(iv) may not be made less  
7 than 12 months prior to the date of the  
8 first scheduled payment under such para-  
9 graph.

10 “(b) RULES RELATING TO FUNDING.—

11 “(1) OFFSHORE PROPERTY IN A TRUST.—In  
12 the case of assets set aside (directly or indirectly) in  
13 a trust (or other arrangement determined by the  
14 Secretary) for purposes of paying deferred com-  
15 pensation under a nonqualified deferred compensa-  
16 tion plan, for purposes of section 83 such assets  
17 shall be treated as property transferred in connec-  
18 tion with the performance of services whether or not  
19 such assets are available to satisfy claims of general  
20 creditors—

21 “(A) at the time set aside if such assets  
22 are located outside of the United States, or

23 “(B) at the time transferred if such assets  
24 are subsequently transferred outside of the  
25 United States.

1           “(2) EMPLOYER’S FINANCIAL HEALTH.—In the  
2 case of compensation deferred under a nonqualified  
3 deferred compensation plan, there is a transfer of  
4 property within the meaning of section 83 with re-  
5 spect to such compensation as of the earlier of—

6           “(A) the date on which the plan first pro-  
7 vides that assets will become restricted to the  
8 provision of benefits under the plan in connec-  
9 tion with a change in the employer’s financial  
10 health, or

11           “(B) the date on which assets are so re-  
12 stricted.

13           “(3) INCOME INCLUSION FOR OFFSHORE  
14 TRUSTS AND EMPLOYER’S FINANCIAL HEALTH.—For  
15 each taxable year that assets treated as transferred  
16 under this subsection remain set aside in a trust or  
17 other arrangement subject to paragraph (1) or (2),  
18 any increase in value in, or earnings with respect to,  
19 such assets shall be treated as an additional transfer  
20 of property under this subsection (to the extent not  
21 previously included in income).

22           “(4) INTEREST ON TAX LIABILITY PAYABLE  
23 WITH RESPECT TO TRANSFERRED PROPERTY.—

24           “(A) IN GENERAL.—If amounts are re-  
25 quired to be included in gross income by reason

1 of paragraph (1) or (2) for a taxable year, the  
2 tax imposed by this chapter for such taxable  
3 year shall be increased by the amount of inter-  
4 est determined under subparagraph (B).

5 “(B) INTEREST.—The interest determined  
6 under this subparagraph for any taxable year is  
7 the amount of interest at the underpayment  
8 rate plus 1 percentage point on the underpay-  
9 ments that would have occurred had the  
10 amounts so required to be included in gross in-  
11 come by paragraph (1) or (2) been includible in  
12 gross income for the taxable year in which first  
13 deferred or, if later, the first taxable year in  
14 which such deferred compensation is not subject  
15 to a substantial risk of forfeiture.

16 “(c) NO INFERENCE ON EARLIER INCOME INCLU-  
17 SION OR REQUIREMENT OF LATER INCLUSION.—Nothing  
18 in this section shall be construed to prevent the inclusion  
19 of amounts in gross income under any other provision of  
20 this chapter or any other rule of law earlier than the time  
21 provided in this section. Any amount included in gross in-  
22 come under this section shall not be required to be in-  
23 cluded in gross income under any other provision of this  
24 chapter or any other rule of law later than the time pro-  
25 vided in this section.



1 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—

2 For purposes of this section—

3 “(1) NONQUALIFIED DEFERRED COMPENSA-  
4 TION PLAN.—The term ‘nonqualified deferred com-  
5 pensation plan’ means any plan that provides for the  
6 deferral 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)  
15 of 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.—

20 The term ‘plan’ includes any agreement or arrange-  
21 ment, including an agreement or arrangement that  
22 includes 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

1 to such compensation are conditioned upon the fu-  
2 ture performance of substantial services by any indi-  
3 vidual.

4 “(5) TREATMENT OF EARNINGS.—References to  
5 deferred compensation shall be treated as including  
6 references to income (whether actual or notional) at-  
7 tributable to such compensation or such income.

8 “(e) REGULATIONS.—The Secretary shall prescribe  
9 such regulations as may be necessary or appropriate to  
10 carry out the purposes of this section, including regula-  
11 tions—

12 “(1) providing for the determination of  
13 amounts of deferral in the case of a nonqualified de-  
14 ferred compensation plan which is a defined benefit  
15 plan,

16 “(2) relating to changes in the ownership and  
17 control of a corporation or assets of a corporation  
18 for purposes of subsection (a)(2)(A)(v),

19 “(3) exempting arrangements from the applica-  
20 tion of subsection (b) if such arrangements will not  
21 result in an improper deferral of United States tax  
22 and will not result in assets being effectively beyond  
23 the reach of creditors,

24 “(4) defining financial health for purposes of  
25 subsection (b)(2), and

1           “(5) disregarding a substantial risk of for-  
2           feiture in cases where necessary to carry out the  
3           purposes of this section.”.

4           (b) W-2 FORMS.—

5           (1) IN GENERAL.—Subsection (a) of section  
6           6051 (relating to receipts for employees) is amended  
7           by striking “and” at the end of paragraph (11), by  
8           striking the period at the end of paragraph (12) and  
9           inserting “, and”, and by inserting after paragraph  
10          (12) the following new paragraph:

11          “(13) the total amount of deferrals under a  
12          nonqualified deferred compensation plan (within the  
13          meaning of section 409A(d)).”.

14          (2) THRESHOLD.—Subsection (a) of section  
15          6051 is amended by adding at the end the following:  
16          “‘In the case of the amounts required to be shown  
17          by paragraph (13), the Secretary (by regulation)  
18          may establish a minimum amount of deferrals below  
19          which paragraph (13) does not apply and may pro-  
20          vide that paragraph (13) does not apply with respect  
21          to amounts of deferrals which are not reasonably as-  
22          certainable.”.

23          (c) CONFORMING AND CLERICAL AMENDMENTS.—

24          (1) Section 414(b) is amended by inserting  
25          “409A,” after “408(p),”.

1           (2) Section 414(c) is amended by inserting  
2           “409A,” after “408(p),”.

3           (3) The table of sections for such subpart A of  
4           part I of subchapter D of chapter 1 is amended by  
5           adding at the end the following new item:

“Sec. 409A. Inclusion in gross income of deferred compensation  
under nonqualified deferred compensation plans.”.

6           (d) EFFECTIVE DATE.—

7           (1) IN GENERAL.—The amendments made by  
8           this section shall apply to amounts deferred after  
9           June 3, 2004.

10          (2) CERTAIN AMOUNTS DEFERRED IN 2004  
11          UNDER CERTAIN IRREVOCABLE ELECTIONS AND  
12          BINDING ARRANGEMENTS.—The amendments made  
13          by this section shall not apply to amounts deferred  
14          after June 3, 2004, and before January 1, 2005,  
15          pursuant to an irrevocable election or binding ar-  
16          rangement made before June 4, 2004.

17          (3) EARNINGS ATTRIBUTABLE TO AMOUNT PRE-  
18          VIOUSLY DEFERRED.—The amendments made by  
19          this section shall apply to earnings on deferred com-  
20          pensation only to the extent that such amendments  
21          apply to such compensation.

22          (e) GUIDANCE RELATING TO CHANGE OF OWNER-  
23          SHIP OR CONTROL.—Not later than 90 days after the date  
24          of the enactment of this Act, the Secretary of the Treasury

1 shall issue guidance on what constitutes a change in own-  
2 ership or effective control for purposes of section 409A  
3 of the Internal Revenue Code of 1986, as added by this  
4 section.

5 (f) GUIDANCE RELATING TO TERMINATION OF CER-  
6 TAIN EXISTING ARRANGEMENTS.—Not later than 90 days  
7 after the date of the enactment of this Act, the Secretary  
8 of the Treasury shall issue guidance providing a limited  
9 period during which an individual participating in a non-  
10 qualified deferred compensation plan adopted before June  
11 4, 2004, may, without violating the requirements of para-  
12 graphs (2), (3), and (4) of section 409A(a)(2) of the Inter-  
13 nal Revenue Code of 1986 (as added by this section), ter-  
14 minate participation or cancel an outstanding deferral  
15 election with regard to amounts earned after June 3,  
16 2004, if such amounts are includible in income as earned.

## 17 **Subtitle E—Other Revenue**

### 18 **Provisions**

#### 19 **SEC. 681. QUALIFIED TAX COLLECTION CONTRACTS.**

20 (a) CONTRACT REQUIREMENTS.—

21 (1) IN GENERAL.—Subchapter A of chapter 64  
22 (relating to collection) is amended by adding at the  
23 end the following new section:

1 **“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.**

2 “(a) IN GENERAL.—Nothing in any provision of law  
3 shall be construed to prevent the Secretary from entering  
4 into a qualified tax collection contract.

5 “(b) QUALIFIED TAX COLLECTION CONTRACT.—For  
6 purposes of this section, the term ‘qualified tax collection  
7 contract’ means any contract which—

8 “(1) is for the services of any person (other  
9 than an officer or employee of the Treasury Depart-  
10 ment)—

11 “(A) to locate and contact any taxpayer  
12 specified by the Secretary,

13 “(B) to request full payment from such  
14 taxpayer of an amount of Federal tax specified  
15 by the Secretary and, if such request cannot be  
16 met by the taxpayer, to offer the taxpayer an  
17 installment agreement providing for full pay-  
18 ment of such amount during a period not to ex-  
19 ceed 5 years, and

20 “(C) to obtain financial information speci-  
21 fied by the Secretary with respect to such tax-  
22 payer,

23 “(2) prohibits each person providing such serv-  
24 ices under such contract from committing any act or  
25 omission which employees of the Internal Revenue

1 Service are prohibited from committing in the per-  
2 formance of similar services,

3 “(3) prohibits subcontractors from—

4 “(A) having contacts with taxpayers,

5 “(B) providing quality assurance services,

6 and

7 “(C) composing debt collection notices, and

8 “(4) permits subcontractors to perform other  
9 services only with the approval of the Secretary.

10 “(c) FEES.—The Secretary may retain and use an  
11 amount not in excess of 25 percent of the amount collected  
12 under any qualified tax collection contract for the costs  
13 of services performed under such contract. The Secretary  
14 shall keep adequate records regarding amounts so retained  
15 and used. The amount credited as paid by any taxpayer  
16 shall be determined without regard to this subsection.

17 “(d) NO FEDERAL LIABILITY.—The United States  
18 shall not be liable for any act or omission of any person  
19 performing services under a qualified tax collection con-  
20 tract.

21 “(e) APPLICATION OF FAIR DEBT COLLECTION  
22 PRACTICES ACT.—The provisions of the Fair Debt Collec-  
23 tion Practices Act (15 U.S.C. 1692 et seq.) shall apply  
24 to any qualified tax collection contract, except to the ex-

1 tent superseded by section 6304, section 7602(c), or by  
 2 any other provision of this title.

3 “(f) CROSS REFERENCES.—

“**(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.**

“**(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(a)(4).**”.

4 (2) CONFORMING AMENDMENTS.—

5 (A) Section 7809(a) is amended by insert-  
 6 ing “6306,” before “7651”.

7 (B) The table of sections for subchapter A  
 8 of chapter 64 is amended by adding at the end  
 9 the following new item:

“Sec. 6306. Qualified Tax Collection Contracts.”.

10 (b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED  
 11 COLLECTION ACTIONS BY PERSONS PERFORMING SERV-  
 12 ICES UNDER QUALIFIED TAX COLLECTION CON-  
 13 TRACTS.—

14 (1) In general.—Subchapter B of chapter 76  
 15 (relating to proceedings by taxpayers and third par-  
 16 ties) is amended by inserting after section 7433 the  
 17 following new section:



1 **“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHOR-**  
2 **IZED COLLECTION ACTIONS BY PERSONS**  
3 **PERFORMING SERVICES UNDER QUALIFIED**  
4 **TAX COLLECTION CONTRACTS.**

5 “(a) IN GENERAL.—Subject to the modifications pro-  
6 vided by subsection (b), section 7433 shall apply to the  
7 acts and omissions of any person performing services  
8 under a qualified tax collection contract (as defined in sec-  
9 tion 6306(b)) to the same extent and in the same manner  
10 as if such person were an employee of the Internal Rev-  
11 enue Service.

12 “(b) MODIFICATIONS.—For purposes of subsection  
13 (a)—

14 “(1) Any civil action brought under section  
15 7433 by reason of this section shall be brought  
16 against the person who entered into the qualified tax  
17 collection contract with the Secretary and shall not  
18 be brought against the United States.

19 “(2) Such person and not the United States  
20 shall be liable for any damages and costs determined  
21 in such civil action.

22 “(3) Such civil action shall not be an exclusive  
23 remedy with respect to such person.

24 “(4) Subsections (c), (d)(1), and (e) of section  
25 7433 shall not apply.”.

1           (2) CLERICAL AMENDMENT.—The table of sec-  
2           tions for subchapter B of chapter 76 is amended by  
3           inserting after the item relating to section 7433 the  
4           following new item:

                  “Sec. 7433A. Civil damages for certain unauthorized collection ac-  
                  tions by persons performing services under qualified  
                  tax collection contracts.”.

5           (c) APPLICATION OF TAXPAYER ASSISTANCE OR-  
6           DERS TO PERSONS PERFORMING SERVICES UNDER A  
7           QUALIFIED TAX COLLECTION CONTRACT.—Section 7811  
8           (relating to taxpayer assistance orders) is amended by  
9           adding at the end the following new subsection:

10          “(g) APPLICATION TO PERSONS PERFORMING SERV-  
11          ICES UNDER A QUALIFIED TAX COLLECTION CON-  
12          TRACT.—Any order issued or action taken by the National  
13          Taxpayer Advocate pursuant to this section shall apply to  
14          persons performing services under a qualified tax collec-  
15          tion contract (as defined in section 6306(b)) to the same  
16          extent and in the same manner as such order or action  
17          applies to the Secretary.”.

18          (d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT  
19          MISCONDUCT TO PERFORM UNDER CONTRACT.—Section  
20          1203 of the Internal Revenue Service Restructuring Act  
21          of 1998 (relating to termination of employment for mis-  
22          conduct) is amended by adding at the end the following  
23          new subsection:

1           “(e) INDIVIDUALS PERFORMING SERVICES UNDER A  
2 QUALIFIED TAX COLLECTION CONTRACT.—An individual  
3 shall cease to be permitted to perform any services under  
4 any qualified tax collection contract (as defined in section  
5 6306(b) of the Internal Revenue Code of 1986) if there  
6 is a final determination by the Secretary of the Treasury  
7 under such contract that such individual committed any  
8 act or omission described under subsection (b) in connec-  
9 tion with the performance of such services.”.

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

13 **SEC. 682. TREATMENT OF CHARITABLE CONTRIBUTIONS OF**  
14 **PATENTS AND SIMILAR PROPERTY.**

15           (a) IN GENERAL.—Subparagraph (B) of section  
16 170(e)(1) is amended by striking “or” at the end of clause  
17 (i), by adding “or” at the end of clause (ii), and by insert-  
18 ing after clause (ii) the following new clause:

19                           “(iii) of any patent, copyright (other  
20 than a copyright described in section  
21 1221(a)(3) or 1231(b)(1)(C)), trademark,  
22 trade name, trade secret, know-how, soft-  
23 ware (other than software described in sec-  
24 tion 197(e)(3)(A)(i)), or similar property,

1                   or applications or registrations of such  
2                   property.”.

3           (b) CERTAIN DONEE INCOME FROM INTELLECTUAL  
4 PROPERTY TREATED AS AN ADDITIONAL CHARITABLE  
5 CONTRIBUTION.—Section 170 is amended by redesignig-  
6 nating subsection (m) as subsection (n) and by inserting  
7 after subsection (l) the following new subsection:

8           “(m) CERTAIN DONEE INCOME FROM INTELLEC-  
9 TUAL PROPERTY TREATED AS AN ADDITIONAL CHARI-  
10 TABLE CONTRIBUTION.—

11                   “(1) TREATMENT AS ADDITIONAL CONTRIBU-  
12 TION.—In the case of a taxpayer who makes a quali-  
13 fied intellectual property contribution, the deduction  
14 allowed under subsection (a) for each taxable year of  
15 the taxpayer ending on or after the date of such con-  
16 tribution shall be increased (subject to the limita-  
17 tions under subsection (b)) by the applicable per-  
18 centage of qualified donee income with respect to  
19 such contribution which is properly allocable to such  
20 year under this subsection.

21                   “(2) REDUCTION IN ADDITIONAL DEDUCTIONS  
22 TO EXTENT OF INITIAL DEDUCTION.—With respect  
23 to any qualified intellectual property contribution,  
24 the deduction allowed under subsection (a) shall be  
25 increased under paragraph (1) only to the extent

1 that the aggregate amount of such increases with re-  
2 spect to such contribution exceed the amount al-  
3 lowed as a deduction under subsection (a) with re-  
4 spect to such contribution determined without re-  
5 gard to this subsection.

6 “(3) QUALIFIED DONEE INCOME.—For pur-  
7 poses of this subsection, the term ‘qualified donee  
8 income’ means any net income received by or ac-  
9 crued to the donee which is properly allocable to the  
10 qualified intellectual property.

11 “(4) ALLOCATION OF QUALIFIED DONEE IN-  
12 COME TO TAXABLE YEARS OF DONOR.—For pur-  
13 poses of this subsection, qualified donee income shall  
14 be treated as properly allocable to a taxable year of  
15 the donor if such income is received by or accrued  
16 to the donee for the taxable year of the donee which  
17 ends within or with such taxable year of the donor.

18 “(5) 10-YEAR LIMITATION.—Income shall not  
19 be treated as properly allocable to qualified intellec-  
20 tual property for purposes of this subsection if such  
21 income is received by or accrued to the donee after  
22 the 10-year period beginning on the date of the con-  
23 tribution of such property.

24 “(6) BENEFIT LIMITED TO LIFE OF INTELLEC-  
25 TUAL PROPERTY.—Income shall not be treated as

1 properly allocable to qualified intellectual property  
 2 for purposes of this subsection if such income is re-  
 3 ceived by or accrued to the donee after the expira-  
 4 tion of the legal life of such property.

5 “(7) APPLICABLE PERCENTAGE.—For purposes  
 6 of this subsection, the term ‘applicable percentage’  
 7 means the percentage determined under the fol-  
 8 lowing table which corresponds to a taxable year of  
 9 the donor ending on or after the date of the quali-  
 10 fied intellectual property contribution:

<b>“Taxable Year of Donor Ending on or After Date of Contribution:</b>	<b>Applicable Percentage:</b>
1st .....	100
2nd .....	100
3rd .....	90
4th .....	80
5th .....	70
6th .....	60
7th .....	50
8th .....	40
9th .....	30
10th .....	20
11th .....	10
12th .....	10.

11 “(8) QUALIFIED INTELLECTUAL PROPERTY  
 12 CONTRIBUTION.—For purposes of this subsection,  
 13 the term ‘qualified intellectual property contribution’  
 14 means any charitable contribution of qualified intel-  
 15 lectual property—

16 “(A) the amount of which taken into ac-  
 17 count under this section is reduced by reason of  
 18 subsection (e)(1), and

1           “(B) with respect to which the donor in-  
2           forms the donee at the time of such contribu-  
3           tion that the donor intends to treat such con-  
4           tribution as a qualified intellectual property  
5           contribution for purposes of this subsection and  
6           section 6050L.

7           “(9) QUALIFIED INTELLECTUAL PROPERTY.—  
8           For purposes of this subsection, the term ‘qualified  
9           intellectual property’ means property described in  
10          subsection (e)(1)(B)(iii) (other than property con-  
11          tributed to or for the use of an organization de-  
12          scribed in subsection (e)(1)(B)(ii)).

13          “(10) OTHER SPECIAL RULES.—

14                 “(A) APPLICATION OF LIMITATIONS ON  
15                 CHARITABLE CONTRIBUTIONS.—Any increase  
16                 under this subsection of the deduction provided  
17                 under subsection (a) shall be treated for pur-  
18                 poses of subsection (b) as a deduction which is  
19                 attributable to a charitable contribution to the  
20                 donee to which such increase relates.

21                 “(B) NET INCOME DETERMINED BY  
22                 DONEE.—The net income taken into account  
23                 under paragraph (3) shall not exceed the  
24                 amount of such income reported under section  
25                 6050L(b)(1).

1           “(C) DEDUCTION LIMITED TO 12 TAXABLE  
2 YEARS.—Except as may be provided under sub-  
3 paragraph (D)(i), this subsection shall not  
4 apply with respect to any qualified intellectual  
5 property contribution for any taxable year of  
6 the donor after the 12th taxable year of the  
7 donor which ends on or after the date of such  
8 contribution.

9           “(D) REGULATIONS.—The Secretary may  
10 issue regulations or other guidance to carry out  
11 the purposes of this subsection, including regu-  
12 lations or guidance—

13                 “(i) modifying the application of this  
14 subsection in the case of a donor or donee  
15 with a short taxable year, and

16                 “(ii) providing for the determination  
17 of an amount to be treated as net income  
18 of the donee which is properly allocable to  
19 qualified intellectual property in the case  
20 of a donee who uses such property to fur-  
21 ther a purpose or function constituting the  
22 basis of the donee’s exemption under sec-  
23 tion 501 (or, in the case of a governmental  
24 unit, any purpose described in section  
25 170(c)) and does not possess a right to re-



1           ceive any payment from a third party with  
2           respect to such property.”.

3       (c) REPORTING REQUIREMENTS.—

4           (1) IN GENERAL.—Section 6050L (relating to  
5       returns relating to certain dispositions of donated  
6       property) is amended to read as follows:

7       **“SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED**  
8           **PROPERTY.**

9       “(a) DISPOSITIONS OF DONATED PROPERTY.—

10           “(1) IN GENERAL.—If the donee of any chari-  
11       table deduction property sells, exchanges, or other-  
12       wise disposes of such property within 2 years after  
13       its receipt, the donee shall make a return (in accord-  
14       ance with forms and regulations prescribed by the  
15       Secretary) showing—

16           “(A) the name, address, and TIN of the  
17       donor,

18           “(B) a description of the property,

19           “(C) the date of the contribution,

20           “(D) the amount received on the dispo-  
21       sition, and

22           “(E) the date of such disposition.

23       “(2) DEFINITIONS.—For purposes of this sub-  
24       section—

1           “(A) CHARITABLE DEDUCTION PROP-  
2           ERTY.—The term ‘charitable deduction prop-  
3           erty’ means any property (other than publicly  
4           traded securities) contributed in a contribution  
5           for which a deduction was claimed under sec-  
6           tion 170 if the claimed value of such property  
7           (plus the claimed value of all similar items of  
8           property donated by the donor to 1 or more  
9           donees) exceeds \$5,000.

10           “(B) PUBLICLY TRADED SECURITIES.—  
11           The term ‘publicly traded securities’ means se-  
12           curities for which (as of the date of the con-  
13           tribution) market quotations are readily avail-  
14           able on an established securities market.

15           “(b) QUALIFIED INTELLECTUAL PROPERTY CON-  
16           TRIBUTIONS.—

17           “(1) IN GENERAL.—Each donee with respect to  
18           a qualified intellectual property contribution shall  
19           make a return (at such time and in such form and  
20           manner as the Secretary may by regulations pre-  
21           scribe) with respect to each specified taxable year of  
22           the donee showing—

23           “(A) the name, address, and TIN of the  
24           donor,

1           “(B) a description of the qualified intellec-  
2           tual property contributed,

3           “(C) the date of the contribution, and

4           “(D) the amount of net income of the  
5           donee for the taxable year which is properly al-  
6           locable to the qualified intellectual property (de-  
7           termined without regard to paragraph (10)(B)  
8           of section 170(m) and with the modifications  
9           described in paragraphs (5) and (6) of such  
10          section).

11          “(2) DEFINITIONS.—For purposes of this sub-  
12          section—

13                 “(A) IN GENERAL.—Terms used in this  
14                 subsection which are also used in section  
15                 170(m) have the respective meanings given  
16                 such terms in such section.

17                 “(B) SPECIFIED TAXABLE YEAR.—The  
18                 term ‘specified taxable year’ means, with re-  
19                 spect to any qualified intellectual property con-  
20                 tribution, any taxable year of the donee any  
21                 portion of which is part of the 10-year period  
22                 beginning on the date of such contribution.

23          “(c) STATEMENT TO BE FURNISHED TO DONORS.—  
24          Every person making a return under subsection (a) or (b)  
25          shall furnish a copy of such return to the donor at such

1 time and in such manner as the Secretary may by regula-  
2 tions prescribe.”.

3 (2) CLERICAL AMENDMENT.—The table of sec-  
4 tions for subpart A of part II of subchapter A of  
5 chapter 61 is amended by striking the item relating  
6 to section 6050L and inserting the following new  
7 item:

“Sec. 6050L. Returns relating to certain donated property.”.

8 (d) COORDINATION WITH APPRAISAL REQUIRE-  
9 MENTS.—Subclause (I) of section 170(f)(11)(A)(ii), as  
10 added by section 683, is amended by inserting “subsection  
11 (e)(1)(B)(iii) or” before “section 1221(a)(1)”.

12 (e) ANTI-ABUSE RULES.—The Secretary of the  
13 Treasury may prescribe such regulations or other guid-  
14 ance as may be necessary or appropriate to prevent the  
15 avoidance of the purposes of section 170(e)(1)(B)(iii) of  
16 the Internal Revenue Code of 1986 (as added by sub-  
17 section (a)), including preventing—

18 (1) the circumvention of the reduction of the  
19 charitable deduction by embedding or bundling the  
20 patent or similar property as part of a charitable  
21 contribution of property that includes the patent or  
22 similar property,

23 (2) the manipulation of the basis of the prop-  
24 erty to increase the amount of the charitable deduc-  
25 tion through the use of related persons, pass-thru

1 entities, or other intermediaries, or through the use  
2 of any provision of law or regulation (including the  
3 consolidated return regulations), and

4 (3) a donor from changing the form of the pat-  
5 ent or similar property to property of a form for  
6 which different deduction rules would apply.

7 (f) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to contributions made after June  
9 3, 2004.

10 **SEC. 683. INCREASED REPORTING FOR NONCASH CHARI-**  
11 **TABLE CONTRIBUTIONS.**

12 (a) IN GENERAL.—Subsection (f) of section 170 (re-  
13 lating to disallowance of deduction in certain cases and  
14 special rules) is amended by adding after paragraph (10)  
15 the following new paragraph:

16 “(11) QUALIFIED APPRAISAL AND OTHER DOC-  
17 UMENTATION FOR CERTAIN CONTRIBUTIONS.—

18 “(A) IN GENERAL.—

19 “(i) DENIAL OF DEDUCTION.—In the  
20 case of an individual, partnership, or cor-  
21 poration, no deduction shall be allowed  
22 under subsection (a) for any contribution  
23 of property for which a deduction of more  
24 than \$500 is claimed unless such person  
25 meets the requirements of subparagraphs

1 (B), (C), and (D), as the case may be,  
2 with respect to such contribution.

3 “(ii) EXCEPTIONS.—

4 “(I) READILY VALUED PROP-  
5 ERTY.—Subparagraphs (C) and (D)  
6 shall not apply to cash, property de-  
7 scribed in section 1221(a)(1), and  
8 publicly traded securities (as defined  
9 in section 6050L(a)(2)(B)).

10 “(II) REASONABLE CAUSE.—

11 Clause (i) shall not apply if it is  
12 shown that the failure to meet such  
13 requirements is due to reasonable  
14 cause and not to willful neglect.

15 “(B) PROPERTY DESCRIPTION FOR CON-  
16 TRIBUTIONS OF MORE THAN \$500.—In the case  
17 of contributions of property for which a deduc-  
18 tion of more than \$500 is claimed, the require-  
19 ments of this subparagraph are met if the indi-  
20 vidual, partnership or corporation includes with  
21 the return for the taxable year in which the  
22 contribution is made a description of such prop-  
23 erty and such other information as the Sec-  
24 retary may require. The requirements of this  
25 subparagraph shall not apply to a C corporation

1 which is not a personal service corporation or a  
2 closely held C corporation.

3 “(C) QUALIFIED APPRAISAL FOR CON-  
4 TRIBUTIONS OF MORE THAN \$5,000.—In the  
5 case of contributions of property for which a  
6 deduction of more than \$5,000 is claimed, the  
7 requirements of this subparagraph are met if  
8 the individual, partnership, or corporation ob-  
9 tains a qualified appraisal of such property and  
10 attaches to the return for the taxable year in  
11 which such contribution is made such informa-  
12 tion regarding such property and such appraisal  
13 as the Secretary may require.

14 “(D) SUBSTANTIATION FOR CONTRIBU-  
15 TIONS OF MORE THAN \$500,000.—In the case of  
16 contributions of property for which a deduction  
17 of more than \$500,000 is claimed, the require-  
18 ments of this subparagraph are met if the indi-  
19 vidual, partnership, or corporation attaches to  
20 the return for the taxable year a qualified ap-  
21 praisal of such property.

22 “(E) QUALIFIED APPRAISAL.—For pur-  
23 poses of this paragraph, the term ‘qualified ap-  
24 praisal’ means, with respect to any property, an  
25 appraisal of such property which is treated for

1 purposes of this paragraph as a qualified ap-  
2 praisal under regulations or other guidance pre-  
3 scribed by the Secretary.

4 “(F) AGGREGATION OF SIMILAR ITEMS OF  
5 PROPERTY.—For purposes of determining  
6 thresholds under this paragraph, property and  
7 all similar items of property donated to 1 or  
8 more donees shall be treated as 1 property.

9 “(G) SPECIAL RULE FOR PASS-THRU ENTI-  
10 TIES.—In the case of a partnership or S cor-  
11 poration, this paragraph shall be applied at the  
12 entity level, except that the deduction shall be  
13 denied at the partner or shareholder level.

14 “(H) REGULATIONS.—The Secretary may  
15 prescribe such regulations as may be necessary  
16 or appropriate to carry out the purposes of this  
17 paragraph, including regulations that may pro-  
18 vide that some or all of the requirements of this  
19 paragraph do not apply in appropriate cases.”.

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall apply to contributions made after June  
22 3, 2004.



1 **SEC. 684. DONATIONS OF MOTOR VEHICLES, BOATS, AND**  
2 **AIRCRAFT.**

3 (a) IN GENERAL.—Subsection (f) of section 170 (re-  
4 lating to disallowance of deduction in certain cases and  
5 special rules) is amended by adding after paragraph (11)  
6 the following new paragraph:

7 “(12) CONTRIBUTIONS OF MOTOR VEHICLES,  
8 BOATS, AND AIRCRAFT.—

9 “(A) IN GENERAL.—Except as provided in  
10 regulations or other guidance, in the case of a  
11 contribution of a specified vehicle to which  
12 paragraph (8) applies, no deduction shall be al-  
13 lowed under subsection (a) for such contribu-  
14 tion unless the taxpayer obtains a qualified ap-  
15 praisal of the specified vehicle on or before the  
16 date of such contribution.

17 “(B) EXCEPTION FOR INVENTORY PROP-  
18 erty.—Subparagraph (A) shall not apply to  
19 property which is described in section  
20 1221(a)(1).

21 “(C) SPECIFIED VEHICLE.—For purposes  
22 of this paragraph, the term ‘specified vehicle’  
23 means any—

24 “(i) motor vehicle manufactured pri-  
25 marily for use on public streets, roads, and  
26 highways,

1 “(ii) boat, or

2 “(iii) aircraft.

3 “(D) QUALIFIED APPRAISAL.—For pur-  
4 poses of this paragraph, the term ‘qualified ap-  
5 praisal’ means any appraisal which is treated  
6 for purposes of this paragraph as a qualified  
7 appraisal under regulations or other guidance  
8 prescribed by the Secretary.

9 “(E) REGULATIONS OR OTHER GUID-  
10 ANCE.—The Secretary shall prescribe such reg-  
11 ulations or other guidance as may be necessary  
12 to carry out the purposes of this paragraph.”.

13 (b) EFFECTIVE DATE.—The amendment made by  
14 subsection (a) shall apply to contributions made after  
15 June 3, 2004.

16 **SEC. 685. EXTENSION OF AMORTIZATION OF INTANGIBLES**  
17 **TO SPORTS FRANCHISES.**

18 (a) IN GENERAL.—Section 197(e) (relating to excep-  
19 tions to definition of section 197 intangible) is amended  
20 by striking paragraph (6) and by redesignating para-  
21 graphs (7) and (8) as paragraphs (6) and (7), respectively.

22 (b) CONFORMING AMENDMENTS.—

23 (1)(A) Section 1056 (relating to basis limitation  
24 for player contracts transferred in connection with  
25 the sale of a franchise) is repealed.

1           (B) The table of sections for part IV of sub-  
2 chapter O of chapter 1 is amended by striking the  
3 item relating to section 1056.

4           (2) Section 1245(a) (relating to gain from dis-  
5 position of certain depreciable property) is amended  
6 by striking paragraph (4).

7           (3) Section 1253 (relating to transfers of fran-  
8 chises, trademarks, and trade names) is amended by  
9 striking subsection (e).

10       (c) EFFECTIVE DATES.—

11           (1) IN GENERAL.—Except as provided in para-  
12 graph (2), the amendments made by this section  
13 shall apply to property acquired after the date of the  
14 enactment of this Act.

15           (2) SECTION 1245.—The amendment made by  
16 subsection (b)(2) shall apply to franchises acquired  
17 after the date of the enactment of this Act.

18 **SEC. 686. MODIFICATION OF CONTINUING LEVY ON PAY-**  
19 **MENTS TO FEDERAL VENDERS.**

20           (a) IN GENERAL.—Section 6331(h) (relating to con-  
21 tinuing levy on certain payments) is amended by adding  
22 at the end the following new paragraph:

23           “(3) INCREASE IN LEVY FOR CERTAIN PAY-  
24 MENTS.—Paragraph (1) shall be applied by sub-  
25 stituting ‘100 percent’ for ‘15 percent’ in the case

1 of any specified payment due to a vendor of goods  
2 or services sold or leased to the Federal Govern-  
3 ment.”.

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall take effect on the date of the enactment  
6 of this Act.

7 **SEC. 687. MODIFICATION OF STRADDLE RULES.**

8 (a) RULES RELATING TO IDENTIFIED STRADDLES.—

9 (1) IN GENERAL.—Subparagraph (A) of section  
10 1092(a)(2) (relating to special rule for identified  
11 straddles) is amended to read as follows:

12 “(A) IN GENERAL.—In the case of any  
13 straddle which is an identified straddle—

14 “(i) paragraph (1) shall not apply  
15 with respect to identified positions com-  
16 prising the identified straddle,

17 “(ii) if there is any loss with respect  
18 to any identified position of the identified  
19 straddle, the basis of each of the identified  
20 offsetting positions in the identified strad-  
21 dle shall be increased by an amount which  
22 bears the same ratio to the loss as the un-  
23 recognized gain with respect to such offset-  
24 ting position bears to the aggregate unrec-

1           ognized gain with respect to all such off-  
2           setting positions, and

3           “(iii) any loss described in clause (ii)  
4           shall not otherwise be taken into account  
5           for purposes of this title.”.

6           (2)       IDENTIFIED       STRADDLE.—Section  
7           1092(a)(2)(B) (defining identified straddle) is  
8           amended—

9           (A) by striking clause (ii) and inserting the  
10          following:

11           “(ii) to the extent provided by regula-  
12           tions, the value of each position of which  
13           (in the hands of the taxpayer immediately  
14           before the creation of the straddle) is not  
15           less than the basis of such position in the  
16           hands of the taxpayer at the time the  
17           straddle is created, and”, and

18           (B) by adding at the end the following new  
19          flush sentence:

20          “The Secretary shall prescribe regulations  
21          which specify the proper methods for clearly  
22          identifying a straddle as an identified straddle  
23          (and the positions comprising such straddle),  
24          which specify the rules for the application of  
25          this section for a taxpayer which fails to prop-

1           erly identify the positions of an identified strad-  
2           dle, and which specify the ordering rules in  
3           cases where a taxpayer disposes of less than an  
4           entire position which is part of an identified  
5           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  
10          new 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 tax-  
18                   payer identified the position as a position in an  
19                   identified 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).

24          (b) PHYSICALLY SETTLED POSITIONS.—Section  
25          1092(d) (relating to definitions and special rules) is

1 amended by adding at the end the following new para-  
2 graph:

3           “(8) SPECIAL RULES FOR PHYSICALLY SET-  
4 TLED POSITIONS.—For purposes of subsection (a), if  
5 a taxpayer settles a position which is part of a strad-  
6 dle by delivering property to which the position re-  
7 lates (and such position, if terminated, would result  
8 in a realization of a loss), then such taxpayer shall  
9 be treated as if such taxpayer—

10                   “(A) terminated the position for its fair  
11 market value immediately before the settlement,  
12 and

13                   “(B) sold the property so delivered by the  
14 taxpayer at its fair market value.”.

15 (c) REPEAL OF STOCK EXCEPTION.—

16           (1) IN GENERAL.—Paragraph (3) of section  
17 1092(d) (relating to definitions and special rules) is  
18 amended to read as follows:

19           “(3) SPECIAL RULES FOR STOCK.—For pur-  
20 poses of paragraph (1)—

21                   “(A) IN GENERAL.—The term ‘personal  
22 property’ includes—

23                           “(i) any stock which is a part of a  
24 straddle at least 1 of the offsetting posi-  
25 tions of which is a position with respect to

1           such stock or substantially similar or re-  
2           lated property, or

3           “(ii) any stock of a corporation  
4           formed or availed of to take positions in  
5           personal property which offset positions  
6           taken by any shareholder.

7           “(B) RULE FOR APPLICATION.—For pur-  
8           poses of determining whether subsection (e) ap-  
9           plies to any transaction with respect to stock  
10          described in subparagraph (A)(ii), all includible  
11          corporations of an affiliated group (within the  
12          meaning of section 1504(a)) shall be treated as  
13          1 taxpayer.”.

14          (2) CONFORMING AMENDMENT.—Section  
15          1258(d)(1) is amended by striking “; except that the  
16          term ‘personal property’ shall include stock”.

17          (d) HOLDING PERIOD FOR DIVIDEND EXCLUSION.—  
18          The last sentence of section 246(c) is amended by insert-  
19          ing: “, other than a qualified covered call option to which  
20          section 1092(f) applies” before the period at the end.

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



1 **SEC. 688. ADDITION OF VACCINES AGAINST HEPATITIS A**  
2 **TO LIST OF TAXABLE VACCINES.**

3 (a) IN GENERAL.—Paragraph (1) of section 4132(a)  
4 (defining taxable vaccine) is amended by redesignating  
5 subparagraphs (I), (J), (K), and (L) as subparagraphs  
6 (J), (K), (L), and (M), respectively, and by inserting after  
7 subparagraph (H) the following new subparagraph:

8 “(I) Any vaccine against hepatitis A.”

9 (b) EFFECTIVE DATE.—

10 (1) SALES, ETC.—The amendments made by  
11 subsection (a) shall apply to sales and uses on or  
12 after the first day of the first month which begins  
13 more than 4 weeks after the date of the enactment  
14 of this Act.

15 (2) DELIVERIES.—For purposes of paragraph  
16 (1) and section 4131 of the Internal Revenue Code  
17 of 1986, in the case of sales on or before the effec-  
18 tive date described in such paragraph for which de-  
19 livery is made after such date, the delivery date shall  
20 be considered the sale date.

21 **SEC. 689. ADDITION OF VACCINES AGAINST INFLUENZA TO**  
22 **LIST OF TAXABLE VACCINES.**

23 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-  
24 able vaccine), as amended by this Act, is amended by add-  
25 ing at the end the following new subparagraph:

1           “(N) Any trivalent vaccine against influ-  
2           enza.”.

3           (b) EFFECTIVE DATE.—

4           (1) SALES, ETC.—The amendment made by this  
5           section shall apply to sales and uses on or after the  
6           later of—

7           (A) the first day of the first month which  
8           begins more than 4 weeks after the date of the  
9           enactment of this Act, or

10           (B) the date on which the Secretary of  
11           Health and Human Services lists any vaccine  
12           against influenza for purposes of compensation  
13           for any vaccine-related injury or death through  
14           the Vaccine Injury Compensation Trust Fund.

15           (2) DELIVERIES.—For purposes of paragraph  
16           (1) and section 4131 of the Internal Revenue Code  
17           of 1986, in the case of sales on or before the effec-  
18           tive date described in such paragraph for which de-  
19           livery is made after such date, the delivery date shall  
20           be considered the sale date.

21   **SEC. 690. EXTENSION OF IRS USER FEES.**

22           (a) IN GENERAL.—Section 7528(c) (relating to ter-  
23           mination) is amended by striking “December 31, 2004”  
24           and inserting “September 30, 2014”.

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

4 **SEC. 691. COBRA FEES.**

5 (a) USE OF MERCHANDISE PROCESSING FEE.—Sec-  
6 tion 13031(f) of the Consolidated Omnibus Budget Rec-  
7 onciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

8 (1) in paragraph (1), by aligning subparagraph  
9 (B) with subparagraph (A); and

10 (2) in paragraph (2), by striking “commercial  
11 operations” and all that follows through “proc-  
12 essing.” and inserting “customs revenue functions as  
13 defined in section 415 of the Homeland Security Act  
14 of 2002 (other than functions performed by the Of-  
15 fice of International Affairs referred to in section  
16 415(8) of that Act), and for automation (including  
17 the Automation Commercial Environment computer  
18 system), and for no other purpose. To the extent  
19 that funds in the Customs User Fee Account are in-  
20 sufficient to pay the costs of such customs revenue  
21 functions, customs duties in an amount equal to the  
22 amount of such insufficiency shall be available, to  
23 the extent provided for in appropriations Acts, to  
24 pay the costs of such customs revenue functions in  
25 the amount of such insufficiency, and shall be avail-

1       able for no other purpose. The provisions of the first  
2       and second sentences of this paragraph specifying  
3       the purposes for which amounts in the Customs  
4       User Fee Account may be made available shall not  
5       be superseded except by a provision of law which  
6       specifically modifies or supersedes such provisions.”.

7       (b) REIMBURSEMENT OF APPROPRIATIONS FROM  
8       COBRA FEES.—Section 13031(f)(3) of the Consolidated  
9       Omnibus Budget Reconciliation Act of 1985 (19 U.S.C.  
10      58c(f)(3)) is amended by adding at the end the following:

11       “(E) Nothing in this paragraph shall be construed  
12      to preclude the use of appropriated funds, from sources  
13      other than the fees collected under subsection (a), to pay  
14      the costs set forth in clauses (i), (ii), and (iii) of subpara-  
15      graph (A).”.

16       (c) SENSE OF CONGRESS; EFFECTIVE PERIOD FOR  
17      COLLECTING FEES; STANDARD FOR SETTING FEES.—

18       (1) SENSE OF CONGRESS.—The Congress finds  
19      that—

20               (A) the fees set forth in paragraphs (1)  
21               through (8) of subsection (a) of section 13031  
22               of the Consolidated Omnibus Budget Reconcili-  
23               ation Act of 1985 have been reasonably related  
24               to the costs of providing customs services in  
25               connection with the activities or items for which

1 the fees have been charged under such para-  
2 graphs; and

3 (B) the fees collected under such para-  
4 graphs have not exceeded, in the aggregate, the  
5 amounts paid for the costs described in sub-  
6 section (f)(3)(A) incurred in providing customs  
7 services in connection with the activities or  
8 items for which the fees were charged under  
9 such paragraphs.

10 (2) EFFECTIVE PERIOD; STANDARD FOR SET-  
11 TING FEES.—Section 13031(j)(3) of the Consoli-  
12 dated Omnibus Budget Reconciliation Act of 1985 is  
13 amended to read as follows:

14 “(3)(A) Fees may not be charged under paragraphs  
15 (9) and (10) of subsection (a) after September 30, 2014.

16 “(B)(i) Subject to clause (ii), Fees may not be  
17 charged under paragraphs (1) through (8) of subsection  
18 (a) after September 30, 2014.

19 “(ii) In fiscal year 2006 and in each succeeding fiscal  
20 year for which fees under paragraphs (1) through (8) of  
21 subsection (a) are authorized—

22 “(I) the Secretary of the Treasury shall charge  
23 fees under each such paragraph in amounts that are  
24 reasonably related to the costs of providing customs  
25 services in connection with the activity or item for

1 which the fee is charged under such paragraph, ex-  
2 cept that in no case may the fee charged under any  
3 such paragraph exceed by more than 10 percent the  
4 amount otherwise prescribed by such paragraph;

5 “(II) the amount of fees collected under such  
6 paragraphs may not exceed, in the aggregate, the  
7 amounts paid in that fiscal year for the costs de-  
8 scribed in subsection (f)(3)(A) incurred in providing  
9 customs services in connection with the activity or  
10 item for which the fees are charged under such  
11 paragraphs;

12 “(III) a fee may not be collected under any  
13 such paragraph except to the extent such fee will be  
14 expended to pay the costs described in subsection  
15 (f)(3)(A) incurred in providing customs services in  
16 connection with the activity or item for which the fee  
17 is charged under such paragraph; and

18 “(IV) any fee collected under any such para-  
19 graph shall be available for expenditure only to pay  
20 the costs described in subsection (f)(3)(A) incurred  
21 in providing customs services in connection with the  
22 activity or item for which the fee is charged under  
23 such paragraph.”.

1 (d) CLERICAL AMENDMENTS.—Section 13031 of the  
2 Consolidated Omnibus Budget Reconciliation Act of 1985  
3 is amended—

4 (1) in subsection (a)(5)(B), by striking “\$1.75”  
5 and inserting “\$1.75.”;

6 (2) in subsection (b)—

7 (A) in paragraph (1)(A), by aligning clause  
8 (iii) with clause (ii);

9 (B) in paragraph (7), by striking “para-  
10 graphs” and inserting “paragraph”; and

11 (C) in paragraph (9), by aligning subpara-  
12 graph (B) with subparagraph (A); and

13 (3) in subsection (e)(2), by aligning subpara-  
14 graph (B) with subparagraph (A).

15 (e) STUDY OF ALL FEES COLLECTED BY DEPART-  
16 MENT OF HOMELAND SECURITY.—The Secretary of the  
17 Treasury shall conduct a study of all the fees collected  
18 by the Department of Homeland Security, and shall sub-  
19 mit to the Congress, not later than September 30, 2005,  
20 a report containing the recommendations of the Secretary  
21 on—

22 (1) what fees should be eliminated;

23 (2) what the rate of fees retained should be;

24 and

1           (3) any other recommendations with respect to  
2           the fees that the Secretary considers appropriate.

3           **TITLE VII—MARKET REFORM**  
4           **FOR TOBACCO GROWERS**

5   **SEC. 701. SHORT TITLE.**

6           This title may be cited as the “Fair and Equitable  
7   Tobacco Reform Act of 2004”.

8   **SEC. 702. EFFECTIVE DATE.**

9           This title and the amendments made by this title  
10   shall apply beginning with the 2005 marketing year of  
11   each kind of tobacco.

12   **Subtitle A—Termination of Federal**  
13   **Tobacco Quota and Price Sup-**  
14   **port Programs**

15   **SEC. 711. TERMINATION OF TOBACCO QUOTA PROGRAM**  
16           **AND RELATED PROVISIONS.**

17           (a) **MARKETING QUOTAS.**—Part I of subtitle B of  
18   title III of the Agricultural Adjustment Act of 1938 (7  
19   U.S.C. 1311 et seq.) is repealed.

20           (b) **PROCESSING.**—Section 9(b) of the Agricultural  
21   Adjustment Act (7 U.S.C. 609(b)), reenacted with amend-  
22   ments by the Agricultural Marketing Agreement Act of  
23   1937, is amended—

24           (1) in paragraph (2), by striking “tobacco,”;  
25           and



1           (2) in paragraph (6)(B)(i), by striking “, or, in  
2           the case of tobacco, is less than the fair exchange  
3           value by not more than 10 per centum,”.

4           (c) DECLARATION OF POLICY.—Section 2 of the Ag-  
5           ricultural Adjustment Act of 1938 (7 U.S.C. 1282) is  
6           amended by striking “tobacco,”.

7           (d) DEFINITIONS.—Section 301(b) of the Agricul-  
8           tural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is  
9           amended—

10           (1) in paragraph (3)—

11                   (A) by striking subparagraph (C); and

12                   (B) by redesignating subparagraph (D) as  
13           subparagraph (C);

14           (2) in paragraph (6)(A), by striking “tobacco,”;

15           (3) in paragraph (10)—

16                   (A) by striking subparagraph (B); and

17                   (B) by redesignating subparagraph (C) as  
18           subparagraph (B);

19           (4) in paragraph (11)(B), by striking “and to-  
20           bacco”;

21           (5) in paragraph (12), by striking “tobacco,”;

22           (6) in paragraph (14)—

23                   (A) in subparagraph (A), by striking  
24           “(A)”; and

1           (B) by striking subparagraphs (B), (C),  
2           and (D);  
3           (7) by striking paragraph (15);  
4           (8) in paragraph (16)—  
5           (A) by striking subparagraph (B); and  
6           (B) by redesignating subparagraph (C) as  
7           subparagraph (B);  
8           (9) by striking paragraph (17); and  
9           (10) by redesignating paragraph (16) as para-  
10          graph (15).

11          (e) PARITY PAYMENTS.—Section 303 of the Agricul-  
12          tural Adjustment Act of 1938 (7 U.S.C. 1303) is amended  
13          in the first sentence by striking “rice, or tobacco,” and  
14          inserting “or rice”.

15          (f) ADMINISTRATIVE PROVISIONS.—Section 361 of  
16          the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361)  
17          is amended by striking “tobacco”.

18          (g) ADJUSTMENT OF QUOTAS.—Section 371 of the  
19          Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is  
20          amended—

21                 (1) in the first sentence of subsection (a), by  
22                 striking “rice, or tobacco” and inserting “or rice”;  
23                 and

24                 (2) in the first sentence of subsection (b), by  
25                 striking “rice, or tobacco” and inserting “or rice”.

1 (h) REGULATIONS.—Section 375 of the Agricultural  
2 Adjustment Act of 1938 (7 U.S.C. 1375) is amended—

3 (1) in subsection (a), by striking “peanuts, or  
4 tobacco” and inserting “or peanuts”; and

5 (2) by striking subsection (c).

6 (i) EMINENT DOMAIN.—Section 378 of the Agricul-  
7 tural Adjustment Act of 1938 (7 U.S.C. 1378) is amend-  
8 ed—

9 (1) in the first sentence of subsection (c), by  
10 striking “cotton, and tobacco” and inserting “and  
11 cotton”; and

12 (2) by striking subsections (d), (e), and (f).

13 (j) BURLEY TOBACCO FARM RECONSTITUTION.—  
14 Section 379 of the Agricultural Adjustment Act of 1938  
15 (7 U.S.C. 1379) is amended—

16 (1) in subsection (a)—

17 (A) by striking “(a)”; and

18 (B) in paragraph (6), by striking “, but  
19 this clause (6) shall not be applicable in the  
20 case of burley tobacco”; and

21 (2) by striking subsections (b) and (c).

22 (k) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the  
23 Act of April 16, 1955 (Public Law 89–12; 7 U.S.C. 1314c  
24 note), is repealed.

1 (l) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The  
2 Act of July 12, 1952 (7 U.S.C. 1315), is repealed.

3 (m) TRANSFER OF ALLOTMENTS.—Section 703 of  
4 the Food and Agriculture Act of 1965 (7 U.S.C. 1316)  
5 is repealed.

6 (n) ADVANCE RECOURSE LOANS.—Section  
7 13(a)(2)(B) of the Food Security Improvements Act of  
8 1986 (7 U.S.C. 1433e–1(a)(2)(B)) is amended by striking  
9 “tobacco and”.

10 (o) TOBACCO FIELD MEASUREMENT.—Section 1112  
11 of the Omnibus Budget Reconciliation Act of 1987 (Public  
12 Law 100–203) is amended by striking subsection (c).

13 **SEC. 712. TERMINATION OF TOBACCO PRICE SUPPORT**  
14 **PROGRAM AND RELATED PROVISIONS.**

15 (a) TERMINATION OF TOBACCO PRICE SUPPORT AND  
16 NO NET COST PROVISIONS.—Sections 106, 106A, and  
17 106B of the Agricultural Act of 1949 (7 U.S.C. 1445,  
18 1445–1, 1445–2) are repealed.

19 (b) PARITY PRICE SUPPORT.—Section 101 of the Ag-  
20 ricultural Act of 1949 (7 U.S.C. 1441) is amended—

21 (1) in the first sentence of subsection (a), by  
22 striking “tobacco (except as otherwise provided here-  
23 in), corn,” and inserting “corn”;

24 (2) by striking subsections (c), (g), (h), and (i);

25 (3) in subsection (d)(3)—

1 (A) by striking “, except tobacco,”; and

2 (B) by striking “and no price support shall  
3 be made available for any crop of tobacco for  
4 which marketing quotas have been disapproved  
5 by producers;”; and

6 (4) by redesignating subsections (d) and (e) as  
7 subsections (c) and (d), respectively.

8 (c) DEFINITION OF BASIC AGRICULTURAL COM-  
9 MODITY.—Section 408(c) of the Agricultural Act of 1949  
10 (7 U.S.C. 1428(c)) is amended by striking “tobacco,”.

11 (d) POWERS OF COMMODITY CREDIT CORPORA-  
12 TION.—Section 5 of the Commodity Credit Corporation  
13 Charter Act (15 U.S.C. 714c) is amended by inserting  
14 “(other than tobacco)” after “agricultural commodities”  
15 each place it appears.

16 **SEC. 713. CONTINUATION OF LIABILITY AND NO NET LOSS**  
17 **ASSESSMENTS TO PREVENT LOSSES ON**  
18 **PRICE SUPPORT LOANS.**

19 (a) LIABILITY.—The amendments made by this sub-  
20 title shall not affect the liability of any person under any  
21 provision of law so amended with respect to any crop of  
22 tobacco planted before the effective date applicable to that  
23 kind of tobacco under section 702.

24 (b) ASSESSMENT AUTHORITY.—

1           (1) ASSESSMENTS TO COVER OUTSTANDING  
2           LOAN COSTS.—The Commodity Credit Corporation  
3           shall impose and collect an assessment on the sale  
4           of 2005 and subsequent crops of each kind of to-  
5           bacco and on the importation of tobacco in such  
6           amounts as may be necessary to obtain funds suffi-  
7           cient to cover any losses incurred by the Corporation  
8           with respect to price support loans that—

9                   (A) were made for that kind of tobacco  
10                   under section 106 of the Agricultural Act of  
11                   1949 (7 U.S.C. 1445), before the repeal of such  
12                   section by section 712 of this Act; and

13                   (B) remain outstanding on or after the  
14                   date of the enactment of this Act.

15           (2) ADMINISTRATION.—Assessments under  
16           paragraph (1) shall be administered in the manner  
17           provided for in section 106B of the Agricultural Act  
18           of 1949 (7 U.S.C. 1445–2), as in effect the day be-  
19           fore the date of the enactment of this Act. To cover  
20           the costs of administering such assessments, the  
21           Commodity Credit Corporation shall use funds re-  
22           maining in the No Net Cost Tobacco Funds and No  
23           Net Cost Tobacco Accounts established pursuant to  
24           sections 106A and 106B of the Agricultural Act of  
25           1949 (7 U.S.C. 1445–1, 1445–2).

1 **Subtitle B—Transitional Payments**  
2 **to Tobacco Quota Holders and**  
3 **Active Producers of Tobacco**

4 **SEC. 721. DEFINITIONS OF ACTIVE TOBACCO PRODUCER**  
5 **AND QUOTA HOLDER.**

6 In this subtitle:

7 (1) **ACTIVE TOBACCO PRODUCER.**—The term  
8 “active tobacco producer” means an owner, oper-  
9 ator, landlord, tenant, or sharecropper who—

10 (A) shared in the risk of producing tobacco  
11 on a farm where tobacco was produced or con-  
12 sidered planted pursuant to a tobacco farm  
13 marketing quota or farm acreage allotment es-  
14 tablished under part I of subtitle B of title III  
15 of the Agricultural Adjustment Act of 1938 (7  
16 U.S.C. 1311 et seq.) for the 2004 marketing  
17 year; and

18 (B) was actively engaged on that farm.

19 (2) **CONSIDERED PLANTED.**—The term “con-  
20 sidered planted” means tobacco that was planted,  
21 but failed to be produced as a result of a natural  
22 disaster, as determined by the Secretary.

23 (3) **TOBACCO QUOTA HOLDER.**—The term “to-  
24 bacco quota holder” means a person that was an  
25 owner of a farm, as of July 1, 2004, for which a

1 basic tobacco farm marketing quota or farm acreage  
2 allotment for quota tobacco was established for the  
3 2004 tobacco marketing year.

4 (4) SECRETARY.—The term “Secretary” means  
5 the Secretary of Agriculture.

6 **SEC. 722. PAYMENTS TO TOBACCO QUOTA HOLDERS.**

7 (a) PAYMENT REQUIRED.—The Secretary shall make  
8 payments to each eligible tobacco quota holder for the ter-  
9 mination of tobacco marketing quotas and related price  
10 support under subtitle A, which shall constitute full and  
11 fair compensation for any losses relating to such termi-  
12 nation.

13 (b) ELIGIBILITY.—To be eligible to receive a payment  
14 under this section, a person shall submit to the Secretary  
15 an application containing such information as the Sec-  
16 retary may require to demonstrate to the satisfaction of  
17 the Secretary that the person satisfies the definition of  
18 tobacco quota holder. The application shall be submitted  
19 within such time, in such form, and in such manner as  
20 the Secretary may require.

21 (c) INDIVIDUAL BASE QUOTA LEVEL.—

22 (1) IN GENERAL.—The Secretary shall establish  
23 a base quota level applicable to each eligible tobacco  
24 quota holder identified under subsection (b).



1           (2) POUNDAGE QUOTAS.—Subject to adjust-  
2           ment under subsection (d), for each kind of tobacco  
3           for which the marketing quota is expressed in  
4           pounds, the base quota level for each tobacco quota  
5           holder shall be equal to the basic tobacco marketing  
6           quota under the Agriculture Adjustment Act of 1938  
7           for the marketing year in effect on the date of the  
8           enactment of this Act for quota tobacco on the farm  
9           owned by the tobacco quota holder.

10           (3) MARKETING QUOTAS OTHER THAN POUND-  
11           AGE QUOTAS.—Subject to adjustment under sub-  
12           section (d), for each kind of tobacco for which there  
13           is marketing quota or allotment on an acreage basis,  
14           the base quota level for each tobacco quota holder  
15           shall be the amount equal to the product obtained  
16           by multiplying—

17                   (A) the basic tobacco farm marketing  
18                   quota or allotment for the marketing year in ef-  
19                   fect on the date of the enactment of this Act,  
20                   as established by the Secretary for quota to-  
21                   bacco on the farm owned by the tobacco quota  
22                   holder; by

23                   (B) the average county production yield  
24                   per acre for the county in which the farm is lo-

1           cated for the kind of tobacco for that marketing  
2           year.

3           (d) TREATMENT OF CERTAIN CONTRACTS AND  
4 AGREEMENTS.—

5           (1) EFFECT OF PURCHASE CONTRACT.—If  
6           there was an agreement for the purchase of all or  
7           part of a farm described in subsection (c) as of the  
8           date of the enactment of this Act, and the parties  
9           to the sale are unable to agree to the disposition of  
10          eligibility for payments under this section, the Sec-  
11          retary, taking into account any transfer of quota  
12          that has been agreed to, shall provide for the equi-  
13          table division of the payments among the parties by  
14          adjusting the determination of who is the tobacco  
15          quota holder with respect to particular pounds of the  
16          quota.

17          (2) EFFECT OF AGREEMENT FOR PERMANENT  
18          QUOTA TRANSFER.—If the Secretary determines  
19          that there was in existence, as of the day before the  
20          date of the enactment of this Act, an agreement for  
21          the permanent transfer of quota, but that the trans-  
22          fer was not completed by that date, the Secretary  
23          shall consider the tobacco quota holder to be the  
24          party to the agreement that, as of that date, was the

1 owner of the farm to which the quota was to be  
2 transferred.

3 (e) TOTAL PAYMENT AMOUNTS BASED ON 2002  
4 MARKETING YEAR.—

5 (1) CALCULATION OF ANNUAL PAYMENT  
6 AMOUNT.—During fiscal years 2005 through 2009,  
7 the Secretary shall make payments to all eligible to-  
8 bacco quota holders identified under subsection (b)  
9 in an annual amount equal to the product obtained  
10 by multiplying, for each kind of tobacco—

11 (A) \$1.40 per pound; by

12 (B) the total national basic marketing  
13 quota established under the Agriculture Adjust-  
14 ment Act of 1938 for the 2002 marketing year  
15 for that kind of tobacco.

16 (2) MARKETING QUOTAS OTHER THAN POUND-  
17 AGE QUOTAS.—For each kind of tobacco for which  
18 there is a marketing quota or allotment on an acre-  
19 age basis, the Secretary shall convert the tobacco  
20 farm marketing quotas or allotments established  
21 under the Agriculture Adjustment Act of 1938 for  
22 the 2002 marketing year for that kind of tobacco as  
23 the Secretary considers appropriate.

24 (f) INDIVIDUAL PAYMENT AMOUNTS.—The annual  
25 payment amount for each eligible tobacco quota holder

1 with respect to a kind of tobacco under this section shall  
2 bear the same ratio to the amount determined by the Sec-  
3 retary under subsection (e) with respect to that kind of  
4 tobacco as the individual base quota level of that eligible  
5 tobacco quota holder under subsection (c) with respect to  
6 that kind of tobacco bears to the total base quota levels  
7 of all eligible tobacco quota holders with respect to that  
8 kind of tobacco.

9 (g) DEATH OF TOBACCO QUOTA HOLDER.—If a to-  
10 bacco quota holder who is entitled to payments under this  
11 section dies and is survived by a spouse or one or more  
12 dependents, the right to receive the payments shall trans-  
13 fer to the surviving spouse or, if there is no surviving  
14 spouse, to the estate of the tobacco quota holder.

15 **SEC. 723. TRANSITION PAYMENTS FOR ACTIVE PRODUCERS**  
16 **OF QUOTA TOBACCO.**

17 (a) TRANSITION PAYMENTS REQUIRED.—The Sec-  
18 retary shall make transition payments under this section  
19 to eligible active producers of quota tobacco.

20 (b) ELIGIBILITY.—To be eligible to receive a transi-  
21 tion payment under this section, a person shall submit to  
22 the Secretary an application containing such information  
23 as the Secretary may require to demonstrate to the satis-  
24 faction of the Secretary that the person satisfies the defi-  
25 nition of active producer of quota tobacco. The application

1 shall be submitted within such time, in such form, and  
2 in such manner as the Secretary may require.

3 (c) CURRENT PRODUCTION BASE.—The Secretary  
4 shall establish a production base applicable to each eligible  
5 active producer of quota tobacco identified under sub-  
6 section (b). A producer's production base shall be equal  
7 to the quantity, in pounds, of quota tobacco subject to the  
8 basic marketing quota marketed or considered planted by  
9 the producer under the Agriculture Adjustment Act of  
10 1938 for the marketing year in effect on the date of the  
11 enactment of this Act.

12 (d) TOTAL PAYMENT AMOUNTS BASED ON 2002  
13 MARKETING YEAR.—

14 (1) CALCULATION OF ANNUAL PAYMENT  
15 AMOUNT.—During fiscal years 2005 through 2009,  
16 the Secretary shall make payments to all eligible ac-  
17 tive producers of quota tobacco identified under sub-  
18 section (b) in an annual amount equal to the prod-  
19 uct obtained by multiplying, for each kind of to-  
20 bacco—

21 (A) \$0.60 per pound; by

22 (B) the total national effective marketing  
23 quota established under the Agriculture Adjust-  
24 ment Act of 1938 for the 2002 marketing year  
25 for that kind of tobacco.

1           (2) **MARKETING QUOTAS OTHER THAN POUND-**  
2           **AGE QUOTAS.**—For each kind of tobacco for which  
3           there is a marketing quota or allotment on an acre-  
4           age basis, the Secretary shall convert the tobacco  
5           farm marketing quotas or allotments established  
6           under the Agriculture Adjustment Act of 1938 for  
7           the 2002 marketing year for that kind of tobacco to  
8           a poundage basis before executing the mathematical  
9           equation specified in paragraph (1).

10          (e) **INDIVIDUAL PAYMENT AMOUNTS.**—The annual  
11          payment amount for each eligible active producer of quota  
12          tobacco identified under subsection (b) with respect to a  
13          kind of tobacco under this section shall bear the same  
14          ratio to the amount determined by the Secretary under  
15          subsection (d) with respect to that kind of tobacco as the  
16          individual production base of that eligible active producer  
17          under subsection (c) with respect to that kind of tobacco  
18          bears to the total production bases determined under that  
19          subsection for all eligible active producers of that kind of  
20          tobacco.

21          (f) **DEATH OF TOBACCO PRODUCER.**—If a tobacco  
22          producer who is entitled to payments under this section  
23          dies and is survived by a spouse or one or more depend-  
24          ents, the right to receive the payments shall transfer to

1 the surviving spouse or, if there is no surviving spouse,  
2 to the estate of the tobacco producer.

3 **SEC. 724. RESOLUTION OF DISPUTES.**

4 Any dispute regarding the eligibility of a person to  
5 receive a payment under this subtitle, or the amount of  
6 the payment, shall be resolved by the county committee  
7 established under section 8 of the Soil Conservation and  
8 Domestic Allotment Act (16 U.S.C. 590h) for the county  
9 or other area in which the farming operation of the person  
10 is located.

11 **SEC. 725. SOURCE OF FUNDS FOR PAYMENTS.**

12 There is hereby appropriated to the Secretary, from  
13 amounts in the general fund of the Treasury, such  
14 amounts as the Secretary needs in order to make the pay-  
15 ments required by sections 722 and 723, except that such  
16 amounts shall not exceed the lesser of—

17 (1) amounts received in the Treasury under  
18 chapter 52 of the Internal Revenue Code of 1986  
19 (relating to tobacco products and cigarette papers  
20 and tubes) during the period beginning on October  
21 1, 2004, and ending on September 30, 2009, or

22 (2) \$9,600,000,000.

1 **TITLE VIII—TRADE PROVISIONS**

2 **SEC. 801. CEILING FANS.**

3 (a) **IN GENERAL.**—Subchapter II of chapter 99 of  
 4 the Harmonized Tariff Schedule of the United States is  
 5 amended by inserting in numerical sequence the following  
 6 new heading:

“	9902.84.14	Ceiling fans for permanent installa- tion (provided for in subheading 8414.51.00) .....	Free	No change	No change	On or before 12/31/2006	”.
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7 (b) **EFFECTIVE DATE.**—The amendment made by  
 8 this section applies to goods entered, or withdrawn from  
 9 warehouse, for consumption on or after the 15th day after  
 10 the date of enactment of this Act.

11 **SEC. 802. CERTAIN STEAM GENERATORS, AND CERTAIN RE-**  
 12 **ACTOR VESSEL HEADS, USED IN NUCLEAR**  
 13 **FACILITIES.**

14 (a) **CERTAIN STEAM GENERATORS.**—Heading  
 15 9902.84.02 of the Harmonized Tariff Schedule of the  
 16 United States is amended by striking “12/31/2006” and  
 17 inserting “12/31/2008”.

18 (b) **CERTAIN REACTOR VESSEL HEADS.**—Sub-  
 19 chapter II of chapter 99 of the Harmonized Tariff Sched-  
 20 ule of the United States is amended by inserting in numer-  
 21 ical sequence the following new heading:



“	9902.84.03	Reactor vessel heads for nuclear reactors (provided for in sub-heading 8401.40.00) .....	Free	No change	No change	On or before 12/31/2008	”.
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1 (c) EFFECTIVE DATE.—

2 (1) SUBSECTION (a).—The amendment made  
3 by subsection (a) shall take effect on the date of the  
4 enactment of this Act.

5 (2) SUBSECTION (b).—The amendment made  
6 by subsection (b) shall apply to goods entered, or  
7 withdrawn from warehouse, for consumption on or  
8 after the 15th day after the date of the enactment  
9 of this Act.

Passed the House of Representatives June 17, 2004.

Attest:

*Clerk.*