

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:

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tivities.

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- Sec. 234. Disregard of unexercised powers of appointment in determining potential current beneficiaries of ESBT.
- Sec. 235. Transfer of suspended losses incident to divorce, etc.
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- Sec. 242. Modification of application of income forecast method of depreciation.
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- Sec. 244. Special rules for certain film and television productions.
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- Sec. 246. Suspension of occupational taxes relating to distilled spirits, wine, and beer.
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- Sec. 301. Alcohol and biodiesel excise tax credit and extension of alcohol fuels income tax credit.
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- Sec. 316. Modification to cooperative marketing rules to include value added processing involving animals.
- Sec. 317. Extension of declaratory judgment procedures to farmers' cooperative organizations.
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Sec. 417. 10-year foreign tax credit carryover; 1-year foreign tax credit carryback.

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

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

7 (a) IN GENERAL.—Section 114 is hereby repealed.

8 (b) CONFORMING AMENDMENTS.—

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 11 come) is hereby repealed.



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

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

6 (4) The second sentence of section
7 56(g)(4)(B)(i) is amended by striking “114 or”.

8 (5) Section 275(a) is amended—

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

13 (B) by striking the last sentence.

14 (6) Paragraph (3) of section 864(e) is
15 amended—

16 (A) by striking:

17 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
18 ACCOUNT.—

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

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

23 (B) by striking subparagraph (B).

24 (7) Section 903 is amended by striking “114,
25 164(a),” and inserting “164(a)”.



1 (8) Section 999(e)(1) is amended by striking
2 “941(a)(5),”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to transactions after December 31,
5 2004.

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

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

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

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

18 (B) For 2006, the applicable percentage
19 shall be 40 percent.

20 (e) REVOCATION OF ELECTION TO BE TREATED AS
21 DOMESTIC CORPORATION.—If, during the 1-year period
22 beginning on the date of the enactment of this Act, a cor-
23 poration for which an election is in effect under section
24 943(e) of the Internal Revenue Code of 1986 revokes such
25 election, no gain or loss shall be recognized with respect



1 to property treated as transferred under clause (ii) of sec-
2 tion 943(e)(4)(B) of such Code to the extent such
3 property—

4 (1) was treated as transferred under clause (i)
5 thereof, or

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

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

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

16 (1) which is between the taxpayer and a person
17 who is not a related person (as defined in section
18 943(b)(3) of such Code, as in effect on the day be-
19 fore the date of the enactment of this Act), and

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

22 For purposes of this subsection, a binding contract shall
23 include a purchase option, renewal option, or replacement
24 option which is included in such contract and which is en-
25 forceable against the seller or lessor.



1 **SEC. 102. DEDUCTION RELATING TO INCOME ATTRIB-**
2 **UTABLE TO DOMESTIC PRODUCTION ACTIVI-**
3 **TIES.**

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

8 **“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
9 **TION ACTIVITIES.**

10 “(a) ALLOWANCE OF DEDUCTION.—

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

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

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

18 “(2) PHASEIN.—In the case of any taxable year
19 beginning after 2004 and before 2010, paragraph
20 (1) shall be applied by substituting for the percent-
21 age contained therein the transition percentage de-
22 termined under the following table:

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

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



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

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

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

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

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

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

25 “(B) the sum of—



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

3 “(ii) other deductions, expenses, or
4 losses directly allocable to such receipts,
5 and

6 “(iii) a ratable portion of other deduc-
7 tions, expenses, and losses that are not di-
8 rectly allocable to such receipts or another
9 class of income.

10 “(2) ALLOCATION METHOD.—The Secretary
11 shall prescribe rules for the proper allocation of
12 items of income, deduction, expense, and loss for
13 purposes of determining income attributable to do-
14 mestic production activities.

15 “(3) SPECIAL RULES FOR DETERMINING
16 COSTS.—

17 “(A) IN GENERAL.—For purposes of deter-
18 mining costs under clause (i) of paragraph
19 (1)(B), any item or service brought into the
20 United States shall be treated as acquired by
21 purchase, and its cost shall be treated as not
22 less than its value immediately after it entered
23 the United States. A similar rule shall apply in
24 determining the adjusted basis of leased or



1 rented property where the lease or rental gives
2 rise to domestic production gross receipts.

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

13 “(4) DOMESTIC PRODUCTION GROSS RE-
14 CEIPTS.—

15 “(A) IN GENERAL.—The term ‘domestic
16 production gross receipts’ means the gross re-
17 ceipts of the taxpayer which are derived from—

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

20 “(I) qualifying production prop-
21 erty which was manufactured, pro-
22 duced, grown, or extracted by the tax-
23 payer in whole or in significant part
24 within the United States,



1 “(II) any qualified film produced
2 by the taxpayer, or

3 “(III) electricity, natural gas, or
4 potable water produced by the tax-
5 payer in the United States,

6 “(ii) construction performed in the
7 United States, or

8 “(iii) engineering or architectural
9 services performed in the United States for
10 construction projects in the United States.

11 “(B) EXCEPTIONS.—Such term shall not
12 include gross receipts of the taxpayer which are
13 derived from—

14 “(i) the sale of food and beverages
15 prepared by the taxpayer at a retail estab-
16 lishment, and

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

19 “(5) QUALIFYING PRODUCTION PROPERTY.—
20 The term ‘qualifying production property’ means—

21 “(A) tangible personal property,

22 “(B) any computer software, and

23 “(C) any property described in section
24 168(f)(4).



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

11 “(7) RELATED PERSONS.—

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

17 “(B) RELATED PERSON.—For purposes of
18 subparagraph (A), a person shall be treated as
19 related to another person if such persons are
20 treated as a single employer under subsection
21 (a) or (b) of section 52 or subsection (m) or (o)
22 of section 414, except that determinations
23 under subsections (a) and (b) of section 52
24 shall be made without regard to section
25 1563(b).



1 “(d) DEFINITIONS AND SPECIAL RULES.—

2 “(1) APPLICATION OF SECTION TO PASS-THRU
3 ENTITIES.—

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

7 “(i) subject to the provisions of para-
8 graphs (2) and (3), this section shall be
9 applied at the shareholder, partner, or
10 similar level, and

11 “(ii) the Secretary shall prescribe
12 rules for the application of this section, in-
13 cluding rules relating to—

14 “(I) restrictions on the allocation
15 of the deduction to taxpayers at the
16 partner or similar level, and

17 “(II) additional reporting re-
18 quirements.

19 “(B) APPLICATION OF WAGE LIMITA-
20 TION.—Notwithstanding subparagraph (A)(i),
21 for purposes of applying subsection (b), a
22 shareholder, partner, or similar person which is
23 allocated qualified production activities income
24 from an S corporation, partnership, estate,
25 trust, or other pass-thru entity shall also be



1 treated as having been allocated W-2 wages
2 from such entity in an amount equal to the
3 lesser of—

4 “(i) such person’s allocable share of
5 such wages (without regard to this sub-
6 paragraph), as determined under regula-
7 tions prescribed by the Secretary, or

8 “(ii) 2 times the qualified production
9 activities income allocated to such person
10 for the taxable year.

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

16 “(A) after application of sections 86, 135,
17 137, 219, 221, 222, and 469, and

18 “(B) without regard to this section.

19 “(3) PATRONS OF AGRICULTURAL AND HORTI-
20 CULTURAL COOPERATIVES.—

21 “(A) IN GENERAL.—If any amount de-
22 scribed in paragraph (1) or (3) of section
23 1385(a)—



1 “(i) is received by a person from an
2 organization to which part I of subchapter
3 T applies which is engaged—

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

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

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

19 then such person shall be allowed a deduction
20 under subsection (a) with respect to such
21 amount. The taxable income of the organization
22 shall not be reduced under section 1382 by rea-
23 son of any amount to which the preceding sen-
24 tence applies.



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

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

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

21 “(4) SPECIAL RULE FOR AFFILIATED
22 GROUPS.—

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



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

6 “(i) by substituting ‘50 percent’ for
7 ‘80 percent’ each place it appears, and

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

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

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

21 “(6) COORDINATION WITH MINIMUM TAX.—The
22 deduction under this section shall be allowed for
23 purposes of the tax imposed by section 55; except
24 that for purposes of section 55, the deduction under
25 this section shall be 9 percent of the lesser of—



1 “(A) qualified production activities income
2 (determined without regard to part IV of sub-
3 chapter A), or

4 “(B) alternative minimum taxable income
5 (determined without regard to this section) for
6 the taxable year.

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

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

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

20 “(v) DEDUCTION FOR DOMESTIC PRO-
21 DUCTION.—Clause (i) shall not apply to
22 any amount allowable as a deduction under
23 section 199.”.

24 (c) SPECIAL RULE RELATING TO ELECTION TO
25 TREAT CUTTING OF TIMBER AS A SALE OR EXCHANGE.—



1 Any election under section 631(a) of the Internal Revenue
2 Code of 1986 made for a taxable year ending on or before
3 the date of the enactment of this Act may be revoked by
4 the taxpayer for any taxable year ending after such date.
5 For purposes of determining whether such taxpayer may
6 make a further election under such section, such election
7 (and any revocation under this section) shall not be taken
8 into account.

9 (d) TECHNICAL AMENDMENTS.—

10 (1) Sections 86(b)(2)(A), 135(c)(4)(A),
11 137(b)(3)(A), and 219(g)(3)(A)(ii) are each amend-
12 ed by inserting “199,” before “221”.

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

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

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

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

21 (6) Subsection (a) of section 613 is amended by
22 inserting “and without the deduction under section
23 199” after “without allowances for depletion”.



1 (7) The table of sections for part VI of sub-
2 chapter B of chapter 1 is amended by adding at the
3 end the following new item:

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

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

7 **TITLE II—BUSINESS TAX**
8 **INCENTIVES**
9 **Subtitle A—Small Business**
10 **Expensing**

11 **SEC. 201. 2-YEAR EXTENSION OF INCREASED EXPENSING**
12 **FOR SMALL BUSINESS.**

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

16 **Subtitle B—Depreciation**

17 **SEC. 211. RECOVERY PERIOD FOR DEPRECIATION OF CER-**
18 **TAIN LEASEHOLD IMPROVEMENTS AND RES-**
19 **TAURANT PROPERTY.**

20 (a) 15-YEAR RECOVERY PERIOD.—Subparagraph
21 (E) of section 168(e)(3) (relating to classification of cer-
22 tain property) is amended by striking “and” at the end
23 of clause (ii), by striking the period at the end of clause



1 (iii) and inserting a comma, and by adding at the end the
2 following new clauses:

3 “(iv) any qualified leasehold improve-
4 ment property placed in service before Jan-
5 uary 1, 2006, and

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

8 (b) QUALIFIED LEASEHOLD IMPROVEMENT PROP-
9 erty.—Subsection (e) of section 168 is amended by add-
10 ing at the end the following new paragraph:

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

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

23 “(B) EXCEPTION FOR CHANGES IN FORM
24 OF BUSINESS.—Property shall not cease to be



1 qualified leasehold improvement property under
2 subparagraph (A) by reason of—

3 “(i) death,

4 “(ii) a transaction to which section
5 381(a) applies,

6 “(iii) a mere change in the form of
7 conducting the trade or business so long as
8 the property is retained in such trade or
9 business as qualified leasehold improve-
10 ment property and the taxpayer retains a
11 substantial interest in such trade or busi-
12 ness,

13 “(iv) the acquisition of such property
14 in an exchange described in section 1031,
15 1033, or 1038 to the extent that the basis
16 of such property includes an amount rep-
17 resenting the adjusted basis of other prop-
18 erty owned by the taxpayer or a related
19 person, or

20 “(v) the acquisition of such property
21 by the taxpayer in a transaction described
22 in section 332, 351, 361, 721, or 731 (or
23 the acquisition of such property by the tax-
24 payer from the transferee or acquiring cor-
25 poration in a transaction described in such



1 section), to the extent that the basis of the
2 property in the hands of the taxpayer is
3 determined by reference to its basis in the
4 hands of the transferor or distributor.”.

5 (c) QUALIFIED RESTAURANT PROPERTY.—Sub-
6 section (e) of section 168 (as amended by subsection (b))
7 is further amended by adding at the end the following new
8 paragraph:

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

13 “(A) such improvement is placed in service
14 more than 3 years after the date such building
15 was first placed in service, and

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

20 (d) REQUIREMENT TO USE STRAIGHT LINE METH-
21 OD.—

22 (1) Paragraph (3) of section 168(b) is amended
23 by adding at the end the following new subpara-
24 graphs:



1 “(G) Qualified leasehold improvement
2 property described in subsection (e)(6).

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

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

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

“(E)(iv)	39
“(E)(v)	39”.

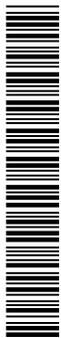
11 (f) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to property placed in service after
13 the date of the enactment of this Act.

14 **Subtitle C—Community**
15 **Revitalization**

16 **SEC. 221. MODIFICATION OF TARGETED AREAS AND LOW-**
17 **INCOME COMMUNITIES FOR NEW MARKETS**
18 **TAX CREDIT.**

19 (a) TARGETED AREAS.—Paragraph (2) of section
20 45D(e) (relating to targeted areas) is amended to read
21 as follows:

22 “(2) TARGETED POPULATIONS.—The Secretary
23 shall prescribe regulations under which 1 or more
24 targeted populations (within the meaning of section



1 103(20) of the Riegle Community Development and
2 Regulatory Improvement Act of 1994 (12 U.S.C.
3 4702(20))) may be treated as low-income commu-
4 nities. Such regulations shall include procedures for
5 determining which entities are qualified active low-
6 income community businesses with respect to such
7 populations.”.

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

11 “(4) TRACTS WITH LOW POPULATION.—A pop-
12 ulation census tract with a population of less than
13 2,000 shall be treated as a low-income community
14 for purposes of this section if such tract—

15 “(A) is within an empowerment zone, the
16 designation of which is in effect under section
17 1391, and

18 “(B) is contiguous to 1 or more low-in-
19 come communities (determined without regard
20 to this paragraph).”.

21 (c) EFFECTIVE DATES.—

22 (1) TARGETED AREAS.—The amendment made
23 by subsection (a) shall apply to designations made
24 by the Secretary of the Treasury after the date of
25 the enactment of this Act.



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

6 “(ii) such community, including such tract,
7 has a population of not more than 200,000
8 using either 1990 census data or 2000 census
9 data,

10 “(iii) such tract meets the requirement of
11 subsection (c)(3)(C) using 2000 census data,
12 and

13 “(iv) such tract meets the requirement of
14 subparagraph (A)(ii).

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

21 “(3) SPECIAL RULE FOR CERTAIN CENSUS
22 TRACTS WITH LOW POPULATION IN 2000.—At the re-
23 quest of all governments which nominated an area
24 as a renewal community, the Secretary of Housing



1 and Urban Development may expand the area of
2 such community to include any census tract if—

3 “(A) either—

4 “(i) such tract has no population
5 using 2000 census data, or

6 “(ii) no poverty rate for such tract is
7 determined by the Bureau of the Census
8 using 2000 census data,

9 “(B) such tract is one of general distress,
10 and

11 “(C) such community, including such tract,
12 meets the requirements of subparagraphs (A)
13 and (B) of subsection (c)(2).

14 “(4) PERIOD IN EFFECT.—Any expansion
15 under this subsection shall take effect as provided in
16 subsection (b).”.

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

21 **SEC. 223. MODIFICATION OF INCOME REQUIREMENT FOR**
22 **CENSUS TRACTS WITHIN HIGH MIGRATION**
23 **RURAL COUNTIES.**

24 (a) IN GENERAL.—Section 45D(e) (relating to low-
25 income community), as amended by this Act, is amended



1 by inserting after paragraph (4) the following new para-
2 graph:

3 “(5) MODIFICATION OF INCOME REQUIREMENT
4 FOR CENSUS TRACTS WITHIN HIGH MIGRATION
5 RURAL COUNTIES.—

6 “(A) IN GENERAL.—In the case of a popu-
7 lation census tract located within a high migra-
8 tion rural county, paragraph (1)(B)(i) shall be
9 applied by substituting ‘85 percent’ for ‘80 per-
10 cent’.

11 “(B) HIGH MIGRATION RURAL COUNTY.—
12 For purposes of this paragraph, the term ‘high
13 migration rural county’ means any county
14 which, during the 20-year period ending with
15 the year in which the most recent census was
16 conducted, has a net out-migration of inhab-
17 itants from the county of at least 10 percent of
18 the population of the county at the beginning of
19 such period.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall take effect as if included in the amend-
22 ment made by section 121(a) of the Community Renewal
23 Tax Relief Act of 2000.



1 **Subtitle D—S Corporation Reform**
2 **and Simplification**

3 **SEC. 231. MEMBERS OF FAMILY TREATED AS 1 SHARE-**
4 **HOLDER.**

5 (a) IN GENERAL.—Paragraph (1) of section 1361(c)
6 (relating to special rules for applying subsection (b)) is
7 amended to read as follows:

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

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

12 “(i) except as provided in clause (ii),
13 a husband and wife (and their estates)
14 shall be treated as 1 shareholder, and

15 “(ii) in the case of a family with re-
16 spect to which an election is in effect
17 under subparagraph (D), all members of
18 the family shall be treated as 1 share-
19 holder.

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

22 “(i) IN GENERAL.—The term ‘mem-
23 bers of the family’ means the common an-
24 cestor, lineal descendants of the common
25 ancestor, and the spouses (or former



1 spouses) of such lineal descendants or com-
2 mon ancestor.

3 “(ii) COMMON ANCESTOR.—For pur-
4 poses of this paragraph, an individual shall
5 not be considered a common ancestor if, as
6 of the later of the effective date of this
7 paragraph or the time the election under
8 section 1362(a) is made, the individual is
9 more than 6 generations removed from the
10 youngest generation of shareholders who
11 would (but for this clause) be members of
12 the family. For purposes of the preceding
13 sentence, a spouse (or former spouse) shall
14 be treated as being of the same generation
15 as the individual to which such spouse is
16 (or was) married.

17 “(C) EFFECT OF ADOPTION, ETC.—In de-
18 termining whether any relationship specified in
19 subparagraph (B) exists, the rules of section
20 152(b)(2) shall apply.

21 “(D) ELECTION.—An election under sub-
22 paragraph (A)(ii)—

23 “(i) may, except as otherwise provided
24 in regulations prescribed by the Secretary,
25 be made by any member of the family, and



1 “(ii) shall remain in effect until termi-
2 nated as provided in regulations prescribed
3 by the Secretary.”.

4 (b) RELIEF FROM INADVERTENT INVALID ELECTION
5 OR TERMINATION.—Section 1362(f) (relating to inad-
6 vertent invalid elections or terminations), as amended by
7 this Act, is amended—

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

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

13 (c) EFFECTIVE DATES.—

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

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

20 **SEC. 232. INCREASE IN NUMBER OF ELIGIBLE SHARE-**
21 **HOLDERS TO 100.**

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



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

4 **SEC. 233. EXPANSION OF BANK S CORPORATION ELIGIBLE**
5 **SHAREHOLDERS TO INCLUDE IRAS.**

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

9 “(vi) In the case of a corporation
10 which is a bank (as defined in section
11 581), a trust which constitutes an indi-
12 vidual retirement account under section
13 408(a), including one designated as a Roth
14 IRA under section 408A, but only to the
15 extent of the stock held by such trust in
16 such bank as of the date of the enactment
17 of this clause.”.

18 (b) TREATMENT AS SHAREHOLDER.—Section
19 1361(c)(2)(B) (relating to treatment as shareholders) is
20 amended by adding at the end the following new clause:

21 “(vi) In the case of a trust described
22 in clause (vi) of subparagraph (A), the in-
23 dividual for whose benefit the trust was
24 created shall be treated as a shareholder.”.



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

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

12 “(A) such stock is in a bank (as defined in
13 section 581),

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

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

18 “(D) such sale is for fair market value at
19 the time of sale (as established by an inde-
20 pendent appraiser) and the terms of the sale
21 are otherwise at least as favorable to such trust
22 as the terms that would apply on a sale to an
23 unrelated party,



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

4 **SEC. 235. TRANSFER OF SUSPENDED LOSSES INCIDENT TO**
5 **DIVORCE, ETC.**

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

9 “(2) INDEFINITE CARRYOVER OF DISALLOWED
10 LOSSES AND DEDUCTIONS.—

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

17 “(B) TRANSFERS OF STOCK BETWEEN
18 SPOUSES OR INCIDENT TO DIVORCE.—In the
19 case of any transfer described in section
20 1041(a) of stock of an S corporation, any loss
21 or deduction described in subparagraph (A)
22 with respect such stock shall be treated as in-
23 curred by the corporation in the succeeding tax-
24 able year with respect to the transferee.”



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

4 **SEC. 236. USE OF PASSIVE ACTIVITY LOSS AND AT-RISK**
5 **AMOUNTS BY QUALIFIED SUBCHAPTER S**
6 **TRUST INCOME BENEFICIARIES.**

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

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

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

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

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

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



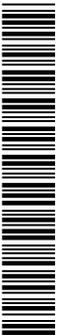
1 **SEC. 237. EXCLUSION OF INVESTMENT SECURITIES INCOME**
2 **FROM PASSIVE INCOME TEST FOR BANK S**
3 **CORPORATIONS.**

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. 238. 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 or the termination occurred
17 is a small business corporation or a qualified
18 subchapter S subsidiary, as the case may be,
19 or”,

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

22 “(4) the corporation for which the election was
23 made or the termination occurred, and each person
24 who was a shareholder in such corporation at any
25 time during the period specified pursuant to this



1 subsection, agrees to make such adjustments (con-
2 sistent with the treatment of such corporation as an
3 S corporation or a qualified subchapter S subsidiary,
4 as the case may be) as may be required by the Sec-
5 retary with respect to such period,” and

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

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

12 **SEC. 239. INFORMATION RETURNS FOR QUALIFIED SUB-**
13 **CHAPTER S SUBSIDIARIES.**

14 (a) IN GENERAL.—Section 1361(b)(3)(A) (relating
15 to treatment of certain wholly owned subsidiaries) is
16 amended by inserting “and in the case of information re-
17 turns required under part III of subchapter A of chapter
18 61” after “Secretary”.

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



1 **SEC. 240. REPAYMENT OF LOANS FOR QUALIFYING EM-**
2 **PLOYER SECURITIES.**

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

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



1 such distribution would have been allocated to such
2 participant.”.

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

6 **Subtitle E—Other Business**
7 **Incentives**

8 **SEC. 241. PHASEOUT OF 4.3-CENT MOTOR FUEL EXCISE**
9 **TAXES ON RAILROADS AND INLAND WATER-**
10 **WAY TRANSPORTATION WHICH REMAIN IN**
11 **GENERAL FUND.**

12 (a) TAXES ON TRAINS.—

13 (1) IN GENERAL.—Clause (ii) of section
14 4041(a)(1)(C) is amended by striking subclauses (I),
15 (II), and (III) and inserting the following new sub-
16 clauses:

17 “(I) 3.3 cents per gallon after
18 December 31, 2004, and before Janu-
19 ary 1, 2006,

20 “(II) 2.3 cents per gallon after
21 December 31, 2005, and before Janu-
22 ary 1, 2008,

23 “(III) 1.3 cents per gallon after
24 December 31, 2007, and before Janu-
25 ary 1, 2010, and



1 “(IV) 0 after December 31,
2 2009.”.

3 (2) CONFORMING AMENDMENTS.—

4 (A) Subsection (d) of section 4041 is
5 amended by redesignating paragraph (3) as
6 paragraph (4) and by inserting after paragraph
7 (2) the following new paragraph:

8 “(3) DIESEL FUEL USED IN TRAINS.—In the
9 case of any sale for use (or use) after September 30,
10 2010, there is hereby imposed a tax of 0.1 cent per
11 gallon on any liquid other than gasoline (as defined
12 in section 4083)—

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

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

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

22 (B) Subsection (f) of section 4082 is
23 amended by striking “section 4041(a)(1)” and
24 inserting “subsections (a)(1) and (d)(3) of sec-
25 tion 4041”.



1 (C) Subparagraph (B) of section
2 6421(f)(3) is amended to read as follows:

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

6 (D) Subparagraph (B) of section
7 6427(l)(3) is amended to read as follows:

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

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

14 “(C) The deficit reduction rate is—

15 “(i) 3.3 cents per gallon after Decem-
16 ber 31, 2004, and before January 1, 2006,

17 “(ii) 2.3 cents per gallon after Decem-
18 ber 31, 2005, and before January 1, 2008,

19 “(iii) 1.3 cents per gallon after De-
20 cember 31, 2007, and before January 1,
21 2010, and

22 “(iv) 0 after December 31, 2009.”.

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



1 **SEC. 242. MODIFICATION OF APPLICATION OF INCOME**
2 **FORECAST METHOD OF DEPRECIATION.**

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

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

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

21 “(B) PARTICIPATIONS AND RESIDUALS.—
22 For purposes of this paragraph, the term ‘par-
23 ticipations and residuals’ means, with respect to
24 any property, costs the amount of which by con-
25 tract varies with the amount of income earned
26 in connection with such property.



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

7 “(D) OTHER SPECIAL RULES.—

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

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

20 “(E) AUTHORITY TO MAKE ADJUST-
21 MENTS.—The Secretary shall prescribe appro-
22 priate adjustments to the basis of property and
23 to the look-back method for the additional
24 amounts allowable as a deduction solely by rea-
25 son of this paragraph.”.



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

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

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

13 **SEC. 243. IMPROVEMENTS RELATED TO REAL ESTATE IN-**
14 **VESTMENT TRUSTS.**

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

18 (1) in subsection (c) by striking paragraph (7),

19 and

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

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

24 “(1) IN GENERAL.—In applying subclause (III)
25 of subsection (c)(4)(B)(iii), except as otherwise de-



1 terminated by the Secretary in regulations, the fol-
2 lowing shall not be considered securities held by the
3 trust:

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

6 “(B) Any loan to an individual or an es-
7 tate.

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

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

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

23 “(F) Any security issued by a real estate
24 investment trust.



1 “(G) Any other arrangement as deter-
2 mined by the Secretary.

3 “(2) SPECIAL RULES RELATING TO STRAIGHT
4 DEBT SECURITIES.—

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

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

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

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



1 of 1/4 of 1 percent or 5 percent of the
2 annual yield to maturity, or

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

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

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



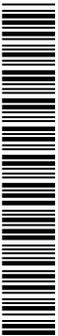
1 “(i) the trust’s interest in the partner-
2 ship assets shall be the trust’s propor-
3 tionate interest in any securities issued by
4 the partnership (determined without re-
5 gard to subparagraph (A)(i) and para-
6 graph (4), but not including securities de-
7 scribed in paragraph (1)), and

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. 244. SPECIAL RULES FOR CERTAIN FILM AND TELE-**
4 **VISION PRODUCTIONS.**

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

8 **“SEC. 181. TREATMENT OF QUALIFIED FILM AND TELE-**
9 **VISION PRODUCTIONS.**

10 **“(a) ELECTION TO TREAT COSTS OF LESS EXPEN-**
11 **SIVE QUALIFIED FILMS AND TELEVISION PRODUCTIONS**
12 **AS EXPENSES.—**

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

18 **“(2) DOLLAR LIMITATION.—**

19 **“(A) IN GENERAL.—**Paragraph (1) shall
20 not apply to any qualified film or television pro-
21 duction the aggregate cost of which exceeds
22 \$15,000,000.

23 **“(B) HIGHER DOLLAR LIMITATION FOR**
24 **PRODUCTIONS IN CERTAIN AREAS.—**In the case
25 of any qualified film or television production the



1 aggregate cost of which is significantly incurred
2 in an area eligible for designation as—

3 “(i) a low-income community under
4 section 45D, or

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

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

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

16 “(c) ELECTION.—

17 “(1) IN GENERAL.—An election under this sec-
18 tion with respect to any qualified film or television
19 production shall be made in such manner as pre-
20 scribed by the Secretary and by the due date (in-
21 cluding extensions) for filing the taxpayer’s return of
22 tax under this chapter for the taxable year in which
23 costs of the production are first incurred.



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

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

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

11 “(2) PRODUCTION.—

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

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

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



1 **SEC. 245. CREDIT FOR MAINTENANCE OF RAILROAD**
2 **TRACK.**

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

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

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

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

17 “(1) \$3,500, and

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

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

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

24 “(2) any person who transports property using
25 the rail facilities of a person described in paragraph



1 (1) or who furnishes railroad-related property or
2 services to such a person.

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

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

12 “(1) CLASS II OR CLASS III RAILROAD.—For
13 purposes of this section, the terms ‘Class II railroad’
14 and ‘Class III railroad’ have the meanings given
15 such terms by the Surface Transportation Board.

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

19 “(3) BASIS ADJUSTMENT.—For purposes of
20 this subtitle, if a credit is allowed under this section
21 with respect to any railroad track, the basis of such
22 track shall be reduced by the amount of the credit
23 so allowed.

24 “(f) APPLICATION OF SECTION.—This section shall
25 apply to qualified railroad track maintenance expenditures



1 paid or incurred during taxable years beginning after De-
2 cember 31, 2004, and before January 1, 2008.”.

3 (b) LIMITATION ON CARRYBACK.—

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

6 “(d) TRANSITIONAL RULE.—No portion of the un-
7 used business credit for any taxable year which is attrib-
8 utable to a credit specified in section 38(b) or any portion
9 thereof may be carried back to any taxable year before
10 the first taxable year for which such specified credit or
11 such portion is allowable (without regard to subsection
12 (a)).”.

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

16 (c) CONFORMING AMENDMENTS.—

17 (1) Section 38(b) (relating to general business
18 credit) is amended by striking “plus” at the end of
19 paragraph (14), by striking the period at the end of
20 paragraph (15) and inserting “, plus”, and by add-
21 ing at the end the following new paragraph:

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

24 (2) Subsection (a) of section 1016 is amended
25 by striking “and” at the end of paragraph (27), by



1 striking the period at the end of paragraph (28) and
2 inserting “, and”, and by adding at the end the fol-
3 lowing new paragraph:

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

7 (d) CLERICAL AMENDMENT.—The table of sections
8 for subpart D of part IV of subchapter A of chapter 1
9 is amended by inserting after the item relating to section
10 45F the following new item:

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

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

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

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

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

21 “(a) IN GENERAL.—Notwithstanding sections 5081,
22 5091, 5111, 5121, and 5131, the rate of tax imposed
23 under such sections for the suspension period shall be
24 zero. During such period, persons engaged in or carrying
25 on a trade or business covered by such sections shall reg-



1 ister under section 5141 and shall comply with the record-
2 keeping requirements under this part.

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

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

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

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

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

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



1 **SEC. 247. 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 after
19 the date of the enactment of the American
20 Jobs Creation Act of 2004 under the Small
21 Business Investment Act of 1958 if such
22 indebtedness is evidenced by a debenture—

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

25 “(II) held or guaranteed by the
26 Small Business Administration.



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

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

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

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to indebtedness incurred after the
19 date of the enactment of this Act by a small business in-
20 vestment company licensed after the date of the enactment
21 of this Act.



1 **SEC. 248. ELECTION TO DETERMINE CORPORATE TAX ON**
2 **CERTAIN INTERNATIONAL SHIPPING ACTIVI-**
3 **TIES USING PER TON RATE.**

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

6 **“Subchapter R—Election To Determine Cor-**
7 **porate Tax on Certain International Ship-**
8 **ping Activities Using per Ton Rate**

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

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

11 “In the case of an electing corporation, the aggregate
12 tax imposed by section 11 shall be the amount equal to
13 the sum of—

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

16 “(2) a tax equal to—

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

19 “(B) the notional shipping income for the
20 taxable year.



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

2 “(a) IN GENERAL.—For purposes of this subchapter,
3 the notional shipping income of an electing corporation
4 shall be the sum of the amounts determined under sub-
5 section (b) for each qualifying vessel operated by such
6 electing corporation.

7 “(b) AMOUNTS.—

8 “(1) IN GENERAL.—For purposes of subsection
9 (a), the amount of notional shipping income of an
10 electing corporation for each qualifying vessel for the
11 taxable year shall equal the product of—

12 “(A) the daily notional shipping income
13 from the operation of the qualifying vessel in
14 United States foreign trade, and

15 “(B) the number of days during the tax-
16 able year that the electing corporation operated
17 such vessel as a qualifying vessel in United
18 States foreign trade.

19 “(2) TREATMENT OF VESSELS THE INCOME
20 FROM WHICH IS NOT OTHERWISE SUBJECT TO
21 TAX.—In the case of a qualifying vessel any of the
22 income from which is not included in gross income
23 by reason of section 883 or otherwise, the amount
24 of notional shipping income from such vessel for the
25 taxable year shall be the amount which bears the
26 same ratio to such shipping income (determined



1 without regard to this paragraph) as the gross in-
2 come from the operation of such vessel in the United
3 States foreign trade bears to the sum of such gross
4 income and the income so excluded.

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

8 “(1) 40 cents for each 100 tons of so much of
9 the net tonnage of the vessel as does not exceed
10 25,000 net tons, and

11 “(2) 20 cents for each 100 tons of so much of
12 the net tonnage of the vessel as exceeds 25,000 net
13 tons.

14 “(d) MULTIPLE OPERATORS OF VESSEL.—If for any
15 period 2 or more persons are operators of a qualifying ves-
16 sel, the notional shipping income from the operation of
17 such vessel for such period shall be allocated among such
18 persons on the basis of their respective ownership and
19 charter interests in such vessel or on such other basis as
20 the Secretary may prescribe by regulations.

21 **“SEC. 1354. ALTERNATIVE TAX ELECTION; REVOCATION;**
22 **TERMINATION.**

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



1 “(b) TIME AND MANNER; YEARS FOR WHICH EF-
2 EFFECTIVE.—An election under this subchapter—

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

5 “(2) shall be effective for the taxable year for
6 which made and all succeeding taxable years until
7 terminated under subsection (d).

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

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

15 “(d) TERMINATION.—

16 “(1) BY REVOCATION.—

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

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

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



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

5 “(C) REVOCATION MAY SPECIFY PROSPEC-
6 TIVE DATE.—If the revocation specifies a date
7 for revocation which is on or after the day on
8 which the revocation is made, the revocation
9 shall be effective for taxable years beginning on
10 and after the date so specified.

11 “(2) BY PERSON CEASING TO BE QUALIFYING
12 VESSEL OPERATOR.—

13 “(A) IN GENERAL.—An election under
14 subsection (a) shall be terminated whenever (at
15 any time on or after the 1st day of the 1st tax-
16 able year for which the corporation is an elect-
17 ing corporation) such corporation ceases to be
18 a qualifying vessel operator.

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

22 “(C) ANNUALIZATION.—The Secretary
23 shall prescribe such annualization and other
24 rules as are appropriate in the case of a termi-
25 nation under this paragraph.



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

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

11 “(a) DEFINITIONS.—For purposes of this
12 subchapter—

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

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

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

20 “(B) CONTROLLED GROUP.—The term
21 ‘controlled group’ means any group which
22 would be treated as a single employer under
23 subsection (a) or (b) of section 52 if paragraphs
24 (1) and (2) of section 52(a) did not apply.



1 “(3) QUALIFYING VESSEL OPERATOR.—The
2 term ‘qualifying vessel operator’ means any
3 corporation—

4 “(A) who operates one or more qualifying
5 vessels, and

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

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

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

18 “(6) UNITED STATES DOMESTIC TRADE.—The
19 term ‘United States domestic trade’ means the
20 transportation of goods or passengers between places
21 in the United States.

22 “(7) UNITED STATES FOREIGN TRADE.—The
23 term ‘United States foreign trade’ means the trans-
24 portation of goods or passengers between a place in



1 the United States and a foreign place or between
2 foreign places.

3 “(b) OPERATING A VESSEL.—For purposes of this
4 subchapter—

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

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

10 “(B) is in use as a qualifying vessel during
11 such period.

12 “(2) BAREBOAT CHARTERS.—A person is treat-
13 ed as operating a vessel that it has chartered out on
14 bareboat charter terms only if—

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

18 “(B) the vessel is bareboat chartered to a
19 member of a controlled group which includes
20 such person or to an unrelated person who sub-
21 bareboats or time charters the vessel to such a
22 member (including the owner of the vessel).

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



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

7 “(2) SPECIAL RULE FOR 1ST YEAR OF ELEC-
8 TION.—A corporation meets the shipping activity re-
9 quirement of this subsection for the first taxable
10 year for which the election under section 1354(a) is
11 in effect only if the requirement of paragraph (4) is
12 met for the preceding taxable year.

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

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

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

21 “(4) REQUIREMENT.—The requirement of this
22 paragraph is met for any taxable year if, on average
23 during such year, at least 25 percent of the aggre-
24 gate tonnage of qualifying vessels used by the cor-



1 poration were owned by such corporation or char-
2 tered to such corporation on bareboat charter terms.

3 “(d) ACTIVITIES CARRIED ON PARTNERSHIPS,
4 ETC.—In applying this subchapter to a partner in a
5 partnership—

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

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

10 “(3) the extent of a partner’s ownership or
11 charter interest in any vessel owned by or chartered
12 to the partnership shall be determined on the basis
13 of the partner’s interest in the partnership.

14 A similar rule shall apply with respect to other pass-thru
15 entities.

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

18 “(1) IN GENERAL.—For purposes of sub-
19 sections (b) and (c), an electing corporation shall be
20 treated as continuing to use a qualifying vessel dur-
21 ing any period of temporary cessation if the electing
22 corporation gives timely notice to the Secretary
23 stating—

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



1 “(B) its intention to resume operating the
2 qualifying vessel.

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

7 “(3) PERIOD DISREGARD IN EFFECT.—The pe-
8 riod of temporary cessation under paragraph (1)
9 shall continue until the earlier of the date on
10 which—

11 “(A) the electing corporation abandons its
12 intention to resume operation of the qualifying
13 vessel, or

14 “(B) the electing corporation resumes op-
15 eration of the qualifying vessel.

16 “(f) EFFECT OF TEMPORARILY OPERATING A QUALI-
17 FYING VESSEL IN THE UNITED STATES DOMESTIC
18 TRADE.—

19 “(1) IN GENERAL.—For purposes of this sub-
20 chapter, an electing corporation shall be treated as
21 continuing to use a qualifying vessel in the United
22 States foreign trade during any period of temporary
23 use in the United States domestic trade if the elect-
24 ing corporation gives timely notice to the Secretary
25 stating—



1 “(A) that it temporarily operates or has
2 operated in the United States domestic trade a
3 qualifying vessel which had been used in the
4 United States foreign trade, and

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

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

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

14 “(A) the electing corporation abandons its
15 intention to resume operations of the vessel in
16 the United States foreign trade, or

17 “(B) the electing corporation resumes op-
18 eration of the vessel in the United States for-
19 eign trade.

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



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

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

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

8 “(1) core qualifying activities,

9 “(2) qualifying secondary activities, and

10 “(3) qualifying incidental activities.

11 “(b) CORE QUALIFYING ACTIVITIES.—For purposes
12 of this subchapter, the term ‘core qualifying activities’
13 means activities in operating qualifying vessels in United
14 States foreign trade.

15 “(c) QUALIFYING SECONDARY ACTIVITIES.—For
16 purposes of this section—

17 “(1) IN GENERAL.—The term ‘qualifying sec-
18 ondary activities’ means secondary activities but only
19 to the extent that, without regard to this sub-
20 chapter, the gross income derived by such corpora-
21 tion from such activities does not exceed 20 percent
22 of the gross income derived by such corporation
23 from its core qualifying activities.

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



1 “(A) the active management or operation
2 of vessels other than qualifying vessels in the
3 United States foreign trade,

4 “(B) the provision of vessel, barge, con-
5 tainer, or cargo-related facilities or services to
6 any person,

7 “(C) other activities of the electing cor-
8 poration and other members of its electing
9 group that are an integral part of its business
10 of operating qualifying vessels in United States
11 foreign trade, including—

12 “(i) ownership or operation of barges,
13 containers, chassis, and other equipment
14 that are the complement of, or used in con-
15 nection with, a qualifying vessel in United
16 States foreign trade,

17 “(ii) the inland haulage of cargo
18 shipped, or to be shipped, on qualifying
19 vessels in United States foreign trade, and

20 “(iii) the provision of terminal, main-
21 tenance, repair, logistical, or other vessel,
22 barge, container, or cargo-related services
23 that are an integral part of operating
24 qualifying vessels in United States foreign
25 trade, and



1 “(D) such other activities as may be pre-
2 scribed by the Secretary pursuant to regula-
3 tions.

4 “(3) COORDINATION WITH CORE ACTIVITIES.—

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

7 “(B) NONELECTING CORPORATIONS.—In
8 the case of a corporation (other than an elect-
9 ing corporation) which is a member of an elect-
10 ing group, any core qualifying activities of the
11 corporation shall be treated as qualifying sec-
12 ondary activities (and not as core qualifying ac-
13 tivities).

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

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

19 “(2) they are not qualifying secondary activi-
20 ties, and

21 “(3) without regard to this subchapter, the
22 gross income derived by such corporation from such
23 activities does not exceed 0.1 percent of the corpora-
24 tion’s gross income from its core qualifying activi-
25 ties.



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

6 “(B) METHOD.—

7 “(i) IN GENERAL.—Except as pro-
8 vided in clause (ii), the straight-line meth-
9 od of depreciation shall apply to qualifying
10 vessels the income from operation of which
11 is excluded from gross income under this
12 section.

13 “(ii) EXCEPTION.—Clause (i) shall
14 not apply to any qualifying vessel which is
15 subject to a charter entered into before the
16 date of the enactment of this subchapter.

17 “(3) INTEREST.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), the interest expense of an
20 electing corporation shall be disallowed in the
21 ratio that the fair market value of such cor-
22 poration’s qualifying vessels bears to the fair
23 market value of such corporation’s total assets.

24 “(B) ELECTING GROUP.—In the case of a
25 corporation which is a member of an electing



1 group, the interest expense of such corporation
2 shall be disallowed in the ratio that the fair
3 market value of such corporation's qualifying
4 vessels bears to the fair market value of the
5 electing groups total assets.

6 **“SEC. 1358. ALLOCATION OF CREDITS, INCOME, AND DE-**
7 **DUCTIONS.**

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

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

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

18 “(2) No deduction shall be allowed for any net
19 operating loss attributable to the qualifying shipping
20 activities of any person to the extent that such loss
21 is carried forward by such person from a taxable
22 year preceding the first taxable year for which such
23 person was an electing corporation.



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

4 “(1) as between an electing corporation and an-
5 other person, or

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

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

9 “(a) IN GENERAL.—If any qualifying vessel operator
10 sells or disposes of any qualifying vessel in an otherwise
11 taxable transaction, at the election of such operator, no
12 gain shall be recognized if any replacement qualifying ves-
13 sel is acquired during the period specified in subsection
14 (b), except to the extent that the amount realized upon
15 such sale or disposition exceeds the cost of the replace-
16 ment qualifying vessel.

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

21 “(1) 3 years after the close of the first taxable
22 year in which the gain is realized, or

23 “(2) subject to such terms and conditions as
24 may be specified by the Secretary, on such later date



1 as the Secretary may designate on application by the
2 taxpayer.

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

5 “(c) APPLICATION OF SECTION TO NONCORPORATE
6 OPERATORS.—For purposes of this section, the term
7 ‘qualifying vessel operator’ includes any person who would
8 be a qualifying vessel operator were such person a corpora-
9 tion.

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

13 “(1) the statutory period for the assessment of
14 any deficiency, for any taxable year in which any
15 part of the gain is realized, attributable to such gain
16 shall not expire prior to the expiration of 3 years
17 from the date the Secretary is notified by such oper-
18 ator (in such manner as the Secretary may by regu-
19 lations prescribe) of the replacement qualifying ves-
20 sel or of an intention not to replace, and

21 “(2) such deficiency may be assessed before the
22 expiration of such 3-year period notwithstanding the
23 provisions of section 6212(c) or the provisions of any
24 other law or rule of law which would otherwise pre-
25 vent such assessment.



1 “(e) BASIS OF REPLACEMENT QUALIFYING VES-
2 SEL.—In the case of any replacement qualifying vessel
3 purchased by the qualifying vessel operator which resulted
4 in the nonrecognition of any part of the gain realized as
5 the result of a sale or other disposition of a qualifying
6 vessel, the basis shall be the cost of the replacement quali-
7 fying vessel decreased in the amount of the gain not so
8 recognized; and if the property purchased consists of more
9 than one piece of property, the basis determined under
10 this sentence shall be allocated to the purchased properties
11 in proportion to their respective costs.”

12 (b) TECHNICAL AMENDMENTS.—

13 (1) The second sentence of section
14 56(g)(4)(B)(i), as amended by this Act, is further
15 amended by inserting “or 1357” after “section
16 139A”.

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

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

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



1 **Subtitle F—Stock Options and Em-**
2 **ployee Stock Purchase Plan**
3 **Stock Options**

4 **SEC. 251. EXCLUSION OF INCENTIVE STOCK OPTIONS AND**
5 **EMPLOYEE STOCK PURCHASE PLAN STOCK**
6 **OPTIONS FROM WAGES.**

7 (a) EXCLUSION FROM EMPLOYMENT TAXES.—

8 (1) SOCIAL SECURITY TAXES.—

9 (A) Section 3121(a) (relating to definition
10 of wages) is amended by striking “or” at the
11 end of paragraph (20), by striking the period at
12 the end of paragraph (21) and inserting “; or”,
13 and by inserting after paragraph (21) the fol-
14 lowing new paragraph:

15 “(22) remuneration on account of—

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

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

23 (B) Section 209(a) of the Social Security
24 Act is amended by striking “or” at the end of
25 paragraph (17), by striking the period at the



1 end of paragraph (18) and inserting “; or”, and
2 by inserting after paragraph (18) the following
3 new paragraph:

4 “(19) Remuneration on account of—

5 “(A) a transfer of a share of stock to any
6 individual pursuant to an exercise of an incen-
7 tive stock option (as defined in section 422(b)
8 of the Internal Revenue Code of 1986) or under
9 an employee stock purchase plan (as defined in
10 section 423(b) of such Code), or

11 “(B) any disposition by the individual of
12 such stock.”.

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

16 “(12) QUALIFIED STOCK OPTIONS.—The term
17 ‘compensation’ shall not include any remuneration
18 on account of—

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

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



1 (3) UNEMPLOYMENT TAXES.—Section 3306(b)
2 (relating to definition of wages) is amended by strik-
3 ing “or” at the end of paragraph (17), by striking
4 the period at the end of paragraph (18) and insert-
5 ing “; or”, and by inserting after paragraph (18) the
6 following new paragraph:

7 “(19) remuneration on account of—

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

13 “(B) any disposition by the individual of
14 such stock.”.

15 (b) WAGE WITHHOLDING NOT REQUIRED ON DIS-
16 QUALIFYING DISPOSITIONS.—Section 421(b) (relating to
17 effect of disqualifying dispositions) is amended by adding
18 at the end the following new sentence: “No amount shall
19 be required to be deducted and withheld under chapter
20 24 with respect to any increase in income attributable to
21 a disposition described in the preceding sentence.”.

22 (c) WAGE WITHHOLDING NOT REQUIRED ON COM-
23 PENSATION WHERE OPTION PRICE IS BETWEEN 85 PER-
24 CENT AND 100 PERCENT OF VALUE OF STOCK.—Section
25 423(c) (relating to special rule where option price is be-



1 tween 85 percent and 100 percent of value of stock) is
2 amended by adding at the end the following new sentence:
3 “No amount shall be required to be deducted and withheld
4 under chapter 24 with respect to any amount treated as
5 compensation under this subsection.”.

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

9 **TITLE III—AGRICULTURAL TAX**
10 **RELIEF AND INCENTIVES**

11 **Subtitle A—Volumetric Ethanol**
12 **Excise Tax Credit**

13 **SEC. 301. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT**
14 **AND EXTENSION OF ALCOHOL FUELS IN-**
15 **COME TAX CREDIT.**

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

19 **“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL**
20 **MIXTURES.**

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

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

25 “(2) the biodiesel mixture credit.



1 “(b) ALCOHOL FUEL MIXTURE CREDIT.—

2 “(1) IN GENERAL.—For purposes of this sec-
3 tion, the alcohol fuel mixture credit is the product
4 of the applicable amount and the number of gallons
5 of alcohol used by the taxpayer in producing any al-
6 cohol fuel mixture for sale or use in a trade or busi-
7 ness of the taxpayer.

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

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), the applicable amount is 51
12 cents.

13 “(B) MIXTURES NOT CONTAINING ETH-
14 ANOL.—In the case of an alcohol fuel mixture
15 in which none of the alcohol consists of ethanol,
16 the applicable amount is 60 cents.

17 “(3) ALCOHOL FUEL MIXTURE.—For purposes
18 of this subsection, the term ‘alcohol fuel mixture’
19 means a mixture of alcohol and a taxable fuel
20 which—

21 “(A) is sold by the taxpayer producing
22 such mixture to any person for use as a fuel,
23 or

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



1 For purposes of subparagraph (A), a mixture pro-
2 duced by any person at a refinery prior to a taxable
3 event which includes ethyl tertiary butyl ether or
4 other ethers produced from alcohol shall be treated
5 as sold at the time of its removal from the refinery
6 (and only at such time) to another person for use as
7 a fuel.

8 “(4) OTHER DEFINITIONS.—For purposes of
9 this subsection—

10 “(A) ALCOHOL.—The term ‘alcohol’ in-
11 cludes methanol and ethanol but does not
12 include—

13 “(i) alcohol produced from petroleum,
14 natural gas, or coal (including peat), or

15 “(ii) alcohol with a proof of less than
16 190 (determined without regard to any
17 added denaturants).

18 Such term also includes an alcohol gallon equiv-
19 alent of ethyl tertiary butyl ether or other
20 ethers produced from such alcohol.

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



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

4 “(c) BIODIESEL MIXTURE CREDIT.—

5 “(1) IN GENERAL.—For purposes of this sec-
6 tion, the biodiesel mixture credit is the product of
7 the applicable amount and the number of gallons of
8 biodiesel used by the taxpayer in producing any bio-
9 diesel mixture for sale or use in a trade or business
10 of the taxpayer.

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

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (B), the applicable amount is 50
15 cents.

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

19 “(3) BIODIESEL MIXTURE.—For purposes of
20 this section, the term ‘biodiesel mixture’ means a
21 mixture of biodiesel and diesel fuel (as defined in
22 section 4083(a)(3)), determined without regard to
23 any use of kerosene, which—



1 “(A) is sold by the taxpayer producing
2 such mixture to any person for use as a fuel,
3 or

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

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

13 “(5) OTHER DEFINITIONS.—Any term used in
14 this subsection which is also used in section 40A
15 shall have the meaning given such term by section
16 40A.

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

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

21 “(1) IMPOSITION OF TAX.—If—

22 “(A) any credit was determined under this
23 section with respect to alcohol or biodiesel used
24 in the production of any alcohol fuel mixture or
25 biodiesel mixture, respectively, and



1 “(B) any person—
2 “(i) separates the alcohol or biodiesel
3 from the mixture, or
4 “(ii) without separation, uses the mix-
5 ture other than as a fuel,
6 then there is hereby imposed on such person a
7 tax equal to the product of the applicable
8 amount and the number of gallons of such alco-
9 hol or biodiesel.

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

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

19 (b) REGISTRATION REQUIREMENT.—Section
20 4101(a)(1) (relating to registration), as amended by this
21 Act, is amended by inserting “and every person producing
22 or importing biodiesel (as defined in section 40A(d)(1))
23 or alcohol (as defined in section 6426(b)(4)(A))” before
24 “shall register with the Secretary”.

25 (c) ADDITIONAL AMENDMENTS.—



1 (1) Section 40(c) is amended by striking “sub-
2 section (b)(2), (k), or (m) of section 4041, section
3 4081(c), or section 4091(c)” and inserting “section
4 4041(b)(2), section 6426, or section 6427(e)”.

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

7 “(4) VOLUME OF ALCOHOL.—For purposes of
8 determining under subsection (a) the number of gal-
9 lons of alcohol with respect to which a credit is al-
10 lowable under subsection (a), the volume of alcohol
11 shall include the volume of any denaturant (includ-
12 ing gasoline) which is added under any formulas ap-
13 proved by the Secretary to the extent that such de-
14 naturants do not exceed 5 percent of the volume of
15 such alcohol (including denaturants).”.

16 (3) Section 40(e)(1) is amended—

17 (A) by striking “2007” in subparagraph
18 (A) and inserting “2010”, and

19 (B) by striking “2008” in subparagraph
20 (B) and inserting “2011”.

21 (4) Section 40(h) is amended—

22 (A) by striking “2007” in paragraph (1)
23 and inserting “2010”, and



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

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

7 (6) Section 4041 is amended by striking sub-
8 section (k).

9 (7) Section 4081 is amended by striking sub-
10 section (c).

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

13 “(2) GASOLINE.—The term ‘gasoline’—

14 “(A) includes any gasoline blend, other
15 than qualified methanol or ethanol fuel (as de-
16 fined in section 4041(b)(2)(B)), partially ex-
17 empt methanol or ethanol fuel (as defined in
18 section 4041(m)(2)), or a denatured alcohol,
19 and

20 “(B) includes, to the extent prescribed in
21 regulations—

22 “(i) any gasoline blend stock, and

23 “(ii) any product commonly used as
24 an additive in gasoline (other than alco-
25 hol).



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

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

6 “(e) ALCOHOL OR BIODIESEL USED TO PRODUCE
7 ALCOHOL FUEL AND BIODIESEL MIXTURES.—Except as
8 provided in subsection (k)—

9 “(1) USED TO PRODUCE A MIXTURE.—If any
10 person produces a mixture described in section 6426
11 in such person’s trade or business, the Secretary
12 shall pay (without interest) to such person an
13 amount equal to the alcohol fuel mixture credit or
14 the biodiesel mixture credit with respect to such mix-
15 ture.

16 “(2) COORDINATION WITH OTHER REPAYMENT
17 PROVISIONS.—No amount shall be payable under
18 paragraph (1) with respect to any mixture with re-
19 spect to which an amount is allowed as a credit
20 under section 6426.

21 “(3) TERMINATION.—This subsection shall not
22 apply with respect to—

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



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

4 (10) Section 6427(i)(3) is amended—

5 (A) by striking “subsection (f)” both
6 places it appears in subparagraph (A) and in-
7 serting “subsection (e)(1)”,

8 (B) by striking “gasoline, diesel fuel, or
9 kerosene used to produce a qualified alcohol
10 mixture (as defined in section 4081(e)(3))” in
11 subparagraph (A) and inserting “a mixture de-
12 scribed in section 6426”,

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

15 “*In the case of an electronic claim, this sub-*
16 *paragraph shall be applied without regard to*
17 *clause (i).”*,

18 (D) by striking “subsection (f)(1)” in sub-
19 paragraph (B) and inserting “subsection
20 (e)(1)”,

21 (E) by striking “20 days of the date of the
22 filing of such claim” in subparagraph (B) and
23 inserting “45 days of the date of the filing of
24 such claim (20 days in the case of an electronic
25 claim)”, and



1 (F) by striking “ALCOHOL MIXTURE” in
2 the heading and inserting “ALCOHOL FUEL AND
3 BIODIESEL MIXTURE”.

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

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

9 (12) Section 9503(b)(4) is amended—

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

12 (B) by striking the comma at the end of
13 subparagraph (D)(iii) and inserting a period,
14 and

15 (C) by striking subparagraphs (E) and
16 (F).

17 (13) Section 9503(c)(2)(A) is amended by add-
18 ing at the end the following: “Clauses (i)(III) and
19 (ii) shall not apply to claims under section
20 6427(e).”.

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

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

24 (d) EFFECTIVE DATES.—



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

5 (2) REGISTRATION REQUIREMENT.—The
6 amendment made by subsection (b) shall take effect
7 on April 1, 2005.

8 (3) EXTENSION OF ALCOHOL FUELS CREDIT.—
9 The amendments made by paragraphs (3), (4), and
10 (14) of subsection (c) shall take effect on the date
11 of the enactment of this Act.

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

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

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

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



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

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

5 “(1) the biodiesel mixture credit, plus

6 “(2) the biodiesel credit.

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

9 “(1) BIODIESEL MIXTURE CREDIT.—

10 “(A) IN GENERAL.—The biodiesel mixture
11 credit of any taxpayer for any taxable year is
12 50 cents for each gallon of biodiesel used by the
13 taxpayer in the production of a qualified bio-
14 diesel mixture.

15 “(B) QUALIFIED BIODIESEL MIXTURE.—

16 The term ‘qualified biodiesel mixture’ means a
17 mixture of biodiesel and diesel fuel (as defined
18 in section 4083(a)(3)), determined without re-
19 gard to any use of kerosene, which—

20 “(i) is sold by the taxpayer producing
21 such mixture to any person for use as a
22 fuel, or

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

25 “(C) SALE OR USE MUST BE IN TRADE OR
26 BUSINESS, ETC.—Biodiesel used in the produc-



1 tion of a qualified biodiesel mixture shall be
2 taken into account—

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

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

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

12 “(2) BIODIESEL CREDIT.—

13 “(A) IN GENERAL.—The biodiesel credit of
14 any taxpayer for any taxable year is 50 cents
15 for each gallon of biodiesel which is not in a
16 mixture with diesel fuel and which during the
17 taxable year—

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

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

23 “(B) USER CREDIT NOT TO APPLY TO BIO-
24 DIESEL SOLD AT RETAIL.—No credit shall be
25 allowed under subparagraph (A)(i) with respect



1 to any biodiesel which was sold in a retail sale
2 described in subparagraph (A)(ii).

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

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

14 “(c) COORDINATION WITH CREDIT AGAINST EXCISE
15 TAX.—The amount of the credit determined under this
16 section with respect to any biodiesel shall be properly re-
17 duced to take into account any benefit provided with re-
18 spect to such biodiesel solely by reason of the application
19 of section 6426 or 6427(e).

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

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



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

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

7 “(2) AGRIBIODIESEL.—The term ‘agri-bio-
8 diesel’ means biodiesel derived solely from virgin oils,
9 including esters derived from virgin vegetable oils
10 from corn, soybeans, sunflower seeds, cottonseeds,
11 canola, crambe, rapeseeds, safflowers, flaxseeds, rice
12 bran, and mustard seeds, and from animal fats.

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

15 “(A) MIXTURES.—If—

16 “(i) any credit was determined under
17 this section with respect to biodiesel used
18 in the production of any qualified biodiesel
19 mixture, and

20 “(ii) any person—

21 “(I) separates the biodiesel from
22 the mixture, or

23 “(II) without separation, uses the
24 mixture other than as a fuel,



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

5 “(B) BIODIESEL.—If—

6 “(i) any credit was determined under
7 this section with respect to the retail sale
8 of any biodiesel, and

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

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

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



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

3 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
4 NESS CREDIT.—Section 38(b) (relating to current year
5 business credit), as amended by this Act, is amended by
6 striking “plus” at the end of paragraph (15), by striking
7 the period at the end of paragraph (16) and inserting “,
8 plus”, and by adding at the end the following new para-
9 graph:

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

12 (c) CONFORMING AMENDMENTS.—

13 (1)(A) Section 87 is amended to read as fol-
14 lows:

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

16 “Gross income includes—

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

20 “(2) the biodiesel fuels credit determined with
21 respect to the taxpayer for the taxable year under
22 section 40A(a).”.

23 (B) The item relating to section 87 in the table
24 of sections for part II of subchapter B of chapter 1



1 is amended by striking “fuel credit” and inserting
2 “and biodiesel fuels credits”.

3 (2) Section 196(c) is amended by striking
4 “and” at the end of paragraph (9), by striking the
5 period at the end of paragraph (10) and inserting “,
6 and”, and by adding at the end the following new
7 paragraph:

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

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

“Sec. 40A. Biodiesel used as fuel.”.

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

18 **SEC. 303. INFORMATION REPORTING FOR PERSONS CLAIM-**
19 **ING CERTAIN TAX BENEFITS.**

20 (a) IN GENERAL.—Subpart C of part III of sub-
21 chapter A of chapter 32 is amended by adding at the end
22 the following new section:



1 **“SEC. 4104. INFORMATION REPORTING FOR PERSONS**
2 **CLAIMING CERTAIN TAX BENEFITS.**

3 “(a) IN GENERAL.—The Secretary shall require any
4 person claiming tax benefits—

5 “(1) under the provisions of section 34, 40, and
6 40A, to file a return at the time such person claims
7 such benefits (in such manner as the Secretary may
8 prescribe), and

9 “(2) under the provisions of section 4041(b)(2),
10 6426, or 6427(e) to file a quarterly return (in such
11 manner as the Secretary may prescribe).

12 “(b) CONTENTS OF RETURN.—Any return filed
13 under this section shall provide such information relating
14 to such benefits and the coordination of such benefits as
15 the Secretary may require to ensure the proper adminis-
16 tration and use of such benefits.

17 “(c) ENFORCEMENT.—With respect to any person
18 described in subsection (a) and subject to registration re-
19 quirements under this title, rules similar to rules of section
20 4222(c) shall apply with respect to any requirement under
21 this section.”.

22 (b) CONFORMING AMENDMENT.—The table of sec-
23 tions for subpart C of part III of subchapter A of chapter
24 32 is amended by adding at the end the following new
25 item:



“Sec. 4104. Information reporting for persons claiming certain tax benefits.”.

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

3 **Subtitle B—Agricultural Incentives**

4 **SEC. 311. SPECIAL RULES FOR LIVESTOCK SOLD ON AC-**
5 **COUNT OF WEATHER-RELATED CONDITIONS.**

6 (a) REPLACEMENT OF LIVESTOCK WITH OTHER
7 FARM PROPERTY.—Subsection (f) of section 1033 (relat-
8 ing to involuntary conversions) is amended—

9 (1) by inserting “drought, flood, or other
10 weather-related conditions, or” after “because of”,

11 (2) by inserting “in the case of soil contamina-
12 tion or other environmental contamination” after
13 “including real property”, and

14 (3) by striking “WHERE THERE HAS BEEN
15 ENVIRONMENTAL CONTAMINATION” in the heading
16 and inserting “IN CERTAIN CASES”.

17 (b) EXTENSION OF REPLACEMENT PERIOD OF IN-
18 VOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e)
19 of section 1033 (relating to involuntary conversions) is
20 amended—

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

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



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

3 “(2) EXTENSION OF REPLACEMENT PERIOD.—

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

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

20 (c) INCOME INCLUSION RULES.—Section 451(e) (re-
21 lating to special rule for proceeds from livestock sold on
22 account of drought, flood, or other weather-related condi-
23 tions) is amended by adding at the end the following new
24 paragraph:



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

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

10 **SEC. 312. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**
11 **TIVES WITHOUT REDUCING PATRONAGE**
12 **DIVIDENDS.**

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

6 (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO
7 PATRONS OF A COOPERATIVE.—Section 40(g) (relating to
8 definitions and special rules for eligible small ethanol pro-
9 ducer credit) is amended by adding at the end the fol-
10 lowing new paragraph:

11 “(6) ALLOCATION OF SMALL ETHANOL PRO-
12 DUCER CREDIT TO PATRONS OF COOPERATIVE.—

13 “(A) ELECTION TO ALLOCATE.—

14 “(i) IN GENERAL.—In the case of a
15 cooperative organization described in sec-
16 tion 1381(a), any portion of the credit de-
17 termined under subsection (a)(3) for the
18 taxable year may, at the election of the or-
19 ganization, be apportioned pro rata among
20 patrons of the organization on the basis of
21 the quantity or value of business done with
22 or for such patrons for the taxable year.

23 “(ii) FORM AND EFFECT OF ELEC-
24 TION.—An election under clause (i) for any
25 taxable year shall be made on a timely



1 filed return for such year. Such election,
2 once made, shall be irrevocable for such
3 taxable year.

4 “(B) TREATMENT OF ORGANIZATIONS AND
5 PATRONS.—

6 “(i) ORGANIZATIONS.—The amount of
7 the credit not apportioned to patrons pur-
8 suant to subparagraph (A) shall be in-
9 cluded in the amount determined under
10 subsection (a)(3) for the taxable year of
11 the organization.

12 “(ii) PATRONS.—The amount of the
13 credit apportioned to patrons pursuant to
14 subparagraph (A) shall be included in the
15 amount determined under such subsection
16 for the first taxable year of each patron
17 ending on or after the last day of the pay-
18 ment period (as defined in section
19 1382(d)) for the taxable year of the orga-
20 nization or, if earlier, for the taxable year
21 of each patron ending on or after the date
22 on which the patron receives notice from
23 the cooperative of the apportionment.

24 “(iii) SPECIAL RULES FOR DECREASE
25 IN CREDITS FOR TAXABLE YEAR.—If the



1 amount of the credit of the organization
2 determined under such subsection for a
3 taxable year is less than the amount of
4 such credit shown on the return of the or-
5 ganization for such year, an amount equal
6 to the excess of—

7 “(I) such reduction, over
8 “(ii) the amount not apportioned
9 to such patrons under subparagraph
10 (A) for the taxable year,
11 shall be treated as an increase in tax im-
12 posed by this chapter on the organization.
13 Such increase shall not be treated as tax
14 imposed by this chapter for purposes of de-
15 termining the amount of any credit under
16 this chapter or for purposes of section
17 55.”.

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. 314. COORDINATE FARMERS AND FISHERMEN INCOME**
22 **AVERAGING AND THE ALTERNATIVE MIN-**
23 **IMUM TAX.**

24 (a) IN GENERAL.—Section 55(c) (defining regular
25 tax) is amended by redesignating paragraph (2) as para-



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

3 “(2) COORDINATION WITH INCOME AVERAGING
4 FOR FARMERS AND FISHERMEN.—Solely for pur-
5 poses of this section, section 1301 (relating to aver-
6 aging of farm and fishing income) shall not apply in
7 computing the regular tax.”.

8 (b) ALLOWING INCOME AVERAGING FOR FISHER-
9 MEN.—

10 (1) IN GENERAL.—Section 1301(a) is amended
11 by striking “farming business” and inserting “farm-
12 ing business or fishing business”.

13 (2) DEFINITION OF ELECTED FARM INCOME.—

14 (A) IN GENERAL.—Clause (i) of section
15 1301(b)(1)(A) is amended by inserting “or fish-
16 ing business” before the semicolon.

17 (B) CONFORMING AMENDMENT.—Subpara-
18 graph (B) of section 1301(b)(1) is amended by
19 inserting “or fishing business” after “farming
20 business” both places it occurs.

21 (3) DEFINITION OF FISHING BUSINESS.—Sec-
22 tion 1301(b) is amended by adding at the end the
23 following new paragraph:

24 “(4) FISHING BUSINESS.—The term ‘fishing
25 business’ means the conduct of commercial fishing



1 as defined in section 3 of the Magnuson-Stevens
2 Fishery Conservation and Management Act (16
3 U.S.C. 1802).”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years beginning after
6 December 31, 2003.

7 **SEC. 315. CAPITAL GAIN TREATMENT UNDER SECTION**
8 **631(b) TO APPLY TO OUTRIGHT SALES BY**
9 **LANDOWNERS.**

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

16 (b) CONFORMING AMENDMENTS.—

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

21 (2) The heading for section 631(b) is amended
22 by striking “WITH A RETAINED ECONOMIC INTER-
23 EST”.

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



1 **SEC. 316. MODIFICATION TO COOPERATIVE MARKETING**
2 **RULES TO INCLUDE VALUE ADDED PROC-**
3 **ESSING INVOLVING ANIMALS.**

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

7 “(k) COOPERATIVE MARKETING INCLUDES VALUE-
8 ADDED PROCESSING INVOLVING ANIMALS.—For pur-
9 poses of section 521 and this subchapter, the marketing
10 of the products of members or other producers shall in-
11 clude the feeding of such products to cattle, hogs, fish,
12 chickens, or other animals and the sale of the resulting
13 animals or animal products.”.

14 (b) CONFORMING AMENDMENT.—Section 521(b) is
15 amended by adding at the end the following new para-
16 graph:

17 “(7) CROSS REFERENCE.—

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

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



1 **SEC. 317. EXTENSION OF DECLARATORY JUDGMENT PRO-**
2 **CEDURES TO FARMERS' COOPERATIVE ORGA-**
3 **NIZATIONS.**

4 (a) IN GENERAL.—Section 7428(a)(1) (relating to
5 declaratory judgments of tax exempt organizations) is
6 amended by striking “or” at the end of subparagraph (B)
7 and by adding at the end the following new subparagraph:

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

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply with respect to pleadings filed after
15 the date of the enactment of this Act.

16 **SEC. 318. MODIFICATION OF SAFE HARBOR RULES FOR**
17 **TIMBER REITS.**

18 (a) EXPANSION OF PROHIBITED TRANSACTION SAFE
19 HARBOR.—Section 857(b)(6) (relating to income from
20 prohibited transactions) is amended by redesignating sub-
21 paragraphs (D) and (E) as subparagraphs (E) and (F),
22 respectively, and by inserting after subparagraph (C) the
23 following new subparagraph:

24 “(D) CERTAIN SALES NOT TO CONSTITUTE
25 PROHIBITED TRANSACTIONS.—For purposes of
26 this part, the term ‘prohibited transaction’ does



1 not include a sale of property which is a real es-
2 tate asset (as defined in section 856(c)(5)(B))
3 if—

4 “(i) the trust held the property for
5 not less than 4 years in connection with
6 the trade or business of producing timber,

7 “(ii) the aggregate expenditures made
8 by the trust, or a partner of the trust, dur-
9 ing the 4-year period preceding the date of
10 sale which—

11 “(I) are includible in the basis of
12 the property (other than timberland
13 acquisition expenditures), and

14 “(II) are directly related to oper-
15 ation of the property for the produc-
16 tion of timber or for the preservation
17 of the property for use as timberland,
18 do not exceed 30 percent of the net selling
19 price of the property,

20 “(iii) the aggregate expenditures made
21 by the trust, or a partner of the trust, dur-
22 ing the 4-year period preceding the date of
23 sale which—



1 “(I) are includible in the basis of
2 the property (other than timberland
3 acquisition expenditures), and

4 “(II) are not directly related to
5 operation of the property for the pro-
6 duction of timber, or for the preserva-
7 tion of the property for use as
8 timberland,

9 do not exceed 5 percent of the net selling
10 price of the property,

11 “(iv)(I) during the taxable year the
12 trust does not make more than 7 sales of
13 property (other than sales of foreclosure
14 property or sales to which section 1033 ap-
15 plies), or

16 “(II) the aggregate adjusted bases (as
17 determined for purposes of computing
18 earnings and profits) of property (other
19 than sales of foreclosure property or sales
20 to which section 1033 applies) sold during
21 the taxable year does not exceed 10 per-
22 cent of the aggregate bases (as so deter-
23 mined) of all of the assets of the trust as
24 of the beginning of the taxable year,



1 “(A) IN GENERAL.—In the case of any
2 qualified timber property with respect to which
3 the taxpayer has made (in accordance with reg-
4 ulations prescribed by the Secretary) an election
5 under this subsection, the taxpayer shall treat
6 reforestation expenditures which are paid or in-
7 curred during the taxable year with respect to
8 such property as an expense which is not
9 chargeable to capital account. The reforestation
10 expenditures so treated shall be allowed as a de-
11 duction.

12 “(B) DOLLAR LIMITATION.—The aggre-
13 gate amount of reforestation expenditures which
14 may be taken into account under subparagraph
15 (A) with respect to each qualified timber prop-
16 erty for any taxable year shall not exceed
17 \$10,000 (\$5,000 in the case of a separate re-
18 turn by a married individual (as defined in sec-
19 tion 7703)).”.

20 (b) NET AMORTIZABLE BASIS.—Section 194(c)(2)
21 (defining amortizable basis) is amended by inserting
22 “which have not been taken into account under subsection
23 (b)” after “expenditures”.

24 (c) CONFORMING AMENDMENTS.—



1 (1) Section 194(b) is amended by striking para-
2 graphs (3) and (4).

3 (2) Section 194(b)(2) is amended by striking
4 “paragraph (1)” both places it appears and inserting
5 “paragraph (1)(B)”.

6 (3) Section 194(c) is amended by striking para-
7 graph (4) and inserting the following new para-
8 graphs:

9 “(4) TREATMENT OF TRUSTS AND ESTATES.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), this section shall not apply
12 to trusts and estates.

13 “(B) AMORTIZATION DEDUCTION AL-
14 LOWED TO ESTATES.—The benefit of the de-
15 duction for amortization provided by subsection
16 (a) shall be allowed to estates in the same man-
17 ner as in the case of an individual. The allow-
18 able deduction shall be apportioned between the
19 income beneficiary and the fiduciary under reg-
20 ulations prescribed by the Secretary. Any
21 amount so apportioned to a beneficiary shall be
22 taken into account for purposes of determining
23 the amount allowable as a deduction under sub-
24 section (a) to such beneficiary.



1 “(5) APPLICATION WITH OTHER DEDUC-
2 TIONS.—No deduction shall be allowed under any
3 other provision of this chapter with respect to any
4 expenditure with respect to which a deduction is al-
5 lowed or allowable under this section to the tax-
6 payer.”.

7 (4) The heading for section 194 is amended by
8 striking “**AMORTIZATION**” and inserting “**TREAT-**
9 **MENT**”.

10 (5) The item relating to section 194 in the table
11 of sections for part VI of subchapter B of chapter
12 1 is amended by striking “Amortization” and insert-
13 ing “Treatment”.

14 (d) REPEAL OF REFORESTATION CREDIT.—

15 (1) IN GENERAL.—Section 46 (relating to
16 amount of credit) is amended—

17 (A) by adding “and” at the end of para-
18 graph (1),

19 (B) by striking “, and” at the end of para-
20 graph (2) and inserting a period, and

21 (C) by striking paragraph (3).

22 (2) CONFORMING AMENDMENTS.—

23 (A) Section 48 is amended—

24 (i) by striking subsection (b),



1 (ii) by striking “this subsection” in
2 paragraph (5) of subsection (a) and insert-
3 ing “subsection (a)”, and

4 (iii) by redesignating such paragraph
5 (5) as subsection (b).

6 (B) The heading for section 48 is amended
7 by striking “; **REFORESTATION CREDIT**”.

8 (C) The item relating to section 48 in the
9 table of sections for subpart E of part IV of
10 subchapter A of chapter 1 is amended by strik-
11 ing “, reforestation credit”.

12 (D) Section 50(c)(3) is amended by strik-
13 ing “or reforestation credit”.

14 (e) **EFFECTIVE DATE.**—The amendments made by
15 this section shall apply with respect to expenditures paid
16 or incurred after the date of the enactment of this Act.

17 **Subtitle C—Other Incentives**

18 **SEC. 321. NET INCOME FROM PUBLICLY TRADED PARTNER-** 19 **SHIPS TREATED AS QUALIFYING INCOME OF** 20 **REGULATED INVESTMENT COMPANIES.**

21 (a) **IN GENERAL.**—Paragraph (2) of section 851(b)
22 (defining regulated investment company) is amended to
23 read as follows:

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



1 “(A) dividends, interest, payments with re-
2 spect to securities loans (as defined in section
3 512(a)(5)), and gains from the sale or other
4 disposition of stock or securities (as defined in
5 section 2(a)(36) of the Investment Company
6 Act of 1940, as amended) or foreign currencies,
7 or other income (including but not limited to
8 gains from options, futures or forward con-
9 tracts) derived with respect to its business of
10 investing in such stock, securities, or currencies,
11 and

12 “(B) net income derived from an interest
13 in a qualified publicly traded partnership (as
14 defined in subsection (h)); and”.

15 (b) SOURCE FLOW-THROUGH RULE NOT TO
16 APPLY.—The last sentence of section 851(b) is amended
17 by inserting “(other than a qualified publicly traded part-
18 nership as defined in subsection (h))” after “derived from
19 a partnership”.

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

24 “(5) The term ‘outstanding voting securities of
25 such issuer’ shall include the equity securities of a



1 qualified publicly traded partnership (as defined in
2 subsection (h)).”.

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

6 “(h) QUALIFIED PUBLICLY TRADED PARTNER-
7 SHIP.—For purposes of this section, the term ‘qualified
8 publicly traded partnership’ means a publicly traded part-
9 nership described in section 7704(b) other than a partner-
10 ship which would satisfy the gross income requirements
11 of section 7704(c)(2) if qualifying income included only
12 income described in subsection (b)(2)(A).”.

13 (e) DEFINITION OF QUALIFYING INCOME.—Section
14 7704(d)(4) is amended by striking “section 851(b)(2)”
15 and inserting “section 851(b)(2)(A)”.

16 (f) LIMITATION ON COMPOSITION OF ASSETS.—Sub-
17 paragraph (B) of section 851(b)(3) is amended to read
18 as follows:

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

21 “(i) the securities (other than Govern-
22 ment securities or the securities of other
23 regulated investment companies) of any
24 one issuer,



1 “(ii) the securities (other than the se-
2 curities of other regulated investment com-
3 panies) of two or more issuers which the
4 taxpayer controls and which are deter-
5 mined, under regulations prescribed by the
6 Secretary, to be engaged in the same or
7 similar trades or businesses or related
8 trades or businesses, or

9 “(iii) the securities of one or more
10 qualified publicly traded partnerships (as
11 defined in subsection (h)).”.

12 (g) APPLICATION OF SPECIAL PASSIVE ACTIVITY
13 RULE TO REGULATED INVESTMENT COMPANIES.—Sub-
14 section (k) of section 469 (relating to separate application
15 of section in case of publicly traded partnerships) is
16 amended by adding at the end the following new para-
17 graph:

18 “(4) APPLICATION TO REGULATED INVEST-
19 MENT COMPANIES.—For purposes of this section, a
20 regulated investment company (as defined in section
21 851) holding an interest in a qualified publicly trad-
22 ed partnership (as defined in section 851(h)) shall
23 be treated as a taxpayer described in subsection
24 (a)(2) with respect to items attributable to such in-
25 terest.”.



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

4 **SEC. 322. SIMPLIFICATION OF EXCISE TAX IMPOSED ON**
5 **BOWS AND ARROWS.**

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

8 “(1) BOWS.—

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

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

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

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

23 a tax equal to 11 percent of the price for which
24 so sold.”.



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

5 “(3) ARROWS.—

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

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

14 “(i) section 6416(b)(3) shall not
15 apply, and

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

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

22 “(II) the amount of tax paid with
23 respect to the tax imposed under
24 paragraph (1) or (2) on such shaft or
25 component.



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

5 (c) CONFORMING AMENDMENTS.—Section
6 4161(b)(2) is amended—

7 (1) by inserting “(other than broadheads)”
8 after “point”, and

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

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to articles sold by the manufac-
13 turer, producer, or importer after the date which is 30
14 days after the date of the enactment of this Act.

15 **SEC. 323. REDUCTION OF EXCISE TAX ON FISHING TACKLE**
16 **BOXES.**

17 (a) IN GENERAL.—Subsection (a) of section 4161
18 (relating to sport fishing equipment) is amended by redес-
19 ignating paragraph (3) as paragraph (4) and by inserting
20 after paragraph (2) the following new paragraph:

21 “(3) 3 PERCENT RATE OF TAX FOR TACKLE
22 BOXES.—In the case of fishing tackle boxes, para-
23 graph (1) shall be applied by substituting ‘3 percent’
24 for ‘10 percent’.”.



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

4 **SEC. 324. SONAR DEVICES SUITABLE FOR FINDING FISH.**

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

11 (b) CONFORMING AMENDMENT.—Section 4162 is
12 amended by striking subsection (b) and by redesignating
13 subsection (c) as subsection (b).

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

17 **SEC. 325. CHARITABLE CONTRIBUTION DEDUCTION FOR**
18 **CERTAIN EXPENSES INCURRED IN SUPPORT**
19 **OF NATIVE ALASKAN SUBSISTENCE WHAL-**
20 **ING.**

21 (a) IN GENERAL.—Section 170 (relating to chari-
22 table, etc., contributions and gifts), as amended by this
23 Act, is amended by redesignating subsection (n) as sub-
24 section (o) and by inserting after subsection (m) the fol-
25 lowing new subsection:



1 “(n) EXPENSES PAID BY CERTAIN WHALING CAP-
2 TAINS IN SUPPORT OF NATIVE ALASKAN SUBSISTENCE
3 WHALING.—

4 “(1) IN GENERAL.—In the case of an individual
5 who is recognized by the Alaska Eskimo Whaling
6 Commission as a whaling captain charged with the
7 responsibility of maintaining and carrying out sanc-
8 tioned whaling activities and who engages in such
9 activities during the taxable year, the amount de-
10 scribed in paragraph (2) (to the extent such amount
11 does not exceed \$10,000 for the taxable year) shall
12 be treated for purposes of this section as a chari-
13 table contribution.

14 “(2) AMOUNT DESCRIBED.—

15 “(A) IN GENERAL.—The amount described
16 in this paragraph is the aggregate of the rea-
17 sonable and necessary whaling expenses paid by
18 the taxpayer during the taxable year in carrying
19 out sanctioned whaling activities.

20 “(B) WHALING EXPENSES.—For purposes
21 of subparagraph (A), the term ‘whaling ex-
22 penses’ includes expenses for—

23 “(i) the acquisition and maintenance
24 of whaling boats, weapons, and gear used
25 in sanctioned whaling activities,



1 “(ii) the supplying of food for the
2 crew and other provisions for carrying out
3 such activities, and

4 “(iii) storage and distribution of the
5 catch from such activities.

6 “(3) SANCTIONED WHALING ACTIVITIES.—For
7 purposes of this subsection, the term ‘sanctioned
8 whaling activities’ means subsistence bowhead whale
9 hunting activities conducted pursuant to the man-
10 agement plan of the Alaska Eskimo Whaling Com-
11 mission.

12 “(4) SUBSTANTIATION OF EXPENSES.—The
13 Secretary shall issue guidance requiring that the
14 taxpayer substantiate the whaling expenses for
15 which a deduction is claimed under this subsection,
16 including by maintaining appropriate written records
17 with respect to the time, place, date, amount, and
18 nature of the expense, as well as the taxpayer’s eligi-
19 bility for such deduction, and that (to the extent
20 provided by the Secretary) such substantiation be
21 provided as part of the taxpayer’s return of tax.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall apply to contributions made after De-
24 cember 31, 2004.



1 **SEC. 326. MODIFICATION OF DEPRECIATION ALLOWANCE**
2 **FOR AIRCRAFT.**

3 (a) AIRCRAFT TREATED AS QUALIFIED PROP-
4 erty.—

5 (1) IN GENERAL.—Paragraph (2) of section
6 168(k) is amended by redesignating subparagraphs
7 (C) through (F) as subparagraphs (D) through (G),
8 respectively, and by inserting after subparagraph
9 (B) the following new subparagraph:

10 “(C) CERTAIN AIRCRAFT.—The term
11 ‘qualified property’ includes property—

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

14 “(ii) which is an aircraft which is not
15 a transportation property (as defined in
16 subparagraph (B)(iii)) other than for agri-
17 cultural or firefighting purposes,

18 “(iii) which is purchased and on which
19 such purchaser, at the time of the contract
20 for purchase, has made a nonrefundable
21 deposit of the lesser of—

22 “(I) 10 percent of the cost, or

23 “(II) \$100,000, and

24 “(iv) which has—

25 “(I) an estimated production pe-
26 riod exceeding 4 months, and



1 “(II) a cost exceeding
2 \$200,000.”.

3 (2) PLACED IN SERVICE DATE.—Clause (iv) of
4 section 168(k)(2)(A) is amended by striking “sub-
5 paragraph (B)” and inserting “subparagraphs (B)
6 and (C)”.

7 (b) CONFORMING AMENDMENTS.—

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

10 “(iv) APPLICATION OF SUBPARA-
11 GRAPH.—This subparagraph shall not
12 apply to any property which is described in
13 subparagraph (C).”.

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

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

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

23 (5) Section 168(k)(4)(D) is amended by strik-
24 ing “Paragraph (2)(E)” and inserting “Paragraph
25 (2)(F)”.



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

5 **SEC. 327. MODIFICATION OF PLACED IN SERVICE RULE**
6 **FOR BONUS DEPRECIATION PROPERTY.**

7 (a) IN GENERAL.—Subclause (II) of section
8 168(k)(2)(E)(iii) (relating to syndication), as amended by
9 the Working Families Tax Relief Act of 2004 and as re-
10 designated by this Act, is amended by inserting before the
11 comma at the end the following: “(or, in the case of mul-
12 tiple units of property subject to the same lease, within
13 3 months after the date the final unit is placed in service,
14 so long as the period between the time the first unit is
15 placed in service and the time the last unit is placed in
16 service does not exceed 12 months)”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to property sold after June 4,
19 2004.

20 **SEC. 328. EXPENSING OF CAPITAL COSTS INCURRED IN**
21 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
22 **TION AGENCY SULFUR REGULATIONS.**

23 (a) IN GENERAL.—Part VI of subchapter B of chap-
24 ter 1 (relating to itemized deductions for individuals and



1 corporations) is amended by inserting after section 179A
2 the following new section:

3 **“SEC. 179B. DEDUCTION FOR CAPITAL COSTS INCURRED IN**
4 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
5 **TION AGENCY SULFUR REGULATIONS.**

6 “(a) TREATMENT AS EXPENSES.—A small business
7 refiner (as defined in section 45H(c)(1)) may elect to treat
8 75 percent of qualified capital costs (as defined in section
9 45H(c)(2)) which are paid or incurred by the taxpayer
10 during the taxable year as expenses which are not charge-
11 able to capital account. Any cost so treated shall be al-
12 lowed as a deduction for the taxable year in which paid
13 or incurred.

14 “(b) REDUCED PERCENTAGE.—In the case of a small
15 business refiner with average daily domestic refinery runs
16 for the 1-year period ending on December 31, 2002, in
17 excess of 155,000 barrels, the number of percentage
18 points described in subsection (a) shall be reduced (not
19 below zero) by the product of such number (before the
20 application of this subsection) and the ratio of such excess
21 to 50,000 barrels.

22 “(c) BASIS REDUCTION.—

23 “(1) IN GENERAL.—For purposes of this title,
24 the basis of any property shall be reduced by the



1 portion of the cost of such property taken into ac-
2 count under subsection (a).

3 “(2) ORDINARY INCOME RECAPTURE.—For
4 purposes of section 1245, the amount of the deduc-
5 tion allowable under subsection (a) with respect to
6 any property which is of a character subject to the
7 allowance for depreciation shall be treated as a de-
8 duction allowed for depreciation under section 167.”.

9 “(d) COORDINATION WITH OTHER PROVISIONS.—
10 Section 280B shall not apply to amounts which are treated
11 as expenses under this section.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) Section 263(a)(1), as amended by this Act,
14 is amended by striking “or” at the end of subpara-
15 graph (G), by striking the period at the end of sub-
16 paragraph (H) and inserting “, or”, and by adding
17 at the end the following new subparagraph:

18 “(I) expenditures for which a deduction is
19 allowed under section 179B.”.

20 (2) Section 263A(c)(3) is amended by inserting
21 “179B,” after “section”.

22 (3) Section 312(k)(3)(B) is amended by strik-
23 ing “or 179A” each place it appears in the heading
24 and text and inserting “179A, or 179B”.



1 (4) Section 1016(a) is amended by striking
2 “and” at the end of paragraph (27), by striking the
3 period at the end of paragraph (28) and inserting “,
4 and”, and by adding at the end the following new
5 paragraph:

6 “(29) to the extent provided in section
7 179B(c).”

8 (5) Paragraphs (2)(C) and (3)(C) of section
9 1245(a) are each amended by inserting “179B,”
10 after “179A.”.

11 (6) The table of sections for part VI of sub-
12 chapter B of chapter 1, as amended by this Act, is
13 amended by inserting after the item relating to sec-
14 tion 179A the following new item:

“Sec. 179B. Deduction for capital costs incurred in complying
with Environmental Protection Agency sulfur regu-
lations.”.

15 (c) **EFFECTIVE DATE.**—The amendment made by
16 this section shall apply to expenses paid or incurred after
17 December 31, 2002, in taxable years ending after such
18 date.

19 **SEC. 329. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**
20 **SEL FUEL.**

21 (a) **IN GENERAL.**—Subpart D of part IV of sub-
22 chapter A of chapter 1 (relating to business-related cred-
23 its), as amended by this Act, is amended by inserting after
24 section 45G the following new section:



1 **“SEC. 45H. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**
2 **SEL FUEL.**

3 “(a) IN GENERAL.—For purposes of section 38, the
4 amount of the low sulfur diesel fuel production credit de-
5 termined under this section with respect to any facility
6 of a small business refiner is an amount equal to 5 cents
7 for each gallon of low sulfur diesel fuel produced during
8 the taxable year by such small business refiner at such
9 facility.

10 “(b) MAXIMUM CREDIT.—

11 “(1) IN GENERAL.—The aggregate credit deter-
12 mined under subsection (a) for any taxable year with
13 respect to any facility shall not exceed—

14 “(A) 25 percent of the qualified capital
15 costs incurred by the small business refiner
16 with respect to such facility, reduced by

17 “(B) the aggregate credits determined
18 under this section for all prior taxable years
19 with respect to such facility.

20 “(2) REDUCED PERCENTAGE.—In the case of a
21 small business refiner with average daily domestic
22 refinery runs for the 1-year period ending on De-
23 cember 31, 2002, in excess of 155,000 barrels, the
24 number of percentage points described in paragraph
25 (1) shall be reduced (not below zero) by the product
26 of such number (before the application of this para-



1 graph) and the ratio of such excess to 50,000 bar-
2 rels.

3 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-
4 poses of this section—

5 “(1) SMALL BUSINESS REFINER.—The term
6 ‘small business refiner’ means, with respect to any
7 taxable year, a refiner of crude oil—

8 “(A) with respect to which not more than
9 1,500 individuals are engaged in the refinery
10 operations of the business on any day during
11 such taxable year, and

12 “(B) the average daily domestic refinery
13 run or average retained production of which for
14 all facilities of the taxpayer for the 1-year pe-
15 riod ending on December 31, 2002, did not ex-
16 ceed 205,000 barrels.

17 “(2) QUALIFIED CAPITAL COSTS.—The term
18 ‘qualified capital costs’ means, with respect to any
19 facility, those costs paid or incurred during the ap-
20 plicable period for compliance with the applicable
21 EPA regulations with respect to such facility, includ-
22 ing expenditures for the construction of new process
23 operation units or the dismantling and reconstruc-
24 tion of existing process units to be used in the pro-
25 duction of low sulfur diesel fuel, associated adjacent



1 or offsite equipment (including tankage, catalyst,
2 and power supply), engineering, construction period
3 interest, and sitework.

4 “(3) APPLICABLE EPA REGULATIONS.—The
5 term ‘applicable EPA regulations’ means the High-
6 way Diesel Fuel Sulfur Control Requirements of the
7 Environmental Protection Agency.

8 “(4) APPLICABLE PERIOD.—The term ‘applica-
9 ble period’ means, with respect to any facility, the
10 period beginning on January 1, 2003, and ending on
11 the earlier of the date which is 1 year after the date
12 on which the taxpayer must comply with the applica-
13 ble EPA regulations with respect to such facility or
14 December 31, 2009.

15 “(5) LOW SULFUR DIESEL FUEL.—The term
16 ‘low sulfur diesel fuel’ means diesel fuel with a sul-
17 fur content of 15 parts per million or less.

18 “(d) REDUCTION IN BASIS.—For purposes of this
19 subtitle, if a credit is determined under this section for
20 any expenditure with respect to any property, the increase
21 in basis of such property which would (but for this sub-
22 section) result from such expenditure shall be reduced by
23 the amount of the credit so determined.

24 “(e) SPECIAL RULE FOR DETERMINATION OF REFIN-
25 ERY RUNS.—For purposes this section and section



1 179B(b), in the calculation of average daily domestic re-
2 finery run or retained production, only refineries which on
3 April 1, 2003, were refineries of the refiner or a related
4 person (within the meaning of section 613A(d)(3)), shall
5 be taken into account.

6 “(f) CERTIFICATION.—

7 “(1) REQUIRED.—No credit shall be allowed
8 unless, not later than the date which is 30 months
9 after the first day of the first taxable year in which
10 the low sulfur diesel fuel production credit is deter-
11 mined with respect to a facility, the small business
12 refiner obtains certification from the Secretary, after
13 consultation with the Administrator of the Environ-
14 mental Protection Agency, that the taxpayer’s quali-
15 fied capital costs with respect to such facility will re-
16 sult in compliance with the applicable EPA regula-
17 tions.

18 “(2) CONTENTS OF APPLICATION.—An applica-
19 tion for certification shall include relevant informa-
20 tion regarding unit capacities and operating charac-
21 teristics sufficient for the Secretary, after consulta-
22 tion with the Administrator of the Environmental
23 Protection Agency, to determine that such qualified
24 capital costs are necessary for compliance with the
25 applicable EPA regulations.



1 “(3) REVIEW PERIOD.—Any application shall
2 be reviewed and notice of certification, if applicable,
3 shall be made within 60 days of receipt of such ap-
4 plication. In the event the Secretary does not notify
5 the taxpayer of the results of such certification with-
6 in such period, the taxpayer may presume the cer-
7 tification to be issued until so notified.

8 “(4) STATUTE OF LIMITATIONS.—With respect
9 to the credit allowed under this section—

10 “(A) the statutory period for the assess-
11 ment of any deficiency attributable to such
12 credit shall not expire before the end of the 3-
13 year period ending on the date that the review
14 period described in paragraph (3) ends with re-
15 spect to the taxpayer, and

16 “(B) such deficiency may be assessed be-
17 fore the expiration of such 3-year period not-
18 withstanding the provisions of any other law or
19 rule of law which would otherwise prevent such
20 assessment.

21 “(g) COOPERATIVE ORGANIZATIONS.—

22 “(1) APPORTIONMENT OF CREDIT.—

23 “(A) IN GENERAL.—In the case of a coop-
24 erative organization described in section
25 1381(a), any portion of the credit determined



1 under subsection (a) for the taxable year may,
2 at the election of the organization, be appor-
3 tioned among patrons eligible to share in pa-
4 tronage dividends on the basis of the quantity
5 or value of business done with or for such pa-
6 trons for the taxable year.

7 “(B) FORM AND EFFECT OF ELECTION.—
8 An election under subparagraph (A) for any
9 taxable year shall be made on a timely filed re-
10 turn for such year. Such election, once made,
11 shall be irrevocable for such taxable year.

12 “(2) TREATMENT OF ORGANIZATIONS AND PA-
13 TRONS.—

14 “(A) ORGANIZATIONS.—The amount of the
15 credit not apportioned to patrons pursuant to
16 paragraph (1) shall be included in the amount
17 determined under subsection (a) for the taxable
18 year of the organization.

19 “(B) PATRONS.—The amount of the credit
20 apportioned to patrons pursuant to paragraph
21 (1) shall be included in the amount determined
22 under subsection (a) for the first taxable year
23 of each patron ending on or after the last day
24 of the payment period (as defined in section
25 1382(d)) for the taxable year of the organiza-



1 tion or, if earlier, for the taxable year of each
2 patron ending on or after the date on which the
3 patron receives notice from the cooperative of
4 the apportionment.

5 “(3) SPECIAL RULE.—If the amount of a credit
6 which has been apportioned to any patron under this
7 subsection is decreased for any reason—

8 “(A) such amount shall not increase the
9 tax imposed on such patron, and

10 “(B) the tax imposed by this chapter on
11 such organization shall be increased by such
12 amount.

13 The increase under subparagraph (B) shall not be
14 treated as tax imposed by this chapter for purposes
15 of determining the amount of any credit under this
16 chapter or for purposes of section 55.”.

17 (b) CREDIT MADE PART OF GENERAL BUSINESS
18 CREDIT.—Subsection (b) of section 38 (relating to general
19 business credit), as amended by this Act, is amended by
20 striking “plus” at the end of paragraph (15), by striking
21 the period at the end of paragraph (16) and inserting “,
22 plus”, and by adding at the end the following new para-
23 graph:

24 “(17) the low sulfur diesel fuel production cred-
25 it determined under section 45H(a).”.



1 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C
2 (relating to certain expenses for which credits are allow-
3 able) is amended by adding at the end the following new
4 subsection:

5 “(d) LOW SULFUR DIESEL FUEL PRODUCTION
6 CREDIT.—No deduction shall be allowed for that portion
7 of the expenses otherwise allowable as a deduction for the
8 taxable year which is equal to the amount of the credit
9 determined for the taxable year under section 45H(a).”.

10 (d) BASIS ADJUSTMENT.—Section 1016(a) (relating
11 to adjustments to basis), as amended by this Act, is
12 amended by striking “and” at the end of paragraph (29),
13 by striking the period at the end of paragraph (30) and
14 inserting “, and”, and by adding at the end the following
15 new paragraph:

16 “(31) in the case of a facility with respect to
17 which a credit was allowed under section 45H, to
18 the extent provided in section 45H(d).”.

19 (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS
20 CREDITS.—Section 196(c) (defining qualified business
21 credits), as amended by this Act, is amended by striking
22 “and” at the end of paragraph (10), by striking the period
23 at the end of paragraph (11) and inserting “, and”, and
24 by adding after paragraph (11) the following new para-
25 graph:



1 “(12) the low sulfur diesel fuel production cred-
2 it determined under section 45H(a).”.

3 (e) CLERICAL AMENDMENT.—The table of sections
4 for subpart D of part IV of subchapter A of chapter 1,
5 as amended by this Act, is amended by inserting after the
6 item relating to section 45G the following new item:

 “Sec. 45H. Credit for production of low sulfur diesel fuel.”.

7 (f) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to expenses paid or incurred after
9 December 31, 2002, in taxable years ending after such
10 date.S6201

11 **TITLE IV—TAX REFORM AND**
12 **SIMPLIFICATION FOR UNITED**
13 **STATES BUSINESSES**

14 **SEC. 401. INTEREST EXPENSE ALLOCATION RULES.**

15 (a) ELECTION TO ALLOCATE ON WORLDWIDE
16 BASIS.—Section 864 is amended by redesignating sub-
17 section (f) as subsection (g) and by inserting after sub-
18 section (e) the following new subsection:

19 “(f) ELECTION TO ALLOCATE INTEREST, ETC. ON
20 WORLDWIDE BASIS.—For purposes of this subchapter, at
21 the election of the worldwide affiliated group—

22 “(1) ALLOCATION AND APPORTIONMENT OF IN-
23 TEREST EXPENSE.—

24 “(A) IN GENERAL.—The taxable income of
25 each domestic corporation which is a member of



1 a worldwide affiliated group shall be determined
2 by allocating and apportioning interest expense
3 of each member as if all members of such group
4 were a single corporation.

5 “(B) TREATMENT OF WORLDWIDE AFFILI-
6 ATED GROUP.—The taxable income of the do-
7 mestic members of a worldwide affiliated group
8 from sources outside the United States shall be
9 determined by allocating and apportioning the
10 interest expense of such domestic members to
11 such income in an amount equal to the excess
12 (if any) of—

13 “(i) the total interest expense of the
14 worldwide affiliated group multiplied by
15 the ratio which the foreign assets of the
16 worldwide affiliated group bears to all the
17 assets of the worldwide affiliated group,
18 over

19 “(ii) the interest expense of all foreign
20 corporations which are members of the
21 worldwide affiliated group to the extent
22 such interest expense of such foreign cor-
23 porations would have been allocated and
24 apportioned to foreign source income if
25 this subsection were applied to a group



1 consisting of all the foreign corporations in
2 such worldwide affiliated group.

3 “(C) WORLDWIDE AFFILIATED GROUP.—

4 For purposes of this paragraph, the term
5 ‘worldwide affiliated group’ means a group con-
6 sisting of—

7 “(i) the includible members of an af-
8 filiated group (as defined in section
9 1504(a), determined without regard to
10 paragraphs (2) and (4) of section
11 1504(b)), and

12 “(ii) all controlled foreign corpora-
13 tions in which such members in the aggre-
14 gate meet the ownership requirements of
15 section 1504(a)(2) either directly or indi-
16 rectly through applying paragraph (2) of
17 section 958(a) or through applying rules
18 similar to the rules of such paragraph to
19 stock owned directly or indirectly by do-
20 mestic partnerships, trusts, or estates.

21 “(2) ALLOCATION AND APPORTIONMENT OF
22 OTHER EXPENSES.—Expenses other than interest
23 which are not directly allocable or apportioned to
24 any specific income producing activity shall be allo-
25 cated and apportioned as if all members of the affili-



1 ated group were a single corporation. For purposes
2 of the preceding sentence, the term ‘affiliated group’
3 has the meaning given such term by section 1504
4 (determined without regard to paragraph (4) of sec-
5 tion 1504(b)).

6 “(3) TREATMENT OF TAX-EXEMPT ASSETS;
7 BASIS OF STOCK IN NONAFFILIATED 10-PERCENT
8 OWNED CORPORATIONS.—The rules of paragraphs
9 (3) and (4) of subsection (e) shall apply for purposes
10 of this subsection, except that paragraph (4) shall be
11 applied on a worldwide affiliated group basis.

12 “(4) TREATMENT OF CERTAIN FINANCIAL IN-
13 STITUTIONS.—

14 “(A) IN GENERAL.—For purposes of para-
15 graph (1), any corporation described in sub-
16 paragraph (B) shall be treated as an includible
17 corporation for purposes of section 1504 only
18 for purposes of applying this subsection sepa-
19 rately to corporations so described.

20 “(B) DESCRIPTION.—A corporation is de-
21 scribed in this subparagraph if—

22 “(i) such corporation is a financial in-
23 stitution described in section 581 or 591,

24 “(ii) the business of such financial in-
25 stitution is predominantly with persons



1 other than related persons (within the
2 meaning of subsection (d)(4)) or their cus-
3 tomers, and

4 “(iii) such financial institution is re-
5 quired by State or Federal law to be oper-
6 ated separately from any other entity
7 which is not such an institution.

8 “(C) TREATMENT OF BANK AND FINAN-
9 CIAL HOLDING COMPANIES.—To the extent pro-
10 vided in regulations—

11 “(i) a bank holding company (within
12 the meaning of section 2(a) of the Bank
13 Holding Company Act of 1956 (12 U.S.C.
14 1841(a)),

15 “(ii) a financial holding company
16 (within the meaning of section 2(p) of the
17 Bank Holding Company Act of 1956 (12
18 U.S.C. 1841(p)), and

19 “(iii) any subsidiary of a financial in-
20 stitution described in section 581 or 591,
21 or of any such bank or financial holding
22 company, if such subsidiary is predomi-
23 nantly engaged (directly or indirectly) in
24 the active conduct of a banking, financing,
25 or similar business,



1 shall be treated as a corporation described in
2 subparagraph (B).

3 “(5) ELECTION TO EXPAND FINANCIAL INSTI-
4 TUTION GROUP OF WORLDWIDE GROUP.—

5 “(A) IN GENERAL.—If a worldwide affili-
6 ated group elects the application of this sub-
7 section, all financial corporations which—

8 “(i) are members of such worldwide
9 affiliated group, but

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

12 shall be treated as described in paragraph
13 (4)(B) for purposes of applying paragraph
14 (4)(A). This subsection (other than this para-
15 graph) shall apply to any such group in the
16 same manner as this subsection (other than this
17 paragraph) applies to the pre-election worldwide
18 affiliated group of which such group is a part.

19 “(B) FINANCIAL CORPORATION.—For pur-
20 poses of this paragraph, the term ‘financial cor-
21 poration’ means any corporation if at least 80
22 percent of its gross income is income described
23 in section 904(d)(2)(C)(ii) and the regulations
24 thereunder which is derived from transactions
25 with persons who are not related (within the



1 meaning of section 267(b) or 707(b)(1)) to the
2 corporation. For purposes of the preceding sen-
3 tence, there shall be disregarded any item of in-
4 come or gain from a transaction or series of
5 transactions a principal purpose of which is the
6 qualification of any corporation as a financial
7 corporation.

8 “(C) ANTI-ABUSE RULES.—In the case of
9 a corporation which is a member of an electing
10 financial institution group, to the extent that
11 such corporation—

12 “(i) distributes dividends or makes
13 other distributions with respect to its stock
14 after the date of the enactment of this
15 paragraph to any member of the pre-elec-
16 tion worldwide affiliated group (other than
17 to a member of the electing financial insti-
18 tution group) in excess of the greater of—

19 “(I) its average annual dividend
20 (expressed as a percentage of current
21 earnings and profits) during the 5-
22 taxable-year period ending with the
23 taxable year preceding the taxable
24 year, or



1 “(II) 25 percent of its average
2 annual earnings and profits for such
3 5-taxable-year period, or

4 “(ii) deals with any person in any
5 manner not clearly reflecting the income of
6 the corporation (as determined under prin-
7 ciples similar to the principles of section
8 482),

9 an amount of indebtedness of the electing fi-
10 nancial institution group equal to the excess
11 distribution or the understatement or overstate-
12 ment of income, as the case may be, shall be re-
13 characterized (for the taxable year and subse-
14 quent taxable years) for purposes of this para-
15 graph as indebtedness of the worldwide affili-
16 ated group (excluding the electing financial in-
17 stitution group). If a corporation has not been
18 in existence for 5 taxable years, this subpara-
19 graph shall be applied with respect to the pe-
20 riod it was in existence.

21 “(D) ELECTION.—An election under this
22 paragraph with respect to any financial institu-
23 tion group may be made only by the common
24 parent of the pre-election worldwide affiliated
25 group and may be made only for the first tax-



1 able year beginning after December 31, 2008,
2 in which such affiliated group includes 1 or
3 more financial corporations. Such an election,
4 once made, shall apply to all financial corpora-
5 tions which are members of the electing finan-
6 cial institution group for such taxable year and
7 all subsequent years unless revoked with the
8 consent of the Secretary.

9 “(E) DEFINITIONS RELATING TO
10 GROUPS.—For purposes of this paragraph—

11 “(i) PRE-ELECTION WORLDWIDE AF-
12 FILATED GROUP.—The term ‘pre-election
13 worldwide affiliated group’ means, with re-
14 spect to a corporation, the worldwide affili-
15 ated group of which such corporation
16 would (but for an election under this para-
17 graph) be a member for purposes of apply-
18 ing paragraph (1).

19 “(ii) ELECTING FINANCIAL INSTITU-
20 TION GROUP.—The term ‘electing financial
21 institution group’ means the group of cor-
22 porations to which this subsection applies
23 separately by reason of the application of
24 paragraph (4)(A) and which includes fi-



1 nancial corporations by reason of an elec-
2 tion under subparagraph (A).

3 “(F) REGULATIONS.—The Secretary shall
4 prescribe such regulations as may be appro-
5 priate to carry out this subsection, including
6 regulations—

7 “(i) providing for the direct allocation
8 of interest expense in other circumstances
9 where such allocation would be appropriate
10 to carry out the purposes of this sub-
11 section,

12 “(ii) preventing assets or interest ex-
13 pense from being taken into account more
14 than once, and

15 “(iii) dealing with changes in mem-
16 bers of any group (through acquisitions or
17 otherwise) treated under this paragraph as
18 an affiliated group for purposes of this
19 subsection.

20 “(6) ELECTION.—An election to have this sub-
21 section apply with respect to any worldwide affiliated
22 group may be made only by the common parent of
23 the domestic affiliated group referred to in para-
24 graph (1)(C) and may be made only for the first
25 taxable year beginning after December 31, 2008, in



1 which a worldwide affiliated group exists which in-
2 cludes such affiliated group and at least 1 foreign
3 corporation. Such an election, once made, shall apply
4 to such common parent and all other corporations
5 which are members of such worldwide affiliated
6 group for such taxable year and all subsequent years
7 unless revoked with the consent of the Secretary.”.

8 (b) EXPANSION OF REGULATORY AUTHORITY.—
9 Paragraph (7) of section 864(e) is amended—

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

14 (2) by striking “and” at the end of subpara-
15 graph (E), by redesignating subparagraph (F) as
16 subparagraph (G), and by inserting after subpara-
17 graph (E) the following new subparagraph:

18 “(F) preventing assets or interest expense
19 from being taken into account more than once,
20 and”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 2008.



1 **SEC. 402. RECHARACTERIZATION OF OVERALL DOMESTIC**
2 **LOSS.**

3 (a) GENERAL RULE.—Section 904 is amended by re-
4 designating subsections (g), (h), (i), (j), and (k) as sub-
5 sections (h), (i), (j), (k), and (l) respectively, and by in-
6 serting after subsection (f) the following new subsection:

7 “(g) RECHARACTERIZATION OF OVERALL DOMESTIC
8 LOSS.—

9 “(1) GENERAL RULE.—For purposes of this
10 subpart and section 936, in the case of any taxpayer
11 who sustains an overall domestic loss for any taxable
12 year beginning after December 31, 2006, that por-
13 tion of the taxpayer’s taxable income from sources
14 within the United States for each succeeding taxable
15 year which is equal to the lesser of—

16 “(A) the amount of such loss (to the extent
17 not used under this paragraph in prior taxable
18 years), or

19 “(B) 50 percent of the taxpayer’s taxable
20 income from sources within the United States
21 for such succeeding taxable year,

22 shall be treated as income from sources without the
23 United States (and not as income from sources with-
24 in the United States).

25 “(2) OVERALL DOMESTIC LOSS DEFINED.—For
26 purposes of this subsection—



1 “(A) IN GENERAL.—The term ‘overall do-
2 mestic loss’ means any domestic loss to the ex-
3 tent such loss offsets taxable income from
4 sources without the United States for the tax-
5 able year or for any preceding taxable year by
6 reason of a carryback. For purposes of the pre-
7 ceding sentence, the term ‘domestic loss’ means
8 the amount by which the gross income for the
9 taxable year from sources within the United
10 States is exceeded by the sum of the deductions
11 properly apportioned or allocated thereto (deter-
12 mined without regard to any carryback from a
13 subsequent taxable year).

14 “(B) TAXPAYER MUST HAVE ELECTED
15 FOREIGN TAX CREDIT FOR YEAR OF LOSS.—
16 The term ‘overall domestic loss’ shall not in-
17 clude any loss for any taxable year unless the
18 taxpayer chose the benefits of this subpart for
19 such taxable year.

20 “(3) CHARACTERIZATION OF SUBSEQUENT IN-
21 COME.—

22 “(A) IN GENERAL.—Any income from
23 sources within the United States that is treated
24 as income from sources without the United
25 States under paragraph (1) shall be allocated



1 among and increase the income categories in
2 proportion to the loss from sources within the
3 United States previously allocated to those in-
4 come categories.

5 “(B) INCOME CATEGORY.—For purposes of
6 this paragraph, the term ‘income category’ has
7 the meaning given such term by subsection
8 (f)(5)(E)(i).

9 “(4) COORDINATION WITH SUBSECTION (f).—
10 The Secretary shall prescribe such regulations as
11 may be necessary to coordinate the provisions of this
12 subsection with the provisions of subsection (f).”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 535(d)(2) is amended by striking
15 “section 904(g)(6)” and inserting “section
16 904(h)(6)”.

17 (2) Subparagraph (A) of section 936(a)(2) is
18 amended by striking “section 904(f)” and inserting
19 “subsections (f) and (g) of section 904”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to losses for taxable years begin-
22 ning after December 31, 2006.



1 **SEC. 403. LOOK-THRU RULES TO APPLY TO DIVIDENDS**
2 **FROM NONCONTROLLED SECTION 902 COR-**
3 **PORATIONS.**

4 (a) IN GENERAL.—Section 904(d)(4) (relating to
5 look-thru rules apply to dividends from noncontrolled sec-
6 tion 902 corporations) is amended to read as follows:

7 “(4) LOOK-THRU APPLIES TO DIVIDENDS FROM
8 NONCONTROLLED SECTION 902 CORPORATIONS.—

9 “(A) IN GENERAL.—For purposes of this
10 subsection, any dividend from a noncontrolled
11 section 902 corporation with respect to the tax-
12 payer shall be treated as income described in a
13 subparagraph of paragraph (1) in proportion to
14 the ratio of—

15 “(i) the portion of earnings and prof-
16 its attributable to income described in such
17 subparagraph, to

18 “(ii) the total amount of earnings and
19 profits.

20 “(B) EARNINGS AND PROFITS OF CON-
21 TROLLED FOREIGN CORPORATIONS.—In the
22 case of any distribution from a controlled for-
23 eign corporation to a United States share-
24 holder, rules similar to the rules of subpara-
25 graph (A) shall apply in determining the extent
26 to which earnings and profits of the controlled



1 foreign corporation which are attributable to
2 dividends received from a noncontrolled section
3 902 corporation may be treated as income in a
4 separate category.

5 “(C) SPECIAL RULES.—For purposes of
6 this paragraph—

7 “(i) EARNINGS AND PROFITS.—

8 “(I) IN GENERAL.—The rules of
9 section 316 shall apply.

10 “(II) REGULATIONS.—The Sec-
11 retary may prescribe regulations re-
12 garding the treatment of distributions
13 out of earnings and profits for periods
14 before the taxpayer’s acquisition of
15 the stock to which the distributions
16 relate.

17 “(ii) INADEQUATE SUBSTAN-
18 TIATION.—If the Secretary determines that
19 the proper subparagraph of paragraph (1)
20 in which a dividend is described has not
21 been substantiated, such dividend shall be
22 treated as income described in paragraph
23 (1)(A).

24 “(iii) COORDINATION WITH HIGH-
25 TAXED INCOME PROVISIONS.—Rules simi-



1 lar to the rules of paragraph (3)(F) shall
2 apply for purposes of this paragraph.

3 “(iv) LOOK-THRU WITH RESPECT TO
4 CARRYOVER OF CREDIT.—Rules similar to
5 subparagraph (A) also shall apply to any
6 carryforward under subsection (c) from a
7 taxable year beginning before January 1,
8 2003, of tax allocable to a dividend from a
9 noncontrolled section 902 corporation with
10 respect to the taxpayer. The Secretary may
11 by regulations provide for the allocation of
12 any carryback of tax allocable to a divi-
13 dend from a noncontrolled section 902 cor-
14 poration from a taxable year beginning on
15 or after January 1, 2003, to a taxable year
16 beginning before such date for purposes of
17 allocating such dividend among the sepa-
18 rate categories in effect for the taxable
19 year to which carried.”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Subparagraph (E) of section 904(d)(1) is
22 hereby repealed.

23 (2) Section 904(d)(2)(C)(iii) is amended by
24 adding “and” at the end of subclause (I), by striking



1 subclause (II), and by redesignating subclause (III)
2 as subclause (II).

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

6 (4) Section 904(d)(2)(E) is amended—

7 (A) by inserting “or (4)” after “paragraph
8 (3)” in clause (i), and

9 (B) by striking clauses (ii) and (iv) and by
10 redesignating clause (iii) as clause (ii).

11 (5) Section 904(d)(3)(F) is amended by strik-
12 ing “(D), or (E)” and inserting “or (D)”.

13 (6) Section 864(d)(5)(A)(i) is amended by
14 striking “(C)(iii)(III)” and inserting “(C)(iii)(II)”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 December 31, 2002.

18 **SEC. 404. REDUCTION TO 2 FOREIGN TAX CREDIT BASKETS.**

19 (a) IN GENERAL.—Paragraph (1) of section 904(d)
20 (relating to separate application of section with respect to
21 certain categories of income) is amended to read as fol-
22 lows:

23 “(1) IN GENERAL.—The provisions of sub-
24 sections (a), (b), and (c) and sections 902, 907, and
25 960 shall be applied separately with respect to—



1 “(A) passive category income, and

2 “(B) general category income.”

3 (b) CATEGORIES.—Paragraph (2) of section 904(d)
4 is amended by striking subparagraph (B), by redesignig-
5 nating subparagraph (A) as subparagraph (B), and by in-
6 serting before subparagraph (B) (as so redesignated) the
7 following new subparagraph:

8 “(A) CATEGORIES.—

9 “(i) PASSIVE CATEGORY INCOME.—

10 The term ‘passive category income’ means
11 passive income and specified passive cat-
12 egory income.

13 “(ii) GENERAL CATEGORY INCOME.—

14 The term ‘general category income’ means
15 income other than passive category in-
16 come.”.

17 (c) SPECIFIED PASSIVE CATEGORY INCOME.—Sub-
18 paragraph (B) of section 904(d)(2), as so redesignated,
19 is amended by adding at the end the following new clause:

20 “(v) SPECIFIED PASSIVE CATEGORY

21 INCOME.—The term ‘specified passive cat-
22 egory income’ means—

23 “(I) dividends from a DISC or
24 former DISC (as defined in section
25 992(a)) to the extent such dividends



1 are treated as income from sources
2 without the United States,

3 “(II) taxable income attributable
4 to foreign trade income (within the
5 meaning of section 923(b)), and

6 “(III) distributions from a FSC
7 (or a former FSC) out of earnings
8 and profits attributable to foreign
9 trade income (within the meaning of
10 section 923(b)) or interest or carrying
11 charges (as defined in section
12 927(d)(1)) derived from a transaction
13 which results in foreign trade income
14 (as defined in section 923(b)).”.

15 (d) TREATMENT OF FINANCIAL SERVICES.—Para-
16 graph (2) of section 904(d), as amended by section
17 403(b)(3), is amended by striking subparagraph (D), by
18 redesignating subparagraph (C) as subparagraph (D), and
19 by inserting before subparagraph (D) (as so redesignated)
20 the following new subparagraph:

21 “(C) TREATMENT OF FINANCIAL SERVICES
22 INCOME AND COMPANIES.—

23 “(i) IN GENERAL.—Financial services
24 income shall be treated as general category
25 income in the case of—



1 “(I) a member of a financial
2 services group, and

3 “(II) any other person if such
4 person is predominantly engaged in
5 the active conduct of a banking, insur-
6 ance, financing, or similar business.

7 “(ii) FINANCIAL SERVICES GROUP.—
8 The term ‘financial services group’ means
9 any affiliated group (as defined in section
10 1504(a) without regard to paragraphs (2)
11 and (3) of section 1504(b)) which is pre-
12 dominantly engaged in the active conduct
13 of a banking, insurance, financing, or simi-
14 lar business. In determining whether such
15 a group is so engaged, there shall be taken
16 into account only the income of members
17 of the group that are—

18 “(I) United States corporations,
19 or

20 “(II) controlled foreign corpora-
21 tions in which such United States cor-
22 porations own, directly or indirectly,
23 at least 80 percent of the total voting
24 power and value of the stock.



1 “(iii) PASS-THRU ENTITIES.—The
2 Secretary shall by regulation specify for
3 purposes of this subparagraph the treat-
4 ment of financial services income received
5 or accrued by partnerships and by other
6 pass-thru entities which are not members
7 of a financial services group.”.

8 (e) TREATMENT OF INCOME TAX BASE DIF-
9 FERENCES.—Paragraph (2) of section 904(d) is amended
10 by redesignating subparagraphs (H) and (I) as subpara-
11 graphs (I) and (J), respectively, and by inserting after
12 subparagraph (G) the following new subparagraph:

13 “(H) TREATMENT OF INCOME TAX BASE
14 DIFFERENCES.—

15 “(i) IN GENERAL.—In the case of tax-
16 able years beginning after December 31,
17 2006, tax imposed under the law of a for-
18 eign country or possession of the United
19 States on an amount which does not con-
20 stitute income under United States tax
21 principles shall be treated as imposed on
22 income described in paragraph (1)(B).

23 “(ii) SPECIAL RULE FOR YEARS BE-
24 FORE 2007.—



1 “(I) IN GENERAL.—In the case
2 of taxes paid or accrued in taxable
3 years beginning after December 31,
4 2004, and before January 1, 2007, a
5 taxpayer may elect to treat tax im-
6 posed under the law of a foreign coun-
7 try or possession of the United States
8 on an amount which does not con-
9 stitute income under United States
10 tax principles as tax imposed on in-
11 come described in subparagraph (C)
12 or (I) of paragraph (1).

13 “(II) ELECTION IRREVOCABLE.—
14 Any such election shall apply to the
15 taxable year for which made and all
16 subsequent taxable years described in
17 subclause (I) unless revoked with the
18 consent of the Secretary.”.

19 (f) CONFORMING AMENDMENTS.—

20 (1) Clause (iii) of section 904(d)(2)(B) (relating
21 to exceptions from passive income), as so redesign-
22 ated, is amended by striking subclause (I) and by
23 redesignating subclauses (II) and (III) as subclauses
24 (I) and (II), respectively.



1 (2) Clause (i) of section 904(d)(2)(D) (defining
2 financial services income), as so redesignated, is
3 amended by adding “or” at the end of subclause (I)
4 and by striking subclauses (II) and (III) and insert-
5 ing the following new subclause:

6 “(II) passive income (determined
7 without regard to subparagraph
8 (B)(iii)(II)).”

9 (3) Section 904(d)(2)(D) (defining financial
10 services income), as so redesignated and amended by
11 section 404(b)(3), is amended by striking clause
12 (iii).

13 (4) Paragraph (3) of section 904(d) is amended
14 to read as follows:

15 “(3) LOOK-THRU IN CASE OF CONTROLLED
16 FOREIGN CORPORATIONS.—

17 “(A) IN GENERAL.—Except as otherwise
18 provided in this paragraph, dividends, interest,
19 rents, and royalties received or accrued by the
20 taxpayer from a controlled foreign corporation
21 in which the taxpayer is a United States share-
22 holder shall not be treated as passive category
23 income.

24 “(B) SUBPART F INCLUSIONS.—Any
25 amount included in gross income under section



1 951(a)(1)(A) shall be treated as passive cat-
2 egory income to the extent the amount so in-
3 cluded is attributable to passive category in-
4 come.

5 “(C) INTEREST, RENTS, AND ROYAL-
6 TIES.—Any interest, rent, or royalty which is
7 received or accrued from a controlled foreign
8 corporation in which the taxpayer is a United
9 States shareholder shall be treated as passive
10 category income to the extent it is properly allo-
11 cable (under regulations prescribed by the Sec-
12 retary) to passive category income of the con-
13 trolled foreign corporation.

14 “(D) DIVIDENDS.—Any dividend paid out
15 of the earnings and profits of any controlled
16 foreign corporation in which the taxpayer is a
17 United States shareholder shall be treated as
18 passive category income in proportion to the
19 ratio of—

20 “(i) the portion of the earnings and
21 profits attributable to passive category in-
22 come, to

23 “(ii) the total amount of earnings and
24 profits.



1 “(E) LOOK-THRU APPLIES ONLY WHERE
2 SUBPART F APPLIES.—If a controlled foreign
3 corporation meets the requirements of section
4 954(b)(3)(A) (relating to de minimis rule) for
5 any taxable year, for purposes of this para-
6 graph, none of its foreign base company income
7 (as defined in section 954(a) without regard to
8 section 954(b)(5)) and none of its gross insur-
9 ance income (as defined in section
10 954(b)(3)(C)) for such taxable year shall be
11 treated as passive category income, except that
12 this sentence shall not apply to any income
13 which (without regard to this sentence) would
14 be treated as financial services income. Solely
15 for purposes of applying subparagraph (D),
16 passive income of a controlled foreign corpora-
17 tion shall not be treated as passive category in-
18 come if the requirements of section 954(b)(4)
19 are met with respect to such income.

20 “(F) COORDINATION WITH HIGH-TAXED
21 INCOME PROVISIONS.—

22 “(i) In determining whether any in-
23 come of a controlled foreign corporation is
24 passive category income, subclause (II) of
25 paragraph (2)(B)(iii) shall not apply.



1 “(ii) Any income of the taxpayer
2 which is treated as passive category income
3 under this paragraph shall be so treated
4 notwithstanding any provision of para-
5 graph (2); except that the determination of
6 whether any amount is high-taxed income
7 shall be made after the application of this
8 paragraph.

9 “(G) DIVIDEND.—For purposes of this
10 paragraph, the term ‘dividend’ includes any
11 amount included in gross income in section
12 951(a)(1)(B). Any amount included in gross in-
13 come under section 78 to the extent attrib-
14 utable to amounts included in gross income in
15 section 951(a)(1)(A) shall not be treated as a
16 dividend but shall be treated as included in
17 gross income under section 951(a)(1)(A).

18 “(H) LOOK-THRU APPLIES TO PASSIVE
19 FOREIGN INVESTMENT COMPANY INCLUSION.—
20 If—

21 “(i) a passive foreign investment com-
22 pany is a controlled foreign corporation,
23 and



1 “(ii) the taxpayer is a United States
2 shareholder in such controlled foreign cor-
3 poration,
4 any amount included in gross income under sec-
5 tion 1293 shall be treated as income in a sepa-
6 rate category to the extent such amount is at-
7 tributable to income in such category.”.

8 (5) Paragraph (2) of section 904(d) is amended
9 by adding at the end the following new subpara-
10 graph:

11 “(K) TRANSITIONAL RULES FOR 2007
12 CHANGES.—For purposes of paragraph (1)—

13 “(i) taxes carried from any taxable
14 year beginning before January 1, 2007, to
15 any taxable year beginning on or after
16 such date, with respect to any item of in-
17 come, shall be treated as described in the
18 subparagraph of paragraph (1) in which
19 such income would be described were such
20 taxes paid or accrued in a taxable year be-
21 ginning on or after such date, and

22 “(ii) the Secretary may by regulations
23 provide for the allocation of any carryback
24 of taxes with respect to income from a tax-
25 able year beginning on or after January 1,



1 2007, to a taxable year beginning before
2 such date for purposes of allocating such
3 income among the separate categories in
4 effect for the taxable year to which car-
5 ried.”.

6 (6) Section 904(j)(3)(A)(i) is amended by strik-
7 ing “subsection (d)(2)(A)” and inserting “subsection
8 (d)(2)(B)”.

9 (g) EFFECTIVE DATES.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to taxable years beginning
12 after December 31, 2006.

13 (2) TRANSITIONAL RULE RELATING TO INCOME
14 TAX BASE DIFFERENCE.—Section 904(d)(2)(H)(ii)
15 of the Internal Revenue Code of 1986, as added by
16 subsection (e), shall apply to taxable years beginning
17 after December 31, 2004.

18 **SEC. 405. ATTRIBUTION OF STOCK OWNERSHIP THROUGH**
19 **PARTNERSHIPS TO APPLY IN DETERMINING**
20 **SECTION 902 AND 960 CREDITS.**

21 (a) IN GENERAL.—Subsection (c) of section 902 is
22 amended by redesignating paragraph (7) as paragraph (8)
23 and by inserting after paragraph (6) the following new
24 paragraph:



1 “(7) CONSTRUCTIVE OWNERSHIP THROUGH
2 PARTNERSHIPS.—Stock owned, directly or indirectly,
3 by or for a partnership shall be considered as being
4 owned proportionately by its partners. Stock consid-
5 ered to be owned by a person by reason of the pre-
6 ceding sentence shall, for purposes of applying such
7 sentence, be treated as actually owned by such per-
8 son. The Secretary may prescribe such regulations
9 as may be necessary to carry out the purposes of
10 this paragraph, including rules to account for special
11 partnership allocations of dividends, credits, and
12 other incidents of ownership of stock in determining
13 proportionate ownership.”.

14 (b) CLARIFICATION OF COMPARABLE ATTRIBUTION
15 UNDER SECTION 901(b)(5).—Paragraph (5) of section
16 901(b) is amended by striking “any individual” and in-
17 serting “any person”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxes of foreign corporations
20 for taxable years of such corporations beginning after the
21 date of the enactment of this Act.

22 **SEC. 406. CLARIFICATION OF TREATMENT OF CERTAIN**
23 **TRANSFERS OF INTANGIBLE PROPERTY.**

24 (a) IN GENERAL.—Subparagraph (C) of section
25 367(d)(2) is amended by adding at the end the following



1 new sentence: “For purposes of applying section 904(d),
2 any such amount shall be treated in the same manner as
3 if such amount were a royalty.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to amounts treated as received pur-
6 suant to section 367(d)(2) of the Internal Revenue Code
7 of 1986 on or after August 5, 1997.

8 **SEC. 407. UNITED STATES PROPERTY NOT TO INCLUDE**
9 **CERTAIN ASSETS OF CONTROLLED FOREIGN**
10 **CORPORATION.**

11 (a) IN GENERAL.—Section 956(c)(2) (relating to ex-
12 ceptions from property treated as United States property)
13 is amended by striking “and” at the end of subparagraph
14 (J), by striking the period at the end of subparagraph (K)
15 and inserting a semicolon, and by adding at the end the
16 following new subparagraphs:

17 “(L) securities acquired and held by a con-
18 trolled foreign corporation in the ordinary
19 course of its business as a dealer in securities
20 if—

21 “(i) the dealer accounts for the securi-
22 ties as securities held primarily for sale to
23 customers in the ordinary course of busi-
24 ness, and



1 “(ii) the dealer disposes of the securi-
2 ties (or such securities mature while held
3 by the dealer) within a period consistent
4 with the holding of securities for sale to
5 customers in the ordinary course of busi-
6 ness; and

7 “(M) an obligation of a United States per-
8 son which—

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

10 “(ii) is not—

11 “(I) a United States shareholder
12 (as defined in section 951(b)) of the
13 controlled foreign corporation, or

14 “(II) a partnership, estate, or
15 trust in which the controlled foreign
16 corporation, or any related person (as
17 defined in section 954(d)(3)), is a
18 partner, beneficiary, or trustee imme-
19 diately after the acquisition of any ob-
20 ligation of such partnership, estate, or
21 trust by the controlled foreign cor-
22 poration.”.

23 (b) CONFORMING AMENDMENT.—Section 956(e)(2)
24 is amended by striking “and (K)” in the last sentence and
25 inserting “, (K), and (L)”.



1 (c) EFFECTIVE DATE.—The amendments 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. 408. TRANSLATION OF FOREIGN TAXES.**

7 (a) ELECTIVE EXCEPTION FOR TAXES PAID OTHER
8 THAN IN FUNCTIONAL CURRENCY.—Paragraph (1) of
9 section 986(a) (relating to determination of foreign taxes
10 and foreign corporation’s earnings and profits) is amended
11 by redesignating subparagraph (D) as subparagraph (E)
12 and by inserting after subparagraph (C) the following new
13 subparagraph:

14 “(D) ELECTIVE EXCEPTION FOR TAXES
15 PAID OTHER THAN IN FUNCTIONAL CUR-
16 RENCY.—

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

23 “(ii) APPLICATION TO QUALIFIED
24 BUSINESS UNITS.—An election under this
25 subparagraph may apply to foreign income



1 taxes attributable to a qualified business
2 unit in accordance with regulations pre-
3 scribed by the Secretary.

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

9 (b) SPECIAL RULE FOR REGULATED INVESTMENT
10 COMPANIES.—

11 (1) IN GENERAL.—Section 986(a)(1), as
12 amended by subsection (a), is amended by redesign-
13 ating subparagraph (E) as subparagraph (F) and
14 by inserting after subparagraph (D) the following:

15 “(E) SPECIAL RULE FOR REGULATED IN-
16 VESTMENT COMPANIES.—In the case of a regu-
17 lated investment company which takes into ac-
18 count income on an accrual basis, subpara-
19 graphs (A) through (D) shall not apply and for-
20 eign income taxes paid or accrued with respect
21 to such income shall be translated into dollars
22 using the exchange rate as of the date the in-
23 come accrues.”.



1 (2) CONFORMING AMENDMENT.—Section
2 986(a)(2) is amended by inserting “or (E)” after
3 “subparagraph (A)”.

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

7 **SEC. 409. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**
8 **FROM CERTAIN FOREIGN CORPORATIONS.**

9 (a) IN GENERAL.—Paragraph (2) of section 871(i)
10 (relating to tax not to apply to certain interest and divi-
11 dends) is amended by adding at the end the following new
12 subparagraph:

13 “(D) Dividends paid by a foreign corpora-
14 tion which are treated under section
15 861(a)(2)(B) as income from sources within the
16 United States.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to payments made after December
19 31, 2004.

20 **SEC. 410. EQUAL TREATMENT OF INTEREST PAID BY FOR-**
21 **EIGN PARTNERSHIPS AND FOREIGN COR-**
22 **PORATIONS.**

23 (a) IN GENERAL.—Paragraph (1) of section 861(a)
24 is amended by striking “and” at the end of subparagraph
25 (A), by striking the period at the end of subparagraph



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

3 “(C) in the case of a foreign partnership,
4 which is predominantly engaged in the active
5 conduct of a trade or business outside the
6 United States, any interest not paid by a trade
7 or business engaged in by the partnership in
8 the United States and not allocable to income
9 which is effectively connected (or treated as ef-
10 fectively connected) with the conduct of a trade
11 or business in the United States.”.

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

15 **SEC. 411. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**
16 **LATED INVESTMENT COMPANIES.**

17 (a) TREATMENT OF CERTAIN DIVIDENDS.—

18 (1) NONRESIDENT ALIEN INDIVIDUALS.—Sec-
19 tion 871 (relating to tax on nonresident alien indi-
20 viduals) is amended by redesignating subsection (k)
21 as subsection (l) and by inserting after subsection (j)
22 the following new subsection:

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

25 “(1) INTEREST-RELATED DIVIDENDS.—



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

6 “(B) EXCEPTIONS.—Subparagraph (A)
7 shall not apply—

8 “(i) to any interest-related dividend
9 received from a regulated investment com-
10 pany by a person to the extent such divi-
11 dend is attributable to interest (other than
12 interest described in subparagraph (E) (i)
13 or (iii)) received by such company on in-
14 debtedness issued by such person or by any
15 corporation or partnership with respect to
16 which such person is a 10-percent share-
17 holder,

18 “(ii) to any interest-related dividend
19 with respect to stock of a regulated invest-
20 ment company unless the person who
21 would otherwise be required to deduct and
22 withhold tax from such dividend under
23 chapter 3 receives a statement (which
24 meets requirements similar to the require-
25 ments of subsection (h)(5)) that the bene-



1 ficial owner of such stock is not a United
2 States person, and

3 “(iii) to any interest-related dividend
4 paid to any person within a foreign coun-
5 try (or any interest-related dividend pay-
6 ment addressed to, or for the account of,
7 persons within such foreign country) dur-
8 ing any period described in subsection
9 (h)(6) with respect to such country.

10 Clause (iii) shall not apply to any dividend with
11 respect to any stock which was acquired on or
12 before the date of the publication of the Sec-
13 retary’s determination under subsection (h)(6).

14 “(C) INTEREST-RELATED DIVIDEND.—For
15 purposes of this paragraph, the term ‘interest-
16 related dividend’ means any dividend (or part
17 thereof) which is designated by the regulated
18 investment company as an interest-related divi-
19 dend in a written notice mailed to its share-
20 holders not later than 60 days after the close
21 of its taxable year. If the aggregate amount so
22 designated with respect to a taxable year of the
23 company (including amounts so designated with
24 respect to dividends paid after the close of the
25 taxable year described in section 855) is greater



1 than the qualified net interest income of the
2 company for such taxable year, the portion of
3 each distribution which shall be an interest-re-
4 lated dividend shall be only that portion of the
5 amounts so designated which such qualified net
6 interest income bears to the aggregate amount
7 so designated. Such term shall not include any
8 dividend with respect to any taxable year of the
9 company beginning after December 31, 2007.

10 “(D) QUALIFIED NET INTEREST IN-
11 COME.—For purposes of subparagraph (C), the
12 term ‘qualified net interest income’ means the
13 qualified interest income of the regulated in-
14 vestment company reduced by the deductions
15 properly allocable to such income.

16 “(E) QUALIFIED INTEREST INCOME.—For
17 purposes of subparagraph (D), the term ‘quali-
18 fied interest income’ means the sum of the fol-
19 lowing amounts derived by the regulated invest-
20 ment company from sources within the United
21 States:

22 “(i) Any amount includible in gross
23 income as original issue discount (within
24 the meaning of section 1273) on an obliga-
25 tion payable 183 days or less from the date



1 of original issue (without regard to the pe-
2 riod held by the company).

3 “(ii) Any interest includible in gross
4 income (including amounts recognized as
5 ordinary income in respect of original issue
6 discount or market discount or acquisition
7 discount under part V of subchapter P and
8 such other amounts as regulations may
9 provide) on an obligation which is in reg-
10 istered form; except that this clause shall
11 not apply to—

12 “(I) any interest on an obligation
13 issued by a corporation or partnership
14 if the regulated investment company
15 is a 10-percent shareholder in such
16 corporation or partnership, and

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

20 “(iii) Any interest referred to in sub-
21 section (i)(2)(A) (without regard to the
22 trade or business of the regulated invest-
23 ment company).

24 “(iv) Any interest-related dividend in-
25 cludable in gross income with respect to



1 stock of another regulated investment com-
2 pany.

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

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

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), no tax shall be imposed
10 under paragraph (1)(A) of subsection (a) on
11 any short-term capital gain dividend received
12 from a regulated investment company.

13 “(B) EXCEPTION FOR ALIENS TAXABLE
14 UNDER SUBSECTION (a)(2).—Subparagraph (A)
15 shall not apply in the case of any nonresident
16 alien individual subject to tax under subsection
17 (a)(2).

18 “(C) SHORT-TERM CAPITAL GAIN DIVI-
19 DEND.—For purposes of this paragraph, the
20 term ‘short-term capital gain dividend’ means
21 any dividend (or part thereof) which is des-
22 ignated by the regulated investment company as
23 a short-term capital gain dividend in a written
24 notice mailed to its shareholders not later than
25 60 days after the close of its taxable year. If



1 the aggregate amount so designated with re-
2 spect to a taxable year of the company (includ-
3 ing amounts so designated with respect to divi-
4 dends paid after the close of the taxable year
5 described in section 855) is greater than the
6 qualified short-term gain of the company for
7 such taxable year, the portion of each distribu-
8 tion which shall be a short-term capital gain
9 dividend shall be only that portion of the
10 amounts so designated which such qualified
11 short-term gain bears to the aggregate amount
12 so designated. Such term shall not include any
13 dividend with respect to any taxable year of the
14 company beginning after December 31, 2007.

15 “(D) QUALIFIED SHORT-TERM GAIN.—For
16 purposes of subparagraph (C), the term ‘quali-
17 fied short-term gain’ means the excess of the
18 net short-term capital gain of the regulated in-
19 vestment company for the taxable year over the
20 net long-term capital loss (if any) of such com-
21 pany for such taxable year. For purposes of this
22 subparagraph—

23 “(i) the net short-term capital gain of
24 the regulated investment company shall be
25 computed by treating any short-term cap-



1 ital gain dividend includible in gross in-
2 come with respect to stock of another regu-
3 lated investment company as a short-term
4 capital gain, and

5 “(ii) the excess of the net short-term
6 capital gain for a taxable year over the net
7 long-term capital loss for a taxable year (to
8 which an election under section 4982(e)(4)
9 does not apply) shall be determined with-
10 out regard to any net capital loss or net
11 short-term capital loss attributable to
12 transactions after October 31 of such year,
13 and any such net capital loss or net short-
14 term capital loss shall be treated as arising
15 on the 1st day of the next taxable year.

16 To the extent provided in regulations, clause
17 (ii) shall apply also for purposes of computing
18 the taxable income of the regulated investment
19 company.”

20 (2) FOREIGN CORPORATIONS.—Section 881 (re-
21 lating to tax on income of foreign corporations not
22 connected with United States business) is amended
23 by redesignating subsection (e) as subsection (f) and
24 by inserting after subsection (d) the following new
25 subsection:



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

3 “(1) INTEREST-RELATED DIVIDENDS.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), no tax shall be imposed
6 under paragraph (1) of subsection (a) on any
7 interest-related dividend (as defined in section
8 871(k)(1)) received from a regulated investment
9 company.

10 “(B) EXCEPTION.—Subparagraph (A)
11 shall not apply—

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

14 “(ii) to any interest-related dividend
15 received by a controlled foreign corporation
16 (within the meaning of section 957(a)) to
17 the extent such dividend is attributable to
18 interest received by the regulated invest-
19 ment company from a person who is a re-
20 lated person (within the meaning of section
21 864(d)(4)) with respect to such controlled
22 foreign corporation.

23 “(C) TREATMENT OF DIVIDENDS RE-
24 CEIVED BY CONTROLLED FOREIGN CORPORA-
25 TIONS.—The rules of subsection (c)(5)(A) shall



1 apply to any (within the meaning of section
2 957(a)) to the extent such dividend is attrib-
3 utable to interest received by the regulated in-
4 vestment company which is described in clause
5 (ii) of section 871(k)(1)(E) (and not described
6 in clause (i) or (iii) of such section).

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

12 (3) WITHHOLDING TAXES.—

13 (A) Section 1441(c) (relating to excep-
14 tions) is amended by adding at the end the fol-
15 lowing new paragraph:

16 “(12) CERTAIN DIVIDENDS RECEIVED FROM
17 REGULATED INVESTMENT COMPANIES.—

18 “(A) IN GENERAL.—No tax shall be re-
19 quired to be deducted and withheld under sub-
20 section (a) from any amount exempt from the
21 tax imposed by section 871(a)(1)(A) by reason
22 of section 871(k).

23 “(B) SPECIAL RULE.—For purposes of
24 subparagraph (A), clause (i) of section
25 871(k)(1)(B) shall not apply to any dividend



1 unless the regulated investment company knows
2 that such dividend is a dividend referred to in
3 such clause. A similar rule shall apply with re-
4 spect to the exception contained in section
5 871(k)(2)(B).”.

6 (B) Section 1442(a) (relating to with-
7 holding of tax on foreign corporations) is
8 amended—

9 (i) by striking “and the reference in
10 section 1441(c)(10)” and inserting “the
11 reference in section 1441(c)(10)”, and

12 (ii) by inserting before the period at
13 the end the following: “, and the references
14 in section 1441(c)(12) to sections 871(a)
15 and 871(k) shall be treated as referring to
16 sections 881(a) and 881(e) (except that for
17 purposes of applying subparagraph (A) of
18 section 1441(c)(12), as so modified, clause
19 (ii) of section 881(e)(1)(B) shall not apply
20 to any dividend unless the regulated invest-
21 ment company knows that such dividend is
22 a dividend referred to in such clause)”.

23 (b) ESTATE TAX TREATMENT OF INTEREST IN CER-
24 TAIN REGULATED INVESTMENT COMPANIES.—Section
25 2105 (relating to property without the United States for



1 estate tax purposes) is amended by adding at the end the
2 following new subsection:

3 “(d) STOCK IN A RIC.—

4 “(1) IN GENERAL.—For purposes of this sub-
5 chapter, stock in a regulated investment company
6 (as defined in section 851) owned by a nonresident
7 not a citizen of the United States shall not be
8 deemed property within the United States in the
9 proportion that, at the end of the quarter of such in-
10 vestment company’s taxable year immediately pre-
11 ceding a decedent’s date of death (or at such other
12 time as the Secretary may designate in regulations),
13 the assets of the investment company that were
14 qualifying assets with respect to the decedent bore
15 to the total assets of the investment company.

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

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

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

24 “(C) other property not within the United
25 States.



1 “(3) TERMINATION.—This subsection shall not
2 apply to estates of decedents dying after December
3 31, 2007.”

4 (c) TREATMENT OF REGULATED INVESTMENT COM-
5 PANIES UNDER SECTION 897.—

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

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

11 “(2) SALE OF STOCK IN DOMESTICALLY CON-
12 TROLLED ENTITY NOT TAXED.—The term ‘United
13 States real property interest’ does not include any
14 interest in a domestically controlled qualified invest-
15 ment entity.

16 “(3) DISTRIBUTIONS BY DOMESTICALLY CON-
17 TROLLED QUALIFIED INVESTMENT ENTITIES.—In
18 the case of a domestically controlled qualified invest-
19 ment entity, rules similar to the rules of subsection
20 (d) shall apply to the foreign ownership percentage
21 of any gain.”

22 (3) Subparagraphs (A) and (B) of section
23 897(h)(4) are amended to read as follows:

24 “(A) QUALIFIED INVESTMENT ENTITY.—



1 “(i) IN GENERAL.—The term ‘quali-
2 fied investment entity’ means—

3 “(I) any real estate investment
4 trust, and

5 “(II) any regulated investment
6 company.

7 “(ii) TERMINATION.—Clause (i)(II)
8 shall not apply after December 31, 2007.

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

16 (4) Subparagraphs (C) and (D) of section
17 897(h)(4) are each amended by striking “REIT”
18 and inserting “qualified investment entity”.

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

22 (d) EFFECTIVE DATE.—

23 (1) IN GENERAL.—Except as otherwise pro-
24 vided in this subsection, the amendments made by
25 this section shall apply to dividends with respect to



1 taxable years of regulated investment companies be-
2 ginning after December 31, 2004.

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

6 (3) CERTAIN OTHER PROVISIONS.—The amend-
7 ments made by subsection (c) (other than paragraph
8 (1) thereof) shall take effect after December 31,
9 2004.

10 **SEC. 412. LOOK-THRU TREATMENT FOR SALES OF PART-**
11 **nership INTERESTS.**

12 (a) IN GENERAL.—Section 954(c) (defining foreign
13 personal holding company income) is amended by adding
14 after paragraph (3) the following new paragraph:

15 “(4) LOOK-THRU RULE FOR CERTAIN PARTNER-
16 SHIP SALES.—

17 “(A) IN GENERAL.—In the case of any
18 sale by a controlled foreign corporation of an
19 interest in a partnership with respect to which
20 such corporation is a 25-percent owner, such
21 corporation shall be treated for purposes of this
22 subsection as selling the proportionate share of
23 the assets of the partnership attributable to
24 such interest. The Secretary shall prescribe
25 such regulations as may be appropriate to pre-



1 vent abuse of the purposes of this paragraph,
2 including regulations providing for coordination
3 of this paragraph with the provisions of sub-
4 chapter K.

5 “(B) 25-PERCENT OWNER.—For purposes
6 of this paragraph, the term ‘25-percent owner’
7 means a controlled foreign corporation which
8 owns directly 25 percent or more of the capital
9 or profits interest in a partnership. For pur-
10 poses of the preceding sentence, if a controlled
11 foreign corporation is a shareholder or partner
12 of a corporation or partnership, the controlled
13 foreign corporation shall be treated as owning
14 directly its proportionate share of any such cap-
15 ital or profits interest held directly or indirectly
16 by such corporation or partnership.”.

17 (b) EFFECTIVE DATE.—The amendment 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.



1 **SEC. 413. REPEAL OF FOREIGN PERSONAL HOLDING COM-**
2 **PANY RULES AND FOREIGN INVESTMENT**
3 **COMPANY RULES.**

4 (a) **GENERAL RULE.**—The following provisions are
5 hereby repealed:

6 (1) Part III of subchapter G of chapter 1 (re-
7 lating to foreign personal holding companies).

8 (2) Section 1246 (relating to gain on foreign in-
9 vestment company stock).

10 (3) Section 1247 (relating to election by foreign
11 investment companies to distribute income cur-
12 rently).

13 (b) **EXEMPTION OF FOREIGN CORPORATIONS FROM**
14 **PERSONAL HOLDING COMPANY RULES.**—

15 (1) **IN GENERAL.**—Subsection (c) of section
16 542 (relating to exceptions) is amended—

17 (A) by striking paragraph (5) and insert-
18 ing the following:

19 “(5) a foreign corporation,”

20 (B) by striking paragraphs (7) and (10)
21 and by redesignating paragraphs (8) and (9) as
22 paragraphs (7) and (8), respectively,

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



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

4 (2) TREATMENT OF INCOME FROM PERSONAL
5 SERVICE CONTRACTS.—Paragraph (1) of section
6 954(c) is amended by adding at the end the fol-
7 lowing new subparagraph:

8 “(I) PERSONAL SERVICE CONTRACTS.—

9 “(i) Amounts received under a con-
10 tract under which the corporation is to fur-
11 nish personal services if—

12 “(I) some person other than the
13 corporation has the right to designate
14 (by name or by description) the indi-
15 vidual who is to perform the services,
16 or

17 “(II) the individual who is to per-
18 form the services is designated (by
19 name or by description) in the con-
20 tract, and

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

23 This subparagraph shall apply with respect to
24 amounts received for services under a particular
25 contract only if at some time during the taxable



1 year 25 percent or more in value of the out-
2 standing stock of the corporation is owned, di-
3 rectly or indirectly, by or for the individual who
4 has performed, is to perform, or may be des-
5 ignated (by name or by description) as the one
6 to perform, such services.”.

7 (c) CONFORMING AMENDMENTS.—

8 (1) Section 1(h) is amended—

9 (A) in paragraph (10), by inserting “and”
10 at the end of subparagraph (F), by striking
11 subparagraph (G), and by redesignating sub-
12 paragraph (H) as subparagraph (G), and

13 (B) by striking “a foreign personal holding
14 company (as defined in section 552), a foreign
15 investment company (as defined in section
16 1246(b)), or” in paragraph (11)(C)(iii).

17 (2) Paragraph (2) of section 171(e) is
18 amended—

19 (A) by striking “, or by a foreign personal
20 holding company, as defined in section 552”,
21 and

22 (B) by striking “, or foreign personal hold-
23 ing company”.

24 (3) Paragraph (2) of section 245(a) is amended
25 by striking “foreign personal holding company or”.



1 (4) Section 312 is amended by striking sub-
2 section (j).

3 (5) Subsection (m) of section 312 is amended
4 by striking “, a foreign investment company (within
5 the meaning of section 1246(b)), or a foreign per-
6 sonal holding company (within the meaning of sec-
7 tion 552)”.

8 (6) Subsection (e) of section 443 is amended by
9 striking paragraph (3) and by redesignating para-
10 graphs (4) and (5) as paragraphs (3) and (4), re-
11 spectively.

12 (7) Subparagraph (B) of section 465(c)(7) is
13 amended by adding “or” at the end of clause (i), by
14 striking clause (ii), and by redesignating clause (iii)
15 as clause (ii).

16 (8) Paragraph (1) of section 543(b) is amended
17 by inserting “and” at the end of subparagraph (A),
18 by striking “, and” at the end of subparagraph (B)
19 and inserting a period, and by striking subparagraph
20 (C).

21 (9) Paragraph (1) of section 562(b) is amended
22 by striking “or a foreign personal holding company
23 described in section 552”.

24 (10) Section 563 is amended—

25 (A) by striking subsection (c),



1 (B) by redesignating subsection (d) as sub-
2 section (e), and

3 (C) by striking “subsection (a), (b), or (c)”
4 in subsection (e) (as so redesignated) and in-
5 serting “subsection (a) or (b)”.

6 (11) Subsection (d) of section 751 is amended
7 by adding “and” at the end of paragraph (2), by
8 striking paragraph (3), by redesignating paragraph
9 (4) as paragraph (3), and by striking “paragraph
10 (1), (2), or (3)” in paragraph (3) (as so redesi-
11 gnated) and inserting “paragraph (1) or (2)”.

12 (12) Paragraph (2) of section 864(d) is amend-
13 ed by striking subparagraph (A) and by redesi-
14 gnating subparagraphs (B) and (C) as subparagraphs
15 (A) and (B), respectively.

16 (13)(A) Subparagraph (A) of section 898(b)(1)
17 is amended to read as follows:

18 “(A) which is treated as a controlled for-
19 eign corporation for any purpose under subpart
20 F of part III of this subchapter, and”.

21 (B) Subparagraph (B) of section 898(b)(2) is
22 amended by striking “and sections 551(f) and 554,
23 whichever are applicable,”.

24 (C) Paragraph (3) of section 898(b) is amended
25 to read as follows:



1 “(3) UNITED STATES SHAREHOLDER.—The
2 term ‘United States shareholder’ has the meaning
3 given to such term by section 951(b), except that, in
4 the case of a foreign corporation having related per-
5 son insurance income (as defined in section
6 953(c)(2)), the Secretary may treat any person as a
7 United States shareholder for purposes of this sec-
8 tion if such person is treated as a United States
9 shareholder under section 953(c)(1).”.

10 (D) Subsection (c) of section 898 is amended to
11 read as follows:

12 “(c) DETERMINATION OF REQUIRED YEAR.—

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

14 “(A) the majority U.S. shareholder year,

15 or

16 “(B) if there is no majority U.S. share-
17 holder year, the taxable year prescribed under
18 regulations.

19 “(2) 1-MONTH DEFERRAL ALLOWED.—A speci-
20 fied foreign corporation may elect, in lieu of the tax-
21 able year under paragraph (1)(A), a taxable year be-
22 ginning 1 month earlier than the majority U.S.
23 shareholder year.

24 “(3) MAJORITY U.S. SHAREHOLDER YEAR.—



1 “(A) IN GENERAL.—For purposes of this
2 subsection, the term ‘majority U.S. shareholder
3 year’ means the taxable year (if any) which, on
4 each testing day, constituted the taxable year
5 of—

6 “(i) each United States shareholder
7 described in subsection (b)(2)(A), and

8 “(ii) each United States shareholder
9 not described in clause (i) whose stock was
10 treated as owned under subsection
11 (b)(2)(B) by any shareholder described in
12 such clause.

13 “(B) TESTING DAY.—The testing days
14 shall be—

15 “(i) the first day of the corporation’s
16 taxable year (determined without regard to
17 this section), or

18 “(ii) the days during such representa-
19 tive period as the Secretary may pre-
20 scribe.”.

21 (14) Clause (ii) of section 904(d)(2)(A) is
22 amended to read as follows:

23 “(ii) CERTAIN AMOUNTS INCLUDED.—
24 Except as provided in clause (iii), the term
25 ‘passive income’ includes, except as pro-



1 vided in subparagraph (E)(iii) or para-
2 graph (3)(I), any amount includible in
3 gross income under section 1293 (relating
4 to certain passive foreign investment com-
5 panies).”.

6 (15)(A) Subparagraph (A) of section 904(h)(1),
7 as redesignated by this Act, is amended by adding
8 “or” at the end of clause (i), by striking clause (ii),
9 and by redesignating clause (iii) as clause (ii).

10 (B) The paragraph heading of paragraph (2) of
11 section 904(h), as so redesignated, is amended by
12 striking “FOREIGN PERSONAL HOLDING OR”.

13 (16) Section 951 is amended by striking sub-
14 sections (c) and (d) and by redesignating subsections
15 (e) and (f) as subsections (c) and (d), respectively.

16 (17) Paragraph (3) of section 989(b) is amend-
17 ed by striking “, 551(a),”.

18 (18) Paragraph (5) of section 1014(b) is
19 amended by inserting “and before January 1,
20 2005,” after “August 26, 1937,”.

21 (19) Subsection (a) of section 1016 is amended
22 by striking paragraph (13).

23 (20)(A) Paragraph (3) of section 1212(a) is
24 amended to read as follows:



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

4 “(A) for which it is a regulated investment
5 company (as defined in section 851), or

6 “(B) for which it is a real estate invest-
7 ment trust (as defined in section 856).”.

8 (B) The amendment made by subparagraph (A)
9 shall apply to taxable years beginning after Decem-
10 ber 31, 2004.

11 (21) Section 1223 is amended by striking para-
12 graph (10) and by redesignating the following para-
13 graphs accordingly.

14 (22) Subsection (d) of section 1248 is amended
15 by striking paragraph (5) and by redesignating
16 paragraphs (6) and (7) as paragraphs (5) and (6),
17 respectively.

18 (23) Paragraph (2) of section 1260(c) is
19 amended by striking subparagraphs (H) and (I) and
20 by redesignating subparagraph (J) as subparagraph
21 (H).

22 (24)(A) Subparagraph (F) of section
23 1291(b)(3) is amended by striking “551(d), 959(a),”
24 and inserting “959(a)”.



1 (B) Subsection (e) of section 1291 is amended
2 by inserting “(as in effect on the day before the date
3 of the enactment of the American Jobs Creation Act
4 of 2004)” after “section 1246”.

5 (25) Paragraph (2) of section 1294(a) is
6 amended to read as follows:

7 “(2) ELECTION NOT PERMITTED WHERE
8 AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION
9 951.—The taxpayer may not make an election under
10 paragraph (1) with respect to the undistributed
11 PFIC earnings tax liability attributable to a quali-
12 fied electing fund for the taxable year if any amount
13 is includible in the gross income of the taxpayer
14 under section 951 with respect to such fund for such
15 taxable year.”.

16 (26) Section 6035 is hereby repealed.

17 (27) Subparagraph (D) of section 6103(e)(1) is
18 amended by striking clause (iv) and redesignating
19 clauses (v) and (vi) as clauses (iv) and (v), respec-
20 tively.

21 (28) Subparagraph (B) of section 6501(e)(1) is
22 amended to read as follows:

23 “(B) CONSTRUCTIVE DIVIDENDS.—If the
24 taxpayer omits from gross income an amount
25 properly includible therein under section



1 951(a), the tax may be assessed, or a pro-
2 ceeding in court for the collection of such tax
3 may be done without assessing, at any time
4 within 6 years after the return was filed.”.

5 (29) Subsection (a) of section 6679 is
6 amended—

7 (A) by striking “6035, 6046, and 6046A”
8 in paragraph (1) and inserting “6046 and
9 6046A”, and

10 (B) by striking paragraph (3).

11 (30) Sections 170(f)(10)(A), 508(d), 4947, and
12 4948(c)(4) are each amended by striking
13 “556(b)(2),” each place it appears.

14 (31) The table of parts for subchapter G of
15 chapter 1 is amended by striking the item relating
16 to part III.

17 (32) The table of sections for part IV of sub-
18 chapter P of chapter 1 is amended by striking the
19 items relating to sections 1246 and 1247.

20 (33) The table of sections for subpart A of part
21 III of subchapter A of chapter 61 is amended by
22 striking the item relating to section 6035.

23 (d) EFFECTIVE DATES.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), the amendments made by this section



1 shall apply to taxable years of foreign corporations
2 beginning after December 31, 2004, and to taxable
3 years of United States shareholders with or within
4 which such taxable years of foreign corporations
5 end.

6 (2) SUBSECTION (c)(27).—The amendments
7 made by subsection (c)(27) shall apply to disclosures
8 of return or return information with respect to tax-
9 able years beginning after December 31, 2004.

10 **SEC. 414. DETERMINATION OF FOREIGN PERSONAL HOLD-**
11 **ING COMPANY INCOME WITH RESPECT TO**
12 **TRANSACTIONS IN COMMODITIES.**

13 (a) IN GENERAL.—Clauses (i) and (ii) of section
14 954(c)(1)(C) (relating to commodity transactions) are
15 amended to read as follows:

16 “(i) arise out of commodity hedging
17 transactions (as defined in paragraph
18 (4)(A)),

19 “(ii) are active business gains or
20 losses from the sale of commodities, but
21 only if substantially all of the controlled
22 foreign corporation’s commodities are
23 property described in paragraph (1), (2),
24 or (8) of section 1221(a), or”.



1 (b) DEFINITION AND SPECIAL RULES.—Subsection
2 (c) of section 954, as amended by this Act, is amended
3 by adding after paragraph (4) the following new para-
4 graph:

5 “(5) DEFINITION AND SPECIAL RULES RELAT-
6 ING TO COMMODITY TRANSACTIONS.—

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

12 “(i) is a hedging transaction as de-
13 fined in section 1221(b)(2), determined—

14 “(I) without regard to subpara-
15 graph (A)(ii) thereof,

16 “(II) by applying subparagraph
17 (A)(i) thereof by substituting ‘ordi-
18 nary property or property described in
19 section 1231(b)’ for ‘ordinary prop-
20 erty’, and

21 “(III) by substituting ‘controlled
22 foreign corporation’ for ‘taxpayer’
23 each place it appears, and

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



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

10 “(C) REGULATIONS.—The Secretary shall
11 prescribe such regulations as are appropriate to
12 carry out the purposes of paragraph (1)(C) in
13 the case of transactions involving related par-
14 ties.”.

15 (c) MODIFICATION OF EXCEPTION FOR DEALERS.—
16 Clause (i) of section 954(c)(2)(C) is amended by inserting
17 “and transactions involving physical settlement” after
18 “(including hedging transactions”.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to transactions entered into after
21 December 31, 2004.



1 **SEC. 415. MODIFICATIONS TO TREATMENT OF AIRCRAFT**
2 **LEASING AND SHIPPING INCOME.**

3 (a) **ELIMINATION OF FOREIGN BASE COMPANY SHIP-**
4 **PING INCOME.**—Section 954 (relating to foreign base com-
5 pany income) is amended—

6 (1) by striking paragraph (4) of subsection (a)
7 (relating to foreign base company shipping income),
8 and

9 (2) by striking subsection (f) (relating to for-
10 eign base company shipping income).

11 (b) **SAFE HARBOR FOR CERTAIN LEASING ACTIVI-**
12 **TIES.**—Subparagraph (A) of section 954(c)(2) is amended
13 by adding at the end the following new sentence: “For
14 purposes of the preceding sentence, rents derived from
15 leasing an aircraft or vessel in foreign commerce shall not
16 fail to be treated as derived in the active conduct of a
17 trade or business if, as determined under regulations pre-
18 scribed by the Secretary, the active leasing expenses are
19 not less than 10 percent of the profit on the lease.”.

20 (c) **CONFORMING AMENDMENTS.**—

21 (1) Section 952(c)(1)(B)(iii) is amended by
22 striking subclause (I) and redesignating subclauses
23 (II) through (VI) as subclauses (I) through (V), re-
24 spectively.

25 (2) Subsection (b) of section 954 is amended—



1 (A) by striking “the foreign base company
2 shipping income,” in paragraph (5),

3 (B) by striking paragraphs (6) and (7),
4 and

5 (C) by redesignating paragraph (8) as
6 paragraph (6).

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

12 **SEC. 416. MODIFICATION OF EXCEPTIONS UNDER SUBPART**
13 **F FOR ACTIVE FINANCING.**

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

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

23 “(i) the related person is an eligible
24 controlled foreign corporation the home
25 country of which is the same as the home



1 country of the corporation or unit to which
2 subparagraph (A)(ii)(II) is being applied,
3 “(ii) the activity is performed in the
4 home country of the related person, and
5 “(iii) the related person is com-
6 pensated on an arm’s-length basis for the
7 performance of the activity by its employ-
8 ees and such compensation is treated as
9 earned by such person in its home country
10 for purposes of the home country’s tax
11 laws.”.

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

17 **SEC. 417. 10-YEAR FOREIGN TAX CREDIT CARRYOVER; 1-**
18 **YEAR FOREIGN TAX CREDIT CARRYBACK.**

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

21 (1) by striking “in the second preceding taxable
22 year,”, and

23 (2) by striking “, and in the first, second, third,
24 fourth, or fifth” and inserting “and in any of the
25 first 10”.



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

3 (1) by striking “in the second preceding taxable
4 year,”,

5 (2) by striking “, and in the first, second, third,
6 fourth, or fifth” and inserting “and in any of the
7 first 10”, and

8 (3) by striking the last sentence.

9 (c) EFFECTIVE DATE.—

10 (1) CARRYBACK.—The amendments made by
11 subsections (a)(1) and (b)(1) shall apply to excess
12 foreign taxes arising in taxable years beginning after
13 the date of the enactment of this Act.

14 (2) CARRYOVER.—The amendments made by
15 subsections (a)(2) and (b)(2) shall apply to excess
16 foreign taxes which (without regard to the amend-
17 ments made by this section) may be carried to any
18 taxable year ending after the date of the enactment
19 of this Act.

20 **SEC. 418. MODIFICATION OF THE TREATMENT OF CERTAIN**
21 **REIT DISTRIBUTIONS ATTRIBUTABLE TO**
22 **GAIN FROM SALES OR EXCHANGES OF**
23 **UNITED STATES REAL PROPERTY INTERESTS.**

24 (a) IN GENERAL.—Paragraph (1) of section 897(h)
25 (relating to look-through of distributions) is amended by



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

10 (b) CONFORMING AMENDMENT.—Paragraph (3) of
11 section 857(b) (relating to capital gains) is amended by
12 adding at the end the following new subparagraph:

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

21 (i) shall not be included in com-
22 puting such shareholder’s long-term capital
23 gains, and



1 “(ii) shall be included in such share-
2 holder’s gross income as a dividend from
3 the real estate investment trust.”.

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

7 **SEC. 419. EXCLUSION OF INCOME DERIVED FROM CERTAIN**
8 **WAGERS ON HORSE RACES AND DOG RACES**
9 **FROM GROSS INCOME OF NONRESIDENT**
10 **ALIEN INDIVIDUALS.**

11 (a) IN GENERAL.—Subsection (b) of section 872 (re-
12 lating to exclusions) is amended by redesignating para-
13 graphs (5), (6), and (7) as paragraphs (6), (7), and (8),
14 respectively, and inserting after paragraph (4) the fol-
15 lowing new paragraph:

16 “(5) INCOME DERIVED FROM WAGERING
17 TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—
18 Gross income derived by a nonresident alien indi-
19 vidual from a legal wagering transaction initiated
20 outside the United States in a parimutuel pool with
21 respect to a live horse race or dog race in the United
22 States.”.

23 (b) CONFORMING AMENDMENT.—Section 883(a)(4)
24 is amended by striking “(5), (6), and (7)” and inserting
25 “(6), (7), and (8)”.



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

4 **SEC. 420. LIMITATION OF WITHHOLDING TAX FOR PUERTO**
5 **RICO CORPORATIONS.**

6 (a) IN GENERAL.—Subsection (b) of section 881 is
7 amended by redesignating paragraph (2) as paragraph (3)
8 and by inserting after paragraph (1) the following new
9 paragraph:

10 “(2) COMMONWEALTH OF PUERTO RICO.—

11 “(A) IN GENERAL.—If dividends are re-
12 ceived during a taxable year by a corporation—

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

16 “(ii) with respect to which the re-
17 quirements of subparagraphs (A), (B), and
18 (C) of paragraph (1) are met for the tax-
19 able year,

20 subsection (a) shall be applied for such taxable
21 year by substituting ‘10 percent’ for ‘30 per-
22 cent’.

23 “(B) APPLICABILITY.—If, on or after the
24 date of the enactment of this paragraph, an in-
25 crease in the rate of the Commonwealth of



1 Puerto Rico’s withholding tax which is generally
2 applicable to dividends paid to United States
3 corporations not engaged in a trade or business
4 in the Commonwealth to a rate greater than 10
5 percent takes effect, this paragraph shall not
6 apply to dividends received on or after the ef-
7 fective date of the increase.”.

8 (b) WITHHOLDING.—Subsection (c) of section 1442
9 (relating to withholding of tax on foreign corporations) is
10 amended—

11 (1) by striking “For purposes” and inserting
12 the following:

13 “(1) GUAM, AMERICAN SAMOA, THE NORTHERN
14 MARIANA ISLANDS, AND THE VIRGIN ISLANDS.—For
15 purposes”, and

16 (2) by adding at the end the following new
17 paragraph:

18 “(2) COMMONWEALTH OF PUERTO RICO.—

19 “(A) IN GENERAL.—If dividends are re-
20 ceived during a taxable year by a corporation—

21 “(i) created or organized in, or under
22 the law of, the Commonwealth of Puerto
23 Rico, and

24 “(ii) with respect to which the re-
25 quirements of subparagraphs (A), (B), and



1 (C) of section 881(b)(1) are met for the
2 taxable year,
3 subsection (a) shall be applied for such taxable
4 year by substituting ‘10 percent’ for ‘30 per-
5 cent’.

6 “(B) APPLICABILITY.—If, on or after the
7 date of the enactment of this paragraph, an in-
8 crease in the rate of the Commonwealth of
9 Puerto Rico’s withholding tax which is generally
10 applicable to dividends paid to United States
11 corporations not engaged in a trade or business
12 in the Commonwealth to a rate greater than 10
13 percent takes effect, this paragraph shall not
14 apply to dividends received on or after the ef-
15 fective date of the increase.”.

16 (c) CONFORMING AMENDMENTS.—

17 (1) Subsection (b) of section 881 is amended by
18 striking “GUAM AND VIRGIN ISLANDS CORPORA-
19 TIONS” in the heading and inserting “POSSES-
20 SIONS”.

21 (2) Paragraph (1) of section 881(b) is amended
22 by striking “IN GENERAL” in the heading and in-
23 serting “GUAM, AMERICAN SAMOA, THE NORTHERN
24 MARIANA ISLANDS, AND THE VIRGIN ISLANDS”.



1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to dividends paid after the date
3 of the enactment of this Act.

4 **SEC. 421. FOREIGN TAX CREDIT UNDER ALTERNATIVE MIN-**
5 **IMUM TAX.**

6 (a) IN GENERAL.—

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

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

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

16 **SEC. 422. INCENTIVES TO REINVEST FOREIGN EARNINGS IN**
17 **UNITED STATES.**

18 (a) IN GENERAL.—Subpart F of part III of sub-
19 chapter N of chapter 1 (relating to controlled foreign cor-
20 porations) is amended by adding at the end the following
21 new section:

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

23 **“(a) DEDUCTION.—**

24 **“(1) IN GENERAL.—**In the case of a corpora-
25 **tion which is a United States shareholder and for**



1 which the election under this section is in effect for
2 the taxable year, there shall be allowed as a deduc-
3 tion an amount equal to 85 percent of the cash divi-
4 dends which are received during such taxable year
5 by such shareholder from controlled foreign corpora-
6 tions.

7 “(2) DIVIDENDS PAID INDIRECTLY FROM CON-
8 TROLLED FOREIGN CORPORATIONS.—If, within the
9 taxable year for which the election under this section
10 is in effect, a United States shareholder receives a
11 cash distribution from a controlled foreign corpora-
12 tion which is excluded from gross income under sec-
13 tion 959(a), such distribution shall be treated for
14 purposes of this section as a cash dividend to the ex-
15 tent of any amount included in income by such
16 United States shareholder under section
17 951(a)(1)(A) as a result of any cash dividend during
18 such taxable year to—

19 “(A) such controlled foreign corporation
20 from another controlled foreign corporation that
21 is in a chain of ownership described in section
22 958(a), or

23 “(B) any other controlled foreign corpora-
24 tion in such chain of ownership, but only to the
25 extent of cash distributions described in section



1 959(b) which are made during such taxable
2 year to the controlled foreign corporation from
3 which such United States shareholder received
4 such distribution.

5 “(b) LIMITATIONS.—

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

9 “(A) \$500,000,000,

10 “(B) the amount shown on the applicable
11 financial statement as earnings permanently re-
12 invested outside the United States, or

13 “(C) in the case of an applicable financial
14 statement which fails to show a specific amount
15 of earnings permanently reinvested outside the
16 United States and which shows a specific
17 amount of tax liability attributable to such
18 earnings, the amount equal to the amount of
19 such liability divided by 0.35.

20 The amounts described in subparagraphs (B) and
21 (C) shall be treated as being zero if there is no such
22 statement or such statement fails to show a specific
23 amount of such earnings or liability, as the case may
24 be.



1 “(2) DIVIDENDS MUST BE EXTRAORDINARY.—

2 The amount of dividends taken into account under
3 subsection (a) shall not exceed the excess (if any)
4 of—

5 “(A) the dividends received during the tax-
6 able year by such shareholder from controlled
7 foreign corporations, over

8 “(B) the annual average for the base pe-
9 riod years of—

10 “(i) the dividends received during
11 each base period year by such shareholder
12 from controlled foreign corporations,

13 “(ii) the amounts includible in such
14 shareholder’s gross income for each base
15 period year under section 951(a)(1)(B)
16 with respect to controlled foreign corpora-
17 tions, and

18 “(iii) the amounts that would have
19 been included for each base period year
20 but for section 959(a) with respect to con-
21 trolled foreign corporations.

22 The amount taken into account under clause
23 (iii) for any base period year shall not include
24 any amount which is not includible in gross in-
25 come by reason of an amount described in



1 clause (ii) with respect to a prior taxable year.
2 Amounts described in subparagraph (B) for any
3 base period year shall be such amounts as
4 shown on the most recent return filed for such
5 year; except that amended returns filed after
6 June 30, 2003, shall not be taken into account.

7 “(3) REDUCTION OF BENEFIT IF INCREASE IN
8 RELATED PARTY INDEBTEDNESS.—The amount of
9 dividends which would (but for this paragraph) be
10 taken into account under subsection (a) shall be re-
11 duced by the excess (if any) of—

12 “(A) the amount of indebtedness of the
13 controlled foreign corporation to any related
14 person (as defined in section 954(d)(3)) as of
15 the close of the taxable year for which the elec-
16 tion under this section is in effect, over

17 “(B) the amount of indebtedness of the
18 controlled foreign corporation to any related
19 person (as so defined) as of the close of October
20 3, 2004.

21 All controlled foreign corporations with respect to
22 which the taxpayer is a United States shareholder
23 shall be treated as 1 controlled foreign corporation
24 for purposes of this paragraph.



1 “(4) REQUIREMENT TO INVEST IN UNITED
2 STATES.—Subsection (a) shall not apply to any divi-
3 dend received by a United States shareholder unless
4 the amount of the dividend is invested in the United
5 States pursuant to a domestic reinvestment plan
6 which—

7 “(A) is approved by the taxpayer’s presi-
8 dent, chief executive officer, or comparable offi-
9 cial before the payment of such dividend and
10 subsequently approved by the taxpayer’s board
11 of directors, management committee, executive
12 committee, or similar body, and

13 “(B) provides for the reinvestment of such
14 dividend in the United States (other than as
15 payment for executive compensation), including
16 as a source for the funding of worker hiring
17 and training, infrastructure, research and devel-
18 opment, capital investments, or the financial
19 stabilization of the corporation for the purposes
20 of job retention or creation.

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

23 “(1) APPLICABLE FINANCIAL STATEMENT.—
24 The term ‘applicable financial statement’ means,
25 with respect to a United States shareholder, the



1 most recently audited financial statement (including
2 notes and other documents which accompany such
3 statement) which includes such shareholder—

4 “(A) which is certified on or before June
5 30, 2003, as being prepared in accordance with
6 generally accepted accounting principles, and

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

9 “(i) to creditors,

10 “(ii) to shareholders, or

11 “(iii) for any other substantial nontax
12 purpose.

13 In the case of a corporation required to file a finan-
14 cial statement with the Securities and Exchange
15 Commission, such term means the most recent such
16 statement filed on or before June 30, 2003.

17 “(2) BASE PERIOD YEARS.—

18 “(A) IN GENERAL.—The base period years
19 are the 3 taxable years—

20 “(i) which are among the 5 most re-
21 cent taxable years ending on or before
22 June 30, 2003, and

23 “(ii) which are determined by
24 disregarding—



1 “(I) 1 taxable year for which the
2 sum of the amounts described in
3 clauses (i), (ii), and (iii) of subsection
4 (b)(2)(B) is the largest, and

5 “(II) 1 taxable year for which
6 such sum is the smallest.

7 “(B) SHORTER PERIOD.—If the taxpayer
8 has fewer than 5 taxable years ending on or be-
9 fore June 30, 2003, then in lieu of applying
10 subparagraph (A), the base period years shall
11 include all the taxable years of the taxpayer
12 ending on or before June 30, 2003.

13 “(C) MERGERS, ACQUISITIONS, ETC.—

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

18 “(ii) SPIN-OFFS, ETC.—If there is a
19 distribution to which section 355 (or so
20 much of section 356 as relates to section
21 355) applies during the 5-year period re-
22 ferred to in subparagraph (A)(i) and the
23 controlled corporation (within the meaning
24 of section 355) is a United States
25 shareholder—



1 “(I) the controlled corporation
2 shall be treated as being in existence
3 during the period that the distributing
4 corporation (within the meaning of
5 section 355) is in existence, and

6 “(II) for purposes of applying
7 subsection (b)(2) to the controlled cor-
8 poration and the distributing corpora-
9 tion, amounts described in subsection
10 (b)(2)(B) which are received or in-
11 cludible by the distributing corpora-
12 tion or controlled corporation (as the
13 case may be) before the distribution
14 referred to in subclause (I) from a
15 controlled foreign corporation shall be
16 allocated between such corporations in
17 proportion to their respective interests
18 as United States shareholders of such
19 controlled foreign corporation imme-
20 diately after such distribution.

21 Subclause (II) shall not apply if neither
22 the controlled corporation nor the distrib-
23 uting corporation is a United States share-
24 holder of such controlled foreign corpora-
25 tion immediately after such distribution.



1 “(3) DIVIDEND.—The term ‘dividend’ shall not
2 include amounts includible in gross income as a divi-
3 dend under section 78, 367, or 1248.

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

8 “(5) CONTROLLED GROUPS.—

9 “(A) IN GENERAL.—All corporations which
10 are treated as a single employer under section
11 52(a) shall be limited to one \$500,000,000
12 amount in subsection (b)(1)(A), and such
13 amount shall be divided among such corpora-
14 tions under regulations prescribed by the Sec-
15 retary.

16 “(B) PERMANENTLY REINVESTED EARN-
17 INGS.—If a financial statement is an applicable
18 financial statement for more than 1 United
19 States shareholder, the amount applicable
20 under subparagraph (B) or (C) of subsection
21 (b)(1) shall be divided among such shareholders
22 under regulations prescribed by the Secretary.

23 “(d) DENIAL OF FOREIGN TAX CREDIT; DENIAL OF
24 CERTAIN EXPENSES.—



1 “(1) FOREIGN TAX CREDIT.—No credit shall be
2 allowed under section 901 for any taxes paid or ac-
3 crued (or treated as paid or accrued) with respect to
4 the deductible portion of—

5 “(A) any dividend, or

6 “(B) any amount described in subsection
7 (a)(2) which is included in income under section
8 951(a)(1)(A).

9 No deduction shall be allowed under this chapter for
10 any tax for which credit is not allowable by reason
11 of the preceding sentence.

12 “(2) EXPENSES.—No deduction shall be al-
13 lowed for expenses properly allocated and appor-
14 tioned to the deductible portion described in para-
15 graph (1).

16 “(3) DEDUCTIBLE PORTION.—For purposes of
17 paragraph (1), unless the taxpayer otherwise speci-
18 fies, the deductible portion of any dividend or other
19 amount is the amount which bears the same ratio to
20 the amount of such dividend or other amount as the
21 amount allowed as a deduction under subsection (a)
22 for the taxable year bears to the amount described
23 in subsection (b)(2)(A) for such year.

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



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

5 “(A) the amount of any credit allowable
6 under this chapter, or

7 “(B) the amount of the tax imposed by
8 section 55.

9 Subparagraph (A) shall not apply to the credit
10 under section 53 or to the credit under section 27(a)
11 with respect to taxes attributable to such dividends.

12 “(2) LIMITATION ON REDUCTION IN TAXABLE
13 INCOME, ETC.—

14 “(A) IN GENERAL.—The taxable income of
15 any United States shareholder for any taxable
16 year shall in no event be less than the amount
17 of nondeductible CFC dividends received during
18 such year.

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

22 “(i) in determining under section 172
23 the amount of any net operating loss for
24 such taxable year, and



1 “(ii) in determining taxable income
2 for such taxable year for purposes of the
3 2nd sentence of section 172(b)(2).

4 “(3) NONDEDUCTIBLE CFC DIVIDENDS.—For
5 purposes of this subsection, the term ‘nondeductible
6 CFC dividends’ means the excess of the amount of
7 dividends taken into account under subsection (a)
8 over the deduction allowed under subsection (a) for
9 such dividends.

10 “(f) ELECTION.—The taxpayer may elect to apply
11 this section to—

12 “(1) the taxpayer’s last taxable year which be-
13 gins before the date of the enactment of this section,
14 or

15 “(2) the taxpayer’s first taxable year which be-
16 gins during the 1-year period beginning on such
17 date.

18 Such election may be made for a taxable year only if made
19 before the due date (including extensions) for filing the
20 return of tax for such taxable year.”

21 (b) ALTERNATIVE MINIMUM TAX.—Subparagraph
22 (C) of section 56(g)(4) is amended by inserting after
23 clause (v) the following new clause:

24 “(vi) SPECIAL RULE FOR CERTAIN
25 DISTRIBUTIONS FROM CONTROLLED FOR-



1 EIGN CORPORATIONS.—Clause (i) shall not
2 apply to any deduction allowable under
3 section 965.”.

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

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

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

10 **SEC. 423. DELAY IN EFFECTIVE DATE OF FINAL REGULA-**
11 **TIONS GOVERNING EXCLUSION OF INCOME**
12 **FROM INTERNATIONAL OPERATION OF SHIPS**
13 **OR AIRCRAFT.**

14 Notwithstanding the provisions of Treasury regula-
15 tion § 1.883–5, the final regulations issued by the Sec-
16 retary of the Treasury relating to income derived by for-
17 eign corporations from the international operation of ships
18 or aircraft (Treasury regulations § 1.883–1 through
19 § 1.883–5) shall apply to taxable years of a foreign cor-
20 poration seeking qualified foreign corporation status be-
21 ginning after September 24, 2004.

22 **SEC. 424. STUDY OF EARNINGS STRIPPING PROVISIONS.**

23 (a) IN GENERAL.—The Secretary of the Treasury or
24 the Secretary’s delegate shall conduct a study of the effec-
25 tiveness of the provisions of the Internal Revenue Code



1 of 1986 applicable to earnings stripping, including a study
2 of—

3 (1) the effectiveness of section 163(j) of such
4 Code in preventing the shifting of income outside the
5 United States, and

6 (2) whether any deficiencies of such provisions
7 place United States-based businesses at a competi-
8 tive disadvantage relative to foreign-based busi-
9 nesses.

10 (b) REPORT.—Not later than June 30, 2005, the
11 Secretary shall submit to the Congress a report of the
12 study conducted under this section, including specific rec-
13 ommendations as to how to improve the provisions of such
14 Code applicable to earnings stripping.

15 **TITLE V—DEDUCTION OF STATE**
16 **AND LOCAL GENERAL SALES**
17 **TAXES**

18 **SEC. 501. DEDUCTION OF STATE AND LOCAL GENERAL**
19 **SALES TAXES IN LIEU OF STATE AND LOCAL**
20 **INCOME TAXES.**

21 (a) IN GENERAL.—Subsection (b) of section 164 (re-
22 lating to definitions and special rules) is amended by add-
23 ing at the end the following:

24 “(5) GENERAL SALES TAXES.—For purposes of
25 subsection (a)—



1 “(A) ELECTION TO DEDUCT STATE AND
2 LOCAL SALES TAXES IN LIEU OF STATE AND
3 LOCAL INCOME TAXES.—

4 “(i) IN GENERAL.—At the election of
5 the taxpayer for the taxable year, sub-
6 section (a) shall be applied—

7 “(I) without regard to the ref-
8 erence to State and local income
9 taxes, and

10 “(II) as if State and local general
11 sales taxes were referred to in a para-
12 graph thereof.

13 “(B) DEFINITION OF GENERAL SALES
14 TAX.—The term ‘general sales tax’ means a tax
15 imposed at one rate with respect to the sale at
16 retail of a broad range of classes of items.

17 “(C) SPECIAL RULES FOR FOOD, ETC.—In
18 the case of items of food, clothing, medical sup-
19 plies, and motor vehicles—

20 “(i) the fact that the tax does not
21 apply with respect to some or all of such
22 items shall not be taken into account in
23 determining whether the tax applies with
24 respect to a broad range of classes of
25 items, and



1 “(ii) the fact that the rate of tax ap-
2 plicable with respect to some or all of such
3 items is lower than the general rate of tax
4 shall not be taken into account in deter-
5 mining whether the tax is imposed at one
6 rate.

7 “(D) ITEMS TAXED AT DIFFERENT
8 RATES.—Except in the case of a lower rate of
9 tax applicable with respect to an item described
10 in subparagraph (C), no deduction shall be al-
11 lowed under this paragraph for any general
12 sales tax imposed with respect to an item at a
13 rate other than the general rate of tax.

14 “(E) COMPENSATING USE TAXES.—A com-
15 pensating use tax with respect to an item shall
16 be treated as a general sales tax. For purposes
17 of the preceding sentence, the term ‘compen-
18 sating use tax’ means, with respect to any item,
19 a tax which—

20 “(i) is imposed on the use, storage, or
21 consumption of such item, and

22 “(ii) is complementary to a general
23 sales tax, but only if a deduction is allow-
24 able under this paragraph with respect to



1 items sold at retail in the taxing jurisdic-
2 tion which are similar to such item.

3 “(F) SPECIAL RULE FOR MOTOR VEHI-
4 CLES.—In the case of motor vehicles, if the rate
5 of tax exceeds the general rate, such excess
6 shall be disregarded and the general rate shall
7 be treated as the rate of tax.

8 “(G) SEPARATELY STATED GENERAL
9 SALES TAXES.—If the amount of any general
10 sales tax is separately stated, then, to the ex-
11 tent that the amount so stated is paid by the
12 consumer (other than in connection with the
13 consumer’s trade or business) to the seller, such
14 amount shall be treated as a tax imposed on,
15 and paid by, such consumer.

16 “(H) AMOUNT OF DEDUCTION MAY BE DE-
17 TERMINED UNDER TABLES.—

18 “(i) IN GENERAL.—At the election of
19 the taxpayer for the taxable year, the
20 amount of the deduction allowed under this
21 paragraph for such year shall be—

22 “(I) the amount determined
23 under this paragraph (without regard
24 to this subparagraph) with respect to



1 motor vehicles, boats, and other items
2 specified by the Secretary, and

3 “(II) the amount determined
4 under tables prescribed by the Sec-
5 retary with respect to items to which
6 subclause (I) does not apply.

7 “(ii) REQUIREMENTS FOR TABLES.—

8 The tables prescribed under clause (i)—

9 “(I) shall reflect the provisions of
10 this paragraph,

11 “(II) shall be based on the aver-
12 age consumption by taxpayers on a
13 State-by-State basis (as determined
14 by the Secretary) of items to which
15 clause (i)(I) does not apply, taking
16 into account filing status, number of
17 dependents, adjusted gross income,
18 and rates of State and local general
19 sales taxation, and

20 “(III) need only be determined
21 with respect to adjusted gross incomes
22 up to the applicable amount (as deter-
23 mined under section 68(b)).

24 “(I) APPLICATION OF PARAGRAPH.—This
25 paragraph shall apply to taxable years begin-



1 ning after December 31, 2003, and before Jan-
2 uary 1, 2006.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2003.

6 **TITLE VI—FAIR AND EQUITABLE**
7 **TOBACCO REFORM**

8 **SEC. 601. SHORT TITLE.**

9 This title may be cited as the “Fair and Equitable
10 Tobacco Reform Act of 2004”.

11 **Subtitle A—Termination of Federal**
12 **Tobacco Quota and Price Sup-**
13 **port Programs**

14 **SEC. 611. TERMINATION OF TOBACCO QUOTA PROGRAM**
15 **AND RELATED PROVISIONS.**

16 (a) MARKETING QUOTAS.—Part I of subtitle B of
17 title III of the Agricultural Adjustment Act of 1938 (7
18 U.S.C. 1311 et seq.) is repealed.

19 (b) TOBACCO INSPECTIONS.—Section 213 of the To-
20 bacco Adjustment Act of 1983 (7 U.S.C. 511r) is repealed.

21 (c) TOBACCO CONTROL.—The Act of April 25, 1936
22 (commonly known as the Tobacco Control Act; 7 U.S.C.
23 515 et seq.), is repealed.

24 (d) PROCESSING TAX.—Section 9(b) of the Agricul-
25 tural Adjustment Act (7 U.S.C. 609(b)), reenacted with



1 amendments by the Agricultural Marketing Agreement
2 Act of 1937, is amended—

3 (1) in paragraph (2), by striking “tobacco,”;
4 and

5 (2) in paragraph (6)(B)(i), by striking “, or, in
6 the case of tobacco, is less than the fair exchange
7 value by not more than 10 per centum,”.

8 (e) DECLARATION OF POLICY.—Section 2 of the Ag-
9 ricultural Adjustment Act of 1938 (7 U.S.C. 1282) is
10 amended by striking “tobacco,”.

11 (f) DEFINITIONS.—Section 301(b) of the Agricultural
12 Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

13 (1) in paragraph (3)—

14 (A) by striking subparagraph (C); and

15 (B) by redesignating subparagraph (D) as
16 subparagraph (C);

17 (2) in paragraph (6)(A), by striking “tobacco,”;

18 (3) in paragraph (10)—

19 (A) by striking subparagraph (B); and

20 (B) by redesignating subparagraph (C) as
21 subparagraph (B);

22 (4) in paragraph (11)(B), by striking “and to-
23 bacco”;

24 (5) in paragraph (12), by striking “tobacco,”;

25 (6) in paragraph (14)—



1 (A) in subparagraph (A), by striking
2 “(A)”; and

3 (B) by striking subparagraphs (B), (C),
4 and (D);

5 (7) by striking paragraph (15);

6 (8) in paragraph (16)—

7 (A) by striking subparagraph (B); and

8 (B) by redesignating subparagraph (C) as
9 subparagraph (B);

10 (9) by striking paragraph (17); and

11 (10) by redesignating paragraph (16) as para-
12 graph (15).

13 (g) PARITY PAYMENTS.—Section 303 of the Agricul-
14 tural Adjustment Act of 1938 (7 U.S.C. 1303) is amended
15 in the first sentence by striking “rice, or tobacco,” and
16 inserting “or rice,”.

17 (h) ADMINISTRATIVE PROVISIONS.—Section 361 of
18 the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361)
19 is amended by striking “tobacco,”.

20 (i) ADJUSTMENT OF QUOTAS.—Section 371 of the
21 Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is
22 amended—

23 (1) in the first sentence of subsection (a), by
24 striking “rice, or tobacco” and inserting “or rice”;

25 and



1 (2) in the first sentence of subsection (b), by
2 striking “rice, or tobacco” and inserting “or rice”.

3 (j) REPORTS AND RECORDS.—Section 373 of the Ag-
4 ricultural Adjustment Act of 1938 (7 U.S.C. 1373) is
5 amended—

6 (1) by striking “rice, or tobacco” each place it
7 appears in subsections (a) and (b) and inserting “or
8 rice”; and

9 (2) in subsection (a)—

10 (A) in the first sentence, by striking “all
11 persons engaged in the business of redrying,
12 prizing, or stemming tobacco for producers,”;
13 and

14 (B) in the last sentence, by striking
15 “\$500;” and all that follows through the period
16 at the end of the sentence and inserting
17 “\$500.”.

18 (k) REGULATIONS.—Section 375 of the Agricultural
19 Adjustment Act of 1938 (7 U.S.C. 1375) is amended—

20 (1) in subsection (a), by striking “peanuts, or
21 tobacco” and inserting “or peanuts”; and

22 (2) by striking subsection (c).

23 (l) EMINENT DOMAIN.—Section 378 of the Agricul-
24 tural Adjustment Act of 1938 (7 U.S.C. 1378) is
25 amended—



1 (1) in the first sentence of subsection (c), by
2 striking “cotton, and tobacco” and inserting “and
3 cotton”; and

4 (2) by striking subsections (d), (e), and (f).

5 (m) BURLEY TOBACCO FARM RECONSTITUTION.—

6 Section 379 of the Agricultural Adjustment Act of 1938

7 (7 U.S.C. 1379) is amended—

8 (1) in subsection (a)—

9 (A) by striking “(a)”; and

10 (B) in paragraph (6), by striking “, but
11 this clause (6) shall not be applicable in the
12 case of burley tobacco”; and

13 (2) by striking subsections (b) and (c).

14 (n) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the

15 Act of April 16, 1955 (Public Law 89–12; 7 U.S.C. 1314c

16 note), is repealed.

17 (o) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The

18 Act of July 12, 1952 (7 U.S.C. 1315), is repealed.

19 (p) TRANSFER OF ALLOTMENTS.—Section 703 of the

20 Food and Agriculture Act of 1965 (7 U.S.C. 1316) is re-

21 pealed.

22 (q) ADVANCE RECOURSE LOANS.—Section

23 13(a)(2)(B) of the Food Security Improvements Act of

24 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking

25 “tobacco and”.



1 (r) TOBACCO FIELD MEASUREMENT.—Section 1112
2 of the Omnibus Budget Reconciliation Act of 1987 (Public
3 Law 100–203; 101 Stat. 1330-8) is amended by striking
4 subsection (e).

5 (s) BURLEY TOBACCO IMPORT REVIEW.—Section 3
6 of Public Law 98–59 (7 U.S.C. 625) is repealed.

7 **SEC. 612. TERMINATION OF TOBACCO PRICE SUPPORT**
8 **PROGRAM AND RELATED PROVISIONS.**

9 (a) TERMINATION OF TOBACCO PRICE SUPPORT AND
10 NO NET COST PROVISIONS.—Sections 106, 106A, and
11 106B of the Agricultural Act of 1949 (7 U.S.C. 1445,
12 1445–1, 1445–2) are repealed.

13 (b) PARITY PRICE SUPPORT.—Section 101 of the Ag-
14 ricultural Act of 1949 (7 U.S.C. 1441) is amended—

15 (1) in the first sentence of subsection (a), by
16 striking “tobacco (except as otherwise provided here-
17 in), corn,” and inserting “corn”;

18 (2) by striking subsections (c), (g), (h), and (i);

19 (3) in subsection (d)(3)—

20 (A) by striking “, except tobacco,”; and

21 (B) by striking “and no price support shall
22 be made available for any crop of tobacco for
23 which marketing quotas have been disapproved
24 by producers;”; and



1 (4) by redesignating subsections (d) and (e) as
2 subsections (c) and (d), respectively.

3 (c) DEFINITION OF BASIC AGRICULTURAL COM-
4 MODITY.—Section 408(c) of the Agricultural Act of 1949
5 (7 U.S.C. 1428(c)) is amended by striking “tobacco,”.

6 (d) POWERS OF COMMODITY CREDIT CORPORA-
7 TION.—Section 5 of the Commodity Credit Corporation
8 Charter Act (15 U.S.C. 714c) is amended by inserting
9 “(other than tobacco)” after “agricultural commodities”
10 each place it appears.

11 **SEC. 613. CONFORMING AMENDMENTS.**

12 Section 320B(c)(1) of the Agricultural Adjustment
13 Act of 1938 (7 U.S.C. 1314h(c)(1)) is amended—

14 (1) by inserting “(A)” after “(1)”;

15 (2) by striking “by” at the end and inserting
16 “or”; and

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

18 “(B) in the case of the 2004 marketing year,
19 the price support rate for the kind of tobacco in-
20 volved in effect under section 106 of the Agricultural
21 Act of 1949 (7 U.S.C. 1445) at the time of the vio-
22 lation; by”.



1 **SEC. 614. CONTINUATION OF LIABILITY FOR 2004 AND EAR-**
2 **LIER CROP YEARS.**

3 The amendments made by this subtitle shall not af-
4 fect the liability of any person under any provision of law
5 so amended with respect to the 2004 or an earlier crop
6 of each kind of tobacco.

7 **Subtitle B—Transitional Payments**
8 **to Tobacco Quota Holders and**
9 **Producers of Tobacco**

10 **SEC. 621. DEFINITIONS.**

11 In this subtitle and subtitle C:

12 (1) **AGRICULTURAL ACT OF 1949.**—The term
13 “Agricultural Act of 1949” means the Agricultural
14 Act of 1949 (7 U.S.C. 1421 et seq.), as in effect on
15 the day before the date of the enactment of this
16 title.

17 (2) **AGRICULTURAL ADJUSTMENT ACT OF**
18 **1938.**—The term “Agricultural Adjustment Act of
19 1938” means the Agricultural Adjustment Act of
20 1938 (7 U.S.C. 1281 et seq.), as in effect on the day
21 before the date of the enactment of this title.

22 (3) **CONSIDERED PLANTED.**—The term “con-
23 sidered planted” means tobacco that was planted,
24 but failed to be produced as a result of a natural
25 disaster, as determined by the Secretary.



1 (4) CONTRACT.—The term “contract” means a
2 contract entered into under section 622 or 623.

3 (5) CONTRACT PAYMENT.—The term “contract
4 payment” means a payment made under section 622
5 or 623 pursuant to a contract.

6 (6) PRODUCER OF QUOTA TOBACCO.—The term
7 “producer of quota tobacco” means an owner, oper-
8 ator, landlord, tenant, or sharecropper that shared
9 in the risk of producing tobacco on a farm where to-
10 bacco was produced or considered planted pursuant
11 to a tobacco farm poundage quota or farm acreage
12 allotment established under part I of subtitle B of
13 title III of the Agricultural Adjustment Act of 1938
14 (7 U.S.C. 1311 et seq.).

15 (7) QUOTA TOBACCO.—The term ‘quota to-
16 bacco’ means a kind of tobacco that is subject to a
17 farm marketing quota or farm acreage allotment for
18 the 2004 tobacco marketing year under a marketing
19 quota or allotment program established under part
20 I of subtitle B of title III of the Agricultural Adjust-
21 ment Act of 1938 (7 U.S.C. 1311 et seq.).

22 (8) TOBACCO.—The term “tobacco” means
23 each of the following kinds of tobacco:

24 (A) Flue-cured tobacco, comprising types
25 11, 12, 13, and 14.



1 (B) Fire-cured tobacco, comprising types
2 22 and 23.

3 (C) Dark air-cured tobacco, comprising
4 types 35 and 36.

5 (D) Virginia sun-cured tobacco, comprising
6 type 37.

7 (E) Virginia fire-cured tobacco, comprising
8 type 21.

9 (F) Burley tobacco, comprising type 31.

10 (G) Cigar-filler and cigar-binder tobacco,
11 comprising types 42, 43, 44, 53, 54, and 55.

12 (9) TOBACCO QUOTA HOLDER.—The term “to-
13 bacco quota holder” means a person that was an
14 owner of a farm, as of the date of enactment of this
15 title, for which a basic tobacco farm marketing
16 quota or farm acreage allotment for quota tobacco
17 was established for the 2004 tobacco marketing
18 year.

19 (10) TOBACCO TRUST FUND.—The term “To-
20 bacco Trust Fund” means the Tobacco Trust Fund
21 established under section 626.

22 (11) SECRETARY.—The term “Secretary”
23 means the Secretary of Agriculture.



1 **SEC. 622. CONTRACT PAYMENTS TO TOBACCO QUOTA**
2 **HOLDERS.**

3 (a) **CONTRACT OFFERED.**—The Secretary shall offer
4 to enter into a contract with each tobacco quota holder
5 under which the tobacco quota holder shall be entitled to
6 receive payments under this section in exchange for the
7 termination of tobacco marketing quotas and related price
8 support under the amendments made by sections 611 and
9 612. The contract payments shall constitute full and fair
10 consideration for the termination of such tobacco mar-
11 keting quotas and related price support.

12 (b) **ELIGIBILITY.**—To be eligible to enter into a con-
13 tract to receive a contract payment under this section, a
14 person shall submit to the Secretary an application con-
15 taining such information as the Secretary may require to
16 demonstrate to the satisfaction of the Secretary that the
17 person is a tobacco quota holder. The application shall be
18 submitted within such time, in such form, and in such
19 manner as the Secretary may require.

20 (c) **BASE QUOTA LEVEL.**—

21 (1) **ESTABLISHMENT.**—The Secretary shall es-
22 tablish a base quota level applicable to each tobacco
23 quota holder identified under subsection (b).

24 (2) **POUNDAGE QUOTAS.**—Subject to adjust-
25 ment under subsection (d), for each kind of tobacco
26 for which the marketing quota is expressed in



1 pounds, the base quota level for each tobacco quota
2 holder shall be equal to the basic quota for quota to-
3 bacco established for the 2002 tobacco marketing
4 year under a marketing quota program established
5 under part I of subtitle B of title III of the Agri-
6 culture Adjustment Act of 1938 on the farm owned
7 by the tobacco quota holder.

8 (3) MARKETING QUOTAS OTHER THAN POUND-
9 AGE QUOTAS.—Subject to adjustment under sub-
10 section (d), for each kind of tobacco for which there
11 is marketing quota or allotment on an acreage basis,
12 the base quota level for each tobacco quota holder
13 shall be the quantity equal to the product obtained
14 by multiplying—

15 (A) the basic tobacco farm marketing
16 quota or allotment for the 2002 marketing year
17 established by the Secretary for quota tobacco
18 owned by the tobacco quota holder; by

19 (B) the average production yield, per acre,
20 for the period covering the 2001, 2002, and
21 2003 crop years for that kind of tobacco in the
22 county in which the quota tobacco is located.

23 (d) TREATMENT OF CERTAIN CONTRACTS AND
24 AGREEMENTS.—



1 (1) EFFECT OF PURCHASE CONTRACT.—If
2 there was an agreement for the purchase of all or
3 part of a farm described in subsection (c) as of the
4 date of the enactment of this title, and the parties
5 to the sale are unable to agree to the disposition of
6 eligibility for contract payments, the Secretary, tak-
7 ing into account any transfer of quota that has been
8 agreed to, shall provide for the equitable division of
9 the contract payments among the parties by adjust-
10 ing the determination of who is the tobacco quota
11 holder with respect to particular pounds or allotment
12 of the quota.

13 (2) EFFECT OF AGREEMENT FOR PERMANENT
14 QUOTA TRANSFER.—If the Secretary determines
15 that there was in existence, as of the day before the
16 date of the enactment of this title, an agreement for
17 the permanent transfer of quota, but that the trans-
18 fer was not completed by that date, the Secretary
19 shall consider the tobacco quota holder to be the
20 party to the agreement that, as of that date, was the
21 owner of the farm to which the quota was to be
22 transferred.

23 (e) CONTRACT PAYMENTS.—

24 (1) CALCULATION OF TOTAL PAYMENT
25 AMOUNT.—The total amount of contract payments



1 to which an eligible tobacco quota holder is entitled
2 under this section, with respect to a kind of tobacco,
3 shall be equal to the product obtained by
4 multiplying—

5 (A) \$7.00 per pound; by

6 (B) the base quota level of the tobacco
7 quota holder determined under subsection (c)
8 with respect to that kind of tobacco.

9 (2) ANNUAL PAYMENT.—During each of fiscal
10 years 2005 through 2014, the Secretary shall make
11 a contract payment under this section to each eligi-
12 ble tobacco quota holder, with respect to a kind of
13 tobacco, in an amount equal to $\frac{1}{10}$ of the amount
14 determined under paragraph (1) for the tobacco
15 quota holder for that kind of tobacco.

16 (f) DEATH OF TOBACCO QUOTA HOLDER.—If a to-
17 bacco quota holder who is entitled to contract payments
18 under this section dies and is survived by a spouse or one
19 or more dependents, the right to receive the payments
20 shall transfer to the surviving spouse or, if there is no
21 surviving spouse, to the estate of the tobacco quota holder.

22 **SEC. 623. CONTRACT PAYMENTS FOR PRODUCERS OF**
23 **QUOTA TOBACCO.**

24 (a) CONTRACT OFFERED.—The Secretary shall offer
25 to enter into a contract with each producer of quota to-



1 bacco under which the producer of quota tobacco shall be
2 entitled to receive payments under this section in exchange
3 for the termination of tobacco marketing quotas and re-
4 lated price support under the amendments made by sec-
5 tions 611 and 612. The contract payments shall constitute
6 full and fair consideration for the termination of such to-
7 bacco marketing quotas and related price support.

8 (b) ELIGIBILITY.—

9 (1) APPLICATION AND DETERMINATION.—To be
10 eligible to enter into a contract to receive a contract
11 payment under this section, a person shall submit to
12 the Secretary an application containing such infor-
13 mation as the Secretary may require to demonstrate
14 to the satisfaction of the Secretary that the person
15 is a producer of quota tobacco. The application shall
16 be submitted within such time, in such form, and in
17 such manner as the Secretary may require.

18 (2) EFFECT OF MULTIPLE PRODUCERS FOR
19 SAME QUOTA TOBACCO.—If, on the basis of the ap-
20 plications submitted under paragraph (1) or other
21 information, the Secretary determines that two or
22 more persons are a producer of the same quota to-
23 bacco, the Secretary shall provide for an equitable
24 distribution among the persons of the contract pay-
25 ments made under this section with respect to that



1 quota tobacco, based on relative share of such per-
2 sons in the risk of producing the quota tobacco and
3 such other factors as the Secretary considers appro-
4 priate.

5 (c) BASE QUOTA LEVEL.—

6 (1) ESTABLISHMENT.—The Secretary shall es-
7 tablish a base quota level applicable to each pro-
8 ducer of quota tobacco, as determined under this
9 subsection.

10 (2) FLUE-CURED AND BURLEY TOBACCO.—In
11 the case of Flue-cured tobacco (types 11, 12, 13,
12 and 14) and Burley tobacco (type 31), the base
13 quota level for each producer of quota tobacco shall
14 be equal to the effective tobacco marketing quota
15 (irrespective of disaster lease and transfers) under
16 part I of subtitle B of title III of the Agriculture
17 Adjustment Act of 1938 for the 2002 marketing
18 year for quota tobacco produced on the farm.

19 (3) OTHER KINDS OF TOBACCO.—In the case of
20 each kind of tobacco (other than tobacco covered by
21 paragraph (2)), for the purpose of calculating a con-
22 tract payment to a producer of quota tobacco, the
23 base quota level for the producer of quota tobacco
24 shall be the quantity obtained by multiplying—



1 (A) the basic tobacco farm acreage allot-
2 ment for the 2002 marketing year established
3 by the Secretary for quota tobacco produced on
4 the farm; by

5 (B) the average annual yield, per acre, of
6 quota tobacco produced on the farm for the pe-
7 riod covering the 2001, 2002, and 2003 crop
8 years.

9 (d) CONTRACT PAYMENTS.—

10 (1) CALCULATION OF TOTAL PAYMENT
11 AMOUNT.—Subject to subsection (b)(2), the total
12 amount of contract payments to which an eligible
13 producer of quota tobacco is entitled under this sec-
14 tion, with respect to a kind of tobacco, shall be equal
15 to the product obtained by multiplying—

16 (A) subject to paragraph (2), \$3.00 per
17 pound; by

18 (B) the base quota level of the producer of
19 quota tobacco determined under subsection (c)
20 with respect to that kind of tobacco.

21 (2) ANNUAL PAYMENT.—During each of fiscal
22 years 2005 through 2014, the Secretary shall make
23 a contract payment under this section to each eligi-
24 ble producer of tobacco, with respect to a kind of to-
25 bacco, in an amount equal to $\frac{1}{10}$ of the amount de-



1 terminated under paragraph (1) for the producer for
2 that kind of tobacco.

3 (3) VARIABLE PAYMENT RATES.—The rate for
4 payments to a producer of quota tobacco under
5 paragraph (1)(A) shall be equal to—

6 (A) in the case of a producer of quota to-
7 bacco that produced quota tobacco marketed, or
8 considered planted, under a marketing quota in
9 all three of the 2002, 2003, or 2004 tobacco
10 marketing years, the rate prescribed under
11 paragraph (1)(A);

12 (B) in the case of a producer of quota to-
13 bacco that produced quota tobacco marketed, or
14 considered planted, under a marketing quota in
15 only two of those tobacco marketing years, $\frac{2}{3}$
16 of the rate prescribed under paragraph (1)(A);

17 (C) in the case of a producer of quota to-
18 bacco that produced quota tobacco marketed, or
19 considered planted, under a marketing quota in
20 only one of those tobacco marketing years, $\frac{1}{3}$
21 of the rate prescribed under paragraph (1)(A).

22 (e) DEATH OF TOBACCO PRODUCER.—If a producer
23 of quota tobacco who is entitled to contract payments
24 under this section dies and is survived by a spouse or one
25 or more dependents, the right to receive the contract pay-



1 ments shall transfer to the surviving spouse or, if there
2 is no surviving spouse, to the estate of the producer.

3 **SEC. 624. ADMINISTRATION.**

4 (a) TIME FOR PAYMENT OF CONTRACT PAY-
5 MENTS.—Contract payments required to be made for a
6 fiscal year shall be made by the Secretary as soon as prac-
7 ticable.

8 (b) USE OF COUNTY COMMITTEES TO RESOLVE DIS-
9 PUTES.—Any dispute regarding the eligibility of a person
10 to enter into a contract or to receive contract payments,
11 and any dispute regarding the amount of a contract pay-
12 ment, may be appealed to the county committee estab-
13 lished under section 8 of the Soil Conservation and Do-
14 mestic Allotment Act (16 U.S.C. 590h) for the county or
15 other area in which the farming operation of the person
16 is located.

17 (c) ROLE OF NATIONAL APPEALS DIVISION.—Any
18 adverse determination of a county committee under sub-
19 section (b) may be appealed to the National Appeals Divi-
20 sion established under subtitle H of the Department of
21 Agriculture Reorganization Act of 1994 (7 U.S.C. 6991
22 et seq.).

23 (d) USE OF FINANCIAL INSTITUTIONS.—The Sec-
24 retary may use a financial institution to manage assets,



1 make contract payments, and otherwise carry out this
2 title.

3 (e) PAYMENT TO FINANCIAL INSTITUTIONS.—The
4 Secretary shall permit a tobacco quota holder or producer
5 of quota tobacco entitled to contract payments to assign
6 to a financial institution the right to receive the contract
7 payments. Upon receiving notification of the assignment,
8 the Secretary shall make subsequent contract payments
9 for the tobacco quota holder or producer of quota tobacco
10 directly to the financial institution designated by the to-
11 bacco quota holder or producer of quota tobacco. The Sec-
12 retary shall make information available to tobacco quota
13 holders and producers of quota tobacco regarding their
14 ability to elect to have the Secretary make payments di-
15 rectly to a financial institution under this subsection so
16 that they may obtain a lump sum or other payment.

17 **SEC. 625. USE OF ASSESSMENTS AS SOURCE OF FUNDS FOR**
18 **PAYMENTS.**

19 (a) DEFINITIONS.—In this section:

20 (1) BASE PERIOD.—The term “base period”
21 means the one-year period ending the June 30 be-
22 fore the beginning of a fiscal year.

23 (2) GROSS DOMESTIC VOLUME.—The term
24 “gross domestic volume” means the volume of to-
25 bacco products—



1 (A) removed (as defined by section 5702 of
2 the Internal Revenue Code of 1986); and

3 (B) not exempt from tax under chapter 52
4 of the Internal Revenue Code of 1986 at the
5 time of their removal under that chapter or the
6 Harmonized Tariff Schedule of the United
7 States (19 U.S.C. 1202).

8 (3) MARKET SHARE.—The term “market
9 share” means the share of each manufacturer or im-
10 porter of a class of tobacco product (expressed as a
11 decimal to the fourth place) of the total volume of
12 domestic sales of the class of tobacco product during
13 the base period for a fiscal year for an assessment
14 under this section.

15 (b) QUARTERLY ASSESSMENTS.—

16 (1) IMPOSITION OF ASSESSMENT.—The Sec-
17 retary, acting through the Commodity Credit Cor-
18 poration, shall impose quarterly assessments during
19 each of fiscal years 2005 through 2014, calculated
20 in accordance with this section, on each tobacco
21 product manufacturer and tobacco product importer
22 that sells tobacco products in domestic commerce in
23 the United States during that fiscal year.

24 (2) AMOUNTS.—Beginning with the calendar
25 quarter ending on December 31 of each of fiscal



1 years 2005 through 2014, the assessment payments
2 over each four-calendar quarter period shall be suffi-
3 cient to cover—

4 (A) the contract payments made under sec-
5 tions 622 and 623 during that period; and

6 (B) other expenditures from the Tobacco
7 Trust Fund made during the base quarter peri-
8 ods corresponding to the four calendar quarters
9 of that period.

10 (3) DEPOSIT.—Assessments collected under this
11 section shall be deposited in the Tobacco Trust
12 Fund.

13 (c) ASSESSMENTS FOR CLASSES OF TOBACCO PROD-
14 UCTS.—

15 (1) INITIAL ALLOCATION.—The percentage of
16 the total amount required by subsection (b) to be as-
17 sessed against, and paid by, the manufacturers and
18 importers of each class of tobacco product in fiscal
19 year 2005 shall be as follows:

20 (A) For cigarette manufacturers and im-
21 porters, 96.331 percent.

22 (B) For cigar manufacturers and import-
23 ers, 2.783 percent.

24 (C) For snuff manufacturers and import-
25 ers, 0.539 percent.



1 (D) For roll-your-own tobacco manufactur-
2 ers and importers, 0.171 percent.

3 (E) For chewing tobacco manufacturers
4 and importers, 0.111 percent.

5 (F) For pipe tobacco manufacturers and
6 importers, 0.066 percent.

7 (2) SUBSEQUENT ALLOCATIONS.—For subse-
8 quent fiscal years, the Secretary shall periodically
9 adjust the percentage of the total amount required
10 under subsection (b) to be assessed against, and
11 paid by, the manufacturers and importers of each
12 class of tobacco product specified in paragraph (1)
13 to reflect changes in the share of gross domestic vol-
14 ume held by that class of tobacco product.

15 (3) EFFECT OF INSUFFICIENT AMOUNTS.—If
16 the Secretary determines that the assessment im-
17 posed under subsection (b) will result in insufficient
18 amounts to carry out this subtitle during a fiscal
19 year, the Secretary shall assess such additional
20 amounts as the Secretary determines to be necessary
21 to carry out this subtitle during that fiscal year. The
22 additional amount shall be allocated to manufactur-
23 ers and importers of each class of tobacco product
24 specified in paragraph (1) in the same manner and



1 based on the same percentages applicable under
2 paragraph (1) or (2) for that fiscal year.

3 (d) NOTIFICATION AND TIMING OF ASSESSMENTS.—

4 (1) NOTIFICATION OF ASSESSMENTS.—The
5 Secretary shall provide each manufacturer or im-
6 porter subject to an assessment under subsection (b)
7 with written notice setting forth the amount to be
8 assessed against the manufacturer or importer for
9 each quarterly payment period. The notice for a
10 quarterly period shall be provided not later than 30
11 days before the date payment is due under para-
12 graph (3).

13 (2) CONTENT.—The notice shall include the fol-
14 lowing information with respect to the quarterly pe-
15 riod used by the Secretary in calculating the
16 amount:

17 (A) The total combined assessment for all
18 manufacturers and importers of tobacco prod-
19 ucts.

20 (B) The total assessment with respect to
21 the class of tobacco products manufactured or
22 imported by the manufacturer or importer.

23 (C) Any adjustments to the percentage al-
24 locations among the classes of tobacco products



1 made pursuant to paragraph (2) or (3) of sub-
2 section (c).

3 (D) The volume of gross sales of the appli-
4 cable class of tobacco product treated as made
5 by the manufacturer or importer for purposes
6 of calculating the manufacturer's or importer's
7 market share under subsection (f).

8 (E) The total volume of gross sales of the
9 applicable class of tobacco product that the Sec-
10 retary treated as made by all manufacturers
11 and importers for purposes of calculating the
12 manufacturer's or importer's market share
13 under subsection (f).

14 (F) The manufacturer's or importer's mar-
15 ket share of the applicable class of tobacco
16 product, as determined by the Secretary under
17 subsection (f).

18 (G) The market share, as determined by
19 the Secretary under subsection (f), of each
20 other manufacturer and importer, for each ap-
21 plicable class of tobacco product.

22 (3) TIMING OF ASSESSMENT PAYMENTS.—

23 (A) COLLECTION DATE.—Assessments
24 shall be collected at the end of each calendar
25 year quarter, except that the Secretary shall en-



1 sure that the final assessment due under this
2 section is collected not later than September 30,
3 2014.

4 (B) BASE PERIOD QUARTER.—The assess-
5 ment for a calendar year quarter shall cor-
6 respond to the base period quarter that ended
7 at the end of the preceding calendar year quar-
8 ter.

9 (e) ALLOCATION OF ASSESSMENT WITHIN EACH
10 CLASS OF TOBACCO PRODUCT.—

11 (1) PRO RATA BASIS.—The assessment for each
12 class of tobacco product specified in subsection
13 (c)(1) shall be allocated on a pro rata basis among
14 manufacturers and importers based on each manu-
15 facturer’s or importer’s share of gross domestic vol-
16 ume.

17 (2) LIMITATION.—No manufacturer or importer
18 shall be required to pay an assessment that is based
19 on a share that is in excess of the manufacturer’s
20 or importer’s share of domestic volume.

21 (f) ALLOCATION OF TOTAL ASSESSMENTS BY MAR-
22 KET SHARE.—The amount of the assessment for each
23 class of tobacco product specified in subsection (c)(1) to
24 be paid by each manufacturer or importer of that class



1 of tobacco product shall be determined for each quarterly
2 payment period by multiplying—

3 (1) the market share of the manufacturer or
4 importer, as calculated with respect to that payment
5 period, of the class of tobacco product; by

6 (2) the total amount of the assessment for that
7 quarterly payment period under subsection (c), for
8 the class of tobacco product.

9 (g) DETERMINATION OF VOLUME OF DOMESTIC
10 SALES.—

11 (1) IN GENERAL.—The calculation of the vol-
12 ume of domestic sales of a class of tobacco product
13 by a manufacturer or importer, and by all manufac-
14 turers and importers as a group, shall be made by
15 the Secretary based on information provided by the
16 manufacturers and importers pursuant to subsection
17 (h), as well as any other relevant information pro-
18 vided to or obtained by the Secretary.

19 (2) GROSS DOMESTIC VOLUME.—The volume of
20 domestic sales shall be calculated based on gross do-
21 mestic volume.

22 (3) MEASUREMENT.—For purposes of the cal-
23 culations under this subsection and the certifications
24 under subsection (h) by the Secretary, the volumes
25 of domestic sales shall be measured by—



1 (A) in the case of cigarettes, the numbers
2 of cigarettes; and

3 (B) in the case of other classes of tobacco
4 products, in terms of number of pounds, or
5 fraction thereof, of those products.

6 (h) MEASUREMENT OF VOLUME OF DOMESTIC
7 SALES.—

8 (1) SUBMISSION OF INFORMATION.—Each man-
9 ufacturer and importer of tobacco products shall
10 submit to the Secretary a certified copy of each of
11 the returns or forms described by paragraph (2)
12 that are required to be filed with a Federal agency
13 on the same date that those returns or forms are
14 filed, or required to be filed, with the agency.

15 (2) RETURNS AND FORMS.—The returns and
16 forms described by this paragraph are those returns
17 and forms that relate to—

18 (A) the removal of tobacco products into
19 domestic commerce (as defined by section 5702
20 of the Internal Revenue Code of 1986); and

21 (B) the payment of the taxes imposed
22 under chapter 52 of the Internal Revenue Code
23 of 1986, including AFT Form 5000.24 and
24 United States Customs Form 7501 under cur-
25 rently applicable regulations.



1 (3) EFFECT OF FAILURE TO PROVIDE RE-
2 QUIRED INFORMATION.—Any person that knowingly
3 fails to provide information required under this sub-
4 section or that provides false information under this
5 subsection shall be subject to the penalties described
6 in section 1003 of title 18, United States Code. The
7 Secretary may also assess against the person a civil
8 penalty in an amount not to exceed two percent of
9 the value of the kind of tobacco products manufac-
10 tured or imported by the person during the fiscal
11 year in which the violation occurred, as determined
12 by the Secretary.

13 (i) CHALLENGE TO ASSESSMENT.—

14 (1) APPEAL TO SECRETARY.—A manufacturer
15 or importer subject to this section may contest an
16 assessment imposed on the manufacturer or im-
17 porter under this section by notifying the Secretary,
18 not later than 30 business days after receiving the
19 assessment notification required by subsection (d),
20 that the manufacturer or importer intends to contest
21 the assessment.

22 (2) INFORMATION.—Not later than 180 days
23 after the date of the enactment of this title, the Sec-
24 retary shall establish by regulation a procedure
25 under which a manufacturer or importer contesting



1 an assessment under this subsection may present in-
2 formation to the Secretary to demonstrate that the
3 assessment applicable to the manufacturer or im-
4 porter is incorrect. In challenging the assessment,
5 the manufacturer or importer may use any informa-
6 tion that is available, including third party data on
7 industry or individual company sales volumes.

8 (3) REVISION.—If a manufacturer or importer
9 establishes that the initial determination of the
10 amount of an assessment is incorrect, the Secretary
11 shall revise the amount of the assessment so that
12 the manufacturer or importer is required to pay only
13 the amount correctly determined.

14 (4) TIME FOR REVIEW.—Not later than 30
15 days after receiving notice from a manufacturer or
16 importer under paragraph (1), the Secretary shall—

17 (A) decide whether the information pro-
18 vided to the Secretary under paragraph (2),
19 and any other information that the Secretary
20 determines is appropriate, is sufficient to estab-
21 lish that the original assessment was incorrect;
22 and

23 (B) make any revisions necessary to ensure
24 that each manufacturer and importer pays only



1 its correct pro rata share of total gross domes-
2 tic volume from all sources.

3 (5) IMMEDIATE PAYMENT OF UNDISPUTED
4 AMOUNTS.—The regulations promulgated by the
5 Secretary under paragraph (2) shall provide for the
6 immediate payment by a manufacturer or importer
7 challenging an assessment of that portion of the as-
8 sessment that is not in dispute. The manufacturer
9 and importer may place into escrow, in accordance
10 with such regulations, only the portion of the assess-
11 ment being challenged in good faith pending final
12 determination of the claim.

13 (j) JUDICIAL REVIEW.—

14 (1) IN GENERAL.—Any manufacturer or im-
15 porter aggrieved by a determination of the Secretary
16 with respect to the amount of any assessment may
17 seek review of the determination in the United
18 States District Court for the District of Columbia or
19 for the district in which the manufacturer or im-
20 porter resides or has its principal place of business
21 at any time following exhaustion of the administra-
22 tive remedies available under subsection (i).

23 (2) TIME LIMITS.—Administrative remedies
24 shall be deemed exhausted if no decision by the Sec-



1 retary is made within the time limits established
2 under subsection (i)(4).

3 (3) EXCESSIVE ASSESSMENTS.—The court shall
4 restrain collection of the excessive portion of any as-
5 sessment or order a refund of excessive assessments
6 already paid, along with interest calculated at the
7 rate prescribed in section 3717 of title 31, United
8 States Code, if it finds that the Secretary’s deter-
9 mination is not supported by a preponderance of the
10 information available to the Secretary.

11 (k) TERMINATION DATE.—The authority provided by
12 this section to impose assessments terminates on Sep-
13 tember 30, 2014.

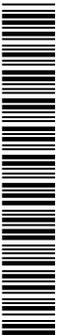
14 **SEC. 626. TOBACCO TRUST FUND.**

15 (a) ESTABLISHMENT.—There is established in the
16 Commodity Credit Corporation a revolving trust fund, to
17 be known as the “Tobacco Trust Fund”, which shall be
18 used in carrying out this subtitle. The Tobacco Trust
19 Fund shall consist of the following:

20 (1) Assessments collected under section 625.

21 (2) Such amounts as are necessary from the
22 Commodity Credit Corporation.

23 (3) Any interest earned on investment of
24 amounts in the Tobacco Trust Fund under sub-
25 section (c).



1 (b) EXPENDITURES.—

2 (1) AUTHORIZED EXPENDITURES.—Subject to
3 paragraph (2), and notwithstanding any other provi-
4 sion of law, the Secretary shall use amounts in the
5 Tobacco Trust Fund, in such amounts as the Sec-
6 retary determines are necessary—

7 (A) to make payments under sections 622
8 and 623;

9 (B) to carry out the Secretary's respon-
10 sibilities under section 641(c);

11 (C) to reimburse the Commodity Credit
12 Corporation for costs incurred by the Com-
13 modity Credit Corporation under paragraph
14 (2); and

15 (D) to make payments to financial institu-
16 tions to satisfy contractual obligations under
17 section 622 or 623.

18 (2) EXPENDITURES BY COMMODITY CREDIT
19 CORPORATION.—Notwithstanding any other provi-
20 sion of law, the Secretary shall use the funds, facili-
21 ties, and authorities of the Commodity Credit Cor-
22 poration to make payments described in paragraph
23 (1). Not later than January 1, 2015, the Secretary
24 shall use amounts in the Tobacco Trust Fund to
25 fully reimburse, with interest, the Commodity Credit



1 Corporation for all funds of the Commodity Credit
2 Corporation expended under the authority of this
3 paragraph. Administrative costs incurred by the Sec-
4 retary or the Commodity Credit Corporation to carry
5 out this title may not be paid using amounts in the
6 Tobacco Trust Fund.

7 (c) INVESTMENT OF AMOUNTS.—

8 (1) IN GENERAL.—The Commodity Credit Cor-
9 poration shall invest such portion of the amounts in
10 the Tobacco Trust Fund as are not, in the judgment
11 of the Commodity Credit Corporation, required to
12 meet current expenditures.

13 (2) INTEREST-BEARING OBLIGATIONS.—Invest-
14 ments may be made only in interest-bearing obliga-
15 tions of the United States.

16 (3) ACQUISITION OF OBLIGATIONS.—For the
17 purpose of investments under paragraph (1), obliga-
18 tions may be acquired—

19 (A) on original issue at the issue price; or

20 (B) by purchase of outstanding obligations
21 at the market price.

22 (4) SALE OF OBLIGATIONS.—Any obligation ac-
23 quired by the Tobacco Trust Fund may be sold by
24 the Commodity Credit Corporation at the market
25 price.



1 tion. The quantity transferred to the association for dis-
2 posal shall be equal to the quantity determined by
3 dividing—

4 (1) the amount of funds held by the association
5 in the No Net Cost Tobacco Fund and the No Net
6 Cost Tobacco Account established under sections
7 106A and 106B of the Agricultural Act of 1949 (7
8 U.S.C. 1445–1, 1445–2) for the kind of tobacco; by

9 (2) the average list price per pound for the kind
10 of tobacco, as determined by the Secretary.

11 (c) DISPOSAL OF REMAINDER BY COMMODITY CRED-
12 IT CORPORATION.—Any loan pool stocks of a kind of to-
13 bacco of an association that are not transferred to the as-
14 sociation under subsection (b) for disposal shall be dis-
15 posed of by Commodity Credit Corporation in a manner
16 determined by the Secretary. To cover the costs of dis-
17 posing of such stocks, the Secretary shall use amounts in
18 the Tobacco Trust Fund, as authorized by section
19 726(b)(1)(B), and funds remaining in the No Net Cost
20 Tobacco Funds and No Net Cost Tobacco Accounts estab-
21 lished pursuant to sections 106A and 106B of the Agricul-
22 tural Act of 1949 (7 U.S.C. 1445–1, 1445–2).

23 (d) TRANSFER OF REMAINING NO NET COST
24 FUNDS.—Any funds in the No Net Cost Tobacco Fund
25 or the No Net Cost Tobacco Account of an association



1 established under sections 106A and 106B of the Agricul-
2 tural Act of 1949 (7 U.S.C. 1445–1, 1445–2) that remain
3 after the application of subsections (b) and (c) shall be
4 transferred to the association for distribution to producers
5 of quota tobacco in accordance with a plan approved by
6 the Secretary.

7 **SEC. 642. REGULATIONS.**

8 (a) IN GENERAL.—The Secretary may promulgate
9 such regulations as are necessary to implement this title
10 and the amendments made by this title.

11 (b) PROCEDURE.—The promulgation of the regula-
12 tions and administration of this title and the amendments
13 made by this title shall be made without regard to—

14 (1) the notice and comment provisions of sec-
15 tion 553 of title 5, United States Code;

16 (2) the Statement of Policy of the Secretary of
17 Agriculture effective July 24, 1971 (36 Fed. Reg.
18 13804), relating to notices of proposed rulemaking
19 and public participation in rulemaking; and

20 (3) chapter 35 of title 44, United States Code
21 (commonly known as the “Paperwork Reduction
22 Act”).

23 (c) CONGRESSIONAL REVIEW OF AGENCY RULE-
24 MAKING.—In carrying out this section, the Secretary shall



1 use the authority provided under section 808 of title 5,
2 United States Code.

3 **SEC. 643. EFFECTIVE DATE.**

4 This title and the amendments made by this title
5 shall apply to the 2005 and subsequent crops of each kind
6 of tobacco.

7 **TITLE VII—MISCELLANEOUS**
8 **PROVISIONS**

9 **SEC. 701. BROWNFIELDS DEMONSTRATION PROGRAM FOR**
10 **QUALIFIED GREEN BUILDING AND SUSTAIN-**
11 **ABLE DESIGN PROJECTS.**

12 (a) TREATMENT AS EXEMPT FACILITY BOND.—Sub-
13 section (a) of section 142 (relating to the definition of ex-
14 empt facility bond) is amended by striking “or” at the
15 end of paragraph (12), by striking the period at the end
16 of paragraph (13) and inserting “, or”, and by inserting
17 at the end the following new paragraph:

18 “(14) qualified green building and sustainable
19 design projects.”.

20 (b) QUALIFIED GREEN BUILDING AND SUSTAINABLE
21 DESIGN PROJECTS.—Section 142 (relating to exempt fa-
22 cility bonds) is amended by adding at the end thereof the
23 following new subsection:

24 “(l) QUALIFIED GREEN BUILDING AND SUSTAIN-
25 ABLE DESIGN PROJECTS.—



1 “(1) IN GENERAL.—For purposes of subsection
2 (a)(14), the term ‘qualified green building and sus-
3 tainable design project’ means any project which is
4 designated by the Secretary, after consultation with
5 the Administrator of the Environmental Protection
6 Agency, as a qualified green building and sustain-
7 able design project and which meets the require-
8 ments of clauses (i), (ii), (iii), and (iv) of paragraph
9 (4)(A).

10 “(2) DESIGNATIONS.—

11 “(A) IN GENERAL.—Within 60 days after
12 the end of the application period described in
13 paragraph (3)(A), the Secretary, after consulta-
14 tion with the Administrator of the Environ-
15 mental Protection Agency, shall designate quali-
16 fied green building and sustainable design
17 projects. At least one of the projects designated
18 shall be located in, or within a 10-mile radius
19 of, an empowerment zone as designated pursu-
20 ant to section 1391, and at least one of the
21 projects designated shall be located in a rural
22 State. No more than one project shall be des-
23 ignated in a State. A project shall not be des-
24 ignated if such project includes a stadium or



1 arena for professional sports exhibitions or
2 games.

3 “(B) MINIMUM CONSERVATION AND TECH-
4 NOLOGY INNOVATION OBJECTIVES.—The Sec-
5 retary, after consultation with the Adminis-
6 trator of the Environmental Protection Agency,
7 shall ensure that, in the aggregate, the projects
8 designated shall—

9 “(i) reduce electric consumption by
10 more than 150 megawatts annually as
11 compared to conventional generation,

12 “(ii) reduce daily sulfur dioxide emis-
13 sions by at least 10 tons compared to coal
14 generation power,

15 “(iii) expand by 75 percent the do-
16 mestic solar photovoltaic market in the
17 United States (measured in megawatts) as
18 compared to the expansion of that market
19 from 2001 to 2002, and

20 “(iv) use at least 25 megawatts of
21 fuel cell energy generation.

22 “(3) LIMITED DESIGNATIONS.—A project may
23 not be designated under this subsection unless—



1 “(A) the project is nominated by a State
2 or local government within 180 days of the en-
3 actment of this subsection, and

4 “(B) such State or local government pro-
5 vides written assurances that the project will
6 satisfy the eligibility criteria described in para-
7 graph (4).

8 “(4) APPLICATION.—

9 “(A) IN GENERAL.—A project may not be
10 designated under this subsection unless the ap-
11 plication for such designation includes a project
12 proposal which describes the energy efficiency,
13 renewable energy, and sustainable design fea-
14 tures of the project and demonstrates that the
15 project satisfies the following eligibility criteria:

16 “(i) GREEN BUILDING AND SUSTAIN-
17 ABLE DESIGN.—At least 75 percent of the
18 square footage of commercial buildings
19 which are part of the project is registered
20 for United States Green Building Council’s
21 LEED certification and is reasonably ex-
22 pected (at the time of the designation) to
23 receive such certification. For purposes of
24 determining LEED certification as re-



1 required under this clause, points shall be
2 credited by using the following:

3 “**(I)** For wood products, certifi-
4 cation under the Sustainable Forestry
5 Initiative Program and the American
6 Tree Farm System.

7 “**(II)** For renewable wood prod-
8 ucts, as credited for recycled content
9 otherwise provided under LEED cer-
10 tification.

11 “**(III)** For composite wood prod-
12 ucts, certification under standards es-
13 tablished by the American National
14 Standards Institute, or such other vol-
15 untary standards as published in the
16 Federal Register by the Administrator
17 of the Environmental Protection
18 Agency.

19 “**(ii)** **BROWNFIELD REDEVELOP-**
20 **MENT.**—The project includes a brownfield
21 site as defined by section 101(39) of the
22 Comprehensive Environmental Response,
23 Compensation, and Liability Act of 1980
24 (42 U.S.C. 9601), including a site de-



1 scribed in subparagraph (D)(ii)(II)(aa)
2 thereof.

3 “(iii) STATE AND LOCAL SUPPORT.—
4 The project receives specific State or local
5 government resources which will support
6 the project in an amount equal to at least
7 \$5,000,000. For purposes of the preceding
8 sentence, the term ‘resources’ includes tax
9 abatement benefits and contributions in
10 kind.

11 “(iv) SIZE.—The project includes at
12 least one of the following:

13 “(I) At least 1,000,000 square
14 feet of building.

15 “(II) At least 20 acres.

16 “(v) USE OF TAX BENEFIT.—The
17 project proposal includes a description of
18 the net benefit of the tax-exempt financing
19 provided under this subsection which will
20 be allocated for financing of one or more
21 of the following:

22 “(I) The purchase, construction,
23 integration, or other use of energy ef-
24 ficiency, renewable energy, and sus-
25 tainable design features of the project.



1 “(II) Compliance with certifi-
2 cation standards cited under clause
3 (i).

4 “(III) The purchase, remediation,
5 and foundation construction and prep-
6 aration of the brownfields site.

7 “(vi) PROHIBITED FACILITIES.—An
8 issue shall not be treated as an issue de-
9 scribed in subsection (a)(14) if any pro-
10 ceeds of such issue are used to provide any
11 facility the principal business of which is
12 the sale of food or alcoholic beverages for
13 consumption on the premises.

14 “(vii) EMPLOYMENT.—The project is
15 projected to provide permanent employ-
16 ment of at least 1,500 full time equivalents
17 (150 full time equivalents in rural States)
18 when completed and construction employ-
19 ment of at least 1,000 full time equivalents
20 (100 full time equivalents in rural States).

21 The application shall include an independent
22 analysis which describes the project’s economic
23 impact, including the amount of projected em-
24 ployment.



1 “(B) PROJECT DESCRIPTION.—Each appli-
2 cation described in subparagraph (A) shall con-
3 tain for each project a description of—

4 “(i) the amount of electric consump-
5 tion reduced as compared to conventional
6 construction,

7 “(ii) the amount of sulfur dioxide
8 daily emissions reduced compared to coal
9 generation,

10 “(iii) the amount of the gross in-
11 stalled capacity of the project’s solar pho-
12 tovoltaic capacity measured in megawatts,
13 and

14 “(iv) the amount, in megawatts, of
15 the project’s fuel cell energy generation.

16 “(5) CERTIFICATION OF USE OF TAX BEN-
17 EFIT.—No later than 30 days after the completion
18 of the project, each project must certify to the Sec-
19 retary that the net benefit of the tax-exempt financ-
20 ing was used for the purposes described in para-
21 graph (4).

22 “(6) DEFINITIONS.—For purposes of this
23 subsection—

24 “(A) RURAL STATE.—The term ‘rural
25 State’ means any State which has—



1 “(i) a population of less than
2 4,500,000 according to the 2000 census,

3 “(ii) a population density of less than
4 150 people per square mile according to
5 the 2000 census, and

6 “(iii) increased in population by less
7 than half the rate of the national increase
8 between the 1990 and 2000 censuses.

9 “(B) LOCAL GOVERNMENT.—The term
10 ‘local government’ has the meaning given such
11 term by section 1393(a)(5).

12 “(C) NET BENEFIT OF TAX-EXEMPT FI-
13 NANCING.—The term ‘net benefit of tax-exempt
14 financing’ means the present value of the inter-
15 est savings (determined by a calculation estab-
16 lished by the Secretary) which result from the
17 tax-exempt status of the bonds.

18 “(7) AGGREGATE FACE AMOUNT OF TAX-EX-
19 EMPT FINANCING.—

20 “(A) IN GENERAL.—An issue shall not be
21 treated as an issue described in subsection
22 (a)(14) if the aggregate face amount of bonds
23 issued by the State or local government pursu-
24 ant thereto for a project (when added to the ag-
25 gregate face amount of bonds previously so



1 issued for such project) exceeds an amount des-
2 igned by the Secretary as part of the designa-
3 tion.

4 “(B) LIMITATION ON AMOUNT OF
5 BONDS.—The Secretary may not allocate au-
6 thority to issue qualified green building and
7 sustainable design project bonds in an aggre-
8 gate face amount exceeding \$2,000,000,000.

9 “(8) TERMINATION.—Subsection (a)(14) shall
10 not apply with respect to any bond issued after Sep-
11 tember 30, 2009.

12 “(9) TREATMENT OF CURRENT REFUNDING
13 BONDS.—Paragraphs (7)(B) and (8) shall not apply
14 to any bond (or series of bonds) issued to refund a
15 bond issued under subsection (a)(14) before October
16 1, 2009, if—

17 “(A) the average maturity date of the issue
18 of which the refunding bond is a part is not
19 later than the average maturity date of the
20 bonds to be refunded by such issue,

21 “(B) the amount of the refunding bond
22 does not exceed the outstanding amount of the
23 refunded bond, and

24 “(C) the net proceeds of the refunding
25 bond are used to redeem the refunded bond not



1 later than 90 days after the date of the
2 issuance of the refunding bond.

3 For purposes of subparagraph (A), average maturity
4 shall be determined in accordance with section
5 147(b)(2)(A).”.

6 (c) EXEMPTION FROM GENERAL STATE VOLUME
7 CAPS.—Paragraph (3) of section 146(g) (relating to ex-
8 ception for certain bonds) is amended—

9 (1) by striking “or (13)” and inserting “(13),
10 or (14)”, and

11 (2) by striking “and qualified public educational
12 facilities” and inserting “qualified public educational
13 facilities, and qualified green building and sustain-
14 able design projects”.

15 (d) ACCOUNTABILITY.—Each issuer shall maintain,
16 on behalf of each project, an interest bearing reserve ac-
17 count equal to 1 percent of the net proceeds of any bond
18 issued under this section for such project. Not later than
19 5 years after the date of issuance, the Secretary of the
20 Treasury, after consultation with the Administrator of the
21 Environmental Protection Agency, shall determine wheth-
22 er the project financed with such bonds has substantially
23 complied with the terms and conditions described in sec-
24 tion 142(l)(4) of the Internal Revenue Code of 1986 (as
25 added by this section). If the Secretary, after such con-



1 sultation, certifies that the project has substantially com-
2 plied with such terms and conditions and meets the com-
3 mitments set forth in the application for such project de-
4 scribed in section 142(l)(4) of such Code, amounts in the
5 reserve account, including all interest, shall be released to
6 the project. If the Secretary determines that the project
7 has not substantially complied with such terms and condi-
8 tions, amounts in the reserve account, including all inter-
9 est, shall be paid to the United States Treasury.

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

13 **SEC. 702. EXCLUSION OF GAIN OR LOSS ON SALE OR EX-**
14 **CHANGE OF CERTAIN BROWNFIELD SITES**
15 **FROM UNRELATED BUSINESS TAXABLE IN-**
16 **COME.**

17 (a) IN GENERAL.—Subsection (b) of section 512 (re-
18 lating to unrelated business taxable income) is amended
19 by adding at the end the following new paragraph:

20 “(18) TREATMENT OF GAIN OR LOSS ON SALE
21 OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

22 “(A) IN GENERAL.—Notwithstanding para-
23 graph (5)(B), there shall be excluded any gain
24 or loss from the qualified sale, exchange, or



1 other disposition of any qualifying brownfield
2 property by an eligible taxpayer.

3 “(B) ELIGIBLE TAXPAYER.—For purposes
4 of this paragraph—

5 “(i) IN GENERAL.—The term ‘eligible
6 taxpayer’ means, with respect to a prop-
7 erty, any organization exempt from tax
8 under section 501(a) which—

9 “(I) acquires from an unrelated
10 person a qualifying brownfield prop-
11 erty, and

12 “(II) pays or incurs eligible re-
13 mediation expenditures with respect to
14 such property in an amount which ex-
15 ceeds the greater of \$550,000 or 12
16 percent of the fair market value of the
17 property at the time such property
18 was acquired by the eligible taxpayer,
19 determined as if there was not a pres-
20 ence of a hazardous substance, pollut-
21 ant, or contaminant on the property
22 which is complicating the expansion,
23 redevelopment, or reuse of the prop-
24 erty.



1 “(ii) EXCEPTION.—Such term shall
2 not include any organization which is—

3 “(I) potentially liable under sec-
4 tion 107 of the Comprehensive Envi-
5 ronmental Response, Compensation,
6 and Liability Act of 1980 with respect
7 to the qualifying brownfield property,

8 “(II) affiliated with any other
9 person which is so potentially liable
10 through any direct or indirect familial
11 relationship or any contractual, cor-
12 porate, or financial relationship (other
13 than a contractual, corporate, or fi-
14 nancial relationship which is created
15 by the instruments by which title to
16 any qualifying brownfield property is
17 conveyed or financed or by a contract
18 of sale of goods or services), or

19 “(III) the result of a reorganiza-
20 tion of a business entity which was so
21 potentially liable.

22 “(C) QUALIFYING BROWNFIELD PROP-
23 ERTY.—For purposes of this paragraph—

24 “(i) IN GENERAL.—The term ‘quali-
25 fying brownfield property’ means any real



1 property which is certified, before the tax-
2 payer incurs any eligible remediation ex-
3 penditures (other than to obtain a Phase I
4 environmental site assessment), by an ap-
5 propriate State agency (within the mean-
6 ing of section 198(c)(4)) in the State in
7 which such property is located as a
8 brownfield site within the meaning of sec-
9 tion 101(39) of the Comprehensive Envi-
10 ronmental Response, Compensation, and
11 Liability Act of 1980 (as in effect on the
12 date of the enactment of this paragraph).

13 “(ii) REQUEST FOR CERTIFICATION.—
14 Any request by an eligible taxpayer for a
15 certification described in clause (i) shall in-
16 clude a sworn statement by the eligible
17 taxpayer and supporting documentation of
18 the presence of a hazardous substance, pol-
19 lutant, or contaminant on the property
20 which is complicating the expansion, rede-
21 velopment, or reuse of the property given
22 the property’s reasonably anticipated fu-
23 ture land uses or capacity for uses of the
24 property (including a Phase I environ-
25 mental site assessment and, if applicable,



1 evidence of the property's presence on a
2 local, State, or Federal list of brownfields
3 or contaminated property) and other envi-
4 ronmental assessments prepared or ob-
5 tained by the taxpayer.

6 “(D) QUALIFIED SALE, EXCHANGE, OR
7 OTHER DISPOSITION.—For purposes of this
8 paragraph—

9 “(i) IN GENERAL.—A sale, exchange,
10 or other disposition of property shall be
11 considered as qualified if—

12 “(I) such property is transferred
13 by the eligible taxpayer to an unre-
14 lated person, and

15 “(II) within 1 year of such trans-
16 fer the eligible taxpayer has received a
17 certification from the Environmental
18 Protection Agency or an appropriate
19 State agency (within the meaning of
20 section 198(c)(4)) in the State in
21 which such property is located that, as
22 a result of the eligible taxpayer's re-
23 mediation actions, such property
24 would not be treated as a qualifying



1 brownfield property in the hands of
2 the transferee.

3 For purposes of subclause (II), before
4 issuing such certification, the Environ-
5 mental Protection Agency or appropriate
6 State agency shall respond to comments
7 received pursuant to clause (ii)(V) in the
8 same form and manner as required under
9 section 117(b) of the Comprehensive Envi-
10 ronmental Response, Compensation, and
11 Liability Act of 1980 (as in effect on the
12 date of the enactment of this paragraph).

13 “(ii) REQUEST FOR CERTIFICATION.—
14 Any request by an eligible taxpayer for a
15 certification described in clause (i) shall be
16 made not later than the date of the trans-
17 fer and shall include a sworn statement by
18 the eligible taxpayer certifying the fol-
19 lowing:

20 “(I) Remedial actions which com-
21 ply with all applicable or relevant and
22 appropriate requirements (consistent
23 with section 121(d) of the Com-
24 prehensive Environmental Response,
25 Compensation, and Liability Act of



1 1980) have been substantially com-
2 pleted, such that there are no haz-
3 ardous substances, pollutants, or con-
4 taminants which complicate the ex-
5 pansion, redevelopment, or reuse of
6 the property given the property's rea-
7 sonably anticipated future land uses
8 or capacity for uses of the property.

9 “(II) The reasonably anticipated
10 future land uses or capacity for uses
11 of the property are more economically
12 productive or environmentally bene-
13 ficial than the uses of the property in
14 existence on the date of the certifi-
15 cation described in subparagraph
16 (C)(i). For purposes of the preceding
17 sentence, use of property as a landfill
18 or other hazardous waste facility shall
19 not be considered more economically
20 productive or environmentally bene-
21 ficial.

22 “(III) A remediation plan has
23 been implemented to bring the prop-
24 erty into compliance with all applica-
25 ble local, State, and Federal environ-



1 mental laws, regulations, and stand-
2 ards and to ensure that the remedi-
3 ation protects human health and the
4 environment.

5 “(IV) The remediation plan de-
6 scribed in subclause (III), including
7 any physical improvements required to
8 remediate the property, is either com-
9 plete or substantially complete, and, if
10 substantially complete, sufficient mon-
11 itoring, funding, institutional controls,
12 and financial assurances have been
13 put in place to ensure the complete
14 remediation of the property in accord-
15 ance with the remediation plan as
16 soon as is reasonably practicable after
17 the sale, exchange, or other disposi-
18 tion of such property.

19 “(V) Public notice and the oppor-
20 tunity for comment on the request for
21 certification was completed before the
22 date of such request. Such notice and
23 opportunity for comment shall be in
24 the same form and manner as re-
25 quired for public participation re-



1 required under section 117(a) of the
2 Comprehensive Environmental Re-
3 sponse, Compensation, and Liability
4 Act of 1980 (as in effect on the date
5 of the enactment of this paragraph).
6 For purposes of this subclause, public
7 notice shall include, at a minimum,
8 publication in a major local newspaper
9 of general circulation.

10 “(iii) ATTACHMENT TO TAX RE-
11 TURNS.—A copy of each of the requests
12 for certification described in clause (ii) of
13 subparagraph (C) and this subparagraph
14 shall be included in the tax return of the
15 eligible taxpayer (and, where applicable, of
16 the qualifying partnership) for the taxable
17 year during which the transfer occurs.

18 “(iv) SUBSTANTIAL COMPLETION.—
19 For purposes of this subparagraph, a re-
20 medial action is substantially complete
21 when any necessary physical construction
22 is complete, all immediate threats have
23 been eliminated, and all long-term threats
24 are under control.



1 “(E) ELIGIBLE REMEDIATION EXPENDI-
2 TURES.—For purposes of this paragraph—

3 “(i) IN GENERAL.—The term ‘eligible
4 remediation expenditures’ means, with re-
5 spect to any qualifying brownfield prop-
6 erty, any amount paid or incurred by the
7 eligible taxpayer to an unrelated third per-
8 son to obtain a Phase I environmental site
9 assessment of the property, and any
10 amount so paid or incurred after the date
11 of the certification described in subpara-
12 graph (C)(i) for goods and services nec-
13 essary to obtain a certification described in
14 subparagraph (D)(i) with respect to such
15 property, including expenditures—

16 “(I) to manage, remove, control,
17 contain, abate, or otherwise remediate
18 a hazardous substance, pollutant, or
19 contaminant on the property,

20 “(II) to obtain a Phase II envi-
21 ronmental site assessment of the
22 property, including any expenditure to
23 monitor, sample, study, assess, or oth-
24 erwise evaluate the release, threat of
25 release, or presence of a hazardous



1 substance, pollutant, or contaminant
2 on the property,

3 “(III) to obtain environmental
4 regulatory certifications and approvals
5 required to manage the remediation
6 and monitoring of the hazardous sub-
7 stance, pollutant, or contaminant on
8 the property, and

9 “(IV) regardless of whether it is
10 necessary to obtain a certification de-
11 scribed in subparagraph (D)(i)(II), to
12 obtain remediation cost-cap or stop-
13 loss coverage, re-opener or regulatory
14 action coverage, or similar coverage
15 under environmental insurance poli-
16 cies, or financial guarantees required
17 to manage such remediation and mon-
18 itoring.

19 “(ii) EXCEPTIONS.—Such term shall
20 not include—

21 “(I) any portion of the purchase
22 price paid or incurred by the eligible
23 taxpayer to acquire the qualifying
24 brownfield property,



1 “(II) environmental insurance
2 costs paid or incurred to obtain legal
3 defense coverage, owner/operator li-
4 ability coverage, lender liability cov-
5 erage, professional liability coverage,
6 or similar types of coverage,

7 “(III) any amount paid or in-
8 curred to the extent such amount is
9 reimbursed, funded, or otherwise sub-
10 sidized by grants provided by the
11 United States, a State, or a political
12 subdivision of a State for use in con-
13 nection with the property, proceeds of
14 an issue of State or local government
15 obligations used to provide financing
16 for the property the interest of which
17 is exempt from tax under section 103,
18 or subsidized financing provided (di-
19 rectly or indirectly) under a Federal,
20 State, or local program provided in
21 connection with the property, or

22 “(IV) any expenditure paid or in-
23 curred before the date of the enact-
24 ment of this paragraph.



1 For purposes of subclause (III), the Sec-
2 retary may issue guidance regarding the
3 treatment of government-provided funds
4 for purposes of determining eligible reme-
5 diation expenditures.

6 “(F) DETERMINATION OF GAIN OR
7 LOSS.—For purposes of this paragraph, the de-
8 termination of gain or loss shall not include an
9 amount treated as gain which is ordinary in-
10 come with respect to section 1245 or section
11 1250 property, including amounts deducted as
12 section 198 expenses which are subject to the
13 recapture rules of section 198(e), if the tax-
14 payer had deducted such amounts in the com-
15 putation of its unrelated business taxable in-
16 come.

17 “(G) SPECIAL RULES FOR PARTNER-
18 SHIPS.—

19 “(i) IN GENERAL.—In the case of an
20 eligible taxpayer which is a partner of a
21 qualifying partnership which acquires, re-
22 mediates, and sells, exchanges, or other-
23 wise disposes of a qualifying brownfield
24 property, this paragraph shall apply to the
25 eligible taxpayer’s distributive share of the



1 qualifying partnership's gain or loss from
2 the sale, exchange, or other disposition of
3 such property.

4 “(ii) QUALIFYING PARTNERSHIP.—
5 The term ‘qualifying partnership’ means a
6 partnership which—

7 “(I) has a partnership agreement
8 which satisfies the requirements of
9 section 514(c)(9)(B)(vi) at all times
10 beginning on the date of the first cer-
11 tification received by the partnership
12 under subparagraph (C)(i),

13 “(II) satisfies the requirements
14 of subparagraphs (B)(i), (C), (D), and
15 (E), if ‘qualified partnership’ is sub-
16 stituted for ‘eligible taxpayer’ each
17 place it appears therein (except sub-
18 paragraph (D)(iii)), and

19 “(III) is not an organization
20 which would be prevented from consti-
21 tuting an eligible taxpayer by reason
22 of subparagraph (B)(ii).

23 “(iii) REQUIREMENT THAT TAX-EX-
24 EMPT PARTNER BE A PARTNER SINCE
25 FIRST CERTIFICATION.—This paragraph



1 shall apply with respect to any eligible tax-
2 payer which is a partner of a partnership
3 which acquires, remediates, and sells, ex-
4 changes, or otherwise disposes of a quali-
5 fying brownfield property only if such eligi-
6 ble taxpayer was a partner of the quali-
7 fying partnership at all times beginning on
8 the date of the first certification received
9 by the partnership under subparagraph
10 (C)(i) and ending on the date of the sale,
11 exchange, or other disposition of the prop-
12 erty by the partnership.

13 “(iv) REGULATIONS.—The Secretary
14 shall prescribe such regulations as are nec-
15 essary to prevent abuse of the require-
16 ments of this subparagraph, including
17 abuse through—

18 “(I) the use of special allocations
19 of gains or losses, or

20 “(II) changes in ownership of
21 partnership interests held by eligible
22 taxpayers.

23 “(H) SPECIAL RULES FOR MULTIPLE
24 PROPERTIES.—



1 “(i) IN GENERAL.—An eligible tax-
2 payer or a qualifying partnership of which
3 the eligible taxpayer is a partner may
4 make a 1-time election to apply this para-
5 graph to more than 1 qualifying brownfield
6 property by averaging the eligible remedi-
7 ation expenditures for all such properties
8 acquired during the election period. If the
9 eligible taxpayer or qualifying partnership
10 makes such an election, the election shall
11 apply to all qualified sales, exchanges, or
12 other dispositions of qualifying brownfield
13 properties the acquisition and transfer of
14 which occur during the period for which
15 the election remains in effect.

16 “(ii) ELECTION.—An election under
17 clause (i) shall be made with the eligible
18 taxpayer’s or qualifying partnership’s time-
19 ly filed tax return (including extensions)
20 for the first taxable year for which the tax-
21 payer or qualifying partnership intends to
22 have the election apply. An election under
23 clause (i) is effective for the period—

24 “(I) beginning on the date which
25 is the first day of the taxable year of



1 the return in which the election is in-
2 cluded or a later day in such taxable
3 year selected by the eligible taxpayer
4 or qualifying partnership, and

5 “(II) ending on the date which is
6 the earliest of a date of revocation se-
7 lected by the eligible taxpayer or
8 qualifying partnership, the date which
9 is 8 years after the date described in
10 subclause (I), or, in the case of an
11 election by a qualifying partnership of
12 which the eligible taxpayer is a part-
13 ner, the date of the termination of the
14 qualifying partnership.

15 “(iii) REVOCATION.—An eligible tax-
16 payer or qualifying partnership may revoke
17 an election under clause (i)(II) by filing a
18 statement of revocation with a timely filed
19 tax return (including extensions). A rev-
20 ocation is effective as of the first day of
21 the taxable year of the return in which the
22 revocation is included or a later day in
23 such taxable year selected by the eligible
24 taxpayer or qualifying partnership. Once
25 an eligible taxpayer or qualifying partner-



1 ship revokes the election, the eligible tax-
2 payer or qualifying partnership is ineligible
3 to make another election under clause (i)
4 with respect to any qualifying brownfield
5 property subject to the revoked election.

6 “(I) RECAPTURE.—If an eligible taxpayer
7 excludes gain or loss from a sale, exchange, or
8 other disposition of property to which an elec-
9 tion under subparagraph (H) applies, and such
10 property fails to satisfy the requirements of this
11 paragraph, the unrelated business taxable in-
12 come of the eligible taxpayer for the taxable
13 year in which such failure occurs shall be deter-
14 mined by including any previously excluded gain
15 or loss from such sale, exchange, or other dis-
16 position allocable to such taxpayer, and interest
17 shall be determined at the overpayment rate es-
18 tablished under section 6621 on any resulting
19 tax for the period beginning with the due date
20 of the return for the taxable year during which
21 such sale, exchange, or other disposition oc-
22 curred, and ending on the date of payment of
23 the tax.



1 “(J) RELATED PERSONS.—For purposes of
2 this paragraph, a person shall be treated as re-
3 lated to another person if—

4 “(i) such person bears a relationship
5 to such other person described in section
6 267(b) (determined without regard to
7 paragraph (9) thereof), or section
8 707(b)(1), determined by substituting ‘25
9 percent’ for ‘50 percent’ each place it ap-
10 pears therein, and

11 “(ii) in the case such other person is
12 a nonprofit organization, if such person
13 controls directly or indirectly more than 25
14 percent of the governing body of such or-
15 ganization.

16 “(K) TERMINATION.—Except for purposes
17 of determining the average eligible remediation
18 expenditures for properties acquired during the
19 election period under subparagraph (H), this
20 paragraph shall not apply to any property ac-
21 quired by the eligible taxpayer or qualifying
22 partnership after December 31, 2009.”.

23 (b) EXCLUSION FROM DEFINITION OF DEBT-FI-
24 NANCED PROPERTY.—Section 514(b)(1) (defining debt-fi-
25 nanced property) is amended by striking “or” at the end



1 of subparagraph (C), by striking the period at the end of
2 subparagraph (D) and inserting “; or”, and by inserting
3 after subparagraph (D) the following new subparagraph:

4 “(E) any property the gain or loss from
5 the sale, exchange, or other disposition of which
6 would be excluded by reason of the provisions
7 of section 512(b)(18) in computing the gross
8 income of any unrelated trade or business.”.

9 (c) SAVINGS CLAUSE.—Nothing in the amendments
10 made by this section shall affect any duty, liability, or
11 other requirement imposed under any other Federal or
12 State law. Notwithstanding section 128(b) of the Com-
13 prehensive Environmental Response, Compensation, and
14 Liability Act of 1980, a certification provided by the Envi-
15 ronmental Protection Agency or an appropriate State
16 agency (within the meaning of section 198(c)(4) of the In-
17 ternal Revenue Code of 1986) shall not affect the liability
18 of any person under section 107(a) of such Act.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to any gain or loss on the sale,
21 exchange, or other disposition of any property acquired by
22 the taxpayer after December 31, 2004.

23 **SEC. 703. CIVIL RIGHTS TAX RELIEF.**

24 (a) DEDUCTION ALLOWED WHETHER OR NOT TAX-
25 PAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a)



1 of section 62 (defining adjusted gross income) is amended
2 by inserting after paragraph (18) the following new item:

3 “(19) COSTS INVOLVING DISCRIMINATION
4 SUITS, ETC.—Any deduction allowable under this
5 chapter for attorney fees and court costs paid by, or
6 on behalf of, the taxpayer in connection with any ac-
7 tion involving a claim of unlawful discrimination (as
8 defined in subsection (e)) or a claim of a violation
9 of subchapter III of chapter 37 of title 31, United
10 States Code or a claim made under section
11 1862(b)(3)(A) of the Social Security Act (42 U.S.C.
12 1395y(b)(3)(A)). The preceding sentence shall not
13 apply to any deduction in excess of the amount in-
14 cludible in the taxpayer’s gross income for the tax-
15 able year on account of a judgment or settlement
16 (whether by suit or agreement and whether as lump
17 sum or periodic payments) resulting from such
18 claim.”.

19 (b) UNLAWFUL DISCRIMINATION DEFINED.—Section
20 62 is amended by adding at the end the following new
21 subsection:

22 “(e) UNLAWFUL DISCRIMINATION DEFINED.—For
23 purposes of subsection (a)(19), the term ‘unlawful dis-
24 crimination’ means an act that is unlawful under any of
25 the following:



1 “(1) Section 302 of the Civil Rights Act of
2 1991 (2 U.S.C. 1202).

3 “(2) Section 201, 202, 203, 204, 205, 206, or
4 207 of the Congressional Accountability Act of 1995
5 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or
6 1317).

7 “(3) The National Labor Relations Act (29
8 U.S.C. 151 et seq.).

9 “(4) The Fair Labor Standards Act of 1938
10 (29 U.S.C. 201 et seq.).

11 “(5) Section 4 or 15 of the Age Discrimination
12 in Employment Act of 1967 (29 U.S.C. 623 or
13 633a).

14 “(6) Section 501 or 504 of the Rehabilitation
15 Act of 1973 (29 U.S.C. 791 or 794).

16 “(7) Section 510 of the Employee Retirement
17 Income Security Act of 1974 (29 U.S.C. 1140).

18 “(8) Title IX of the Education Amendments of
19 1972 (20 U.S.C. 1681 et seq.).

20 “(9) The Employee Polygraph Protection Act of
21 1988 (29 U.S.C. 2001 et seq.).

22 “(10) The Worker Adjustment and Retraining
23 Notification Act (29 U.S.C. 2102 et seq.).

24 “(11) Section 105 of the Family and Medical
25 Leave Act of 1993 (29 U.S.C. 2615).



1 “(12) Chapter 43 of title 38, United States
2 Code (relating to employment and reemployment
3 rights of members of the uniformed services).

4 “(13) Section 1977, 1979, or 1980 of the Re-
5 vised Statutes (42 U.S.C. 1981, 1983, or 1985).

6 “(14) Section 703, 704, or 717 of the Civil
7 Rights Act of 1964 (42 U.S.C. 2000e-2, 2000e-3,
8 or 2000e-16).

9 “(15) Section 804, 805, 806, 808, or 818 of the
10 Fair Housing Act (42 U.S.C. 3604, 3605, 3606,
11 3608, or 3617).

12 “(16) Section 102, 202, 302, or 503 of the
13 Americans with Disabilities Act of 1990 (42 U.S.C.
14 12112, 12132, 12182, or 12203).

15 “(17) Any provision of Federal law (popularly
16 known as whistleblower protection provisions) pro-
17 hibiting the discharge of an employee, the discrimi-
18 nation against an employee, or any other form of re-
19 taliation or reprisal against an employee for assert-
20 ing rights or taking other actions permitted under
21 Federal law.

22 “(18) Any provision of Federal, State, or local
23 law, or common law claims permitted under Federal,
24 State, or local law—



1 “(i) providing for the enforcement of
2 civil rights, or
3 “(ii) regulating any aspect of the em-
4 ployment relationship, including claims for
5 wages, compensation, or benefits, or pro-
6 hibiting the discharge of an employee, the
7 discrimination against an employee, or any
8 other form of retaliation or reprisal against
9 an employee for asserting rights or taking
10 other actions permitted by law.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to fees and costs paid after the
13 date of the enactment of this Act, with respect to any
14 judgment or settlement occurring after such date.

15 **SEC. 704. MODIFICATION OF CLASS LIFE FOR CERTAIN**
16 **TRACK FACILITIES.**

17 (a) 7-YEAR PROPERTY.—Subparagraph (C) of sec-
18 tion 168(e)(3) (relating to classification of certain prop-
19 erty) is amended by redesignating clause (ii) as clause (iii)
20 and by inserting after clause (i) the following new clause:

21 “(ii) any motorsports entertainment
22 complex, and”.

23 (b) DEFINITION.—Section 168(i) (relating to defini-
24 tions and special rules) is amended by adding at the end
25 the following new paragraph:



1 “(15) MOTORSPORTS ENTERTAINMENT COM-
2 PLEX.—

3 “(A) IN GENERAL.—The term ‘motor-
4 sports entertainment complex’ means a racing
5 track facility which—

6 “(i) is permanently situated on land,
7 and

8 “(ii) during the 36-month period fol-
9 lowing the first day of the month in which
10 the asset is placed in service, hosts 1 or
11 more racing events for automobiles (of any
12 type), trucks, or motorcycles which are
13 open to the public for the price of admis-
14 sion.

15 “(B) ANCILLARY AND SUPPORT FACILI-
16 TIES.—Such term shall include, if owned by the
17 taxpayer who owns the complex and provided
18 for the benefit of patrons of the complex—

19 “(i) ancillary facilities and land im-
20 provements in support of the complex’s ac-
21 tivities (including parking lots, sidewalks,
22 waterways, bridges, fences, and land-
23 scaping),

24 “(ii) support facilities (including food
25 and beverage retailing, souvenir vending,



1 and other nonlodging accommodations),
2 and

3 “(iii) appurtenances associated with
4 such facilities and related attractions and
5 amusements (including ticket booths, race
6 track surfaces, suites and hospitality facili-
7 ties, grandstands and viewing structures,
8 props, walls, facilities that support the de-
9 livery of entertainment services, other spe-
10 cial purpose structures, facades, shop inte-
11 riors, and buildings).

12 “(C) EXCEPTION.—Such term shall not in-
13 clude any transportation equipment, adminis-
14 trative services assets, warehouses, administra-
15 tive buildings, hotels, or motels.”.

16 (c) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall apply to any property placed in
19 service after the date of the enactment of this Act
20 and before January 1, 2008.

21 (2) NO INFERENCE.—Nothing in the amend-
22 ments made by this section shall be construed to af-
23 fect the treatment of property placed in service on
24 or before the date of the enactment of this Act.



1 **SEC. 705. SUSPENSION OF POLICYHOLDERS SURPLUS AC-**
2 **COUNT PROVISIONS.**

3 (a) DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-
4 1984 POLICYHOLDERS SURPLUS ACCOUNT.—Section 815
5 (relating to distributions to shareholders from pre-1984
6 policyholders surplus account) is amended by adding at
7 the end the following:

8 “(g) SPECIAL RULES APPLICABLE DURING 2005
9 AND 2006.—In the case of any taxable year of a stock
10 life insurance company beginning after December 31,
11 2004, and before January 1, 2007—

12 “(1) the amount under subsection (a)(2) for
13 such taxable year shall be treated as zero, and

14 “(2) notwithstanding subsection (b), in deter-
15 mining any subtractions from an account under sub-
16 sections (c)(3) and (d)(3), any distribution to share-
17 holders during such taxable year shall be treated as
18 made first out of the policyholders surplus account,
19 then out of the shareholders surplus account, and fi-
20 nally out of other accounts.”.

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



1 **SEC. 706. CERTAIN ALASKA NATURAL GAS PIPELINE PROP-**
2 **ERTY TREATED AS 7-YEAR PROPERTY.**

3 (a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-
4 year property), as amended by this Act, is amended by
5 striking “and” at the end of clause (ii), by redesignating
6 clause (iii) as clause (iv), and by inserting after clause (ii)
7 the following new clause:

8 “(iii) any Alaska natural gas pipeline,
9 and”.

10 (b) ALASKA NATURAL GAS PIPELINE.—Section
11 168(i) (relating to definitions and special rules), as
12 amended by this Act, is amended by inserting after para-
13 graph (15) the following new paragraph:

14 “(16) ALASKA NATURAL GAS PIPELINE.—The
15 term ‘Alaska natural gas pipeline’ means the natural
16 gas pipeline system located in the State of Alaska
17 which—

18 “(A) has a capacity of more than
19 500,000,000,000 Btu of natural gas per day,
20 and

21 “(B) is—

22 “(i) placed in service after December
23 31, 2013, or

24 “(ii) treated as placed in service on
25 January 1, 2014, if the taxpayer who



1 places such system in service before Janu-
2 ary 1, 2014, elects such treatment.

3 Such term includes the pipe, trunk lines, related
4 equipment, and appurtenances used to carry natural
5 gas, but does not include any gas processing plant.”.

6 (c) ALTERNATIVE SYSTEM.—The table contained in
7 section 168(g)(3)(B) (relating to special rule for certain
8 property assigned to classes) is amended by inserting after
9 the item relating to subparagraph (C)(i) the following new
10 item:

“(C)(ii) 22”.

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to property placed in service after
13 December 31, 2004.

14 **SEC. 707. EXTENSION OF ENHANCED OIL RECOVERY CRED-**
15 **IT TO CERTAIN ALASKA FACILITIES.**

16 (a) IN GENERAL.—Section 43(c)(1) (defining quali-
17 fied enhanced oil recovery costs) is amended by adding at
18 the end the following new subparagraph:

19 “(D) Any amount which is paid or in-
20 curred during the taxable year to construct a
21 gas treatment plant which—

22 “(i) is located in the area of the
23 United States (within the meaning of sec-
24 tion 638(1)) lying north of 64 degrees
25 North latitude,



1 “(ii) prepares Alaska natural gas for
2 transportation through a pipeline with a
3 capacity of at least 2,000,000,000,000 Btu
4 of natural gas per day, and

5 “(iii) produces carbon dioxide which is
6 injected into hydrocarbon-bearing geologi-
7 cal formations.”.

8 (b) ALASKA NATURAL GAS.—Section 43(c) is amend-
9 ed by adding at the end the following new paragraph:

10 “(5) ALASKA NATURAL GAS.—For purposes of
11 paragraph (1)(D)—

12 “(1) IN GENERAL.—The term ‘Alaska natural
13 gas’ means natural gas entering the Alaska natural
14 gas pipeline (as defined in section 168(i)(16) (deter-
15 mined without regard to subparagraph (B) thereof))
16 which is produced from a well—

17 “(A) located in the area of the State of
18 Alaska lying north of 64 degrees North lati-
19 tude, determined by excluding the area of the
20 Alaska National Wildlife Refuge (including the
21 continental shelf thereof within the meaning of
22 section 638(1)), and

23 “(B) pursuant to the applicable State and
24 Federal pollution prevention, control, and per-
25 mit requirements from such area (including the



1 continental shelf thereof within the meaning of
2 section 638(1)).

3 “(2) NATURAL GAS.—The term ‘natural gas’
4 has the meaning given such term by section
5 613A(e)(2).”.

6 (c) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to costs paid or incurred in taxable
8 years beginning after December 31, 2004.

9 **SEC. 708. METHOD OF ACCOUNTING FOR NAVAL SHIP-**
10 **BUILDERS.**

11 (a) IN GENERAL.—In the case of a qualified naval
12 ship contract, the taxable income of such contract during
13 the 5-taxable year period beginning with the taxable year
14 in which the contract commencement date occurs shall be
15 determined under a method identical to the method used
16 in the case of a qualified ship contract (as defined in sec-
17 tion 10203(b)(2)(B) of the Revenue Act of 1987).

18 (b) RECAPTURE OF TAX BENEFIT.—In the case of
19 a qualified naval ship contract to which subsection (a) ap-
20 plies, the taxpayer’s tax imposed by chapter 1 of the Inter-
21 nal Revenue Code of 1986 for the first taxable year fol-
22 lowing the 5-taxable year period described in subsection
23 (a) shall be increased by the excess (if any) of—



1 (1) the amount of tax which would have been
2 imposed during such period if this section had not
3 been enacted, over

4 (2) the amount of tax so imposed during such
5 period.

6 (c) QUALIFIED NAVAL SHIP CONTRACT.—For pur-
7 poses of this section—

8 (1) IN GENERAL.—The term “qualified naval
9 ship contract” means any contract or portion thereof
10 that is for the construction in the United States of
11 1 ship or submarine for the Federal Government if
12 the taxpayer reasonably expects the acceptance date
13 will occur no later than 9 years after the construc-
14 tion commencement date.

15 (2) ACCEPTANCE DATE.—The term “acceptance
16 date” means the date 1 year after the date on which
17 the Federal Government issues a letter of acceptance
18 or other similar document for the ship or submarine.

19 (3) CONSTRUCTION COMMENCEMENT DATE.—
20 The term “construction commencement date” means
21 the date on which the physical fabrication of any
22 section or component of the ship or submarine be-
23 gins.

24 (d) EFFECTIVE DATE.—This section shall apply to
25 contracts for ships or submarines with respect to which



1 the construction commencement date occurs after the date
2 of the enactment of this Act.

3 **SEC. 709. MODIFICATION OF MINIMUM COST REQUIRE-**
4 **MENT FOR TRANSFER OF EXCESS PENSION**
5 **ASSETS.**

6 (a) AMENDMENTS OF ERISA.—

7 (1) Section 101(e)(3) of the Employee Retirement
8 Income Security Act of 1974 (29 U.S.C.
9 1021(e)(3)) is amended by striking “Pension Fund-
10 ing Equity Act of 2004” and inserting “American
11 Jobs Creation Act of 2004”.

12 (2) Section 403(c)(1) of such Act (29 U.S.C.
13 1103(c)(1)) is amended by striking “Pension Fund-
14 ing Equity Act of 2004” and inserting “American
15 Jobs Creation Act of 2004”.

16 (3) Paragraph (13) of section 408(b) of such
17 Act (29 U.S.C. 1108(b)(3)) is amended by striking
18 “Pension Funding Equity Act of 2004” and insert-
19 ing “American Jobs Creation Act of 2004”.

20 (b) MINIMUM COST REQUIREMENTS.—

21 (1) IN GENERAL.—Section 420(c)(3)(E) is
22 amended by adding at the end the following new
23 clause:

24 “(ii) INSIGNIFICANT COST REDUC-
25 TIONS PERMITTED.—



1 “(I) IN GENERAL.—An eligible
2 employer shall not be treated as fail-
3 ing to meet the requirements of this
4 paragraph for any taxable year if, in
5 lieu of any reduction of retiree health
6 coverage permitted under the regula-
7 tions prescribed under clause (i), the
8 employer reduces applicable employer
9 cost by an amount not in excess of the
10 reduction in costs which would have
11 occurred if the employer had made the
12 maximum permissible reduction in re-
13 tiree health coverage under such regu-
14 lations. In applying such regulations
15 to any subsequent taxable year, any
16 reduction in applicable employer cost
17 under this clause shall be treated as if
18 it were an equivalent reduction in re-
19 tiree health coverage.

20 “(II) ELIGIBLE EMPLOYER.—For
21 purposes of subclause (I), an employer
22 shall be treated as an eligible em-
23 ployer for any taxable year if, for the
24 preceding taxable year, the qualified
25 current retiree health liabilities of the



1 employer were at least 5 percent of
2 the gross receipts of the employer.
3 For purposes of this subclause, the
4 rules of paragraphs (2), (3)(B), and
5 (3)(C) of section 448(c) shall apply in
6 determining the amount of an employ-
7 er's gross receipts.”.

8 (2) CONFORMING AMENDMENT.—Section
9 420(c)(3)(E) is amended by striking “The Sec-
10 retary” and inserting:

11 “(i) IN GENERAL.—The Secretary”.

12 (3) EFFECTIVE DATE.—The amendments made
13 by this subsection shall apply to taxable years end-
14 ing after the date of the enactment of this Act.

15 **SEC. 710. BLUE RIBBON COMMISSION ON COMPREHENSIVE**
16 **TAX REFORM.**

17 (a) ESTABLISHMENT.—

18 (1) IN GENERAL.—There is established the
19 “Blue Ribbon Commission on Comprehensive Tax
20 Reform” (in this section referred to as the “Com-
21 mission”).

22 (2) MEMBERSHIP.—

23 (A) COMPOSITION.—The Commission shall
24 be composed of 17 members of whom—



1 (i) 3 shall be appointed by the major-
2 ity leader of the Senate;

3 (ii) 3 shall be appointed by the minor-
4 ity leader of the Senate;

5 (iii) 3 shall be appointed by the
6 Speaker of the House of Representatives;

7 (iv) 3 shall be appointed by the minor-
8 ity leader of the House of Representatives;
9 and

10 (v) 5 shall be appointed by the Presi-
11 dent, of which no more than 3 shall be of
12 the same party as the President.

13 (B) FEDERAL EMPLOYEES.—The members
14 of the Commission may be employees or former
15 employees of the Federal Government.

16 (C) DATE.—The appointments of the
17 members of the Commission shall be made not
18 later than October 31, 2005.

19 (3) PERIOD OF APPOINTMENT; VACANCIES.—
20 Members shall be appointed for the life of the Com-
21 mission. Any vacancy in the Commission shall not
22 affect its powers, but shall be filled in the same
23 manner as the original appointment.

24 (4) INITIAL MEETING.—Not later than 30 days
25 after the date on which all members of the Commis-



1 sion have been appointed, the Commission shall hold
2 its first meeting.

3 (5) MEETINGS.—The Commission shall meet at
4 the call of the Chairman.

5 (6) QUORUM.—A majority of the members of
6 the Commission shall constitute a quorum, but a
7 lesser number of members may hold hearings.

8 (7) CHAIRMAN AND VICE CHAIRMAN.—The
9 President shall select a Chairman and Vice Chair-
10 man from among its members.

11 (b) DUTIES OF THE COMMISSION.—

12 (1) STUDY.—The Commission shall conduct a
13 thorough study of all matters relating to a com-
14 prehensive reform of the Federal tax system, includ-
15 ing the reform of the Internal Revenue Code of 1986
16 and the implementation (if appropriate) of other
17 types of tax systems.

18 (2) RECOMMENDATIONS.—The Commission
19 shall develop recommendations on how to com-
20 prehensively reform the Federal tax system in a
21 manner that generates appropriate revenue for the
22 Federal Government.

23 (3) REPORT.—Not later than 18 months after
24 the date on which all initial members of the commis-
25 sion have been appointed pursuant to subsection



1 (a)(2), the Commission shall submit a report to the
2 President and Congress which shall contain a de-
3 tailed statement of the findings and conclusions of
4 the Commission, together with its recommendations
5 for such legislation and administrative actions as it
6 considers appropriate.

7 (c) POWERS OF THE COMMISSION.—

8 (1) HEARINGS.—The Commission may hold
9 such hearings, sit and act at such times and places,
10 take such testimony, and receive such evidence as
11 the Commission considers advisable to carry out this
12 Act.

13 (2) INFORMATION FROM FEDERAL AGENCIES.—
14 The Commission may secure directly from any Fed-
15 eral department or agency such information as the
16 Commission considers necessary to carry out this
17 Act. Upon request of the Chairman of the Commis-
18 sion, the head of such department or agency shall
19 furnish such information to the Commission.

20 (3) POSTAL SERVICES.—The Commission may
21 use the United States mails in the same manner and
22 under the same conditions as other departments and
23 agencies of the Federal Government.



1 (4) GIFTS.—The Commission may accept, use,
2 and dispose of gifts or donations of services or prop-
3 erty.

4 (d) COMMISSION PERSONNEL MATTERS.—

5 (1) COMPENSATION OF MEMBERS.—Each mem-
6 ber of the Commission who is not an officer or em-
7 ployee of the Federal Government shall be com-
8 pensated at a rate equal to the daily equivalent of
9 the annual rate of basic pay prescribed for level IV
10 of the Executive Schedule under section 5315 of title
11 5, United States Code, for each day (including travel
12 time) during which such member is engaged in the
13 performance of the duties of the Commission. All
14 members of the Commission who are officers or em-
15 ployees of the United States shall serve without com-
16 pensation in addition to that received for their serv-
17 ices as officers or employees of the United States.

18 (2) TRAVEL EXPENSES.—The members of the
19 Commission shall be allowed travel expenses, includ-
20 ing per diem in lieu of subsistence, at rates author-
21 ized for employees of agencies under subchapter I of
22 chapter 57 of title 5, United States Code, while
23 away from their homes or regular places of business
24 in the performance of services for the Commission.

25 (3) STAFF.—



1 (A) IN GENERAL.—The Chairman of the
2 Commission may, without regard to the civil
3 service laws and regulations, appoint and termi-
4 nate an executive director and such other addi-
5 tional personnel as may be necessary to enable
6 the Commission to perform its duties. The em-
7 ployment of an executive director shall be sub-
8 ject to confirmation by the Commission.

9 (B) COMPENSATION.—The Chairman of
10 the Commission may fix the compensation of
11 the executive director and other personnel with-
12 out regard to chapter 51 and subchapter III of
13 chapter 53 of title 5, United States Code, relat-
14 ing to classification of positions and General
15 Schedule pay rates, except that the rate of pay
16 for the executive director and other personnel
17 may not exceed the rate payable for level V of
18 the Executive Schedule under section 5316 of
19 such title.

20 (4) DETAIL OF GOVERNMENT EMPLOYEES.—
21 Any Federal Government employee may be detailed
22 to the Commission without reimbursement, and such
23 detail shall be without interruption or loss of civil
24 service status or privilege.



1 (5) PROCUREMENT OF TEMPORARY AND INTER-
2 MITTENT SERVICES.—The Chairman of the Commis-
3 sion may procure temporary and intermittent serv-
4 ices under section 3109(b) of title 5, United States
5 Code, at rates for individuals which do not exceed
6 the daily equivalent of the annual rate of basic pay
7 prescribed for level V of the Executive Schedule
8 under section 5316 of such title.

9 (e) TERMINATION OF THE COMMISSION.—The Com-
10 mission shall terminate 90 days after the date on which
11 the Commission submits its report under subsection (b).

12 (f) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated such sums as are nec-
14 essary to the Commission to carry out this section.

15 **SEC. 711. EXPANSION OF CREDIT FOR ELECTRICITY PRO-**
16 **DUCTION FROM CERTAIN RENEWABLE RE-**
17 **SOURCES.**

18 (a) EXPANSION OF QUALIFIED ENERGY RE-
19 SOURCES.—Subsection (c) of section 45 (relating to elec-
20 tricity produced from certain renewable resources) is
21 amended to read as follows:

22 “(c) QUALIFIED ENERGY RESOURCES AND REFINED
23 COAL.—For purposes of this section—

24 “(1) IN GENERAL.—The term ‘qualified energy
25 resources’ means—



- 1 “(A) wind,
- 2 “(B) closed-loop biomass,
- 3 “(C) open-loop biomass,
- 4 “(D) geothermal energy,
- 5 “(E) solar energy,
- 6 “(F) small irrigation power, and
- 7 “(G) municipal solid waste.

8 “(2) CLOSED-LOOP BIOMASS.—The term
9 ‘closed-loop biomass’ means any organic material
10 from a plant which is planted exclusively for pur-
11 poses of being used at a qualified facility to produce
12 electricity.

13 “(3) OPEN-LOOP BIOMASS.—

14 “(A) IN GENERAL.—The term ‘open-loop
15 biomass’ means—

16 “(i) any agricultural livestock waste
17 nutrients, or

18 “(ii) any solid, nonhazardous, cel-
19 lulosic waste material which is segregated
20 from other waste materials and which is
21 derived from—

22 “(I) any of the following forest-
23 related resources: mill and harvesting
24 residues, precommercial thinnings,
25 slash, and brush,



1 “(II) solid wood waste materials,
2 including waste pallets, crates,
3 dunnage, manufacturing and con-
4 struction wood wastes (other than
5 pressure-treated, chemically-treated,
6 or painted wood wastes), and land-
7 scape or right-of-way tree trimmings,
8 but not including municipal solid
9 waste, gas derived from the bio-
10 degradation of solid waste, or paper
11 which is commonly recycled, or

12 “(III) agriculture sources, includ-
13 ing orchard tree crops, vineyard,
14 grain, legumes, sugar, and other crop
15 by-products or residues.

16 Such term shall not include closed-loop biomass.

17 “(B) AGRICULTURAL LIVESTOCK WASTE
18 NUTRIENTS.—

19 “(i) IN GENERAL.—The term ‘agricul-
20 tural livestock waste nutrients’ means agri-
21 cultural livestock manure and litter, includ-
22 ing wood shavings, straw, rice hulls, and
23 other bedding material for the disposition
24 of manure.



1 “(ii) AGRICULTURAL LIVESTOCK.—

2 The term ‘agricultural livestock’ includes
3 bovine, swine, poultry, and sheep.

4 “(4) GEOTHERMAL ENERGY.—The term ‘geo-
5 thermal energy’ means energy derived from a geo-
6 thermal deposit (within the meaning of section
7 613(e)(2)).

8 “(5) SMALL IRRIGATION POWER.—The term
9 ‘small irrigation power’ means power—

10 “(A) generated without any dam or im-
11 poundment of water through an irrigation sys-
12 tem canal or ditch, and

13 “(B) the nameplate capacity rating of
14 which is not less than 150 kilowatts but is less
15 than 5 megawatts.

16 “(6) MUNICIPAL SOLID WASTE.—The term
17 ‘municipal solid waste’ has the meaning given the
18 term ‘solid waste’ under section 2(27) of the Solid
19 Waste Disposal Act (42 U.S.C. 6903).

20 “(7) REFINED COAL.—

21 “(A) IN GENERAL.—The term ‘refined
22 coal’ means a fuel which—

23 “(i) is a liquid, gaseous, or solid syn-
24 thetic fuel produced from coal (including



1 lignite) or high carbon fly ash, including
2 such fuel used as a feedstock,

3 “(ii) is sold by the taxpayer with the
4 reasonable expectation that it will be used
5 for purpose of producing steam,

6 “(iii) is certified by the taxpayer as
7 resulting (when used in the production of
8 steam) in a qualified emission reduction,
9 and

10 “(iv) is produced in such a manner as
11 to result in an increase of at least 50 per-
12 cent in the market value of the refined coal
13 (excluding any increase caused by mate-
14 rials combined or added during the produc-
15 tion process), as compared to the value of
16 the feedstock coal.

17 “(B) QUALIFIED EMISSION REDUCTION.—

18 The term ‘qualified emission reduction’ means a
19 reduction of at least 20 percent of the emissions
20 of nitrogen oxide and either sulfur dioxide or
21 mercury released when burning the refined coal
22 (excluding any dilution caused by materials
23 combined or added during the production pro-
24 cess), as compared to the emissions released
25 when burning the feedstock coal or comparable



1 coal predominantly available in the marketplace
2 as of January 1, 2003.”.

3 (b) EXPANSION OF QUALIFIED FACILITIES.—

4 (1) IN GENERAL.—Section 45 is amended by
5 redesignating subsection (d) as subsection (e) and by
6 inserting after subsection (c) the following new sub-
7 section:

8 “(d) QUALIFIED FACILITIES.—For purposes of this
9 section—

10 “(1) WIND FACILITY.—In the case of a facility
11 using wind to produce electricity, the term ‘qualified
12 facility’ means any facility owned by the taxpayer
13 which is originally placed in service after December
14 31, 1993, and before January 1, 2006.

15 “(2) CLOSED-LOOP BIOMASS FACILITY.—

16 “(A) IN GENERAL.—In the case of a facil-
17 ity using closed-loop biomass to produce elec-
18 tricity, the term ‘qualified facility’ means any
19 facility—

20 “(i) owned by the taxpayer which is
21 originally placed in service after December
22 31, 1992, and before January 1, 2006, or

23 “(ii) owned by the taxpayer which be-
24 fore January 1, 2006, is originally placed
25 in service and modified to use closed-loop



1 biomass to co-fire with coal, with other bio-
2 mass, or with both, but only if the modi-
3 fication is approved under the Biomass
4 Power for Rural Development Programs or
5 is part of a pilot project of the Commodity
6 Credit Corporation as described in 65 Fed.
7 Reg. 63052.

8 “(B) SPECIAL RULES.—In the case of a
9 qualified facility described in subparagraph
10 (A)(ii)—

11 “(i) the 10-year period referred to in
12 subsection (a) shall be treated as beginning
13 no earlier than the date of the enactment
14 of this clause,

15 “(ii) the amount of the credit deter-
16 mined under subsection (a) with respect to
17 the facility shall be an amount equal to the
18 amount determined without regard to this
19 clause multiplied by the ratio of the ther-
20 mal content of the closed-loop biomass
21 used in such facility to the thermal content
22 of all fuels used in such facility, and

23 “(iii) if the owner of such facility is
24 not the producer of the electricity, the per-
25 son eligible for the credit allowable under



1 subsection (a) shall be the lessee or the op-
2 erator of such facility.

3 “(3) OPEN-LOOP BIOMASS FACILITIES.—

4 “(A) IN GENERAL.—In the case of a facil-
5 ity using open-loop biomass to produce elec-
6 tricity, the term ‘qualified facility’ means any
7 facility owned by the taxpayer which—

8 “(i) in the case of a facility using ag-
9 ricultural livestock waste nutrients—

10 “(I) is originally placed in service
11 after the date of the enactment of this
12 subclause and before January 1,
13 2006, and

14 “(II) the nameplate capacity rat-
15 ing of which is not less than 150 kilo-
16 watts, and

17 “(ii) in the case of any other facility,
18 is originally placed in service before Janu-
19 ary 1, 2006.

20 “(B) CREDIT ELIGIBILITY.—In the case of
21 any facility described in subparagraph (A), if
22 the owner of such facility is not the producer of
23 the electricity, the person eligible for the credit
24 allowable under subsection (a) shall be the les-
25 see or the operator of such facility.



1 “(4) GEOTHERMAL OR SOLAR ENERGY FACIL-
2 ITY.—In the case of a facility using geothermal or
3 solar energy to produce electricity, the term ‘quali-
4 fied facility’ means any facility owned by the tax-
5 payer which is originally placed in service after the
6 date of the enactment of this paragraph and before
7 January 1, 2006. Such term shall not include any
8 property described in section 48(a)(3) the basis of
9 which is taken into account by the taxpayer for pur-
10 poses of determining the energy credit under section
11 48.

12 “(5) SMALL IRRIGATION POWER FACILITY.—In
13 the case of a facility using small irrigation power to
14 produce electricity, the term ‘qualified facility’
15 means any facility owned by the taxpayer which is
16 originally placed in service after the date of the en-
17 actment of this paragraph and before January 1,
18 2006.

19 “(6) LANDFILL GAS FACILITIES.—In the case
20 of a facility producing electricity from gas derived
21 from the biodegradation of municipal solid waste,
22 the term ‘qualified facility’ means any facility owned
23 by the taxpayer which is originally placed in service
24 after the date of the enactment of this paragraph
25 and before January 1, 2006.



1 “(7) TRASH COMBUSTION FACILITIES.—In the
2 case of a facility which burns municipal solid waste
3 to produce electricity, the term ‘qualified facility’
4 means any facility owned by the taxpayer which is
5 originally placed in service after the date of the en-
6 actment of this paragraph and before January 1,
7 2006

8 “(8) REFINED COAL PRODUCTION FACILITY.—
9 The term ‘refined coal production facility’ means a
10 facility which is placed in service after the date of
11 the enactment of this paragraph and before January
12 1, 2009.”.

13 (2) RULES FOR REFINED COAL PRODUCTION
14 FACILITIES.—Subsection (e) of section 45, as so re-
15 designated, is amended by adding at the end the fol-
16 lowing new paragraph:

17 “(8) REFINED COAL PRODUCTION FACILI-
18 TIES.—

19 “(A) DETERMINATION OF CREDIT
20 AMOUNT.—In the case of a producer of refined
21 coal, the credit determined under this section
22 (without regard to this paragraph) for any tax-
23 able year shall be increased by an amount equal
24 to \$4.375 per ton of qualified refined coal—



1 “(i) produced by the taxpayer at a re-
2 fined coal production facility during the
3 10-year period beginning on the date the
4 facility was originally placed in service, and

5 “(ii) sold by the taxpayer—

6 “(I) to an unrelated person, and

7 “(II) during such 10-year period
8 and such taxable year.

9 “(B) PHASEOUT OF CREDIT.—The amount
10 of the increase determined under subparagraph
11 (A) shall be reduced by an amount which bears
12 the same ratio to the amount of the increase
13 (determined without regard to this subpara-
14 graph) as—

15 “(i) the amount by which the ref-
16 erence price of fuel used as a feedstock
17 (within the meaning of subsection
18 (c)(7)(A)) for the calendar year in which
19 the sale occurs exceeds an amount equal to
20 1.7 multiplied by the reference price for
21 such fuel in 2002, bears to

22 “(ii) \$8.75.

23 “(C) APPLICATION OF RULES.—Rules
24 similar to the rules of the subsection (b)(3) and
25 paragraphs (1) through (5) and (9) of this sub-



1 section shall apply for purposes of determining
2 the amount of any increase under this para-
3 graph.”.

4 (3) CONFORMING AMENDMENTS.—

5 (A) Section 45(e), as so redesignated, is
6 amended by striking “subsection (c)(3)(A)” in
7 paragraph (7)(A)(i) and inserting “subsection
8 (d)(1)”.

9 (B) The heading of section 45 and the
10 item relating to such section in the table of sec-
11 tions for subpart D of part IV of subchapter A
12 of chapter 1 are each amended by inserting be-
13 fore the period at the end “, etc”.

14 (C) Paragraph (2) of section 45(b) is
15 amended by striking “The 1.5 cent amount”
16 and all that follows through “paragraph (1)”
17 and inserting “The 1.5 cent amount in sub-
18 section (a), the 8 cent amount in paragraph
19 (1), the \$4.375 amount in subsection (e)(8)(A),
20 and in subsection (e)(8)(B)(i) the reference
21 price of fuel used as a feedstock (within the
22 meaning of subsection (c)(7)(A)) in 2002”.

23 (c) SPECIAL CREDIT RATE AND PERIOD FOR ELEC-
24 TRICITY PRODUCED AND SOLD AFTER ENACTMENT



1 DATE.—Section 45(b) is amended by adding at the end
2 the following new paragraph:

3 “(4) CREDIT RATE AND PERIOD FOR ELEC-
4 TRICITY PRODUCED AND SOLD FROM CERTAIN FA-
5 CILITIES.—

6 “(A) CREDIT RATE.—In the case of elec-
7 tricity produced and sold in any calendar year
8 after 2003 at any qualified facility described in
9 paragraph (3), (5), (6), or (7) of subsection (d),
10 the amount in effect under subsection (a)(1) for
11 such calendar year (determined before the ap-
12 plication of the last sentence of paragraph (2)
13 of this subsection) shall be reduced by one-half.

14 “(B) CREDIT PERIOD.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in clause (ii), in the case of any facil-
17 ity described in paragraph (3), (4), (5),
18 (6), or (7) of subsection (d), the 5-year pe-
19 riod beginning on the date the facility was
20 originally placed in service shall be sub-
21 stituted for the 10-year period in sub-
22 section (a)(2)(A)(ii).

23 “(ii) CERTAIN OPEN-LOOP BIOMASS
24 FACILITIES.—In the case of any facility de-
25 scribed in subsection (d)(3)(A)(ii) placed in



1 service before the date of the enactment of
2 this paragraph, the 5-year period begin-
3 ning on the date of the enactment of this
4 Act shall be substituted for the 10-year pe-
5 riod in subsection (a)(2)(A)(ii).”.

6 (d) COORDINATION WITH OTHER CREDITS.—Section
7 45(e), as redesignated and amended by this section, is
8 amended by inserting after paragraph (8) the following
9 new paragraph:

10 “(9) COORDINATION WITH CREDIT FOR PRO-
11 DUCING FUEL FROM A NONCONVENTIONAL
12 SOURCE.—The term ‘qualified facility’ shall not in-
13 clude any facility the production from which is al-
14 lowed as a credit under section 29 for the taxable
15 year or any prior taxable year.”.

16 (e) COORDINATION WITH SECTION 48.—Section
17 48(a)(3) (defining energy property) is amended by adding
18 at the end the following new sentence: “Such term shall
19 not include any property which is part of a facility the
20 production from which is allowed as a credit under section
21 45 for the taxable year or any prior taxable year.”.

22 (f) ELIMINATION OF CERTAIN CREDIT REDUC-
23 TIONS.—Section 45(b)(3) (relating to credit reduced for
24 grants, tax-exempt bonds, subsidized energy financing,
25 and other credits) is amended—



1 (1) by inserting “the lesser of 1/2 or” before “a
2 fraction” in the matter preceding subparagraph (A),
3 and

4 (2) by adding at the end the following new sen-
5 tence: “This paragraph shall not apply with respect
6 to any facility described in subsection (d)(2)(A)(ii).”.

7 (g) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as otherwise pro-
9 vided in this subsection, the amendments made by
10 this section shall apply to electricity produced and
11 sold after the date of the enactment of this Act, in
12 taxable years ending after such date.

13 (2) CERTAIN BIOMASS FACILITIES.—With re-
14 spect to any facility described in section
15 45(d)(3)(A)(ii) of the Internal Revenue Code of
16 1986, as added by subsection (b)(1), which is placed
17 in service before the date of the enactment of this
18 Act, the amendments made by this section shall
19 apply to electricity produced and sold after Decem-
20 ber 31, 2004, in taxable years ending after such
21 date.

22 (3) CREDIT RATE AND PERIOD FOR NEW FA-
23 CILITIES.—The amendments made by subsection (c)
24 shall apply to electricity produced and sold after De-



1 cember 31, 2004, in taxable years ending after such
2 date.

3 (4) NONAPPLICATION OF AMENDMENTS TO
4 PREEFFECTIVE DATE POULTRY WASTE FACILI-
5 TIES.—The amendments made by this section shall
6 not apply with respect to any poultry waste facility
7 (within the meaning of section 45(c)(3)(C), as in ef-
8 fect on the day before the date of the enactment of
9 this Act) placed in service before January 1, 2004.

10 (5) REFINED COAL PRODUCTION FACILITIES.—
11 Section 45(e)(8) of the Internal Revenue Code of
12 1986, as added by this section, shall apply to refined
13 coal produced and sold after the date of the enact-
14 ment of this Act.

15 **SEC. 712. CERTAIN BUSINESS RELATED CREDITS ALLOWED**
16 **AGAINST REGULAR AND MINIMUM TAX.**

17 (a) IN GENERAL.—Subsection (c) of section 38 (re-
18 lating to limitation based on amount of tax) is amended
19 by redesignating paragraph (4) as paragraph (5) and by
20 inserting after paragraph (3) the following new paragraph:

21 “(4) SPECIAL RULES FOR SPECIFIED CRED-
22 ITS.—

23 “(A) IN GENERAL.—In the case of speci-
24 fied credits—



1 “(i) this section and section 39 shall
2 be applied separately with respect to such
3 credits, and

4 “(ii) in applying paragraph (1) to
5 such credits—

6 “(I) the tentative minimum tax
7 shall be treated as being zero, and

8 “(II) the limitation under para-
9 graph (1) (as modified by subclause
10 (I)) shall be reduced by the credit al-
11 lowed under subsection (a) for the
12 taxable year (other than the specified
13 credits).

14 “(B) SPECIFIED CREDITS.—For purposes
15 of this subsection, the term ‘specified credits’
16 includes—

17 “(i) for taxable years beginning after
18 December 31, 2004, the credit determined
19 under section 40,

20 “(ii) the credit determined under sec-
21 tion 45 to the extent that such credit is at-
22 tributable to electricity or refined coal
23 produced—

24 “(I) at a facility which is origi-
25 nally placed in service after the date



1 of the enactment of this paragraph,
2 and

3 “(II) during the 4-year period be-
4 ginning on the date that such facility
5 was originally placed in service”.

6 (b) CONFORMING AMENDMENTS.—Paragraph
7 (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) are each
8 amended by inserting “or the specified credits” after “em-
9 ployee credit”.

10 (c) EFFECTIVE DATE.—Except as otherwise pro-
11 vided, the amendments made by this section shall apply
12 to taxable years ending after the date of the enactment
13 of this Act.

14 **SEC. 713. INCLUSION OF PRIMARY AND SECONDARY MED-**
15 **ICAL STRATEGIES FOR CHILDREN AND**
16 **ADULTS WITH SICKLE CELL DISEASE AS MED-**
17 **ICAL ASSISTANCE UNDER THE MEDICAID**
18 **PROGRAM.**

19 (a) OPTIONAL MEDICAL ASSISTANCE.—

20 (1) IN GENERAL.—Section 1905 of the Social
21 Security Act (42 U.S.C. 1396d) is amended—

22 (A) in subsection (a)—

23 (i) by striking “and” at the end of
24 paragraph (26);



1 (ii) by redesignating paragraph (27)
2 as paragraph (28); and

3 (iii) by inserting after paragraph (26),
4 the following:

5 “(27) subject to subsection (x), primary and
6 secondary medical strategies and treatment and
7 services for individuals who have Sickle Cell Disease;
8 and”; and

9 (B) by adding at the end the following:

10 “(x) For purposes of subsection (a)(27), the strate-
11 gies, treatment, and services described in that subsection
12 include the following:

13 “(1) Chronic blood transfusion (with
14 deferoxamine chelation) to prevent stroke in individ-
15 uals with Sickle Cell Disease who have been identi-
16 fied as being at high risk for stroke.

17 “(2) Genetic counseling and testing for individ-
18 uals with Sickle Cell Disease or the sickle cell trait
19 to allow health care professionals to treat such indi-
20 viduals and to prevent symptoms of Sickle Cell Dis-
21 ease.

22 “(3) Other treatment and services to prevent
23 individuals who have Sickle Cell Disease and who
24 have had a stroke from having another stroke.”.



1 (2) RULE OF CONSTRUCTION.—Nothing in sub-
2 sections (a)(27) or (x) of section 1905 of the Social
3 Security Act (42 U.S.C. 1396d), as added by para-
4 graph (1), shall be construed as implying that a
5 State medicaid program under title XIX of such Act
6 could not have treated, prior to the date of enact-
7 ment of this Act, any of the primary and secondary
8 medical strategies and treatment and services de-
9 scribed in such subsections as medical assistance
10 under such program, including as early and periodic
11 screening, diagnostic, and treatment services under
12 section 1905(r) of such Act.

13 (b) FEDERAL REIMBURSEMENT FOR EDUCATION
14 AND OTHER SERVICES RELATED TO THE PREVENTION
15 AND TREATMENT OF SICKLE CELL DISEASE.—Section
16 1903(a)(3) of the Social Security Act (42 U.S.C.
17 1396b(a)(3)) is amended—

18 (1) in subparagraph (D), by striking “plus” at
19 the end and inserting “and”; and

20 (2) by adding at the end the following:

21 “(E) 50 percent of the sums expended with
22 respect to costs incurred during such quarter as
23 are attributable to providing—

24 “(i) services to identify and educate
25 individuals who are likely to be eligible for



1 medical assistance under this title and who
2 have Sickle Cell Disease or who are car-
3 riers of the sickle cell gene, including edu-
4 cation regarding how to identify such indi-
5 viduals; or

6 “(ii) education regarding the risks of
7 stroke and other complications, as well as
8 the prevention of stroke and other com-
9 plications, in individuals who are likely to
10 be eligible for medical assistance under
11 this title and who have Sickle Cell Disease;
12 plus”.

13 (c) DEMONSTRATION PROGRAM FOR THE DEVELOP-
14 MENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS
15 FOR THE PREVENTION AND TREATMENT OF SICKLE
16 CELL DISEASE.—

17 (1) AUTHORITY TO CONDUCT DEMONSTRATION
18 PROGRAM.—

19 (A) IN GENERAL.—The Administrator,
20 through the Bureau of Primary Health Care
21 and the Maternal and Child Health Bureau,
22 shall conduct a demonstration program by mak-
23 ing grants to up to 40 eligible entities for each
24 fiscal year in which the program is conducted
25 under this section for the purpose of developing



1 and establishing systemic mechanisms to im-
2 prove the prevention and treatment of Sickle
3 Cell Disease, including through—

4 (i) the coordination of service delivery
5 for individuals with Sickle Cell Disease;

6 (ii) genetic counseling and testing;

7 (iii) bundling of technical services re-
8 lated to the prevention and treatment of
9 Sickle Cell Disease;

10 (iv) training of health professionals;
11 and

12 (v) identifying and establishing other
13 efforts related to the expansion and coordi-
14 nation of education, treatment, and con-
15 tinuity of care programs for individuals
16 with Sickle Cell Disease.

17 (B) GRANT AWARD REQUIREMENTS.—

18 (i) GEOGRAPHIC DIVERSITY.—The
19 Administrator shall, to the extent prac-
20 ticable, award grants under this section to
21 eligible entities located in different regions
22 of the United States.

23 (ii) PRIORITY.—In awarding grants
24 under this subsection, the Administrator



1 shall give priority to awarding grants to el-
2 igible entities that are—

3 (I) Federally-qualified health cen-
4 ters that have a partnership or other
5 arrangement with a comprehensive
6 Sickle Cell Disease treatment center
7 that does not receive funds from the
8 National Institutes of Health; or

9 (II) Federally-qualified health
10 centers that intend to develop a part-
11 nership or other arrangement with a
12 comprehensive Sickle Cell Disease
13 treatment center that does not receive
14 funds from the National Institutes of
15 Health.

16 (2) ADDITIONAL REQUIREMENTS.—An eligible
17 entity awarded a grant under this subsection shall
18 use funds made available under the grant to carry
19 out, in addition to the activities described in para-
20 graph (1)(A), the following activities:

21 (A) To facilitate and coordinate the deliv-
22 ery of education, treatment, and continuity of
23 care for individuals with Sickle Cell Disease
24 under—



1 (i) the entity's collaborative agreement
2 with a community-based Sickle Cell Dis-
3 ease organization or a nonprofit entity that
4 works with individuals who have Sickle Cell
5 Disease;

6 (ii) the Sickle Cell Disease newborn
7 screening program for the State in which
8 the entity is located; and

9 (iii) the maternal and child health
10 program under title V of the Social Secu-
11 rity Act (42 U.S.C. 701 et seq.) for the
12 State in which the entity is located.

13 (B) To train nursing and other health
14 staff who provide care for individuals with Sick-
15 le Cell Disease.

16 (C) To enter into a partnership with adult
17 or pediatric hematologists in the region and
18 other regional experts in Sickle Cell Disease at
19 tertiary and academic health centers and State
20 and county health offices.

21 (D) To identify and secure resources for
22 ensuring reimbursement under the medicaid
23 program, State children's health insurance pro-
24 gram, and other health programs for the pre-
25 vention and treatment of Sickle Cell Disease.



1 (3) NATIONAL COORDINATING CENTER.—

2 (A) ESTABLISHMENT.—The Administrator
3 shall enter into a contract with an entity to
4 serve as the National Coordinating Center for
5 the demonstration program conducted under
6 this subsection.

7 (B) ACTIVITIES DESCRIBED.—The Na-
8 tional Coordinating Center shall—

9 (i) collect, coordinate, monitor, and
10 distribute data, best practices, and findings
11 regarding the activities funded under
12 grants made to eligible entities under the
13 demonstration program;

14 (ii) develop a model protocol for eligi-
15 ble entities with respect to the prevention
16 and treatment of Sickle Cell Disease;

17 (iii) develop educational materials re-
18 garding the prevention and treatment of
19 Sickle Cell Disease; and

20 (iv) prepare and submit to Congress a
21 final report that includes recommendations
22 regarding the effectiveness of the dem-
23 onstration program conducted under this
24 subsection and such direct outcome meas-
25 ures as—



1 (I) the number and type of
2 health care resources utilized (such as
3 emergency room visits, hospital visits,
4 length of stay, and physician visits for
5 individuals with Sickle Cell Disease);
6 and

7 (II) the number of individuals
8 that were tested and subsequently re-
9 ceived genetic counseling for the sickle
10 cell trait.

11 (4) APPLICATION.—An eligible entity desiring a
12 grant under this subsection shall submit an applica-
13 tion to the Administrator at such time, in such man-
14 ner, and containing such information as the Admin-
15 istrator may require.

16 (5) DEFINITIONS.—In this subsection:

17 (A) ADMINISTRATOR.—The term “Admin-
18 istrator” means the Administrator of the
19 Health Resources and Services Administration.

20 (B) ELIGIBLE ENTITY.—The term “eligible
21 entity” means a Federally-qualified health cen-
22 ter, a nonprofit hospital or clinic, or a univer-
23 sity health center that provides primary health
24 care, that—



1 (i) has a collaborative agreement with
2 a community-based SickleCell Disease or-
3 ganization or a nonprofit entity with expe-
4 rience in working with individuals who
5 have Sickle Cell Disease; and

6 (ii) demonstrates to the Administrator
7 that either the Federally-qualified health
8 center, the nonprofit hospital or clinic, the
9 university health center, the organization
10 or entity described in clause (i), or the ex-
11 perts described in paragraph (2)(C), has at
12 least 5 years of experience in working with
13 individuals who have Sickle Cell Disease.

14 (C) **FEDERALLY-QUALIFIED HEALTH CEN-**
15 **TER.**—The term “Federally-qualified health
16 center” has the meaning given that term in sec-
17 tion 1905(l)(2)(B) of the Social Security Act
18 (42 U.S.C. 1396d(l)(2)(B)).

19 (6) **AUTHORIZATION OF APPROPRIATIONS.**—
20 There is authorized to be appropriated to carry out
21 this subsection, \$10,000,000 for each of fiscal years
22 2005 through 2009.

23 (d) **EFFECTIVE DATE.**—The amendments made by
24 subsections (a) and (b) take effect on the date of enact-
25 ment of this Act and apply to medical assistance and serv-



1 ices provided under title XIX of the Social Security Act
2 (42 U.S.C. 1396 et seq.) on or after that date.

3 **SEC. 714. CEILING FANS.**

4 (a) IN GENERAL.—Subchapter II of chapter 99 of
5 the Harmonized Tariff Schedule of the United States is
6 amended by inserting in numerical sequence the following
7 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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8 (b) EFFECTIVE DATE.—The amendment made by
9 this section applies to goods entered, or withdrawn from
10 warehouse, for consumption on or after the 15th day after
11 the date of enactment of this Act.

12 **SEC. 715. CERTAIN STEAM GENERATORS, AND CERTAIN RE-**
13 **ACTOR VESSEL HEADS AND PRESSURIZERS,**
14 **USED IN NUCLEAR FACILITIES.**

15 (a) CERTAIN STEAM GENERATORS.—Heading
16 9902.84.02 of the Harmonized Tariff Schedule of the
17 United States is amended by striking “12/31/2006” and
18 inserting “12/31/2008”.

19 (b) CERTAIN REACTOR VESSEL HEADS AND PRES-
20 SURIZERS.—Subchapter II of chapter 99 of the Har-
21 monized Tariff Schedule of the United States is amended
22 by inserting in numerical sequence the following new head-
23 ing:



“	9902.84.03	Reactor vessel heads and pressurizers for nuclear reactors (provided for in subheading 8401.40.00)	Free	No change	No change	On or before 12/31/2008	”.
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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 subsection (b) shall apply to goods entered, or with-
 7 drawn from warehouse, for consumption on or after
 8 the 15th day after the date of the enactment of this
 9 Act.

10 **TITLE VIII—REVENUE**
 11 **PROVISIONS**

12 **Subtitle A—Provisions to Reduce**
 13 **Tax Avoidance Through Indi-**
 14 **vidual and Corporate Expatria-**
 15 **tion**

16 **SEC. 801. TAX TREATMENT OF EXPATRIATED ENTITIES AND**
 17 **THEIR FOREIGN PARENTS.**

18 (a) IN GENERAL.—Subchapter C of chapter 80 (re-
 19 lating to provisions affecting more than one subtitle) is
 20 amended by adding at the end the following new section:



1 **“SEC. 7874. RULES RELATING TO EXPATRIATED ENTITIES**
2 **AND THEIR FOREIGN PARENTS.**

3 “(a) TAX ON INVERSION GAIN OF EXPATRIATED EN-
4 TITIES.—

5 “(1) IN GENERAL.—The taxable income of an
6 expatriated entity for any taxable year which in-
7 cludes any portion of the applicable period shall in
8 no event be less than the inversion gain of the entity
9 for the taxable year.

10 “(2) EXPATRIATED ENTITY.—For purposes of
11 this subsection—

12 “(A) IN GENERAL.—The term ‘expatriated
13 entity’ means—

14 “(i) the domestic corporation or part-
15 nership referred to in subparagraph (B)(i)
16 with respect to which a foreign corporation
17 is a surrogate foreign corporation, and

18 “(ii) any United States person who is
19 related (within the meaning of section
20 267(b) or 707(b)(1)) to a domestic cor-
21 poration or partnership described in clause
22 (i).

23 “(B) SURROGATE FOREIGN CORPORA-
24 TION.—A foreign corporation shall be treated
25 as a surrogate foreign corporation if, pursuant
26 to a plan (or a series of related transactions)—



1 “(i) the entity completes after March
2 4, 2003, the direct or indirect acquisition
3 of substantially all of the properties held
4 directly or indirectly by a domestic cor-
5 poration or substantially all of the prop-
6 erties constituting a trade or business of a
7 domestic partnership,

8 “(ii) after the acquisition at least 60
9 percent of the stock (by vote or value) of
10 the entity is held—

11 “(I) in the case of an acquisition
12 with respect to a domestic corpora-
13 tion, by former shareholders of the
14 domestic corporation by reason of
15 holding stock in the domestic corpora-
16 tion, or

17 “(II) in the case of an acquisition
18 with respect to a domestic partner-
19 ship, by former partners of the do-
20 mestic partnership by reason of hold-
21 ing a capital or profits interest in the
22 domestic partnership, and

23 “(iii) after the acquisition the ex-
24 panded affiliated group which includes the
25 entity does not have substantial business



1 activities in the foreign country in which,
2 or under the law of which, the entity is
3 created or organized, when compared to
4 the total business activities of such ex-
5 panded affiliated group.

6 An entity otherwise described in clause (i) with
7 respect to any domestic corporation or partner-
8 ship trade or business shall be treated as not so
9 described if, on or before March 4, 2003, such
10 entity acquired directly or indirectly more than
11 half of the properties held directly or indirectly
12 by such corporation or more than half of the
13 properties constituting such partnership trade
14 or business, as the case may be.

15 “(3) COORDINATION WITH SUBSECTION (B).—
16 Paragraph (1) shall not apply to any entity which is
17 treated as a domestic corporation under subsection
18 (b).

19 “(b) INVERTED CORPORATIONS TREATED AS DO-
20 MESTIC CORPORATIONS.—Notwithstanding section
21 7701(a)(4), a foreign corporation shall be treated for pur-
22 poses of this title as a domestic corporation if such cor-
23 poration would be a surrogate foreign corporation if sub-
24 section (a)(2) were applied by substituting ‘80 percent’ for
25 ‘60 percent’.



1 “(c) DEFINITIONS AND SPECIAL RULES.—

2 “(1) EXPANDED AFFILIATED GROUP.—The
3 term ‘expanded affiliated group’ means an affiliated
4 group as defined in section 1504(a) but without re-
5 gard to section 1504(b)(3), except that section
6 1504(a) shall be applied by substituting ‘more than
7 50 percent’ for ‘at least 80 percent’ each place it ap-
8 pears.

9 “(2) CERTAIN STOCK DISREGARDED.—There
10 shall not be taken into account in determining own-
11 ership under subsection (a)(2)(B)(ii)—

12 “(A) stock held by members of the ex-
13 panded affiliated group which includes the for-
14 eign corporation, or

15 “(B) stock of such foreign corporation
16 which is sold in a public offering related to the
17 acquisition described in subsection (a)(2)(B)(i).

18 “(3) PLAN DEEMED IN CERTAIN CASES.—If a
19 foreign corporation acquires directly or indirectly
20 substantially all of the properties of a domestic cor-
21 poration or partnership during the 4-year period be-
22 ginning on the date which is 2 years before the own-
23 ership requirements of subsection (a)(2)(B)(ii) are
24 met, such actions shall be treated as pursuant to a
25 plan.



1 “(4) CERTAIN TRANSFERS DISREGARDED.—The
2 transfer of properties or liabilities (including by con-
3 tribution or distribution) shall be disregarded if such
4 transfers are part of a plan a principal purpose of
5 which is to avoid the purposes of this section.

6 “(5) SPECIAL RULE FOR RELATED PARTNER-
7 SHIPS.—For purposes of applying subsection
8 (a)(2)(B)(ii) to the acquisition of a trade or business
9 of a domestic partnership, except as provided in reg-
10 ulations, all partnerships which are under common
11 control (within the meaning of section 482) shall be
12 treated as 1 partnership.

13 “(6) REGULATIONS.—The Secretary shall pre-
14 scribe such regulations as may be appropriate to de-
15 termine whether a corporation is a surrogate foreign
16 corporation, including regulations—

17 “(A) to treat warrants, options, contracts
18 to acquire stock, convertible debt interests, and
19 other similar interests as stock, and

20 “(B) to treat stock as not stock.

21 “(d) OTHER DEFINITIONS.—For purposes of this
22 section—

23 “(1) APPLICABLE PERIOD.—The term ‘applica-
24 ble period’ means the period—



1 “(A) beginning on the first date properties
2 are acquired as part of the acquisition described
3 in subsection (a)(2)(B)(i), and

4 “(B) ending on the date which is 10 years
5 after the last date properties are acquired as
6 part of such acquisition.

7 “(2) INVERSION GAIN.—The term ‘inversion
8 gain’ means the income or gain recognized by reason
9 of the transfer during the applicable period of stock
10 or other properties by an expatriated entity, and any
11 income received or accrued during the applicable pe-
12 riod by reason of a license of any property by an ex-
13 patriated entity—

14 “(A) as part of the acquisition described in
15 subsection (a)(2)(B)(i), or

16 “(B) after such acquisition if the transfer
17 or license is to a foreign related person.

18 Subparagraph (B) shall not apply to property de-
19 scribed in section 1221(a)(1) in the hands of the ex-
20 patriated entity.

21 “(3) FOREIGN RELATED PERSON.—The term
22 ‘foreign related person’ means, with respect to any
23 expatriated entity, a foreign person which—

24 “(A) is related (within the meaning of sec-
25 tion 267(b) or 707(b)(1)) to such entity, or



1 “(B) is under the same common control
2 (within the meaning of section 482) as such en-
3 tity.

4 “(e) SPECIAL RULES.—

5 “(1) CREDITS NOT ALLOWED AGAINST TAX ON
6 INVERSION GAIN.—Credits (other than the credit al-
7 lowed by section 901) shall be allowed against the
8 tax imposed by this chapter on an expatriated entity
9 for any taxable year described in subsection (a) only
10 to the extent such tax exceeds the product of—

11 “(A) the amount of the inversion gain for
12 the taxable year, and

13 “(B) the highest rate of tax specified in
14 section 11(b)(1).

15 For purposes of determining the credit allowed by
16 section 901, inversion gain shall be treated as from
17 sources within the United States.

18 “(2) SPECIAL RULES FOR PARTNERSHIPS.—In
19 the case of an expatriated entity which is a
20 partnership—

21 “(A) subsection (a)(1) shall apply at the
22 partner rather than the partnership level,

23 “(B) the inversion gain of any partner for
24 any taxable year shall be equal to the sum of—



1 “(i) the partner’s distributive share of
2 inversion gain of the partnership for such
3 taxable year, plus

4 “(ii) gain recognized for the taxable
5 year by the partner by reason of the trans-
6 fer during the applicable period of any
7 partnership interest of the partner in such
8 partnership to the surrogate foreign cor-
9 poration, and

10 “(C) the highest rate of tax specified in
11 the rate schedule applicable to the partner
12 under this chapter shall be substituted for the
13 rate of tax referred to in paragraph (1).

14 “(3) COORDINATION WITH SECTION 172 AND
15 MINIMUM TAX.—Rules similar to the rules of para-
16 graphs (3) and (4) of section 860E(a) shall apply
17 for purposes of subsection (a).

18 “(4) STATUTE OF LIMITATIONS.—

19 “(A) IN GENERAL.—The statutory period
20 for the assessment of any deficiency attrib-
21 utable to the inversion gain of any taxpayer for
22 any pre-inversion year shall not expire before
23 the expiration of 3 years from the date the Sec-
24 retary is notified by the taxpayer (in such man-
25 ner as the Secretary may prescribe) of the ac-



1 quisition described in subsection (a)(2)(B)(i) to
2 which such gain relates and such deficiency
3 may be assessed before the expiration of such
4 3-year period notwithstanding the provisions of
5 any other law or rule of law which would other-
6 wise prevent such assessment.

7 “(B) PRE-INVERSION YEAR.—For purposes
8 of subparagraph (A), the term ‘pre-inversion
9 year’ means any taxable year if—

10 “(i) any portion of the applicable pe-
11 riod is included in such taxable year, and

12 “(ii) such year ends before the taxable
13 year in which the acquisition described in
14 subsection (a)(2)(B)(i) is completed.

15 “(f) SPECIAL RULE FOR TREATIES.—Nothing in sec-
16 tion 894 or 7852(d) or in any other provision of law shall
17 be construed as permitting an exemption, by reason of any
18 treaty obligation of the United States heretofore or here-
19 after entered into, from the provisions of this section.

20 “(g) REGULATIONS.—The Secretary shall provide
21 such regulations as are necessary to carry out this section,
22 including regulations providing for such adjustments to
23 the application of this section as are necessary to prevent
24 the avoidance of the purposes of this section, including the
25 avoidance of such purposes through—



1 expatriated corporation, there is hereby imposed on such
2 person a tax equal to—

3 “(1) the rate of tax specified in section
4 1(h)(1)(C), multiplied by

5 “(2) the value (determined under subsection
6 (b)) of the specified stock compensation held (di-
7 rectly or indirectly) by or for the benefit of such in-
8 dividual or a member of such individual’s family (as
9 defined in section 267) at any time during the 12-
10 month period beginning on the date which is 6
11 months before the expatriation date.

12 “(b) VALUE.—For purposes of subsection (a)—

13 “(1) IN GENERAL.—The value of specified stock
14 compensation shall be—

15 “(A) in the case of a stock option (or other
16 similar right) or a stock appreciation right, the
17 fair value of such option or right, and

18 “(B) in any other case, the fair market
19 value of such compensation.

20 “(2) DATE FOR DETERMINING VALUE.—The
21 determination of value shall be made—

22 “(A) in the case of specified stock com-
23 pensation held on the expatriation date, on such
24 date,



1 “(B) in the case of such compensation
2 which is canceled during the 6 months before
3 the expatriation date, on the day before such
4 cancellation, and

5 “(C) in the case of such compensation
6 which is granted after the expatriation date, on
7 the date such compensation is granted.

8 “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN
9 RECOGNIZED.—Subsection (a) shall apply to any disquali-
10 fied individual with respect to an expatriated corporation
11 only if gain (if any) on any stock in such corporation is
12 recognized in whole or part by any shareholder by reason
13 of the acquisition referred to in section 7874(a)(2)(B)(i)
14 with respect to such corporation.

15 “(d) EXCEPTION WHERE GAIN RECOGNIZED ON
16 COMPENSATION.—Subsection (a) shall not apply to—

17 “(1) any stock option which is exercised on the
18 expatriation date or during the 6-month period be-
19 fore such date and to the stock acquired in such ex-
20 ercise, if income is recognized under section 83 on
21 or before the expatriation date with respect to the
22 stock acquired pursuant to such exercise, and

23 “(2) any other specified stock compensation
24 which is exercised, sold, exchanged, distributed,
25 cashed-out, or otherwise paid during such period in



1 a transaction in which income, gain, or loss is recog-
2 nized in full.

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

4 “(1) DISQUALIFIED INDIVIDUAL.—The term
5 ‘disqualified individual’ means, with respect to a cor-
6 poration, any individual who, at any time during the
7 12-month period beginning on the date which is 6
8 months before the expatriation date—

9 “(A) is subject to the requirements of sec-
10 tion 16(a) of the Securities Exchange Act of
11 1934 with respect to such corporation or any
12 member of the expanded affiliated group which
13 includes such corporation, or

14 “(B) would be subject to such require-
15 ments if such corporation or member were an
16 issuer of equity securities referred to in such
17 section.

18 “(2) EXPATRIATED CORPORATION; EXPATRIA-
19 TION DATE.—

20 “(A) EXPATRIATED CORPORATION.—The
21 term ‘expatriated corporation’ means any cor-
22 poration which is an expatriated entity (as de-
23 fined in section 7874(a)(2)). Such term in-
24 cludes any predecessor or successor of such a
25 corporation.



1 “(B) EXPATRIATION DATE.—The term ‘ex-
2 patriation date’ means, with respect to a cor-
3 poration, the date on which the corporation
4 first becomes an expatriated corporation.

5 “(3) SPECIFIED STOCK COMPENSATION.—

6 “(A) IN GENERAL.—The term ‘specified
7 stock compensation’ means payment (or right
8 to payment) granted by the expatriated cor-
9 poration (or by any member of the expanded af-
10 filiated group which includes such corporation)
11 to any person in connection with the perform-
12 ance of services by a disqualified individual for
13 such corporation or member if the value of such
14 payment or right is based on (or determined by
15 reference to) the value (or change in value) of
16 stock in such corporation (or any such mem-
17 ber).

18 “(B) EXCEPTIONS.—Such term shall not
19 include—

20 “(i) any option to which part II of
21 subchapter D of chapter 1 applies, or

22 “(ii) any payment or right to payment
23 from a plan referred to in section
24 280G(b)(6).



1 “(4) EXPANDED AFFILIATED GROUP.—The
2 term ‘expanded affiliated group’ means an affiliated
3 group (as defined in section 1504(a) without regard
4 to section 1504(b)(3)); except that section 1504(a)
5 shall be applied by substituting ‘more than 50 per-
6 cent’ for ‘at least 80 percent’ each place it appears.

7 “(f) SPECIAL RULES.—For purposes of this
8 section—

9 “(1) CANCELLATION OF RESTRICTION.—The
10 cancellation of a restriction which by its terms will
11 never lapse shall be treated as a grant.

12 “(2) PAYMENT OR REIMBURSEMENT OF TAX BY
13 CORPORATION TREATED AS SPECIFIED STOCK COM-
14 PENSATION.—Any payment of the tax imposed by
15 this section directly or indirectly by the expatriated
16 corporation or by any member of the expanded affili-
17 ated group which includes such corporation—

18 “(A) shall be treated as specified stock
19 compensation, and

20 “(B) shall not be allowed as a deduction
21 under any provision of chapter 1.

22 “(3) CERTAIN RESTRICTIONS IGNORED.—
23 Whether there is specified stock compensation, and
24 the value thereof, shall be determined without regard



1 to any restriction other than a restriction which by
2 its terms will never lapse.

3 “(4) PROPERTY TRANSFERS.—Any transfer of
4 property shall be treated as a payment and any right
5 to a transfer of property shall be treated as a right
6 to a payment.

7 “(5) OTHER ADMINISTRATIVE PROVISIONS.—
8 For purposes of subtitle F, any tax imposed by this
9 section shall be treated as a tax imposed by subtitle
10 A.

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

14 (b) DENIAL OF DEDUCTION.—

15 (1) IN GENERAL.—Paragraph (6) of section
16 275(a) is amended by inserting “45,” before “46,”.

17 (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-
18 PENSATION REDUCED BY PAYMENT OF EXCISE TAX
19 ON SPECIFIED STOCK COMPENSATION.—Paragraph
20 (4) of section 162(m) is amended by adding at the
21 end the following new subparagraph:

22 “(G) COORDINATION WITH EXCISE TAX ON
23 SPECIFIED STOCK COMPENSATION.—The dollar
24 limitation contained in paragraph (1) with re-
25 spect to any covered employee shall be reduced



1 (but not below zero) by the amount of any pay-
2 ment (with respect to such employee) of the tax
3 imposed by section 4985 directly or indirectly
4 by the expatriated corporation (as defined in
5 such section) or by any member of the ex-
6 panded affiliated group (as defined in such sec-
7 tion) which includes such corporation.”.

8 (c) CONFORMING AMENDMENTS.—

9 (1) The last sentence of section 3121(v)(2)(A)
10 is amended by inserting before the period “or to any
11 specified stock compensation (as defined in section
12 4985) on which tax is imposed by section 4985”.

13 (2) The table of chapters for subtitle D is
14 amended by inserting after the item relating to
15 chapter 44 the following new item:

“Chapter 45. Provisions relating to expatriated entities.”.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on March 4, 2003; except that
18 periods before such date shall not be taken into account
19 in applying the periods in subsections (a) and (e)(1) of
20 section 4985 of the Internal Revenue Code of 1986, as
21 added by this section.

22 **SEC. 803. REINSURANCE OF UNITED STATES RISKS IN FOR-**
23 **EIGN JURISDICTIONS.**

24 (a) IN GENERAL.—Section 845(a) (relating to alloca-
25 tion in case of reinsurance agreement involving tax avoid-



1 ance or evasion) is amended by striking “source and char-
2 acter” and inserting “amount, source, or character”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to any risk reinsured after the date
5 of the enactment of this Act.

6 **SEC. 804. REVISION OF TAX RULES ON EXPATRIATION OF**
7 **INDIVIDUALS.**

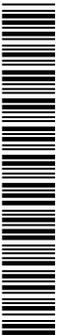
8 (a) EXPATRIATION TO AVOID TAX.—

9 (1) IN GENERAL.—Subsection (a) of section
10 877 (relating to treatment of expatriates) is amend-
11 ed to read as follows:

12 “(a) TREATMENT OF EXPATRIATES.—

13 “(1) IN GENERAL.—Every nonresident alien in-
14 dividual to whom this section applies and who, with-
15 in the 10-year period immediately preceding the
16 close of the taxable year, lost United States citizen-
17 ship shall be taxable for such taxable year in the
18 manner provided in subsection (b) if the tax imposed
19 pursuant to such subsection (after any reduction in
20 such tax under the last sentence of such subsection)
21 exceeds the tax which, without regard to this section,
22 is imposed pursuant to section 871.

23 “(2) INDIVIDUALS SUBJECT TO THIS SEC-
24 TION.—This section shall apply to any individual
25 if—



1 “(A) the average annual net income tax
2 (as defined in section 38(c)(1)) of such indi-
3 vidual for the period of 5 taxable years ending
4 before the date of the loss of United States citi-
5 zenship is greater than \$124,000,

6 “(B) the net worth of the individual as of
7 such date is \$2,000,000 or more, or

8 “(C) such individual fails to certify under
9 penalty of perjury that he has met the require-
10 ments of this title for the 5 preceding taxable
11 years or fails to submit such evidence of such
12 compliance as the Secretary may require.

13 In the case of the loss of United States citizenship
14 in any calendar year after 2004, such \$124,000
15 amount shall be increased by an amount equal to
16 such dollar amount multiplied by the cost-of-living
17 adjustment determined under section 1(f)(3) for
18 such calendar year by substituting ‘2003’ for ‘1992’
19 in subparagraph (B) thereof. Any increase under the
20 preceding sentence shall be rounded to the nearest
21 multiple of \$1,000.”.

22 (2) REVISION OF EXCEPTIONS FROM ALTER-
23 NATIVE TAX.—Subsection (c) of section 877 (relat-
24 ing to tax avoidance not presumed in certain cases)
25 is amended to read as follows:



1 “(c) EXCEPTIONS.—

2 “(1) IN GENERAL.—Subparagraphs (A) and
3 (B) of subsection (a)(2) shall not apply to an indi-
4 vidual described in paragraph (2) or (3).

5 “(2) DUAL CITIZENS.—

6 “(A) IN GENERAL.—An individual is de-
7 scribed in this paragraph if—

8 “(i) the individual became at birth a
9 citizen of the United States and a citizen
10 of another country and continues to be a
11 citizen of such other country, and

12 “(ii) the individual has had no sub-
13 stantial contacts with the United States.

14 “(B) SUBSTANTIAL CONTACTS.—An indi-
15 vidual shall be treated as having no substantial
16 contacts with the United States only if the
17 individual—

18 “(i) was never a resident of the
19 United States (as defined in section
20 7701(b)),

21 “(ii) has never held a United States
22 passport, and

23 “(iii) was not present in the United
24 States for more than 30 days during any
25 calendar year which is 1 of the 10 calendar



1 years preceding the individual's loss of
2 United States citizenship.

3 “(3) CERTAIN MINORS.—An individual is de-
4 scribed in this paragraph if—

5 “(A) the individual became at birth a cit-
6 izen of the United States,

7 “(B) neither parent of such individual was
8 a citizen of the United States at the time of
9 such birth,

10 “(C) the individual's loss of United States
11 citizenship occurs before such individual attains
12 age 18½, and

13 “(D) the individual was not present in the
14 United States for more than 30 days during
15 any calendar year which is 1 of the 10 calendar
16 years preceding the individual's loss of United
17 States citizenship.”.

18 (3) CONFORMING AMENDMENT.—Section
19 2107(a) is amended to read as follows:

20 “(a) TREATMENT OF EXPATRIATES.—A tax com-
21 puted in accordance with the table contained in section
22 2001 is hereby imposed on the transfer of the taxable es-
23 tate, determined as provided in section 2106, of every de-
24 cedent nonresident not a citizen of the United States if
25 the date of death occurs during a taxable year with respect



1 to which the decedent is subject to tax under section
2 877(b).”.

3 (b) SPECIAL RULES FOR DETERMINING WHEN AN
4 INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN
5 OR LONG-TERM RESIDENT.—Section 7701 (relating to
6 definitions) is amended by redesignating subsection (n) as
7 subsection (o) and by inserting after subsection (m) the
8 following new subsection:

9 “(n) SPECIAL RULES FOR DETERMINING WHEN AN
10 INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN
11 OR LONG-TERM RESIDENT.—An individual who would
12 (but for this subsection) cease to be treated as a citizen
13 or resident of the United States shall continue to be treat-
14 ed as a citizen or resident of the United States, as the
15 case may be, until such individual—

16 “(1) gives notice of an expatriating act or ter-
17 mination of residency (with the requisite intent to
18 relinquish citizenship or terminate residency) to the
19 Secretary of State or the Secretary of Homeland Se-
20 curity, and

21 “(2) provides a statement in accordance with
22 section 6039G.”.

23 (c) PHYSICAL PRESENCE IN THE UNITED STATES
24 FOR MORE THAN 30 DAYS.—Section 877 (relating to ex-



1 patriation to avoid tax) is amended by adding at the end
2 the following new subsection:

3 “(g) PHYSICAL PRESENCE.—

4 “(1) IN GENERAL.—This section shall not apply
5 to any individual to whom this section would other-
6 wise apply for any taxable year during the 10-year
7 period referred to in subsection (a) in which such in-
8 dividual is physically present in the United States at
9 any time on more than 30 days in the calendar year
10 ending in such taxable year, and such individual
11 shall be treated for purposes of this title as a citizen
12 or resident of the United States, as the case may be,
13 for such taxable year.

14 “(2) EXCEPTION.—

15 “(A) IN GENERAL.—In the case of an indi-
16 vidual described in any of the following sub-
17 paragraphs of this paragraph, a day of physical
18 presence in the United States shall be dis-
19 regarded if the individual is performing services
20 in the United States on such day for an em-
21 ployer. The preceding sentence shall not apply
22 if—

23 “(i) such employer is related (within
24 the meaning of section 267 and 707) to
25 such individual, or



1 “(ii) such employer fails to meet such
2 requirements as the Secretary may pre-
3 scribe by regulations to prevent the avoid-
4 ance of the purposes of this paragraph.

5 Not more than 30 days during any calendar
6 year may be disregarded under this subpara-
7 graph.

8 “(B) INDIVIDUALS WITH TIES TO OTHER
9 COUNTRIES.—An individual is described in this
10 subparagraph if—

11 “(i) the individual becomes (not later
12 than the close of a reasonable period after
13 loss of United States citizenship or termi-
14 nation of residency) a citizen or resident of
15 the country in which—

16 “(I) such individual was born,
17 “(II) if such individual is mar-
18 ried, such individual’s spouse was
19 born, or

20 “(III) either of such individual’s
21 parents were born, and

22 “(ii) the individual becomes fully lia-
23 ble for income tax in such country.

24 “(C) MINIMAL PRIOR PHYSICAL PRESENCE
25 IN THE UNITED STATES.—An individual is de-



1 scribed in this subparagraph if, for each year in
2 the 10-year period ending on the date of loss of
3 United States citizenship or termination of resi-
4 dency, the individual was physically present in
5 the United States for 30 days or less. The rule
6 of section 7701(b)(3)(D)(ii) shall apply for pur-
7 poses of this subparagraph.”.

8 (d) TRANSFERS SUBJECT TO GIFT TAX.—

9 (1) IN GENERAL.—Subsection (a) of section
10 2501 (relating to taxable transfers) is amended by
11 striking paragraph (4), by redesignating paragraph
12 (5) as paragraph (4), and by striking paragraph (3)
13 and inserting the following new paragraph:

14 “(3) EXCEPTION.—

15 “(A) CERTAIN INDIVIDUALS.—Paragraph
16 (2) shall not apply in the case of a donor to
17 whom section 877(b) applies for the taxable
18 year which includes the date of the transfer.

19 “(B) CREDIT FOR FOREIGN GIFT TAXES.—

20 The tax imposed by this section solely by reason
21 of this paragraph shall be credited with the
22 amount of any gift tax actually paid to any for-
23 eign country in respect of any gift which is tax-
24 able under this section solely by reason of this
25 paragraph.”.



1 (2) TRANSFERS OF CERTAIN STOCK.—Sub-
2 section (a) of section 2501 is amended by adding at
3 the end the following new paragraph:

4 “(5) TRANSFERS OF CERTAIN STOCK.—

5 “(A) IN GENERAL.—In the case of a trans-
6 fer of stock in a foreign corporation described
7 in subparagraph (B) by a donor to whom sec-
8 tion 877(b) applies for the taxable year which
9 includes the date of the transfer—

10 “(i) section 2511(a) shall be applied
11 without regard to whether such stock is
12 situated within the United States, and

13 “(ii) the value of such stock for pur-
14 poses of this chapter shall be its U.S.-asset
15 value determined under subparagraph (C).

16 “(B) FOREIGN CORPORATION DE-
17 SCRIBED.—A foreign corporation is described in
18 this subparagraph with respect to a donor if—

19 “(i) the donor owned (within the
20 meaning of section 958(a)) at the time of
21 such transfer 10 percent or more of the
22 total combined voting power of all classes
23 of stock entitled to vote of the foreign cor-
24 poration, and



1 “(ii) such donor owned (within the
2 meaning of section 958(a)), or is consid-
3 ered to have owned (by applying the own-
4 ership rules of section 958(b)), at the time
5 of such transfer, more than 50 percent
6 of—

7 “(I) the total combined voting
8 power of all classes of stock entitled
9 to vote of such corporation, or

10 “(II) the total value of the stock
11 of such corporation.

12 “(C) U.S.-ASSET VALUE.—For purposes of
13 subparagraph (A), the U.S.-asset value of stock
14 shall be the amount which bears the same ratio
15 to the fair market value of such stock at the
16 time of transfer as—

17 “(i) the fair market value (at such
18 time) of the assets owned by such foreign
19 corporation and situated in the United
20 States, bears to

21 “(ii) the total fair market value (at
22 such time) of all assets owned by such for-
23 eign corporation.”.

24 (e) ENHANCED INFORMATION REPORTING FROM IN-
25 DIVIDUALS LOSING UNITED STATES CITIZENSHIP.—



1 (1) IN GENERAL.—Subsection (a) of section
2 6039G is amended to read as follows:

3 “(a) IN GENERAL.—Notwithstanding any other pro-
4 vision of law, any individual to whom section 877(b) ap-
5 plies for any taxable year shall provide a statement for
6 such taxable year which includes the information described
7 in subsection (b).”.

8 (2) INFORMATION TO BE PROVIDED.—Sub-
9 section (b) of section 6039G is amended to read as
10 follows:

11 “(b) INFORMATION TO BE PROVIDED.—Information
12 required under subsection (a) shall include—

13 “(1) the taxpayer’s TIN,

14 “(2) the mailing address of such individual’s
15 principal foreign residence,

16 “(3) the foreign country in which such indi-
17 vidual is residing,

18 “(4) the foreign country of which such indi-
19 vidual is a citizen,

20 “(5) information detailing the income, assets,
21 and liabilities of such individual,

22 “(6) the number of days during any portion of
23 which that the individual was physically present in
24 the United States during the taxable year, and



1 “(7) such other information as the Secretary
2 may prescribe.”.

3 (3) INCREASE IN PENALTY.—Subsection (d) of
4 section 6039G is amended to read as follows:

5 “(d) PENALTY.—If—

6 “(1) an individual is required to file a state-
7 ment under subsection (a) for any taxable year, and

8 “(2) fails to file such a statement with the Sec-
9 retary on or before the date such statement is re-
10 quired to be filed or fails to include all the informa-
11 tion required to be shown on the statement or in-
12 cludes incorrect information,

13 such individual shall pay a penalty of \$10,000 unless it
14 is shown that such failure is due to reasonable cause and
15 not to willful neglect.”.

16 (4) CONFORMING AMENDMENT.—Section
17 6039G is amended by striking subsections (e), (f),
18 and (g) and by redesignating subsections (d) and (e)
19 as subsection (c) and (d), respectively.

20 (f) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to individuals who expatriate after
22 June 3, 2004.



1 **SEC. 805. REPORTING OF TAXABLE MERGERS AND ACQUI-**
2 **SIONS.**

3 (a) IN GENERAL.—Subpart B of part III of sub-
4 chapter A of chapter 61 is amended by inserting after sec-
5 tion 6043 the following new section:

6 **“SEC. 6043A. RETURNS RELATING TO TAXABLE MERGERS**
7 **AND ACQUISITIONS.**

8 “(a) IN GENERAL.—According to the forms or regu-
9 lations prescribed by the Secretary, the acquiring corpora-
10 tion in any taxable acquisition shall make a return setting
11 forth—

- 12 “(1) a description of the acquisition,
- 13 “(2) the name and address of each shareholder
14 of the acquired corporation who is required to recog-
15 nize gain (if any) as a result of the acquisition,
- 16 “(3) the amount of money and the fair market
17 value of other property transferred to each such
18 shareholder as part of such acquisition, and
- 19 “(4) such other information as the Secretary
20 may prescribe.

21 To the extent provided by the Secretary, the requirements
22 of this section applicable to the acquiring corporation shall
23 be applicable to the acquired corporation and not to the
24 acquiring corporation.

25 “(b) NOMINEES.—According to the forms or regula-
26 tions prescribed by the Secretary—



1 “(1) REPORTING.—Any person who holds stock
2 as a nominee for another person shall furnish in the
3 manner prescribed by the Secretary to such other
4 person the information provided by the corporation
5 under subsection (d).

6 “(2) REPORTING TO NOMINEES.—In the case of
7 stock held by any person as a nominee, references in
8 this section (other than in subsection (c)) to a share-
9 holder shall be treated as a reference to the nomi-
10 nee.

11 “(c) TAXABLE ACQUISITION.—For purposes of this
12 section, the term ‘taxable acquisition’ means any acquisi-
13 tion by a corporation of stock in or property of another
14 corporation if any shareholder of the acquired corporation
15 is required to recognize gain (if any) as a result of such
16 acquisition.

17 “(d) STATEMENTS TO BE FURNISHED TO SHARE-
18 HOLDERS.—According to the forms or regulations pre-
19 scribed by the Secretary, every person required to make
20 a return under subsection (a) shall furnish to each share-
21 holder whose name is required to be set forth in such re-
22 turn a written statement showing—

23 “(1) the name, address, and phone number of
24 the information contact of the person required to
25 make such return,



1 “(2) the information required to be shown on
2 such return with respect to such shareholder, and

3 “(3) such other information as the Secretary
4 may prescribe.

5 The written statement required under the preceding sen-
6 tence shall be furnished to the shareholder on or before
7 January 31 of the year following the calendar year during
8 which the taxable acquisition occurred.”.

9 (b) ASSESSABLE PENALTIES.—

10 (1) Subparagraph (B) of section 6724(d)(1)
11 (relating to definitions) is amended by redesignating
12 clauses (ii) through (xviii) as clauses (iii) through
13 (xix), respectively, and by inserting after clause (i)
14 the following new clause:

15 “(ii) section 6043A(a) (relating to re-
16 turns relating to taxable mergers and ac-
17 quisitions),”.

18 (2) Paragraph (2) of section 6724(d) is amend-
19 ed by redesignating subparagraphs (F) through
20 (BB) as subparagraphs (G) through (CC), respec-
21 tively, and by inserting after subparagraph (E) the
22 following new subparagraph:

23 “(F) subsections (b) and (d) of section
24 6043A (relating to returns relating to taxable
25 mergers and acquisitions).”.



1 (c) CLERICAL AMENDMENT.—The table of sections
2 for subpart B of part III of subchapter A of chapter 61
3 is amended by inserting after the item relating to section
4 6043 the following new item:

“Sec. 6043A. Returns relating to taxable mergers and acquisitions.”.

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

8 **SEC. 806. STUDIES.**

9 (a) TRANSFER PRICING RULES.—The Secretary of
10 the Treasury or the Secretary’s delegate shall conduct a
11 study regarding the effectiveness of current transfer pricing
12 rules and compliance efforts in ensuring that cross-
13 border transfers and other related-party transactions, particularly
14 transactions involving intangible assets, service
15 contracts, or leases cannot be used improperly to shift income
16 out of the United States. The study shall include
17 a review of the contemporaneous documentation and penalty
18 rules under section 6662 of the Internal Revenue
19 Code of 1986, a review of the regulatory and administrative
20 guidance implementing the principles of section 482
21 of such Code to transactions involving intangible property
22 and services and to cost-sharing arrangements, and an examination
23 of whether increased disclosure of cross-border
24 transactions should be required. The study shall set forth



1 specific recommendations to address all abuses identified
2 in the study. Not later than June 30, 2005, such Sec-
3 retary or delegate shall submit to the Congress a report
4 of such study.

5 (b) INCOME TAX TREATIES.—The Secretary of the
6 Treasury or the Secretary's delegate shall conduct a study
7 of United States income tax treaties to identify any inap-
8 propriate reductions in United States withholding tax that
9 provide opportunities for shifting income out of the United
10 States, and to evaluate whether existing anti-abuse mecha-
11 nisms are operating properly. The study shall include spe-
12 cific recommendations to address all inappropriate uses of
13 tax treaties. Not later than June 30, 2005, such Secretary
14 or delegate shall submit to the Congress a report of such
15 study.

16 (c) IMPACT OF CORPORATE EXPATRIATION PROVI-
17 SIONS.—The Secretary of the Treasury or the Secretary's
18 delegate shall conduct a study of the impact of the provi-
19 sions of this title on corporate expatriation. The study
20 shall include such recommendations as such Secretary or
21 delegate may have to improve the impact of such provi-
22 sions in carrying out the purposes of this title. Not later
23 than December 31, 2006, such Secretary or delegate shall
24 submit to the Congress a report of such study.



1 **Subtitle B—Provisions Relating to**
2 **Tax Shelters**

3 **Part I—Taxpayer-Related Provisions**

4 **SEC. 811. PENALTY FOR FAILING TO DISCLOSE REPORT-**
5 **ABLE TRANSACTIONS.**

6 (a) IN GENERAL.—Part I of subchapter B of chapter
7 68 (relating to assessable penalties) is amended by insert-
8 ing after section 6707 the following new section:

9 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**
10 **ABLE TRANSACTION INFORMATION WITH RE-**
11 **TURN.**

12 “(a) IMPOSITION OF PENALTY.—Any person who
13 fails to include on any return or statement any informa-
14 tion with respect to a reportable transaction which is re-
15 quired under section 6011 to be included with such return
16 or statement shall pay a penalty in the amount determined
17 under subsection (b).

18 “(b) AMOUNT OF PENALTY.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), the amount of the penalty under sub-
21 section (a) shall be—

22 “(A) \$10,000 in the case of a natural per-
23 son, and

24 “(B) \$50,000 in any other case.



1 “(2) LISTED TRANSACTION.—The amount of
2 the penalty under subsection (a) with respect to a
3 listed transaction shall be—

4 “(A) \$100,000 in the case of a natural
5 person, and

6 “(B) \$200,000 in any other case.

7 “(c) DEFINITIONS.—For purposes of this section—

8 “(1) REPORTABLE TRANSACTION.—The term
9 ‘reportable transaction’ means any transaction with
10 respect to which information is required to be in-
11 cluded with a return or statement because, as deter-
12 mined under regulations prescribed under section
13 6011, such transaction is of a type which the Sec-
14 retary determines as having a potential for tax
15 avoidance or evasion.

16 “(2) LISTED TRANSACTION.—The term ‘listed
17 transaction’ means a reportable transaction which is
18 the same as, or substantially similar to, a trans-
19 action specifically identified by the Secretary as a
20 tax avoidance transaction for purposes of section
21 6011.

22 “(d) AUTHORITY TO RESCIND PENALTY.—

23 “(1) IN GENERAL.—The Commissioner of In-
24 ternal Revenue may rescind all or any portion of any



1 penalty imposed by this section with respect to any
2 violation if—

3 “(A) the violation is with respect to a re-
4 reportable transaction other than a listed trans-
5 action, and

6 “(B) rescinding the penalty would promote
7 compliance with the requirements of this title
8 and effective tax administration.

9 “(2) NO JUDICIAL APPEAL.—Notwithstanding
10 any other provision of law, any determination under
11 this subsection may not be reviewed in any judicial
12 proceeding.

13 “(3) RECORDS.—If a penalty is rescinded under
14 paragraph (1), the Commissioner shall place in the
15 file in the Office of the Commissioner the opinion of
16 the Commissioner with respect to the determination,
17 including—

18 “(A) a statement of the facts and cir-
19 cumstances relating to the violation,

20 “(B) the reasons for the rescission, and

21 “(C) the amount of the penalty rescinded.

22 “(e) PENALTY REPORTED TO SEC.—In the case of
23 a person—

24 “(1) which is required to file periodic reports
25 under section 13 or 15(d) of the Securities Ex-



1 change Act of 1934 or is required to be consolidated
2 with another person for purposes of such reports,
3 and

4 “(2) which—

5 “(A) is required to pay a penalty under
6 this section with respect to a listed transaction,

7 “(B) is required to pay a penalty under
8 section 6662A with respect to any reportable
9 transaction at a rate prescribed under section
10 6662A(c), or

11 “(C) is required to pay a penalty under
12 section 6662(h) with respect to any reportable
13 transaction and would (but for section
14 6662A(e)(2)(C)) have been subject to penalty
15 under section 6662A at a rate prescribed under
16 section 6662A(c),

17 the requirement to pay such penalty shall be disclosed in
18 such reports filed by such person for such periods as the
19 Secretary shall specify. Failure to make a disclosure in
20 accordance with the preceding sentence shall be treated
21 as a failure to which the penalty under subsection (b)(2)
22 applies.

23 “(f) COORDINATION WITH OTHER PENALTIES.—The
24 penalty imposed by this section shall be in addition to any
25 other penalty imposed by this title.”



1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions for part I of subchapter B of chapter 68 is amended
3 by inserting after the item relating to section 6707 the
4 following:

“Sec. 6707A. Penalty for failure to include reportable transaction
information with return.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to returns and statements the due
7 date for which is after the date of the enactment of this
8 Act.

9 (d) REPORT.—The Commissioner of Internal Rev-
10 enue shall annually report to the Committee on Ways and
11 Means of the House of Representatives and the Committee
12 on Finance of the Senate—

13 (1) a summary of the total number and aggre-
14 gate amount of penalties imposed, and rescinded,
15 under section 6707A of the Internal Revenue Code
16 of 1986, and

17 (2) a description of each penalty rescinded
18 under section 6707(c) of such Code and the reasons
19 therefor.



1 **SEC. 812. ACCURACY-RELATED PENALTY FOR LISTED**
2 **TRANSACTIONS, OTHER REPORTABLE TRANS-**
3 **ACTIONS HAVING A SIGNIFICANT TAX AVOID-**
4 **ANCE PURPOSE, ETC.**

5 (a) IN GENERAL.—Subchapter A of chapter 68 is
6 amended by inserting after section 6662 the following new
7 section:

8 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**
9 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
10 **TO REPORTABLE TRANSACTIONS.**

11 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
12 reportable transaction understatement for any taxable
13 year, there shall be added to the tax an amount equal to
14 20 percent of the amount of such understatement.

15 “(b) REPORTABLE TRANSACTION UNDERSTATE-
16 MENT.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘reportable trans-
18 action understatement’ means the sum of—

19 “(A) the product of—

20 “(i) the amount of the increase (if
21 any) in taxable income which results from
22 a difference between the proper tax treat-
23 ment of an item to which this section ap-
24 plies and the taxpayer’s treatment of such
25 item (as shown on the taxpayer’s return of
26 tax), and



1 “(ii) the highest rate of tax imposed
2 by section 1 (section 11 in the case of a
3 taxpayer which is a corporation), and

4 “(B) the amount of the decrease (if any)
5 in the aggregate amount of credits determined
6 under subtitle A which results from a difference
7 between the taxpayer’s treatment of an item to
8 which this section applies (as shown on the tax-
9 payer’s return of tax) and the proper tax treat-
10 ment of such item.

11 For purposes of subparagraph (A), any reduction of
12 the excess of deductions allowed for the taxable year
13 over gross income for such year, and any reduction
14 in the amount of capital losses which would (without
15 regard to section 1211) be allowed for such year,
16 shall be treated as an increase in taxable income.

17 “(2) ITEMS TO WHICH SECTION APPLIES.—This
18 section shall apply to any item which is attributable
19 to—

20 “(A) any listed transaction, and

21 “(B) any reportable transaction (other
22 than a listed transaction) if a significant pur-
23 pose of such transaction is the avoidance or
24 evasion of Federal income tax.



1 “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED
2 AND OTHER AVOIDANCE TRANSACTIONS.—Subsection (a)
3 shall be applied by substituting ‘30 percent’ for ‘20 per-
4 cent’ with respect to the portion of any reportable trans-
5 action understatement with respect to which the require-
6 ment of section 6664(d)(2)(A) is not met.

7 “(d) DEFINITIONS OF REPORTABLE AND LISTED
8 TRANSACTIONS.—For purposes of this section, the terms
9 ‘reportable transaction’ and ‘listed transaction’ have the
10 respective meanings given to such terms by section
11 6707A(c).

12 “(e) SPECIAL RULES.—

13 “(1) COORDINATION WITH PENALTIES, ETC.,
14 ON OTHER UNDERSTATEMENTS.—In the case of an
15 understatement (as defined in section 6662(d)(2))—

16 “(A) the amount of such understatement
17 (determined without regard to this paragraph)
18 shall be increased by the aggregate amount of
19 reportable transaction understatements for pur-
20 poses of determining whether such understate-
21 ment is a substantial understatement under
22 section 6662(d)(1), and

23 “(B) the addition to tax under section
24 6662(a) shall apply only to the excess of the
25 amount of the substantial understatement (if



1 any) after the application of subparagraph (A)
2 over the aggregate amount of reportable trans-
3 action understatements.

4 “(2) COORDINATION WITH OTHER PEN-
5 ALTIES.—

6 “(A) APPLICATION OF FRAUD PENALTY.—
7 References to an underpayment in section 6663
8 shall be treated as including references to a re-
9 reportable transaction understatement.

10 “(B) NO DOUBLE PENALTY.—This section
11 shall not apply to any portion of an understatement
12 on which a penalty is imposed under section
13 6663.

14 “(C) CORRINATION WITH VALUATION
15 PENALTIES.—

16 “(i) SECTION 6662(E).—Section
17 6662(e) shall not apply to any portion of
18 an understatement on which a penalty is
19 imposed under this section.

20 “(ii) SECTION 6662(H).—This section
21 shall not apply to any portion of an under-
22 statement on which a penalty is imposed
23 under section 6662(h).

24 “(3) SPECIAL RULE FOR AMENDED RE-
25 TURNS.—Except as provided in regulations, in no



1 event shall any tax treatment included with an
2 amendment or supplement to a return of tax be
3 taken into account in determining the amount of any
4 reportable transaction understatement if the amend-
5 ment or supplement is filed after the earlier of the
6 date the taxpayer is first contacted by the Secretary
7 regarding the examination of the return or such
8 other date as is specified by the Secretary.”.

9 (b) DETERMINATION OF OTHER UNDERSTATE-
10 MENTS.—Subparagraph (A) of section 6662(d)(2) is
11 amended by adding at the end the following flush sen-
12 tence:

13 “The excess under the preceding sentence shall
14 be determined without regard to items to which
15 section 6662A applies.”.

16 (c) REASONABLE CAUSE EXCEPTION.—

17 (1) IN GENERAL.—Section 6664 is amended by
18 adding at the end the following new subsection:

19 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-
20 ABLE TRANSACTION UNDERSTATEMENTS.—

21 “(1) IN GENERAL.—No penalty shall be im-
22 posed under section 6662A with respect to any por-
23 tion of a reportable transaction understatement if it
24 is shown that there was a reasonable cause for such



1 portion and that the taxpayer acted in good faith
2 with respect to such portion.

3 “(2) SPECIAL RULES.—Paragraph (1) shall not
4 apply to any reportable transaction understatement
5 unless—

6 “(A) the relevant facts affecting the tax
7 treatment of the item are adequately disclosed
8 in accordance with the regulations prescribed
9 under section 6011,

10 “(B) there is or was substantial authority
11 for such treatment, and

12 “(C) the taxpayer reasonably believed that
13 such treatment was more likely than not the
14 proper treatment.

15 A taxpayer failing to adequately disclose in accord-
16 ance with section 6011 shall be treated as meeting
17 the requirements of subparagraph (A) if the penalty
18 for such failure was rescinded under section
19 6707A(d).

20 “(3) RULES RELATING TO REASONABLE BE-
21 LIEF.—For purposes of paragraph (2)(C)—

22 “(A) IN GENERAL.—A taxpayer shall be
23 treated as having a reasonable belief with re-
24 spect to the tax treatment of an item only if
25 such belief—



1 “(i) is based on the facts and law that
2 exist at the time the return of tax which
3 includes such tax treatment is filed, and

4 “(ii) relates solely to the taxpayer’s
5 chances of success on the merits of such
6 treatment and does not take into account
7 the possibility that a return will not be au-
8 dited, such treatment will not be raised on
9 audit, or such treatment will be resolved
10 through settlement if it is raised.

11 “(B) CERTAIN OPINIONS MAY NOT BE RE-
12 LIED UPON.—

13 “(i) IN GENERAL.—An opinion of a
14 tax advisor may not be relied upon to es-
15 tablish the reasonable belief of a taxpayer
16 if—

17 “(I) the tax advisor is described
18 in clause (ii), or

19 “(II) the opinion is described in
20 clause (iii).

21 “(ii) DISQUALIFIED TAX ADVISORS.—
22 A tax advisor is described in this clause if
23 the tax advisor—

24 “(I) is a material advisor (within
25 the meaning of section 6111(b)(1))



1 and participates in the organization,
2 management, promotion, or sale of
3 the transaction or is related (within
4 the meaning of section 267(b) or
5 707(b)(1)) to any person who so par-
6 ticipates,

7 “(II) is compensated directly or
8 indirectly by a material advisor with
9 respect to the transaction,

10 “(III) has a fee arrangement
11 with respect to the transaction which
12 is contingent on all or part of the in-
13 tended tax benefits from the trans-
14 action being sustained, or

15 “(IV) as determined under regu-
16 lations prescribed by the Secretary,
17 has a disqualifying financial interest
18 with respect to the transaction.

19 “(iii) DISQUALIFIED OPINIONS.—For
20 purposes of clause (i), an opinion is dis-
21 qualified if the opinion—

22 “(I) is based on unreasonable
23 factual or legal assumptions (includ-
24 ing assumptions as to future events),



1 “(II) unreasonably relies on rep-
2 resentations, statements, findings, or
3 agreements of the taxpayer or any
4 other person,

5 “(III) does not identify and con-
6 sider all relevant facts, or

7 “(IV) fails to meet any other re-
8 quirement as the Secretary may pre-
9 scribe.”.

10 (2) CONFORMING AMENDMENTS.—

11 (A) Paragraph (1) of section 6664(c) is
12 amended by striking “this part” and inserting
13 “section 6662 or 6663”.

14 (B) The heading for subsection (c) of sec-
15 tion 6664 is amended by inserting “FOR UN-
16 DERPAYMENTS” after “EXCEPTION”.

17 (d) REDUCTION IN PENALTY FOR SUBSTANTIAL UN-
18 DERSTATEMENT OF INCOME TAX NOT TO APPLY TO TAX
19 SHELTERS.—Subparagraph (C) of section 6662(d)(2) (re-
20 lating to substantial understatement of income tax) is
21 amended to read as follows:

22 “(C) REDUCTION NOT TO APPLY TO TAX
23 SHELTERS.—



1 “(i) IN GENERAL.—Subparagraph (B)
2 shall not apply to any item attributable to
3 a tax shelter.

4 “(ii) TAX SHELTER.—For purposes of
5 clause (i), the term ‘tax shelter’ means—

6 “(I) a partnership or other enti-
7 ty,

8 “(II) any investment plan or ar-
9 rangement, or

10 “(III) any other plan or arrange-
11 ment,

12 if a significant purpose of such partner-
13 ship, entity, plan, or arrangement is the
14 avoidance or evasion of Federal income
15 tax.”.

16 (e) CLERICAL AMENDMENTS.—

17 (1) The heading for section 6662 is amended to
18 read as follows:

19 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
20 **ON UNDERPAYMENTS.”.**

21 (2) The table of sections for part II of sub-
22 chapter A of chapter 68 is amended by striking the
23 item relating to section 6662 and inserting the fol-
24 lowing new items:

 “Sec. 6662. Imposition of accuracy-related penalty on underpay-
 ments.



“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”.

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

4 **SEC. 813. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
5 **PRIVILEGES RELATING TO TAXPAYER COM-**
6 **MUNICATIONS.**

7 (a) IN GENERAL.—Section 7525(b) (relating to sec-
8 tion not to apply to communications regarding corporate
9 tax shelters) is amended to read as follows:

10 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS
11 REGARDING TAX SHELTERS.—The privilege under sub-
12 section (a) shall not apply to any written communication
13 which is—

14 “(1) between a federally authorized tax practi-
15 tioner and—

16 “(A) any person,

17 “(B) any director, officer, employee, agent,
18 or representative of the person, or

19 “(C) any other person holding a capital or
20 profits interest in the person, and

21 “(2) in connection with the promotion of the di-
22 rect or indirect participation of the person in any
23 tax shelter (as defined in section
24 6662(d)(2)(C)(ii)).”.



1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to communications made on or
3 after the date of the enactment of this Act.

4 **SEC. 814. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**
5 **FOR WHICH REQUIRED LISTED TRANS-**
6 **ACTIONS NOT REPORTED.**

7 (a) IN GENERAL.—Section 6501(c) (relating to ex-
8 ceptions) is amended by adding at the end the following
9 new paragraph:

10 “(10) LISTED TRANSACTIONS.—If a taxpayer
11 fails to include on any return or statement for any
12 taxable year any information with respect to a listed
13 transaction (as defined in section 6707A(c)(2))
14 which is required under section 6011 to be included
15 with such return or statement, the time for assess-
16 ment of any tax imposed by this title with respect
17 to such transaction shall not expire before the date
18 which is 1 year after the earlier of—

19 “(A) the date on which the Secretary is
20 furnished the information so required, or

21 “(B) the date that a material advisor (as
22 defined in section 6111) meets the requirements
23 of section 6112 with respect to a request by the
24 Secretary under section 6112(b) relating to



1 such transaction with respect to such tax-
2 payer.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to taxable years with respect to
5 which the period for assessing a deficiency did not expire
6 before the date of the enactment of this Act.

7 **SEC. 815. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

8 (a) **IN GENERAL.**—Section 6111 (relating to registra-
9 tion of tax shelters) is amended to read as follows:

10 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

11 “(a) **IN GENERAL.**—Each material advisor with re-
12 spect to any reportable transaction shall make a return
13 (in such form as the Secretary may prescribe) setting
14 forth—

15 “(1) information identifying and describing the
16 transaction,

17 “(2) information describing any potential tax
18 benefits expected to result from the transaction, and

19 “(3) such other information as the Secretary
20 may prescribe.

21 Such return shall be filed not later than the date specified
22 by the Secretary.

23 “(b) **DEFINITIONS.**—For purposes of this section—

24 “(1) **MATERIAL ADVISOR.**—



1 “(A) IN GENERAL.—The term ‘material
2 advisor’ means any person—

3 “(i) who provides any material aid,
4 assistance, or advice with respect to orga-
5 nizing, managing, promoting, selling, im-
6 plementing, insuring, or carrying out any
7 reportable transaction, and

8 “(ii) who directly or indirectly derives
9 gross income in excess of the threshold
10 amount (or such other amount as may be
11 prescribed by the Secretary) for such ad-
12 vice or assistance.

13 “(B) THRESHOLD AMOUNT.—For purposes
14 of subparagraph (A), the threshold amount is—

15 “(i) \$50,000 in the case of a report-
16 able transaction substantially all of the tax
17 benefits from which are provided to nat-
18 ural persons, and

19 “(ii) \$250,000 in any other case.

20 “(2) REPORTABLE TRANSACTION.—The term
21 ‘reportable transaction’ has the meaning given to
22 such term by section 6707A(c).

23 “(c) REGULATIONS.—The Secretary may prescribe
24 regulations which provide—



1 “(1) that only 1 person shall be required to
2 meet the requirements of subsection (a) in cases in
3 which 2 or more persons would otherwise be re-
4 quired to meet such requirements,

5 “(2) exemptions from the requirements of this
6 section, and

7 “(3) such rules as may be necessary or appro-
8 priate to carry out the purposes of this section.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) The item relating to section 6111 in the
11 table of sections for subchapter B of chapter 61 is
12 amended to read as follows:

 “Sec. 6111. Disclosure of reportable transactions.”.

13 (2) So much of section 6112 as precedes sub-
14 section (c) thereof is amended to read as follows:

15 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
16 **ACTIONS MUST KEEP LISTS OF ADVISEES,**
17 **ETC.**

18 “(a) IN GENERAL.—Each material advisor (as de-
19 fined in section 6111) with respect to any reportable
20 transaction (as defined in section 6707A(c)) shall (wheth-
21 er or not required to file a return under section 6111 with
22 respect to such transaction) maintain (in such manner as
23 the Secretary may by regulations prescribe) a list—



1 “(1) identifying each person with respect to
2 whom such advisor acted as a material advisor with
3 respect to such transaction, and

4 “(2) containing such other information as the
5 Secretary may by regulations require.”.

6 (3) Section 6112 is amended—

7 (A) by redesignating subsection (c) as sub-
8 section (b),

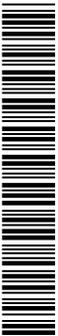
9 (B) by inserting “written” before “re-
10 quest” in subsection (b)(1) (as so redesign-
11 ated), and

12 (C) by striking “shall prescribe” in sub-
13 section (b)(2) (as so redesignated) and inserting
14 “may prescribe”.

15 (4) The item relating to section 6112 in the
16 table of sections for subchapter B of chapter 61 is
17 amended to read as follows:

 “Sec. 6112. Material advisors of reportable transactions must
 keep lists of advisees, etc.”.

18 (5)(A) The heading for section 6708 is amend-
19 ed to read as follows:



1 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
2 **WITH RESPECT TO REPORTABLE TRANS-**
3 **ACTIONS.”**

4 (B) The item relating to section 6708 in the
5 table of sections for part I of subchapter B of chap-
6 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to transactions with respect to
9 which material aid, assistance, or advice referred to in sec-
10 tion 6111(b)(1)(A)(i) of the Internal Revenue Code of
11 1986 (as added by this section) is provided after the date
12 of the enactment of this Act.

13 **SEC. 816. FAILURE TO FURNISH INFORMATION REGARDING**
14 **REPORTABLE TRANSACTIONS.**

15 (a) IN GENERAL.—Section 6707 (relating to failure
16 to furnish information regarding tax shelters) is amended
17 to read as follows:

18 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
19 **ING REPORTABLE TRANSACTIONS.**

20 “(a) IN GENERAL.—If a person who is required to
21 file a return under section 6111(a) with respect to any
22 reportable transaction—

23 “(1) fails to file such return on or before the
24 date prescribed therefor, or



1 “(2) files false or incomplete information with
2 the Secretary with respect to such transaction,
3 such person shall pay a penalty with respect to such return
4 in the amount determined under subsection (b).

5 “(b) AMOUNT OF PENALTY.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), the penalty imposed under subsection (a)
8 with respect to any failure shall be \$50,000.

9 “(2) LISTED TRANSACTIONS.—The penalty im-
10 posed under subsection (a) with respect to any listed
11 transaction shall be an amount equal to the greater
12 of—

13 “(A) \$200,000, or

14 “(B) 50 percent of the gross income de-
15 rived by such person with respect to aid, assist-
16 ance, or advice which is provided with respect
17 to the listed transaction before the date the re-
18 turn is filed under section 6111.

19 Subparagraph (B) shall be applied by substituting
20 ‘75 percent’ for ‘50 percent’ in the case of an inten-
21 tional failure or act described in subsection (a).

22 “(c) RESCISSION AUTHORITY.—The provisions of
23 section 6707A(d) (relating to authority of Commissioner
24 to rescind penalty) shall apply to any penalty imposed
25 under this section.



1 “(d) REPORTABLE AND LISTED TRANSACTIONS.—
2 For purposes of this section, the terms ‘reportable trans-
3 action’ and ‘listed transaction’ have the respective mean-
4 ings given to such terms by section 6707A(c).”.

5 (b) CLERICAL AMENDMENT.—The item relating to
6 section 6707 in the table of sections for part I of sub-
7 chapter B of chapter 68 is amended by striking “tax shel-
8 ters” and inserting “reportable transactions”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to returns the due date for which
11 is after the date of the enactment of this Act.

12 **SEC. 817. MODIFICATION OF PENALTY FOR FAILURE TO**
13 **MAINTAIN LISTS OF INVESTORS.**

14 (a) IN GENERAL.—Subsection (a) of section 6708 is
15 amended to read as follows:

16 “(a) IMPOSITION OF PENALTY.—

17 “(1) IN GENERAL.—If any person who is re-
18 quired to maintain a list under section 6112(a) fails
19 to make such list available upon written request to
20 the Secretary in accordance with section 6112(b)
21 within 20 business days after the date of such re-
22 quest, such person shall pay a penalty of \$10,000
23 for each day of such failure after such 20th day.

24 “(2) REASONABLE CAUSE EXCEPTION.—No
25 penalty shall be imposed by paragraph (1) with re-



1 spect to the failure on any day if such failure is due
2 to reasonable cause.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to requests made after the date
5 of the enactment of this Act.

6 **SEC. 818. PENALTY ON PROMOTERS OF TAX SHELTERS.**

7 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-
8 TERS.—Section 6700(a) is amended by adding at the end
9 the following new sentence: “Notwithstanding the first
10 sentence, if an activity with respect to which a penalty
11 imposed under this subsection involves a statement de-
12 scribed in paragraph (2)(A), the amount of the penalty
13 shall be equal to 50 percent of the gross income derived
14 (or to be derived) from such activity by the person on
15 which the penalty is imposed.”

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to activities after the date of the
18 enactment of this Act.

19 **SEC. 819. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**
20 **MENT PENALTY FOR NONREPORTABLE**
21 **TRANSACTIONS.**

22 (a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-
23 TIONS.—Section 6662(d)(1)(B) (relating to special rule
24 for corporations) is amended to read as follows:



1 “(B) SPECIAL RULE FOR CORPORA-
2 TIONS.—In the case of a corporation other than
3 an S corporation or a personal holding company
4 (as defined in section 542), there is a substan-
5 tial understatement of income tax for any tax-
6 able year if the amount of the understatement
7 for the taxable year exceeds the lesser of—

8 “(i) 10 percent of the tax required to
9 be shown on the return for the taxable
10 year (or, if greater, \$10,000), or

11 “(ii) \$10,000,000.”.

12 (b) SECRETARIAL LIST.—

13 (1) IN GENERAL.—Section 6662(d) is amended
14 by adding at the end the following new paragraph:

15 “(3) SECRETARIAL LIST.—The Secretary may
16 prescribe a list of positions which the Secretary be-
17 lieves do not meet the 1 or more of the standards
18 specified in paragraph (2)(B)(i), section 6664(d)(2),
19 and section 6694(a)(1). Such list (and any revisions
20 thereof) shall be published in the Federal Register
21 or the Internal Revenue Bulletin.”.

22 (2) CONFORMING AMENDMENT.—Paragraph (2)
23 of section 6662(d) is amended by striking subpara-
24 graph (D).



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

4 **SEC. 820. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
5 **CONDUCT RELATED TO TAX SHELTERS AND**
6 **REPORTABLE TRANSACTIONS.**

7 (a) IN GENERAL.—Section 7408 (relating to action
8 to enjoin promoters of abusive tax shelters, etc.) is amend-
9 ed by redesignating subsection (c) as subsection (d) and
10 by striking subsections (a) and (b) and inserting the fol-
11 lowing new subsections:

12 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-
13 tion in the name of the United States to enjoin any person
14 from further engaging in specified conduct may be com-
15 menced at the request of the Secretary. Any action under
16 this section shall be brought in the district court of the
17 United States for the district in which such person resides,
18 has his principal place of business, or has engaged in spec-
19 ified conduct. The court may exercise its jurisdiction over
20 such action (as provided in section 7402(a)) separate and
21 apart from any other action brought by the United States
22 against such person.

23 “(b) ADJUDICATION AND DECREE.—In any action
24 under subsection (a), if the court finds—



1 “(1) that the person has engaged in any speci-
2 fied conduct, and

3 “(2) that injunctive relief is appropriate to pre-
4 vent recurrence of such conduct,

5 the court may enjoin such person from engaging in such
6 conduct or in any other activity subject to penalty under
7 this title.

8 “(c) SPECIFIED CONDUCT.—For purposes of this
9 section, the term ‘specified conduct’ means any action, or
10 failure to take action, which is—

11 “(1) subject to penalty under section 6700,
12 6701, 6707, or 6708, or

13 “(2) in violation of any requirement under reg-
14 ulations issued under section 330 of title 31, United
15 States Code.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) The heading for section 7408 is amended to
18 read as follows:

19 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
20 **LATED TO TAX SHELTERS AND REPORTABLE**
21 **TRANSACTIONS.”**

22 (2) The table of sections for subchapter A of
23 chapter 76 is amended by striking the item relating
24 to section 7408 and inserting the following new
25 item:



“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.”.

1 (c) EFFECTIVE DATE.—The amendment made by
2 this section shall take effect on the day after the date of
3 the enactment of this Act.

4 **SEC. 821. PENALTY ON FAILURE TO REPORT INTERESTS IN**
5 **FOREIGN FINANCIAL ACCOUNTS.**

6 (a) IN GENERAL.—Section 5321(a)(5) of title 31,
7 United States Code, is amended to read as follows:

8 “(5) FOREIGN FINANCIAL AGENCY TRANS-
9 ACTION VIOLATION.—

10 “(A) PENALTY AUTHORIZED.—The Sec-
11 retary of the Treasury may impose a civil
12 money penalty on any person who violates, or
13 causes any violation of, any provision of section
14 5314.

15 “(B) AMOUNT OF PENALTY.—

16 “(i) IN GENERAL.—Except as pro-
17 vided in subparagraph (C), the amount of
18 any civil penalty imposed under subpara-
19 graph (A) shall not exceed \$10,000.

20 “(ii) REASONABLE CAUSE EXCEP-
21 TION.—No penalty shall be imposed under
22 subparagraph (A) with respect to any vio-
23 lation if—



1 “(I) such violation was due to
2 reasonable cause, and

3 “(II) the amount of the trans-
4 action or the balance in the account
5 at the time of the transaction was
6 properly reported.

7 “(C) WILLFUL VIOLATIONS.—In the case
8 of any person willfully violating, or willfully
9 causing any violation of, any provision of sec-
10 tion 5314—

11 “(i) the maximum penalty under sub-
12 paragraph (B)(i) shall be increased to the
13 greater of—

14 “(I) \$100,000, or

15 “(II) 50 percent of the amount
16 determined under subparagraph (D),
17 and

18 “(ii) subparagraph (B)(ii) shall not
19 apply.

20 “(D) AMOUNT.—The amount determined
21 under this subparagraph is—

22 “(i) in the case of a violation involving
23 a transaction, the amount of the trans-
24 action, or



1 “(ii) in the case of a violation involv-
2 ing a failure to report the existence of an
3 account or any identifying information re-
4 quired to be provided with respect to an
5 account, the balance in the account at the
6 time of the violation.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to violations occurring after the
9 date of the enactment of this Act.

10 **SEC. 822. REGULATION OF INDIVIDUALS PRACTICING BE-**
11 **FORE THE DEPARTMENT OF TREASURY.**

12 (a) CENSURE; IMPOSITION OF PENALTY.—

13 (1) IN GENERAL.—Section 330(b) of title 31,
14 United States Code, is amended—

15 (A) by inserting “, or censure,” after “De-
16 partment”, and

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

19 “The Secretary may impose a monetary penalty on any
20 representative described in the preceding sentence. If the
21 representative was acting on behalf of an employer or any
22 firm or other entity in connection with the conduct giving
23 rise to such penalty, the Secretary may impose a monetary
24 penalty on such employer, firm, or entity if it knew, or
25 reasonably should have known, of such conduct. Such pen-



1 alty shall not exceed the gross income derived (or to be
2 derived) from the conduct giving rise to the penalty and
3 may be in addition to, or in lieu of, any suspension, disbar-
4 ment, or censure of the representative.”.

5 (2) EFFECTIVE DATE.—The amendments made
6 by this subsection shall apply to actions taken after
7 the date of the enactment of this Act.

8 (b) TAX SHELTER OPINIONS, ETC.—Section 330 of
9 such title 31 is amended by adding at the end the fol-
10 lowing new subsection:

11 “(d) Nothing in this section or in any other provision
12 of law shall be construed to limit the authority of the Sec-
13 retary of the Treasury to impose standards applicable to
14 the rendering of written advice with respect to any entity,
15 transaction plan or arrangement, or other plan or arrange-
16 ment, which is of a type which the Secretary determines
17 as having a potential for tax avoidance or evasion.”.

18 **Part II—Other Provisions**

19 **SEC. 831. TREATMENT OF STRIPPED INTERESTS IN BOND**
20 **AND PREFERRED STOCK FUNDS, ETC.**

21 (a) IN GENERAL.—Section 1286 (relating to tax
22 treatment of stripped bonds) is amended by redesignating
23 subsection (f) as subsection (g) and by inserting after sub-
24 section (e) the following new subsection:



1 “(f) TREATMENT OF STRIPPED INTERESTS IN BOND
2 AND PREFERRED STOCK FUNDS, ETC.—In the case of an
3 account or entity substantially all of the assets of which
4 consist of bonds, preferred stock, or a combination thereof,
5 the Secretary may by regulations provide that rules simi-
6 lar to the rules of this section and 305(e), as appropriate,
7 shall apply to interests in such account or entity to which
8 (but for this subsection) this section or section 305(e), as
9 the case may be, would not apply.”.

10 (b) CROSS REFERENCE.—Subsection (e) of section
11 305 is amended by adding at the end the following new
12 paragraph:

13 “(7) CROSS REFERENCE.—

**“For treatment of stripped interests in certain ac-
counts or entities holding preferred stock, see sec-
tion 1286(f).”.**

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to purchases and dispositions after
16 the date of the enactment of this Act.

17 **SEC. 832. MINIMUM HOLDING PERIOD FOR FOREIGN TAX**
18 **CREDIT ON WITHHOLDING TAXES ON INCOME**
19 **OTHER THAN DIVIDENDS.**

20 (a) IN GENERAL.—Section 901 is amended by redess-
21 ignating subsection (l) as subsection (m) and by inserting
22 after subsection (k) the following new subsection:



1 “(1) MINIMUM HOLDING PERIOD FOR WITHHOLDING
2 TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS
3 ETC.—

4 “(1) IN GENERAL.—In no event shall a credit
5 be allowed under subsection (a) for any withholding
6 tax (as defined in subsection (k)) on any item of in-
7 come or gain with respect to any property if—

8 “(A) such property is held by the recipient
9 of the item for 15 days or less during the 31-
10 day period beginning on the date which is 15
11 days before the date on which the right to re-
12 ceive payment of such item arises, or

13 “(B) to the extent that the recipient of the
14 item is under an obligation (whether pursuant
15 to a short sale or otherwise) to make related
16 payments with respect to positions in substan-
17 tially similar or related property.

18 This paragraph shall not apply to any dividend to
19 which subsection (k) applies.

20 “(2) EXCEPTION FOR TAXES PAID BY DEAL-
21 ERS.—

22 “(A) IN GENERAL.—Paragraph (1) shall
23 not apply to any qualified tax with respect to
24 any property held in the active conduct in a for-



1 eign country of a business as a dealer in such
2 property.

3 “(B) QUALIFIED TAX.—For purposes of
4 subparagraph (A), the term ‘qualified tax’
5 means a tax paid to a foreign country (other
6 than the foreign country referred to in subpara-
7 graph (A)) if—

8 “(i) the item to which such tax is at-
9 tributable is subject to taxation on a net
10 basis by the country referred to in sub-
11 paragraph (A), and

12 “(ii) such country allows a credit
13 against its net basis tax for the full
14 amount of the tax paid to such other for-
15 eign country.

16 “(C) DEALER.—For purposes of subpara-
17 graph (A), the term ‘dealer’ means—

18 “(i) with respect to a security, any
19 person to whom paragraphs (1) and (2) of
20 subsection (k) would not apply by reason
21 of paragraph (4) thereof if such security
22 were stock, and

23 “(ii) with respect to any other prop-
24 erty, any person with respect to whom



1 such property is described in section
2 1221(a)(1).

3 “(D) REGULATIONS.—The Secretary may
4 prescribe such regulations as may be appro-
5 priate to carry out this paragraph, including
6 regulations to prevent the abuse of the excep-
7 tion provided by this paragraph and to treat
8 other taxes as qualified taxes.

9 “(3) EXCEPTIONS.—The Secretary may by reg-
10 ulation provide that paragraph (1) shall not apply to
11 property where the Secretary determines that the
12 application of paragraph (1) to such property is not
13 necessary to carry out the purposes of this sub-
14 section.

15 “(4) CERTAIN RULES TO APPLY.—Rules similar
16 to the rules of paragraphs (5), (6), and (7) of sub-
17 section (k) shall apply for purposes of this sub-
18 section.

19 “(5) DETERMINATION OF HOLDING PERIOD.—
20 Holding periods shall be determined for purposes of
21 this subsection without regard to section 1235 or
22 any similar rule.”.

23 (b) CONFORMING AMENDMENT.—The heading of
24 subsection (k) of section 901 is amended by inserting “ON
25 DIVIDENDS” after “TAXES”.



1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid or accrued more
3 than 30 days after the date of the enactment of this Act.

4 **SEC. 833. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS**
5 **TRANSFERS.**

6 (a) TREATMENT OF CONTRIBUTED PROPERTY WITH
7 BUILT-IN LOSS.—Paragraph (1) of section 704(c) is
8 amended by striking “and” at the end of subparagraph
9 (A), by striking the period at the end of subparagraph
10 (B) and inserting “, and”, and by adding at the end the
11 following:

12 “(C) if any property so contributed has a
13 built-in loss—

14 “(i) such built-in loss shall be taken
15 into account only in determining the
16 amount of items allocated to the contrib-
17 uting partner, and

18 “(ii) except as provided in regulations,
19 in determining the amount of items allo-
20 cated to other partners, the basis of the
21 contributed property in the hands of the
22 partnership shall be treated as being equal
23 to its fair market value at the time of con-
24 tribution.



1 For purposes of subparagraph (C), the term ‘built-
2 in loss’ means the excess of the adjusted basis of the
3 property (determined without regard to subpara-
4 graph (C)(ii)) over its fair market value at the time
5 of contribution.”.

6 (b) SPECIAL RULES FOR TRANSFERS OF PARTNER-
7 SHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN
8 LOSS.—

9 (1) ADJUSTMENT OF PARTNERSHIP BASIS RE-
10 QUIRED.—Subsection (a) of section 743 (relating to
11 optional adjustment to basis of partnership prop-
12 erty) is amended by inserting before the period “or
13 unless the partnership has a substantial built-in loss
14 immediately after such transfer”.

15 (2) ADJUSTMENT.—Subsection (b) of section
16 743 is amended by inserting “or which has a sub-
17 stantial built-in loss immediately after such trans-
18 fer” after “section 754 is in effect”.

19 (3) SUBSTANTIAL BUILT-IN LOSS.—Section 743
20 is amended by adding at the end the following new
21 subsection:

22 “(d) SUBSTANTIAL BUILT-IN LOSS.—

23 “(1) IN GENERAL.—For purposes of this sec-
24 tion, a partnership has a substantial built-in loss
25 with respect to a transfer of an interest in a part-



1 nership if the partnership's adjusted basis in the
2 partnership property exceeds by more than \$250,000
3 the fair market value of such property.

4 “(2) REGULATIONS.—The Secretary shall pre-
5 scribe such regulations as may be appropriate to
6 carry out the purposes of paragraph (1) and section
7 734(d), including regulations aggregating related
8 partnerships and disregarding property acquired by
9 the partnership in an attempt to avoid such pur-
10 poses.”.

11 (4) ALTERNATIVE RULES FOR ELECTING IN-
12 VESTMENT PARTNERSHIPS.—

13 (A) IN GENERAL.—Section 743 is amended
14 by adding after subsection (d) the following new
15 subsection:

16 “(e) ALTERNATIVE RULES FOR ELECTING INVEST-
17 MENT PARTNERSHIPS.—

18 “(1) NO ADJUSTMENT OF PARTNERSHIP
19 BASIS.—For purposes of this section, an electing in-
20 vestment partnership shall not be treated as having
21 a substantial built-in loss with respect to any trans-
22 fer occurring while the election under paragraph
23 (6)(A) is in effect.

24 “(2) LOSS DEFERRAL FOR TRANSFEREE PART-
25 NER.—In the case of a transfer of an interest in an



1 electing investment partnership, the transferee part-
2 ner's distributive share of losses (without regard to
3 gains) from the sale or exchange of partnership
4 property shall not be allowed except to the extent
5 that it is established that such losses exceed the loss
6 (if any) recognized by the transferor (or any prior
7 transferor to the extent not fully offset by a prior
8 disallowance under this paragraph) on the transfer
9 of the partnership interest.

10 “(3) NO REDUCTION IN PARTNERSHIP BASIS.—
11 Losses disallowed under paragraph (2) shall not de-
12 crease the transferee partner's basis in the partner-
13 ship interest.

14 “(4) EFFECT OF TERMINATION OF PARTNER-
15 SHIP.—This subsection shall be applied without re-
16 gard to any termination of a partnership under sec-
17 tion 708(b)(1)(B).

18 “(5) CERTAIN BASIS REDUCTIONS TREATED AS
19 LOSSES.—In the case of a transferee partner whose
20 basis in property distributed by the partnership is
21 reduced under section 732(a)(2), the amount of the
22 loss recognized by the transferor on the transfer of
23 the partnership interest which is taken into account
24 under paragraph (2) shall be reduced by the amount
25 of such basis reduction.



1 “(6) ELECTING INVESTMENT PARTNERSHIP.—

2 For purposes of this subsection, the term ‘electing
3 investment partnership’ means any partnership if—

4 “(A) the partnership makes an election to
5 have this subsection apply,

6 “(B) the partnership would be an invest-
7 ment company under section 3(a)(1)(A) of the
8 Investment Company Act of 1940 but for an
9 exemption under paragraph (1) or (7) of section
10 3(e) of such Act,

11 “(C) such partnership has never been en-
12 gaged in a trade or business,

13 “(D) substantially all of the assets of such
14 partnership are held for investment,

15 “(E) at least 95 percent of the assets con-
16 tributed to such partnership consist of money,

17 “(F) no assets contributed to such part-
18 nership had an adjusted basis in excess of fair
19 market value at the time of contribution,

20 “(G) all partnership interests of such part-
21 nership are issued by such partnership pursu-
22 ant to a private offering before the date which
23 is 24 months after the date of the first capital
24 contribution to such partnership,



1 “(H) the partnership agreement of such
2 partnership has substantive restrictions on each
3 partner’s ability to cause a redemption of the
4 partner’s interest, and

5 “(I) the partnership agreement of such
6 partnership provides for a term that is not in
7 excess of 15 years.

8 The election described in subparagraph (A), once
9 made, shall be irrevocable except with the consent of
10 the Secretary.

11 “(7) REGULATIONS.—The Secretary shall pre-
12 scribe such regulations as may be appropriate to
13 carry out the purposes of this subsection, including
14 regulations for applying this subsection to tiered
15 partnerships.”.

16 (B) INFORMATION REPORTING.—Section
17 6031 is amended by adding at the end the fol-
18 lowing new subsection:

19 “(f) ELECTING INVESTMENT PARTNERSHIPS.—In
20 the case of any electing investment partnership (as defined
21 in section 743(e)(6)), the information required under sub-
22 section (b) to be furnished to any partner to whom section
23 743(e)(2) applies shall include such information as is nec-
24 essary to enable the partner to compute the amount of
25 losses disallowed under section 743(e).”.



1 (5) SPECIAL RULE FOR SECURITIZATION PART-
2 NERSHIPS.—Section 743 is amended by adding after
3 subsection (e) the following new subsection:

4 “(f) EXCEPTION FOR SECURITIZATION PARTNER-
5 SHIPS.—

6 “(1) NO ADJUSTMENT OF PARTNERSHIP
7 BASIS.—For purposes of this section, a
8 securitization partnership shall not be treated as
9 having a substantial built-in loss with respect to any
10 transfer.

11 “(2) SECURITIZATION PARTNERSHIP.—For pur-
12 poses of paragraph (1), the term ‘securitization part-
13 nership’ means any partnership the sole business ac-
14 tivity of which is to issue securities which provide for
15 a fixed principal (or similar) amount and which are
16 primarily serviced by the cash flows of a discrete
17 pool (either fixed or revolving) of receivables or other
18 financial assets that by their terms convert into cash
19 in a finite period, but only if the sponsor of the pool
20 reasonably believes that the receivables and other fi-
21 nancial assets comprising the pool are not acquired
22 so as to be disposed of.”

23 (6) CLERICAL AMENDMENTS.—

24 (A) The section heading for section 743 is
25 amended to read as follows:



1 **“SEC. 743. SPECIAL RULES WHERE SECTION 754 ELECTION**
2 **OR SUBSTANTIAL BUILT-IN LOSS.”**

3 (B) The table of sections for subpart C of
4 part II of subchapter K of chapter 1 is amend-
5 ed by striking the item relating to section 743
6 and inserting the following new item:

“Sec. 743. Special rules where section 754 election or substantial
built-in loss.”.

7 (c) **ADJUSTMENT TO BASIS OF UNDISTRIBUTED**
8 **PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL**
9 **BASIS REDUCTION.—**

10 (1) **ADJUSTMENT REQUIRED.—**Subsection (a)
11 of section 734 (relating to optional adjustment to
12 basis of undistributed partnership property) is
13 amended by inserting before the period “or unless
14 there is a substantial basis reduction”.

15 (2) **ADJUSTMENT.—**Subsection (b) of section
16 734 is amended by inserting “or unless there is a
17 substantial basis reduction” after “section 754 is in
18 effect”.

19 (3) **SUBSTANTIAL BASIS REDUCTION.—**Section
20 734 is amended by adding at the end the following
21 new subsection:

22 **“(d) SUBSTANTIAL BASIS REDUCTION.—**

23 **“(1) IN GENERAL.—**For purposes of this sec-
24 tion, there is a substantial basis reduction with re-



1 spect to a distribution if the sum of the amounts de-
2 scribed in subparagraphs (A) and (B) of subsection
3 (b)(2) exceeds \$250,000.

4 “(2) REGULATIONS.—

“For regulations to carry out this subsection, see
section 743(d)(2).”.

5 (4) CLERICAL AMENDMENTS.—

6 (A) The section heading for section 734 is
7 amended to read as follows:

8 **“SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED**
9 **PARTNERSHIP PROPERTY WHERE SECTION**
10 **754 ELECTION OR SUBSTANTIAL BASIS RE-**
11 **DUCTION.”**

12 (B) The table of sections for subpart B of
13 part II of subchapter K of chapter 1 is amend-
14 ed by striking the item relating to section 734
15 and inserting the following new item:

“Sec. 734. Adjustment to basis of undistributed partnership prop-
erty where section 754 election or substantial basis
reduction.”.

16 (d) EFFECTIVE DATES.—

17 (1) SUBSECTION (a).—The amendment made
18 by subsection (a) shall apply to contributions made
19 after the date of the enactment of this Act.

20 (2) SUBSECTION (b).—

21 (A) IN GENERAL.—Except as provided in
22 subparagraph (B), the amendments made by



1 subsection (b) shall apply to transfers after the
2 date of the enactment of this Act.

3 (B) TRANSITION RULE.—In the case of an
4 electing investment partnership which is in ex-
5 istence on June 4, 2004, section 743(e)(6)(H)
6 of the Internal Revenue Code of 1986, as added
7 by this section, shall not apply to such partner-
8 ship and section 743(e)(6)(I) of such Code, as
9 so added, shall be applied by substituting “20
10 years” for “15 years”.

11 (3) SUBSECTION (c).—The amendments made
12 by subsection (c) shall apply to distributions after
13 the date of the enactment of this Act.

14 **SEC. 834. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
15 **STOCK HELD BY PARTNERSHIP IN COR-**
16 **PORATE PARTNER.**

17 (a) IN GENERAL.—Section 755 is amended by adding
18 at the end the following new subsection:

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

23 “(1) no allocation may be made to stock in a
24 corporation (or any person related (within the mean-



1 ing of sections 267(b) and 707(b)(1)) to such cor-
2 poration) which is a partner in the partnership, and

3 “(2) any amount not allocable to stock by rea-
4 son of paragraph (1) shall be allocated under sub-
5 section (a) to other partnership property.

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

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

14 **SEC. 835. REPEAL OF SPECIAL RULES FOR FASITS.**

15 (a) IN GENERAL.—Part V of subchapter M of chap-
16 ter 1 (relating to financial asset securitization investment
17 trusts) is hereby repealed.

18 (b) CONFORMING AMENDMENTS.—

19 (1) Paragraph (6) of section 56(g) is amended
20 by striking “REMIC, or FASIT” and inserting “or
21 REMIC”.

22 (2) Clause (ii) of section 382(l)(4)(B) is amend-
23 ed by striking “a REMIC to which part IV of sub-
24 chapter M applies, or a FASIT to which part V of



1 subchapter M applies,” and inserting “or a REMIC
2 to which part IV of subchapter M applies,”.

3 (3) Paragraph (1) of section 582(c) is amended
4 by striking “, and any regular interest in a
5 FASIT,”.

6 (4) Subparagraph (E) of section 856(c)(5) is
7 amended by striking the last sentence.

8 (5)(A) Section 860G(a)(1) is amended by add-
9 ing at the end the following new sentence: “An inter-
10 est shall not fail to qualify as a regular interest sole-
11 ly because the specified principal amount of the reg-
12 ular interest (or the amount of interest accrued on
13 the regular interest) can be reduced as a result of
14 the nonoccurrence of 1 or more contingent payments
15 with respect to any reverse mortgage loan held by
16 the REMIC if, on the startup day for the REMIC,
17 the sponsor reasonably believes that all principal and
18 interest due under the regular interest will be paid
19 at or prior to the liquidation of the REMIC.”.

20 (B) The last sentence of section 860G(a)(3) is
21 amended by inserting “, and any reverse mortgage
22 loan (and each balance increase on such loan meet-
23 ing the requirements of subparagraph (A)(iii)) shall
24 be treated as an obligation secured by an interest in
25 real property” before the period at the end.



1 (6) Paragraph (3) of section 860G(a) is amend-
2 ed by adding “and” at the end of subparagraph (B),
3 by striking “, and” at the end of subparagraph (C)
4 and inserting a period, and by striking subparagraph
5 (D).

6 (7) Section 860G(a)(3), as amended by para-
7 graph (6), is amended by adding at the end the fol-
8 lowing new sentence: “For purposes of subparagraph
9 (A), if more than 50 percent of the obligations
10 transferred to, or purchased by, the REMIC are
11 originated by the United States or any State (or any
12 political subdivision, agency, or instrumentality of
13 the United States or any State) and are principally
14 secured by an interest in real property, then each
15 obligation transferred to, or purchased by, the
16 REMIC shall be treated as secured by an interest in
17 real property.”.

18 (8)(A) Section 860G(a)(3)(A) is amended by
19 striking “or” at the end of clause (i), by inserting
20 “or” at the end of clause (ii), and by inserting after
21 clause (ii) the following new clause:

22 “(iii) represents an increase in the
23 principal amount under the original terms
24 of an obligation described in clause (i) or
25 (ii) if such increase—



1 “(I) is attributable to an advance
2 made to the obligor pursuant to the
3 original terms of the obligation,

4 “(II) occurs after the startup
5 day, and

6 “(III) is purchased by the
7 REMIC pursuant to a fixed price con-
8 tract in effect on the startup day.”.

9 (B) Section 860G(a)(7)(B) is amended to read
10 as follows:

11 “(B) QUALIFIED RESERVE FUND.—For
12 purposes of subparagraph (A), the term ‘quali-
13 fied reserve fund’ means any reasonably re-
14 quired reserve to—

15 “(i) provide for full payment of ex-
16 penses of the REMIC or amounts due on
17 regular interests in the event of defaults on
18 qualified mortgages or lower than expected
19 returns on cash flow investments, or

20 “(ii) provide a source of funds for the
21 purchase of obligations described in clause
22 (ii) or (iii) of paragraph (3)(A).

23 The aggregate fair market value of the assets
24 held in any such reserve shall not exceed 50
25 percent of the aggregate fair market value of all



1 of the assets of the REMIC on the startup day,
2 and the amount of any such reserve shall be
3 promptly and appropriately reduced to the ex-
4 tent the amount held in such reserve is no
5 longer reasonably required for purposes speci-
6 fied in clause (i) or (ii) of this subparagraph.”.

7 (9) Subparagraph (C) of section 1202(e)(4) is
8 amended by striking “REMIC, or FASIT” and in-
9 serting “or REMIC”.

10 (10) Clause (xi) of section 7701(a)(19)(C) is
11 amended—

12 (A) by striking “and any regular interest
13 in a FASIT,” and

14 (B) by striking “or FASIT” each place it
15 appears.

16 (11) Subparagraph (A) of section 7701(i)(2) is
17 amended by striking “or a FASIT”.

18 (12) The table of parts for subchapter M of
19 chapter 1 is amended by striking the item relating
20 to part V.

21 (c) EFFECTIVE DATE.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), the amendments made by this section
24 shall take effect on January 1, 2005.



1 (2) EXCEPTION FOR EXISTING FASITS.—Para-
2 graph (1) shall not apply to any FASIT in existence
3 on the date of the enactment of this Act to the ex-
4 tent that regular interests issued by the FASIT be-
5 fore such date continue to remain outstanding in ac-
6 cordance with the original terms of issuance.

7 **SEC. 836. LIMITATION ON TRANSFER OR IMPORTATION OF**
8 **BUILT-IN LOSSES.**

9 (a) IN GENERAL.—Section 362 (relating to basis to
10 corporations) is amended by adding at the end the fol-
11 lowing new subsection:

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

13 “(1) LIMITATION ON IMPORTATION OF BUILT-
14 IN LOSSES.—

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

23 “(B) PROPERTY DESCRIBED.—For pur-
24 poses of subparagraph (A), property is de-
25 scribed in this subparagraph if—



1 “(i) gain or loss with respect to such
2 property is not subject to tax under this
3 subtitle in the hands of the transferor im-
4 mediately before the transfer, and

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

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

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

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

25 “(A) IN GENERAL.—If—



1 “(i) property is transferred by a
2 transferor in any transaction which is de-
3 scribed in subsection (a) and which is not
4 described in paragraph (1) of this sub-
5 section, and

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

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

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

22 “(C) ELECTION TO APPLY LIMITATION TO
23 TRANSFEROR’S STOCK BASIS.—

24 “(i) IN GENERAL.—If the transferor
25 and transferee of a transaction described



1 in subparagraph (A) both elect the applica-
2 tion of this subparagraph—

3 “(I) subparagraph (A) shall not
4 apply, and

5 “(II) the transferor’s basis in the
6 stock received for property to which
7 subparagraph (A) does not apply by
8 reason of the election shall not exceed
9 its fair market value immediately
10 after the transfer.

11 “(ii) ELECTION.—An election under
12 clause (i) shall be included with the return
13 of tax for the taxable year in which the
14 transaction occurred, shall be in such form
15 and manner as the Secretary may pre-
16 scribe, and, once made, shall be irrev-
17 ocable.”.

18 (b) COMPARABLE TREATMENT WHERE LIQUIDA-
19 TION.—Paragraph (1) of section 334(b) (relating to liq-
20 uidation of subsidiary) is amended to read as follows:

21 “(1) IN GENERAL.—If property is received by a
22 corporate distributee in a distribution in a complete
23 liquidation to which section 332 applies (or in a
24 transfer described in section 337(b)(1)), the basis of
25 such property in the hands of such distributee shall



1 be the same as it would be in the hands of the trans-
2 feror; except that the basis of such property in the
3 hands of such distributee shall be the fair market
4 value of the property at the time of the
5 distribution—

6 “(A) in any case in which gain or loss is
7 recognized by the liquidating corporation with
8 respect to such property, or

9 “(B) in any case in which the liquidating
10 corporation is a foreign corporation, the cor-
11 porate distributee is a domestic corporation,
12 and the corporate distributee’s aggregate ad-
13 justed bases of property described in section
14 362(e)(1)(B) which is distributed in such liq-
15 uidation would (but for this subparagraph) ex-
16 ceed the fair market value of such property im-
17 mediately after such liquidation.”.

18 (c) EFFECTIVE DATES.—

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

22 (2) LIQUIDATIONS.—The amendment made by
23 subsection (b) shall apply to liquidations after the
24 date of the enactment of this Act.



1 **SEC. 837. 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—

8 “(i) any bank (as defined by section
9 2(c) of the Bank Holding Company Act of
10 1956 (12 U.S.C. 1841(c)), without regard
11 to subparagraphs (C) and (G) of para-
12 graph (2) of such section), or

13 “(ii) any corporation not described in
14 clause (i) with respect to which a bank
15 holding company (as defined by section
16 2(a) of such Act) or financial holding com-
17 pany (as defined by section 2(p) of such
18 Act) owns directly or indirectly more than
19 80 percent by vote or value of the stock of
20 such corporation;”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall take effect on the date of the enactment
23 of this Act.



1 **SEC. 838. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
2 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**
3 **CLOSED REPORTABLE TRANSACTIONS.**

4 (a) IN GENERAL.—Section 163 (relating to deduction
5 for interest) is amended by redesignating subsection (m)
6 as subsection (n) and by inserting after subsection (l) the
7 following new subsection:

8 “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE
9 TO NONDISCLOSED REPORTABLE TRANSACTIONS.—No
10 deduction shall be allowed under this chapter for any in-
11 terest paid or accrued under section 6601 on any under-
12 payment of tax which is attributable to the portion of any
13 reportable transaction understatement (as defined in sec-
14 tion 6662A(b)) with respect to which the requirement of
15 section 6664(d)(2)(A) is not met.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to transactions in taxable years
18 beginning after the date of the enactment of this Act.

19 **SEC. 839. CLARIFICATION OF RULES FOR PAYMENT OF ES-**
20 **TIMATED TAX FOR CERTAIN DEEMED ASSET**
21 **SALES.**

22 (a) IN GENERAL.—Paragraph (13) of section 338(h)
23 (relating to tax on deemed sale not taken into account for
24 estimated tax purposes) is amended by adding at the end
25 the following: “The preceding sentence shall not apply



1 with respect to a qualified stock purchase for which an
2 election is made under paragraph (10).”.

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

6 **SEC. 840. RECOGNITION OF GAIN FROM THE SALE OF A**
7 **PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-**
8 **KIND EXCHANGE WITHIN 5 YEARS OF SALE.**

9 (a) IN GENERAL.—Section 121(d) (relating to special
10 rules for exclusion of gain from sale of principal residence)
11 is amended by adding at the end the following new para-
12 graph:

13 “(10) PROPERTY ACQUIRED IN LIKE-KIND EX-
14 CHANGE.—If a taxpayer acquired property in an ex-
15 change to which section 1031 applied, subsection (a)
16 shall not apply to the sale or exchange of such prop-
17 erty if it occurs during the 5-year period beginning
18 with the date of the acquisition of such property.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to sales or exchanges after the date
21 of the enactment of this Act.



1 **SEC. 841. PREVENTION OF MISMATCHING OF INTEREST**
2 **AND ORIGINAL ISSUE DISCOUNT DEDUC-**
3 **TIONS AND INCOME INCLUSIONS IN TRANS-**
4 **ACTIONS WITH RELATED FOREIGN PERSONS.**

5 (a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3)
6 (relating to special rule for original issue discount on obli-
7 gation held by related foreign person) is amended by re-
8 designating subparagraph (B) as subparagraph (C) and
9 by inserting after subparagraph (A) the following new sub-
10 paragraph:

11 “(B) SPECIAL RULE FOR CERTAIN FOR-
12 EIGN ENTITIES.—

13 “(i) IN GENERAL.—In the case of any
14 debt instrument having original issue dis-
15 count which is held by a related foreign
16 person which is a controlled foreign cor-
17 poration (as defined in section 957) or a
18 passive foreign investment company (as de-
19 fined in section 1297), a deduction shall be
20 allowable to the issuer with respect to such
21 original issue discount for any taxable year
22 before the taxable year in which paid only
23 to the extent such original issue discount is
24 includible (determined without regard to
25 properly allocable deductions and qualified
26 deficits under section 952(c)(1)(B)) during



1 such prior taxable year in the gross income
2 of a United States person who owns (with-
3 in the meaning of section 958(a)) stock in
4 such corporation.

5 “(ii) SECRETARIAL AUTHORITY.—The
6 Secretary may by regulation exempt trans-
7 actions from the application of clause (i),
8 including any transaction which is entered
9 into by a payor in the ordinary course of
10 a trade or business in which the payor is
11 predominantly engaged.”.

12 (b) INTEREST AND OTHER DEDUCTIBLE
13 AMOUNTS.—Section 267(a)(3) is amended—

14 (1) by striking “The Secretary” and inserting:

15 “(A) IN GENERAL.—The Secretary”, and

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

18 “(B) SPECIAL RULE FOR CERTAIN FOR-
19 EIGN ENTITIES.—

20 “(i) IN GENERAL.—Notwithstanding
21 subparagraph (A), in the case of any item
22 payable to a controlled foreign corporation
23 (as defined in section 957) or a passive
24 foreign investment company (as defined in
25 section 1297), a deduction shall be allow-



1 able to the payor with respect to such
2 amount for any taxable year before the
3 taxable year in which paid only to the ex-
4 tent that an amount attributable to such
5 item is includible (determined without re-
6 gard to properly allocable deductions and
7 qualified deficits under section
8 952(c)(1)(B)) during such prior taxable
9 year in the gross income of a United
10 States person who owns (within the mean-
11 ing of section 958(a)) stock in such cor-
12 poration.

13 “(ii) SECRETARIAL AUTHORITY.—The
14 Secretary may by regulation exempt trans-
15 actions from the application of clause (i),
16 including any transaction which is entered
17 into by a payor in the ordinary course of
18 a trade or business in which the payor is
19 predominantly engaged and in which the
20 payment of the accrued amounts occurs
21 within 8½ months after accrual or within
22 such other period as the Secretary may
23 prescribe.”.



1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to payments accrued on or after
3 the date of the enactment of this Act.

4 **SEC. 842. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
5 **TEREST ON POTENTIAL UNDERPAYMENTS.**

6 (a) IN GENERAL.—Subchapter A of chapter 67 (re-
7 lating to interest on underpayments) is amended by add-
8 ing at the end the following new section:

9 **“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
10 **TEREST ON POTENTIAL UNDERPAYMENTS,**
11 **ETC.**

12 “(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN
13 AS PAYMENT OF TAX.—A taxpayer may make a cash de-
14 posit with the Secretary which may be used by the Sec-
15 retary to pay any tax imposed under subtitle A or B or
16 chapter 41, 42, 43, or 44 which has not been assessed
17 at the time of the deposit. Such a deposit shall be made
18 in such manner as the Secretary shall prescribe.

19 “(b) NO INTEREST IMPOSED.—To the extent that
20 such deposit is used by the Secretary to pay tax, for pur-
21 poses of section 6601 (relating to interest on underpay-
22 ments), the tax shall be treated as paid when the deposit
23 is made.

24 “(c) RETURN OF DEPOSIT.—Except in a case where
25 the Secretary determines that collection of tax is in jeop-



1 ardy, the Secretary shall return to the taxpayer any
2 amount of the deposit (to the extent not used for a pay-
3 ment of tax) which the taxpayer requests in writing.

4 “(d) PAYMENT OF INTEREST.—

5 “(1) IN GENERAL.—For purposes of section
6 6611 (relating to interest on overpayments), except
7 as provided in paragraph (4), a deposit which is re-
8 turned to a taxpayer shall be treated as a payment
9 of tax for any period to the extent (and only to the
10 extent) attributable to a disputable tax for such pe-
11 riod. Under regulations prescribed by the Secretary,
12 rules similar to the rules of section 6611(b)(2) shall
13 apply.

14 “(2) DISPUTABLE TAX.—

15 “(A) IN GENERAL.—For purposes of this
16 section, the term ‘disputable tax’ means the
17 amount of tax specified at the time of the de-
18 posit as the taxpayer’s reasonable estimate of
19 the maximum amount of any tax attributable to
20 disputable items.

21 “(B) SAFE HARBOR BASED ON 30-DAY
22 LETTER.—In the case of a taxpayer who has
23 been issued a 30-day letter, the maximum
24 amount of tax under subparagraph (A) shall



1 not be less than the amount of the proposed de-
2 ficiency specified in such letter.

3 “(3) OTHER DEFINITIONS.—For purposes of
4 paragraph (2)—

5 “(A) DISPUTABLE ITEM.—The term ‘dis-
6 putable item’ means any item of income, gain,
7 loss, deduction, or credit if the taxpayer—

8 “(i) has a reasonable basis for its
9 treatment of such item, and

10 “(ii) reasonably believes that the Sec-
11 retary also has a reasonable basis for dis-
12 allowing the taxpayer’s treatment of such
13 item.

14 “(B) 30-DAY LETTER.—The term ‘30-day
15 letter’ means the first letter of proposed defi-
16 ciency which allows the taxpayer an opportunity
17 for administrative review in the Internal Rev-
18 enue Service Office of Appeals.

19 “(4) RATE OF INTEREST.—The rate of interest
20 under this subsection shall be the Federal short-
21 term rate determined under section 6621(b), com-
22 pounded daily.

23 “(e) USE OF DEPOSITS.—

24 “(1) PAYMENT OF TAX.—Except as otherwise
25 provided by the taxpayer, deposits shall be treated



1 as used for the payment of tax in the order depos-
2 ited.

3 “(2) RETURNS OF DEPOSITS.—Deposits shall
4 be treated as returned to the taxpayer on a last-in,
5 first-out basis.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 for subchapter A of chapter 67 is amended by adding at
8 the end the following new item:

“Sec. 6603. Deposits made to suspend running of interest on po-
tential underpayments, etc.”.

9 (c) EFFECTIVE DATE.—

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

13 (2) COORDINATION WITH DEPOSITS MADE
14 UNDER REVENUE PROCEDURE 84–58.—In the case of
15 an amount held by the Secretary of the Treasury or
16 his delegate on the date of the enactment of this Act
17 as a deposit in the nature of a cash bond deposit
18 pursuant to Revenue Procedure 84–58, the date that
19 the taxpayer identifies such amount as a deposit
20 made pursuant to section 6603 of the Internal Rev-
21 enue Code (as added by this Act) shall be treated as
22 the date such amount is deposited for purposes of
23 such section 6603.



1 **SEC. 843. PARTIAL PAYMENT OF TAX LIABILITY IN IN-**
2 **STALLMENT AGREEMENTS.**

3 (a) IN GENERAL.—

4 (1) Section 6159(a) (relating to authorization
5 of agreements) is amended—

6 (A) by striking “satisfy liability for pay-
7 ment of” and inserting “make payment on”,
8 and

9 (B) by inserting “full or partial” after “fa-
10 cilitate”.

11 (2) Section 6159(c) (relating to Secretary re-
12 quired to enter into installment agreements in cer-
13 tain cases) is amended in the matter preceding para-
14 graph (1) by inserting “full” before “payment”.

15 (b) REQUIREMENT TO REVIEW PARTIAL PAYMENT
16 AGREEMENTS EVERY TWO YEARS.—Section 6159 is
17 amended by redesignating subsections (d) and (e) as sub-
18 sections (e) and (f), respectively, and inserting after sub-
19 section (c) the following new subsection:

20 “(d) SECRETARY REQUIRED TO REVIEW INSTALL-
21 MENT AGREEMENTS FOR PARTIAL COLLECTION EVERY
22 TWO YEARS.—In the case of an agreement entered into
23 by the Secretary under subsection (a) for partial collection
24 of a tax liability, the Secretary shall review the agreement
25 at least once every 2 years.”.



1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to agreements entered into on or
3 after the date of the enactment of this Act.

4 **SEC. 844. AFFIRMATION OF CONSOLIDATED RETURN REGU-**
5 **LATION AUTHORITY.**

6 (a) IN GENERAL.—Section 1502 is amended by add-
7 ing at the end the following new sentence: “In carrying
8 out the preceding sentence, the Secretary may prescribe
9 rules that are different from the provisions of chapter 1
10 that would apply if such corporations filed separate re-
11 turns.”.

12 (b) RESULT NOT OVERTURNED.—Notwithstanding
13 the amendment made by subsection (a), the Internal Rev-
14 enue Code of 1986 shall be construed by treating Treasury
15 Regulation § 1.1502-20(c)(1)(iii) (as in effect on January
16 1, 2001) as being inapplicable to the factual situation in
17 *Rite Aid Corporation and Subsidiary Corporations v.*
18 *United States*, 255 F.3d 1357 (Fed. Cir. 2001).

19 (c) EFFECTIVE DATE.—This section, and the amend-
20 ment made by this section, shall apply to taxable years
21 beginning before, on, or after the date of the enactment
22 of this Act.



1 **SEC. 845. EXPANDED DISALLOWANCE OF DEDUCTION FOR**
2 **INTEREST ON CONVERTIBLE DEBT.**

3 (a) IN GENERAL.—Paragraph (2) of section 163(l)
4 is amended by inserting “or equity held by the issuer (or
5 any related party) in any other person” after “or a related
6 party”.

7 (b) CAPITALIZATION ALLOWED WITH RESPECT TO
8 EQUITY OF PERSONS OTHER THAN ISSUER AND RE-
9 LATED PARTIES.—Section 163(l) is amended by redesignig-
10 nating paragraphs (4) and (5) as paragraphs (5) and (6)
11 and by inserting after paragraph (3) the following new
12 paragraph:

13 “(4) CAPITALIZATION ALLOWED WITH RESPECT
14 TO EQUITY OF PERSONS OTHER THAN ISSUER AND
15 RELATED PARTIES.—If the disqualified debt instru-
16 ment of a corporation is payable in equity held by
17 the issuer (or any related party) in any other person
18 (other than a related party), the basis of such equity
19 shall be increased by the amount not allowed as a
20 deduction by reason of paragraph (1) with respect to
21 the instrument.”.

22 (c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED
23 BY DEALERS IN SECURITIES.—Section 163(l), as amend-
24 ed by subsection (b), is amended by redesignating para-
25 graphs (5) and (6) as paragraphs (6) and (7) and by in-
26 serting after paragraph (4) the following new paragraph:



1 withstanding any other subparagraph of this paragraph)”
2 after “shall”.

3 (b) LIMITATION ON DEPRECIATION AND AMORTIZA-
4 TION PERIODS FOR INTANGIBLES LEASED TO TAX-EX-
5 EMPT ENTITY.—

6 (1) COMPUTER SOFTWARE.—Paragraph (1) of
7 section 167(f) is amended by adding at the end the
8 following new subparagraph:

9 “(C) TAX-EXEMPT USE PROPERTY SUB-
10 JECT TO LEASE.—In the case of computer soft-
11 ware which would be tax-exempt use property
12 as defined in subsection (h) of section 168 if
13 such section applied to computer software, the
14 useful life under subparagraph (A) shall not be
15 less than 125 percent of the lease term (within
16 the meaning of section 168(i)(3)).”.

17 (2) CERTAIN INTERESTS OR RIGHTS ACQUIRED
18 SEPARATELY.—Paragraph (2) of section 167(f) is
19 amended by adding at the end the following new
20 sentence: “If such property would be tax-exempt use
21 property as defined in subsection (h) of section 168
22 if such section applied to such property, the useful
23 life under such regulations shall not be less than
24 125 percent of the lease term (within the meaning
25 of section 168(i)(3)).”.



1 (3) SECTION 197 INTANGIBLES.—Section 197(f)
2 (relating to special rules) is amended by adding at
3 the end the following new paragraph:

4 “(10) TAX-EXEMPT USE PROPERTY SUBJECT
5 TO LEASE.—In the case of any section 197 intan-
6 gible which would be tax-exempt use property as de-
7 fined in subsection (h) of section 168 if such section
8 applied to such intangible, the amortization period
9 under this section shall not be less than 125 percent
10 of the lease term (within the meaning of section
11 168(i)(3)).”.

12 (c) LEASE TERM TO INCLUDE RELATED SERVICE
13 CONTRACTS.—Subparagraph (A) of section 168(i)(3) (re-
14 lating to lease term) is amended by striking “and” at the
15 end of clause (i), by redesignating clause (ii) as clause
16 (iii), and by inserting after clause (i) the following new
17 clause:

18 “(ii) the term of a lease shall include
19 the term of any service contract or similar
20 arrangement (whether or not treated as a
21 lease under section 7701(e))—

22 “(I) which is part of the same
23 transaction (or series of related trans-
24 actions) which includes the lease, and



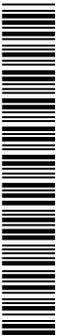
1 “(II) which is with respect to the
2 property subject to the lease or sub-
3 stantially similar property, and”.

4 (d) EXPANSION OF SHORT-TERM LEASE EXEMPTION
5 FOR QUALIFIED TECHNOLOGICAL EQUIPMENT.—Sub-
6 paragraph (A) of section 168(h)(3) is amended by adding
7 at the end the following new sentence: “Notwithstanding
8 subsection (i)(3)(A)(i), in determining a lease term for
9 purposes of the preceding sentence, there shall not be
10 taken into account any option of the lessee to renew at
11 the fair market value rent determined at the time of re-
12 newal; except that the aggregate period not taken into ac-
13 count by reason of this sentence shall not exceed 24
14 months.”.

15 (e) TREATMENT OF CERTAIN INDIAN TRIBAL GOV-
16 ERNMENTS AS TAX-EXEMPT ENTITIES.—Section
17 168(h)(2)(A) is amended by striking “and” at the end of
18 clause (ii), by striking the period at the end of clause (iii)
19 and inserting “, and”, and by inserting at the end the
20 following:

21 “(iv) any Indian tribal government de-
22 scribed in section 7701(a)(40).

23 For purposes of applying this subsection, any
24 Indian tribal government referred to in clause



1 (iv) shall be treated in the same manner as a
2 State.”

3 **SEC. 848. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
4 **PROPERTY USED BY GOVERNMENTS OR**
5 **OTHER TAX-EXEMPT ENTITIES.**

6 (a) IN GENERAL.—Subpart C of part II of sub-
7 chapter E of chapter 1 (relating to taxable year for which
8 deductions taken) is amended by adding at the end the
9 following new section:

10 **“SEC. 470. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
11 **PROPERTY USED BY GOVERNMENTS OR**
12 **OTHER TAX-EXEMPT ENTITIES.**

13 “(a) LIMITATION ON LOSSES.—Except as otherwise
14 provided in this section, a tax-exempt use loss for any tax-
15 able year shall not be allowed.

16 “(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—
17 Any tax-exempt use loss with respect to any tax-exempt
18 use property which is disallowed under subsection (a) for
19 any taxable year shall be treated as a deduction with re-
20 spect to such property in the next taxable year.

21 “(c) DEFINITIONS.—For purposes of this section—

22 “(1) TAX-EXEMPT USE LOSS.—The term ‘tax-
23 exempt use loss’ means, with respect to any taxable
24 year, the amount (if any) by which—

25 “(A) the sum of—



1 “(i) the aggregate deductions (other
2 than interest) directly allocable to a tax-ex-
3 empt use property, plus

4 “(ii) the aggregate deductions for in-
5 terest properly allocable to such property,
6 exceed

7 “(B) the aggregate income from such
8 property.

9 “(2) TAX-EXEMPT USE PROPERTY.—The term
10 ‘tax-exempt use property’ has the meaning given to
11 such term by section 168(h), except that such sec-
12 tion shall be applied—

13 “(A) without regard to paragraphs (1)(C)
14 and (3) thereof, and

15 “(B) as if property described in—

16 “(i) section 167(f)(1)(B),

17 “(ii) section 167(f)(2), and

18 “(iii) section 197 intangible,

19 were tangible property.

20 Such term shall not include property which would
21 (but for this sentence) be tax-exempt use property
22 solely by reason of section 168(h)(6) if any credit is
23 allowable under section 42 or 47 with respect to
24 such property.



1 “(d) EXCEPTION FOR CERTAIN LEASES.—This sec-
2 tion shall not apply to any lease of property which meets
3 the requirements of all of the following paragraphs:

4 “(1) AVAILABILITY OF FUNDS.—

5 “(A) IN GENERAL.—A lease of property
6 meets the requirements of this paragraph if (at
7 any time during the lease term) not more than
8 an allowable amount of funds are—

9 “(i) subject to any arrangement re-
10 ferred to in subparagraph (B), or

11 “(ii) set aside or expected to be set
12 aside,

13 to or for the benefit of the lessor or any lender,
14 or to or for the benefit of the lessee to satisfy
15 the lessee’s obligations or options under the
16 lease. For purposes of clause (ii), funds shall be
17 treated as set aside or expected to be set aside
18 only if a reasonable person would conclude,
19 based on the facts and circumstances, that such
20 funds are set aside or expected to be set aside.

21 “(B) ARRANGEMENTS.—The arrangements
22 referred to in this subparagraph include a de-
23 feasance arrangement, a loan by the lessee to
24 the lessor or any lender, a deposit arrangement,
25 a letter of credit collateralized with cash or cash



1 equivalents, a payment undertaking agreement,
2 prepaid rent (within the meaning of the regula-
3 tions under section 467), a sinking fund ar-
4 rangement, a guaranteed investment contract,
5 financial guaranty insurance, and any similar
6 arrangement (whether or not such arrangement
7 provides credit support).

8 “(C) ALLOWABLE AMOUNT.—

9 “(i) IN GENERAL.—Except as other-
10 wise provided in this subparagraph, the
11 term ‘allowable amount’ means an amount
12 equal to 20 percent of the lessor’s adjusted
13 basis in the property at the time the lease
14 is entered into.

15 “(ii) HIGHER AMOUNT PERMITTED IN
16 CERTAIN CASES.—To the extent provided
17 in regulations, a higher percentage shall be
18 permitted under clause (i) where necessary
19 because of the credit-worthiness of the les-
20 see. In no event may such regulations per-
21 mit a percentage of more than 50 percent.

22 “(iii) OPTION TO PURCHASE.—If
23 under the lease the lessee has the option to
24 purchase the property for a fixed price or
25 for other than the fair market value of the



1 property (determined at the time of exer-
2 cise), the allowable amount at the time
3 such option may be exercised may not ex-
4 ceed 50 percent of the price at which such
5 option may be exercised.

6 “(iv) NO ALLOWABLE AMOUNT FOR
7 CERTAIN ARRANGEMENTS.—The allowable
8 amount shall be zero with respect to any
9 arrangement which involves—

10 “(I) a loan from the lessee to the
11 lessor or a lender,

12 “(II) any deposit received, letter
13 of credit issued, or payment under-
14 taking agreement entered into by a
15 lender otherwise involved in the trans-
16 action, or

17 “(III) in the case of a trans-
18 action which involves a lender, any
19 credit support made available to the
20 lessor in which any such lender does
21 not have a claim that is senior to the
22 lessor.

23 For purposes of subclause (I), the term
24 ‘loan’ shall not include any amount treated



1 as a loan under section 467 with respect to
2 a section 467 rental agreement.

3 “(2) LESSOR MUST MAKE SUBSTANTIAL EQUITY
4 INVESTMENT.—

5 “(A) IN GENERAL.—A lease of property
6 meets the requirements of this paragraph if—

7 “(i) the lessor—

8 “(I) has at the time the lease is
9 entered into an unconditional at-risk
10 equity investment (as determined by
11 the Secretary) in the property of at
12 least 20 percent of the lessor’s ad-
13 justed basis in the property as of that
14 time, and

15 “(II) maintains such investment
16 throughout the term of the lease, and

17 “(ii) the fair market value of the
18 property at the end of the lease term is
19 reasonably expected to be equal to at least
20 20 percent of such basis.

21 “(B) RISK OF LOSS.—For purposes of
22 clause (ii), the fair market value at the end of
23 the lease term shall be reduced to the extent
24 that a person other than the lessor bears a risk
25 of loss in the value of the property.



1 “(C) PARAGRAPH NOT TO APPLY TO
2 SHORT-TERM LEASES.—This paragraph shall
3 not apply to any lease with a lease term of 5
4 years or less.

5 “(3) LESSEE MAY NOT BEAR MORE THAN MINI-
6 MAL RISK OF LOSS.—

7 “(A) IN GENERAL.—A lease of property
8 meets the requirements of this paragraph if
9 there is no arrangement under which the lessee
10 bears—

11 “(i) any portion of the loss that would
12 occur if the fair market value of the leased
13 property were 25 percent less than its rea-
14 sonably expected fair market value at the
15 time the lease is terminated, or

16 “(ii) more than 50 percent of the loss
17 that would occur if the fair market value
18 of the leased property at the time the lease
19 is terminated were zero.

20 “(B) EXCEPTION.—The Secretary may by
21 regulations provide that the requirements of
22 this paragraph are not met where the lessee
23 bears more than a minimal risk of loss.

24 “(C) PARAGRAPH NOT TO APPLY TO
25 SHORT-TERM LEASES.—This paragraph shall



1 not apply to any lease with a lease term of 5
2 years or less.

3 “(4) PROPERTY WITH MORE THAN 7-YEAR
4 CLASS LIFE.—In the case of a lease—

5 “(A) of property with a class life (as de-
6 fined in section 168(i)(1)) of more than 7
7 years, other than fixed-wing aircraft and ves-
8 sels, and

9 “(B) under which the lessee has the option
10 to purchase the property,
11 the lease meets the requirements of this paragraph
12 only if the purchase price under the option equals
13 the fair market value of the property (determined at
14 the time of exercise).

15 “(e) SPECIAL RULES.—

16 “(1) TREATMENT OF FORMER TAX-EXEMPT
17 USE PROPERTY.—

18 “(A) IN GENERAL.—In the case of any
19 former tax-exempt use property—

20 “(i) any deduction allowable under
21 subsection (b) with respect to such prop-
22 erty for any taxable year shall be allowed
23 only to the extent of any net income (with-
24 out regard to such deduction) from such
25 property for such taxable year, and



1 “(ii) any portion of such unused de-
2 duction remaining after application of
3 clause (i) shall be treated as a deduction
4 allowable under subsection (b) with respect
5 to such property in the next taxable year.

6 “(B) FORMER TAX-EXEMPT USE PROP-
7 ERTY.—For purposes of this subsection, the
8 term ‘former tax-exempt use property’ means
9 any property which—

10 “(i) is not tax-exempt use property for
11 the taxable year, but

12 “(ii) was tax-exempt use property for
13 any prior taxable year.

14 “(2) DISPOSITION OF ENTIRE INTEREST IN
15 PROPERTY.—If during the taxable year a taxpayer
16 disposes of the taxpayer’s entire interest in tax-ex-
17 empt use property (or former tax-exempt use prop-
18 erty), rules similar to the rules of section 469(g)
19 shall apply for purposes of this section.

20 “(3) COORDINATION WITH SECTION 469.—This
21 section shall be applied before the application of sec-
22 tion 469.

23 “(4) COORDINATION WITH SECTIONS 1031 AND
24 1033.—



1 “(A) IN GENERAL.—Sections 1031(a) and
2 1033(a) shall not apply if—

3 “(i) the exchanged or converted prop-
4 erty is tax-exempt use property subject to
5 a lease which was entered into before
6 March 13, 2004, and which would not have
7 met the requirements of subsection (d) had
8 such requirements been in effect when the
9 lease was entered into, or

10 “(ii) the replacement property is tax-
11 exempt use property subject to a lease
12 which does not meet the requirements of
13 subsection (d).

14 “(B) ADJUSTED BASIS.—In the case of
15 property acquired by the lessor in a transaction
16 to which section 1031 or 1033 applies, the ad-
17 justed basis of such property for purposes of
18 this section shall be equal to the lesser of—

19 “(i) the fair market value of the prop-
20 erty as of the beginning of the lease term,
21 or

22 “(ii) the amount which would be the
23 lessor’s adjusted basis if such sections did
24 not apply to such transaction.



1 “(f) OTHER DEFINITIONS.—For purposes of this
2 section—

3 “(1) RELATED PARTIES.—The terms ‘lessor’,
4 ‘lessee’, and ‘lender’ each include any related party
5 (within the meaning of section 197(f)(9)(C)(i)).

6 “(2) LEASE TERM.—The term ‘lease term’ has
7 the meaning given to such term by section 168(i)(3).

8 “(3) LENDER.—The term ‘lender’ means, with
9 respect to any lease, a person that makes a loan to
10 the lessor which is secured (or economically similar
11 to being secured) by the lease or the leased property.

12 “(4) LOAN.—The term ‘loan’ includes any simi-
13 lar arrangement.

14 “(g) REGULATIONS.—The Secretary shall prescribe
15 such regulations as may be necessary or appropriate to
16 carry out the purposes of this section, including regula-
17 tions which—

18 “(1) allow in appropriate cases the aggregation
19 of property subject to the same lease, and

20 “(2) provide for the determination of the alloca-
21 tion of interest expense for purposes of this sec-
22 tion.”.

23 (b) CONFORMING AMENDMENT.—The table of sec-
24 tions for subpart C of part II of subchapter E of chapter
25 1 is amended by adding at the end the following new item:



“Sec. 470. Limitation on deductions allocable to property used by governments or other tax-exempt entities.”.

1 **SEC. 849. 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
13 application—

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 section



1 848, shall apply to property exchanged or converted
2 after the date of the enactment of this Act.

3 (4) INTANGIBLES AND INDIAN TRIBAL GOVERN-
4 MENTS.—The amendments made subsections (b)(2),
5 (b)(3), and (e) of section 847, and the treatment of
6 property described in clauses (ii) and (iii) of section
7 470(c)(2)(B) of the Internal Revenue Code of 1986
8 (as added by section 848) as tangible property, shall
9 apply to leases entered into after October 3, 2004.

10 **Subtitle C—Reduction of Fuel Tax**
11 **Evasion**

12 **SEC. 851. EXEMPTION FROM CERTAIN EXCISE TAXES FOR**
13 **MOBILE MACHINERY.**

14 (a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND
15 TRAILERS SOLD AT RETAIL.—

16 (1) IN GENERAL.—Section 4053 (relating to ex-
17 emptions) is amended by adding at the end the fol-
18 lowing new paragraph:

19 “(8) MOBILE MACHINERY.—Any vehicle which
20 consists of a chassis—

21 “(A) to which there has been permanently
22 mounted (by welding, bolting, riveting, or other
23 means) machinery or equipment to perform a
24 construction, manufacturing, processing, farm-
25 ing, mining, drilling, timbering, or similar oper-



1 ation if the operation of the machinery or
2 equipment is unrelated to transportation on or
3 off the public highways,

4 “(B) which has been specially designed to
5 serve only as a mobile carriage and mount (and
6 a power source, where applicable) for the par-
7 ticular machinery or equipment involved, wheth-
8 er or not such machinery or equipment is in op-
9 eration, and

10 “(C) which, by reason of such special de-
11 sign, could not, without substantial structural
12 modification, be used as a component of a vehi-
13 cle designed to perform a function of trans-
14 porting any load other than that particular ma-
15 chinery or equipment or similar machinery or
16 equipment requiring such a specially designed
17 chassis.”.

18 (2) EFFECTIVE DATE.—The amendment made
19 by this subsection shall take effect on the day after
20 the date of the enactment of this Act.

21 (b) EXEMPTION FROM TAX ON USE OF CERTAIN VE-
22 HICLES.—

23 (1) IN GENERAL.—Section 4483 (relating to ex-
24 emptions) is amended by redesignating subsection



1 (g) as subsection (h) and by inserting after sub-
2 section (f) the following new subsection:

3 “(g) EXEMPTION FOR MOBILE MACHINERY.—No tax
4 shall be imposed by section 4481 on the use of any vehicle
5 described in section 4053(8).”.

6 (2) EFFECTIVE DATE.—The amendments made
7 by this subsection shall take effect on the day after
8 the date of the enactment of this Act.

9 (c) EXEMPTION FROM TAX ON TIRES.—

10 (1) IN GENERAL.—Section 4072(b)(2) is
11 amended by adding at the end the following flush
12 sentence: “Such term shall not include tires of a
13 type used exclusively on vehicles described in section
14 4053(8).”.

15 (2) EFFECTIVE DATE.—The amendment made
16 by this subsection shall take effect on the day after
17 the date of the enactment of this Act.

18 (d) REFUND OF FUEL TAXES.—

19 (1) IN GENERAL.—Section 6421(e)(2) (defining
20 off-highway business use) is amended by adding at
21 the end the following new subparagraph:

22 “(C) USES IN MOBILE MACHINERY.—

23 “(i) IN GENERAL.—The term ‘off-
24 highway business use’ shall include any use



1 in a vehicle which meets the requirements
2 described in clause (ii).

3 “(ii) REQUIREMENTS FOR MOBILE
4 MACHINERY.—The requirements described
5 in this clause are—

6 “(I) the design-based test, and

7 “(II) the use-based test.

8 “(iii) DESIGN-BASED TEST.—For pur-
9 poses of clause (ii)(I), the design-based
10 test is met if the vehicle consists of a
11 chassis—

12 “(I) to which there has been per-
13 manently mounted (by welding, bolt-
14 ing, riveting, or other means) machin-
15 ery or equipment to perform a con-
16 struction, manufacturing, processing,
17 farming, mining, drilling, timbering,
18 or similar operation if the operation of
19 the machinery or equipment is unre-
20 lated to transportation on or off the
21 public highways,

22 “(II) which has been specially de-
23 signed to serve only as a mobile car-
24 riage and mount (and a power source,
25 where applicable) for the particular



1 machinery or equipment involved,
2 whether or not such machinery or
3 equipment is in operation, and

4 “(III) which, by reason of such
5 special design, could not, without sub-
6 stantial structural modification, be
7 used as a component of a vehicle de-
8 signed to perform a function of trans-
9 porting any load other than that par-
10 ticular machinery or equipment or
11 similar machinery or equipment re-
12 quiring such a specially designed chas-
13 sis.

14 “(iv) USE-BASED TEST.—For pur-
15 poses of clause (ii)(II), the use-based test
16 is met if the use of the vehicle on public
17 highways was less than 7,500 miles during
18 the taxpayer’s taxable year. This clause
19 shall be applied without regard to use of
20 the vehicle by any organization which is
21 described in section 501(c) and exempt
22 from tax under section 501(a).”.

23 (2) NO TAX-FREE SALES.—Subsection (b) of
24 section 4082 is amended by inserting before the pe-



1 riod at the end “and such term shall not include any
2 use described in section 6421(e)(2)(C)”.

3 (3) ANNUAL REFUND OF TAX PAID.—Section
4 6427(i)(2) (relating to exceptions) is amended by
5 adding at the end the following new subparagraph:

6 “(C) NONAPPLICATION OF PARAGRAPH.—
7 This paragraph shall not apply to any fuel used
8 solely in any off-highway business use described
9 in section 6421(e)(2)(C).”.

10 (4) EFFECTIVE DATE.—The amendments made
11 by this subsection shall apply to taxable years begin-
12 ning after the date of the enactment of this Act.

13 **SEC. 852. MODIFICATION OF DEFINITION OF OFF-HIGHWAY**
14 **VEHICLE.**

15 (a) IN GENERAL.—Section 7701(a) (relating to defi-
16 nitions) is amended by adding at the end the following
17 new paragraph:

18 “(48) OFF-HIGHWAY VEHICLES.—

19 “(A) OFF-HIGHWAY TRANSPORTATION VE-
20 HICLES.—

21 “(i) IN GENERAL.—A vehicle shall not
22 be treated as a highway vehicle if such ve-
23 hicle is specially designed for the primary
24 function of transporting a particular type
25 of load other than over the public highway



1 and because of this special design such ve-
2 hicle's capability to transport a load over
3 the public highway is substantially limited
4 or impaired.

5 “(ii) DETERMINATION OF VEHICLE'S
6 DESIGN.—For purposes of clause (i), a ve-
7 hicle's design is determined solely on the
8 basis of its physical characteristics.

9 “(iii) DETERMINATION OF SUBSTAN-
10 TIAL LIMITATION OR IMPAIRMENT.—For
11 purposes of clause (i), in determining
12 whether substantial limitation or impair-
13 ment exists, account may be taken of fac-
14 tors such as the size of the vehicle, wheth-
15 er such vehicle is subject to the licensing,
16 safety, and other requirements applicable
17 to highway vehicles, and whether such ve-
18 hicle can transport a load at a sustained
19 speed of at least 25 miles per hour. It is
20 immaterial that a vehicle can transport a
21 greater load off the public highway than
22 such vehicle is permitted to transport over
23 the public highway.

24 “(B) NONTRANSPORTATION TRAILERS AND
25 SEMITRAILERS.—A trailer or semitrailer shall



1 not be treated as a highway vehicle if it is spe-
2 cially designed to function only as an enclosed
3 stationary shelter for the carrying on of an off-
4 highway function at an off-highway site.”.

5 (c) EFFECTIVE DATES.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), the amendment made by this section shall
8 take effect on the date of the enactment of this Act.

9 (2) FUEL TAXES.—With respect to taxes im-
10 posed under subchapter B of chapter 31 and part
11 III of subchapter A of chapter 32, the amendment
12 made by this section shall apply to taxable periods
13 beginning after the date of the enactment of this
14 Act.

15 **SEC. 853. TAXATION OF AVIATION-GRADE KEROSENE.**

16 (a) RATE OF TAX.—

17 (1) IN GENERAL.—Subparagraph (A) of section
18 4081(a)(2) is amended by striking “and” at the end
19 of clause (ii), by striking the period at the end of
20 clause (iii) and inserting “, and”, and by adding at
21 the end the following new clause:

22 “(iv) in the case of aviation-grade ker-
23 osene, 21.8 cents per gallon.”.



1 (2) COMMERCIAL AVIATION.—Paragraph (2) of
2 section 4081(a) is amended by adding at the end the
3 following new subparagraph:

4 “(C) TAXES IMPOSED ON FUEL USED IN
5 COMMERCIAL AVIATION.—In the case of avia-
6 tion-grade kerosene which is removed from any
7 refinery or terminal directly into the fuel tank
8 of an aircraft for use in commercial aviation,
9 the rate of tax under subparagraph (A)(iv) shall
10 be 4.3 cents per gallon.”.

11 (3) CERTAIN REFUELER TRUCKS, TANKERS,
12 AND TANK WAGONS TREATED AS TERMINAL.—

13 (A) IN GENERAL.—Subsection (a) of sec-
14 tion 4081 is amended by adding at the end the
15 following new paragraph:

16 “(3) CERTAIN REFUELER TRUCKS, TANKERS,
17 AND TANK WAGONS TREATED AS TERMINAL.—

18 “(A) IN GENERAL.—For purposes of para-
19 graph (2)(C), a refueler truck, tanker, or tank
20 wagon shall be treated as part of a terminal
21 if—

22 “(i) such terminal is located within a
23 secured area of an airport,

24 “(ii) any aviation-grade kerosene
25 which is loaded in such truck, tanker, or



1 wagon at such terminal is for delivery only
2 into aircraft at the airport in which such
3 terminal is located,

4 “(iii) such truck, tanker, or wagon
5 meets the requirements of subparagraph
6 (B) with respect to such terminal, and

7 “(iv) except in the case of exigent cir-
8 cumstances identified by the Secretary in
9 regulations, no vehicle registered for high-
10 way use is loaded with aviation-grade ker-
11 osene at such terminal.

12 “(B) REQUIREMENTS.—A refueler truck,
13 tanker, or tank wagon meets the requirements
14 of this subparagraph with respect to a terminal
15 if such truck, tanker, or wagon—

16 “(i) has storage tanks, hose, and cou-
17 pling equipment designed and used for the
18 purposes of fueling aircraft,

19 “(ii) is not registered for highway use,
20 and

21 “(iii) is operated by—

22 “(I) the terminal operator of
23 such terminal, or

24 “(II) a person that makes a daily
25 accounting to such terminal operator



1 of each delivery of fuel from such
2 truck, tanker, or wagon.

3 “(C) REPORTING.—The Secretary shall re-
4 quire under section 4101(d) reporting by such
5 terminal operator of—

6 “(i) any information obtained under
7 subparagraph (B)(iii)(II), and

8 “(ii) any similar information main-
9 tained by such terminal operator with re-
10 spect to deliveries of fuel made by trucks,
11 tankers, or wagons operated by such ter-
12 minal operator.”.

13 (B) LIST OF AIRPORTS WITH SECURED
14 TERMINALS.—Not later than December 15,
15 2004, the Secretary of the Treasury shall pub-
16 lish and maintain a list of airports which in-
17 clude a secured area in which a terminal is lo-
18 cated (within the meaning of section
19 4081(a)(3)(A)(i) of the Internal Revenue Code
20 of 1986, as added by this paragraph).

21 (4) LIABILITY FOR TAX ON AVIATION-GRADE
22 KEROSENE USED IN COMMERCIAL AVIATION.—Sub-
23 section (a) of section 4081 is amended by adding at
24 the end the following new paragraph:



1 “(4) LIABILITY FOR TAX ON AVIATION-GRADE
2 KEROSENE USED IN COMMERCIAL AVIATION.—For
3 purposes of paragraph (2)(C), the person who uses
4 the fuel for commercial aviation shall pay the tax
5 imposed under such paragraph. For purposes of the
6 preceding sentence, fuel shall be treated as used
7 when such fuel is removed into the fuel tank.”.

8 (5) NONTAXABLE USES.—

9 (A) IN GENERAL.—Section 4082 is amend-
10 ed by redesignating subsections (e) and (f) as
11 subsections (f) and (g), respectively, and by in-
12 serting after subsection (d) the following new
13 subsection:

14 “(e) AVIATION-GRADE KEROSENE.—In the case of
15 aviation-grade kerosene which is exempt from the tax im-
16 posed by section 4041(c) (other than by reason of a prior
17 imposition of tax) and which is removed from any refinery
18 or terminal directly into the fuel tank of an aircraft, the
19 rate of tax under section 4081(a)(2)(A)(iv) shall be zero.”.

20 (B) CONFORMING AMENDMENTS.—

21 (i) Subsection (b) of section 4082 is
22 amended by adding at the end the fol-
23 lowing new flush sentence:

24 “The term ‘nontaxable use’ does not include the use of
25 aviation-grade kerosene in an aircraft.”.



1 (ii) Section 4082(d) is amended by
2 striking paragraph (1) and by redesignig-
3 nating paragraphs (2) and (3) as para-
4 graphs (1) and (2), respectively.

5 (6) NONAIRCRAFT USE OF AVIATION-GRADE
6 KEROSENE.—

7 (A) IN GENERAL.—Subparagraph (B) of
8 section 4041(a)(1) is amended by adding at the
9 end the following new sentence: “This subpara-
10 graph shall not apply to aviation-grade ker-
11 osene.”.

12 (B) CONFORMING AMENDMENT.—The
13 heading for paragraph (1) of section 4041(a) is
14 amended by inserting “AND KEROSENE” after
15 “DIESEL FUEL”.

16 (b) COMMERCIAL AVIATION.—Section 4083 is
17 amended by redesignating subsections (b) and (c) as sub-
18 sections (c) and (d), respectively, and by inserting after
19 subsection (a) the following new subsection:

20 “(b) COMMERCIAL AVIATION.—For purposes of this
21 subpart, the term ‘commercial aviation’ means any use of
22 an aircraft in a business of transporting persons or prop-
23 erty for compensation or hire by air, unless properly allo-
24 cable to any transportation exempt from the taxes imposed



1 by sections 4261 and 4271 by reason of section 4281 or
2 4282 or by reason of section 4261(h).”.

3 (c) REFUNDS.—

4 (1) IN GENERAL.—Paragraph (4) of section
5 6427(l) is amended to read as follows:

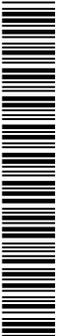
6 “(4) REFUNDS FOR AVIATION-GRADE KER-
7 OSENE.—

8 “(A) NO REFUND OF CERTAIN TAXES ON
9 FUEL USED IN COMMERCIAL AVIATION.—In the
10 case of aviation-grade kerosene used in com-
11 mercial aviation (as defined in section 4083(b))
12 (other than supplies for vessels or aircraft with-
13 in the meaning of section 4221(d)(3)), para-
14 graph (1) shall not apply to so much of the tax
15 imposed by section 4081 as is attributable to—

16 “(i) the Leaking Underground Stor-
17 age Tank Trust Fund financing rate im-
18 posed by such section, and

19 “(ii) so much of the rate of tax speci-
20 fied in section 4081(a)(2)(A)(iv) as does
21 not exceed 4.3 cents per gallon.

22 “(B) PAYMENT TO ULTIMATE, REG-
23 ISTERED VENDOR.—With respect to aviation-
24 grade kerosene, if the ultimate purchaser of
25 such kerosene waives (at such time and in such



1 form and manner as the Secretary shall pre-
2 scribe) the right to payment under paragraph
3 (1) and assigns such right to the ultimate ven-
4 dor, then the Secretary shall pay the amount
5 which would be paid under paragraph (1) to
6 such ultimate vendor, but only if such ultimate
7 vendor—

8 “(i) is registered under section 4101,
9 and

10 “(ii) meets the requirements of sub-
11 paragraph (A), (B), or (D) of section
12 6416(a)(1).”.

13 (2) TIME FOR FILING CLAIMS.—Subparagraph
14 (A) of section 6427(i)(4) is amended—

15 (A) by striking “subsection (l)(5)” both
16 places it appears and inserting “paragraph
17 (4)(B) or (5) of subsection (l)”, and

18 (B) by striking “the preceding sentence”
19 and inserting “subsection (l)(5)”.

20 (3) CONFORMING AMENDMENT.—Subparagraph
21 (B) of section 6427(l)(2) is amended to read as fol-
22 lows:

23 “(B) in the case of aviation-grade
24 kerosene—



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 applicable
5 under section 4081(a)(2)(A)(iv) which is in effect at
6 the 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) Section 4041(m)(1) is amended to
15 read as follows:

16 “(1) IN GENERAL.—In the case of the sale or
17 use of any partially exempt methanol or ethanol fuel
18 the rate of the tax imposed by subsection (a)(2)
19 shall be—

20 “(A) after September 30, 1997, and before
21 October 1, 2005—

22 “(i) in the case of fuel none of the al-
23 cohol in which consists of ethanol, 9.15
24 cents per gallon, and



1 “(ii) in any other case, 11.3 cents per
2 gallon, and

3 “(B) after September 30, 2005—

4 “(i) in the case of fuel none of the al-
5 cohol in which consists of ethanol, 2.15
6 cents per gallon, and

7 “(ii) in any other case, 4.3 cents per
8 gallon.”.

9 (F) Sections 4101(a), 4103, 4221(a), and
10 6206 are each amended by striking “, 4081, or
11 4091” and inserting “or 4081”.

12 (G) Section 6416(b)(2) is amended by
13 striking “4091 or”.

14 (H) Section 6416(b)(3) is amended by
15 striking “or 4091” each place it appears.

16 (I) Section 6416(d) is amended by striking
17 “or to the tax imposed by section 4091 in the
18 case of refunds described in section 4091(d)”.

19 (J) Section 6427(j)(1) is amended by
20 striking “, 4081, and 4091” and inserting “and
21 4081”.

22 (K)(i) Section 6427(l)(1) is amended to
23 read as follows:

24 “(1) IN GENERAL.—Except as otherwise pro-
25 vided in this subsection and in subsection (k), if any



1 diesel fuel or kerosene on which tax has been im-
2 posed by section 4041 or 4081 is used by any person
3 in a nontaxable use, the Secretary shall pay (without
4 interest) to the ultimate purchaser of such fuel an
5 amount equal to the aggregate amount of tax im-
6 posed on such fuel under section 4041 or 4081, as
7 the case may be, reduced by any payment made to
8 the ultimate vendor under paragraph (4)(B).”.

9 (ii) Paragraph (5)(B) of section 6427(l) is
10 amended by striking “Paragraph (1)(A) shall
11 not apply to kerosene” and inserting “Para-
12 graph (1) shall not apply to kerosene (other
13 than aviation-grade kerosene)”.

14 (L) Subparagraph (B) of section
15 6724(d)(1) is amended by striking clause (xv)
16 and by redesignating the succeeding clauses ac-
17 cordingly.

18 (M) Paragraph (2) of section 6724(d) is
19 amended by striking subparagraph (W) and by
20 redesignating the succeeding subparagraphs ac-
21 cordingly.

22 (N) Paragraph (1) of section 9502(b) is
23 amended by adding “and” at the end of sub-
24 paragraph (B) and by striking subparagraphs



1 (C) and (D) and inserting the following new
2 subparagraph:

3 “(C) section 4081 with respect to aviation
4 gasoline and aviation-grade kerosene, and”.

5 (O) The last sentence of section 9502(b) is
6 amended to read as follows:

7 “There shall not be taken into account under paragraph
8 (1) so much of the taxes imposed by section 4081 as are
9 determined at the rate specified in section
10 4081(a)(2)(B).”.

11 (P) Subsection (b) of section 9508 is
12 amended by striking paragraph (3) and by re-
13 designating paragraphs (4) and (5) as para-
14 graphs (3) and (4), respectively.

15 (Q) Section 9508(c)(2)(A) is amended by
16 striking “sections 4081 and 4091” and insert-
17 ing “section 4081”.

18 (R) The table of subparts for part III of
19 subchapter A of chapter 32 is amended to read
20 as follows:

“Subpart A. Motor and aviation fuels.
“Subpart B. Special provisions applicable to fuels tax.”.

21 (S) The heading for subpart A of part III
22 of subchapter A of chapter 32 is amended to
23 read as follows:



1 this clause) reasonably expect (as of such
2 date) to be paid as a refund under section
3 6427(l) of such Code with respect to such
4 kerosene.

5 (2) EXCEPTION FOR FUEL HELD IN AIRCRAFT
6 FUEL TANK.—Paragraph (1) shall not apply to ker-
7 osene held in the fuel tank of an aircraft on January
8 1, 2005.

9 (3) LIABILITY FOR TAX AND METHOD OF PAY-
10 MENT.—

11 (A) LIABILITY FOR TAX.—The person
12 holding the kerosene on January 1, 2005, to
13 which the tax imposed by paragraph (1) applies
14 shall be liable for such tax.

15 (B) METHOD AND TIME FOR PAYMENT.—
16 The tax imposed by paragraph (1) shall be paid
17 at such time and in such manner as the Sec-
18 retary of the Treasury (or the Secretary's dele-
19 gate) shall prescribe, including the nonapplica-
20 tion of such tax on de minimis amounts of ker-
21 osene.

22 (4) TRANSFER OF FLOOR STOCK TAX REVE-
23 NUES TO TRUST FUNDS.—For purposes of deter-
24 mining the amount transferred to any trust fund,
25 the tax imposed by this subsection shall be treated



1 as imposed by section 4081 of the Internal Revenue
2 Code of 1986—

3 (A) at the Leaking Underground Storage
4 Tank Trust Fund financing rate under such
5 section to the extent of 0.1 cents per gallon,
6 and

7 (B) at the rate under section
8 4081(a)(2)(A)(iv) to the extent of the remain-
9 der.

10 (5) HELD BY A PERSON.—For purposes of this
11 subsection, kerosene shall be considered as held by
12 a person if title thereto has passed to such person
13 (whether or not delivery to the person has been
14 made).

15 (6) OTHER LAWS APPLICABLE.—All provisions
16 of law, including penalties, applicable with respect to
17 the tax imposed by section 4081 of such Code shall,
18 insofar as applicable and not inconsistent with the
19 provisions of this subsection, apply with respect to
20 the floor stock tax imposed by paragraph (1) to the
21 same extent as if such tax were imposed by such
22 section.



1 **SEC. 854. DYE INJECTION EQUIPMENT.**

2 (a) IN GENERAL.—Section 4082(a)(2) (relating to
3 exemptions for diesel fuel and kerosene) is amended by
4 inserting “by mechanical injection” after “indelibly dyed”.

5 (b) DYE INJECTOR SECURITY.—Not later than 180
6 days after the date of the enactment of this Act, the Sec-
7 retary of the Treasury shall issue regulations regarding
8 mechanical dye injection systems described in the amend-
9 ment made by subsection (a), and such regulations shall
10 include standards for making such systems tamper resist-
11 ant.

12 (c) PENALTY FOR TAMPERING WITH OR FAILING TO
13 MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL
14 DYE INJECTION SYSTEMS.—

15 (1) IN GENERAL.—Part I of subchapter B of
16 chapter 68 (relating to assessable penalties) is
17 amended by adding after section 6715 the following
18 new section:

19 **“SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN**
20 **SECURITY REQUIREMENTS FOR MECHAN-**
21 **ICAL DYE INJECTION SYSTEMS.**

22 “(a) IMPOSITION OF PENALTY—

23 “(1) TAMPERING.—If any person tampers with
24 a mechanical dye injection system used to indelibly
25 dye fuel for purposes of section 4082, such person
26 shall pay a penalty in addition to the tax (if any).



1 “(2) FAILURE TO MAINTAIN SECURITY RE-
2 QUIREMENTS.—If any operator of a mechanical dye
3 injection system used to indelibly dye fuel for pur-
4 poses of section 4082 fails to maintain the security
5 standards for such system as established by the Sec-
6 retary, then such operator shall pay a penalty in ad-
7 dition to the tax (if any).

8 “(b) AMOUNT OF PENALTY.—The amount of the
9 penalty under subsection (a) shall be—

10 “(1) for each violation described in paragraph
11 (1), the greater of—

12 “(A) \$25,000, or

13 “(B) \$10 for each gallon of fuel involved,
14 and

15 “(2) for each—

16 “(A) failure to maintain security standards
17 described in paragraph (2), \$1,000, and

18 “(B) failure to correct a violation described
19 in paragraph (2), \$1,000 per day for each day
20 after which such violation was discovered or
21 such person should have reasonably known of
22 such violation.

23 “(c) JOINT AND SEVERAL LIABILITY.—

24 “(1) IN GENERAL.—If a penalty is imposed
25 under this section on any business entity, each offi-



1 cer, employee, or agent of such entity or other con-
2 tracting party who willfully participated in any act
3 giving rise to such penalty shall be jointly and sever-
4 ally liable with such entity for such penalty.

5 “(2) AFFILIATED GROUPS.—If a business entity
6 described in paragraph (1) is part of an affiliated
7 group (as defined in section 1504(a)), the parent
8 corporation of such entity shall be jointly and sever-
9 ally liable with such entity for the penalty imposed
10 under this section.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-
12 tions for part I of subchapter B of chapter 68 is
13 amended by adding after the item related to section
14 6715 the following new item:

“Sec. 6715A. Tampering with or failing to maintain security re-
quirements for mechanical dye injection systems.”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 subsections (a) and (c) shall take effect on the 180th day
17 after the date on which the Secretary issues the regula-
18 tions described in subsection (b).

19 **SEC. 855. ELIMINATION OF ADMINISTRATIVE REVIEW FOR**
20 **TAXABLE USE OF DYED FUEL.**

21 (a) IN GENERAL.—Section 6715 is amended by in-
22 serting at the end the following new subsection:

23 “(e) NO ADMINISTRATIVE APPEAL FOR THIRD AND
24 SUBSEQUENT VIOLATIONS.—In the case of any person



1 who is found to be subject to the penalty under this section
2 after a chemical analysis of such fuel and who has been
3 penalized under this section at least twice after the date
4 of the enactment of this subsection, no administrative ap-
5 peal or review shall be allowed with respect to such finding
6 except in the case of a claim regarding—

7 “(1) fraud or mistake in the chemical analysis,

8 or

9 “(2) mathematical calculation of the amount of
10 the penalty.”.

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

14 **SEC. 856. PENALTY ON UNTAXED CHEMICALLY ALTERED**
15 **DYED FUEL MIXTURES.**

16 (a) IN GENERAL.—Section 6715(a) (relating to dyed
17 fuel sold for use or used in taxable use, etc.) is amended
18 by striking “or” in paragraph (2), by inserting “or” at
19 the end of paragraph (3), and by inserting after paragraph
20 (3) the following new paragraph:

21 “(4) any person who has knowledge that a dyed
22 fuel which has been altered as described in para-
23 graph (3) sells or holds for sale such fuel for any
24 use which the person knows or has reason to know
25 is not a nontaxable use of such fuel,”.



1 (b) CONFORMING AMENDMENT.—Section 6715(a)(3)
2 is amended by striking “alters, or attempts to alter,” and
3 inserting “alters, chemically or otherwise, or attempts to
4 so alter,”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect on the date of the enactment
7 of this Act.

8 **SEC. 857. TERMINATION OF DYED DIESEL USE BY INTER-**
9 **CITY BUSES.**

10 (a) IN GENERAL.—Paragraph (3) of section 4082(b)
11 (relating to nontaxable use) is amended to read as follows:

12 “(3) any use described in section
13 4041(a)(1)(C)(iii)(II).”.

14 (b) ULTIMATE VENDOR REFUND.—Subsection (b) of
15 section 6427 is amended by adding at the end the fol-
16 lowing new paragraph:

17 “(4) REFUNDS FOR USE OF DIESEL FUEL IN
18 CERTAIN INTERCITY BUSES.—With respect to any
19 fuel to which paragraph (2)(A) applies, if the ulti-
20 mate purchaser of such fuel waives (at such time
21 and in such form and manner as the Secretary shall
22 prescribe) the right to payment under paragraph (1)
23 and assigns such right to the ultimate vendor, then
24 the Secretary shall pay the amount which would be



1 paid under paragraph (1) to such ultimate vendor,
2 but only if such ultimate vendor—

3 “(A) is registered under section 4101, and
4 “(B) meets the requirements of subpara-
5 graph (A), (B), or (D) of section 6416(a)(1).”.

6 (c) PAYMENT OF REFUNDS.—Subparagraph (A) of
7 section 6427(i)(4), as amended by this Act, is amended
8 by inserting “subsections (b)(4) and” after “filed under”.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to fuel sold after December 31,
11 2004.

12 **SEC. 858. AUTHORITY TO INSPECT ON-SITE RECORDS.**

13 (a) IN GENERAL.—Section 4083(d)(1)(A) (relating
14 to administrative authority), as amended by this Act, is
15 amended by striking “and” at the end of clause (i) and
16 by inserting after clause (ii) the following new clause:

17 “(iii) inspecting any books and
18 records and any shipping papers pertaining
19 to such fuel, and”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on the date of the enactment
22 of this Act.

23 **SEC. 859. ASSESSABLE PENALTY FOR REFUSAL OF ENTRY.**

24 (a) IN GENERAL.—Part I of subchapter B of chapter
25 68 (relating to assessable penalties), as amended by this



1 Act, is amended by adding at the end the following new
2 section:

3 **“SEC. 6717. REFUSAL OF ENTRY.**

4 “(a) IN GENERAL.—In addition to any other penalty
5 provided by law, any person who refuses to admit entry
6 or refuses to permit any other action by the Secretary au-
7 thorized by section 4083(d)(1) shall pay a penalty of
8 \$1,000 for such refusal.

9 “(b) JOINT AND SEVERAL LIABILITY.—

10 “(1) IN GENERAL.—If a penalty is imposed
11 under this section on any business entity, each offi-
12 cer, employee, or agent of such entity or other con-
13 tracting party who willfully participated in any act
14 giving rise to such penalty shall be jointly and sever-
15 ally liable with such entity for such penalty.

16 “(2) AFFILIATED GROUPS.—If a business entity
17 described in paragraph (1) is part of an affiliated
18 group (as defined in section 1504(a)), the parent
19 corporation of such entity shall be jointly and sever-
20 ally liable with such entity for the penalty imposed
21 under this section.

22 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
23 shall be imposed under this section with respect to any
24 failure if it is shown that such failure is due to reasonable
25 cause.”.



1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 4083(d)(3), as amended by this Act,
3 is amended—

4 (A) by striking “ENTRY.—The penalty”
5 and inserting: “ENTRY.—

6 “(A) FORFEITURE.—The penalty”, and

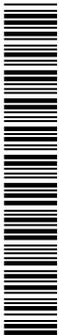
7 (B) by adding at the end the following new
8 subparagraph:

9 “(B) ASSESSABLE PENALTY.—For addi-
10 tional assessable penalty for the refusal to
11 admit entry or other refusal to permit an action
12 by the Secretary authorized by paragraph (1),
13 see section 6717.”.

14 (2) The table of sections for part I of sub-
15 chapter B of chapter 68, as amended by this Act,
16 is amended by adding at the end the following new
17 item:

“Sec. 6717. Refusal of entry.”.

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



1 **SEC. 860. REGISTRATION OF PIPELINE OR VESSEL OPERA-**
2 **TORS REQUIRED FOR EXEMPTION OF BULK**
3 **TRANSFERS TO REGISTERED TERMINALS OR**
4 **REFINERIES.**

5 (a) IN GENERAL.—Section 4081(a)(1)(B) (relating
6 to exemption for bulk transfers to registered terminals or
7 refineries) is amended—

8 (1) by inserting “by pipeline or vessel” after
9 “transferred in bulk”, and

10 (2) by inserting “, the operator of such pipeline
11 or vessel,” after “the taxable fuel”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on March 1, 2005.

14 (c) PUBLICATION OF REGISTERED PERSONS.—Be-
15 ginning on January 1, 2005, the Secretary of the Treas-
16 ury (or the Secretary’s delegate) shall periodically publish
17 under section 6103(k)(7) a current list of persons reg-
18 istered under section 4101 of the Internal Revenue Code
19 of 1986 who are required to register under such section.

20 **SEC. 861. DISPLAY OF REGISTRATION.**

21 (a) IN GENERAL.—Subsection (a) of section 4101
22 (relating to registration) is amended—

23 (1) by striking “Every” and inserting the fol-
24 lowing:

25 “(1) IN GENERAL.—Every”, and



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

3 “(2) DISPLAY OF REGISTRATION.—Every oper-
4 ator of a vessel required by the Secretary to register
5 under this section shall display proof of registration
6 through an identification device prescribed by the
7 Secretary on each vessel used by such operator to
8 transport any taxable fuel.”.

9 (b) CIVIL PENALTY FOR FAILURE TO DISPLAY REG-
10 ISTRATION.—

11 (1) IN GENERAL.—Part I of subchapter B of
12 chapter 68 (relating to assessable penalties), as
13 amended by this Act, is amended by inserting after
14 section 6717 the following new section:

15 **“SEC. 6718. FAILURE TO DISPLAY TAX REGISTRATION ON**
16 **VESSELS.**

17 “(a) FAILURE TO DISPLAY REGISTRATION.—Every
18 operator of a vessel who fails to display proof of registra-
19 tion pursuant to section 4101(a)(2) shall pay a penalty
20 of \$500 for each such failure. With respect to any vessel,
21 only one penalty shall be imposed by this section during
22 any calendar month.

23 “(b) MULTIPLE VIOLATIONS.—In determining the
24 penalty under subsection (a) on any person, subsection (a)
25 shall be applied by increasing the amount in subsection



1 (a) by the product of such amount and the aggregate num-
2 ber of penalties (if any) imposed with respect to prior
3 months by this section on such person (or a related person
4 or any predecessor of such person or related person).

5 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
6 shall be imposed under this section with respect to any
7 failure if it is shown that such failure is due to reasonable
8 cause.”.

9 (2) CLERICAL AMENDMENT.—The table of sec-
10 tions for part I of subchapter B of chapter 68, as
11 amended by this Act, is amended by inserting after
12 the item relating to section 6718 the following new
13 item:

“Sec. 6718. Failure to display tax registration on vessels.”.

14 (c) EFFECTIVE DATES.—

15 (1) SUBSECTION (a).—The amendments made
16 by subsection (a) shall take effect on January 1,
17 2005.

18 (2) SUBSECTION (b).—The amendments made
19 by subsection (b) shall apply to penalties imposed
20 after December 31, 2004.

21 **SEC. 862. REGISTRATION OF PERSONS WITHIN FOREIGN**
22 **TRADE ZONES, ETC.**

23 (a) IN GENERAL.—Section 4101(a), as amended by
24 this Act, is amended by redesignating paragraph (2) as



1 paragraph (3), and by inserting after paragraph (1) the
2 following new paragraph:

3 “(2) REGISTRATION OF PERSONS WITHIN FOR-
4 EIGN TRADE ZONES, ETC.—The Secretary shall re-
5 quire registration by any person which—

6 “(A) operates a terminal or refinery within
7 a foreign trade zone or within a customs bond-
8 ed storage facility, or

9 “(B) holds an inventory position with re-
10 spect to a taxable fuel in such a terminal.”.

11 (b) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on January 1, 2005.

13 **SEC. 863. PENALTIES FOR FAILURE TO REGISTER AND**
14 **FAILURE TO REPORT.**

15 (a) INCREASED PENALTY.—Subsection (a) of section
16 7272 (relating to penalty for failure to register) is amend-
17 ed by inserting “(\$10,000 in the case of a failure to reg-
18 ister under section 4101)” after “\$50”.

19 (b) INCREASED CRIMINAL PENALTY.—Section 7232
20 (relating to failure to register under section 4101, false
21 representations of registration status, etc.) is amended by
22 striking “\$5,000” and inserting “\$10,000”.

23 (c) ASSESSABLE PENALTY FOR FAILURE TO REG-
24 ISTER.—



1 (1) IN GENERAL.—Part I of subchapter B of
2 chapter 68 (relating to assessable penalties), as
3 amended by this Act, is amended by inserting after
4 section 6718 at the end the following new section:

5 **“SEC. 6719. FAILURE TO REGISTER.**

6 “(a) FAILURE TO REGISTER.—Every person who is
7 required to register under section 4101 and fails to do
8 so shall pay a penalty in addition to the tax (if any).

9 “(b) AMOUNT OF PENALTY.—The amount of the
10 penalty under subsection (a) shall be—

11 “(1) \$10,000 for each initial failure to register,
12 and

13 “(2) \$1,000 for each day thereafter such person
14 fails to register.

15 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
16 shall be imposed under this section with respect to any
17 failure if it is shown that such failure is due to reasonable
18 cause.”.

19 (2) CLERICAL AMENDMENT.—The table of sec-
20 tions for part I of subchapter B of chapter 68, as
21 amended by this Act, is amended by inserting after
22 the item relating to section 6717 the following new
23 item:

“Sec. 6719. Failure to register.”.

24 (d) ASSESSABLE PENALTY FOR FAILURE TO RE-
25 PORT.—



1 (1) IN GENERAL.—Part II of subchapter B of
2 chapter 68 (relating to assessable penalties) is
3 amended by adding at the end the following new sec-
4 tion:

5 **“SEC. 6725. FAILURE TO REPORT INFORMATION UNDER**
6 **SECTION 4101.**

7 “(a) IN GENERAL.—In the case of each failure de-
8 scribed in subsection (b) by any person with respect to
9 a vessel or facility, such person shall pay a penalty of
10 \$10,000 in addition to the tax (if any).

11 “(b) FAILURES SUBJECT TO PENALTY.—For pur-
12 poses of subsection (a), the failures described in this sub-
13 section are—

14 “(1) any failure to make a report under section
15 4101(d) on or before the date prescribed therefor,
16 and

17 “(2) any failure to include all of the informa-
18 tion required to be shown on such report or the in-
19 clusion of incorrect information.

20 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
21 shall be imposed under this section with respect to any
22 failure if it is shown that such failure is due to reasonable
23 cause.”.

24 (2) CLERICAL AMENDMENT.—The table of sec-
25 tions for part II of subchapter B of chapter 68 is



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

“Sec. 6725. Failure to report information under section 4101.”.

3 (e) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to penalties imposed after Decem-
5 ber 31, 2004.

6 **SEC. 864. ELECTRONIC FILING OF REQUIRED INFORMA-**
7 **TION REPORTS.**

8 (a) **IN GENERAL.**—Section 4101(d) is amended by
9 adding at the end the following new flush sentence:

10 “Any person who is required to report under this sub-
11 section and who has 25 or more reportable transactions
12 in a month shall file such report in electronic format.”.

13 (b) **EFFECTIVE DATE.**—The amendment made by
14 this section shall apply on January 1, 2006.

15 **SEC. 865. TAXABLE FUEL REFUNDS FOR CERTAIN ULTI-**
16 **MATE VENDORS.**

17 (a) **IN GENERAL.**—Paragraph (4) of section 6416(a)
18 (relating to abatements, credits, and refunds) is amended
19 to read as follows:

20 “(4) **REGISTERED ULTIMATE VENDOR TO AD-**
21 **MINISTER CREDITS AND REFUNDS OF GASOLINE**
22 **TAX.**—

23 “(A) **IN GENERAL.**—For purposes of this
24 subsection, if an ultimate vendor purchases any
25 gasoline on which tax imposed by section 4081



1 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C)
2 or (D) of subsection (b)(2) (and such gasoline
3 is for a use described in such subparagraph),
4 such ultimate vendor shall be treated as the
5 person (and the only person) who paid such tax,
6 but only if such ultimate vendor is registered
7 under section 4101.
8

9 “(B) TIMING OF CLAIMS.—The procedure
10 and timing of any claim under subparagraph
11 (A) shall be the same as for claims under section
12 6427(i)(4), except that the rules of section
13 6427(i)(3)(B) regarding electronic claims shall
14 not apply unless the ultimate vendor has certified
15 to the Secretary for the most recent quarter
16 of the taxable year that all ultimate purchasers
17 of the vendor are certified and entitled
18 to a refund under subparagraph (C) or (D) of
19 subsection (b)(2).”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on January 1, 2005.

22 **SEC. 866. TWO-PARTY EXCHANGES.**

23 (a) IN GENERAL.—Subpart C of part III of sub-
24 chapter A of chapter 32, as amended by this Act, is



1 amended by inserting after section 4104 the following new
2 section:

3 **“SEC. 4105. TWO-PARTY EXCHANGES.**

4 “(a) IN GENERAL.—In a two-party exchange, the de-
5 livering person shall not be liable for the tax imposed
6 under of section 4081(a)(1)(A)(ii).

7 “(b) TWO-PARTY EXCHANGE.—The term ‘two-party
8 exchange’ means a transaction, other than a sale, in which
9 taxable fuel is transferred from a delivering person reg-
10 istered under section 4101 as a taxable fuel registrant to
11 a receiving person who is so registered where all of the
12 following occur:

13 “(1) The transaction includes a transfer from
14 the delivering person, who holds the inventory posi-
15 tion for taxable fuel in the terminal as reflected in
16 the records of the terminal operator.

17 “(2) The exchange transaction occurs before or
18 contemporaneous with completion of removal across
19 the rack from the terminal by the receiving person.

20 “(3) The terminal operator in its books and
21 records treats the receiving person as the person
22 that removes the product across the terminal rack
23 for purposes of reporting the transaction to the Sec-
24 retary.



1 “(4) The transaction is the subject of a written
2 contract.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-
4 tions for subpart C of part III of subchapter A of chapter
5 32, as amended by of this Act, is amended by adding after
6 the last item the following new item:

 “Sec. 4105. Two-party exchanges.”.

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

10 **SEC. 867. MODIFICATIONS OF TAX ON USE OF CERTAIN VE-**
11 **HICLES.**

12 (a) PRORATION OF TAX WHERE VEHICLE SOLD.—

13 (1) IN GENERAL.—Subparagraph (A) of section
14 4481(c)(2) (relating to where vehicle destroyed or
15 stolen) is amended by striking “destroyed or stolen”
16 both places it appears and inserting “sold, de-
17 stroyed, or stolen”.

18 (2) CONFORMING AMENDMENT.—The heading
19 for section 4481(c)(2) is amended by striking “DE-
20 STROYED OR STOLEN” and inserting “SOLD, DE-
21 STROYED, OR STOLEN”.

22 (b) REPEAL OF INSTALLMENT PAYMENT.—

23 (1) Section 6156 (relating to installment pay-
24 ment of tax on use of highway motor vehicles) is re-
25 pealed.



1 equivalent to the penalties paid under sections 6715,
2 6715A, 6717, 6718, 6719, 6725, 7232, and 7272
3 (but only with regard to penalties under such section
4 related to failure to register under section 4101).”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) The heading of subsection (b) of section
7 9503 is amended by inserting “AND PENALTIES”
8 after “TAXES”.

9 (2) The heading of paragraph (1) of section
10 9503(b) is amended by striking “IN GENERAL” and
11 inserting “CERTAIN TAXES”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to penalties assessed on or after
14 the date of the enactment of this Act.

15 **SEC. 869. SIMPLIFICATION OF TAX ON TIRES.**

16 (a) IN GENERAL.—Subsection (a) of section 4071 is
17 amended to read as follows:

18 “(a) IMPOSITION AND RATE OF TAX.—There is here-
19 by imposed on taxable tires sold by the manufacturer, pro-
20 ducer, or importer thereof a tax at the rate of 9.45 cents
21 (4.725 cents in the case of a biasply tire or super single
22 tire) for each 10 pounds so much of the maximum rated
23 load capacity thereof as exceeds 3,500 pounds.”



1 (b) BIASPLY AND SUPER SINGLE TIRES.—Section
2 4072 is amended by adding at the end the following new
3 subsections:

4 “(c) BIASPLY.—For purposes of this part, the term
5 ‘biasply tire’ means a pneumatic tire on which the ply
6 cords that extend to the beads are laid at alternate angles
7 substantially less than 90 degrees to the centerline of the
8 tread.

9 “(d) SUPER SINGLE TIRE.—For purposes of this
10 part, the term ‘super single tire’ means a single tire great-
11 er than 13 inches in cross section width designed to re-
12 place 2 tires in a dual fitment.”.

13 (b) TAXABLE TIRE.—Section 4072, as amended by
14 subsection (a), is amended by redesignating subsections
15 (a), (b), (c), and (d) as subsections (b), (c), (d), and (e)
16 respectively, and by inserting before subsection (b) (as so
17 redesignated) the following new subsection:

18 “(a) TAXABLE TIRE.—For purposes of this chapter,
19 the term ‘taxable tire’ means any tire of the type used
20 on highway vehicles if wholly or in part made of rubber
21 and if marked pursuant to Federal regulations for high-
22 way use.”

23 (c) EXEMPTION FOR TIRES SOLD TO DEPARTMENT
24 OF DEFENSE.—Section 4073 is amended to read as fol-
25 lows:



1 **“SEC. 4073. EXEMPTIONS.**

2 “The tax imposed by section 4071 shall not apply to
3 tires sold for the exclusive use of the Department of De-
4 fense or the Coast Guard.”.

5 (d) CONFORMING AMENDMENTS.—

6 (1) Section 4071 is amended by striking sub-
7 section (c) and by moving subsection (e) after sub-
8 section (b) and redesignating subsection (e) as sub-
9 section (c).

10 (2) The item relating to section 4073 in the
11 table of sections for part II of subchapter A of chap-
12 ter 32 is amended to read as follows:

“Sec. 4073. Exemptions.”.

13 (e) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to sales in calendar years begin-
15 ning more than 30 days after the date of the enactment
16 of this Act.

17 **SEC. 870. TRANSMIX AND DIESEL FUEL BLEND STOCKS**
18 **TREATED AS TAXABLE FUEL.**

19 (a) IN GENERAL.—Paragraph (3) of section 4083(a)
20 is amended to read as follows:

21 “(3) DIESEL FUEL.—

22 “(A) IN GENERAL.—The term ‘diesel fuel’
23 means—

24 “(i) any liquid (other than gasoline)
25 which is suitable for use as a fuel in a die-



1 sel-powered highway vehicle, or a diesel-
2 powered train,

3 “(ii) transmix, and

4 “(iii) diesel fuel blend stocks identified
5 by the Secretary.

6 “(B) TRANSMIX.—For purposes of sub-
7 paragraph (A), the term ‘transmix’ means a by-
8 product of refined products pipeline operations
9 created by the mixing of different specification
10 products during pipeline transportation.”.

11 (b) CONFORMING AMENDMENT.—Subsection (h) of
12 section 6427 is amended to read as follows:

13 “(h) BLEND STOCKS NOT USED FOR PRODUCING
14 TAXABLE FUEL.—

15 “(1) GASOLINE BLEND STOCKS OR ADDITIVES
16 NOT USED FOR PRODUCING GASOLINE.—Except as
17 provided in subsection (k), if any gasoline blend
18 stock or additive (within the meaning of section
19 4083(a)(2)) is not used by any person to produce
20 gasoline and such person establishes that the ulti-
21 mate use of such gasoline blend stock or additive is
22 not to produce gasoline, the Secretary shall pay
23 (without interest) to such person an amount equal to
24 the aggregate amount of the tax imposed on such



1 person with respect to such gasoline blend stock or
2 additive.

3 “(2) DIESEL FUEL BLEND STOCKS OR ADDI-
4 TIVES NOT USED FOR PRODUCING DIESEL.—Except
5 as provided in subsection (k), if any diesel fuel blend
6 stock is not used by any person to produce diesel
7 fuel and such person establishes that the ultimate
8 use of such diesel fuel blend stock is not to produce
9 diesel fuel, the Secretary shall pay (without interest)
10 to such person an amount equal to the aggregate
11 amount of the tax imposed on such person with re-
12 spect to such diesel fuel blend stock.”.

13 (c) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to fuel removed, sold, or used after
15 December 31, 2004.

16 **SEC. 871. STUDY REGARDING FUEL TAX COMPLIANCE.**

17 (a) IN GENERAL.—Not later than January 31, 2005,
18 the Secretary of the Treasury shall submit to the Com-
19 mittee on Finance of the Senate and the Committee on
20 Ways and Means of the House of Representatives a report
21 regarding compliance with the tax imposed under sub-
22 chapter B of chapter 31 and part III of subchapter A of
23 chapter 32 of the Internal Revenue Code of 1986. Such
24 report shall include the information, analysis, and rec-
25 ommendations specified in subsections (b), (c), and (d).



1 (b) TAXABLE FUEL BLENDSTOCKS.—The Secretary
2 shall identify chemical products to be added to the list of
3 blendstocks from lab analysis of fuel samples collected by
4 the Internal Revenue Service which have been blended
5 with taxable fuel but are not treated as blendstocks. The
6 Secretary shall include statistics regarding the frequency
7 in which a chemical product has been collected, and wheth-
8 er the sample contained an above normal concentration
9 of the chemical product.

10 (c) WASTE PRODUCTS ADDED TO TAXABLE
11 FUELS.—The report shall include a discussion of Internal
12 Revenue Service findings regarding the addition of waste
13 products to taxable fuel and any recommendations to ad-
14 dress the taxation of such products.

15 (d) ERRONEOUS CLAIMS OF FUEL TAX EXEMP-
16 TIONS.—The report shall include a discussion of Internal
17 Revenue Service findings regarding sales of taxable fuel
18 to entities claiming exempt status as a State or local gov-
19 ernment and the frequency of erroneous certifications of
20 tax exempt status. The Secretary, in consultation with
21 representatives of State and local governments, shall pro-
22 vide recommendations to address such erroneous claims,
23 including recommendations on the feasibility of a State
24 maintained list of exempt governmental entities within the
25 State.



1 **Subtitle D—Other Revenue**
2 **Provisions**

3 **SEC. 881. QUALIFIED TAX COLLECTION CONTRACTS.**

4 (a) CONTRACT REQUIREMENTS.—

5 (1) IN GENERAL.—Subchapter A of chapter 64
6 (relating to collection) is amended by adding at the
7 end the following new section:

8 **“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.**

9 “(a) IN GENERAL.—Nothing in any provision of law
10 shall be construed to prevent the Secretary from entering
11 into a qualified tax collection contract.

12 “(b) QUALIFIED TAX COLLECTION CONTRACT.—For
13 purposes of this section, the term ‘qualified tax collection
14 contract’ means any contract which—

15 “(1) is for the services of any person (other
16 than an officer or employee of the Treasury Depart-
17 ment)—

18 “(A) to locate and contact any taxpayer
19 specified by the Secretary,

20 “(B) to request full payment from such
21 taxpayer of an amount of Federal tax specified
22 by the Secretary and, if such request cannot be
23 met by the taxpayer, to offer the taxpayer an
24 installment agreement providing for full pay-



1 ment of such amount during a period not to ex-
2 ceed 5 years, and

3 “(C) to obtain financial information speci-
4 fied by the Secretary with respect to such tax-
5 payer,

6 “(2) prohibits each person providing such serv-
7 ices under such contract from committing any act or
8 omission which employees of the Internal Revenue
9 Service are prohibited from committing in the per-
10 formance of similar services,

11 “(3) prohibits subcontractors from—

12 “(A) having contacts with taxpayers,

13 “(B) providing quality assurance services,
14 and

15 “(C) composing debt collection notices, and

16 “(4) permits subcontractors to perform other
17 services only with the approval of the Secretary.

18 “(c) FEES.—The Secretary may retain and use—

19 “(1) an amount not in excess of 25 percent of
20 the amount collected under any qualified tax collec-
21 tion contract for the costs of services performed
22 under such contract, and

23 “(2) an amount not in excess of 25 percent of
24 such amount collected for collection enforcement ac-
25 tivities of the Internal Revenue Service.



1 The Secretary shall keep adequate records regarding
2 amounts so retained and used. The amount credited as
3 paid by any taxpayer shall be determined without regard
4 to this subsection.

5 “(d) NO FEDERAL LIABILITY.—The United States
6 shall not be liable for any act or omission of any person
7 performing services under a qualified tax collection con-
8 tract.

9 “(e) APPLICATION OF FAIR DEBT COLLECTION
10 PRACTICES ACT.—The provisions of the Fair Debt Collec-
11 tion Practices Act (15 U.S.C. 1692 et seq.) shall apply
12 to any qualified tax collection contract, except to the ex-
13 tent superseded by section 6304, section 7602(c), or by
14 any other provision of this title.

15 “(f) CROSS REFERENCES.—

“**(1) For damages for certain unauthorized collec-
tion actions by persons performing services under a
qualified tax collection contract, see section 7433A.**

“**(2) For application of Taxpayer Assistance Or-
ders to persons performing services under a quali-
fied tax collection contract, see section 7811(g).”.**

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 7809(a) is amended by insert-
18 ing “6306,” before “7651”.

19 (B) The table of sections for subchapter A
20 of chapter 64 is amended by adding at the end
21 the following new item:

“Sec. 6306. Qualified tax collection contracts.”.



1 (b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED
2 COLLECTION ACTIONS BY PERSONS PERFORMING SERV-
3 ICES UNDER QUALIFIED TAX COLLECTION CON-
4 TRACTS.—

5 (1) IN GENERAL.—Subchapter B of chapter 76
6 (relating to proceedings by taxpayers and third par-
7 ties) is amended by inserting after section 7433 the
8 following new section:

9 **“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHOR-**
10 **IZED COLLECTION ACTIONS BY PERSONS**
11 **PERFORMING SERVICES UNDER QUALIFIED**
12 **TAX COLLECTION CONTRACTS.**

13 “(a) IN GENERAL.—Subject to the modifications pro-
14 vided by subsection (b), section 7433 shall apply to the
15 acts and omissions of any person performing services
16 under a qualified tax collection contract (as defined in sec-
17 tion 6306(b)) to the same extent and in the same manner
18 as if such person were an employee of the Internal Rev-
19 enue Service.

20 “(b) MODIFICATIONS.—For purposes of subsection
21 (a)—

22 “(1) Any civil action brought under section
23 7433 by reason of this section shall be brought
24 against the person who entered into the qualified tax



1 collection contract with the Secretary and shall not
2 be brought against the United States.

3 “(2) Such person and not the United States
4 shall be liable for any damages and costs determined
5 in such civil action.

6 “(3) Such civil action shall not be an exclusive
7 remedy with respect to such person.

8 “(4) Subsections (c), (d)(1), and (e) of section
9 7433 shall not apply.”.

10 (2) CLERICAL AMENDMENT.—The table of sec-
11 tions for subchapter B of chapter 76 is amended by
12 inserting after the item relating to section 7433 the
13 following new item:

“Sec. 7433A. Civil damages for certain unauthorized collection ac-
tions by persons performing services under qualified
tax collection contracts.”.

14 (c) APPLICATION OF TAXPAYER ASSISTANCE OR-
15 DERS TO PERSONS PERFORMING SERVICES UNDER A
16 QUALIFIED TAX COLLECTION CONTRACT.—Section 7811
17 (relating to taxpayer assistance orders) is amended by
18 adding at the end the following new subsection:

19 “(g) APPLICATION TO PERSONS PERFORMING SERV-
20 ICES UNDER A QUALIFIED TAX COLLECTION CON-
21 TRACT.—Any order issued or action taken by the National
22 Taxpayer Advocate pursuant to this section shall apply to
23 persons performing services under a qualified tax collec-
24 tion contract (as defined in section 6306(b)) to the same



1 extent and in the same manner as such order or action
2 applies to the Secretary.”.

3 (d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT
4 MISCONDUCT TO PERFORM UNDER CONTRACT.—Section
5 1203 of the Internal Revenue Service Restructuring Act
6 of 1998 (relating to termination of employment for mis-
7 conduct) is amended by adding at the end the following
8 new subsection:

9 “(e) INDIVIDUALS PERFORMING SERVICES UNDER A
10 QUALIFIED TAX COLLECTION CONTRACT.—An individual
11 shall cease to be permitted to perform any services under
12 any qualified tax collection contract (as defined in section
13 6306(b) of the Internal Revenue Code of 1986) if there
14 is a final determination by the Secretary of the Treasury
15 under such contract that such individual committed any
16 act or omission described under subsection (b) in connec-
17 tion with the performance of such services.”.

18 (e) BIENNIAL REPORT.—The Secretary of the Treas-
19 ury shall biennially submit (beginning in 2005) to the
20 Committee on Finance of the Senate and the Committee
21 on Ways and Means of the House of Representatives a
22 report with respect to qualified tax collection contracts
23 under section 6306 of the Internal Revenue Code of 1986
24 (as added by this section) which includes—

25 (1) a complete cost benefit analysis,



1 (2) the impact of such contracts on collection
2 enforcement staff levels in the Internal Revenue
3 Service,

4 (3) the impact of such contracts on the total
5 number and amount of unpaid assessments, and on
6 the number and amount of assessments collected by
7 Internal Revenue Service personnel after initial con-
8 tact by a contractor,

9 (4) the amounts collected and the collection
10 costs incurred (directly and indirectly) by the Inter-
11 nal Revenue Service,

12 (5) an evaluation of contractor performance,

13 (6) a disclosure safeguard report in a form
14 similar to that required under section 6103(p)(5) of
15 such Code, and

16 (7) a measurement plan which includes a com-
17 parison of the best practices used by the private col-
18 lectors with the Internal Revenue Service's own col-
19 lection techniques) and mechanisms to identify and
20 capture information on successful collection tech-
21 niques used by the contractors which could be adopt-
22 ed by the Internal Revenue Service.

23 (f) EFFECTIVE DATE.—The amendments made to
24 this section shall take effect on the date of the enactment
25 of this Act.



1 **SEC. 882. TREATMENT OF CHARITABLE CONTRIBUTIONS OF**
2 **PATENTS AND SIMILAR PROPERTY.**

3 (a) IN GENERAL.—Subparagraph (B) of section
4 170(e)(1) is amended by striking “or” at the end of clause
5 (i), by adding “or” at the end of clause (ii), and by insert-
6 ing after clause (ii) the following new clause:

7 “(iii) of any patent, copyright (other
8 than a copyright described in section
9 1221(a)(3) or 1231(b)(1)(C)), trademark,
10 trade name, trade secret, know-how, soft-
11 ware (other than software described in sec-
12 tion 197(e)(3)(A)(i)), or similar property,
13 or applications or registrations of such
14 property.”

15 (b) CERTAIN DONEE INCOME FROM INTELLECTUAL
16 PROPERTY TREATED AS AN ADDITIONAL CHARITABLE
17 CONTRIBUTION.—Section 170 is amended by redesign-
18 ating subsection (m) as subsection (n) and by inserting
19 after subsection (l) the following new subsection:

20 “(m) CERTAIN DONEE INCOME FROM INTELLEC-
21 TUAL PROPERTY TREATED AS AN ADDITIONAL CHARI-
22 TABLE CONTRIBUTION.—

23 “(1) TREATMENT AS ADDITIONAL CONTRIBU-
24 TION.—In the case of a taxpayer who makes a quali-
25 fied intellectual property contribution, the deduction
26 allowed under subsection (a) for each taxable year of



1 the taxpayer ending on or after the date of such con-
2 tribution shall be increased (subject to the limita-
3 tions under subsection (b)) by the applicable per-
4 centage of qualified donee income with respect to
5 such contribution which is properly allocable to such
6 year under this subsection.

7 “(2) REDUCTION IN ADDITIONAL DEDUCTIONS
8 TO EXTENT OF INITIAL DEDUCTION.—With respect
9 to any qualified intellectual property contribution,
10 the deduction allowed under subsection (a) shall be
11 increased under paragraph (1) only to the extent
12 that the aggregate amount of such increases with re-
13 spect to such contribution exceed the amount al-
14 lowed as a deduction under subsection (a) with re-
15 spect to such contribution determined without re-
16 gard to this subsection.

17 “(3) QUALIFIED DONEE INCOME.—For pur-
18 poses of this subsection, the term ‘qualified donee
19 income’ means any net income received by or ac-
20 crued to the donee which is properly allocable to the
21 qualified intellectual property.

22 “(4) ALLOCATION OF QUALIFIED DONEE IN-
23 COME TO TAXABLE YEARS OF DONOR.—For pur-
24 poses of this subsection, qualified donee income shall
25 be treated as properly allocable to a taxable year of



1 the donor if such income is received by or accrued
2 to the donee for the taxable year of the donee which
3 ends within or with such taxable year of the donor.

4 “(5) 10-YEAR LIMITATION.—Income shall not
5 be treated as properly allocable to qualified intellec-
6 tual property for purposes of this subsection if such
7 income is received by or accrued to the donee after
8 the 10-year period beginning on the date of the con-
9 tribution of such property.

10 “(6) BENEFIT LIMITED TO LIFE OF INTELLEC-
11 TUAL PROPERTY.—Income shall not be treated as
12 properly allocable to qualified intellectual property
13 for purposes of this subsection if such income is re-
14 ceived by or accrued to the donee after the expira-
15 tion of the legal life of such property.

16 “(7) APPLICABLE PERCENTAGE.—For purposes
17 of this subsection, the term ‘applicable percentage’
18 means the percentage determined under the fol-
19 lowing table which corresponds to a taxable year of
20 the donor ending on or after the date of the quali-
21 fied intellectual property contribution:

“Taxable Year of Donor Ending on or After Date of Contribution:	Applicable Percentage:
1st	100
2nd	100
3rd	90
4th	80
5th	70
6th	60



“Taxable Year of Donor Ending on or After Date of Contribution:	Applicable Percentage:
7th	50
8th	40
9th	30
10th	20
11th	10
12th	10.

1 “(8) QUALIFIED INTELLECTUAL PROPERTY
2 CONTRIBUTION.—For purposes of this subsection,
3 the term ‘qualified intellectual property contribution’
4 means any charitable contribution of qualified intel-
5 lectual property—

6 “(A) the amount of which taken into ac-
7 count under this section is reduced by reason of
8 subsection (e)(1), and

9 “(B) with respect to which the donor in-
10 forms the donee at the time of such contribu-
11 tion that the donor intends to treat such con-
12 tribution as a qualified intellectual property
13 contribution for purposes of this subsection and
14 section 6050L.

15 “(9) QUALIFIED INTELLECTUAL PROPERTY.—
16 For purposes of this subsection, the term ‘qualified
17 intellectual property’ means property described in
18 subsection (e)(1)(B)(iii) (other than property con-
19 tributed to or for the use of an organization de-
20 scribed in subsection (e)(1)(B)(ii)).

21 “(10) OTHER SPECIAL RULES.—



1 “(A) APPLICATION OF LIMITATIONS ON
2 CHARITABLE CONTRIBUTIONS.—Any increase
3 under this subsection of the deduction provided
4 under subsection (a) shall be treated for pur-
5 poses of subsection (b) as a deduction which is
6 attributable to a charitable contribution to the
7 donee to which such increase relates.

8 “(B) NET INCOME DETERMINED BY
9 DONEE.—The net income taken into account
10 under paragraph (3) shall not exceed the
11 amount of such income reported under section
12 6050L(b)(1).

13 “(C) DEDUCTION LIMITED TO 12 TAXABLE
14 YEARS.—Except as may be provided under sub-
15 paragraph (D)(i), this subsection shall not
16 apply with respect to any qualified intellectual
17 property contribution for any taxable year of
18 the donor after the 12th taxable year of the
19 donor which ends on or after the date of such
20 contribution.

21 “(D) REGULATIONS.—The Secretary may
22 issue regulations or other guidance to carry out
23 the purposes of this subsection, including regu-
24 lations or guidance—



1 “(i) modifying the application of this
2 subsection in the case of a donor or donee
3 with a short taxable year, and

4 “(ii) providing for the determination
5 of an amount to be treated as net income
6 of the donee which is properly allocable to
7 qualified intellectual property in the case
8 of a donee who uses such property to fur-
9 ther a purpose or function constituting the
10 basis of the donee’s exemption under sec-
11 tion 501 (or, in the case of a governmental
12 unit, any purpose described in section
13 170(c)) and does not possess a right to re-
14 ceive any payment from a third party with
15 respect to such property.”.

16 (c) REPORTING REQUIREMENTS.—

17 (1) IN GENERAL.—Section 6050L (relating to
18 returns relating to certain dispositions of donated
19 property) is amended to read as follows:

20 **“SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED**
21 **PROPERTY.**

22 “(a) DISPOSITIONS OF DONATED PROPERTY.—

23 “(1) IN GENERAL.—If the donee of any chari-
24 table deduction property sells, exchanges, or other-
25 wise disposes of such property within 2 years after



1 its receipt, the donee shall make a return (in accord-
2 ance with forms and regulations prescribed by the
3 Secretary) showing—

4 “(A) the name, address, and TIN of the
5 donor,

6 “(B) a description of the property,

7 “(C) the date of the contribution,

8 “(D) the amount received on the disposi-
9 tion, and

10 “(E) the date of such disposition.

11 “(2) DEFINITIONS.—For purposes of this
12 subsection—

13 “(A) CHARITABLE DEDUCTION PROP-
14 erty.—The term ‘charitable deduction prop-
15 erty’ means any property (other than publicly
16 traded securities) contributed in a contribution
17 for which a deduction was claimed under sec-
18 tion 170 if the claimed value of such property
19 (plus the claimed value of all similar items of
20 property donated by the donor to 1 or more
21 donees) exceeds \$5,000.

22 “(B) PUBLICLY TRADED SECURITIES.—
23 The term ‘publicly traded securities’ means se-
24 curities for which (as of the date of the con-



1 tribution) market quotations are readily avail-
2 able on an established securities market.

3 “(b) QUALIFIED INTELLECTUAL PROPERTY CON-
4 TRIBUTIONS.—

5 “(1) IN GENERAL.—Each donee with respect to
6 a qualified intellectual property contribution shall
7 make a return (at such time and in such form and
8 manner as the Secretary may by regulations pre-
9 scribe) with respect to each specified taxable year of
10 the donee showing—

11 “(A) the name, address, and TIN of the
12 donor,

13 “(B) a description of the qualified intellec-
14 tual property contributed,

15 “(C) the date of the contribution, and

16 “(D) the amount of net income of the
17 donee for the taxable year which is properly al-
18 locable to the qualified intellectual property (de-
19 termined without regard to paragraph (10)(B)
20 of section 170(m) and with the modifications
21 described in paragraphs (5) and (6) of such
22 section).

23 “(2) DEFINITIONS.—For purposes of this
24 subsection—



1 “(A) IN GENERAL.—Terms used in this
2 subsection which are also used in section
3 170(m) have the respective meanings given
4 such terms in such section.

5 “(B) SPECIFIED TAXABLE YEAR.—The
6 term ‘specified taxable year’ means, with re-
7 spect to any qualified intellectual property con-
8 tribution, any taxable year of the donee any
9 portion of which is part of the 10-year period
10 beginning on the date of such contribution.

11 “(c) STATEMENT TO BE FURNISHED TO DONORS.—
12 Every person making a return under subsection (a) or (b)
13 shall furnish a copy of such return to the donor at such
14 time and in such manner as the Secretary may by regula-
15 tions prescribe.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions for subpart A of part II of subchapter A of
18 chapter 61 is amended by striking the item relating
19 to section 6050L and inserting the following new
20 item:

“Sec. 6050L. Returns relating to certain donated property.”.



21 (d) COORDINATION WITH APPRAISAL REQUIRE-
22 MENTS.—Subclause (I) of section 170(f)(11)(A)(ii), as
23 added by this Act, is amended by inserting “subsection
24 (e)(1)(B)(iii) or” before “section 1221(a)(1)”.

1 (e) ANTI-ABUSE RULES.—The Secretary of the
2 Treasury may prescribe such regulations or other guid-
3 ance as may be necessary or appropriate to prevent the
4 avoidance of the purposes of section 170(e)(1)(B)(iii) of
5 the Internal Revenue Code of 1986 (as added by sub-
6 section (a)), including preventing—

7 (1) the circumvention of the reduction of the
8 charitable deduction by embedding or bundling the
9 patent or similar property as part of a charitable
10 contribution of property that includes the patent or
11 similar property,

12 (2) the manipulation of the basis of the prop-
13 erty to increase the amount of the charitable deduc-
14 tion through the use of related persons, pass-thru
15 entities, or other intermediaries, or through the use
16 of any provision of law or regulation (including the
17 consolidated return regulations), and

18 (3) a donor from changing the form of the pat-
19 ent or similar property to property of a form for
20 which different deduction rules would apply.

21 (f) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to contributions made after June
23 3, 2004.



1 **SEC. 883. INCREASED REPORTING FOR NONCASH CHARITABLE CONTRIBUTIONS.**
2

3 (a) IN GENERAL.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and
4 special rules) is amended by adding after paragraph (10)
5 the following new paragraph:
6

7 “(11) QUALIFIED APPRAISAL AND OTHER DOCUMENTATION FOR CERTAIN CONTRIBUTIONS.—
8

9 “(A) IN GENERAL.—

10 “(i) DENIAL OF DEDUCTION.—In the
11 case of an individual, partnership, or corporation,
12 no deduction shall be allowed
13 under subsection (a) for any contribution
14 of property for which a deduction of more
15 than \$500 is claimed unless such person
16 meets the requirements of subparagraphs
17 (B), (C), and (D), as the case may be,
18 with respect to such contribution.

19 “(ii) EXCEPTIONS.—

20 “(I) READILY VALUED PROPERTY.—Subparagraphs (C) and (D)
21 shall not apply to cash, property described in section 1221(a)(1), publicly
22 traded securities (as defined in section
23 6050L(a)(2)(B)), and any qualified
24 vehicle described in paragraph
25
26



1 (12)(A)(ii) to which an acknowledge-
2 ment under paragraph (12)(B)(iii) is
3 provided.

4 “(II) REASONABLE CAUSE.—
5 Clause (i) shall not apply if it is
6 shown that the failure to meet such
7 requirements is due to reasonable
8 cause and not to willful neglect.

9 “(B) PROPERTY DESCRIPTION FOR CON-
10 TRIBUTIONS OF MORE THAN \$500.—In the case
11 of contributions of property for which a deduc-
12 tion of more than \$500 is claimed, the require-
13 ments of this subparagraph are met if the indi-
14 vidual, partnership or corporation includes with
15 the return for the taxable year in which the
16 contribution is made a description of such prop-
17 erty and such other information as the Sec-
18 retary may require. The requirements of this
19 subparagraph shall not apply to a C corporation
20 which is not a personal service corporation or a
21 closely held C corporation.

22 “(C) QUALIFIED APPRAISAL FOR CON-
23 TRIBUTIONS OF MORE THAN \$5,000.—In the
24 case of contributions of property for which a
25 deduction of more than \$5,000 is claimed, the



1 requirements of this subparagraph are met if
2 the individual, partnership, or corporation ob-
3 tains a qualified appraisal of such property and
4 attaches to the return for the taxable year in
5 which such contribution is made such informa-
6 tion regarding such property and such appraisal
7 as the Secretary may require.

8 “(D) SUBSTANTIATION FOR CONTRIBU-
9 TIONS OF MORE THAN \$500,000.—In the case of
10 contributions of property for which a deduction
11 of more than \$500,000 is claimed, the require-
12 ments of this subparagraph are met if the indi-
13 vidual, partnership, or corporation attaches to
14 the return for the taxable year a qualified ap-
15 praisal of such property.

16 “(E) QUALIFIED APPRAISAL.—For pur-
17 poses of this paragraph, the term ‘qualified ap-
18 praisal’ means, with respect to any property, an
19 appraisal of such property which is treated for
20 purposes of this paragraph as a qualified ap-
21 praisal under regulations or other guidance pre-
22 scribed by the Secretary.

23 “(F) AGGREGATION OF SIMILAR ITEMS OF
24 PROPERTY.—For purposes of determining
25 thresholds under this paragraph, property and



1 all similar items of property donated to 1 or
2 more donees shall be treated as 1 property.

3 “(G) SPECIAL RULE FOR PASS-THRU ENTI-
4 TIES.—In the case of a partnership or S cor-
5 poration, this paragraph shall be applied at the
6 entity level, except that the deduction shall be
7 denied at the partner or shareholder level.

8 “(H) REGULATIONS.—The Secretary may
9 prescribe such regulations as may be necessary
10 or appropriate to carry out the purposes of this
11 paragraph, including regulations that may pro-
12 vide that some or all of the requirements of this
13 paragraph do not apply in appropriate cases.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to contributions made after June
16 3, 2004.

17 **SEC. 884. DONATIONS OF MOTOR VEHICLES, BOATS, AND**
18 **AIRPLANES.**

19 (a) IN GENERAL.—Subsection (f) of section 170 (re-
20 lating to disallowance of deduction in certain cases and
21 special rules), as amended by this Act, is amended by in-
22 serting after paragraph (11) the following new paragraph:

23 “(12) CONTRIBUTIONS OF USED MOTOR VEHI-
24 CLES, BOATS, AND AIRPLANES.—



1 “(A) IN GENERAL.—In the case of a con-
2 tribution of a qualified vehicle the claimed value
3 of which exceeds \$500—

4 “(i) paragraph (8) shall not apply and
5 no deduction shall be allowed under sub-
6 section (a) for such contribution unless the
7 taxpayer substantiates the contribution by
8 a contemporaneous written acknowledge-
9 ment of the contribution by the donee or-
10 ganization that meets the requirements of
11 subparagraph (B) and includes the ac-
12 knowledgement with the taxpayer’s return
13 of tax which includes the deduction, and

14 “(ii) if the organization sells the vehi-
15 cle without any significant intervening use
16 or material improvement of such vehicle by
17 the organization, the amount of the deduc-
18 tion allowed under subsection (a) shall not
19 exceed the gross proceeds received from
20 such sale.

21 “(B) CONTENT OF ACKNOWLEDGEMENT.—
22 An acknowledgement meets the requirements of
23 this subparagraph if it includes the following
24 information:



1 “(i) The name and taxpayer identi-
2 fication number of the donor.

3 “(ii) The vehicle identification number
4 or similar number.

5 “(iii) In the case of a qualified vehicle
6 to which subparagraph (A)(ii) applies—

7 “(I) a certification that the vehi-
8 cle was sold in an arm’s length trans-
9 action between unrelated parties,

10 “(II) the gross proceeds from the
11 sale, and

12 “(III) a statement that the de-
13 ductible amount may not exceed the
14 amount of such gross proceeds.

15 “(iv) In the case of a qualified vehicle
16 to which subparagraph (A)(ii) does not
17 apply—

18 “(I) a certification of the in-
19 tended use or material improvement
20 of the vehicle and the intended dura-
21 tion of such use, and

22 “(II) a certification that the vehi-
23 cle would not be transferred in ex-
24 change for money, other property, or



1 services before completion of such use
2 or improvement.

3 “(C) CONTEMPORANEOUS.—For purposes
4 of subparagraph (A), an acknowledgement shall
5 be considered to be contemporaneous if the
6 donee organization provides it within 30 days
7 of—

8 “(i) the sale of the qualified vehicle,
9 or

10 “(ii) in the case of an acknowledge-
11 ment including a certification described in
12 subparagraph (B)(iv), the contribution of
13 the qualified vehicle.

14 “(D) INFORMATION TO SECRETARY.—A
15 donee organization required to provide an ac-
16 knowledgement under this paragraph shall pro-
17 vide to the Secretary the information contained
18 in the acknowledgement. Such information shall
19 be provided at such time and in such manner
20 as the Secretary may prescribe.

21 “(E) QUALIFIED VEHICLE.—For purposes
22 of this paragraph, the term ‘qualified vehicle’
23 means any—



1 “(i) motor vehicle manufactured pri-
2 marily for use on public streets, roads, and
3 highways,

4 “(ii) boat, or

5 “(iii) airplane.

6 Such term shall not include any property which
7 is described in section 1221(a)(1).

8 “(F) REGULATIONS OR OTHER GUID-
9 ANCE.—The Secretary shall prescribe such reg-
10 ulations or other guidance as may be necessary
11 to carry out the purposes of this paragraph.
12 The Secretary may prescribe regulations or
13 other guidance which exempts sales by the
14 donee organization which are in direct further-
15 ance of such organization’s charitable purpose
16 from the requirements of subparagraphs (A)(ii)
17 and (B)(iv)(II).”.

18 (b) PENALTY FOR FRAUDULENT ACKNOWLEDG-
19 MENTS.—

20 (1) IN GENERAL.—Part I of subchapter B of
21 chapter 68 (relating to assessable penalties), as
22 amended by this Act, is amended by inserting after
23 section 6719 the following new section:



1 **“SEC. 6720. FRAUDULENT ACKNOWLEDGMENTS WITH RE-**
2 **SPECT TO DONATIONS OF MOTOR VEHICLES,**
3 **BOATS, AND AIRPLANES.**

4 “Any donee organization required under section
5 170(f)(12)(A) to furnish a contemporaneous written ac-
6 knowledgment to a donor which knowingly furnishes a
7 false or fraudulent acknowledgment, or which knowingly
8 fails to furnish such acknowledgment in the manner, at
9 the time, and showing the information required under sec-
10 tion 170(f)(12), or regulations prescribed thereunder,
11 shall for each such act, or for each such failure, be subject
12 to a penalty equal to—

13 “(1) in the case of an acknowledgment with re-
14 spect to a qualified vehicle to which section
15 170(f)(12)(A)(ii) applies, the greater of—

16 “(A) the product of the highest rate of tax
17 specified in section 1 and the sales price stated
18 on the acknowledgment, or

19 “(B) the gross proceeds from the sale of
20 such vehicle, and

21 “(2) in the case of an acknowledgment with re-
22 spect to any other qualified vehicle to which section
23 170(f)(12) applies, the greater of—

24 “(A) the product of the highest rate of tax
25 specified in section 1 and the claimed value of
26 the vehicle, or



1 “(B) \$5,000.”.

2 (2) CONFORMING AMENDMENT.—The table of
3 sections for part I of subchapter B of chapter 68,
4 as amended by this Act, is amended by adding at
5 the end the following new item:

“Sec. 6720. Fraudulent acknowledgments with respect to dona-
tions of motor vehicles, boats, and airplanes.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to contributions made after De-
8 cember 31, 2004.

9 **SEC. 885. TREATMENT OF NONQUALIFIED DEFERRED COM-**
10 **PENSATION PLANS.**

11 (a) IN GENERAL.—Subpart A of part I of subchapter
12 D of chapter 1 is amended by adding at the end the fol-
13 lowing new section:

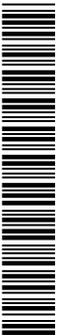
14 **“SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED**
15 **COMPENSATION UNDER NONQUALIFIED DE-**
16 **FERRED COMPENSATION PLANS.**

17 “(a) RULES RELATING TO CONSTRUCTIVE RE-
18 CEIPT.—

19 “(1) PLAN FAILURES.—

20 “(A) GROSS INCOME INCLUSION.—

21 “(i) IN GENERAL.—If at any time
22 during a taxable year a nonqualified de-
23 ferred compensation plan—



1 “(I) fails to meet the require-
2 ments of paragraphs (2), (3), and (4),
3 or

4 “(II) is not operated in accord-
5 ance with such requirements,
6 all compensation deferred under the plan
7 for the taxable year and all preceding tax-
8 able years shall be includible in gross in-
9 come for the taxable year to the extent not
10 subject to a substantial risk of forfeiture
11 and not previously included in gross in-
12 come.

13 “(ii) APPLICATION ONLY TO AF-
14 FECTED PARTICIPANTS.—Clause (i) shall
15 only apply with respect to all compensation
16 deferred under the plan for participants
17 with respect to whom the failure relates.

18 “(B) INTEREST AND ADDITIONAL TAX
19 PAYABLE WITH RESPECT TO PREVIOUSLY DE-
20 FERRED COMPENSATION.—

21 “(i) IN GENERAL.—If compensation is
22 required to be included in gross income
23 under subparagraph (A) for a taxable year,
24 the tax imposed by this chapter for the



1 taxable year shall be increased by the sum
2 of—

3 “(I) the amount of interest deter-
4 mined under clause (ii), and

5 “(II) an amount equal to 20 per-
6 cent of the compensation which is re-
7 quired to be included in gross income.

8 “(ii) INTEREST.—For purposes of
9 clause (i), the interest determined under
10 this clause for any taxable year is the
11 amount of interest at the underpayment
12 rate plus 1 percentage point on the under-
13 payments that would have occurred had
14 the deferred compensation been includible
15 in gross income for the taxable year in
16 which first deferred or, if later, the first
17 taxable year in which such deferred com-
18 pensation is not subject to a substantial
19 risk of forfeiture.

20 “(2) DISTRIBUTIONS.—

21 “(A) IN GENERAL.—The requirements of
22 this paragraph are met if the plan provides that
23 compensation deferred under the plan may not
24 be distributed earlier than—



1 “(i) separation from service as deter-
2 mined by the Secretary (except as provided
3 in subparagraph (B)(i)),

4 “(ii) the date the participant becomes
5 disabled (within the meaning of subpara-
6 graph (C)),

7 “(iii) death,

8 “(iv) a specified time (or pursuant to
9 a fixed schedule) specified under the plan
10 at the date of the deferral of such com-
11 pensation,

12 “(v) to the extent provided by the
13 Secretary, a change in the ownership or ef-
14 fective control of the corporation, or in the
15 ownership of a substantial portion of the
16 assets of the corporation, or

17 “(vi) the occurrence of an unforesee-
18 able emergency.

19 “(B) SPECIAL RULES.—

20 “(i) SPECIFIED EMPLOYEES.—In the
21 case of any specified employee, the require-
22 ment of subparagraph (A)(i) is met only if
23 distributions may not be made before the
24 date which is 6 months after the date of
25 separation from service (or, if earlier, the



1 date of death of the employee). For pur-
2 poses of the preceding sentence, a specified
3 employee is a key employee (as defined in
4 section 416(i) without regard to paragraph
5 (5) thereof) of a corporation any stock in
6 which is publicly traded on an established
7 securities market 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 an illness or acci-
15 dent of the participant, the partici-
16 pant’s spouse, or a dependent (as de-
17 fined in section 152(a)) of the partici-
18 pant, loss of the participant’s property
19 due to casualty, or other similar ex-
20 traordinary and unforeseeable cir-
21 cumstances arising as a result of
22 events beyond the control of the par-
23 ticipant.

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.—

22 “(i) IN GENERAL.—The requirements
23 of this subparagraph are met if the plan
24 provides that compensation for services
25 performed during a taxable year may be



1 deferred at the participant's election only if
2 the election to defer such compensation is
3 made not later than the close of the pre-
4 ceding taxable year or at such other time
5 as provided in regulations.

6 “(ii) FIRST YEAR OF ELIGIBILITY.—
7 In the case of the first year in which a
8 participant becomes eligible to participate
9 in the plan, such election may be made
10 with respect to services to be performed
11 subsequent to the election within 30 days
12 after the date the participant becomes eli-
13 gible to participate in such plan.

14 “(iii) PERFORMANCE-BASED COM-
15 PENSATION.—In the case of any perform-
16 ance-based compensation based on services
17 performed over a period of at least 12
18 months, such election may be made no
19 later than 6 months before the end of the
20 period.

21 “(C) CHANGES IN TIME AND FORM OF DIS-
22 TRIBUTION.—The requirements of this subpara-
23 graph are met if, in the case of a plan which
24 permits under a subsequent election a delay in



1 a payment or a change in the form of
2 payment—

3 “(i) the plan requires that such elec-
4 tion may not take effect until at least 12
5 months after the date on which the elec-
6 tion is made,

7 “(ii) in the case of an election related
8 to a payment not described in clause (ii),
9 (iii), or (vi) of paragraph (2)(A), the plan
10 requires that the first payment with re-
11 spect to which such election is made be de-
12 ferred for a period of not less than 5 years
13 from the date such payment would other-
14 wise have been made, and

15 “(iii) the plan requires that any elec-
16 tion related to a payment described in
17 paragraph (2)(A)(iv) may not be made less
18 than 12 months prior to the date of the
19 first scheduled payment under such para-
20 graph.

21 “(b) RULES RELATING TO FUNDING.—

22 “(1) OFFSHORE PROPERTY IN A TRUST.—In
23 the case of assets set aside (directly or indirectly) in
24 a trust (or other arrangement determined by the
25 Secretary) for purposes of paying deferred com-



1 pensation under a nonqualified deferred compensa-
2 tion plan, for purposes of section 83 such assets
3 shall be treated as property transferred in connec-
4 tion with the performance of services whether or not
5 such assets are available to satisfy claims of general
6 creditors—

7 “(A) at the time set aside if such assets
8 (or such trust or other arrangement) are lo-
9 cated outside of the United States, or

10 “(B) at the time transferred if such assets
11 (or such trust or other arrangement) are subse-
12 quently transferred outside of the United
13 States.

14 This paragraph shall not apply to assets located in
15 a foreign jurisdiction if substantially all of the serv-
16 ices to which the nonqualified deferred compensation
17 relates are performed in such jurisdiction.

18 “(2) EMPLOYER’S FINANCIAL HEALTH.—In the
19 case of compensation deferred under a nonqualified
20 deferred compensation plan, there is a transfer of
21 property within the meaning of section 83 with re-
22 spect to such compensation as of the earlier of—

23 “(A) the date on which the plan first pro-
24 vides that assets will become restricted to the
25 provision of benefits under the plan in connec-



1 tion with a change in the employer’s financial
2 health, or

3 “(B) the date on which assets are so re-
4 stricted.

5 “(3) INCOME INCLUSION FOR OFFSHORE
6 TRUSTS AND EMPLOYER’S FINANCIAL HEALTH.—For
7 each taxable year that assets treated as transferred
8 under this subsection remain set aside in a trust or
9 other arrangement subject to paragraph (1) or (2),
10 any increase in value in, or earnings with respect to,
11 such assets shall be treated as an additional transfer
12 of property under this subsection (to the extent not
13 previously included in income).

14 “(4) INTEREST ON TAX LIABILITY PAYABLE
15 WITH RESPECT TO TRANSFERRED PROPERTY.—

16 “(A) IN GENERAL.—If amounts are re-
17 quired to be included in gross income by reason
18 of paragraph (1) or (2) for a taxable year, the
19 tax imposed by this chapter for such taxable
20 year shall be increased by the sum of—

21 “(i) the amount of interest determined
22 under subparagraph (B), and

23 “(ii) an amount equal to 20 percent of
24 the amounts required to be included in
25 gross income.



1 “(B) INTEREST.—For purposes of sub-
2 paragraph (A), the interest determined under
3 this subparagraph for any taxable year is the
4 amount of interest at the underpayment rate
5 plus 1 percentage point on the underpayments
6 that would have occurred had the amounts so
7 required to be included in gross income by
8 paragraph (1) or (2) been includible in gross in-
9 come for the taxable year in which first de-
10 ferred or, if later, the first taxable year in
11 which such amounts are not subject to a sub-
12 stantial risk of forfeiture.

13 “(c) NO INFERENCE ON EARLIER INCOME INCLU-
14 SION OR REQUIREMENT OF LATER INCLUSION.—Nothing
15 in this section shall be construed to prevent the inclusion
16 of amounts in gross income under any other provision of
17 this chapter or any other rule of law earlier than the time
18 provided in this section. Any amount included in gross in-
19 come under this section shall not be required to be in-
20 cluded in gross income under any other provision of this
21 chapter or any other rule of law later than the time pro-
22 vided in this section.

23 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—
24 For purposes of this section—



1 “(1) NONQUALIFIED DEFERRED COMPENSA-
2 TION PLAN.—The term ‘nonqualified deferred com-
3 pensation plan’ means any plan that provides for the
4 deferral of compensation, other than—

5 “(A) a qualified employer plan, and

6 “(B) any bona fide vacation leave, sick
7 leave, compensatory time, disability pay, or
8 death benefit plan.

9 “(2) QUALIFIED EMPLOYER PLAN.—The term
10 ‘qualified employer plan’ means—

11 “(A) any plan, contract, pension, account,
12 or trust described in subparagraph (A) or (B)
13 of section 219(g)(5) (without regard to sub-
14 paragraph (A)(iii)),

15 “(B) any eligible deferred compensation
16 plan (within the meaning of section 457(b)),
17 and

18 “(C) any plan described in section 415(m).

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 “(6) AGGREGATION RULES.—Except as pro-
9 vided by the Secretary, rules similar to the rules of
10 subsections (b) and (c) of section 414 shall apply.

11 “(7) EXCEPTION FOR NONELECTIVE DEFERRED
12 COMPENSATION.—This section shall not apply to any
13 nonelective deferred compensation to which section
14 457 does not apply by reason of section 457(e)(12),
15 but only if such compensation is provided under a
16 nonqualified deferred compensation plan—

17 “(A) which was in existence on May 1,
18 2004,

19 “(B) which was providing nonelective de-
20 ferred compensation described in section
21 457(e)(12) on such date, and

22 “(C) with respect to which a determination
23 letter was issued on or before such date that
24 section 457 does not apply to such plan.



1 If, after May 1, 2004, a plan described in the pre-
2 ceding sentence adopts a plan amendment which
3 provides a material change in the classes of individ-
4 uals eligible to participate in the plan, this para-
5 graph shall not apply to any nonelective deferred
6 compensation provided under the plan on or after
7 the date of the adoption of the amendment.

8 “(e) REGULATIONS.—The Secretary shall prescribe
9 such regulations as may be necessary or appropriate to
10 carry out the purposes of this section, including
11 regulations—

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) TREATMENT OF DEFERRED AMOUNTS.—

5 (1) W-2 FORMS.—

6 (A) IN GENERAL.—Subsection (a) of sec-
7 tion 6051 (relating to receipts for employees) is
8 amended by striking “and” at the end of para-
9 graph (11), by striking the period at the end of
10 paragraph (12) and inserting “, and”, and by
11 inserting after paragraph (12) the following
12 new paragraph:

13 “(13) the total amount of deferrals for the year
14 under a nonqualified deferred compensation plan
15 (within the meaning of section 409A(d)).”.

16 (B) THRESHOLD.—Subsection (a) of sec-
17 tion 6051 is amended by adding at the end the
18 following: “In the case of the amounts required
19 to be shown by paragraph (13), the Secretary
20 may (by regulation) establish a minimum
21 amount of deferrals below which paragraph
22 (13) does not apply.”.

23 (2) WAGE WITHHOLDING.—Section 3401(a)
24 (defining wages) is amended by adding at the end
25 the following flush sentence: “The term ‘wages’ in-



1 includes any amount includible in gross income of an
2 employee under section 409A and payment of such
3 amount shall be treated as having been made in the
4 taxable year in which the amount is so includible.”.

5 (3) OTHER REPORTING.—Section 6041 (relat-
6 ing to information at source) is amended by adding
7 at the end the following new subsection:

8 “(g) NONQUALIFIED DEFERRED COMPENSATION.—
9 Subsection (a) shall apply to—

10 “(1) any deferrals for the year under a non-
11 qualified deferred compensation plan (within the
12 meaning of section 409A(d)), whether or not paid,
13 except that this paragraph shall not apply to defer-
14 rals which are required to be reported under section
15 6051(a)(13) (without regard to any de minimis ex-
16 ception), and

17 “(2) any amount includible under section 409A
18 and which is not treated as wages under section
19 3401(a).”.

20 (c) CLERICAL AMENDMENT.—The table of sections
21 for such subpart A of part I of subchapter D of chapter
22 1 is amended by adding at the end the following new item:

“Sec. 409A. Inclusion in gross income of deferred compensation
under nonqualified deferred compensation plans.”.

23 (d) EFFECTIVE DATE.—



1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to amounts deferred after
3 December 31, 2004.

4 (2) SPECIAL RULES.—

5 (A) EARNINGS.—The amendments made
6 by this section shall apply to earnings on de-
7 ferred compensation only to the extent that
8 such amendments apply to such compensation.

9 (B) MATERIAL MODIFICATIONS.—For pur-
10 poses of this subsection, amounts deferred in
11 taxable years beginning before January 1,
12 2005, shall be treated as amounts deferred in
13 a taxable year beginning on or after such date
14 if the plan under which the deferral is made is
15 materially modified after October 3, 2004, un-
16 less such modification is pursuant to the guid-
17 ance issued under subsection (f).

18 (e) GUIDANCE RELATING TO CHANGE OF OWNER-
19 SHIP OR CONTROL.—Not later than 90 days after the date
20 of the enactment of this Act, the Secretary of the Treasury
21 shall issue guidance on what constitutes a change in own-
22 ership or effective control for purposes of section 409A
23 of the Internal Revenue Code of 1986, as added by this
24 section.



1 (f) GUIDANCE RELATING TO TERMINATION OF CER-
2 TAIN EXISTING ARRANGEMENTS.—Not later than 60 days
3 after the date of the enactment of this Act, the Secretary
4 of the Treasury shall issue guidance providing a limited
5 period during which a nonqualified deferred compensation
6 plan adopted before December 31, 2004, may, without vio-
7 lating the requirements of paragraphs (2), (3), and (4)
8 of section 409A(a) of the Internal Revenue Code of 1986
9 (as added by this section), be amended—

10 (1) to provide that a participant may terminate
11 participation in the plan, or cancel an outstanding
12 deferral election with regard to amounts deferred
13 after December 31, 2004, but only if amounts sub-
14 ject to the termination or cancellation are includible
15 in income of the participant as earned (or, if later,
16 when no longer subject to substantial risk of for-
17 feiture), and

18 (2) to conform to the requirements of such sec-
19 tion 409A with regard to amounts deferred after De-
20 cember 31, 2004.

21 **SEC. 886. EXTENSION OF AMORTIZATION OF INTANGIBLES**
22 **TO SPORTS FRANCHISES.**

23 (a) IN GENERAL.—Section 197(e) (relating to excep-
24 tions to definition of section 197 intangible) is amended



1 by striking paragraph (6) and by redesignating para-
2 graphs (7) and (8) as paragraphs (6) and (7), respectively.

3 (b) CONFORMING AMENDMENTS.—

4 (1)(A) Section 1056 (relating to basis limitation
5 for player contracts transferred in connection with
6 the sale of a franchise) is repealed.

7 (B) The table of sections for part IV of sub-
8 chapter O of chapter 1 is amended by striking the
9 item relating to section 1056.

10 (2) Section 1245(a) (relating to gain from dis-
11 position of certain depreciable property) is amended
12 by striking paragraph (4).

13 (3) Section 1253 (relating to transfers of fran-
14 chises, trademarks, and trade names) is amended by
15 striking subsection (e).

16 (c) EFFECTIVE DATES.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (2), the amendments made by this section
19 shall apply to property acquired after the date of the
20 enactment of this Act.

21 (2) SECTION 1245.—The amendment made by
22 subsection (b)(2) shall apply to franchises acquired
23 after the date of the enactment of this Act.



1 **SEC. 887. MODIFICATION OF CONTINUING LEVY ON PAY-**
2 **MENTS TO FEDERAL VENDERS.**

3 (a) IN GENERAL.—Section 6331(h) (relating to con-
4 tinuing levy on certain payments) is amended by adding
5 at the end the following new paragraph:

6 “(3) INCREASE IN LEVY FOR CERTAIN PAY-
7 MENTS.—Paragraph (1) shall be applied by sub-
8 stituting ‘100 percent’ for ‘15 percent’ in the case
9 of any specified payment due to a vendor of goods
10 or services sold or leased to the Federal Govern-
11 ment.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall take effect on the date of the enactment
14 of this Act.

15 **SEC. 888. MODIFICATION OF STRADDLE RULES.**

16 (a) RULES RELATING TO IDENTIFIED STRADDLES.—

17 (1) IN GENERAL.—Subparagraph (A) of section
18 1092(a)(2) (relating to special rule for identified
19 straddles) is amended to read as follows:

20 “(A) IN GENERAL.—In the case of any
21 straddle which is an identified straddle—

22 “(i) paragraph (1) shall not apply
23 with respect to identified positions com-
24 prising the identified straddle,

25 “(ii) if there is any loss with respect
26 to any identified position of the identified



1 straddle, the basis of each of the identified
2 offsetting positions in the identified strad-
3 dle shall be increased by an amount which
4 bears the same ratio to the loss as the un-
5 recognized gain with respect to such offset-
6 ting position bears to the aggregate unrec-
7 ognized gain with respect to all such off-
8 setting positions, and

9 “(iii) any loss described in clause (ii)
10 shall not otherwise be taken into account
11 for purposes of this title.”.

12 (2) IDENTIFIED STRADDLE.—Section
13 1092(a)(2)(B) (defining identified straddle) is
14 amended—

15 (A) by striking clause (ii) and inserting the
16 following:

17 “(ii) to the extent provided by regula-
18 tions, the value of each position of which
19 (in the hands of the taxpayer immediately
20 before the creation of the straddle) is not
21 less than the basis of such position in the
22 hands of the taxpayer at the time the
23 straddle is created, and”, and

24 (B) by adding at the end the following new
25 flush sentence:



1 “The Secretary shall prescribe regulations
2 which specify the proper methods for clearly
3 identifying a straddle as an identified straddle
4 (and the positions comprising such straddle),
5 which specify the rules for the application of
6 this section for a taxpayer which fails to prop-
7 erly identify the positions of an identified strad-
8 dle, and which specify the ordering rules in
9 cases where a taxpayer disposes of less than an
10 entire position which is part of an identified
11 straddle.”.

12 (3) UNRECOGNIZED GAIN.—Section 1092(a)(3)
13 (defining unrecognized gain) is amended by redesign-
14 ating subparagraph (B) as subparagraph (C) and
15 by inserting after subparagraph (A) the following
16 new subparagraph:

17 “(B) SPECIAL RULE FOR IDENTIFIED
18 STRADDLES.—For purposes of paragraph
19 (2)(A)(ii), the unrecognized gain with respect to
20 any identified offsetting position shall be the ex-
21 cess of the fair market value of the position at
22 the time of the determination over the fair mar-
23 ket value of the position at the time the tax-
24 payer identified the position as a position in an
25 identified straddle.”.



1 (4) CONFORMING AMENDMENT.—Section
2 1092(c)(2) is amended by striking subparagraph (B)
3 and by redesignating subparagraph (C) as subpara-
4 graph (B).

5 (b) PHYSICALLY SETTLED POSITIONS.—Section
6 1092(d) (relating to definitions and special rules) is
7 amended by adding at the end the following new para-
8 graph:

9 “(8) SPECIAL RULES FOR PHYSICALLY SET-
10 TLED POSITIONS.—For purposes of subsection (a), if
11 a taxpayer settles a position which is part of a strad-
12 dle by delivering property to which the position re-
13 lates (and such position, if terminated, would result
14 in a realization of a loss), then such taxpayer shall
15 be treated as if such taxpayer—

16 “(A) terminated the position for its fair
17 market value immediately before the settlement,
18 and

19 “(B) sold the property so delivered by the
20 taxpayer at its fair market value.”.

21 (c) REPEAL OF STOCK EXCEPTION.—

22 (1) IN GENERAL.—Paragraph (3) of section
23 1092(d) (relating to definitions and special rules) is
24 amended to read as follows:



1 “(3) SPECIAL RULES FOR STOCK.—For pur-
2 poses of paragraph (1)—

3 “(A) IN GENERAL.—The term ‘personal
4 property’ includes—

5 “(i) any stock which is a part of a
6 straddle at least 1 of the offsetting posi-
7 tions of which is a position with respect to
8 such stock or substantially similar or re-
9 lated property, or

10 “(ii) any stock of a corporation
11 formed or availed of to take positions in
12 personal property which offset positions
13 taken by any shareholder.

14 “(B) RULE FOR APPLICATION.—For pur-
15 poses of determining whether subsection (e) ap-
16 plies to any transaction with respect to stock
17 described in subparagraph (A)(ii), all includible
18 corporations of an affiliated group (within the
19 meaning of section 1504(a)) shall be treated as
20 1 taxpayer.”.

21 (2) CONFORMING AMENDMENT.—Section
22 1258(d)(1) is amended by striking “; except that the
23 term ‘personal property’ shall include stock”.

24 (d) HOLDING PERIOD FOR DIVIDEND EXCLUSION.—
25 The last sentence of section 246(e) is amended by insert-



1 ing: “, other than a qualified covered call option to which
2 section 1092(f) applies” before the period at the end.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to positions established on or after
5 the date of the enactment of this Act.

6 **SEC. 889. ADDITION OF VACCINES AGAINST HEPATITIS A**
7 **TO LIST OF TAXABLE VACCINES.**

8 (a) IN GENERAL.—Paragraph (1) of section 4132(a)
9 (defining taxable vaccine) is amended by redesignating
10 subparagraphs (I), (J), (K), and (L) as subparagraphs
11 (J), (K), (L), and (M), respectively, and by inserting after
12 subparagraph (H) the following new subparagraph:

13 “(I) Any vaccine against hepatitis A.”

14 (b) EFFECTIVE DATE.—

15 (1) SALES, ETC.—The amendments made by
16 subsection (a) shall apply to sales and uses on or
17 after the first day of the first month which begins
18 more than 4 weeks after the date of the enactment
19 of this Act.

20 (2) DELIVERIES.—For purposes of paragraph
21 (1) and section 4131 of the Internal Revenue Code
22 of 1986, in the case of sales on or before the effec-
23 tive date described in such paragraph for which de-
24 livery is made after such date, the delivery date shall
25 be considered the sale date.



1 **SEC. 890. ADDITION OF VACCINES AGAINST INFLUENZA TO**
2 **LIST OF TAXABLE VACCINES.**

3 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-
4 able vaccine), as amended by this Act, is amended by add-
5 ing at the end the following new subparagraph:

6 “(N) Any trivalent vaccine against influ-
7 enza.”.

8 (b) EFFECTIVE DATE.—

9 (1) SALES, ETC.—The amendment made by this
10 section shall apply to sales and uses on or after the
11 later of—

12 (A) the first day of the first month which
13 begins more than 4 weeks after the date of the
14 enactment of this Act, or

15 (B) the date on which the Secretary of
16 Health and Human Services lists any vaccine
17 against influenza for purposes of compensation
18 for any vaccine-related injury or death through
19 the Vaccine Injury Compensation Trust Fund.

20 (2) DELIVERIES.—For purposes of paragraph
21 (1) and section 4131 of the Internal Revenue Code
22 of 1986, in the case of sales on or before the effec-
23 tive date described in such paragraph for which de-
24 livery is made after such date, the delivery date shall
25 be considered the sale date.



1 **SEC. 891. EXTENSION OF IRS USER FEES.**

2 (a) IN GENERAL.—Section 7528(c) (relating to ter-
3 mination) is amended by striking “December 31, 2004”
4 and inserting “September 30, 2014”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to requests after the date of the
7 enactment of this Act.

8 **SEC. 892. COBRA FEES.**

9 (a) USE OF MERCHANDISE PROCESSING FEE.—Sec-
10 tion 13031(f) of the Consolidated Omnibus Budget Rec-
11 onciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

12 (1) in paragraph (1), by aligning subparagraph
13 (B) with subparagraph (A); and

14 (2) in paragraph (2), by striking “commercial
15 operations” and all that follows through “proc-
16 essing.” and inserting “customs revenue functions as
17 defined in section 415 of the Homeland Security Act
18 of 2002 (other than functions performed by the Of-
19 fice of International Affairs referred to in section
20 415(8) of that Act), and for automation (including
21 the Automation Commercial Environment computer
22 system), and for no other purpose. To the extent
23 that funds in the Customs User Fee Account are in-
24 sufficient to pay the costs of such customs revenue
25 functions, customs duties in an amount equal to the
26 amount of such insufficiency shall be available, to



1 the extent provided for in appropriations Acts, to
2 pay the costs of such customs revenue functions in
3 the amount of such insufficiency, and shall be avail-
4 able for no other purpose. The provisions of the first
5 and second sentences of this paragraph specifying
6 the purposes for which amounts in the Customs
7 User Fee Account may be made available shall not
8 be superseded except by a provision of law which
9 specifically modifies or supersedes such provisions.”.

10 (b) REIMBURSEMENT OF APPROPRIATIONS FROM
11 COBRA FEES.—Section 13031(f)(3) of the Consolidated
12 Omnibus Budget Reconciliation Act of 1985 (19 U.S.C.
13 58c(f)(3)) is amended by adding at the end the following:

14 “(E) Nothing in this paragraph shall be construed
15 to preclude the use of appropriated funds, from sources
16 other than the fees collected under subsection (a), to pay
17 the costs set forth in clauses (i), (ii), and (iii) of subpara-
18 graph (A).”.

19 (c) SENSE OF CONGRESS; EFFECTIVE PERIOD FOR
20 COLLECTING FEES; STANDARD FOR SETTING FEES.—

21 (1) SENSE OF CONGRESS.—The Congress finds
22 that—

23 (A) the fees set forth in paragraphs (1)
24 through (8) of subsection (a) of section 13031
25 of the Consolidated Omnibus Budget Reconcili-



1 ation Act of 1985 have been reasonably related
2 to the costs of providing customs services in
3 connection with the activities or items for which
4 the fees have been charged under such para-
5 graphs; and

6 (B) the fees collected under such para-
7 graphs have not exceeded, in the aggregate, the
8 amounts paid for the costs described in sub-
9 section (f)(3)(A) incurred in providing customs
10 services in connection with the activities or
11 items for which the fees were charged under
12 such paragraphs.

13 (2) EFFECTIVE PERIOD; STANDARD FOR SET-
14 TING FEES.—Section 13031(j)(3) of the Consoli-
15 dated Omnibus Budget Reconciliation Act of 1985 is
16 amended to read as follows:

17 “(3)(A) Fees may not be charged under paragraphs
18 (9) and (10) of subsection (a) after September 30, 2014.

19 “(B)(i) Subject to clause (ii), Fees may not be
20 charged under paragraphs (1) through (8) of subsection
21 (a) after September 30, 2014.

22 “(ii) In fiscal year 2006 and in each succeeding fiscal
23 year for which fees under paragraphs (1) through (8) of
24 subsection (a) are authorized—



1 “(I) the Secretary of the Treasury shall charge
2 fees under each such paragraph in amounts that are
3 reasonably related to the costs of providing customs
4 services in connection with the activity or item for
5 which the fee is charged under such paragraph, ex-
6 cept that in no case may the fee charged under any
7 such paragraph exceed by more than 10 percent the
8 amount otherwise prescribed by such paragraph;

9 “(II) the amount of fees collected under such
10 paragraphs may not exceed, in the aggregate, the
11 amounts paid in that fiscal year for the costs de-
12 scribed in subsection (f)(3)(A) incurred in providing
13 customs services in connection with the activity or
14 item for which the fees are charged under such
15 paragraphs;

16 “(III) a fee may not be collected under any
17 such paragraph except to the extent such fee will be
18 expended to pay the costs described in subsection
19 (f)(3)(A) incurred in providing customs services in
20 connection with the activity or item for which the fee
21 is charged under such paragraph; and

22 “(IV) any fee collected under any such para-
23 graph shall be available for expenditure only to pay
24 the costs described in subsection (f)(3)(A) incurred
25 in providing customs services in connection with the



1 activity or item for which the fee is charged under
2 such paragraph.”.

3 (d) CLERICAL AMENDMENTS.—Section 13031 of the
4 Consolidated Omnibus Budget Reconciliation Act of 1985
5 is amended—

6 (1) in subsection (a)(5)(B), by striking “\$1.75”
7 and inserting “\$1.75.”;

8 (2) in subsection (b)—

9 (A) in paragraph (1)(A), by aligning clause
10 (iii) with clause (ii);

11 (B) in paragraph (7), by striking “para-
12 graphs” and inserting “paragraph”; and

13 (C) in paragraph (9), by aligning subpara-
14 graph (B) with subparagraph (A); and

15 (3) in subsection (e)(2), by aligning subpara-
16 graph (B) with subparagraph (A).

17 (e) STUDY OF ALL FEES COLLECTED BY DEPART-
18 MENT OF HOMELAND SECURITY.—The Secretary of the
19 Treasury shall conduct a study of all the fees collected
20 by the Department of Homeland Security, and shall sub-
21 mit to the Congress, not later than September 30, 2005,
22 a report containing the recommendations of the Secretary
23 on—

24 (1) what fees should be eliminated;



1 (2) what the rate of fees retained should be;
2 and

3 (3) any other recommendations with respect to
4 the fees that the Secretary considers appropriate.

5 **SEC. 893. PROHIBITION ON NONRECOGNITION OF GAIN**
6 **THROUGH COMPLETE LIQUIDATION OF**
7 **HOLDING COMPANY.**

8 (a) IN GENERAL.—Section 332 is amended by adding
9 at the end the following new subsection:

10 “(d) RECOGNITION OF GAIN ON LIQUIDATION OF
11 CERTAIN HOLDING COMPANIES.—

12 “(1) IN GENERAL.—In the case of any distribu-
13 tion to a foreign corporation in complete liquidation
14 of an applicable holding company—

15 “(A) subsection (a) and section 331 shall
16 not apply to such distribution, and

17 “(B) such distribution shall be treated as
18 a distribution to which section 301 applies.

19 “(2) APPLICABLE HOLDING COMPANY.—For
20 purposes of this subsection—

21 “(A) IN GENERAL.—The term ‘applicable
22 holding company’ means any domestic
23 corporation—

24 “(i) which is a common parent of an
25 affiliated group,



1 “(ii) stock of which is directly owned
2 by the distributee foreign corporation,

3 “(iii) substantially all of the assets of
4 which consist of stock in other members of
5 such affiliated group, and

6 “(iv) which has not been in existence
7 at all times during the 5 years immediately
8 preceding the date of the liquidation.

9 “(B) AFFILIATED GROUP.—For purposes
10 of this subsection, the term ‘affiliated group’
11 has the meaning given such term by section
12 1504(a) (without regard to paragraphs (2) and
13 (4) of section 1504(b)).

14 “(3) COORDINATION WITH SUBPART F.—If the
15 distributee of a distribution described in paragraph
16 (1) is a controlled foreign corporation (as defined in
17 section 957), then notwithstanding paragraph (1) or
18 subsection (a), such distribution shall be treated as
19 a distribution to which section 331 applies.

20 “(4) REGULATIONS.—The Secretary shall pro-
21 vide such regulations as appropriate to prevent the
22 abuse of this subsection, including regulations which
23 provide, for the purposes of clause (iv) of paragraph
24 (2)(A), that a corporation is not in existence for any
25 period unless it is engaged in the active conduct of



1 a trade or business or owns a significant ownership
2 interest in another corporation so engaged.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to distributions in complete liq-
5 uidation occurring on or after the date of the enactment
6 of this Act.

7 **SEC. 894. EFFECTIVELY CONNECTED INCOME TO INCLUDE**
8 **CERTAIN FOREIGN SOURCE INCOME.**

9 (a) **IN GENERAL.**—Section 864(c)(4)(B) (relating to
10 treatment of income from sources without the United
11 States as effectively connected income) is amended by add-
12 ing at the end the following new flush sentence:

13 “Any income or gain which is equivalent to any
14 item of income or gain described in clause (i),
15 (ii), or (iii) shall be treated in the same manner
16 as such item for purposes of this subpara-
17 graph.”.

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.



1 **SEC. 895. RECAPTURE OF OVERALL FOREIGN LOSSES ON**
2 **SALE OF CONTROLLED FOREIGN CORPORA-**
3 **TION.**

4 (a) IN GENERAL.—Section 904(f)(3) (relating to dis-
5 positions) is amending by adding at the end the following
6 new subparagraph:

7 “(D) APPLICATION TO CERTAIN DISPOSI-
8 TIONS OF STOCK IN CONTROLLED FOREIGN
9 CORPORATION.—

10 “(i) IN GENERAL.—This paragraph
11 shall apply to an applicable disposition in
12 the same manner as if it were a disposition
13 of property described in subparagraph (A),
14 except that the exception contained in sub-
15 paragraph (C)(i) shall not apply.

16 “(ii) APPLICABLE DISPOSITION.—For
17 purposes of clause (i), the term ‘applicable
18 disposition’ means any disposition of any
19 share of stock in a controlled foreign cor-
20 poration in a transaction or series of trans-
21 actions if, immediately before such trans-
22 action or series of transactions, the tax-
23 payer owned more than 50 percent (by
24 vote or value) of the stock of the controlled
25 foreign corporation. Such term shall not
26 include a disposition described in clause



1 (iii) or (iv), except that clause (i) shall
2 apply to any gain recognized on any such
3 disposition.

4 “(iii) EXCEPTION FOR CERTAIN EX-
5 CHANGES WHERE OWNERSHIP PERCENT-
6 AGE RETAINED.—A disposition shall not be
7 treated as an applicable disposition under
8 clause (ii) if it is part of a transaction or
9 series of transactions—

10 “(I) to which section 351 or 721
11 applies, or under which the transferor
12 receives stock in a foreign corporation
13 in exchange for the stock in the con-
14 trolled foreign corporation and the
15 stock received is exchanged basis
16 property (as defined in section
17 7701(a)(44)), and

18 “(II) immediately after which,
19 the transferor owns (by vote or value)
20 at least the same percentage of stock
21 in the controlled foreign corporation
22 (or, if the controlled foreign corpora-
23 tion is not in existence after such
24 transaction or series of transactions,
25 in another foreign corporation stock



1 in which was received by the trans-
2 feror in exchange for stock in the con-
3 trolled foreign corporation) as the per-
4 centage of stock in the controlled for-
5 eign corporation which the taxpayer
6 owned immediately before such trans-
7 action or series of transactions.

8 “(iv) EXCEPTION FOR CERTAIN ASSET
9 ACQUISITIONS.—A disposition shall not be
10 treated as an applicable disposition under
11 clause (ii) if it is part of a transaction or
12 series of transactions in which the tax-
13 payer (or any member of a controlled
14 group of corporations filing a consolidated
15 return under section 1501 which includes
16 the taxpayer) acquires the assets of a con-
17 trolled foreign corporation in exchange for
18 the shares of the controlled foreign cor-
19 poration in a liquidation described in sec-
20 tion 332 or a reorganization described in
21 section 368(a)(1).

22 “(v) CONTROLLED FOREIGN COR-
23 PORATION.—For purposes of this subpara-
24 graph, the term ‘controlled foreign cor-



1 poration' has the meaning given such term
2 by section 957.

3 “(vi) STOCK OWNERSHIP.—For pur-
4 poses of this subparagraph, ownership of
5 stock shall be determined under the rules
6 of subsections (a) and (b) of section 958.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to dispositions after the date of
9 the enactment of this Act.

10 **SEC. 896. RECOGNITION OF CANCELLATION OF INDEBTED-**
11 **NESS INCOME REALIZED ON SATISFACTION**
12 **OF DEBT WITH PARTNERSHIP INTEREST.**

13 (a) IN GENERAL.—Paragraph (8) of section 108(e)
14 (relating to general rules for discharge of indebtedness (in-
15 cluding discharges not in title 11 cases or insolvency)) is
16 amended to read as follows:

17 “(8) INDEBTEDNESS SATISFIED BY CORPORATE
18 STOCK OR PARTNERSHIP INTEREST.—For purposes
19 of determining income of a debtor from discharge of
20 indebtedness, if—

21 “(A) a debtor corporation transfers stock,

22 or

23 “(B) a debtor partnership transfers a cap-
24 ital or profits interest in such partnership,



1 to a creditor in satisfaction of its recourse or non-
2 recourse indebtedness, such corporation or partner-
3 ship shall be treated as having satisfied the indebt-
4 edness with an amount of money equal to the fair
5 market value of the stock or interest. In the case of
6 any partnership, any discharge of indebtedness in-
7 come recognized under this paragraph shall be in-
8 cluded in the distributive shares of taxpayers which
9 were the partners in the partnership immediately be-
10 fore such discharge.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply with respect to cancellations of in-
13 debtedness occurring on or after the date of the enactment
14 of this Act.

15 **SEC. 897. DENIAL OF INSTALLMENT SALE TREATMENT FOR**
16 **ALL READILY TRADABLE DEBT.**

17 (a) IN GENERAL.—Section 453(f)(4)(B) (relating to
18 purchaser evidences of indebtedness payable on demand
19 or readily tradable) is amended by striking “is issued by
20 a corporation or a government or political subdivision
21 thereof and”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to sales occurring on or after the
24 date of the enactment of this Act.



1 **SEC. 898. MODIFICATION OF TREATMENT OF TRANSFERS**
2 **TO CREDITORS IN DIVISIVE REORGANIZA-**
3 **TIONS.**

4 (a) IN GENERAL.—Section 361(b)(3) (relating to
5 treatment of transfers to creditors) is amended by adding
6 at the end the following new sentence: “In the case of a
7 reorganization described in section 368(a)(1)(D) with re-
8 spect to which stock or securities of the corporation to
9 which the assets are transferred are distributed in a trans-
10 action which qualifies under section 355, this paragraph
11 shall apply only to the extent that the sum of the money
12 and the fair market value of other property transferred
13 to such creditors does not exceed the adjusted bases of
14 such assets transferred.”.

15 (b) LIABILITIES IN EXCESS OF BASIS.—Section
16 357(c)(1)(B) is amended by inserting “with respect to
17 which stock or securities of the corporation to which the
18 assets are transferred are distributed in a transaction
19 which qualifies under section 355” after “section
20 368(a)(1)(D)”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to transfers of money or other
23 property, or liabilities assumed, in connection with a reor-
24 ganization occurring on or after the date of the enactment
25 of this Act.



1 **SEC. 899. CLARIFICATION OF DEFINITION OF NON-**
2 **QUALIFIED PREFERRED STOCK.**

3 (a) IN GENERAL.—Section 351(g)(3)(A) is amended
4 by adding at the end the following: “Stock shall not be
5 treated as participating in corporate growth to any signifi-
6 cant extent unless there is a real and meaningful likeli-
7 hood of the shareholder actually participating in the earn-
8 ings and growth of the corporation.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to transactions after May 14,
11 2003.

12 **SEC. 900. MODIFICATION OF DEFINITION OF CONTROLLED**
13 **GROUP OF CORPORATIONS.**

14 (a) IN GENERAL.—Section 1563(a)(2) (relating to
15 brother-sister controlled group) is amended by striking
16 “possessing—” and all that follows through “(B)” and in-
17 serting “possessing”.

18 (b) APPLICATION OF EXISTING RULES TO OTHER
19 CODE PROVISIONS.—Section 1563(f) (relating to other
20 definitions and rules) is amended by adding at the end
21 the following new paragraph:

22 “(5) BROTHER-SISTER CONTROLLED GROUP
23 DEFINITION FOR PROVISIONS OTHER THAN THIS
24 PART.—

25 “(A) IN GENERAL.—Except as specifically
26 provided in an applicable provision, subsection



1 (a)(2) shall be applied to an applicable provi-
2 sion as if it read as follows:

3 “(2) BROTHER-SISTER CONTROLLED GROUP.—

4 Two or more corporations if 5 or fewer persons who
5 are individuals, estates, or trusts own (within the
6 meaning of subsection (d)(2) stock possessing—

7 “(A) at least 80 percent of the total com-
8 bined voting power of all classes of stock enti-
9 tled to vote, or at least 80 percent of the total
10 value of shares of all classes of stock, of each
11 corporation, and

12 “(B) more than 50 percent of the total
13 combined voting power of all classes of stock
14 entitled to vote or more than 50 percent of the
15 total value of shares of all classes of stock of
16 each corporation, taking into account the stock
17 ownership of each such person only to the ex-
18 tent such stock ownership is identical with re-
19 spect to each such corporation.’

20 “(B) APPLICABLE PROVISION.—For pur-
21 poses of this paragraph, an applicable provision
22 is any provision of law (other than this part)
23 which incorporates the definition of controlled
24 group of corporations under subsection (a).”.



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

4 **SEC. 901. CLASS LIVES FOR UTILITY GRADING COSTS.**

5 (a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E)
6 (defining 15-year property), as amended by this Act, is
7 amended by striking “and” at the end of clause (iv), by
8 striking the period at the end of clause (v) and inserting
9 “, and”, and by adding at the end the following new
10 clause:

11 “(vi) initial clearing and grading land
12 improvements with respect to gas utility
13 property.”.

14 (b) ELECTRIC UTILITY PROPERTY.—Section
15 168(e)(3) is amended by adding at the end the following
16 new subparagraph:

17 “(F) 20-YEAR PROPERTY.—The term ‘20-
18 year property’ means initial clearing and grad-
19 ing land improvements with respect to any elec-
20 tric utility transmission and distribution
21 plant.”.

22 (c) CONFORMING AMENDMENT.—The table contained
23 in section 168(g)(3)(B), as amended by this Act, is
24 amended by inserting after the item relating to subpara-
25 graph (E)(v) the following new items:



“(E)(vi)	20”.
“(F)	25”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to property placed in service after
 3 the date of the enactment of this Act.

4 **SEC. 902. CONSISTENT AMORTIZATION OF PERIODS FOR IN-**
 5 **TANGIBLES.**

6 (a) START-UP EXPENDITURES.—

7 (1) ALLOWANCE OF DEDUCTION.—Paragraph
 8 (1) of section 195(b) (relating to start-up expendi-
 9 tures) is amended to read as follows:

10 “(1) ALLOWANCE OF DEDUCTION.—If a tax-
 11 payer elects the application of this subsection with
 12 respect to any start-up expenditures—

13 “(A) the taxpayer shall be allowed a deduc-
 14 tion for the taxable year in which the active
 15 trade or business begins in an amount equal to
 16 the lesser of—

17 “(i) the amount of start-up expendi-
 18 tures with respect to the active trade or
 19 business, or

20 “(ii) \$5,000, reduced (but not below
 21 zero) by the amount by which such start-
 22 up expenditures exceed \$50,000, and

23 “(B) the remainder of such start-up ex-
 24 penditures shall be allowed as a deduction rat-



1 ably over the 180-month period beginning with
2 the month in which the active trade or business
3 begins.”.

4 (2) CONFORMING AMENDMENT.—Subsection (b)
5 of section 195 is amended by striking “AMORTIZE”
6 and inserting “DEDUCT” in the heading.

7 (b) ORGANIZATIONAL EXPENDITURES.—Subsection
8 (a) of section 248 (relating to organizational expenditures)
9 is amended to read as follows:

10 “(a) ELECTION TO DEDUCT.—If a corporation elects
11 the application of this subsection (in accordance with reg-
12 ulations prescribed by the Secretary) with respect to any
13 organizational expenditures—

14 “(1) the corporation shall be allowed a deduc-
15 tion for the taxable year in which the corporation be-
16 gins business in an amount equal to the lesser of—

17 “(A) the amount of organizational expendi-
18 tures with respect to the taxpayer, or

19 “(B) \$5,000, reduced (but not below zero)
20 by the amount by which such organizational ex-
21 penditures exceed \$50,000, and

22 “(2) the remainder of such organizational ex-
23 penditures shall be allowed as a deduction ratably
24 over the 180-month period beginning with the month
25 in which the corporation begins business.”.



1 (c) TREATMENT OF ORGANIZATIONAL AND SYNDICA-
2 TION FEES OR PARTNERSHIPS.—

3 (1) IN GENERAL.—Section 709(b) (relating to
4 amortization of organization fees) is amended by re-
5 designating paragraph (2) as paragraph (3) and by
6 amending paragraph (1) to read as follows:

7 “(1) ALLOWANCE OF DEDUCTION.—If a tax-
8 payer elects the application of this subsection (in ac-
9 cordance with regulations prescribed by the Sec-
10 retary) with respect to any organizational
11 expenses—

12 “(A) the taxpayer shall be allowed a deduc-
13 tion for the taxable year in which the partner-
14 ship begins business in an amount equal to the
15 lesser of—

16 “(i) the amount of organizational ex-
17 penses with respect to the partnership, or

18 “(ii) \$5,000, reduced (but not below
19 zero) by the amount by which such organi-
20 zational expenses exceed \$50,000, and

21 “(B) the remainder of such organizational
22 expenses shall be allowed as a deduction ratably
23 over the 180-month period beginning with the
24 month in which the partnership begins busi-
25 ness.



1 “(2) DISPOSITIONS BEFORE CLOSE OF AMORTI-
2 ZATION PERIOD.—In any case in which a partner-
3 ship is liquidated before the end of the period to
4 which paragraph (1)(B) applies, any deferred ex-
5 penses attributable to the partnership which were
6 not allowed as a deduction by reason of this section
7 may be deducted to the extent allowable under sec-
8 tion 165.”.

9 (2) CONFORMING AMENDMENT.—Subsection (b)
10 of section 709 is amended by striking “AMORTIZA-
11 TION” and inserting “DEDUCTION” in the heading.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to amounts paid or incurred after
14 the date of the enactment of this Act.

15 **SEC. 903. FREEZE OF PROVISIONS REGARDING SUSPEN-**
16 **SION OF INTEREST WHERE SECRETARY FAILS**
17 **TO CONTACT TAXPAYER.**

18 (a) IN GENERAL.—Section 6404(g) (relating to sus-
19 pension of interest and certain penalties where Secretary
20 fails to contact taxpayer) is amended by striking “1-year
21 period (18-month period in the case of taxable years begin-
22 ning before January 1, 2004)” both places it appears and
23 inserting “18-month period”.

24 (b) EXCEPTION FOR GROSS MISSTATEMENT.—Sec-
25 tion 6404(g)(2) (relating to exceptions) is amended by



1 striking “or” at the end of subparagraph (C), by redesignig-
2 nating subparagraph (D) as subparagraph (E), and by in-
3 serting after subparagraph (C) the following new subpara-
4 graph:

5 “(D) any interest, penalty, addition to tax,
6 or additional amount with respect to any gross
7 misstatement; or”.

8 (c) EXCEPTION FOR LISTED AND REPORTABLE
9 TRANSACTIONS.—Section 6404(g)(2) (relating to excep-
10 tions), as amended by subsection (b), is amended by strik-
11 ing “or” at the end of subparagraph (D), by redesignating
12 subparagraph (E) as subparagraph (F), and by inserting
13 after subparagraph (D) the following new subparagraph:

14 “(E) any interest, penalty, addition to tax,
15 or additional amount with respect to any re-
16 portable transaction with respect to which the
17 requirement of section 6664(d)(2)(A) is not met
18 and any listed transaction (as defined in
19 6707A(c)); or”.

20 (d) EFFECTIVE DATES.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), the amendments made by this section
23 shall apply to taxable years beginning after Decem-
24 ber 31, 2003.



1 (2) EXCEPTION FOR REPORTABLE OR LISTED
2 TRANSACTIONS.—The amendments made by sub-
3 section (c) shall apply with respect to interest accru-
4 ing after October 3, 2004.

5 **SEC. 904. INCREASE IN WITHHOLDING FROM SUPPLE-**
6 **MENTAL WAGE PAYMENTS IN EXCESS OF**
7 **\$1,000,000.**

8 (a) IN GENERAL.—If an employer elects under
9 Treasury Regulation 31.3402(g)-1 to determine the
10 amount to be deducted and withheld from any supple-
11 mental wage payment by using a flat percentage rate, the
12 rate to be used in determining the amount to be so de-
13 ducted and withheld shall not be less than 28 percent (or
14 the corresponding rate in effect under section 1(i)(2) of
15 the Internal Revenue Code of 1986 for taxable years be-
16 ginning in the calendar year in which the payment is
17 made).

18 (b) SPECIAL RULE FOR LARGE PAYMENTS.—

19 (1) IN GENERAL.—Notwithstanding subsection
20 (a), if the supplemental wage payment, when added
21 to all such payments previously made by the em-
22 ployer to the employee during the calendar year, ex-
23 ceeds \$1,000,000, the rate used with respect to such
24 excess shall be equal to the maximum rate of tax in



1 effect under section 1 of such Code for taxable years
2 beginning in such calendar year.

3 (2) AGGREGATION.—All persons treated as a
4 single employer under subsection (a) or (b) of sec-
5 tion 52 of the Internal Revenue Code of 1986 shall
6 be treated as a single employer for purposes of this
7 subsection.

8 (c) CONFORMING AMENDMENT.—Section 13273 of
9 the Revenue Reconciliation Act of 1993 (Public Law 103–
10 66) is repealed.

11 (d) EFFECTIVE DATE.—The provisions of, and the
12 amendment made by, this section shall apply to payments
13 made after December 31, 2004.

14 **SEC. 905. TREATMENT OF SALE OF STOCK ACQUIRED PUR-**
15 **SUANT TO EXERCISE OF STOCK OPTIONS TO**
16 **COMPLY WITH CONFLICT-OF-INTEREST RE-**
17 **QUIREMENTS.**

18 (a) IN GENERAL.—Section 421 of the Internal Rev-
19 enue Code of 1986 (relating to general rules for certain
20 stock options) is amended by adding at the end the fol-
21 lowing new subsection:

22 “(d) CERTAIN SALES TO COMPLY WITH CONFLICT-
23 OF-INTEREST REQUIREMENTS.—If—

24 “(1) a share of stock is transferred to an eligi-
25 ble person (as defined in section 1043(b)(1)) pursu-



1 ant to such person's exercise of an option to which
2 this part applies, and

3 “(2) such share is disposed of by such person
4 pursuant to a certificate of divestiture (as defined in
5 section 1043(b)(2)),

6 such disposition shall be treated as meeting the require-
7 ments of section 422(a)(1) or 423(a)(1), whichever is ap-
8 plicable.”

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to sales after the date of the enact-
11 ment of this Act.

12 **SEC. 906. APPLICATION OF BASIS RULES TO NONRESIDENT**
13 **ALIENS.**

14 (a) IN GENERAL.—Section 72 of the Internal Rev-
15 enue Code of 1986 (relating to annuities and certain pro-
16 ceeds of endowment and life insurance contracts) is
17 amended by redesignating subsection (w) as subsection (x)
18 and by inserting after subsection (v) the following new
19 subsection:

20 “(w) APPLICATION OF BASIS RULES TO NON-
21 RESIDENT ALIENS.—

22 “(1) IN GENERAL.—Notwithstanding any other
23 provision of this section, for purposes of determining
24 the portion of any distribution which is includible in
25 gross income of a distributee who is a citizen or resi-



1 dent of the United States, the investment in the con-
2 tract shall not include any applicable nontaxable
3 contributions or applicable nontaxable earnings.

4 “(2) APPLICABLE NONTAXABLE CONTRIBU-
5 TION.—For purposes of this subsection, the term
6 ‘applicable nontaxable contribution’ means any em-
7 ployer or employee contribution—

8 “(A) which was made with respect to
9 compensation—

10 “(i) for labor or personal services per-
11 formed by an employee who, at the time
12 the labor or services were performed, was
13 a nonresident alien for purposes of the
14 laws of the United States in effect at such
15 time, and

16 “(ii) which is treated as from sources
17 without the United States, and

18 “(B) which was not subject to income tax
19 (and would have been subject to income tax if
20 paid as cash compensation when the services
21 were rendered) under the laws of the United
22 States or any foreign country.

23 “(3) APPLICABLE NONTAXABLE EARNINGS.—
24 For purposes of this subsection, the term ‘applicable
25 nontaxable earnings’ means earnings—



1 “(A) which are paid or accrued with re-
2 spect to any employer or employee contribution
3 which was made with respect to compensation
4 for labor or personal services performed by an
5 employee,

6 “(B) with respect to which the employee
7 was at the time the earnings were paid or ac-
8 crued a nonresident alien for purposes of the
9 laws of the United States, and

10 “(C) which were not subject to income tax
11 under the laws of the United States or any for-
12 eign country.

13 “(4) REGULATIONS.—The Secretary shall pre-
14 scribe such regulations as may be necessary to carry
15 out the provisions of this subsection, including regu-
16 lations treating contributions and earnings as not
17 subject to tax under the laws of any foreign country
18 where appropriate to carry out the purposes of this
19 subsection.”

20 (b) BASIS.—Section 83 (relating to property trans-
21 ferred in connection with the performance of services is
22 amended by adding after paragraph (3) of subsection (c)
23 the following new paragraph:

24 “(4) For purposes of determining an individ-
25 ual’s basis in property transferred in connection with



1 the performance of services, rules similar to the
2 rules of section 72(w) shall apply.”

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to distributions on or after the date
5 of the enactment of this Act.

6 **SEC. 907. LIMITATION OF EMPLOYER DEDUCTION FOR CER-**
7 **TAIN ENTERTAINMENT EXPENSES.**

8 (a) IN GENERAL.—Paragraph (2) of section 274(e)
9 (relating to expenses treated as compensation) is amended
10 to read as follows:

11 “(2) EXPENSES TREATED AS COMPENSATION.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), expenses for goods, services,
14 and facilities, to the extent that the expenses
15 are treated by the taxpayer, with respect to the
16 recipient of the entertainment, amusement, or
17 recreation, as compensation to an employee on
18 the taxpayer’s return of tax under this chapter
19 and as wages to such employee for purposes of
20 chapter 24 (relating to withholding of income
21 tax at source on wages).

22 “(B) SPECIFIED INDIVIDUALS.—

23 “(i) IN GENERAL.—In the case of a
24 recipient who is a specified individual, sub-
25 paragraph (A) and paragraph (9) shall



1 each be applied by substituting ‘to the ex-
2 tent that the expenses do not exceed the
3 amount of the expenses which’ for ‘to the
4 extent that the expenses’.

5 “(ii) SPECIFIED INDIVIDUAL.—For
6 purposes of clause (i), the term ‘specified
7 individual’ means any individual who—

8 “(I) is subject to the require-
9 ments of section 16(a) of the Securi-
10 ties Exchange Act of 1934 with re-
11 spect to the taxpayer, or

12 “(II) would be subject to such re-
13 quirements if the taxpayer were an
14 issuer of equity securities referred to
15 in such section.”

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to expenses incurred after the date
18 of the enactment of this Act.

19 **SEC. 908. RESIDENCE AND SOURCE RULES RELATING TO**
20 **UNITED STATES POSSESSIONS.**

21 (a) RESIDENCE AND SOURCE RULES.—Subpart D of
22 part III of subchapter N of chapter 1 (relating to posses-
23 sions of the United States) is amended by adding at the
24 end the following new section:



1 **“SEC. 937. RESIDENCE AND SOURCE RULES INVOLVING**
2 **POSSESSIONS.**

3 “(a) BONA FIDE RESIDENT.—For purposes of this
4 subpart, section 865(g)(3), section 876, section 881(b),
5 paragraphs (2) and (3) of section 901(b), section 957(c),
6 section 3401(a)(8)(C), and section 7654(a), except as pro-
7 vided in regulations, the term ‘bona fide resident’ means
8 a person—

9 “(1) who is present for at least 183 days during
10 the taxable year in Guam, American Samoa, the
11 Northern Mariana Islands, Puerto Rico, or the Vir-
12 gin Islands, as the case may be, and

13 “(2) who does not have a tax home (determined
14 under the principles of section 911(d)(3) without re-
15 gard to the second sentence thereof) outside such
16 specified possession during the taxable year and does
17 not have a closer connection (determined under the
18 principles of section 7701(b)(3)(B)(ii)) to the United
19 States or a foreign country than to such specified
20 possession.

21 For purposes of paragraph (1), the determination as
22 to whether a person is present for any day shall be
23 made under the principles of section 7701(b).

24 “(b) SOURCE RULES.—Except as provided in regula-
25 tions, for purposes of this title—



1 “(1) except as provided in paragraph (2), rules
2 similar to the rules for determining whether income
3 is income from sources within the United States or
4 is effectively connected with the conduct of a trade
5 or business within the United States shall apply for
6 purposes of determining whether income is from
7 sources within a possession specified in subsection
8 (a)(1) or effectively connected with the conduct of a
9 trade or business within any such possession, and

10 “(2) any income treated as income from sources
11 within the United States or as effectively connected
12 with the conduct of a trade or business within the
13 United States shall not be treated as income from
14 sources within any such possession or as effectively
15 connected with the conduct of a trade or business
16 within any such possession.

17 “(c) REPORTING REQUIREMENT.—

18 “(1) IN GENERAL.—If, for any taxable year, an
19 individual takes the position for United States in-
20 come tax reporting purposes that the individual be-
21 came, or ceases to be, a bona fide resident of a pos-
22 session specified in subsection (a)(1), such individual
23 shall file with the Secretary, at such time and in
24 such manner as the Secretary may prescribe, notice
25 of such position.



1 “(2) TRANSITION RULE.—If, for any of an indi-
2 vidual’s 3 taxable years ending before the individ-
3 ual’s first taxable year ending after the date of the
4 enactment of this subsection, the individual took a
5 position described in paragraph (1), the individual
6 shall file with the Secretary, at such time and in
7 such manner as the Secretary may prescribe, notice
8 of such position.”.

9 (b) PENALTY.—Section 6688 is amended—

10 (1) by inserting “under section 937(c) or” be-
11 fore “by regulations”, and

12 (2) by striking “\$100” and inserting “\$1,000”.

13 (c) CONFORMING AND CLERICAL AMENDMENTS.—

14 (1) Section 931(d) is amended to read as fol-
15 lows:

16 “(d) EMPLOYEES OF THE UNITED STATES.—
17 Amounts paid for services performed as an employee of
18 the United States (or any agency thereof) shall be treated
19 as not described in paragraph (1) or (2) of subsection
20 (a).”

21 (2) Section 932 is amended by striking “at the
22 close of the taxable year” and inserting “during the
23 entire taxable year” each place it appears.

24 (3) Section 934(b) is amended by striking para-
25 graph (4).



1 (4) Section 935, as in effect before the effective
2 date of its repeal, is amended—

3 (A) by striking “for the taxable year who”
4 in subsection (a) and inserting “who, during
5 the entire taxable year”,

6 (B) by inserting “bona fide” before “resi-
7 dent” in subsection (a)(1),

8 (C) in subsection (b)(1)—

9 (i) by inserting “(other a bona fide
10 resident of Guam during the entire taxable
11 year)” after “United States” in subpara-
12 graph (A), and

13 (ii) by inserting “bona fide” before
14 “resident” in subparagraph (B), and

15 (D) in subsection (b)(2) by striking “resi-
16 dence and”.

17 (5) Section 957(c) is amended—

18 (A) in paragraph (2)(B) by striking “con-
19 duct of an active” and

20 (B) in the last sentence by striking “de-
21 rived from sources within a possession, was ef-
22 fectively connected with the conduct of a trade
23 or business within a possession, or”.



1 (6) The table of sections of subpart D of part
2 III of subchapter N of chapter 1 is amended by add-
3 ing at the end the following new item:

“Sec. 937. Residence and source rules involving possessions.”.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years ending after the
6 date of the enactment of this Act.

7 **SEC. 909. SALES OR DISPOSITIONS TO IMPLEMENT FED-**
8 **ERAL ENERGY REGULATORY COMMISSION**
9 **OR STATE ELECTRIC RESTRUCTURING POL-**
10 **ICY.**

11 (a) IN GENERAL.—Section 451 (relating to general
12 rule for taxable year of inclusion) is amended by adding
13 at the end the following new subsection:

14 “(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO
15 IMPLEMENT FEDERAL ENERGY REGULATORY COMMIS-
16 SION OR STATE ELECTRIC RESTRUCTURING POLICY.—

17 “(1) IN GENERAL.—In the case of any quali-
18 fying electric transmission transaction for which the
19 taxpayer elects the application of this section, quali-
20 fied gain from such transaction shall be
21 recognized—

22 “(A) in the taxable year which includes the
23 date of such transaction to the extent the
24 amount realized from such transaction
25 exceeds—



1 “(i) the cost of exempt utility property
2 which is purchased by the taxpayer during
3 the 4-year period beginning on such date,
4 reduced (but not below zero) by

5 “(ii) any portion of such cost pre-
6 viously taken into account under this sub-
7 section, and

8 “(B) ratably over the 8-taxable year period
9 beginning with the taxable year which includes
10 the date of such transaction, in the case of any
11 such gain not recognized under subparagraph
12 (A).

13 “(2) QUALIFIED GAIN.—For purposes of this
14 subsection, the term ‘qualified gain’ means, with re-
15 spect to any qualifying electric transmission trans-
16 action in any taxable year—

17 “(A) any ordinary income derived from
18 such transaction which would be required to be
19 recognized under section 1245 or 1250 for such
20 taxable year (determined without regard to this
21 subsection), and

22 “(B) any income derived from such trans-
23 action in excess of the amount described in sub-
24 paragraph (A) which is required to be included



1 in gross income for such taxable year (deter-
2 mined without regard to this subsection).

3 “(3) QUALIFYING ELECTRIC TRANSMISSION
4 TRANSACTION.—For purposes of this subsection, the
5 term ‘qualifying electric transmission transaction’
6 means any sale or other disposition before January
7 1, 2007, of—

8 “(A) property used in the trade or business
9 of providing electric transmission services, or

10 “(B) any stock or partnership interest in a
11 corporation or partnership, as the case may be,
12 whose principal trade or business consists of
13 providing electric transmission services,

14 but only if such sale or disposition is to an inde-
15 pendent transmission company.

16 “(4) INDEPENDENT TRANSMISSION COM-
17 PANY.—For purposes of this subsection, the term
18 ‘independent transmission company’ means—

19 “(A) an independent transmission provider
20 approved by the Federal Energy Regulatory
21 Commission,

22 “(B) a person—

23 “(i) who the Federal Energy Regu-
24 latory Commission determines in its au-
25 thorization of the transaction under section



1 203 of the Federal Power Act (16 U.S.C.
2 824b) or by declaratory order is not a
3 market participant within the meaning of
4 such Commission's rules applicable to inde-
5 pendent transmission providers, and

6 “(ii) whose transmission facilities to
7 which the election under this subsection
8 applies are under the operational control of
9 a Federal Energy Regulatory Commission-
10 approved independent transmission pro-
11 vider before the close of the period speci-
12 fied in such authorization, but not later
13 than the close of the period applicable
14 under subsection (a)(2)(B) as extended
15 under paragraph (2), or

16 “(C) in the case of facilities subject to the
17 jurisdiction of the Public Utility Commission of
18 Texas—

19 “(i) a person which is approved by
20 that Commission as consistent with Texas
21 State law regarding an independent trans-
22 mission provider, or

23 “(ii) a political subdivision or affiliate
24 thereof whose transmission facilities are



1 under the operational control of a person
2 described in clause (i).

3 “(5) EXEMPT UTILITY PROPERTY.—For pur-
4 poses of this subsection—

5 “(A) IN GENERAL.—The term ‘exempt
6 utility property’ means property used in the
7 trade or business of—

8 “(i) generating, transmitting, distrib-
9 uting, or selling electricity, or

10 “(ii) producing, transmitting, distrib-
11 uting, or selling natural gas.

12 “(B) NONRECOGNITION OF GAIN BY REA-
13 SON OF ACQUISITION OF STOCK.—Acquisition of
14 control of a corporation shall be taken into ac-
15 count under this subsection with respect to a
16 qualifying electric transmission transaction only
17 if the principal trade or business of such cor-
18 poration is a trade or business referred to in
19 subparagraph (A).

20 “(6) SPECIAL RULE FOR CONSOLIDATED
21 GROUPS.—In the case of a corporation which is a
22 member of an affiliated group filing a consolidated
23 return, any exempt utility property purchased by an-
24 other member of such group shall be treated as pur-



1 chased by such corporation for purposes of applying
2 paragraph (1)(A).

3 “(7) TIME FOR ASSESSMENT OF DEFICI-
4 CIENCIES.—If the taxpayer has made the election
5 under paragraph (1) and any gain is recognized by
6 such taxpayer as provided in paragraph (1)(B),
7 then—

8 “(A) the statutory period for the assess-
9 ment of any deficiency, for any taxable year in
10 which any part of the gain on the transaction
11 is realized, attributable to such gain shall not
12 expire prior to the expiration of 3 years from
13 the date the Secretary is notified by the tax-
14 payer (in such manner as the Secretary may by
15 regulations prescribe) of the purchase of exempt
16 utility property or of an intention not to pur-
17 chase such property, and

18 “(B) such deficiency may be assessed be-
19 fore the expiration of such 3-year period not-
20 withstanding any law or rule of law which
21 would otherwise prevent such assessment.

22 “(8) PURCHASE.—For purposes of this sub-
23 section, the taxpayer shall be considered to have
24 purchased any property if the unadjusted basis of



1 such property is its cost within the meaning of sec-
2 tion 1012.

3 “(9) ELECTION.—An election under paragraph
4 (1) shall be made at such time and in such manner
5 as the Secretary may require and, once made, shall
6 be irrevocable.

7 “(10) NONAPPLICATION OF INSTALLMENT
8 SALES TREATMENT.—Section 453 shall not apply to
9 any qualifying electric transmission transaction with
10 respect to which an election to apply this subsection
11 is made.”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to transactions occurring after the
14 date of the enactment of this Act, in taxable years ending
15 after such date.

