

108TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. GRASSLEY (for himself and Mr. BAUCUS) introduced the following bill;
which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

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

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

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Jumpstart Our Business Strength (JOBS) Act”.

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

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

5 (c) TABLE OF CONTENTS.—

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

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

Sec. 101. Repeal of exclusion for extraterritorial income.

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

TITLE II—INTERNATIONAL TAX PROVISIONS

Subtitle A—International Tax Reform

Sec. 201. 20-year foreign tax credit carryover; 1-year foreign tax credit carryback.

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

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

Sec. 204. Recharacterization of overall domestic loss.

Sec. 205. Interest expense allocation rules.

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

Subtitle B—International Tax Simplification

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

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

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

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

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

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

Subtitle C—Additional International Tax Provisions

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

Sec. 222. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company income rules.

Sec. 223. Look-thru treatment for sales of partnership interests.

Sec. 224. Election not to use average exchange rate for foreign tax paid other than in functional currency.

Sec. 225. Treatment of income tax base differences.

3

- Sec. 226. Modification of exceptions under subpart F for active financing.
- Sec. 227. United States property not to include certain assets of controlled foreign corporation.
- Sec. 228. Provide equal treatment for interest paid by foreign partnerships and foreign corporations.
- Sec. 229. Clarification of treatment of certain transfers of intangible property.
- Sec. 230. Modification of the treatment of certain REIT distributions attributable to gain from sales or exchanges of United States real property interests.
- Sec. 231. Toll tax on excess qualified foreign distribution amount.
- Sec. 232. Exclusion of income derived from certain wagers on horse races and dog races from gross income of nonresident alien individuals.
- Sec. 233. Limitation of withholding tax for Puerto Rico corporations.
- Sec. 234. Report on WTO dispute settlement panels and the appellate body.
- Sec. 235. Study of impact of international tax laws on taxpayers other than large corporations.
- Sec. 236. Delay in effective date of final regulations governing exclusion of income from international operation of ships or aircraft.

TITLE III—DOMESTIC MANUFACTURING AND BUSINESS
PROVISIONS

Subtitle A—General Provisions

- Sec. 301. Expansion of qualified small-issue bond program.
- Sec. 302. Expensing of broadband Internet access expenditures.
- Sec. 303. Exemption of natural aging process in determination of production period for distilled spirits under section 263A.
- Sec. 304. Modification of active business definition under section 355.
- Sec. 305. Modified taxation of imported archery products.
- Sec. 306. Modification to cooperative marketing rules to include value added processing involving animals.
- Sec. 307. Extension of declaratory judgment procedures to farmers' cooperative organizations.
- Sec. 308. Temporary suspension of personal holding company tax.
- Sec. 309. Increase in section 179 expensing.
- Sec. 310. Five-year carryback of net operating losses.
- Sec. 311. Extension and modification of research credit.
- Sec. 312. Expansion of research credit.

Subtitle B—Manufacturing Relating to Films

- Sec. 321. Special rules for certain film and television productions.
- Sec. 322. Modification of application of income forecast method of depreciation.

Subtitle C—Manufacturing Relating to Timber

- Sec. 331. Expensing of certain reforestation expenditures.
- Sec. 332. Election to treat cutting of timber as a sale or exchange.
- Sec. 333. Capital gain treatment under section 631(b) to apply to outright sales by landowners.
- Sec. 334. Modification of safe harbor rules for timber REITS.

TITLE IV—ADDITIONAL PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

- Sec. 401. Clarification of economic substance doctrine.
- Sec. 402. Penalty for failing to disclose reportable transaction.
- Sec. 403. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
- Sec. 404. Penalty for understatements attributable to transactions lacking economic substance, etc.
- Sec. 405. Modifications of substantial understatement penalty for nonreportable transactions.
- Sec. 406. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
- Sec. 407. Disclosure of reportable transactions.
- Sec. 408. Modifications to penalty for failure to register tax shelters.
- Sec. 409. Modification of penalty for failure to maintain lists of investors.
- Sec. 410. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
- Sec. 411. Understatement of taxpayer's liability by income tax return preparer.
- Sec. 412. Penalty on failure to report interests in foreign financial accounts.
- Sec. 413. Frivolous tax submissions.
- Sec. 414. Regulation of individuals practicing before the Department of Treasury.
- Sec. 415. Penalty on promoters of tax shelters.
- Sec. 416. Statute of limitations for taxable years for which required listed transactions not reported.
- Sec. 417. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.
- Sec. 418. Authorization of appropriations for tax law enforcement.
- Sec. 419. Increases in penalties for aiding and abetting understatements.
- Sec. 420. Study on information sharing among law enforcement agencies.

Subtitle B—Other Corporate Governance Provisions

- Sec. 421. Affirmation of consolidated return regulation authority.
- Sec. 422. Declaration by chief executive officer relating to Federal annual income tax return of a corporation.
- Sec. 423. Denial of deduction for certain fines, penalties, and other amounts.
- Sec. 424. Disallowance of deduction for punitive damages.
- Sec. 425. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud.

Subtitle C—Enron-Related Tax Shelter Provisions

- Sec. 431. Limitation on transfer or importation of built-in losses.
- Sec. 432. No reduction of basis under section 734 in stock held by partnership in corporate partner.
- Sec. 433. Repeal of special rules for FASITs.
- Sec. 434. Expanded disallowance of deduction for interest on convertible debt.
- Sec. 435. Expanded authority to disallow tax benefits under section 269.
- Sec. 436. Modification of interaction between subpart F and passive foreign investment company rules.

Subtitle D—Provisions To Discourage Expatriation

- Sec. 441. Tax treatment of inverted corporate entities.
- Sec. 442. Imposition of mark-to-market tax on individuals who expatriate.
- Sec. 443. Excise tax on stock compensation of insiders of inverted corporations.

5

- Sec. 444. Reinsurance of United States risks in foreign jurisdictions.
- Sec. 445. Reporting of taxable mergers and acquisitions.

Subtitle E—International Tax

- Sec. 451. Clarification of banking business for purposes of determining investment of earnings in United States property.
- Sec. 452. Prohibition on nonrecognition of gain through complete liquidation of holding company.
- Sec. 453. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.
- Sec. 454. Effectively connected income to include certain foreign source income.
- Sec. 455. Recapture of overall foreign losses on sale of controlled foreign corporation.
- Sec. 456. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.

Subtitle F—Other Revenue Provisions

PART I—FINANCIAL INSTRUMENTS

- Sec. 461. Treatment of stripped interests in bond and preferred stock funds, etc.
- Sec. 462. Application of earnings stripping rules to partners which are C corporations.
- Sec. 463. Recognition of cancellation of indebtedness income realized on satisfaction of debt with partnership interest.
- Sec. 464. Modification of straddle rules.
- Sec. 465. Denial of installment sale treatment for all readily tradeable debt.

PART II—CORPORATIONS AND PARTNERSHIPS

- Sec. 466. Modification of treatment of transfers to creditors in divisive reorganizations.
- Sec. 467. Clarification of definition of nonqualified preferred stock.
- Sec. 468. Modification of definition of controlled group of corporations.
- Sec. 469. Mandatory basis adjustments in connection with partnership distributions and transfers of partnership interests.

PART III—DEPRECIATION AND AMORTIZATION

- Sec. 471. Extension of amortization of intangibles to sports franchises.
- Sec. 472. Class lives for utility grading costs.
- Sec. 473. Expansion of limitation on depreciation of certain passenger automobiles.
- Sec. 474. Consistent amortization of periods for intangibles.
- Sec. 475. Reform of tax treatment of leasing operations.
- Sec. 476. Limitation on deductions allocable to property used by governments or other tax-exempt entities.

PART IV—ADMINISTRATIVE PROVISIONS

- Sec. 481. Clarification of rules for payment of estimated tax for certain deemed asset sales.
- Sec. 482. Extension of IRS user fees.
- Sec. 483. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangement.

6

- Sec. 484. Partial payment of tax liability in installment agreements.
- Sec. 485. Extension of customs user fees.
- Sec. 486. Deposits made to suspend running of interest on potential underpayments.
- Sec. 487. Qualified tax collection contracts.
- Sec. 488. Whistleblower reforms.

PART V—MISCELLANEOUS PROVISIONS

- Sec. 491. Addition of vaccines against hepatitis A to list of taxable vaccines.
- Sec. 492. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale.
- Sec. 493. Clarification of exemption from tax for small property and casualty insurance companies.
- Sec. 494. Limitations on deduction for charitable contributions of patents and similar property.
- Sec. 495. Repeal of 10-percent rehabilitation tax credit.
- Sec. 496. Increase in age of minor children whose unearned income is taxed as if parent's income.
- Sec. 497. Holding period for preferred stock.

TITLE V—PROTECTION OF UNITED STATES WORKERS FROM
COMPETITION OF FOREIGN WORKFORCES

- Sec. 501. Limitations on off-shore performance of contracts.
- Sec. 502. Repeal of superseded law.
- Sec. 503. Effective date and applicability.

TITLE VI—OTHER PROVISIONS

Subtitle A—Provisions Relating to Housing

- Sec. 601. Treatment of qualified mortgage bonds.
- Sec. 602. Premiums for mortgage insurance.
- Sec. 603. Increase in historic rehabilitation credit for certain low-income housing for the elderly.

Subtitle B—Provisions Relating to Bonds

- Sec. 611. Expansion of New York Liberty Zone tax benefits.
- Sec. 612. Modifications of treatment of qualified zone academy bonds.
- Sec. 613. Modifications of authority of Indian tribal governments to issue tax-exempt bonds.
- Sec. 614. Definition of manufacturing facility for small issue bonds.
- Sec. 615. Conservation bonds.
- Sec. 616. Indian school construction.

Subtitle C—Provisions Relating to Depreciation

- Sec. 621. Special placed in service rule for bonus depreciation property.
- Sec. 622. Modification of depreciation allowance for aircraft.
- Sec. 623. Modification of class life for certain track facilities.
- Sec. 624. Minimum tax relief for certain taxpayers.

Subtitle D—Expansion of Business Credit

- Sec. 631. New markets tax credit for Native American reservations.

- Sec. 632. Ready Reserve-National Guard employee credit added to general business credit.
- Sec. 633. Rural investment tax credit.
- Sec. 634. Qualified rural small business investment credit.
- Sec. 635. Credit for maintenance of railroad track.
- Sec. 636. Railroad revitalization and security investment credit.
- Sec. 637. Modification of targeted areas designated for new markets tax credit.
- Sec. 638. Modification of income requirement for census tracts within high migration rural counties.

Subtitle E—Miscellaneous Provisions

- Sec. 641. Exclusion of gain or loss on sale or exchange of certain brownfield sites from unrelated business taxable income.
- Sec. 642. Modification of unrelated business income limitation on investment in certain debt-financed properties.
- Sec. 643. Civil rights tax relief.
- Sec. 644. Exclusion for payments to individuals under National Health Service Corps loan repayment program and certain State loan repayment programs.
- Sec. 645. Certain expenses of rural letter carriers.
- Sec. 646. Method of accounting for naval shipbuilders.
- Sec. 647. Suspension of policyholders surplus account provisions.
- Sec. 648. Payment of dividends on stock of cooperatives without reducing patronage dividends.
- Sec. 649. Special rules for livestock sold on account of weather-related conditions.
- Sec. 650. Motor vehicle dealer transitional assistance.
- Sec. 651. Expansion of designated renewal community area based on 2000 census data.
- Sec. 652. Reduction of holding period to 12 months for purposes of determining whether horses are section 1231 assets.
- Sec. 653. Blue Ribbon Commission on Comprehensive Tax Reform.
- Sec. 654. Treatment of distributions by ESOPs with respect to S corporation stock.
- Sec. 655. Clarification of working capital for reasonably anticipated needs of a business for purposes of accumulated earnings tax.
- Sec. 656. Tax treatment of State ownership of railroad real estate investment trust.
- Sec. 657. Clarification of contribution in aid of construction for water and sewerage disposal utilities.
- Sec. 658. Credit for purchase and installation of agricultural water conservation systems.
- Sec. 659. Modification of involuntary conversion rules for businesses affected by the September 11th terrorist attacks.

Subtitle F—Revenue Provisions

PART I—GENERAL REVENUE PROVISIONS

- Sec. 661. Treasury regulations on foreign tax credit.
- Sec. 662. Nonattribution of certain manufacturing by persons other than controlled foreign corporation.
- Sec. 663. Freeze of provisions regarding suspension of interest where Secretary fails to contact taxpayer.

PART II—PENSION AND DEFERRED COMPENSATION

- Sec. 671. Treatment of nonqualified deferred compensation plans.
- Sec. 672. Prohibition on deferral of gain from the exercise of stock options and restricted stock gains through deferred compensation arrangements.
- Sec. 673. Increase in withholding from supplemental wage payments in excess of \$1,000,000.
- Sec. 674. Treatment of sale of stock acquired pursuant to exercise of stock options to comply with conflict-of-interest requirements.
- Sec. 675. Determination of basis of amounts paid from foreign pension plans.

TITLE VII—EXTENSIONS OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Extensions

- Sec. 701. Parity in the application of certain limits to mental health benefits.
- Sec. 702. Modifications to work opportunity credit and welfare-to-work credit.
- Sec. 703. Consolidation of work opportunity credit with welfare-to-work credit.
- Sec. 704. Qualified zone academy bonds.
- Sec. 705. Cover over of tax on distilled spirits.
- Sec. 706. Deduction for corporate donations of scientific property and computer technology.
- Sec. 707. Deduction for certain expenses of school teachers.
- Sec. 708. Expensing of environmental remediation costs.
- Sec. 709. Expansion of certain New York Liberty Zone benefits.
- Sec. 710. Repeal of reduction of deductions for mutual life insurance companies.
- Sec. 711. Tax incentives for investment in the District of Columbia.
- Sec. 712. Combined employment tax reporting program.
- Sec. 713. Allowance of nonrefundable personal credits against regular and minimum tax liability.
- Sec. 714. Credit for electricity produced from certain renewable resources.
- Sec. 715. Taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.
- Sec. 716. Indian employment tax credit.
- Sec. 717. Accelerated depreciation for business property on Indian reservation.
- Sec. 718. Disclosure of return information relating to student loans.
- Sec. 719. Extension of transfers of excess pension assets to retiree health accounts.
- Sec. 720. Elimination of phaseout of credit for qualified electric vehicles.
- Sec. 721. Elimination of phaseout for deduction for clean-fuel vehicle property.

Subtitle B—Revenue Provisions

- Sec. 731. Donations of motor vehicles, boats, and airplanes.
- Sec. 732. Addition of vaccines against influenza to list of taxable vaccines.
- Sec. 733. Treatment of contingent payment convertible debt instruments.
- Sec. 734. Modification of continuing levy on payments to Federal vendors.

TITLE VIII—ENERGY TAX INCENTIVES

- Sec. 800. Short title.

Subtitle A—Renewable Electricity Production Tax Credit

Sec. 801. Extension and expansion of credit for electricity produced from certain renewable resources.

Subtitle B—Alternative Motor Vehicles and Fuels Incentives

Sec. 811. Alternative motor vehicle credit.
Sec. 812. Modification of credit for qualified electric vehicles.
Sec. 813. Credit for installation of alternative fueling stations.
Sec. 814. Credit for retail sale of alternative fuels as motor vehicle fuel.
Sec. 815. Small ethanol producer credit.

Subtitle C—Conservation and Energy Efficiency Provisions

Sec. 821. Credit for construction of new energy efficient home.
Sec. 822. Credit for energy efficient appliances.
Sec. 823. Credit for residential energy efficient property.
Sec. 824. Credit for business installation of qualified fuel cells and stationary microturbine power plants.
Sec. 825. Energy efficient commercial buildings deduction.
Sec. 826. Three-year applicable recovery period for depreciation of qualified energy management devices.
Sec. 827. Three-year applicable recovery period for depreciation of qualified water submetering devices.
Sec. 828. Energy credit for combined heat and power system property.
Sec. 829. Credit for energy efficiency improvements to existing homes.

Subtitle D—Clean Coal Incentives

PART I—CREDIT FOR EMISSION REDUCTIONS AND EFFICIENCY IMPROVEMENTS IN EXISTING COAL-BASED ELECTRICITY GENERATION FACILITIES

Sec. 831. Credit for production from a qualifying clean coal technology unit.

PART II—INCENTIVES FOR EARLY COMMERCIAL APPLICATIONS OF ADVANCED CLEAN COAL TECHNOLOGIES

Sec. 832. Credit for investment in qualifying advanced clean coal technology.
Sec. 833. Credit for production from a qualifying advanced clean coal technology unit.

PART III—TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT

Sec. 834. Treatment of persons not able to use entire credit.

Subtitle E—Oil and Gas Provisions

Sec. 841. Oil and gas from marginal wells.
Sec. 842. Natural gas gathering lines treated as 7-year property.
Sec. 843. Expensing of capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
Sec. 844. Credit for production of low sulfur diesel fuel.
Sec. 845. Determination of small refiner exception to oil depletion deduction.
Sec. 846. Marginal production income limit extension.
Sec. 847. Amortization of delay rental payments.
Sec. 848. Amortization of geological and geophysical expenditures.
Sec. 849. Extension and modification of credit for producing fuel from a non-conventional source.
Sec. 850. Natural gas distribution lines treated as 15-year property.

10

- Sec. 851. Credit for Alaska natural gas.
- Sec. 852. Certain Alaska natural gas pipeline property treated as 7-year property.
- Sec. 853. Extension of enhanced oil recovery credit to certain Alaska facilities.
- Sec. 854. Arbitrage rules not to apply to prepayments for natural gas.

Subtitle F—Electric Utility Restructuring Provisions

- Sec. 855. Modifications to special rules for nuclear decommissioning costs.
- Sec. 856. Treatment of certain income of cooperatives.
- Sec. 857. Sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy.

Subtitle G—Volumetric Ethanol Excise Tax Credit

- Sec. 860. Short title.
- Sec. 861. Alcohol and biodiesel excise tax credit and extension of alcohol fuels income tax credit.
- Sec. 862. Biodiesel income tax credit.

Subtitle H—Fuel Fraud Prevention

- Sec. 870. Short title.

PART I—AVIATION JET FUEL

- Sec. 871. Taxation of aviation-grade kerosene.
- Sec. 872. Transfer of certain amounts from the Airport and Airway Trust Fund to the Highway Trust Fund to reflect highway use of jet fuel.

PART II—DYED FUEL

- Sec. 873. Dye injection equipment.
- Sec. 874. Elimination of administrative review for taxable use of dyed fuel.
- Sec. 875. Penalty on untaxed chemically altered dyed fuel mixtures.
- Sec. 876. Termination of dyed diesel use by intercity buses.

PART III—MODIFICATION OF INSPECTION OF RECORDS PROVISIONS

- Sec. 877. Authority to inspect on-site records.
- Sec. 878. Assessable penalty for refusal of entry.

PART IV—REGISTRATION AND REPORTING REQUIREMENTS

- Sec. 879. Registration of pipeline or vessel operators required for exemption of bulk transfers to registered terminals or refineries.
- Sec. 880. Display of registration.
- Sec. 881. Registration of persons within foreign trade zones.
- Sec. 882. Penalties for failure to register and failure to report.
- Sec. 883. Information reporting for persons claiming certain tax benefits.

PART V—IMPORTS

- Sec. 884. Tax at point of entry where importer not registered.
- Sec. 885. Reconciliation of on-loaded cargo to entered cargo.

PART VI—MISCELLANEOUS PROVISIONS

11

- Sec. 886. Tax on sale of diesel fuel whether suitable for use or not in a diesel-powered vehicle or train.
- Sec. 887. Modification of ultimate vendor refund claims with respect to farming.
- Sec. 888. Taxable fuel refunds for certain ultimate vendors.
- Sec. 889. Two-party exchanges.
- Sec. 890. Modifications of tax on use of certain vehicles.
- Sec. 891. Dedication of revenues from certain penalties to the Highway Trust Fund.
- Sec. 892. Nonapplication of export exemption to delivery of fuel to motor vehicles removed from United States.

PART VII—TOTAL ACCOUNTABILITY

- Sec. 893. Total accountability.
- Sec. 894. Excise tax reporting.
- Sec. 895. Information reporting.

Subtitle I—Mobile Machinery

- Sec. 896. Treatment of mobile machinery.

Subtitle J—Additional Provisions

- Sec. 897. Study of effectiveness of certain provisions by GAO.
- Sec. 898. Repeal of 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in general fund.
- Sec. 899. Distributions from publicly traded partnerships treated as qualifying income of regulated investment companies.
- Sec. 899A. Certain business related credits allowed against regular and minimum tax.

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

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

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

8 (b) CONFORMING AMENDMENTS.—

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

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

3 (2) 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 (3) The second sentence of section
7 56(g)(4)(B)(i) is amended by striking “114 or”.

8 (4) 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 (5) 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 (6) Section 903 is amended by striking “114,
25 164(a),” and inserting “164(a)”.

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

3 (c) EFFECTIVE DATE.—

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

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

11 (A) which is between the taxpayer and a
12 person who is not a related person (as defined
13 in section 943(b)(3) of the Internal Revenue
14 Code of 1986, as in effect on the day before the
15 date of the enactment of this Act), and

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

18 (d) REVOCATION OF SECTION 943(e) ELECTIONS.—

19 (1) IN GENERAL.—In the case of a corporation
20 that elected to be treated as a domestic corporation
21 under section 943(e) of the Internal Revenue Code
22 of 1986 (as in effect on the day before the date of
23 the enactment of this Act)—

24 (A) the corporation may, during the 1-year
25 period beginning on the date of the enactment

1 of this Act, revoke such election, effective as of
2 such date of enactment, and

3 (B) if the corporation does revoke such
4 election—

5 (i) such corporation shall be treated
6 as a domestic corporation transferring (as
7 of such date of enactment) all of its prop-
8 erty to a foreign corporation in connection
9 with an exchange described in section 354
10 of such Code, and

11 (ii) no gain or loss shall be recognized
12 on such transfer.

13 (2) EXCEPTION.—Subparagraph (B)(ii) of
14 paragraph (1) shall not apply to gain on any asset
15 held by the revoking corporation if—

16 (A) the basis of such asset is determined
17 in whole or in part by reference to the basis of
18 such asset in the hands of the person from
19 whom the revoking corporation acquired such
20 asset,

21 (B) the asset was acquired by transfer (not
22 as a result of the election under section 943(e)
23 of such Code) occurring on or after the 1st day
24 on which its election under section 943(e) of
25 such Code was effective, and

1 (C) a principal purpose of the acquisition
2 was the reduction or avoidance of tax (other
3 than a reduction in tax under section 114 of
4 such Code, as in effect on the day before the
5 date of the enactment of this Act).

6 (e) GENERAL TRANSITION.—

7 (1) IN GENERAL.—In the case of a taxable year
8 ending after the date of the enactment of this Act
9 and beginning before January 1, 2007, for purposes
10 of chapter 1 of such Code, a current FSC/ETI bene-
11 ficiary shall be allowed a deduction equal to the
12 transition amount determined under this subsection
13 with respect to such beneficiary for such year.

14 (2) CURRENT FSC/ETI BENEFICIARY.—The
15 term “current FSC/ETI beneficiary” means any cor-
16 poration which entered into one or more transactions
17 during its taxable year beginning in calendar year
18 2002 with respect to which FSC/ETI benefits were
19 allowable.

20 (3) TRANSITION AMOUNT.—For purposes of
21 this subsection—

22 (A) IN GENERAL.—The transition amount
23 applicable to any current FSC/ETI beneficiary
24 for any taxable year is the phaseout percentage
25 of the base period amount.

1 (B) PHASEOUT PERCENTAGE.—

2 (i) IN GENERAL.—In the case of a
3 taxpayer using the calendar year as its
4 taxable year, the phaseout percentage shall
5 be determined under the following table:

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

6 (ii) SPECIAL RULE FOR 2004.—The
7 phaseout percentage for 2004 shall be the
8 amount that bears the same ratio to 80
9 percent as the number of days after the
10 date of the enactment of this Act bears to
11 366.

12 (iii) SPECIAL RULE FOR FISCAL YEAR
13 TAXPAYERS.—In the case of a taxpayer
14 not using the calendar year as its taxable
15 year, the phaseout percentage is the
16 weighted average of the phaseout percent-
17 ages determined under the preceding provi-
18 sions of this paragraph with respect to cal-
19 endar years any portion of which is in-
20 cluded in the taxpayer’s taxable year. The
21 weighted average shall be determined on
22 the basis of the respective portions of the
23 taxable year in each calendar year.

1 (C) SHORT TAXABLE YEAR.—The Sec-
2 retary shall prescribe guidance for the computa-
3 tion of the transition amount in the case of a
4 short taxable year.

5 (4) BASE PERIOD AMOUNT.—For purposes of
6 this subsection, the base period amount is the aver-
7 age FSC/ETI benefit for the taxpayer’s taxable
8 years beginning in calendar years 2000, 2001, and
9 2002.

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

12 (A) amounts excludable from gross income
13 under section 114 of such Code, and

14 (B) the exempt foreign trade income of re-
15 lated foreign sales corporations from property
16 acquired from the taxpayer (determined without
17 regard to section 923(a)(5) of such Code (relat-
18 ing to special rule for military property), as in
19 effect on the day before the date of the enact-
20 ment of the FSC Repeal and Extraterritorial
21 Income Exclusion Act of 2000).

22 In determining the FSC/ETI benefit there shall be
23 excluded any amount attributable to a transaction
24 with respect to which the taxpayer is the lessor un-
25 less the leased property was manufactured or pro-

1 duced in whole or in significant part by the tax-
2 payer.

3 (6) SPECIAL RULE FOR AGRICULTURAL AND
4 HORTICULTURAL COOPERATIVES.—Determinations
5 under this subsection with respect to an organization
6 described in section 943(g)(1) of such Code, as in
7 effect on the day before the date of the enactment
8 of this Act, shall be made at the cooperative level
9 and the purposes of this subsection shall be carried
10 out in a manner similar to section 199(h)(2) of such
11 Code, as added by this Act. Such determinations
12 shall be in accordance with such requirements and
13 procedures as the Secretary may prescribe.

14 (7) CERTAIN RULES TO APPLY.—Rules similar
15 to the rules of section 41(f) of such Code shall apply
16 for purposes of this subsection.

17 (8) COORDINATION WITH BINDING CONTRACT
18 RULE.—The deduction determined under paragraph
19 (1) for any taxable year shall be reduced by the
20 phaseout percentage of any FSC/ETI benefit real-
21 ized for the taxable year by reason of subsection
22 (c)(2) or section 5(c)(1)(B) of the FSC Repeal and
23 Extraterritorial Income Exclusion Act of 2000, ex-
24 cept that for purposes of this paragraph the phase-

1 out percentage for 2004 shall be treated as being
2 equal to 100 percent.

3 (9) SPECIAL RULE FOR TAXABLE YEAR WHICH
4 INCLUDES DATE OF ENACTMENT.—In the case of a
5 taxable year which includes the date of the enact-
6 ment of this Act, the deduction allowed under this
7 subsection to any current FSC/ETI beneficiary shall
8 in no event exceed—

9 (A) 100 percent of such beneficiary’s base
10 period amount for calendar year 2004, reduced
11 by

12 (B) the FSC/ETI benefit of such bene-
13 ficiary with respect to transactions occurring
14 during the portion of the taxable year ending on
15 the date of the enactment of this Act.

16 **SEC. 102. DEDUCTION RELATING TO INCOME ATTRIB-**
17 **UTABLE TO UNITED STATES PRODUCTION**
18 **ACTIVITIES.**

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

23 **“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
24 **TION ACTIVITIES.**

25 “(a) ALLOWANCE OF DEDUCTION.—

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

5 “(2) PHASEIN.—In the case of taxable years
6 beginning in 2004, 2005, 2006, 2007, or 2008,
7 paragraph (1) shall be applied by substituting for
8 the percentage contained therein the transition per-
9 centage determined under the following table:

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

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

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

15 “(2) W-2 WAGES.—For purposes of paragraph
16 (1), the term ‘W-2 wages’ means the sum of the ag-
17 gregate amounts the taxpayer is required to include
18 on statements under paragraphs (3) and (8) of sec-
19 tion 6051(a) with respect to employment of employ-
20 ees of the taxpayer during the taxpayer’s taxable
21 year.

22 “(3) SPECIAL RULES.—

1 “(A) PASS-THRU ENTITIES.—In the case
2 of an S corporation, partnership, estate or
3 trust, or other pass-thru entity, the limitation
4 under this subsection shall apply at the entity
5 level. The preceding sentence shall not apply to
6 any entity all of the ownership interests of
7 which are held directly or indirectly by members
8 of the same expanded affiliated group.

9 “(B) ACQUISITIONS AND DISPOSITIONS.—
10 The Secretary shall provide for the application
11 of this subsection in cases where the taxpayer
12 acquires, or disposes of, the major portion of a
13 trade or business or the major portion of a sep-
14 arate unit of a trade or business during the tax-
15 able year.

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

18 “(1) IN GENERAL.—The term ‘qualified produc-
19 tion activities income’ means an amount equal to the
20 portion of the modified taxable income of the tax-
21 payer which is attributable to domestic production
22 activities.

23 “(2) REDUCTION FOR TAXABLE YEARS BEGIN-
24 NING BEFORE 2013.—The amount otherwise deter-

1 mined under paragraph (1) (the ‘unreduced
2 amount’) shall not exceed—

3 “(A) in the case of taxable years beginning
4 before 2010, the product of the unreduced
5 amount and the domestic/worldwide fraction,
6 and

7 “(B) in the case of taxable years beginning
8 in 2010, 2011, or 2012, an amount equal to the
9 sum of—

10 “(i) the product of the unreduced
11 amount and the domestic/worldwide frac-
12 tion, plus

13 “(ii) the applicable percentage of an
14 amount equal to the unreduced amount
15 minus the amount determined under clause
16 (i).

17 For purposes of subparagraph (B)(ii), the applicable
18 percentage is 25 percent for 2010, 50 percent for
19 2011, and 75 percent for 2012.

20 “(d) DETERMINATION OF INCOME ATTRIBUTABLE
21 TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes
22 of this section—

23 “(1) IN GENERAL.—The portion of the modified
24 taxable income which is attributable to domestic pro-

1 duction activities is so much of the modified taxable
2 income for the taxable year as does not exceed—

3 “(A) the taxpayer’s domestic production
4 gross receipts for such taxable year, reduced by

5 “(B) the sum of—

6 “(i) the costs of goods sold that are
7 allocable to such receipts,

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

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

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

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

22 “(A) IN GENERAL.—For purposes of deter-
23 mining costs under clause (i) of paragraph
24 (1)(B), any item or service brought into the
25 United States shall be treated as acquired by

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

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

18 “(4) MODIFIED TAXABLE INCOME.—The term
19 ‘modified taxable income’ means taxable income
20 computed without regard to the deduction allowable
21 under this section.

22 “(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—
23 For purposes of this section—

1 “(1) IN GENERAL.—The term ‘domestic produc-
2 tion gross receipts’ means the gross receipts of the
3 taxpayer which are derived from—

4 “(A) any sale, exchange, or other disposi-
5 tion of, or

6 “(B) any lease, rental, or license of,
7 qualifying production property which was manufac-
8 tured, produced, grown, or extracted in whole or in
9 significant part by the taxpayer within the United
10 States.

11 “(2) SPECIAL RULES FOR CERTAIN PROP-
12 ERTY.—In the case of any qualifying production
13 property described in subsection (f)(1)(C)—

14 “(A) such property shall be treated for
15 purposes of paragraph (1) as produced in sig-
16 nificant part by the taxpayer within the United
17 States if more than 50 percent of the aggregate
18 development and production costs are incurred
19 by the taxpayer within the United States, and

20 “(B) if a taxpayer acquires such property
21 before such property begins to generate sub-
22 stantial gross receipts, any development or pro-
23 duction costs incurred before the acquisition
24 shall be treated as incurred by the taxpayer for

1 purposes of subparagraph (A) and paragraph
2 (1).

3 “(f) QUALIFYING PRODUCTION PROPERTY.—For
4 purposes of this section—

5 “(1) IN GENERAL.—Except as otherwise pro-
6 vided in this paragraph, the term ‘qualifying produc-
7 tion property’ means—

8 “(A) any tangible personal property,

9 “(B) any computer software, and

10 “(C) any property described in section
11 168(f) (3) or (4), including any underlying
12 copyright or trademark.

13 “(2) EXCLUSIONS FROM QUALIFYING PRODUC-
14 TION PROPERTY.—The term ‘qualifying production
15 property’ shall not include—

16 “(A) consumable property that is sold,
17 leased, or licensed by the taxpayer as an inte-
18 gral part of the provision of services,

19 “(B) oil or gas,

20 “(C) electricity,

21 “(D) water supplied by pipeline to the con-
22 sumer,

23 “(E) utility services, or

24 “(F) any film, tape, recording, book, mag-
25 azine, newspaper, or similar property the mar-

1 ket for which is primarily topical or otherwise
2 essentially transitory in nature.

3 “(g) DOMESTIC/WORLDWIDE FRACTION.—For pur-
4 poses of this section—

5 “(1) IN GENERAL.—The term ‘domestic/world-
6 wide fraction’ means a fraction (not greater than
7 1)—

8 “(A) the numerator of which is the value
9 of the domestic production of the taxpayer, and

10 “(B) the denominator of which is the value
11 of the worldwide production of the taxpayer.

12 “(2) VALUE OF DOMESTIC PRODUCTION.—The
13 value of domestic production is the excess (if any)
14 of—

15 “(A) the domestic production gross re-
16 ceipts, over

17 “(B) the cost of purchased inputs allocable
18 to such receipts that are deductible under this
19 chapter for the taxable year.

20 “(3) PURCHASED INPUTS.—

21 “(A) IN GENERAL.—Purchased inputs are
22 any of the following items acquired by pur-
23 chase:

1 “(i) Services (other than services of
2 employees) used in manufacture, produc-
3 tion, growth, or extraction activities.

4 “(ii) Items consumed in connection
5 with such activities.

6 “(iii) Items incorporated as part of
7 the property being manufactured, pro-
8 duced, grown, or extracted.

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

12 “(4) VALUE OF WORLDWIDE PRODUCTION.—

13 “(A) IN GENERAL.—The value of world-
14 wide production shall be determined under the
15 principles of paragraph (2), except that—

16 “(i) worldwide production gross re-
17 ceipts shall be taken into account, and

18 “(ii) paragraph (3)(B) shall not apply.

19 “(B) WORLDWIDE PRODUCTION GROSS RE-
20 CEIPTS.—The worldwide production gross re-
21 ceipts is the amount that would be determined
22 under subsection (e) if such subsection were ap-
23 plied without any reference to the United
24 States.

25 “(h) DEFINITIONS AND SPECIAL RULES.—

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

4 “(A) subject to the provisions of paragraph
5 (2) and subsection (b)(3)(A), this section shall
6 be applied at the shareholder, partner, or simi-
7 lar level, and

8 “(B) the Secretary shall prescribe rules for
9 the application of this section, including rules
10 relating to—

11 “(i) restrictions on the allocation of
12 the deduction to taxpayers at the partner
13 or similar level, and

14 “(ii) additional reporting require-
15 ments.

16 “(2) PATRONS OF AGRICULTURAL AND HORTI-
17 CULTURAL COOPERATIVES.—

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

21 “(i) is received by a person from an
22 organization to which part I of subchapter
23 T applies which is engaged—

24 “(I) in the manufacturing, pro-
25 duction, growth, or extraction in

1 whole or significant part of any agri-
2 cultural or horticultural product, or

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

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

14 then such person shall be allowed a deduction
15 under subsection (a) with respect to such
16 amount. The taxable income of the organization
17 shall not be reduced under section 1382 by rea-
18 son of any amount to which the preceding sen-
19 tence applies.

20 “(B) SPECIAL RULES.—For purposes of
21 applying subparagraph (A), in determining the
22 qualified production activities income of the or-
23 ganization under this section—

24 “(i) there shall not be taken into ac-
25 count in computing the organization’s

1 modified taxable income any deduction al-
2 lowable under subsection (b) or (c) of sec-
3 tion 1382 (relating to patronage dividends,
4 per-unit retain allocations, and nonpatron-
5 age distributions), and

6 “(ii) in the case of an organization de-
7 scribed in subparagraph (A)(i)(II), the or-
8 ganization shall be treated as having man-
9 ufactured, produced, grown, or extracted in
10 whole or significant part any qualifying
11 production property marketed by the orga-
12 nization which its patrons have so manu-
13 factured, produced, grown, or extracted.

14 “(3) SPECIAL RULE FOR AFFILIATED
15 GROUPS.—

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

19 “(B) EXPANDED AFFILIATED GROUP.—
20 The term ‘expanded affiliated group’ means an
21 affiliated group as defined in section 1504(a),
22 determined—

23 “(i) by substituting ‘50 percent’ for
24 ‘80 percent’ each place it appears, and

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

3 For purposes of determining the domestic/
4 worldwide fraction under subsection (g), clause
5 (ii) shall be applied by also disregarding para-
6 graphs (3) and (8) of section 1504(b).

7 “(4) COORDINATION WITH MINIMUM TAX.—The
8 deduction under this section shall be allowed for
9 purposes of the tax imposed by section 55; except
10 that for purposes of section 55, alternative minimum
11 taxable income shall be taken into account in deter-
12 mining the deduction under this section.

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

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

20 “(7) POSSESSIONS, ETC.—

21 “(A) IN GENERAL.—For purposes of sub-
22 sections (d) and (e), the term ‘United States’
23 includes the Commonwealth of Puerto Rico,
24 Guam, American Samoa, the Commonwealth of

1 the Northern Mariana Islands, and the Virgin
2 Islands of the United States.

3 “(B) SPECIAL RULES FOR APPLYING WAGE
4 LIMITATION.—For purposes of applying the
5 limitation under subsection (b) for any taxable
6 year—

7 “(i) the determination of W-2 wages
8 of a taxpayer shall be made without regard
9 to any exclusion under section 3401(a)(8)
10 for remuneration paid for services per-
11 formed in a jurisdiction described in sub-
12 paragraph (A), and

13 “(ii) in determining the amount of
14 any credit allowable under section 30A or
15 936 for the taxable year, there shall not be
16 taken into account any wages which are
17 taken into account in applying such limita-
18 tion.

19 “(8) COORDINATION WITH TRANSITION
20 RULES.—For purposes of this section—

21 “(A) domestic production gross receipts
22 shall not include gross receipts from any trans-
23 action if the binding contract transition relief of
24 section 101(c)(2) of the Jumpstart Our Busi-

1 ness Strength (JOBS) Act applies to such
2 transaction, and

3 “(B) any deduction allowed under section
4 101(e) of such Act shall be disregarded in de-
5 termining the portion of the taxable income
6 which is attributable to domestic production
7 gross receipts.

8 “(9) SEPARATE APPLICATION TO FILMS AND
9 VIDEOTAPE.—In the case of qualifying production
10 property described in section 168(f)(3), this section
11 shall be applied separately to qualified production
12 activities income of the taxpayer allocable to each of
13 the following markets with respect to such property:

14 “(A) Theatrical.

15 “(B) Broadcast television (including cable,
16 foreign, pay-per-view, and syndication).

17 “(C) Home video.”.

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

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

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

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

4 (d) EFFECTIVE DATE.—

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

8 (2) APPLICATION OF SECTION 15.—Section 15
9 of the Internal Revenue Code of 1986 shall apply to
10 the amendments made by this section as if they were
11 changes in a rate of tax.

12 **TITLE II—INTERNATIONAL TAX** 13 **PROVISIONS**

14 **Subtitle A—International Tax** 15 **Reform**

16 **SEC. 201. 20-YEAR FOREIGN TAX CREDIT CARRYOVER; 1-**
17 **YEAR FOREIGN TAX CREDIT CARRYBACK.**

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

20 (1) by striking “in the second preceding taxable
21 year,” and

22 (2) by striking “, and in the first, second, third,
23 fourth, or fifth” and inserting “and in any of the
24 first 20”.

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 20”, 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. 202. LOOK-THRU RULES TO APPLY TO DIVIDENDS**
21 **FROM NONCONTROLLED SECTION 902 COR-**
22 **PORATIONS.**

23 (a) IN GENERAL.—Section 904(d)(4) (relating to
24 look-thru rules apply to dividends from noncontrolled sec-
25 tion 902 corporations) is amended to read as follows:

1 “(4) LOOK-THRU APPLIES TO DIVIDENDS FROM
2 NONCONTROLLED SECTION 902 CORPORATIONS.—

3 “(A) IN GENERAL.—For purposes of this
4 subsection, any dividend from a noncontrolled
5 section 902 corporation with respect to the tax-
6 payer shall be treated as income described in a
7 subparagraph of paragraph (1) in proportion to
8 the ratio of—

9 “(i) the portion of earnings and prof-
10 its attributable to income described in such
11 subparagraph, to

12 “(ii) the total amount of earnings and
13 profits.

14 “(B) EARNINGS AND PROFITS OF CON-
15 TROLLED FOREIGN CORPORATIONS.—In the
16 case of any distribution from a controlled for-
17 eign corporation to a United States share-
18 holder, rules similar to the rules of subpara-
19 graph (A) shall apply in determining the extent
20 to which earnings and profits of the controlled
21 foreign corporation which are attributable to
22 dividends received from a noncontrolled section
23 902 corporation may be treated as income in a
24 separate category.

1 “(C) SPECIAL RULES.—For purposes of
2 this paragraph—

3 “(i) EARNINGS AND PROFITS.—

4 “(I) IN GENERAL.—The rules of
5 section 316 shall apply.

6 “(II) REGULATIONS.—The Sec-
7 retary may prescribe regulations re-
8 garding the treatment of distributions
9 out of earnings and profits for periods
10 before the taxpayer’s acquisition of
11 the stock to which the distributions
12 relate.

13 “(ii) INADEQUATE SUBSTAN-
14 TIATION.—If the Secretary determines that
15 the proper subparagraph of paragraph (1)
16 in which a dividend is described has not
17 been substantiated, such dividend shall be
18 treated as income described in paragraph
19 (1)(A).

20 “(iii) COORDINATION WITH HIGH-
21 TAXED INCOME PROVISIONS.—Rules simi-
22 lar to the rules of paragraph (3)(F) shall
23 apply for purposes of this paragraph.

24 “(iv) LOOK-THRU WITH RESPECT TO
25 CARRYOVER OF CREDIT.—Rules similar to

1 subparagraph (A) also shall apply to any
2 carryforward under subsection (c) from a
3 taxable year beginning before January 1,
4 2003, of tax allocable to a dividend from a
5 noncontrolled section 902 corporation with
6 respect to the taxpayer. The Secretary may
7 by regulations provide for the allocation of
8 any carryback of tax allocable to a divi-
9 dend from a noncontrolled section 902 cor-
10 poration to such a taxable year for pur-
11 poses of allocating such dividend among
12 the separate categories in effect for such
13 taxable year.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Subparagraph (E) of section 904(d)(1) is
16 hereby repealed.

17 (2) Section 904(d)(2)(C)(iii) is amended by
18 adding “and” at the end of subclause (I), by striking
19 subclause (II), and by redesignating subclause (III)
20 as subclause (II).

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

24 (4) Section 904(d)(2)(E) is amended—

1 (A) by inserting “or (4)” after “paragraph
2 (3)” in clause (i), and

3 (B) by striking clauses (ii) and (iv) and by
4 redesignating clause (iii) as clause (ii).

5 (5) Section 904(d)(3)(F) is amended by strik-
6 ing “(D), or (E)” and inserting “or (D)”.

7 (6) Section 864(d)(5)(A)(i) is amended by
8 striking “(C)(iii)(III)” and inserting “(C)(iii)(II)”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 December 31, 2002.

12 **SEC. 203. FOREIGN TAX CREDIT UNDER ALTERNATIVE MIN-**
13 **IMUM TAX.**

14 (a) IN GENERAL.—

15 (1) Subsection (a) of section 59 is amended by
16 striking paragraph (2) and by redesignating para-
17 graphs (3) and (4) as paragraphs (2) and (3), re-
18 spectively.

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

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

1 **SEC. 204. 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.

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

24 (a) ELECTION TO ALLOCATE ON WORLDWIDE
25 BASIS.—Section 864 is amended by redesignating sub-

1 section (f) as subsection (g) and by inserting after sub-
2 section (e) the following new subsection:

3 “(f) ELECTION TO ALLOCATE INTEREST, ETC. ON
4 WORLDWIDE BASIS.—For purposes of this subchapter, at
5 the election of the worldwide affiliated group—

6 “(1) ALLOCATION AND APPORTIONMENT OF IN-
7 TEREST EXPENSE.—

8 “(A) IN GENERAL.—The taxable income of
9 each domestic corporation which is a member of
10 a worldwide affiliated group shall be determined
11 by allocating and apportioning interest expense
12 of each member as if all members of such group
13 were a single corporation.

14 “(B) TREATMENT OF WORLDWIDE AFFILI-
15 ATED GROUP.—The taxable income of the do-
16 mestic members of a worldwide affiliated group
17 from sources outside the United States shall be
18 determined by allocating and apportioning the
19 interest expense of such domestic members to
20 such income in an amount equal to the excess
21 (if any) of—

22 “(i) the total interest expense of the
23 worldwide affiliated group multiplied by
24 the ratio which the foreign assets of the
25 worldwide affiliated group bears to all the

1 assets of the worldwide affiliated group,
2 over

3 “(ii) the interest expense of all foreign
4 corporations which are members of the
5 worldwide affiliated group to the extent
6 such interest expense of such foreign cor-
7 porations would have been allocated and
8 apportioned to foreign source income if
9 this subsection were applied to a group
10 consisting of all the foreign corporations in
11 such worldwide affiliated group.

12 “(C) WORLDWIDE AFFILIATED GROUP.—
13 For purposes of this paragraph, the term
14 ‘worldwide affiliated group’ means a group con-
15 sisting of—

16 “(i) the includible members of an af-
17 filiated group (as defined in section
18 1504(a), determined without regard to
19 paragraphs (2) and (4) of section
20 1504(b)), and

21 “(ii) all controlled foreign corpora-
22 tions in which such members in the aggre-
23 gate meet the ownership requirements of
24 section 1504(a)(2) either directly or indi-
25 rectly through applying paragraph (2) of

1 section 958(a) or through applying rules
2 similar to the rules of such paragraph to
3 stock owned directly or indirectly by do-
4 mestic partnerships, trusts, or estates.

5 “(2) ALLOCATION AND APPORTIONMENT OF
6 OTHER EXPENSES.—Expenses other than interest
7 which are not directly allocable or apportioned to
8 any specific income producing activity shall be allo-
9 cated and apportioned as if all members of the affili-
10 ated group were a single corporation. For purposes
11 of the preceding sentence, the term ‘affiliated group’
12 has the meaning given such term by section 1504
13 (determined without regard to paragraph (4) of sec-
14 tion 1504(b)).

15 “(3) TREATMENT OF TAX-EXEMPT ASSETS;
16 BASIS OF STOCK IN NONAFFILIATED 10-PERCENT
17 OWNED CORPORATIONS.—The rules of paragraphs
18 (3) and (4) of subsection (e) shall apply for purposes
19 of this subsection, except that paragraph (4) shall be
20 applied on a worldwide affiliated group basis.

21 “(4) TREATMENT OF CERTAIN FINANCIAL IN-
22 STITUTIONS.—

23 “(A) IN GENERAL.—For purposes of para-
24 graph (1), any corporation described in sub-
25 paragraph (B) shall be treated as an includible

1 corporation for purposes of section 1504 only
2 for purposes of applying this subsection sepa-
3 rately to corporations so described.

4 “(B) DESCRIPTION.—A corporation is de-
5 scribed in this subparagraph if—

6 “(i) such corporation is a financial in-
7 stitution described in section 581 or 591,

8 “(ii) the business of such financial in-
9 stitution is predominantly with persons
10 other than related persons (within the
11 meaning of subsection (d)(4)) or their cus-
12 tomers, and

13 “(iii) such financial institution is re-
14 quired by State or Federal law to be oper-
15 ated separately from any other entity
16 which is not such an institution.

17 “(C) TREATMENT OF BANK AND FINAN-
18 CIAL HOLDING COMPANIES.—To the extent pro-
19 vided in regulations—

20 “(i) a bank holding company (within
21 the meaning of section 2(a) of the Bank
22 Holding Company Act of 1956 (12 U.S.C.
23 1841(a)),

24 “(ii) a financial holding company
25 (within the meaning of section 2(p) of the

1 Bank Holding Company Act of 1956 (12
2 U.S.C. 1841(p)), and

3 “(iii) any subsidiary of a financial in-
4 stitution described in section 581 or 591,
5 or of any such bank or financial holding
6 company, if such subsidiary is predomi-
7 nantly engaged (directly or indirectly) in
8 the active conduct of a banking, financing,
9 or similar business,

10 shall be treated as a corporation described in
11 subparagraph (B).

12 “(5) ELECTION TO EXPAND FINANCIAL INSTI-
13 TUTION GROUP OF WORLDWIDE GROUP.—

14 “(A) IN GENERAL.—If a worldwide affili-
15 ated group elects the application of this sub-
16 section, all financial corporations which—

17 “(i) are members of such worldwide
18 affiliated group, but

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

21 shall be treated as described in paragraph
22 (4)(B) for purposes of applying paragraph
23 (4)(A). This subsection (other than this para-
24 graph) shall apply to any such group in the
25 same manner as this subsection (other than this

1 paragraph) applies to the pre-election worldwide
2 affiliated group of which such group is a part.

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

17 “(C) ANTIABUSE RULES.—In the case of a
18 corporation which is a member of an electing fi-
19 nancial institution group, to the extent that
20 such corporation—

21 “(i) distributes dividends or makes
22 other distributions with respect to its stock
23 after the date of the enactment of this
24 paragraph to any member of the pre-elec-
25 tion worldwide affiliated group (other than

1 to a member of the electing financial insti-
2 tution group) in excess of the greater of—

3 “(I) its average annual dividend
4 (expressed as a percentage of current
5 earnings and profits) during the 5-
6 taxable-year period ending with the
7 taxable year preceding the taxable
8 year, or

9 “(II) 25 percent of its average
10 annual earnings and profits for such
11 5-taxable-year period, or

12 “(ii) deals with any person in any
13 manner not clearly reflecting the income of
14 the corporation (as determined under prin-
15 ciples similar to the principles of section
16 482),

17 an amount of indebtedness of the electing fi-
18 nancial institution group equal to the excess
19 distribution or the understatement or overstate-
20 ment of income, as the case may be, shall be re-
21 characterized (for the taxable year and subse-
22 quent taxable years) for purposes of this para-
23 graph as indebtedness of the worldwide affili-
24 ated group (excluding the electing financial in-
25 stitution group). If a corporation has not been

1 in existence for 5 taxable years, this subpara-
2 graph shall be applied with respect to the pe-
3 riod it was in existence.

4 “(D) ELECTION.—An election under this
5 paragraph with respect to any financial institu-
6 tion group may be made only by the common
7 parent of the pre-election worldwide affiliated
8 group and may be made only for the first tax-
9 able year beginning after December 31, 2008,
10 in which such affiliated group includes 1 or
11 more financial corporations. Such an election,
12 once made, shall apply to all financial corpora-
13 tions which are members of the electing finan-
14 cial institution group for such taxable year and
15 all subsequent years unless revoked with the
16 consent of the Secretary.

17 “(E) DEFINITIONS RELATING TO
18 GROUPS.—For purposes of this paragraph—

19 “(i) PRE-ELECTION WORLDWIDE AF-
20 FILLATED GROUP.—The term ‘pre-election
21 worldwide affiliated group’ means, with re-
22 spect to a corporation, the worldwide affili-
23 ated group of which such corporation
24 would (but for an election under this para-

1 graph) be a member for purposes of apply-
2 ing paragraph (1).

3 “(ii) ELECTING FINANCIAL INSTITU-
4 TION GROUP.—The term ‘electing financial
5 institution group’ means the group of cor-
6 porations to which this subsection applies
7 separately by reason of the application of
8 paragraph (4)(A) and which includes fi-
9 nancial corporations by reason of an elec-
10 tion under subparagraph (A).

11 “(F) REGULATIONS.—The Secretary shall
12 prescribe such regulations as may be appro-
13 priate to carry out this subsection, including
14 regulations—

15 “(i) providing for the direct allocation
16 of interest expense in other circumstances
17 where such allocation would be appropriate
18 to carry out the purposes of this sub-
19 section,

20 “(ii) preventing assets or interest ex-
21 pense from being taken into account more
22 than once, and

23 “(iii) dealing with changes in mem-
24 bers of any group (through acquisitions or
25 otherwise) treated under this paragraph as

1 an affiliated group for purposes of this
2 subsection.

3 “(6) ELECTION.—An election to have this sub-
4 section apply with respect to any worldwide affiliated
5 group may be made only by the common parent of
6 the domestic affiliated group referred to in para-
7 graph (1)(C) and may be made only for the first
8 taxable year beginning after December 31, 2008, in
9 which a worldwide affiliated group exists which in-
10 cludes such affiliated group and at least 1 foreign
11 corporation. Such an election, once made, shall apply
12 to such common parent and all other corporations
13 which are members of such worldwide affiliated
14 group for such taxable year and all subsequent years
15 unless revoked with the consent of the Secretary.”.

16 (b) EXPANSION OF REGULATORY AUTHORITY.—
17 Paragraph (7) of section 864(e) is amended—

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

22 (2) by striking “and” at the end of subpara-
23 graph (E), by redesignating subparagraph (F) as
24 subparagraph (G), and by inserting after subpara-
25 graph (E) the following new subparagraph:

1 “(F) preventing assets or interest expense
2 from being taken into account more than once,
3 and”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years beginning after
6 December 31, 2008.

7 **SEC. 206. DETERMINATION OF FOREIGN PERSONAL HOLD-**
8 **ING COMPANY INCOME WITH RESPECT TO**
9 **TRANSACTIONS IN COMMODITIES.**

10 (a) IN GENERAL.—Clauses (i) and (ii) of section
11 954(c)(1)(C) (relating to commodity transactions) are
12 amended to read as follows:

13 “(i) arise out of commodity hedging
14 transactions (as defined in paragraph
15 (4)(A)),

16 “(ii) are active business gains or
17 losses from the sale of commodities, but
18 only if substantially all of the controlled
19 foreign corporation’s commodities are
20 property described in paragraph (1), (2),
21 or (8) of section 1221(a), or”.

22 (b) DEFINITION AND SPECIAL RULES.—Subsection
23 (c) of section 954 is amended by adding after paragraph
24 (3) the following new paragraph:

1 “(4) DEFINITION AND SPECIAL RULES RELAT-
2 ING TO COMMODITY TRANSACTIONS.—

3 “(A) COMMODITY HEDGING TRANS-
4 ACTIONS.—For purposes of paragraph
5 (1)(C)(i), the term ‘commodity hedging trans-
6 action’ means any transaction with respect to a
7 commodity if such transaction—

8 “(i) is a hedging transaction as de-
9 fined in section 1221(b)(2), determined—

10 “(I) without regard to subpara-
11 graph (A)(ii) thereof,

12 “(II) by applying subparagraph
13 (A)(i) thereof by substituting ‘ordi-
14 nary property or property described in
15 section 1231(b)’ for ‘ordinary prop-
16 erty’, and

17 “(III) by substituting ‘controlled
18 foreign corporation’ for ‘taxpayer’
19 each place it appears, and

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

22 “(B) TREATMENT OF DEALER ACTIVITIES
23 UNDER PARAGRAPH (1)(C).—Commodities with
24 respect to which gains and losses are not taken
25 into account under paragraph (2)(C) in com-

1 putting a controlled foreign corporation’s foreign
2 personal holding company income shall not be
3 taken into account in applying the substantially
4 all test under paragraph (1)(C)(ii) to such cor-
5 poration.

6 “(C) REGULATIONS.—The Secretary shall
7 prescribe such regulations as are appropriate to
8 carry out the purposes of paragraph (1)(C) in
9 the case of transactions involving related par-
10 ties.”.

11 (c) MODIFICATION OF EXCEPTION FOR DEALERS.—
12 Clause (i) of section 954(e)(2)(C) is amended by inserting
13 “and transactions involving physical settlement” after
14 “(including hedging transactions”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to transactions entered into after
17 December 31, 2004.

18 **Subtitle B—International Tax**
19 **Simplification**

20 **SEC. 211. REPEAL OF FOREIGN PERSONAL HOLDING COM-**
21 **PANY RULES AND FOREIGN INVESTMENT**
22 **COMPANY RULES.**

23 (a) GENERAL RULE.—The following provisions are
24 hereby repealed:

1 (1) Part III of subchapter G of chapter 1 (re-
2 lating to foreign personal holding companies).

3 (2) Section 1246 (relating to gain on foreign in-
4 vestment company stock).

5 (3) Section 1247 (relating to election by foreign
6 investment companies to distribute income cur-
7 rently).

8 (b) EXEMPTION OF FOREIGN CORPORATIONS FROM
9 PERSONAL HOLDING COMPANY RULES.—

10 (1) IN GENERAL.—Subsection (c) of section
11 542 (relating to exceptions) is amended—

12 (A) by striking paragraph (5) and insert-
13 ing the following:

14 “(5) a foreign corporation,”

15 (B) by striking paragraphs (7) and (10)
16 and by redesignating paragraphs (8) and (9) as
17 paragraphs (7) and (8), respectively,

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

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

23 (2) TREATMENT OF INCOME FROM PERSONAL
24 SERVICE CONTRACTS.—Paragraph (1) of section

1 954(c) is amended by adding at the end the fol-
2 lowing new subparagraph:

3 “(I) PERSONAL SERVICE CONTRACTS.—

4 “(i) Amounts received under a con-
5 tract under which the corporation is to fur-
6 nish personal services if—

7 “(I) some person other than the
8 corporation has the right to designate
9 (by name or by description) the indi-
10 vidual who is to perform the services,
11 or

12 “(II) the individual who is to per-
13 form the services is designated (by
14 name or by description) in the con-
15 tract, and

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

18 This subparagraph shall apply with respect to
19 amounts received for services under a particular
20 contract only if at some time during the taxable
21 year 25 percent or more in value of the out-
22 standing stock of the corporation is owned, di-
23 rectly or indirectly, by or for the individual who
24 has performed, is to perform, or may be des-

1 ignated (by name or by description) as the one
2 to perform, such services.”.

3 (c) CONFORMING AMENDMENTS.—

4 (1) Section 1(h) is amended—

5 (A) in paragraph (10), by inserting “and”
6 at the end of subparagraph (F), by striking
7 subparagraph (G), and by redesignating sub-
8 paragraph (H) as subparagraph (G), and

9 (B) by striking “a foreign personal holding
10 company (as defined in section 552), a foreign
11 investment company (as defined in section
12 1246(b)), or” in paragraph (11)(C)(iii).

13 (2) Section 163(e)(3)(B), as amended by this
14 Act, is amended by striking “which is a foreign per-
15 sonal holding company (as defined in section 552),
16 a controlled foreign corporation (as defined in sec-
17 tion 957), or” and inserting “which is a controlled
18 foreign corporation (as defined in section 957) or”.

19 (3) Paragraph (2) of section 171(c) is
20 amended—

21 (A) by striking “, or by a foreign personal
22 holding company, as defined in section 552”,
23 and

24 (B) by striking “, or foreign personal hold-
25 ing company”.

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

3 (5) Section 267(a)(3)(B), as amended by this
4 Act, is amended by striking “to a foreign personal
5 holding company (as defined in section 552), a con-
6 trolled foreign corporation (as defined in section
7 957), or” and inserting “to a controlled foreign cor-
8 poration (as defined in section 957) or”.

9 (6) Section 312 is amended by striking sub-
10 section (j).

11 (7) Subsection (m) of section 312 is amended
12 by striking “, a foreign investment company (within
13 the meaning of section 1246(b)), or a foreign per-
14 sonal holding company (within the meaning of sec-
15 tion 552)”.

16 (8) Subsection (e) of section 443 is amended by
17 striking paragraph (3) and by redesignating para-
18 graphs (4) and (5) as paragraphs (3) and (4), re-
19 spectively.

20 (9) Subparagraph (B) of section 465(e)(7) is
21 amended by adding “or” at the end of clause (i), by
22 striking clause (ii), and by redesignating clause (iii)
23 as clause (ii).

24 (10) Paragraph (1) of section 543(b) is amend-
25 ed by inserting “and” at the end of subparagraph

1 (A), by striking “, and” at the end of subparagraph
2 (B) and inserting a period, and by striking subpara-
3 graph (C).

4 (11) Paragraph (1) of section 562(b) is amend-
5 ed by striking “or a foreign personal holding com-
6 pany described in section 552”.

7 (12) Section 563 is amended—

8 (A) by striking subsection (c),

9 (B) by redesignating subsection (d) as sub-
10 section (c), and

11 (C) by striking “subsection (a), (b), or (c)”
12 in subsection (c) (as so redesignated) and in-
13 serting “subsection (a) or (b)”.

14 (13) Subsection (d) of section 751 is amended
15 by adding “and” at the end of paragraph (2), by
16 striking paragraph (3), by redesignating paragraph
17 (4) as paragraph (3), and by striking “paragraph
18 (1), (2), or (3)” in paragraph (3) (as so redesign-
19 ated) and inserting “paragraph (1) or (2)”.

20 (14) Paragraph (2) of section 864(d) is amend-
21 ed by striking subparagraph (A) and by redesign-
22 ating subparagraphs (B) and (C) as subparagraphs
23 (A) and (B), respectively.

24 (15)(A) Subparagraph (A) of section 898(b)(1)
25 is amended to read as follows:

1 “(A) which is treated as a controlled for-
2 eign corporation for any purpose under subpart
3 F of part III of this subchapter, and”.

4 (B) Subparagraph (B) of section 898(b)(2) is
5 amended by striking “and sections 551(f) and 554,
6 whichever are applicable,”.

7 (C) Paragraph (3) of section 898(b) is amended
8 to read as follows:

9 “(3) UNITED STATES SHAREHOLDER.—The
10 term ‘United States shareholder’ has the meaning
11 given to such term by section 951(b), except that, in
12 the case of a foreign corporation having related per-
13 son insurance income (as defined in section
14 953(c)(2)), the Secretary may treat any person as a
15 United States shareholder for purposes of this sec-
16 tion if such person is treated as a United States
17 shareholder under section 953(c)(1).”.

18 (D) Subsection (c) of section 898 is amended to
19 read as follows:

20 “(c) DETERMINATION OF REQUIRED YEAR.—

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

22 “(A) the majority U.S. shareholder year,

23 or

1 “(B) if there is no majority U.S. share-
2 holder year, the taxable year prescribed under
3 regulations.

4 “(2) 1-MONTH DEFERRAL ALLOWED.—A speci-
5 fied foreign corporation may elect, in lieu of the tax-
6 able year under paragraph (1)(A), a taxable year be-
7 ginning 1 month earlier than the majority U.S.
8 shareholder year.

9 “(3) MAJORITY U.S. SHAREHOLDER YEAR.—

10 “(A) IN GENERAL.—For purposes of this
11 subsection, the term ‘majority U.S. shareholder
12 year’ means the taxable year (if any) which, on
13 each testing day, constituted the taxable year
14 of—

15 “(i) each United States shareholder
16 described in subsection (b)(2)(A), and

17 “(ii) each United States shareholder
18 not described in clause (i) whose stock was
19 treated as owned under subsection
20 (b)(2)(B) by any shareholder described in
21 such clause.

22 “(B) TESTING DAY.—The testing days
23 shall be—

1 “(i) the first day of the corporation’s
2 taxable year (determined without regard to
3 this section), or

4 “(ii) the days during such representa-
5 tive period as the Secretary may pre-
6 scribe.”.

7 (16) Clause (ii) of section 904(d)(2)(A) is
8 amended to read as follows:

9 “(ii) CERTAIN AMOUNTS INCLUDED.—
10 Except as provided in clause (iii), the term
11 ‘passive income’ includes, except as pro-
12 vided in subparagraph (E)(iii) or para-
13 graph (3)(I), any amount includible in
14 gross income under section 1293 (relating
15 to certain passive foreign investment com-
16 panies).”.

17 (17)(A) Subparagraph (A) of section 904(g)(1),
18 as redesignated by section 204, is amended by add-
19 ing “or” at the end of clause (i), by striking clause
20 (ii), and by redesignating clause (iii) as clause (ii).

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

1 (18) Section 951 is amended by striking sub-
2 sections (c) and (d) and by redesignating subsections
3 (e) and (f) as subsections (c) and (d), respectively.

4 (19) Paragraph (3) of section 989(b) is amend-
5 ed by striking “, 551(a),”.

6 (20) Paragraph (5) of section 1014(b) is
7 amended by inserting “and before January 1,
8 2005,” after “August 26, 1937,”.

9 (21) Subsection (a) of section 1016 is amended
10 by striking paragraph (13).

11 (22)(A) Paragraph (3) of section 1212(a) is
12 amended to read as follows:

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

16 “(A) for which it is a regulated investment
17 company (as defined in section 851), or

18 “(B) for which it is a real estate invest-
19 ment trust (as defined in section 856).”.

20 (B) The amendment made by subparagraph (A)
21 shall apply to taxable years beginning after Decem-
22 ber 31, 2004.

23 (23) Section 1223 is amended by striking para-
24 graph (10) and by redesignating the following para-
25 graphs accordingly.

1 (24) Subsection (d) of section 1248 is amended
2 by striking paragraph (5) and by redesignating
3 paragraphs (6) and (7) as paragraphs (5) and (6),
4 respectively.

5 (25) Paragraph (2) of section 1260(c) is
6 amended by striking subparagraphs (H) and (I) and
7 by redesignating subparagraph (J) as subparagraph
8 (H).

9 (26)(A) Subparagraph (F) of section
10 1291(b)(3) is amended by striking “551(d), 959(a),”
11 and inserting “959(a)”.

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

16 (27) Paragraph (2) of section 1294(a) is
17 amended to read as follows:

18 “(2) ELECTION NOT PERMITTED WHERE
19 AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION
20 951.—The taxpayer may not make an election under
21 paragraph (1) with respect to the undistributed
22 PFIC earnings tax liability attributable to a quali-
23 fied electing fund for the taxable year if any amount
24 is includible in the gross income of the taxpayer

1 under section 951 with respect to such fund for such
2 taxable year.”.

3 (28) Section 6035 is hereby repealed.

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

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

10 “(B) CONSTRUCTIVE DIVIDENDS.—If the
11 taxpayer omits from gross income an amount
12 properly includible therein under section
13 951(a), the tax may be assessed, or a pro-
14 ceeding in court for the collection of such tax
15 may be done without assessing, at any time
16 within 6 years after the return was filed.”.

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

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

22 (B) by striking paragraph (3).

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

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

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

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

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

15 **SEC. 212. EXPANSION OF DE MINIMIS RULE UNDER SUB-**
16 **PART F.**

17 (a) **IN GENERAL.**—Clause (ii) of section
18 954(b)(3)(A) (relating to de minimis, etc., rules) is
19 amended by striking “\$1,000,000” and inserting
20 “\$5,000,000”.

21 (b) **TECHNICAL AMENDMENTS.**—

22 (1) Clause (ii) of section 864(d)(5)(A) is
23 amended by striking “\$1,000,000” and inserting
24 “\$5,000,000”.

1 (2) Clause (i) of section 881(c)(5)(A) is amend-
2 ed by striking “\$1,000,000” and inserting
3 “\$5,000,000”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years of foreign corpora-
6 tions beginning after December 31, 2004, and to taxable
7 years of United States shareholders with or within which
8 such taxable years of foreign corporations end.

9 **SEC. 213. ATTRIBUTION OF STOCK OWNERSHIP THROUGH**
10 **PARTNERSHIPS TO APPLY IN DETERMINING**
11 **SECTION 902 AND 960 CREDITS.**

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

16 “(7) CONSTRUCTIVE OWNERSHIP THROUGH
17 PARTNERSHIPS.—Stock owned, directly or indirectly,
18 by or for a partnership shall be considered as being
19 owned proportionately by its partners. Stock consid-
20 ered to be owned by a person by reason of the pre-
21 ceding sentence shall, for purposes of applying such
22 sentence, be treated as actually owned by such per-
23 son. The Secretary may prescribe such regulations
24 as may be necessary to carry out the purposes of
25 this paragraph, including rules to account for special

1 partnership allocations of dividends, credits, and
2 other incidents of ownership of stock in determining
3 proportionate ownership.”.

4 (b) CLARIFICATION OF COMPARABLE ATTRIBUTION
5 UNDER SECTION 901(b)(5).—Paragraph (5) of section
6 901(b) is amended by striking “any individual” and in-
7 serting “any person”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxes of foreign corporations
10 for taxable years of such corporations beginning after the
11 date of the enactment of this Act.

12 **SEC. 214. APPLICATION OF UNIFORM CAPITALIZATION**
13 **RULES TO FOREIGN PERSONS.**

14 (a) IN GENERAL.—Section 263A(c) (relating to ex-
15 ceptions) is amended by adding at the end the following
16 new paragraph:

17 “(7) FOREIGN PERSONS.—Except for purposes
18 of applying sections 871(b)(1) and 882(a)(1), this
19 section shall not apply to any taxpayer who is not
20 a United States person if such taxpayer capitalizes
21 costs of produced property or property acquired for
22 resale by applying the method used to ascertain the
23 income, profit, or loss for purposes of reports or
24 statements to shareholders, partners, other propri-
25 etors, or beneficiaries, or for credit purposes.”.

1 (b) EFFECTIVE DATE.—

2 (1) IN GENERAL.—The amendment made by
3 subsection (a) shall apply to taxable years beginning
4 after December 31, 2004.

5 (2) CHANGE IN METHOD OF ACCOUNTING.—In
6 the case of any taxpayer required by the amendment
7 made by this section to change its method of ac-
8 counting for its first taxable year beginning after
9 December 31, 2004—

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

12 (B) such change shall be treated as made
13 with the consent of the Secretary of the Treas-
14 ury, and

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

20 **SEC. 215. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**
21 **FROM CERTAIN FOREIGN CORPORATIONS.**

22 (a) IN GENERAL.—Paragraph (2) of section 871(i)
23 (relating to tax not to apply to certain interest and divi-
24 dends) is amended by adding at the end the following new
25 subparagraph:

1 “(D) Dividends paid by a foreign corpora-
2 tion which are treated under section
3 861(a)(2)(B) as income from sources within the
4 United States.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to payments made after December
7 31, 2004.

8 **SEC. 216. REPEAL OF SPECIAL CAPITAL GAINS TAX ON**
9 **ALIENS PRESENT IN THE UNITED STATES**
10 **FOR 183 DAYS OR MORE.**

11 (a) IN GENERAL.—Subsection (a) of section 871 is
12 amended by striking paragraph (2) and by redesignating
13 paragraph (3) as paragraph (2).

14 (b) CONFORMING AMENDMENT.—Section 1441(g) is
15 amended is amended by striking “section 871(a)(3)” and
16 inserting “section 871(a)(2)”.

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

20 **Subtitle C—Additional**
21 **International Tax Provisions**

22 **SEC. 221. ACTIVE LEASING INCOME FROM AIRCRAFT AND**
23 **VESSELS.**

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

1 “(D) CERTAIN RENTS, ETC.—

2 “(i) IN GENERAL.—Foreign personal
3 holding company income shall not include
4 qualified leasing income derived from or in
5 connection with the leasing or rental of
6 any aircraft or vessel.

7 “(ii) QUALIFIED LEASING INCOME.—

8 For purposes of this subparagraph, the
9 term ‘qualified leasing income’ means rents
10 and gains derived in the active conduct of
11 a trade or business of leasing with respect
12 to which the controlled foreign corporation
13 conducts substantial activity, but only if—

14 “(I) the leased property is used
15 by the lessee or other end-user in for-
16 eign commerce and predominantly
17 outside the United States, and

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

21 Any amount not treated as foreign per-
22 sonal holding income under this subpara-
23 graph shall not be treated as foreign base
24 company shipping income.”.

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

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years of foreign corpora-
6 tions beginning after December 31, 2005, and to taxable
7 years of United States shareholders with or within which
8 such taxable years of foreign corporations end.

9 **SEC. 222. LOOK-THRU TREATMENT OF PAYMENTS BE-**
10 **TWEEN RELATED CONTROLLED FOREIGN**
11 **CORPORATIONS UNDER FOREIGN PERSONAL**
12 **HOLDING COMPANY INCOME RULES.**

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

16 “(5) LOOK-THRU IN THE CASE OF RELATED
17 CONTROLLED FOREIGN CORPORATIONS.—For pur-
18 poses of this subsection, dividends, interest, rents,
19 and royalties received or accrued from a controlled
20 foreign corporation which is a related person (as de-
21 fined in subsection (b)(9)) shall not be treated as
22 foreign personal holding company income to the ex-
23 tent attributable or properly allocable (determined
24 under rules similar to the rules of subparagraphs
25 (C) and (D) of section 904(d)(3)) to income of the

1 related person which is not subpart F income (as de-
2 fined in section 952). For purposes of this para-
3 graph, interest shall include factoring income which
4 is treated as income equivalent to interest for pur-
5 poses of paragraph (1)(E). The Secretary shall pre-
6 scribe such regulations as may be appropriate to
7 prevent the abuse of the purposes of this para-
8 graph.”.

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

14 **SEC. 223. LOOK-THRU TREATMENT FOR SALES OF PART-**
15 **NERSHIP INTERESTS.**

16 (a) IN GENERAL.—Section 954(c) (defining foreign
17 personal holding company income), as amended by this
18 Act, is amended by adding after paragraph (5) the fol-
19 lowing new paragraph:

20 “(6) LOOK-THRU RULE FOR CERTAIN PARTNER-
21 SHIP SALES.—

22 “(A) IN GENERAL.—In the case of any
23 sale by a controlled foreign corporation of an
24 interest in a partnership with respect to which
25 such corporation is a 25-percent owner, such

1 corporation shall be treated for purposes of this
2 subsection as selling the proportionate share of
3 the assets of the partnership attributable to
4 such interest. The Secretary shall prescribe
5 such regulations as may be appropriate to pre-
6 vent abuse of the purposes of this paragraph,
7 including regulations providing for coordination
8 of this paragraph with the provisions of sub-
9 chapter K.

10 “(B) 25-PERCENT OWNER.—For purposes
11 of this paragraph, the term ‘25-percent owner’
12 means a controlled foreign corporation which
13 owns directly 25 percent or more of the capital
14 or profits interest in a partnership. For pur-
15 poses of the preceding sentence, if a controlled
16 foreign corporation is a shareholder or partner
17 of a corporation or partnership, the controlled
18 foreign corporation shall be treated as owning
19 directly its proportionate share of any such cap-
20 ital or profits interest held directly or indirectly
21 by such corporation or partnership”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to taxable years of foreign corpora-
24 tions beginning after December 31, 2004, and to taxable

1 years of United States shareholders with or within which
2 such taxable years of foreign corporations end.

3 **SEC. 224. ELECTION NOT TO USE AVERAGE EXCHANGE**
4 **RATE FOR FOREIGN TAX PAID OTHER THAN**
5 **IN FUNCTIONAL CURRENCY.**

6 (a) IN GENERAL.—Paragraph (1) of section 986(a)
7 (relating to determination of foreign taxes and foreign cor-
8 poration’s earnings and profits) is amended by redesi-
9 gnating subparagraph (D) as subparagraph (E) and by in-
10 serting after subparagraph (C) the following new subpara-
11 graph:

12 “(D) ELECTIVE EXCEPTION FOR TAXES
13 PAID OTHER THAN IN FUNCTIONAL CUR-
14 RENCY.—

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

21 “(ii) APPLICATION TO QUALIFIED
22 BUSINESS UNITS.—An election under this
23 subparagraph may apply to foreign income
24 taxes attributable to a qualified business

1 unit in accordance with regulations pre-
2 scribed by the Secretary.

3 “(iii) ELECTION.—Any such election
4 shall apply to the taxable year for which
5 made and all subsequent taxable years un-
6 less revoked with the consent of the Sec-
7 retary.”.

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

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

12 (a) IN GENERAL.—Paragraph (2) of section 904(d)
13 is amended by redesignating subparagraphs (H) and (I)
14 as subparagraphs (I) and (J), respectively, and by insert-
15 ing after subparagraph (G) the following new subpara-
16 graph:

17 “(H) TREATMENT OF INCOME TAX BASE
18 DIFFERENCES.—

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

1 described in subparagraph (C) or (I) of
2 paragraph (1).

3 “(ii) ELECTION IRREVOCABLE.—Any
4 such election shall apply to the taxable
5 year for which made and all subsequent
6 taxable years unless revoked with the con-
7 sent of the Secretary.”.

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

11 **SEC. 226. MODIFICATION OF EXCEPTIONS UNDER SUBPART**
12 **F FOR ACTIVE FINANCING.**

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

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

22 “(i) the related person is an eligible
23 controlled foreign corporation the home
24 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. 227. UNITED STATES PROPERTY NOT TO INCLUDE**
18 **CERTAIN ASSETS OF CONTROLLED FOREIGN**
19 **CORPORATION.**

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

1 partner, beneficiary, or trustee imme-
2 diately after the acquisition of any ob-
3 ligation of such partnership, estate, or
4 trust by the controlled foreign cor-
5 poration.”.

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

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

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

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

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

1 or business engaged in by the partnership in
2 the United States and not allocable to income
3 which is effectively connected (or treated as ef-
4 fectively connected) with the conduct of a trade
5 or business in the United States.”.

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

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

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

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

20 **SEC. 230. 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. 231. TOLL TAX ON EXCESS QUALIFIED FOREIGN DIS-**
8 **TRIBUTION AMOUNT.**

9 (a) IN GENERAL.—Subpart F of part III of sub-
10 chapter N of chapter 1 is amended by adding at the end
11 the following new section:

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

14 “(a) TOLL TAX IMPOSED ON EXCESS QUALIFIED
15 FOREIGN DISTRIBUTION AMOUNT.—If a corporation
16 elects the application of this section, a tax shall be im-
17 posed on the taxpayer in an amount equal to 5.25 percent
18 of—

19 “(1) the taxpayer’s excess qualified foreign dis-
20 tribution amount, and

21 “(2) the amount determined under section 78
22 which is attributable to such excess qualified foreign
23 distribution amount.

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

4 “(b) EXCESS QUALIFIED FOREIGN DISTRIBUTION
5 AMOUNT.—For purposes of this section—

6 “(1) IN GENERAL.—The term ‘excess qualified
7 foreign distribution amount’ means the excess (if
8 any) of—

9 “(A) the aggregate dividends received by
10 the taxpayer during the taxable year which
11 are—

12 “(i) from 1 or more corporations
13 which are controlled foreign corporations
14 in which the taxpayer is a United States
15 shareholder on the date such dividends are
16 paid, and

17 “(ii) described in a domestic reinvest-
18 ment plan which—

19 “(I) is approved by the tax-
20 payer’s president, chief executive offi-
21 cer, or comparable official before the
22 payment of such dividends and subse-
23 quently approved by the taxpayer’s
24 board of directors, management com-

1 mittee, executive committee, or similar
2 body, and

3 “(II) provides for the reinvest-
4 ment of such dividends in the United
5 States (other than as payment for ex-
6 ecutive compensation), including as a
7 source for the funding of worker hir-
8 ing and training, infrastructure, re-
9 search and development, capital in-
10 vestments, or the financial stabiliza-
11 tion of the corporation for the pur-
12 poses of job retention or creation, over

13 “(B) the base dividend amount.

14 “(2) BASE DIVIDEND AMOUNT.—The term
15 ‘base dividend amount’ means an amount designated
16 under subsection (c)(7), but not less than the aver-
17 age amount of dividends received during the fixed
18 base period from 1 or more corporations which are
19 controlled foreign corporations in which the taxpayer
20 is a United States shareholder on the date such divi-
21 dends are paid.

22 “(3) FIXED BASE PERIOD.—

23 “(A) IN GENERAL.—The term ‘fixed base
24 period’ means each of 3 taxable years which are
25 among the 5 most recent taxable years of the

1 taxpayer ending on or before December 31,
2 2002, determined by disregarding—

3 “(i) the 1 taxable year for which the
4 taxpayer had the highest amount of divi-
5 dends from 1 or more corporations which
6 are controlled foreign corporations relative
7 to the other 4 taxable years, and

8 “(ii) the 1 taxable year for which the
9 taxpayer had the lowest amount of divi-
10 dends from such corporations relative to
11 the other 4 taxable years.

12 “(B) SHORTER PERIOD.—If the taxpayer
13 has fewer than 5 taxable years ending on or be-
14 fore December 31, 2002, then in lieu of apply-
15 ing subparagraph (A), the fixed base period
16 shall include all the taxable years of the tax-
17 payer ending on or before December 31, 2002.

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

20 “(1) DIVIDENDS.—The term ‘dividend’ has the
21 meaning given such term by section 316, except that
22 the term shall include amounts described in section
23 951(a)(1)(B), but shall not include amounts de-
24 scribed in sections 78 and 959.

1 “(2) CONTROLLED FOREIGN CORPORATIONS
2 AND UNITED STATES SHAREHOLDERS.—The term
3 ‘controlled foreign corporation’ has the meaning
4 given such term by section 957(a) and the term
5 ‘United States shareholder’ has the meaning given
6 such term by section 951(b).

7 “(3) FOREIGN TAX CREDITS.—The amount of
8 any income, war, profits, or excess profit taxes paid
9 (or deemed paid under sections 902 and 960) or ac-
10 crued by the taxpayer with respect to the excess
11 qualified foreign distribution amount for which a
12 credit would be allowable under section 901 in the
13 absence of this section, shall be reduced by 85 per-
14 cent. No deduction shall be allowed under this chap-
15 ter for the portion of any tax for which credit is not
16 allowable by reason of the preceding sentence.

17 “(4) FOREIGN TAX CREDIT LIMITATION.—For
18 purposes of section 904, there shall be disregarded
19 85 percent of—

20 “(A) the excess qualified foreign distribu-
21 tion amount,

22 “(B) the amount determined under section
23 78 which is attributable to such excess qualified
24 foreign distribution amount, and

1 “(C) the amounts (including assets, gross
2 income, and other relevant bases of apportion-
3 ment) which are attributable to the excess
4 qualified foreign distribution amount which
5 would, determined without regard to this sec-
6 tion, be used to apportion the expenses, losses,
7 and deductions of the taxpayer under section
8 861 and 864 in determining its taxable income
9 from sources without the United States.

10 For purposes of applying subparagraph (C), the
11 principles of section 864(e)(3)(A) shall apply.

12 “(5) TREATMENT OF ACQUISITIONS AND DIS-
13 POSITIONS.—Rules similar to the rules of section
14 41(f)(3) shall apply in the case of acquisitions or
15 dispositions of controlled foreign corporations occur-
16 ring on or after the first day of the earliest taxable
17 year taken into account in determining the fixed
18 base period.

19 “(6) TREATMENT OF CONSOLIDATED
20 GROUPS.—Members of an affiliated group of cor-
21 porations filing a consolidated return under section
22 1501 shall be treated as a single taxpayer for pur-
23 poses of this section.

24 “(7) DESIGNATION OF DIVIDENDS.—Subject to
25 subsection (b)(2), the taxpayer shall designate the

1 particular dividends received during the taxable year
2 from 1 or more corporations which are controlled
3 foreign corporations in which it is a United States
4 shareholder which are dividends excluded from the
5 excess qualified foreign distribution amount. The
6 total amount of such designated dividends shall
7 equal the base dividend amount.

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

11 “(A) shall not be applied to reduce the
12 amounts described in subsection (a)(1), and

13 “(B) shall be applied to reduce other in-
14 come of the taxpayer (determined without re-
15 gard to the amounts described in subsection
16 (a)(1)).

17 “(d) ELECTION.—

18 “(1) IN GENERAL.—An election under this sec-
19 tion shall be made on the taxpayer’s timely filed in-
20 come tax return for the first taxable year (deter-
21 mined by taking extensions into account) ending 120
22 days or more after the date of the enactment of this
23 section, and, once made, may be revoked only with
24 the consent of the Secretary.

1 “(2) ALL CONTROLLED FOREIGN CORPORA-
2 TIONS.—The election shall apply to all corporations
3 which are controlled foreign corporations in which
4 the taxpayer is a United States shareholder during
5 the taxable year.

6 “(3) CONSOLIDATED GROUPS.—If a taxpayer is
7 a member of an affiliated group of corporations fil-
8 ing a consolidated return under section 1501 for the
9 taxable year, an election under this section shall be
10 made by the common parent of the affiliated group
11 which includes the taxpayer and shall apply to all
12 members of the affiliated group.

13 “(e) REGULATIONS.—The Secretary shall prescribe
14 such regulations as may be necessary and appropriate to
15 carry out the purposes of this section, including regula-
16 tions under section 55 and regulations addressing corpora-
17 tions which, during the fixed base period or thereafter,
18 join or leave an affiliated group of corporations filing a
19 consolidated return.”.

20 (b) CONFORMING AMENDMENT.—The table of sec-
21 tions for subpart F of part III of subchapter N of chapter
22 1 is amended by adding at the end the following new item:

 “Sec. 965. Toll tax imposed on excess qualified foreign distribu-
 tion amount.”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply only to the first taxable year of

1 the electing taxpayer ending 120 days or more after the
2 date of the enactment of this Act.

3 **SEC. 232. EXCLUSION OF INCOME DERIVED FROM CERTAIN**
4 **WAGERS ON HORSE RACES AND DOG RACES**
5 **FROM GROSS INCOME OF NONRESIDENT**
6 **ALIEN INDIVIDUALS.**

7 (a) IN GENERAL.—Subsection (b) of section 872 (re-
8 lating to exclusions) is amended by redesignating para-
9 graphs (5), (6), and (7) as paragraphs (6), (7), and (8),
10 respectively, and inserting after paragraph (4) the fol-
11 lowing new paragraph:

12 “(5) INCOME DERIVED FROM WAGERING
13 TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—
14 Gross income derived by a nonresident alien indi-
15 vidual from a legal wagering transaction initiated
16 outside the United States in a parimutuel pool with
17 respect to a live horse race or dog race in the United
18 States.”.

19 (b) CONFORMING AMENDMENT.—Section 883(a)(4)
20 is amended by striking “(5), (6), and (7)” and inserting
21 “(6), (7), and (8)”.

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

1 **SEC. 233. LIMITATION OF WITHHOLDING TAX FOR PUERTO**
2 **RICO CORPORATIONS.**

3 (a) IN GENERAL.—Subsection (b) of section 881 is
4 amended by redesignating paragraph (2) as paragraph (3)
5 and by inserting after paragraph (1) the following new
6 paragraph:

7 “(2) COMMONWEALTH OF PUERTO RICO.—If
8 dividends are received during a taxable year by a
9 corporation—

10 “(A) created or organized in, or under the
11 law of, the Commonwealth of Puerto Rico, and

12 “(B) with respect to which the require-
13 ments of subparagraphs (A), (B), and (C) of
14 paragraph (1) are met for the taxable year,

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

17 (b) WITHHOLDING.—Subsection (c) of section 1442
18 (relating to withholding of tax on foreign corporations) is
19 amended—

20 (1) by striking “For purposes” and inserting
21 the following:

22 “(1) GUAM, AMERICAN SAMOA, THE NORTHERN
23 MARIANA ISLANDS, AND THE VIRGIN ISLANDS.—For
24 purposes”, and

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

1 “(2) COMMONWEALTH OF PUERTO RICO.—If
2 dividends are received during a taxable year by a
3 corporation—

4 “(A) created or organized in, or under the
5 law of, the Commonwealth of Puerto Rico, and

6 “(B) with respect to which the require-
7 ments of subparagraphs (A), (B), and (C) of
8 section 881(b)(1) are met for the taxable year,
9 subsection (a) shall be applied for such taxable year
10 by substituting ‘10 percent’ for ‘30 percent.’”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Subsection (b) of section 881 is amended by
13 striking “GUAM AND VIRGIN ISLANDS CORPORA-
14 TIONS” in the heading and inserting “POSSES-
15 SIONS”.

16 (2) Paragraph (1) of section 881(b) is amended
17 by striking “IN GENERAL” in the heading and in-
18 serting “GUAM, AMERICAN SAMOA, THE NORTHERN
19 MARIANA ISLANDS, AND THE VIRGIN ISLANDS”.

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

1 **SEC. 234. REPORT ON WTO DISPUTE SETTLEMENT PANELS**
2 **AND THE APPELLATE BODY.**

3 Not later than March 31, 2004, the Secretary of
4 Commerce, in consultation with the United States Trade
5 Representative, shall transmit a report to the Committee
6 on Finance of the Senate and the Committee on Ways and
7 Means of the House of Representatives, regarding whether
8 dispute settlement panels and the Appellate Body of the
9 World Trade Organization have—

10 (1) added to or diminished the rights of the
11 United States by imposing obligations or restrictions
12 on the use of antidumping, countervailing, and safe-
13 guard measures not agreed to under the Agreement
14 on Implementation of Article VI of the General
15 Agreement on Tariffs and Trade of 1994, the Agree-
16 ment on Subsidies and Countervailing Measures,
17 and the Agreement on Safeguards;

18 (2) appropriately applied the standard of review
19 contained in Article 17.6 of the Agreement on Im-
20 plementation of Article VI of the General Agreement
21 on Tariffs and Trade of 1994; or

22 (3) exceeded their authority or terms of ref-
23 erence under the Agreements referred to in para-
24 graph (1).

1 **SEC. 235. STUDY OF IMPACT OF INTERNATIONAL TAX LAWS**
2 **ON TAXPAYERS OTHER THAN LARGE COR-**
3 **PORATIONS.**

4 (a) STUDY.—The Secretary of the Treasury or the
5 Secretary's delegate shall conduct a study of the impact
6 of Federal international tax rules on taxpayers other than
7 large corporations, including the burdens placed on such
8 taxpayers in complying with such rules.

9 (b) REPORT.—Not later than 180 days after the date
10 of the enactment of this Act, the Secretary shall report
11 to the Committee on Finance of the Senate and the Com-
12 mittee on Ways and Means of the House of Representa-
13 tives the results of the study conducted under subsection
14 (a), including any recommendations for legislative or ad-
15 ministrative changes to reduce the compliance burden on
16 taxpayers other than large corporations and for such other
17 purposes as the Secretary determines appropriate.

18 **SEC. 236. DELAY IN EFFECTIVE DATE OF FINAL REGULA-**
19 **TIONS GOVERNING EXCLUSION OF INCOME**
20 **FROM INTERNATIONAL OPERATION OF SHIPS**
21 **OR AIRCRAFT.**

22 Notwithstanding the provisions of Treasury regula-
23 tion § 1.883–5, the final regulations issued by the Sec-
24 retary of the Treasury relating to income derived by for-
25 eign corporations from the international operation of ships
26 or aircraft (Treasury regulations § 1.883–1 through

1 § 1.883–5) shall apply to taxable years of a foreign cor-
2 poration seeking qualified foreign corporation status be-
3 ginning after September 24, 2004.

4 **TITLE III—DOMESTIC MANUFAC-**
5 **TURING AND BUSINESS PRO-**
6 **VISIONS**

7 **Subtitle A—General Provisions**

8 **SEC. 301. EXPANSION OF QUALIFIED SMALL-ISSUE BOND**
9 **PROGRAM.**

10 (a) **IN GENERAL.**—Subparagraph (F) of section
11 144(a)(4) (relating to \$10,000,000 limit in certain cases)
12 is amended to read as follows:

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

20 (b) **EFFECTIVE DATE.**—The amendment made by
21 this section shall apply to bonds issued after the date of
22 the enactment of this Act.

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

3 (a) IN GENERAL.—Part VI of subchapter B of chap-
4 ter 1 (relating to itemized deductions for individuals and
5 corporations) is amended by inserting after section 190
6 the following new section:

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

8 “(a) TREATMENT OF EXPENDITURES.—

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

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

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

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

24 “(A) the purchase or installation of quali-
25 fied equipment (including any upgrades there-
26 to), and

1 “(B) the connection of such qualified
2 equipment to any qualified subscriber.

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

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

13 “(c) WHEN EXPENDITURES TAKEN INTO AC-
14 COUNT.—For purposes of this section—

15 “(1) IN GENERAL.—Qualified broadband ex-
16 penditures with respect to qualified equipment shall
17 be taken into account with respect to the first tax-
18 able year in which—

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

22 “(B) next generation broadband services
23 are provided through such equipment to quali-
24 fied subscribers.

25 “(2) LIMITATION.—

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

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

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

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

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

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

20 “(d) SPECIAL ALLOCATION RULES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 “(7) NONRESIDENTIAL SUBSCRIBER.—The
22 term ‘nonresidential subscriber’ means any person
23 who purchases broadband services which are deliv-
24 ered to the permanent place of business of such per-
25 son.

1 “(8) OPEN VIDEO SYSTEM OPERATOR.—The
2 term ‘open video system operator’ means any person
3 authorized to provide service under section 653 of
4 the Communications Act of 1934 (47 U.S.C. 573).

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

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

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

19 “(A) a cable operator,

20 “(B) a commercial mobile service carrier,

21 “(C) an open video system operator,

22 “(D) a satellite carrier,

23 “(E) a telecommunications carrier, or

24 “(F) any other wireless carrier,

1 providing current generation broadband services or
2 next generation broadband services to subscribers
3 through such qualified equipment.

4 “(12) PROVISION OF SERVICES.—A provider
5 shall be treated as providing services to 1 or more
6 subscribers if—

7 “(A) such a subscriber has been passed by
8 the provider’s equipment and can be connected
9 to such equipment for a standard connection
10 fee,

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

17 “(C) the provider has made reasonable ef-
18 forts to make such subscribers aware of the
19 availability of such services,

20 “(D) such services have been purchased by
21 1 or more such subscribers, and

22 “(E) such services are made available to
23 such subscribers at average prices comparable
24 to those at which the provider makes available

1 similar services in any areas in which the pro-
2 vider makes available such services.

3 “(13) QUALIFIED EQUIPMENT.—

4 “(A) IN GENERAL.—The term ‘qualified
5 equipment’ means equipment which provides
6 current generation broadband services or next
7 generation broadband services—

8 “(i) at least a majority of the time
9 during periods of maximum demand to
10 each subscriber who is utilizing such serv-
11 ices, and

12 “(ii) in a manner substantially the
13 same as such services are provided by the
14 provider to subscribers through equipment
15 with respect to which no deduction is al-
16 lowed under subsection (a)(1).

17 “(B) ONLY CERTAIN INVESTMENT TAKEN
18 INTO ACCOUNT.—Except as provided in sub-
19 paragraph (C) or (D), equipment shall be taken
20 into account under subparagraph (A) only to
21 the extent it—

22 “(i) extends from the last point of
23 switching to the outside of the unit, build-
24 ing, dwelling, or office owned or leased by

1 a subscriber in the case of a telecommuni-
2 cations carrier,

3 “(ii) extends from the customer side
4 of the mobile telephone switching office to
5 a transmission/receive antenna (including
6 such antenna) owned or leased by a sub-
7 scriber in the case of a commercial mobile
8 service carrier,

9 “(iii) extends from the customer side
10 of the headend to the outside of the unit,
11 building, dwelling, or office owned or
12 leased by a subscriber in the case of a
13 cable operator or open video system oper-
14 ator, or

15 “(iv) extends from a transmission/re-
16 ceive antenna (including such antenna)
17 which transmits and receives signals to or
18 from multiple subscribers, to a trans-
19 mission/receive antenna (including such
20 antenna) on the outside of the unit, build-
21 ing, dwelling, or office owned or leased by
22 a subscriber in the case of a satellite car-
23 rier or other wireless carrier, unless such
24 other wireless carrier is also a tele-
25 communications carrier.

1 “(C) PACKET SWITCHING EQUIPMENT.—
2 Packet switching equipment, regardless of loca-
3 tion, shall be taken into account under subpara-
4 graph (A) only if it is deployed in connection
5 with equipment described in subparagraph (B)
6 and is uniquely designed to perform the func-
7 tion of packet switching for current generation
8 broadband services or next generation
9 broadband services, but only if such packet
10 switching is the last in a series of such func-
11 tions performed in the transmission of a signal
12 to a subscriber or the first in a series of such
13 functions performed in the transmission of a
14 signal from a subscriber.

15 “(D) MULTIPLEXING AND
16 DEMULTIPLEXING EQUIPMENT.—Multiplexing
17 and demultiplexing equipment shall be taken
18 into account under subparagraph (A) only to
19 the extent it is deployed in connection with
20 equipment described in subparagraph (B) and
21 is uniquely designed to perform the function of
22 multiplexing and demultiplexing packets or cells
23 of data and making associated application
24 adaptions, but only if such multiplexing or
25 demultiplexing equipment is located between

1 packet switching equipment described in sub-
2 paragraph (C) and the subscriber's premises.

3 “(14) QUALIFIED SUBSCRIBER.—The term
4 ‘qualified subscriber’ means—

5 “(A) with respect to the provision of cur-
6 rent generation broadband services—

7 “(i) any nonresidential subscriber
8 maintaining a permanent place of business
9 in a rural area or underserved area, or

10 “(ii) any residential subscriber resid-
11 ing in a dwelling located in a rural area or
12 underserved area which is not a saturated
13 market, and

14 “(B) with respect to the provision of next
15 generation broadband services—

16 “(i) any nonresidential subscriber
17 maintaining a permanent place of business
18 in a rural area or underserved area, or

19 “(ii) any residential subscriber.

20 “(15) RESIDENTIAL SUBSCRIBER.—The term
21 ‘residential subscriber’ means any individual who
22 purchases broadband services which are delivered to
23 such individual's dwelling.

24 “(16) RURAL AREA.—The term ‘rural area’
25 means any census tract which—

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

4 “(B) is not within a county or county
5 equivalent which has an overall population den-
6 sity of more than 500 people per square mile of
7 land.

8 “(17) RURAL SUBSCRIBER.—The term ‘rural
9 subscriber’ means any residential subscriber residing
10 in a dwelling located in a rural area or nonresiden-
11 tial subscriber maintaining a permanent place of
12 business located in a rural area.

13 “(18) SATELLITE CARRIER.—The term ‘sat-
14 ellite carrier’ means any person using the facilities
15 of a satellite or satellite service licensed by the Fed-
16 eral Communications Commission and operating in
17 the Fixed-Satellite Service under part 25 of title 47
18 of the Code of Federal Regulations or the Direct
19 Broadcast Satellite Service under part 100 of title
20 47 of such Code to establish and operate a channel
21 of communications for distribution of signals, and
22 owning or leasing a capacity or service on a satellite
23 in order to provide such point-to-multipoint distribu-
24 tion.

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

4 “(A) current generation broadband services
5 have been provided by a single provider to 85
6 percent or more of the total number of potential
7 residential subscribers residing in dwellings lo-
8 cated within such census tract, and

9 “(B) such services can be utilized—

10 “(i) at least a majority of the time
11 during periods of maximum demand by
12 each such subscriber who is utilizing such
13 services, and

14 “(ii) in a manner substantially the
15 same as such services are provided by the
16 provider to subscribers through equipment
17 with respect to which no deduction is al-
18 lowed under subsection (a)(1).

19 “(20) SUBSCRIBER.—The term ‘subscriber’
20 means any person who purchases current generation
21 broadband services or next generation broadband
22 services.

23 “(21) TELECOMMUNICATIONS CARRIER.—The
24 term ‘telecommunications carrier’ has the meaning

1 given such term by section 3(44) of the Communica-
2 tions Act of 1934 (47 U.S.C. 153(44)), but—

3 “(A) includes all members of an affiliated
4 group of which a telecommunications carrier is
5 a member, and

6 “(B) does not include a commercial mobile
7 service carrier.

8 “(22) TOTAL POTENTIAL SUBSCRIBER POPU-
9 LATION.—The term ‘total potential subscriber popu-
10 lation’ means, with respect to any area and based on
11 the most recent census data, the total number of po-
12 tential residential subscribers residing in dwellings
13 located in such area and potential nonresidential
14 subscribers maintaining permanent places of busi-
15 ness located in such area.

16 “(23) UNDERSERVED AREA.—The term ‘under-
17 served area’ means—

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

19 “(i) an empowerment zone or enter-
20 prise community designated under section
21 1391, or

22 “(ii) the District of Columbia Enter-
23 prise Zone established under section 1400,
24 or

25 “(B) any census tract—

1 “(i) the poverty level of which is at
2 least 30 percent (based on the most recent
3 census data), and

4 “(ii) the median family income of
5 which does not exceed—

6 “(I) in the case of a census tract
7 located in a metropolitan statistical
8 area, 70 percent of the greater of the
9 metropolitan area median family in-
10 come or the statewide median family
11 income, and

12 “(II) in the case of a census tract
13 located in a nonmetropolitan statis-
14 tical area, 70 percent of the non-
15 metropolitan statewide median family
16 income.

17 “(24) UNDERSERVED SUBSCRIBER.—The term
18 ‘underserved subscriber’ means any residential sub-
19 scriber residing in a dwelling located in an under-
20 served area or nonresidential subscriber maintaining
21 a permanent place of business located in an under-
22 served area.

23 “(f) SPECIAL RULES.—

24 “(1) PROPERTY USED OUTSIDE THE UNITED
25 STATES, ETC., NOT QUALIFIED.—No expenditures

1 shall be taken into account under subsection (a)(1)
2 with respect to the portion of the cost of any prop-
3 erty referred to in section 50(b) or with respect to
4 the portion of the cost of any property specified in
5 an election under section 179.

6 “(2) BASIS REDUCTION.—

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

11 “(B) ORDINARY INCOME RECAPTURE.—
12 For purposes of section 1245, the amount of
13 the deduction allowable under subsection (a)(1)
14 with respect to any property which is of a char-
15 acter subject to the allowance for depreciation
16 shall be treated as a deduction allowed for de-
17 preciation under section 167.

18 “(3) COORDINATION WITH SECTION 38.—No
19 credit shall be allowed under section 38 with respect
20 to any amount for which a deduction is allowed
21 under subsection (a)(1).”.

22 (b) SPECIAL RULE FOR MUTUAL OR COOPERATIVE
23 TELEPHONE COMPANIES.—Section 512(b) (relating to
24 modifications) is amended by adding at the end the fol-
25 lowing new paragraph:

1 “(18) SPECIAL RULE FOR MUTUAL OR COOPER-
2 ATIVE TELEPHONE COMPANIES.—A mutual or coop-
3 erative telephone company which for the taxable year
4 satisfies the requirements of section 501(c)(12)(A)
5 may elect to reduce its unrelated business taxable in-
6 come for such year, if any, by an amount that does
7 not exceed the qualified broadband expenditures
8 which would be taken into account under section
9 191 for such year by such company if such company
10 was not exempt from taxation. Any amount which is
11 allowed as a deduction under this paragraph shall
12 not be allowed as a deduction under section 191 and
13 the basis of any property to which this paragraph
14 applies shall be reduced under section
15 1016(a)(29).”.

16 (c) CONFORMING AMENDMENTS.—

17 (1) Section 263(a)(1) (relating to capital ex-
18 penditures) is amended by striking “or” at the end
19 of subparagraph (G), by striking the period at the
20 end of subparagraph (H) and inserting “, or”, and
21 by adding at the end the following new subpara-
22 graph:

23 “(I) expenditures for which a deduction is
24 allowed under section 191.”.

1 (2) Section 1016(a) of such Code is amended
2 by striking “and” at the end of paragraph (27), by
3 striking the period at the end of paragraph (28) and
4 inserting “, and”, and by adding at the end the fol-
5 lowing new paragraph:

6 “(29) to the extent provided in section
7 191(f)(2).”.

8 (3) The table of sections for part VI of sub-
9 chapter A of chapter 1 of such Code is amended by
10 inserting after the item relating to section 190 the
11 following new item:

“Sec. 191. Broadband expenditures.”.

12 (d) DESIGNATION OF CENSUS TRACTS.—

13 (1) IN GENERAL.—The Secretary of the Treas-
14 ury shall, not later than 90 days after the date of
15 the enactment of this Act, designate and publish
16 those census tracts meeting the criteria described in
17 paragraphs (16), (22), and (23) of section 191(e) of
18 the Internal Revenue Code of 1986 (as added by
19 this section). In making such designations, the Sec-
20 retary of the Treasury shall consult with such other
21 departments and agencies as the Secretary deter-
22 mines appropriate.

23 (2) SATURATED MARKET.—

24 (A) IN GENERAL.—For purposes of desig-
25 nating and publishing those census tracts meet-

1 ing the criteria described in subsection (e)(19)
2 of such section 191—

3 (i) the Secretary of the Treasury shall
4 prescribe not later than 30 days after the
5 date of the enactment of this Act the form
6 upon which any provider which takes the
7 position that it meets such criteria with re-
8 spect to any census tract shall submit a
9 list of such census tracts (and any other
10 information required by the Secretary) not
11 later than 60 days after the date of the
12 publication of such form, and

13 (ii) the Secretary of the Treasury
14 shall publish an aggregate list of such cen-
15 sus tracts and the applicable providers not
16 later than 30 days after the last date such
17 submissions are allowed under clause (i).

18 (B) NO SUBSEQUENT LISTS REQUIRED.—
19 The Secretary of the Treasury shall not be re-
20 quired to publish any list of census tracts meet-
21 ing such criteria subsequent to the list de-
22 scribed in subparagraph (A)(ii).

23 (e) OTHER REGULATORY MATTERS.—

24 (1) PROHIBITION.—No Federal or State agency
25 or instrumentality shall adopt regulations or rate-

1 making procedures that would have the effect of
2 eliminating or reducing any deduction or portion
3 thereof allowed under section 191 of the Internal
4 Revenue Code of 1986 (as added by this section) or
5 otherwise subverting the purpose of this section.

6 (2) TREASURY REGULATORY AUTHORITY.—It is
7 the intent of Congress in providing the election to
8 deduct qualified broadband expenditures under sec-
9 tion 191 of the Internal Revenue Code of 1986 (as
10 added by this section) to provide incentives for the
11 purchase, installation, and connection of equipment
12 and facilities offering expanded broadband access to
13 the Internet for users in certain low income and
14 rural areas of the United States, as well as to resi-
15 dential users nationwide, in a manner that main-
16 tains competitive neutrality among the various class-
17 es of providers of broadband services. Accordingly,
18 the Secretary of the Treasury shall prescribe such
19 regulations as may be necessary or appropriate to
20 carry out the purposes of section 191 of such Code,
21 including—

22 (A) regulations to determine how and when
23 a taxpayer that incurs qualified broadband ex-
24 penditures satisfies the requirements of section

1 191 of such Code to provide broadband serv-
2 ices, and

3 (B) regulations describing the information,
4 records, and data taxpayers are required to pro-
5 vide the Secretary to substantiate compliance
6 with the requirements of section 191 of such
7 Code.

8 (f) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to expenditures incurred after the
10 date of the enactment of this Act and before the date
11 which is 12 months after the date of the enactment of
12 this Act.

13 **SEC. 303. EXEMPTION OF NATURAL AGING PROCESS IN DE-**
14 **TERMINATION OF PRODUCTION PERIOD FOR**
15 **DISTILLED SPIRITS UNDER SECTION 263A.**

16 (a) IN GENERAL.—Section 263A(f) of the Internal
17 Revenue Code of 1986 (relating to general exceptions) is
18 amended by adding at the end the following new para-
19 graph:

20 “(5) EXEMPTION OF NATURAL AGING PROCESS
21 IN DETERMINATION OF PRODUCTION PERIOD FOR
22 DISTILLED SPIRITS.—For purposes of this sub-
23 section, the production period for distilled spirits
24 shall be determined without regard to any period al-
25 located to the natural aging process.”.

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

4 **SEC. 304. MODIFICATION OF ACTIVE BUSINESS DEFINITION**
5 **UNDER SECTION 355.**

6 (a) IN GENERAL.—Section 355(b) (defining active
7 conduct of a trade or business) is amended by adding at
8 the end the following new paragraph:

9 “(3) SPECIAL RULES RELATING TO ACTIVE
10 BUSINESS REQUIREMENT.—

11 “(A) IN GENERAL.—For purposes of deter-
12 mining whether a corporation meets the re-
13 quirement of paragraph (2)(A), all members of
14 such corporation’s separate affiliated group
15 shall be treated as one corporation. For pur-
16 poses of the preceding sentence, a corporation’s
17 separate affiliated group is the affiliated group
18 which would be determined under section
19 1504(a) if such corporation were the common
20 parent and section 1504(b) did not apply.

21 “(B) CONTROL.—For purposes of para-
22 graph (2)(D), all distributee corporations which
23 are members of the same affiliated group (as
24 defined in section 1504(a) without regard to

1 section 1504(b)) shall be treated as one dis-
2 tributee corporation.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Subparagraph (A) of section 355(b)(2) is
5 amended to read as follows:

6 “(A) it is engaged in the active conduct of
7 a trade or business,”.

8 (2) Section 355(b)(2) is amended by striking
9 the last sentence.

10 (c) EFFECTIVE DATE.—

11 (1) IN GENERAL.—The amendments made by
12 this section shall apply—

13 (A) to distributions after the date of the
14 enactment of this Act, and

15 (B) for purposes of determining the contin-
16 ued qualification under section 355(b)(2)(A) of
17 the Internal Revenue Code of 1986 (as amend-
18 ed by subsection (b)(1)) of distributions made
19 before such date, as a result of an acquisition,
20 disposition, or other restructuring after such
21 date.

22 (2) TRANSITION RULE.—The amendments
23 made by this section shall not apply to any distribu-
24 tion pursuant to a transaction which is—

1 (A) made pursuant to an agreement which
2 was binding on such date of enactment and at
3 all times thereafter,

4 (B) described in a ruling request submitted
5 to the Internal Revenue Service on or before
6 such date, or

7 (C) described on or before such date in a
8 public announcement or in a filing with the Se-
9 curities and Exchange Commission.

10 (3) ELECTION TO HAVE AMENDMENTS
11 APPLY.—Paragraph (2) shall not apply if the dis-
12 tributing corporation elects not to have such para-
13 graph apply to distributions of such corporation.
14 Any such election, once made, shall be irrevocable.

15 **SEC. 305. MODIFIED TAXATION OF IMPORTED ARCHERY**
16 **PRODUCTS.**

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

19 “(1) BOWS.—

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

1 “(B) ARCHERY EQUIPMENT.—There is
2 hereby imposed on the sale by the manufac-
3 turer, producer, or importer—

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

7 “(ii) of any quiver or broadhead suit-
8 able for use with an arrow described in
9 paragraph (2),

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

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

16 “(3) ARROWS.—

17 “(A) IN GENERAL.—There is hereby im-
18 posed on the sale by the manufacturer, pro-
19 ducer, or importer of any arrow, a tax equal to
20 12 percent of the price for which so sold.

21 “(B) EXCEPTION.—In the case of any
22 arrow of which the shaft or any other compo-
23 nent has been previously taxed under paragraph
24 (1) or (2)—

1 “(i) section 6416(b)(3) shall not
2 apply, and

3 “(ii) the tax imposed by subparagraph
4 (A) shall be an amount equal to the excess
5 (if any) of—

6 “(I) the amount of tax imposed
7 by this paragraph (determined with-
8 out regard to this subparagraph), over

9 “(II) the amount of tax paid with
10 respect to the tax imposed under
11 paragraph (1) or (2) on such shaft or
12 component.

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

17 (c) CONFORMING AMENDMENTS.—Section
18 4161(b)(2) is amended—

19 (1) by inserting “(other than broadheads)”
20 after “point”, and

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

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to articles sold by the manufac-
25 turer, producer, or importer after December 31, 2003.

1 **SEC. 306. 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. 307. 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. 308. TEMPORARY SUSPENSION OF PERSONAL HOLD-**
17 **ING COMPANY TAX.**

18 (a) IN GENERAL.—Section 541 (relating to imposi-
19 tion of personal holding company tax) is amended by add-
20 ing at the end the following new sentence: “The preceding
21 sentence shall not apply with respect to any taxable year
22 to which section 1(h)(11) (as in effect on the date of the
23 enactment of this sentence) applies.”.

24 (b) COORDINATION WITH ACCUMULATED EARNINGS
25 TAX.—Section 532(b) is amended by adding at the end
26 the following flush sentence:

1 “Paragraph (1) shall not apply to any taxable year to
2 which section 541 does not apply.”

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

6 **SEC. 309. INCREASE IN SECTION 179 EXPENSING.**

7 (a) IN GENERAL.—Section 179(b)(2) (relating to re-
8 duction in limitation) is amended by inserting “50 percent
9 of” before “the amount”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to taxable years beginning after
12 December 31, 2002.

13 **SEC. 310. FIVE-YEAR CARRYBACK OF NET OPERATING**
14 **LOSSES.**

15 (a) IN GENERAL.—Subparagraph (H) of section
16 172(b)(1) is amended—

17 (1) by inserting “5-YEAR CARRYBACK OF CER-
18 TAIN LOSSES.—” after “(H)”, and

19 (2) by striking “or 2002” and inserting “,
20 2002, or 2003”.

21 (b) RULES RELATING TO CERTAIN EXTENDED NET
22 OPERATING LOSSES.—Section 172 is amended by redesi-
23 gnating subsection (k) as subsection (l) and by inserting
24 after subsection (j) the following new subsection:

1 “(k) RULES RELATING TO CERTAIN EXTENDED NET
2 OPERATING LOSSES.—In the case of a taxpayer which has
3 a net operating loss for any taxable year ending during
4 2003 and does not make an election under subsection (j),
5 such taxpayer shall be treated as having made an election
6 under paragraphs (4)(E) and (2)(C)(iii) of section 168(k)
7 with respect to all classes of property for such taxable
8 year.

9 (c) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT
10 ON CERTAIN NOL CARRYOVERS.—Section
11 56(d)(1)(A)(ii)(I) (relating to general rule defining alter-
12 native tax net operating loss deduction) is amended—

13 (1) by striking “or 2002” and inserting “,
14 2002, or 2003”, and

15 (2) by striking “and 2002” and inserting “,
16 2002, and 2003”.

17 (d) TECHNICAL CORRECTIONS.—

18 (1) Subparagraph (H) of section 172(b)(1) is
19 amended by striking “a taxpayer which has”.

20 (2) Section 102(c)(2) of the Job Creation and
21 Worker Assistance Act of 2002 (Public Law 107–
22 147) is amended by striking “before January 1,
23 2003” and inserting “after December 31, 1990”.

24 (3)(A) Subclause (I) of section 56(d)(1)(A)(i) is
25 amended by striking “attributable to carryovers”.

1 (B) Subclause (I) of section 56(d)(1)(A)(ii) is
2 amended—

3 (i) by striking “for taxable years” and in-
4 serting “from taxable years”, and

5 (ii) by striking “carryforwards” and insert-
6 ing “carryovers”.

7 (e) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall apply to net operating losses for taxable years
11 ending after December 31, 2002.

12 (2) TECHNICAL CORRECTIONS.—The amend-
13 ments made by subsection (d) shall take effect as if
14 included in the amendments made by section 102 of
15 the Job Creation and Worker Assistance Act of
16 2002.

17 (3) ELECTION.—In the case of a net operating
18 loss for a taxable year ending during 2003—

19 (A) any election made under section
20 172(b)(3) of such Code may (notwithstanding
21 such section) be revoked before November 15,
22 2004, and

23 (B) any election made under section 172(j)
24 of such Code shall (notwithstanding such sec-

1 (b) INCREASE IN RATES OF ALTERNATIVE INCRE-
2 MENTAL CREDIT.—Subparagraph (A) of section 41(c)(4)
3 (relating to election of alternative incremental credit) is
4 amended—

5 (1) by striking “2.65 percent” and inserting “3
6 percent”,

7 (2) by striking “3.2 percent” and inserting “4
8 percent”, and

9 (3) by striking “3.75 percent” and inserting “5
10 percent”.

11 (c) ALTERNATIVE SIMPLIFIED CREDIT FOR QUALI-
12 FIED RESEARCH EXPENSES.—

13 (1) IN GENERAL.—Subsection (c) of section 41
14 (relating to base amount) is amended by redesignig-
15 nating paragraphs (5) and (6) as paragraphs (6)
16 and (7), respectively, and by inserting after para-
17 graph (4) the following new paragraph:

18 “(5) ELECTION OF ALTERNATIVE SIMPLIFIED
19 CREDIT.—

20 “(A) IN GENERAL.—At the election of the
21 taxpayer, the credit determined under sub-
22 section (a)(1) shall be equal to 12 percent of so
23 much of the qualified research expenses for the
24 taxable year as exceeds 50 percent of the aver-
25 age qualified research expenses for the 3 tax-

1 able years preceding the taxable year for which
2 the credit is being determined.

3 “(B) SPECIAL RULE IN CASE OF NO
4 QUALIFIED RESEARCH EXPENSES IN ANY OF 3
5 PRECEDING TAXABLE YEARS.—

6 “(i) TAXPAYERS TO WHICH SUBPARA-
7 GRAPH APPLIES.—The credit under this
8 paragraph shall be determined under this
9 subparagraph if the taxpayer has no quali-
10 fied research expenses in any 1 of the 3
11 taxable years preceding the taxable year
12 for which the credit is being determined.

13 “(ii) CREDIT RATE.—The credit de-
14 termined under this subparagraph shall be
15 equal to 6 percent of the qualified research
16 expenses for the taxable year.

17 “(C) ELECTION.—An election under this
18 paragraph shall apply to the taxable year for
19 which made and all succeeding taxable years
20 unless revoked with the consent of the Sec-
21 retary. An election under this paragraph may
22 not be made for any taxable year to which an
23 election under paragraph (4) applies.”

24 (2) COORDINATION WITH ELECTION OF ALTER-
25 NATIVE INCREMENTAL CREDIT.—

1 (A) IN GENERAL.—Section 41(c)(4)(B)
2 (relating to election) is amended by adding at
3 the end the following: “An election under this
4 paragraph may not be made for any taxable
5 year to which an election under paragraph (5)
6 applies.”

7 (B) TRANSITION RULE.—In the case of an
8 election under section 41(c)(4) of the Internal
9 Revenue Code of 1986 which applies to the tax-
10 able year which includes the date of the enact-
11 ment of this Act, such election shall be treated
12 as revoked with the consent of the Secretary of
13 the Treasury if the taxpayer makes an election
14 under section 41(c)(5) of such Code (as added
15 by paragraph (1)) for such year.

16 (f) EFFECTIVE DATES.—

17 (1) SUBSECTION (a).—The amendments made
18 by subsection (a) shall apply to amounts paid or in-
19 curred after the date of the enactment of this Act.

20 (2) SUBSECTIONS (b) AND (c).—The amend-
21 ments made by subsections (b) and (c) shall apply
22 to taxable years beginning after December 31, 2004.

23 **SEC. 312. EXPANSION OF RESEARCH CREDIT.**

24 (a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CER-
25 TAIN COLLABORATIVE RESEARCH CONSORTIA.—

1 lic interest (within the meaning of sec-
2 tion 501(c)(3)),

3 “(ii) which is not a private founda-
4 tion,

5 “(iii) to which at least 5 unrelated
6 persons paid or incurred during the cal-
7 endar year in which the taxable year of the
8 organization begins amounts (including as
9 contributions) to such organization for re-
10 search, and

11 “(iv) to which no single person paid
12 or incurred (including as contributions)
13 during such calendar year an amount
14 equal to more than 50 percent of the total
15 amounts received by such organization
16 during such calendar year for research.

17 “(B) TREATMENT OF PERSONS.—All per-
18 sons treated as a single employer under sub-
19 section (a) or (b) of section 52 shall be treated
20 as related persons for purposes of subparagraph
21 (A)(iii) and as a single person for purposes of
22 subparagraph (A)(iv).”.

23 (3) CONFORMING AMENDMENT.—Section
24 41(b)(3)(C) is amended by inserting “(other than a
25 research consortium)” after “organization”.

1 (b) REPEAL OF LIMITATION ON CONTRACT RE-
2 SEARCH EXPENSES PAID TO SMALL BUSINESSES, UNI-
3 VERSITIES, AND FEDERAL LABORATORIES.—Section
4 41(b)(3) (relating to contract research expenses) is
5 amended by adding at the end the following new subpara-
6 graph:

7 “(D) AMOUNTS PAID TO ELIGIBLE SMALL
8 BUSINESSES, UNIVERSITIES, AND FEDERAL
9 LABORATORIES.—

10 “(i) IN GENERAL.—In the case of
11 amounts paid by the taxpayer to—

12 “(I) an eligible small business,

13 “(II) an institution of higher
14 education (as defined in section
15 3304(f)), or

16 “(III) an organization which is a
17 Federal laboratory,

18 for qualified research which is energy re-
19 search, subparagraph (A) shall be applied
20 by substituting ‘100 percent’ for ‘65 per-
21 cent’.

22 “(ii) ELIGIBLE SMALL BUSINESS.—
23 For purposes of this subparagraph, the
24 term ‘eligible small business’ means a
25 small business with respect to which the

1 taxpayer does not own (within the meaning
2 of section 318) 50 percent or more of—

3 “(I) in the case of a corporation,
4 the outstanding stock of the corpora-
5 tion (either by vote or value), and

6 “(II) in the case of a small busi-
7 ness which is not a corporation, the
8 capital and profits interests of the
9 small business.

10 “(iii) SMALL BUSINESS.—For pur-
11 poses of this subparagraph—

12 “(I) IN GENERAL.—The term
13 ‘small business’ means, with respect
14 to any calendar year, any person if
15 the annual average number of employ-
16 ees employed by such person during
17 either of the 2 preceding calendar
18 years was 500 or fewer. For purposes
19 of the preceding sentence, a preceding
20 calendar year may be taken into ac-
21 count only if the person was in exist-
22 ence throughout the year.

23 “(II) STARTUPS, CONTROLLED
24 GROUPS, AND PREDECESSORS.—Rules
25 similar to the rules of subparagraphs

1 (B) and (D) of section 220(c)(4) shall
2 apply for purposes of this clause.

3 “(iv) FEDERAL LABORATORY.—For
4 purposes of this subparagraph, the term
5 ‘Federal laboratory’ has the meaning given
6 such term by section 4(6) of the Steven-
7 son-Wydler Technology Innovation Act of
8 1980 (15 U.S.C. 3703(6)), as in effect on
9 the date of the enactment of the Energy
10 Tax Incentives Act of 2003.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to amounts paid or incurred after
13 December 31, 2004.

14 **Subtitle B—Manufacturing**
15 **Relating to Films**

16 **SEC. 321. SPECIAL RULES FOR CERTAIN FILM AND TELE-**
17 **VISION PRODUCTIONS.**

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

21 **“SEC. 181. TREATMENT OF QUALIFIED FILM AND TELE-**
22 **VISION PRODUCTIONS.**

23 “(a) ELECTION TO TREAT CERTAIN COSTS OF
24 QUALIFIED FILM AND TELEVISION PRODUCTIONS AS EX-
25 PENSES.—

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

6 “(2) DOLLAR LIMITATION.—

7 “(A) IN GENERAL.—The aggregate cost
8 which may be taken into account under para-
9 graph (1) with respect to each qualified film or
10 television production shall not exceed
11 \$15,000,000.

12 “(B) HIGHER DOLLAR LIMITATION FOR
13 PRODUCTIONS IN CERTAIN AREAS.—In the case
14 of any qualified film or television production the
15 aggregate cost of which is significantly incurred
16 in an area eligible for designation as—

17 “(i) a low-income community under
18 section 45D, or

19 “(ii) a distressed county or isolated
20 area of distress by the Delta Regional Au-
21 thority established under section 2009aa-1
22 of title 7, United States Code,
23 subparagraph (A) shall be applied by sub-
24 stituting ‘\$20,000,000’ for ‘\$15,000,000’.

25 “(b) AMORTIZATION OF REMAINING COSTS.—

1 “(1) IN GENERAL.—If an election is made
2 under subsection (a) with respect to any qualified
3 film or television production, that portion of the
4 basis of such production in excess of the amount
5 taken into account under subsection (a) shall be al-
6 lowed as a deduction ratably over the 36-month pe-
7 riod beginning with the month in which such produc-
8 tion is placed in service.

9 “(2) NO OTHER DEDUCTION OR AMORTIZATION
10 DEDUCTION ALLOWABLE.—With respect to the basis
11 of any qualified film or television production de-
12 scribed in paragraph (1), no other depreciation or
13 amortization deduction shall be allowable.

14 “(c) ELECTION.—

15 “(1) IN GENERAL.—An election under sub-
16 section (a) with respect to any qualified film or tele-
17 vision production shall be made in such manner as
18 prescribed by the Secretary and by the due date (in-
19 cluding extensions) for filing the taxpayer’s return of
20 tax under this chapter for the taxable year in which
21 costs of the production are first incurred.

22 “(2) REVOCATION OF ELECTION.—Any election
23 made under subsection (a) may not be revoked with-
24 out the consent of the Secretary.

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

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

8 “(2) PRODUCTION.—

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

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

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

22 “(A) IN GENERAL.—The term ‘qualified
23 compensation’ means compensation for services
24 performed in the United States by actors, direc-

1 **SEC. 322. 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 **Subtitle C—Manufacturing** 14 **Relating to Timber**

15 **SEC. 331. EXPENSING OF CERTAIN REFORESTATION EX-** 16 **PENDITURES.**

17 (a) IN GENERAL.—So much of subsection (b) of sec-
18 tion 194 (relating to amortization of reforestation expendi-
19 tures) as precedes paragraph (2) is amended to read as
20 follows:

21 “(b) TREATMENT AS EXPENSES.—

22 “(1) ELECTION TO TREAT CERTAIN REFOREST-
23 ATION EXPENDITURES AS EXPENSES.—

24 “(A) IN GENERAL.—In the case of any
25 qualified timber property with respect to which

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

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

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

22 (c) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

23 “(5) APPLICATION WITH OTHER DEDUC-
24 TIONS.—No deduction shall be allowed under any
25 other provision of this chapter with respect to any

1 expenditure with respect to which a deduction is al-
2 lowed or allowable under this section to the taxpayer
3 .”.

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

7 (5) The item relating to section 194 in the table
8 of sections for part VI of subchapter B of chapter
9 1 is amended by striking “Amortization” and insert-
10 ing “Treatment”.

11 (d) REPEAL OF REFORESTATION CREDIT.—

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

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

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

18 (C) by striking paragraph (3).

19 (2) CONFORMING AMENDMENTS.—

20 (A) Section 48 is amended—

21 (i) by striking subsection (b),

22 (ii) by striking “this subsection” in
23 paragraph (5) of subsection (a) and insert-
24 ing “subsection (a)”, and

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

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

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

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

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

14 **SEC. 332. ELECTION TO TREAT CUTTING OF TIMBER AS A**
15 **SALE OR EXCHANGE.**

16 Any election under section 631(a) of the Internal
17 Revenue Code of 1986 made for a taxable year ending on
18 or before the date of the enactment of this Act may be
19 revoked by the taxpayer for any taxable year ending after
20 such date. For purposes of determining whether the tax-
21 payer may make a further election under such section,
22 such election (and any revocation under this section) shall
23 not be taken into account.

1 **SEC. 333. CAPITAL GAIN TREATMENT UNDER SECTION**
2 **631(b) TO APPLY TO OUTRIGHT SALES BY**
3 **LANDOWNERS.**

4 (a) **IN GENERAL.**—The first sentence of section
5 631(b) (relating to disposal of timber with a retained eco-
6 nomic interest) is amended by striking “retains an eco-
7 nomic interest in such timber” and inserting “either re-
8 tains an economic interest in such timber or makes an
9 outright sale of such timber”.

10 (b) **CONFORMING AMENDMENTS.**—

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

15 (2) The heading for section 631(b) is amended
16 by striking “WITH A RETAINED ECONOMIC INTER-
17 EST”.

18 (c) **EFFECTIVE DATE.**—The amendments made by
19 this section shall apply to sales after the date of the enact-
20 ment of this Act.

21 **SEC. 334. MODIFICATION OF SAFE HARBOR RULES FOR**
22 **TIMBER REITS.**

23 (a) **EXPANSION OF PROHIBITED TRANSACTION SAFE**
24 **HARBOR.**—Section 857(b)(6) (relating to income from
25 prohibited transactions) is amended by redesignating sub-
26 paragraphs (D) and (E) as subparagraphs (E) and (F),

1 respectively, and by inserting after subparagraph (C) the
2 following new subparagraph:

3 “(D) CERTAIN SALES NOT TO CONSTITUTE
4 PROHIBITED TRANSACTIONS.—For purposes of
5 this part, the term ‘prohibited transaction’ does
6 not include a sale of property which is a real es-
7 tate asset (as defined in section 856(c)(5)(B))
8 if—

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

12 “(ii) the aggregate expenditures made
13 by the trust, or a partner of the trust, dur-
14 ing the 4-year period preceding the date of
15 sale which—

16 “(I) are includible in the basis of
17 the property (other than timberland
18 acquisition expenditures), and

19 “(II) are directly related to oper-
20 ation of the property for the produc-
21 tion of timber or for the preservation
22 of the property for use as timberland,
23 do not exceed 30 percent of the net selling
24 price of the property,

1 cent of the aggregate bases (as so deter-
2 mined) of all of the assets of the trust as
3 of the beginning of the taxable year,

4 “(v) in the case that the requirement
5 of clause (iv)(I) is not satisfied, substan-
6 tially all of the marketing expenditures
7 with respect to the property were made
8 through an independent contractor (as de-
9 fined in section 856(d)(3)) from whom the
10 trust itself does not derive or receive any
11 income, and

12 “(vi) the sales price of the property
13 sold by the trust is not based in whole or
14 in part on income or profits, including in-
15 come or profits derived from the sale or
16 operation of such property.”.

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

1 **TITLE IV—ADDITIONAL**
2 **PROVISIONS**
3 **Subtitle A—Provisions Designed To**
4 **Curtail Tax Shelters**

5 **SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**
6 **TRINE.**

7 (a) IN GENERAL.—Section 7701 is amended by re-
8 designating subsection (n) as subsection (o) and by insert-
9 ing after subsection (m) the following new subsection:

10 “(n) CLARIFICATION OF ECONOMIC SUBSTANCE
11 DOCTRINE; ETC.—

12 “(1) GENERAL RULES.—

13 “(A) IN GENERAL.—In any case in which
14 a court determines that the economic substance
15 doctrine is relevant for purposes of this title to
16 a transaction (or series of transactions), such
17 transaction (or series of transactions) shall have
18 economic substance only if the requirements of
19 this paragraph are met.

20 “(B) DEFINITION OF ECONOMIC SUB-
21 STANCE.—For purposes of subparagraph (A)—

22 “(i) IN GENERAL.—A transaction has
23 economic substance only if—

24 “(I) the transaction changes in a
25 meaningful way (apart from Federal

1 tax effects) the taxpayer's economic
2 position, and

3 “(II) the taxpayer has a substan-
4 tial nontax purpose for entering into
5 such transaction and the transaction
6 is a reasonable means of accom-
7 plishing such purpose.

8 In applying subclause (II), a purpose of
9 achieving a financial accounting benefit
10 shall not be taken into account in deter-
11 mining whether a transaction has a sub-
12 stantial nontax purpose if the origin of
13 such financial accounting benefit is a re-
14 duction of income tax.

15 “(ii) SPECIAL RULE WHERE TAX-
16 PAYER RELIES ON PROFIT POTENTIAL.—A
17 transaction shall not be treated as having
18 economic substance by reason of having a
19 potential for profit unless—

20 “(I) the present value of the rea-
21 sonably expected pre-tax profit from
22 the transaction is substantial in rela-
23 tion to the present value of the ex-
24 pected net tax benefits that would be

1 allowed if the transaction were re-
2 spected, and

3 “(II) the reasonably expected
4 pre-tax profit from the transaction ex-
5 ceeds a risk-free rate of return.

6 “(C) TREATMENT OF FEES AND FOREIGN
7 TAXES.—Fees and other transaction expenses
8 and foreign taxes shall be taken into account as
9 expenses in determining pre-tax profit under
10 subparagraph (B)(ii).

11 “(2) SPECIAL RULES FOR TRANSACTIONS WITH
12 TAX-INDIFFERENT PARTIES.—

13 “(A) SPECIAL RULES FOR FINANCING
14 TRANSACTIONS.—The form of a transaction
15 which is in substance the borrowing of money
16 or the acquisition of financial capital directly or
17 indirectly from a tax-indifferent party shall not
18 be respected if the present value of the deduc-
19 tions to be claimed with respect to the trans-
20 action is substantially in excess of the present
21 value of the anticipated economic returns of the
22 person lending the money or providing the fi-
23 nancial capital. A public offering shall be treat-
24 ed as a borrowing, or an acquisition of financial
25 capital, from a tax-indifferent party if it is rea-

1 sonably expected that at least 50 percent of the
2 offering will be placed with tax-indifferent par-
3 ties.

4 “(B) ARTIFICIAL INCOME SHIFTING AND
5 BASIS ADJUSTMENTS.—The form of a trans-
6 action with a tax-indifferent party shall not be
7 respected if—

8 “(i) it results in an allocation of in-
9 come or gain to the tax-indifferent party in
10 excess of such party’s economic income or
11 gain, or

12 “(ii) it results in a basis adjustment
13 or shifting of basis on account of over-
14 stating the income or gain of the tax-indif-
15 ferent party.

16 “(3) DEFINITIONS AND SPECIAL RULES.—For
17 purposes of this subsection—

18 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
19 The term ‘economic substance doctrine’ means
20 the common law doctrine under which tax bene-
21 fits under subtitle A with respect to a trans-
22 action are not allowable if the transaction does
23 not have economic substance or lacks a business
24 purpose.

1 “(B) TAX-INDIFFERENT PARTY.—The
2 term ‘tax-indifferent party’ means any person
3 or entity not subject to tax imposed by subtitle
4 A. A person shall be treated as a tax-indifferent
5 party with respect to a transaction if the items
6 taken into account with respect to the trans-
7 action have no substantial impact on such per-
8 son’s liability under subtitle A.

9 “(C) EXCEPTION FOR PERSONAL TRANS-
10 ACTIONS OF INDIVIDUALS.—In the case of an
11 individual, this subsection shall apply only to
12 transactions entered into in connection with a
13 trade or business or an activity engaged in for
14 the production of income.

15 “(D) TREATMENT OF LESSORS.—In apply-
16 ing paragraph (1)(B)(ii) to the lessor of tan-
17 gible property subject to a lease—

18 “(i) the expected net tax benefits with
19 respect to the leased property shall not in-
20 clude the benefits of—

21 “(I) depreciation,

22 “(II) any tax credit, or

23 “(III) any other deduction as
24 provided in guidance by the Secretary,
25 and

1 “(ii) subclause (II) of paragraph
2 (1)(B)(ii) shall be disregarded in deter-
3 mining whether any of such benefits are al-
4 lowable.

5 “(4) OTHER COMMON LAW DOCTRINES NOT AF-
6 FECTED.—Except as specifically provided in this
7 subsection, the provisions of this subsection shall not
8 be construed as altering or supplanting any other
9 rule of law, and the requirements of this subsection
10 shall be construed as being in addition to any such
11 other rule of law.

12 “(5) REGULATIONS.—The Secretary shall pre-
13 scribe such regulations as may be necessary or ap-
14 propriate to carry out the purposes of this sub-
15 section. Such regulations may include exemptions
16 from the application of this subsection.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to transactions entered into after
19 the date of the enactment of this Act.

20 **SEC. 402. PENALTY FOR FAILING TO DISCLOSE REPORT-**
21 **ABLE TRANSACTION.**

22 (a) IN GENERAL.—Part I of subchapter B of chapter
23 68 (relating to assessable penalties) is amended by insert-
24 ing after section 6707 the following new section:

1 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**
2 **ABLE TRANSACTION INFORMATION WITH RE-**
3 **TURN OR STATEMENT.**

4 “(a) IMPOSITION OF PENALTY.—Any person who
5 fails to include on any return or statement any informa-
6 tion with respect to a reportable transaction which is re-
7 quired under section 6011 to be included with such return
8 or statement shall pay a penalty in the amount determined
9 under subsection (b).

10 “(b) AMOUNT OF PENALTY.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graphs (2) and (3), the amount of the penalty under
13 subsection (a) shall be \$50,000.

14 “(2) LISTED TRANSACTION.—The amount of
15 the penalty under subsection (a) with respect to a
16 listed transaction shall be \$100,000.

17 “(3) INCREASE IN PENALTY FOR LARGE ENTI-
18 TIES AND HIGH NET WORTH INDIVIDUALS.—

19 “(A) IN GENERAL.—In the case of a fail-
20 ure under subsection (a) by—

21 “(i) a large entity, or

22 “(ii) a high net worth individual,

23 the penalty under paragraph (1) or (2) shall be
24 twice the amount determined without regard to
25 this paragraph.

1 “(B) LARGE ENTITY.—For purposes of
2 subparagraph (A), the term ‘large entity’
3 means, with respect to any taxable year, a per-
4 son (other than a natural person) with gross re-
5 ceipts in excess of \$10,000,000 for the taxable
6 year in which the reportable transaction occurs
7 or the preceding taxable year. Rules similar to
8 the rules of paragraph (2) and subparagraphs
9 (B), (C), and (D) of paragraph (3) of section
10 448(c) shall apply for purposes of this subpara-
11 graph.

12 “(C) HIGH NET WORTH INDIVIDUAL.—For
13 purposes of subparagraph (A), the term ‘high
14 net worth individual’ means, with respect to a
15 reportable transaction, a natural person whose
16 net worth exceeds \$2,000,000 immediately be-
17 fore the transaction.

18 “(c) DEFINITIONS.—For purposes of this section—

19 “(1) REPORTABLE TRANSACTION.—The term
20 ‘reportable transaction’ means any transaction with
21 respect to which information is required to be in-
22 cluded with a return or statement because, as deter-
23 mined under regulations prescribed under section
24 6011, such transaction is of a type which the Sec-

1 retary determines as having a potential for tax
2 avoidance or evasion.

3 “(2) LISTED TRANSACTION.—Except as pro-
4 vided in regulations, the term ‘listed transaction’
5 means a reportable transaction which is the same as,
6 or substantially similar to, a transaction specifically
7 identified by the Secretary as a tax avoidance trans-
8 action for purposes of section 6011.

9 “(d) AUTHORITY TO RESCIND PENALTY.—

10 “(1) IN GENERAL.—The Commissioner of In-
11 ternal Revenue may rescind all or any portion of any
12 penalty imposed by this section with respect to any
13 violation if—

14 “(A) the violation is with respect to a re-
15 portable transaction other than a listed trans-
16 action,

17 “(B) the person on whom the penalty is
18 imposed has a history of complying with the re-
19 quirements of this title,

20 “(C) it is shown that the violation is due
21 to an unintentional mistake of fact;

22 “(D) imposing the penalty would be
23 against equity and good conscience, and

1 “(C) the amount of the penalty rescinded.

2 “(5) REPORT.—The Commissioner shall each
3 year report to the Committee on Ways and Means
4 of the House of Representatives and the Committee
5 on Finance of the Senate—

6 “(A) a summary of the total number and
7 aggregate amount of penalties imposed, and re-
8 scinded, under this section, and

9 “(B) a description of each penalty re-
10 scinded under this subsection and the reasons
11 therefor.

12 “(e) PENALTY REPORTED TO SEC.—In the case of
13 a person—

14 “(1) which is required to file periodic reports
15 under section 13 or 15(d) of the Securities Ex-
16 change Act of 1934 or is required to be consolidated
17 with another person for purposes of such reports,
18 and

19 “(2) which—

20 “(A) is required to pay a penalty under
21 this section with respect to a listed transaction,

22 “(B) is required to pay a penalty under
23 section 6662A with respect to any reportable
24 transaction at a rate prescribed under section
25 6662A(c), or

1 “(C) is required to pay a penalty under
2 section 6662B with respect to any noneconomic
3 substance transaction,
4 the requirement to pay such penalty shall be disclosed in
5 such reports filed by such person for such periods as the
6 Secretary shall specify. Failure to make a disclosure in
7 accordance with the preceding sentence shall be treated
8 as a failure to which the penalty under subsection (b)(2)
9 applies.

10 “(f) COORDINATION WITH OTHER PENALTIES.—The
11 penalty imposed by this section is in addition to any pen-
12 alty imposed under this title.”.

13 (b) DISCLOSURE BY SECRETARY.—

14 (1) IN GENERAL.—Section 6103 is amended by
15 redesignating subsection (q) as subsection (r) and by
16 inserting after subsection (p) the following new sub-
17 section:

18 “(q) DISCLOSURE RELATING TO PAYMENTS OF CER-
19 TAIN PENALTIES.—Notwithstanding any other provision
20 of this section, the Secretary shall make public the name
21 of any person required to pay a penalty described in sec-
22 tion 6707A(e)(2) and the amount of the penalty.”.

23 (2) RECORDS.—Section 6103(p)(3)(A) is
24 amended by striking “or (n)” and inserting “(n), or
25 (q)”.

1 (c) 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 or statement.”.

5 (d) 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 **SEC. 403. ACCURACY-RELATED PENALTY FOR LISTED**
10 **TRANSACTIONS AND OTHER REPORTABLE**
11 **TRANSACTIONS HAVING A SIGNIFICANT TAX**
12 **AVOIDANCE PURPOSE.**

13 (a) IN GENERAL.—Subchapter A of chapter 68 is
14 amended by inserting after section 6662 the following new
15 section:

16 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**
17 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
18 **TO REPORTABLE TRANSACTIONS.**

19 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
20 reportable transaction understatement for any taxable
21 year, there shall be added to the tax an amount equal to
22 20 percent of the amount of such understatement.

23 “(b) REPORTABLE TRANSACTION UNDERSTATE-
24 MENT.—For purposes of this section—

1 “(1) IN GENERAL.—The term ‘reportable trans-
2 action understatement’ means the sum of—

3 “(A) the product of—

4 “(i) the amount of the increase (if
5 any) in taxable income which results from
6 a difference between the proper tax treat-
7 ment of an item to which this section ap-
8 plies and the taxpayer’s treatment of such
9 item (as shown on the taxpayer’s return of
10 tax), and

11 “(ii) the highest rate of tax imposed
12 by section 1 (section 11 in the case of a
13 taxpayer which is a corporation), and

14 “(B) the amount of the decrease (if any)
15 in the aggregate amount of credits determined
16 under subtitle A which results from a difference
17 between the taxpayer’s treatment of an item to
18 which this section applies (as shown on the tax-
19 payer’s return of tax) and the proper tax treat-
20 ment of such item.

21 For purposes of subparagraph (A), any reduction of
22 the excess of deductions allowed for the taxable year
23 over gross income for such year, and any reduction
24 in the amount of capital losses which would (without

1 regard to section 1211) be allowed for such year,
2 shall be treated as an increase in taxable income.

3 “(2) ITEMS TO WHICH SECTION APPLIES.—This
4 section shall apply to any item which is attributable
5 to—

6 “(A) any listed transaction, and

7 “(B) any reportable transaction (other
8 than a listed transaction) if a significant pur-
9 pose of such transaction is the avoidance or
10 evasion of Federal income tax.

11 “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED
12 AND OTHER AVOIDANCE TRANSACTIONS.—

13 “(1) IN GENERAL.—Subsection (a) shall be ap-
14 plied by substituting ‘30 percent’ for ‘20 percent’
15 with respect to the portion of any reportable trans-
16 action understatement with respect to which the re-
17 quirement of section 6664(d)(2)(A) is not met.

18 “(2) RULES APPLICABLE TO ASSERTION AND
19 COMPROMISE OF PENALTY.—

20 “(A) IN GENERAL.—Only upon the ap-
21 proval by the Chief Counsel for the Internal
22 Revenue Service or the Chief Counsel’s delegate
23 at the national office of the Internal Revenue
24 Service may a penalty to which paragraph (1)
25 applies be included in a 1st letter of proposed

1 deficiency which allows the taxpayer an oppor-
2 tunity for administrative review in the Internal
3 Revenue Service Office of Appeals. If such a
4 letter is provided to the taxpayer, only the Com-
5 missioner of Internal Revenue may compromise
6 all or any portion of such penalty.

7 “(B) APPLICABLE RULES.—The rules of
8 paragraphs (2), (3), (4), and (5) of section
9 6707A(d) shall apply for purposes of subpara-
10 graph (A).

11 “(d) DEFINITIONS OF REPORTABLE AND LISTED
12 TRANSACTIONS.—For purposes of this section, the terms
13 ‘reportable transaction’ and ‘listed transaction’ have the
14 respective meanings given to such terms by section
15 6707A(e).

16 “(e) SPECIAL RULES.—

17 “(1) COORDINATION WITH PENALTIES, ETC.,
18 ON OTHER UNDERSTATEMENTS.—In the case of an
19 understatement (as defined in section 6662(d)(2))—

20 “(A) the amount of such understatement
21 (determined without regard to this paragraph)
22 shall be increased by the aggregate amount of
23 reportable transaction understatements and
24 noneconomic substance transaction understate-
25 ments for purposes of determining whether

1 such understatement is a substantial under-
2 statement under section 6662(d)(1), and

3 “(B) the addition to tax under section
4 6662(a) shall apply only to the excess of the
5 amount of the substantial understatement (if
6 any) after the application of subparagraph (A)
7 over the aggregate amount of reportable trans-
8 action understatements and noneconomic sub-
9 stance transaction understatements.

10 “(2) COORDINATION WITH OTHER PEN-
11 ALTIES.—

12 “(A) APPLICATION OF FRAUD PENALTY.—
13 References to an underpayment in section 6663
14 shall be treated as including references to a re-
15 portable transaction understatement and a non-
16 economic substance transaction understatement.

17 “(B) NO DOUBLE PENALTY.—This section
18 shall not apply to any portion of an understate-
19 ment on which a penalty is imposed under sec-
20 tion 6662B or 6663.

21 “(3) SPECIAL RULE FOR AMENDED RE-
22 TURNS.—Except as provided in regulations, in no
23 event shall any tax treatment included with an
24 amendment or supplement to a return of tax be
25 taken into account in determining the amount of any

1 reportable transaction understatement or non-
2 economic substance transaction understatement if
3 the amendment or supplement is filed after the ear-
4 lier of the date the taxpayer is first contacted by the
5 Secretary regarding the examination of the return or
6 such other date as is specified by the Secretary.

7 “(4) NONECONOMIC SUBSTANCE TRANS-
8 ACTION UNDERSTATEMENT.—For purposes of
9 this subsection, the term ‘noneconomic sub-
10 stance transaction understatement’ has the
11 meaning given such term by section 6662B(c).

12 “(5) CROSS REFERENCE.—

“**For reporting of section 6662A(c) penalty to the
Securities and Exchange Commission, see section
6707A(e).**”.

13 (b) DETERMINATION OF OTHER UNDERSTATE-
14 MENTS.—Subparagraph (A) of section 6662(d)(2) is
15 amended by adding at the end the following flush sen-
16 tence:

17 “The excess under the preceding sentence shall
18 be determined without regard to items to which
19 section 6662A applies and without regard to
20 items with respect to which a penalty is im-
21 posed by section 6662B.”.

22 (c) REASONABLE CAUSE EXCEPTION.—

23 (1) IN GENERAL.—Section 6664 is amended by
24 adding at the end the following new subsection:

1 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-
2 ABLE TRANSACTION UNDERSTATEMENTS.—

3 “(1) IN GENERAL.—No penalty shall be im-
4 posed under section 6662A with respect to any por-
5 tion of a reportable transaction understatement if it
6 is shown that there was a reasonable cause for such
7 portion and that the taxpayer acted in good faith
8 with respect to such portion.

9 “(2) SPECIAL RULES.—Paragraph (1) shall not
10 apply to any reportable transaction understatement
11 unless—

12 “(A) the relevant facts affecting the tax
13 treatment of the item are adequately disclosed
14 in accordance with the regulations prescribed
15 under section 6011,

16 “(B) there is or was substantial authority
17 for such treatment, and

18 “(C) the taxpayer reasonably believed that
19 such treatment was more likely than not the
20 proper treatment.

21 A taxpayer failing to adequately disclose in accord-
22 ance with section 6011 shall be treated as meeting
23 the requirements of subparagraph (A) if the penalty
24 for such failure was rescinded under section
25 6707A(d).

1 “(3) RULES RELATING TO REASONABLE BE-
2 LIEF.—For purposes of paragraph (2)(C)—

3 “(A) IN GENERAL.—A taxpayer shall be
4 treated as having a reasonable belief with re-
5 spect to the tax treatment of an item only if
6 such belief—

7 “(i) is based on the facts and law that
8 exist at the time the return of tax which
9 includes such tax treatment is filed, and

10 “(ii) relates solely to the taxpayer’s
11 chances of success on the merits of such
12 treatment and does not take into account
13 the possibility that a return will not be au-
14 dited, such treatment will not be raised on
15 audit, or such treatment will be resolved
16 through settlement if it is raised.

17 “(B) CERTAIN OPINIONS MAY NOT BE RE-
18 LIED UPON.—

19 “(i) IN GENERAL.—An opinion of a
20 tax advisor may not be relied upon to es-
21 tablish the reasonable belief of a taxpayer
22 if—

23 “(I) the tax advisor is described
24 in clause (ii), or

1 “(II) the opinion is described in
2 clause (iii).

3 “(ii) DISQUALIFIED TAX ADVISORS.—
4 A tax advisor is described in this clause if
5 the tax advisor—

6 “(I) is a material advisor (within
7 the meaning of section 6111(b)(1))
8 who participates in the organization,
9 management, promotion, or sale of
10 the transaction or who is related
11 (within the meaning of section 267(b)
12 or 707(b)(1)) to any person who so
13 participates,

14 “(II) is compensated directly or
15 indirectly by a material advisor with
16 respect to the transaction,

17 “(III) has a fee arrangement
18 with respect to the transaction which
19 is contingent on all or part of the in-
20 tended tax benefits from the trans-
21 action being sustained,

22 “(IV) has an arrangement with
23 respect to the transaction which pro-
24 vides that contractual disputes be-
25 tween the taxpayer and the advisor

1 are to be settled by arbitration or
2 which limits damages by reference to
3 fees paid to the advisor for such
4 transaction, or

5 “(V) as determined under regula-
6 tions prescribed by the Secretary, has
7 a disqualifying financial interest with
8 respect to the transaction.

9 “(iii) DISQUALIFIED OPINIONS.—For
10 purposes of clause (i), an opinion is dis-
11 qualified if the opinion—

12 “(I) is based on unreasonable
13 factual or legal assumptions (includ-
14 ing assumptions as to future events),

15 “(II) unreasonably relies on rep-
16 resentations, statements, findings, or
17 agreements of the taxpayer or any
18 other person,

19 “(III) does not identify and con-
20 sider all relevant facts,

21 “(IV) is not signed by all individ-
22 uals who are principal authors of the
23 opinion, or

1 if a significant purpose of such partnership, en-
2 tity, plan, or arrangement is the avoidance or
3 evasion of Federal income tax.”.

4 (3) Section 6662(d)(2) is amended by striking
5 subparagraphs (C) and (D).

6 (4) Section 6664(c)(1) is amended by striking
7 “this part” and inserting “section 6662 or 6663”.

8 (5) Subsection (b) of section 7525 is amended
9 by striking “section 6662(d)(2)(C)(iii)” and insert-
10 ing “section 1274(b)(3)(C)”.

11 (6)(A) The heading for section 6662 is amend-
12 ed to read as follows:

13 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
14 **ON UNDERPAYMENTS.”.**

15 (B) The table of sections for part II of sub-
16 chapter A of chapter 68 is amended by striking the
17 item relating to section 6662 and inserting the fol-
18 lowing new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpay-
ments.

“Sec. 6662A. Imposition of accuracy-related penalty on under-
statements with respect to reportable trans-
actions.”.

19 (e) **EFFECTIVE DATE.**—The amendments made by
20 this section shall apply to taxable years ending after the
21 date of the enactment of this Act.

1 **SEC. 404. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
2 **UTABLE TO TRANSACTIONS LACKING ECO-**
3 **NOMIC SUBSTANCE, ETC.**

4 (a) IN GENERAL.—Subchapter A of chapter 68 is
5 amended by inserting after section 6662A the following
6 new section:

7 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
8 **UTABLE TO TRANSACTIONS LACKING ECO-**
9 **NOMIC SUBSTANCE, ETC.**

10 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an
11 noneconomic substance transaction understatement for
12 any taxable year, there shall be added to the tax an
13 amount equal to 40 percent of the amount of such under-
14 statement.

15 “(b) REDUCTION OF PENALTY FOR DISCLOSED
16 TRANSACTIONS.—Subsection (a) shall be applied by sub-
17 stituting ‘20 percent’ for ‘40 percent’ with respect to the
18 portion of any noneconomic substance transaction under-
19 statement with respect to which the relevant facts affect-
20 ing the tax treatment of the item are adequately disclosed
21 in the return or a statement attached to the return.

22 “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-
23 DERSTATEMENT.—For purposes of this section—

24 “(1) IN GENERAL.—The term ‘noneconomic
25 substance transaction understatement’ means any
26 amount which would be an understatement under

1 section 6662A(b)(1) if section 6662A were applied
2 by taking into account items attributable to non-
3 economic substance transactions rather than items
4 to which section 6662A would apply without regard
5 to this paragraph.

6 “(2) NONECONOMIC SUBSTANCE TRANS-
7 ACTION.—The term ‘noneconomic substance trans-
8 action’ means any transaction if—

9 “(A) there is a lack of economic substance
10 (within the meaning of section 7701(n)(1)) for
11 the transaction giving rise to the claimed ben-
12 efit or the transaction was not respected under
13 section 7701(n)(2), or

14 “(B) the transaction fails to meet the re-
15 quirements of any similar rule of law.

16 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-
17 ALTY.—

18 “(1) IN GENERAL.—If the 1st letter of pro-
19 posed deficiency which allows the taxpayer an oppor-
20 tunity for administrative review in the Internal Rev-
21 enue Service Office of Appeals has been sent with
22 respect to a penalty to which this section applies,
23 only the Commissioner of Internal Revenue may
24 compromise all or any portion of such penalty.

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) REDUCTION FOR UNDERSTATEMENT OF TAX-
13 PAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED
14 ITEM.—

15 (1) IN GENERAL.—Section 6662(d)(2)(B)(i)
16 (relating to substantial authority) is amended to
17 read as follows:

18 “(i) the tax treatment of any item by
19 the taxpayer if the taxpayer had reason-
20 able belief that the tax treatment was more
21 likely than not the proper treatment, or”.

22 (2) CONFORMING AMENDMENT.—Section
23 6662(d) is amended by adding at the end the fol-
24 lowing new paragraph:

1 “(3) SECRETARIAL LIST.—For purposes of this
2 subsection, section 6664(d)(2), and section
3 6694(a)(1), the Secretary may prescribe a list of po-
4 sitions for which the Secretary believes there is not
5 substantial authority or there is no reasonable belief
6 that the tax treatment is more likely than not the
7 proper tax treatment. Such list (and any revisions
8 thereof) shall be published in the Federal Register
9 or the Internal Revenue Bulletin.”.

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

13 **SEC. 406. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
14 **PRIVILEGES RELATING TO TAXPAYER COM-**
15 **MUNICATIONS.**

16 (a) IN GENERAL.—Section 7525(b) (relating to sec-
17 tion not to apply to communications regarding corporate
18 tax shelters) is amended to read as follows:

19 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS
20 REGARDING TAX SHELTERS.—The privilege under sub-
21 section (a) shall not apply to any written communication
22 which is—

23 “(1) between a federally authorized tax practi-
24 tioner and—

25 “(A) any person,

1 “(B) any director, officer, employee, agent,
2 or representative of the person, or

3 “(C) any other person holding a capital or
4 profits interest in the person, and

5 “(2) in connection with the promotion of the di-
6 rect or indirect participation of the person in any
7 tax shelter (as defined in section 1274(b)(3)(C)).”.

8 (b) **EFFECTIVE DATE.**—The amendment made by
9 this section shall apply to communications made on or
10 after the date of the enactment of this Act.

11 **SEC. 407. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

12 (a) **IN GENERAL.**—Section 6111 (relating to registra-
13 tion of tax shelters) is amended to read as follows:

14 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

15 “(a) **IN GENERAL.**—Each material advisor with re-
16 spect to any reportable transaction shall make a return
17 (in such form as the Secretary may prescribe) setting
18 forth—

19 “(1) information identifying and describing the
20 transaction,

21 “(2) information describing any potential tax
22 benefits expected to result from the transaction, and

23 “(3) such other information as the Secretary
24 may prescribe.

1 Such return shall be filed not later than the date specified
2 by the Secretary.

3 “(b) DEFINITIONS.—For purposes of this section—

4 “(1) MATERIAL ADVISOR.—

5 “(A) IN GENERAL.—The term ‘material
6 advisor’ means any person—

7 “(i) who provides any material aid,
8 assistance, or advice with respect to orga-
9 nizing, managing, promoting, selling, im-
10 plementing, or carrying out any reportable
11 transaction, and

12 “(ii) who directly or indirectly derives
13 gross income in excess of the threshold
14 amount for such aid, assistance, or advice.

15 “(B) THRESHOLD AMOUNT.—For purposes
16 of subparagraph (A), the threshold amount is—

17 “(i) \$50,000 in the case of a report-
18 able transaction substantially all of the tax
19 benefits from which are provided to nat-
20 ural persons, and

21 “(ii) \$250,000 in any other case.

22 “(2) REPORTABLE TRANSACTION.—The term
23 ‘reportable transaction’ has the meaning given to
24 such term by section 6707A(c).

1 “(c) REGULATIONS.—The Secretary may prescribe
2 regulations which provide—

3 “(1) that only 1 person shall be required to
4 meet the requirements of subsection (a) in cases in
5 which 2 or more persons would otherwise be re-
6 quired to meet such requirements,

7 “(2) exemptions from the requirements of this
8 section, and

9 “(3) such rules as may be necessary or appro-
10 priate to carry out the purposes of this section.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) The item relating to section 6111 in the
13 table of sections for subchapter B of chapter 61 is
14 amended to read as follows:

 “Sec. 6111. Disclosure of reportable transactions.”.

15 (2)(A) So much of section 6112 as precedes
16 subsection (c) thereof is amended to read as follows:

17 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
18 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

19 “(a) IN GENERAL.—Each material advisor (as de-
20 fined in section 6111) with respect to any reportable
21 transaction (as defined in section 6707A(e)) shall main-
22 tain, in such manner as the Secretary may by regulations
23 prescribe, a list—

1 “(1) identifying each person with respect to
2 whom such advisor acted as such a material advisor
3 with respect to such transaction, and

4 “(2) containing such other information as the
5 Secretary may by regulations require.

6 This section shall apply without regard to whether a mate-
7 rial advisor is required to file a return under section 6111
8 with respect to such transaction.”.

9 (B) Section 6112 is amended by redesignating
10 subsection (c) as subsection (b).

11 (C) Section 6112(b), as redesignated by sub-
12 paragraph (B), is amended—

13 (i) by inserting “written” before “request”
14 in paragraph (1)(A), and

15 (ii) by striking “shall prescribe” in para-
16 graph (2) and inserting “may prescribe”.

17 (D) The item relating to section 6112 in the
18 table of sections for subchapter B of chapter 61 is
19 amended to read as follows:

 “Sec. 6112. Material advisors of reportable transactions must
 keep lists of advisees.”.

20 (3)(A) The heading for section 6708 is amend-
21 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) **REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM**
8 **OF CONFIDENTIALITY.**—Subparagraph (A) of section
9 6112(b)(1), as redesignated by subsection (b)(2)(B), is
10 amended by adding at the end the following new flush sen-
11 tence:

12 “For purposes of this section, the identity of any
13 person on such list shall not be privileged.”.

14 (d) **EFFECTIVE DATE.**—

15 (1) **IN GENERAL.**—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply to transactions with respect to which ma-
18 terial aid, assistance, or advice referred to in section
19 6111(b)(1)(A)(i) of the Internal Revenue Code of
20 1986 (as added by this section) is provided after the
21 date of the enactment of this Act.

22 (2) **NO CLAIM OF CONFIDENTIALITY AGAINST**
23 **DISCLOSURE.**—The amendment made by subsection
24 (c) shall take effect as if included in the amend-

1 ments made by section 142 of the Deficit Reduction
2 Act of 1984.

3 **SEC. 408. MODIFICATIONS TO PENALTY FOR FAILURE TO**
4 **REGISTER TAX SHELTERS.**

5 (a) IN GENERAL.—Section 6707 (relating to failure
6 to furnish information regarding tax shelters) is amended
7 to read as follows:

8 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
9 **ING REPORTABLE TRANSACTIONS.**

10 “(a) IN GENERAL.—If a person who is required to
11 file a return under section 6111(a) with respect to any
12 reportable transaction—

13 “(1) fails to file such return on or before the
14 date prescribed therefor, or

15 “(2) files false or incomplete information with
16 the Secretary with respect to such transaction,
17 such person shall pay a penalty with respect to such return
18 in the amount determined under subsection (b).

19 “(b) AMOUNT OF PENALTY.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2), the penalty imposed under subsection (a)
22 with respect to any failure shall be \$50,000.

23 “(2) LISTED TRANSACTIONS.—The penalty im-
24 posed under subsection (a) with respect to any listed

1 transaction shall be an amount equal to the greater
2 of—

3 “(A) \$200,000, or

4 “(B) 50 percent of the gross income de-
5 rived by such person with respect to aid, assist-
6 ance, or advice which is provided with respect
7 to the listed transaction before the date the re-
8 turn including the transaction is filed under
9 section 6111.

10 Subparagraph (B) shall be applied by substituting
11 ‘75 percent’ for ‘50 percent’ in the case of an inten-
12 tional failure or act described in subsection (a).

13 “(c) CERTAIN RULES TO APPLY.—The provisions of
14 section 6707A(d) shall apply to any penalty imposed under
15 this section.

16 “(d) REPORTABLE AND LISTED TRANSACTIONS.—
17 The terms ‘reportable transaction’ and ‘listed transaction’
18 have the respective meanings given to such terms by sec-
19 tion 6707A(c).”.

20 (b) CLERICAL AMENDMENT.—The item relating to
21 section 6707 in the table of sections for part I of sub-
22 chapter B of chapter 68 is amended by striking “tax shel-
23 ters” and inserting “reportable transactions”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to returns the due date for which
3 is after the date of the enactment of this Act.

4 **SEC. 409. MODIFICATION OF PENALTY FOR FAILURE TO**
5 **MAINTAIN LISTS OF INVESTORS.**

6 (a) IN GENERAL.—Subsection (a) of section 6708 is
7 amended to read as follows:

8 “(a) IMPOSITION OF PENALTY.—

9 “(1) IN GENERAL.—If any person who is re-
10 quired to maintain a list under section 6112(a) fails
11 to make such list available upon written request to
12 the Secretary in accordance with section
13 6112(b)(1)(A) within 20 business days after the
14 date of the Secretary’s request, such person shall
15 pay a penalty of \$10,000 for each day of such fail-
16 ure after such 20th day.

17 “(2) REASONABLE CAUSE EXCEPTION.—No
18 penalty shall be imposed by paragraph (1) with re-
19 spect to the failure on any day if such failure is due
20 to reasonable cause.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to requests made after the date
23 of the enactment of this Act.

1 **SEC. 410. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
2 **CONDUCT RELATED TO TAX SHELTERS AND**
3 **REPORTABLE TRANSACTIONS.**

4 (a) IN GENERAL.—Section 7408 (relating to action
5 to enjoin promoters of abusive tax shelters, etc.) is amend-
6 ed by redesignating subsection (c) as subsection (d) and
7 by striking subsections (a) and (b) and inserting the fol-
8 lowing new subsections:

9 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-
10 tion in the name of the United States to enjoin any person
11 from further engaging in specified conduct may be com-
12 menced at the request of the Secretary. Any action under
13 this section shall be brought in the district court of the
14 United States for the district in which such person resides,
15 has his principal place of business, or has engaged in spec-
16 ified conduct. The court may exercise its jurisdiction over
17 such action (as provided in section 7402(a)) separate and
18 apart from any other action brought by the United States
19 against such person.

20 “(b) ADJUDICATION AND DECREE.—In any action
21 under subsection (a), if the court finds—

22 “(1) that the person has engaged in any speci-
23 fied conduct, and

24 “(2) that injunctive relief is appropriate to pre-
25 vent recurrence of such conduct,

1 the court may enjoin such person from engaging in such
2 conduct or in any other activity subject to penalty under
3 this title.

4 “(c) SPECIFIED CONDUCT.—For purposes of this
5 section, the term ‘specified conduct’ means any action, or
6 failure to take action, which is—

7 “(1) subject to penalty under section 6700,
8 6701, 6707, or 6708, or

9 “(2) in violation of any requirement under reg-
10 ulations issued under section 320 of title 31, United
11 States Code.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) The heading for section 7408 is amended to
14 read as follows:

15 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
16 **LATED TO TAX SHELTERS AND REPORTABLE**
17 **TRANSACTIONS.”.**

18 (2) The table of sections for subchapter A of
19 chapter 67 is amended by striking the item relating
20 to section 7408 and inserting the following new
21 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and
reportable transactions.”.

22 (c) EFFECTIVE DATE.—The amendment made by
23 this section shall take effect on the day after the date of
24 the enactment of this Act.

1 **SEC. 411. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY**
2 **INCOME TAX RETURN PREPARER.**

3 (a) STANDARDS CONFORMED TO TAXPAYER STAND-
4 ARDS.—Section 6694(a) (relating to understatements due
5 to unrealistic positions) is amended—

6 (1) by striking “realistic possibility of being
7 sustained on its merits” in paragraph (1) and in-
8 serting “reasonable belief that the tax treatment in
9 such position was more likely than not the proper
10 treatment”,

11 (2) by striking “or was frivolous” in paragraph
12 (3) and inserting “or there was no reasonable basis
13 for the tax treatment of such position”, and

14 (3) by striking “UNREALISTIC” in the heading
15 and inserting “IMPROPER”.

16 (b) AMOUNT OF PENALTY.—Section 6694 is
17 amended—

18 (1) by striking “\$250” in subsection (a) and in-
19 serting “\$1,000”, and

20 (2) by striking “\$1,000” in subsection (b) and
21 inserting “\$5,000”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to documents prepared after the
24 date of the enactment of this Act.

1 **SEC. 412. PENALTY ON FAILURE TO REPORT INTERESTS IN**
2 **FOREIGN FINANCIAL ACCOUNTS.**

3 (a) IN GENERAL.—Section 5321(a)(5) of title 31,
4 United States Code, is amended to read as follows:

5 “(5) FOREIGN FINANCIAL AGENCY TRANS-
6 ACTION VIOLATION.—

7 “(A) PENALTY AUTHORIZED.—The Sec-
8 retary of the Treasury may impose a civil
9 money penalty on any person who violates, or
10 causes any violation of, any provision of section
11 5314.

12 “(B) AMOUNT OF PENALTY.—

13 “(i) IN GENERAL.—Except as pro-
14 vided in subparagraph (C), the amount of
15 any civil penalty imposed under subpara-
16 graph (A) shall not exceed \$10,000.

17 “(ii) REASONABLE CAUSE EXCEP-
18 TION.—No penalty shall be imposed under
19 subparagraph (A) with respect to any vio-
20 lation if—

21 “(I) such violation was due to
22 reasonable cause, and

23 “(II) the amount of the trans-
24 action or the balance in the account
25 at the time of the transaction was
26 properly reported.

1 “(C) WILLFUL VIOLATIONS.—In the case
2 of any person willfully violating, or willfully
3 causing any violation of, any provision of sec-
4 tion 5314—

5 “(i) the maximum penalty under sub-
6 paragraph (B)(i) shall be increased to the
7 greater of—

8 “(I) \$100,000, or

9 “(II) 50 percent of the amount
10 determined under subparagraph (D),
11 and

12 “(ii) subparagraph (B)(ii) shall not
13 apply.

14 “(D) AMOUNT.—The amount determined
15 under this subparagraph is—

16 “(i) in the case of a violation involving
17 a transaction, the amount of the trans-
18 action, or

19 “(ii) in the case of a violation involv-
20 ing a failure to report the existence of an
21 account or any identifying information re-
22 quired to be provided with respect to an
23 account, the balance in the account at the
24 time of the violation.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to violations occurring after the
3 date of the enactment of this Act.

4 **SEC. 413. FRIVOLOUS TAX SUBMISSIONS.**

5 (a) CIVIL PENALTIES.—Section 6702 is amended to
6 read as follows:

7 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

8 “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-
9 TURNS.—A person shall pay a penalty of \$5,000 if—

10 “(1) such person files what purports to be a re-
11 turn of a tax imposed by this title but which—

12 “(A) does not contain information on
13 which the substantial correctness of the self-as-
14 sessment may be judged, or

15 “(B) contains information that on its face
16 indicates that the self-assessment is substan-
17 tially incorrect; and

18 “(2) the conduct referred to in paragraph (1)—

19 “(A) is based on a position which the Sec-
20 retary has identified as frivolous under sub-
21 section (c), or

22 “(B) reflects a desire to delay or impede
23 the administration of Federal tax laws.

24 “(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS
25 SUBMISSIONS.—

1 “(1) IMPOSITION OF PENALTY.—Except as pro-
2 vided in paragraph (3), any person who submits a
3 specified frivolous submission shall pay a penalty of
4 \$5,000.

5 “(2) SPECIFIED FRIVOLOUS SUBMISSION.—For
6 purposes of this section—

7 “(A) SPECIFIED FRIVOLOUS SUBMIS-
8 SION.—The term ‘specified frivolous submis-
9 sion’ means a specified submission if any por-
10 tion of such submission—

11 “(i) is based on a position which the
12 Secretary has identified as frivolous under
13 subsection (c), or

14 “(ii) reflects a desire to delay or im-
15 pede the administration of Federal tax
16 laws.

17 “(B) SPECIFIED SUBMISSION.—The term
18 ‘specified submission’ means—

19 “(i) a request for a hearing under—

20 “(I) section 6320 (relating to no-
21 tice and opportunity for hearing upon
22 filing of notice of lien), or

23 “(II) section 6330 (relating to
24 notice and opportunity for hearing be-
25 fore levy), and

1 “(ii) an application under—

2 “(I) section 6159 (relating to
3 agreements for payment of tax liabil-
4 ity in installments),

5 “(II) section 7122 (relating to
6 compromises), or

7 “(III) section 7811 (relating to
8 taxpayer assistance orders).

9 “(3) OPPORTUNITY TO WITHDRAW SUBMIS-
10 SION.—If the Secretary provides a person with no-
11 tice that a submission is a specified frivolous sub-
12 mission and such person withdraws such submission
13 within 30 days after such notice, the penalty im-
14 posed under paragraph (1) shall not apply with re-
15 spect to such submission.

16 “(c) LISTING OF FRIVOLOUS POSITIONS.—The Sec-
17 retary shall prescribe (and periodically revise) a list of po-
18 sitions which the Secretary has identified as being frivo-
19 lous for purposes of this subsection. The Secretary shall
20 not include in such list any position that the Secretary
21 determines meets the requirement of section
22 6662(d)(2)(B)(ii)(II).

23 “(d) REDUCTION OF PENALTY.—The Secretary may
24 reduce the amount of any penalty imposed under this sec-
25 tion if the Secretary determines that such reduction would

1 promote compliance with and administration of the Fed-
2 eral tax laws.

3 “(e) PENALTIES IN ADDITION TO OTHER PEN-
4 ALTIES.—The penalties imposed by this section shall be
5 in addition to any other penalty provided by law.”.

6 (b) TREATMENT OF FRIVOLOUS REQUESTS FOR
7 HEARINGS BEFORE LEVY.—

8 (1) FRIVOLOUS REQUESTS DISREGARDED.—
9 Section 6330 (relating to notice and opportunity for
10 hearing before levy) is amended by adding at the
11 end the following new subsection:

12 “(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—
13 Notwithstanding any other provision of this section, if the
14 Secretary determines that any portion of a request for a
15 hearing under this section or section 6320 meets the re-
16 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
17 then the Secretary may treat such portion as if it were
18 never submitted and such portion shall not be subject to
19 any further administrative or judicial review.”.

20 (2) PRECLUSION FROM RAISING FRIVOLOUS
21 ISSUES AT HEARING.—Section 6330(c)(4) is
22 amended—

23 (A) by striking “(A)” and inserting
24 “(A)(i)”;

25 (B) by striking “(B)” and inserting “(ii)”;

1 (C) by striking the period at the end of the
2 first sentence and inserting “; or”; and

3 (D) by inserting after subparagraph (A)(ii)
4 (as so redesignated) the following:

5 “(B) the issue meets the requirement of
6 clause (i) or (ii) of section 6702(b)(2)(A).”.

7 (3) STATEMENT OF GROUNDS.—Section
8 6330(b)(1) is amended by striking “under sub-
9 section (a)(3)(B)” and inserting “in writing under
10 subsection (a)(3)(B) and states the grounds for the
11 requested hearing”.

12 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR
13 HEARINGS UPON FILING OF NOTICE OF LIEN.—Section
14 6320 is amended—

15 (1) in subsection (b)(1), by striking “under sub-
16 section (a)(3)(B)” and inserting “in writing under
17 subsection (a)(3)(B) and states the grounds for the
18 requested hearing”, and

19 (2) in subsection (c), by striking “and (e)” and
20 inserting “(e), and (g)”.

21 (d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR
22 OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-
23 MENTS.—Section 7122 is amended by adding at the end
24 the following new subsection:

1 “(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwith-
2 standing any other provision of this section, if the Sec-
3 retary determines that any portion of an application for
4 an offer-in-compromise or installment agreement sub-
5 mitted under this section or section 6159 meets the re-
6 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
7 then the Secretary may treat such portion as if it were
8 never submitted and such portion shall not be subject to
9 any further administrative or judicial review.”.

10 (e) CLERICAL AMENDMENT.—The table of sections
11 for part I of subchapter B of chapter 68 is amended by
12 striking the item relating to section 6702 and inserting
13 the following new item:

“Sec. 6702. Frivolous tax submissions.”.

14 (f) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to submissions made and issues
16 raised after the date on which the Secretary first pre-
17 scribes a list under section 6702(e) of the Internal Rev-
18 enue Code of 1986, as amended by subsection (a).

19 **SEC. 414. REGULATION OF INDIVIDUALS PRACTICING BE-**
20 **FORE THE DEPARTMENT OF TREASURY.**

21 (a) CENSURE; IMPOSITION OF PENALTY.—

22 (1) IN GENERAL.—Section 330(b) of title 31,
23 United States Code, is amended—

24 (A) by inserting “, or censure,” after “De-
25 partment”, and

1 (B) by adding at the end the following new
2 flush sentence:

3 “The Secretary may impose a monetary penalty on any
4 representative described in the preceding sentence. If the
5 representative was acting on behalf of an employer or any
6 firm or other entity in connection with the conduct giving
7 rise to such penalty, the Secretary may impose a monetary
8 penalty on such employer, firm, or entity if it knew, or
9 reasonably should have known, of such conduct. Such pen-
10 alty shall not exceed the gross income derived (or to be
11 derived) from the conduct giving rise to the penalty and
12 may be in addition to, or in lieu of, any suspension, disbar-
13 ment, or censure of the representative.”.

14 (2) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply to actions taken after
16 the date of the enactment of this Act.

17 (b) TAX SHELTER OPINIONS, ETC.—Section 330 of
18 such title 31 is amended by adding at the end the fol-
19 lowing new subsection:

20 “(d) Nothing in this section or in any other provision
21 of law shall be construed to limit the authority of the Sec-
22 retary of the Treasury to impose standards applicable to
23 the rendering of written advice with respect to any entity,
24 transaction plan or arrangement, or other plan or arrange-

1 ment, which is of a type which the Secretary determines
2 as having a potential for tax avoidance or evasion.”.

3 **SEC. 415. PENALTY ON PROMOTERS OF TAX SHELTERS.**

4 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-
5 TERS.—Section 6700(a) is amended by adding at the end
6 the following new sentence: “Notwithstanding the first
7 sentence, if an activity with respect to which a penalty
8 imposed under this subsection involves a statement de-
9 scribed in paragraph (2)(A), the amount of the penalty
10 shall be equal to 50 percent of the gross income derived
11 (or to be derived) from such activity by the person on
12 which the penalty is imposed.”.

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

16 **SEC. 416. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**
17 **FOR WHICH REQUIRED LISTED TRANS-**
18 **ACTIONS NOT REPORTED.**

19 (a) IN GENERAL.—Section 6501(c) (relating to ex-
20 ceptions) is amended by adding at the end the following
21 new paragraph:

22 “(10) LISTED TRANSACTIONS.—If a taxpayer
23 fails to include on any return or statement for any
24 taxable year any information with respect to a listed
25 transaction (as defined in section 6707A(c)(2))

1 which is required under section 6011 to be included
2 with such return or statement, the time for assess-
3 ment of any tax imposed by this title with respect
4 to such transaction shall not expire before the date
5 which is 1 year after the earlier of—

6 “(A) the date on which the Secretary is
7 furnished the information so required; or

8 “(B) the date that a material advisor (as
9 defined in section 6111) meets the requirements
10 of section 6112 with respect to a request by the
11 Secretary under section 6112(b) relating to
12 such transaction with respect to such tax-
13 payer.”.

14 (b) **EFFECTIVE DATE.**—The amendment made by
15 this section shall apply to taxable years with respect to
16 which the period for assessing a deficiency did not expire
17 before the date of the enactment of this Act.

18 **SEC. 417. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
19 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**
20 **CLOSED REPORTABLE AND NONECONOMIC**
21 **SUBSTANCE TRANSACTIONS.**

22 (a) **IN GENERAL.**—Section 163 (relating to deduction
23 for interest) is amended by redesignating subsection (m)
24 as subsection (n) and by inserting after subsection (l) the
25 following new subsection:

1 “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE
2 TO NONDISCLOSED REPORTABLE TRANSACTIONS AND
3 NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduc-
4 tion shall be allowed under this chapter for any interest
5 paid or accrued under section 6601 on any underpayment
6 of tax which is attributable to—

7 “(1) the portion of any reportable transaction
8 understatement (as defined in section 6662A(b))
9 with respect to which the requirement of section
10 6664(d)(2)(A) is not met, or

11 “(2) any noneconomic substance transaction
12 understatement (as defined in section 6662B(c)).”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to transactions in taxable years
15 beginning after the date of the enactment of this Act.

16 **SEC. 418. AUTHORIZATION OF APPROPRIATIONS FOR TAX**
17 **LAW ENFORCEMENT.**

18 There is authorized to be appropriated \$300,000,000
19 for each fiscal year beginning after September 30, 2003,
20 for the purpose of carrying out tax law enforcement to
21 combat tax avoidance transactions and other tax shelters,
22 including the use of offshore financial accounts to conceal
23 taxable income.

1 **SEC. 419. INCREASES IN PENALTIES FOR AIDING AND ABET-**
2 **TING UNDERSTATEMENTS.**

3 (a) IN GENERAL.—Section 6701(b) is amended to
4 read as follows:

5 “(b) AMOUNT OF PENALTY.—

6 “(1) IN GENERAL.—The amount of the penalty
7 imposed by subsection (a) shall be the greater of—

8 “(A) \$2,000, or

9 “(B) 50 percent of the gross income de-
10 rived (or to be derived) from the activity giving
11 rise to the penalty.

12 “(2) CORPORATIONS.—If the return, affidavit,
13 claim, or other document relates to the tax liability
14 of a corporation, paragraph (1)(A) shall be applied
15 by substituting ‘\$20,000’ for ‘\$2,000.’”

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. 420. STUDY ON INFORMATION SHARING AMONG LAW**
20 **ENFORCEMENT AGENCIES.**

21 (a) STUDY.—The Secretary of the Treasury shall,
22 jointly with the Attorney General, the Securities and Ex-
23 change Commission, and the Commissioner of Internal
24 Revenue, study the effectiveness of, and ways to improve,
25 the sharing of information related to the promotion of pro-

1 hibited tax shelters or tax avoidance schemes and other
2 potential violations of Federal laws.

3 (b) REPORT.—The Secretary shall, not later than 1
4 year after the date of the enactment of this Act, report
5 to the appropriate committees of the Congress the results
6 of the study under subsection (a), including any rec-
7 ommendations for legislation.

8 **Subtitle B—Other Corporate** 9 **Governance Provisions**

10 **SEC. 421. AFFIRMATION OF CONSOLIDATED RETURN REGU-** 11 **LATION AUTHORITY.**

12 (a) IN GENERAL.—Section 1502 (relating to consoli-
13 dated return regulations) is amended by adding at the end
14 the following new sentence: “In prescribing such regula-
15 tions, the Secretary may prescribe rules applicable to cor-
16 porations filing consolidated returns under section 1501
17 that are different from other provisions of this title that
18 would apply if such corporations filed separate returns.”.

19 (b) RESULT NOT OVERTURNED.—Notwithstanding
20 subsection (a), the Internal Revenue Code of 1986 shall
21 be construed by treating Treasury regulation § 1.1502-
22 20(c)(1)(iii) (as in effect on January 1, 2001) as being
23 inapplicable to the type of factual situation in 255 F.3d
24 1357 (Fed. Cir. 2001).

1 (c) EFFECTIVE DATE.—The provisions of this section
2 shall apply to taxable years beginning before, on, or after
3 the date of the enactment of this Act.

4 **SEC. 422. DECLARATION BY CHIEF EXECUTIVE OFFICER**
5 **RELATING TO FEDERAL ANNUAL INCOME**
6 **TAX RETURN OF A CORPORATION.**

7 (a) IN GENERAL.—The Federal annual tax return of
8 a corporation with respect to income shall also include a
9 declaration signed by the chief executive officer of such
10 corporation (or other such officer of the corporation as
11 the Secretary of the Treasury may designate if the cor-
12 poration does not have a chief executive officer), under
13 penalties of perjury, that the corporation has in place
14 processes and procedures to ensure that such return com-
15 plies with the Internal Revenue Code of 1986 and that
16 the chief executive officer was provided reasonable assur-
17 ance of the accuracy of all material aspects of such return.
18 The preceding sentence shall not apply to any return of
19 a regulated investment company (within the meaning of
20 section 851 of such Code).

21 (b) EFFECTIVE DATE.—This section shall apply to
22 the Federal annual tax return of a corporation with re-
23 spect to income for taxable years ending after the date
24 of the enactment of this Act.

1 **SEC. 423. DENIAL OF DEDUCTION FOR CERTAIN FINES,**
2 **PENALTIES, AND OTHER AMOUNTS.**

3 (a) IN GENERAL.—Subsection (f) of section 162 (re-
4 lating to trade or business expenses) is amended to read
5 as follows:

6 “(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), no deduction otherwise allowable shall be
9 allowed under this chapter for any amount paid or
10 incurred (whether by suit, agreement, or otherwise)
11 to, or at the direction of, a government or entity de-
12 scribed in paragraph (4) in relation to the violation
13 of any law or the investigation or inquiry by such
14 government or entity into the potential violation of
15 any law.

16 “(2) EXCEPTION FOR AMOUNTS CONSTITUTING
17 RESTITUTION.—Paragraph (1) shall not apply to
18 any amount which the taxpayer establishes con-
19 stitutes restitution (including remediation of prop-
20 erty) for damage or harm caused by or which may
21 be caused by the violation of any law or the potential
22 violation of any law. This paragraph shall not apply
23 to any amount paid or incurred as reimbursement to
24 the government or entity for the costs of any inves-
25 tigation or litigation.

1 “(3) EXCEPTION FOR AMOUNTS PAID OR IN-
2 CURRED AS THE RESULT OF CERTAIN COURT OR-
3 DERS.—Paragraph (1) shall not apply to any
4 amount paid or incurred by order of a court in a
5 suit in which no government or entity described in
6 paragraph (4) is a party.

7 “(4) CERTAIN NONGOVERNMENTAL REGU-
8 LATORY ENTITIES.—An entity is described in this
9 paragraph if it is—

10 “(A) a nongovernmental entity which exer-
11 cises self-regulatory powers (including imposing
12 sanctions) in connection with a qualified board
13 or exchange (as defined in section 1256(g)(7)),
14 or

15 “(B) to the extent provided in regulations,
16 a nongovernmental entity which exercises self-
17 regulatory powers (including imposing sanc-
18 tions) as part of performing an essential gov-
19 ernmental function.

20 “(5) EXCEPTION FOR TAXES DUE.—Paragraph
21 (1) shall not apply to any amount paid or incurred
22 as taxes due.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to amounts paid or incurred after
25 April 27, 2003, except that such amendment shall not

1 apply to amounts paid or incurred under any binding
2 order or agreement entered into on or before April 27,
3 2003. Such exception shall not apply to an order or agree-
4 ment requiring court approval unless the approval was ob-
5 tained on or before April 27, 2003.

6 **SEC. 424. DISALLOWANCE OF DEDUCTION FOR PUNITIVE**
7 **DAMAGES.**

8 (a) DISALLOWANCE OF DEDUCTION.—

9 (1) IN GENERAL.—Section 162(g) (relating to
10 treble damage payments under the antitrust laws) is
11 amended by adding at the end the following new
12 paragraph:

13 “(2) PUNITIVE DAMAGES.—No deduction shall
14 be allowed under this chapter for any amount paid
15 or incurred for punitive damages in connection with
16 any judgment in, or settlement of, any action. This
17 paragraph shall not apply to punitive damages de-
18 scribed in section 104(c).”.

19 (2) CONFORMING AMENDMENTS.—

20 (A) Section 162(g) is amended—

21 (i) by striking “If” and inserting:

22 “(1) TREBLE DAMAGES.—If”, and

23 (ii) by redesignating paragraphs (1)
24 and (2) as subparagraphs (A) and (B), re-
25 spectively.

1 (B) The heading for section 162(g) is
2 amended by inserting “OR PUNITIVE DAM-
3 AGES” after “LAWS”.

4 (b) INCLUSION IN INCOME OF PUNITIVE DAMAGES
5 PAID BY INSURER OR OTHERWISE.—

6 (1) IN GENERAL.—Part II of subchapter B of
7 chapter 1 (relating to items specifically included in
8 gross income) is amended by adding at the end the
9 following new section:

10 **“SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSUR-**
11 **ANCE OR OTHERWISE.**

12 “Gross income shall include any amount paid to or
13 on behalf of a taxpayer as insurance or otherwise by rea-
14 son of the taxpayer’s liability (or agreement) to pay puni-
15 tive damages.”.

16 (2) REPORTING REQUIREMENTS.—Section 6041
17 (relating to information at source) is amended by
18 adding at the end the following new subsection:

19 “(f) SECTION TO APPLY TO PUNITIVE DAMAGES
20 COMPENSATION.—This section shall apply to payments by
21 a person to or on behalf of another person as insurance
22 or otherwise by reason of the other person’s liability (or
23 agreement) to pay punitive damages.”.

24 (3) CONFORMING AMENDMENT.—The table of
25 sections for part II of subchapter B of chapter 1 is

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

“Sec. 91. Punitive damages compensated by insurance or otherwise.”.

3 (c) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to damages paid or incurred on
5 or after the date of the enactment of this Act.

6 **SEC. 425. INCREASE IN CRIMINAL MONETARY PENALTY**
7 **LIMITATION FOR THE UNDERPAYMENT OR**
8 **OVERPAYMENT OF TAX DUE TO FRAUD.**

9 (a) **IN GENERAL.**—Section 7206 (relating to fraud
10 and false statements) is amended—

11 (1) by striking “Any person who—” and insert-
12 ing “(a) **IN GENERAL.**—Any person who—”, and

13 (2) by adding at the end the following new sub-
14 section:

15 “(b) **INCREASE IN MONETARY LIMITATION FOR UN-**
16 **DERPAYMENT OR OVERPAYMENT OF TAX DUE TO**
17 **FRAUD.**—If any portion of any underpayment (as defined
18 in section 6664(a)) or overpayment (as defined in section
19 6401(a)) of tax required to be shown on a return is attrib-
20 utable to fraudulent action described in subsection (a), the
21 applicable dollar amount under subsection (a) shall in no
22 event be less than an amount equal to such portion. A
23 rule similar to the rule under section 6663(b) shall apply
24 for purposes of determining the portion so attributable.”.

25 (b) **INCREASE IN PENALTIES.**—

1 (1) ATTEMPT TO EVADE OR DEFEAT TAX.—

2 Section 7201 is amended—

3 (A) by striking “\$100,000” and inserting
4 “\$250,000”,

5 (B) by striking “\$500,000” and inserting
6 “\$1,000,000”, and

7 (C) by striking “5 years” and inserting
8 “10 years”.

9 (2) WILLFUL FAILURE TO FILE RETURN, SUP-
10 PLY INFORMATION, OR PAY TAX.—Section 7203 is
11 amended—

12 (A) in the first sentence—

13 (i) by striking “misdemeanor” and in-
14 serting “felony”, and

15 (ii) by striking “1 year” and inserting
16 “10 years”, and

17 (B) by striking the third sentence.

18 (3) FRAUD AND FALSE STATEMENTS.—Section
19 7206(a) (as redesignated by subsection (a)) is
20 amended—

21 (A) by striking “\$100,000” and inserting
22 “\$250,000”,

23 (B) by striking “\$500,000” and inserting
24 “\$1,000,000”, and

1 (C) by striking “3 years” and inserting “5
2 years”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to underpayments and overpay-
5 ments attributable to actions occurring after the date of
6 the enactment of this Act.

7 **Subtitle C—Enron-Related Tax**
8 **Shelter Provisions**

9 **SEC. 431. LIMITATION ON TRANSFER OR IMPORTATION OF**
10 **BUILT-IN LOSSES.**

11 (a) IN GENERAL.—Section 362 (relating to basis to
12 corporations) is amended by adding at the end the fol-
13 lowing new subsection:

14 “(e) LIMITATIONS ON BUILT-IN LOSSES.—

15 “(1) LIMITATION ON IMPORTATION OF BUILT-
16 IN LOSSES.—

17 “(A) IN GENERAL.—If in any transaction
18 described in subsection (a) or (b) there would
19 (but for this subsection) be an importation of a
20 net built-in loss, the basis of each property de-
21 scribed in subparagraph (B) which is acquired
22 in such transaction shall (notwithstanding sub-
23 sections (a) and (b)) be its fair market value
24 immediately after such transaction.

1 “(B) PROPERTY DESCRIBED.—For pur-
2 poses of subparagraph (A), property is de-
3 scribed in this subparagraph if—

4 “(i) gain or loss with respect to such
5 property is not subject to tax under this
6 subtitle in the hands of the transferor im-
7 mediately before the transfer, and

8 “(ii) gain or loss with respect to such
9 property is subject to such tax in the
10 hands of the transferee immediately after
11 such transfer.

12 In any case in which the transferor is a part-
13 nership, the preceding sentence shall be applied
14 by treating each partner in such partnership as
15 holding such partner’s proportionate share of
16 the property of such partnership.

17 “(C) IMPORTATION OF NET BUILT-IN
18 LOSS.—For purposes of subparagraph (A),
19 there is an importation of a net built-in loss in
20 a transaction if the transferee’s aggregate ad-
21 justed bases of property described in subpara-
22 graph (B) which is transferred in such trans-
23 action would (but for this paragraph) exceed
24 the fair market value of such property imme-
25 diately after such transaction.

1 “(2) LIMITATION ON TRANSFER OF BUILT-IN
2 LOSSES IN SECTION 351 TRANSACTIONS.—

3 “(A) IN GENERAL.—If—

4 “(i) property is transferred by a
5 transferor in any transaction which is de-
6 scribed in subsection (a) and which is not
7 described in paragraph (1) of this sub-
8 section, and

9 “(ii) the transferee’s aggregate ad-
10 justed bases of such property so trans-
11 ferred would (but for this paragraph) ex-
12 ceed the fair market value of such property
13 immediately after such transaction,

14 then, notwithstanding subsection (a), the trans-
15 feree’s aggregate adjusted bases of the property
16 so transferred shall not exceed the fair market
17 value of such property immediately after such
18 transaction.

19 “(B) ALLOCATION OF BASIS REDUC-
20 TION.—The aggregate reduction in basis by
21 reason of subparagraph (A) shall be allocated
22 among the property so transferred in proportion
23 to their respective built-in losses immediately
24 before the transaction.

1 “(C) EXCEPTION FOR TRANSFERS WITHIN
2 AFFILIATED GROUP.—Subparagraph (A) shall
3 not apply to any transaction if the transferor
4 owns stock in the transferee meeting the re-
5 quirements of section 1504(a)(2). In the case of
6 property to which subparagraph (A) does not
7 apply by reason of the preceding sentence, the
8 transferor’s basis in the stock received for such
9 property shall not exceed its fair market value
10 immediately after the transfer.”.

11 (b) COMPARABLE TREATMENT WHERE LIQUIDA-
12 TION.—Paragraph (1) of section 334(b) (relating to liq-
13 uidation of subsidiary) is amended to read as follows:

14 “(1) IN GENERAL.—If property is received by a
15 corporate distributee in a distribution in a complete
16 liquidation to which section 332 applies (or in a
17 transfer described in section 337(b)(1)), the basis of
18 such property in the hands of such distributee shall
19 be the same as it would be in the hands of the trans-
20 feror; except that the basis of such property in the
21 hands of such distributee shall be the fair market
22 value of the property at the time of the
23 distribution—

1 “(A) in any case in which gain or loss is
2 recognized by the liquidating corporation with
3 respect to such property, or

4 “(B) in any case in which the liquidating
5 corporation is a foreign corporation, the cor-
6 porate distributee is a domestic corporation,
7 and the corporate distributee’s aggregate ad-
8 justed bases of property described in section
9 362(e)(1)(B) which is distributed in such liq-
10 uidation would (but for this subparagraph) ex-
11 ceed the fair market value of such property im-
12 mediately after such liquidation.”.

13 (c) EFFECTIVE DATES.—

14 (1) IN GENERAL.—The amendment made by
15 subsection (a) shall apply to transactions after De-
16 cember 31, 2003.

17 (2) LIQUIDATIONS.—The amendment made by
18 subsection (b) shall apply to liquidations after De-
19 cember 31, 2003.

20 **SEC. 432. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
21 **STOCK HELD BY PARTNERSHIP IN COR-**
22 **PORATE PARTNER.**

23 (a) IN GENERAL.—Section 755 is amended by adding
24 at the end the following new subsection:

1 “(c) NO ALLOCATION OF BASIS DECREASE TO
2 STOCK OF CORPORATE PARTNER.—In making an alloca-
3 tion under subsection (a) of any decrease in the adjusted
4 basis of partnership property under section 734(b)—

5 “(1) no allocation may be made to stock in a
6 corporation (or any person which is related (within
7 the meaning of section 267(b) or 707(b)(1)) to such
8 corporation) which is a partner in the partnership,
9 and

10 “(2) any amount not allocable to stock by rea-
11 son of paragraph (1) shall be allocated under sub-
12 section (a) to other partnership property in such
13 manner as the Secretary may prescribe.

14 Gain shall be recognized to the partnership to the extent
15 that the amount required to be allocated under paragraph
16 (2) to other partnership property exceeds the aggregate
17 adjusted basis of such other property immediately before
18 the allocation required by paragraph (2).”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to distributions after February 13,
21 2003.

22 **SEC. 433. REPEAL OF SPECIAL RULES FOR FASITS.**

23 (a) IN GENERAL.—Part V of subchapter M of chap-
24 ter 1 (relating to financial asset securitization investment
25 trusts) is hereby repealed.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Paragraph (6) of section 56(g) is amended
3 by striking “REMIC, or FASIT” and inserting “or
4 REMIC”.

5 (2) Clause (ii) of section 382(l)(4)(B) is amend-
6 ed by striking “a REMIC to which part IV of sub-
7 chapter M applies, or a FASIT to which part V of
8 subchapter M applies,” and inserting “or a REMIC
9 to which part IV of subchapter M applies,”.

10 (3) Paragraph (1) of section 582(c) is amended
11 by striking “, and any regular interest in a
12 FASIT,”.

13 (4) Subparagraph (E) of section 856(c)(5) is
14 amended by striking the last sentence.

15 (5)(A) Section 860G(a)(1) is amended by add-
16 ing at the end the following new sentence: “An inter-
17 est shall not fail to qualify as a regular interest sole-
18 ly because the specified principal amount of the reg-
19 ular interest (or the amount of interest accrued on
20 the regular interest) can be reduced as a result of
21 the nonoccurrence of 1 or more contingent payments
22 with respect to any reverse mortgage loan held by
23 the REMIC if, on the startup day for the REMIC,
24 the sponsor reasonably believes that all principal and

1 interest due under the regular interest will be paid
2 at or prior to the liquidation of the REMIC.”.

3 (B) The last sentence of section 860G(a)(3) is
4 amended by inserting “, and any reverse mortgage
5 loan (and each balance increase on such loan meet-
6 ing the requirements of subparagraph (A)(iii)) shall
7 be treated as an obligation secured by an interest in
8 real property” before the period at the end.

9 (6) Paragraph (3) of section 860G(a) is amend-
10 ed by adding “and” at the end of subparagraph (B),
11 by striking “, and” at the end of subparagraph (C)
12 and inserting a period, and by striking subparagraph
13 (D).

14 (7) Section 860G(a)(3), as amended by para-
15 graph (6), is amended by adding at the end the fol-
16 lowing new sentence: “For purposes of subparagraph
17 (A), if more than 50 percent of the obligations
18 transferred to, or purchased by, the REMIC are
19 originated by the United States or any State (or any
20 political subdivision, agency, or instrumentality of
21 the United States or any State) and are principally
22 secured by an interest in real property, then each
23 obligation transferred to, or purchased by, the
24 REMIC shall be treated as secured by an interest in
25 real property.”.

1 (8)(A) Section 860G(a)(3)(A) is amended by
2 striking “or” at the end of clause (i), by inserting
3 “or” at the end of clause (ii), and by inserting after
4 clause (ii) the following new clause:

5 “(iii) represents an increase in the
6 principal amount under the original terms
7 of an obligation described in clause (i) or
8 (ii) if such increase—

9 “(I) is attributable to an advance
10 made to the obligor pursuant to the
11 original terms of the obligation,

12 “(II) occurs after the startup
13 day, and

14 “(III) is purchased by the
15 REMIC pursuant to a fixed price con-
16 tract in effect on the startup day.”.

17 (B) Section 860G(a)(7)(B) is amended to read
18 as follows:

19 “(B) QUALIFIED RESERVE FUND.—For
20 purposes of subparagraph (A), the term ‘quali-
21 fied reserve fund’ means any reasonably re-
22 quired reserve to—

23 “(i) provide for full payment of ex-
24 penses of the REMIC or amounts due on
25 regular interests in the event of defaults on

1 qualified mortgages or lower than expected
2 returns on cash flow investments, or

3 “(ii) provide a source of funds for the
4 purchase of obligations described in clause
5 (ii) or (iii) of paragraph (3)(A).

6 The aggregate fair market value of the assets
7 held in any such reserve shall not exceed 50
8 percent of the aggregate fair market value of all
9 of the assets of the REMIC on the startup day,
10 and the amount of any such reserve shall be
11 promptly and appropriately reduced to the ex-
12 tent the amount held in such reserve is no
13 longer reasonably required for purposes speci-
14 fied in clause (i) or (ii) of paragraph (3)(A).”.

15 (9) Subparagraph (C) of section 1202(e)(4) is
16 amended by striking “REMIC, or FASIT” and in-
17 serting “or REMIC”.

18 (10) Clause (xi) of section 7701(a)(19)(C) is
19 amended—

20 (A) by striking “and any regular interest
21 in a FASIT,” and

22 (B) by striking “or FASIT” each place it
23 appears.

24 (11) Subparagraph (A) of section 7701(i)(2) is
25 amended by striking “or a FASIT”.

1 (12) The table of parts for subchapter M of
2 chapter 1 is amended by striking the item relating
3 to part V.

4 (c) EFFECTIVE DATE.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), the amendments made by this section
7 shall take effect on February 14, 2003.

8 (2) EXCEPTION FOR EXISTING FASITS.—Para-
9 graph (1) shall not apply to any FASIT in existence
10 on the date of the enactment of this Act to the ex-
11 tent that regular interests issued by the FASIT be-
12 fore such date continue to remain outstanding in ac-
13 cordance with the original terms of issuance.

14 **SEC. 434. EXPANDED DISALLOWANCE OF DEDUCTION FOR**
15 **INTEREST ON CONVERTIBLE DEBT.**

16 (a) IN GENERAL.—Paragraph (2) of section 163(l)
17 is amended by inserting “or equity held by the issuer (or
18 any related party) in any other person” after “or a related
19 party”.

20 (b) CAPITALIZATION ALLOWED WITH RESPECT TO
21 EQUITY OF PERSONS OTHER THAN ISSUER AND RE-
22 LATED PARTIES.—Section 163(l) is amended by redesi-
23 gnating paragraphs (4) and (5) as paragraphs (5) and (6)
24 and by inserting after paragraph (3) the following new
25 paragraph:

1 “(4) CAPITALIZATION ALLOWED WITH RESPECT
2 TO EQUITY OF PERSONS OTHER THAN ISSUER AND
3 RELATED PARTIES.—If the disqualified debt instru-
4 ment of a corporation is payable in equity held by
5 the issuer (or any related party) in any other person
6 (other than a related party), the basis of such equity
7 shall be increased by the amount not allowed as a
8 deduction by reason of paragraph (1) with respect to
9 the instrument.”.

10 (c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED
11 BY DEALERS IN SECURITIES.—Section 163(l), as amend-
12 ed by subsection (b), is amended by redesignating para-
13 graphs (5) and (6) as paragraphs (6) and (7) and by in-
14 serting after paragraph (4) the following new paragraph:

15 “(5) EXCEPTION FOR CERTAIN INSTRUMENTS
16 ISSUED BY DEALERS IN SECURITIES.—For purposes
17 of this subsection, the term ‘disqualified debt instru-
18 ment’ does not include indebtedness issued by a
19 dealer in securities (or a related party) which is pay-
20 able in, or by reference to, equity (other than equity
21 of the issuer or a related party) held by such dealer
22 in its capacity as a dealer in securities. For purposes
23 of this paragraph, the term ‘dealer in securities’ has
24 the meaning given such term by section 475.”.

1 (c) CONFORMING AMENDMENTS.—Paragraph (3) of
2 section 163(l) is amended—

3 (1) by striking “or a related party” in the ma-
4 terial preceding subparagraph (A) and inserting “or
5 any other person”, and

6 (2) by striking “or interest” each place it ap-
7 pears.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to debt instruments issued after
10 February 13, 2003.

11 **SEC. 435. EXPANDED AUTHORITY TO DISALLOW TAX BENE-**
12 **FITS UNDER SECTION 269.**

13 (a) IN GENERAL.—Subsection (a) of section 269 (re-
14 lating to acquisitions made to evade or avoid income tax)
15 is amended to read as follows:

16 “(a) IN GENERAL.—If—

17 “(1)(A) any person or persons acquire, directly
18 or indirectly, control of a corporation, or

19 “(B) any corporation acquires, directly or indi-
20 rectly, property of another corporation and the basis
21 of such property, in the hands of the acquiring cor-
22 poration, is determined by reference to the basis in
23 the hands of the transferor corporation, and

1 “(2) the principal purpose for which such acqui-
2 sition was made is evasion or avoidance of Federal
3 income tax,
4 then the Secretary may disallow such deduction, credit,
5 or other allowance. For purposes of paragraph (1)(A),
6 control means the ownership of stock possessing at least
7 50 percent of the total combined voting power of all class-
8 es of stock entitled to vote or at least 50 percent of the
9 total value of all shares of all classes of stock of the cor-
10 poration.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to stock and property acquired
13 after February 13, 2003.

14 **SEC. 436. MODIFICATION OF INTERACTION BETWEEN SUB-**
15 **PART F AND PASSIVE FOREIGN INVESTMENT**
16 **COMPANY RULES.**

17 (a) LIMITATION ON EXCEPTION FROM PFIC RULES
18 FOR UNITED STATES SHAREHOLDERS OF CONTROLLED
19 FOREIGN CORPORATIONS.—Paragraph (2) of section
20 1297(e) (relating to passive foreign investment company)
21 is amended by adding at the end the following flush sen-
22 tence:

23 “Such term shall not include any period if the
24 earning of subpart F income by such corpora-
25 tion during such period would result in only a

1 remote likelihood of an inclusion in gross in-
2 come under section 951(a)(1)(A)(i).”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to taxable years of controlled for-
5 eign corporations beginning after February 13, 2003, and
6 to taxable years of United States shareholders with or
7 within which such taxable years of controlled foreign cor-
8 porations end.

9 **Subtitle D—Provisions to**
10 **Discourage Expatriation**

11 **SEC. 441. TAX TREATMENT OF INVERTED CORPORATE EN-**
12 **TITIES.**

13 (a) **IN GENERAL.**—Subchapter C of chapter 80 (re-
14 lating to provisions affecting more than one subtitle) is
15 amended by adding at the end the following new section:

16 **“SEC. 7874. RULES RELATING TO INVERTED CORPORATE**
17 **ENTITIES**

18 **“(a) INVERTED CORPORATIONS TREATED AS DOMES-**
19 **TIC CORPORATIONS.**—

20 **“(1) IN GENERAL.**—If a foreign incorporated
21 entity is treated as an inverted domestic corporation,
22 then, notwithstanding section 7701(a)(4), such enti-
23 ty shall be treated for purposes of this title as a do-
24 mestic corporation.

1 “(2) INVERTED DOMESTIC CORPORATION.—For
2 purposes of this section, a foreign incorporated enti-
3 ty shall be treated as an inverted domestic corpora-
4 tion if, pursuant to a plan (or a series of related
5 transactions)—

6 “(A) the entity completes after March 20,
7 2002, the direct or indirect acquisition of sub-
8 stantially all of the properties held directly or
9 indirectly by a domestic corporation or substan-
10 tially all of the properties constituting a trade
11 or business of a domestic partnership,

12 “(B) after the acquisition at least 80 per-
13 cent of the stock (by vote or value) of the entity
14 is held—

15 “(i) in the case of an acquisition with
16 respect to a domestic corporation, by
17 former shareholders of the domestic cor-
18 poration by reason of holding stock in the
19 domestic corporation, or

20 “(ii) in the case of an acquisition with
21 respect to a domestic partnership, by
22 former partners of the domestic partner-
23 ship by reason of holding a capital or prof-
24 its interest in the domestic partnership,
25 and

1 “(C) the expanded affiliated group which
2 after the acquisition includes the entity does
3 not have substantial business activities in the
4 foreign country in which or under the law of
5 which the entity is created or organized when
6 compared to the total business activities of such
7 expanded affiliated group.

8 Except as provided in regulations, an acquisition of
9 properties of a domestic corporation shall not be
10 treated as described in subparagraph (A) if none of
11 the corporation’s stock was readily tradeable on an
12 established securities market at any time during the
13 4-year period ending on the date of the acquisition.

14 “(b) PRESERVATION OF DOMESTIC TAX BASE IN
15 CERTAIN INVERSION TRANSACTIONS TO WHICH SUB-
16 SECTION (a) DOES NOT APPLY.—

17 “(1) IN GENERAL.—If a foreign incorporated
18 entity would be treated as an inverted domestic cor-
19 poration with respect to an acquired entity if
20 either—

21 “(A) subsection (a)(2)(A) were applied by
22 substituting ‘after December 31, 1996, and on
23 or before March 20, 2002’ for ‘after March 20,
24 2002’ and subsection (a)(2)(B) were applied by

1 substituting ‘more than 50 percent’ for ‘at least
2 80 percent’, or

3 “(B) subsection (a)(2)(B) were applied by
4 substituting ‘more than 50 percent’ for ‘at least
5 80 percent’,

6 then the rules of subsection (c) shall apply to any
7 inversion gain of the acquired entity during the ap-
8 plicable period and the rules of subsection (d) shall
9 apply to any related party transaction of the ac-
10 quired entity during the applicable period. This sub-
11 section shall not apply for any taxable year if sub-
12 section (a) applies to such foreign incorporated enti-
13 ty for such taxable year.

14 “(2) ACQUIRED ENTITY.—For purposes of this
15 section—

16 “(A) IN GENERAL.—The term ‘acquired
17 entity’ means the domestic corporation or part-
18 nership substantially all of the properties of
19 which are directly or indirectly acquired in an
20 acquisition described in subsection (a)(2)(A) to
21 which this subsection applies.

22 “(B) AGGREGATION RULES.—Any domes-
23 tic person bearing a relationship described in
24 section 267(b) or 707(b) to an acquired entity
25 shall be treated as an acquired entity with re-

1 spect to the acquisition described in subpara-
2 graph (A).

3 “(3) APPLICABLE PERIOD.—For purposes of
4 this section—

5 “(A) IN GENERAL.—The term ‘applicable
6 period’ means the period—

7 “(i) beginning on the first date prop-
8 erties are acquired as part of the acquisi-
9 tion described in subsection (a)(2)(A) to
10 which this subsection applies, and

11 “(ii) ending on the date which is 10
12 years after the last date properties are ac-
13 quired as part of such acquisition.

14 “(B) SPECIAL RULE FOR INVERSIONS OC-
15 CURRING BEFORE MARCH 21, 2002.—In the case
16 of any acquired entity to which paragraph
17 (1)(A) applies, the applicable period shall be the
18 10-year period beginning on January 1, 2003.

19 “(c) TAX ON INVERSION GAINS MAY NOT BE OFF-
20 SET.—If subsection (b) applies—

21 “(1) IN GENERAL.—The taxable income of an
22 acquired entity (or any expanded affiliated group
23 which includes such entity) for any taxable year
24 which includes any portion of the applicable period

1 shall in no event be less than the inversion gain of
2 the entity for the taxable year.

3 “(2) CREDITS NOT ALLOWED AGAINST TAX ON
4 INVERSION GAIN.—Credits shall be allowed against
5 the tax imposed by this chapter on an acquired enti-
6 ty for any taxable year described in paragraph (1)
7 only to the extent such tax exceeds the product of—

8 “(A) the amount of the inversion gain for
9 the taxable year, and

10 “(B) the highest rate of tax specified in
11 section 11(b)(1).

12 For purposes of determining the credit allowed by
13 section 901 inversion gain shall be treated as from
14 sources within the United States.

15 “(3) SPECIAL RULES FOR PARTNERSHIPS.—In
16 the case of an acquired entity which is a
17 partnership—

18 “(A) the limitations of this subsection shall
19 apply at the partner rather than the partner-
20 ship level,

21 “(B) the inversion gain of any partner for
22 any taxable year shall be equal to the sum of—

23 “(i) the partner’s distributive share of
24 inversion gain of the partnership for such
25 taxable year, plus

1 “(ii) income or gain required to be
2 recognized for the taxable year by the part-
3 ner under section 367(a), 741, or 1001, or
4 under any other provision of chapter 1, by
5 reason of the transfer during the applica-
6 ble period of any partnership interest of
7 the partner in such partnership to the for-
8 eign incorporated entity, and

9 “(C) the highest rate of tax specified in
10 the rate schedule applicable to the partner
11 under chapter 1 shall be substituted for the
12 rate of tax under paragraph (2)(B).

13 “(4) INVERSION GAIN.—For purposes of this
14 section, the term ‘inversion gain’ means any income
15 or gain required to be recognized under section 304,
16 311(b), 367, 1001, or 1248, or under any other pro-
17 vision of chapter 1, by reason of the transfer during
18 the applicable period of stock or other properties by
19 an acquired entity—

20 “(A) as part of the acquisition described in
21 subsection (a)(2)(A) to which subsection (b) ap-
22 plies, or

23 “(B) after such acquisition to a foreign re-
24 lated person.

1 The Secretary may provide that income or gain from
2 the sale of inventories or other transactions in the
3 ordinary course of a trade or business shall not be
4 treated as inversion gain under subparagraph (B) to
5 the extent the Secretary determines such treatment
6 would not be inconsistent with the purposes of this
7 section.

8 “(5) COORDINATION WITH SECTION 172 AND
9 MINIMUM TAX.—Rules similar to the rules of para-
10 graphs (3) and (4) of section 860E(a) shall apply
11 for purposes of this section.

12 “(6) STATUTE OF LIMITATIONS.—

13 “(A) IN GENERAL.—The statutory period
14 for the assessment of any deficiency attrib-
15 utable to the inversion gain of any taxpayer for
16 any pre-inversion year shall not expire before
17 the expiration of 3 years from the date the Sec-
18 retary is notified by the taxpayer (in such man-
19 ner as the Secretary may prescribe) of the ac-
20 quisition described in subsection (a)(2)(A) to
21 which such gain relates and such deficiency
22 may be assessed before the expiration of such
23 3-year period notwithstanding the provisions of
24 any other law or rule of law which would other-
25 wise prevent such assessment.

1 “(B) PRE-INVERSION YEAR.—For purposes
2 of subparagraph (A), the term ‘pre-inversion
3 year’ means any taxable year if—

4 “(i) any portion of the applicable pe-
5 riod is included in such taxable year, and

6 “(ii) such year ends before the taxable
7 year in which the acquisition described in
8 subsection (a)(2)(A) is completed.

9 “(d) SPECIAL RULES APPLICABLE TO ACQUIRED EN-
10 TITIES TO WHICH SUBSECTION (b) APPLIES.—

11 “(1) INCREASES IN ACCURACY-RELATED PEN-
12 ALTIES.—In the case of any underpayment of tax of
13 an acquired entity to which subsection (b) applies—

14 “(A) section 6662(a) shall be applied with
15 respect to such underpayment by substituting
16 ‘30 percent’ for ‘20 percent’, and

17 “(B) if such underpayment is attributable
18 to one or more gross valuation understatement-
19 s, the increase in the rate of penalty under
20 section 6662(h) shall be to 50 percent rather
21 than 40 percent.

22 “(2) MODIFICATIONS OF LIMITATION ON INTER-
23 EST DEDUCTION.—In the case of an acquired entity
24 to which subsection (b) applies, section 163(j) shall
25 be applied—

1 “(A) without regard to paragraph
2 (2)(A)(ii) thereof, and

3 “(B) by substituting ‘25 percent’ for ‘50
4 percent’ each place it appears in paragraph
5 (2)(B) thereof.

6 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—
7 For purposes of this section—

8 “(1) RULES FOR APPLICATION OF SUBSECTION
9 (a)(2).—In applying subsection (a)(2) for purposes
10 of subsections (a) and (b), the following rules shall
11 apply:

12 “(A) CERTAIN STOCK DISREGARDED.—
13 There shall not be taken into account in deter-
14 mining ownership for purposes of subsection
15 (a)(2)(B)—

16 “(i) stock held by members of the ex-
17 panded affiliated group which includes the
18 foreign incorporated entity, or

19 “(ii) stock of such entity which is sold
20 in a public offering or private placement
21 related to the acquisition described in sub-
22 section (a)(2)(A).

23 “(B) PLAN DEEMED IN CERTAIN CASES.—
24 If a foreign incorporated entity acquires directly
25 or indirectly substantially all of the properties

1 of a domestic corporation or partnership during
2 the 4-year period beginning on the date which
3 is 2 years before the ownership requirements of
4 subsection (a)(2)(B) are met with respect to
5 such domestic corporation or partnership, such
6 actions shall be treated as pursuant to a plan.

7 “(C) CERTAIN TRANSFERS DIS-
8 REGARDED.—The transfer of properties or li-
9 abilities (including by contribution or distribu-
10 tion) shall be disregarded if such transfers are
11 part of a plan a principal purpose of which is
12 to avoid the purposes of this section.

13 “(D) SPECIAL RULE FOR RELATED PART-
14 NERSHIPS.—For purposes of applying sub-
15 section (a)(2) to the acquisition of a domestic
16 partnership, except as provided in regulations,
17 all partnerships which are under common con-
18 trol (within the meaning of section 482) shall
19 be treated as 1 partnership.

20 “(E) TREATMENT OF CERTAIN RIGHTS.—
21 The Secretary shall prescribe such regulations
22 as may be necessary—

23 “(i) to treat warrants, options, con-
24 tracts to acquire stock, convertible debt in-

1 struments, and other similar interests as
2 stock, and

3 “(ii) to treat stock as not stock.

4 “(2) EXPANDED AFFILIATED GROUP.—The
5 term ‘expanded affiliated group’ means an affiliated
6 group as defined in section 1504(a) but without re-
7 gard to section 1504(b)(3), except that section
8 1504(a) shall be applied by substituting ‘more than
9 50 percent’ for ‘at least 80 percent’ each place it ap-
10 pears.

11 “(3) FOREIGN INCORPORATED ENTITY.—The
12 term ‘foreign incorporated entity’ means any entity
13 which is, or but for subsection (a)(1) would be,
14 treated as a foreign corporation for purposes of this
15 title.

16 “(4) FOREIGN RELATED PERSON.—The term
17 ‘foreign related person’ means, with respect to any
18 acquired entity, a foreign person which—

19 “(A) bears a relationship to such entity de-
20 scribed in section 267(b) or 707(b), or

21 “(B) is under the same common control
22 (within the meaning of section 482) as such en-
23 tity.

24 “(5) SUBSEQUENT ACQUISITIONS BY UNRE-
25 LATED DOMESTIC CORPORATIONS.—

1 “(A) IN GENERAL.—Subject to such condi-
2 tions, limitations, and exceptions as the Sec-
3 retary may prescribe, if, after an acquisition de-
4 scribed in subsection (a)(2)(A) to which sub-
5 section (b) applies, a domestic corporation stock
6 of which is traded on an established securities
7 market acquires directly or indirectly any prop-
8 erties of one or more acquired entities in a
9 transaction with respect to which the require-
10 ments of subparagraph (B) are met, this sec-
11 tion shall cease to apply to any such acquired
12 entity with respect to which such requirements
13 are met.

14 “(B) REQUIREMENTS.—The requirements
15 of the subparagraph are met with respect to a
16 transaction involving any acquisition described
17 in subparagraph (A) if—

18 “(i) before such transaction the do-
19 mestic corporation did not have a relation-
20 ship described in section 267(b) or 707(b),
21 and was not under common control (within
22 the meaning of section 482), with the ac-
23 quired entity, or any member of an ex-
24 panded affiliated group including such en-
25 tity, and

1 “(ii) after such transaction, such ac-
2 quired entity—

3 “(I) is a member of the same ex-
4 panded affiliated group which includes
5 the domestic corporation or has such
6 a relationship or is under such com-
7 mon control with any member of such
8 group, and

9 “(II) is not a member of, and
10 does not have such a relationship and
11 is not under such common control
12 with any member of, the expanded af-
13 filiated group which before such ac-
14 quisition included such entity.

15 “(f) REGULATIONS.—The Secretary shall provide
16 such regulations as are necessary to carry out this section,
17 including regulations providing for such adjustments to
18 the application of this section as are necessary to prevent
19 the avoidance of the purposes of this section, including the
20 avoidance of such purposes through—

21 “(1) the use of related persons, pass-thru or
22 other noncorporate entities, or other intermediaries,
23 or

1 “(2) transactions designed to have persons
2 cease to be (or not become) members of expanded
3 affiliated groups or related persons.”.

4 (b) INFORMATION REPORTING.—The Secretary of
5 the Treasury shall exercise the Secretary’s authority under
6 the Internal Revenue Code of 1986 to require entities in-
7 volved in transactions to which section 7874 of such Code
8 (as added by subsection (a)) applies to report to the Sec-
9 retary, shareholders, partners, and such other persons as
10 the Secretary may prescribe such information as is nec-
11 essary to ensure the proper tax treatment of such trans-
12 actions.

13 (c) CONFORMING AMENDMENT.—The table of sec-
14 tions for subchapter C of chapter 80 is amended by adding
15 at the end the following new item:

 “Sec. 7874. Rules relating to inverted corporate entities.”.

16 (d) TRANSITION RULE FOR CERTAIN REGULATED
17 INVESTMENT COMPANIES AND UNIT INVESTMENT
18 TRUSTS.—Notwithstanding section 7874 of the Internal
19 Revenue Code of 1986 (as added by subsection (a)), a reg-
20 ulated investment company, or other pooled fund or trust
21 specified by the Secretary of the Treasury, may elect to
22 recognize gain by reason of section 367(a) of such Code
23 with respect to a transaction under which a foreign incor-
24 porated entity is treated as an inverted domestic corpora-
25 tion under section 7874(a) of such Code by reason of an

1 acquisition completed after March 20, 2002, and before
2 January 1, 2004.

3 (e) DISCLOSURE OF CORPORATE EXPATRIATION
4 TRANSACTIONS.—

5 (1) IN GENERAL.—Section 14 of the Securities Ex-
6 change Act of 1934 (15 U.S.C. 78n) is amended by adding
7 at the end the following new subsection:

8 “(i) PROXY SOLICITATIONS IN CONNECTION WITH
9 CORPORATE EXPATRIATION TRANSACTIONS.—

10 “(1) DISCLOSURE TO SHAREHOLDERS OF EF-
11 FECTS OF CORPORATE EXPATRIATION TRANS-
12 ACTION.—The Commission shall, by rule, require
13 that each domestic issuer shall prominently disclose,
14 not later than 5 business days before any share-
15 holder vote relating to a corporate expatriation
16 transaction, as a separate and distinct document ac-
17 companying each proxy statement relating to the
18 transaction—

19 “(A) the number of employees of the do-
20 mestic issuer that would be located in the new
21 foreign jurisdiction of incorporation or organi-
22 zation of that issuer upon completion of the
23 corporate expatriation transaction;

24 “(B) how the rights of holders of the secu-
25 rities of the domestic issuer would be impacted

1 by a completed corporate expatriation trans-
2 action, and any differences in such rights before
3 and after a completed corporate expatriation
4 transaction; and

5 “(C) that, as a result of a completed cor-
6 porate expatriation transaction, any taxable
7 holder of the securities of the domestic issuer
8 shall be subject to the taxation of any capital
9 gains realized with respect to such securities,
10 and the amount of any such capital gains tax
11 that would apply as a result of the transaction.

12 “(2) DEFINITIONS.—In this subsection, the fol-
13 lowing definitions shall apply:

14 “(A) CORPORATE EXPATRIATION TRANS-
15 ACTION.—The term ‘corporate expatriation
16 transaction’ means any transaction, or series of
17 related transactions, described in subsection (a)
18 or (b) of section 7874 of the Internal Revenue
19 Code of 1986.

20 “(A) DOMESTIC ISSUER.—The term ‘do-
21 mestic issuer’ means an issuer created or orga-
22 nized in the United States or under the law of
23 the United States or of any State.”

24 (2) EFFECTIVE DATE.—Section 14(i) of the Se-
25 curities Exchange Act of 1934 (as added by this

1 subsection) shall apply with respect to corporate ex-
2 patriation transactions (as defined in that section
3 14(i)) proposed on and after the date of enactment
4 of this Act.

5 **SEC. 442. IMPOSITION OF MARK-TO-MARKET TAX ON INDI-**
6 **VIDUALS WHO EXPATRIATE.**

7 (a) IN GENERAL.—Subpart A of part II of sub-
8 chapter N of chapter 1 is amended by inserting after sec-
9 tion 877 the following new section:

10 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

11 “(a) GENERAL RULES.—For purposes of this
12 subtitle—

13 “(1) MARK TO MARKET.—Except as provided in
14 subsections (d) and (f), all property of a covered ex-
15 patriate to whom this section applies shall be treated
16 as sold on the day before the expatriation date for
17 its fair market value.

18 “(2) RECOGNITION OF GAIN OR LOSS.—In the
19 case of any sale under paragraph (1)—

20 “(A) notwithstanding any other provision
21 of this title, any gain arising from such sale
22 shall be taken into account for the taxable year
23 of the sale, and

24 “(B) any loss arising from such sale shall
25 be taken into account for the taxable year of

1 the sale to the extent otherwise provided by this
2 title, except that section 1091 shall not apply to
3 any such loss.

4 Proper adjustment shall be made in the amount of
5 any gain or loss subsequently realized for gain or
6 loss taken into account under the preceding sen-
7 tence.

8 “(3) EXCLUSION FOR CERTAIN GAIN.—

9 “(A) IN GENERAL.—The amount which,
10 but for this paragraph, would be includible in
11 the gross income of any individual by reason of
12 this section shall be reduced (but not below
13 zero) by \$600,000. For purposes of this para-
14 graph, allocable expatriation gain taken into ac-
15 count under subsection (f)(2) shall be treated in
16 the same manner as an amount required to be
17 includible in gross income.

18 “(B) COST-OF-LIVING ADJUSTMENT.—

19 “(i) IN GENERAL.—In the case of an
20 expatriation date occurring in any calendar
21 year after 2004, the \$600,000 amount
22 under subparagraph (A) shall be increased
23 by an amount equal to—

24 “(I) such dollar amount, multi-
25 plied by

1 “(II) the cost-of-living adjust-
2 ment determined under section 1(f)(3)
3 for such calendar year, determined by
4 substituting ‘calendar year 2003’ for
5 ‘calendar year 1992’ in subparagraph
6 (B) thereof.

7 “(ii) ROUNDING RULES.—If any
8 amount after adjustment under clause (i)
9 is not a multiple of \$1,000, such amount
10 shall be rounded to the next lower multiple
11 of \$1,000.

12 “(4) ELECTION TO CONTINUE TO BE TAXED AS
13 UNITED STATES CITIZEN.—

14 “(A) IN GENERAL.—If a covered expatriate
15 elects the application of this paragraph—

16 “(i) this section (other than this para-
17 graph and subsection (i)) shall not apply to
18 the expatriate, but

19 “(ii) in the case of property to which
20 this section would apply but for such elec-
21 tion, the expatriate shall be subject to tax
22 under this title in the same manner as if
23 the individual were a United States citizen.

1 “(B) REQUIREMENTS.—Subparagraph (A)
2 shall not apply to an individual unless the
3 individual—

4 “(i) provides security for payment of
5 tax in such form and manner, and in such
6 amount, as the Secretary may require,

7 “(ii) consents to the waiver of any
8 right of the individual under any treaty of
9 the United States which would preclude as-
10 sessment or collection of any tax which
11 may be imposed by reason of this para-
12 graph, and

13 “(iii) complies with such other re-
14 quirements as the Secretary may prescribe.

15 “(C) ELECTION.—An election under sub-
16 paragraph (A) shall apply to all property to
17 which this section would apply but for the elec-
18 tion and, once made, shall be irrevocable. Such
19 election shall also apply to property the basis of
20 which is determined in whole or in part by ref-
21 erence to the property with respect to which the
22 election was made.

23 “(b) ELECTION TO DEFER TAX.—

24 “(1) IN GENERAL.—If the taxpayer elects the
25 application of this subsection with respect to any

1 property treated as sold by reason of subsection (a),
2 the payment of the additional tax attributable to
3 such property shall be postponed until the due date
4 of the return for the taxable year in which such
5 property is disposed of (or, in the case of property
6 disposed of in a transaction in which gain is not rec-
7 ognized in whole or in part, until such other date as
8 the Secretary may prescribe).

9 “(2) DETERMINATION OF TAX WITH RESPECT
10 TO PROPERTY.—For purposes of paragraph (1), the
11 additional tax attributable to any property is an
12 amount which bears the same ratio to the additional
13 tax imposed by this chapter for the taxable year
14 solely by reason of subsection (a) as the gain taken
15 into account under subsection (a) with respect to
16 such property bears to the total gain taken into ac-
17 count under subsection (a) with respect to all prop-
18 erty to which subsection (a) applies.

19 “(3) TERMINATION OF POSTPONEMENT.—No
20 tax may be postponed under this subsection later
21 than the due date for the return of tax imposed by
22 this chapter for the taxable year which includes the
23 date of death of the expatriate (or, if earlier, the
24 time that the security provided with respect to the
25 property fails to meet the requirements of paragraph

1 (4), unless the taxpayer corrects such failure within
2 the time specified by the Secretary).

3 “(4) SECURITY.—

4 “(A) IN GENERAL.—No election may be
5 made under paragraph (1) with respect to any
6 property unless adequate security is provided to
7 the Secretary with respect to such property.

8 “(B) ADEQUATE SECURITY.—For purposes
9 of subparagraph (A), security with respect to
10 any property shall be treated as adequate secu-
11 rity if—

12 “(i) it is a bond in an amount equal
13 to the deferred tax amount under para-
14 graph (2) for the property, or

15 “(ii) the taxpayer otherwise estab-
16 lishes to the satisfaction of the Secretary
17 that the security is adequate.

18 “(5) WAIVER OF CERTAIN RIGHTS.—No elec-
19 tion may be made under paragraph (1) unless the
20 taxpayer consents to the waiver of any right under
21 any treaty of the United States which would pre-
22 clude assessment or collection of any tax imposed by
23 reason of this section.

24 “(6) ELECTIONS.—An election under paragraph
25 (1) shall only apply to property described in the elec-

1 tion and, once made, is irrevocable. An election may
2 be made under paragraph (1) with respect to an in-
3 terest in a trust with respect to which gain is re-
4 quired to be recognized under subsection (f)(1).

5 “(7) INTEREST.—For purposes of section
6 6601—

7 “(A) the last date for the payment of tax
8 shall be determined without regard to the elec-
9 tion under this subsection, and

10 “(B) section 6621(a)(2) shall be applied by
11 substituting ‘5 percentage points’ for ‘3 per-
12 centage points’ in subparagraph (B) thereof.

13 “(c) COVERED EXPATRIATE.—For purposes of this
14 section—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), the term ‘covered expatriate’ means an
17 expatriate.

18 “(2) EXCEPTIONS.—An individual shall not be
19 treated as a covered expatriate if—

20 “(A) the individual—

21 “(i) became at birth a citizen of the
22 United States and a citizen of another
23 country and, as of the expatriation date,
24 continues to be a citizen of, and is taxed
25 as a resident of, such other country, and

1 “(ii) has not been a resident of the
2 United States (as defined in section
3 7701(b)(1)(A)(ii)) during the 5 taxable
4 years ending with the taxable year during
5 which the expatriation date occurs, or

6 “(B)(i) the individual’s relinquishment of
7 United States citizenship occurs before such in-
8 dividual attains age 18½, and

9 “(ii) the individual has been a resident of
10 the United States (as so defined) for not more
11 than 5 taxable years before the date of relin-
12 quishment.

13 “(d) EXEMPT PROPERTY; SPECIAL RULES FOR PEN-
14 SION PLANS.—

15 “(1) EXEMPT PROPERTY.—This section shall
16 not apply to the following:

17 “(A) UNITED STATES REAL PROPERTY IN-
18 TERESTS.—Any United States real property in-
19 terest (as defined in section 897(c)(1)), other
20 than stock of a United States real property
21 holding corporation which does not, on the day
22 before the expatriation date, meet the require-
23 ments of section 897(c)(2).

24 “(B) SPECIFIED PROPERTY.—Any prop-
25 erty or interest in property not described in

1 subparagraph (A) which the Secretary specifies
2 in regulations.

3 “(2) SPECIAL RULES FOR CERTAIN RETIRE-
4 MENT PLANS.—

5 “(A) IN GENERAL.—If a covered expatriate
6 holds on the day before the expatriation date
7 any interest in a retirement plan to which this
8 paragraph applies—

9 “(i) such interest shall not be treated
10 as sold for purposes of subsection (a)(1),
11 but

12 “(ii) an amount equal to the present
13 value of the expatriate’s nonforfeitable ac-
14 crued benefit shall be treated as having
15 been received by such individual on such
16 date as a distribution under the plan.

17 “(B) TREATMENT OF SUBSEQUENT DIS-
18 TRIBUTIONS.—In the case of any distribution
19 on or after the expatriation date to or on behalf
20 of the covered expatriate from a plan from
21 which the expatriate was treated as receiving a
22 distribution under subparagraph (A), the
23 amount otherwise includible in gross income by
24 reason of the subsequent distribution shall be
25 reduced by the excess of the amount includible

1 in gross income under subparagraph (A) over
2 any portion of such amount to which this sub-
3 paragraph previously applied.

4 “(C) TREATMENT OF SUBSEQUENT DIS-
5 TRIBUTIONS BY PLAN.—For purposes of this
6 title, a retirement plan to which this paragraph
7 applies, and any person acting on the plan’s be-
8 half, shall treat any subsequent distribution de-
9 scribed in subparagraph (B) in the same man-
10 ner as such distribution would be treated with-
11 out regard to this paragraph.

12 “(D) APPLICABLE PLANS.—This para-
13 graph shall apply to—

14 “(i) any qualified retirement plan (as
15 defined in section 4974(c)),

16 “(ii) an eligible deferred compensation
17 plan (as defined in section 457(b)) of an
18 eligible employer described in section
19 457(e)(1)(A), and

20 “(iii) to the extent provided in regula-
21 tions, any foreign pension plan or similar
22 retirement arrangements or programs.

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

24 “(1) EXPATRIATE.—The term ‘expatriate’
25 means—

1 “(A) any United States citizen who relin-
2 quishes citizenship, and

3 “(B) any long-term resident of the United
4 States who—

5 “(i) ceases to be a lawful permanent
6 resident of the United States (within the
7 meaning of section 7701(b)(6)), or

8 “(ii) commences to be treated as a
9 resident of a foreign country under the
10 provisions of a tax treaty between the
11 United States and the foreign country and
12 who does not waive the benefits of such
13 treaty applicable to residents of the foreign
14 country.

15 “(2) EXPATRIATION DATE.—The term ‘expa-
16 triation date’ means—

17 “(A) the date an individual relinquishes
18 United States citizenship, or

19 “(B) in the case of a long-term resident of
20 the United States, the date of the event de-
21 scribed in clause (i) or (ii) of paragraph (1)(B).

22 “(3) RELINQUISHMENT OF CITIZENSHIP.—A
23 citizen shall be treated as relinquishing United
24 States citizenship on the earliest of—

1 “(A) the date the individual renounces
2 such individual’s United States nationality be-
3 fore a diplomatic or consular officer of the
4 United States pursuant to paragraph (5) of sec-
5 tion 349(a) of the Immigration and Nationality
6 Act (8 U.S.C. 1481(a)(5)),

7 “(B) the date the individual furnishes to
8 the United States Department of State a signed
9 statement of voluntary relinquishment of
10 United States nationality confirming the per-
11 formance of an act of expatriation specified in
12 paragraph (1), (2), (3), or (4) of section 349(a)
13 of the Immigration and Nationality Act (8
14 U.S.C. 1481(a)(1)–(4)),

15 “(C) the date the United States Depart-
16 ment of State issues to the individual a certifi-
17 cate of loss of nationality, or

18 “(D) the date a court of the United States
19 cancels a naturalized citizen’s certificate of nat-
20 uralization.

21 Subparagraph (A) or (B) shall not apply to any indi-
22 vidual unless the renunciation or voluntary relin-
23 quishment is subsequently approved by the issuance
24 to the individual of a certificate of loss of nationality
25 by the United States Department of State.

1 “(4) LONG-TERM RESIDENT.—The term ‘long-
2 term resident’ has the meaning given to such term
3 by section 877(e)(2).

4 “(f) SPECIAL RULES APPLICABLE TO BENE-
5 FICIARIES’ INTERESTS IN TRUST.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), if an individual is determined under para-
8 graph (3) to hold an interest in a trust on the day
9 before the expatriation date—

10 “(A) the individual shall not be treated as
11 having sold such interest,

12 “(B) such interest shall be treated as a
13 separate share in the trust, and

14 “(C)(i) such separate share shall be treat-
15 ed as a separate trust consisting of the assets
16 allocable to such share,

17 “(ii) the separate trust shall be treated as
18 having sold its assets on the day before the ex-
19 patriation date for their fair market value and
20 as having distributed all of its assets to the in-
21 dividual as of such time, and

22 “(iii) the individual shall be treated as hav-
23 ing recontributed the assets to the separate
24 trust.

1 Subsection (a)(2) shall apply to any income, gain, or
2 loss of the individual arising from a distribution de-
3 scribed in subparagraph (C)(ii). In determining the
4 amount of such distribution, proper adjustments
5 shall be made for liabilities of the trust allocable to
6 an individual's share in the trust.

7 “(2) SPECIAL RULES FOR INTERESTS IN QUALI-
8 FIED TRUSTS.—

9 “(A) IN GENERAL.—If the trust interest
10 described in paragraph (1) is an interest in a
11 qualified trust—

12 “(i) paragraph (1) and subsection (a)
13 shall not apply, and

14 “(ii) in addition to any other tax im-
15 posed by this title, there is hereby imposed
16 on each distribution with respect to such
17 interest a tax in the amount determined
18 under subparagraph (B).

19 “(B) AMOUNT OF TAX.—The amount of
20 tax under subparagraph (A)(ii) shall be equal to
21 the lesser of—

22 “(i) the highest rate of tax imposed by
23 section 1(e) for the taxable year which in-
24 cludes the day before the expatriation date,

1 multiplied by the amount of the distribu-
2 tion, or

3 “(ii) the balance in the deferred tax
4 account immediately before the distribution
5 determined without regard to any increases
6 under subparagraph (C)(ii) after the 30th
7 day preceding the distribution.

8 “(C) DEFERRED TAX ACCOUNT.—For pur-
9 poses of subparagraph (B)(ii)—

10 “(i) OPENING BALANCE.—The open-
11 ing balance in a deferred tax account with
12 respect to any trust interest is an amount
13 equal to the tax which would have been im-
14 posed on the allocable expatriation gain
15 with respect to the trust interest if such
16 gain had been included in gross income
17 under subsection (a).

18 “(ii) INCREASE FOR INTEREST.—The
19 balance in the deferred tax account shall
20 be increased by the amount of interest de-
21 termined (on the balance in the account at
22 the time the interest accrues), for periods
23 after the 90th day after the expatriation
24 date, by using the rates and method appli-
25 cable under section 6621 for underpay-

1 ments of tax for such periods, except that
2 section 6621(a)(2) shall be applied by sub-
3 stituting ‘5 percentage points’ for ‘3 per-
4 centage points’ in subparagraph (B) there-
5 of.

6 “(iii) DECREASE FOR TAXES PRE-
7 VIOUSLY PAID.—The balance in the tax de-
8 ferred account shall be reduced—

9 “(I) by the amount of taxes im-
10 posed by subparagraph (A) on any
11 distribution to the person holding the
12 trust interest, and

13 “(II) in the case of a person
14 holding a nonvested interest, to the
15 extent provided in regulations, by the
16 amount of taxes imposed by subpara-
17 graph (A) on distributions from the
18 trust with respect to nonvested inter-
19 ests not held by such person.

20 “(D) ALLOCABLE EXPATRIATION GAIN.—
21 For purposes of this paragraph, the allocable
22 expatriation gain with respect to any bene-
23 ficiary’s interest in a trust is the amount of
24 gain which would be allocable to such bene-
25 ficiary’s vested and nonvested interests in the

1 trust if the beneficiary held directly all assets
2 allocable to such interests.

3 “(E) TAX DEDUCTED AND WITHHELD.—

4 “(i) IN GENERAL.—The tax imposed
5 by subparagraph (A)(ii) shall be deducted
6 and withheld by the trustees from the dis-
7 tribution to which it relates.

8 “(ii) EXCEPTION WHERE FAILURE TO
9 WAIVE TREATY RIGHTS.—If an amount
10 may not be deducted and withheld under
11 clause (i) by reason of the distributee fail-
12 ing to waive any treaty right with respect
13 to such distribution—

14 “(I) the tax imposed by subpara-
15 graph (A)(ii) shall be imposed on the
16 trust and each trustee shall be person-
17 ally liable for the amount of such tax,
18 and

19 “(II) any other beneficiary of the
20 trust shall be entitled to recover from
21 the distributee the amount of such tax
22 imposed on the other beneficiary.

23 “(F) DISPOSITION.—If a trust ceases to be
24 a qualified trust at any time, a covered expa-
25 triate disposes of an interest in a qualified

1 trust, or a covered expatriate holding an inter-
2 est in a qualified trust dies, then, in lieu of the
3 tax imposed by subparagraph (A)(ii), there is
4 hereby imposed a tax equal to the lesser of—

5 “(i) the tax determined under para-
6 graph (1) as if the day before the expatria-
7 tion date were the date of such cessation,
8 disposition, or death, whichever is applica-
9 ble, or

10 “(ii) the balance in the tax deferred
11 account immediately before such date.

12 Such tax shall be imposed on the trust and
13 each trustee shall be personally liable for the
14 amount of such tax and any other beneficiary
15 of the trust shall be entitled to recover from the
16 covered expatriate or the estate the amount of
17 such tax imposed on the other beneficiary.

18 “(G) DEFINITIONS AND SPECIAL RULES.—

19 For purposes of this paragraph—

20 “(i) QUALIFIED TRUST.—The term
21 ‘qualified trust’ means a trust which is de-
22 scribed in section 7701(a)(30)(E).

23 “(ii) VESTED INTEREST.—The term
24 ‘vested interest’ means any interest which,

1 as of the day before the expatriation date,
2 is vested in the beneficiary.

3 “(iii) NONVESTED INTEREST.—The
4 term ‘nonvested interest’ means, with re-
5 spect to any beneficiary, any interest in a
6 trust which is not a vested interest. Such
7 interest shall be determined by assuming
8 the maximum exercise of discretion in
9 favor of the beneficiary and the occurrence
10 of all contingencies in favor of the bene-
11 ficiary.

12 “(iv) ADJUSTMENTS.—The Secretary
13 may provide for such adjustments to the
14 bases of assets in a trust or a deferred tax
15 account, and the timing of such adjust-
16 ments, in order to ensure that gain is
17 taxed only once.

18 “(v) COORDINATION WITH RETIRE-
19 MENT PLAN RULES.—This subsection shall
20 not apply to an interest in a trust which
21 is part of a retirement plan to which sub-
22 section (d)(2) applies.

23 “(3) DETERMINATION OF BENEFICIARIES’ IN-
24 TEREST IN TRUST.—

1 “(A) DETERMINATIONS UNDER PARA-
2 GRAPH (1).—For purposes of paragraph (1), a
3 beneficiary’s interest in a trust shall be based
4 upon all relevant facts and circumstances, in-
5 cluding the terms of the trust instrument and
6 any letter of wishes or similar document, histor-
7 ical patterns of trust distributions, and the ex-
8 istence of and functions performed by a trust
9 protector or any similar adviser.

10 “(B) OTHER DETERMINATIONS.—For pur-
11 poses of this section—

12 “(i) CONSTRUCTIVE OWNERSHIP.—If
13 a beneficiary of a trust is a corporation,
14 partnership, trust, or estate, the share-
15 holders, partners, or beneficiaries shall be
16 deemed to be the trust beneficiaries for
17 purposes of this section.

18 “(ii) TAXPAYER RETURN POSITION.—
19 A taxpayer shall clearly indicate on its in-
20 come tax return—

21 “(I) the methodology used to de-
22 termine that taxpayer’s trust interest
23 under this section, and

24 “(II) if the taxpayer knows (or
25 has reason to know) that any other

1 beneficiary of such trust is using a
2 different methodology to determine
3 such beneficiary's trust interest under
4 this section.

5 “(g) TERMINATION OF DEFERRALS, ETC.—In the
6 case of any covered expatriate, notwithstanding any other
7 provision of this title—

8 “(1) any period during which recognition of in-
9 come or gain is deferred shall terminate on the day
10 before the expatriation date, and

11 “(2) any extension of time for payment of tax
12 shall cease to apply on the day before the expatria-
13 tion date and the unpaid portion of such tax shall
14 be due and payable at the time and in the manner
15 prescribed by the Secretary.

16 “(h) IMPOSITION OF TENTATIVE TAX.—

17 “(1) IN GENERAL.—If an individual is required
18 to include any amount in gross income under sub-
19 section (a) for any taxable year, there is hereby im-
20 posed, immediately before the expatriation date, a
21 tax in an amount equal to the amount of tax which
22 would be imposed if the taxable year were a short
23 taxable year ending on the expatriation date.

1 “(2) DUE DATE.—The due date for any tax im-
2 posed by paragraph (1) shall be the 90th day after
3 the expatriation date.

4 “(3) TREATMENT OF TAX.—Any tax paid under
5 paragraph (1) shall be treated as a payment of the
6 tax imposed by this chapter for the taxable year to
7 which subsection (a) applies.

8 “(4) DEFERRAL OF TAX.—The provisions of
9 subsection (b) shall apply to the tax imposed by this
10 subsection to the extent attributable to gain includ-
11 ible in gross income by reason of this section.

12 “(i) SPECIAL LIENS FOR DEFERRED TAX
13 AMOUNTS.—

14 “(1) IMPOSITION OF LIEN.—

15 “(A) IN GENERAL.—If a covered expatriate
16 makes an election under subsection (a)(4) or
17 (b) which results in the deferral of any tax im-
18 posed by reason of subsection (a), the deferred
19 amount (including any interest, additional
20 amount, addition to tax, assessable penalty, and
21 costs attributable to the deferred amount) shall
22 be a lien in favor of the United States on all
23 property of the expatriate located in the United
24 States (without regard to whether this section
25 applies to the property).

1 “(B) DEFERRED AMOUNT.—For purposes
2 of this subsection, the deferred amount is the
3 amount of the increase in the covered expatri-
4 ate’s income tax which, but for the election
5 under subsection (a)(4) or (b), would have oc-
6 curred by reason of this section for the taxable
7 year including the expatriation date.

8 “(2) PERIOD OF LIEN.—The lien imposed by
9 this subsection shall arise on the expatriation date
10 and continue until—

11 “(A) the liability for tax by reason of this
12 section is satisfied or has become unenforceable
13 by reason of lapse of time, or

14 “(B) it is established to the satisfaction of
15 the Secretary that no further tax liability may
16 arise by reason of this section.

17 “(3) CERTAIN RULES APPLY.—The rules set
18 forth in paragraphs (1), (3), and (4) of section
19 6324A(d) shall apply with respect to the lien im-
20 posed by this subsection as if it were a lien imposed
21 by section 6324A.

22 “(j) REGULATIONS.—The Secretary shall prescribe
23 such regulations as may be necessary or appropriate to
24 carry out the purposes of this section.”.

1 (b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS
2 RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS
3 FROM EXPATRIATES.—Section 102 (relating to gifts, etc.
4 not included in gross income) is amended by adding at
5 the end the following new subsection:

6 “(d) GIFTS AND INHERITANCES FROM COVERED EX-
7 PATRIATES.—

8 “(1) IN GENERAL.—Subsection (a) shall not ex-
9 clude from gross income the value of any property
10 acquired by gift, bequest, devise, or inheritance from
11 a covered expatriate after the expatriation date. For
12 purposes of this subsection, any term used in this
13 subsection which is also used in section 877A shall
14 have the same meaning as when used in section
15 877A.

16 “(2) EXCEPTIONS FOR TRANSFERS OTHERWISE
17 SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1)
18 shall not apply to any property if either—

19 “(A) the gift, bequest, devise, or inherit-
20 ance is—

21 “(i) shown on a timely filed return of
22 tax imposed by chapter 12 as a taxable gift
23 by the covered expatriate, or

24 “(ii) included in the gross estate of
25 the covered expatriate for purposes of

1 chapter 11 and shown on a timely filed re-
2 turn of tax imposed by chapter 11 of the
3 estate of the covered expatriate, or

4 “(B) no such return was timely filed but
5 no such return would have been required to be
6 filed even if the covered expatriate were a cit-
7 izen or long-term resident of the United
8 States.”.

9 (c) DEFINITION OF TERMINATION OF UNITED
10 STATES CITIZENSHIP.—Section 7701(a) is amended by
11 adding at the end the following new paragraph:

12 “(48) TERMINATION OF UNITED STATES CITI-
13 ZENSHIP.—

14 “(A) IN GENERAL.—An individual shall
15 not cease to be treated as a United States cit-
16 izen before the date on which the individual’s
17 citizenship is treated as relinquished under sec-
18 tion 877A(e)(3).

19 “(B) DUAL CITIZENS.—Under regulations
20 prescribed by the Secretary, subparagraph (A)
21 shall not apply to an individual who became at
22 birth a citizen of the United States and a cit-
23 izen of another country.”.

24 (d) INELIGIBILITY FOR VISA OR ADMISSION TO
25 UNITED STATES.—

1 (1) IN GENERAL.—Section 212(a)(10)(E) of the
2 Immigration and Nationality Act (8 U.S.C.
3 1182(a)(10)(E)) is amended to read as follows:

4 “(E) FORMER CITIZENS NOT IN COMPLI-
5 ANCE WITH EXPATRIATION REVENUE PROVI-
6 SIONS.—Any alien who is a former citizen of
7 the United States who relinquishes United
8 States citizenship (within the meaning of sec-
9 tion 877A(e)(3) of the Internal Revenue Code
10 of 1986) and who is not in compliance with sec-
11 tion 877A of such Code (relating to expatria-
12 tion).”.

13 (2) AVAILABILITY OF INFORMATION.—

14 (A) IN GENERAL.—Section 6103(l) (relat-
15 ing to disclosure of returns and return informa-
16 tion for purposes other than tax administration)
17 is amended by adding at the end the following
18 new paragraph:

19 “(19) DISCLOSURE TO DENY VISA OR ADMIS-
20 SION TO CERTAIN EXPATRIATES.—Upon written re-
21 quest of the Attorney General or the Attorney Gen-
22 eral’s delegate, the Secretary shall disclose whether
23 an individual is in compliance with section 877A
24 (and if not in compliance, any items of noncompli-
25 ance) to officers and employees of the Federal agen-

1 cy responsible for administering section
2 212(a)(10)(E) of the Immigration and Nationality
3 Act solely for the purpose of, and to the extent nec-
4 essary in, administering such section
5 212(a)(10)(E).”.

6 (B) SAFEGUARDS.—

7 (i) TECHNICAL AMENDMENTS.—Para-
8 graph (4) of section 6103(p) of the Inter-
9 nal Revenue Code of 1986, as amended by
10 section 202(b)(2)(B) of the Trade Act of
11 2002 (Public Law 107–210; 116 Stat.
12 961), is amended by striking “or (17)”
13 after “any other person described in sub-
14 section (l)(16)” each place it appears and
15 inserting “or (18)”.

16 (ii) CONFORMING AMENDMENTS.—
17 Section 6103(p)(4) (relating to safe-
18 guards), as amended by clause (i), is
19 amended by striking “or (18)” after “any
20 other person described in subsection
21 (l)(16)” each place it appears and insert-
22 ing “(18), or (19)”.

23 (3) EFFECTIVE DATES.—

24 (A) IN GENERAL.—Except as provided in
25 subparagraph (B), the amendments made by

1 this subsection shall apply to individuals who
2 relinquish United States citizenship on or after
3 the date of the enactment of this Act.

4 (B) TECHNICAL AMENDMENTS.—The
5 amendments made by paragraph (2)(B)(i) shall
6 take effect as if included in the amendments
7 made by section 202(b)(2)(B) of the Trade Act
8 of 2002 (Public Law 107–210; 116 Stat. 961).

9 (e) CONFORMING AMENDMENTS.—

10 (1) Section 877 is amended by adding at the
11 end the following new subsection:

12 “(g) APPLICATION.—This section shall not apply to
13 an expatriate (as defined in section 877A(e)) whose expa-
14 triation date (as so defined) occurs on or after January
15 1, 2004.”.

16 (2) Section 2107 is amended by adding at the
17 end the following new subsection:

18 “(f) APPLICATION.—This section shall not apply to
19 any expatriate subject to section 877A.”.

20 (3) Section 2501(a)(3) is amended by adding at
21 the end the following new subparagraph:

22 “(F) APPLICATION.—This paragraph shall
23 not apply to any expatriate subject to section
24 877A.”.

1 (4)(A) Paragraph (1) of section 6039G(d) is
2 amended by inserting “or 877A” after “section
3 877”.

4 (B) The second sentence of section 6039G(e) is
5 amended by inserting “or who relinquishes United
6 States citizenship (within the meaning of section
7 877A(e)(3))” after “877(a)”.

8 (C) Section 6039G(f) is amended by inserting
9 “or 877A(e)(2)(B)” after “877(e)(1)”.

10 (f) CLERICAL AMENDMENT.—The table of sections
11 for subpart A of part II of subchapter N of chapter 1
12 is amended by inserting after the item relating to section
13 877 the following new item:

 “Sec. 877A. Tax responsibilities of expatriation.”.

14 (g) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as provided in this
16 subsection, the amendments made by this section
17 shall apply to expatriates (within the meaning of
18 section 877A(e) of the Internal Revenue Code of
19 1986, as added by this section) whose expatriation
20 date (as so defined) occurs on or after January 1,
21 2004.

22 (2) GIFTS AND BEQUESTS.—Section 102(d) of
23 the Internal Revenue Code of 1986 (as added by
24 subsection (b)) shall apply to gifts and bequests re-
25 ceived on or after January 1, 2004, from an indi-

1 vidual or the estate of an individual whose expatria-
2 tion date (as so defined) occurs after such date.

3 (3) DUE DATE FOR TENTATIVE TAX.—The due
4 date under section 877A(h)(2) of the Internal Rev-
5 enue Code of 1986, as added by this section, shall
6 in no event occur before the 90th day after the date
7 of the enactment of this Act.

8 **SEC. 443. EXCISE TAX ON STOCK COMPENSATION OF INSID-**
9 **ERS IN INVERTED CORPORATIONS.**

10 (a) IN GENERAL.—Subtitle D is amended by adding
11 at the end the following new chapter:

12 **“CHAPTER 48—STOCK COMPENSATION OF**
13 **INSIDERS IN INVERTED CORPORATIONS**

 “Sec. 5000A. Stock compensation of insiders in inverted corpora-
 tions entities.

14 **“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN IN-**
15 **VERTED CORPORATIONS.**

16 “(a) IMPOSITION OF TAX.—In the case of an indi-
17 vidual who is a disqualified individual with respect to any
18 inverted corporation, there is hereby imposed on such per-
19 son a tax equal to 20 percent of the value (determined
20 under subsection (b)) of the specified stock compensation
21 held (directly or indirectly) by or for the benefit of such
22 individual or a member of such individual’s family (as de-
23 fined in section 267) at any time during the 12-month

1 period beginning on the date which is 6 months before
2 the inversion date.

3 “(b) VALUE.—For purposes of subsection (a)—

4 “(1) IN GENERAL.—The value of specified stock
5 compensation shall be—

6 “(A) in the case of a stock option (or other
7 similar right) or any stock appreciation right,
8 the fair value of such option or right, and

9 “(B) in any other case, the fair market
10 value of such compensation.

11 “(2) DATE FOR DETERMINING VALUE.—The
12 determination of value shall be made—

13 “(A) in the case of specified stock com-
14 pensation held on the inversion date, on such
15 date,

16 “(B) in the case of such compensation
17 which is canceled during the 6 months before
18 the inversion date, on the day before such can-
19 cellation, and

20 “(C) in the case of such compensation
21 which is granted after the inversion date, on the
22 date such compensation is granted.

23 “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN
24 RECOGNIZED.—Subsection (a) shall apply to any disquali-
25 fied individual with respect to an inverted corporation only

1 if gain (if any) on any stock in such corporation is recog-
2 nized in whole or part by any shareholder by reason of
3 the acquisition referred to in section 7874(a)(2)(A) (deter-
4 mined by substituting ‘July 10, 2002’ for ‘March 20,
5 2002’) with respect to such corporation.

6 “(d) EXCEPTION WHERE GAIN RECOGNIZED ON
7 COMPENSATION.—Subsection (a) shall not apply to—

8 “(1) any stock option which is exercised on the
9 inversion date or during the 6-month period before
10 such date and to the stock acquired in such exercise,
11 if income is recognized under section 83 on or before
12 the inversion date with respect to the stock acquired
13 pursuant to such exercise, and

14 “(2) any specified stock compensation which is
15 exercised, sold, exchanged, distributed, cashed out,
16 or otherwise paid during such period in a trans-
17 action in which gain or loss is recognized in full.

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

19 “(1) DISQUALIFIED INDIVIDUAL.—The term
20 ‘disqualified individual’ means, with respect to a cor-
21 poration, any individual who, at any time during the
22 12-month period beginning on the date which is 6
23 months before the inversion date—

1 “(A) is subject to the requirements of sec-
2 tion 16(a) of the Securities Exchange Act of
3 1934 with respect to such corporation, or

4 “(B) would be subject to such require-
5 ments if such corporation were an issuer of eq-
6 uity securities referred to in such section.

7 “(2) INVERTED CORPORATION; INVERSION
8 DATE.—

9 “(A) INVERTED CORPORATION.—The term
10 ‘inverted corporation’ means any corporation to
11 which subsection (a) or (b) of section 7874 ap-
12 plies determined—

13 “(i) by substituting ‘July 10, 2002’
14 for ‘March 20, 2002’ in section
15 7874(a)(2)(A), and

16 “(ii) without regard to subsection
17 (b)(1)(A).

18 Such term includes any predecessor or suc-
19 cessor of such a corporation.

20 “(B) INVERSION DATE.—The term ‘inver-
21 sion date’ means, with respect to a corporation,
22 the date on which the corporation first becomes
23 an inverted corporation.

24 “(3) SPECIFIED STOCK COMPENSATION.—

1 “(A) IN GENERAL.—The term ‘specified
2 stock compensation’ means payment (or right
3 to payment) granted by the inverted corpora-
4 tion (or by any member of the expanded affili-
5 ated group which includes such corporation) to
6 any person in connection with the performance
7 of services by a disqualified individual for such
8 corporation or member if the value of such pay-
9 ment or right is based on (or determined by ref-
10 erence to) the value (or change in value) of
11 stock in such corporation (or any such mem-
12 ber).

13 “(B) EXCEPTIONS.—Such term shall not
14 include—

15 “(i) any option to which part II of
16 subchapter D of chapter 1 applies, or

17 “(ii) any payment or right to payment
18 from a plan referred to in section
19 280G(b)(6).

20 “(4) EXPANDED AFFILIATED GROUP.—The
21 term ‘expanded affiliated group’ means an affiliated
22 group (as defined in section 1504(a) without regard
23 to section 1504(b)(3)); except that section 1504(a)
24 shall be applied by substituting ‘more than 50 per-
25 cent’ for ‘at least 80 percent’ each place it appears.

1 “(f) SPECIAL RULES.—For purposes of this
2 section—

3 “(1) CANCELLATION OF RESTRICTION.—The
4 cancellation of a restriction which by its terms will
5 never lapse shall be treated as a grant.

6 “(2) PAYMENT OR REIMBURSEMENT OF TAX BY
7 CORPORATION TREATED AS SPECIFIED STOCK COM-
8 PENSATION.—Any payment of the tax imposed by
9 this section directly or indirectly by the inverted cor-
10 poration or by any member of the expanded affili-
11 ated group which includes such corporation—

12 “(A) shall be treated as specified stock
13 compensation, and

14 “(B) shall not be allowed as a deduction
15 under any provision of chapter 1.

16 “(3) CERTAIN RESTRICTIONS IGNORED.—
17 Whether there is specified stock compensation, and
18 the value thereof, shall be determined without regard
19 to any restriction other than a restriction which by
20 its terms will never lapse.

21 “(4) PROPERTY TRANSFERS.—Any transfer of
22 property shall be treated as a payment and any right
23 to a transfer of property shall be treated as a right
24 to a payment.

1 “(5) OTHER ADMINISTRATIVE PROVISIONS.—
2 For purposes of subtitle F, any tax imposed by this
3 section shall be treated as a tax imposed by subtitle
4 A.

5 “(g) REGULATIONS.—The Secretary shall prescribe
6 such regulations as may be necessary or appropriate to
7 carry out the purposes of this section.”.

8 (b) DENIAL OF DEDUCTION.—

9 (1) IN GENERAL.—Paragraph (6) of section
10 275(a) is amended by inserting “48,” after “46,”.

11 (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-
12 PENSATION REDUCED BY PAYMENT OF EXCISE TAX
13 ON SPECIFIED STOCK COMPENSATION.—Paragraph
14 (4) of section 162(m) is amended by adding at the
15 end the following new subparagraph:

16 “(G) COORDINATION WITH EXCISE TAX ON
17 SPECIFIED STOCK COMPENSATION.—The dollar
18 limitation contained in paragraph (1) with re-
19 spect to any covered employee shall be reduced
20 (but not below zero) by the amount of any pay-
21 ment (with respect to such employee) of the tax
22 imposed by section 5000A directly or indirectly
23 by the inverted corporation (as defined in such
24 section) or by any member of the expanded af-

1 filiated group (as defined in such section) which
2 includes such corporation.”.

3 (c) CONFORMING AMENDMENTS.—

4 (1) The last sentence of section 3121(v)(2)(A)
5 is amended by inserting before the period “or to any
6 specified stock compensation (as defined in section
7 5000A) on which tax is imposed by section 5000A”.

8 (2) The table of chapters for subtitle D is
9 amended by adding at the end the following new
10 item:

“Chapter 48. Stock compensation of insiders in inverted corpora-
tions.”.

11 (d) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on July 11, 2002; except that
13 periods before such date shall not be taken into account
14 in applying the periods in subsections (a) and (e)(1) of
15 section 5000A of the Internal Revenue Code of 1986, as
16 added by this section.

17 **SEC. 444. REINSURANCE OF UNITED STATES RISKS IN FOR-**
18 **EIGN JURISDICTIONS.**

19 (a) IN GENERAL.—Section 845(a) (relating to alloca-
20 tion in case of reinsurance agreement involving tax avoid-
21 ance or evasion) is amended by striking “source and char-
22 acter” and inserting “amount, source, or character”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to any risk reinsured after April
3 11, 2002.

4 **SEC. 445. REPORTING OF TAXABLE MERGERS AND ACQUI-**
5 **TIONS.**

6 (a) IN GENERAL.—Subpart B of part III of sub-
7 chapter A of chapter 61 is amended by inserting after sec-
8 tion 6043 the following new section:

9 **“SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.**

10 “(a) IN GENERAL.—The acquiring corporation in any
11 taxable acquisition shall make a return (according to the
12 forms or regulations prescribed by the Secretary) setting
13 forth—

14 “(1) a description of the acquisition,

15 “(2) the name and address of each shareholder
16 of the acquired corporation who is required to recog-
17 nize gain (if any) as a result of the acquisition,

18 “(3) the amount of money and the fair market
19 value of other property transferred to each such
20 shareholder as part of such acquisition, and

21 “(4) such other information as the Secretary
22 may prescribe.

23 To the extent provided by the Secretary, the requirements
24 of this section applicable to the acquiring corporation shall

1 be applicable to the acquired corporation and not to the
2 acquiring corporation.

3 “(b) NOMINEE REPORTING.—Any person who holds
4 stock as a nominee for another person shall furnish in the
5 manner prescribed by the Secretary to such other person
6 the information provided by the corporation under sub-
7 section (d).

8 “(c) TAXABLE ACQUISITION.—For purposes of this
9 section, the term ‘taxable acquisition’ means any acquisi-
10 tion by a corporation of stock in or property of another
11 corporation if any shareholder of the acquired corporation
12 is required to recognize gain (if any) as a result of such
13 acquisition.

14 “(d) STATEMENTS TO BE FURNISHED TO SHARE-
15 HOLDERS.—Every person required to make a return under
16 subsection (a) shall furnish to each shareholder whose
17 name is required to be set forth in such return a written
18 statement showing—

19 “(1) the name, address, and phone number of
20 the information contact of the person required to
21 make such return,

22 “(2) the information required to be shown on
23 such return with respect to such shareholder, and

24 “(3) such other information as the Secretary
25 may prescribe.

1 The written statement required under the preceding sen-
2 tence shall be furnished to the shareholder on or before
3 January 31 of the year following the calendar year during
4 which the taxable acquisition occurred.”.

5 (b) ASSESSABLE PENALTIES.—

6 (1) Subparagraph (B) of section 6724(d)(1)
7 (relating to definitions) is amended by redesignating
8 clauses (ii) through (xvii) as clauses (iii) through
9 (xviii), respectively, and by inserting after clause (i)
10 the following new clause:

11 “(ii) section 6043A(a) (relating to re-
12 turns relating to taxable mergers and ac-
13 quisitions),”.

14 (2) Paragraph (2) of section 6724(d) is amend-
15 ed by redesignating subparagraphs (F) through
16 (AA) as subparagraphs (G) through (BB), respec-
17 tively, and by inserting after subparagraph (E) the
18 following new subparagraph:

19 “(F) subsections (b) and (d) of section
20 6043A (relating to returns relating to taxable
21 mergers and acquisitions).”.

22 (c) CLERICAL AMENDMENT.—The table of sections
23 for subpart B of part III of subchapter A of chapter 61
24 is amended by inserting after the item relating to section
25 6043 the following new item:

“Sec. 6043A. Returns relating to taxable mergers and acquisitions.”.

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

4 **Subtitle E—International Tax**

5 **SEC. 451. CLARIFICATION OF BANKING BUSINESS FOR PUR-** 6 **POSES OF DETERMINING INVESTMENT OF** 7 **EARNINGS IN UNITED STATES PROPERTY.**

8 (a) IN GENERAL.—Subparagraph (A) of section
9 956(c)(2) is amended to read as follows:

10 “(A) obligations of the United States,
11 money, or deposits with—

12 “(i) any bank (as defined by section
13 2(c) of the Bank Holding Company Act of
14 1956 (12 U.S.C. 1841(c)), without regard
15 to subparagraphs (C) and (G) of para-
16 graph (2) of such section), or

17 “(ii) any corporation not described in
18 clause (i) with respect to which a bank
19 holding company (as defined by section
20 2(a) of such Act) or financial holding com-
21 pany (as defined by section 2(p) of such
22 Act) owns directly or indirectly more than
23 80 percent by vote or value of the stock of
24 such corporation;”.

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

4 **SEC. 452. PROHIBITION ON NONRECOGNITION OF GAIN**
5 **THROUGH COMPLETE LIQUIDATION OF**
6 **HOLDING COMPANY.**

7 (a) IN GENERAL.—Section 332 is amended by adding
8 at the end the following new subsection:

9 “(d) RECOGNITION OF GAIN ON LIQUIDATION OF
10 CERTAIN HOLDING COMPANIES.—

11 “(1) IN GENERAL.—In the case of any distribu-
12 tion to a foreign corporation in complete liquidation
13 of an applicable holding company—

14 “(A) subsection (a) and section 331 shall
15 not apply to such distribution, and

16 “(B) such distribution shall be treated as
17 a distribution to which section 301 applies.

18 “(2) APPLICABLE HOLDING COMPANY.—For
19 purposes of this subsection—

20 “(A) IN GENERAL.—The term ‘applicable
21 holding company’ means any domestic
22 corporation—

23 “(i) which is a common parent of an
24 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. 453. PREVENTION OF MISMATCHING OF INTEREST**
8 **AND ORIGINAL ISSUE DISCOUNT DEDUC-**
9 **TIONS AND INCOME INCLUSIONS IN TRANS-**
10 **ACTIONS WITH RELATED FOREIGN PERSONS.**

11 (a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3)
12 (relating to special rule for original issue discount on obli-
13 gation held by related foreign person) is amended by re-
14 designating subparagraph (B) as subparagraph (C) and
15 by inserting after subparagraph (A) the following new sub-
16 paragraph:

17 “(B) SPECIAL RULE FOR CERTAIN FOR-
18 EIGN ENTITIES.—

19 “(i) IN GENERAL.—In the case of any
20 debt instrument having original issue dis-
21 count which is held by a related foreign
22 person which is a foreign personal holding
23 company (as defined in section 552), a
24 controlled foreign corporation (as defined
25 in section 957), or a passive foreign invest-

1 ment company (as defined in section
2 1297), a deduction shall be allowable to
3 the issuer with respect to such original
4 issue discount for any taxable year before
5 the taxable year in which paid only to the
6 extent such original issue discount (re-
7 duced by properly allowable deductions and
8 qualified deficits under section
9 952(c)(1)(B)) is includible during such
10 prior taxable year in the gross income of a
11 United States person who owns (within the
12 meaning of section 958(a)) stock in such
13 corporation.

14 “(ii) SECRETARIAL AUTHORITY.—The
15 Secretary may by regulation exempt trans-
16 actions from the application of clause (i),
17 including any transaction which is entered
18 into by a payor in the ordinary course of
19 a trade or business in which the payor is
20 predominantly engaged.”.

21 (b) INTEREST AND OTHER DEDUCTIBLE
22 AMOUNTS.—Section 267(a)(3) is amended—

23 (1) by striking “The Secretary” and inserting:
24 “(A) IN GENERAL.—The Secretary”, and

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

3 “(B) SPECIAL RULE FOR CERTAIN FOR-
4 EIGN ENTITIES.—

5 “(i) IN GENERAL.—Notwithstanding
6 subparagraph (A), in the case of any item
7 payable to a foreign personal holding com-
8 pany (as defined in section 552), a con-
9 trolled foreign corporation (as defined in
10 section 957), or a passive foreign invest-
11 ment company (as defined in section
12 1297), a deduction shall be allowable to
13 the payor with respect to such amount for
14 any taxable year before the taxable year in
15 which paid only to the extent that an
16 amount attributable to such item (reduced
17 by properly allowable deductions and quali-
18 fied deficits under section 952(c)(1)(B)) is
19 includible during such prior taxable year in
20 the gross income of a United States person
21 who owns (within the meaning of section
22 958(a)) stock in such corporation.

23 “(ii) SECRETARIAL AUTHORITY.—The
24 Secretary may by regulation exempt trans-
25 actions from the application of clause (i),

1 including any transaction which is entered
2 into by a payor in the ordinary course of
3 a trade or business in which the payor is
4 predominantly engaged and in which the
5 payment of the accrued amounts occurs
6 within 8½ months after accrual or within
7 such other period as the Secretary may
8 prescribe.”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to payments accrued on or after
11 the date of the enactment of this Act.

12 **SEC. 454. EFFECTIVELY CONNECTED INCOME TO INCLUDE**
13 **CERTAIN FOREIGN SOURCE INCOME.**

14 (a) IN GENERAL.—Section 864(c)(4)(B) (relating to
15 treatment of income from sources without the United
16 States as effectively connected income) is amended by add-
17 ing at the end the following new flush sentence:

18 “Any income or gain which is equivalent to any
19 item of income or gain described in clause (i),
20 (ii), or (iii) shall be treated in the same manner
21 as such item for purposes of this subpara-
22 graph.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to taxable years beginning after
25 the date of the enactment of this Act.

1 **SEC. 455. RECAPTURE OF OVERALL FOREIGN LOSSES ON**
2 **SALE OF CONTROLLED FOREIGN CORPORA-**
3 **TION.**

4 (a) IN GENERAL.—Section 904(f)(3) (relating to dis-
5 positions) is amending by adding at the end the following
6 new subparagraph:

7 “(D) APPLICATION TO CERTAIN DISPOSI-
8 TIONS OF STOCK IN CONTROLLED FOREIGN
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.

1 “(iii) EXCEPTION.—A disposition
2 shall not be treated as an applicable dis-
3 position under clause (ii) if it is part of a
4 transaction or series of transactions—

5 “(I) to which section 351 or 721
6 applies, or under which the transferor
7 receives stock in a foreign corporation
8 in exchange for the stock in the con-
9 trolled foreign corporation and the
10 stock received is exchanged basis
11 property (as defined in section
12 7701(a)(44)), and

13 “(II) immediately after which,
14 the transferor owns (by vote or value)
15 at least the same percentage of stock
16 in the controlled foreign corporation
17 (or, if the controlled foreign corpora-
18 tion is not in existence after such
19 transaction or series of transactions,
20 in another foreign corporation stock
21 in which was received by the trans-
22 feror in exchange for stock in the con-
23 trolled foreign corporation) as the per-
24 centage of stock in the controlled for-
25 eign corporation which the taxpayer

1 owned immediately before such trans-
2 action or series of transactions.

3 Clause (i) shall apply to any gain recog-
4 nized on any disposition to which this
5 clause applies.

6 “(iv) CONTROLLED FOREIGN COR-
7 PORATION.—For purposes of this subpara-
8 graph, the term ‘controlled foreign cor-
9 poration’ has the meaning given such term
10 by section 957.

11 “(v) STOCK OWNERSHIP.—For pur-
12 poses of this subparagraph, ownership of
13 stock shall be determined under the rules
14 of subsections (a) and (b) of section 958.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to dispositions after the date of
17 the enactment of this Act.

18 **SEC. 456. MINIMUM HOLDING PERIOD FOR FOREIGN TAX**
19 **CREDIT ON WITHHOLDING TAXES ON INCOME**
20 **OTHER THAN DIVIDENDS.**

21 (a) IN GENERAL.—Section 901 is amended by redess-
22 ignating subsection (l) as subsection (m) and by inserting
23 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 30-
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 **Subtitle F—Other Revenue**
5 **Provisions**

6 **PART I—FINANCIAL INSTRUMENTS**

7 **SEC. 461. TREATMENT OF STRIPPED INTERESTS IN BOND**
8 **AND PREFERRED STOCK FUNDS, ETC.**

9 (a) IN GENERAL.—Section 1286 (relating to tax
10 treatment of stripped bonds) is amended by redesignating
11 subsection (f) as subsection (g) and by inserting after sub-
12 section (e) the following new subsection:

13 “(f) TREATMENT OF STRIPPED INTERESTS IN BOND
14 AND PREFERRED STOCK FUNDS, ETC.—In the case of an
15 account or entity substantially all of the assets of which
16 consist of bonds, preferred stock, or a combination thereof,
17 the Secretary may by regulations provide that rules simi-
18 lar to the rules of this section and 305(e), as appropriate,
19 shall apply to interests in such account or entity to which
20 (but for this subsection) this section or section 305(e), as
21 the case may be, would not apply.”.

22 (b) CROSS REFERENCE.—Subsection (e) of section
23 305 is amended by adding at the end the following new
24 paragraph:

1 “(7) CROSS REFERENCE.—

“**For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).**”.

2 (c) EFFECTIVE DATE.—The amendments made by
3 this section shall apply to purchases and dispositions after
4 the date of the enactment of this Act.

5 **SEC. 462. APPLICATION OF EARNINGS STRIPPING RULES**
6 **TO PARTNERS WHICH ARE C CORPORATIONS.**

7 (a) IN GENERAL.—Section 168(j) (relating to limita-
8 tion on deduction for interest on certain indebtedness) is
9 amended by redesignating paragraph (8) as paragraph (9)
10 and by inserting after paragraph (7) the following new
11 paragraph:

12 “(8) ALLOCATIONS TO CERTAIN CORPORATE
13 PARTNERS.—If a C corporation is a partner in a
14 partnership—

15 “(A) the corporation’s allocable share of
16 indebtedness and interest income of the part-
17 nership shall be taken into account in applying
18 this subsection to the corporation, and

19 “(B) if a deduction is not disallowed under
20 this subsection with respect to any interest ex-
21 pense of the partnership, this subsection shall
22 be applied separately in determining whether a
23 deduction is allowable to the corporation with

1 respect to the corporation's allocable share of
2 such interest expense.”.

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

6 **SEC. 463. RECOGNITION OF CANCELLATION OF INDEBTED-**
7 **NESS INCOME REALIZED ON SATISFACTION**
8 **OF DEBT WITH PARTNERSHIP INTEREST.**

9 (a) **IN GENERAL.**—Paragraph (8) of section 108(e)
10 (relating to general rules for discharge of indebtedness (in-
11 cluding discharges not in title 11 cases or insolvency)) is
12 amended to read as follows:

13 “(8) **INDEBTEDNESS SATISFIED BY CORPORATE**
14 **STOCK OR PARTNERSHIP INTEREST.**—For purposes
15 of determining income of a debtor from discharge of
16 indebtedness, if—

17 “(A) a debtor corporation transfers stock,
18 or

19 “(B) a debtor partnership transfers a cap-
20 ital or profits interest in such partnership,

21 to a creditor in satisfaction of its recourse or non-
22 recourse indebtedness, such corporation or partner-
23 ship shall be treated as having satisfied the indebt-
24 edness with an amount of money equal to the fair
25 market value of the stock or interest. In the case of

1 any partnership, any discharge of indebtedness in-
2 come recognized under this paragraph shall be in-
3 cluded in the distributive shares of taxpayers which
4 were the partners in the partnership immediately be-
5 fore such discharge.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply with respect to cancellations of in-
8 debtedness occurring on or after the date of the enactment
9 of this Act.

10 **SEC. 464. MODIFICATION OF STRADDLE RULES.**

11 (a) RULES RELATING TO IDENTIFIED STRADDLES.—

12 (1) IN GENERAL.—Subparagraph (A) of section
13 1092(a)(2) (relating to special rule for identified
14 straddles) is amended to read as follows:

15 “(A) IN GENERAL.—In the case of any
16 straddle which is an identified straddle—

17 “(i) paragraph (1) shall not apply
18 with respect to identified positions com-
19 prising the identified straddle,

20 “(ii) if there is any loss with respect
21 to any identified position of the identified
22 straddle, the basis of each of the identified
23 offsetting positions in the identified strad-
24 dle shall be increased by an amount which
25 bears the same ratio to the loss as the un-

1 recognized gain with respect to such offset-
2 ting position bears to the aggregate unrec-
3 ognized gain with respect to all such off-
4 setting positions, and

5 “(iii) any loss described in clause (ii)
6 shall not otherwise be taken into account
7 for purposes of this title.”.

8 (2) IDENTIFIED STRADDLE.—Section
9 1092(a)(2)(B) (defining identified straddle) is
10 amended—

11 (A) by striking clause (ii) and inserting the
12 following:

13 “(ii) to the extent provided by regula-
14 tions, the value of each position of which
15 (in the hands of the taxpayer immediately
16 before the creation of the straddle) is not
17 less than the basis of such position in the
18 hands of the taxpayer at the time the
19 straddle is created, and”, and

20 (B) by adding at the end the following new
21 flush sentence:

22 “The Secretary shall prescribe regulations
23 which specify the proper methods for clearly
24 identifying a straddle as an identified straddle
25 (and the positions comprising such straddle),

1 which specify the rules for the application of
2 this section for a taxpayer which fails to prop-
3 erly identify the positions of an identified strad-
4 dle, and which specify the ordering rules in
5 cases where a taxpayer disposes of less than an
6 entire position which is part of an identified
7 straddle.”.

8 (3) UNRECOGNIZED GAIN.—Section 1092(a)(3)
9 (defining unrecognized gain) is amended by redesignig-
10 nating subparagraph (B) as subparagraph (C) and
11 by inserting after subparagraph (A) the following
12 new subparagraph:

13 “(B) SPECIAL RULE FOR IDENTIFIED
14 STRADDLES.—For purposes of paragraph
15 (2)(A)(ii), the unrecognized gain with respect to
16 any identified offsetting position shall be the ex-
17 cess of the fair market value of the position at
18 the time of the determination over the fair mar-
19 ket value of the position at the time the tax-
20 payer identified the position as a position in an
21 identified straddle.”.

22 (4) CONFORMING AMENDMENT.—Section
23 1092(e)(2) is amended by striking subparagraph (B)
24 and by redesignating subparagraph (C) as subpara-
25 graph (B).

1 (b) PHYSICALLY SETTLED POSITIONS.—Section
2 1092(d) (relating to definitions and special rules) is
3 amended by adding at the end the following new para-
4 graph:

5 “(8) SPECIAL RULES FOR PHYSICALLY SET-
6 TLED POSITIONS.—For purposes of subsection (a), if
7 a taxpayer settles a position which is part of a strad-
8 dle by delivering property to which the position re-
9 lates (and such position, if terminated, would result
10 in a realization of a loss), then such taxpayer shall
11 be treated as if such taxpayer—

12 “(A) terminated the position for its fair
13 market value immediately before the settlement,
14 and

15 “(B) sold the property so delivered by the
16 taxpayer at its fair market value.”.

17 (c) REPEAL OF STOCK EXCEPTION.—

18 (1) IN GENERAL.—Paragraph (3) of section
19 1092(d) (relating to definitions and special rules) is
20 amended to read as follows:

21 “(3) SPECIAL RULES FOR STOCK.—For pur-
22 poses of paragraph (1)—

23 “(A) IN GENERAL.—The term ‘personal
24 property’ includes—

1 “(i) any stock which is a part of a
2 straddle at least 1 of the offsetting posi-
3 tions of which is a position with respect to
4 such stock or substantially similar or re-
5 lated property, or

6 “(ii) any stock of a corporation
7 formed or availed of to take positions in
8 personal property which offset positions
9 taken by any shareholder.

10 “(B) RULE FOR APPLICATION.—For pur-
11 poses of determining whether subsection (e) ap-
12 plies to any transaction with respect to stock
13 described in subparagraph (A)(ii), all includible
14 corporations of an affiliated group (within the
15 meaning of section 1504(a)) shall be treated as
16 1 taxpayer.”.

17 (2) CONFORMING AMENDMENT.—Section
18 1258(d)(1) is amended by striking “; except that the
19 term ‘personal property’ shall include stock”.

20 (d) MODIFICATIONS OF QUALIFIED COVERED CALL
21 EXCEPTION.—

22 (1) MARKETS ON WHICH OPTIONS MAY BE
23 TRADED.—

24 (A) IN GENERAL.—Section
25 1092(c)(4)(B)(i) is amended by striking “or

1 other market which the Secretary determines
2 has rules adequate to carry out the purposes of
3 this paragraph”.

4 (B) REGULATIONS.—Section
5 1092(c)(4)(H) is amended by adding at the end
6 the following new sentence: “Such regulations
7 shall not add any exchange or market not de-
8 scribed in subparagraph (B)(i) to the exchanges
9 or markets on which qualified covered call op-
10 tions may be traded.”

11 (2) HOLDING PERIOD FOR DIVIDEND EXCLU-
12 SION.—The last sentence of section 246(c) is amend-
13 ed by inserting: “, other than a qualified covered call
14 option to which section 1092(f) applies” before the
15 period at the end.

16 (e) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to positions established on or after
18 the date of the enactment of this Act.

19 **SEC. 465. DENIAL OF INSTALLMENT SALE TREATMENT FOR**
20 **ALL READILY TRADEABLE DEBT.**

21 (a) IN GENERAL.—Section 453(f)(4)(B) (relating to
22 purchaser evidences of indebtedness payable on demand
23 or readily tradeable) is amended by striking “is issued by
24 a corporation or a government or political subdivision
25 thereof and”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to sales occurring on or after the
3 date of the enactment of this Act.

4 **PART II—CORPORATIONS AND PARTNERSHIPS**

5 **SEC. 466. MODIFICATION OF TREATMENT OF TRANSFERS**

6 **TO CREDITORS IN DIVISIVE REORGANIZA-**
7 **TIONS.**

8 (a) IN GENERAL.—Section 361(b)(3) (relating to
9 treatment of transfers to creditors) is amended by adding
10 at the end the following new sentence: “In the case of a
11 reorganization described in section 368(a)(1)(D) with re-
12 spect to which stock or securities of the corporation to
13 which the assets are transferred are distributed in a trans-
14 action which qualifies under section 355, this paragraph
15 shall apply only to the extent that the sum of the money
16 and the fair market value of other property transferred
17 to such creditors does not exceed the adjusted bases of
18 such assets transferred.”.

19 (b) LIABILITIES IN EXCESS OF BASIS.—Section
20 357(c)(1)(B) is amended by inserting “with respect to
21 which stock or securities of the corporation to which the
22 assets are transferred are distributed in a transaction
23 which qualifies under section 355” after “section
24 368(a)(1)(D)”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to transfers of money or other
3 property, or liabilities assumed, in connection with a reor-
4 ganization occurring on or after the date of the enactment
5 of this Act.

6 **SEC. 467. CLARIFICATION OF DEFINITION OF NON-**
7 **QUALIFIED PREFERRED STOCK.**

8 (a) IN GENERAL.—Section 351(g)(3)(A) is amended
9 by adding at the end the following: “Stock shall not be
10 treated as participating in corporate growth to any signifi-
11 cant extent unless there is a real and meaningful likeli-
12 hood of the shareholder actually participating in the earn-
13 ings and growth of the corporation.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to transactions after May 14,
16 2003.

17 **SEC. 468. MODIFICATION OF DEFINITION OF CONTROLLED**
18 **GROUP OF CORPORATIONS.**

19 (a) IN GENERAL.—Section 1563(a)(2) (relating to
20 brother-sister controlled group) is amended by striking
21 “possessing—” and all that follows through “(B)” and in-
22 serting “possessing”.

23 (b) APPLICATION OF EXISTING RULES TO OTHER
24 CODE PROVISIONS.—Section 1563(f) (relating to other

1 definitions and rules) is amended by adding at the end
2 the following new paragraph:

3 “(5) BROTHER-SISTER CONTROLLED GROUP
4 DEFINITION FOR PROVISIONS OTHER THAN THIS
5 PART.—

6 “(A) IN GENERAL.—Except as specifically
7 provided in an applicable provision, subsection
8 (a)(2) shall be applied to an applicable provi-
9 sion as if it read as follows:

10 “(2) BROTHER-SISTER CONTROLLED GROUP.—
11 Two or more corporations if 5 or fewer persons who
12 are individuals, estates, or trusts own (within the
13 meaning of subsection (d)(2) stock possessing—

14 “(A) at least 80 percent of the total com-
15 bined voting power of all classes of stock enti-
16 tled to vote, or at least 80 percent of the total
17 value of shares of all classes of stock, of each
18 corporation, and

19 “(B) more than 50 percent of the total
20 combined voting power of all classes of stock
21 entitled to vote or more than 50 percent of the
22 total value of shares of all classes of stock of
23 each corporation, taking into account the stock
24 ownership of each such person only to the ex-

1 tent such stock ownership is identical with re-
2 spect to each such corporation.’

3 “(B) APPLICABLE PROVISION.—For pur-
4 poses of this paragraph, an applicable provision
5 is any provision of law (other than this part)
6 which incorporates the definition of controlled
7 group of corporations under subsection (a).”.

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

11 **SEC. 469. MANDATORY BASIS ADJUSTMENTS IN CONNEC-**
12 **TION WITH PARTNERSHIP DISTRIBUTIONS**
13 **AND TRANSFERS OF PARTNERSHIP INTER-**
14 **ESTS.**

15 (a) IN GENERAL.—Section 754 is repealed.

16 (b) ADJUSTMENT TO BASIS OF UNDISTRIBUTED
17 PARTNERSHIP PROPERTY.—Section 734 is amended—

18 (1) by striking “, with respect to which the elec-
19 tion provided in section 754 is in effect,” in the mat-
20 ter preceding paragraph (1) of subsection (b),

21 (2) by striking “(as adjusted by section
22 732(d))” both places it appears in subsection (b),

23 (3) by striking the last sentence of subsection
24 (b),

1 (4) by striking subsection (a) and by redesignig-
2 nating subsections (b) and (c) as subsections (a) and
3 (b), respectively, and

4 (5) by striking “**OPTIONAL**” in the heading.

5 (c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-
6 ERTY.—Section 743 is amended—

7 (1) by striking “with respect to which the elec-
8 tion provided in section 754 is in effect” in the mat-
9 ter preceding paragraph (1) of subsection (b),

10 (2) by striking subsection (a) and by redesignig-
11 nating subsections (b) and (c) as subsections (a) and
12 (b), respectively,

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

15 “(c) ELECTION TO ADJUST BASIS FOR TRANSFERS
16 UPON DEATH OF PARTNER.—Subsection (a) shall not
17 apply and no adjustments shall be made in the case of
18 any transfer of an interest in a partnership upon the death
19 of a partner unless an election to do so is made by the
20 partnership. Such an election shall apply with respect to
21 all such transfers of interests in the partnership. Any elec-
22 tion under section 754 in effect on the date of the enact-
23 ment of this subsection shall constitute an election made
24 under this subsection. Such election may be revoked by

1 the partnership, subject to such limitations as may be pro-
2 vided by regulations prescribed by the Secretary.”, and

3 (4) by striking “**OPTIONAL**” in the heading.

4 (d) CONFORMING AMENDMENTS.—

5 (1) Subsection (d) of section 732 is repealed.

6 (2) Section 755(a) is amended—

7 (A) by striking “section 734(b) (relating to
8 the optional adjustment” and inserting “section
9 734(a) (relating to the adjustment”, and

10 (B) by striking “section 743(b) (relating to
11 the optional adjustment” and inserting “section
12 743(a) (relating to the adjustment”.

13 (3) Section 755(c), as added by this Act, is
14 amended by striking “section 734(b)” and inserting
15 “section 734(a)”.

16 (4) Section 761(e)(2) is amended by striking
17 “optional”.

18 (5) Section 774(a) is amended by striking
19 “743(b)” both places it appears and inserting
20 “743(a)”.

21 (6) The item relating to section 734 in the table
22 of sections for subpart B of part II of subchapter K
23 of chapter 1 is amended by striking “Optional”.

1 (7) The item relating to section 743 in the table
2 of sections for subpart C of part II of subchapter K
3 of chapter 1 is amended by striking “Optional”.

4 (e) EFFECTIVE DATES.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), the amendments made by this section
7 shall apply to transfers and distributions made after
8 the date of the enactment of this Act.

9 (2) REPEAL OF SECTION 732(d).—The amend-
10 ments made by subsections (b)(2) and (d)(1) shall
11 apply to—

12 (A) except as provided in subparagraph
13 (B), transfers made after the date of the enact-
14 ment of this Act, and

15 (B) in the case of any transfer made on or
16 before such date to which section 732(d) ap-
17 plies, distributions made after the date which is
18 2 years after such date of enactment.

19 **PART III—DEPRECIATION AND AMORTIZATION**

20 **SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES**
21 **TO SPORTS FRANCHISES.**

22 (a) IN GENERAL.—Section 197(e) (relating to excep-
23 tions to definition of section 197 intangible) is amended
24 by striking paragraph (6) and by redesignating para-
25 graphs (7) and (8) as paragraphs (6) and (7), respectively.

1 (b) CONFORMING AMENDMENTS.—

2 (1)(A) Section 1056 (relating to basis limitation
3 for player contracts transferred in connection with
4 the sale of a franchise) is repealed.

5 (B) The table of sections for part IV of sub-
6 chapter O of chapter 1 is amended by striking the
7 item relating to section 1056.

8 (2) Section 1245(a) (relating to gain from dis-
9 position of certain depreciable property) is amended
10 by striking paragraph (4).

11 (3) Section 1253 (relating to transfers of fran-
12 chises, trademarks, and trade names) is amended by
13 striking subsection (e).

14 (c) EFFECTIVE DATES.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply to property acquired after the date of the
18 enactment of this Act.

19 (2) SECTION 1245.—The amendment made by
20 subsection (b)(2) shall apply to franchises acquired
21 after the date of the enactment of this Act.

22 **SEC. 472. CLASS LIVES FOR UTILITY GRADING COSTS.**

23 (a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E)
24 (defining 15-year property) is amended by striking “and”
25 at the end of clause (ii), by striking the period at the end

1 of clause (iii) and inserting “, and”, and by adding at the
2 end the following new clause:

3 “(iv) initial clearing and grading land
4 improvements with respect to gas utility
5 property.”.

6 (b) ELECTRIC UTILITY PROPERTY.—Section
7 168(e)(3) is amended by adding at the end the following
8 new subparagraph:

9 “(F) 20-YEAR PROPERTY.—The term ‘20-
10 year property’ means initial clearing and grad-
11 ing land improvements with respect to any elec-
12 tric utility transmission and distribution
13 plant.”.

14 (c) CONFORMING AMENDMENTS.—The table con-
15 tained in section 168(g)(3)(B) is amended—

16 (1) by inserting “or (E)(iv)” after “(E)(iii)”,
17 and

18 (2) by adding at the end the following new
19 item:

“(F) 25”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to property placed in service after
22 the date of the enactment of this Act.

1 **SEC. 473. EXPANSION OF LIMITATION ON DEPRECIATION**
2 **OF CERTAIN PASSENGER AUTOMOBILES.**

3 (a) IN GENERAL.—Section 179(b) of the Internal
4 Revenue Code of 1986 (relating to limitations) is amended
5 by adding at the end the following new paragraph:

6 “(6) LIMITATION ON COST TAKEN INTO AC-
7 COUNT FOR CERTAIN PASSENGER VEHICLES.—

8 “(A) IN GENERAL.—The cost of any sport
9 utility vehicle for any taxable year which may
10 be taken into account under this section shall
11 not exceed \$25,000.

12 “(B) SPORT UTILITY VEHICLE.—For pur-
13 poses of subparagraph (A)—

14 “(i) IN GENERAL.—The term ‘sport
15 utility vehicle’ means any 4-wheeled
16 vehicle—

17 “(I) which is primarily designed
18 or which can be used to carry pas-
19 sengers over public streets, roads, or
20 highways (except any vehicle operated
21 exclusively on a rail or rails),

22 “(II) which is not subject to sec-
23 tion 280F, and

24 “(III) which is rated at not more
25 than 14,000 pounds gross vehicle
26 weight.

1 “(ii) CERTAIN VEHICLES EX-
2 CLUDED.—Such term does not include any
3 vehicle which—

4 “(I) is designed to have a seating
5 capacity of more than 9 persons be-
6 hind the driver’s seat,

7 “(II) is equipped with a cargo
8 area of at least 6 feet in interior
9 length which is an open area or is de-
10 signed for use as an open area but is
11 enclosed by a cap and is not readily
12 accessible directly from the passenger
13 compartment, or

14 “(III) has an integral enclosure,
15 fully enclosing the driver compartment
16 and load carrying device, does not
17 have seating rearward of the driver’s
18 seat, and has no body section pro-
19 truding more than 30 inches ahead of
20 the leading edge of the windshield.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to property placed in service after
23 the date of the enactment of this Act.

1 **SEC. 474. CONSISTENT AMORTIZATION OF PERIODS FOR IN-**
2 **TANGIBLES.**

3 (a) **START-UP EXPENDITURES.—**

4 (1) **ALLOWANCE OF DEDUCTION.—**Paragraph
5 (1) of section 195(b) (relating to start-up expendi-
6 tures) is amended to read as follows:

7 “(1) **ALLOWANCE OF DEDUCTION.—**If a tax-
8 payer elects the application of this subsection with
9 respect to any start-up expenditures—

10 “(A) the taxpayer shall be allowed a deduc-
11 tion for the taxable year in which the active
12 trade or business begins in an amount equal to
13 the lesser of—

14 “(i) the amount of start-up expendi-
15 tures with respect to the active trade or
16 business, or

17 “(ii) \$5,000, reduced (but not below
18 zero) by the amount by which such start-
19 up expenditures exceed \$50,000, and

20 “(B) the remainder of such start-up ex-
21 penditures shall be allowed as a deduction rat-
22 ably over the 180-month period beginning with
23 the month in which the active trade or business
24 begins.”.

1 (2) CONFORMING AMENDMENT.—Subsection (b)
2 of section 195 is amended by striking “AMORTIZE”
3 and inserting “DEDUCT” in the heading.

4 (b) ORGANIZATIONAL EXPENDITURES.—Subsection
5 (a) of section 248 (relating to organizational expenditures)
6 is amended to read as follows:

7 “(a) ELECTION TO DEDUCT.—If a corporation elects
8 the application of this subsection (in accordance with reg-
9 ulations prescribed by the Secretary) with respect to any
10 organizational expenditures—

11 “(1) the corporation shall be allowed a deduc-
12 tion for the taxable year in which the corporation be-
13 gins business in an amount equal to the lesser of—

14 “(A) the amount of organizational expendi-
15 tures with respect to the taxpayer, or

16 “(B) \$5,000, reduced (but not below zero)
17 by the amount by which such organizational ex-
18 penditures exceed \$50,000, and

19 “(2) the remainder of such organizational ex-
20 penditures shall be allowed as a deduction ratably
21 over the 180-month period beginning with the month
22 in which the corporation begins business.”.

23 (c) TREATMENT OF ORGANIZATIONAL AND SYNDICA-
24 TION FEES OR PARTNERSHIPS.—

1 (1) IN GENERAL.—Section 709(b) (relating to
2 amortization of organization fees) is amended by re-
3 designating paragraph (2) as paragraph (3) and by
4 amending paragraph (1) to read as follows:

5 “(1) ALLOWANCE OF DEDUCTION.—If a tax-
6 payer elects the application of this subsection (in ac-
7 cordance with regulations prescribed by the Sec-
8 retary) with respect to any organizational
9 expenses—

10 “(A) the taxpayer shall be allowed a deduc-
11 tion for the taxable year in which the partner-
12 ship begins business in an amount equal to the
13 lesser of—

14 “(i) the amount of organizational ex-
15 penses with respect to the partnership, or

16 “(ii) \$5,000, reduced (but not below
17 zero) by the amount by which such organi-
18 zational expenses exceed \$50,000, and

19 “(B) the remainder of such organizational
20 expenses shall be allowed as a deduction ratably
21 over the 180-month period beginning with the
22 month in which the partnership begins busi-
23 ness.

24 “(2) DISPOSITIONS BEFORE CLOSE OF AMORTI-
25 ZATION PERIOD.—In any case in which a partner-

1 ship is liquidated before the end of the period to
2 which paragraph (1)(B) applies, any deferred ex-
3 penses attributable to the partnership which were
4 not allowed as a deduction by reason of this section
5 may be deducted to the extent allowable under sec-
6 tion 165.”.

7 (2) CONFORMING AMENDMENT.—Subsection (b)
8 of section 709 is amended by striking “AMORTIZA-
9 TION” and inserting “DEDUCTION” in the heading.
10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to amounts paid or incurred after
12 the date of the enactment of this Act.

13 **SEC. 475. REFORM OF TAX TREATMENT OF LEASING OPER-**
14 **ATIONS.**

15 (a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-
16 EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subpara-
17 graph (A) of section 168(g)(3) (relating to special rules
18 for determining class life) is amended by inserting “(not-
19 withstanding any other subparagraph of this paragraph)”
20 after “shall”.

21 (b) LIMITATION ON DEPRECIATION PERIOD FOR
22 SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Para-
23 graph (1) of section 167(f) is amended by adding at the
24 end the following new subparagraph:

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to leases entered into after Decem-
3 ber 31, 2003.

4 **SEC. 476. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
5 **PROPERTY USED BY GOVERNMENTS OR**
6 **OTHER TAX-EXEMPT ENTITIES.**

7 (a) IN GENERAL.—Subpart C of part II of sub-
8 chapter E of chapter 1 (relating to taxable year for which
9 deductions taken) is amended by adding at the end the
10 following new section:

11 **“SEC. 470. LIMITATIONS ON LOSSES FROM TAX-EXEMPT**
12 **USE PROPERTY.**

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) (without regard to
12 paragraph (1)(C) or (3) thereof and determined as
13 if property described in section 167(f)(1)(B) were
14 tangible property). Such term shall not include prop-
15 erty with respect to which the credit under section
16 42 is allowed and which, but for this sentence, would
17 be tax-exempt property solely by reason of section
18 168(h)(6).

19 “(d) EXCEPTION FOR CERTAIN LEASES.—This sec-
20 tion shall not apply to any lease of property which meets
21 the requirements of all of the following paragraphs:

22 “(1) PROPERTY NOT FINANCED WITH TAX-EX-
23 EMPT BONDS OR FEDERAL FUNDS.—A lease of prop-
24 erty meets the requirements of this paragraph if no

1 part of the property was financed (directly or indi-
2 rectly) from—

3 “(A) the proceeds of an obligation the in-
4 terest on which is exempt from tax under sec-
5 tion 103(a) and which (or any refunding bond
6 of which) is outstanding when the lease is en-
7 tered into, or

8 “(B) Federal funds.

9 The Secretary may by regulations provide for a de
10 minimis exception from this paragraph.

11 “(2) AVAILABILITY OF FUNDS.—

12 “(A) IN GENERAL.—A lease of property
13 meets the requirements of this paragraph if (at
14 any time during the lease term) not more than
15 an allowable amount of funds are—

16 “(i) subject to any arrangement re-
17 ferred to in subparagraph (B), or

18 “(ii) set aside or expected to be set
19 aside,

20 to or for the benefit of the lessor or a lender,
21 or to or for the benefit of the lessee to satisfy
22 the lessee’s obligations or options under the
23 lease. Funds shall be treated as described in
24 clause (ii) only if a reasonable person would

1 conclude, based on the facts and circumstances,
2 that such funds are so described.

3 “(B) ARRANGEMENTS.—The arrangements
4 referred to in this subparagraph are—

5 “(i) a defeasance arrangement, a loan
6 by the lessee to the lessor or a lender, a
7 deposit arrangement, a letter of credit
8 collateralized with cash or cash equiva-
9 lents, a payment undertaking agreement, a
10 lease prepayment, a sinking fund arrange-
11 ment, or any similar arrangement (whether
12 or not such arrangement provides credit
13 support), and

14 “(ii) any other arrangement identified
15 by the Secretary in regulations.

16 “(C) ALLOWABLE AMOUNT.—

17 “(i) IN GENERAL.—Except as other-
18 wise provided in this subparagraph, the
19 term ‘allowable amount’ means an amount
20 equal to 20 percent of the lessor’s adjusted
21 basis in the property at the time the lease
22 is entered into.

23 “(ii) HIGHER AMOUNT PERMITTED IN
24 CERTAIN CASES.—To the extent provided
25 in regulations, a higher percentage shall be

1 permitted under clause (i) where necessary
2 because of the credit-worthiness of the les-
3 see. In no event may such regulations per-
4 mit a percentage of more than 50 percent.

5 “(iii) OPTION TO PURCHASE.—If
6 under the lease the lessee has the option to
7 purchase the property for a fixed price or
8 for other than the fair market value of the
9 property (determined at the time of exer-
10 cise), the allowable amount at the time
11 such option may be exercised may not ex-
12 ceed 50 percent of the price at which such
13 option may be exercised.

14 “(iv) NO ALLOWABLE AMOUNT FOR
15 CERTAIN ARRANGEMENTS.—The allowable
16 amount shall be zero in the case of any ar-
17 rangement which involves—

18 “(I) a loan from the lessee to the
19 lessor or a lender,

20 “(II) any deposit, letter of credit,
21 or payment undertaking agreement
22 involving a lender, or

23 “(III) any credit support made
24 available to the lessor in which a lend-

1 er (if any) does not have a claim
2 which is senior to the lessor.

3 For purposes of subclause (I), the term
4 ‘loan’ shall not include any amount treated
5 as a loan under section 467 with respect to
6 a section 467 rental agreement.

7 “(3) LESSOR MUST MAKE SUBSTANTIAL EQUITY
8 INVESTMENT.—A lease of property meets the re-
9 quirements of this paragraph if—

10 “(A) the lessor—

11 “(i) has at the time the lease is en-
12 tered into an unconditional at-risk equity
13 investment (as determined by the Sec-
14 retary) in the property of at least 20 per-
15 cent of the lessor’s adjusted basis in the
16 property as of that time, and

17 “(ii) maintains such investment
18 throughout the term of the lease, and

19 “(B) the fair market value of the property
20 at the end of the lease term is reasonably ex-
21 pected to be equal to at least 20 percent of such
22 basis.

23 Subparagraphs (A)(ii) and (B) shall not apply if the
24 lease term is described in section 168(h)(1)(C)(ii),
25 or in the case of qualified technological equipment,

1 is described in section 168(h)(3). For purposes of
2 subparagraph (B), the fair market value at the end
3 of the lease term shall be reduced to the extent that
4 a person other than the lessor bears a risk of loss
5 in the value of the property.

6 “(4) LESSEE MAY NOT BEAR MORE THAN MINI-
7 MAL RISK OF LOSS.—

8 “(A) IN GENERAL.—A lease of property
9 meets the requirements of this paragraph if
10 there is no arrangement under which more than
11 a minimal risk of loss (as determined under
12 regulations) in the value of the property is
13 borne by the lessee.

14 “(B) CERTAIN ARRANGEMENTS FAIL RE-
15 QUIREMENT.—In no event will the requirements
16 of this paragraph be met if there is any ar-
17 rangement under which the lessee bears—

18 “(i) any portion of the loss that would
19 occur if the fair market value of the leased
20 property were 25 percent less than its rea-
21 sonably expected fair market value at the
22 time the lease is terminated, or

23 “(ii) more than 50 percent of the loss
24 that would occur if the fair market value

1 of the leased property at the time the lease
2 is terminated were zero.

3 “(5) 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, and

8 “(B) under which the lessee has the option
9 to purchase the property,
10 the lease meets the requirements of this paragraph
11 only if the purchase price under the option equals
12 the fair market value of the property (determined at
13 the time of exercise).

14 “(6) REGULATORY REQUIREMENTS.—A lease of
15 property meets the requirements of this paragraph if
16 such lease of property meets such requirements as
17 the Secretary may prescribe by regulations.

18 “(e) SPECIAL RULES.—

19 “(1) TREATMENT OF FORMER TAX-EXEMPT
20 USE PROPERTY.—

21 “(A) IN GENERAL.—In the case of any
22 former tax-exempt use property—

23 “(i) any deduction allowable under
24 subsection (b) with respect to such prop-
25 erty for any taxable year shall be allowed

1 only to the extent of any net income (with-
2 out regard to such deduction) from such
3 property for such taxable year, and

4 “(ii) any portion of such unused de-
5 duction remaining after application of
6 clause (i) shall be treated as allowable
7 under subsection (b) with respect to such
8 property in the next taxable year.

9 “(B) FORMER TAX-EXEMPT USE PROP-
10 PERTY.—For purposes of this subsection, the
11 term ‘former tax-exempt use property’ means
12 any property which—

13 “(i) is not tax-exempt use property for
14 the taxable year, but

15 “(ii) was tax-exempt use property for
16 any prior taxable year.

17 “(2) DISPOSITION OF ENTIRE INTEREST IN
18 PROPERTY.—If during the taxable year a taxpayer
19 disposes of the taxpayer’s entire interest in tax-ex-
20 empt use property (or former tax-exempt use prop-
21 erty), rules similar to the rules of section 469(g)
22 shall apply for purposes of this section.

23 “(3) COORDINATION WITH SECTION 469.—This
24 section shall be applied before the application of sec-
25 tion 469.

1 “(f) OTHER DEFINITIONS.—For purposes of this
2 section—

3 “(1) RELATED PARTIES.—The terms ‘lessor’,
4 ‘lessee’, and ‘lender’ include any related party (with-
5 in 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 regulation
17 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 section.”

22 (b) CONFORMING AMENDMENT.—The table of sec-
23 tions for subpart C of part II of subchapter E of chapter
24 1 is amended by adding at the end the following new item:

“Sec. 470. Limitations on losses from tax-exempt use property.”

25 (c) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to leases entered into after
3 November 18, 2003.

4 (2) LEASES TO FOREIGN ENTITIES.—In the
5 case of tax-exempt use property leased to a tax-ex-
6 empt entity which is a foreign person or entity, the
7 amendments made by this section shall apply to tax-
8 able years beginning after December 31, 2004, with
9 respect to leases entered into on or before November
10 18, 2003.

11 **PART IV—ADMINISTRATIVE PROVISIONS**

12 **SEC. 481. CLARIFICATION OF RULES FOR PAYMENT OF ES-**
13 **TIMATED TAX FOR CERTAIN DEEMED ASSET**
14 **SALES.**

15 (a) IN GENERAL.—Paragraph (13) of section 338(h)
16 (relating to tax on deemed sale not taken into account for
17 estimated tax purposes) is amended by adding at the end
18 the following: “The preceding sentence shall not apply
19 with respect to a qualified stock purchase for which an
20 election is made under paragraph (10).”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall apply to transactions occurring after
23 the date of the enactment of this Act.

1 **SEC. 482. 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, 2013”.

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. 483. DOUBLING OF CERTAIN PENALTIES, FINES, AND**
9 **INTEREST ON UNDERPAYMENTS RELATED TO**
10 **CERTAIN OFFSHORE FINANCIAL ARRANGE-**
11 **MENT.**

12 (a) DETERMINATION OF PENALTY.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of law, in the case of an applicable
15 taxpayer—

16 (A) the determination as to whether any
17 interest or applicable penalty is to be imposed
18 with respect to any arrangement to which any
19 initiative described in paragraph (2) applied, or
20 to any underpayment of Federal income tax at-
21 tributable to items arising in connection with
22 any arrangement described in paragraph (2),
23 shall be made without regard to section 6664 of
24 the Internal Revenue Code of 1986, and

25 (B) if any such interest or applicable pen-
26 alty is imposed, the amount of such interest or

1 penalty shall be equal to twice that determined
2 without regard to this section.

3 (2) APPLICABLE TAXPAYER.—For purposes of
4 this subsection, the term “applicable taxpayer”
5 means a taxpayer eligible to participate in—

6 (A) the Department of the Treasury’s Off-
7 shore Voluntary Compliance Initiative, or

8 (B) the Department of the Treasury’s vol-
9 untary disclosure initiative which applies to the
10 taxpayer by reason of the taxpayer’s under-
11 reporting of United States income tax liability
12 through financial arrangements which rely on
13 the use of offshore arrangements which were
14 the subject of the initiative described in sub-
15 paragraph (A).

16 (b) DEFINITIONS AND RULES.—For purposes of this
17 section—

18 (1) APPLICABLE PENALTY.—The term “appli-
19 cable penalty” means any penalty, addition to tax,
20 or fine imposed under chapter 68 of the Internal
21 Revenue Code of 1986.

22 (2) VOLUNTARY OFFSHORE COMPLIANCE INI-
23 TIATIVE.—The term “Voluntary Offshore Compli-
24 ance Initiative” means the program established by
25 the Department of the Treasury in January of 2003

1 under which any taxpayer was eligible to voluntarily
2 disclose previously undisclosed income on assets
3 placed in offshore accounts and accessed through
4 credit card and other financial arrangements.

5 (3) PARTICIPATION.—A taxpayer shall be treat-
6 ed as having participated in the Voluntary Offshore
7 Compliance Initiative if the taxpayer submitted the
8 request in a timely manner and all information re-
9 quested by the Secretary of the Treasury or his dele-
10 gate within a reasonable period of time following the
11 request.

12 (c) EFFECTIVE DATE.—The provisions of this section
13 shall apply to interest, penalties, additions to tax, and
14 fines with respect to any taxable year if as of the date
15 of the enactment of this Act, the assessment of any tax,
16 penalty, or interest with respect to such taxable year is
17 not prevented by the operation of any law or rule of law.

18 **SEC. 484. PARTIAL PAYMENT OF TAX LIABILITY IN IN-**

19 **STALLMENT AGREEMENTS.**

20 (a) IN GENERAL.—

21 (1) Section 6159(a) (relating to authorization
22 of agreements) is amended—

23 (A) by striking “satisfy liability for pay-
24 ment of” and inserting “make payment on”,
25 and

1 (B) by inserting “full or partial” after “fa-
2 cilitate”.

3 (2) Section 6159(c) (relating to Secretary re-
4 quired to enter into installment agreements in cer-
5 tain cases) is amended in the matter preceding para-
6 graph (1) by inserting “full” before “payment”.

7 (b) REQUIREMENT TO REVIEW PARTIAL PAYMENT
8 AGREEMENTS EVERY TWO YEARS.—Section 6159, as
9 amended by this Act, is amended by redesignating sub-
10 sections (d), (e), and (f) as subsections (e), (f), and (g),
11 respectively, and inserting after subsection (c) the fol-
12 lowing new subsection:

13 “(d) SECRETARY REQUIRED TO REVIEW INSTALL-
14 MENT AGREEMENTS FOR PARTIAL COLLECTION EVERY
15 TWO YEARS.—In the case of an agreement entered into
16 by the Secretary under subsection (a) for partial collection
17 of a tax liability, the Secretary shall review the agreement
18 at least once every 2 years.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to agreements entered into on or
21 after the date of the enactment of this Act.

22 **SEC. 485. EXTENSION OF CUSTOMS USER FEES.**

23 Section 13031(j)(3) of the Consolidated Omnibus
24 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3))

1 is amended by striking “March 1, 2005” and inserting
2 “September 30, 2013”.

3 **SEC. 486. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
4 **TEREST ON POTENTIAL UNDERPAYMENTS.**

5 (a) IN GENERAL.—Subchapter A of chapter 67 (re-
6 lating to interest on underpayments) is amended by add-
7 ing at the end the following new section:

8 **“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
9 **TEREST ON POTENTIAL UNDERPAYMENTS,**
10 **ETC.**

11 “(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN
12 AS PAYMENT OF TAX.—A taxpayer may make a cash de-
13 posit with the Secretary which may be used by the Sec-
14 retary to pay any tax imposed under subtitle A or B or
15 chapter 41, 42, 43, or 44 which has not been assessed
16 at the time of the deposit. Such a deposit shall be made
17 in such manner as the Secretary shall prescribe.

18 “(b) NO INTEREST IMPOSED.—To the extent that
19 such deposit is used by the Secretary to pay tax, for pur-
20 poses of section 6601 (relating to interest on underpay-
21 ments), the tax shall be treated as paid when the deposit
22 is made.

23 “(c) RETURN OF DEPOSIT.—Except in a case where
24 the Secretary determines that collection of tax is in jeop-
25 ardy, the Secretary shall return to the taxpayer any

1 amount of the deposit (to the extent not used for a pay-
2 ment of tax) which the taxpayer requests in writing.

3 “(d) PAYMENT OF INTEREST.—

4 “(1) IN GENERAL.—For purposes of section
5 6611 (relating to interest on overpayments), a de-
6 posit which is returned to a taxpayer shall be treated
7 as a payment of tax for any period to the extent
8 (and only to the extent) attributable to a disputable
9 tax for such period. Under regulations prescribed by
10 the Secretary, rules similar to the rules of section
11 6611(b)(2) shall apply.

12 “(2) DISPUTABLE TAX.—

13 “(A) IN GENERAL.—For purposes of this
14 section, the term ‘disputable tax’ means the
15 amount of tax specified at the time of the de-
16 posit as the taxpayer’s reasonable estimate of
17 the maximum amount of any tax attributable to
18 disputable items.

19 “(B) SAFE HARBOR BASED ON 30-DAY
20 LETTER.—In the case of a taxpayer who has
21 been issued a 30-day letter, the maximum
22 amount of tax under subparagraph (A) shall
23 not be less than the amount of the proposed de-
24 ficiency specified in such letter.

1 “(3) OTHER DEFINITIONS.—For purposes of
2 paragraph (2)—

3 “(A) DISPUTABLE ITEM.—The term ‘dis-
4 putable item’ means any item of income, gain,
5 loss, deduction, or credit if the taxpayer—

6 “(i) has a reasonable basis for its
7 treatment of such item, and

8 “(ii) reasonably believes that the Sec-
9 retary also has a reasonable basis for dis-
10 allowing the taxpayer’s treatment of such
11 item.

12 “(B) 30-DAY LETTER.—The term ‘30-day
13 letter’ means the first letter of proposed defi-
14 ciency which allows the taxpayer an opportunity
15 for administrative review in the Internal Rev-
16 enue Service Office of Appeals.

17 “(4) RATE OF INTEREST.—The rate of interest
18 allowable under this subsection shall be the Federal
19 short-term rate determined under section 6621(b),
20 compounded daily.

21 “(e) USE OF DEPOSITS.—

22 “(1) PAYMENT OF TAX.—Except as otherwise
23 provided by the taxpayer, deposits shall be treated
24 as used for the payment of tax in the order depos-
25 ited.

1 “(2) RETURNS OF DEPOSITS.—Deposits shall
2 be treated as returned to the taxpayer on a last-in,
3 first-out basis.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for subchapter A of chapter 67 is amended by adding at
6 the end the following new item:

 “Sec. 6603. Deposits made to suspend running of interest on po-
 tential underpayments, etc.”.

7 (c) EFFECTIVE DATE.—

8 (1) IN GENERAL.—The amendments made by
9 this section shall apply to deposits made after the
10 date of the enactment of this Act.

11 (2) COORDINATION WITH DEPOSITS MADE
12 UNDER REVENUE PROCEDURE 84–58.—In the case of
13 an amount held by the Secretary of the Treasury or
14 his delegate on the date of the enactment of this Act
15 as a deposit in the nature of a cash bond deposit
16 pursuant to Revenue Procedure 84–58, the date that
17 the taxpayer identifies such amount as a deposit
18 made pursuant to section 6603 of the Internal Rev-
19 enue Code (as added by this Act) shall be treated as
20 the date such amount is deposited for purposes of
21 such section 6603.

22 **SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.**

23 (a) CONTRACT REQUIREMENTS.—

1 (1) IN GENERAL.—Subchapter A of chapter 64
2 (relating to collection) is amended by adding at the
3 end the following new section:

4 **“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.**

5 “(a) IN GENERAL.—Nothing in any provision of law
6 shall be construed to prevent the Secretary from entering
7 into a qualified tax collection contract.

8 “(b) QUALIFIED TAX COLLECTION CONTRACT.—For
9 purposes of this section, the term ‘qualified tax collection
10 contract’ means any contract which—

11 “(1) is for the services of any person (other
12 than an officer or employee of the Treasury Depart-
13 ment)—

14 “(A) to locate and contact any taxpayer
15 specified by the Secretary,

16 “(B) to request full payment from such
17 taxpayer of an amount of Federal tax specified
18 by the Secretary and, if such request cannot be
19 met by the taxpayer, to offer the taxpayer an
20 installment agreement providing for full pay-
21 ment of such amount during a period not to ex-
22 ceed 3 years, and

23 “(C) to obtain financial information speci-
24 fied by the Secretary with respect to such tax-
25 payer,

1 “(2) prohibits each person providing such serv-
2 ices under such contract from committing any act or
3 omission which employees of the Internal Revenue
4 Service are prohibited from committing in the per-
5 formance of similar services,

6 “(3) prohibits subcontractors from—

7 “(A) having contacts with taxpayers,

8 “(B) providing quality assurance services,

9 and

10 “(C) composing debt collection notices, and

11 “(4) permits subcontractors to perform other
12 services only with the approval of the Secretary.

13 “(c) FEES.—The Secretary may retain and use an
14 amount not in excess of 25 percent of the amount collected
15 under any qualified tax collection contract for the costs
16 of services performed under such contract. The Secretary
17 shall keep adequate records regarding amounts so retained
18 and used. The amount credited as paid by any taxpayer
19 shall be determined without regard to this subsection.

20 “(d) NO FEDERAL LIABILITY.—The United States
21 shall not be liable for any act or omission of any person
22 performing services under a qualified tax collection con-
23 tract.

24 “(e) APPLICATION OF FAIR DEBT COLLECTION
25 PRACTICES ACT.—The provisions of the Fair Debt Collec-

1 tion Practices Act (15 U.S.C. 1692 et seq.) shall apply
2 to any qualified tax collection contract, except to the ex-
3 tent superseded by section 6304, section 7602(c), or by
4 any other provision of this title.

5 “(f) CROSS REFERENCES.—

6 “(1) For damages for certain unauthorized col-
7 lection actions by persons performing services under
8 a qualified tax collection contract, see section
9 7433A.

10 “(2) For application of Taxpayer Assistance
11 Orders to persons performing services under a quali-
12 fied tax collection contract, see section 7811(a)(4).”.

13 (2) CONFORMING AMENDMENTS.—

14 (A) Section 7809(a) is amended by insert-
15 ing “6306,” before “7651”.

16 (B) The table of sections for subchapter A
17 of chapter 64 is amended by adding at the end
18 the following new item:

“Sec. 6306. Qualified Tax Collection Contracts.”.

19 (b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED
20 COLLECTION ACTIONS BY PERSONS PERFORMING SERV-
21 ICES UNDER QUALIFIED TAX COLLECTION CON-
22 TRACTS.—

23 (1) IN GENERAL.—Subchapter B of chapter 76
24 (relating to proceedings by taxpayers and third par-

1 ties) is amended by inserting after section 7433 the
2 following new section:

3 **“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHOR-**
4 **IZED COLLECTION ACTIONS BY PERSONS**
5 **PERFORMING SERVICES UNDER QUALIFIED**
6 **TAX COLLECTION CONTRACTS.**

7 “(a) IN GENERAL.—Subject to the modifications pro-
8 vided by subsection (b), section 7433 shall apply to the
9 acts and omissions of any person performing services
10 under a qualified tax collection contract (as defined in sec-
11 tion 6306(b)) to the same extent and in the same manner
12 as if such person were an employee of the Internal Rev-
13 enue Service.

14 “(b) MODIFICATIONS.—For purposes of subsection
15 (a)—

16 “(1) Any civil action brought under section
17 7433 by reason of this section shall be brought
18 against the person who entered into the qualified tax
19 collection contract with the Secretary and shall not
20 be brought against the United States.

21 “(2) Such person and not the United States
22 shall be liable for any damages and costs determined
23 in such civil action.

24 “(3) Such civil action shall not be an exclusive
25 remedy with respect to such person.

1 “(4) Subsections (c), (d)(1), and (e) of section
2 7433 shall not apply.”.

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions for subchapter B of chapter 76 is amended by
5 inserting after the item relating to section 7433 the
6 following new item:

 “Sec. 7433A. Civil damages for certain unauthorized collection ac-
 tions by persons performing services under a quali-
 fied tax collection contract.”.

7 (c) APPLICATION OF TAXPAYER ASSISTANCE OR-
8 DERS TO PERSONS PERFORMING SERVICES UNDER A
9 QUALIFIED TAX COLLECTION CONTRACT.—Section 7811
10 (relating to taxpayer assistance orders) is amended by
11 adding at the end the following new subsection:

12 “(g) APPLICATION TO PERSONS PERFORMING SERV-
13 ICES UNDER A QUALIFIED TAX COLLECTION CON-
14 TRACT.—Any order issued or action taken by the National
15 Taxpayer Advocate pursuant to this section shall apply to
16 persons performing services under a qualified tax collec-
17 tion contract (as defined in section 6306(b)) to the same
18 extent and in the same manner as such order or action
19 applies to the Secretary.”.

20 (d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT
21 MISCONDUCT TO PERFORM UNDER CONTRACT.—Section
22 1203 of the Internal Revenue Service Restructuring Act
23 of 1998 (relating to termination of employment for mis-

1 conduct) is amended by adding at the end the following
2 new subsection:

3 “(e) INDIVIDUALS PERFORMING SERVICES UNDER A
4 QUALIFIED TAX COLLECTION CONTRACT.—An individual
5 shall cease to be permitted to perform any services under
6 any qualified tax collection contract (as defined in section
7 6306(b) of the Internal Revenue Code of 1986) if there
8 is a final determination by the Secretary of the Treasury
9 under such contract that such individual committed any
10 act or omission described under subsection (b) in connec-
11 tion with the performance of such services.”.

12 (e) EFFECTIVE DATE.—The amendments made to
13 this section shall take effect on the date of the enactment
14 of this Act.

15 **SEC. 488. WHISTLEBLOWER REFORMS.**

16 (a) IN GENERAL.—Section 7623 (relating to ex-
17 penses of detection of underpayments and fraud, etc.) is
18 amended—

19 (1) by striking “The Secretary” and inserting

20 “(a) IN GENERAL.—The Secretary”,

21 (2) by striking “and” at the end of paragraph

22 (1) and inserting “or”,

23 (3) by striking “(other than interest)”, and

24 (4) by adding at the end the following new sub-

25 sections:

1 “(b) AWARDS TO WHISTLEBLOWERS.—

2 “(1) IN GENERAL.—If the Secretary proceeds
3 with any administrative or judicial action described
4 in subsection (a) based on information brought to
5 the Secretary’s attention by an individual, such indi-
6 vidual shall, subject to paragraph (2), receive as an
7 award at least 15 percent but not more than 30 per-
8 cent of the proceeds (including penalties and inter-
9 est) resulting from the action (including any related
10 actions) or from any settlement in response to such
11 action. The determination of the amount of such
12 award by the Whistleblower Office shall depend upon
13 the extent to which the individual substantially con-
14 tributed to such action.

15 “(2) AWARD IN CASE OF LESS SUBSTANTIAL
16 CONTRIBUTION.—In the event the action described
17 in paragraph (1) is one which the Whistleblower Of-
18 fice determines to be based primarily on disclosures
19 of specific information (other than information pro-
20 vided by the individual described in paragraph (1))
21 resulting from a judicial or administrative hearing,
22 from a governmental report, hearing, audit, or inves-
23 tigation, or from the news media, the Whistleblower
24 Office may award such sums as it considers appro-
25 priate, but in no case more than 10 percent of the

1 proceeds (including penalties and interest) resulting
2 from the action (including any related actions) or
3 from any settlement in response to such action, tak-
4 ing into account the significance of the individual's
5 information and the role of such individual in con-
6 tributing to such action. This paragraph shall not
7 apply if the information resulting in the initiation of
8 such action was originally provided by such indi-
9 vidual.

10 “(3) APPEAL OF AWARD DETERMINATION.—
11 Any determination regarding an award under para-
12 graph (1) or (2) shall be subject to the filing by the
13 individual described in such paragraph of a petition
14 for review with the Tax Court under rules similar to
15 the rules under section 7463 (without regard to the
16 amount in dispute) and such review shall be subject
17 to the rules under section 7461(b)(1).

18 “(4) APPLICATION OF THIS SUBSECTION.—This
19 subsection shall apply with respect to any action—

20 “(A) against any taxpayer, but in the case
21 of any individual, only if such individual's gross
22 income exceeds \$200,000 for the taxable year
23 subject to such action, and

24 “(B) if the tax (including penalties and in-
25 terest) in dispute exceeds \$20,000.

1 “(5) ADDITIONAL RULES.—

2 “(A) NO CONTRACT NECESSARY.—No con-
3 tract with the Internal Revenue Service is nec-
4 essary for any individual to receive an award
5 under this subsection.

6 “(B) REPRESENTATION.—Any individual
7 described in paragraph (1) or (2) may be rep-
8 resented by counsel.

9 “(C) AWARD NOT SUBJECT TO INDIVIDUAL
10 ALTERNATIVE MINIMUM TAX.—No award re-
11 ceived under this subsection shall be included in
12 gross income for purposes of determining alter-
13 native minimum taxable income.

14 “(c) WHISTLEBLOWER OFFICE.—

15 “(1) IN GENERAL.—There is established in the
16 Internal Revenue Service an office to be known as
17 the ‘Whistleblower Office’ which—

18 “(A) shall analyze information received
19 from any individual described in subsection (b)
20 and either investigate the matter itself or assign
21 it to the appropriate Internal Revenue Service
22 office,

23 “(B) shall monitor any action taken with
24 respect to such matter,

1 “(C) shall inform such individual that it
2 has accepted the individual’s information for
3 further review, may ask for additional assist-
4 ance from such individual, and may require
5 such individual to not disclose any information
6 so provided,

7 “(D) shall determine the amount to be
8 awarded to such individual under subsection
9 (b).

10 “(2) FUNDING FOR OFFICE.—From the
11 amounts available for expenditure under subsection
12 (a), the budget of the Whistleblower Office shall be
13 credited with an amount equal to 20 percent of the
14 awards made under subsection (b). These funds
15 shall be used to maintain the Whistleblower Office
16 and also to reimburse other Internal Revenue Serv-
17 ice offices for related costs, such as costs of inves-
18 tigation and collection. Such funds may also be used
19 to contract with or reimburse the legal representa-
20 tives of any such individual to provide assistance in
21 pursuing the actions described in subsection (a).

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to information provided on or after
24 the date of the enactment of this Act.

1 **PART V—MISCELLANEOUS PROVISIONS**
2 **SEC. 491. ADDITION OF VACCINES AGAINST HEPATITIS A**
3 **TO LIST OF TAXABLE VACCINES.**

4 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-
5 able vaccine) is amended by redesignating subparagraphs
6 (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and
7 (M), respectively, and by inserting after subparagraph (H)
8 the following new subparagraph:

9 “(I) Any vaccine against hepatitis A.”.

10 (b) CONFORMING AMENDMENT.—Section
11 9510(c)(1)(A) is amended by striking “October 18, 2000”
12 and inserting “May 8, 2003”.

13 (c) EFFECTIVE DATE.—

14 (1) SALES, ETC.—The amendments made by
15 this section shall apply to sales and uses on or after
16 the first day of the first month which begins more
17 than 4 weeks after the date of the enactment of this
18 Act.

19 (2) DELIVERIES.—For purposes of paragraph
20 (1) and section 4131 of the Internal Revenue Code
21 of 1986, in the case of sales on or before the effec-
22 tive date described in such paragraph for which de-
23 livery is made after such date, the delivery date shall
24 be considered the sale date.

1 **SEC. 492. RECOGNITION OF GAIN FROM THE SALE OF A**
2 **PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-**
3 **KIND EXCHANGE WITHIN 5 YEARS OF SALE.**

4 (a) IN GENERAL.—Section 121(d) (relating to special
5 rules for exclusion of gain from sale of principal residence)
6 is amended by adding at the end the following new para-
7 graph:

8 “(10) PROPERTY ACQUIRED IN LIKE-KIND EX-
9 CHANGE.—If a taxpayer acquired property in an ex-
10 change to which section 1031 applied, subsection (a)
11 shall not apply to the sale or exchange of such prop-
12 erty if it occurs during the 5-year period beginning
13 with the date of the acquisition of such property.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to sales or exchanges after the date
16 of the enactment of this Act.

17 **SEC. 493. CLARIFICATION OF EXEMPTION FROM TAX FOR**
18 **SMALL PROPERTY AND CASUALTY INSUR-**
19 **ANCE COMPANIES.**

20 (a) IN GENERAL.—Section 501(c)(15)(A) is amended
21 to read as follows:

22 “(A) Insurance companies (as defined in section
23 816(a)) other than life (including interinsurers and
24 reciprocal underwriters) if—

25 “(i)(I) the gross receipts for the taxable
26 year do not exceed \$600,000, and

1 “(II) more than 50 percent of such gross
2 receipts consist of premiums, or

3 “(ii) in the case of a mutual insurance
4 company—

5 “(I) the gross receipts of which for
6 the taxable year do not exceed \$150,000,
7 and

8 “(II) more than 35 percent of such
9 gross receipts consist of premiums.

10 Clause (ii) shall not apply to a company if any em-
11 ployee of the company, or a member of the employ-
12 ee’s family (as defined in section 2032A(e)(2)), is an
13 employee of another company exempt from taxation
14 by reason of this paragraph (or would be so exempt
15 but for this sentence).”.

16 (b) CONTROLLED GROUP RULE.—Section
17 501(c)(15)(C) is amended by inserting “, except that in
18 applying section 831(b)(2)(B)(ii) for purposes of this sub-
19 paragraph, subparagraphs (B) and (C) of section
20 1563(b)(2) shall be disregarded” before the period at the
21 end.

22 (c) DEFINITION OF INSURANCE COMPANY FOR SEC-
23 TION 831.—Section 831 is amended by redesignating sub-
24 section (c) as subsection (d) and by inserting after sub-
25 section (b) the following new subsection:

1 “(c) INSURANCE COMPANY DEFINED.—For purposes
2 of this section, the term ‘insurance company’ has the
3 meaning given to such term by section 816(a).”.

4 (d) CONFORMING AMENDMENT.—Clause (i) of sec-
5 tion 831(b)(2)(A) is amended by striking “exceed
6 \$350,000 but”.

7 (e) EFFECTIVE DATE.—

8 (1) IN GENERAL.—The amendments made by
9 this section shall apply to taxable years beginning
10 after December 31, 2003.

11 (2) TRANSITION RULE FOR COMPANIES IN RE-
12 CEIVERSHIP OR LIQUIDATION.—In the case of a
13 company or association which—

14 (A) for the taxable year which includes
15 April 1, 2004, meets the requirements of sec-
16 tion 501(c)(15)(A) of the Internal Revenue
17 Code of 1986, as in effect for the taxable year
18 beginning before January 1, 2004, and

19 (B) on April 1, 2004, is in a receivership,
20 liquidation, or similar proceeding under the su-
21 pervision of a State court,

22 the amendments made by this section shall apply to
23 taxable years beginning after the earlier of the date
24 such proceeding ends or December 31, 2007.

1 **SEC. 494. LIMITATIONS ON DEDUCTION FOR CHARITABLE**
2 **CONTRIBUTIONS OF PATENTS AND SIMILAR**
3 **PROPERTY.**

4 (a) DEDUCTION ALLOWED ONLY TO THE EXTENT OF
5 BASIS.—Section 170(e)(1)(B) (relating to certain con-
6 tributions of ordinary income and capital gain property)
7 is amended by striking “or” at the end of clause (i), by
8 adding “or” at the end of clause (ii), and by inserting
9 after clause (ii) the following new clause:

10 “(iii) of any patent, copyright, trade-
11 mark, trade name, trade secret, know-how,
12 software, or similar property, or applica-
13 tions or registrations of such property,”.

14 (b) TREATMENT OF CONTRIBUTIONS WHERE DONOR
15 RECEIVES INTEREST.—Section 170(e) is amended by add-
16 ing at the end the following new paragraph:

17 “(7) SPECIAL RULES FOR CONTRIBUTIONS OF
18 PATENTS AND SIMILAR PROPERTY WHERE DONOR
19 RECEIVES INTEREST.—

20 “(A) DISALLOWANCE OF DEDUCTION.—No
21 deduction shall be allowed under this section
22 with respect to a contribution of property de-
23 scribed in paragraph (1)(B)(iii) if the taxpayer
24 after the contribution has any interest in the
25 property other than a qualified interest.

1 “(B) CONTRIBUTIONS WITH QUALIFIED IN-
2 TEREST.—If a taxpayer after a contribution of
3 property described in paragraph (1)(B)(iii) has
4 a qualified interest in the property—

5 “(i) any payment pursuant to the
6 qualified interest shall be treated as ordi-
7 nary income and shall be includible in
8 gross income of the taxpayer for the tax-
9 able year in which the payment is received
10 by the taxpayer, and

11 “(ii) subsection (f)(3) and section
12 1011(b) shall not apply to the transfer of
13 the property from the taxpayer to the
14 donee.

15 “(C) QUALIFIED INTEREST.—For purposes
16 of this paragraph—

17 “(i) IN GENERAL.—The term ‘quali-
18 fied interest’ means, with respect to any
19 taxpayer, a right to receive from the donee
20 a percentage (not greater than 50 percent)
21 of any royalty payment received by the
22 donee with respect to property described in
23 paragraph (1)(B)(iii) (other than copy-
24 rights which are described in section

1 1221(a)(3) or 1231(b)(1)(C)) contributed
2 by the taxpayer to the donee.

3 “(ii) SECRETARIAL AUTHORITY.—

4 “(I) IN GENERAL.—Except as
5 provided in subclause (II), the Sec-
6 retary may by regulation or other ad-
7 ministrative guidance treat as a quali-
8 fied interest the right to receive other
9 payments from the donee, but only if
10 the donee does not possess a right to
11 receive any payment (whether royal-
12 ties or otherwise) from a third party
13 with respect to the contributed prop-
14 erty.

15 “(II) EXCEPTIONS.—The Sec-
16 retary may not treat as a qualified in-
17 terest the right to receive any pay-
18 ment which provides a benefit to the
19 donor which is greater than the ben-
20 efit retained by the donee or the right
21 to receive any portion of the proceeds
22 from the sale of the property contrib-
23 uted.

24 “(iii) LIMITATION.—An interest shall
25 be treated as a qualified interest under this

1 subparagraph only if the taxpayer has no
2 right to receive any payment described in
3 clause (i) or (ii)(I) after the earlier of the
4 date on which the legal life of the contrib-
5 uted property expires or the date which is
6 20 years after the date of the contribu-
7 tion.”.

8 (c) REPORTING REQUIREMENTS.—

9 (1) IN GENERAL.—Section 6050L(a) (relating
10 to returns regarding certain dispositions of donated
11 property) is amended—

12 (A) by striking “If” and inserting:

13 “(1) DISPOSITIONS OF DONATED PROPERTY.—
14 If”,

15 (B) by redesignating paragraphs (1)
16 through (5) as subparagraphs (A) through (E),
17 respectively, and

18 (C) by adding at the end the following new
19 paragraph:

20 “(2) PAYMENTS OF QUALIFIED INTERESTS.—

21 Each donee of property described in section
22 170(e)(1)(B)(iii) which makes a payment to a donor
23 pursuant to a qualified interest (as defined in sec-
24 tion 170(e)(7)) during any calendar year shall make

1 a return (in accordance with forms and regulations
2 prescribed by the Secretary) showing—

3 “(A) the name, address, and TIN of the
4 payor and the payee with respect to such a pay-
5 ment,

6 “(B) a description, and date of contribu-
7 tion, of the property to which the qualified in-
8 terest relates,

9 “(C) the dates and amounts of any royalty
10 payments received by the donee with respect to
11 such property,

12 “(D) the date and the amount of the pay-
13 ment pursuant to the qualified interest, and

14 “(E) a description of the terms of the
15 qualified interest.”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) The heading for section 6050L is
18 amended by striking “**CERTAIN DISPOSI-**
19 **TIONS OF**”.

20 (B) The item relating to section 6050L in
21 the table of sections for subpart B of part III
22 of subchapter A of chapter 61 is amended by
23 striking “certain dispositions of”.

24 (d) ANTI-ABUSE RULES.—The Secretary of the
25 Treasury may prescribe such regulations or other adminis-

1 trative guidance as may be necessary or appropriate to
2 prevent the avoidance of the purposes of section
3 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986
4 (as added by subsection (a)), including preventing—

5 (1) the circumvention of the reduction of the
6 charitable deduction by embedding or bundling the
7 patent or similar property as part of a charitable
8 contribution of property that includes the patent or
9 similar property,

10 (2) the manipulation of the basis of the prop-
11 erty to increase the amount of the charitable deduc-
12 tion through the use of related persons, pass-thru
13 entities, or other intermediaries, or through the use
14 of any provision of law or regulation (including the
15 consolidated return regulations), and

16 (3) a donor from changing the form of the pat-
17 ent or similar property to property of a form for
18 which different deduction rules would apply.

19 (e) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to contributions made after Octo-
21 ber 1, 2003.

22 **SEC. 495. REPEAL OF 10-PERCENT REHABILITATION TAX**
23 **CREDIT.**

24 Section 47 is amended by adding at the end the fol-
25 lowing new subsection:

1 (b) 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 **TITLE V—PROTECTION OF**
5 **UNITED STATES WORKERS**
6 **FROM COMPETITION OF FOR-**
7 **EIGN WORKFORCES**

8 **SEC. 501. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**
9 **CONTRACTS.**

10 (a) LIMITATIONS.—

11 (1) IN GENERAL.—The Office of Federal Pro-
12 curement Policy Act (41 U.S.C. 403 et seq.) is
13 amended by adding at the end the following new sec-
14 tion:

15 **“SEC. 42. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**
16 **CONTRACTS.**

17 **“(a) CONVERSIONS TO CONTRACTOR PERFORMANCE**
18 **OF FEDERAL ACTIVITIES.—**An activity or function of an
19 executive agency that is converted to contractor perform-
20 ance under Office of Management and Budget Circular
21 A-76 may not be performed by the contractor or any sub-
22 contractor at a location outside the United States except
23 to the extent that such activity or function was previously
24 performed by Federal Government employees outside the
25 United States.

1 “(b) OTHER FEDERAL CONTRACTS.—(1) A contract
2 that is entered into by the head of an executive agency
3 may not be performed outside the United States except
4 to meet a requirement of the executive agency for the con-
5 tract to be performed specifically at a location outside the
6 United States.

7 “(2) The prohibition in paragraph (1) does not apply
8 in the case of a contract of an executive agency if—

9 “(A) the President determines in writing that it
10 is necessary in the national security interests of the
11 United States for the contract to be performed out-
12 side the United States; or

13 “(B) the head of such executive agency makes
14 a determination and reports such determination on
15 a timely basis to the Director of the Office of Man-
16 agement and Budget that—

17 “(i) the property or services needed by the
18 executive agency are available only by means of
19 performance of the contract outside the United
20 States; and

21 “(ii) no property or services available by
22 means of performance of the contract inside the
23 United States would satisfy the executive agen-
24 cy’s need.

1 “(3) Paragraph (1) does not apply to the perform-
2 ance of a contract outside the United States under the
3 exception provided in subsection (a).

4 “(c) STATE CONTRACTS.—(1) Except as provided in
5 paragraph (2), funds appropriated for financial assistance
6 for a State may not be disbursed to or for such State dur-
7 ing a fiscal year unless the chief executive of that State
8 has transmitted to the Administrator for Federal Procure-
9 ment Policy, not later than April 1 of the preceding fiscal
10 year, a written certification that none of such funds will
11 be expended for the performance outside the United States
12 of contracts entered into by such State.

13 “(2) The prohibition on disbursement of funds to or
14 for a State under paragraph (1) does not apply with re-
15 spect to the performance of a State contract outside the
16 United States if—

17 “(A) the chief executive of such State—

18 “(i) determines that the property or serv-
19 ices needed by the State are available only by
20 means of performance of the contract outside
21 the United States and no property or services
22 available by means of performance of the con-
23 tract inside the United States would satisfy the
24 State’s need; and

1 “(ii) transmits a notification of such deter-
2 mination to the head of the executive agency of
3 the United States that administers the author-
4 ity under which such funds are disbursed to or
5 for the State; and

6 “(B) the head of the executive agency receiving
7 the notification of such determination—

8 “(i) confirms that the facts warrant the
9 determination;

10 “(ii) approves the determination; and

11 “(iii) transmits a notification of the ap-
12 proval of the determination to the Director of
13 the Office of Management and Budget.

14 “(3) In this subsection, the term ‘State’ means each
15 of the several States of the United States, the District
16 of Columbia, the Commonwealth of Puerto Rico, the Com-
17 monwealth of the Northern Mariana Islands, the Virgin
18 Islands, Guam, American Samoa, and the Trust Territory
19 of the Pacific Islands.

20 “(d) Subsections (b) and (c) shall not apply to pro-
21 curement covered by the World Trade Organization Gov-
22 ernment Procurement Agreement.

23 “(e) NATIONAL SECURITY EXEMPTION.—Subsection
24 (b) shall not apply to any procurement for national secu-
25 rity purposes entered into by—

1 “(1) the Department of Defense or any agency
2 or entity thereof;

3 “(2) the Department of the Army, the Depart-
4 ment of the Navy, the Department of the Air Force,
5 or any agency or entity of any of the military de-
6 partments;

7 “(3) the Department of Homeland Security;

8 “(4) the Department of Energy or any agency
9 or entity thereof, with respect to the national secu-
10 rity programs of that Department; or

11 “(5) any element of the intelligence community.

12 “(f) RESPONSIBILITIES OF OMB.—The Director of
13 the Office of Management and Budget shall—

14 “(1) maintain—

15 “(A) the waivers granted under subsection
16 (b)(2), together with the determinations and
17 certifications on which such waivers were based;
18 and

19 “(B) the notifications received under sub-
20 section (c)(2)(B)(iii); and

21 “(2) submit to Congress promptly after the end
22 of each quarter of each fiscal year a report that sets
23 forth—

24 “(A) the waivers that were granted under
25 subsection (b)(2) during such quarter; and

1 “(B) the notifications that were received
2 under subsection (c)(2)(B)(iii) during such
3 quarter.

4 “(g) ANNUAL GAO REVIEW.—The Comptroller Gen-
5 eral shall—

6 “(1) review, each fiscal year, the waivers grant-
7 ed during such fiscal year under subsection (b)(2)
8 and the disbursements of funds authorized pursuant
9 to the exceptions in subsections (c)(2) and (e); and

10 “(2) promptly after the end of such fiscal year,
11 transmit to Congress a report containing a list of
12 the contracts covered by such waivers and exception
13 together with a brief description of the performance
14 of each such contract to the maximum extent fea-
15 sible outside the United States.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions in section 1(b) of such Act is amended by add-
18 ing at the end the following new item:

“Sec. 42. Limitations on off-shore performance of contracts.”.

19 (b) INAPPLICABILITY TO STATES DURING FIRST
20 TWO FISCAL YEARS.—Section 42(c) of the Office of Fed-
21 eral Procurement Policy Act (as added by subsection (a))
22 shall not apply to disbursements of funds to a State dur-
23 ing the fiscal year in which this Act is enacted and the
24 next fiscal year.

1 **SEC. 502. REPEAL OF SUPERSEDED LAW.**

2 Section 647 of the Transportation, Treasury, and
3 Independent Agencies Appropriations Act, 2004 (division
4 F of Public Law 108–199) is amended by striking sub-
5 section (e).

6 **SEC. 503. EFFECTIVE DATE AND APPLICABILITY.**

7 (a) IN GENERAL.—This title and the amendments
8 made by this title shall take effect 30 days after the Sec-
9 retary of Commerce certifies that the amendments made
10 by this title will not result in the loss of more jobs than
11 it will protect and will not cause harm to the United States
12 economy. The initial certification shall be made by the
13 Secretary of Commerce no later than 90 days after the
14 enactment of this Act. Such certification must be renewed
15 on or before January 1 of each year in order for the
16 amendments made by this title to be in effect for that
17 year.

18 (b) CONSISTENCY WITH INTERNATIONAL AGREE-
19 MENTS.—The provisions of this title shall not apply to the
20 extent that they may be inconsistent with obligations
21 under international agreements. Within 90 days of this
22 legislation, the Office of Management and Budget, in con-
23 sultation with the Office of the United States Trade Rep-
24 resentative, shall develop guidelines for the implementa-
25 tion of this provision.

1 **TITLE VI—OTHER PROVISIONS**
2 **Subtitle A—Provisions Relating to**
3 **Housing**

4 **SEC. 601. TREATMENT OF QUALIFIED MORTGAGE BONDS.**

5 (a) YEAR HOLIDAY.—Section 143(a)(2)(A)(iv) of the
6 Internal Revenue Code of 1986 shall not apply to amounts
7 received during the 1-year period beginning on the date
8 of the enactment of this Act with respect to any bond out-
9 standing on such date.

10 (b) REPEAL OF REQUIRED USE OF CERTAIN PRIN-
11 CIPAL REPAYMENTS ON MORTGAGE SUBSIDY BOND
12 FINANCINGS TO REDEEM BONDS.—

13 (1) IN GENERAL.—Subparagraph (A) of section
14 143(a)(2) (defining qualified mortgage issue) is
15 amended by adding “and” at the end of clause (ii),
16 by striking “, and” at the end of clause (iii) and in-
17 serting a period, and by striking clause (iv) and the
18 last sentence.

19 (2) CONFORMING AMENDMENT.—Clause (ii) of
20 section 143(a)(2)(D) is amended by striking “(and
21 clause (iv) of subparagraph (A))”.

22 (3) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to bonds originally
24 issued after the date of the enactment of this Act.

1 **SEC. 602. PREMIUMS FOR MORTGAGE INSURANCE.**

2 (a) IN GENERAL.—Paragraph (3) of section 163(h)
3 (relating to qualified residence interest) is amended by
4 adding after subparagraph (D) the following new subpara-
5 graph:

6 “(E) MORTGAGE INSURANCE PREMIUMS
7 TREATED AS INTEREST.—

8 “(i) IN GENERAL.—Premiums paid or
9 accrued for qualified mortgage insurance
10 by a taxpayer during the taxable year in
11 connection with acquisition indebtedness
12 with respect to a qualified residence of the
13 taxpayer shall be treated for purposes of
14 this subsection as qualified residence inter-
15 est.

16 “(ii) PHASEOUT.—The amount other-
17 wise allowable as a deduction under clause
18 (i) shall be reduced (but not below zero) by
19 10 percent of such amount for each \$1,000
20 (\$500 in the case of a married individual
21 filing a separate return) (or fraction there-
22 of) that the taxpayer’s adjusted gross in-
23 come for the taxable year exceeds
24 \$100,000 (\$50,000 in the case of a mar-
25 ried individual filing a separate return).”.

1 (b) DEFINITION AND SPECIAL RULES.—Paragraph
2 (4) of section 163(h) (relating to other definitions and spe-
3 cial rules) is amended by adding at the end the following
4 new subparagraphs:

5 “(E) QUALIFIED MORTGAGE INSUR-
6 ANCE.—The term ‘qualified mortgage insur-
7 ance’ means—

8 “(i) the Home Loan Guaranty Pro-
9 gram of the Department of Veterans Af-
10 fairs, and mortgage insurance provided by
11 the Federal Housing Administration or the
12 Rural Housing Administration, and

13 “(ii) private mortgage insurance (as
14 defined by section 2 of the Homeowners
15 Protection Act of 1998 (12 U.S.C. 4901),
16 as in effect on the date of the enactment
17 of this subparagraph).

18 “(F) SPECIAL RULES FOR PREPAID QUALI-
19 FIED MORTGAGE INSURANCE.—Any amount
20 paid by the taxpayer for qualified mortgage in-
21 surance that is properly allocable to any mort-
22 gage the payment of which extends to periods
23 that are after the close of the taxable year in
24 which such amount is paid shall be chargeable
25 to capital account and shall be treated as paid

1 in such periods to which so allocated. No deduc-
2 tion shall be allowed for the unamortized bal-
3 ance of such account if such mortgage is satis-
4 fied before the end of its term. The preceding
5 sentences shall not apply to amounts paid for
6 qualified mortgage insurance provided by the
7 Department of Veterans Affairs or the Rural
8 Housing Administration.”.

9 (c) INFORMATION RETURNS RELATING TO MORT-
10 GAGE INSURANCE.—Section 6050H (relating to returns
11 relating to mortgage interest received in trade or business
12 from individuals) is amended by adding at the end the fol-
13 lowing new subsection:

14 “(h) RETURNS RELATING TO MORTGAGE INSURANCE
15 PREMIUMS.—

16 “(1) IN GENERAL.—The Secretary may pre-
17 scribe, by regulations, that any person who, in the
18 course of a trade or business, receives from any indi-
19 vidual premiums for mortgage insurance aggregating
20 \$600 or more for any calendar year, shall make a
21 return with respect to each such individual. Such re-
22 turn shall be in such form, shall be made at such
23 time, and shall contain such information as the Sec-
24 retary may prescribe.

1 as in effect on the date of the enactment
2 of this subparagraph).”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to amounts paid or accrued in tax-
5 able years beginning after December 31, 2004, and ending
6 before January 1, 2006.

7 **SEC. 603. INCREASE IN HISTORIC REHABILITATION CREDIT**
8 **FOR CERTAIN LOW-INCOME HOUSING FOR**
9 **THE ELDERLY.**

10 (a) **IN GENERAL.**—Section 47 (relating to rehabilita-
11 tion credit) is amended by adding at the end the following
12 new subsection:

13 “(e) **SPECIAL RULE REGARDING CERTAIN HISTORIC**
14 **STRUCTURES.**—In the case of any qualified rehabilitation
15 expenditure with respect to any certified historic
16 structure—

17 “(1) which is placed in service after the date of
18 the enactment of this subsection,

19 “(2) which is part of a qualified low-income
20 building with respect to which a credit under section
21 42 is allowed, and

22 “(3) substantially all of the residential rental
23 units of which are used for tenants who have at-
24 tained the age of 65,

1 subsection (a)(2) shall be applied by substituting ‘25 per-
2 cent’ for ‘20 percent’.”.

3 (b) APPLICATION OF MACRS.—The Internal Rev-
4 enue Code of 1986 shall be applied and administered as
5 if paragraph (4)(X) of section 251(d) of the Tax Reform
6 Act of 1986 as applied to the amendments made by section
7 201 of such Act had not been enacted with respect to any
8 property described in such paragraph and placed in service
9 after the date of the enactment of this Act.

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

13 **Subtitle B—Provisions Relating to** 14 **Bonds**

15 **SEC. 611. EXPANSION OF NEW YORK LIBERTY ZONE TAX** 16 **BENEFITS.**

17 (a) ADDITIONAL EXTENSION OF TAX-EXEMPT BOND
18 FINANCING.—Section 1400L(d)(2)(D), as amended by
19 this Act, is amended by striking “2006” and inserting
20 “2010”.

21 (b) EXTENSION OF ADVANCE REFUNDINGS.—Sec-
22 tion 1400L(e)(1) is amended by striking “2005” and in-
23 serting “2006”.

1 **SEC. 612. MODIFICATIONS OF TREATMENT OF QUALIFIED**
2 **ZONE ACADEMY BONDS.**

3 (a) PROCEEDS OF BONDS MAY BE USED FOR CON-
4 STRUCTION AND LAND ACQUISITION.—Paragraph (5) of
5 section 1397E(d) (defining qualified purpose) is
6 amended—

7 (1) by striking “rehabilitating or repairing” in
8 subparagraph (A) and inserting “constructing, reha-
9 bilitating, or repairing”, and

10 (2) by redesignating subparagraphs (B), (C),
11 and (D) as subparagraphs (C), (D), and (E), respec-
12 tively, and by inserting after subparagraph (A) the
13 following:

14 “(B) acquiring the land on which the facil-
15 ity is to be constructed.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to obligations issued after Decem-
18 ber 31, 2003.

19 **SEC. 613. MODIFICATIONS OF AUTHORITY OF INDIAN TRIB-**
20 **AL GOVERNMENTS TO ISSUE TAX-EXEMPT**
21 **BONDS.**

22 (a) IN GENERAL.—Paragraph (1) of section 7871(c)
23 (relating to Indian tribal governments treated as States
24 for certain purposes) is amended to read as follows:

25 “(1) IN GENERAL.—Subsection (a) of section
26 103 shall apply to any obligation issued by an In-

1 dian tribal government (or subdivision thereof) only
2 if—

3 “(A) such obligation—

4 “(i) is part of an issue 95 percent or
5 more of the net proceeds of which are to
6 be used to finance any facility located on
7 an Indian reservation, and

8 “(ii) is issued before January 1, 2006,
9 or

10 “(B) such obligation is part of an issue
11 substantially all of the proceeds of which are to
12 be used in the exercise of any essential govern-
13 mental function.”.

14 (b) SPECIAL RULES AND DEFINITIONS.—Subsection
15 (c) of section 7871 is amended by inserting at the end
16 the following new paragraph:

17 “(4) SPECIAL RULES AND DEFINITIONS.—

18 “(A) EXCLUSION OF GAMING.—An obliga-
19 tion described in subparagraph (A) or (B) of
20 paragraph (1) may not be used to finance any
21 portion of a building in which class II or III
22 gaming (as defined in section 4 of the Indian
23 Gaming Regulatory Act (25 U.S.C. 2702)) is
24 conducted or housed.

1 results in a change in the condition of such
2 property),

3 “(ii) the manufacture or development
4 of any software product or process if—

5 “(I) it takes more than 6 months
6 to manufacture or develop such prod-
7 uct,

8 “(II) the manufacture or develop-
9 ment could not with due diligence be
10 reasonably expected to occur in less
11 than 6 months, and

12 “(III) the software product or
13 process comprises programs, routines,
14 and attendant documentation devel-
15 oped and maintained for use in com-
16 puter and telecommunications tech-
17 nology, or

18 “(iii) the manufacture or development
19 of any biobased product or bioenergy if—

20 “(I) it takes more than 6 months
21 to manufacture or develop, and

22 “(II) the manufacture or develop-
23 ment could not with due diligence be
24 reasonably expected to occur in less
25 than 6 months.

1 “(D) RELATED FACILITIES.—For purposes
2 of subparagraph (C), the term ‘manufacturing
3 facility’ includes a facility which is directly and
4 functionally related to a manufacturing facility
5 (determined without regard to subparagraph
6 (C)) if—

7 “(i) such facility, including an office
8 facility and a research and development fa-
9 cility, is located on the same site as the
10 manufacturing facility, and

11 “(ii) not more than 40 percent of the
12 net proceeds of the issue are used to pro-
13 vide such facility.

14 “(E) OTHER DEFINITIONS.—For purposes
15 of subparagraph (C)(iii)—

16 “(i) BIOBASED PRODUCT.—The term
17 ‘biobased product’ means a commercial or
18 industrial product (other than food or
19 feed) which utilizes biological products or
20 renewable domestic agricultural (plant,
21 animal, and marine) or forestry materials.

22 “(ii) BIOENERGY.—The term ‘bio-
23 energy’ means biomass used in the produc-
24 tion of energy, including liquid, solid, or
25 gaseous fuels, electricity, and heat.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to obligations issued after the date
3 of the enactment of this Act.

4 **SEC. 615. CONSERVATION BONDS.**

5 (a) TAX-EXEMPT BOND FINANCING.—

6 (1) IN GENERAL.—For purposes of the Internal
7 Revenue Code of 1986, any qualified forest con-
8 servation bond shall be treated as an exempt facility
9 bond under section 142 of such Code.

10 (2) QUALIFIED FOREST CONSERVATION
11 BOND.—For purposes of this section, the term
12 “qualified forest conservation bond” means any bond
13 issued as part of an issue if—

14 (A) 95 percent or more of the net proceeds
15 (as defined in section 150(a)(3) of such Code)
16 of such issue are to be used for qualified project
17 costs,

18 (B) such bond is issued for a qualified or-
19 ganization, and

20 (C) such bond is issued before December
21 31, 2006.

22 (3) LIMITATION ON AGGREGATE AMOUNT
23 ISSUED.—

24 (A) IN GENERAL.—The maximum aggre-
25 gate face amount of bonds which may be issued

1 under this subsection shall not exceed
2 \$1,500,000,000 for all projects (excluding re-
3 funding bonds).

4 (B) ALLOCATION OF LIMITATION.—The
5 limitation described in subparagraph (A) shall
6 be allocated by the Secretary of the Treasury
7 among qualified organizations based on criteria
8 established by the Secretary not later than 180
9 days after the date of the enactment of this sec-
10 tion, after consultation with the Chief of the
11 Forest Service.

12 (4) QUALIFIED PROJECT COSTS.—For purposes
13 of this subsection, the term “qualified project costs”
14 means the sum of—

15 (A) the cost of acquisition by the qualified
16 organization from an unrelated person of for-
17 ests and forest land which at the time of acqui-
18 sition or immediately thereafter are subject to
19 a conservation restriction described in sub-
20 section (c)(2),

21 (B) capitalized interest on the qualified
22 forest conservation bonds for the 3-year period
23 beginning on the date of issuance of such
24 bonds, and

1 (C) credit enhancement fees which con-
2 stitute qualified guarantee fees (within the
3 meaning of section 148 of such Code).

4 (5) SPECIAL RULES.—In applying the Internal
5 Revenue Code of 1986 to any qualified forest con-
6 servation bond, the following modifications shall
7 apply:

8 (A) Section 146 of such Code (relating to
9 volume cap) shall not apply.

10 (B) For purposes of section 147(b) of such
11 Code (relating to maturity may not exceed 120
12 percent of economic life), the land and standing
13 timber acquired with proceeds of qualified for-
14 est conservation bonds shall have an economic
15 life of 35 years.

16 (C) Subsections (c) and (d) of section 147
17 of such Code (relating to limitations on acquisi-
18 tion of land and existing property) shall not
19 apply.

20 (D) Section 57(a)(5) of such Code (relat-
21 ing to tax-exempt interest) shall not apply to
22 interest on qualified forest conservation bonds.

23 (6) TREATMENT OF CURRENT REFUNDING
24 BONDS.—Paragraphs (2)(C) and (3) shall not apply
25 to any bond (or series of bonds) issued to refund a

1 qualified forest conservation bond issued before De-
2 cember 31, 2006, if—

3 (A) the average maturity date of the issue
4 of which the refunding bond is a part is not
5 later than the average maturity date of the
6 bonds to be refunded by such issue,

7 (B) the amount of the refunding bond does
8 not exceed the outstanding amount of the re-
9 funded bond, and

10 (C) the net proceeds of the refunding bond
11 are used to redeem the refunded bond not later
12 than 90 days after the date of the issuance of
13 the refunding bond.

14 For purposes of subparagraph (A), average maturity
15 shall be determined in accordance with section
16 147(b)(2)(A) of such Code.

17 (7) EFFECTIVE DATE.—This subsection shall
18 apply to obligations issued on or after the date
19 which is 180 days after the enactment of this Act.

20 (b) ITEMS FROM QUALIFIED HARVESTING ACTIVI-
21 TIES NOT SUBJECT TO TAX OR TAKEN INTO ACCOUNT.—

22 (1) IN GENERAL.—Income, gains, deductions,
23 losses, or credits from a qualified harvesting activity
24 conducted by a qualified organization shall not be

1 subject to tax or taken into account under subtitle
2 A of the Internal Revenue Code of 1986.

3 (2) LIMITATION.—The amount of income ex-
4 cluded from gross income under paragraph (1) for
5 any taxable year shall not exceed the amount used
6 by the qualified organization to make debt service
7 payments during such taxable year for qualified for-
8 est conservation bonds.

9 (3) QUALIFIED HARVESTING ACTIVITY.—For
10 purposes of paragraph (1)—

11 (A) IN GENERAL.—The term “qualified
12 harvesting activity” means the sale, lease, or
13 harvesting, of standing timber—

14 (i) on land owned by a qualified orga-
15 nization which was acquired with proceeds
16 of qualified forest conservation bonds,

17 (ii) with respect to which a written ac-
18 knowledgement has been obtained by the
19 qualified organization from the State or
20 local governments with jurisdiction over
21 such land that the acquisition lessens the
22 burdens of such government with respect
23 to such land, and

1 (iii) pursuant to a qualified conserva-
2 tion plan adopted by the qualified organi-
3 zation.

4 (B) EXCEPTIONS.—

5 (i) CESSATION AS QUALIFIED ORGANI-
6 ZATION.—The term “qualified harvesting
7 activity” shall not include any sale, lease,
8 or harvesting for any period during which
9 the organization ceases to qualify as a
10 qualified organization.

11 (ii) EXCEEDING LIMITS ON HAR-
12 VESTING.—The term “qualified harvesting
13 activity” shall not include any sale, lease,
14 or harvesting of standing timber on land
15 acquired with proceeds of qualified forest
16 conservation bonds to the extent that—

17 (I) the average annual area of
18 timber harvested from such land ex-
19 ceeds 2.5 percent of the total area of
20 such land or,

21 (II) the quantity of timber re-
22 moved from such land exceeds the
23 quantity which can be removed from
24 such land annually in perpetuity on a

1 sustained-yield basis with respect to
2 such land.

3 The limitations under subclauses (I) and
4 (II) shall not apply to post-fire restoration
5 and rehabilitation or sanitation harvesting
6 of timber stands which are substantially
7 damaged by fire, windthrow, or other ca-
8 tastrophes, or which are in imminent dan-
9 ger from insect or disease attack.

10 (4) TERMINATION.—This subsection shall not
11 apply to any qualified harvesting activity of a quali-
12 fied organization occurring after the date on which
13 there is no outstanding qualified forest conservation
14 bond with respect to such qualified organization or
15 any such bond ceases to be a tax-exempt bond.

16 (5) PARTIAL RECAPTURE OF BENEFITS IF HAR-
17 VESTING LIMIT EXCEEDED.—If, as of the date that
18 this subsection ceases to apply under paragraph (3),
19 the average annual area of timber harvested from
20 the land exceeds the requirement of paragraph
21 (3)(B)(ii)(I), the tax imposed by chapter 1 of the In-
22 ternal Revenue Code of 1986 shall be increased,
23 under rules prescribed by the Secretary of the
24 Treasury, by the sum of the tax benefits attributable
25 to such excess and interest at the underpayment

1 rate under section 6621 of such Code for the period
2 of the underpayment.

3 (c) DEFINITIONS.—For purposes of this section—

4 (1) QUALIFIED CONSERVATION PLAN.—The
5 term “qualified conservation plan” means a multiple
6 land use program or plan which—

7 (A) is designed and administered primarily
8 for the purposes of protecting and enhancing
9 wildlife and fish, timber, scenic attributes,
10 recreation, and soil and water quality of the
11 forest and forest land,

12 (B) mandates that conservation of forest
13 and forest land is the single-most significant
14 use of the forest and forest land, and

15 (C) requires that timber harvesting be con-
16 sistent with—

17 (i) restoring and maintaining ref-
18 erence conditions for the region’s ecotype,

19 (ii) restoring and maintaining a rep-
20 resentative sample of young, mid, and late
21 successional forest age classes,

22 (iii) maintaining or restoring the re-
23 sources’ ecological health for purposes of
24 preventing damage from fire, insect, or dis-
25 ease,

1 (iv) maintaining or enhancing wildlife
2 or fish habitat, or

3 (v) enhancing research opportunities
4 in sustainable renewable resource uses.

5 (2) CONSERVATION RESTRICTION.—The con-
6 servation restriction described in this paragraph is a
7 restriction which—

8 (A) is granted in perpetuity to an unre-
9 lated person which is described in section
10 170(h)(3) of such Code and which, in the case
11 of a nongovernmental unit, is organized and op-
12 erated for conservation purposes,

13 (B) meets the requirements of clause (ii)
14 or (iii)(II) of section 170(h)(4)(A) of such
15 Code,

16 (C) obligates the qualified organization to
17 pay the costs incurred by the holder of the con-
18 servation restriction in monitoring compliance
19 with such restriction, and

20 (D) requires an increasing level of con-
21 servation benefits to be provided whenever cir-
22 cumstances allow it.

23 (3) QUALIFIED ORGANIZATION.—The term
24 “qualified organization” means an organization—

1 (A) which is a nonprofit organization sub-
2 stantially all the activities of which are chari-
3 table, scientific, or educational, including ac-
4 quiring, protecting, restoring, managing, and
5 developing forest lands and other renewable re-
6 sources for the long-term charitable, edu-
7 cational, scientific and public benefit,

8 (B) more than half of the value of the
9 property of which consists of forests and forest
10 land acquired with the proceeds from qualified
11 forest conservation bonds,

12 (C) which periodically conducts educational
13 programs designed to inform the public of envi-
14 ronmentally sensitive forestry management and
15 conservation techniques,

16 (D) which has at all times a board of
17 directors—

18 (i) at least 20 percent of the members
19 of which represent the holders of the con-
20 servation restriction described in para-
21 graph (2),

22 (ii) at least 20 percent of the mem-
23 bers of which are public officials, and

24 (iii) not more than one-third of the
25 members of which are individuals who are

1 or were at any time within 5 years before
2 the beginning of a term of membership on
3 the board, an employee of, independent
4 contractor with respect to, officer of, direc-
5 tor of, or held a material financial interest
6 in, a commercial forest products enterprise
7 with which the qualified organization has a
8 contractual or other financial arrangement,
9 (E) the bylaws of which require at least
10 two-thirds of the members of the board of direc-
11 tors to vote affirmatively to approve the quali-
12 fied conservation plan and any change thereto,
13 and
14 (F) upon dissolution, is required to dedi-
15 cate its assets to—
16 (i) an organization described in sec-
17 tion 501(c)(3) of such Code which is orga-
18 nized and operated for conservation pur-
19 poses, or
20 (ii) a governmental unit described in
21 section 170(c)(1) of such Code.
22 (4) UNRELATED PERSON.—The term “unre-
23 lated person” means a person who is not a related
24 person.

1 (5) RELATED PERSON.—A person shall be
2 treated as related to another person if—

3 (A) such person bears a relationship to
4 such other person described in section 267(b)
5 (determined without regard to paragraph (9)
6 thereof), or 707(b)(1), of such Code, deter-
7 mined by substituting “25 percent” for “50
8 percent” each place it appears therein, and

9 (B) in the case such other person is a non-
10 profit organization, if such person controls di-
11 rectly or indirectly more than 25 percent of the
12 governing body of such organization.

13 **SEC. 616. INDIAN SCHOOL CONSTRUCTION.**

14 (a) DEFINITIONS.—In this section:

15 (1) BUREAU.—The term “Bureau” means the
16 Bureau of Indian Affairs of the Department.

17 (2) DEPARTMENT.—The term “Department”
18 means the Department of the Interior.

19 (3) ESCROW ACCOUNT.—The term “escrow ac-
20 count” means the tribal school modernization escrow
21 account established under subsection (b)(6)(B)(i).

22 (4) INDIAN.—The term “Indian” means any in-
23 dividual who is a member of an Indian tribe.

24 (5) INDIAN TRIBE.—

1 (A) IN GENERAL.—The term “Indian
2 tribe” has the meaning given the term “Indian
3 tribal government” by section 7701(a)(40) of
4 the Internal Revenue Code of 1986 (including
5 the application of section 7871(d) of that
6 Code).

7 (B) INCLUSION.—The term “Indian tribe”
8 includes a consortium of Indian tribes approved
9 by the Secretary.

10 (6) SECRETARY.—The term “Secretary” means
11 the Secretary of the Interior.

12 (7) TRIBAL SCHOOL.—The term “tribal school”
13 means an elementary school, secondary school, or
14 dormitory that—

15 (A) is operated by a tribal organization or
16 the Bureau for the education of Indian chil-
17 dren; and

18 (B) under a contract, a grant, or an agree-
19 ment, or for a Bureau-operated school, receives
20 financial assistance to pay the costs of oper-
21 ation from funds made available under—

22 (i) section 102, 103(a), or 208 of the
23 Indian Self-Determination and Education
24 Assistance Act (25 U.S.C. 450f, 450h(a),
25 458d); or

1 (ii) the Tribally Controlled Schools
2 Act of 1988 (25 U.S.C. 2501 et seq.).

3 (b) ISSUANCE OF BONDS.—

4 (1) IN GENERAL.—The Secretary shall establish
5 a pilot program under which eligible Indian tribes
6 may issue qualified tribal school modernization
7 bonds to provide funding for the construction, reha-
8 bilitation, or repair of tribal schools (including the
9 advance planning and design of tribal schools).

10 (2) ELIGIBILITY.—

11 (A) IN GENERAL.—To be eligible to issue
12 any qualified tribal school modernization bond
13 under the program under paragraph (1), an In-
14 dian tribe shall—

15 (i) prepare and submit to the Sec-
16 retary a plan of construction that meets
17 the requirements of subparagraph (B);

18 (ii) provide for quarterly and final in-
19 spection of the project by the Bureau; and

20 (iii) pledge that the facilities financed
21 by the bond will be used primarily for ele-
22 mentary and secondary educational pur-
23 poses for not less than the period during
24 which the bond remains outstanding.

1 (B) PLAN OF CONSTRUCTION.—A plan of
2 construction referred to in subparagraph (A)(i)
3 meets the requirements of this subparagraph if
4 the plan—

5 (i) contains a description of the con-
6 struction to be carried out with funding
7 provided under a qualified tribal school
8 modernization bond;

9 (ii) demonstrates that a comprehen-
10 sive survey has been completed to deter-
11 mine the construction needs of the tribal
12 school involved;

13 (iii) contains assurances that funding
14 under the bond will be used only for the
15 activities described in the plan;

16 (iv) contains a response to the evalua-
17 tion criteria contained in Instructions and
18 Application for Replacement School Con-
19 struction, Revision 6, dated February 6,
20 1999; and

21 (v) contains any other reasonable and
22 related information determined to be ap-
23 propriate by the Secretary.

24 (C) PRIORITY.—In determining whether an
25 Indian tribe is eligible to participate in the pro-

1 to an Indian tribe of advance planning and
2 design funds from the escrow account
3 under clause (i), the Indian tribe shall
4 agree—

5 (I) to issue qualified tribal school
6 modernization bonds after the date of
7 receipt of the funds; and

8 (II) as a condition of each bond
9 issuance, that the Indian tribe will de-
10 posit into the escrow account, or a
11 fund managed by the trustee as de-
12 scribed in paragraph (4)(C), an
13 amount equal to the amount of funds
14 received from the escrow account.

15 (3) PERMISSIBLE ACTIVITIES.—In addition to
16 the use of funds permitted under paragraph (1), an
17 Indian tribe may use amounts received through the
18 issuance of a qualified tribal school modernization
19 bond—

20 (A) to enter into and make payments
21 under contracts with licensed and bonded archi-
22 tects, engineers, and construction firms—

23 (i) to determine the needs of the tribal
24 school; and

1 (ii) for the design and engineering of
2 the tribal school;

3 (B) enter into and make payments under
4 contracts with financial advisers, underwriters,
5 attorneys, trustees, and other professionals who
6 would be able to provide assistance to the In-
7 dian tribe in issuing bonds; and

8 (C) carry out other activities determined to
9 be appropriate by the Secretary.

10 (4) BOND TRUSTEE.—

11 (A) IN GENERAL.—Notwithstanding any
12 other provision of law, any qualified tribal
13 school modernization bond issued by an Indian
14 tribe under this subsection shall be subject to a
15 trust agreement between the Indian tribe and a
16 trustee.

17 (B) TRUSTEE.—Any bank or trust com-
18 pany that meets requirements established by
19 the Secretary may be designated as a trustee
20 under subparagraph (A).

21 (C) CONTENT OF TRUST AGREEMENT.—A
22 trust agreement entered into by an Indian tribe
23 under this paragraph shall specify that the
24 trustee, with respect to any bond issued under
25 this subsection, shall—

- 1 (i) act as a repository for the proceeds
2 of the bond;
- 3 (ii) make payments to bondholders;
- 4 (iii) receive, as a condition to the
5 issuance of the bond, a transfer of funds
6 from the escrow account, or from other
7 funds furnished by or on behalf of the In-
8 dian tribe, in an amount that (including
9 interest earnings from the investment of
10 the funds in obligations of, or fully guaran-
11 teed by, the United States, or from other
12 investments authorized by paragraph (10))
13 will produce funds sufficient to timely pay
14 in full the entire principal amount of the
15 bond on the stated maturity date of the
16 bond;
- 17 (iv) invest the funds transferred under
18 clause (iii) in an investment described in
19 that clause; and
- 20 (v)(I) hold and invest the funds trans-
21 ferred under clause (iii) in a segregated
22 fund or account under the agreement; and
- 23 (II) use the fund or account solely for
24 payment of the costs of items described in
25 paragraph (3).

1 (D) REQUIREMENTS FOR MAKING DIRECT
2 PAYMENTS.—

3 (i) PAYMENTS.—

4 (I) IN GENERAL.—Notwith-
5 standing any other provision of law,
6 the trustee shall make any payment
7 referred to in subparagraph (C)(v) in
8 accordance with such requirements as
9 the Indian tribe shall prescribe in the
10 trust agreement entered into under
11 subparagraph (C).

12 (II) INSPECTION.—Before mak-
13 ing a payment for a project to a con-
14 tractor under subparagraph (C)(v), to
15 ensure completion of the project, the
16 trustee shall require an inspection of
17 the project by—

18 (aa) a local financial institu-
19 tion; or

20 (bb) an independent inspect-
21 ing architect or engineer.

22 (ii) CONTRACTS.—Each contract re-
23 ferred to in paragraph (3) shall specify, or
24 be renegotiated to specify, that payments

1 under the contract shall be made in ac-
2 cordance with this paragraph.

3 (5) PAYMENTS OF PRINCIPAL AND INTEREST.—

4 (A) PRINCIPAL.—

5 (i) IN GENERAL.—No principal pay-
6 ment on any qualified tribal school mod-
7 ernization bond shall be required under
8 this subsection until the final, stated date
9 on which the bond reaches maturity.

10 (ii) MATURITY; OUTSTANDING PRIN-
11 CIPAL.—With respect to a qualified tribal
12 school modernization bond issued under
13 this subsection—

14 (I) the bond shall reach maturity
15 not later than 15 years after the date
16 of issuance of the bond; and

17 (II) on the date on which the
18 bond reaches maturity, the entire out-
19 standing principal under the bond
20 shall become due and payable.

21 (B) INTEREST.—There shall be awarded a
22 tax credit under section 1400M of the Internal
23 Revenue Code of 1986 in lieu of interest on a
24 qualified tribal school modernization bond
25 issued under this subsection.

1 (6) BOND GUARANTEES.—

2 (A) IN GENERAL.—Payment of the prin-
3 cipal portion of a qualified tribal school mod-
4 ernization bond issued under this subsection
5 shall be guaranteed solely by amounts deposited
6 with each respective bond trustee as described
7 in paragraph (4)(C)(iii).

8 (B) ESTABLISHMENT OF ACCOUNT.—

9 (i) IN GENERAL.—Notwithstanding
10 any other provision of law, the Secretary
11 may—

12 (I) establish a tribal school mod-
13 ernization escrow account; and

14 (II) beginning in fiscal year
15 2005, from amounts made available
16 for school replacement under the con-
17 struction account of the Bureau, de-
18 posit not more than \$30,000,000 for
19 each fiscal year into the escrow ac-
20 count.

21 (ii) TRANSFERS OF EXCESS PRO-
22 CEEDS.—Excess proceeds held under any
23 trust agreement that are not needed for
24 any of the purposes described in clauses
25 (iii) and (v) of paragraph (4)(C) shall be

1 transferred, from time to time, by the
2 trustee for deposit into the escrow account.

3 (iii) PAYMENTS.—The Secretary shall
4 use any amounts deposited in the escrow
5 account under clauses (i) and (ii)—

6 (I) to make payments to trustees
7 appointed and acting in accordance
8 with paragraph (4); or

9 (II) to make payments described
10 in paragraph (2)(D).

11 (7) LIMITATIONS.—

12 (A) OBLIGATION TO REPAY.—

13 (i) IN GENERAL.—Notwithstanding
14 any other provision of law, the principal
15 amount on any qualified tribal school mod-
16 ernization bond issued under this sub-
17 section shall be repaid only to the extent of
18 any escrowed funds provided under para-
19 graph (4)(C)(iii).

20 (ii) NO GUARANTEE.—No qualified
21 tribal school modernization bond issued by
22 an Indian tribe under this subsection shall
23 be an obligation of, and no payment of the
24 principal of such a bond shall be guaran-
25 teed by—

- 1 (I) the United States;
2 (II) the Indian tribe; or
3 (III) the tribal school for which
4 the bond was issued.

5 (B) LAND AND FACILITIES.—No land or
6 facility purchased or improved with amounts
7 derived from a qualified tribal school mod-
8 ernization bond issued under this subsection
9 shall be mortgaged or used as collateral for the
10 bond.

11 (8) SALE OF BONDS.—A qualified tribal school
12 modernization bond may be sold at a purchase price
13 equal to, in excess of, or at a discount from, the par
14 amount of the bond.

15 (9) TREATMENT OF TRUST AGREEMENT EARN-
16 INGS.—No amount earned through the investment of
17 funds under the control of a trustee under any trust
18 agreement described in paragraph (4) shall be sub-
19 ject to Federal income taxation.

20 (10) INVESTMENT OF SINKING FUNDS.—A
21 sinking fund established for the purpose of the pay-
22 ment of principal on a qualified tribal school mod-
23 ernization bond issued under this subsection shall be
24 invested in—

1 (A) obligations issued by or guaranteed by
2 the United States; or

3 (B) such other assets as the Secretary of
4 the Treasury may by regulation allow.

5 (c) EXPANSION OF INCENTIVES FOR TRIBAL
6 SCHOOLS.—Chapter 1 is amended by adding at the end
7 the following new subchapter:

8 **“Subchapter Z—Tribal School Modernization**
9 **Provisions**

“Sec. 1400M. Credit to holders of qualified tribal school modernization bonds.

10 **“SEC. 1400M. CREDIT TO HOLDERS OF QUALIFIED TRIBAL**
11 **SCHOOL MODERNIZATION BONDS.**

12 “(a) ALLOWANCE OF CREDIT.—In the case of a tax-
13 payer who holds a qualified tribal school modernization
14 bond on a credit allowance date of such bond which occurs
15 during the taxable year, there shall be allowed as a credit
16 against the tax imposed by this chapter for such taxable
17 year an amount equal to the sum of the credits determined
18 under subsection (b) with respect to credit allowance dates
19 during such year on which the taxpayer holds such bond.

20 “(b) AMOUNT OF CREDIT.—

21 “(1) IN GENERAL.—The amount of the credit
22 determined under this subsection with respect to any
23 credit allowance date for a qualified tribal school

1 modernization bond is 25 percent of the annual
2 credit determined with respect to such bond.

3 “(2) ANNUAL CREDIT.—The annual credit de-
4 termined with respect to any qualified tribal school
5 modernization bond is the product of—

6 “(A) the applicable credit rate, multiplied
7 by

8 “(B) the outstanding face amount of the
9 bond.

10 “(3) APPLICABLE CREDIT RATE.—For purposes
11 of paragraph (1), the applicable credit rate with re-
12 spect to an issue is the rate equal to an average
13 market yield (as of the date of sale of the issue) on
14 outstanding long-term corporate obligations (as de-
15 termined by the Secretary).

16 “(4) SPECIAL RULE FOR ISSUANCE AND RE-
17 DEMPTION.—In the case of a bond which is issued
18 during the 3-month period ending on a credit allow-
19 ance date, the amount of the credit determined
20 under this subsection with respect to such credit al-
21 lowance date shall be a ratable portion of the credit
22 otherwise determined based on the portion of the 3-
23 month period during which the bond is outstanding.
24 A similar rule shall apply when the bond is re-
25 deemed.

1 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

2 “(1) IN GENERAL.—The credit allowed under
3 subsection (a) for any taxable year shall not exceed
4 the excess of—

5 “(A) the sum of the regular tax liability
6 (as defined in section 26(b)) plus the tax im-
7 posed by section 55, over

8 “(B) the sum of the credits allowable
9 under part IV of subchapter A (other than sub-
10 part C thereof, relating to refundable credits).

11 “(2) CARRYOVER OF UNUSED CREDIT.—If the
12 credit allowable under subsection (a) exceeds the
13 limitation imposed by paragraph (1) for such taxable
14 year, such excess shall be carried to the succeeding
15 taxable year and added to the credit allowable under
16 subsection (a) for such taxable year.

17 “(d) QUALIFIED TRIBAL SCHOOL MODERNIZATION
18 BOND; OTHER DEFINITIONS.—For purposes of this
19 section—

20 “(1) QUALIFIED TRIBAL SCHOOL MODERNIZA-
21 TION BOND.—

22 “(A) IN GENERAL.—The term ‘qualified
23 tribal school modernization bond’ means, sub-
24 ject to subparagraph (B), any bond issued as
25 part of an issue under section 616(b) of the

1 Jumpstart Our Business Strength (JOBS) Act,
2 as in effect on the date of the enactment of this
3 section, if—

4 “(i) 95 percent or more of the pro-
5 ceeds of such issue are to be used for the
6 construction, rehabilitation, or repair of a
7 school facility funded by the Bureau of In-
8 dian Affairs of the Department of the Inte-
9 rior or for the acquisition of land on which
10 such a facility is to be constructed with
11 part of the proceeds of such issue,

12 “(ii) the bond is issued by an Indian
13 tribe,

14 “(iii) the issuer designates such bond
15 for purposes of this section, and

16 “(iv) the term of each bond which is
17 part of such issue does not exceed 15
18 years.

19 “(B) NATIONAL LIMITATION ON AMOUNT
20 OF BONDS DESIGNATED.—

21 “(i) NATIONAL LIMITATION.—There is
22 a national qualified tribal school mod-
23 ernization bond limitation for each cal-
24 endar year. Such limitation is—

25 “(I) \$200,000,000 for 2005,

412

1 “(II) \$200,000,000 for 2006,

2 and

3 “(III) zero after 2006.

4 “(ii) ALLOCATION OF LIMITATION.—

5 The national qualified tribal school mod-
6 ernization bond limitation shall be allo-
7 cated to Indian tribes by the Secretary of
8 the Interior subject to the provisions of
9 section 616 of the Jumpstart Our Business
10 Strength (JOBS) Act, as in effect on the
11 date of the enactment of this section.

12 “(iii) DESIGNATION SUBJECT TO LIM-
13 ITATION AMOUNT.—The maximum aggre-
14 gate face amount of bonds issued during
15 any calendar year which may be designated
16 under subsection (d)(1) with respect to any
17 Indian tribe shall not exceed the limitation
18 amount allocated to such government
19 under clause (ii) for such calendar year.

20 “(iv) CARRYOVER OF UNUSED LIMITA-
21 TION.—If for any calendar year—

22 “(I) the limitation amount under
23 this subparagraph, exceeds

1 “(II) the amount of qualified
2 tribal school modernization bonds
3 issued during such year,
4 the limitation amount under this subpara-
5 graph for the following calendar year shall
6 be increased by the amount of such excess.
7 The preceding sentence shall not apply if
8 such following calendar year is after 2012.

9 “(2) CREDIT ALLOWANCE DATE.—The term
10 ‘credit allowance date’ means—

11 “(A) March 15,

12 “(B) June 15,

13 “(C) September 15, and

14 “(D) December 15.

15 Such term includes the last day on which the bond
16 is outstanding.

17 “(3) BOND.—The term ‘bond’ includes any ob-
18 ligation.

19 “(4) TRIBE.—The term ‘tribe’ has the meaning
20 given the term ‘Indian tribal government’ by section
21 7701(a)(40), including the application of section
22 7871(d). Such term includes any consortium of
23 tribes approved by the Secretary of the Interior.

24 “(e) CREDIT INCLUDED IN GROSS INCOME.—Gross
25 income includes the amount of the credit allowed to the

1 taxpayer under this section (determined without regard to
2 subsection (c)) and the amount so included shall be treat-
3 ed as interest income.

4 “(f) BONDS HELD BY REGULATED INVESTMENT
5 COMPANIES.—If any qualified tribal school modernization
6 bond is held by a regulated investment company, the credit
7 determined under subsection (a) shall be allowed to share-
8 holders of such company under procedures prescribed by
9 the Secretary.

10 “(g) TREATMENT FOR ESTIMATED TAX PUR-
11 POSES.—Solely for purposes of sections 6654 and 6655,
12 the credit allowed by this section to a taxpayer by reason
13 of holding a qualified tribal school modernization bonds
14 on a credit allowance date shall be treated as if it were
15 a payment of estimated tax made by the taxpayer on such
16 date.

17 “(h) CREDIT TREATED AS ALLOWED UNDER PART
18 IV OF SUBCHAPTER A.—For purposes of subtitle F, the
19 credit allowed by this section shall be treated as a credit
20 allowable under part IV of subchapter A of this chapter.

21 “(i) REPORTING.—Issuers of qualified tribal school
22 modernization bonds shall submit reports similar to the
23 reports required under section 149(e).”.

1 (d) CONFORMING AMENDMENT.—The table of sub-
2 chapters for chapter 1 is amended by adding at the end
3 the following new item:

“SUBCHAPTER Z. Tribal school modernization provisions.”.

4 (e) ADDITIONAL PROVISIONS.—

5 (1) SOVEREIGN IMMUNITY.—This section and
6 the amendments made by this section shall not be
7 construed to impact, limit, or affect the sovereign
8 immunity of the Federal Government or any State
9 or tribal government.

10 (2) APPLICATION.—This section and the
11 amendments made by this section shall take effect
12 on the date of the enactment of this Act with respect
13 to bonds issued after December 31, 2004, regardless
14 of the status of regulations promulgated thereunder.

15 **Subtitle C—Provisions Relating to** 16 **Depreciation**

17 **SEC. 621. SPECIAL PLACED IN SERVICE RULE FOR BONUS**
18 **DEPRECIATION PROPERTY.**

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

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

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

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

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

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

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

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to sales after the date of the enact-
5 ment of this Act.

6 **SEC. 622. MODIFICATION OF DEPRECIATION ALLOWANCE**
7 **FOR AIRCRAFT.**

8 (a) **AIRCRAFT TREATED AS QUALIFIED PROP-**
9 **ERTY.**—

10 (1) **IN GENERAL.**—Paragraph (2) of section
11 168(k) is amended by redesignating subparagraphs
12 (C) through (F) as subparagraphs (D) through (G),
13 respectively, and by inserting after subparagraph
14 (B) the following new subparagraph:

15 “(C) **CERTAIN AIRCRAFT.**—The term
16 ‘qualified property’ includes property—

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

19 “(ii) which is an aircraft which is not
20 a transportation property (as defined in
21 subparagraph (B)(iii)) other than for agri-
22 cultural or firefighting purposes,

23 “(iii) which is purchased and on which
24 such purchaser, at the time of the contract

1 for purchase, has made a nonrefundable
2 deposit of the lesser of—

3 “(I) 10 percent of the cost, or

4 “(II) \$100,000, and

5 “(iv) which has—

6 “(I) an estimated production pe-
7 riod exceeding 4 months, and

8 “(II) a cost exceeding
9 \$200,000.”.

10 (2) PLACED IN SERVICE DATE.—Clause (iv) of
11 section 168(k)(2)(A) is amended by striking “sub-
12 paragraph (B)” and inserting “subparagraphs (B)
13 and (C)”.

14 (b) CONFORMING AMENDMENTS.—

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

17 “(iv) APPLICATION OF SUBPARA-
18 GRAPH.—This subparagraph shall not
19 apply to any property which is described in
20 subparagraph (C).”.

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

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

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

7 (5) Section 168(k)(4)(D) is amended by strik-
8 ing “Paragraph (2)(E)” and inserting “Paragraph
9 (2)(F)”.

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

13 **SEC. 623. MODIFICATION OF CLASS LIFE FOR CERTAIN**
14 **TRACK FACILITIES.**

15 (a) 7-YEAR PROPERTY.—Subparagraph (C) of sec-
16 tion 168(e)(3) (relating to classification of certain prop-
17 erty) is amended by redesignating clause (ii) as clause (iii)
18 and by inserting after clause (i) the following new clause:

19 “(ii) any motorsports entertainment
20 complex, and”.

21 (b) DEFINITION.—Section 168(i) (relating to defini-
22 tions and special rules) is amended by adding at the end
23 the following new paragraph:

24 “(15) MOTORSPORTS ENTERTAINMENT COM-
25 PLEX.—

1 “(A) IN GENERAL.—The term ‘motor-
2 sports entertainment complex’ means a racing
3 track facility that is permanently situated on
4 land and which during the applicable period is
5 scheduled to host one or more racing events for
6 automobiles (of any type), trucks, or motor-
7 cycles that are open to the public for the price
8 of admission.

9 “(B) ANCILLARY AND SUPPORT FACILI-
10 TIES.—Such term shall include, if owned by the
11 complex and provided for the benefit of patrons
12 of the complex—

13 “(i) ancillary grounds and facilities
14 and land improvements in support of the
15 complex’s activities (including parking lots,
16 sidewalks, waterways, bridges, fences, and
17 landscaping),

18 “(ii) support facilities (including food
19 and beverage retailing, souvenir vending,
20 and other nonlodging accommodations),
21 and

22 “(iii) appurtenances associated with
23 such facilities and related attractions and
24 amusements (including ticket booths, race
25 track surfaces, suites and hospitality facili-

1 ties, grandstands and viewing structures,
2 props, walls, facilities that support the de-
3 livery of entertainment services, other spe-
4 cial purpose structures, facades, shop inte-
5 riors, and buildings).

6 “(C) EXCEPTION.—Such term shall not in-
7 clude any transportation equipment, adminis-
8 trative services assets, warehouses, administra-
9 tive buildings, hotels, or motels.

10 “(D) APPLICABLE PERIOD.—For purposes
11 of subparagraph (A), the term ‘applicable pe-
12 riod’ means the period ending the later of the
13 last day of—

14 “(i) the 36 month period following the
15 first day of the month in which the asset
16 is or was placed in service, or

17 “(ii) the 36 month period ending De-
18 cember 31, 2003, to the extent that the
19 asset remains in service during such pe-
20 riod.”.

21 (c) EFFECTIVE DATE.—

22 (1) IN GENERAL.—The amendments made by
23 this section shall apply to any property placed in
24 service after the date of the enactment of this Act.

1 section 168 for property placed in service
2 during such taxable year if no election
3 under this subsection were made, over

4 “(ii) the aggregate allowance for de-
5 preciation allowable with respect to such
6 property placed in service for such taxable
7 year.

8 “(3) AGGREGATION RULE.—All members of the
9 same controlled group of corporations shall be treat-
10 ed as 1 corporation for purposes of this subsection.

11 “(4) ELECTION.—Sections 168(k) (other than
12 paragraph (2)(F) thereof) shall not apply to any
13 property placed in service during a taxable year by
14 a corporation making an election under this sub-
15 section for such taxable year. An election under this
16 subsection may only be revoked with the consent of
17 the Secretary.

18 “(5) CREDIT REFUNDABLE.—The aggregate in-
19 crease in the credit allowed by this section for any
20 taxable year by reason of this subsection shall for
21 purposes of this title (other than subsection (b)(2)
22 of this section) be treated as a credit allowed to the
23 taxpayer under subpart C.”

1 (2) CONFORMING AMENDMENTS.—Subsection
2 (k) of section 168 is amended by adding at the end
3 the following new paragraph:

4 “(5) CROSS REFERENCE.—For an election to
5 claim certain minimum tax credits in lieu of the al-
6 lowance determined under this subsection, see sec-
7 tion 53(e).”.

8 (3) EFFECTIVE DATE.—The amendments made
9 by this subsection shall apply to taxable years end-
10 ing after December 31, 2003.

11 (b) USE OF GENERAL BUSINESS CREDITS AGAINST
12 ALTERNATIVE MINIMUM TAX.—

13 (1) IN GENERAL.—Section 38(c) (relating to
14 limitations based on amount of tax) is amended by
15 redesignating paragraph (4) as paragraph (5) and
16 by inserting after paragraph (3) the following new
17 paragraph:

18 “(4) SPECIAL RULE FOR 2004.—Notwith-
19 standing the preceding provisions of this paragraph,
20 in the case of any taxable year beginning in 2004,
21 the credit allowed under subsection (a) shall not ex-
22 ceed the greater of—

23 “(A) the amount determined under this
24 subsection without regard to this paragraph, or

25 “(B) 50 percent of the lesser of—

1 “(i) the amount which would be deter-
2 mined under this subsection if the ten-
3 tative minimum tax were treated as being
4 zero in applying paragraph (1) to such
5 credit, or

6 “(ii) the amount of the current year
7 business credit.”.

8 (2) EFFECTIVE DATE.—The amendments made
9 by this subsection shall apply to taxable years begin-
10 ning in 2004.

11 **Subtitle D—Expansion of Business** 12 **Credit**

13 **SEC. 631. NEW MARKETS TAX CREDIT FOR NATIVE AMER-** 14 **ICAN RESERVATIONS.**

15 (a) IN GENERAL.—Subpart D of part IV of sub-
16 chapter A of chapter 1 (relating to business related cred-
17 its) is amended by redesignating sections 45E and 45F
18 as sections 45F and 45G, respectively, and by inserting
19 after section 45E the following new section:

20 **“SEC. 45D. NEW MARKETS TAX CREDIT FOR NATIVE AMER-** 21 **ICAN RESERVATIONS.**

22 “(a) ALLOWANCE OF CREDIT.—

23 “(1) IN GENERAL.—For purposes of section 38,
24 in the case of a taxpayer who holds a qualified eq-
25 uity investment on a credit allowance date of such

1 investment which occurs during the taxable year, the
2 Native American new markets tax credit determined
3 under this section for such taxable year is an
4 amount equal to the applicable percentage of the
5 amount paid to the reservation development entity
6 for such investment at its original issue.

7 “(2) APPLICABLE PERCENTAGE.—For purposes
8 of paragraph (1), the applicable percentage is—

9 “(A) 5 percent with respect to the first 3
10 credit allowance dates, and

11 “(B) 6 percent with respect to the remain-
12 der of the credit allowance dates.

13 “(3) CREDIT ALLOWANCE DATE.—For purposes
14 of paragraph (1), the term ‘credit allowance date’
15 means, with respect to any qualified equity
16 investment—

17 “(A) the date on which such investment is
18 initially made, and

19 “(B) each of the 6 anniversary dates of
20 such date thereafter.

21 “(b) QUALIFIED EQUITY INVESTMENT.—For pur-
22 poses of this section—

23 “(1) IN GENERAL.—The term ‘qualified equity
24 investment’ means any equity investment in a res-
25 ervation development entity if—

1 “(A) such investment is acquired by the
2 taxpayer at its original issue (directly or
3 through an underwriter) solely in exchange for
4 cash,

5 “(B) substantially all of such cash is used
6 by the reservation development entity to make
7 qualified low-income reservation investments,
8 and

9 “(C) such investment is designated for
10 purposes of this section by the reservation de-
11 velopment entity.

12 Such term shall not include any equity investment
13 issued by a reservation development entity more
14 than 5 years after the date that such entity receives
15 an allocation under subsection (f). Any allocation
16 not used within such 5-year period may be reallo-
17 cated by the Secretary under subsection (f).

18 “(2) LIMITATION.—The maximum amount of
19 equity investments issued by a reservation develop-
20 ment entity which may be designated under para-
21 graph (1)(C) by such entity shall not exceed the por-
22 tion of the limitation amount allocated under sub-
23 section (f) to such entity.

24 “(3) SAFE HARBOR FOR DETERMINING USE OF
25 CASH.—The requirement of paragraph (1)(B) shall

1 be treated as met if at least 85 percent of the aggre-
2 gate gross assets of the reservation development en-
3 tity are invested in qualified low-income reservation
4 investments.

5 “(4) TREATMENT OF SUBSEQUENT PUR-
6 CHASERS.—The term ‘qualified equity investment’
7 includes any equity investment which would (but for
8 paragraph (1)(A)) be a qualified equity investment
9 in the hands of the taxpayer if such investment was
10 a qualified equity investment in the hands of a prior
11 holder.

12 “(5) REDEMPTIONS.—A rule similar to the rule
13 of section 1202(c)(3) shall apply for purposes of this
14 subsection.

15 “(6) EQUITY INVESTMENT.—The term ‘equity
16 investment’ means—

17 “(A) any stock (other than nonqualified
18 preferred stock as defined in section 351(g)(2))
19 in an entity which is a corporation, and

20 “(B) any capital interest in an entity
21 which is a partnership.

22 “(c) RESERVATION DEVELOPMENT ENTITY.—For
23 purposes of this section—

1 “(1) IN GENERAL.—The term ‘reservation de-
2 velopment entity’ means any domestic corporation or
3 partnership if—

4 “(A) the primary mission of the entity is
5 serving, or providing investment capital for,
6 low-income reservations,

7 “(B) the entity maintains accountability to
8 residents of low-income reservations through
9 their representation on any governing board of
10 the entity or on any advisory board to the enti-
11 ty, and

12 “(C) the entity is certified by the Secretary
13 for purposes of this section as being a reserva-
14 tion development entity.

15 “(2) EXCEPTION.—For purposes of subpara-
16 graph (C) of paragraph (1), the Secretary shall not
17 certify an entity as a reservation development entity
18 if such entity is also certified as a qualified commu-
19 nity development entity under section 45D(c).

20 “(d) QUALIFIED LOW-INCOME RESERVATION IN-
21 VESTMENTS.—For purposes of this section—

22 “(1) IN GENERAL.—The term ‘qualified low-in-
23 come reservation investment’ means—

1 “(ii) a substantial portion of the use
2 of the tangible property of such entity
3 (whether owned or leased) is within any
4 low-income reservation,

5 “(iii) a substantial portion of the serv-
6 ices performed for such entity by its em-
7 ployees are performed in any low-income
8 reservation,

9 “(iv) less than 5 percent of the aver-
10 age of the aggregate unadjusted bases of
11 the property of such entity is attributable
12 to collectibles (as defined in section
13 408(m)(2)) other than collectibles that are
14 held primarily for sale to customers in the
15 ordinary course of such business, and

16 “(v) less than 5 percent of the aver-
17 age of the aggregate unadjusted bases of
18 the property of such entity is attributable
19 to nonqualified financial property (as de-
20 fined in section 1397C(e)).

21 “(B) PROPRIETORSHIP.—Such term shall
22 include any business carried on by an individual
23 as a proprietor if such business would meet the
24 requirements of subparagraph (A) were it incor-
25 porated.

1 “(C) PORTIONS OF BUSINESS MAY BE
2 QUALIFIED ACTIVE LOW-INCOME RESERVATION
3 BUSINESS.—The term ‘qualified active low-in-
4 come reservation business’ includes any trades
5 or businesses which would qualify as a qualified
6 active low-income reservation business if such
7 trades or businesses were separately incor-
8 porated.

9 “(3) QUALIFIED BUSINESS.—For purposes of
10 this subsection, the term ‘qualified business’ has the
11 meaning given to such term by section 45D(d)(3).

12 “(e) LOW-INCOME RESERVATION.—For purposes of
13 this section, the term ‘low-income reservation’ means any
14 Indian reservation (as defined in section 168(j)(6)) which
15 has a poverty rate of at least 40 percent.

16 “(f) NATIONAL LIMITATION ON AMOUNT OF INVEST-
17 MENTS DESIGNATED.—

18 “(1) IN GENERAL.—There is a Native American
19 new markets tax credit limitation of \$50,000,000 for
20 each of calendar years 2004 through 2007.

21 “(2) ALLOCATION OF LIMITATION.—The limita-
22 tion under paragraph (1) shall be allocated by the
23 Secretary among reservation development entities se-
24 lected by the Secretary. In making allocations under

1 the preceding sentence, the Secretary shall give pri-
2 ority to any entity—

3 “(A) with a record of having successfully
4 provided capital or technical assistance to dis-
5 advantaged businesses or communities, or

6 “(B) which intends to satisfy the require-
7 ment under subsection (b)(1)(B) by making
8 qualified low-income reservation investments in
9 1 or more businesses in which persons unre-
10 lated to such entity (within the meaning of sec-
11 tion 267(b) or 707(b)(1)) hold the majority eq-
12 uity interest.

13 “(3) CARRYOVER OF UNUSED LIMITATION.—If
14 the Native American new markets tax credit limita-
15 tion for any calendar year exceeds the aggregate
16 amount allocated under paragraph (2) for such year,
17 such limitation for the succeeding calendar year
18 shall be increased by the amount of such excess. No
19 amount may be carried under the preceding sentence
20 to any calendar year after 2014.

21 “(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

22 “(1) IN GENERAL.—If, at any time during the
23 7-year period beginning on the date of the original
24 issue of a qualified equity investment in a reserva-
25 tion development entity, there is a recapture event

1 with respect to such investment, then the tax im-
2 posed by this chapter for the taxable year in which
3 such event occurs shall be increased by the credit re-
4 capture amount.

5 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
6 poses of paragraph (1), the credit recapture amount
7 is an amount equal to the sum of—

8 “(A) the aggregate decrease in the credits
9 allowed to the taxpayer under section 38 for all
10 prior taxable years which would have resulted if
11 no credit had been determined under this sec-
12 tion with respect to such investment, plus

13 “(B) interest at the underpayment rate es-
14 tablished under section 6621 on the amount de-
15 termined under subparagraph (A) for each
16 prior taxable year for the period beginning on
17 the due date for filing the return for the prior
18 taxable year involved.

19 No deduction shall be allowed under this chapter for
20 interest described in subparagraph (B).

21 “(3) RECAPTURE EVENT.—For purposes of
22 paragraph (1), there is a recapture event with re-
23 spect to an equity investment in a reservation devel-
24 opment entity if—

1 “(A) such entity ceases to be a reservation
2 development entity,

3 “(B) the proceeds of the investment cease
4 to be used as required of subsection (b)(1)(B),
5 or

6 “(C) such investment is redeemed by such
7 entity.

8 “(4) SPECIAL RULES.—

9 “(A) TAX BENEFIT RULE.—The tax for
10 the taxable year shall be increased under para-
11 graph (1) only with respect to credits allowed
12 by reason of this section which were used to re-
13 duce tax liability. In the case of credits not so
14 used to reduce tax liability, the carryforwards
15 and carrybacks under section 39 shall be appro-
16 priately adjusted.

17 “(B) NO CREDITS AGAINST TAX.—Any in-
18 crease in tax under this subsection shall not be
19 treated as a tax imposed by this chapter for
20 purposes of determining the amount of any
21 credit under this chapter or for purposes of sec-
22 tion 55.

23 “(h) BASIS REDUCTION.—The basis of any qualified
24 equity investment shall be reduced by the amount of any
25 credit determined under this section with respect to such

1 investment. This subsection shall not apply for purposes
2 of sections 1202, 1400B, and 1400F.

3 “(i) REGULATIONS.—The Secretary shall prescribe
4 such regulations as may be appropriate to carry out this
5 section, including regulations—

6 “(1) which limit the credit for investments
7 which are directly or indirectly subsidized by other
8 Federal tax benefits (including the credit under sec-
9 tion 42 and the exclusion from gross income under
10 section 103),

11 “(2) which prevent the abuse of the purposes of
12 this section,

13 “(3) which provide rules for determining wheth-
14 er the requirement of subsection (b)(1)(B) is treated
15 as met,

16 “(4) which impose appropriate reporting re-
17 quirements, and

18 “(5) which apply the provisions of this section
19 to newly formed entities.”.

20 (b) CREDIT MADE PART OF GENERAL BUSINESS
21 CREDIT.—

22 (1) IN GENERAL.—Subsection (b) of section 38
23 is amended by redesignating paragraphs (14) and
24 (15) as paragraphs (15) and (16), respectively, and

1 by inserting after paragraph (13) the following new
2 paragraph:

3 “(14) the Native American new markets tax
4 credit determined under section 45E(a),”.

5 (2) LIMITATION ON CARRYBACK.—Subsection
6 (d) of section 39 is amended by redesignating para-
7 graph (10) as paragraph (11) and by inserting after
8 paragraph (9) the following new paragraph:

9 “(10) NO CARRYBACK OF NATIVE AMERICAN
10 NEW MARKETS TAX CREDIT BEFORE JANUARY 1,
11 2004.—No portion of the unused business credit for
12 any taxable year which is attributable to the credit
13 under section 45E may be carried back to a taxable
14 year ending before January 1, 2004.”.

15 (c) DEDUCTION FOR UNUSED CREDIT.—Subsection
16 (c) of section 196 is amended by redesignating paragraph
17 (10) as paragraph (11), by striking “and” at the end of
18 paragraph (9), and by inserting after paragraph (9) the
19 following new paragraph:

20 “(10) the Native American new markets tax
21 credit determined under section 45E(a), and”.

22 (d) CONFORMING AMENDMENTS.—

23 (1) Section 38(b)(15), as redesignated by sub-
24 section (b)(1), is amended—

1 (A) by striking “45E(c)” and inserting
2 “45F(e)”, and

3 (B) by striking “45E(a)” and inserting
4 “45F(a)”.

5 (2) Section 38(b)(16), as redesignated by sub-
6 section (b)(1), is amended by striking “45F(a)” and
7 inserting “45G(a)”.

8 (3) Section 39(d)(11), as redesignated by sub-
9 section (b)(2), is amended by striking “section 45E”
10 and inserting “section 45F”.

11 (4) Section 196(c)(11), as redesignated by sub-
12 section (c), is amended by striking “45E(a)” and in-
13 serting “45F(a)”.

14 (5) Section 1016(a)(28) is amended—

15 (A) by striking “under section 45F” and
16 inserting “under section 45G”, and

17 (B) by striking “section 45F(f)(1)” and in-
18 serting “section 45G(f)(1)”.

19 (e) CLERICAL AMENDMENT.—The table of sections
20 for subpart D of part IV of subchapter A of chapter 1
21 is amended by striking the items relating to sections 45E
22 and 45F and inserting the following:

“Sec. 45E. Native American new markets tax credit.

“Sec. 45F. Small employer pension plan startup costs.

“Sec. 45G. Employer-provided child care credit.”

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to investments made after Decem-
3 ber 31, 2003.

4 (f) GUIDANCE ON ALLOCATION OF NATIONAL LIM-
5 TATION.—Not later than 120 days after the date of the
6 enactment of this Act, the Secretary of the Treasury or
7 the Secretary's delegate shall issue guidance which
8 specifies—

9 (1) how entities shall apply for an allocation
10 under section 45E(f)(2) of the Internal Revenue
11 Code of 1986, as added by this section;

12 (2) the competitive procedure through which
13 such allocations are made; and

14 (3) the actions that such Secretary or delegate
15 shall take to ensure that such allocations are prop-
16 erly made to appropriate entities.

17 (g) AUDIT AND REPORT.—Not later than January 31
18 of 2007 and 2010, the Comptroller General of the United
19 States shall, pursuant to an audit of the Native American
20 new markets tax credit program established under section
21 45E of the Internal Revenue Code of 1986 (as added by
22 subsection (a)), report to Congress on such program, in-
23 cluding all reservation development entities that receive an
24 allocation under the Native American new markets credit
25 under such section.

1 (f) GRANTS IN COORDINATION WITH CREDIT.—

2 (1) IN GENERAL.—The Secretary of the Treas-
3 ury is authorized to award a grant of not more than
4 \$1,000,000 to the First Nations Oweesta Corpora-
5 tion.

6 (2) USE OF FUNDS.—The grant awarded under
7 paragraph (1) may be used—

8 (A) to enhance the capacity of people living
9 on low-income reservations (within the meaning
10 of section 45E(e) of the Internal Revenue Code
11 of 1986, as added by this section) to access,
12 apply, control, create, leverage, utilize, and re-
13 tain the financial benefits to such low-income
14 reservations which are attributable to qualified
15 low-income reservation investments (within the
16 meaning of section 45E(d) of such Code), and

17 (B) to provide access to appropriate finan-
18 cial capital for the development of such low-in-
19 come reservations.

20 (3) AUTHORIZATION OF APPROPRIATIONS.—

21 There are authorized to be appropriated \$1,000,000
22 for fiscal years 2004 through 2014 to carry out the
23 provisions of this subsection.

1 **SEC. 632. READY RESERVE-NATIONAL GUARD EMPLOYEE**
2 **CREDIT ADDED TO GENERAL BUSINESS**
3 **CREDIT.**

4 (a) READY RESERVE-NATIONAL GUARD CREDIT.—
5 Subpart D of part IV of subchapter A of chapter 1 (relat-
6 ing to business-related credits), as amended by this Act,
7 is amended by adding at the end the following:

8 **“SEC. 45H. READY RESERVE-NATIONAL GUARD EMPLOYEE**
9 **CREDIT.**

10 “(a) GENERAL RULE.—For purposes of section 38,
11 the Ready Reserve-National Guard employee credit deter-
12 mined under this section for any taxable year with respect
13 to each Ready Reserve-National Guard employee of an em-
14 ployer is an amount equal to 50 percent of the lesser of—

15 “(1) the actual compensation amount with re-
16 spect to such employee for such taxable year, or

17 “(2) \$15,000.

18 “(b) DEFINITION OF ACTUAL COMPENSATION
19 AMOUNT.—For purposes of this section, the term ‘actual
20 compensation amount’ means the amount of compensation
21 paid or incurred by an employer with respect to a Ready
22 Reserve-National Guard employee on any day when the
23 employee was absent from employment for the purpose of
24 performing qualified active duty.

25 “(c) LIMITATIONS.—

1 “(1) MAXIMUM PERIOD FOR CREDIT PER EM-
2 PLOYEE.—The maximum period with respect to
3 which the credit may be allowed with respect to any
4 Ready Reserve-National Guard employee shall not
5 exceed the 12-month period beginning on the first
6 day such credit is so allowed with respect to such
7 employee.

8 “(2) DAYS OTHER THAN WORK DAYS.—No
9 credit shall be allowed with respect to any day that
10 a Ready Reserve-National Guard employee who per-
11 forms qualified active duty was not scheduled to
12 work (for reason other than to participate in quali-
13 fied active duty).

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

16 “(1) QUALIFIED ACTIVE DUTY.—The term
17 ‘qualified active duty’ means—

18 “(A) active duty, other than the training
19 duty specified in section 10147 of title 10,
20 United States Code (relating to training re-
21 quirements for the Ready Reserve), or section
22 502(a) of title 32, United States Code (relating
23 to required drills and field exercises for the Na-
24 tional Guard), in connection with which an em-
25 ployee is entitled to reemployment rights and

1 other benefits or to a leave of absence from em-
2 ployment under chapter 43 of title 38, United
3 States Code, and

4 “(B) hospitalization incident to such duty.

5 “(2) COMPENSATION.—The term ‘compensa-
6 tion’ means any remuneration for employment,
7 whether in cash or in kind, which is paid or incurred
8 by a taxpayer and which is deductible from the tax-
9 payer’s gross income under section 162(a)(1).

10 “(3) READY RESERVE-NATIONAL GUARD EM-
11 PLOYEE.—The term ‘Ready Reserve-National Guard
12 employee’ means an employee who is a member of
13 the Ready Reserve of a reserve component of an
14 Armed Force of the United States as described in
15 sections 10142 and 10101 of title 10, United States
16 Code.

17 “(4) CERTAIN RULES TO APPLY.—Rules similar
18 to the rules of section 52 shall apply.

19 “(e) PORTION OF CREDIT REFUNDABLE.—

20 “(1) IN GENERAL.—In the case of an employer
21 of a qualified first responder, the aggregate credits
22 allowed to a taxpayer under subpart C shall be in-
23 creased by the lesser of—

24 “(A) the credit which would be allowed
25 under this section without regard to this sub-

1 section and the limitation under section 38(c),
2 or

3 “(B) the amount by which the aggregate
4 amount of credits allowed by this subpart (de-
5 termined without regard to this subsection)
6 would increase if the limitation imposed by sec-
7 tion 38(c) for any taxable year were increased
8 by the amount of employer payroll taxes im-
9 posed on the taxpayer during the calendar year
10 in which the taxable year begins.

11 The amount of the credit allowed under this sub-
12 section shall not be treated as a credit allowed under
13 this subpart and shall reduce the amount of the
14 credit otherwise allowable under subsection (a) with-
15 out regard to section 38(c).

16 “(2) EMPLOYER PAYROLL TAXES.—For pur-
17 poses of this subsection—

18 “(A) IN GENERAL.—The term ‘employer
19 payroll taxes’ means the taxes imposed by—

20 “(i) section 3111(b), and

21 “(ii) sections 3211(a) and 3221(a)
22 (determined at a rate equal to the rate
23 under section 3111(b)).

1 “(B) SPECIAL RULE.—A rule similar to
2 the rule of section 24(d)(2)(C) shall apply for
3 purposes of subparagraph (A).

4 “(3) QUALIFIED FIRST RESPONDER.—For pur-
5 poses of this subsection, the term ‘qualified first re-
6 sponder’ means any person who is—

7 “(A) employed as a law enforcement offi-
8 cial, a firefighter, or a paramedic, and

9 “(B) a Ready Reserve-National Guard em-
10 ployee.”.

11 (b) CREDIT TO BE PART OF GENERAL BUSINESS
12 CREDIT.—Subsection (b) of section 38 (relating to general
13 business credit), as amended by this Act, is amended by
14 striking “plus” at the end of paragraph (15), by striking
15 the period at the end of paragraph (16) and inserting “,
16 plus”, and by adding at the end the following:

17 “(17) the Ready Reserve-National Guard em-
18 ployee credit determined under section 45H(a).”.

19 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C(a)
20 (relating to rule for employment credits) is amended by
21 inserting “45H(a),” after “45A(a),”.

22 (d) CONFORMING AMENDMENT.—The table of sec-
23 tions for subpart D of part IV of subchapter A of chapter
24 1, as amended by this Act, is amended by inserting after
25 the item relating to section 45G the following:

“Sec. 45H. Ready Reserve-National Guard employee credit.”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid or incurred after
3 the date of the enactment of this Act, in taxable years
4 ending after such date.

5 **SEC. 633. RURAL INVESTMENT TAX CREDIT.**

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

9 **“SEC. 42A. RURAL INVESTMENT CREDIT.**

10 “(a) IN GENERAL.—For purposes of section 38, the
11 amount of the rural investment credit determined under
12 this section for any taxable year in the credit period shall
13 be an amount equal to the applicable percentage of the
14 eligible basis of each qualified rural investment building.

15 “(b) APPLICABLE PERCENTAGE: 70 PERCENT
16 PRESENT VALUE CREDIT FOR NEW BUILDINGS; 30 PER-
17 CENT PRESENT VALUE CREDIT FOR EXISTING BUILD-
18 INGS.—For purposes of this section—

19 “(1) IN GENERAL.—The term ‘applicable per-
20 centage’ means the appropriate percentage pre-
21 scribed by the Secretary for the earlier of—

22 “(A) the first month of the credit period
23 with respect to a rural investment building, or

24 “(B) at the election of the taxpayer, the
25 month in which the taxpayer and the rural in-

1 vestment credit agency enter into an agreement
2 with respect to such building (which is binding
3 on such agency, the taxpayer, and all successors
4 in interest) as to the rural investment credit
5 dollar amount to be allocated to such building.

6 A month may be elected under subparagraph (B)
7 only if the election is made not later than the 5th
8 day after the close of such month. Such an election,
9 once made, shall be irrevocable.

10 “(2) METHOD OF PRESCRIBING PERCENT-
11 AGES.—The percentages prescribed by the Secretary
12 for any month shall be percentages which will yield
13 over a 10-year period amounts of credit under sub-
14 section (a) which have a present value equal to—

15 “(A) 70 percent of the eligible basis of a
16 new building, and

17 “(B) 30 percent of the eligible basis of an
18 existing building.

19 “(3) METHOD OF DISCOUNTING.—The present
20 value under paragraph (2) shall be determined—

21 “(A) as of the last day of the 1st year of
22 the 10-year period referred to in paragraph (2),

23 “(B) by using a discount rate equal to 72
24 percent of the average of the annual Federal
25 mid-term rate and the annual Federal long-

1 term rate applicable under section 1274(d)(1)
2 to the month applicable under subparagraph
3 (A) or (B) of paragraph (1) and compounded
4 annually, and

5 “(C) by assuming that the credit allowable
6 under this section for any year is received on
7 the last day of such year.

8 “(c) ELIGIBLE BASIS; QUALIFIED RURAL INVEST-
9 MENT BUILDING.—For purposes of this section—

10 “(1) ELIGIBLE BASIS.—

11 “(A) IN GENERAL.—The eligible basis of
12 any qualified rural investment building for any
13 taxable year shall be determined under rules
14 similar to the rules under section 42(d), except
15 that—

16 “(i) the determination of the adjusted
17 basis of any building shall be made as of
18 the beginning of the credit period, and

19 “(ii) such basis shall include develop-
20 ment costs properly attributable to such
21 building.

22 “(B) DEVELOPMENT COSTS.—For pur-
23 poses of subparagraph (A)(ii), the term ‘devel-
24 opment costs’ includes—

25 “(i) site preparation costs,

- 1 “(ii) State and local impact fees,
2 “(iii) reasonable development costs,
3 “(iv) professional fees related to basis
4 items,
5 “(v) construction financing costs re-
6 lated to basis items other than land, and
7 “(vi) on-site and adjacent improve-
8 ments required by State and local govern-
9 ments.

10 “(2) QUALIFIED RURAL INVESTMENT BUILD-
11 ING.—The term ‘qualified rural investment building’
12 means any building which is part of a qualified rural
13 investment project at all times during the period—

14 “(A) beginning on the 1st day in the com-
15 pliance period on which such building is part of
16 such an investment project, and

17 “(B) ending on the last day of the compli-
18 ance period with respect to such building.

19 “(d) REHABILITATION EXPENDITURES TREATED AS
20 SEPARATE NEW BUILDING.—Rehabilitation expenditures
21 paid or incurred by the taxpayer with respect to any build-
22 ing shall be treated for purposes of this section as a sepa-
23 rate new building under the rules of section 42(e).

24 “(e) DEFINITION AND SPECIAL RULES RELATING TO
25 CREDIT PERIOD.—

1 “(1) CREDIT PERIOD DEFINED.—For purposes
2 of this section, the term ‘credit period’ means, with
3 respect to any building, the period of 10 taxable
4 years beginning with the taxable year in which the
5 building is first placed in service.

6 “(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT
7 PERIOD.—

8 “(A) IN GENERAL.—The credit allowable
9 under subsection (a) with respect to any build-
10 ing for the 1st taxable year of the credit period
11 shall be determined by multiplying such credit
12 by the fraction—

13 “(i) the numerator of which is the
14 number of full months of such year during
15 which such building was in service, and

16 “(ii) the denominator of which is 12.

17 “(B) DISALLOWED 1ST YEAR CREDIT AL-
18 LOWED IN 11TH YEAR.—Any reduction by rea-
19 son of subparagraph (A) in the credit allowable
20 (without regard to subparagraph (A)) for the
21 1st taxable year of the credit period shall be al-
22 lowable under subsection (a) for the 1st taxable
23 year following the credit period.

24 “(3) CREDIT PERIOD FOR EXISTING BUILDINGS
25 NOT TO BEGIN BEFORE REHABILITATION CREDIT

1 ALLOWED.—The credit period for an existing build-
2 ing shall not begin before the 1st taxable year of the
3 credit period for rehabilitation expenditures with re-
4 spect to the building.

5 “(f) QUALIFIED RURAL INVESTMENT PROJECT;
6 QUALIFYING COUNTY.—For purposes of this section—

7 “(1) QUALIFIED RURAL INVESTMENT
8 PROJECT.—The term ‘qualified rural investment
9 project’ means any investment project of 1 or more
10 qualified rural investment buildings located in a
11 qualifying county (and, if necessary to the project,
12 any contiguous county) and selected by the State ac-
13 cording to its qualified rural investment plan.

14 “(2) QUALIFYING COUNTY.—The term ‘quali-
15 fying county’ means any county which—

16 “(A) is outside a metropolitan statistical
17 area (defined as such by the Office of Manage-
18 ment and Budget), and

19 “(B) during the 20-year period ending
20 with the year in which the most recent census
21 was conducted, has a net out-migration of in-
22 habitants from the county of at least 10 percent
23 of the population of the county at the beginning
24 of such period.

1 “(g) LIMITATION ON AGGREGATE CREDIT ALLOW-
2 ABLE WITH RESPECT TO INVESTMENT PROJECTS LO-
3 CATED IN A STATE.—

4 “(1) CREDIT MAY NOT EXCEED CREDIT
5 AMOUNT ALLOCATED TO BUILDING.—The amount of
6 the credit determined under this section for any tax-
7 able year with respect to any building shall not ex-
8 ceed the rural investment credit dollar amount allo-
9 cated to such building under rules similar to the
10 rules of section 42(h)(1).

11 “(2) ALLOCATED CREDIT AMOUNT TO APPLY
12 TO ALL TAXABLE YEARS ENDING DURING OR AFTER
13 CREDIT ALLOCATION YEAR.—Any rural investment
14 credit dollar amount allocated to any building for
15 any calendar year—

16 “(A) shall apply to such building for all
17 taxable years in the credit period ending during
18 or after such calendar year, and

19 “(B) shall reduce the aggregate rural in-
20 vestment credit dollar amount of the allocating
21 agency only for such calendar year.

22 “(3) RURAL INVESTMENT CREDIT DOLLAR
23 AMOUNT FOR AGENCIES.—

24 “(A) IN GENERAL.—The aggregate rural
25 investment credit dollar amount which a rural

1 investment credit agency may allocate for any
2 calendar year is the portion of the State rural
3 investment credit ceiling allocated under this
4 paragraph for such calendar year to such agen-
5 cy.

6 “(B) STATE CEILING INITIALLY ALLO-
7 CATED TO STATE RURAL INVESTMENT CREDIT
8 AGENCIES.—Except as provided in subpara-
9 graphs (D) and (E), the State rural investment
10 credit ceiling for each calendar year shall be al-
11 located to the rural investment credit agency of
12 such State. If there is more than 1 rural invest-
13 ment credit agency of a State, all such agencies
14 shall be treated as a single agency.

15 “(C) STATE RURAL INVESTMENT CREDIT
16 CEILING.—The State rural investment credit
17 ceiling applicable to any State and any calendar
18 year shall be an amount equal to the sum of—

19 “(i) the unused State rural investment
20 credit ceiling (if any) of such State for the
21 preceding calendar year,

22 “(ii) \$185,000 for each qualifying
23 county in the State,

1 “(iii) the amount of State rural in-
2 vestment credit ceiling returned in the cal-
3 endar year, plus

4 “(iv) the amount (if any) allocated
5 under subparagraph (D) to such State by
6 the Secretary.

7 For purposes of clause (i), the unused State
8 rural investment credit ceiling for any calendar
9 year is the excess (if any) of the sum of the
10 amounts described in clauses (ii) through (iv)
11 over the aggregate rural investment credit dol-
12 lar amount allocated for such year. For pur-
13 poses of clause (iii), the amount of State rural
14 investment credit ceiling returned in the cal-
15 endar year equals the rural investment credit
16 dollar amount previously allocated within the
17 State to any investment project which fails to
18 meet the 10 percent test under section
19 42(h)(1)(E)(ii) on a date after the close of the
20 calendar year in which the allocation was made
21 or which does not become a qualified rural in-
22 vestment project within the period required by
23 this section or the terms of the allocation or to
24 any investment project with respect to which an
25 allocation is canceled by mutual consent of the

1 rural investment credit agency and the alloca-
2 tion recipient.

3 “(D) UNUSED RURAL INVESTMENT CREDIT
4 CARRYOVERS ALLOCATED AMONG CERTAIN
5 STATES.—

6 “(i) IN GENERAL.—The unused rural
7 investment credit carryover of a State for
8 any calendar year shall be assigned to the
9 Secretary for allocation among qualified
10 States for the succeeding calendar year.

11 “(ii) UNUSED RURAL INVESTMENT
12 CREDIT CARRYOVER.—For purposes of this
13 subparagraph, the unused rural investment
14 credit carryover of a State for any calendar
15 year is the excess (if any) of the unused
16 State rural investment credit ceiling for
17 such year (as defined in subparagraph
18 (C)(i)) over the excess (if any) of—

19 “(I) the unused State rural in-
20 vestment credit ceiling for the year
21 preceding such year, over

22 “(II) the aggregate rural invest-
23 ment credit dollar amount allocated
24 for such year.

1 year) to receive an allocation under
2 clause (iii).

3 “(E) STATE MAY PROVIDE FOR DIF-
4 FERENT ALLOCATION.—Rules similar to the
5 rules of section 146(e) (other than paragraph
6 (2)(B) thereof) shall apply for purposes of this
7 paragraph.

8 “(F) POPULATION.—For purposes of this
9 paragraph, population shall be determined in
10 accordance with section 146(j).

11 “(G) COST-OF-LIVING ADJUSTMENT.—

12 “(i) IN GENERAL.—In the case of a
13 calendar year after 2005, the \$185,000
14 amount in subparagraph (C) shall be in-
15 creased by an amount equal to—

16 “(I) such dollar amount, multi-
17 plied by

18 “(II) the cost-of-living adjust-
19 ment determined under section
20 1(f)(3) for such calendar year by sub-
21 stituting ‘calendar year 2004’ for ‘cal-
22 endar year 1992’ in subparagraph (B)
23 thereof.

24 “(ii) ROUNDING.—Any increase under
25 clause (i) which is not a multiple of \$5,000

1 shall be rounded to the next lowest mul-
2 tiple of \$5,000.

3 “(4) PORTION OF STATE CEILING SET-ASIDE
4 FOR CERTAIN INVESTMENT PROJECTS INVOLVING
5 QUALIFIED NONPROFIT ORGANIZATIONS.—

6 “(A) IN GENERAL.—At least 10 percent of
7 the State rural investment credit ceiling for any
8 State for any calendar year shall be allocated to
9 qualified rural investment projects described in
10 subparagraph (B).

11 “(B) INVESTMENT PROJECTS INVOLVING
12 QUALIFIED NONPROFIT ORGANIZATIONS.—For
13 purposes of subparagraph (A), a qualified rural
14 investment project is described in this subpara-
15 graph if a qualified nonprofit organization is to
16 materially participate (within the meaning of
17 section 469(h)) in the development and oper-
18 ation of the investment project throughout the
19 compliance period.

20 “(C) QUALIFIED NONPROFIT ORGANIZA-
21 TION.—For purposes of this paragraph, the
22 term ‘qualified nonprofit organization’ means
23 any organization if—

1 “(i) such organization is described in
2 any paragraph of section 501(c) and is ex-
3 empt from tax under section 501(a),

4 “(ii) such organization is determined
5 by the State rural investment credit agency
6 not to be affiliated with or controlled by a
7 for-profit organization; and

8 “(iii) 1 of the exempt purposes of
9 such organization includes the fostering of
10 rural investment.

11 “(D) TREATMENT OF CERTAIN SUBSIDI-
12 ARIES.—

13 “(i) IN GENERAL.—For purposes of
14 this paragraph, a qualified nonprofit orga-
15 nization shall be treated as satisfying the
16 ownership and material participation test
17 of subparagraph (B) if any qualified cor-
18 poration in which such organization holds
19 stock satisfies such test.

20 “(ii) QUALIFIED CORPORATION.—For
21 purposes of clause (i), the term ‘qualified
22 corporation’ means any corporation if 100
23 percent of the stock of such corporation is
24 held by 1 or more qualified nonprofit orga-

1 nizations at all times during the period
2 such corporation is in existence.

3 “(E) STATE MAY NOT OVERRIDE SET-
4 ASIDE.—Nothing in subparagraph (F) of para-
5 graph (3) shall be construed to permit a State
6 not to comply with subparagraph (A) of this
7 paragraph.

8 “(F) CREDITS FOR QUALIFIED NONPROFIT
9 ORGANIZATIONS.—

10 “(i) ALLOWANCE OF CREDIT.—Any
11 credit which would be allowable under sub-
12 section (a) with respect to a qualified rural
13 investment building of a qualified nonprofit
14 organization if such organization were not
15 exempt from tax under this chapter shall
16 be treated as a credit allowable under sub-
17 part C to such organization.

18 “(ii) USE OF CREDIT.—A qualified
19 nonprofit organization may assign, trade,
20 sell, or otherwise transfer any credit allow-
21 able to such organization under subpara-
22 graph (A) to any taxpayer.

23 “(iii) CREDIT NOT INCOME.—A trans-
24 fer under subparagraph (B) of any credit
25 allowable under subparagraph (A) shall not

1 result in income for purposes of section
2 511.

3 “(5) SPECIAL RULES.—

4 “(A) BUILDING MUST BE LOCATED WITH-
5 IN JURISDICTION OF CREDIT AGENCY.—A rural
6 investment credit agency may allocate its aggre-
7 gate rural investment credit dollar amount only
8 to buildings located in the jurisdiction of the
9 governmental unit of which such agency is a
10 part.

11 “(B) AGENCY ALLOCATIONS IN EXCESS OF
12 LIMIT.—If the aggregate rural investment cred-
13 it dollar amounts allocated by a rural invest-
14 ment credit agency for any calendar year exceed
15 the portion of the State rural investment credit
16 ceiling allocated to such agency for such cal-
17 endar year, the rural investment credit dollar
18 amounts so allocated shall be reduced (to the
19 extent of such excess) for buildings in the re-
20 verse of the order in which the allocations of
21 such amounts were made.

22 “(C) CREDIT REDUCED IF ALLOCATED
23 CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT
24 WHICH WOULD BE ALLOWABLE WITHOUT RE-
25 GARD TO SALES CONVENTION, ETC.—

1 “(i) IN GENERAL.—The amount of
2 the credit determined under this section
3 with respect to any building shall not ex-
4 ceed the clause (ii) percentage of the
5 amount of the credit which would (but for
6 this subparagraph) be determined under
7 this section with respect to such building.

8 “(ii) DETERMINATION OF PERCENT-
9 AGE.—For purposes of clause (i), the
10 clause (ii) percentage with respect to any
11 building is the percentage which—

12 “(I) the rural investment credit
13 dollar amount allocated to such build-
14 ing bears to

15 “(II) the credit amount deter-
16 mined in accordance with clause (iii).

17 “(iii) DETERMINATION OF CREDIT
18 AMOUNT.—The credit amount determined
19 in accordance with this clause is the
20 amount of the credit which would (but for
21 this subparagraph) be determined under
22 this section with respect to the building if
23 this section were applied without regard to
24 paragraph (2)(A) of subsection (e).

1 “(D) RURAL INVESTMENT CREDIT AGENCY
2 TO SPECIFY APPLICABLE PERCENTAGE AND
3 MAXIMUM ELIGIBLE BASIS.—In allocating a
4 rural investment credit dollar amount to any
5 building, the rural investment credit agency
6 shall specify the applicable percentage and the
7 maximum eligible basis which may be taken
8 into account under this section with respect to
9 such building. The applicable percentage and
10 maximum eligible basis so specified shall not ex-
11 ceed the applicable percentage and eligible basis
12 determined under this section without regard to
13 this subsection.

14 “(6) OTHER DEFINITIONS.—For purposes of
15 this subsection—

16 “(A) RURAL INVESTMENT CREDIT AGEN-
17 CY.—The term ‘rural investment credit agency’
18 means any agency authorized to carry out this
19 subsection.

20 “(B) POSSESSIONS TREATED AS
21 STATES.—The term ‘State’ includes a posses-
22 sion of the United States.

23 “(7) PORTION OF STATE CEILING SET-ASIDE
24 FOR QUALIFIED RURAL SMALL BUSINESS INVEST-
25 MENT CREDITS.—Not more than 10 percent of the

1 State rural investment credit ceiling for any State
2 for any calendar year may be allocated to qualified
3 rural small business investment credits under section
4 42B.

5 “(h) DEFINITIONS AND SPECIAL RULES.—For pur-
6 poses of this section—

7 “(1) COMPLIANCE PERIOD.—The term ‘compli-
8 ance period’ means, with respect to any building, the
9 period of 10 taxable years beginning with the 1st
10 taxable year of the credit period with respect there-
11 to.

12 “(2) NEW BUILDING.—The term ‘new building’
13 means a building the original use of which begins
14 with the taxpayer.

15 “(3) EXISTING BUILDING.—The term ‘existing
16 building’ means any building which is not a new
17 building.

18 “(4) APPLICATION TO ESTATES AND TRUSTS.—
19 In the case of an estate or trust, the amount of the
20 credit determined under subsection (a) and any in-
21 crease in tax under subsection (i) shall be appor-
22 tioned between the estate or trust and the bene-
23 ficiaries on the basis of the income of the estate or
24 trust allocable to each.

25 “(i) RECAPTURE OF CREDIT.—If—

1 “(1) as of the close of any taxable year in the
2 compliance period, the amount of the eligible basis
3 of any building with respect to the taxpayer is less
4 than

5 “(2) the amount of such basis as of the close
6 of the preceding taxable year,
7 then the taxpayer’s tax under this chapter for the
8 taxable year shall be increased by the credit recap-
9 ture amount determined under rules similar to the
10 rules of section 42(j).

11 “(j) CERTIFICATIONS AND OTHER REPORTS TO SEC-
12 RETARY.—

13 “(1) CERTIFICATION WITH RESPECT TO 1ST
14 YEAR OF CREDIT PERIOD.—Following the close of
15 the 1st taxable year in the credit period with respect
16 to any qualified rural investment building, the tax-
17 payer shall certify to the Secretary (at such time
18 and in such form and in such manner as the Sec-
19 retary prescribes)—

20 “(A) the taxable year, and calendar year,
21 in which such building was first placed in serv-
22 ice,

23 “(B) the eligible basis of such building as
24 of the beginning of the credit period,

1 “(C) the maximum applicable percentage
2 and eligible basis permitted to be taken into ac-
3 count by the appropriate rural investment cred-
4 it agency under subsection (g),

5 “(D) the election made under subsection
6 (f) with respect to the qualified rural invest-
7 ment project of which such building is a part,
8 and

9 “(E) such other information as the Sec-
10 retary may require.

11 In the case of a failure to make the certification re-
12 quired by the preceding sentence on the date pre-
13 scribed therefor, unless it is shown that such failure
14 is due to reasonable cause and not to willful neglect,
15 no credit shall be allowable by reason of subsection
16 (a) with respect to such building for any taxable
17 year ending before such certification is made.

18 “(2) ANNUAL REPORTS TO THE SECRETARY.—
19 The Secretary may require taxpayers to submit an
20 information return (at such time and in such form
21 and manner as the Secretary prescribes) for each
22 taxable year setting forth—

23 “(A) the eligible basis for the taxable year
24 of each qualified rural investment building of
25 the taxpayer,

1 “(B) the information described in para-
2 graph (1)(C) for the taxable year, and

3 “(C) such other information as the Sec-
4 retary may require.

5 The penalty under section 6652(j) shall apply to any
6 failure to submit the return required by the Sec-
7 retary under the preceding sentence on the date pre-
8 scribed therefor.

9 “(3) ANNUAL REPORTS FROM RURAL INVEST-
10 MENT CREDIT AGENCIES.—Each agency which allo-
11 cates any rural investment credit amount to any
12 building for any calendar year shall submit to the
13 Secretary (at such time and in such manner as the
14 Secretary shall prescribe) an annual report
15 specifying—

16 “(A) the amount of rural investment credit
17 amount allocated to each building for such year,

18 “(B) sufficient information to identify each
19 such building and the taxpayer with respect
20 thereto, and

21 “(C) such other information as the Sec-
22 retary may require.

23 The penalty under section 6652(j) shall apply to any
24 failure to submit the report required by the pre-
25 ceding sentence on the date prescribed therefor.

1 “(k) RESPONSIBILITIES OF RURAL INVESTMENT
2 CREDIT AGENCIES.—

3 “(1) PLANS FOR ALLOCATION OF CREDIT
4 AMONG INVESTMENT PROJECTS.—

5 “(A) IN GENERAL.—Notwithstanding any
6 other provision of this section, the rural invest-
7 ment credit dollar amount with respect to any
8 building shall be zero unless—

9 “(i) such amount was allocated pursu-
10 ant to a qualified rural investment plan of
11 the agency which is approved by the gov-
12 ernmental unit (in accordance with rules
13 similar to the rules of section 147(f)(2)
14 (other than subparagraph (B)(ii) thereof))
15 of which such agency is a part,

16 “(ii) such agency notifies the chief ex-
17 ecutive officer (or the equivalent) of the
18 local jurisdiction within which the building
19 is located of such investment project and
20 provides such individual a reasonable op-
21 portunity to comment on the investment
22 project,

23 “(iii) a comprehensive market study
24 of the development needs of individuals in
25 the qualifying county to be served by the

1 investment project is conducted before the
2 credit allocation is made and at the devel-
3 oper's expense by a disinterested party who
4 is approved by such agency, and

5 “(iv) a written explanation is available
6 to the general public for any allocation of
7 a rural investment credit dollar amount
8 which is not made in accordance with es-
9 tablished priorities and selection criteria of
10 the rural investment credit agency.

11 “(B) QUALIFIED RURAL INVESTMENT
12 PLAN.—For purposes of this section, the term
13 ‘qualified rural investment plan’ means any
14 plan—

15 “(i) which sets forth selection criteria
16 to be used to determine priorities of the
17 rural investment credit agency which are
18 appropriate to qualifying counties,

19 “(ii) which also gives preference in al-
20 locating rural investment credit dollar
21 amounts among selected investment
22 projects to—

23 “(I) investment projects that tar-
24 get those small rural counties with

1 consistently high rates of net out-mi-
2 gration,

3 “(II) investment projects that
4 link the economic development and job
5 creation efforts of 2 or more small
6 rural counties with high rates of net
7 out-migration, and

8 “(III) investment projects that
9 link the economic development and job
10 creation efforts of 1 or more small
11 rural counties in the State with high
12 rates of net out-migration to related
13 efforts in regions of such State experi-
14 encing economic growth, and

15 “(iii) which provides a procedure that
16 the agency (or an agent or other private
17 contractor of such agency) will follow in
18 monitoring for noncompliance with the
19 provisions of this section and in notifying
20 the Internal Revenue Service of such non-
21 compliance which such agency becomes
22 aware of and in monitoring for noncompli-
23 ance through regular site visits.

1 “(C) CERTAIN SELECTION CRITERIA MUST
2 BE USED.—The selection criteria set forth in a
3 qualified rural investment plan must include—

4 “(i) investment project location,

5 “(ii) technology and transportation in-
6 frastructure needs, and

7 “(iii) private development trends.

8 “(2) CREDIT ALLOCATED TO BUILDING NOT TO
9 EXCEED AMOUNT NECESSARY TO ASSURE INVEST-
10 MENT PROJECT FEASIBILITY.—

11 “(A) IN GENERAL.—The rural investment
12 credit dollar amount allocated to an investment
13 project shall not exceed the amount the rural
14 investment credit agency determines is nec-
15 essary for the financial feasibility of the invest-
16 ment project and its viability as a qualified
17 rural investment project throughout the compli-
18 ance period.

19 “(B) AGENCY EVALUATION.—In making
20 the determination under subparagraph (A), the
21 rural investment credit agency shall consider—

22 “(i) the sources and uses of funds and
23 the total financing planned for the invest-
24 ment project,

1 “(ii) any proceeds or receipts expected
2 to be generated by reason of tax benefits,

3 “(iii) the percentage of the rural in-
4 vestment credit dollar amount used for in-
5 vestment project costs other than the cost
6 of intermediaries, and

7 “(iv) the reasonableness of the devel-
8 opmental and operational costs of the in-
9 vestment project.

10 Clause (iii) shall not be applied so as to impede
11 the development of investment projects in hard-
12 to-develop areas.

13 “(C) DETERMINATION MADE WHEN CRED-
14 IT AMOUNT APPLIED FOR AND WHEN BUILDING
15 PLACED IN SERVICE.—

16 “(i) IN GENERAL.—A determination
17 under subparagraph (A) shall be made as
18 of each of the following times:

19 “(I) The application for the rural
20 investment credit dollar amount.

21 “(II) The allocation of the rural
22 investment credit dollar amount.

23 “(III) The date the building is
24 first placed in service.

1 “(ii) CERTIFICATION AS TO AMOUNT
2 OF OTHER SUBSIDIES.—Prior to each de-
3 termination under clause (i), the taxpayer
4 shall certify to the rural investment credit
5 agency the full extent of all Federal, State,
6 and local subsidies which apply (or which
7 the taxpayer expects to apply) with respect
8 to the building.

9 “(l) REGULATIONS.—The Secretary shall prescribe
10 such regulations as may be necessary or appropriate to
11 carry out the purposes of this section, including
12 regulations—

13 “(1) dealing with—

14 “(A) investment projects which include
15 more than 1 building or only a portion of a
16 building,

17 “(B) buildings which are sold in portions,

18 “(2) providing for the application of this section
19 to short taxable years,

20 “(3) preventing the avoidance of the rules of
21 this section, and

22 “(4) providing the opportunity for rural invest-
23 ment credit agencies to correct administrative errors
24 and omissions with respect to allocations and record
25 keeping within a reasonable period after their dis-

1 covery, taking into account the availability of regula-
2 tions and other administrative guidance from the
3 Secretary.”.

4 (b) CURRENT YEAR BUSINESS CREDIT CALCULA-
5 TION.—Section 38(b) (relating to current year business
6 credit), as amended by this Act, is amended by striking
7 “plus” at the end of paragraph (16), by striking the period
8 at the end of paragraph (17) and inserting “, plus”, and
9 by adding at the end the following:

10 “(18) the rural investment credit determined
11 under section 42A(a).”.

12 (c) LIMITATION ON CARRYBACK.—Subsection (d) of
13 section 39 (relating to carryback and carryforward of un-
14 used credits), as amended by this Act, is amended by add-
15 ing at the end the following:

16 “(12) NO CARRYBACK OF RURAL INVESTMENT
17 CREDIT BEFORE EFFECTIVE DATE.—No portion of
18 the unused business credit for any taxable year
19 which is attributable to the rural investment credit
20 determined under section 42A may be carried back
21 to a taxable year beginning before the date of the
22 enactment of the Jumpstart Our Business Strength
23 (JOBS) Act.”.

24 (d) CONFORMING AMENDMENTS.—

1 (1) Section 55(c)(1) is amended by inserting
2 “or subsection (i) or (j) of section 42A” after “sec-
3 tion 42”.

4 (2) Subsections (i)(c)(3), (i)(c)(6)(B)(i), and
5 (k)(1) of section 469 are each amended by inserting
6 “or 42A” after “section 42”.

7 (3) Section 772(a) is amended by striking
8 “and” at the end of paragraph (10), by redesignig-
9 nating paragraph (11) as paragraph (12), and by in-
10 serting after paragraph (10) the following:

11 “(11) the rural investment credit determined
12 under section 42A, and”.

13 (4) Section 774(b)(4) is amended by inserting
14 “, 42A(i),” after “section 42(j)”.

15 (e) CLERICAL AMENDMENT.—The table of sections
16 for subpart D of part IV of subchapter A of chapter 1
17 is amended by inserting after the item relating to section
18 42 the following:

 “Sec. 42A. Rural investment credit.”.

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

1 **SEC. 634. QUALIFIED RURAL SMALL BUSINESS INVEST-**
2 **MENT CREDIT.**

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

7 **“SEC. 42B. QUALIFIED RURAL SMALL BUSINESS INVEST-**
8 **MENT CREDIT.**

9 “(a) IN GENERAL.—For purposes of section 38, in
10 the case of a qualified rural small business, the amount
11 of the qualified rural small business investment credit de-
12 termined under this section for any taxable year is equal
13 to 30 percent of the qualified expenditures for the taxable
14 year of such business.

15 “(b) DOLLAR LIMITATION.—

16 “(1) IN GENERAL.—The credit allowable under
17 subsection (a) for any taxable year shall not exceed
18 the lesser of—

19 “(A) \$5,000, or

20 “(B) the amount when added to the aggre-
21 gate credits allowable to the taxpayer under
22 subsection (a) for all preceding taxable years
23 does not exceed \$25,000.

24 “(2) NO DOUBLE CREDIT ALLOWED.—In the
25 case of any qualified rural small business which
26 places in service a qualified rural investment build-

1 ing with respect to which a rural investment credit
2 is allowed under section 42A for any taxable year,
3 paragraph (1)(A) shall be applied with respect to
4 such taxable year by substituting ‘zero’ for ‘\$5,000’.

5 “(c) QUALIFIED RURAL SMALL BUSINESS.—For
6 purposes of this section, the term ‘qualified rural small
7 business’ means any person if such person—

8 “(1) employed not more than 5 full-time em-
9 ployees during the taxable year,

10 “(2) materially and substantially participates in
11 management,

12 “(3) is located in a qualifying county, and

13 “(4) submitted a qualified business plan with
14 respect to which the rural investment credit agency
15 with jurisdiction over such qualifying county has al-
16 located a portion of the State rural investment ceil-
17 ing for such taxable year under section 42A(g)(7).

18 For purposes of paragraph (1), an employee shall be con-
19 sidered full-time if such employee is employed at least 30
20 hours per week for 20 or more calendar weeks in the tax-
21 able year.

22 “(d) QUALIFIED EXPENDITURES.—For purposes of
23 this section—

24 “(1) IN GENERAL.—The term ‘qualified expend-
25 itures’ means expenditures normally associated with

1 starting or expanding a business and included in a
2 qualified business plan, including costs for capital,
3 plant and equipment, inventory expenses, and wages,
4 but not including interest costs.

5 “(2) ONLY CERTAIN EXPENDITURES INCLUDED
6 FOR EXISTING BUSINESSES.—In the case of a quali-
7 fied rural small business with respect to which a
8 credit under subsection (a) was allowed for a pre-
9 ceding taxable year, such term shall include only so
10 much of the expenditures described in paragraph (1)
11 for the taxable year as exceed the aggregate of such
12 expenditures for the preceding taxable year.

13 “(e) QUALIFIED BUSINESS PLAN.—For purposes of
14 this section, the term ‘qualified business plan’ means a
15 business plan which—

16 “(1) has been approved by the rural investment
17 credit agency with jurisdiction over the qualifying
18 county in which the qualified rural small business is
19 located pursuant to such agency’s rural investment
20 plan, and

21 “(2) meets such requirements as the agency
22 may specify.

23 “(f) DENIAL OF DOUBLE BENEFIT.—In the case of
24 the amount of the credit determined under this section—

1 “(1) no deduction or credit shall be allowed for
2 such amount under any other provision of this chap-
3 ter, and

4 “(2) no increase in the adjusted basis of any
5 property shall result from such amount.

6 “(g) DEFINITIONS AND SPECIAL RULES.—For pur-
7 poses of this section—

8 “(1) any term which is used in this section
9 which is used in section 42A shall have the meaning
10 given such term by section 42A, and

11 “(2) rules similar to the rules under subsections
12 (j)(2), (j)(3), and (k) of section 42A shall apply.”.

13 (b) CURRENT YEAR BUSINESS CREDIT CALCULA-
14 TION.—Section 38(b) (relating to current year business
15 credit), as amended by this Act, is amended by striking
16 “plus” at the end of paragraph (17), by striking the period
17 at the end of paragraph (18) and inserting “, plus”, and
18 by adding at the end the following:

19 “(19) the qualified rural small business invest-
20 ment credit determined under section 42B(a).”.

21 (c) LIMITATION ON CARRYBACK.—Subsection (d) of
22 section 39 (relating to carryback and carryforward of un-
23 used credits), as amended by this Act, is amended by add-
24 ing at the end the following:

1 “(13) NO CARRYBACK OF QUALIFIED RURAL
2 SMALL BUSINESS INVESTMENT CREDIT BEFORE EF-
3 FECTIVE DATE.—No portion of the unused business
4 credit for any taxable year which is attributable to
5 the qualified rural small business investment credit
6 determined under section 42B may be carried back
7 to a taxable year beginning before the date of the
8 enactment of the Jumpstart Our Business Strength
9 (JOBS) Act.”.

10 (d) CLERICAL AMENDMENT.—The table of sections
11 for subpart D of part IV of subchapter A of chapter 1,
12 as amended by this Act, is amended by inserting after the
13 item relating to section 42A the following:

 “Sec. 42B. Qualified rural small business investment credit.”.

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to expenditures made in taxable
16 years beginning after the date of the enactment of this
17 Act.

18 **SEC. 635. CREDIT FOR MAINTENANCE OF RAILROAD**
19 **TRACK.**

20 (a) IN GENERAL.—Subpart D of part IV of sub-
21 chapter A of chapter 1 (relating to business-related cred-
22 its), as amended by this Act, is amended by adding at
23 the end the following new section:

1 **“SEC. 45I. RAILROAD TRACK MAINTENANCE CREDIT.**

2 “(a) GENERAL RULE.—For purposes of section 38,
3 the railroad track maintenance credit determined under
4 this section for the taxable year is an amount equal to
5 30 percent of the qualified railroad track maintenance ex-
6 penditures paid or incurred by an eligible taxpayer during
7 the taxable year.

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

11 “(1) \$3,500, and

12 “(2) the number of miles of railroad track
13 owned or leased by the eligible taxpayer as of the
14 close of the taxable year.

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

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

18 “(2) any person who transports property using
19 the rail facilities of a person described in paragraph
20 (1) or who furnishes railroad-related property or
21 services to such a person.

22 “(d) QUALIFIED RAILROAD TRACK MAINTENANCE
23 EXPENDITURES.—For purposes of this section, the term
24 ‘qualified railroad track maintenance expenditures’ means
25 expenditures (whether or not otherwise chargeable to cap-
26 ital account) for maintaining railroad track (including

1 roadbed, bridges, and related track structures) owned or
2 leased as of January 1, 2005, by a Class II or Class III
3 railroad.

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

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

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

12 “(3) BASIS ADJUSTMENT.—For purposes of
13 this subtitle, if a credit is allowed under this section
14 with respect to any railroad track, the basis of such
15 track shall be reduced by the amount of the credit
16 so allowed.

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

21 (b) LIMITATION ON CARRYBACK.—Section 39(d) (re-
22 lating to transition rules), as amended by this Act, is
23 amended by adding at the end the following new para-
24 graph:

1 “(14) NO CARRYBACK OF RAILROAD TRACK
2 MAINTENANCE CREDIT BEFORE EFFECTIVE DATE.—
3 No portion of the unused business credit for any
4 taxable year which is attributable to the railroad
5 track maintenance credit determined under section
6 45I may be carried to a taxable year beginning be-
7 fore January 1, 2005.”.

8 (c) CONFORMING AMENDMENTS.—

9 (1) Section 38(b) (relating to general business
10 credit), as amended by this Act, is amended by
11 striking “plus” at the end of paragraph (18), by
12 striking the period at the end of paragraph (19) and
13 inserting “, plus”, and by adding at the end the fol-
14 lowing new paragraph:

15 “(20) the railroad track maintenance credit de-
16 termined under section 45I(a).”.

17 (2) Subsection (a) of section 1016, as amended
18 by this Act, is amended by striking “and” at the end
19 of paragraph (28), by striking the period at the end
20 of paragraph (29) and inserting “, and”, and by
21 adding at the end the following new paragraph:

22 “(30) in the case of railroad track with respect
23 to which a credit was allowed under section 45I, to
24 the extent provided in section 45I(e)(3).”.

1 (d) CLERICAL AMENDMENT.—The table of sections
2 for subpart D of part IV of subchapter A of chapter 1,
3 as amended by this Act, is amended by inserting after the
4 item relating to section 45F the following new item:

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

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

8 **SEC. 636. RAILROAD REVITALIZATION AND SECURITY IN-**
9 **VESTMENT CREDIT.**

10 (a) RAILROAD REVITALIZATION AND SECURITY IN-
11 VESTMENT CREDIT.—

12 (1) IN GENERAL.—Subpart D of part IV of
13 subchapter A of chapter 1 (relating to business-re-
14 lated credits), as amended by this Act, is amended
15 by adding at the end the following new section:

16 **“SEC. 45J. RAILROAD REVITALIZATION AND SECURITY IN-**
17 **VESTMENT CREDIT.**

18 “(a) GENERAL RULE.—For purposes of section 38,
19 the railroad revitalization and security investment credit
20 determined under this section for the taxable year is the
21 amount equal to 50 percent of the qualified project ex-
22 penditures paid or incurred by the taxpayer during the
23 taxable year.

24 “(b) QUALIFIED PROJECT EXPENDITURES.—

1 “(1) IN GENERAL.—For purposes of this sec-
2 tion, the term ‘qualified project expenditures’ means,
3 with respect to any project for intercity passenger
4 rail transportation (as defined under section 24102
5 of title 49, United States Code) which is included in
6 a State rail plan, expenditures (whether or not oth-
7 erwise chargeable to capital account) for—

8 “(A) planning,

9 “(B) environmental review and environ-
10 mental impact mitigation,

11 “(C) track and track structure rehabilita-
12 tion, relocation, improvement, and development,

13 “(D) railroad safety and security improve-
14 ments,

15 “(E) communications and signaling im-
16 provements,

17 “(F) intercity passenger rail equipment ac-
18 quisition, and

19 “(G) rail station and intermodal facilities
20 development.

21 “(2) EXCEPTIONS.—An expenditure shall not
22 be treated as a qualified project expenditure unless
23 all persons which conduct rail operations over the in-
24 frastructure with respect to which such an expendi-
25 ture is made—

1 “(A) are employers for purposes of the
2 Railroad Retirement Act of 1974 and are car-
3 riers for purposes of the Railway Labor Act
4 (unless such a person is an operator with re-
5 spect to commuter rail passenger transportation
6 (as defined in section 24102(4) of title 49,
7 United States Code) of a State or local govern-
8 ment authority (as such terms are defined in
9 section 5302 of such title) eligible to receive fi-
10 nancial assistance under section 5307 of such
11 title, a contractor performing services in con-
12 nection with the operations with respect to com-
13 muter rail passenger transportation (as so de-
14 fined), or the Alaska Railroad or its contrac-
15 tors),

16 “(B) provide assurances to the State that
17 any collective bargaining agreements with such
18 a person’s employees (including terms regu-
19 lating the contracting of work) will remain in
20 full force and effect according to the terms of
21 the agreements for work performed for such a
22 person on the railroad transportation corridor,
23 and

24 “(C) comply with the protective agree-
25 ments established under section 504 of the

1 Railroad Revitalization and Regulatory Reform
2 Act of 1976 with respect to employees affected
3 by actions taken in connection with the project.

4 “(c) LIMITATION.—

5 “(1) IN GENERAL.—The amount of the credit
6 allowed under subsection (a) for any taxable year
7 with respect to any project for which qualified
8 project expenditures are made shall not exceed the
9 limitation allocated to such project under this sub-
10 section for the calendar year in which the taxable
11 year begins.

12 “(2) STATE LIMITATION.—

13 “(A) IN GENERAL.—There is a State rail-
14 road revitalization and security investment
15 credit limitation for each calendar year. Such
16 limitation is the amount which bears the same
17 ratio to \$165,000,000 as the allocation number
18 for such State bears to the allocation number
19 for all States.

20 “(B) ALLOCATION NUMBER.—For pur-
21 poses of subparagraph (A), the allocation num-
22 ber is, with respect to any State, the sum of the
23 following:

1 “(i) The number of railroad and pub-
2 lic road grade crossings on intercity pas-
3 senger rail routes within the State.

4 “(ii) The number of intercity pas-
5 senger rail miles within the State.

6 “(iii) The number of intercity embar-
7 kations and disembarkations for each pas-
8 senger within the State.

9 “(3) UNUSED CREDIT CARRYOVERS ALLOCATED
10 AMONG CERTAIN STATES.—

11 “(A) IN GENERAL.—The unused credit
12 carryover for all States for any calendar year
13 shall be reallocated to each qualified State in an
14 amount which bears the same ratio to the un-
15 used credit carryover for all States for the cal-
16 endar as the allocation number for such quali-
17 fied State bears to the allocation number for all
18 qualified States.

19 “(B) UNUSED CREDIT CARRYOVER.—For
20 purposes of this paragraph, the term ‘unused
21 credit carryover’ means, with respect to any
22 State, the excess of the State limitation (deter-
23 mined under paragraph (2)) for the calendar
24 year over the amount allocated by the State
25 under paragraph (4) for such calendar year.

1 “(C) QUALIFIED STATES.—For purposes
2 of this paragraph, the term ‘qualified State’
3 means any State—

4 “(i) which allocated its entire State
5 limitation amount under paragraph (4) for
6 the calendar year, and

7 “(ii) for which a request is made to
8 receive an allocation under this paragraph.

9 “(4) ALLOCATION WITHIN STATES.—Each
10 State shall allocate the limitation amount allocated
11 to such State under paragraphs (2) and (3) to
12 projects for intercity passenger rail transportation
13 which are included in the State rail plan of such
14 State.

15 “(5) NEW YORK CITY RAIL PROJECTS.—

16 “(A) IN GENERAL.—In addition to the
17 amounts allocated under paragraph (2), the
18 Secretary shall allocate a limitation of
19 \$200,000,000 to New York City, New York, for
20 qualified project expenditures within the New
21 York Liberty Zone (as defined in section
22 1400L(h)) for the period described in sub-
23 section (h).

1 “(B) ALLOCATION AMONG PROJECTS.—Of
2 the limitation allocated under subparagraph
3 (A)—

4 “(i) \$100,000,000 shall be allocated
5 to projects designated by the Mayor of
6 New York City, New York, and

7 “(ii) \$100,000,000 shall be allocated
8 to projects designated by the Governor of
9 New York.

10 “(C) SPECIAL RULE REGARDING QUALI-
11 FIED PROJECT EXPENDITURES.—For purposes
12 of this paragraph, a qualified project expendi-
13 ture shall include any expenditure for improve-
14 ments to subway systems, for commuter rail
15 systems, for rail links to airports, and for public
16 infrastructure improvements in the vicinity of
17 rail or subway stations.

18 “(d) STATE RAIL PLAN.—For purposes of this sec-
19 tion, the term ‘State rail plan’ means a plan prepared and
20 maintained in accordance with chapter 225 of title 49,
21 United States Code.

22 “(e) BASIS ADJUSTMENT.—For purposes of this sub-
23 title, if a credit is allowed under this section with respect
24 to any property, the basis of such property shall be re-
25 duced by the amount of the credit so allowed.

1 “(f) NO DOUBLE BENEFIT.—No credit shall be al-
2 lowed under this section with respect to any expenditures
3 for which a credit is allowed under section 45I.

4 “(g) CREDIT TRANSFERABILITY.—Any credit allow-
5 able under this section may be transferred (but not more
6 than once) if—

7 “(1) the credit exceeds the tax liability of the
8 taxpayer for the taxable year, or

9 “(2) the taxpayer is not subject to any tax im-
10 posed by this chapter by reason of having a tax-ex-
11 empt status.

12 “(h) APPLICATION OF SECTION.—This section shall
13 apply to qualified project expenditures paid or incurred
14 during taxable years beginning after December 31, 2004,
15 and before January 1, 2008.”.

16 (2) LIMITATION ON CARRYBACK.—Section
17 39(d) (relating to transition rules), as amended by
18 this Act, is amended by adding at the end the fol-
19 lowing new paragraph:

20 “(15) NO CARRYBACK OF SECTION 45J CREDIT
21 BEFORE EFFECTIVE DATE.—No portion of the un-
22 used business credit for any taxable year which is
23 attributable to the credit determined under section
24 45J(a) may be carried back to any taxable year be-
25 ginning before January 1, 2005.”.

1 (3) CONFORMING AMENDMENTS.—

2 (A) Section 38(b) (relating to general busi-
3 ness credit), as amended by this Act, is amend-
4 ed by striking “plus” at the end of paragraph
5 (19), by striking the period at the end of para-
6 graph (20) and inserting “, plus”, and by add-
7 ing at the end the following new paragraph:

8 “(21) the railroad revitalization and security in-
9 vestment credit determined under section 45J(a).”.

10 (B) Subsection (a) of section 1016, as
11 amended by this Act, is amended by striking
12 “and” at the end of paragraph (29), by striking
13 the period at the end of paragraph (30) and in-
14 serting “, and”, and by adding at the end the
15 following new paragraph:

16 “(31) in the case of property with respect to
17 which a credit was allowed under section 45J, to the
18 extent provided in section 45J(e).”.

19 (4) CLERICAL AMENDMENT.—The table of sec-
20 tions for subpart D of part IV of subchapter A of
21 chapter 1, as amended by this Act, is amended by
22 inserting after the item relating to section 45I the
23 following new item:

“Sec. 45J. Railroad revitalization and security invest-
ment credit.”.

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

4 (b) **STATE RAIL PLANS.**—

5 (1) **IN GENERAL.**—Part B of subtitle V of title
6 49, United States Code, is amended by adding at
7 the end the following:

8 **“CHAPTER 225—STATE RAIL PLANS**

 “Sec.

 “22501. Authority.

 “22502. Purposes.

 “22503. Transparency; coordination.

 “22504. Content.

 “22505. Approval.

 “22506. Definitions.

9 **“§ 22501. Authority**

10 “(a) **IN GENERAL.**—Each State may prepare and
11 maintain a State rail plan in accordance with the provi-
12 sions of this chapter.

13 “(b) **REQUIREMENTS.**—For the preparation and peri-
14 odic revision of a State rail plan, a State shall—

15 “(1) establish or designate a State rail trans-
16 portation authority to prepare, maintain, coordinate,
17 and administer the plan;

18 “(2) establish or designate a State rail plan ap-
19 proval authority to approve the plan;

1 “(3) make the State’s approved plan available
2 to the public and transmit a copy to the Secretary
3 of Transportation; and

4 “(4) revise the plan no less frequently than
5 once every 5 years.

6 **“§ 22502. Purposes**

7 “(a) PURPOSES.—The purposes of a State rail plan
8 are as follows:

9 “(1) To set forth State policy involving freight
10 and passenger rail transportation, including com-
11 muter rail operations, in the State.

12 “(2) To present priorities and strategies to en-
13 hance rail service in the State that benefits the pub-
14 lic.

15 “(3) To serve as the basis for Federal and
16 State rail investments within the State.

17 “(b) CONTENT.—The State rail plan shall establish
18 the period covered by such plan.

19 “(c) CONSISTENCY WITH STATE TRANSPORTATION
20 EFFORTS.—A State rail plan shall be consistent with the
21 State transportation planning goals and programs and
22 shall set forth rail transportation’s role within the State
23 transportation system.

1 **“§ 22503. Transparency; coordination**

2 “(a) PREPARATION.—A State shall provide adequate
3 and reasonable notice and opportunity for comment and
4 other input on a proposed State rail plan under this chap-
5 ter to the following:

6 “(1) The public.

7 “(2) Rail carriers.

8 “(3) Commuter and transit authorities oper-
9 ating in, or affected by rail operations within, the
10 State.

11 “(4) Units of local government.

12 “(5) Other parties interested in the preparation
13 and review of the State rail plan.

14 “(b) INTERGOVERNMENTAL COORDINATION.—A
15 State shall review the freight and passenger rail service
16 activities and initiatives of regional planning agencies, re-
17 gional transportation authorities, and municipalities with-
18 in the State, or in the region in which the State is located,
19 while preparing the plan, and shall include any rec-
20 ommendations made by such agencies, authorities, and
21 municipalities as deemed appropriate by the State.

22 **“§ 22504. Content**

23 “(a) IN GENERAL.—Each State rail plan shall con-
24 tain the following:

25 “(1) An inventory of the existing overall rail
26 transportation system and rail services and facilities

1 within the State and an analysis of the role of rail
2 transportation within the State's surface transpor-
3 tation system.

4 “(2) A comprehensive review of all rail lines
5 within the State, including proposed high speed rail
6 corridors and significant rail line segments not cur-
7 rently in service.

8 “(3) A statement of the State's passenger rail
9 service objectives, including minimum service levels,
10 for intercity passenger rail transportation routes in
11 the State.

12 “(4) A general analysis of rail's transportation,
13 economic, and environmental impacts in the State,
14 including congestion mitigation, trade and economic
15 development, air quality, land-use, energy-use, and
16 community impacts.

17 “(5) A long-range rail investment program for
18 current and future freight and passenger infrastruc-
19 ture in the State that meets the requirements of
20 subsection (b).

21 “(6) A statement of public financing issues for
22 rail projects and service in the State, including a list
23 of current and prospective public capital and oper-
24 ating funding resources, public subsidies, State tax-

1 ation, and other financial policies relating to rail in-
2 frastructure development.

3 “(7) An identification of rail infrastructure
4 issues within the State that reflects consultation
5 with all relevant stake holders.

6 “(8) A review of major passenger and freight
7 intermodal rail connections and facilities within the
8 State, including seaports, and prioritized options to
9 maximize service integration and efficiency between
10 rail and other modes of transportation within the
11 State.

12 “(9) A review of publicly funded projects within
13 the State to improve rail transportation safety and
14 security, including all major projects funded under
15 section 130 of title 23.

16 “(10) A performance evaluation of passenger
17 rail services operating in the State, including pos-
18 sible improvements in those services, and a descrip-
19 tion of strategies to achieve those improvements.

20 “(11) A compilation of studies and reports on
21 high-speed rail corridor development within the
22 State not included in a previous plan under this
23 chapter, and a plan for funding any recommended
24 development of such corridors in the State.

1 “(12) A statement that the State satisfies the
2 conditions set forth in section 22102.

3 “(b) LONG-RANGE SERVICE AND INVESTMENT PRO-
4 GRAM.—

5 “(1) PROGRAM CONTENT.—A long-range rail
6 investment program included in a State rail plan
7 under subsection (a)(5) shall include the following
8 matters:

9 “(A) Two lists for rail capital projects, 1
10 list for freight rail capital projects and 1 list for
11 intercity passenger rail capital projects.

12 “(B) A detailed funding plan for the
13 projects.

14 “(2) PROJECT LIST CONTENT.—The lists of
15 freight and intercity passenger rail capital projects
16 shall contain—

17 “(A) a description of the anticipated public
18 and private benefits of each such project; and

19 “(B) a statement of the correlation
20 between—

21 “(i) public funding contributions for
22 the projects; and

23 “(ii) the public benefits.

24 “(3) CONSIDERATIONS FOR PROJECT LIST.—In
25 preparing the list of freight and intercity passenger

1 rail capital projects, a State rail transportation au-
2 thority shall take into consideration the following
3 matters:

4 “(A) Contributions made by non-Federal
5 and non-State sources through user fees,
6 matching funds, or other private capital involve-
7 ment.

8 “(B) Rail capacity and congestion effects.

9 “(C) Effects to highway, aviation, and
10 maritime capacity, congestion, or safety.

11 “(D) Regional balance.

12 “(E) Environmental impact.

13 “(F) Economic and employment impacts.

14 “(G) Projected ridership and other service
15 measures for passenger rail projects.

16 **“§ 22505. Approval**

17 “The State rail plan approval authority established
18 or designated under section 22501(b)(2) may approve a
19 State rail plan for the purposes of this chapter if—

20 “(1) the plan meets all of the requirements ap-
21 plicable to State plans under this chapter;

22 “(2) for each ready-to-commence project listed
23 on the ranked list of freight and intercity passenger
24 rail capital improvement projects under the plan—

1 “(A) the project meets all safety and envi-
2 ronmental requirements, including those pre-
3 scribed under the National Environmental Pol-
4 icy Act of 1969 (42 U.S.C. 4331 et seq.) that
5 are applicable to the project under law; and

6 “(B) the State has entered into an agree-
7 ment with any owner of rail infrastructure or
8 right-of-way directly affected by the project that
9 provides for the State to proceed with the
10 project and includes assurances regarding ca-
11 pacity and compensation for use of such infra-
12 structure or right-of-way, if applicable; and

13 “(3) the content of the plan is coordinated with
14 State transportation plans developed pursuant to
15 section 135 of title 23.

16 **“§ 22506. Definitions**

17 “In this chapter:

18 “(1) PRIVATE BENEFIT.—The term ‘private
19 benefit’—

20 “(A) means a benefit accrued to a person
21 or private entity, other than the National Rail-
22 road Passenger Corporation, that directly im-
23 proves the economic and competitive condition
24 of that person or entity through improved as-

1 sets, cost reductions, service improvements, or
2 other means; and

3 “(B) shall be determined on a project-by-
4 project basis, based upon an agreement between
5 the State and the affected persons or private
6 entities.

7 “(2) PUBLIC BENEFIT.—The term ‘public
8 benefit’—

9 “(A) means a benefit accrued to the public
10 in the form of enhanced mobility of people or
11 goods, environmental protection or enhance-
12 ment, congestion mitigation, enhanced trade
13 and economic development, improved air quality
14 or land use, more efficient energy use, enhanced
15 public safety or security, reduction of public ex-
16 penditures due to improved transportation effi-
17 ciency or infrastructure preservation, and other
18 positive community effects; and

19 “(B) shall be determined on a project-by-
20 project basis, based upon an agreement between
21 the State and the persons or private entities in-
22 volved in the project.

23 “(3) STATE.—The term ‘State’ means any of
24 the 50 States and the District of Columbia.

1 “(4) STATE RAIL TRANSPORTATION AUTHOR-
 2 ITY.—The term ‘State rail transportation authority’
 3 means the State agency or official responsible under
 4 the direction of the Chief Executive of the State or
 5 a State law for preparation, maintenance, coordina-
 6 tion, and administration of the State rail plan under
 7 this chapter.”.

8 (2) CLERICAL AMENDMENT.—The table of
 9 chapters at the beginning of subtitle V of title 49,
 10 United States Code, is amended by inserting after
 11 the item relating to chapter 223 the following:

“225. STATE RAIL PLANS22501.”.

12 **SEC. 637. MODIFICATION OF TARGETED AREAS DES-**
 13 **IGNATED FOR NEW MARKETS TAX CREDIT.**

14 (a) IN GENERAL.—Paragraph (2) of section 45D(e)
 15 is amended to read as follows:

16 “(2) TARGETED POPULATIONS.—The Secretary
 17 shall prescribe regulations under which 1 or more
 18 targeted populations (within the meaning of section
 19 3(20) of the Riegle Community Development and
 20 Regulatory Improvement Act of 1974 (12 U.S.C.
 21 4702(20))) may be treated as low-income commu-
 22 nities. Such regulations shall include procedures for
 23 determining which entities are qualified active low-
 24 income community businesses with respect to such
 25 populations.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to designations made by the Sec-
3 retary of the Treasury after the date of the enactment
4 of this Act.

5 **SEC. 638. MODIFICATION OF INCOME REQUIREMENT FOR**
6 **CENSUS TRACTS WITHIN HIGH MIGRATION**
7 **RURAL COUNTIES.**

8 (a) IN GENERAL.—Section 45D(e) (relating to low-
9 income community) is amended by adding at the end the
10 following new paragraph:

11 “(4) MODIFICATION OF INCOME REQUIREMENT
12 FOR CENSUS TRACTS WITHIN HIGH MIGRATION
13 RURAL COUNTIES.—

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

19 “(B) HIGH MIGRATION RURAL COUNTY.—
20 For purposes of this paragraph, the term ‘high
21 migration rural county’ means any county
22 which, during the 20-year period ending with
23 the year in which the most recent census was
24 conducted, has a net out-migration of inhab-
25 itants from the county of at least 10 percent of

1 the population of the county at the beginning of
2 such period.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall take effect as if included in the amend-
5 ment made by section 121(a) of the Community Renewal
6 Tax Relief Act of 2000.

7 **Subtitle E—Miscellaneous**
8 **Provisions**

9 **SEC. 641. EXCLUSION OF GAIN OR LOSS ON SALE OR EX-**
10 **CHANGE OF CERTAIN BROWNFIELD SITES**
11 **FROM UNRELATED BUSINESS TAXABLE IN-**
12 **COME.**

13 (a) **IN GENERAL.**—Subsection (b) of section 512 (re-
14 lating to unrelated business taxable income) is amended
15 by adding at the end the following new paragraph:

16 “(18) **TREATMENT OF GAIN OR LOSS ON SALE**
17 **OR EXCHANGE OF CERTAIN BROWNFIELD SITES.**—

18 “(A) **IN GENERAL.**—Notwithstanding para-
19 graph (5)(B), there shall be excluded any gain
20 or loss from the qualified sale, exchange, or
21 other disposition of any qualifying brownfield
22 property by an eligible taxpayer.

23 “(B) **ELIGIBLE TAXPAYER.**—For purposes
24 of this paragraph—

1 “(i) IN GENERAL.—The term ‘eligible
2 taxpayer’ means, with respect to a prop-
3 erty, any organization exempt from tax
4 under section 501(a) which—

5 “(I) acquires from an unrelated
6 person a qualifying brownfield prop-
7 erty, and

8 “(II) pays or incurs eligible re-
9 mediation expenditures with respect to
10 such property in an amount which ex-
11 ceeds the greater of \$550,000 or 12
12 percent of the fair market value of the
13 property at the time such property
14 was acquired by the eligible taxpayer,
15 determined as if there was not a pres-
16 ence of a hazardous substance, pollut-
17 ant, or contaminant on the property
18 which is complicating the expansion,
19 redevelopment, or reuse of the prop-
20 erty.

21 “(ii) EXCEPTION.—Such term shall
22 not include any organization which is—

23 “(I) potentially liable under sec-
24 tion 107 of the Comprehensive Envi-
25 ronmental Response, Compensation,

1 and Liability Act of 1980 with respect
2 to the qualifying brownfield property,
3 “(II) affiliated with any other
4 person which is so potentially liable
5 through any direct or indirect familial
6 relationship or any contractual, cor-
7 porate, or financial relationship (other
8 than a contractual, corporate, or fi-
9 nancial relationship which is created
10 by the instruments by which title to
11 any qualifying brownfield property is
12 conveyed or financed or by a contract
13 of sale of goods or services), or

14 “(III) the result of a reorganiza-
15 tion of a business entity which was so
16 potentially liable.

17 “(C) QUALIFYING BROWNFIELD PROP-
18 ERTY.—For purposes of this paragraph—

19 “(i) IN GENERAL.—The term ‘quali-
20 fying brownfield property’ means any real
21 property which is certified, before the tax-
22 payer incurs any eligible remediation ex-
23 penditures (other than to obtain a Phase I
24 environmental site assessment), by an ap-
25 propriate State agency (within the mean-

1 ing of section 198(c)(4)) in the State in
2 which such property is located as a
3 brownfield site within the meaning of sec-
4 tion 101(39) of the Comprehensive Envi-
5 ronmental Response, Compensation, and
6 Liability Act of 1980 (as in effect on the
7 date of the enactment of this paragraph).

8 “(ii) REQUEST FOR CERTIFICATION.—

9 Any request by an eligible taxpayer for a
10 certification described in clause (i) shall in-
11 clude a sworn statement by the eligible
12 taxpayer and supporting documentation of
13 the presence of a hazardous substance, pol-
14 lutant, or contaminant on the property
15 which is complicating the expansion, rede-
16 velopment, or reuse of the property given
17 the property’s reasonably anticipated fu-
18 ture land uses or capacity for uses of the
19 property (including a Phase I environ-
20 mental site assessment and, if applicable,
21 evidence of the property’s presence on a
22 local, State, or Federal list of brownfields
23 or contaminated property) and other envi-
24 ronmental assessments prepared or ob-
25 tained by the taxpayer.

1 “(D) QUALIFIED SALE, EXCHANGE, OR
2 OTHER DISPOSITION.—For purposes of this
3 paragraph—

4 “(i) IN GENERAL.—A sale, exchange,
5 or other disposition of property shall be
6 considered as qualified if—

7 “(I) such property is transferred
8 by the eligible taxpayer to an unre-
9 lated person, and

10 “(II) within 1 year of such trans-
11 fer the eligible taxpayer has received a
12 certification from the Environmental
13 Protection Agency or an appropriate
14 State agency (within the meaning of
15 section 198(c)(4)) in the State in
16 which such property is located that, as
17 a result of the eligible taxpayer’s re-
18 mediation actions, such property
19 would not be treated as a qualifying
20 brownfield property in the hands of
21 the transferee.

22 For purposes of subclause (II), before
23 issuing such certification, the Environ-
24 mental Protection Agency or appropriate
25 State agency shall respond to comments

1 received pursuant to clause (ii)(V) in the
2 same form and manner as required under
3 section 117(b) of the Comprehensive Envi-
4 ronmental Response, Compensation, and
5 Liability Act of 1980 (as in effect on the
6 date of the enactment of this paragraph).

7 “(ii) REQUEST FOR CERTIFICATION.—
8 Any request by an eligible taxpayer for a
9 certification described in clause (i) shall be
10 made not later than the date of the trans-
11 fer and shall include a sworn statement by
12 the eligible taxpayer certifying the fol-
13 lowing:

14 “(I) Remedial actions which com-
15 ply with all applicable or relevant and
16 appropriate requirements (consistent
17 with section 121(d) of the Com-
18 prehensive Environmental Response,
19 Compensation, and Liability Act of
20 1980) have been substantially com-
21 pleted, such that there are no haz-
22 ardous substances, pollutants, or con-
23 taminants which complicate the ex-
24 pansion, redevelopment, or reuse of
25 the property given the property’s rea-

1 sonably anticipated future land uses
2 or capacity for uses of the property.

3 “(II) The reasonably anticipated
4 future land uses or capacity for uses
5 of the property are more economically
6 productive or environmentally bene-
7 ficial than the uses of the property in
8 existence on the date of the certifi-
9 cation described in subparagraph
10 (C)(i). For purposes of the preceding
11 sentence, use of property as a landfill
12 or other hazardous waste facility shall
13 not be considered more economically
14 productive or environmentally bene-
15 ficial.

16 “(III) A remediation plan has
17 been implemented to bring the prop-
18 erty into compliance with all applica-
19 ble local, State, and Federal environ-
20 mental laws, regulations, and stand-
21 ards and to ensure that the remedi-
22 ation protects human health and the
23 environment.

24 “(IV) The remediation plan de-
25 scribed in subclause (III), including

1 any physical improvements required to
2 remediate the property, is either com-
3 plete or substantially complete, and, if
4 substantially complete, sufficient mon-
5 itoring, funding, institutional controls,
6 and financial assurances have been
7 put in place to ensure the complete
8 remediation of the property in accord-
9 ance with the remediation plan as
10 soon as is reasonably practicable after
11 the sale, exchange, or other disposi-
12 tion of such property.

13 “(V) Public notice and the oppor-
14 tunity for comment on the request for
15 certification was completed before the
16 date of such request. Such notice and
17 opportunity for comment shall be in
18 the same form and manner as re-
19 quired for public participation re-
20 quired under section 117(a) of the
21 Comprehensive Environmental Re-
22 sponse, Compensation, and Liability
23 Act of 1980 (as in effect on the date
24 of the enactment of this paragraph).
25 For purposes of this subclause, public

1 notice shall include, at a minimum,
2 publication in a major local newspaper
3 of general circulation.

4 “(iii) ATTACHMENT TO TAX RE-
5 TURNS.—A copy of each of the requests
6 for certification described in clause (ii) of
7 subparagraph (C) and this subparagraph
8 shall be included in the tax return of the
9 eligible taxpayer (and, where applicable, of
10 the qualifying partnership) for the taxable
11 year during which the transfer occurs.

12 “(iv) SUBSTANTIAL COMPLETION.—
13 For purposes of this subparagraph, a re-
14 medial action is substantially complete
15 when any necessary physical construction
16 is complete, all immediate threats have
17 been eliminated, and all long-term threats
18 are under control.

19 “(E) ELIGIBLE REMEDIATION EXPENDI-
20 TURES.—For purposes of this paragraph—

21 “(i) IN GENERAL.—The term ‘eligible
22 remediation expenditures’ means, with re-
23 spect to any qualifying brownfield prop-
24 erty, any amount paid or incurred by the
25 eligible taxpayer to an unrelated third per-

1 son to obtain a Phase I environmental site
2 assessment of the property, and any
3 amount so paid or incurred after the date
4 of the certification described in subpara-
5 graph (C)(i) for goods and services nec-
6 essary to obtain a certification described in
7 subparagraph (D)(i) with respect to such
8 property, including expenditures—

9 “(I) to manage, remove, control,
10 contain, abate, or otherwise remediate
11 a hazardous substance, pollutant, or
12 contaminant on the property,

13 “(II) to obtain a Phase II envi-
14 ronmental site assessment of the
15 property, including any expenditure to
16 monitor, sample, study, assess, or oth-
17 erwise evaluate the release, threat of
18 release, or presence of a hazardous
19 substance, pollutant, or contaminant
20 on the property,

21 “(III) to obtain environmental
22 regulatory certifications and approvals
23 required to manage the remediation
24 and monitoring of the hazardous sub-

1 stance, pollutant, or contaminant on
2 the property, and

3 “(IV) regardless of whether it is
4 necessary to obtain a certification de-
5 scribed in subparagraph (D)(i)(II), to
6 obtain remediation cost-cap or stop-
7 loss coverage, re-opener or regulatory
8 action coverage, or similar coverage
9 under environmental insurance poli-
10 cies, or financial guarantees required
11 to manage such remediation and mon-
12 itoring.

13 “(ii) EXCEPTIONS.—Such term shall
14 not include—

15 “(I) any portion of the purchase
16 price paid or incurred by the eligible
17 taxpayer to acquire the qualifying
18 brownfield property,

19 “(II) environmental insurance
20 costs paid or incurred to obtain legal
21 defense coverage, owner/operator li-
22 ability coverage, lender liability cov-
23 erage, professional liability coverage,
24 or similar types of coverage,

1 “(III) any amount paid or in-
2 curred to the extent such amount is
3 reimbursed, funded, or otherwise sub-
4 sidized by grants provided by the
5 United States, a State, or a political
6 subdivision of a State for use in con-
7 nection with the property, proceeds of
8 an issue of State or local government
9 obligations used to provide financing
10 for the property the interest of which
11 is exempt from tax under section 103,
12 or subsidized financing provided (di-
13 rectly or indirectly) under a Federal,
14 State, or local program provided in
15 connection with the property, or

16 “(IV) any expenditure paid or in-
17 curred before the date of the enact-
18 ment of this paragraph.

19 For purposes of subclause (III), the Sec-
20 retary may issue guidance regarding the
21 treatment of government-provided funds
22 for purposes of determining eligible reme-
23 diation expenditures.

24 “(F) DETERMINATION OF GAIN OR
25 LOSS.—For purposes of this paragraph, the de-

1 termination of gain or loss shall not include an
2 amount treated as gain which is ordinary in-
3 come with respect to section 1245 or section
4 1250 property, including amounts deducted as
5 section 198 expenses which are subject to the
6 recapture rules of section 198(e), if the tax-
7 payer had deducted such amounts in the com-
8 putation of its unrelated business taxable in-
9 come.

10 “(G) SPECIAL RULES FOR PARTNER-
11 SHIPS.—

12 “(i) IN GENERAL.—In the case of an
13 eligible taxpayer which is a partner of a
14 qualifying partnership which acquires, re-
15 mediates, and sells, exchanges, or other-
16 wise disposes of a qualifying brownfield
17 property, this paragraph shall apply to the
18 eligible taxpayer’s distributive share of the
19 qualifying partnership’s gain or loss from
20 the sale, exchange, or other disposition of
21 such property.

22 “(ii) QUALIFYING PARTNERSHIP.—
23 The term ‘qualifying partnership’ means a
24 partnership which—

1 fying partnership at all times beginning on
2 the date of the first certification received
3 by the partnership under subparagraph
4 (C)(i) and ending on the date of the sale,
5 exchange, or other disposition of the prop-
6 erty by the partnership.

7 “(iv) REGULATIONS.—The Secretary
8 shall prescribe such regulations as are nec-
9 essary to prevent abuse of the require-
10 ments of this subparagraph, including
11 abuse through—

12 “(I) the use of special allocations
13 of gains or losses, or

14 “(II) changes in ownership of
15 partnership interests held by eligible
16 taxpayers.

17 “(H) SPECIAL RULES FOR MULTIPLE
18 PROPERTIES.—

19 “(i) IN GENERAL.—An eligible tax-
20 payer or a qualifying partnership of which
21 the eligible taxpayer is a partner may
22 make a 1-time election to apply this para-
23 graph to more than 1 qualifying brownfield
24 property by averaging the eligible remedi-
25 ation expenditures for all such properties

1 acquired during the election period. If the
2 eligible taxpayer or qualifying partnership
3 makes such an election, the election shall
4 apply to all qualified sales, exchanges, or
5 other dispositions of qualifying brownfield
6 properties the acquisition and transfer of
7 which occur during the period for which
8 the election remains in effect.

9 “(ii) ELECTION.—An election under
10 clause (i) shall be made with the eligible
11 taxpayer’s or qualifying partnership’s time-
12 ly filed tax return (including extensions)
13 for the first taxable year for which the tax-
14 payer or qualifying partnership intends to
15 have the election apply. An election under
16 clause (i) is effective for the period—

17 “(I) beginning on the date which
18 is the first day of the taxable year of
19 the return in which the election is in-
20 cluded or a later day in such taxable
21 year selected by the eligible taxpayer
22 or qualifying partnership, and

23 “(II) ending on the date which is
24 the earliest of a date of revocation se-
25 lected by the eligible taxpayer or

1 qualifying partnership, the date which
2 is 8 years after the date described in
3 subclause (I), or, in the case of an
4 election by a qualifying partnership of
5 which the eligible taxpayer is a part-
6 ner, the date of the termination of the
7 qualifying partnership.

8 “(iii) REVOCATION.—An eligible tax-
9 payer or qualifying partnership may revoke
10 an election under clause (i)(II) by filing a
11 statement of revocation with a timely filed
12 tax return (including extensions). A rev-
13 ocation is effective as of the first day of
14 the taxable year of the return in which the
15 revocation is included or a later day in
16 such taxable year selected by the eligible
17 taxpayer or qualifying partnership. Once
18 an eligible taxpayer or qualifying partner-
19 ship revokes the election, the eligible tax-
20 payer or qualifying partnership is ineligible
21 to make another election under clause (i)
22 with respect to any qualifying brownfield
23 property subject to the revoked election.

24 “(I) RECAPTURE.—If an eligible taxpayer
25 excludes gain or loss from a sale, exchange, or

1 other disposition of property to which an elec-
2 tion under subparagraph (H) applies, and such
3 property fails to satisfy the requirements of this
4 paragraph, the unrelated business taxable in-
5 come of the eligible taxpayer for the taxable
6 year in which such failure occurs shall be deter-
7 mined by including any previously excluded gain
8 or loss from such sale, exchange, or other dis-
9 position allocable to such taxpayer, and interest
10 shall be determined at the overpayment rate es-
11 tablished under section 6621 on any resulting
12 tax for the period beginning with the due date
13 of the return for the taxable year during which
14 such sale, exchange, or other disposition oc-
15 curred, and ending on the date of payment of
16 the tax.

17 “(J) RELATED PERSONS.—For purposes of
18 this paragraph, a person shall be treated as re-
19 lated to another person if—

20 “(i) such person bears a relationship
21 to such other person described in section
22 267(b) (determined without regard to
23 paragraph (9) thereof), or section
24 707(b)(1), determined by substituting ‘25

1 percent’ for ‘50 percent’ each place it ap-
2 pears therein, and

3 “(ii) in the case such other person is
4 a nonprofit organization, if such person
5 controls directly or indirectly more than 25
6 percent of the governing body of such or-
7 ganization.”

8 (b) EXCLUSION FROM DEFINITION OF DEBT-FI-
9 NANCED PROPERTY.—Section 514(b)(1) (defining debt-fi-
10 nanced property) is amended by striking “or” at the end
11 of subparagraph (C), by striking the period at the end of
12 subparagraph (D) and inserting “; or”, and by inserting
13 after subparagraph (D) the following new subparagraph:

14 “(E) any property the gain or loss from
15 the sale, exchange, or other disposition of which
16 would be excluded by reason of the provisions
17 of section 512(b)(18) in computing the gross
18 income of any unrelated trade or business.”.

19 (c) SAVINGS CLAUSE.—Nothing in the amendments
20 made by this section shall affect any duty, liability, or
21 other requirement imposed under any other Federal or
22 State law. Notwithstanding section 128(b) of the Com-
23 prehensive Environmental Response, Compensation, and
24 Liability Act of 1980, a certification provided by the Envi-
25 ronmental Protection Agency or an appropriate State

1 agency (within the meaning of section 198(c)(4) of the In-
2 ternal Revenue Code of 1986) shall not affect the liability
3 of any person under section 107(a) of such Act.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to any gain or loss on the sale,
6 exchange, or other disposition of any property acquired by
7 the taxpayer after December 31, 2004.

8 **SEC. 642. MODIFICATION OF UNRELATED BUSINESS IN-**
9 **COME LIMITATION ON INVESTMENT IN CER-**
10 **TAIN DEBT-FINANCED PROPERTIES.**

11 (a) IN GENERAL.—Section 514(c)(6) (relating to ac-
12 quisition indebtedness) is amended—

13 (1) by striking “include an obligation” and in-
14 sserting “include—

15 “(A) an obligation”,

16 (2) by striking the period at the end and insert-
17 ing “, or”, and

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

19 “(B) indebtedness incurred by a small
20 business investment company licensed under the
21 Small Business Investment Act of 1958 which
22 is evidenced by a debenture—

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

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

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

6 **SEC. 643. CIVIL RIGHTS TAX RELIEF.**

7 (a) DEDUCTION ALLOWED WHETHER OR NOT TAX-
8 PAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a)
9 of section 62 (defining adjusted gross income) is amended
10 by inserting after paragraph (18) the following new item:

11 “(19) COSTS INVOLVING DISCRIMINATION
12 SUITS, ETC.—Any deduction allowable under this
13 chapter for attorney fees and court costs paid by, or
14 on behalf of, the taxpayer in connection with any ac-
15 tion involving a claim of unlawful discrimination (as
16 defined in subsection (e)) or a claim of a violation
17 of subchapter III of chapter 37 of title 31, United
18 States Code. The preceding sentence shall not apply
19 to any deduction in excess of the amount includible
20 in the taxpayer’s gross income for the taxable year
21 on account of a judgment or settlement (whether by
22 suit or agreement and whether as lump sum or peri-
23 odic payments) resulting from such claim.”.

1 (b) UNLAWFUL DISCRIMINATION DEFINED.—Section
2 62 is amended by adding at the end the following new
3 subsection:

4 “(e) UNLAWFUL DISCRIMINATION DEFINED.—For
5 purposes of subsection (a)(19), the term ‘unlawful dis-
6 crimination’ means an act that is unlawful under any of
7 the following:

8 “(1) Section 302 of the Civil Rights Act of
9 1991 (2 U.S.C. 1202).

10 “(2) Section 201, 202, 203, 204, 205, 206, or
11 207 of the Congressional Accountability Act of 1995
12 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or
13 1317).

14 “(3) The National Labor Relations Act (29
15 U.S.C. 151 et seq.).

16 “(4) The Fair Labor Standards Act of 1938
17 (29 U.S.C. 201 et seq.).

18 “(5) Section 4 or 15 of the Age Discrimination
19 in Employment Act of 1967 (29 U.S.C. 623 or
20 633a).

21 “(6) Section 501 or 504 of the Rehabilitation
22 Act of 1973 (29 U.S.C. 791 or 794).

23 “(7) Section 510 of the Employee Retirement
24 Income Security Act of 1974 (29 U.S.C. 1140).

1 “(8) Title IX of the Education Amendments of
2 1972 (29 U.S.C. 1681 et seq.).

3 “(9) The Employee Polygraph Protection Act of
4 1988 (29 U.S.C. 201 et seq.).

5 “(10) The Worker Adjustment and Retraining
6 Notification Act (29 U.S.C. 2102 et seq.).

7 “(11) Section 105 of the Family and Medical
8 Leave Act of 1993 (29 U.S.C. 2615).

9 “(12) Chapter 43 of title 38, United States
10 Code (relating to employment and reemployment
11 rights of members of the uniformed services).

12 “(13) Section 1977, 1979, or 1980 of the Re-
13 vised Statutes (42 U.S.C. 1981, 1983, or 1985).

14 “(14) Section 703, 704, or 717 of the Civil
15 Rights Act of 1964 (42 U.S.C. 2000e-2, 2000e-3,
16 or 2000e-16).

17 “(15) Section 804, 805, 806, 808, or 818 of the
18 Fair Housing Act (42 U.S.C. 3604, 3605, 3606,
19 3608, or 3617).

20 “(16) Section 102, 202, 302, or 503 of the
21 Americans with Disabilities Act of 1990 (42 U.S.C.
22 12112, 12132, 12182, or 12203).

23 “(17) Any provision of Federal law (popularly
24 known as whistleblower protection provisions) pro-
25 hibiting the discharge of an employee, the discrimi-

1 nation against an employee, or any other form of re-
2 tialiation or reprisal against an employee for assert-
3 ing rights or taking other actions permitted under
4 Federal law.

5 “(18) Any provision of Federal, State, or local
6 law, or common law claims permitted under Federal,
7 State, or local law—

8 “(i) providing for the enforcement of
9 civil rights, or

10 “(ii) regulating any aspect of the em-
11 ployment relationship, including claims for
12 wages, compensation, or benefits, or pro-
13 hibiting the discharge of an employee, the
14 discrimination against an employee, or any
15 other form of retaliation or reprisal against
16 an employee for asserting rights or taking
17 other actions permitted by law.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to fees and costs paid after Decem-
20 ber 31, 2002, with respect to any judgment or settlement
21 occurring after such date.

1 **SEC. 644. EXCLUSION FOR PAYMENTS TO INDIVIDUALS**
2 **UNDER NATIONAL HEALTH SERVICE CORPS**
3 **LOAN REPAYMENT PROGRAM AND CERTAIN**
4 **STATE LOAN REPAYMENT PROGRAMS.**

5 (a) IN GENERAL.—Section 108(f) (relating to stu-
6 dent loans) is amended by adding at the end the following
7 new paragraph:

8 “(4) PAYMENTS UNDER NATIONAL HEALTH
9 SERVICE CORPS LOAN REPAYMENT PROGRAM AND
10 CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In
11 the case of an individual, gross income shall not in-
12 clude any amount received under section 338B(g) of
13 the Public Health Service Act or under a State pro-
14 gram described in section 338I of such Act.”.

15 (b) TREATMENT FOR PURPOSES OF EMPLOYMENT
16 TAXES.—Each of the following provisions is amended by
17 inserting “108(f)(4),” after “74(c),”:

18 (1) Section 3121(a)(20).

19 (2) Section 3231(e)(5).

20 (3) Section 3306(b)(16).

21 (4) Section 3401(a)(19).

22 (5) Section 209(a)(17) of the Social Security
23 Act.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to amounts received by an indi-

1 vidual in taxable years beginning after December 31,
2 2003.

3 **SEC. 645. CERTAIN EXPENSES OF RURAL LETTER CAR-**
4 **RIERS.**

5 (a) IN GENERAL.—Section 162(o) (relating to treat-
6 ment of certain reimbursed expenses of rural mail car-
7 riers) is amended by redesignating paragraph (2) as para-
8 graph (3) and by inserting after paragraph (1) the fol-
9 lowing:

10 “(2) SPECIAL RULE WHERE EXPENSES EXCEED
11 REIMBURSEMENTS.—Notwithstanding paragraph
12 (1)(A), if the expenses incurred by an employee for
13 the use of a vehicle in performing services described
14 in paragraph (1) exceed the qualified reimburse-
15 ments for such expenses, such excess shall be taken
16 into account in computing the miscellaneous
17 itemized deductions of the employee under section
18 67.”.

19 (b) CONFORMING AMENDMENT.—The heading for
20 section 162(o) is amended by striking “REIMBURSED”.

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

1 **SEC. 646. METHOD OF ACCOUNTING FOR NAVAL SHIP-**
2 **BUILDERS.**

3 (a) **IN GENERAL.**—In the case of a qualified naval
4 ship contract, the taxable income of such contract during
5 the 5-taxable year period beginning with the taxable year
6 in which the contract commencement date occurs shall be
7 determined under a method identical to the method used
8 in the case of a qualified ship contract (as defined in sec-
9 tion 10203(b)(2)(B) of the Revenue Act of 1987).

10 (b) **RECAPTURE OF TAX BENEFIT.**—In the case of
11 a qualified naval ship contract to which subsection (a) ap-
12 plies, the taxpayer's tax imposed by chapter 1 of the Inter-
13 nal Revenue Code of 1986 for the first taxable year fol-
14 lowing the 5-taxable year period described in subsection
15 (a) shall be increased by the excess (if any) of—

16 (1) the amount of tax which would have been
17 imposed during such period if this section had not
18 been enacted, over

19 (2) the amount of tax so imposed during such
20 period.

21 (c) **QUALIFIED NAVAL SHIP CONTRACT.**—For pur-
22 poses of this section—

23 (1) **IN GENERAL.**—The term “qualified naval
24 ship contract” means any contract or portion thereof
25 that is for the construction in the United States of
26 1 ship or submarine for the Federal Government if

1 the taxpayer reasonably expects the acceptance date
2 will occur no later than 9 years after the construc-
3 tion commencement date.

4 (2) ACCEPTANCE DATE.—The term “acceptance
5 date” means the date 1 year after the date on which
6 the Federal Government issues a letter of acceptance
7 or other similar document for the ship or submarine.

8 (3) CONSTRUCTION COMMENCEMENT DATE.—
9 The term “construction commencement date” means
10 the date on which the physical fabrication of any
11 section or component of the ship or submarine be-
12 gins.

13 (d) EFFECTIVE DATE.—This section shall apply to
14 contracts for ships or submarines with respect to which
15 the construction commencement date occurs after the date
16 of the enactment of this Act.

17 **SEC. 647. SUSPENSION OF POLICYHOLDERS SURPLUS AC-**
18 **COUNT PROVISIONS.**

19 (a) DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-
20 1984 POLICYHOLDERS SURPLUS ACCOUNT.—Section 815
21 (relating to distributions to shareholders from pre-1984
22 policyholders surplus account) is amended by adding at
23 the end the following:

24 “(g) SPECIAL RULES APPLICABLE DURING 2004
25 AND 2005.—In the case of any taxable year of a stock

1 life insurance company beginning after December 31,
2 2003, and before January 1, 2006—

3 “(1) the amount under subsection (a)(2) for
4 such taxable year shall be treated as zero, and

5 “(2) notwithstanding subsection (b), in deter-
6 mining any subtractions from an account under sub-
7 sections (c)(3) and (d)(3), any distribution to share-
8 holders during such taxable year shall be treated as
9 made first out of the policyholders surplus account,
10 then out of the shareholders surplus account, and fi-
11 nally out of other accounts.”.

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

15 **SEC. 648. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**
16 **TIVES WITHOUT REDUCING PATRONAGE**
17 **DIVIDENDS.**

18 (a) IN GENERAL.—Subsection (a) of section 1388
19 (relating to patronage dividend defined) is amended by
20 adding at the end the following new sentence: “For pur-
21 poses of paragraph (3), net earnings shall not be reduced
22 by amounts paid during the year as dividends on capital
23 stock or other proprietary capital interests of the organiza-
24 tion to the extent that the articles of incorporation or by-
25 laws of such organization or other contract with patrons

1 provide that such dividends are in addition to amounts
2 otherwise payable to patrons which are derived from busi-
3 ness done with or for patrons during the taxable year.”.

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

7 **SEC. 649. SPECIAL RULES FOR LIVESTOCK SOLD ON AC-**
8 **COUNT OF WEATHER-RELATED CONDITIONS.**

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

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

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

17 (3) by striking “WHERE THERE HAS BEEN
18 ENVIRONMENTAL CONTAMINATION” in the heading
19 and inserting “IN CERTAIN CASES”.

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

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

1 “(1) IN GENERAL.—For purposes”, and

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

4 “(2) EXTENSION OF REPLACEMENT PERIOD.—

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

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

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

1 (2) to the extent such termination payment is
2 reinvested in property used in a motor vehicle retail
3 sales and service dealership located within the
4 United States, such property shall qualify as like-
5 kind replacement property to which section 1031 of
6 the Internal Revenue Code of 1986 shall apply with
7 the following modifications:

8 (A) Such section shall be applied without
9 regard to subparagraphs (A) and (B)(ii) of sub-
10 section (a)(3).

11 (B) The period described in section
12 1031(a)(3)(B) of such Code shall be applied by
13 substituting “2 years” for “180 days”.

14 (b) RULES FOR ELECTION.—

15 (1) FORM OF ELECTION.—The taxpayer shall
16 make an election under this section in such form
17 and manner as the Secretary of the Treasury may
18 prescribe and shall include in such election the
19 amount of the termination payment received, the
20 identification of the replacement property purchased,
21 and such other information as the Secretary may
22 prescribe.

23 (2) ELECTION ON AMENDED RETURN.—The
24 Secretary of the Treasury shall permit an election
25 under this section on an amended tax return for tax-

1 section for inclusion in such community but for
2 the failure of such tract to meet 1 or more of
3 the population and poverty rate requirements of
4 this section using 1990 census data, and

5 “(B) which meets all failed population and
6 poverty rate requirements of this section using
7 2000 census data.

8 “(2) EXPANSION TO CERTAIN AREAS WHICH DO
9 NOT MEET POPULATION REQUIREMENTS.—

10 “(A) IN GENERAL.—At the request of 1 or
11 more local governments and the State or States
12 in which an area described in subparagraph (B)
13 is located, the Secretary of Housing and Urban
14 Development may expand a designated area to
15 include such area.

16 “(B) AREA.—An area is described in this
17 subparagraph if—

18 “(i) the area is adjacent to at least 1
19 other area designated as a renewal commu-
20 nity,

21 “(ii) the area has a population less
22 than the population required under sub-
23 section (c)(2)(C), and

24 “(iii)(I) the area meets the require-
25 ments of subparagraphs (A) and (B) of

1 subsection (c)(2) and subparagraph (A) of
2 subsection (c)(3), or

3 “(II) the area contains a population
4 of less than 100 people.

5 “(3) APPLICABILITY.—Any expansion of a re-
6 newal community under this section shall take effect
7 as provided in subsection (b).”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this subsection shall take effect as if included in the
10 amendments made by section 101 of the Community Re-
11 newal Tax Relief Act of 2000.

12 **SEC. 652. REDUCTION OF HOLDING PERIOD TO 12 MONTHS**
13 **FOR PURPOSES OF DETERMINING WHETHER**
14 **HORSES ARE SECTION 1231 ASSETS.**

15 (a) IN GENERAL.—Subparagraph (A) of section
16 1231(b)(3) (relating to definition of property used in the
17 trade or business) is amended by striking “and horses”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to taxable years beginning after
20 December 31, 2003.

21 **SEC. 653. BLUE RIBBON COMMISSION ON COMPREHENSIVE**
22 **TAX REFORM.**

23 (a) ESTABLISHMENT.—

24 (1) IN GENERAL.—There is established the
25 “Blue Ribbon Commission on Comprehensive Tax

1 Reform” (in this section referred to as the “Com-
2 mission”).

3 (2) MEMBERSHIP.—

4 (A) COMPOSITION.—The Commission shall
5 be composed of 17 members of whom—

6 (i) 3 shall be appointed by the major-
7 ity leader of the Senate;

8 (ii) 3 shall be appointed by the minor-
9 ity leader of the Senate;

10 (iii) 3 shall be appointed by the
11 Speaker of the House of Representatives;

12 (iv) 3 shall be appointed by the minor-
13 ity leader of the House of Representatives;
14 and

15 (v) 5 shall be appointed by the Presi-
16 dent, of which no more than 3 shall be of
17 the same party as the President.

18 (B) FEDERAL EMPLOYEES.—The members
19 of the Commission may be employees or former
20 employees of the Federal Government.

21 (C) DATE.—The appointments of the
22 members of the Commission shall be made not
23 later than October 30, 2004.

24 (3) PERIOD OF APPOINTMENT; VACANCIES.—
25 Members shall be appointed for the life of the Com-

1 mission. Any vacancy in the Commission shall not
2 affect its powers, but shall be filled in the same
3 manner as the original appointment.

4 (4) INITIAL MEETING.—Not later than 30 days
5 after the date on which all members of the Commis-
6 sion have been appointed, the Commission shall hold
7 its first meeting.

8 (5) MEETINGS.—The Commission shall meet at
9 the call of the Chairman.

10 (6) QUORUM.—A majority of the members of
11 the Commission shall constitute a quorum, but a
12 lesser number of members may hold hearings.

13 (7) CHAIRMAN AND VICE CHAIRMAN.—The
14 President shall select a Chairman and Vice Chair-
15 man from among its members.

16 (b) DUTIES OF THE COMMISSION.—

17 (1) STUDY.—The Commission shall conduct a
18 thorough study of all matters relating to a com-
19 prehensive reform of the Federal tax system, includ-
20 ing the reform of the Internal Revenue Code of 1986
21 and the implementation (if appropriate) of other
22 types of tax systems.

23 (2) RECOMMENDATIONS.—The Commission
24 shall develop recommendations on how to com-
25 prehensively reform the Federal tax system in a

1 manner that generates appropriate revenue for the
2 Federal Government.

3 (3) REPORT.—Not later than 18 months after
4 the date on which all initial members of the commis-
5 sion have been appointed pursuant to subsection
6 (a)(2), the Commission shall submit a report to the
7 President and Congress which shall contain a de-
8 tailed statement of the findings and conclusions of
9 the Commission, together with its recommendations
10 for such legislation and administrative actions as it
11 considers appropriate.

12 (c) POWERS OF THE COMMISSION.—

13 (1) HEARINGS.—The Commission may hold
14 such hearings, sit and act at such times and places,
15 take such testimony, and receive such evidence as
16 the Commission considers advisable to carry out this
17 Act.

18 (2) INFORMATION FROM FEDERAL AGENCIES.—
19 The Commission may secure directly from any Fed-
20 eral department or agency such information as the
21 Commission considers necessary to carry out this
22 Act. Upon request of the Chairman of the Commis-
23 sion, the head of such department or agency shall
24 furnish such information to the Commission.

1 (3) POSTAL SERVICES.—The Commission may
2 use the United States mails in the same manner and
3 under the same conditions as other departments and
4 agencies of the Federal Government.

5 (4) GIFTS.—The Commission may accept, use,
6 and dispose of gifts or donations of services or prop-
7 erty.

8 (d) COMMISSION PERSONNEL MATTERS.—

9 (1) COMPENSATION OF MEMBERS.—Each mem-
10 ber of the Commission who is not an officer or em-
11 ployee of the Federal Government shall be com-
12 pensated at a rate equal to the daily equivalent of
13 the annual rate of basic pay prescribed for level IV
14 of the Executive Schedule under section 5315 of title
15 5, United States Code, for each day (including travel
16 time) during which such member is engaged in the
17 performance of the duties of the Commission. All
18 members of the Commission who are officers or em-
19 ployees of the United States shall serve without com-
20 pensation in addition to that received for their serv-
21 ices as officers or employees of the United States.

22 (2) TRAVEL EXPENSES.—The members of the
23 Commission shall be allowed travel expenses, includ-
24 ing per diem in lieu of subsistence, at rates author-
25 ized for employees of agencies under subchapter I of

1 chapter 57 of title 5, United States Code, while
2 away from their homes or regular places of business
3 in the performance of services for the Commission.

4 (3) STAFF.—

5 (A) IN GENERAL.—The Chairman of the
6 Commission may, without regard to the civil
7 service laws and regulations, appoint and termi-
8 nate an executive director and such other addi-
9 tional personnel as may be necessary to enable
10 the Commission to perform its duties. The em-
11 ployment of an executive director shall be sub-
12 ject to confirmation by the Commission.

13 (B) COMPENSATION.—The Chairman of
14 the Commission may fix the compensation of
15 the executive director and other personnel with-
16 out regard to chapter 51 and subchapter III of
17 chapter 53 of title 5, United States Code, relat-
18 ing to classification of positions and General
19 Schedule pay rates, except that the rate of pay
20 for the executive director and other personnel
21 may not exceed the rate payable for level V of
22 the Executive Schedule under section 5316 of
23 such title.

24 (4) DETAIL OF GOVERNMENT EMPLOYEES.—

25 Any Federal Government employee may be detailed

1 to the Commission without reimbursement, and such
2 detail shall be without interruption or loss of civil
3 service status or privilege.

4 (5) PROCUREMENT OF TEMPORARY AND INTER-
5 MITTENT SERVICES.—The Chairman of the Commis-
6 sion may procure temporary and intermittent serv-
7 ices under section 3109(b) of title 5, United States
8 Code, at rates for individuals which do not exceed
9 the daily equivalent of the annual rate of basic pay
10 prescribed for level V of the Executive Schedule
11 under section 5316 of such title.

12 (e) TERMINATION OF THE COMMISSION.—The Com-
13 mission shall terminate 90 days after the date on which
14 the Commission submits its report under subsection (b).

15 (f) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated such sums as are nec-
17 essary to the Commission to carry out this section.

18 **SEC. 654. TREATMENT OF DISTRIBUTIONS BY ESOPS WITH**
19 **RESPECT TO S CORPORATION STOCK.**

20 (a) IN GENERAL.—Section 4975(d) of the Internal
21 Revenue Code of 1986 is amended by adding at the end
22 the following new flush sentences:

23 “A plan shall not be treated as violating the requirements
24 of section 401, 409, or subsection (e)(7), or as engaging
25 in a prohibited transaction for purposes of paragraph (3),

1 merely by reason of any distribution described in section
2 1368(a) with respect to S corporation stock which con-
3 stitutes qualifying employer securities if the distribution
4 is, in accordance with the plan provisions, used to make
5 payments on a loan described in paragraph (3) the pro-
6 ceeds of which were used to acquire the qualifying em-
7 ployer securities (whether or not allocated to participants).
8 The preceding sentence shall not apply in the case of a
9 distribution which is paid with respect to any employer
10 security which is allocated to a participant unless the plan
11 provides that employer securities with a fair market value
12 of not less than the amount of such distribution are allo-
13 cated to such participant for the year which (but for the
14 preceding sentence) such distribution would have been al-
15 located to such participant.”

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall take effect on January 1, 1998.

18 **SEC. 655. CLARIFICATION OF WORKING CAPITAL FOR REA-**
19 **SONABLY ANTICIPATED NEEDS OF A BUSI-**
20 **NESS FOR PURPOSES OF ACCUMULATED**
21 **EARNINGS TAX.**

22 (a) IN GENERAL.—Section 537(b) (relating to special
23 rules) is amended by adding at the end the following new
24 paragraph:

1 (1) income derived from such activities by the
2 corporation shall be treated as accruing to the State,
3 and

4 (2) such activities shall be treated as the exer-
5 cise of an essential governmental function of the
6 State to the extent such activities are of a type
7 which are an essential government function (within
8 the meaning of section 115 of such Code).

9 (b) GAIN OR LOSS NOT RECOGNIZED ON CONVER-
10 SION.—Notwithstanding section 337(d) of the Internal
11 Revenue Code of 1986—

12 (1) no gain or loss shall be recognized under
13 section 336 or 337 of such Code, and

14 (2) no change in basis of the property of such
15 corporation shall occur,

16 because of any change of status of the corporation to a
17 tax-exempt entity by reason of the application of sub-
18 section (a).

19 (c) TAX-EXEMPT FINANCING.—Any obligation issued
20 by an entity described in subsection (a) shall be treated
21 as an obligation of the State for purposes of applying sec-
22 tion 103 and part IV of subchapter B of chapter 1 of the
23 Internal Revenue Code of 1986.

24 (d) DEFINITIONS.—For purposes of this section—

1 (1) REAL ESTATE INVESTMENT TRUST.—The
2 term “real estate investment trust” has the meaning
3 given such term by section 856(a) of the Internal
4 Revenue Code of 1986.

5 (2) NON-OPERATING CLASS III RAILROAD.—The
6 term “non-operating class III railroad” has the
7 meaning given such term by part A of subtitle IV of
8 title 49, United States Code (49 U.S.C. 10101 et
9 seq.) and the regulations thereunder.

10 (3) STATE.—The term “State” includes—

11 (A) the District of Columbia and any pos-
12 session of the United States, and

13 (B) any authority, agency, or public cor-
14 poration of a State.

15 (e) APPLICABILITY.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), this section shall apply on and after the
18 date on which a State becomes the owner of all of
19 the outstanding stock of a corporation described in
20 subsection (a).

21 (2) EXCEPTION.—This section shall not apply
22 to any State which—

23 (A) becomes the owner of all of the voting
24 stock of a corporation described in subsection

25 (a) after December 31, 2003, or

1 (B) becomes the owner of all of the out-
2 standing stock of a corporation described in
3 subsection (a) after December 31, 2005.

4 **SEC. 657. CLARIFICATION OF CONTRIBUTION IN AID OF**
5 **CONSTRUCTION FOR WATER AND SEWERAGE**
6 **DISPOSAL UTILITIES.**

7 (a) IN GENERAL.—Subparagraph (A) of section
8 118(c)(3) (relating to definitions) is amended to read as
9 follows:

10 “(A) CONTRIBUTION IN AID OF CONSTRUC-
11 TION.—The term ‘contribution in aid of con-
12 struction’ shall be defined by regulations pre-
13 scribed by the Secretary, except that such
14 term—

15 “(i) shall include amounts paid as
16 customer connection fees (including
17 amounts paid to connect the customer’s
18 water service line or sewer lateral line to
19 the utility’s distribution or collection sys-
20 tem or extend a main water or sewer line
21 to provide service to a customer), and

22 “(ii) shall not include amounts paid as
23 service charges for starting or stopping
24 services.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to contributions made after the
3 date of the enactment of this Act.

4 **SEC. 658. CREDIT FOR PURCHASE AND INSTALLATION OF**
5 **AGRICULTURAL WATER CONSERVATION SYS-**
6 **TEMS.**

7 (a) IN GENERAL.—Subpart B of part IV of sub-
8 chapter A of chapter 1 (relating to foreign tax credit, etc.)
9 is amended by adding at the end the following new section:
10 **“SEC. 30B. PURCHASE AND INSTALLATION OF AGRICUL-**
11 **TURAL WATER CONSERVATION SYSTEMS.**

12 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
13 gible taxpayer, there shall be allowed as a credit against
14 the tax imposed by this chapter for the taxable year an
15 amount equal to 30 percent of the water conservation sys-
16 tem expenses paid or incurred by the taxpayer during such
17 year.

18 “(b) LIMITATIONS.—The credit allowed by subsection
19 (a) with respect to any acre of land which is served by
20 a water conservation system shall not exceed the excess
21 of—

22 “(1) \$500, over

23 “(2) the amount of credit allowed under this
24 section with respect to such acre for all prior taxable
25 years.

1 “(c) DEFINITIONS.—For purposes of this section—

2 “(1) ELIGIBLE TAXPAYER.—The term ‘eligible
3 taxpayer’ means any taxpayer if—

4 “(A) at least 50 percent of such taxpayer’s
5 gross income is normally derived from farm
6 land, and

7 “(B) such taxpayer complies with all Fed-
8 eral, State, and local water rights and environ-
9 mental laws.

10 “(2) WATER CONSERVATION SYSTEM EX-
11 PENSES.—

12 “(A) IN GENERAL.—The term ‘water con-
13 servation system expenses’ means expenses for
14 the purchase and installation of a water con-
15 servation system but only if—

16 “(i) the land served by the water con-
17 servation system is entirely in a county or
18 county-equivalent area which has received,
19 in the taxable year the expenses were paid
20 or incurred or in any of the 3 preceding
21 taxable years, a primary-county designa-
22 tion due to drought by the Secretary of
23 Agriculture, and

24 “(ii) such system is certified as saving
25 at least 5 percent more irrigation water

1 than the irrigation system which was used
2 on such land immediately prior to the in-
3 stallation of such water conservation sys-
4 tem.

5 For purposes of clause (ii), irrigation water sav-
6 ings shall be determined and certified under
7 regulations prescribed jointly by the Natural
8 Resources Conservation Service of the Depart-
9 ment of Agriculture and the Bureau of Rec-
10 lamation of the Department of the Interior.
11 Such regulations shall include a list of individ-
12 uals or organizations qualified to make such
13 certification.

14 “(B) WATER CONSERVATION SYSTEM.—
15 The term ‘water conservation system’ means,
16 with respect to farm land—

17 “(i) new or replacement irrigation
18 equipment and machinery, including sprin-
19 klers, pipes, siphons, nozzles, pumps, mo-
20 tors, and engines, and

21 “(ii) computer systems for irrigation
22 and water management.

23 “(C) FARM LAND.—The term ‘farm land’
24 means land used in a trade or business by the
25 taxpayer or a tenant of the taxpayer for—

1 “(i) the production of crops, fruits, or
2 other agricultural products,

3 “(ii) the raising, harvesting, or grow-
4 ing of trees, or

5 “(iii) the sustenance of livestock.

6 “(d) YEAR EXPENDITURE MADE.—For purposes of
7 this section, an expenditure with respect to a water con-
8 servation system shall be treated as made when the origi-
9 nal installation of the system is completed.

10 “(e) LIMITATION BASED ON AMOUNT OF TAX.—

11 “(1) LIABILITY FOR TAX.—The credit allowable
12 under subsection (a) for any taxable year shall not
13 exceed the excess (if any) of—

14 “(A) the regular tax for the taxable year,
15 reduced by the sum of the credits allowable
16 under subpart A and the preceding sections of
17 this subpart, over

18 “(B) the tentative minimum tax for the
19 taxable year.

20 “(2) CARRYFORWARD OF UNUSED CREDIT.—If
21 the amount of the credit allowable under subsection
22 (a) for any taxable year exceeds the limitation under
23 paragraph (1) for the taxable year, the excess shall
24 be carried to the succeeding taxable year and added

1 to the amount allowable as a credit under subsection
2 (a) for such succeeding taxable year.

3 “(f) DENIAL OF DOUBLE BENEFIT.—No deduction
4 shall be allowed under this chapter with respect to any
5 expense which is taken into account in determining the
6 credit under this section, and any increase in the basis
7 of any property which would (but for this subsection) re-
8 sult from such expense shall be reduced by the amount
9 of credit allowed under this section for such expense.

10 “(g) TERMINATION.—This section shall not apply to
11 amounts paid or incurred with respect any water conserva-
12 tion system the installation of which is completed after
13 December 31, 2006.”.

14 (b) TECHNICAL AMENDMENT.—Subsection (a) of
15 section 1016, as amended by this Act, is amended by strik-
16 ing “and” at the end of paragraph (30), by striking the
17 period at the end of paragraph (31) and inserting “; and”,
18 and by adding at the end the following new paragraph:

19 “(32) to the extent provided in section 30B(f),
20 in the case of amounts with respect to which a credit
21 has been allowed under section 30B.”.

22 (c) CLERICAL AMENDMENT.—The table of sections
23 for subpart B of part IV of subchapter A of chapter 1
24 is amended by adding at the end the following new item:

“Sec. 30B. Purchase and installation of agricultural water con-
servation systems.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid or incurred after
3 the date of the enactment of this Act with respect any
4 water conservation system the installation of which is com-
5 pleted after December 31, 2004.

6 **SEC. 659. MODIFICATION OF INVOLUNTARY CONVERSION**
7 **RULES FOR BUSINESSES AFFECTED BY THE**
8 **SEPTEMBER 11TH TERRORIST ATTACKS.**

9 (a) IN GENERAL.—Subsection (g) of section 1400L
10 is amended to read as follows:

11 “(g) MODIFICATION OF RULES APPLICABLE TO NON-
12 RECOGNITION OF GAIN.—In the case of property which
13 is compulsorily or involuntarily converted as a result of
14 the terrorist attacks on September 11, 2001, in the New
15 York Liberty Zone—

16 “(1) which was held by a corporation which is
17 a member of an affiliated group filing a consolidated
18 return, such corporation shall be treated as satis-
19 fying the purchase requirement of section
20 1033(a)(2) with respect to such property to the ex-
21 tent such requirement is satisfied by another mem-
22 ber of the group, and

23 “(2) notwithstanding subsections (g) and (h) of
24 section 1033, clause (i) of section 1033(a)(2)(B)
25 shall be applied by substituting ‘5 years’ for ‘2

1 years' with respect to property which is compulsorily
2 or involuntarily converted as a result of the terrorist
3 attacks on September 11, 2001, in the New York
4 Liberty Zone but only if substantially all of the use
5 of the replacement property is in the City of New
6 York, New York.”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this Act shall apply to involuntary conversions occurring
9 on or after September 11, 2001.

10 **Subtitle F—Revenue Provisions**

11 **PART I—GENERAL REVENUE PROVISIONS**

12 **SEC. 661. TREASURY REGULATIONS ON FOREIGN TAX** 13 **CREDIT.**

14 Section 901, as amended by this Act, is amended by
15 redesignating subsection (m) as subsection (n) and by in-
16 serting after subsection (l) the following new subsection:

17 “(m) REGULATIONS.—The Secretary may prescribe
18 regulations disallowing a credit under subsection (a) for
19 all or a portion of any foreign tax, or allocating a foreign
20 tax among 2 or more persons, in cases where the foreign
21 tax is imposed on any person in respect of income of an-
22 other person or in other cases involving the inappropriate
23 separation of the foreign tax from the related foreign in-
24 come.”.

1 **SEC. 662. NONATTRIBUTION OF CERTAIN MANUFACTURING**
2 **BY PERSONS OTHER THAN CONTROLLED**
3 **FOREIGN CORPORATION.**

4 (a) IN GENERAL.—Section 954(d) (defining foreign
5 base company sales income) is amended by adding at the
6 end the following new paragraph:

7 “(5) NONATTRIBUTION OF CERTAIN MANUFAC-
8 TURING ACTIVITIES.—For purposes of this sub-
9 section, in determining whether income of a con-
10 trolled foreign corporation is foreign base company
11 sales income, any manufacturing, production, or con-
12 struction by a person other than an individual who
13 is an employee of the corporation shall not be attrib-
14 uted to the corporation or taken into account in de-
15 termining whether the property sold by such cor-
16 poration has been sufficiently transformed as to con-
17 stitute property different from the property pur-
18 chased by such corporation.”

19 (b) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The amendment made by
21 this section shall apply to taxable years of controlled
22 foreign corporations beginning on or after the date
23 of the enactment of this Act, and to taxable years
24 of United States shareholders with or within which
25 such taxable years of foreign corporations end.

1 (2) NO INFERENCE.—Nothing in the amend-
2 ment made by this section shall be construed to infer
3 the proper treatment of manufacturing, production,
4 or construction for taxable years beginning before
5 the date of the enactment of this Act.

6 **SEC. 663. FREEZE OF PROVISIONS REGARDING SUSPEN-**
7 **SION OF INTEREST WHERE SECRETARY FAILS**
8 **TO CONTACT TAXPAYER.**

9 (a) IN GENERAL.—Section 6404(g) (relating to sus-
10 pension of interest and certain penalties where secretary
11 fails to contact taxpayer) is amended by striking “1-year
12 period (18-month period in the case of taxable years begin-
13 ning before January 1, 2004)” both places it appears and
14 inserting “18-month period”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to taxable years beginning after
17 December 31, 2003.

18 **PART II—PENSION AND DEFERRED**
19 **COMPENSATION**

20 **SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COM-**
21 **PENSATION PLANS.**

22 (a) IN GENERAL.—Subpart A of part I of subchapter
23 D of chapter 1 is amended by adding at the end the fol-
24 lowing new section:

1 taxable year of inclusion shall be increased
2 by the sum of—

3 “(I) the amount of interest deter-
4 mined under clause (ii), and

5 “(II) an amount equal to 10 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 on the underpayments that would
13 have occurred had the deferred compensa-
14 tion been includible in gross income for the
15 taxable year in which first deferred or, if
16 later, the first taxable in which such de-
17 ferred compensation is not subject to a
18 substantial risk of forfeiture.

19 “(2) DISTRIBUTIONS.—

20 “(A) IN GENERAL.—The requirements of
21 this paragraph are met if the plan provides that
22 compensation deferred under the plan may not
23 be distributed earlier than—

1 “(i) except as provided in subpara-
2 graph (B)(i), separation from service (as
3 determined by the Secretary),

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 as of 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) SEPARATION FROM SERVICE OF
21 SPECIFIED EMPLOYEES.—In the case of
22 specified employees, the requirement of
23 subparagraph (A)(i) is met only if distribu-
24 tions may not be made earlier than 6
25 months after the date of separation from

1 service. For purposes of the preceding sen-
2 tence, a specified employee is a key em-
3 ployee (as defined in section 416(i)) of a
4 corporation the stock in which is publicly
5 traded on an established securities market
6 or otherwise.

7 “(ii) CHANGES IN OWNERSHIP OR
8 CONTROL.—In the case of a participant
9 who is subject to the requirements of sec-
10 tion 16(a) of the Securities Exchange Act
11 of 1934, the requirement of subparagraph
12 (A)(v) is met only if distributions may not
13 be made earlier than 1 year after the date
14 of the change in ownership or effective
15 control.

16 “(iii) UNFORESEEABLE EMER-
17 GENCY.—For purposes of subparagraph
18 (A)(vi)—

19 “(I) IN GENERAL.—The term
20 ‘unforeseeable emergency’ means a se-
21 vere financial hardship to the partici-
22 pant or beneficiary resulting from a
23 sudden and unexpected illness or acci-
24 dent of the participant or beneficiary,
25 the participant’s or beneficiary’s

1 spouse, or the participant's or bene-
2 ficiary's dependent (as defined in sec-
3 tion 152(a)), loss of the participant's
4 or beneficiary's property due to cas-
5 ualty, or other similar extraordinary
6 and unforeseeable circumstances aris-
7 ing as a result of events beyond the
8 control of the participant or bene-
9 ficiary.

10 “(II) LIMITATION ON DISTRIBU-
11 TIONS.—The requirement of subpara-
12 graph (A)(vi) is met only if, as deter-
13 mined under regulations of the Sec-
14 retary, the amounts distributed with
15 respect to an emergency do not exceed
16 the amounts necessary to satisfy such
17 emergency plus amounts necessary to
18 pay taxes reasonably anticipated as a
19 result of the distribution, after taking
20 into account the extent to which such
21 hardship is or may be relieved
22 through reimbursement or compensa-
23 tion by insurance or otherwise or by
24 liquidation of the participant's or
25 beneficiary's assets (to the extent the

1 liquidation of such assets would not
2 itself cause severe financial hardship).

3 “(C) DISABLED.—For purposes of sub-
4 paragraph (A)(ii), a participant shall be consid-
5 ered disabled if the participant—

6 “(i) is unable to engage in any sub-
7 stantial gainful activity by reason of any
8 medically determinable physical or mental
9 impairment which can be expected to result
10 in death or can be expected to last for a
11 continuous period of not less than 12
12 months, or

13 “(ii) is, by reason of any medically de-
14 terminable physical or mental impairment
15 which can be expected to result in death or
16 can be expected to last for a continuous
17 period of not less than 12 months, receiv-
18 ing income replacement benefits for a pe-
19 riod of not less than 3 months under an
20 accident and health plan covering employ-
21 ees of the participant’s employer .

22 “(3) INVESTMENT OPTIONS.—The requirements
23 of this paragraph are met if the plan provides that
24 the investment options a participant may elect under
25 the plan—

1 “(A) are comparable to the investment op-
2 tions which a participant may elect under the
3 qualified employer plan of the employer which
4 has the fewest investment options, or

5 “(B) if there is no such qualified employer
6 plan, meet such requirements as the Secretary
7 may prescribe (including requirements limiting
8 such options to permissible investment options
9 specified by the Secretary).

10 “(4) ACCELERATION OF BENEFITS.—The re-
11 quirements of this paragraph are met if the plan
12 does not permit the acceleration of the time or
13 schedule of any payment under the plan, except as
14 provided by the Secretary.

15 “(5) ELECTIONS.—

16 “(A) IN GENERAL.—The requirements of
17 this paragraph are met if the requirements of
18 subparagraphs (B) and (C) are met.

19 “(B) INITIAL DEFERRAL DECISION.—The
20 requirements of this subparagraph are met if
21 the plan provides that compensation earned
22 during a taxable year may be deferred at the
23 participant’s election only if the election to
24 defer such compensation is made during the
25 preceding taxable year or at such other time as

1 provided in regulations. In the case of the first
2 year in which a participant becomes eligible to
3 participate in the plan, such election may be
4 made with respect to services to be performed
5 subsequent to the election within 30 days after
6 the date the participant becomes eligible to par-
7 ticipate in such plan.

8 “(C) CHANGES IN TIME AND FORM OF DIS-
9 TRIBUTION.—The requirements of this subpara-
10 graph are met if, in the case of a plan which
11 permits under a subsequent election a delay in
12 a payment or a change in the form of
13 payment—

14 “(i) the plan requires that such elec-
15 tion may not take effect until at least 12
16 months after the date on which the elec-
17 tion is made,

18 “(ii) in the case an election related to
19 a payment not described in clause (ii), (iii),
20 or (vi) of paragraph (2)(A), the plan re-
21 quires that the first payment with respect
22 to which such election is made be deferred
23 for a period of not less than 5 years from
24 the date such payment would otherwise
25 have been made, and

1 “(iii) the plan requires that any elec-
2 tion related to a payment described in
3 paragraph (2)(A)(iv) may not be made less
4 than 12 months prior to the date of the
5 first scheduled payment under such para-
6 graph.

7 A plan shall be treated as failing to meet the
8 requirements of this subparagraph if the plan
9 permits more than 1 subsequent election to
10 delay any payment.

11 “(b) RULES RELATING TO FUNDING.—

12 “(1) OFFSHORE PROPERTY IN A TRUST.—In
13 the case of assets set aside (directly or indirectly) in
14 a trust (or other arrangement determined by the
15 Secretary) for purposes of paying deferred com-
16 pensation under a nonqualified deferred compensa-
17 tion plan, such assets shall be treated for purposes
18 of section 83 as property transferred in connection
19 with the performance of services whether or not such
20 assets are available to satisfy claims of general
21 creditors—

22 “(A) at the time set aside if such assets
23 are located outside of the United States, or

1 “(B) at the time transferred if such assets
2 are subsequently transferred outside of the
3 United States.

4 This paragraph shall not apply to assets located in
5 a foreign jurisdiction if substantially all of the serv-
6 ices to which the nonqualified deferred compensation
7 relates are performed in such jurisdiction.

8 “(2) EMPLOYER’S FINANCIAL HEALTH.—In the
9 case of a nonqualified deferred compensation plan,
10 there is a transfer of property within the meaning
11 of section 83 as of the earlier of—

12 “(A) the date on which the plan first pro-
13 vides that assets will become restricted to the
14 provision of benefits under the plan in connec-
15 tion with a change in the employer’s financial
16 health, or

17 “(B) the date on which assets are so re-
18 stricted.

19 “(3) INCOME INCLUSION FOR OFFSHORE
20 TRUSTS AND EMPLOYER’S FINANCIAL HEALTH.—For
21 each taxable year that assets treated as transferred
22 under this subsection remain set aside in a trust or
23 other arrangement subject to paragraph (1) or (2),
24 any increase in value in, or earnings with respect to,
25 such assets shall be treated as an additional transfer

1 of property under this subsection (to the extent not
2 previously included in income).

3 “(4) INTEREST ON TAX LIABILITY PAYABLE
4 WITH RESPECT TO TRANSFERRED PROPERTY.—

5 “(A) IN GENERAL.—If amounts are re-
6 quired to be included in gross income by reason
7 of paragraph (1) or (2) for a taxable year, the
8 tax imposed by this chapter for such taxable
9 year shall be increased by the sum of—

10 “(i) the amount of interest determined
11 under subparagraph (B), and

12 “(ii) an amount equal to 10 percent of
13 the amounts required to be included in
14 gross income.

15 “(B) INTEREST.—For purposes of sub-
16 paragraph (A), the interest determined under
17 this subparagraph for any taxable year is the
18 amount of interest at the underpayment rate on
19 the underpayments that would have occurred
20 had the amounts been includible in gross in-
21 come for the taxable year in which first de-
22 ferred or, if later, the first taxable in which
23 such amounts is not subject to a substantial
24 risk of forfeiture.

1 “(c) NO INFERENCE ON EARLIER INCOME INCLU-
2 SION.—Nothing in this section shall be construed to pre-
3 vent the inclusion of amounts in gross income under any
4 other provision of this chapter or any other rule of law
5 earlier than the time provided in this section. Any amount
6 included in gross income under this section shall not be
7 required to be included in gross income under any other
8 provision of this chapter or any other rule of law later
9 than the time provided in this section.

10 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—
11 For purposes of this section—

12 “(1) NONQUALIFIED DEFERRED COMPENSA-
13 TION PLAN.—The term ‘nonqualified deferred com-
14 pensation plan’ means any plan that provides for the
15 deferral of compensation, other than—

16 “(A) a qualified employer plan, and

17 “(B) any bona fide vacation leave, sick
18 leave, compensatory time, disability pay, or
19 death benefit plan.

20 “(2) QUALIFIED EMPLOYER PLAN.—The term
21 ‘qualified employer plan’ means—

22 “(A) any plan, contract, pension, account,
23 or trust described in subparagraph (A) or (B)
24 of section 219(g)(5), and

1 “(B) any eligible deferred compensation
2 plan (within the meaning of section 457(b)) of
3 an employer described in section 457(e)(1)(A).

4 “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—
5 The term ‘plan’ includes any agreement or arrange-
6 ment, including an agreement or arrangement that
7 includes one person.

8 “(4) SUBSTANTIAL RISK OF FORFEITURE.—The
9 rights of a person to compensation are subject to a
10 substantial risk of forfeiture if such person’s rights
11 to such compensation are conditioned upon the fu-
12 ture performance of substantial services by any indi-
13 vidual.

14 “(5) TREATMENT OF EARNINGS.—References to
15 deferred compensation shall be treated as including
16 references to income (whether actual or notional) at-
17 tributable to such compensation or such income.

18 “(e) REGULATIONS.—The Secretary shall prescribe
19 such regulations as may be necessary or appropriate to
20 carry out the purposes of this section, including
21 regulations—

22 “(1) providing for the determination of
23 amounts of deferral in the case of a nonqualified de-
24 ferred compensation plan which is a defined benefit
25 plan,

1 “(2) relating to changes in the ownership and
2 control of a corporation or assets of a corporation
3 for purposes of subsection (a)(2)(A)(v),

4 “(3) exempting arrangements from the applica-
5 tion of subsection (b) if such arrangements will not
6 result in an improper deferral of United States tax
7 and will not result in assets being effectively beyond
8 the reach of creditors,

9 “(4) defining financial health for purposes of
10 subsection (b)(2), and

11 “(5) disregarding a substantial risk of for-
12 feiture in cases where necessary to carry out the
13 purposes of this section.”

14 (b) APPLICATION OF GOLDEN PARACHUTE PAYMENT
15 PROVISIONS.—Section 280G(b) of such Code (defining ex-
16 cess parachute payment) is amended by adding at the end
17 the following new paragraph:

18 “(7) SPECIAL RULES FOR CERTAIN PAYMENTS
19 FROM NONQUALIFIED DEFERRED COMPENSATION
20 PLANS.—

21 “(A) IN GENERAL.—In the case of any ap-
22 plicable payment—

23 “(i) such payment shall be treated as
24 a parachute payment without regard to

1 any exception otherwise applicable under
2 this subsection, and

3 “(ii) notwithstanding paragraph (1),
4 the entire amount of the payment shall be
5 treated as an excess parachute payment.

6 “(B) COORDINATION WITH OTHER PAY-
7 MENTS.—An applicable payment shall be taken
8 into account in determining whether any pay-
9 ment other than an applicable payment is a
10 parachute payment under paragraph (2) or an
11 excess parachute payment under paragraph (1).

12 “(C) APPLICABLE PAYMENT.—For pur-
13 poses of this paragraph, the term ‘applicable
14 payment’ means any distribution (including any
15 distribution treated as a parachute payment
16 without regard to this paragraph) from a non-
17 qualified deferred compensation plan (as de-
18 fined in section 409A(d)) which is made—

19 “(i) to a participant who is subject to
20 the requirements of section 16(a) of the
21 Securities Exchange Act of 1934, and

22 “(ii) during the 1-year period fol-
23 lowing a change in the ownership or effec-
24 tive control of the corporation or in the

1 ownership of a substantial portion of the
2 assets of the corporation.

3 “(D) NO DOUBLE COUNTING.—Under reg-
4 ulations, proper adjustments shall be made in
5 the application of this paragraph to prevent a
6 deduction from being disallowed more than
7 once.”

8 (c) W-2 FORMS.—

9 (1) IN GENERAL.—Subsection (a) of section
10 6051 (relating to receipts for employees) is amended
11 by striking “and”, by striking the period at the end
12 of paragraph (12) and inserting “, and”, and by in-
13 sserting after paragraph (12) the following new para-
14 graph:

15 “(13) the total amount of deferrals under a
16 nonqualified deferred compensation plan (within the
17 meaning of section 409A(d)).”

18 (2) THRESHOLD.—Subsection (a) of section
19 6051 is amended by adding at the end the following:
20 “In the case of the amounts required to be shown
21 by paragraph (13), the Secretary may (by regula-
22 tion) establish a minimum amount of deferrals below
23 which paragraph (13) does not apply.”

24 (d) CONFORMING AND CLERICAL AMENDMENTS.—

1 (1) Section 414(b) is amended by inserting
2 “409A,” after “408(p),”.

3 (2) Section 414(c) is amended by inserting
4 “409A,” after “408(p),”.

5 (3) The table of sections for such subpart A is
6 amended by adding at the end the following new
7 item:

“Sec. 409A. Inclusion in gross income of deferred compensation
under nonqualified deferred compensation plans.”

8 (e) EFFECTIVE DATE.—

9 (1) IN GENERAL.—The amendments made by
10 this section shall apply to amounts deferred in tax-
11 able years beginning after December 31, 2004.

12 (2) EARNINGS ATTRIBUTABLE TO AMOUNT PRE-
13 VIOUSLY DEFERRED.—The amendments made by
14 this section shall apply to earnings on deferred com-
15 pensation only to the extent that such amendments
16 apply to such compensation.

17 (f) GUIDANCE RELATING TO CHANGE OF OWNER-
18 SHIP OR CONTROL.—Not later than 90 days after the date
19 of the enactment of this Act, the Secretary of the Treasury
20 shall issue guidance on what constitutes a change in own-
21 ership or effective control for purposes of section 409A
22 of the Internal Revenue Code of 1986, as added by this
23 section.

1 (g) GUIDANCE RELATING TO TERMINATION OF CER-
2 TAIN EXISTING ARRANGEMENTS.—Not later than 90 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 an individual participating in a non-
6 qualified deferred compensation plan adopted on or before
7 December 31, 2004, may, without violating the require-
8 ments of paragraphs (2), (3), (4), and (5) of section
9 409A(a)(2) of the Internal Revenue Code of 1986 (as
10 added by this section), terminate participation or cancel
11 an outstanding deferral election with regard to amounts
12 earned after December 31, 2004, if such amounts are in-
13 cludible in income as earned.

14 **SEC. 672. PROHIBITION ON DEFERRAL OF GAIN FROM THE**
15 **EXERCISE OF STOCK OPTIONS AND RE-**
16 **STRICTED STOCK GAINS THROUGH DE-**
17 **FERRED COMPENSATION ARRANGEMENTS.**

18 (a) IN GENERAL.—Section 83 (relating to property
19 transferred in connection with performance of services) is
20 amending by adding at the end the following new sub-
21 section:

22 “(i) PROHIBITION ON ADDITIONAL DEFERRAL
23 THROUGH DEFERRED COMPENSATION ARRANGE-
24 MENTS.—If a taxpayer elects to exchange an option to
25 purchase employer securities—

1 “(1) to which subsection (a) applies, or
2 “(2) which is described in subsection (e)(3),
3 or any other property based on employer securities trans-
4 ferred to the taxpayer, for a right to receive future pay-
5 ments, then, notwithstanding any other provision of this
6 title, there shall be included in gross income for the tax-
7 able year of the exchange an amount equal to the present
8 value of such right (or such other amount as the Secretary
9 may by regulations specify). For purposes of this sub-
10 section, the term ‘employer securities’ includes any secu-
11 rity issued by the employer.”

12 (b) CONTROLLED GROUP RULES.—Section 414(t)(2)
13 is amended by inserting “83(i),” after “79,”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to any exchange after December
16 31, 2004.

17 **SEC. 673. INCREASE IN WITHHOLDING FROM SUPPLE-**
18 **MENTAL WAGE PAYMENTS IN EXCESS OF**
19 **\$1,000,000.**

20 (a) IN GENERAL.—If an employer elects under
21 Treasury Regulation 31.3402(g)-1 to determine the
22 amount to be deducted and withheld from any supple-
23 mental wage payment by using a flat percentage rate, the
24 rate to be used in determining the amount to be so de-
25 ducted and withheld shall not be less than 28 percent (or

1 the corresponding rate in effect under section 1(i)(2) of
2 the Internal Revenue Code of 1986 for taxable years be-
3 ginning in the calendar year in which the payment is
4 made).

5 (b) SPECIAL RULE FOR LARGE PAYMENTS.—

6 (1) IN GENERAL.—Notwithstanding subsection
7 (a), if the supplemental wage payment, when added
8 to all such payments previously made by the em-
9 ployer to the employee during the calendar year, ex-
10 ceeds \$1,000,000, the rate used with respect to such
11 excess shall be equal to the maximum rate of tax in
12 effect under section 1 of such Code for taxable years
13 beginning in such calendar year.

14 (2) AGGREGATION.—All persons treated as a
15 single employer under subsection (a) or (b) of sec-
16 tion 52 of the Internal Revenue Code of 1986 shall
17 be treated as a single employer for purposes of this
18 subsection.

19 (c) CONFORMING AMENDMENT.—Section 13273 of
20 the Revenue Reconciliation Act of 1993 (Public Law 103–
21 66) is repealed.

22 (d) EFFECTIVE DATE.—The provisions of, and the
23 amendment made by, this section shall apply to payments
24 made after December 31, 2003.

1 **SEC. 674. TREATMENT OF SALE OF STOCK ACQUIRED PUR-**
2 **SUANT TO EXERCISE OF STOCK OPTIONS TO**
3 **COMPLY WITH CONFLICT-OF-INTEREST RE-**
4 **QUIREMENTS.**

5 (a) IN GENERAL.—Section 421 of the Internal Rev-
6 enue Code of 1986 (relating to general rules for certain
7 stock options) is amended by adding at the end the fol-
8 lowing new subsection:

9 “(d) CERTAIN SALES TO COMPLY WITH CONFLICT-
10 OF-INTEREST REQUIREMENTS.—If—

11 “(1) a share of stock is transferred to an eligi-
12 ble person (as defined in section 1043(b)(1)) pursu-
13 ant to such person’s exercise of an option to which
14 this part applies, and

15 “(2) such share is disposed of by such person
16 pursuant to a certificate of divestiture (as defined in
17 section 1043(b)(2)),

18 such disposition shall be treated as meeting the require-
19 ments of section 422(a)(1) or 423(a)(1), whichever is ap-
20 plicable.”

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to sales after the date of the enact-
23 ment of this Act.

1 **SEC. 675. DETERMINATION OF BASIS OF AMOUNTS PAID**
2 **FROM FOREIGN PENSION PLANS.**

3 (a) IN GENERAL.—Section 72 of the Internal Rev-
4 enue Code of 1986 (relating to annuities and certain pro-
5 ceeds of endowment and life insurance contracts) is
6 amended by redesignating subsection (w) as subsection (x)
7 by inserting subsection (v) the following new subsection:
8 “(w) DETERMINATION OF BASIS OF FOREIGN PEN-
9 SION PLANS.—Notwithstanding any other provision of
10 this section, for purposes of determining the portion of
11 any distribution from a foreign pension plan which is in-
12 cludible in gross income of the distributee, the investment
13 in the contract with respect to the plan shall not include
14 employer or employee contributions to the plan (or any
15 earnings on such contributions) unless such contributions
16 or earnings were subject to taxation by the United States
17 or any foreign government.”

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to distributions on or after the date
20 of the enactment of this Act.

21 **TITLE VII—EXTENSIONS OF**
22 **CERTAIN EXPIRING PROVISIONS**
23 **Subtitle A—Extensions**

24 **SEC. 701. PARITY IN THE APPLICATION OF CERTAIN LIMITS**
25 **TO MENTAL HEALTH BENEFITS.**

26 (a) IN GENERAL.—Section 9812(f) is amended—

1 (1) by striking “and” at the end of paragraph
2 (1), and

3 (2) by striking paragraph (2) and inserting the
4 following new paragraphs:

5 “(2) on or after January 1, 2004, and before
6 the date of the enactment of the Jumpstart Our
7 Business Strength (JOBS) Act, and

8 “(3) after December 31, 2005.”.

9 (b) ERISA.—Section 712(f) of the Employee Retire-
10 ment Income Security Act of 1974 (29 U.S.C. 1185a(f))
11 is amended by striking “on or after December 31, 2004”
12 and inserting “after December 31, 2005”.

13 (c) PHSA.—Section 2705(f) of the Public Health
14 Service Act (42 U.S.C. 300gg-5(f)) is amended by striking
15 “on or after December 31, 2004” and inserting “after De-
16 cember 31, 2005”.

17 (d) EFFECTIVE DATES.—

18 (1) SUBSECTION (a).—The amendments made
19 by subsection (a) shall apply to benefits for services
20 furnished on or after December 31, 2003.

21 (2) SUBSECTIONS (b) AND (c).—The amend-
22 ments made by subsections (b) and (c) shall apply
23 to benefits for services furnished on or after Decem-
24 ber 31, 2004.

1 **SEC. 702. MODIFICATIONS TO WORK OPPORTUNITY CREDIT**
2 **AND WELFARE-TO-WORK CREDIT.**

3 (a) PERMANENT EXTENSION OF CREDIT.—

4 (1) IN GENERAL.—Section 51(e) is amended by
5 striking paragraph (4).

6 (2) LONG-TERM FAMILY ASSISTANCE RECIPI-
7 ENTS.—

8 (A) IN GENERAL.—Section 51A is amend-
9 ed by striking subsection (f).

10 (B) CONFORMING AMENDMENTS.—

11 (i) The heading for section 51A is
12 amended by striking “**TEMPORARY**”.

13 (ii) The item relating to section 51A
14 in the table of sections for subpart F of
15 part IV of subchapter A of chapter 1 is
16 amended by striking “Temporary incen-
17 tives” and inserting “Incentives”.

18 (b) ELIGIBILITY OF EX-FELONS DETERMINED
19 WITHOUT REGARD TO FAMILY INCOME.—Paragraph (4)
20 of section 51(d) is amended by adding “and” at the end
21 of subparagraph (A), by striking “, and” at the end of
22 subparagraph (B) and inserting a period, and by striking
23 all that follows subparagraph (B).

24 (c) INCREASE IN MAXIMUM AGE FOR ELIGIBILITY OF
25 FOOD STAMP RECIPIENTS.—Clause (i) of section

1 51(d)(8)(A) is amended by striking “25” and inserting
2 “40”.

3 (d) INCREASE IN MAXIMUM AGE FOR DESIGNATED
4 COMMUNITY RESIDENTS.—

5 (1) IN GENERAL.—Paragraph (5) of section
6 51(d) is amended to read as follows:

7 “(5) DESIGNATED COMMUNITY RESIDENTS.—

8 “(A) IN GENERAL.—The term ‘designated
9 community resident’ means any individual who
10 is certified by the designated local agency—

11 “(i) as having attained age 18 but not
12 age 40 on the hiring date, and

13 “(ii) as having his principal place of
14 abode within an empowerment zone, enter-
15 prise community, or renewal community.

16 “(B) INDIVIDUAL MUST CONTINUE TO RE-
17 SIDE IN ZONE OR COMMUNITY.—In the case of
18 a designated community resident, the term
19 ‘qualified wages’ shall not include wages paid or
20 incurred for services performed while the indi-
21 vidual’s principal place of abode is outside an
22 empowerment zone, enterprise community, or
23 renewal community.”

1 (2) CONFORMING AMENDMENT.—Subparagraph
2 (D) of section 51(d)(1) is amended to read as fol-
3 lows:

4 “(D) a designated community resident,”.

5 (e) EFFECTIVE DATES.—

6 (1) EXTENSION OF CREDITS.—The amend-
7 ments made by subsection (a) shall apply to individ-
8 uals who begin work for the employer after Decem-
9 ber 31, 2003.

10 (2) MODIFICATIONS.—The amendments made
11 by subsections (b), (c), and (d) shall apply to indi-
12 viduals who begin work for the employer after De-
13 cember 31, 2004.

14 **SEC. 703. CONSOLIDATION OF WORK OPPORTUNITY CRED-**
15 **IT WITH WELFARE-TO-WORK CREDIT.**

16 (a) IN GENERAL.—Paragraph (1) of section 51(d) is
17 amended by striking “or” at the end of subparagraph (G),
18 by striking the period at the end of subparagraph (H) and
19 inserting “, or”, and by adding at the end the following
20 new subparagraph:

21 “(I) a long-term family assistance recipi-
22 ent.”

23 (b) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—
24 Subsection (d) of section 51 is amended by redesignating
25 paragraphs (10) through (12) as paragraphs (11) through

1 (13), respectively, and by inserting after paragraph (9) the
2 following new paragraph:

3 “(10) LONG-TERM FAMILY ASSISTANCE RECIPI-
4 ENT.—The term ‘long-term family assistance recipi-
5 ent’ means any individual who is certified by the
6 designated local agency—

7 “(A) as being a member of a family receiv-
8 ing assistance under a IV–A program (as de-
9 fined in paragraph (2)(B)) for at least the 18-
10 month period ending on the hiring date,

11 “(B)(i) as being a member of a family re-
12 ceiving such assistance for 18 months beginning
13 after August 5, 1997, and

14 “(ii) as having a hiring date which is not
15 more than 2 years after the end of the earliest
16 such 18-month period, or

17 “(C)(i) as being a member of a family
18 which ceased to be eligible for such assistance
19 by reason of any limitation imposed by Federal
20 or State law on the maximum period such as-
21 sistance is payable to a family, and

22 “(ii) as having a hiring date which is not
23 more than 2 years after the date of such ces-
24 sation.”

1 (c) INCREASED CREDIT FOR EMPLOYMENT OF LONG-
2 TERM FAMILY ASSISTANCE RECIPIENTS.—Section 51 is
3 amended by inserting after subsection (d) the following
4 new subsection:

5 “(e) CREDIT FOR EMPLOYMENT OF LONG-TERM
6 FAMILY ASSISTANCE RECIPIENTS.—

7 “(1) IN GENERAL.—With respect to the em-
8 ployment of a long-term family assistance
9 recipient—

10 “(A) the amount of the work opportunity
11 credit determined under this section for the tax-
12 able year shall include 50 percent of the quali-
13 fied second-year wages for such year, and

14 “(B) in lieu of applying subsection (b)(3),
15 the amount of the qualified first-year wages,
16 and the amount of qualified second-year wages,
17 which may be taken into account with respect
18 to such a recipient shall not exceed \$10,000 per
19 year.

20 “(2) QUALIFIED SECOND-YEAR WAGES.—For
21 purposes of this subsection, the term ‘qualified sec-
22 ond-year wages’ means qualified wages—

23 “(A) which are paid to a long-term family
24 assistance recipient, and

1 “(B) which are attributable to service ren-
2 dered during the 1-year period beginning on the
3 day after the last day of the 1-year period with
4 respect to such recipient determined under sub-
5 section (b)(2).

6 “(3) SPECIAL RULES FOR AGRICULTURAL AND
7 RAILWAY LABOR.—If such recipient is an employee
8 to whom subparagraph (A) or (B) of subsection
9 (h)(1) applies, rules similar to the rules of such sub-
10 paragraphs shall apply except that—

11 “(A) such subparagraph (A) shall be ap-
12 plied by substituting ‘\$10,000’ for ‘\$6,000’, and

13 “(B) such subparagraph (B) shall be ap-
14 plied by substituting ‘\$833.33’ for ‘\$500’.”

15 (d) REPEAL OF SEPARATE WELFARE-TO-WORK
16 CREDIT.—

17 (1) IN GENERAL.—Section 51A is hereby re-
18 pealed.

19 (2) CLERICAL AMENDMENT.—The table of sec-
20 tions for subpart F of part IV of subchapter A of
21 chapter 1 is amended by striking the item relating
22 to section 51A.

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to individuals who begin work for
25 the employer after December 31, 2004.

1 **SEC. 704. QUALIFIED ZONE ACADEMY BONDS.**

2 (a) IN GENERAL.—Paragraph (1) of section
3 1397E(e) is amended by striking “and 2003” and insert-
4 ing “2003, 2004, and 2005”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall apply to obligations issued after De-
7 cember 31, 2003.

8 **SEC. 705. COVER OVER OF TAX ON DISTILLED SPIRITS.**

9 (a) IN GENERAL.—Paragraph (1) of section 7652(f)
10 is amended by striking “January 1, 2004” and inserting
11 “January 1, 2006”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall apply to articles brought into the
14 United States after December 31, 2003.

15 **SEC. 706. DEDUCTION FOR CORPORATE DONATIONS OF**
16 **SCIENTIFIC PROPERTY AND COMPUTER**
17 **TECHNOLOGY.**

18 (a) SCIENTIFIC PROPERTY USED FOR RESEARCH.—

19 (1) IN GENERAL.—Clause (ii) of section
20 170(e)(4)(B) (defining qualified research contribu-
21 tions) is amended by inserting “or assembled” after
22 “constructed”.

23 (2) CONFORMING AMENDMENT.—Clause (iii) of
24 section 170(e)(4)(B) is amended by inserting “or as-
25 sembling” after “construction”.

1 (b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR
2 EDUCATIONAL PURPOSES.—

3 (1) IN GENERAL.—Clause (ii) of section
4 170(e)(6)(B) is amended by inserting “or assem-
5 bled” after “constructed” and “or assembling” after
6 “construction”.

7 (2) SPECIAL RULE EXTENDED.—Section
8 170(e)(6)(G) is amended by striking “2003” and in-
9 serting “2005”.

10 (3) CONFORMING AMENDMENTS.—Subpara-
11 graph (D) of section 170(e)(6) is amended by insert-
12 ing “or assembled” after “constructed” and “or as-
13 sembling” after “construction”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to contributions made in taxable
16 years beginning after December 31, 2003.

17 **SEC. 707. DEDUCTION FOR CERTAIN EXPENSES OF SCHOOL**
18 **TEACHERS.**

19 (a) IN GENERAL.—Subparagraph (D) of section
20 62(a)(2) is amended by striking “or 2003” and inserting
21 “, 2003, 2004, or 2005”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall apply to expenses paid or incurred in
24 taxable years beginning after December 31, 2003.

1 **SEC. 708. EXPENSING OF ENVIRONMENTAL REMEDIATION**
2 **COSTS.**

3 (a) EXTENSION OF TERMINATION DATE.—Sub-
4 section (h) of section 198 is amended by striking “Decem-
5 ber 31, 2003” and inserting “December 31, 2005”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall apply to expenditures paid or incurred
8 after December 31, 2003.

9 **SEC. 709. EXPANSION OF CERTAIN NEW YORK LIBERTY**
10 **ZONE BENEFITS.**

11 (a) EXTENSION OF TAX-EXEMPT BOND FINANC-
12 ING.—Subparagraph (D) of section 1400L(d)(2) is
13 amended by striking “2005” and inserting “2006”.

14 (b) CLARIFICATION OF BONDS ELIGIBLE FOR AD-
15 VANCE REFUNDING.—Section 1400L(e)(2)(B) (relating to
16 bonds described) is amended by striking “, or” and insert-
17 ing “or the Municipal Assistance Corporation, or”.

18 (c) ELECTION OUT TECHNICAL AMENDMENT.—Sub-
19 section (c) of section 1400L is amended by adding at the
20 end the following new paragraph:

21 “(5) ELECTION OUT.—For purposes of this
22 subsection, rules similar to the rules of section
23 168(k)(2)(C)(iii) shall apply.”.

24 (d) EFFECTIVE DATE.—The amendments made by
25 subsections (b) and (c) shall take effect as if included in

1 the amendments made by section 301 of the Job Creation
2 and Worker Assistance Act of 2002.

3 **SEC. 710. REPEAL OF REDUCTION OF DEDUCTIONS FOR**
4 **MUTUAL LIFE INSURANCE COMPANIES.**

5 (a) IN GENERAL.—Section 809 of the Internal Rev-
6 enue Code of 1986 (relating to reductions in certain de-
7 duction of mutual life insurance companies) is hereby re-
8 pealed.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Subsections (a)(2)(B) and (b)(1)(B) of sec-
11 tion 807 of such Code are each amended by striking
12 “the sum of (i)” and by striking “plus (ii) any ex-
13 cess described in section 809(a)(2) for the taxable
14 year,”.

15 (2)(A) The last sentence of section 807(d)(1) of
16 such Code is amended by striking “section
17 809(b)(4)(B)” and inserting “paragraph (6)”.

18 (B) Subsection (d) of section 807 of such Code
19 is amended by adding at the end the following new
20 paragraph:

21 “(6) STATUTORY RESERVES.—The term ‘statu-
22 tory reserves’ means the aggregate amount set forth
23 in the annual statement with respect to items de-
24 scribed in section 807(c). Such term shall not in-
25 clude any reserve attributable to a deferred and un-

1 collected premium if the establishment of such re-
2 serve is not permitted under section 811(c).”

3 (3) Subsection (c) of section 808 of such Code
4 is amended to read as follows:

5 “(c) AMOUNT OF DEDUCTION.—The deduction for
6 policyholder dividends for any taxable year shall be an
7 amount equal to the policyholder dividends paid or accrued
8 during the taxable year.”

9 (4) Subparagraph (A) of section 812(b)(3) of
10 such Code is amended by striking “sections 808 and
11 809” and inserting “section 808”.

12 (5) Subsection (c) of section 817 of such Code
13 is amended by striking “(other than section 809)”.

14 (6) Subsection (c) of section 842 of such Code
15 is amended by striking paragraph (3) and by redesi-
16 gnating paragraph (4) as paragraph (3).

17 (7) The table of sections for subpart C of part
18 I of subchapter L of chapter 1 of such Code is
19 amended by striking the item relating to section
20 809.

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

1 **SEC. 711. TAX INCENTIVES FOR INVESTMENT IN THE DIS-**
2 **TRICT OF COLUMBIA.**

3 (a) DESIGNATION OF ZONE.—Subsection (f) of sec-
4 tion 1400 is amended by striking “December 31, 2003”
5 both places it appears and inserting “December 31,
6 2005”.

7 (b) TAX-EXEMPT ECONOMIC DEVELOPMENT
8 BONDS.—Subsection (b) of section 1400A is amended by
9 striking “December 31, 2003” and inserting “December
10 31, 2005”.

11 (c) ZERO PERCENT CAPITAL GAINS RATE.—

12 (1) IN GENERAL.—Subsection (b) of section
13 1400B is amended by striking “January 1, 2004”
14 each place it appears and inserting “January 1,
15 2006”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 1400B(e)(2) is amended—

18 (i) by striking “December 31, 2008”
19 and inserting “December 31, 2010”, and

20 (ii) by striking “2008” in the heading
21 and inserting “2010”.

22 (B) Section 1400B(g)(2) is amended by
23 striking “December 31, 2008” and inserting
24 “December 31, 2010”.

1 (C) Section 1400F(d) is amended by strik-
2 ing “December 31, 2008” and inserting “De-
3 cember 31, 2010”.

4 (d) FIRST-TIME HOMEBUYER CREDIT.—Subsection
5 (i) of section 1400C is amended by striking “January 1,
6 2004” and inserting “January 1, 2006”.

7 (e) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall take effect on January 1, 2004.

11 (2) TAX-EXEMPT ECONOMIC DEVELOPMENT
12 BONDS.—The amendment made by subsection (b)
13 shall apply to obligations issued after the date of the
14 enactment of this Act.

15 **SEC. 712. DISCLOSURE OF TAX INFORMATION TO FACILI-**
16 **TATE COMBINED EMPLOYMENT TAX REPORT-**
17 **ING.**

18 (a) IN GENERAL.—Paragraph (5) of section 6103(d)
19 (relating to disclosure to State tax officials and State and
20 local law enforcement agencies) is amended to read as fol-
21 lows:

22 “(5) DISCLOSURE FOR COMBINED EMPLOY-
23 MENT TAX REPORTING.—The Secretary may disclose
24 taxpayer identity information and signatures to any
25 agency, body, or commission of any State for the

1 purpose of carrying out with such agency, body, or
2 commission a combined Federal and State employ-
3 ment tax reporting program approved by the Sec-
4 retary. Subsections (a)(2) and (p)(4) and sections
5 7213 and 7213A shall not apply with respect to dis-
6 closures or inspections made pursuant to this para-
7 graph.”.

8 (b) EFFECTIVE DATE.—The amendment made
9 by this section shall take effect on the date of the
10 enactment of this Act.

11 **SEC. 713. ALLOWANCE OF NONREFUNDABLE PERSONAL**
12 **CREDITS AGAINST REGULAR AND MINIMUM**
13 **TAX LIABILITY.**

14 (a) IN GENERAL.—Paragraph (2) of section 26(a) is
15 amended—

16 (1) by striking “RULE FOR 2000, 2001, 2002, AND
17 2003.—” and inserting “RULE FOR TAXABLE YEARS
18 2000 THROUGH 2004.—”, and

19 (2) by striking “or 2003” and inserting “2003,
20 or 2004”.

21 (b) CONFORMING PROVISIONS.—

22 (1) Section 904(h) is amended by striking “or
23 2003” and inserting “2003, or 2004”.

24 (2) The amendments made by sections 201(b),
25 202(f), and 618(b) of the Economic Growth and Tax

1 Relief Reconciliation Act of 2001 shall not apply to
2 taxable years beginning during 2004.

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

6 **SEC. 714. CREDIT FOR ELECTRICITY PRODUCED FROM**
7 **CERTAIN RENEWABLE RESOURCES.**

8 (a) IN GENERAL.—Subparagraphs (A), (B), and (C)
9 of section 45(c)(3) are each amended by striking “January
10 1, 2004” and inserting “January 1, 2005”.

11 (b) EFFECTIVE DATE.—The amendments made by
12 subsection (a) shall apply to facilities placed in service
13 after December 31, 2003.

14 **SEC. 715. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLE-**
15 **TION FOR OIL AND NATURAL GAS PRODUCED**
16 **FROM MARGINAL PROPERTIES.**

17 (a) IN GENERAL.—Subparagraph (H) of section
18 613A(c)(6) is amended by striking “January 1, 2004” and
19 inserting “January 1, 2005”.

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

1 **SEC. 716. INDIAN EMPLOYMENT TAX CREDIT.**

2 Section 45A(f) (relating to termination) is amended
3 by striking “December 31, 2004” and inserting “Decem-
4 ber 31, 2005”.

5 **SEC. 717. ACCELERATED DEPRECIATION FOR BUSINESS**
6 **PROPERTY ON INDIAN RESERVATION.**

7 Section 168(j)(8) (relating to termination) is amend-
8 ed by striking “December 31, 2004” and inserting “De-
9 cember 31, 2005”.

10 **SEC. 718. DISCLOSURE OF RETURN INFORMATION RELAT-**
11 **ING TO STUDENT LOANS.**

12 Section 6103(l)(13)(D) (relating to termination) is
13 amended by striking “December 31, 2004” and inserting
14 “December 31, 2005”.

15 **SEC. 719. EXTENSION OF TRANSFERS OF EXCESS PENSION**
16 **ASSETS TO RETIREE HEALTH ACCOUNTS.**

17 (a) AMENDMENT OF INTERNAL REVENUE CODE OF
18 1986.—Paragraph (5) of section 420(b) (relating to expi-
19 ration) is amended by striking “December 31, 2005” and
20 inserting “December 31, 2013”.

21 (b) AMENDMENTS OF ERISA.—

22 (1) Section 101(e)(3) of the Employee Retirement
23 Income Security Act of 1974 (29 U.S.C.
24 1021(e)(3)) is amended by striking “Tax Relief Ex-
25 tension Act of 1999” and inserting “Jumpstart Our
26 Business Strength (JOBS) Act”.

1 cost by an amount not in excess of the
2 reduction in costs which would have
3 occurred if the employer had made the
4 maximum permissible reduction in re-
5 tiree health coverage under such regu-
6 lations. In applying such regulations
7 to any subsequent taxable year, any
8 reduction in applicable employer cost
9 under this clause shall be treated as if
10 it were an equivalent reduction in re-
11 tiree health coverage.

12 “(II) ELIGIBLE EMPLOYER.—For
13 purposes of subclause (I), an employer
14 shall be treated as an eligible em-
15 ployer for any taxable year if, for the
16 preceding taxable year, the qualified
17 current retiree health liabilities of the
18 employer were at least 5 percent of
19 the gross receipts of the employer.
20 For purposes of this subclause, the
21 rules of paragraphs (2), (3)(B), and
22 (3)(C) of section 448(c) shall apply in
23 determining the amount of an employ-
24 er’s gross receipts.”

1 (2) CONFORMING AMENDMENT.—Section
2 420(c)(3)(E) is amended by striking “The Sec-
3 retary” and inserting:

4 “(i) IN GENERAL.—The Secretary”.

5 (3) EFFECTIVE DATE.—The amendments made
6 by this subsection shall apply to taxable years end-
7 ing after the date of the enactment of this Act.

8 **SEC. 720. ELIMINATION OF PHASEOUT OF CREDIT FOR**
9 **QUALIFIED ELECTRIC VEHICLES.**

10 (a) IN GENERAL.—Section 30(b) is amended by
11 striking paragraph (2) and by redesignating paragraph
12 (3) as paragraph (2).

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 53(d)(1)(B)(iii) is amended by
15 striking “section 30(b)(3)(B)” and inserting “sec-
16 tion 30(b)(2)(B)”.

17 (2) Section 55(c)(2) is amended by striking
18 “30(b)(3)” and inserting “30(b)(2)”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to property placed in service after
21 December 31, 2003.

22 **SEC. 721. ELIMINATION OF PHASEOUT FOR DEDUCTION**
23 **FOR CLEAN-FUEL VEHICLE PROPERTY.**

24 (a) IN GENERAL.—Paragraph (1) of section 179A(b)
25 is amended to read as follows:

1 “(1) QUALIFIED CLEAN-FUEL VEHICLE PROP-
2 ERTY.—The cost which may be taken into account
3 under subsection (a)(1)(A) with respect to any
4 motor vehicle shall not exceed—

5 “(A) in the case of a motor vehicle not de-
6 scribed in subparagraph (B) or (C), \$2,000,

7 “(B) in the case of any truck or van with
8 a gross vehicle weight rating greater than
9 10,000 pounds but not greater than 26,000
10 pounds, \$5,000, or

11 “(C) \$50,000 in the case of—

12 “(i) a truck or van with a gross vehi-
13 cle weight rating greater than 26,000
14 pounds, or

15 “(ii) any bus which has a seating ca-
16 pacity of at least 20 adults (not including
17 the driver).”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall apply to property placed in service
20 after December 31, 2003.

21 **Subtitle B—Revenue Provisions**

22 **SEC. 731. DONATIONS OF MOTOR VEHICLES, BOATS, AND** 23 **AIRPLANES.**

24 (a) IN GENERAL.—Subsection (f) of section 170 (re-
25 lating to disallowance of deduction in certain cases and

1 special rules) is amended by adding at the end the fol-
2 lowing new paragraph:

3 “(11) CONTRIBUTIONS OF USED MOTOR VEHI-
4 CLES, BOATS, AND AIRPLANES.—

5 “(A) IN GENERAL.—In the case of a con-
6 tribution of a qualified vehicle in excess of
7 \$500—

8 “(i) paragraph (8) shall not apply and
9 no deduction shall be allowed under sub-
10 section (a) for such contribution unless the
11 taxpayer substantiates the contribution by
12 a contemporaneous written acknowledge-
13 ment of the contribution by the donee or-
14 ganization that meets the requirements of
15 subparagraph (B) and includes the ac-
16 knowledgement with the taxpayer’s return
17 of tax which includes the deduction, and

18 “(ii) if the organization sells the vehi-
19 cle without any significant intervening use
20 or material improvement of such vehicle by
21 the organization, the amount of the deduc-
22 tion allowed under subsection (a) shall not
23 exceed the gross proceeds received from
24 such sale.

1 “(B) CONTENT OF ACKNOWLEDGEMENT.—

2 An acknowledgement meets the requirements of
3 this subparagraph if it includes the following
4 information:

5 “(i) The name and taxpayer identi-
6 fication number of the donor.

7 “(ii) The vehicle identification number
8 or similar number.

9 “(iii) In the case of a qualified vehicle
10 to which subparagraph (A)(ii) applies and
11 which is sold by the donee organization—

12 “(I) a certification that the vehi-
13 cle was sold in an arm’s length trans-
14 action between unrelated parties,

15 “(II) the gross proceeds from the
16 sale, and

17 “(III) that the deductible amount
18 may not exceed the amount of such
19 gross proceeds.

20 “(iv) In the case of a qualified vehicle
21 to which subparagraph (A)(ii) does not
22 apply—

23 “(I) a certification of the in-
24 tended use or material improvement

1 of the vehicle and the intended dura-
2 tion of such use, and

3 “(II) a certification that the vehi-
4 cle would not be transferred in ex-
5 change for money, other property, or
6 services before completion of such use
7 or improvement.

8 “(C) CONTEMPORANEOUS.—For purposes
9 of subparagraph (A), an acknowledgement shall
10 be considered to be contemporaneous if the
11 donee organization provides it within 30 days
12 of—

13 “(i) the sale of the qualified vehicle,
14 or

15 “(ii) in the case of an acknowledge-
16 ment including a certification described in
17 subparagraph (B)(iv), the contribution of
18 the qualified vehicle.

19 “(D) INFORMATION TO SECRETARY.—A
20 donee organization required to provide an ac-
21 knowledgement under this paragraph shall pro-
22 vide to the Secretary the information contained
23 in the acknowledgement. Such information shall
24 be provided at such time and in such manner
25 as the Secretary may prescribe.

1 “(E) QUALIFIED VEHICLE.—For purposes
2 of this paragraph, the term ‘qualified vehicle’
3 means any—

4 “(i) self-propelled vehicle manufac-
5 tured primarily for use on public streets,
6 roads, and highways,

7 “(ii) boat, or

8 “(iii) airplane.

9 Such term shall not include any property which
10 is described in section 1221(a)(1).

11 “(F) REGULATIONS OR OTHER GUID-
12 ANCE.—The Secretary shall prescribe such reg-
13 ulations or other guidance as may be necessary
14 to carry out the purposes of this paragraph.”.

15 (b) PENALTY FOR FRAUDULENT ACKNOWLEDG-
16 MENTS.—

17 (1) IN GENERAL.—Part I of subchapter B of
18 chapter 68 (relating to assessable penalties) is
19 amended adding at the end the following new sec-
20 tion:

21 **“SEC. 6717. FRAUDULENT ACKNOWLEDGMENTS WITH RE-**
22 **SPECT TO DONATIONS OF MOTOR VEHICLES,**
23 **BOATS, AND AIRPLANES.**

24 “Any donee organization required under section
25 170(f)(11)(A) to furnish a contemporaneous written ac-

1 knowledge to a donor which knowingly furnishes a
2 false or fraudulent acknowledgment, or which knowingly
3 fails to furnish such acknowledgment in the manner, at
4 the time, and showing the information required under sec-
5 tion 170(f)(11), or regulations prescribed thereunder,
6 shall for each such act, or for each such failure, be subject
7 to a penalty equal to—

8 “(1) in the case of an acknowledgment with re-
9 spect to a qualified vehicle to which section
10 170(f)(11)(A)(ii) applies, the greater of the value of
11 the tax benefit to the donor or the gross proceeds
12 from the sale of such vehicle, and

13 “(2) in the case of an acknowledgment with re-
14 spect to any other qualified vehicle to which section
15 170(f)(11) applies, the greater of the value of the
16 tax benefit to the donor or \$5,000.”.

17 (2) CONFORMING AMENDMENT.—The table of
18 sections for part I of subchapter B of chapter 68 is
19 amended by adding at the end the following new
20 item:

 “Sec. 6717. Fraudulent acknowledgments with respect to dona-
 tions of motor vehicles, boats, and airplanes.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to contributions after June 30,
23 2004.

1 **SEC. 732. ADDITION OF VACCINES AGAINST INFLUENZA TO**
2 **LIST OF TAXABLE VACCINES.**

3 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-
4 able vaccine) is amended adding at the end the following
5 new subparagraph:

6 “(M) Any trivalent vaccine against influ-
7 enza.”.

8 (b) CONFORMING AMENDMENT.—Section
9 9510(c)(1)(A) is amended by striking “October 18, 2000”
10 and inserting “the date of the enactment of the Jumpstart
11 Our Business Strength (JOBS) Act”.

12 (b) EFFECTIVE DATE.—

13 (1) SALES, ETC.—The amendment made by this
14 section shall apply to sales and uses on or after the
15 later of—

16 (A) the first day of the first month which
17 begins more than 4 weeks after the date of the
18 enactment of this Act, or

19 (B) the date on which the Secretary of
20 Health and Human Services lists any vaccine
21 against influenza for purposes of compensation
22 for any vaccine-related injury or death through
23 the Vaccine Injury Compensation Trust Fund.

24 (2) DELIVERIES.—For purposes of paragraph
25 (1) and section 4131 of the Internal Revenue Code
26 of 1986, in the case of sales on or before the effec-

1 tive date described in such paragraph for which de-
2 livery is made after such date, the delivery date shall
3 be considered the sale date.

4 **SEC. 733. TREATMENT OF CONTINGENT PAYMENT CON-**
5 **VERTIBLE DEBT INSTRUMENTS.**

6 (a) IN GENERAL.—Section 1275(d) (relating to regu-
7 lation authority) is amended—

8 (1) by striking “The Secretary” and inserting
9 the following:

10 “(1) IN GENERAL.—The Secretary”, and

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

13 “(2) TREATMENT OF CONTINGENT PAYMENT
14 CONVERTIBLE DEBT.—

15 “(A) IN GENERAL.—In the case of a debt
16 instrument which—

17 “(i) is convertible into stock of the
18 issuing corporation, into stock or debt of a
19 related party (within the meaning of sec-
20 tion 267(b) or 707(b)(1)), or into cash or
21 other property in an amount equal to the
22 approximate value of such stock or debt,
23 and

24 “(ii) provides for contingent pay-
25 ments,

1 any regulations which require original issue dis-
2 count to be determined by reference to the com-
3 parable yield of a noncontingent fixed rate debt
4 instrument shall be applied as requiring that
5 such comparable yield be determined by ref-
6 erence to a noncontingent fixed rate debt in-
7 strument which is convertible into stock.

8 “(B) SPECIAL RULE.—For purposes of
9 subparagraph (A), the comparable yield shall be
10 determined without taking into account the
11 yield resulting from the conversion of a debt in-
12 strument into stock.”.

13 (b) CROSS REFERENCE.—Section 163(e)(6) (relating
14 to cross references) is amended by adding at the end the
15 following:

16 “For the treatment of contingent payment con-
17 vertible debt, see section 1275(d)(2).”.

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

21 **SEC. 734. MODIFICATION OF CONTINUING LEVY ON PAY-**
22 **MENTS TO FEDERAL VENDERS.**

23 (a) IN GENERAL.—Section 6331(h) (relating to con-
24 tinuing levy on certain payments) is amended by adding
25 at the end the following new paragraph:

1 “(3) INCREASE IN LEVY FOR CERTAIN PAY-
2 MENTS.—Paragraph (1) shall be applied by sub-
3 stituting ‘100 percent’ for ‘15 percent’ in the case
4 of any specified payment due to a vendor of goods
5 or services sold or leased to the Federal Govern-
6 ment.”.

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

10 **TITLE VIII—ENERGY TAX**
11 **INCENTIVES**

12 **SEC. 800. SHORT TITLE.**

13 This title may be cited as the “Energy Tax Incentives
14 Act”.

15 **Subtitle A—Renewable Electricity**
16 **Production Tax Credit**

17 **SEC. 801. EXTENSION AND EXPANSION OF CREDIT FOR**

18 **ELECTRICITY PRODUCED FROM CERTAIN RE-**

19 **NEWABLE RESOURCES.**

20 (a) EXPANSION OF QUALIFIED ENERGY RE-
21 SOURCES.—Subsection (c) of section 45 (relating to elec-
22 tricity produced from certain renewable resources) is
23 amended to read as follows:

24 “(c) QUALIFIED ENERGY RESOURCES.—For pur-
25 poses of this section—

1 “(1) IN GENERAL.—The term ‘qualified energy
2 resources’ means—

3 “(A) wind,

4 “(B) closed-loop biomass,

5 “(C) open-loop biomass,

6 “(D) geothermal energy,

7 “(E) solar energy,

8 “(F) small irrigation power,

9 “(G) biosolids and sludge, and

10 “(H) municipal solid waste.”.

11 “(2) CLOSED-LOOP BIOMASS.—The term
12 ‘closed-loop biomass’ means any organic material
13 from a plant which is planted exclusively for pur-
14 poses of being used at a qualified facility to produce
15 electricity.

16 “(3) OPEN-LOOP BIOMASS.—

17 “(A) IN GENERAL.—The term ‘open-loop
18 biomass’ means—

19 “(i) any agricultural livestock waste
20 nutrients, or

21 “(ii) any solid, nonhazardous, cel-
22 lulosic waste material which is segregated
23 from other waste materials and which is
24 derived from—

1 “(I) any of the following forest-
2 related resources: mill and harvesting
3 residues, precommercial thinnings,
4 slash, and brush; but not including
5 spent chemicals from pulp manufac-
6 turing,

7 “(II) solid wood waste materials,
8 including waste pallets, crates,
9 dunnage, manufacturing and con-
10 struction wood wastes (other than
11 pressure-treated, chemically-treated,
12 or painted wood wastes), and land-
13 scape or right-of-way tree trimmings,
14 but not including municipal solid
15 waste, gas derived from the bio-
16 degradation of solid waste, or paper
17 which is commonly recycled, or

18 “(III) agriculture sources, includ-
19 ing orchard tree crops, vineyard,
20 grain, legumes, sugar, and other crop
21 by-products or residues.

22 “(B) AGRICULTURAL LIVESTOCK WASTE
23 NUTRIENTS.—

24 “(i) IN GENERAL.—The term ‘agricul-
25 tural livestock waste nutrients’ means agri-

1 cultural livestock manure and litter, includ-
2 ing wood shavings, straw, rice hulls, and
3 other bedding material for the disposition
4 of manure.

5 “(ii) AGRICULTURAL LIVESTOCK.—
6 The term ‘agricultural livestock’ includes
7 bovine, swine, poultry, and sheep.

8 “(C) EXCEPTIONS.—The term ‘open-loop
9 biomass’ does not include—

10 “(i) closed-loop biomass, or

11 “(ii) biomass burned in conjunction
12 with fossil fuel (cofiring) beyond such fossil
13 fuel required for startup and flame sta-
14 bilization.

15 “(4) GEOTHERMAL ENERGY.—The term ‘geo-
16 thermal energy’ means energy derived from a geo-
17 thermal deposit (within the meaning of section
18 613(e)(2)).

19 “(5) SMALL IRRIGATION POWER.—The term
20 ‘small irrigation power’ means power—

21 “(A) generated without any dam or im-
22 poundment of water through an irrigation sys-
23 tem canal or ditch, and

24 “(B) the installed capacity of which is less
25 than 5 megawatts.

1 “(6) BIOSOLIDS AND SLUDGE.—The term ‘bio-
2 solids and sludge’ means the residue or solids re-
3 moved in the treatment of commercial, industrial, or
4 municipal wastewater.

5 “(7) MUNICIPAL SOLID WASTE.—The term
6 ‘municipal solid waste’ has the meaning given the
7 term ‘solid waste’ under section 2(27) of the Solid
8 Waste Disposal Act (42 U.S.C. 6903).”.

9 (b) EXTENSION AND EXPANSION OF QUALIFIED FA-
10 CILITIES.—

11 (1) IN GENERAL.—Section 45 is amended by
12 redesignating subsection (d) as subsection (e) and by
13 inserting after subsection (c) the following new sub-
14 section:

15 “(d) QUALIFIED FACILITIES.—For purposes of this
16 section—

17 “(1) WIND FACILITY.—In the case of a facility
18 using wind to produce electricity, the term ‘qualified
19 facility’ means any facility owned by the taxpayer
20 which is originally placed in service after December
21 31, 1993, and before January 1, 2007.

22 “(2) CLOSED-LOOP BIOMASS FACILITY.—

23 “(A) IN GENERAL.—In the case of a facil-
24 ity using closed-loop biomass to produce elec-

1 clause multiplied by the ratio of the ther-
2 mal content of the closed-loop biomass
3 used in such facility to the thermal content
4 of all fuels used in such facility, and

5 “(iii) if the owner of such facility is
6 not the producer of the electricity, the per-
7 son eligible for the credit allowable under
8 subsection (a) shall be the lessee or the op-
9 erator of such facility.

10 “(3) OPEN-LOOP BIOMASS FACILITY.—

11 “(A) IN GENERAL.—In the case of a facil-
12 ity using open-loop biomass to produce elec-
13 tricity for grid sale in excess of its internal re-
14 quirements, the term ‘qualified facility’ means
15 any facility owned by the taxpayer which—

16 “(i) in the case of a facility using ag-
17 ricultural livestock waste nutrients, is
18 originally placed in service after December
19 31, 2004, and before January 1, 2007, and

20 “(ii) in the case of any other facility,
21 is originally placed in service before Janu-
22 ary 1, 2005.

23 “(B) SPECIAL RULES FOR PREEFFECTIVE
24 DATE FACILITIES.—In the case of any facility

1 described in subparagraph (A)(ii) which is
2 placed in service before January 1, 2005—

3 “(i) subsection (a)(1) shall be applied
4 by substituting ‘1.2 cents’ for ‘1.5 cents’,
5 and

6 “(ii) the 5-year period beginning on
7 January 1, 2005, shall be substituted for
8 the 10-year period in subsection
9 (a)(2)(A)(ii).

10 “(C) CREDIT ELIGIBILITY.—In the case of
11 any facility described in subparagraph (A), if
12 the owner of such facility is not the producer of
13 the electricity, the person eligible for the credit
14 allowable under subsection (a) shall be the les-
15 see or the operator of such facility.

16 “(4) GEOTHERMAL OR SOLAR ENERGY FACIL-
17 ITY.—In the case of a facility using geothermal or
18 solar energy to produce electricity, the term ‘quali-
19 fied facility’ means any facility owned by the tax-
20 payer which is originally placed in service after De-
21 cember 31, 2004, and before January 1, 2007. Such
22 term shall not include any property described in sec-
23 tion 48(a)(3) the basis of which is taken into ac-
24 count by the taxpayer for purposes of determining
25 the energy credit under section 48.

1 “(5) SMALL IRRIGATION POWER FACILITY.—In
2 the case of a facility using small irrigation power to
3 produce electricity, the term ‘qualified facility’
4 means any facility owned by the taxpayer which is
5 originally placed in service after December 31, 2004,
6 and before January 1, 2007.

7 “(6) BIOSOLIDS AND SLUDGE FACILITY.—In
8 the case of a facility using waste heat from the in-
9 cineration of biosolids and sludge to produce elec-
10 tricity, the term ‘qualified facility’ means any facility
11 owned by the taxpayer which is originally placed in
12 service after December 31, 2004, and before Janu-
13 ary 1, 2007. Such term shall not include any prop-
14 erty described in section 48(a)(3) the basis of which
15 is taken into account for purposes of the energy
16 credit under section 46.

17 “(7) MUNICIPAL SOLID WASTE FACILITY.—

18 “(A) IN GENERAL.—In the case of a facil-
19 ity or unit incinerating municipal solid waste to
20 produce electricity, the term ‘qualified facility’
21 means any facility or unit owned by the tax-
22 payer which is originally placed in service after
23 December 31, 2004, and before January 1,
24 2007.

1 “(B) SPECIAL RULE.—In the case of any
2 facility or unit described in subparagraph (A),
3 the 5-year period beginning on the date the fa-
4 cility or unit was originally placed in service
5 shall be substituted for the 10-year period in
6 subsection (a)(2)(A)(ii).

7 “(C) CREDIT ELIGIBILITY.—In the case of
8 any qualified facility described in subparagraph
9 (A), if the owner of such facility is not the pro-
10 ducer of the electricity, the person eligible for
11 the credit allowable under subsection (a) shall
12 be the lessee or the operator of such facility.”.

13 (2) NO CREDIT FOR CERTAIN PRODUCTION.—
14 Section 45(e) (relating to definitions and special
15 rules), as redesignated by paragraph (1), is amended
16 by striking paragraph (6) and inserting the following
17 new paragraph:

18 “(6) OPERATIONS INCONSISTENT WITH SOLID
19 WASTE DISPOSAL ACT.—In the case of a qualified fa-
20 cility described in subsection (d)(6)(A), subsection
21 (a) shall not apply to electricity produced at such fa-
22 cility during any taxable year if, during a portion of
23 such year, there is a certification in effect by the
24 Administrator of the Environmental Protection
25 Agency that such facility was permitted to operate

1 in a manner inconsistent with section 4003(d) of the
2 Solid Waste Disposal Act (42 U.S.C. 6943(d)).”.

3 (3) CONFORMING AMENDMENT.—Section 45(e),
4 as so redesignated, is amended by striking “sub-
5 section (c)(3)(A)” in paragraph (7)(A)(i) and insert-
6 ing “subsection (d)(1)”.

7 (c) CREDIT RATE FOR ELECTRICITY PRODUCED
8 FROM NEW FACILITIES.—

9 (1) IN GENERAL.—Section 45(a) is amended by
10 adding at the end the following new flush sentence:
11 “In the case of electricity produced after December 31,
12 2004, at any qualified facility originally placed in service
13 after such date, paragraph (1) shall be applied by sub-
14 stituting ‘1.8 cents’ for ‘1.5 cents’.”.

15 (2) NEW RATE NOT SUBJECT TO INFLATION
16 ADJUSTMENT.—Section 45(b)(2) (relating to credit
17 and phaseout adjustment based on inflation) is
18 amended by adding at the end the following new
19 sentence: “This paragraph shall not apply to any
20 amount which is substituted for the 1.5 cent amount
21 in subsection (a) by reason of any provision of this
22 section.”.

23 (d) ELIMINATION OF CERTAIN CREDIT REDUC-
24 TIONS.—Section 45(b)(3)(A) (relating to credit reduced

1 for grants, tax-exempt bonds, subsidized energy financing,
2 and other credits) is amended—

3 (1) by striking clause (ii),

4 (2) by redesignating clauses (iii) and (iv) as
5 clauses (ii) and (iii),

6 (3) by inserting “(other than proceeds of an
7 issue of State or local government obligations the in-
8 terest on which is exempt from tax under section
9 103, or any loan, debt, or other obligation incurred
10 under subchapter I of chapter 31 of title 7 of the
11 Rural Electrification Act of 1936 (7 U.S.C. 901 et
12 seq.), as in effect on the date of the enactment of
13 the Energy Tax Incentives Act)” after “project” in
14 clause (ii) (as so redesignated),

15 (4) by adding at the end the following new sen-
16 tence: “This paragraph shall not apply with respect
17 to any facility described in subsection (d)(2)(A)(ii).”,
18 and

19 (5) by striking “TAX-EXEMPT BONDS,” in the
20 heading and inserting “CERTAIN”.

21 (e) TREATMENT OF PERSONS NOT ABLE TO USE
22 ENTIRE CREDIT.—Section 45(e) (relating to definitions
23 and special rules), as redesignated by subsection (b)(1),
24 is amended by adding at the end the following new para-
25 graph:

1 “(8) TREATMENT OF PERSONS NOT ABLE TO
2 USE ENTIRE CREDIT.—

3 “(A) ALLOWANCE OF CREDIT.—

4 “(i) IN GENERAL.—Except as other-
5 wise provided in this subsection—

6 “(I) any credit allowable under
7 subsection (a) with respect to a quali-
8 fied facility owned by a person de-
9 scribed in clause (ii) may be trans-
10 ferred or used as provided in this
11 paragraph, and

12 “(II) the determination as to
13 whether the credit is allowable shall
14 be made without regard to the tax-ex-
15 empt status of the person.

16 “(ii) PERSONS DESCRIBED.—A person
17 is described in this clause if the person
18 is—

19 “(I) an organization described in
20 section 501(c)(12)(C) and exempt
21 from tax under section 501(a),

22 “(II) an organization described
23 in section 1381(a)(2)(C),

24 “(III) a public utility (as defined
25 in section 136(c)(2)(B)), which is ex-

1 empt from income tax under this sub-
2 title,

3 “(IV) any State or political sub-
4 division thereof, the District of Co-
5 lumbia, any possession of the United
6 States, or any agency or instrumen-
7 tality of any of the foregoing, or

8 “(V) any Indian tribal govern-
9 ment (within the meaning of section
10 7871) or any agency or instrumen-
11 tality thereof.

12 “(B) TRANSFER OF CREDIT.—

13 “(i) IN GENERAL.—A person de-
14 scribed in subparagraph (A)(ii) may trans-
15 fer any credit to which subparagraph
16 (A)(i) applies through an assignment to
17 any other person not described in subpara-
18 graph (A)(ii). Such transfer may be re-
19 voked only with the consent of the Sec-
20 retary.

21 “(ii) REGULATIONS.—The Secretary
22 shall prescribe such regulations as nec-
23 essary to ensure that any credit described
24 in clause (i) is assigned once and not reas-
25 signed by such other person.

1 “(iii) TRANSFER PROCEEDS TREATED
2 AS ARISING FROM ESSENTIAL GOVERN-
3 MENT FUNCTION.—Any proceeds derived
4 by a person described in subclause (III),
5 (IV), or (V) of subparagraph (A)(ii) from
6 the transfer of any credit under clause (i)
7 shall be treated as arising from the exer-
8 cise of an essential government function.

9 “(C) USE OF CREDIT AS AN OFFSET.—
10 Notwithstanding any other provision of law, in
11 the case of a person described in subclause (I),
12 (II), or (V) of subparagraph (A)(ii), any credit
13 to which subparagraph (A)(i) applies may be
14 applied by such person, to the extent provided
15 by the Secretary of Agriculture, as a prepay-
16 ment of any loan, debt, or other obligation the
17 entity has incurred under subchapter I of chap-
18 ter 31 of title 7 of the Rural Electrification Act
19 of 1936 (7 U.S.C. 901 et seq.), as in effect on
20 the date of the enactment of the Energy Tax
21 Incentives Act.

22 “(D) CREDIT NOT INCOME.—Any transfer
23 under subparagraph (B) or use under subpara-
24 graph (C) of any credit to which subparagraph

1 (A)(i) applies shall not be treated as income for
2 purposes of section 501(c)(12).

3 “(E) TREATMENT OF UNRELATED PER-
4 SONS.—For purposes of subsection (a)(2)(B),
5 sales of electricity among and between persons
6 described in subparagraph (A)(ii) shall be treat-
7 ed as sales between unrelated parties.”.

8 (g) EFFECTIVE DATES.—

9 (1) IN GENERAL.—Except as otherwise pro-
10 vided in this subsection, the amendments made by
11 this section shall apply to electricity produced and
12 sold after December 31, 2004, in taxable years end-
13 ing after such date.

14 (2) CERTAIN BIOMASS FACILITIES.—With re-
15 spect to any facility described in section
16 45(d)(3)(A)(ii) of the Internal Revenue Code of
17 1986, as added by subsection (b)(1), which is placed
18 in service before the date of the enactment of this
19 Act, the amendments made by this section shall
20 apply to electricity produced and sold after Decem-
21 ber 31, 2004, in taxable years ending after such
22 date.

23 (3) CREDIT RATE FOR NEW FACILITIES.—The
24 amendments made by subsection (c) shall apply to

1 electricity produced and sold after December 31,
2 2004, in taxable years ending after such 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 December 31, 2004) placed in service on or
9 before such date.

10 **Subtitle B—Alternative Motor** 11 **Vehicles and Fuels Incentives**

12 **SEC. 811. ALTERNATIVE MOTOR VEHICLE CREDIT.**

13 (a) IN GENERAL.—Subpart B of part IV of sub-
14 chapter A of chapter 1 (relating to foreign tax credit, etc.)
15 is amended by adding at the end the following new section:

16 **“SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.**

17 “(a) ALLOWANCE OF CREDIT.—There shall be al-
18 lowed as a credit against the tax imposed by this chapter
19 for the taxable year an amount equal to the sum of—

20 “(1) the new qualified fuel cell motor vehicle
21 credit determined under subsection (b),

22 “(2) the new qualified hybrid motor vehicle
23 credit determined under subsection (c), and

24 “(3) the new qualified alternative fuel motor ve-
25 hicle credit determined under subsection (d).

1 “(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE
2 CREDIT.—

3 “(1) IN GENERAL.—For purposes of subsection
4 (a), the new qualified fuel cell motor vehicle credit
5 determined under this subsection with respect to a
6 new qualified fuel cell motor vehicle placed in service
7 by the taxpayer during the taxable year is—

8 “(A) \$4,000, if such vehicle has a gross ve-
9 hicle weight rating of not more than 8,500
10 pounds,

11 “(B) \$10,000, if such vehicle has a gross
12 vehicle weight rating of more than 8,500
13 pounds but not more than 14,000 pounds,

14 “(C) \$20,000, if such vehicle has a gross
15 vehicle weight rating of more than 14,000
16 pounds but not more than 26,000 pounds, and

17 “(D) \$40,000, if such vehicle has a gross
18 vehicle weight rating of more than 26,000
19 pounds.

20 “(2) INCREASE FOR FUEL EFFICIENCY.—

21 “(A) IN GENERAL.—The amount deter-
22 mined under paragraph (1)(A) with respect to
23 a new qualified fuel cell motor vehicle which is
24 a passenger automobile or light truck shall be
25 increased by—

1 “(i) \$1,000, if such vehicle achieves at
2 least 150 percent but less than 175 per-
3 cent of the 2002 model year city fuel econ-
4 omy,

5 “(ii) \$1,500, if such vehicle achieves
6 at least 175 percent but less than 200 per-
7 cent of the 2002 model year city fuel econ-
8 omy,

9 “(iii) \$2,000, if such vehicle achieves
10 at least 200 percent but less than 225 per-
11 cent of the 2002 model year city fuel econ-
12 omy,

13 “(iv) \$2,500, if such vehicle achieves
14 at least 225 percent but less than 250 per-
15 cent of the 2002 model year city fuel econ-
16 omy,

17 “(v) \$3,000, if such vehicle achieves
18 at least 250 percent but less than 275 per-
19 cent of the 2002 model year city fuel econ-
20 omy,

21 “(vi) \$3,500, if such vehicle achieves
22 at least 275 percent but less than 300 per-
23 cent of the 2002 model year city fuel econ-
24 omy, and

1 “(vii) \$4,000, if such vehicle achieves
 2 at least 300 percent of the 2002 model
 3 year city fuel economy.

4 “(B) 2002 MODEL YEAR CITY FUEL ECON-
 5 OMY.—For purposes of subparagraph (A), the
 6 2002 model year city fuel economy with respect
 7 to a vehicle shall be determined in accordance
 8 with the following tables:

9 “(i) In the case of a passenger auto-
 10 mobile:

“If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

11 “(ii) In the case of a light truck:

“If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg

“If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

1 “(C) VEHICLE INERTIA WEIGHT CLASS.—
2 For purposes of subparagraph (B), the term
3 ‘vehicle inertia weight class’ has the same
4 meaning as when defined in regulations pre-
5 scribed by the Administrator of the Environ-
6 mental Protection Agency for purposes of the
7 administration of title II of the Clean Air Act
8 (42 U.S.C. 7521 et seq.).

9 “(3) NEW QUALIFIED FUEL CELL MOTOR VEHI-
10 CLE.—For purposes of this subsection, the term
11 ‘new qualified fuel cell motor vehicle’ means a motor
12 vehicle—

13 “(A) which is propelled by power derived
14 from 1 or more cells which convert chemical en-
15 ergy directly into electricity by combining oxy-
16 gen with hydrogen fuel which is stored on board
17 the vehicle in any form and may or may not re-
18 quire reformation prior to use,

19 “(B) which, in the case of a passenger
20 automobile or light truck—

21 “(i) for 2002 and later model vehicles,
22 has received a certificate of conformity
23 under the Clean Air Act and meets or ex-

1 ceeds the equivalent qualifying California
2 low emission vehicle standard under sec-
3 tion 243(e)(2) of the Clean Air Act for
4 that make and model year, and

5 “(ii) for 2004 and later model vehi-
6 cles, has received a certificate that such ve-
7 hicle meets or exceeds the Bin 5 Tier II
8 emission level established in regulations
9 prescribed by the Administrator of the En-
10 vironmental Protection Agency under sec-
11 tion 202(i) of the Clean Air Act for that
12 make and model year vehicle,

13 “(C) the original use of which commences
14 with the taxpayer,

15 “(D) which is acquired for use or lease by
16 the taxpayer and not for resale, and

17 “(E) which is made by a manufacturer.

18 “(c) NEW QUALIFIED HYBRID MOTOR VEHICLE
19 CREDIT.—

20 “(1) IN GENERAL.—For purposes of subsection
21 (a), the new qualified hybrid motor vehicle credit de-
22 termined under this subsection with respect to a new
23 qualified hybrid motor vehicle placed in service by
24 the taxpayer during the taxable year is the credit
25 amount determined under paragraph (2).

1 “(2) CREDIT AMOUNT.—

2 “(A) IN GENERAL.—The credit amount de-
3 termined under this paragraph shall be deter-
4 mined in accordance with the following tables:

5 “(i) In the case of a new qualified hy-
6 brid motor vehicle which is a passenger
7 automobile, medium duty passenger vehi-
8 cle, or light truck and which provides the
9 following percentage of the maximum
10 available power:

“If percentage of the maximum available power is:	The credit amount is:
At least 4 percent but less than 10 percent	\$250
At least 10 percent but less than 20 percent	\$500
At least 20 percent but less than 30 percent	\$750
At least 30 percent	\$1,000.

11 “(ii) In the case of a new qualified hy-
12 brid motor vehicle which is a heavy duty
13 hybrid motor vehicle and which provides
14 the following percentage of the maximum
15 available power:

16 “(I) If such vehicle has a gross
17 vehicle weight rating of not more than
18 14,000 pounds:

“If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	\$1,000
At least 30 percent but less than 40 percent	\$1,750
At least 40 percent but less than 50 percent	\$2,000
At least 50 percent but less than 60 percent	\$2,250
At least 60 percent	\$2,500.

635

1 “(II) \$1,000, if such vehicle
2 achieves at least 150 percent but less
3 than 175 percent of the 2002 model
4 year city fuel economy,

5 “(III) \$1,500, if such vehicle
6 achieves at least 175 percent but less
7 than 200 percent of the 2002 model
8 year city fuel economy,

9 “(IV) \$2,000, if such vehicle
10 achieves at least 200 percent but less
11 than 225 percent of the 2002 model
12 year city fuel economy,

13 “(V) \$2,500, if such vehicle
14 achieves at least 225 percent but less
15 than 250 percent of the 2002 model
16 year city fuel economy, and

17 “(VI) \$3,000, if such vehicle
18 achieves at least 250 percent of the
19 2002 model year city fuel economy.

20 “(ii) 2002 MODEL YEAR CITY FUEL
21 ECONOMY.—For purposes of clause (i), the
22 2002 model year city fuel economy with re-
23 spect to a vehicle shall be determined on a
24 gasoline gallon equivalent basis as deter-
25 mined by the Administrator of the Envi-

1 ronmental Protection Agency using the ta-
 2 bles provided in subsection (b)(2)(B) with
 3 respect to such vehicle.

4 “(C) INCREASE FOR ACCELERATED EMIS-
 5 SIONS PERFORMANCE.—The amount deter-
 6 mined under subparagraph (A)(ii) with respect
 7 to an applicable heavy duty hybrid motor vehi-
 8 cle shall be increased by the increased credit
 9 amount determined in accordance with the fol-
 10 lowing tables:

11 “(i) In the case of a vehicle which has
 12 a gross vehicle weight rating of not more
 13 than 14,000 pounds:

“If the model year is:	The increased credit amount is:
2004	\$2,500
2005	\$2,000
2006	\$1,500.

14 “(ii) In the case of a vehicle which
 15 has a gross vehicle weight rating of more
 16 than 14,000 pounds but not more than
 17 26,000 pounds:

“If the model year is:	The increased credit amount is:
2004	\$6,500
2005	\$5,250
2006	\$4,000.

18 “(iii) In the case of a vehicle which
 19 has a gross vehicle weight rating of more
 20 than 26,000 pounds:

“If the model year is:	The increased credit amount is:
2004	\$10,000

If the model year is:	The increased credit amount is:
2005	\$8,000
2006	\$6,000.

1 “(D) DEFINITIONS RELATING TO CREDIT
2 AMOUNT.—

3 “(i) APPLICABLE HEAVY DUTY HY-
4 BRID MOTOR VEHICLE.—For purposes of
5 subparagraph (C), the term ‘applicable
6 heavy duty hybrid motor vehicle’ means a
7 heavy duty hybrid motor vehicle which is
8 powered by an internal combustion or heat
9 engine which is certified as meeting the
10 emission standards set in the regulations
11 prescribed by the Administrator of the En-
12 vironmental Protection Agency for 2007
13 and later model year diesel heavy duty en-
14 gines, or for 2008 and later model year
15 ottocycle heavy duty engines, as applicable.

16 “(ii) MAXIMUM AVAILABLE POWER.—

17 “(I) PASSENGER AUTOMOBILE,
18 MEDIUM DUTY PASSENGER VEHICLE,
19 OR LIGHT TRUCK.—For purposes of
20 subparagraph (A)(i), the term ‘max-
21 imum available power’ means the
22 maximum power available from the re-
23 chargeable energy storage system,
24 during a standard 10 second pulse

1 power or equivalent test, divided by
2 such maximum power and the SAE
3 net power of the heat engine.

4 “(II) HEAVY DUTY HYBRID
5 MOTOR VEHICLE.—For purposes of
6 subparagraph (A)(ii), the term ‘max-
7 imum available power’ means the
8 maximum power available from the re-
9 chargeable energy storage system,
10 during a standard 10 second pulse
11 power or equivalent test, divided by
12 the vehicle’s total traction power. The
13 term ‘total traction power’ means the
14 sum of the peak power from the re-
15 chargeable energy storage system and
16 the heat engine peak power of the ve-
17 hicle, except that if such storage sys-
18 tem is the sole means by which the ve-
19 hicle can be driven, the total traction
20 power is the peak power of such stor-
21 age system.

22 “(3) NEW QUALIFIED HYBRID MOTOR VEHI-
23 CLE.—For purposes of this subsection—

1 “(A) IN GENERAL.—The term ‘new quali-
2 fied hybrid motor vehicle’ means a motor
3 vehicle—

4 “(i) which draws propulsion energy
5 from onboard sources of stored energy
6 which are both—

7 “(I) an internal combustion or
8 heat engine using consumable fuel,
9 and

10 “(II) a rechargeable energy stor-
11 age system,

12 “(ii) which, in the case of a passenger
13 automobile, medium duty passenger vehi-
14 cle, or light truck—

15 “(I) for 2002 and later model ve-
16 hicles, has received a certificate of
17 conformity under the Clean Air Act
18 and meets or exceeds the equivalent
19 qualifying California low emission ve-
20 hicle standard under section 243(e)(2)
21 of the Clean Air Act for that make
22 and model year, and

23 “(II) for 2004 and later model
24 vehicles, has received a certificate that
25 such vehicle meets or exceeds the Bin

1 5 Tier II emission level established in
2 regulations prescribed by the Adminis-
3 trator of the Environmental Protec-
4 tion Agency under section 202(i) of
5 the Clean Air Act for that make and
6 model year vehicle,

7 “(iii) which, in the case of a heavy
8 duty hybrid motor vehicle, has an internal
9 combustion or heat engine which has re-
10 ceived a certificate of conformity under the
11 Clean Air Act as meeting the emission
12 standards set in the regulations prescribed
13 by the Administrator of the Environmental
14 Protection Agency for 2004 through 2007
15 model year diesel heavy duty engines or
16 ottocycle heavy duty engines, as applicable,

17 “(iv) the original use of which com-
18 mences with the taxpayer,

19 “(v) which is acquired for use or lease
20 by the taxpayer and not for resale, and

21 “(vi) which is made by a manufac-
22 turer.

23 “(B) CONSUMABLE FUEL.—For purposes
24 of subparagraph (A)(i)(I), the term ‘consumable
25 fuel’ means any solid, liquid, or gaseous matter

1 which releases energy when consumed by an
2 auxiliary power unit.

3 “(4) HEAVY DUTY HYBRID MOTOR VEHICLE.—

4 For purposes of this subsection, the term ‘heavy
5 duty hybrid motor vehicle’ means a new qualified hy-
6 brid motor vehicle which has a gross vehicle weight
7 rating of more than 8,500 pounds. Such term does
8 not include a medium duty passenger vehicle.

9 “(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR
10 VEHICLE CREDIT.—

11 “(1) ALLOWANCE OF CREDIT.—Except as pro-
12 vided in paragraph (5), the new qualified alternative
13 fuel motor vehicle credit determined under this sub-
14 section is an amount equal to the applicable percent-
15 age of the incremental cost of any new qualified al-
16 ternative fuel motor vehicle placed in service by the
17 taxpayer during the taxable year.

18 “(2) APPLICABLE PERCENTAGE.—For purposes
19 of paragraph (1), the applicable percentage with re-
20 spect to any new qualified alternative fuel motor ve-
21 hicle is—

22 “(A) 40 percent, plus

23 “(B) 30 percent, if such vehicle—

24 “(i) has received a certificate of con-
25 formity under the Clean Air Act and meets

1 or exceeds the most stringent standard
2 available for certification under the Clean
3 Air Act for that make and model year vehi-
4 cle (other than a zero emission standard),
5 or

6 “(ii) has received an order certifying
7 the vehicle as meeting the same require-
8 ments as vehicles which may be sold or
9 leased in California and meets or exceeds
10 the most stringent standard available for
11 certification under the State laws of Cali-
12 fornia (enacted in accordance with a waiv-
13 er granted under section 209(b) of the
14 Clean Air Act) for that make and model
15 year vehicle (other than a zero emission
16 standard).

17 For purposes of the preceding sentence, in the case
18 of any new qualified alternative fuel motor vehicle
19 which weighs more than 14,000 pounds gross vehicle
20 weight rating, the most stringent standard available
21 shall be such standard available for certification on
22 the date of the enactment of the Energy Tax Incen-
23 tives Act.

24 “(3) INCREMENTAL COST.—For purposes of
25 this subsection, the incremental cost of any new

1 qualified alternative fuel motor vehicle is equal to
2 the amount of the excess of the manufacturer's sug-
3 gested retail price for such vehicle over such price
4 for a gasoline or diesel fuel motor vehicle of the
5 same model, to the extent such amount does not
6 exceed—

7 “(A) \$5,000, if such vehicle has a gross ve-
8 hicle weight rating of not more than 8,500
9 pounds,

10 “(B) \$10,000, if such vehicle has a gross
11 vehicle weight rating of more than 8,500
12 pounds but not more than 14,000 pounds,

13 “(C) \$25,000, if such vehicle has a gross
14 vehicle weight rating of more than 14,000
15 pounds but not more than 26,000 pounds, and

16 “(D) \$40,000, if such vehicle has a gross
17 vehicle weight rating of more than 26,000
18 pounds.

19 “(4) NEW QUALIFIED ALTERNATIVE FUEL
20 MOTOR VEHICLE.—For purposes of this
21 subsection—

22 “(A) IN GENERAL.—The term ‘new quali-
23 fied alternative fuel motor vehicle’ means any
24 motor vehicle—

1 “(i) which is only capable of operating
2 on an alternative fuel,

3 “(ii) the original use of which com-
4 mences with the taxpayer,

5 “(iii) which is acquired by the tax-
6 payer for use or lease, but not for resale,
7 and

8 “(iv) which is made by a manufac-
9 turer.

10 “(B) ALTERNATIVE FUEL.—The term ‘al-
11 ternative fuel’ means compressed natural gas,
12 liquefied natural gas, liquefied petroleum gas,
13 hydrogen, and any liquid at least 85 percent of
14 the volume of which consists of methanol.

15 “(5) CREDIT FOR MIXED-FUEL VEHICLES.—

16 “(A) IN GENERAL.—In the case of a
17 mixed-fuel vehicle placed in service by the tax-
18 payer during the taxable year, the credit deter-
19 mined under this subsection is an amount equal
20 to—

21 “(i) in the case of a 75/25 mixed-fuel
22 vehicle, 70 percent of the credit which
23 would have been allowed under this sub-
24 section if such vehicle was a qualified alter-
25 native fuel motor vehicle, and

1 “(ii) in the case of a 90/10 mixed-fuel
2 vehicle, 90 percent of the credit which
3 would have been allowed under this sub-
4 section if such vehicle was a qualified alter-
5 native fuel motor vehicle.

6 “(B) MIXED-FUEL VEHICLE.—For pur-
7 poses of this subsection, the term ‘mixed-fuel
8 vehicle’ means any motor vehicle described in
9 subparagraph (C) or (D) of paragraph (3),
10 which—

11 “(i) is certified by the manufacturer
12 as being able to perform efficiently in nor-
13 mal operation on a combination of an al-
14 ternative fuel and a petroleum-based fuel,

15 “(ii) either—

16 “(I) has received a certificate of
17 conformity under the Clean Air Act,
18 or

19 “(II) has received an order certi-
20 fying the vehicle as meeting the same
21 requirements as vehicles which may be
22 sold or leased in California and meets
23 or exceeds the low emission vehicle
24 standard under section 88.105–94 of

1 title 40, Code of Federal Regulations,
2 for that make and model year vehicle,
3 “(iii) the original use of which com-
4 mences with the taxpayer,
5 “(iv) which is acquired by the tax-
6 payer for use or lease, but not for resale,
7 and
8 “(v) which is made by a manufac-
9 turer.

10 “(C) 75/25 MIXED-FUEL VEHICLE.—For
11 purposes of this subsection, the term ‘75/25
12 mixed-fuel vehicle’ means a mixed-fuel vehicle
13 which operates using at least 75 percent alter-
14 native fuel and not more than 25 percent petro-
15 leum-based fuel.

16 “(D) 90/10 MIXED-FUEL VEHICLE.—For
17 purposes of this subsection, the term ‘90/10
18 mixed-fuel vehicle’ means a mixed-fuel vehicle
19 which operates using at least 90 percent alter-
20 native fuel and not more than 10 percent petro-
21 leum-based fuel.

22 “(e) APPLICATION WITH OTHER CREDITS.—The
23 credit allowed under subsection (a) for any taxable year
24 shall not exceed the excess (if any) of—

1 “(1) the regular tax for the taxable year re-
2 duced by the sum of the credits allowable under sub-
3 part A and sections 27, 29, and 30, over

4 “(2) the tentative minimum tax for the taxable
5 year.

6 “(f) OTHER DEFINITIONS AND SPECIAL RULES.—

7 For purposes of this section—

8 “(1) MOTOR VEHICLE.—The term ‘motor vehi-
9 cle’ has the meaning given such term by section
10 30(c)(2).

11 “(2) CITY FUEL ECONOMY.—The city fuel econ-
12 omy with respect to any vehicle shall be measured in
13 a manner which is substantially similar to the man-
14 ner city fuel economy is measured in accordance
15 with procedures under part 600 of subchapter Q of
16 chapter I of title 40, Code of Federal Regulations,
17 as in effect on the date of the enactment of this sec-
18 tion.

19 “(3) OTHER TERMS.—The terms ‘automobile’,
20 ‘passenger automobile’, ‘medium duty passenger ve-
21 hicle’, ‘light truck’, and ‘manufacturer’ have the
22 meanings given such terms in regulations prescribed
23 by the Administrator of the Environmental Protec-
24 tion Agency for purposes of the administration of

1 title II of the Clean Air Act (42 U.S.C. 7521 et
2 seq.).

3 “(4) REDUCTION IN BASIS.—For purposes of
4 this subtitle, the basis of any property for which a
5 credit is allowable under subsection (a) shall be re-
6 duced by the amount of such credit so allowed (de-
7 termined without regard to subsection (e)).

8 “(5) NO DOUBLE BENEFIT.—The amount of
9 any deduction or other credit allowable under this
10 chapter—

11 “(A) for any incremental cost taken into
12 account in computing the amount of the credit
13 determined under subsection (d) shall be re-
14 duced by the amount of such credit attributable
15 to such cost, and

16 “(B) with respect to a vehicle described
17 under subsection (b) or (c), shall be reduced by
18 the amount of credit allowed under subsection
19 (a) for such vehicle for the taxable year.

20 “(6) PROPERTY USED BY TAX-EXEMPT ENTI-
21 TIES.—In the case of a credit amount which is al-
22 lowable with respect to a motor vehicle which is ac-
23 quired by an entity exempt from tax under this
24 chapter, the person which sells or leases such vehicle
25 to the entity shall be treated as the taxpayer with

1 respect to the vehicle for purposes of this section
2 and the credit shall be allowed to such person, but
3 only if the person clearly discloses to the entity at
4 the time of any sale or lease the specific amount of
5 any credit otherwise allowable to the entity under
6 this section.

7 “(7) RECAPTURE.—The Secretary shall, by reg-
8 ulations, provide for recapturing the benefit of any
9 credit allowable under subsection (a) with respect to
10 any property which ceases to be property eligible for
11 such credit (including recapture in the case of a
12 lease period of less than the economic life of a vehi-
13 cle).

14 “(8) PROPERTY USED OUTSIDE UNITED
15 STATES, ETC., NOT QUALIFIED.—No credit shall be
16 allowed under subsection (a) with respect to any
17 property referred to in section 50(b) or with respect
18 to the portion of the cost of any property taken into
19 account under section 179.

20 “(9) ELECTION TO NOT TAKE CREDIT.—No
21 credit shall be allowed under subsection (a) for any
22 vehicle if the taxpayer elects to not have this section
23 apply to such vehicle.

24 “(10) CARRYBACK AND CARRYFORWARD AL-
25 LOWED.—

1 “(A) IN GENERAL.—If the credit allowable
2 under subsection (a) for a taxable year exceeds
3 the amount of the limitation under subsection
4 (e) for such taxable year (in this paragraph re-
5 ferred to as the ‘unused credit year’), such ex-
6 cess shall be a credit carryback to each of the
7 3 taxable years preceding the unused credit
8 year and a credit carryforward to each of the
9 20 taxable years following the unused credit
10 year, except that no excess may be carried to a
11 taxable year beginning before January 1, 2005.

12 “(B) RULES.—Rules similar to the rules of
13 section 39 shall apply with respect to the credit
14 carryback and credit carryforward under sub-
15 paragraph (A).

16 “(11) INTERACTION WITH AIR QUALITY AND
17 MOTOR VEHICLE SAFETY STANDARDS.—Unless oth-
18 erwise provided in this section, a motor vehicle shall
19 not be considered eligible for a credit under this sec-
20 tion unless such vehicle is in compliance with—

21 “(A) the applicable provisions of the Clean
22 Air Act for the applicable make and model year
23 of the vehicle (or applicable air quality provi-
24 sions of State law in the case of a State which

1 has adopted such provision under a waiver
2 under section 209(b) of the Clean Air Act), and

3 “(B) the motor vehicle safety provisions of
4 sections 30101 through 30169 of title 49,
5 United States Code.

6 “(g) REGULATIONS.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), the Secretary shall promulgate such regu-
9 lations as necessary to carry out the provisions of
10 this section.

11 “(2) COORDINATION IN PRESCRIPTION OF CER-
12 TAIN REGULATIONS.—The Secretary of the Treas-
13 ury, in coordination with the Secretary of Transpor-
14 tation and the Administrator of the Environmental
15 Protection Agency, shall prescribe such regulations
16 as necessary to determine whether a motor vehicle
17 meets the requirements to be eligible for a credit
18 under this section.

19 “(h) TERMINATION.—This section shall not apply to
20 any property purchased after—

21 “(1) in the case of a new qualified fuel cell
22 motor vehicle (as described in subsection (b)), De-
23 cember 31, 2011, and

24 “(2) in the case of any other property, Decem-
25 ber 31, 2006.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 1016(a) is amended by striking
3 “and” at the end of paragraph (27), by striking the
4 period at the end of paragraph (28) and inserting “,
5 and”, and by adding at the end the following new
6 paragraph:

7 “(29) to the extent provided in section
8 30B(f)(4).”.

9 (2) Section 55(c)(2) is amended by inserting
10 “30B(e),” after “30(b)(3),”.

11 (3) Section 6501(m) is amended by inserting
12 “30B(f)(9),” after “30(d)(4),”.

13 (4) The table of sections for subpart B of part
14 IV of subchapter A of chapter 1 is amended by in-
15 serting after the item relating to section 30A the fol-
16 lowing new item:

“Sec. 30B. Alternative motor vehicle credit.”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to property placed in service after
19 December 31, 2004, in taxable years ending after such
20 date.

21 **SEC. 812. MODIFICATION OF CREDIT FOR QUALIFIED ELEC-**
22 **TRIC VEHICLES.**

23 (a) AMOUNT OF CREDIT.—

1 (1) IN GENERAL.—Section 30(a) (relating to al-
2 lowance of credit) is amended by striking “10 per-
3 cent of”.

4 (2) LIMITATION OF CREDIT ACCORDING TO
5 TYPE OF VEHICLE.—Paragraph (1) of section 30(b)
6 (relating to limitations) is amended to read as fol-
7 lows:

8 “(1) LIMITATION ACCORDING TO TYPE OF VE-
9 HICLE.—The amount of the credit allowed under
10 subsection (a) for any vehicle shall not exceed the
11 greatest of the following amounts applicable to such
12 vehicle:

13 “(A) In the case of a vehicle with a gross
14 vehicle weight rating not exceeding 8,500
15 pounds—

16 “(i) except as provided in clause (ii)
17 or (iii), \$3,500,

18 “(ii) \$6,000, if such vehicle is—

19 “(I) capable of a driving range of
20 at least 100 miles on a single charge
21 of the vehicle’s rechargeable batteries
22 as measured pursuant to the urban
23 dynamometer schedules under appen-
24 dix I to part 86 of title 40, Code of
25 Federal Regulations, or

1 “(II) capable of a payload capac-
2 ity of at least 1,000 pounds, and

3 “(iii) if such vehicle is a low-speed ve-
4 hicle which conforms to Standard 500 pre-
5 scribed by the Secretary of Transportation
6 (49 C.F.R. 571.500), as in effect on the
7 date of the enactment of the Energy Tax
8 Incentives Act, the lesser of—

9 “(I) 10 percent of the manufac-
10 turer’s suggested retail price of the
11 vehicle, or

12 “(II) \$1,500.

13 “(B) In the case of a vehicle with a gross
14 vehicle weight rating exceeding 8,500 but not
15 exceeding 14,000 pounds, \$10,000.

16 “(C) In the case of a vehicle with a gross
17 vehicle weight rating exceeding 14,000 but not
18 exceeding 26,000 pounds, \$20,000.

19 “(D) In the case of a vehicle with a gross
20 vehicle weight rating exceeding 26,000 pounds,
21 \$40,000.”.

22 (b) QUALIFIED BATTERY ELECTRIC VEHICLE.—

23 (1) IN GENERAL.—Section 30(c)(1)(A) (defin-
24 ing qualified electric vehicle) is amended to read as
25 follows:

1 “(A) which is—

2 “(i) operated solely by use of a bat-
3 tery or battery pack, or

4 “(ii) powered primarily through the
5 use of an electric battery or battery pack
6 using a flywheel or capacitor which stores
7 energy produced by an electric motor
8 through regenerative braking to assist in
9 vehicle operation,”.

10 (2) LEASED VEHICLES.—Section 30(c)(1)(C) is
11 amended by inserting “or lease” after “use”.

12 (3) CONFORMING AMENDMENTS.—

13 (A) Subsections (a), (b)(2), and (c) of sec-
14 tion 30 are each amended by inserting “bat-
15 tery” after “qualified” each place it appears.

16 (B) The heading of subsection (c) of sec-
17 tion 30 is amended by inserting “BATTERY”
18 after “QUALIFIED”.

19 (C) The heading of section 30 is amended
20 by inserting “**BATTERY**” after “**QUALIFIED**”.

21 (D) The item relating to section 30 in the
22 table of sections for subpart B of part IV of
23 subchapter A of chapter 1 is amended by in-
24 serting “battery” after “qualified”.

1 (E) Section 179A(c)(3) is amended by in-
2 serting “battery” before “electric”.

3 (F) The heading of paragraph (3) of sec-
4 tion 179A(c) is amended by inserting “BAT-
5 TERY” before “ELECTRIC”.

6 (c) ADDITIONAL SPECIAL RULES.—Section 30(d)
7 (relating to special rules) is amended by adding at the end
8 the following new paragraphs:

9 “(5) NO DOUBLE BENEFIT.—The amount of
10 any deduction or other credit allowable under this
11 chapter for any cost taken into account in com-
12 puting the amount of the credit determined under
13 subsection (a) shall be reduced by the amount of
14 such credit attributable to such cost.

15 “(6) PROPERTY USED BY TAX-EXEMPT ENTI-
16 TIES.—In the case of a credit amount which is al-
17 lowable with respect to a vehicle which is acquired
18 by an entity exempt from tax under this chapter, the
19 person which sells or leases such vehicle to the entity
20 shall be treated as the taxpayer with respect to the
21 vehicle for purposes of this section and the credit
22 shall be allowed to such person, but only if the per-
23 son clearly discloses to the entity at the time of any
24 sale or lease the specific amount of any credit other-
25 wise allowable to the entity under this section.

1 “(7) CARRYBACK AND CARRYFORWARD AL-
2 LOWED.—

3 “(A) IN GENERAL.—If the credit allowable
4 under subsection (a) for a taxable year exceeds
5 the amount of the limitation under subsection
6 (b)(2) for such taxable year (in this paragraph
7 referred to as the ‘unused credit year’), such
8 excess shall be a credit carryback to each of the
9 3 taxable years preceding the unused credit
10 year and a credit carryforward to each of the
11 20 taxable years following the unused credit
12 year, except that no excess may be carried to a
13 taxable year beginning before January 1, 2005.

14 “(B) RULES.—Rules similar to the rules of
15 section 39 shall apply with respect to the credit
16 carryback and credit carryforward under sub-
17 paragraph (A).”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to property placed in service after
20 December 31, 2004, in taxable years ending after such
21 date.

22 **SEC. 813. CREDIT FOR INSTALLATION OF ALTERNATIVE**
23 **FUELING STATIONS.**

24 (a) IN GENERAL.—Subpart B of part IV of sub-
25 chapter A of chapter 1 (relating to foreign tax credit, etc.),

1 as amended by this Act, is amended by adding at the end
2 the following new section:

3 **“SEC. 30C. CLEAN-FUEL VEHICLE REFUELING PROPERTY**
4 **CREDIT.**

5 “(a) CREDIT ALLOWED.—There shall be allowed as
6 a credit against the tax imposed by this chapter for the
7 taxable year an amount equal to 50 percent of the amount
8 paid or incurred by the taxpayer during the taxable year
9 for the installation of qualified clean-fuel vehicle refueling
10 property.

11 “(b) LIMITATION.—The credit allowed under sub-
12 section (a)—

13 “(1) with respect to any retail clean-fuel vehicle
14 refueling property, shall not exceed \$30,000, and

15 “(2) with respect to any residential clean-fuel
16 vehicle refueling property, shall not exceed \$1,000.

17 “(c) YEAR CREDIT ALLOWED.—Notwithstanding
18 subsection (a), no credit shall be allowed under subsection
19 (a) with respect to any qualified clean-fuel vehicle refuel-
20 ing property before the taxable year in which the property
21 is placed in service by the taxpayer.

22 “(d) DEFINITIONS.—For purposes of this section—

23 “(1) QUALIFIED CLEAN-FUEL VEHICLE RE-
24 FUELING PROPERTY.—The term ‘qualified clean-fuel

1 vehicle refueling property' has the same meaning
2 given such term by section 179A(d).

3 “(2) RESIDENTIAL CLEAN-FUEL VEHICLE RE-
4 FUELING PROPERTY.—The term ‘residential clean-
5 fuel vehicle refueling property’ means qualified
6 clean-fuel vehicle refueling property which is in-
7 stalled on property which is used as the principal
8 residence (within the meaning of section 121) of the
9 taxpayer.

10 “(3) RETAIL CLEAN-FUEL VEHICLE REFUELING
11 PROPERTY.—The term ‘retail clean-fuel vehicle re-
12 fueling property’ means qualified clean-fuel vehicle
13 refueling property which is installed on property
14 (other than property described in paragraph (2))
15 used in a trade or business of the taxpayer.

16 “(e) APPLICATION WITH OTHER CREDITS.—The
17 credit allowed under subsection (a) for any taxable year
18 shall not exceed the excess (if any) of—

19 “(1) the regular tax for the taxable year re-
20 duced by the sum of the credits allowable under sub-
21 part A and sections 27, 29, 30, and 30B, over

22 “(2) the tentative minimum tax for the taxable
23 year.

24 “(f) BASIS REDUCTION.—For purposes of this title,
25 the basis of any property shall be reduced by the portion

1 of the cost of such property taken into account under sub-
2 section (a).

3 “(g) NO DOUBLE BENEFIT.—

4 “(1) COORDINATION WITH OTHER DEDUCTIONS
5 AND CREDITS.—Except as provided in paragraph
6 (2), the amount of any deduction or other credit al-
7 lowable under this chapter for any cost taken into
8 account in computing the amount of the credit de-
9 termined under subsection (a) shall be reduced by
10 the amount of such credit attributable to such cost.

11 “(2) NO DEDUCTION ALLOWED UNDER SECTION
12 179A.—No deduction shall be allowed under section
13 179A with respect to any property with respect to
14 which a credit is allowed under subsection (a).

15 “(h) REFUELING PROPERTY INSTALLED FOR TAX-
16 EXEMPT ENTITIES.—In the case of qualified clean-fuel ve-
17 hicle refueling property installed on property owned or
18 used by an entity exempt from tax under this chapter, the
19 person which installs such refueling property for the entity
20 shall be treated as the taxpayer with respect to the refuel-
21 ing property for purposes of this section (and such refuel-
22 ing property shall be treated as retail clean-fuel vehicle
23 refueling property) and the credit shall be allowed to such
24 person, but only if the person clearly discloses to the entity

1 in any installation contract the specific amount of the
2 credit allowable under this section.

3 “(i) CARRYFORWARD ALLOWED.—

4 “(1) IN GENERAL.—If the credit allowable
5 under subsection (a) for a taxable year exceeds the
6 amount of the limitation under subsection (e) for
7 such taxable year, such excess shall be a credit
8 carryforward to each of the 20 taxable years fol-
9 lowing such taxable year.

10 “(2) RULES.—Rules similar to the rules of sec-
11 tion 39 shall apply with respect to the credit
12 carryforward under paragraph (1).

13 “(j) SPECIAL RULES.—Rules similar to the rules of
14 paragraphs (4) and (5) of section 179A(e) shall apply.

15 “(k) REGULATIONS.—The Secretary shall prescribe
16 such regulations as necessary to carry out the provisions
17 of this section.

18 “(l) TERMINATION.—This section shall not apply to
19 any property placed in service—

20 “(1) in the case of property relating to hydro-
21 gen, after December 31, 2011, and

22 “(2) in the case of any other property, after
23 December 31, 2007.”.

1 (b) MODIFICATIONS TO EXTENSION OF DEDUCTION
2 FOR CERTAIN REFUELING PROPERTY.—Subsection (f) of
3 section 179A is amended to read as follows:

4 “(f) TERMINATION.—This section shall not apply to
5 any property placed in service—

6 “(1) in the case of property relating to hydro-
7 gen, after December 31, 2011, and

8 “(2) in the case of any other property, after
9 December 31, 2007.”.

10 (c) INCENTIVE FOR PRODUCTION OF HYDROGEN AT
11 QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROP-
12 erty.—Section 179A(d) (defining qualified clean-fuel ve-
13 hicle refueling property) is amended by adding at the end
14 the following new flush sentence:

15 “In the case of clean-burning fuel which is hydrogen pro-
16 duced from another clean-burning fuel, paragraph (3)(A)
17 shall be applied by substituting ‘production, storage, or
18 dispensing’ for ‘storage or dispensing’ both places it ap-
19 pears.”.

20 (d) CONFORMING AMENDMENTS.—

21 (1) Section 1016(a), as amended by this Act, is
22 amended by striking “and” at the end of paragraph
23 (28), by striking the period at the end of paragraph
24 (29) and inserting “, and”, and by adding at the
25 end the following new paragraph:

1 “(30) to the extent provided in section
2 30C(f).”.

3 (2) Section 55(c)(2), as amended by this Act, is
4 amended by inserting “30C(e),” after “30B(e),”.

5 (3) The table of sections for subpart B of part
6 IV of subchapter A of chapter 1, as amended by this
7 Act, is amended by inserting after the item relating
8 to section 30B the following new item:

 “Sec. 30C. Clean-fuel vehicle refueling property credit.”.

9 (e) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to property placed in service after
11 December 31, 2004, in taxable years ending after such
12 date.

13 **SEC. 814. CREDIT FOR RETAIL SALE OF ALTERNATIVE**
14 **FUELS AS MOTOR VEHICLE FUEL.**

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

19 **“SEC. 40A. CREDIT FOR RETAIL SALE OF ALTERNATIVE**
20 **FUELS AS MOTOR VEHICLE FUEL.**

21 “(a) GENERAL RULE.—For purposes of section 38,
22 the alternative fuel retail sales credit for any taxable year
23 is the applicable amount for each gasoline gallon equiva-
24 lent of alternative fuel sold at retail by the taxpayer during
25 such year as a fuel to propel any qualified motor vehicle.

1 “(b) DEFINITIONS.—For purposes of this section—

2 “(1) APPLICABLE AMOUNT.—The term ‘applica-
3 ble amount’ means the amount determined in ac-
4 cordance with the following table:

“In the case of any taxable year ending in—	The applicable amount is—
2005 and 2006	50 cents.

5 “(2) ALTERNATIVE FUEL.—The term ‘alter-
6 native fuel’ means compressed natural gas, liquefied
7 natural gas, liquefied petroleum gas, hydrogen, or
8 any liquid at least 85 percent of the volume of which
9 consists of methanol or ethanol.

10 “(3) GASOLINE GALLON EQUIVALENT.—The
11 term ‘gasoline gallon equivalent’ means, with respect
12 to any alternative fuel, the amount (determined by
13 the Secretary) of such fuel having a Btu content of
14 114,000.

15 “(4) QUALIFIED MOTOR VEHICLE.—The term
16 ‘qualified motor vehicle’ means any motor vehicle (as
17 defined in section 30(c)(2)) which meets any appli-
18 cable Federal or State emissions standards with re-
19 spect to each fuel by which such vehicle is designed
20 to be propelled.

21 “(5) SOLD AT RETAIL.—

22 “(A) IN GENERAL.—The term ‘sold at re-
23 tail’ means the sale, for a purpose other than

1 resale, after manufacture, production, or impor-
2 tation.

3 “(B) USE TREATED AS SALE.—If any per-
4 son uses alternative fuel (including any use
5 after importation) as a fuel to propel any new
6 qualified alternative fuel motor vehicle (as de-
7 fined in section 30B(d)(4)) before such fuel is
8 sold at retail, then such use shall be treated in
9 the same manner as if such fuel were sold at
10 retail as a fuel to propel such a vehicle by such
11 person.

12 “(c) NO DOUBLE BENEFIT.—The amount of any de-
13 duction or other credit allowable under this chapter for
14 any fuel taken into account in computing the amount of
15 the credit determined under subsection (a) shall be re-
16 duced by the amount of such credit attributable to such
17 fuel.

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

22 “(e) TERMINATION.—This section shall not apply to
23 any fuel sold at retail after December 31, 2006.”.

24 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
25 tion 38(b) (relating to current year business credit) is

1 amended by striking “plus” at the end of paragraph (20),
2 by striking the period at the end of paragraph (21) and
3 inserting “, plus”, and by adding at the end the following
4 new paragraph:

5 “(22) the alternative fuel retail sales credit de-
6 termined under section 40A(a).”.

7 (c) LIMITATION ON CARRYBACK.—

8 (1) IN GENERAL.—Subsection (d) of section 39,
9 as amended by this Act, is amended to read as fol-
10 lows:

11 “(d) TRANSITIONAL RULE.—No portion of the un-
12 used business credit for any taxable year which is attrib-
13 utable to a credit specified in section 38(b) may be carried
14 back to any taxable year before the first taxable year for
15 which such specified credit is allowable.”.

16 (2) EFFECTIVE DATE.—The amendment made
17 by paragraph (1) shall apply with respect to taxable
18 years beginning after December 31, 2003.

19 (d) CLERICAL AMENDMENT.—The table of sections
20 for subpart D of part IV of subchapter A of chapter 1
21 is amended by inserting after the item relating to section
22 40 the following new item:

 “Sec. 40A. Credit for retail sale of alternative fuels as motor vehicle fuel.”.

23 (e) EFFECTIVE DATE.—Except as otherwise pro-
24 vided, the amendments made by this section shall apply

1 to fuel sold at retail after December 31, 2004, in taxable
2 years ending after such date.

3 **SEC. 815. SMALL ETHANOL PRODUCER CREDIT.**

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

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

11 “(A) ELECTION TO ALLOCATE.—

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

21 “(ii) FORM AND EFFECT OF ELEC-
22 TION.—An election under clause (i) for any
23 taxable year shall be made on a timely
24 filed return for such year. Such election,

1 once made, shall be irrevocable for such
2 taxable year.

3 “(B) TREATMENT OF ORGANIZATIONS AND
4 PATRONS.—The amount of the credit appor-
5 tioned to patrons under subparagraph (A)—

6 “(i) shall not be included in the
7 amount determined under subsection (a)
8 with respect to the organization for the
9 taxable year, and

10 “(ii) shall be included in the amount
11 determined under subsection (a) for the
12 taxable year of each patron for which the
13 patronage dividends for the taxable year
14 described in subparagraph (A) are included
15 in gross income.

16 “(C) SPECIAL RULES FOR DECREASE IN
17 CREDITS FOR TAXABLE YEAR.—If the amount
18 of the credit of a cooperative organization de-
19 termined under subsection (a)(3) for a taxable
20 year is less than the amount of such credit
21 shown on the return of the cooperative organi-
22 zation for such year, an amount equal to the
23 excess of—

24 “(i) such reduction, over

1 “(ii) the amount not apportioned to
2 such patrons under subparagraph (A) for
3 the taxable year,
4 shall be treated as an increase in tax imposed
5 by this chapter on the organization. Such in-
6 crease shall not be treated as tax imposed by
7 this chapter for purposes of determining the
8 amount of any credit under this chapter or for
9 purposes of section 55.”.

10 (b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER
11 CREDIT.—

12 (1) DEFINITION OF SMALL ETHANOL PRO-
13 DUCER.—Section 40(g) (relating to definitions and
14 special rules for eligible small ethanol producer cred-
15 it) is amended by striking “30,000,000” each place
16 it appears and inserting “60,000,000”.

17 (2) SMALL ETHANOL PRODUCER CREDIT NOT A
18 PASSIVE ACTIVITY CREDIT.—Clause (i) of section
19 469(d)(2)(A) is amended by striking “subpart D”
20 and inserting “subpart D, other than section
21 40(a)(3),”.

22 (3) SMALL ETHANOL PRODUCER CREDIT NOT
23 ADDED BACK TO INCOME UNDER SECTION 87.—Sec-
24 tion 87 (relating to income inclusion of alcohol fuel
25 credit) is amended to read as follows:

1 **“SEC. 87. ALCOHOL FUEL CREDIT.**

2 “Gross income includes an amount equal to the sum
3 of—

4 “(1) the amount of the alcohol mixture credit
5 determined with respect to the taxpayer for the tax-
6 able year under section 40(a)(1), and

7 “(2) the alcohol credit determined with respect
8 to the taxpayer for the taxable year under section
9 40(a)(2).”.

10 (c) CONFORMING AMENDMENT.—Section 1388 (re-
11 lating to definitions and special rules for cooperative orga-
12 nizations) is amended by adding at the end the following
13 new subsection:

14 “(k) CROSS REFERENCE.—For provisions relating to
15 the apportionment of the alcohol fuels credit between coop-
16 erative organizations and their patrons, see section
17 40(g)(6).”.

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

21 **Subtitle C—Conservation and**
22 **Energy Efficiency Provisions**

23 **SEC. 821. CREDIT FOR CONSTRUCTION OF NEW ENERGY EF-**
24 **FICIENT HOME.**

25 (a) IN GENERAL.—Subpart D of part IV of sub-
26 chapter A of chapter 1 (relating to business related cred-

1 its), as amended by this Act, is amended by adding at
2 the end the following new section:

3 **“SEC. 45K. NEW ENERGY EFFICIENT HOME CREDIT.**

4 “(a) IN GENERAL.—For purposes of section 38, in
5 the case of an eligible contractor, the credit determined
6 under this section for the taxable year is an amount equal
7 to the aggregate adjusted bases of all energy efficient
8 property installed in a qualifying new home during con-
9 struction of such home.

10 “(b) LIMITATIONS.—

11 “(1) MAXIMUM CREDIT.—

12 “(A) IN GENERAL.—The credit allowed by
13 this section with respect to a qualifying new
14 home shall not exceed—

15 “(i) in the case of a 30-percent home,
16 \$1,000, and

17 “(ii) in the case of a 50-percent home,
18 \$2,000.

19 “(B) 30- OR 50-PERCENT HOME.—For pur-
20 poses of subparagraph (A)—

21 “(i) 30-PERCENT HOME.—The term
22 ‘30-percent home’ means—

23 “(I) a qualifying new home which
24 is certified to have a projected level of
25 annual heating and cooling energy

1 consumption, measured in terms of
2 average annual energy cost to the
3 homeowner, which is at least 30 per-
4 cent less than the annual level of
5 heating and cooling energy consump-
6 tion of a qualifying new home con-
7 structed in accordance with the latest
8 standards of chapter 4 of the Inter-
9 national Energy Conservation Code
10 approved by the Department of En-
11 ergy before the construction of such
12 qualifying new home and any applica-
13 ble Federal minimum efficiency stand-
14 ards for equipment, or

15 “(II) in the case of a qualifying
16 new home which is a manufactured
17 home, a home which meets the appli-
18 cable standards required by the Ad-
19 ministrator of the Environmental Pro-
20 tection Agency under the Energy Star
21 Labeled Homes program.

22 “(ii) 50-PERCENT HOME.—The term
23 ‘50-percent home’ means a qualifying new
24 home which would be described in clause

1 (i)(I) if 50 percent were substituted for 30
2 percent.

3 “(C) PRIOR CREDIT AMOUNTS ON SAME
4 HOME TAKEN INTO ACCOUNT.—The amount of
5 the credit otherwise allowable for the taxable
6 year with respect to a qualifying new home
7 under clause (i) or (ii) of subparagraph (A)
8 shall be reduced by the sum of the credits al-
9 lowed under subsection (a) to any taxpayer with
10 respect to the home for all preceding taxable
11 years.

12 “(2) COORDINATION WITH CERTAIN CREDITS.—
13 For purposes of this section—

14 “(A) the basis of any property referred to
15 in subsection (a) shall be reduced by that por-
16 tion of the basis of any property which is attrib-
17 utable to the rehabilitation credit (as deter-
18 mined under section 47(a)) or to the energy
19 credit (as determined under section 48(a)), and

20 “(B) expenditures taken into account
21 under section 25D, 47, or 48(a) shall not be
22 taken into account under this section.

23 “(3) PROVIDER LIMITATION.—Any eligible con-
24 tractor who directly or indirectly provides the guar-
25 antee of energy savings under a guarantee-based

1 method of certification described in subsection
2 (d)(1)(D) shall not be eligible to receive the credit
3 allowed by this section.

4 “(c) DEFINITIONS.—For purposes of this section—

5 “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-
6 ble contractor’ means—

7 “(A) the person who constructed the quali-
8 fying new home, or

9 “(B) in the case of a qualifying new home
10 which is a manufactured home, the manufac-
11 tured home producer of such home.

12 If more than 1 person is described in subparagraph
13 (A) or (B) with respect to any qualifying new home,
14 such term means the person designated as such by
15 the owner of such home.

16 “(2) ENERGY EFFICIENT PROPERTY.—The
17 term ‘energy efficient property’ means any energy
18 efficient building envelope component, and any en-
19 ergy efficient heating or cooling equipment or system
20 which can, individually or in combination with other
21 components, meet the requirements of this section.

22 “(3) QUALIFYING NEW HOME.—

23 “(A) IN GENERAL.—The term ‘qualifying
24 new home’ means a dwelling—

25 “(i) located in the United States,

1 “(ii) the construction of which is sub-
2 stantially completed after December 31,
3 2004, and

4 “(iii) the first use of which after con-
5 struction is as a principal residence (within
6 the meaning of section 121).

7 “(B) MANUFACTURED HOME INCLUDED.—
8 The term ‘qualifying new home’ includes a
9 manufactured home conforming to Federal
10 Manufactured Home Construction and Safety
11 Standards (24 C.F.R. 3280).

12 “(4) CONSTRUCTION.—The term ‘construction’
13 includes reconstruction and rehabilitation.

14 “(5) BUILDING ENVELOPE COMPONENT.—The
15 term ‘building envelope component’ means—

16 “(A) any insulation material or system
17 which is specifically and primarily designed to
18 reduce the heat loss or gain of a qualifying new
19 home when installed in or on such home,

20 “(B) exterior windows (including sky-
21 lights), and

22 “(C) exterior doors.

23 “(d) CERTIFICATION.—

24 “(1) METHOD OF CERTIFICATION.—

1 “(A) IN GENERAL.—A certification de-
2 scribed in subsection (b)(1)(B) shall be deter-
3 mined either by a component-based method, a
4 performance-based method, or a guarantee-
5 based method, or, in the case of a qualifying
6 new home which is a manufactured home, by a
7 method prescribed by the Administrator of the
8 Environmental Protection Agency under the
9 Energy Star Labeled Homes program.

10 “(B) COMPONENT-BASED METHOD.—A
11 component-based method is a method which
12 uses the applicable technical energy efficiency
13 specifications or ratings (including product la-
14 beling requirements) for the energy efficient
15 building envelope component or energy efficient
16 heating or cooling equipment. The Secretary
17 shall, in consultation with the Administrator of
18 the Environmental Protection Agency, develop
19 prescriptive component-based packages which
20 are equivalent in energy performance to prop-
21 erties which qualify under subparagraph (C).

22 “(C) PERFORMANCE-BASED METHOD.—

23 “(i) IN GENERAL.—A performance-
24 based method is a method which calculates
25 projected energy usage and cost reductions

1 in the qualifying new home in relation to
2 a new home—

3 “(I) heated by the same fuel
4 type, and

5 “(II) constructed in accordance
6 with the latest standards of chapter 4
7 of the International Energy Conserva-
8 tion Code approved by the Depart-
9 ment of Energy before the construc-
10 tion of such qualifying new home and
11 any applicable Federal minimum effi-
12 ciency standards for equipment.

13 “(ii) COMPUTER SOFTWARE.—Com-
14 puter software shall be used in support of
15 a performance-based method certification
16 under clause (i). Such software shall meet
17 procedures and methods for calculating en-
18 ergy and cost savings in regulations pro-
19 mulgated by the Secretary of Energy.

20 “(D) GUARANTEE-BASED METHOD.—

21 “(i) IN GENERAL.—A guarantee-based
22 method is a method which guarantees in
23 writing to the homeowner energy savings
24 of either 30 percent or 50 percent over the
25 2000 International Energy Conservation

1 Code for heating and cooling costs. The
2 guarantee shall be provided for a minimum
3 of 2 years and shall fully reimburse the
4 homeowner any heating and cooling costs
5 in excess of the guaranteed amount.

6 “(ii) COMPUTER SOFTWARE.—Com-
7 puter software shall be selected by the pro-
8 vider to support the guarantee-based meth-
9 od certification under clause (i). Such soft-
10 ware shall meet procedures and methods
11 for calculating energy and cost savings in
12 regulations promulgated by the Secretary
13 of Energy.

14 “(2) PROVIDER.—A certification described in
15 subsection (b)(1)(B) shall be provided by—

16 “(A) in the case of a component-based
17 method, a local building regulatory authority, a
18 utility, or a home energy rating organization,

19 “(B) in the case of a performance-based
20 method or a guarantee-based method, an indi-
21 vidual recognized by an organization designated
22 by the Secretary for such purposes, or

23 “(C) in the case of a qualifying new home
24 which is a manufactured home, a manufactured
25 home primary inspection agency.

1 “(3) FORM.—

2 “(A) IN GENERAL.—A certification de-
3 scribed in subsection (b)(1)(B) shall be made in
4 writing in a manner which specifies in readily
5 verifiable fashion the energy efficient building
6 envelope components and energy efficient heat-
7 ing or cooling equipment installed and their re-
8 spective rated energy efficiency performance,
9 and

10 “(i) in the case of a performance-
11 based method, accompanied by a written
12 analysis documenting the proper applica-
13 tion of a permissible energy performance
14 calculation method to the specific cir-
15 cumstances of such qualifying new home,
16 and

17 “(ii) in the case of a qualifying new
18 home which is a manufactured home, ac-
19 companied by such documentation as re-
20 quired by the Administrator of the Envi-
21 ronmental Protection Agency under the
22 Energy Star Labeled Homes program.

23 “(B) FORM PROVIDED TO BUYER.—A form
24 documenting the energy efficient building enve-
25 lope components and energy efficient heating or

1 cooling equipment installed and their rated en-
2 energy efficiency performance shall be provided to
3 the buyer of the qualifying new home. The form
4 shall include labeled R-value for insulation
5 products, NFRC-labeled U-factor and solar
6 heat gain coefficient for windows, skylights, and
7 doors, labeled annual fuel utilization efficiency
8 (AFUE) ratings for furnaces and boilers, la-
9 beled heating seasonal performance factor
10 (HSPF) ratings for electric heat pumps, and la-
11 beled seasonal energy efficiency ratio (SEER)
12 ratings for air conditioners.

13 “(C) RATINGS LABEL AFFIXED IN DWELL-
14 ING.—A permanent label documenting the rat-
15 ings in subparagraph (B) shall be affixed to the
16 front of the electrical distribution panel of the
17 qualifying new home, or shall be otherwise per-
18 manently displayed in a readily inspectable loca-
19 tion in such home.

20 “(4) REGULATIONS.—

21 “(A) IN GENERAL.—In prescribing regula-
22 tions under this subsection for performance-
23 based and guarantee-based certification meth-
24 ods, the Secretary shall prescribe procedures for
25 calculating annual energy usage and cost reduc-

1 tions for heating and cooling and for the report-
2 ing of the results. Such regulations shall—

3 “(i) provide that any calculation pro-
4 cedures be fuel neutral such that the same
5 energy efficiency measures allow a quali-
6 fying new home to be eligible for the credit
7 under this section regardless of whether
8 such home uses a gas or oil furnace or
9 boiler or an electric heat pump, and

10 “(ii) require that any computer soft-
11 ware allow for the printing of the Federal
12 tax forms necessary for the credit under
13 this section and for the printing of forms
14 for disclosure to the homebuyer.

15 “(B) PROVIDERS.—For purposes of para-
16 graph (2)(B), the Secretary shall establish re-
17 quirements for the designation of individuals
18 based on the requirements for energy consult-
19 ants and home energy raters specified by the
20 Mortgage Industry National Home Energy Rat-
21 ing Standards.

22 “(e) APPLICATION.—Subsection (a) shall apply to
23 qualifying new homes the construction of which is substan-
24 tially completed after December 31, 2004, and purchased
25 during the period beginning on such date and ending on—

1 “(1) in the case of any 30-percent home, De-
2 cember 31, 2005, and

3 “(2) in the case of any 50-percent home, De-
4 cember 31, 2007.”.

5 (b) CREDIT MADE PART OF GENERAL BUSINESS
6 CREDIT.—Section 38(b) (relating to current year business
7 credit), as amended by this Act, is amended by striking
8 “plus” at the end of paragraph (21), by striking the period
9 at the end of paragraph (22) and inserting “, plus”, and
10 by adding at the end the following new paragraph:

11 “(23) the new energy efficient home credit de-
12 termined under section 45K(a).”.

13 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C
14 (relating to certain expenses for which credits are allow-
15 able) is amended by adding at the end the following new
16 subsection:

17 “(d) NEW ENERGY EFFICIENT HOME EXPENSES.—
18 No deduction shall be allowed for that portion of expenses
19 for a qualifying new home otherwise allowable as a deduc-
20 tion for the taxable year which is equal to the amount
21 of the credit determined for such taxable year under sec-
22 tion 45K(a).”.

23 (d) DEDUCTION FOR CERTAIN UNUSED BUSINESS
24 CREDITS.—Section 196(c) (defining qualified business
25 credits), as amended by this Act, is amended by striking

1 “and” at the end of paragraph (10), by striking the period
2 at the end of paragraph (11) and inserting “, and”, and
3 by adding after paragraph (11) the following new para-
4 graph:

5 “(12) the new energy efficient home credit de-
6 termined under section 45K(a).”.

7 (e) CLERICAL AMENDMENT.—The table of sections
8 for subpart D of part IV of subchapter A of chapter 1,
9 as amended by this Act, is amended by adding at the end
10 the following new item:

“Sec. 45K. New energy efficient home credit.”.

11 (f) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to homes the construction of which
13 is substantially completed after December 31, 2004.

14 **SEC. 822. CREDIT FOR ENERGY EFFICIENT APPLIANCES.**

15 (a) IN GENERAL.—Subpart D of part IV of sub-
16 chapter A of chapter 1 (relating to business-related cred-
17 its), as amended by this Act, is amended by adding at
18 the end the following new section:

19 **“SEC. 45L. ENERGY EFFICIENT APPLIANCE CREDIT.**

20 “(a) ALLOWANCE OF CREDIT.—

21 “(1) IN GENERAL.—For purposes of section 38,
22 the energy efficient appliance credit determined
23 under this section for the taxable year is an amount
24 equal to the sum of the amounts determined under
25 paragraph (2) for qualified energy efficient appli-

1 ances produced by the taxpayer during the calendar
2 year ending with or within the taxable year.

3 “(2) AMOUNT.—The amount determined under
4 this paragraph for any category described in sub-
5 section (b)(2)(B) shall be the product of the applica-
6 ble amount for appliances in the category and the el-
7 igible production for the category.

8 “(b) APPLICABLE AMOUNT; ELIGIBLE PRODUC-
9 TION.—For purposes of subsection (a)—

10 “(1) APPLICABLE AMOUNT.—The applicable
11 amount is—

12 “(A) \$50, in the case of—

13 “(i) a clothes washer which is manu-
14 factured with at least a 1.42 MEF, or

15 “(ii) a refrigerator which consumes at
16 least 10 percent less kilowatt hours per
17 year than the energy conservation stand-
18 ards for refrigerators promulgated by the
19 Department of Energy and effective on
20 July 1, 2001,

21 “(B) \$100, in the case of—

22 “(i) a clothes washer which is manu-
23 factured with at least a 1.50 MEF, or

24 “(ii) a refrigerator which consumes at
25 least 15 percent (20 percent in the case of

1 a refrigerator manufactured after 2006)
2 less kilowatt hours per year than such en-
3 ergy conservation standards, and

4 “(C) \$150, in the case of a refrigerator
5 manufactured before 2007 which consumes at
6 least 20 percent less kilowatt hours per year
7 than such energy conservation standards.

8 “(2) ELIGIBLE PRODUCTION.—

9 “(A) IN GENERAL.—The eligible produc-
10 tion of each category of qualified energy effi-
11 cient appliances is the excess of—

12 “(i) the number of appliances in such
13 category which are produced by the tax-
14 payer during such calendar year, over

15 “(ii) the average number of appliances
16 in such category which were produced by
17 the taxpayer during calendar years 2001,
18 2002, and 2003.

19 “(B) CATEGORIES.—For purposes of sub-
20 paragraph (A), the categories are—

21 “(i) clothes washers described in para-
22 graph (1)(A)(i),

23 “(ii) clothes washers described in
24 paragraph (1)(B)(i),

1 “(iii) refrigerators described in para-
2 graph (1)(A)(ii),

3 “(iv) refrigerators described in para-
4 graph (1)(B)(ii), and

5 “(v) refrigerators described in para-
6 graph (1)(C).

7 “(c) LIMITATION ON MAXIMUM CREDIT.—

8 “(1) IN GENERAL.—The amount of credit al-
9 lowed under subsection (a) with respect to a tax-
10 payer for all taxable years shall not exceed
11 \$60,000,000, of which not more than \$30,000,000
12 may be allowed with respect to the credit determined
13 by using the applicable amount under subsection
14 (b)(1)(A).

15 “(2) LIMITATION BASED ON GROSS RE-
16 CEIPTS.—The credit allowed under subsection (a)
17 with respect to a taxpayer for the taxable year shall
18 not exceed an amount equal to 2 percent of the aver-
19 age annual gross receipts of the taxpayer for the 3
20 taxable years preceding the taxable year in which
21 the credit is determined.

22 “(3) GROSS RECEIPTS.—For purposes of this
23 subsection, the rules of paragraphs (2) and (3) of
24 section 448(c) shall apply.

25 “(d) DEFINITIONS.—For purposes of this section—

1 “(1) QUALIFIED ENERGY EFFICIENT APPLI-
2 ANCE.—The term ‘qualified energy efficient appli-
3 ance’ means—

4 “(A) a clothes washer described in sub-
5 paragraph (A)(i) or (B)(i) of subsection (b)(1),
6 or

7 “(B) a refrigerator described in subpara-
8 graph (A)(ii), (B)(ii), or (C) of subsection
9 (b)(1).

10 “(2) CLOTHES WASHER.—The term ‘clothes
11 washer’ means a residential clothes washer, includ-
12 ing a residential style coin operated washer.

13 “(3) REFRIGERATOR.—The term ‘refrigerator’
14 means an automatic defrost refrigerator-freezer
15 which has an internal volume of at least 16.5 cubic
16 feet.

17 “(4) MEF.—The term ‘MEF’ means Modified
18 Energy Factor (as determined by the Secretary of
19 Energy).

20 “(e) SPECIAL RULES.—

21 “(1) IN GENERAL.—Rules similar to the rules
22 of subsections (c), (d), and (e) of section 52 shall
23 apply for purposes of this section.

24 “(2) AGGREGATION RULES.—All persons treat-
25 ed as a single employer under subsection (a) or (b)

1 of section 52 or subsection (m) or (o) of section 414
2 shall be treated as 1 person for purposes of sub-
3 section (a).

4 “(f) VERIFICATION.—The taxpayer shall submit such
5 information or certification as the Secretary, in consulta-
6 tion with the Secretary of Energy, determines necessary
7 to claim the credit amount under subsection (a).

8 “(g) TERMINATION.—This section shall not apply—

9 “(1) with respect to refrigerators described in
10 subsection (b)(1)(A)(ii) produced after December 31,
11 2005, and

12 “(2) with respect to all other qualified energy
13 efficient appliances produced after December 31,
14 2007.”.

15 (b) CREDIT MADE PART OF GENERAL BUSINESS
16 CREDIT.—Section 38(b) (relating to current year business
17 credit), as amended by this Act, is amended by striking
18 “plus” at the end of paragraph (22), by striking the period
19 at the end of paragraph (23) and inserting “, plus”, and
20 by adding at the end the following new paragraph:

21 “(24) the energy efficient appliance credit de-
22 termined under section 45L(a).”.

23 (c) CLERICAL AMENDMENT.—The table of sections
24 for subpart D of part IV of subchapter A of chapter 1,

1 as amended by this Act, is amended by adding at the end
2 the following new item:

“Sec. 45L. Energy efficient appliance credit.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to appliances produced after De-
5 cember 31, 2004, in taxable years ending after such date.

6 **SEC. 823. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT**
7 **PROPERTY.**

8 (a) **IN GENERAL.**—Subpart A of part IV of sub-
9 chapter A of chapter 1 (relating to nonrefundable personal
10 credits) is amended by inserting after section 25B the fol-
11 lowing new section:

12 **“SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.**

13 “(a) **ALLOWANCE OF CREDIT.**—In the case of an in-
14 dividual, there shall be allowed as a credit against the tax
15 imposed by this chapter for the taxable year an amount
16 equal to the sum of—

17 “(1) 15 percent of the qualified photovoltaic
18 property expenditures made by the taxpayer during
19 such year,

20 “(2) 15 percent of the qualified solar water
21 heating property expenditures made by the taxpayer
22 during such year,

23 “(3) 30 percent of the qualified fuel cell prop-
24 erty expenditures made by the taxpayer during such
25 year,

1 “(4) 30 percent of the qualified wind energy
2 property expenditures made by the taxpayer during
3 such year, and

4 “(5) the sum of the qualified Tier 2 energy effi-
5 cient building property expenditures made by the
6 taxpayer during such year.

7 “(b) LIMITATIONS.—

8 “(1) MAXIMUM CREDIT.—The credit allowed
9 under subsection (a) shall not exceed—

10 “(A) \$2,000 for property described in
11 paragraph (1), (2), or (5) of subsection (d),

12 “(B) \$500 for each 0.5 kilowatt of capac-
13 ity of property described in subsection (d)(4),
14 and

15 “(C) for property described in subsection
16 (d)(6)—

17 “(i) \$150 for each electric heat pump
18 water heater,

19 “(ii) \$125 for each advanced natural
20 gas, oil, propane furnace, or hot water boil-
21 er,

22 “(iii) \$150 for each advanced natural
23 gas, oil, or propane water heater,

24 “(iv) \$50 for each natural gas, oil, or
25 propane water heater,

1 “(v) \$50 for an advanced main air
2 circulating fan,

3 “(vi) \$150 for each advanced com-
4 bination space and water heating system,

5 “(vii) \$50 for each combination space
6 and water heating system, and

7 “(viii) \$250 for each geothermal heat
8 pump.

9 “(2) SAFETY CERTIFICATIONS.—No credit shall
10 be allowed under this section for an item of property
11 unless—

12 “(A) in the case of solar water heating
13 property, such property is certified for perform-
14 ance and safety by the non-profit Solar Rating
15 Certification Corporation or a comparable enti-
16 ty endorsed by the government of the State in
17 which such property is installed,

18 “(B) in the case of a photovoltaic property,
19 a fuel cell property, or a wind energy property,
20 such property meets appropriate fire and elec-
21 tric code requirements, and

22 “(C) in the case of property described in
23 subsection (d)(6), such property meets the per-
24 formance and quality standards, and the certifi-
25 cation requirements (if any), which—

1 “(i) have been prescribed by the Sec-
2 retary by regulations (after consultation
3 with the Secretary of Energy or the Ad-
4 ministrator of the Environmental Protec-
5 tion Agency, as appropriate),

6 “(ii) in the case of the energy effi-
7 ciency ratio (EER) for property described
8 in subsection (d)(6)(B)(viii)—

9 “(I) require measurements to be
10 based on published data which is test-
11 ed by manufacturers at 95 degrees
12 Fahrenheit, and

13 “(II) do not require ratings to be
14 based on certified data of the Air
15 Conditioning and Refrigeration Insti-
16 tute, and

17 “(iii) are in effect at the time of the
18 acquisition of the property.

19 “(c) CARRYFORWARD OF UNUSED CREDIT.—If the
20 credit allowable under subsection (a) exceeds the limita-
21 tion imposed by section 26(a) for such taxable year re-
22 duced by the sum of the credits allowable under this sub-
23 part (other than this section and section 25D), such excess
24 shall be carried to the succeeding taxable year and added

1 to the credit allowable under subsection (a) for such suc-
2 ceeding taxable year.

3 “(d) DEFINITIONS.—For purposes of this section—

4 “(1) QUALIFIED SOLAR WATER HEATING PROP-
5 ERTY EXPENDITURE.—The term ‘qualified solar
6 water heating property expenditure’ means an ex-
7 penditure for property to heat water for use in a
8 dwelling unit located in the United States and used
9 as a residence by the taxpayer if at least half of the
10 energy used by such property for such purpose is de-
11 rived from the sun.

12 “(2) QUALIFIED PHOTOVOLTAIC PROPERTY EX-
13 PENDITURE.—The term ‘qualified photovoltaic prop-
14 erty expenditure’ means an expenditure for property
15 which uses solar energy to generate electricity for
16 use in a dwelling unit located in the United States
17 and used as a residence by the taxpayer.

18 “(3) SOLAR PANELS.—No expenditure relating
19 to a solar panel or other property installed as a roof
20 (or portion thereof) shall fail to be treated as prop-
21 erty described in paragraph (1) or (2) solely because
22 it constitutes a structural component of the struc-
23 ture on which it is installed.

24 “(4) QUALIFIED FUEL CELL PROPERTY EX-
25 PENDITURE.—The term ‘qualified fuel cell property

1 expenditure' means an expenditure for qualified fuel
2 cell property (as defined in section 48(a)(4)) in-
3 stalled on or in connection with a dwelling unit lo-
4 cated in the United States and used as a principal
5 residence (within the meaning of section 121) by the
6 taxpayer.

7 “(5) QUALIFIED WIND ENERGY PROPERTY EX-
8 PENDITURE.—The term ‘qualified wind energy prop-
9 erty expenditure’ means an expenditure for property
10 which uses wind energy to generate electricity for
11 use in a dwelling unit located in the United States
12 and used as a residence by the taxpayer.

13 “(6) QUALIFIED TIER 2 ENERGY EFFICIENT
14 BUILDING PROPERTY EXPENDITURE.—

15 “(A) IN GENERAL.—The term ‘qualified
16 Tier 2 energy efficient building property ex-
17 penditure’ means an expenditure for any Tier 2
18 energy efficient building property.

19 “(B) TIER 2 ENERGY EFFICIENT BUILDING
20 PROPERTY.—The term ‘Tier 2 energy efficient
21 building property’ means—

22 “(i) an electric heat pump water heat-
23 er which yields an energy factor of at least
24 1.7 in the standard Department of Energy
25 test procedure,

1 “(ii) an advanced natural gas, oil,
2 propane furnace, or hot water boiler which
3 achieves at least 95 percent annual fuel
4 utilization efficiency (AFUE),

5 “(iii) an advanced natural gas, oil, or
6 propane water heater which has an energy
7 factor of at least 0.80 in the standard De-
8 partment of Energy test procedure,

9 “(iv) a natural gas, oil, or propane
10 water heater which has an energy factor of
11 at least 0.65 but less than 0.80 in the
12 standard Department of Energy test proce-
13 dure,

14 “(v) an advanced main air circulating
15 fan used in a new natural gas, propane, or
16 oil-fired furnace, including main air circu-
17 lating fans that use a brushless permanent
18 magnet motor or another type of motor
19 which achieves similar or higher efficiency
20 at half and full speed, as determined by
21 the Secretary,

22 “(vi) an advanced combination space
23 and water heating system which has a
24 combined energy factor of at least 0.80
25 and a combined annual fuel utilization effi-

1 ciency (AFUE) of at least 78 percent in
2 the standard Department of Energy test
3 procedure,

4 “(vii) a combination space and water
5 heating system which has a combined en-
6 ergy factor of at least 0.65 but less than
7 0.80 and a combined annual fuel utiliza-
8 tion efficiency (AFUE) of at least 78 per-
9 cent in the standard Department of En-
10 ergy test procedure, and

11 “(viii) a geothermal heat pump which
12 has an energy efficiency ratio (EER) of at
13 least 21.

14 “(7) LABOR COSTS.—Expenditures for labor
15 costs properly allocable to the onsite preparation, as-
16 sembly, or original installation of the property de-
17 scribed in paragraph (1), (2), (4), (5), or (6) and for
18 piping or wiring to interconnect such property to the
19 dwelling unit shall be taken into account for pur-
20 poses of this section.

21 “(8) SWIMMING POOLS, ETC., USED AS STOR-
22 AGE MEDIUM.—Expenditures which are properly al-
23 locable to a swimming pool, hot tub, or any other
24 energy storage medium which has a function other

1 than the function of such storage shall not be taken
2 into account for purposes of this section.

3 “(e) SPECIAL RULES.—For purposes of this
4 section—

5 “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-
6 CUPANCY.—In the case of any dwelling unit which is
7 jointly occupied and used during any calendar year
8 as a residence by 2 or more individuals the following
9 rules shall apply:

10 “(A) The amount of the credit allowable,
11 under subsection (a) by reason of expenditures
12 (as the case may be) made during such cal-
13 endar year by any of such individuals with re-
14 spect to such dwelling unit shall be determined
15 by treating all of such individuals as 1 taxpayer
16 whose taxable year is such calendar year.

17 “(B) There shall be allowable, with respect
18 to such expenditures to each of such individ-
19 uals, a credit under subsection (a) for the tax-
20 able year in which such calendar year ends in
21 an amount which bears the same ratio to the
22 amount determined under subparagraph (A) as
23 the amount of such expenditures made by such
24 individual during such calendar year bears to

1 the aggregate of such expenditures made by all
2 of such individuals during such calendar year.

3 “(2) TENANT-STOCKHOLDER IN COOPERATIVE
4 HOUSING CORPORATION.—In the case of an indi-
5 vidual who is a tenant-stockholder (as defined in sec-
6 tion 216) in a cooperative housing corporation (as
7 defined in such section), such individual shall be
8 treated as having made his tenant-stockholder’s pro-
9 portionate share (as defined in section 216(b)(3)) of
10 any expenditures of such corporation.

11 “(3) CONDOMINIUMS.—

12 “(A) IN GENERAL.—In the case of an indi-
13 vidual who is a member of a condominium man-
14 agement association with respect to a condo-
15 minium which the individual owns, such indi-
16 vidual shall be treated as having made the indi-
17 vidual’s proportionate share of any expenditures
18 of such association.

19 “(B) CONDOMINIUM MANAGEMENT ASSO-
20 CIATION.—For purposes of this paragraph, the
21 term ‘condominium management association’
22 means an organization which meets the require-
23 ments of paragraph (1) of section 528(c) (other
24 than subparagraph (E) thereof) with respect to

1 a condominium project substantially all of the
2 units of which are used as residences.

3 “(4) ALLOCATION IN CERTAIN CASES.—Except
4 in the case of qualified wind energy property expend-
5 itures, if less than 80 percent of the use of an item
6 is for nonbusiness purposes, only that portion of the
7 expenditures for such item which is properly allo-
8 cable to use for nonbusiness purposes shall be taken
9 into account.

10 “(5) WHEN EXPENDITURE MADE; AMOUNT OF
11 EXPENDITURE.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), an expenditure with respect
14 to an item shall be treated as made when the
15 original installation of the item is completed.

16 “(B) EXPENDITURES PART OF BUILDING
17 CONSTRUCTION.—In the case of an expenditure
18 in connection with the construction or recon-
19 struction of a structure, such expenditure shall
20 be treated as made when the original use of the
21 constructed or reconstructed structure by the
22 taxpayer begins.

23 “(C) AMOUNT.—The amount of any ex-
24 penditure shall be the cost thereof.

1 “(6) PROPERTY FINANCED BY SUBSIDIZED EN-
2 ERGY FINANCING.—For purposes of determining the
3 amount of expenditures made by any individual with
4 respect to any dwelling unit, there shall not be taken
5 into account expenditures which are made from sub-
6 sidized energy financing (as defined in section
7 48(a)(5)(C)).

8 “(f) BASIS ADJUSTMENTS.—For purposes of this
9 subtitle, if a credit is allowed under this section for any
10 expenditure with respect to any property, the increase in
11 the basis of such property which would (but for this sub-
12 section) result from such expenditure shall be reduced by
13 the amount of the credit so allowed.

14 “(g) TERMINATION.—The credit allowed under this
15 section shall not apply to expenditures after December 31,
16 2007.”.

17 (b) CREDIT ALLOWED AGAINST REGULAR TAX AND
18 ALTERNATIVE MINIMUM TAX.—

19 (1) IN GENERAL.—Section 25C(b), as added by
20 subsection (a), is amended by adding at the end the
21 following new paragraph:

22 “(3) LIMITATION BASED ON AMOUNT OF
23 TAX.—The credit allowed under subsection (a) for
24 the taxable year shall not exceed the excess of—

701

1 “(A) the sum of the regular tax liability
2 (as defined in section 26(b)) plus the tax im-
3 posed by section 55, over

4 “(B) the sum of the credits allowable
5 under this subpart (other than this section and
6 section 25D) and section 27 for the taxable
7 year.”.

8 (2) CONFORMING AMENDMENTS.—

9 (A) Section 25C(e), as added by subsection
10 (a), is amended by striking “section 26(a) for
11 such taxable year reduced by the sum of the
12 credits allowable under this subpart (other than
13 this section and section 25D)” and inserting
14 “subsection (b)(3)”.

15 (B) Section 23(b)(4)(B) is amended by in-
16 serting “and section 25C” after “this section”.

17 (C) Section 24(b)(3)(B) is amended by
18 striking “23 and 25B” and inserting “23, 25B,
19 and 25C”.

20 (D) Section 25(e)(1)(C) is amended by in-
21 serting “25C,” after “25B,”.

22 (E) Section 25B(g)(2) is amended by
23 striking “section 23” and inserting “sections 23
24 and 25C”.

1 (F) Section 26(a)(1) is amended by strik-
2 ing “and 25B” and inserting “25B, and 25C”.

3 (G) Section 904(h) is amended by striking
4 “and 25B” and inserting “25B, and 25C”.

5 (H) Section 1400C(d) is amended by strik-
6 ing “and 25B” and inserting “25B, and 25C”.

7 (c) ADDITIONAL CONFORMING AMENDMENTS.—

8 (1) Section 1016(a), as amended by this Act, is
9 amended by striking “and” at the end of paragraph
10 (29), by striking the period at the end of paragraph
11 (30) and inserting “, and”, and by adding at the
12 end the following new paragraph:

13 “(31) to the extent provided in section 25C(f),
14 in the case of amounts with respect to which a credit
15 has been allowed under section 25C.”.

16 (2) The table of sections for subpart A of part
17 IV of subchapter A of chapter 1 is amended by in-
18 serting after the item relating to section 25B the fol-
19 lowing new item:

“Sec. 25C. Residential energy efficient property.”.

20 (d) EFFECTIVE DATES.—

21 (1) IN GENERAL.—Except as provided by para-
22 graph (2), the amendments made by this section
23 shall apply to expenditures after December 31,
24 2004, in taxable years ending after such date.

1 “(I) generates at least 0.5 kilo-
2 watt of electricity using an electro-
3 chemical process, and

4 “(II) has an electricity-only gen-
5 eration efficiency greater than 30 per-
6 cent.

7 “(ii) LIMITATION.—In the case of
8 qualified fuel cell property placed in service
9 during the taxable year, the credit other-
10 wise determined under paragraph (1) for
11 such year with respect to such property
12 shall not exceed an amount equal to \$500
13 for each 0.5 kilowatt of capacity of such
14 property.

15 “(iii) FUEL CELL POWER PLANT.—
16 The term ‘fuel cell power plant’ means an
17 integrated system comprised of a fuel cell
18 stack assembly and associated balance of
19 plant components which converts a fuel
20 into electricity using electrochemical
21 means.

22 “(iv) TERMINATION.—The term
23 ‘qualified fuel cell property’ shall not in-
24 clude any property placed in service after
25 December 31, 2007.

1 “(B) QUALIFIED MICROTURBINE PROP-
2 ERTY.—

3 “(i) IN GENERAL.—The term ‘quali-
4 fied microturbine property’ means a sta-
5 tionary microturbine power plant which—

6 “(I) has a capacity of less than
7 2,000 kilowatts, and

8 “(II) has an electricity-only gen-
9 eration efficiency of not less than 26
10 percent at International Standard Or-
11 ganization conditions.

12 “(ii) LIMITATION.—In the case of
13 qualified microturbine property placed in
14 service during the taxable year, the credit
15 otherwise determined under paragraph (1)
16 for such year with respect to such property
17 shall not exceed an amount equal \$200 for
18 each kilowatt of capacity of such property.

19 “(iii) STATIONARY MICROTURBINE
20 POWER PLANT.—The term ‘stationary
21 microturbine power plant’ means an inte-
22 grated system comprised of a gas turbine
23 engine, a combustor, a recuperator or re-
24 generator, a generator or alternator, and
25 associated balance of plant components

1 which converts a fuel into electricity and
2 thermal energy. Such term also includes all
3 secondary components located between the
4 existing infrastructure for fuel delivery and
5 the existing infrastructure for power dis-
6 tribution, including equipment and controls
7 for meeting relevant power standards, such
8 as voltage, frequency, and power factors.

9 “(iv) TERMINATION.—The term
10 ‘qualified microturbine property’ shall not
11 include any property placed in service after
12 December 31, 2006.”.

13 (c) ENERGY PERCENTAGE.—Section 48(a)(2)(A) (re-
14 lating to energy percentage) is amended to read as follows:

15 “(A) IN GENERAL.—The energy percent-
16 age is—

17 “(i) in the case of qualified fuel cell
18 property, 30 percent, and

19 “(ii) in the case of any other energy
20 property, 10 percent.”.

21 (d) CONFORMING AMENDMENTS.—

22 (A) Section 29(b)(3)(A)(i)(III) is amended
23 by striking “section 48(a)(4)(C)” and inserting
24 “section 48(a)(5)(C)”.

1 (B) Section 48(a)(1) is amended by insert-
2 ing “except as provided in subparagraph (A)(ii)
3 or (B)(ii) of paragraph (4),” before “the en-
4 ergy”.

5 (e) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to property placed in service after
7 December 31, 2004, in taxable years ending after such
8 date, under rules similar to the rules of section 48(m) of
9 the Internal Revenue Code of 1986 (as in effect on the
10 day before the date of the enactment of the Revenue Rec-
11 onciliation Act of 1990).

12 **SEC. 825. ENERGY EFFICIENT COMMERCIAL BUILDINGS DE-**
13 **DUCTION.**

14 (a) IN GENERAL.—Part VI of subchapter B of chap-
15 ter 1 (relating to itemized deductions for individuals and
16 corporations) is amended by inserting after section 179A
17 the following new section:

18 **“SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS**
19 **DEDUCTION.**

20 “(a) IN GENERAL.—There shall be allowed as a de-
21 duction for the taxable year in which a building is placed
22 in service by a taxpayer, an amount equal to the energy
23 efficient commercial building property expenditures made
24 by such taxpayer with respect to the construction or recon-

1 construction of such building for the taxable year or any pre-
2 ceding taxable year.

3 “(b) MAXIMUM AMOUNT OF DEDUCTION.—The
4 amount of energy efficient commercial building property
5 expenditures taken into account under subsection (a) shall
6 not exceed an amount equal to the product of—

7 “(1) \$2.25, and

8 “(2) the square footage of the building with re-
9 spect to which the expenditures are made.

10 “(c) ENERGY EFFICIENT COMMERCIAL BUILDING
11 PROPERTY EXPENDITURES.—For purposes of this
12 section—

13 “(1) IN GENERAL.—The term ‘energy efficient
14 commercial building property expenditures’ means
15 amounts paid or incurred for energy efficient prop-
16 erty installed on or in connection with the construc-
17 tion or reconstruction of a building—

18 “(A) for which depreciation is allowable
19 under section 167,

20 “(B) which is located in the United States,
21 and

22 “(C) which is the type of structure to
23 which the Standard 90.1–2001 of the American
24 Society of Heating, Refrigerating, and Air Con-

1 conditioning Engineers and the Illuminating Engi-
2 neering Society of North America is applicable.
3 Such term includes expenditures for labor costs
4 properly allocable to the onsite preparation, assem-
5 bly, or original installation of the property.

6 “(2) ENERGY EFFICIENT PROPERTY.—For pur-
7 poses of paragraph (1)—

8 “(A) IN GENERAL.—The term ‘energy effi-
9 cient property’ means any property which re-
10 duces total annual energy and power costs with
11 respect to the lighting, heating, cooling, ventila-
12 tion, and hot water supply systems of the build-
13 ing by 50 percent or more in comparison to a
14 building which meets the minimum require-
15 ments of Standard 90.1–2001 of the American
16 Society of Heating, Refrigerating, and Air Con-
17 ditioning Engineers and the Illuminating Engi-
18 neering Society of North America, using meth-
19 ods of calculation described in subparagraph
20 (B) and certified by qualified individuals as
21 provided under paragraph (5).

22 “(B) METHODS OF CALCULATION.—The
23 Secretary, in consultation with the Secretary of
24 Energy, shall promulgate regulations which de-

1 scribe in detail methods for calculating and
2 verifying energy and power costs.

3 “(C) COMPUTER SOFTWARE.—

4 “(i) IN GENERAL.—Any calculation
5 described in subparagraph (B) shall be
6 prepared by qualified computer software.

7 “(ii) QUALIFIED COMPUTER SOFT-
8 WARE.—For purposes of this subpara-
9 graph, the term ‘qualified computer soft-
10 ware’ means software—

11 “(I) for which the software de-
12 signer has certified that the software
13 meets all procedures and detailed
14 methods for calculating energy and
15 power costs as required by the Sec-
16 retary,

17 “(II) which provides such forms
18 as required to be filed by the Sec-
19 retary in connection with energy effi-
20 ciency of property and the deduction
21 allowed under this section, and

22 “(III) which provides a notice
23 form which summarizes the energy ef-
24 ficiency features of the building and
25 its projected annual energy costs.

1 “(3) ALLOCATION OF DEDUCTION FOR PUBLIC
2 PROPERTY.—In the case of energy efficient commer-
3 cial building property expenditures made by a public
4 entity with respect to the construction or reconstruc-
5 tion of a public building, the Secretary shall promul-
6 gate regulations under which the value of the deduc-
7 tion with respect to such expenditures which would
8 be allowable to the public entity under this section
9 (determined without regard to the tax-exempt status
10 of such entity) may be allocated to the person pri-
11 marily responsible for designing the energy efficient
12 property. Such person shall be treated as the tax-
13 payer for purposes of this section.

14 “(4) NOTICE TO OWNER.—Any qualified indi-
15 vidual providing a certification under paragraph (5)
16 shall provide an explanation to the owner of the
17 building regarding the energy efficiency features of
18 the building and its projected annual energy costs as
19 provided in the notice under paragraph
20 (2)(C)(ii)(III).

21 “(5) CERTIFICATION.—

22 “(A) IN GENERAL.—The Secretary shall
23 prescribe procedures for the inspection and test-
24 ing for compliance of buildings by qualified in-

1 individuals described in subparagraph (B). Such
2 procedures shall be—

3 “(i) comparable, given the difference
4 between commercial and residential build-
5 ings, to the requirements in the Mortgage
6 Industry National Home Energy Rating
7 Standards, and

8 “(ii) fuel neutral such that the same
9 energy efficiency measures allow a building
10 to be eligible for the credit under this sec-
11 tion regardless of whether such building
12 uses a gas or oil furnace or boiler or an
13 electric heat pump.

14 “(B) QUALIFIED INDIVIDUALS.—Individ-
15 uals qualified to determine compliance shall be
16 only those individuals who are recognized by an
17 organization certified by the Secretary for such
18 purposes. The Secretary may qualify a home
19 energy ratings organization, a local building
20 regulatory authority, a State or local energy of-
21 fice, a utility, or any other organization which
22 meets the requirements prescribed under this
23 paragraph.

24 “(C) PROFICIENCY OF QUALIFIED INDIVID-
25 UALS.—The Secretary shall consult with non-

1 profit organizations and State agencies with ex-
2 pertise in energy efficiency calculations and in-
3 spections to develop proficiency tests and train-
4 ing programs to qualify individuals to determine
5 compliance.

6 “(d) BASIS REDUCTION.—For purposes of this sub-
7 title, if a deduction is allowed under this section with re-
8 spect to any energy efficient property, the basis of such
9 property shall be reduced by the amount of the deduction
10 so allowed.

11 “(e) INTERIM RULES FOR LIGHTING SYSTEMS.—
12 Until such time as the Secretary issues final regulations
13 under subsection (c)(2)(B) with respect to property which
14 is part of a lighting system—

15 “(1) IN GENERAL.—The lighting system target
16 under subsection (d)(1)(A)(ii) shall be a reduction in
17 lighting power density of 25 percent (50 percent in
18 the case of a warehouse) of the minimum require-
19 ments in Table 9.3.1.1 or Table 9.3.1.2 (not includ-
20 ing additional interior lighting power allowances) of
21 Standard 90.1–2001.

22 “(2) REDUCTION IN CREDIT IF REDUCTION
23 LESS THAN 40 PERCENT.—

24 “(A) IN GENERAL.—If, with respect to the
25 lighting system of any building other than a

1 warehouse, the reduction of lighting power den-
2 sity of the lighting system is not at least 40
3 percent, only the applicable percentage of the
4 amount of credit otherwise allowable under this
5 section with respect to such property shall be
6 allowed.

7 “(B) APPLICABLE PERCENTAGE.—For
8 purposes of subparagraph (A), the applicable
9 percentage is the number of percentage points
10 (not greater than 100) equal to the sum of—

11 “(i) 50, and

12 “(ii) the amount which bears the same
13 ratio to 50 as the excess of the reduction
14 of lighting power density of the lighting
15 system over 25 percentage points bears to
16 15.

17 “(C) EXCEPTIONS.—This subsection shall
18 not apply to any system—

19 “(i) the controls and circuiting of
20 which do not comply fully with the manda-
21 tory and prescriptive requirements of
22 Standard 90.1–2001 and which do not in-
23 clude provision for bilevel switching in all
24 occupancies except hotel and motel guest

1 rooms, store rooms, restrooms, and public
2 lobbies, or

3 “(ii) which does not meet the min-
4 imum requirements for calculated lighting
5 levels as set forth in the Illuminating Engi-
6 neering Society of North America Lighting
7 Handbook, Performance and Application,
8 Ninth Edition, 2000.

9 “(f) REGULATIONS.—The Secretary shall promulgate
10 such regulations as necessary to take into account new
11 technologies regarding energy efficiency and renewable en-
12 ergy for purposes of determining energy efficiency and
13 savings under this section.

14 “(g) TERMINATION.—This section shall not apply
15 with respect to any energy efficient commercial building
16 property expenditures in connection with a building the
17 construction of which is not completed on or before De-
18 cember 31, 2009.”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 1016(a), as amended by this Act, is
21 amended by striking “and” at the end of paragraph
22 (30), by striking the period at the end of paragraph
23 (31) and inserting “, and”, and by adding at the
24 end the following new paragraph:

1 “(32) to the extent provided in section
2 179B(d).”.

3 (2) Section 1245(a) is amended by inserting
4 “179B,” after “179A,” both places it appears in
5 paragraphs (2)(C) and (3)(C).

6 (3) Section 1250(b)(3) is amended by inserting
7 before the period at the end of the first sentence “or
8 by section 179B”.

9 (4) Section 263(a)(1) is amended by striking
10 “or” at the end of subparagraph (G), by striking the
11 period at the end of subparagraph (H) and inserting
12 “, or”, and by inserting after subparagraph (H) the
13 following new subparagraph:

14 “(I) expenditures for which a deduction is
15 allowed under section 179B.”.

16 (5) Section 312(k)(3)(B) is amended by strik-
17 ing “or 179A” each place it appears in the heading
18 and text and inserting “, 179A, or 179B”.

19 (c) CLERICAL AMENDMENT.—The table of sections
20 for part VI of subchapter B of chapter 1 is amended by
21 inserting after section 179A the following new item:

 “Sec. 179B. Energy efficient commercial buildings deduction.”.

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

1 **SEC. 826. THREE-YEAR APPLICABLE RECOVERY PERIOD**
2 **FOR DEPRECIATION OF QUALIFIED ENERGY**
3 **MANAGEMENT DEVICES.**

4 (a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-
5 year property) is amended by striking “and” at the end
6 of clause (ii), by striking the period at the end of clause
7 (iii) and inserting “, and”, and by adding at the end the
8 following new clause:

9 “(iv) any qualified energy manage-
10 ment device.”.

11 (b) DEFINITION OF QUALIFIED ENERGY MANAGE-
12 MENT DEVICE.—Section 168(i) (relating to definitions
13 and special rules) is amended by inserting at the end the
14 following new paragraph:

15 “(15) QUALIFIED ENERGY MANAGEMENT DE-
16 VICE.—

17 “(A) IN GENERAL.—The term ‘qualified
18 energy management device’ means any energy
19 management device which is placed in service
20 before January 1, 2008, by a taxpayer who is
21 a supplier of electric energy or a provider of
22 electric energy services.

23 “(B) ENERGY MANAGEMENT DEVICE.—
24 For purposes of subparagraph (A), the term
25 ‘energy management device’ means any meter

1 or metering device which is used by the
2 taxpayer—

3 “(i) to measure and record electricity
4 usage data on a time-differentiated basis
5 in at least 4 separate time segments per
6 day, and

7 “(ii) to provide such data on at least
8 a monthly basis to both consumers and the
9 taxpayer.”.

10 (c) ALTERNATIVE SYSTEM.—The table contained in
11 section 168(g)(3)(B) is amended by inserting after the
12 item relating to subparagraph (A)(iii) the following:

“(A)(iv) 20”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to property placed in service after
15 December 31, 2004, in taxable years ending after such
16 date.

17 **SEC. 827. THREE-YEAR APPLICABLE RECOVERY PERIOD**
18 **FOR DEPRECIATION OF QUALIFIED WATER**
19 **SUBMETERING DEVICES.**

20 (a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-
21 year property), as amended by this Act, is amended by
22 striking “and” at the end of clause (iii), by striking the
23 period at the end of clause (iv) and inserting “, and”, and
24 by adding at the end the following new clause:

1 “(v) any qualified water submetering
2 device.”.

3 (b) DEFINITION OF QUALIFIED WATER SUB-
4 METERING DEVICE.—Section 168(i) (relating to defini-
5 tions and special rules), as amended by this Act, is amend-
6 ed by inserting at the end the following new paragraph:

7 “(16) QUALIFIED WATER SUBMETERING DE-
8 VICE.—

9 “(A) IN GENERAL.—The term ‘qualified
10 water submetering device’ means any water
11 submetering device which is placed in service
12 before January 1, 2008, by a taxpayer who is
13 an eligible resupplier with respect to the unit
14 for which the device is placed in service.

15 “(B) WATER SUBMETERING DEVICE.—For
16 purposes of this paragraph, the term ‘water
17 submetering device’ means any submetering de-
18 vice which is used by the taxpayer—

19 “(i) to measure and record water
20 usage data, and

21 “(ii) to provide such data on at least
22 a monthly basis to both consumers and the
23 taxpayer.

24 “(C) ELIGIBLE RESUPPLIER.—For pur-
25 poses of subparagraph (A), the term ‘eligible re-

1 supplier’ means any taxpayer who purchases
 2 and installs qualified water submetering devices
 3 in every unit in any multi-unit property.”.

4 (c) ALTERNATIVE SYSTEM.—The table contained in
 5 section 168(g)(3)(B), as amended by this Act, is amended
 6 by inserting after the item relating to subparagraph
 7 (A)(iv) the following:

 “(A)(v) 20”.

8 (d) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to property placed in service after
 10 December 31, 2004, in taxable years ending after such
 11 date.

12 **SEC. 828. ENERGY CREDIT FOR COMBINED HEAT AND**
 13 **POWER SYSTEM PROPERTY.**

14 (a) IN GENERAL.—Section 48(a)(3)(A) (defining en-
 15 ergy property), as amended by this Act, is amended by
 16 striking “or” at the end of clause (ii), by adding “or” at
 17 the end of clause (iii), and by inserting after clause (iii)
 18 the following new clause:

19 “(iv) combined heat and power system
 20 property,”.

21 (b) COMBINED HEAT AND POWER SYSTEM PROP-
 22 erty.—Section 48 (relating to energy credit; reforestation
 23 credit), as amended by this Act, is amended by adding
 24 at the end the following new subsection:

1 “(d) COMBINED HEAT AND POWER SYSTEM PROP-
2 PERTY.—For purposes of subsection (a)(3)(A)(iv)—

3 “(1) COMBINED HEAT AND POWER SYSTEM
4 PROPERTY.—The term ‘combined heat and power
5 system property’ means property comprising a
6 system—

7 “(A) which uses the same energy source
8 for the simultaneous or sequential generation of
9 electrical power, mechanical shaft power, or
10 both, in combination with the generation of
11 steam or other forms of useful thermal energy
12 (including heating and cooling applications),

13 “(B) which has an electrical capacity of
14 not more than 15 megawatts or a mechanical
15 energy capacity of not more than 2,000 horse-
16 power or an equivalent combination of electrical
17 and mechanical energy capacities,

18 “(C) which produces—

19 “(i) at least 20 percent of its total
20 useful energy in the form of thermal en-
21 ergy which is not used to produce electrical
22 or mechanical power (or combination
23 thereof), and

1 “(ii) at least 20 percent of its total
2 useful energy in the form of electrical or
3 mechanical power (or combination thereof),

4 “(D) the energy efficiency percentage of
5 which exceeds 60 percent, and

6 “(E) which is placed in service before Jan-
7 uary 1, 2007.

8 “(2) SPECIAL RULES.—

9 “(A) ENERGY EFFICIENCY PERCENT-
10 AGE.—For purposes of this subsection, the en-
11 ergy efficiency percentage of a system is the
12 fraction—

13 “(i) the numerator of which is the
14 total useful electrical, thermal, and me-
15 chanical power produced by the system at
16 normal operating rates, and expected to be
17 consumed in its normal application, and

18 “(ii) the denominator of which is the
19 lower heating value of the fuel sources for
20 the system.

21 “(B) DETERMINATIONS MADE ON BTU
22 BASIS.—The energy efficiency percentage and
23 the percentages under paragraph (1)(C) shall
24 be determined on a Btu basis.

1 “(C) INPUT AND OUTPUT PROPERTY NOT
2 INCLUDED.—The term ‘combined heat and
3 power system property’ does not include prop-
4 erty used to transport the energy source to the
5 facility or to distribute energy produced by the
6 facility.

7 “(D) PUBLIC UTILITY PROPERTY.—

8 “(i) ACCOUNTING RULE FOR PUBLIC
9 UTILITY PROPERTY.—If the combined heat
10 and power system property is public utility
11 property (as defined in section 168(i)(10)),
12 the taxpayer may only claim the credit
13 under subsection (a) if, with respect to
14 such property, the taxpayer uses a normal-
15 ization method of accounting.

16 “(ii) CERTAIN EXCEPTION NOT TO
17 APPLY.—The matter in subsection (a)(3)
18 which follows subparagraph (D) thereof
19 shall not apply to combined heat and
20 power system property.

21 “(3) SYSTEMS USING BAGASSE.—If a system is
22 designed to use bagasse for at least 90 percent of
23 the energy source—

24 “(A) paragraph (1)(D) shall not apply, but

1 equal to 10 percent of the amount paid or incurred by
2 the taxpayer for qualified energy efficiency improvements
3 installed during such taxable year.

4 “(b) LIMITATION.—The credit allowed by this section
5 with respect to a dwelling for any taxable year shall not
6 exceed \$300, reduced (but not below zero) by the sum of
7 the credits allowed under subsection (a) to the taxpayer
8 with respect to the dwelling for all preceding taxable years.

9 “(c) CARRYFORWARD OF UNUSED CREDIT.—If the
10 credit allowable under subsection (a) exceeds the limita-
11 tion imposed by section 26(a) for such taxable year re-
12 duced by the sum of the credits allowable under this sub-
13 part (other than this section) for such taxable year, such
14 excess shall be carried to the succeeding taxable year and
15 added to the credit allowable under subsection (a) for such
16 succeeding taxable year.

17 “(d) QUALIFIED ENERGY EFFICIENCY IMPROVE-
18 MENTS.—For purposes of this section, the term ‘qualified
19 energy efficiency improvements’ means any energy effi-
20 cient building envelope component which is certified to
21 meet or exceed the latest prescriptive criteria for such
22 component in the International Energy Conservation Code
23 approved by the Department of Energy before the installa-
24 tion of such component, or any combination of energy effi-
25 ciency measures which are certified as achieving at least

1 a 30 percent reduction in heating and cooling energy
2 usage for the dwelling (as measured in terms of energy
3 cost to the taxpayer), if—

4 “(1) such component or combination of meas-
5 ures is installed in or on a dwelling which—

6 “(A) is located in the United States,

7 “(B) has not been treated as a qualifying
8 new home for purposes of any credit allowed
9 under section 45K, and

10 “(C) is owned and used by the taxpayer as
11 the taxpayer’s principal residence (within the
12 meaning of section 121),

13 “(2) the original use of such component or com-
14 bination of measures commences with the taxpayer,
15 and

16 “(3) such component or combination of meas-
17 ures reasonably can be expected to remain in use for
18 at least 5 years.

19 “(e) CERTIFICATION.—

20 “(1) METHODS OF CERTIFICATION.—

21 “(A) COMPONENT-BASED METHOD.—The
22 certification described in subsection (d) for any
23 component described in such subsection shall be
24 determined on the basis of applicable energy ef-
25 ficiency ratings (including product labeling re-

1 requirements) for affected building envelope com-
2 ponents.

3 “(B) PERFORMANCE-BASED METHOD.—

4 “(i) IN GENERAL.—The certification
5 described in subsection (d) for any com-
6 bination of measures described in such
7 subsection shall be—

8 “(I) determined by comparing
9 the projected heating and cooling en-
10 energy usage for the dwelling to such
11 usage for such dwelling in its original
12 condition, and

13 “(II) accompanied by a written
14 analysis documenting the proper ap-
15 plication of a permissible energy per-
16 formance calculation method to the
17 specific circumstances of such dwell-
18 ing.

19 “(ii) COMPUTER SOFTWARE.—Com-
20 puter software shall be used in support of
21 a performance-based method certification
22 under clause (i). Such software shall meet
23 procedures and methods for calculating en-
24 ergy and cost savings in regulations pro-
25 mulgated by the Secretary of Energy.

1 “(2) PROVIDER.—A certification described in
2 subsection (d) shall be provided by—

3 “(A) in the case of the method described
4 in paragraph (1)(A), a third party, such as a
5 local building regulatory authority, a utility, a
6 manufactured home primary inspection agency,
7 or a home energy rating organization, or

8 “(B) in the case of the method described
9 in paragraph (1)(B), an individual recognized
10 by an organization designated by the Secretary
11 for such purposes.

12 “(3) FORM.—A certification described in sub-
13 section (d) shall be made in writing on forms which
14 specify in readily inspectable fashion the energy effi-
15 cient components and other measures and their re-
16 spective efficiency ratings, and which include a per-
17 manent label affixed to the electrical distribution
18 panel of the dwelling.

19 “(4) REGULATIONS.—

20 “(A) IN GENERAL.—In prescribing regula-
21 tions under this subsection for certification
22 methods described in paragraph (1)(B), the
23 Secretary, after examining the requirements for
24 energy consultants and home energy ratings
25 providers specified by the Mortgage Industry

1 National Home Energy Rating Standards, shall
2 prescribe procedures for calculating annual en-
3 ergy usage and cost reductions for heating and
4 cooling and for the reporting of the results.
5 Such regulations shall—

6 “(i) provide that any calculation pro-
7 cedures be fuel neutral such that the same
8 energy efficiency measures allow a dwelling
9 to be eligible for the credit under this sec-
10 tion regardless of whether such dwelling
11 uses a gas or oil furnace or boiler or an
12 electric heat pump, and

13 “(ii) require that any computer soft-
14 ware allow for the printing of the Federal
15 tax forms necessary for the credit under
16 this section and for the printing of forms
17 for disclosure to the owner of the dwelling.

18 “(B) PROVIDERS.—For purposes of para-
19 graph (2)(B), the Secretary shall establish re-
20 quirements for the designation of individuals
21 based on the requirements for energy consult-
22 ants and home energy raters specified by the
23 Mortgage Industry National Home Energy Rat-
24 ing Standards.

1 “(f) DEFINITIONS AND SPECIAL RULES.—For pur-
2 poses of this section—

3 “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-
4 CUPANCY.—In the case of any dwelling unit which is
5 jointly occupied and used during any calendar year
6 as a residence by 2 or more individuals the following
7 rules shall apply:

8 “(A) The amount of the credit allowable
9 under subsection (a) by reason of expenditures
10 for the qualified energy efficiency improvements
11 made during such calendar year by any of such
12 individuals with respect to such dwelling unit
13 shall be determined by treating all of such indi-
14 viduals as 1 taxpayer whose taxable year is
15 such calendar year.

16 “(B) There shall be allowable, with respect
17 to such expenditures to each of such individ-
18 uals, a credit under subsection (a) for the tax-
19 able year in which such calendar year ends in
20 an amount which bears the same ratio to the
21 amount determined under subparagraph (A) as
22 the amount of such expenditures made by such
23 individual during such calendar year bears to
24 the aggregate of such expenditures made by all
25 of such individuals during such calendar year.

1 “(2) TENANT-STOCKHOLDER IN COOPERATIVE
2 HOUSING CORPORATION.—In the case of an indi-
3 vidual who is a tenant-stockholder (as defined in sec-
4 tion 216) in a cooperative housing corporation (as
5 defined in such section), such individual shall be
6 treated as having paid his tenant-stockholder’s pro-
7 portionate share (as defined in section 216(b)(3)) of
8 the cost of qualified energy efficiency improvements
9 made by such corporation.

10 “(3) CONDOMINIUMS.—

11 “(A) IN GENERAL.—In the case of an indi-
12 vidual who is a member of a condominium man-
13 agement association with respect to a condo-
14 minium which the individual owns, such indi-
15 vidual shall be treated as having paid the indi-
16 vidual’s proportionate share of the cost of quali-
17 fied energy efficiency improvements made by
18 such association.

19 “(B) CONDOMINIUM MANAGEMENT ASSO-
20 CIATION.—For purposes of this paragraph, the
21 term ‘condominium management association’
22 means an organization which meets the require-
23 ments of paragraph (1) of section 528(c) (other
24 than subparagraph (E) thereof) with respect to

1 a condominium project substantially all of the
2 units of which are used as residences.

3 “(4) BUILDING ENVELOPE COMPONENT.—The
4 term ‘building envelope component’ means—

5 “(A) any insulation material or system
6 which is specifically and primarily designed to
7 reduce the heat loss or gain of a dwelling when
8 installed in or on such dwelling,

9 “(B) exterior windows (including sky-
10 lights), and

11 “(C) exterior doors.

12 “(5) MANUFACTURED HOMES INCLUDED.—For
13 purposes of this section, the term ‘dwelling’ includes
14 a manufactured home which conforms to Federal
15 Manufactured Home Construction and Safety Stand-
16 ards (24 C.F.R. 3280).

17 “(g) BASIS ADJUSTMENT.—For purposes of this sub-
18 title, if a credit is allowed under this section for any ex-
19 penditure with respect to any property, the increase in the
20 basis of such property which would (but for this sub-
21 section) result from such expenditure shall be reduced by
22 the amount of the credit so allowed.

23 “(h) TERMINATION.—Subsection (a) shall not apply
24 to qualified energy efficiency improvements installed after
25 December 31, 2006.”.

1 (b) CREDIT ALLOWED AGAINST REGULAR TAX AND
2 ALTERNATIVE MINIMUM TAX.—

3 (1) IN GENERAL.—Section 25D(b), as added by
4 subsection (a), is amended—

5 (A) by striking “The credit” and inserting
6 the following:

7 “(1) DOLLAR AMOUNT.—The credit”, and

8 (B) by adding at the end the following new
9 paragraph:

10 “(2) LIMITATION BASED ON AMOUNT OF
11 TAX.—The credit allowed under subsection (a) for
12 the taxable year shall not exceed the excess of—

13 “(A) the sum of the regular tax liability
14 (as defined in section 26(b)) plus the tax im-
15 posed by section 55, over

16 “(B) the sum of the credits allowable
17 under this subpart (other than this section) and
18 section 27 for the taxable year.”.

19 (2) CONFORMING AMENDMENTS.—

20 (A) Section 25D(c), as added by subsection
21 (a), is amended by striking “section 26(a) for
22 such taxable year reduced by the sum of the
23 credits allowable under this subpart (other than
24 this section)” and inserting “subsection (b)(2)”.

1 (B) Section 23(b)(4)(B), as amended by
2 this Act, is amended by striking “section 25C”
3 and inserting “sections 25C and 25D”.

4 (C) Section 24(b)(3)(B), as amended by
5 this Act, is amended by striking “and 25C” and
6 inserting “25C, and 25D”.

7 (D) Section 25(e)(1)(C), as amended by
8 this Act, is amended by inserting “25D,” after
9 “25C,”.

10 (E) Section 25B(g)(2), as amended by this
11 Act, is amended by striking “23 and 25C” and
12 inserting “23, 25C, and 25D”.

13 (F) Section 26(a)(1), as amended by this
14 Act, is amended by striking “and 25C” and in-
15 sserting “25C, and 25D”.

16 (G) Section 904(h), as amended by this
17 Act, is amended by striking “and 25C” and in-
18 sserting “25C, and 25D”.

19 (H) Section 1400C(d), as amended by this
20 Act, is amended by striking “and 25C” and in-
21 sserting “25C, and 25D”.

22 (c) ADDITIONAL CONFORMING AMENDMENTS.—

23 (1) Section 1016(a), as amended by this Act, is
24 amended by striking “and” at the end of paragraph
25 (31), by striking the period at the end of paragraph

1 (32) and inserting “; and”, and by adding at the
2 end the following new paragraph:

3 “(33) to the extent provided in section 25D(g),
4 in the case of amounts with respect to which a credit
5 has been allowed under section 25D.”.

6 (2) The table of sections for subpart A of part
7 IV of subchapter A of chapter 1, as amended by this
8 Act, is amended by inserting after the item relating
9 to section 25C the following new item:

“Sec. 25D. Energy efficiency improvements to existing homes.”.

10 (d) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided by para-
12 graph (2), the amendments made by this section
13 shall apply to property installed after December 31,
14 2004, in taxable years ending after such date.

15 (2) SUBSECTION (b).—The amendments made
16 by subsection (b) shall apply to taxable years begin-
17 ning after December 31, 2004.

1 **Subtitle D—Clean Coal Incentives**
2 **PART I—CREDIT FOR EMISSION REDUCTIONS**
3 **AND EFFICIENCY IMPROVEMENTS IN EXIST-**
4 **ING COAL-BASED ELECTRICITY GENERATION**
5 **FACILITIES**

6 **SEC. 831. CREDIT FOR PRODUCTION FROM A QUALIFYING**
7 **CLEAN COAL TECHNOLOGY UNIT.**

8 (a) CREDIT FOR PRODUCTION FROM A QUALIFYING
9 CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV
10 of subchapter A of chapter 1 (relating to business related
11 credits), as amended by this Act, is amended by adding
12 at the end the following new section:

13 **“SEC. 45M. CREDIT FOR PRODUCTION FROM A QUALIFYING**
14 **CLEAN COAL TECHNOLOGY UNIT.**

15 “(a) GENERAL RULE.—For purposes of section 38,
16 the qualifying clean coal technology production credit of
17 any taxpayer for any taxable year is equal to—

18 “(1) the applicable amount of clean coal tech-
19 nology production credit, multiplied by

20 “(2) the applicable percentage of the sum of—

21 “(A) the kilowatt hours of electricity, plus

22 “(B) each 3,413 Btu of fuels or chemicals,

23 produced by the taxpayer during such taxable year

24 at a qualifying clean coal technology unit, but only

25 if such production occurs during the 10-year period

1 beginning on the date the unit was returned to serv-
2 ice after becoming a qualifying clean coal technology
3 unit.

4 “(b) APPLICABLE AMOUNT.—

5 “(1) IN GENERAL.—For purposes of this sec-
6 tion, the applicable amount of clean coal technology
7 production credit is equal to \$0.0034.

8 “(2) INFLATION ADJUSTMENT.—For calendar
9 years after 2005, the applicable amount of clean coal
10 technology production credit shall be adjusted by
11 multiplying such amount by the inflation adjustment
12 factor for the calendar year in which the amount is
13 applied. If any amount as increased under the pre-
14 ceding sentence is not a multiple of 0.01 cent, such
15 amount shall be rounded to the nearest multiple of
16 0.01 cent.

17 “(c) APPLICABLE PERCENTAGE.—For purposes of
18 this section, with respect to any qualifying clean coal tech-
19 nology unit, the applicable percentage is the percentage
20 equal to the ratio which the portion of the national mega-
21 watt capacity limitation allocated to the taxpayer with re-
22 spect to such unit under subsection (e) bears to the total
23 megawatt capacity of such unit.

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

1 “(1) QUALIFYING CLEAN COAL TECHNOLOGY
2 UNIT.—The term ‘qualifying clean coal technology
3 unit’ means a clean coal technology unit of the tax-
4 payer which—

5 “(A) on January 1, 2005—

6 “(i) was a coal-based electricity gener-
7 ating steam generator-turbine unit which
8 was not a clean coal technology unit, and

9 “(ii) had a nameplate capacity rating
10 of not more than 300 megawatts,

11 “(B) becomes a clean coal technology unit
12 as the result of the retrofitting, repowering, or
13 replacement of the unit with clean coal tech-
14 nology during the 10-year period beginning on
15 January 1, 2005,

16 “(C) is not receiving nor is scheduled to
17 receive funding under the Clean Coal Tech-
18 nology Program, the Power Plant Improvement
19 Initiative, or the Clean Coal Power Initiative
20 administered by the Secretary of Energy, and

21 “(D) receives an allocation of a portion of
22 the national megawatt capacity limitation under
23 subsection (e).

1 lower of the emission levels for each such
2 emission specified in—

3 “(I) subparagraph (B), or

4 “(II) the new source performance
5 standards of the Clean Air Act (42
6 U.S.C. 7411) which are in effect for
7 the category of source at the time of
8 the retrofitting, repowering, or re-
9 placement of the unit, and

10 “(ii) its emissions do not exceed any
11 relevant emission level specified by regula-
12 tion pursuant to the hazardous air pollut-
13 ant requirements of the Clean Air Act (42
14 U.S.C. 7412) in effect at the time of the
15 retrofitting, repowering, or replacement.

16 “(B) SPECIFIC LEVELS.—The levels speci-
17 fied in this subparagraph are—

18 “(i) in the case of sulfur dioxide emis-
19 sions, 50 percent of the sulfur dioxide
20 emission levels specified in the new source
21 performance standards of the Clean Air
22 Act (42 U.S.C. 7411) in effect on the date
23 of the enactment of this section for the
24 category of source,

1 “(ii) in the case of nitrogen oxide
2 emissions—

3 “(I) 0.1 pound per million Btu of
4 heat input if the unit is not a cyclone-
5 fired boiler, and

6 “(II) if the unit is a cyclone-fired
7 boiler, 15 percent of the uncontrolled
8 nitrogen oxide emissions from such
9 boilers, and

10 “(iii) in the case of particulate emis-
11 sions, 0.02 pound per million Btu of heat
12 input.

13 “(4) DESIGN NET HEAT RATE.—The design net
14 heat rate with respect to any unit, measured in Btu
15 per kilowatt hour (HHV)—

16 “(A) shall be based on the design annual
17 heat input to and the design annual net elec-
18 trical power, fuels, and chemicals output from
19 such unit (determined without regard to such
20 unit’s co-generation of steam),

21 “(B) shall be adjusted for the heat content
22 of the design coal to be used by the unit if it
23 is less than 12,000 Btu per pound according to
24 the following formula:

1 Design net heat rate = Unit net heat rate \times [1 –
2 {((12,000-design coal heat content, Btu per pound)/
3 1,000) \times 0.013}],

4 “(C) shall be corrected for the site ref-
5 erence conditions of—

6 “(i) elevation above sea level of 500
7 feet,

8 “(ii) air pressure of 14.4 pounds per
9 square inch absolute (psia),

10 “(iii) temperature, dry bulb of 63°F,

11 “(iv) temperature, wet bulb of 54°F,

12 and

13 “(v) relative humidity of 55 percent,

14 and

15 “(D) if carbon capture controls have been
16 installed with respect to any qualifying unit and
17 such controls remove at least 50 percent of the
18 unit’s carbon dioxide emissions, shall be ad-
19 justed up to the design heat rate level which
20 would have resulted without the installation of
21 such controls.

22 “(5) HHV.—The term ‘HHV’ means higher
23 heating value.

1 “(6) APPLICATION OF CERTAIN RULES.—The
2 rules of paragraphs (3), (4), and (5) of section 45(e)
3 shall apply.

4 “(7) INFLATION ADJUSTMENT FACTOR.—

5 “(A) IN GENERAL.—The term ‘inflation
6 adjustment factor’ means, with respect to a cal-
7 endar year, a fraction the numerator of which
8 is the GDP implicit price deflator for the pre-
9 ceding calendar year and the denominator of
10 which is the GDP implicit price deflator for the
11 calendar year 2003.

12 “(B) GDP IMPLICIT PRICE DEFLATOR.—
13 The term ‘GDP implicit price deflator’ means,
14 for any calendar year, the most recent revision
15 of the implicit price deflator for the gross do-
16 mestic product as of June 30 of such calendar
17 year as computed by the Department of Com-
18 merce before October 1 of such calendar year.

19 “(8) NONCOMPLIANCE WITH POLLUTION
20 LAWS.—For purposes of this section, a unit which is
21 not in compliance with the applicable State and Fed-
22 eral pollution prevention, control, and permit re-
23 quirements for any period of time shall not be con-
24 sidered to be a qualifying clean coal technology unit
25 during such period.

1 “(e) NATIONAL LIMITATION ON THE AGGREGATE CA-
2 PACITY OF QUALIFYING CLEAN COAL TECHNOLOGY
3 UNITS.—

4 “(1) IN GENERAL.—For purposes of this sec-
5 tion, the national megawatt capacity limitation for
6 qualifying clean coal technology units is 4,000
7 megawatts.

8 “(2) ALLOCATION OF LIMITATION.—The Sec-
9 retary shall allocate the national megawatt capacity
10 limitation for qualifying clean coal technology units
11 in such manner as the Secretary may prescribe
12 under the regulations under paragraph (3).

13 “(3) REGULATIONS.—Not later than 6 months
14 after the date of the enactment of this section, the
15 Secretary shall prescribe such regulations as may be
16 necessary or appropriate—

17 “(A) to carry out the purposes of this sub-
18 section,

19 “(B) to limit the capacity of any qualifying
20 clean coal technology unit to which this section
21 applies so that the megawatt capacity allocated
22 to any unit under this subsection does not ex-
23 ceed 300 megawatts and the combined mega-
24 watt capacity allocated to all such units when
25 all such units are placed in service during the

1 10-year period described in subsection
2 (d)(1)(B), does not exceed 4,000 megawatts,

3 “(C) to provide a certification process
4 under which the Secretary, in consultation with
5 the Secretary of Energy, shall approve and allo-
6 cate the national megawatt capacity
7 limitation—

8 “(i) to encourage that units with the
9 highest thermal efficiencies, when adjusted
10 for the heat content of the design coal and
11 site reference conditions described in sub-
12 section (d)(4)(C), and environmental per-
13 formance, be placed in service as soon as
14 possible, and

15 “(ii) to allocate capacity to taxpayers
16 which have a definite and credible plan for
17 placing into commercial operation a quali-
18 fying clean coal technology unit,
19 including—

20 “(I) a site,

21 “(II) contractual commitments
22 for procurement and construction or,
23 in the case of regulated utilities, the
24 agreement of the State utility commis-
25 sion,

1 “(III) filings for all necessary
2 preconstruction approvals,

3 “(IV) a demonstrated record of
4 having successfully completed com-
5 parable projects on a timely basis, and

6 “(V) such other factors that the
7 Secretary determines are appropriate,

8 “(D) to allocate the national megawatt ca-
9 pacity limitation to a portion of the capacity of
10 a qualifying clean coal technology unit if the
11 Secretary determines that such an allocation
12 would maximize the amount of efficient produc-
13 tion encouraged with the available tax credits,

14 “(E) to set progress requirements and con-
15 ditional approvals so that capacity allocations
16 for clean coal technology units which become
17 unlikely to meet the necessary conditions for
18 qualifying can be reallocated by the Secretary
19 to other clean coal technology units, and

20 “(F) to provide taxpayers with opportuni-
21 ties to correct administrative errors and omis-
22 sions with respect to allocations and record
23 keeping within a reasonable period after dis-
24 covery, taking into account the availability of

1 regulations and other administrative guidance
2 from the Secretary.”.

3 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
4 tion 38(b) (relating to current year business credit), as
5 amended by this Act, is amended by striking “plus” at
6 the end of paragraph (23), by striking the period at the
7 end of paragraph (24) and inserting “, plus”, and by add-
8 ing at the end the following new paragraph:

9 “(25) the qualifying clean coal technology pro-
10 duction credit determined under section 45M(a).”.

11 (c) CLERICAL AMENDMENT.—The table of sections
12 for subpart D of part IV of subchapter A of chapter 1,
13 as amended by this Act, is amended by adding at the end
14 the following new item:

“Sec. 45M. Credit for production from a qualifying clean coal technology unit.”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to production after December 31,
17 2004, in taxable years ending after such date.

18 **PART II—INCENTIVES FOR EARLY COMMERCIAL**
19 **APPLICATIONS OF ADVANCED CLEAN COAL**
20 **TECHNOLOGIES**

21 **SEC. 832. CREDIT FOR INVESTMENT IN QUALIFYING AD-**
22 **VANCED CLEAN COAL TECHNOLOGY.**

23 (a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN
24 COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating
25 to amount of credit) is amended by striking “and” at the

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

4 “(4) the qualifying advanced clean coal tech-
5 nology unit credit.”.

6 (b) AMOUNT OF QUALIFYING ADVANCED CLEAN
7 COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part
8 IV of subchapter A of chapter 1 (relating to rules for com-
9 puting investment credit) is amended by inserting after
10 section 48 the following new section:

11 **“SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECH-
12 NOLOGY UNIT CREDIT.**

13 “(a) IN GENERAL.—For purposes of section 46, the
14 qualifying advanced clean coal technology unit credit for
15 any taxable year is an amount equal to 10 percent of the
16 applicable percentage of the qualified investment in a
17 qualifying advanced clean coal technology unit for such
18 taxable year.

19 “(b) QUALIFYING ADVANCED CLEAN COAL TECH-
20 NOLOGY UNIT.—

21 “(1) IN GENERAL.—For purposes of subsection
22 (a), the term ‘qualifying advanced clean coal tech-
23 nology unit’ means an advanced clean coal tech-
24 nology unit of the taxpayer—

1 “(A)(i) in the case of a unit first placed in
2 service after December 31, 2004, the original
3 use of which commences with the taxpayer, or

4 “(ii) in the case of the retrofitting or
5 repowering of a unit first placed in service be-
6 fore January 1, 2005, the retrofitting or
7 repowering of which is completed by the tax-
8 payer after such date, or

9 “(B) which is depreciable under section
10 167,

11 “(C) which has a useful life of not less
12 than 4 years,

13 “(D) which is located in the United States,

14 “(E) which is not receiving nor is sched-
15 uled to receive funding under the Clean Coal
16 Technology Program, the Power Plant Improve-
17 ment Initiative, or the Clean Coal Power Initia-
18 tive administered by the Secretary of Energy,

19 “(F) which is not a qualifying clean coal
20 technology unit, and

21 “(G) which receives an allocation of a por-
22 tion of the national megawatt capacity limita-
23 tion under subsection (f).

1 “(2) SPECIAL RULE FOR SALE-LEASEBACKS.—

2 For purposes of subparagraph (A) of paragraph (1),
3 in the case of a unit which—

4 “(A) is originally placed in service by a
5 person, and

6 “(B) is sold and leased back by such per-
7 son, or is leased to such person, within 3
8 months after the date such unit was originally
9 placed in service, for a period of not less than
10 12 years,

11 such unit shall be treated as originally placed in
12 service not earlier than the date on which such unit
13 is used under the leaseback (or lease) referred to in
14 subparagraph (B). The preceding sentence shall not
15 apply to any property if the lessee and lessor of such
16 property make an election under this sentence. Such
17 an election, once made, may be revoked only with
18 the consent of the Secretary.

19 “(3) NONCOMPLIANCE WITH POLLUTION
20 LAWS.—For purposes of this subsection, a unit
21 which is not in compliance with the applicable State
22 and Federal pollution prevention, control, and per-
23 mit requirements for any period of time shall not be
24 considered to be a qualifying advanced clean coal
25 technology unit during such period.

1 “(c) APPLICABLE PERCENTAGE.—For purposes of
2 this section, with respect to any qualifying advanced clean
3 coal technology unit, the applicable percentage is the per-
4 centage equal to the ratio which the portion of the national
5 megawatt capacity limitation allocated to the taxpayer
6 with respect to such unit under subsection (f) bears to
7 the total megawatt capacity of such unit.

8 “(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—
9 For purposes of this section—

10 “(1) IN GENERAL.—The term ‘advanced clean
11 coal technology unit’ means a new, retrofit, or
12 repowering unit of the taxpayer which—

13 “(A) is—

14 “(i) an eligible advanced pulverized
15 coal or atmospheric fluidized bed combus-
16 tion technology unit,

17 “(ii) an eligible pressurized fluidized
18 bed combustion technology unit,

19 “(iii) an eligible integrated gasifi-
20 cation combined cycle technology unit, or

21 “(iv) an eligible other technology unit,

22 and

23 “(B) meets the carbon emission rate re-
24 quirements of paragraph (6).

1 “(2) ELIGIBLE ADVANCED PULVERIZED COAL
2 OR ATMOSPHERIC FLUIDIZED BED COMBUSTION
3 TECHNOLOGY UNIT.—The term ‘eligible advanced
4 pulverized coal or atmospheric fluidized bed combus-
5 tion technology unit’ means a clean coal technology
6 unit using advanced pulverized coal or atmospheric
7 fluidized bed combustion technology which—

8 “(A) is placed in service after December
9 31, 2004, and before January 1, 2013, and

10 “(B) has a design net heat rate of not
11 more than 8,500 (8,900 in the case of units
12 placed in service before 2009).

13 “(3) ELIGIBLE PRESSURIZED FLUIDIZED BED
14 COMBUSTION TECHNOLOGY UNIT.—The term ‘eligi-
15 ble pressurized fluidized bed combustion technology
16 unit’ means a clean coal technology unit using pres-
17 surized fluidized bed combustion technology which—

18 “(A) is placed in service after December
19 31, 2004, and before January 1, 2017, and

20 “(B) has a design net heat rate of not
21 more than 7,720 (8,900 in the case of units
22 placed in service before 2009, and 8,500 in the
23 case of units placed in service after 2008 and
24 before 2013).

1 “(4) ELIGIBLE INTEGRATED GASIFICATION
2 COMBINED CYCLE TECHNOLOGY UNIT.—The term
3 ‘eligible integrated gasification combined cycle tech-
4 nology unit’ means a clean coal technology unit
5 using integrated gasification combined cycle tech-
6 nology, with or without fuel or chemical co-produc-
7 tion, which—

8 “(A) is placed in service after December
9 31, 2004, and before January 1, 2017,

10 “(B) has a design net heat rate of not
11 more than 7,720 (8,900 in the case of units
12 placed in service before 2009, and 8,500 in the
13 case of units placed in service after 2008 and
14 before 2013), and

15 “(C) has a net thermal efficiency (HHV)
16 using coal with fuel or chemical co-production
17 of not less than 44.2 percent (38.4 percent in
18 the case of units placed in service before 2009,
19 and 40.2 percent in the case of units placed in
20 service after 2008 and before 2013).

21 “(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—
22 The term ‘eligible other technology unit’ means a
23 clean coal technology unit using any other tech-
24 nology for the production of electricity which is

1 placed in service after December 31, 2004, and be-
2 fore January 1, 2017.

3 “(6) CARBON EMISSION RATE REQUIRE-
4 MENTS.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), a unit meets the require-
7 ments of this paragraph if—

8 “(i) in the case of a unit using design
9 coal with a heat content of not more than
10 9,000 Btu per pound, the carbon emission
11 rate is less than 0.60 pound of carbon per
12 kilowatt hour, and

13 “(ii) in the case of a unit using design
14 coal with a heat content of more than
15 9,000 Btu per pound, the carbon emission
16 rate is less than 0.54 pound of carbon per
17 kilowatt hour.

18 “(B) ELIGIBLE OTHER TECHNOLOGY
19 UNIT.—In the case of an eligible other tech-
20 nology unit, subparagraph (A) shall be applied
21 by substituting ‘0.51’ and ‘0.459’ for ‘0.60’ and
22 ‘0.54’, respectively.

23 “(e) GENERAL DEFINITIONS.—Any term used in this
24 section which is also used in section 45M shall have the
25 meaning given such term in section 45M.

1 “(f) NATIONAL LIMITATION ON THE AGGREGATE CA-
2 PACITY OF ADVANCED CLEAN COAL TECHNOLOGY
3 UNITS.—

4 “(1) IN GENERAL.—For purposes of subsection
5 (b)(1)(G), the national megawatt capacity limitation
6 is—

7 “(A) for qualifying advanced clean coal
8 technology units using advanced pulverized coal
9 or atmospheric fluidized bed combustion tech-
10 nology, not more than 1,000 megawatts (not
11 more than 500 megawatts in the case of units
12 placed in service before 2009),

13 “(B) for such units using pressurized flu-
14 idized bed combustion technology, not more
15 than 500 megawatts (not more than 250
16 megawatts in the case of units placed in service
17 before 2009),

18 “(C) for such units using integrated gasifi-
19 cation combined cycle technology, with or with-
20 out fuel or chemical co-production, not more
21 than 2,000 megawatts (not more than 1,000
22 megawatts in the case of units placed in service
23 before 2009), and

24 “(D) for such units using other technology
25 for the production of electricity, not more than

1 500 megawatts (not more than 250 megawatts
2 in the case of units placed in service before
3 2009).

4 “(2) ALLOCATION OF LIMITATION.—The Sec-
5 retary shall allocate the national megawatt capacity
6 limitation for qualifying advanced clean coal tech-
7 nology units in such manner as the Secretary may
8 prescribe under the regulations under paragraph (3).

9 “(3) REGULATIONS.—Not later than 6 months
10 after the date of the enactment of this section, the
11 Secretary shall prescribe such regulations as may be
12 necessary or appropriate—

13 “(A) to carry out the purposes of this sub-
14 section and section 45N,

15 “(B) to limit the capacity of any qualifying
16 advanced clean coal technology unit to which
17 this section applies so that the combined mega-
18 watt capacity of all such units to which this sec-
19 tion applies does not exceed 4,000 megawatts,

20 “(C) to provide a certification process de-
21 scribed in section 45M(e)(3)(C),

22 “(D) to carry out the purposes described
23 in subparagraphs (D), (E), and (F) of section
24 45M(e)(3), and

1 “(E) to reallocate capacity which is not al-
2 located to any technology described in subpara-
3 graphs (A) through (D) of paragraph (1) be-
4 cause an insufficient number of qualifying units
5 request an allocation for such technology, to an-
6 other technology described in such subpara-
7 graphs in order to maximize the amount of en-
8 ergy efficient production encouraged with the
9 available tax credits.

10 “(4) SELECTION CRITERIA.—For purposes of
11 this subsection, the selection criteria for allocating
12 the national megawatt capacity limitation to quali-
13 fying advanced clean coal technology units—

14 “(A) shall be established by the Secretary
15 of Energy as part of a competitive solicitation,

16 “(B) shall include primary criteria of min-
17 imum design net heat rate, maximum design
18 thermal efficiency, environmental performance,
19 and lowest cost to the Government, and

20 “(C) shall include supplemental criteria as
21 determined appropriate by the Secretary of En-
22 ergy.

23 “(g) QUALIFIED INVESTMENT.—For purposes of
24 subsection (a), the term ‘qualified investment’ means, with
25 respect to any taxable year, the basis of a qualifying ad-

1 vanced clean coal technology unit placed in service by the
2 taxpayer during such taxable year (in the case of a unit
3 described in subsection (b)(1)(A)(ii), only that portion of
4 the basis of such unit which is properly attributable to
5 the retrofitting or repowering of such unit).

6 “(h) QUALIFIED PROGRESS EXPENDITURES.—

7 “(1) INCREASE IN QUALIFIED INVESTMENT.—

8 In the case of a taxpayer who has made an election
9 under paragraph (5), the amount of the qualified in-
10 vestment of such taxpayer for the taxable year (de-
11 termined under subsection (g) without regard to this
12 subsection) shall be increased by an amount equal to
13 the aggregate of each qualified progress expenditure
14 for the taxable year with respect to progress expend-
15 iture property.

16 “(2) PROGRESS EXPENDITURE PROPERTY DE-
17 FINED.—For purposes of this subsection, the term
18 ‘progress expenditure property’ means any property
19 being constructed by or for the taxpayer and which
20 it is reasonable to believe will qualify as a qualifying
21 advanced clean coal technology unit which is being
22 constructed by or for the taxpayer when it is placed
23 in service.

24 “(3) QUALIFIED PROGRESS EXPENDITURES DE-
25 FINED.—For purposes of this subsection—

1 “(A) SELF-CONSTRUCTED PROPERTY.—In
2 the case of any self-constructed property, the
3 term ‘qualified progress expenditures’ means
4 the amount which, for purposes of this subpart,
5 is properly chargeable (during such taxable
6 year) to capital account with respect to such
7 property.

8 “(B) NONSELF-CONSTRUCTED PROP-
9 ERTY.—In the case of nonself-constructed prop-
10 erty, the term ‘qualified progress expenditures’
11 means the amount paid during the taxable year
12 to another person for the construction of such
13 property.

14 “(4) OTHER DEFINITIONS.—For purposes of
15 this subsection—

16 “(A) SELF-CONSTRUCTED PROPERTY.—
17 The term ‘self-constructed property’ means
18 property for which it is reasonable to believe
19 that more than half of the construction expendi-
20 tures will be made directly by the taxpayer.

21 “(B) NONSELF-CONSTRUCTED PROP-
22 ERTY.—The term ‘nonself-constructed property’
23 means property which is not self-constructed
24 property.

1 “(C) CONSTRUCTION, ETC.—The term
2 ‘construction’ includes reconstruction and erec-
3 tion, and the term ‘constructed’ includes recon-
4 structed and erected.

5 “(D) ONLY CONSTRUCTION OF QUALI-
6 FYING ADVANCED CLEAN COAL TECHNOLOGY
7 UNIT TO BE TAKEN INTO ACCOUNT.—Construc-
8 tion shall be taken into account only if, for pur-
9 poses of this subpart, expenditures therefor are
10 properly chargeable to capital account with re-
11 spect to the property.

12 “(5) ELECTION.—An election under this sub-
13 section may be made at such time and in such man-
14 ner as the Secretary may by regulations prescribe.
15 Such an election shall apply to the taxable year for
16 which made and to all subsequent taxable years.
17 Such an election, once made, may not be revoked ex-
18 cept with the consent of the Secretary.

19 “(i) COORDINATION WITH OTHER CREDITS.—This
20 section shall not apply to any property with respect to
21 which the rehabilitation credit under section 47 or the en-
22 ergy credit under section 48 is allowed unless the taxpayer
23 elects to waive the application of such credit to such prop-
24 erty.”.

1 (c) RECAPTURE.—Section 50(a) (relating to other
2 special rules) is amended by adding at the end the fol-
3 lowing new paragraph:

4 “(6) SPECIAL RULES RELATING TO QUALIFYING
5 ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For
6 purposes of applying this subsection in the case of
7 any credit allowable by reason of section 48A, the
8 following rules shall apply:

9 “(A) GENERAL RULE.—In lieu of the
10 amount of the increase in tax under paragraph
11 (1), the increase in tax shall be an amount
12 equal to the investment tax credit allowed under
13 section 38 for all prior taxable years with re-
14 spect to a qualifying advanced clean coal tech-
15 nology unit (as defined by section 48A(b)(1))
16 multiplied by a fraction the numerator of which
17 is the number of years remaining to fully depre-
18 ciate under this title the qualifying advanced
19 clean coal technology unit disposed of, and the
20 denominator of which is the total number of
21 years over which such unit would otherwise
22 have been subject to depreciation. For purposes
23 of the preceding sentence, the year of disposi-
24 tion of the qualifying advanced clean coal tech-

1 nology unit shall be treated as a year of re-
2 maining depreciation.

3 “(B) PROPERTY CEASES TO QUALIFY FOR
4 PROGRESS EXPENDITURES.—Rules similar to
5 the rules of paragraph (2) shall apply in the
6 case of qualified progress expenditures for a
7 qualifying advanced clean coal technology unit
8 under section 48A, except that the amount of
9 the increase in tax under subparagraph (A) of
10 this paragraph shall be substituted for the
11 amount described in such paragraph (2).

12 “(C) APPLICATION OF PARAGRAPH.—This
13 paragraph shall be applied separately with re-
14 spect to the credit allowed under section 38 re-
15 garding a qualifying advanced clean coal tech-
16 nology unit.”.

17 (d) TECHNICAL AMENDMENTS.—

18 (1) Section 49(a)(1)(C) is amended by striking
19 “and” at the end of clause (ii), by striking the pe-
20 riod at the end of clause (iii) and inserting “, and”,
21 and by adding at the end the following new clause:

22 “(iv) the portion of the basis of any
23 qualifying advanced clean coal technology
24 unit attributable to any qualified invest-
25 ment (as defined by section 48A(g)).”.

1 **“SEC. 45N. CREDIT FOR PRODUCTION FROM A QUALIFYING**
2 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

3 “(a) GENERAL RULE.—For purposes of section 38,
4 the qualifying advanced clean coal technology production
5 credit of any taxpayer for any taxable year is equal to—

6 “(1) the applicable amount of advanced clean
7 coal technology production credit, multiplied by

8 “(2) the applicable percentage (as determined
9 under section 48A(c)) of the sum of—

10 “(A) the kilowatt hours of electricity, plus

11 “(B) each 3,413 Btu of fuels or chemicals,
12 produced by the taxpayer during such taxable year
13 at a qualifying advanced clean coal technology unit,
14 but only if such production occurs during the 10-
15 year period beginning on the date the unit was origi-
16 nally placed in service (or returned to service after
17 becoming a qualifying advanced clean coal tech-
18 nology unit).

19 “(b) APPLICABLE AMOUNT.—For purposes of this
20 section—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), the applicable amount of advanced clean
23 coal technology production credit with respect to
24 production from a qualifying advanced clean coal
25 technology unit shall be determined as follows:

1 “(A) If the qualifying advanced clean coal
 2 technology unit is producing electricity only:

3 “(i) In the case of a unit originally
 4 placed in service before 2009, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,500	\$.0060	\$.0038
More than 8,500 but not more than 8,750	\$.0025	\$.0010
More than 8,750 but less than 8,900	\$.0010	\$.0010.

5 “(ii) In the case of a unit originally
 6 placed in service after 2008 and before
 7 2013, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,770	\$.0105	\$.0090
More than 7,770 but not more than 8,125	\$.0085	\$.0068
More than 8,125 but less than 8,500	\$.0075	\$.0055.

8 “(iii) In the case of a unit originally
 9 placed in service after 2012 and before
 10 2017, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,380	\$.0140	\$.0115
More than 7,380 but not more than 7,720	\$.0120	\$.0090.

11 “(B) If the qualifying advanced clean coal
 12 technology unit is producing fuel or chemicals:

13 “(i) In the case of a unit originally
 14 placed in service before 2009, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 40.2 percent	\$.0060	\$.0038
Less than 40.2 but not less than 39 percent	\$.0025	\$.0010
Less than 39 but not less than 38.4 percent	\$.0010	\$.0010.

1 “(ii) In the case of a unit originally
 2 placed in service after 2008 and before
 3 2013, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 43.9 percent	\$.0105	\$.0090
Less than 43.9 but not less than 42 percent	\$.0085	\$.0068
Less than 42 but not less than 40.2 percent	\$.0075	\$.0055.

4 “(iii) In the case of a unit originally
 5 placed in service after 2012 and before
 6 2017, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 46.3 percent	\$.0140	\$.0115
Less than 46.3 but not less than 44.2 percent	\$.0120	\$.0090.

7 “(2) SPECIAL RULE FOR UNITS QUALIFYING
 8 FOR GREATER APPLICABLE AMOUNT WHEN PLACED
 9 IN SERVICE.—If, at the time a qualifying advanced
 10 clean coal technology unit is placed in service, pro-
 11 duction from the unit would be entitled to a greater
 12 applicable amount if such unit had been placed in
 13 service at a later date, the applicable amount for
 14 such unit shall be such greater amount.

1 “(c) INFLATION ADJUSTMENT.—For calendar years
2 after 2005, each dollar amount in subsection (b)(1) shall
3 be adjusted by multiplying such amount by the inflation
4 adjustment factor for the calendar year in which the
5 amount is applied. If any amount as increased under the
6 preceding sentence is not a multiple of 0.01 cent, such
7 amount shall be rounded to the nearest multiple of 0.01
8 cent.

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

11 “(1) IN GENERAL.—Any term used in this sec-
12 tion which is also used in section 45M or 48A shall
13 have the meaning given such term in such section.

14 “(2) APPLICABLE RULES.—The rules of para-
15 graphs (3), (4), and (5) of section 45(e) shall
16 apply.”.

17 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
18 tion 38(b) (relating to current year business credit), as
19 amended by this Act, is amended by striking “plus” at
20 the end of paragraph (24), by striking the period at the
21 end of paragraph (25) and inserting “, plus”, and by add-
22 ing at the end the following new paragraph:

23 “(26) the qualifying advanced clean coal tech-
24 nology production credit determined under section
25 45N(a).”.

1 (c) DENIAL OF DOUBLE BENEFIT.—Section 29(d)
2 (relating to other definitions and special rules) is amended
3 by adding at the end the following new paragraph:

4 “(9) DENIAL OF DOUBLE BENEFIT.—This sec-
5 tion shall not apply with respect to any qualified fuel
6 the production of which may be taken into account
7 for purposes of determining the credit under section
8 45N.”.

9 (d) CLERICAL AMENDMENT.—The table of sections
10 for subpart D of part IV of subchapter A of chapter 1,
11 as amended by this Act, is amended by adding at the end
12 the following new item:

“Sec. 45N. Credit for production from a qualifying advanced clean coal tech-
nology unit.”.

13 (e) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to production after December 31,
15 2004, in taxable years ending after such date.

16 **PART III—TREATMENT OF PERSONS NOT ABLE**

17 **TO USE ENTIRE CREDIT**

18 **SEC. 834. TREATMENT OF PERSONS NOT ABLE TO USE EN-**
19 **TIRE CREDIT.**

20 (a) IN GENERAL.—Section 45M, as added by this
21 Act, is amended by adding at the end the following new
22 subsection:

23 “(f) TREATMENT OF PERSON NOT ABLE TO USE
24 ENTIRE CREDIT.—

1 “(1) ALLOWANCE OF CREDITS.—

2 “(A) IN GENERAL.—Any credit allowable
3 under this section, section 45N, or section 48A
4 with respect to a facility owned by a person de-
5 scribed in subparagraph (B) may be transferred
6 or used as provided in this subsection, and the
7 determination as to whether the credit is allow-
8 able shall be made without regard to the tax-
9 exempt status of the person.

10 “(B) PERSONS DESCRIBED.—A person is
11 described in this subparagraph if the person
12 is—

13 “(i) an organization described in sec-
14 tion 501(c)(12)(C) and exempt from tax
15 under section 501(a),

16 “(ii) an organization described in sec-
17 tion 1381(a)(2)(C),

18 “(iii) a public utility (as defined in
19 section 136(c)(2)(B)),

20 “(iv) any State or political subdivision
21 thereof, the District of Columbia, or any
22 agency or instrumentality of any of the
23 foregoing,

1 “(v) any Indian tribal government
2 (within the meaning of section 7871) or
3 any agency or instrumentality thereof, or

4 “(vi) the Tennessee Valley Authority.

5 “(2) TRANSFER OF CREDIT.—

6 “(A) IN GENERAL.—A person described in
7 clause (i), (ii), (iii), (iv), or (v) of paragraph
8 (1)(B) may transfer any credit to which para-
9 graph (1)(A) applies through an assignment to
10 any other person not described in paragraph
11 (1)(B). Such transfer may be revoked only with
12 the consent of the Secretary.

13 “(B) REGULATIONS.—The Secretary shall
14 prescribe such regulations as necessary to en-
15 sure that any credit described in subparagraph
16 (A) is claimed once and not reassigned by such
17 other person.

18 “(C) TRANSFER PROCEEDS TREATED AS
19 ARISING FROM ESSENTIAL GOVERNMENT FUNC-
20 TION.—Any proceeds derived by a person de-
21 scribed in clause (iii), (iv), or (v) of paragraph
22 (1)(B) from the transfer of any credit under
23 subparagraph (A) shall be treated as arising
24 from the exercise of an essential government
25 function.

1 “(3) USE OF CREDIT AS AN OFFSET.—Notwith-
2 standing any other provision of law, in the case of
3 a person described in clause (i), (ii), or (v) of para-
4 graph (1)(B), any credit to which paragraph (1)(A)
5 applies may be applied by such person, to the extent
6 provided by the Secretary of Agriculture, as a pre-
7 payment of any loan, debt, or other obligation the
8 entity has incurred under subchapter I of chapter 31
9 of title 7 of the Rural Electrification Act of 1936 (7
10 U.S.C. 901 et seq.), as in effect on the date of the
11 enactment of this section.

12 “(4) USE BY TVA.—

13 “(A) IN GENERAL.—Notwithstanding any
14 other provision of law, in the case of a person
15 described in paragraph (1)(B)(vi), any credit to
16 which paragraph (1)(A) applies may be applied
17 as a credit against the payments required to be
18 made in any fiscal year under section 15d(e) of
19 the Tennessee Valley Authority Act of 1933 (16
20 U.S.C. 831n-4(e)) as an annual return on the
21 appropriations investment and an annual repay-
22 ment sum.

23 “(B) TREATMENT OF CREDITS.—The ag-
24 gregate amount of credits described in para-
25 graph (1)(A) with respect to such person shall

1 be treated in the same manner and to the same
2 extent as if such credits were a payment in cash
3 and shall be applied first against the annual re-
4 turn on the appropriations investment.

5 “(C) CREDIT CARRYOVER.—With respect
6 to any fiscal year, if the aggregate amount of
7 credits described paragraph (1)(A) with respect
8 to such person exceeds the aggregate amount of
9 payment obligations described in subparagraph
10 (A), the excess amount shall remain available
11 for application as credits against the amounts
12 of such payment obligations in succeeding fiscal
13 years in the same manner as described in this
14 paragraph.

15 “(5) CREDIT NOT INCOME.—Any transfer
16 under paragraph (2) or use under paragraph (3) of
17 any credit to which paragraph (1)(A) applies shall
18 not be treated as income for purposes of section
19 501(c)(12).

20 “(6) TREATMENT OF UNRELATED PERSONS.—
21 For purposes of this subsection, transfers among
22 and between persons described in clauses (i), (ii),
23 (iii), (iv), and (v) of paragraph (1)(B) shall be treat-
24 ed as transfers between unrelated parties.”.

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

4 **Subtitle E—Oil and Gas Provisions**

5 **SEC. 841. OIL AND GAS FROM MARGINAL WELLS.**

6 (a) IN GENERAL.—Subpart D of part IV of sub-
7 chapter A of chapter 1 (relating to business credits), as
8 amended by this Act, is amended by adding at the end
9 the following new section:

10 **“SEC. 450. CREDIT FOR PRODUCING OIL AND GAS FROM** 11 **MARGINAL WELLS.**

12 “(a) GENERAL RULE.—For purposes of section 38,
13 the marginal well production credit for any taxable year
14 is an amount equal to the product of—

15 “(1) the credit amount, and

16 “(2) the qualified crude oil production and the
17 qualified natural gas production which is attrib-
18 utable to the taxpayer.

19 “(b) CREDIT AMOUNT.—For purposes of this
20 section—

21 “(1) IN GENERAL.—The credit amount is—

22 “(A) \$3 per barrel of qualified crude oil
23 production, and

24 “(B) 50 cents per 1,000 cubic feet of
25 qualified natural gas production.

1 “(2) REDUCTION AS OIL AND GAS PRICES IN-
2 CREASE.—

3 “(A) IN GENERAL.—The \$3 and 50 cents
4 amounts under paragraph (1) shall each be re-
5 duced (but not below zero) by an amount which
6 bears the same ratio to such amount (deter-
7 mined without regard to this paragraph) as—

8 “(i) the excess (if any) of the applica-
9 ble reference price over \$15 (\$1.67 for
10 qualified natural gas production), bears to

11 “(ii) \$3 (\$0.33 for qualified natural
12 gas production).

13 The applicable reference price for a taxable
14 year is the reference price of the calendar year
15 preceding the calendar year in which the tax-
16 able year begins.

17 “(B) INFLATION ADJUSTMENT.—

18 “(i) IN GENERAL.—In the case of any
19 taxable year beginning in a calendar year
20 after 2005, each of the dollar amounts
21 contained in subparagraph (A) shall be in-
22 creased to an amount equal to such dollar
23 amount multiplied by the inflation adjust-
24 ment factor for such calendar year.

1 “(ii) INFLATION ADJUSTMENT FAC-
2 TOR.—For purposes of clause (i)—

3 “(I) IN GENERAL.—The term ‘in-
4 flation adjustment factor’ means, with
5 respect to a calendar year, a fraction
6 the numerator of which is the GDP
7 implicit price deflator for the pre-
8 ceding calendar year and the denomi-
9 nator of which is the GDP implicit
10 price deflator for the calendar year
11 2004.

12 “(II) GDP IMPLICIT PRICE
13 DEFLATOR.—The term ‘GDP implicit
14 price deflator’ means, for any cal-
15 endar year, the most recent revision of
16 the implicit price deflator for the
17 gross domestic product as of June 30
18 of such calendar year as computed by
19 the Department of Commerce before
20 October 1 of such calendar year.

21 “(C) REFERENCE PRICE.—For purposes of
22 this paragraph, the term ‘reference price’
23 means, with respect to any calendar year—

1 “(i) in the case of qualified crude oil
2 production, the reference price determined
3 under section 29(d)(2)(C), and

4 “(ii) in the case of qualified natural
5 gas production, the Secretary’s estimate of
6 the annual average wellhead price per
7 1,000 cubic feet for all domestic natural
8 gas.

9 “(c) QUALIFIED CRUDE OIL AND NATURAL GAS
10 PRODUCTION.—For purposes of this section—

11 “(1) IN GENERAL.—The terms ‘qualified crude
12 oil production’ and ‘qualified natural gas production’
13 mean domestic crude oil or domestic natural gas
14 which is produced from a qualified marginal well.

15 “(2) LIMITATION ON AMOUNT OF PRODUCTION
16 WHICH MAY QUALIFY.—

17 “(A) IN GENERAL.—Crude oil or natural
18 gas produced during any taxable year from any
19 well shall not be treated as qualified crude oil
20 production or qualified natural gas production
21 to the extent production from the well during
22 the taxable year exceeds 1,095 barrels or barrel
23 equivalents.

24 “(B) PROPORTIONATE REDUCTIONS.—

1 “(i) SHORT TAXABLE YEARS.—In the
2 case of a short taxable year, the limitations
3 under this paragraph shall be proportion-
4 ately reduced to reflect the ratio which the
5 number of days in such taxable year bears
6 to 365.

7 “(ii) WELLS NOT IN PRODUCTION EN-
8 TIRE YEAR.—In the case of a well which is
9 not capable of production during each day
10 of a taxable year, the limitations under
11 this paragraph applicable to the well shall
12 be proportionately reduced to reflect the
13 ratio which the number of days of produc-
14 tion bears to the total number of days in
15 the taxable year.

16 “(3) NONCOMPLIANCE WITH POLLUTION
17 LAWS.—Production from any well during any period
18 in which such well is not in compliance with applica-
19 ble Federal pollution prevention, control, and permit
20 requirements shall not be treated as qualified crude
21 oil production or qualified natural gas production.

22 “(4) DEFINITIONS.—

23 “(A) QUALIFIED MARGINAL WELL.—The
24 term ‘qualified marginal well’ means a domestic
25 well—

1 “(i) the production from which during
2 the taxable year is treated as marginal
3 production under section 613A(c)(6), or

4 “(ii) which, during the taxable year—

5 “(I) has average daily production
6 of not more than 25 barrel equiva-
7 lents, and

8 “(II) produces water at a rate
9 not less than 95 percent of total well
10 effluent.

11 “(B) CRUDE OIL, ETC.—The terms ‘crude
12 oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have
13 the meanings given such terms by section
14 613A(e).

15 “(C) BARREL EQUIVALENT.—The term
16 ‘barrel equivalent’ means, with respect to nat-
17 ural gas, a conversion ratio of 6,000 cubic
18 feet of natural gas to 1 barrel of crude oil.

19 “(D) DOMESTIC NATURAL GAS.—The term
20 ‘domestic natural gas’ does not include Alaska
21 natural gas (as defined in section 45Q(c)(1)).

22 “(d) OTHER RULES.—

23 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
24 PAYER.—In the case of a qualified marginal well in
25 which there is more than 1 owner of operating inter-

1 ests in the well and the crude oil or natural gas pro-
2 duction exceeds the limitation under subsection
3 (c)(2), qualifying crude oil production or qualifying
4 natural gas production attributable to the taxpayer
5 shall be determined on the basis of the ratio which
6 taxpayer's revenue interest in the production bears
7 to the aggregate of the revenue interests of all oper-
8 ating interest owners in the production.

9 “(2) OPERATING INTEREST REQUIRED.—Any
10 credit under this section may be claimed only on
11 production which is attributable to the holder of an
12 operating interest.

13 “(3) PRODUCTION FROM NONCONVENTIONAL
14 SOURCES EXCLUDED.—In the case of production
15 from a qualified marginal well which is eligible for
16 the credit allowed under section 29 for the taxable
17 year, no credit shall be allowable under this section
18 unless the taxpayer elects not to claim the credit
19 under section 29 with respect to the well.”.

20 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
21 tion 38(b) (relating to current year business credit), as
22 amended by this Act, is amended by striking “plus” at
23 the end of paragraph (25), by striking the period at the
24 end of paragraph (26) and inserting “, plus”, and by add-
25 ing at the end the following new paragraph:

1 amended by this Act, is amended by adding at the end
2 the following new paragraph:

3 “(17) NATURAL GAS GATHERING LINE.—The
4 term ‘natural gas gathering line’ means—

5 “(A) the pipe, equipment, and appur-
6 tenances used to deliver natural gas from the
7 wellhead or a commonpoint to the point at
8 which such gas first reaches—

9 “(i) a gas processing plant,

10 “(ii) an interconnection with a trans-
11 mission pipeline certificated by the Federal
12 Energy Regulatory Commission as an
13 interstate transmission pipeline,

14 “(iii) an interconnection with an
15 intrastate transmission pipeline, or

16 “(iv) a direct interconnection with a
17 local distribution company, a gas storage
18 facility, or an industrial consumer, or

19 “(B) any other pipe, equipment, or appur-
20 tenances determined to be a gathering line by
21 the Federal Energy Regulatory Commission.

22 (c) ALTERNATIVE SYSTEM.—The table contained in
23 section 168(g)(3)(B) (relating to special rule for certain
24 property assigned to classes) is amended by inserting after

1 the item relating to subparagraph (C)(i) the following new
2 item:

“(C)(ii) 14”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to property placed in service after
5 December 31, 2004, in taxable years ending after such
6 date.

7 **SEC. 843. EXPENSING OF CAPITAL COSTS INCURRED IN**
8 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
9 **TION AGENCY SULFUR REGULATIONS.**

10 (a) IN GENERAL.—Part VI of subchapter B of chap-
11 ter 1 (relating to itemized deductions for individuals and
12 corporations), as amended by this Act, is amended by in-
13 serting after section 179B the following new section:

14 **“SEC. 179C. DEDUCTION FOR CAPITAL COSTS INCURRED IN**
15 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
16 **TION AGENCY SULFUR REGULATIONS.**

17 “(a) TREATMENT AS EXPENSES.—A small business
18 refiner (as defined in section 45I(c)(1)) may elect to treat
19 75 percent of qualified capital costs (as defined in section
20 45I(c)(2)) which are paid or incurred by the taxpayer dur-
21 ing the taxable year as expenses which are not chargeable
22 to capital account. Any cost so treated shall be allowed
23 as a deduction for the taxable year in which paid or in-
24 curred.

1 “(b) REDUCED PERCENTAGE.—In the case of a small
2 business refiner with average daily domestic refinery runs
3 for the 1-year period ending on December 31, 2002, in
4 excess of 155,000 barrels, the number of percentage
5 points described in subsection (a) shall be reduced (not
6 below zero) by the product of such number (before the
7 application of this subsection) and the ratio of such excess
8 to 50,000 barrels. For purposes of calculating such aver-
9 age daily domestic refinery runs, only refineries of the re-
10 finer or a related person (within the meaning of section
11 613A(d)(3)) on April 1, 2003, shall be taken into account.

12 “(c) BASIS REDUCTION.—

13 “(1) IN GENERAL.—For purposes of this title,
14 the basis of any property shall be reduced by the
15 portion of the cost of such property taken into ac-
16 count under subsection (a).

17 “(2) ORDINARY INCOME RECAPTURE.—For
18 purposes of section 1245, the amount of the deduc-
19 tion allowable under subsection (a) with respect to
20 any property which is of a character subject to the
21 allowance for depreciation shall be treated as a de-
22 duction allowed for depreciation under section 167.”.

23 “(d) COORDINATION WITH OTHER PROVISIONS.—
24 Section 280B shall not apply to amounts which are treated
25 as expenses under this section.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 263(a)(1), as amended by this Act,
3 is amended by striking “or” at the end of subpara-
4 graph (H), by striking the period at the end of sub-
5 paragraph (I) and inserting “; or”, and by adding
6 at the end the following new subparagraph:

7 “(J) expenditures for which a deduction is
8 allowed under section 179C.”.

9 (2) Section 263A(c)(3) is amended by inserting
10 “179C,” after “section”.

11 (3) Section 312(k)(3)(B), as amended by this
12 Act, is amended by striking “or 179B” each place
13 it appears in the heading and text and inserting
14 “179B, or 179C”.

15 (4) Section 1016(a), as amended by this Act, is
16 amended by striking “and” at the end of paragraph
17 (32), by striking the period at the end of paragraph
18 (33) and inserting “, and”, and by adding at the
19 end the following new paragraph:

20 “(34) to the extent provided in section
21 179C(e).”

22 (5) Paragraphs (2)(C) and (3)(C) of section
23 1245(a), as amended by this Act, are each amended
24 by inserting “179C,” after “179B,”.

1 (5) The table of sections for part VI of sub-
2 chapter B of chapter 1, as amended by this Act, is
3 amended by inserting after the item relating to sec-
4 tion 179B the following new item:

 “Sec. 179C. Deduction for capital costs incurred in complying
 with Environmental Protection Agency sulfur regu-
 lations.”.

5 (c) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to expenses paid or incurred after
7 December 31, 2002, in taxable years ending after such
8 date.

9 **SEC. 844. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**
10 **SEL FUEL.**

11 (a) IN GENERAL.—Subpart D of part IV of sub-
12 chapter A of chapter 1 (relating to business-related cred-
13 its), as amended by this Act, is amended by adding at
14 the end the following new section:

15 **“SEC. 45P. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**
16 **SEL FUEL.**

17 “(a) IN GENERAL.—For purposes of section 38, the
18 amount of the low sulfur diesel fuel production credit de-
19 termined under this section with respect to any facility
20 of a small business refiner is an amount equal to 5 cents
21 for each gallon of low sulfur diesel fuel produced during
22 the taxable year by such small business refiner at such
23 facility.

24 “(b) MAXIMUM CREDIT.—

1 “(1) IN GENERAL.—The aggregate credit deter-
2 mined under subsection (a) for any taxable year with
3 respect to any facility shall not exceed—

4 “(A) 25 percent of the qualified capital
5 costs incurred by the small business refiner
6 with respect to such facility, reduced by

7 “(B) the aggregate credits determined
8 under this section for all prior taxable years
9 with respect to such facility.

10 “(2) REDUCED PERCENTAGE.—In the case of a
11 small business refiner with average daily domestic
12 refinery runs for the 1-year period ending on De-
13 cember 31, 2002, in excess of 155,000 barrels, the
14 number of percentage points described in paragraph
15 (1) shall be reduced (not below zero) by the product
16 of such number (before the application of this para-
17 graph) and the ratio of such excess to 50,000 bar-
18 rels. For purposes of calculating such average daily
19 domestic refinery runs, only refineries of the refiner
20 or a related person (within the meaning of section
21 613A(d)(3)) on April 1, 2003, shall be taken into
22 account.

23 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-
24 poses of this section—

1 “(1) SMALL BUSINESS REFINER.—The term
2 ‘small business refiner’ means, with respect to any
3 taxable year, a refiner of crude oil—

4 “(A) with respect to which not more than
5 1,500 individuals are engaged in the refinery
6 operations of the business on any day during
7 such taxable year, and

8 “(B) the average daily domestic refinery
9 run or average retained production of which for
10 all facilities of the taxpayer for the 1-year pe-
11 riod ending on December 31, 2002, did not ex-
12 ceed 205,000 barrels.

13 For purposes of calculating such average daily do-
14 mestic refinery run or retained production, only re-
15 fineries of the refiner or a related person (within the
16 meaning of section 613A(d)(3)) on April 1, 2003,
17 shall be taken into account.

18 “(2) QUALIFIED CAPITAL COSTS.—The term
19 ‘qualified capital costs’ means, with respect to any
20 facility, those costs paid or incurred during the ap-
21 plicable period for compliance with the applicable
22 EPA regulations with respect to such facility, includ-
23 ing expenditures for the construction of new process
24 operation units or the dismantling and reconstruc-
25 tion of existing process units to be used in the pro-

1 duction of low sulfur diesel fuel, associated adjacent
2 or offsite equipment (including tankage, catalyst,
3 and power supply), engineering, construction period
4 interest, and sitework.

5 “(3) APPLICABLE EPA REGULATIONS.—The
6 term ‘applicable EPA regulations’ means the High-
7 way Diesel Fuel Sulfur Control Requirements of the
8 Environmental Protection Agency.

9 “(4) APPLICABLE PERIOD.—The term ‘applica-
10 ble period’ means, with respect to any facility, the
11 period beginning on January 1, 2003, and ending on
12 the earlier of the date which is 1 year after the date
13 on which the taxpayer must comply with the applica-
14 ble EPA regulations with respect to such facility or
15 December 31, 2009.

16 “(5) LOW SULFUR DIESEL FUEL.—The term
17 ‘low sulfur diesel fuel’ means diesel fuel with a sul-
18 fur content of 15 parts per million or less.

19 “(6) SPECIAL RULE FOR DETERMINATION OF
20 REFINERY RUNS.—Refinery runs shall be deter-
21 mined under rules similar to the rules under section
22 613A(d)(4).

23 “(d) REDUCTION IN BASIS.—For purposes of this
24 subtitle, if a credit is determined under this section for
25 any expenditure with respect to any property, the increase

1 in basis of such property which would (but for this sub-
2 section) result from such expenditure shall be reduced by
3 the amount of the credit so determined.

4 “(e) CERTIFICATION.—

5 “(1) REQUIRED.—No credit shall be allowed
6 unless, not later than the date which is 30 months
7 after the first day of the first taxable year in which
8 the low sulfur diesel fuel production credit is allowed
9 with respect to a facility, the small business refiner
10 obtains certification from the Secretary, after con-
11 sultation with the Administrator of the Environ-
12 mental Protection Agency, that the taxpayer’s quali-
13 fied capital costs with respect to such facility will re-
14 sult in compliance with the applicable EPA regula-
15 tions.

16 “(2) CONTENTS OF APPLICATION.—An applica-
17 tion for certification shall include relevant informa-
18 tion regarding unit capacities and operating charac-
19 teristics sufficient for the Secretary, after consulta-
20 tion with the Administrator of the Environmental
21 Protection Agency, to determine that such qualified
22 capital costs are necessary for compliance with the
23 applicable EPA regulations.

24 “(3) REVIEW PERIOD.—Any application shall
25 be reviewed and notice of certification, if applicable,

1 shall be made within 60 days of receipt of such ap-
2 plication. In the event the Secretary does not notify
3 the taxpayer of the results of such certification with-
4 in such period, the taxpayer may presume the cer-
5 tification to be issued until so notified.

6 “(4) STATUTE OF LIMITATIONS.—With respect
7 to the credit allowed under this section—

8 “(A) the statutory period for the assess-
9 ment of any deficiency attributable to such
10 credit shall not expire before the end of the 3-
11 year period ending on the date that the review
12 period described in paragraph (3) ends with re-
13 spect to the taxpayer, and

14 “(B) such deficiency may be assessed be-
15 fore the expiration of such 3-year period not-
16 withstanding the provisions of any other law or
17 rule of law which would otherwise prevent such
18 assessment.

19 “(f) COOPERATIVE ORGANIZATIONS.—

20 “(1) APPORTIONMENT OF CREDIT.—

21 “(A) IN GENERAL.—In the case of a coop-
22 erative organization described in section
23 1381(a), any portion of the credit determined
24 under subsection (a) for the taxable year may,
25 at the election of the organization, be appor-

1 tioned among patrons eligible to share in pa-
2 tronage dividends on the basis of the quantity
3 or value of business done with or for such pa-
4 trons for the taxable year.

5 “(B) FORM AND EFFECT OF ELECTION.—
6 An election under subparagraph (A) for any
7 taxable year shall be made on a timely filed re-
8 turn for such year. Such election, once made,
9 shall be irrevocable for such taxable year.

10 “(2) TREATMENT OF ORGANIZATIONS AND PA-
11 TRONS.—

12 “(A) ORGANIZATIONS.—The amount of the
13 credit not apportioned to patrons pursuant to
14 paragraph (1) shall be included in the amount
15 determined under subsection (a) for the taxable
16 year of the organization.

17 “(B) PATRONS.—The amount of the credit
18 apportioned to patrons pursuant to paragraph
19 (1) shall be included in the amount determined
20 under subsection (a) for the first taxable year
21 of each patron ending on or after the last day
22 of the payment period (as defined in section
23 1382(d)) for the taxable year of the organiza-
24 tion or, if earlier, for the taxable year of each
25 patron ending on or after the date on which the

1 patron receives notice from the cooperative of
2 the apportionment.

3 “(3) SPECIAL RULE.—If for any reason the tax
4 imposed with respect to any patron of a cooperative
5 organization would, but for this paragraph, be in-
6 creased by any amount by reason of a credit appor-
7 tioned to such patron under this subsection—

8 “(A) the amount of such increase in tax
9 shall not be 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 (26), by striking
21 the period at the end of paragraph (27) and inserting “,
22 plus”, and by adding at the end the following new para-
23 graph:

1 “(28) in the case of a small business refiner,
2 the low sulfur diesel fuel production credit deter-
3 mined under section 45P(a).”.

4 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C
5 (relating to certain expenses for which credits are allow-
6 able) is amended by adding after subsection (d) the fol-
7 lowing new subsection:

8 “(e) LOW SULFUR DIESEL FUEL PRODUCTION
9 CREDIT.—No deduction shall be allowed for that portion
10 of the expenses otherwise allowable as a deduction for the
11 taxable year which is equal to the amount of the credit
12 determined for the taxable year under section 45P(a).”.

13 (d) BASIS ADJUSTMENT.—Section 1016(a) (relating
14 to adjustments to basis), as amended by this Act, is
15 amended by striking “and” at the end of paragraph (33),
16 by striking the period at the end of paragraph (34) and
17 inserting “, and”, and by adding at the end the following
18 new paragraph:

19 “(35) in the case of a facility with respect to
20 which a credit was allowed under section 45P, to the
21 extent provided in section 45P(d).”.

22 (e) CLERICAL AMENDMENT.—The table of sections
23 for subpart D of part IV of subchapter A of chapter 1,
24 as amended by this Act, is amended by adding at the end
25 the following new item:

 “Sec. 45P. Credit for production of low sulfur diesel fuel.”.

1 (f) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to expenses paid or incurred after
3 December 31, 2002, in taxable years ending after such
4 date.

5 **SEC. 845. DETERMINATION OF SMALL REFINER EXCEPTION**
6 **TO OIL DEPLETION DEDUCTION.**

7 (a) IN GENERAL.—Paragraph (4) of section 613A(d)
8 (relating to limitations on application of subsection (e))
9 is amended to read as follows:

10 “(4) CERTAIN REFINERS EXCLUDED.—If the
11 taxpayer or 1 or more related persons engages in the
12 refining of crude oil, subsection (e) shall not apply
13 to the taxpayer for a taxable year if the average
14 daily refinery runs of the taxpayer and such persons
15 for the taxable year exceed 60,000 barrels. For pur-
16 poses of this paragraph, the average daily refinery
17 runs for any taxable year shall be determined by di-
18 viding the aggregate refinery runs for the taxable
19 year by the number of days in the taxable year.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to taxable years ending after De-
22 cember 31, 2004.

1 **SEC. 846. MARGINAL PRODUCTION INCOME LIMIT EXTEN-**
2 **SION.**

3 Section 613A(c)(6)(H) (relating to temporary sus-
4 pension of taxable income limit with respect to marginal
5 production) is amended by striking “2005” and inserting
6 “2007”.

7 **SEC. 847. AMORTIZATION OF DELAY RENTAL PAYMENTS.**

8 (a) IN GENERAL.—Section 167 (relating to deprecia-
9 tion) is amended by redesignating subsection (h) as sub-
10 section (i) and by inserting after subsection (g) the fol-
11 lowing new subsection:

12 “(h) AMORTIZATION OF DELAY RENTAL PAYMENTS
13 FOR DOMESTIC OIL AND GAS WELLS.—

14 “(1) IN GENERAL.—Any delay rental payment
15 paid or incurred in connection with the development
16 of oil or gas wells within the United States (as de-
17 fined in section 638) shall be allowed as a deduction
18 ratably over the 24-month period beginning on the
19 date that such payment was paid or incurred.

20 “(2) HALF-YEAR CONVENTION.—For purposes
21 of paragraph (1), any payment paid or incurred dur-
22 ing the taxable year shall be treated as paid or in-
23 curred on the mid-point of such taxable year.

24 “(3) EXCLUSIVE METHOD.—Except as provided
25 in this subsection, no depreciation or amortization

1 deduction shall be allowed with respect to such pay-
2 ments.

3 “(4) TREATMENT UPON ABANDONMENT.—If
4 any property to which a delay rental payment relates
5 is retired or abandoned during the 24-month period
6 described in paragraph (1), no deduction shall be al-
7 lowed on account of such retirement or abandon-
8 ment and the amortization deduction under this sub-
9 section shall continue with respect to such payment.

10 “(5) DELAY RENTAL PAYMENTS.—For purposes
11 of this subsection, the term ‘delay rental payment’
12 means an amount paid for the privilege of deferring
13 development of an oil or gas well under an oil or gas
14 lease.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to amounts paid or incurred in tax-
17 able years beginning after December 31, 2004.

18 **SEC. 848. AMORTIZATION OF GEOLOGICAL AND GEO-**
19 **PHYSICAL EXPENDITURES.**

20 (a) IN GENERAL.—Section 167 (relating to deprecia-
21 tion), as amended by this Act, is amended by redesi-
22 gnating subsection (i) as subsection (j) and by inserting
23 after subsection (h) the following new subsection:

24 “(i) AMORTIZATION OF GEOLOGICAL AND GEO-
25 PHYSICAL EXPENDITURES.—

1 “(1) IN GENERAL.—Any geological and geo-
2 physical expenses paid or incurred in connection
3 with the exploration for, or development of, oil or
4 gas within the United States (as defined in section
5 638) shall be allowed as a deduction ratably over the
6 24-month period beginning on the date that such ex-
7 pense was paid or incurred.

8 “(2) SPECIAL RULES.—For purposes of this
9 subsection, rules similar to the rules of paragraphs
10 (2), (3), and (4) of subsection (h) shall apply.”.

11 (b) CONFORMING AMENDMENT.—Section 263A(e)(3)
12 is amended by inserting “167(h), 167(i),” after “under
13 section”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to costs paid or incurred in taxable
16 years beginning after December 31, 2004.

17 **SEC. 849. EXTENSION AND MODIFICATION OF CREDIT FOR**
18 **PRODUCING FUEL FROM A NONCONVEN-**
19 **TIONAL SOURCE.**

20 (a) IN GENERAL.—Section 29 (relating to credit for
21 producing fuel from a nonconventional source) is amended
22 by adding at the end the following new subsection:

23 “(h) EXTENSION FOR OTHER FACILITIES.—

24 “(1) OIL AND GAS.—In the case of a well or fa-
25 cility for producing qualified fuels described in sub-

1 paragraph (A) or (B) of subsection (c)(1) which was
2 drilled or placed in service after December 31, 2004,
3 and before January 1, 2007, notwithstanding sub-
4 section (f), this section shall apply with respect to
5 such fuels produced at such well or facility before
6 the close of the 3-year period beginning on the date
7 that such well is drilled or such facility is placed in
8 service.

9 “(2) FACILITIES PRODUCING FUELS FROM AG-
10 RICULTURAL AND ANIMAL WASTE.—

11 “(A) IN GENERAL.—In the case of a facil-
12 ity for producing liquid, gaseous, or solid fuels
13 from qualified agricultural and animal wastes,
14 including such fuels when used as feedstocks,
15 which was placed in service after December 31,
16 2004, and before January 1, 2007, this section
17 shall apply with respect to fuel produced at
18 such facility before the close of the 3-year pe-
19 riod beginning on the date such facility is
20 placed in service.

21 “(B) QUALIFIED AGRICULTURAL AND ANI-
22 MAL WASTE.—For purposes of this paragraph,
23 the term ‘qualified agricultural and animal
24 waste’ means agriculture and animal waste, in-
25 cluding by-products, packaging, and any mate-

1 rials associated with the processing, feeding,
2 selling, transporting, or disposal of agricultural
3 or animal products or wastes.

4 “(3) WELLS PRODUCING VISCOUS OIL.—

5 “(A) IN GENERAL.—In the case of a well
6 for producing viscous oil which was placed in
7 service after December 31, 2004, and before
8 January 1, 2007, this section shall apply with
9 respect to fuel produced at such well before the
10 close of the 3-year period beginning on the date
11 such well is placed in service.

12 “(B) VISCOUS OIL.—The term ‘viscous oil’
13 means heavy oil, as defined in section
14 613A(c)(6), except that—

15 “(i) ‘22 degrees’ shall be substituted
16 for ‘20 degrees’ in applying subparagraph
17 (F) thereof, and

18 “(ii) in all cases, the oil gravity shall
19 be measured from the initial well-head
20 samples, drill cuttings, or down hole sam-
21 ples.

22 “(C) WAIVER OF UNRELATED PERSON RE-
23 QUIREMENT.—In the case of viscous oil, the re-
24 quirement under subsection (a)(2)(A) of a sale
25 to an unrelated person shall not apply to any

1 sale to the extent that the viscous oil is not con-
2 sumed in the immediate vicinity of the wellhead.

3 “(4) FACILITIES PRODUCING REFINED COAL.—

4 “(A) IN GENERAL.—In the case of a facil-
5 ity described in subparagraph (C) for producing
6 refined coal which was placed in service after
7 December 31, 2004, and before January 1,
8 2007, this section shall apply with respect to
9 fuel produced at such facility before the close of
10 the 5-year period beginning on the date such
11 facility is placed in service.

12 “(B) REFINED COAL.—For purposes of
13 this paragraph, the term ‘refined coal’ means a
14 fuel which is a liquid, gaseous, or solid syn-
15 thetic fuel produced from coal (including lig-
16 nite) or high carbon fly ash, including such fuel
17 used as a feedstock.

18 “(C) COVERED FACILITIES.—

19 “(i) IN GENERAL.—A facility is de-
20 scribed in this subparagraph if such facil-
21 ity produces refined coal using a tech-
22 nology which results in—

23 “(I) a qualified emission reduc-
24 tion, and

25 “(II) a qualified enhanced value.

1 “(ii) QUALIFIED EMISSION REDUC-
2 TION.—For purposes of this subparagraph,
3 the term ‘qualified emission reduction’
4 means a reduction of at least 20 percent of
5 the emissions of nitrogen oxide and either
6 sulfur dioxide or mercury released when
7 burning the refined coal (excluding any di-
8 lution caused by materials combined or
9 added during the production process), as
10 compared to the emissions released when
11 burning the feedstock coal or comparable
12 coal predominantly available in the market-
13 place as of January 1, 2004.

14 “(iii) QUALIFIED ENHANCED
15 VALUE.—For purposes of this subpara-
16 graph, the term ‘qualified enhanced value’
17 means an increase of at least 50 percent in
18 the market value of the refined coal (ex-
19 cluding any increase caused by materials
20 combined or added during the production
21 process), as compared to the value of the
22 feedstock coal.

23 “(iv) QUALIFYING ADVANCED CLEAN
24 COAL TECHNOLOGY UNITS EXCLUDED.—A
25 facility described in this subparagraph

1 shall not include a qualifying advanced
2 clean coal technology unit (as defined in
3 section 48A(b)).

4 “(5) COALMINE GAS.—

5 “(A) IN GENERAL.—This section shall
6 apply to coalmine gas—

7 “(i) captured or extracted by the tax-
8 payer during the period beginning after
9 December 31, 2004, and ending before
10 January 1, 2007, and

11 “(ii) utilized as a fuel source or sold
12 by or on behalf of the taxpayer to an unre-
13 lated person during such period.

14 “(B) COALMINE GAS.—For purposes of
15 this paragraph, the term ‘coalmine gas’ means
16 any methane gas which is—

17 “(i) liberated during or as a result of
18 coal mining operations, or

19 “(ii) extracted up to 10 years in ad-
20 vance of coal mining operations as part of
21 a specific plan to mine a coal deposit.

22 “(C) SPECIAL RULE FOR ADVANCED EX-
23 TRACTION.—In the case of coalmine gas which
24 is captured in advance of coal mining oper-
25 ations, the credit under subsection (a) shall be

1 allowed only after the date the coal extraction
2 occurs in the immediate area where the
3 coalmine gas was removed.

4 “(D) NONCOMPLIANCE WITH POLLUTION
5 LAWS.—This paragraph shall not apply to the
6 capture or extraction of coalmine gas from coal
7 mining operations with respect to any period in
8 which such coal mining operations are not in
9 compliance with applicable State and Federal
10 pollution prevention, control, and permit re-
11 quirements.

12 “(6) SPECIAL RULES.—In determining the
13 amount of credit allowable under this section solely
14 by reason of this subsection—

15 “(A) FUELS TREATED AS QUALIFIED
16 FUELS.—Any fuel described in paragraph (2),
17 (3), (4), or (5) shall be treated as a qualified
18 fuel for purposes of this section.

19 “(B) DAILY LIMIT.—The amount of quali-
20 fied fuels described in subparagraph (A) or
21 (B)(i) of subsection (c)(1) sold during any tax-
22 able year which may be taken into account by
23 reason of this subsection with respect to any
24 project shall not exceed an average barrel-of-oil
25 equivalent of 200,000 cubic feet of natural gas

1 per day. Days before the date the project is
2 placed in service shall not be taken into account
3 in determining such average.

4 “(C) EXTENSION PERIOD TO COMMENCE
5 WITH UNADJUSTED CREDIT AMOUNT AND NEW
6 PHASEOUT ADJUSTMENT.—For purposes of ap-
7 plying subsection (b)(2), in the case of fuels
8 sold after 2003—

9 “(i) paragraphs (1)(A) and (2) of sub-
10 section (b) shall be applied by substituting
11 ‘\$35.00’ for ‘\$23.50’, and

12 “(ii) subparagraph (B) of subsection
13 (d)(2) shall be applied by substituting
14 ‘2002’ for ‘1979’ in determining such dol-
15 lar amounts.”.

16 (b) EXTENSION FOR CERTAIN FUEL PRODUCED AT
17 EXISTING FACILITIES.—

18 (1) EXTENSION.—Section 29(f)(2) (relating to
19 application of section) is amended by inserting
20 “(January 1, 2006, in the case of any coke, coke
21 gas, or natural gas and byproducts produced by coal
22 gasification from lignite in a facility described in
23 paragraph (1)(B))” after “January 1, 2003”.

1 (2) USE OF CREDIT AS AN OFFSET.—Section
2 29, as amended by subsection (a), is amended by
3 adding the end the following new subsection;

4 “(i) USE OF CREDIT AS AN OFFSET.—

5 “(1) IN GENERAL.—Any credit allowable under
6 subsection (a) with respect to any natural gas and
7 byproducts produced by coal gasification from lignite
8 in a facility described in paragraph (1)(B) owned by
9 a person described in section 1381(a)(2)(C) or sub-
10 sidiaries of such person may be used as provided in
11 paragraph (2).”.

12 “(2) USE OF CREDIT AS AN OFFSET.—Notwith-
13 standing any other provision of law, in the case of
14 a person described in paragraph (1), any credit to
15 which paragraph (1) applies may be applied by such
16 person—

17 “(A) to the extent provided by the Sec-
18 retary of Agriculture, as a prepayment of any
19 loan, debt, or other obligation the entity has in-
20 curred under subchapter I of chapter 31 of title
21 7 of the Rural Electrification Act of 1936 (7
22 U.S.C. 901 et seq.), as in effect on the date of
23 the enactment of the Energy Tax Incentives
24 Act of 2003, and

1 “(B) to the extent provided by the Sec-
2 retary of Energy, as a prepayment not to ex-
3 ceed 50 percent of any obligation the person
4 has incurred pursuant to an asset purchase
5 agreement entered into with the Secretary and
6 dated October 7, 1988.

7 “(3) CREDIT NOT INCOME.—Any use under
8 paragraph (2) of any credit to which paragraph (1)
9 applies shall not be treated as income for purposes
10 of this title.

11 “(4) TREATMENT OF UNRELATED PERSONS.—
12 For purposes of subsection (a)(2)(A), sales of quali-
13 fied fuels among and between persons described in
14 paragraph (1) shall be treated as sales between un-
15 related parties.”.

16 (c) TREATMENT AS BUSINESS CREDIT.—

17 (1) CREDIT MOVED TO SUBPART RELATING TO
18 BUSINESS RELATED CREDITS.—The Internal Rev-
19 enue Code of 1986, as amended by this Act, is
20 amended by redesignating section 29, as amended by
21 this Act, as section 45R and by moving section 45R
22 (as so redesignated) from subpart B of part IV of
23 subchapter A of chapter 1 to the end of subpart D
24 of part IV of subchapter A of chapter 1.

1 (2) CREDIT TREATED AS BUSINESS CREDIT.—
2 Section 38(b) is amended by striking “plus” at the
3 end of paragraph (29), by striking the period at the
4 end of paragraph (30) and inserting “, plus”, and
5 by adding at the end the following:

6 “(31) the nonconventional source production
7 credit determined under section 45R(a).”.

8 (3) CONFORMING AMENDMENTS.—

9 (A) Section 30(b)(2)(A), as redesignated
10 by this Act, is amended by striking “sections 27
11 and 29” and inserting “section 27”.

12 (B) Sections 43(b)(2) and 613A(c)(6)(C)
13 are each amended by striking “section
14 29(d)(2)(C)” and inserting “section
15 45R(d)(2)(C)”.

16 (C) Section 45R(a), as redesignated by
17 paragraph (1), is amended by striking “At the
18 election of the taxpayer, there shall be allowed
19 as a credit against the tax imposed by this
20 chapter for the taxable year” and inserting
21 “For purposes of section 38, if the taxpayer
22 elects to have this section apply, the nonconven-
23 tional source production credit determined
24 under this section for the taxable year is”.

1 (D) Section 45R(b), as so redesignated, is
2 amended by striking paragraph (6).

3 (E) Section 53(d)(1)(B)(iii) is amended by
4 striking “under section 29” and all that follows
5 through “or not allowed”.

6 (F) Section 55(c)(2) is amended by strik-
7 ing “29(b)(6),”.

8 (G) Subsection (a) of section 772 is
9 amended by inserting “and” at the end of para-
10 graph (9), by striking paragraph (10), and by
11 redesignating paragraph (11) as paragraph
12 (10).

13 (H) Paragraph (5) of section 772(d) is
14 amended by striking “the foreign tax credit,
15 and the credit allowable under section 29” and
16 inserting “and the foreign tax credit”.

17 (I) The table of sections for subpart B of
18 part IV of subchapter A of chapter 1 is amend-
19 ed by striking the item relating to section 29.

20 (J) The table of sections for subpart D of
21 part IV of subchapter A of chapter 1, as
22 amended by this Act, is amended by inserting
23 after the item relating to section 45Q the fol-
24 lowing new item:

“Sec. 45R. Credit for producing fuel from a nonconventional
source.”.

1 (d) STUDY OF COALBED METHANE.—

2 (1) IN GENERAL.—The Secretary of the Treas-
3 ury shall conduct a study regarding the effect of sec-
4 tion 45R of the Internal Revenue Code of 1986 on
5 the production of coalbed methane.

6 (2) CONTENTS OF STUDY.—The study under
7 paragraph (1) shall estimate the total amount of
8 credits under section 45R of the Internal Revenue
9 Code of 1986 claimed annually and in the aggregate
10 which are related to the production of coalbed meth-
11 ane since the date of the enactment of such section
12 45R. Such study shall report the annual value of
13 such credits allowable for coalbed methane compared
14 to the average annual wellhead price of natural gas
15 (per thousand cubic feet of natural gas). Such study
16 shall also estimate the incremental increase in pro-
17 duction of coalbed methane which has resulted from
18 the enactment of such section 45R, and the cost to
19 the Federal Government, in terms of the net tax
20 benefits claimed, per thousand cubic feet of incre-
21 mental coalbed methane produced annually and in
22 the aggregate since such enactment.

23 (e) EFFECTIVE DATES.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), the amendments made by this section

1 shall apply to fuel sold after December 31, 2004, in
2 taxable years ending after such date.

3 (2) EXISTING FACILITIES.—The amendments
4 made by subsection (b) shall apply to fuel sold after
5 December 31, 2002, in taxable years ending after
6 such date.

7 (3) TREATMENT AS BUSINESS CREDIT.—The
8 amendments made by subsection (c) shall apply to
9 taxable years ending after December 31, 2003.

10 **SEC. 850. NATURAL GAS DISTRIBUTION LINES TREATED AS**
11 **15-YEAR PROPERTY.**

12 (a) IN GENERAL.—Section 168(e)(3)(E) (defining
13 15-year property) is amended by striking “and” at the end
14 of clause (ii), by striking the period at the end of clause
15 (iii) and by inserting “, and”, and by adding at the end
16 the following new clause:

17 “(iv) any natural gas distribution
18 line.”.

19 (b) ALTERNATIVE SYSTEM.—The table contained in
20 section 168(g)(3)(B) (relating to special rule for certain
21 property assigned to classes), as amended by this Act, is
22 amended by adding after the item relating to subpara-
23 graph (E)(iii) the following new item:

“(E)(iv) 35”.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to property placed in service after

1 December 31, 2004, in taxable years ending after such
2 date.

3 **SEC. 851. CREDIT FOR ALASKA NATURAL GAS.**

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

8 **“SEC. 45Q. ALASKA NATURAL GAS.**

9 “(a) IN GENERAL.—For purposes of section 38, the
10 Alaska natural gas credit for any taxable year is an
11 amount equal to the product of—

12 “(1) the credit amount, and

13 “(2) Alaska natural gas the production of which
14 is attributable to the taxpayer.

15 “(b) CREDIT AMOUNT.—For purposes of this
16 section—

17 “(1) IN GENERAL.—The credit amount is \$0.52
18 per 1,000,000 Btu of Alaska natural gas.

19 “(2) REDUCTION AS GAS PRICES INCREASE.—

20 “(A) IN GENERAL.—The dollar amount
21 under paragraph (1) shall be reduced (but not
22 below zero) by an amount which bears the same
23 ratio to such amount (determined without re-
24 gard to this paragraph) as—

1 “(i) the excess (if any) of the applica-
2 ble reference price over \$0.83, bears to

3 “(ii) \$0.52.

4 “(B) APPLICABLE REFERENCE PRICE.—
5 For purposes of this paragraph—

6 “(i) IN GENERAL.—The applicable
7 reference price for any calendar month in
8 a taxable year is the reference price for the
9 calendar month in which production oc-
10 curs.

11 “(ii) REFERENCE PRICE.—The term
12 ‘reference price’ means, with respect to any
13 calendar month, a published market price
14 for natural gas in United States dollars
15 per 1,000,000 Btu (reduced by any gas
16 transportation costs and gas processing
17 costs as determined by the appropriate na-
18 tional regulatory body for natural gas
19 transportation) as determined under regu-
20 lations by the Secretary.

21 “(C) INFLATION ADJUSTMENT.—

22 “(i) IN GENERAL.—In the case of any
23 taxable year beginning in a calendar year
24 after 2005, each of the dollar amounts
25 contained in paragraph (1) and subpara-

1 graph (A) of this paragraph shall be in-
2 creased to an amount equal to such dollar
3 amount multiplied by the inflation adjust-
4 ment factor for such calendar year.

5 “(ii) INFLATION ADJUSTMENT FAC-
6 TOR.—For purposes of clause (i)—

7 “(I) IN GENERAL.—The term ‘in-
8 flation adjustment factor’ means, with
9 respect to a calendar year, a fraction
10 the numerator of which is the GDP
11 implicit price deflator for the pre-
12 ceding calendar year and the denomi-
13 nator of which is the GDP implicit
14 price deflator for the calendar year
15 2004.

16 “(II) GDP IMPLICIT PRICE
17 DEFLATOR.—The term ‘GDP implicit
18 price deflator’ means, for any cal-
19 endar year, the most recent revision of
20 the implicit price deflator for the
21 gross domestic product as of June 30
22 of such calendar year as computed by
23 the Department of Commerce before
24 October 1 of such calendar year.

1 “(c) ALASKA NATURAL GAS.—For purposes of this
2 section—

3 “(1) IN GENERAL.—The term ‘Alaska natural
4 gas’ means natural gas entering the Alaska natural
5 gas pipeline (as defined in section 168(i)(18) (deter-
6 mined without regard to subparagraph (B) thereof))
7 which is produced from a well—

8 “(A) located in the area of the State of
9 Alaska lying north of 64 degrees North lati-
10 tude, determined by excluding the area of the
11 Alaska National Wildlife Refuge (including the
12 continental shelf thereof within the meaning of
13 section 638(1)), and

14 “(B) pursuant to the applicable State and
15 Federal pollution prevention, control, and per-
16 mit requirements from such area (including the
17 continental shelf thereof within the meaning of
18 section 638(1)).

19 “(2) NATURAL GAS.—The term ‘natural gas’
20 has the meaning given such term by section
21 613A(e)(2).

22 “(d) SPECIAL RULES.—For purposes of this
23 section—

24 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
25 PAYER.—

1 “(A) IN GENERAL.—In the case of a well
2 in which there is more than 1 person or
3 entity—

4 “(i) entitled to production of Alaska
5 natural gas, or

6 “(ii) at the election of such person or
7 entity, entitled to the value of production
8 as either an operating interest owner or a
9 royalty interest owner,
10 the portion of such production attributable to
11 such person or entity shall be determined on
12 the basis of the ratio which the person’s or enti-
13 ty’s interest in the production or the value of
14 production bears to the aggregate of the inter-
15 ests of all such persons or entities. Production
16 otherwise attributable to a United States tax-
17 exempt person or entity by reason of a royalty
18 interest shall be attributable to such person or
19 entity with respect to whom royalty-in-value
20 production remains or to whom royalty-in-kind
21 production is sold.

22 “(B) PARTNERSHIP PROPERTIES.—In the
23 case of a partnership, for purposes of applying
24 subparagraph (A), production shall be attrib-
25 utable to its partners based on each partner’s

1 distributive share of Alaska natural gas which
2 is produced from partnership properties and at-
3 tributable to the partnership or its partners
4 under subparagraph (A).

5 “(2) PASS-THRU IN THE CASE OF ESTATES
6 AND TRUSTS.—Under regulations prescribed by the
7 Secretary, rules similar to the rules of subsection (d)
8 of section 52 shall apply.

9 “(e) APPLICATION OF SECTION.—This section shall
10 apply to Alaska natural gas during the period—

11 “(1) beginning with the later of—

12 “(A) January 1, 2010, or

13 “(B) the initial date for the interstate
14 transportation of such Alaska natural gas, and

15 “(2) ending with the date which is 25 years
16 after the date described in paragraph (1).”.

17 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
18 tion 38(b) (relating to current year business credit), as
19 amended by this Act, is amended by striking “plus” at
20 the end of paragraph (27), by striking the period at the
21 end of paragraph (28) and inserting “, plus”, and by add-
22 ing at the end the following new paragraph:

23 “(29) The Alaska natural gas credit determined
24 under section 45Q(a).”.

1 (c) ALLOWING CREDIT AGAINST ENTIRE REGULAR
2 TAX AND MINIMUM TAX.—

3 (1) IN GENERAL.—Section 38(c) (relating to
4 limitation based on amount of tax), as amended by
5 this Act, is amended by redesignating paragraph (5)
6 as paragraph (6) and by inserting after paragraph
7 (4) the following new paragraph:

8 “(5) SPECIAL RULES FOR ALASKA NATURAL
9 GAS CREDIT.—

10 “(A) IN GENERAL.—In the case of the
11 Alaska natural gas credit—

12 “(i) this section and section 39 shall
13 be applied separately with respect to the
14 credit, and

15 “(ii) in applying paragraph (1) to the
16 credit—

17 “(I) the amounts in subpara-
18 graphs (A) and (B) thereof shall be
19 treated as being zero, and

20 “(II) the limitation under para-
21 graph (1) (as modified by subclause
22 (I)) shall be reduced by the credit al-
23 lowed under subsection (a) for the
24 taxable year (other than the Alaska
25 natural gas credit).

1 (b) ALASKA NATURAL GAS PIPELINE.—Section
2 168(i) (relating to definitions and special rules), as
3 amended by this Act, is amended by adding at the end
4 the following new paragraph:

5 “(18) ALASKA NATURAL GAS PIPELINE.—The
6 term ‘Alaska natural gas pipeline’ means the natural
7 gas pipeline system located in the State of Alaska
8 which—

9 “(A) has a capacity of more than
10 500,000,000,000 Btu of natural gas per day,
11 and

12 “(B) is—

13 “(i) placed in service after December
14 31, 2012, or

15 “(ii) treated as placed in service on
16 January 1, 2013, if the taxpayer who
17 places such system in service before Janu-
18 ary 1, 2013, elects such treatment.

19 Such term includes the pipe, trunk lines, related
20 equipment, and appurtenances used to carry natural
21 gas, but does not include any gas processing plant.”.

22 (c) ALTERNATIVE SYSTEM.—The table contained in
23 section 168(g)(3)(B) (relating to special rule for certain
24 property assigned to classes), as amended by this Act, is

1 amended by inserting after the item relating to subpara-
2 graph (C)(ii) the following new item:

“(C)(iii) 22”.

3 “(d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to property placed in service after
5 December 31, 2004.

6 **SEC. 853. EXTENSION OF ENHANCED OIL RECOVERY CRED-**
7 **IT TO CERTAIN ALASKA FACILITIES.**

8 (a) IN GENERAL.—Section 43(e)(1) (defining quali-
9 fied enhanced oil recovery costs) is amended by adding at
10 the end the following new subparagraph:

11 “(D) Any amount which is paid or in-
12 curred during the taxable year to construct a
13 gas treatment plant which—

14 “(i) is located in the area of the
15 United States (within the meaning of sec-
16 tion 638(1)) lying north of 64 degrees
17 North latitude,

18 “(ii) prepares Alaska natural gas (as
19 defined in section 45Q(c)(1)) for transpor-
20 tation through a pipeline with a capacity of
21 at least 2,000,000,000,000 Btu of natural
22 gas per day, and

23 “(iii) produces carbon dioxide which is
24 injected into hydrocarbon-bearing geologi-
25 cal formations.”.

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

4 **SEC. 854. ARBITRAGE RULES NOT TO APPLY TO PREPAY-**
5 **MENTS FOR NATURAL GAS.**

6 (a) IN GENERAL.—Section 148(b) (relating to higher
7 yielding investments) is amended by adding at the end the
8 following new paragraph:

9 “(4) SAFE HARBOR FOR PREPAID NATURAL
10 GAS.—

11 “(A) IN GENERAL.—The term ‘investment-
12 type property’ does not include a prepayment
13 under a qualified natural gas supply contract.

14 “(B) QUALIFIED NATURAL GAS SUPPLY
15 CONTRACT.—For purposes of this paragraph,
16 the term ‘qualified natural gas supply contract’
17 means any contract to acquire natural gas for
18 resale by or for a utility owned by a govern-
19 mental unit if the amount of gas permitted to
20 be acquired under the contract for the utility
21 during any year does not exceed the sum of—

22 “(i) the annual average amount dur-
23 ing the testing period of natural gas pur-
24 chased (other than for resale) by cus-

1 tomers of such utility who are located
2 within the service area of such utility, and

3 “(ii) the amount of natural gas to be
4 used to transport the prepaid natural gas
5 to the utility during such year.

6 “(C) NATURAL GAS USED TO GENERATE
7 ELECTRICITY.—Natural gas used to generate
8 electricity shall be taken into account in deter-
9 mining the average under subparagraph
10 (B)(i)—

11 “(i) only if the electricity is generated
12 by a utility owned by a governmental unit,
13 and

14 “(ii) only to the extent that the elec-
15 tricity is sold (other than for resale) to
16 customers of such utility who are located
17 within the service area of such utility.

18 “(D) ADJUSTMENTS FOR CHANGES IN
19 CUSTOMER BASE.—

20 “(i) NEW BUSINESS CUSTOMERS.—
21 If—

22 “(I) after the close of the testing
23 period and before the date of issuance
24 of the issue, the utility owned by a
25 governmental unit enters into a con-

1 tract to supply natural gas (other
2 than for resale) for use by a business
3 at a property within the service area
4 of such utility, and

5 “(II) the utility did not supply
6 natural gas to such property during
7 the testing period or the ratable
8 amount of natural gas to be supplied
9 under the contract is significantly
10 greater than the ratable amount of
11 gas supplied to such property during
12 the testing period,

13 then a contract shall not fail to be treated
14 as a qualified natural gas supply contract
15 by reason of supplying the additional nat-
16 ural gas under the contract referred to in
17 subclause (I).

18 “(ii) OVERALL LIMITATION.—The av-
19 erage under subparagraph (B)(i) shall not
20 exceed the annual amount of natural gas
21 reasonably expected to be purchased (other
22 than for resale) by persons who are located
23 within the service area of such utility and
24 who, as of the date of issuance of the
25 issue, are customers of such utility.

1 “(E) RULING REQUESTS.—The Secretary
2 may increase the average under subparagraph
3 (B)(i) for any period if the utility owned by the
4 governmental unit establishes to the satisfaction
5 of the Secretary that, based on objective evi-
6 dence of growth in natural gas consumption or
7 population, such average would otherwise be in-
8 sufficient for such period.

9 “(F) ADJUSTMENT FOR NATURAL GAS
10 OTHERWISE ON HAND.—

11 “(i) IN GENERAL.—The amount oth-
12 erwise permitted to be acquired under the
13 contract for any period shall be reduced
14 by—

15 “(I) the applicable share of nat-
16 ural gas held by the utility on the
17 date of issuance of the issue, and

18 “(II) the natural gas (not taken
19 into account under subclause (I))
20 which the utility has a right to ac-
21 quire during such period (determined
22 as of the date of issuance of the
23 issue).

24 “(ii) APPLICABLE SHARE.—For pur-
25 poses of clause (i), the term ‘applicable

1 share' means, with respect to any period,
2 the natural gas allocable to such period if
3 the gas were allocated ratably over the pe-
4 riod to which the prepayment relates.

5 “(G) INTENTIONAL ACTS.—Subparagraph
6 (A) shall cease to apply to any issue if the util-
7 ity owned by the governmental unit engages in
8 any intentional act to render the volume of nat-
9 ural gas acquired by such prepayment to be in
10 excess of the sum of—

11 “(i) the amount of natural gas needed
12 (other than for resale) by customers of
13 such utility who are located within the
14 service area of such utility, and

15 “(ii) the amount of natural gas used
16 to transport such natural gas to the utility.

17 “(H) TESTING PERIOD.—For purposes of
18 this paragraph, the term ‘testing period’ means,
19 with respect to an issue, the most recent 5 cal-
20 endar years ending before the date of issuance
21 of the issue.

22 “(I) SERVICE AREA.—For purposes of this
23 paragraph, the service area of a utility owned
24 by a governmental unit shall be comprised of—

1 “(i) any area throughout which such
2 utility provided at all times during the
3 testing period—

4 “(I) in the case of a natural gas
5 utility, natural gas transmission or
6 distribution services, and

7 “(II) in the case of an electric
8 utility, electricity distribution services,

9 “(ii) any area within a county contig-
10 uous to the area described in clause (i) in
11 which retail customers of such utility are
12 located if such area is not also served by
13 another utility providing natural gas or
14 electricity services, as the case may be, and

15 “(iii) any area recognized as the serv-
16 ice area of such utility under State or Fed-
17 eral law.”.

18 (b) PRIVATE LOAN FINANCING TEST NOT TO APPLY
19 TO PREPAYMENTS FOR NATURAL GAS.—Section
20 141(c)(2) (providing exceptions to the private loan financ-
21 ing test) is amended by striking “or” at the end of sub-
22 paragraph (A), by striking the period at the end of sub-
23 paragraph (B) and inserting “, or”, and by adding at the
24 end the following new subparagraph:

1 “(C) is a qualified natural gas supply con-
2 tract (as defined in section 148(b)(4)).”.

3 (c) CONFORMING AMENDMENT.—Section 141(d) is
4 amended by adding at the end the following new para-
5 graph:

6 “(7) EXCEPTION FOR QUALIFIED ELECTRIC
7 AND NATURAL GAS SUPPLY CONTRACTS.—The term
8 ‘nongovernmental output property’ shall not include
9 any contract for the prepayment of electricity or nat-
10 ural gas which is not investment property under sec-
11 tion 148(b)(2).”.

12 (d) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to obligations issued after Decem-
14 ber 31, 2004.

15 **Subtitle F—Electric Utility** 16 **Restructuring Provisions**

17 **SEC. 855. MODIFICATIONS TO SPECIAL RULES FOR NU-** 18 **CLEAR DECOMMISSIONING COSTS.**

19 (a) REPEAL OF LIMITATION ON DEPOSITS INTO
20 FUND BASED ON COST OF SERVICE; CONTRIBUTIONS
21 AFTER FUNDING PERIOD.—Subsection (b) of section
22 468A (relating to special rules for nuclear decommis-
23 sioning costs) is amended to read as follows:

24 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—
25 The amount which a taxpayer may pay into the Fund for

1 any taxable year shall not exceed the ruling amount appli-
2 cable to such taxable year.”.

3 (b) CLARIFICATION OF TREATMENT OF FUND
4 TRANSFERS.—Section 468A(e) (relating to Nuclear De-
5 commissioning Reserve Fund) is amended by adding at
6 the end the following new paragraph:

7 “(8) TREATMENT OF FUND TRANSFERS.—If, in
8 connection with the transfer of the taxpayer’s inter-
9 est in a nuclear power plant, the taxpayer transfers
10 the Fund with respect to such power plant to the
11 transferee of such interest and the transferee elects
12 to continue the application of this section to such
13 Fund—

14 “(A) the transfer of such Fund shall not
15 cause such Fund to be disqualified from the ap-
16 plication of this section, and

17 “(B) no amount shall be treated as distrib-
18 uted from such Fund, or be includable in gross
19 income, by reason of such transfer.”.

20 (c) TREATMENT OF CERTAIN DECOMMISSIONING
21 COSTS.—

22 (1) IN GENERAL.—Section 468A is amended by
23 redesignating subsections (f) and (g) as subsections
24 (g) and (h), respectively, and by inserting after sub-
25 section (e) the following new subsection:

1 “(f) TRANSFERS INTO QUALIFIED FUNDS.—

2 “(1) IN GENERAL.—Notwithstanding subsection
3 (b), any taxpayer maintaining a Fund to which this
4 section applies with respect to a nuclear power plant
5 may transfer into such Fund not more than an
6 amount equal to the present value of the excess of
7 the total nuclear decommissioning costs with respect
8 to such nuclear power plant over the portion of such
9 costs taken into account in determining the ruling
10 amount in effect immediately before the transfer.

11 “(2) DEDUCTION FOR AMOUNTS TRANS-
12 FERRED.—

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (C), the deduction allowed by
15 subsection (a) for any transfer permitted by
16 this subsection shall be allowed ratably over the
17 remaining estimated useful life (within the
18 meaning of subsection (d)(2)(A)) of the nuclear
19 power plant beginning with the taxable year
20 during which the transfer is made.

21 “(B) DENIAL OF DEDUCTION FOR PRE-
22 VIOUSLY DEDUCTED AMOUNTS.—No deduction
23 shall be allowed for any transfer under this sub-
24 section of an amount for which a deduction was
25 previously allowed or a corresponding amount

1 was not included in gross income. For purposes
2 of the preceding sentence, a ratable portion of
3 each transfer shall be treated as being from
4 previously deducted or excluded amounts to the
5 extent thereof.

6 “(C) TRANSFERS OF QUALIFIED FUNDS.—

7 If—

8 “(i) any transfer permitted by this
9 subsection is made to any Fund to which
10 this section applies, and

11 “(ii) such Fund is transferred there-
12 after,

13 any deduction under this subsection for taxable
14 years ending after the date that such Fund is
15 transferred shall be allowed to the transferee
16 and not the transferor. The preceding sentence
17 shall not apply if the transferor is an entity ex-
18 empt from tax under this chapter.

19 “(D) SPECIAL RULES.—

20 “(i) GAIN OR LOSS NOT RECOG-
21 NIZED.—No gain or loss shall be recog-
22 nized on any transfer permitted by this
23 subsection.

24 “(ii) TRANSFERS OF APPRECIATED
25 PROPERTY.—If appreciated property is

1 transferred in a transfer permitted by this
2 subsection, the amount of the deduction
3 shall not exceed the adjusted basis of such
4 property.

5 “(3) NEW RULING AMOUNT REQUIRED.—Para-
6 graph (1) shall not apply to any transfer unless the
7 taxpayer requests from the Secretary a new schedule
8 of ruling amounts in connection with such transfer.

9 “(4) NO BASIS IN QUALIFIED FUNDS.—Not-
10 withstanding any other provision of law, the tax-
11 payer’s basis in any Fund to which this section ap-
12 plies shall not be increased by reason of any transfer
13 permitted by this subsection.”.

14 (2) NEW RULING AMOUNT TO TAKE INTO AC-
15 COUNT TOTAL COSTS.—Subparagraph (A) of section
16 468A(d)(2) (defining ruling amount) is amended to
17 read as follows:

18 “(A) fund the total nuclear decommis-
19 sioning costs with respect to such power plant
20 over the estimated useful life of such power
21 plant, and”.

22 (d) TECHNICAL AMENDMENT.—Section 468A(e)(2)
23 (relating to taxation of Fund) is amended—

1 (1) by striking “rate set forth in subparagraph
2 (B)” in subparagraph (A) and inserting “rate of 20
3 percent”,

4 (2) by striking subparagraph (B), and

5 (3) by redesignating subparagraphs (C) and
6 (D) as subparagraphs (B) and (C), respectively.

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

10 **SEC. 856. TREATMENT OF CERTAIN INCOME OF COOPERA-**
11 **TIVES.**

12 (a) INCOME FROM OPEN ACCESS AND NUCLEAR DE-
13 COMMISSIONING TRANSACTIONS.—

14 (1) IN GENERAL.—Section 501(c)(12)(C) (re-
15 lating to list of exempt organizations) is amended by
16 striking “or” at the end of clause (i), by striking
17 clause (ii), and by adding at the end the following
18 new clauses:

19 “(ii) from any open access transaction
20 (other than income received or accrued di-
21 rectly or indirectly from a member),

22 “(iii) from any nuclear decommis-
23 sioning transaction,

24 “(iv) from any asset exchange or con-
25 version transaction, or

1 “(v) from the prepayment of any loan,
2 debt, or obligation made, insured, or guar-
3 anteed under the Rural Electrification Act
4 of 1936.”.

5 (2) DEFINITIONS AND SPECIAL RULES.—Sec-
6 tion 501(c)(12) is amended by adding at the end the
7 following new subparagraphs:

8 “(E) For purposes of subparagraph
9 (C)(ii)—

10 “(i) The term ‘open access trans-
11 action’ means any transaction meeting the
12 open access requirements of any of the fol-
13 lowing subclauses with respect to a mutual
14 or cooperative electric company:

15 “(I) The provision or sale of elec-
16 tric transmission service or ancillary
17 services meets the open access re-
18 quirements of this subclause only if
19 such services are provided on a non-
20 discriminatory open access basis pur-
21 suant to an open access transmission
22 tariff filed with and approved by
23 FERC, including an acceptable reci-
24 procity tariff, or under a regional

1 transmission organization agreement
2 approved by FERC.

3 “(II) The provision or sale of
4 electric energy distribution services or
5 ancillary services meets the open ac-
6 cess requirements of this subclause
7 only if such services are provided on a
8 nondiscriminatory open access basis to
9 end-users served by distribution facili-
10 ties owned by the mutual or coopera-
11 tive electric company (or its mem-
12 bers).

13 “(III) The delivery or sale of
14 electric energy generated by a genera-
15 tion facility meets the open access re-
16 quirements of this subclause only if
17 such facility is directly connected to
18 distribution facilities owned by the
19 mutual or cooperative electric com-
20 pany (or its members) which owns the
21 generation facility, and such distribu-
22 tion facilities meet the open access re-
23 quirements of subclause (II).

24 “(ii) Clause (i)(I) shall apply in the
25 case of a voluntarily filed tariff only if the

1 mutual or cooperative electric company
2 files a report with FERC within 90 days
3 after the date of the enactment of this sub-
4 paragraph relating to whether or not such
5 company will join a regional transmission
6 organization.

7 “(iii) A mutual or cooperative electric
8 company shall be treated as meeting the
9 open access requirements of clause (i)(I) if
10 a regional transmission organization con-
11 trols the transmission facilities.

12 “(iv) References to FERC in this sub-
13 paragraph shall be treated as including
14 references to the Public Utility Commis-
15 sion of Texas with respect to any ERCOT
16 utility (as defined in section 212(k)(2)(B)
17 of the Federal Power Act (16 U.S.C.
18 824k(k)(2)(B))) or references to the Rural
19 Utilities Service with respect to any other
20 facility not subject to FERC jurisdiction.

21 “(v) For purposes of this
22 subparagraph—

23 “(I) The term ‘transmission facil-
24 ity’ means an electric output facility
25 (other than a generation facility)

1 which operates at an electric voltage
2 of 69 kilovolts or greater. To the ex-
3 tent provided in regulations, such
4 term includes any output facility
5 which FERC determines is a trans-
6 mission facility under standards ap-
7 plied by FERC under the Federal
8 Power Act (as in effect on the date of
9 the enactment of the Energy Tax In-
10 centives Act).

11 “(II) The term ‘regional trans-
12 mission organization’ includes an
13 independent system operator.

14 “(III) The term ‘FERC’ means
15 the Federal Energy Regulatory Com-
16 mission.

17 “(F) The term ‘nuclear decommissioning
18 transaction’ means—

19 “(i) any transfer into a trust, fund, or
20 instrument established to pay any nuclear
21 decommissioning costs if the transfer is in
22 connection with the transfer of the mutual
23 or cooperative electric company’s interest
24 in a nuclear power plant or nuclear power
25 plant unit,

1 “(ii) any distribution from any trust,
2 fund, or instrument established to pay any
3 nuclear decommissioning costs, or

4 “(iii) any earnings from any trust,
5 fund, or instrument established to pay any
6 nuclear decommissioning costs.

7 “(G) The term ‘asset exchange or conver-
8 sion transaction’ means any voluntary exchange
9 or involuntary conversion of any property re-
10 lated to generating, transmitting, distributing,
11 or selling electric energy by a mutual or cooper-
12 ative electric company, the gain from which
13 qualifies for deferred recognition under section
14 1031 or 1033, but only if the replacement prop-
15 erty acquired by such company pursuant to
16 such section constitutes property which is used,
17 or to be used, for—

18 “(i) generating, transmitting, distrib-
19 uting, or selling electric energy, or

20 “(ii) producing, transmitting, distrib-
21 uting, or selling natural gas.”.

22 (b) TREATMENT OF INCOME FROM LOAD LOSS
23 TRANSACTIONS.—Section 501(c)(12), as amended by sub-
24 section (a)(2), is amended by adding after subparagraph
25 (G) the following new subparagraph:

1 “(H)(i) In the case of a mutual or coopera-
2 tive electric company described in this para-
3 graph or an organization described in section
4 1381(a)(2)(C), income received or accrued from
5 a load loss transaction shall be treated as an
6 amount collected from members for the sole
7 purpose of meeting losses and expenses.

8 “(ii) For purposes of clause (i), the term
9 ‘load loss transaction’ means any wholesale or
10 retail sale of electric energy (other than to
11 members) to the extent that the aggregate sales
12 during the recovery period do not exceed the
13 load loss mitigation sales limit for such period.

14 “(iii) For purposes of clause (ii), the load
15 loss mitigation sales limit for the recovery pe-
16 riod is the sum of the annual load losses for
17 each year of such period.

18 “(iv) For purposes of clause (iii), a mutual
19 or cooperative electric company’s annual load
20 loss for each year of the recovery period is the
21 amount (if any) by which—

22 “(I) the megawatt hours of electric
23 energy sold during such year to members
24 of such electric company are less than

1 “(II) the megawatt hours of electric
2 energy sold during the base year to such
3 members.

4 “(v) For purposes of clause (iv)(II), the
5 term ‘base year’ means—

6 “(I) the calendar year preceding the
7 start-up year, or

8 “(II) at the election of the electric
9 company, the second or third calendar
10 years preceding the start-up year.

11 “(vi) For purposes of this subparagraph,
12 the recovery period is the 7-year period begin-
13 ning with the start-up year.

14 “(vii) For purposes of this subparagraph,
15 the start-up year is the calendar year which in-
16 cludes January 1, 2005, or, if later, at the elec-
17 tion of the mutual or cooperative electric
18 company—

19 “(I) the first year that such electric
20 company offers nondiscriminatory open ac-
21 cess, or

22 “(II) the first year in which at least
23 10 percent of such electric company’s sales
24 are not to members of such electric com-
25 pany.

1 “(viii) A company shall not fail to be treat-
2 ed as a mutual or cooperative company for pur-
3 poses of this paragraph or as a corporation op-
4 erating on a cooperative basis for purposes of
5 section 1381(a)(2)(C) by reason of the treat-
6 ment under clause (i).

7 “(ix) In the case of a mutual or coopera-
8 tive electric company, income from any open ac-
9 cess transaction received, or accrued, indirectly
10 from a member shall be treated as an amount
11 collected from members for the sole purpose of
12 meeting losses and expenses.”.

13 (c) EXCEPTION FROM UNRELATED BUSINESS TAX-
14 ABLE INCOME.—Section 512(b) (relating to modifications)
15 is amended by adding at the end the following new para-
16 graph:

17 “(18) TREATMENT OF MUTUAL OR COOPERA-
18 TIVE ELECTRIC COMPANIES.—In the case of a mu-
19 tual or cooperative electric company described in sec-
20 tion 501(c)(12), there shall be excluded income
21 which is treated as member income under subpara-
22 graph (H) thereof.”.

23 (d) CROSS REFERENCE.—Section 1381 is amended
24 by adding at the end the following new subsection:

1 “(c) CROSS REFERENCE.—

“For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).”.

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

5 **SEC. 857. SALES OR DISPOSITIONS TO IMPLEMENT FED-**
6 **ERAL ENERGY REGULATORY COMMISSION**
7 **OR STATE ELECTRIC RESTRUCTURING POL-**
8 **ICY.**

9 (a) IN GENERAL.—Section 451 (relating to general
10 rule for taxable year of inclusion) is amended by adding
11 at the end the following new subsection:

12 “(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO
13 IMPLEMENT FEDERAL ENERGY REGULATORY COMMIS-
14 SION OR STATE ELECTRIC RESTRUCTURING POLICY.—

15 “(1) IN GENERAL.—For purposes of this sub-
16 title, if a taxpayer elects the application of this sub-
17 section to a qualifying electric transmission trans-
18 action in any taxable year—

19 “(A) any ordinary income derived from
20 such transaction which would be required to be
21 recognized under section 1245 or 1250 for such
22 taxable year (determined without regard to this
23 subsection), and

1 “(B) any income derived from such trans-
2 action in excess of such ordinary income which
3 is required to be included in gross income for
4 such taxable year (determined without regard to
5 this subsection),
6 shall be so recognized and included ratably over the
7 8-taxable year period beginning with such taxable
8 year.

9 “(2) QUALIFYING ELECTRIC TRANSMISSION
10 TRANSACTION.—For purposes of this subsection, the
11 term ‘qualifying electric transmission transaction’
12 means any sale or other disposition before January
13 1, 2008, of—

14 “(A) property used by the taxpayer in the
15 trade or business of providing electric trans-
16 mission services, or

17 “(B) any stock or partnership interest in a
18 corporation or partnership, as the case may be,
19 whose principal trade or business consists of
20 providing electric transmission services,
21 but only if such sale or disposition is to an inde-
22 pendent transmission company.

23 “(3) INDEPENDENT TRANSMISSION COM-
24 PANY.—For purposes of this subsection, the term
25 ‘independent transmission company’ means—

1 “(A) a regional transmission organization
2 approved by the Federal Energy Regulatory
3 Commission,

4 “(B) a person—

5 “(i) who the Federal Energy Regu-
6 latory Commission determines in its au-
7 thorization of the transaction under section
8 203 of the Federal Power Act (16 U.S.C.
9 824b) is not a market participant within
10 the meaning of such Commission’s rules
11 applicable to regional transmission organi-
12 zations, and

13 “(ii) whose transmission facilities to
14 which the election under this subsection
15 applies are under the operational control of
16 a Federal Energy Regulatory Commission-
17 approved regional transmission organiza-
18 tion before the close of the period specified
19 in such authorization, but not later than
20 January 1, 2008, or

21 “(C) in the case of facilities subject to the
22 exclusive jurisdiction of the Public Utility Com-
23 mission of Texas, a person which is approved by
24 that Commission as consistent with Texas State

1 law regarding an independent transmission or-
2 ganization.

3 “(4) ELECTION.—An election under paragraph
4 (1), once made, shall be irrevocable.

5 “(5) NONAPPLICATION OF INSTALLMENT SALES
6 TREATMENT.—Section 453 shall not apply to any
7 qualifying electric transmission transaction with re-
8 spect to which an election to apply this subsection
9 is made.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to transactions occurring after De-
12 cember 31, 2004.

13 **Subtitle G—Volumetric Ethanol** 14 **Excise Tax Credit**

15 **SEC. 860. SHORT TITLE.**

16 This subtitle may be cited as the “Volumetric Eth-
17 anol Excise Tax Credit (VEETC) Act of 2004”.

18 **SEC. 861. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT** 19 **AND EXTENSION OF ALCOHOL FUELS IN-** 20 **COME TAX CREDIT.**

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

1 **“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL**
2 **MIXTURES.**

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

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

7 “(2) the biodiesel mixture credit.

8 “(b) ALCOHOL FUEL MIXTURE CREDIT.—

9 “(1) IN GENERAL.—For purposes of this sec-
10 tion, the alcohol fuel mixture credit is the product
11 of the applicable amount and the number of gallons
12 of alcohol used by the taxpayer in producing any al-
13 cohol fuel mixture for sale or use in a trade or busi-
14 ness of the taxpayer.

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

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), the applicable amount is 52
19 cents (51 cents in the case of any sale or use
20 after 2004).

21 “(B) MIXTURES NOT CONTAINING ETH-
22 ANOL.—In the case of an alcohol fuel mixture
23 in which none of the alcohol consists of ethanol,
24 the applicable amount is 60 cents.

25 “(3) ALCOHOL FUEL MIXTURE.—For purposes
26 of this subsection, the term ‘alcohol fuel mixture’

1 means a mixture of alcohol and a taxable fuel
2 which—

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

5 “(B) is used as a fuel by the taxpayer pro-
6 ducing such mixture, or

7 “(C) is removed from the refinery by a
8 person producing such mixture.

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

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

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

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

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

22 “(B) TAXABLE FUEL.—The term ‘taxable
23 fuel’ has the meaning given such term by sec-
24 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—

24 “(A) is sold by the taxpayer producing
25 such mixture to any person for use as a fuel,

1 “(B) is used as a fuel by the taxpayer pro-
2 ducing such mixture, or

3 “(C) is removed from the refinery by a
4 person producing such mixture.

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

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

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

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

20 “(1) IMPOSITION OF TAX.—If—

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

25 “(B) any person—

1 “(i) separates the alcohol or biodiesel
2 from the mixture, or

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

5 then there is hereby imposed on such person a
6 tax equal to the product of the applicable
7 amount and the number of gallons of such alco-
8 hol or biodiesel.

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

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

18 (b) REGISTRATION REQUIREMENT.—Section
19 4101(a)(1) (relating to registration), as amended by sec-
20 tions 5211 and 5242 of this Act, is amended by inserting
21 “and every person producing or importing biodiesel (as de-
22 fined in section 40A(d)(1)) or alcohol (as defined in sec-
23 tion 6426(b)(4)(A))” after “4081”.

24 (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 OR USED AS
8 FUELS.—Except as provided in subsection (k)—

9 “(1) USED TO PRODUCE A MIXTURE.—If any
10 person produces a mixture described in section 6426
11 in such person’s trade or business, the Secretary
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) USED AS FUEL.—If alcohol (as defined in
17 section 40(d)(1)) or biodiesel (as defined in section
18 40A(d)(1)) or agri-biodiesel (as defined in section
19 40A(d)(2)) which is not in a mixture described in
20 section 6426—

21 “(A) is used by any person as a fuel in a
22 trade or business, or

23 “(B) is sold by any person at retail to an-
24 other person and placed in the fuel tank of such
25 person’s vehicle,

1 the Secretary shall pay (without interest) to such
2 person an amount equal to the alcohol credit (as de-
3 termined under section 40(b)(2)) or the biodiesel
4 credit (as determined under section 40A(b)(2)) with
5 respect to such fuel.

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

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

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

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

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

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

24 (B) by striking “gasoline, diesel fuel, or
25 kerosene used to produce a qualified alcohol

1 mixture (as defined in section 4081(c)(3))” in
2 subparagraph (A) and inserting “a mixture de-
3 scribed in section 6426”,

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

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

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

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

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

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

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

1 (12) Section 9503(b)(4), as amended by section
2 5101 of this Act, is amended—

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

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

8 (C) by striking subparagraphs (E) and
9 (F).

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

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

13 (14) TARIFF SCHEDULE.—Headings
14 9901.00.50 and 9901.00.52 of the Harmonized Tar-
15 iff Schedule of the United States (19 U.S.C. 3007)
16 are each amended in the effective period column by
17 striking “10/1/2007” each place it appears and in-
18 serting “1/1/2011”.

19 (d) EFFECTIVE DATES.—

20 (1) IN GENERAL.—Except as otherwise pro-
21 vided in this subsection, the amendments made by
22 this section shall apply to fuel sold or used after
23 September 30, 2004.

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

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

8 (4) REPEAL OF GENERAL FUND RETENTION OF
9 CERTAIN ALCOHOL FUELS TAXES.—The amend-
10 ments made by subsection (c)(12) shall apply to fuel
11 sold or used after September 30, 2003.

12 (e) FORMAT FOR FILING.—The Secretary of the
13 Treasury shall describe the electronic format for filing
14 claims described in section 6427(i)(3)(B) of the Internal
15 Revenue Code of 1986 (as amended by subsection
16 (c)(10)(C)) not later than September 30, 2004.

17 **SEC. 862. BIODIESEL INCOME TAX CREDIT.**

18 (a) IN GENERAL.—Subpart D of part IV of sub-
19 chapter A of chapter 1 (relating to business related cred-
20 its), as amended by this Act, is amended by inserting after
21 section 40A the following new section:

22 **“SEC. 40B. BIODIESEL USED AS FUEL.**

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

1 “(1) the biodiesel mixture credit, plus

2 “(2) the biodiesel credit.

3 “(b) DEFINITION OF BIODIESEL MIXTURE CREDIT

4 AND BIODIESEL CREDIT.—For purposes of this section—

5 “(1) BIODIESEL MIXTURE CREDIT.—

6 “(A) IN GENERAL.—The biodiesel mixture
7 credit of any taxpayer for any taxable year is
8 50 cents for each gallon of biodiesel used by the
9 taxpayer in the production of a qualified bio-
10 diesel mixture.

11 “(B) QUALIFIED BIODIESEL MIXTURE.—

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

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

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

21 “(C) SALE OR USE MUST BE IN TRADE OR

22 BUSINESS, ETC.—Biodiesel used in the produc-
23 tion of a qualified biodiesel mixture shall be
24 taken into account—

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

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

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

10 “(2) BIODIESEL CREDIT.—

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

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

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

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

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

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

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

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

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

23 “(A) the registration requirements for
24 fuels and fuel additives established by the Envi-

1 ronmental Protection Agency under section 211
2 of the Clean Air Act (42 U.S.C. 7545), and

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

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

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

13 “(A) MIXTURES.—If—

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

18 “(ii) any person—

19 “(I) separates the biodiesel from
20 the mixture, or

21 “(II) without separation, uses the
22 mixture other than as a fuel,

23 then there is hereby imposed on such person a
24 tax equal to the product of the rate applicable

1 under subsection (b)(1)(A) and the number of
2 gallons of such biodiesel in such mixture.

3 “(B) BIODIESEL.—If—

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

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

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

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

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

1 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
2 NESS CREDIT.—Section 38(b) (relating to current year
3 business credit) is amended by striking “plus” at the end
4 of paragraph (28), by striking the period at the end of
5 paragraph (29) and inserting “, plus”, and by adding at
6 the end the following new paragraph:

7 “(30) the biodiesel fuels credit determined
8 under section 40B(a).”.

9 (c) CONFORMING AMENDMENTS.—

10 (1)(A) Section 87 is amended to read as fol-
11 lows:

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

13 “Gross income includes—

14 “(1) the amount of the alcohol fuels credit de-
15 termined with respect to the taxpayer for the taxable
16 year under section 40(a), and

17 “(2) the biodiesel fuels credit determined with
18 respect to the taxpayer for the taxable year under
19 section 40B(a).”.

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

24 (2) Section 196(c) is amended by striking
25 “and” at the end of paragraph (9), by striking the

1 period at the end of paragraph (10) and inserting “,
2 and”, and by adding at the end the following new
3 paragraph:

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

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

“Sec. 40B. Biodiesel used as fuel.”.

10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to fuel produced, and sold or used,
12 after September 30, 2004, in taxable years ending after
13 such date.

14 **Subtitle H—Fuel Fraud Prevention**

15 **SEC. 870. SHORT TITLE.**

16 This subtitle may be cited as the “Fuel Fraud Pre-
17 vention Act of 2004”.

18 **PART I—AVIATION JET FUEL**

19 **SEC. 871. TAXATION OF AVIATION-GRADE KEROSENE.**

20 (a) RATE OF TAX.—

21 (1) IN GENERAL.—Subparagraph (A) of section
22 4081(a)(2) is amended by striking “and” at the end
23 of clause (ii), by striking the period at the end of
24 clause (iii) and inserting “, and”, and by adding at
25 the end the following new clause:

1 “(iv) in the case of aviation-grade ker-
2 osene, 21.8 cents per gallon.”.

3 (2) COMMERCIAL AVIATION.—Paragraph (2) of
4 section 4081(a) is amended by adding at the end the
5 following new subparagraph:

6 “(C) TAXES IMPOSED ON FUEL USED IN
7 COMMERCIAL AVIATION.—In the case of avia-
8 tion-grade kerosene which is removed from any
9 refinery or terminal directly into the fuel tank
10 of an aircraft for use in commercial aviation,
11 the rate of tax under subparagraph (A)(iv) shall
12 be 4.3 cents per gallon.”.

13 (3) NONTAXABLE USES.—

14 (A) IN GENERAL.—Section 4082 is amend-
15 ed by redesignating subsections (e) and (f) as
16 subsections (f) and (g), respectively, and by in-
17 serting after subsection (d) the following new
18 subsection:

19 “(e) AVIATION-GRADE KEROSENE.—In the case of
20 aviation-grade kerosene which is exempt from the tax im-
21 posed by section 4041(c) (other than by reason of a prior
22 imposition of tax) and which is removed from any refinery
23 or terminal directly into the fuel tank of an aircraft, the
24 rate of tax under section 4081(a)(2)(A)(iv) shall be zero.”.

25 (B) CONFORMING AMENDMENTS.—

1 (i) Subsection (b) of section 4082 is
2 amended by adding at the end the fol-
3 lowing new flush sentence: “The term
4 ‘nontaxable use’ does not include the use
5 of aviation-grade kerosene in an aircraft.”.

6 (ii) Section 4082(d) is amended by
7 striking paragraph (1) and by redesignig-
8 nating paragraphs (2) and (3) as para-
9 graphs (1) and (2), respectively.

10 (4) NONAIRCRAFT USE OF AVIATION-GRADE
11 KEROSENE.—

12 (A) IN GENERAL.—Subparagraph (B) of
13 section 4041(a)(1) is amended by adding at the
14 end the following new sentence: “This subpara-
15 graph shall not apply to aviation-grade ker-
16 osene.”.

17 (B) CONFORMING AMENDMENT.—The
18 heading for paragraph (1) of section 4041(a) is
19 amended by inserting “AND KEROSENE” after
20 “DIESEL FUEL”.

21 (b) COMMERCIAL AVIATION.—Section 4083 is
22 amended redesignating subsections (b) and (c) as sub-
23 sections (c) and (d), respectively, and by inserting after
24 subsection (a) the following new subsection:

1 “(b) COMMERCIAL AVIATION.—For purposes of this
2 subpart, the term ‘commercial aviation’ means any use of
3 an aircraft in a business of transporting persons or prop-
4 erty for compensation or hire by air, unless properly allo-
5 cable to any transportation exempt from the taxes imposed
6 by section 4261 and 4271 by reason of section 4281 or
7 4282 or by reason of section 4261(h).”.

8 (c) REFUNDS.—

9 (1) IN GENERAL.—Paragraph (4) of section
10 6427(l) is amended to read as follows:

11 “(4) REFUNDS FOR AVIATION-GRADE KER-
12 OSENE.—

13 “(A) NO REFUND OF CERTAIN TAXES ON
14 FUEL USED IN COMMERCIAL AVIATION.—In the
15 case of aviation-grade kerosene used in com-
16 mercial aviation (as defined in section 4083(b))
17 (other than supplies for vessels or aircraft with-
18 in the meaning of section 4221(d)(3)), para-
19 graph (1) shall not apply to so much of the tax
20 imposed by section 4081 as is attributable to—

21 “(i) the Leaking Underground Stor-
22 age Tank Trust Fund financing rate im-
23 posed by such section, and

1 “(ii) so much of the rate of tax speci-
2 fied in section 4081(a)(2)(A)(iv) as does
3 not exceed 4.3 cents per gallon.

4 “(B) PAYMENT TO ULTIMATE, REG-
5 ISTERED VENDOR.—With respect to aviation-
6 grade kerosene, if the ultimate purchaser of
7 such kerosene waives (at such time and in such
8 form and manner as the Secretary shall pre-
9 scribe) the right to payment under paragraph
10 (1) and assigns such right to the ultimate ven-
11 dor, then the Secretary shall pay the amount
12 which would be paid under paragraph (1) to
13 such ultimate vendor, but only if such ultimate
14 vendor—

15 “(i) is registered under section 4101,
16 and

17 “(ii) meets the requirements of sub-
18 paragraph (A), (B), or (D) of section
19 6416(a)(1).”.

20 (2) TIME FOR FILING CLAIMS.—Subparagraph
21 (A) of section 6427(i)(4) is amended—

22 (A) by striking “subsection (l)(5)” both
23 places it appears and inserting “paragraph
24 (4)(B) or (5) of subsection (l)”, and

1 (B) by striking “the preceding sentence”
2 and inserting “subsection (l)(5)”.

3 (3) CONFORMING AMENDMENT.—Subparagraph
4 (B) of section 6427(l)(2) is amended to read as fol-
5 lows:

6 “(B) in the case of aviation-grade
7 kerosene—

8 “(i) any use which is exempt from the
9 tax imposed by section 4041(c) other than
10 by reason of a prior imposition of tax, or

11 “(ii) any use in commercial aviation
12 (within the meaning of section 4083(b)).”.

13 (d) REPEAL OF PRIOR TAXATION OF AVIATION
14 FUEL.—

15 (1) IN GENERAL.—Part III of subchapter A of
16 chapter 32 is amended by striking subpart B and by
17 redesignating subpart C as subpart B.

18 (2) CONFORMING AMENDMENTS.—

19 (A) Section 4041(c) is amended to read as
20 follows:

21 “(c) AVIATION-GRADE KEROSENE.—

22 “(1) IN GENERAL.—There is hereby imposed a
23 tax upon aviation-grade kerosene—

1 “(A) sold by any person to an owner, les-
2 see, or other operator of an aircraft for use in
3 such aircraft, or

4 “(B) used by any person in an aircraft un-
5 less there was a taxable sale of such fuel under
6 subparagraph (A).

7 “(2) EXEMPTION FOR PREVIOUSLY TAXED
8 FUEL.—No tax shall be imposed by this subsection
9 on the sale or use of any aviation-grade kerosene if
10 tax was imposed on such liquid under section 4081
11 and the tax thereon was not credited or refunded.

12 “(3) RATE OF TAX.—The rate of tax imposed
13 by this subsection shall be the rate of tax specified
14 in section 4081(a)(2)(A)(iv) which is in effect at the
15 time of such sale or use.”.

16 (B) Section 4041(d)(2) is amended by
17 striking “section 4091” and inserting “section
18 4081”.

19 (C) Section 4041 is amended by striking
20 subsection (e).

21 (D) Section 4041 is amended by striking
22 subsection (i).

23 (E) Section 4041(m)(1) is amended to
24 read as follows:

1 “(1) IN GENERAL.—In the case of the sale or
2 use of any partially exempt methanol or ethanol fuel,
3 the rate of the tax imposed by subsection (a)(2)
4 shall be—

5 “(A) after September 30, 1997, and before
6 September 30, 2009—

7 “(i) in the case of fuel none of the al-
8 cohool in which consists of ethanol, 9.15
9 cents per gallon, and

10 “(ii) in any other case, 11.3 cents per
11 gallon, and

12 “(B) after September 30, 2009—

13 “(i) in the case of fuel none of the al-
14 cohool in which consists of ethanol, 2.15
15 cents per gallon, and

16 “(ii) in any other case, 4.3 cents per
17 gallon.”.

18 (F) Sections 4101(a), 4103, 4221(a), and
19 6206 are each amended by striking “, 4081, or
20 4091” and inserting “or 4081”.

21 (G) Section 6416(b)(2) is amended by
22 striking “4091 or”.

23 (H) Section 6416(b)(3) is amended by
24 striking “or 4091” each place it appears.

1 (I) Section 6416(d) is amended by striking
2 “or to the tax imposed by section 4091 in the
3 case of refunds described in section 4091(d)”.

4 (J) Section 6427 is amended by striking
5 subsection (f).

6 (K) Section 6427(j)(1) is amended by
7 striking “, 4081, and 4091” and inserting “and
8 4081”.

9 (L)(i) Section 6427(l)(1) is amended to
10 read as follows:

11 “(1) IN GENERAL.—Except as otherwise pro-
12 vided in this subsection and in subsection (k), if any
13 diesel fuel or kerosene on which tax has been im-
14 posed by section 4041 or 4081 is used by any person
15 in a nontaxable use, the Secretary shall pay (without
16 interest) to the ultimate purchaser of such fuel an
17 amount equal to the aggregate amount of tax im-
18 posed on such fuel under section 4041 or 4081, as
19 the case may be, reduced by any refund paid to the
20 ultimate vendor under paragraph (4)(B).”.

21 (ii) Paragraph (5)(B) of section 6427(l) is
22 amended by striking “Paragraph (1)(A) shall
23 not apply to kerosene” and inserting “Para-
24 graph (1) shall not apply to kerosene (other
25 than aviation-grade kerosene)”.

1 (M) Subparagraph (B) of section
2 6724(d)(1) is amended by striking clause (xv)
3 and by redesignating the succeeding clauses ac-
4 cordingly.

5 (N) Paragraph (2) of section 6724(d) is
6 amended by striking subparagraph (W) and by
7 redesignating the succeeding subparagraphs ac-
8 cordingly.

9 (O) Paragraph (1) of section 9502(b) is
10 amended by adding “and” at the end of sub-
11 paragraph (B) and by striking subparagraphs
12 (C) and (D) and inserting the following new
13 subparagraph:

14 “(C) section 4081 with respect to aviation
15 gasoline and aviation-grade kerosene, and”.

16 (P) The last sentence of section 9502(b) is
17 amended to read as follows:

18 “There shall not be taken into account under paragraph
19 (1) so much of the taxes imposed by section 4081 as are
20 determined at the rate specified in section
21 4081(a)(2)(B).”.

22 (Q) Subsection (b) of section 9508 is
23 amended by striking paragraph (3) and by re-
24 designating paragraphs (4) and (5) as para-
25 graphs (3) and (4), respectively.

1 (R) Section 9508(e)(2)(A) is amended by
2 striking “sections 4081 and 4091” and insert-
3 ing “section 4081”.

4 (S) The table of subparts for part III of
5 subchapter A of chapter 32 is amended to read
6 as follows:

“Subpart A. Motor and aviation fuels.

“Subpart B. Special provisions applicable to fuels tax.”.

7 (T) The heading for subpart A of part III
8 of subchapter A of chapter 32 is amended to
9 read as follows:

10 **“Subpart A—Motor and Aviation Fuels”.**

11 (U) The heading for subpart B of part III
12 of subchapter A of chapter 32 is amended to
13 read as follows:

14 **“Subpart B—Special Provisions Applicable to Fuels**
15 **Tax”.**

16 (e) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to aviation-grade kerosene re-
18 moved, entered, or sold after September 30, 2004.

19 (f) FLOOR STOCKS TAX.—

20 (1) IN GENERAL.—There is hereby imposed on
21 aviation-grade kerosene held on October 1, 2004, by
22 any person a tax equal to—

23 (A) the tax which would have been imposed
24 before such date on such kerosene had the

1 amendments made by this section been in effect
2 at all times before such date, reduced by

3 (B) the tax imposed before such date
4 under section 4091 of the Internal Revenue
5 Code of 1986, as in effect on the day before the
6 date of the enactment of this Act.

7 (2) LIABILITY FOR TAX AND METHOD OF PAY-
8 MENT.—

9 (A) LIABILITY FOR TAX.—The person
10 holding the kerosene on October 1, 2004, to
11 which the tax imposed by paragraph (1) applies
12 shall be liable for such tax.

13 (B) METHOD AND TIME FOR PAYMENT.—
14 The tax imposed by paragraph (1) shall be paid
15 at such time and in such manner as the Sec-
16 retary of the Treasury shall prescribe, including
17 the nonapplication of such tax on de minimis
18 amounts of kerosene.

19 (3) TRANSFER OF FLOOR STOCK TAX REVE-
20 NUES TO TRUST FUNDS.—For purposes of deter-
21 mining the amount transferred to any trust fund,
22 the tax imposed by this subsection shall be treated
23 as imposed by section 4081 of the Internal Revenue
24 Code of 1986—

1 (A) at the Leaking Underground Storage
2 Tank Trust Fund financing rate under such
3 section to the extent of 0.1 cents per gallon,
4 and

5 (B) at the rate under section
6 4081(a)(2)(A)(iv) to the extent of the remain-
7 der.

8 (4) HELD BY A PERSON.—For purposes of this
9 section, kerosene shall be considered as held by a
10 person if title thereto has passed to such person
11 (whether or not delivery to the person has been
12 made).

13 (5) OTHER LAWS APPLICABLE.—All provisions
14 of law, including penalties, applicable with respect to
15 the tax imposed by section 4081 of such Code shall,
16 insofar as applicable and not inconsistent with the
17 provisions of this subsection, apply with respect to
18 the floor stock tax imposed by paragraph (1) to the
19 same extent as if such tax were imposed by such
20 section.

1 **SEC. 872. TRANSFER OF CERTAIN AMOUNTS FROM THE AIR-**
2 **PORT AND AIRWAY TRUST FUND TO THE**
3 **HIGHWAY TRUST FUND TO REFLECT HIGH-**
4 **WAY USE OF JET FUEL.**

5 (a) IN GENERAL.—Section 9502(d) is amended by
6 adding at the end the following new paragraph:

7 “(7) TRANSFERS FROM THE TRUST FUND TO
8 THE HIGHWAY TRUST FUND.—

9 “(A) IN GENERAL.—The Secretary shall
10 pay annually from the Airport and Airway
11 Trust Fund into the Highway Trust Fund an
12 amount (as determined by him) equivalent to
13 amounts received in the Airport and Airway
14 Trust Fund which are attributable to fuel that
15 is used primarily for highway transportation
16 purposes.

17 “(B) AMOUNTS TRANSFERRED TO MASS
18 TRANSIT ACCOUNT.—The Secretary shall trans-
19 fer 11 percent of the amounts paid into the
20 Highway Trust Fund under subparagraph (A)
21 to the Mass Transit Account established under
22 section 9503(e).”.

23 (b) CONFORMING AMENDMENTS.—

24 (1) Subsection (a) of section 9503 is
25 amended—

1 (A) by striking “appropriated or credited”
2 and inserting “paid, appropriated, or credited”,
3 and

4 (B) by striking “or section 9602(b)” and
5 inserting “, section 9502(d)(7), or section
6 9602(b)”.

7 (2) Subsection (e)(1) of section 9503 is amend-
8 ed by striking “or section 9602(b)” and inserting “,
9 section 9502(d)(7), or section 9602(b)”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall take effect on October 1, 2004.

12 **PART II—DYED FUEL**

13 **SEC. 873. DYE INJECTION EQUIPMENT.**

14 (a) IN GENERAL.—Section 4082(a)(2) (relating to
15 exemptions for diesel fuel and kerosene) is amended by
16 inserting “by mechanical injection” after “indelibly dyed”.

17 (b) DYE INJECTOR SECURITY.—Not later than June
18 30, 2004, the Secretary of the Treasury shall issue regula-
19 tions regarding mechanical dye injection systems described
20 in the amendment made by subsection (a), and such regu-
21 lations shall include standards for making such systems
22 tamper resistant.

23 (c) PENALTY FOR TAMPERING WITH OR FAILING TO
24 MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL
25 DYE INJECTION SYSTEMS.—

1 (1) IN GENERAL.—Part I of subchapter B of
2 chapter 68 (relating to assessable penalties) is
3 amended by adding after section 6715 the following
4 new section:

5 **“SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN**
6 **SECURITY REQUIREMENTS FOR MECHAN-**
7 **ICAL DYE INJECTION SYSTEMS.**

8 “(a) IMPOSITION OF PENALTY—

9 “(1) TAMPERING.—If any person tampers with
10 a mechanical dye injection system used to indelibly
11 dye fuel for purposes of section 4082, then such per-
12 son shall pay a penalty in addition to the tax (if
13 any).

14 “(2) FAILURE TO MAINTAIN SECURITY RE-
15 QUIREMENTS.—If any operator of a mechanical dye
16 injection system used to indelibly dye fuel for pur-
17 poses of section 4082 fails to maintain the security
18 standards for such system as established by the Sec-
19 retary, then such operator shall pay a penalty.

20 “(b) AMOUNT OF PENALTY.—The amount of the
21 penalty under subsection (a) shall be—

22 “(1) for each violation described in paragraph
23 (1), the greater of—

24 “(A) \$25,000, or

1 “(B) \$10 for each gallon of fuel involved,
2 and

3 “(2) for each—

4 “(A) failure to maintain security standards
5 described in paragraph (2), \$1,000, and

6 “(B) failure to correct a violation described
7 in paragraph (2), \$1,000 per day for each day
8 after which such violation was discovered or
9 such person should have reasonably known of
10 such violation.

11 “(c) JOINT AND SEVERAL LIABILITY.—

12 “(1) IN GENERAL.—If a penalty is imposed
13 under this section on any business entity, each offi-
14 cer, employee, or agent of such entity or other con-
15 tracting party who willfully participated in any act
16 giving rise to such penalty shall be jointly and sever-
17 ally liable with such entity for such penalty.

18 “(2) AFFILIATED GROUPS.—If a business entity
19 described in paragraph (1) is part of an affiliated
20 group (as defined in section 1504(a)), the parent
21 corporation of such entity shall be jointly and sever-
22 ally liable with such entity for the penalty imposed
23 under this section.”.

24 (2) CLERICAL AMENDMENT.—The table of sec-
25 tions for part I of subchapter B of chapter 68 is

1 amended by adding after the item related to section
2 6715 the following new item:

“Sec. 6715A. Tampering with or failing to maintain security re-
quirements for mechanical dye injection systems.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 subsections (a) and (c) shall take effect 180 days after
5 the date on which the Secretary issues the regulations de-
6 scribed in subsection (b).

7 **SEC. 874. ELIMINATION OF ADMINISTRATIVE REVIEW FOR**
8 **TAXABLE USE OF DYED FUEL.**

9 (a) **IN GENERAL.**—Section 6715 is amended by in-
10 serting at the end the following new subsection:

11 “(e) **NO ADMINISTRATIVE APPEAL FOR THIRD AND**
12 **SUBSEQUENT VIOLATIONS.**—In the case of any person
13 who is found to be subject to the penalty under this section
14 after a chemical analysis of such fuel and who has been
15 penalized under this section at least twice after the date
16 of the enactment of this subsection, no administrative ap-
17 peal or review shall be allowed with respect to such finding
18 except in the case of a claim regarding—

19 “(1) fraud or mistake in the chemical analysis,
20 or

21 “(2) mathematical calculation of the amount of
22 the penalty.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to penalties assessed after the date
3 of the enactment of this Act.

4 **SEC. 875. PENALTY ON UNTAXED CHEMICALLY ALTERED**
5 **DYED FUEL MIXTURES.**

6 (a) IN GENERAL.—Section 6715(a) (relating to dyed
7 fuel sold for use or used in taxable use, etc.) is amended
8 by striking “or” in paragraph (2), by inserting “or” at
9 the end of paragraph (3), and by inserting after paragraph
10 (3) the following new paragraph:

11 “(4) any person who has knowledge that a dyed
12 fuel which has been altered as described in para-
13 graph (3) sells or holds for sale such fuel for any
14 use which the person knows or has reason to know
15 is not a nontaxable use of such fuel,”.

16 (b) CONFORMING AMENDMENT.—Section 6715(a)(3)
17 is amended by striking “alters, or attempts to alter,” and
18 inserting “alters, chemically or otherwise, or attempts to
19 so alter,”.

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

1 **SEC. 876. TERMINATION OF DYED DIESEL USE BY INTER-**
2 **CITY BUSES.**

3 (a) IN GENERAL.—Paragraph (3) of section 4082(b)
4 (relating to nontaxable use) is amended to read as follows:

5 “(3) any use described in section
6 4041(a)(1)(C)(iii)(II).”.

7 (b) ULTIMATE VENDOR REFUND.—Subsection (b) of
8 section 6427 is amended by adding at the end the fol-
9 lowing new paragraph:

10 “(4) REFUNDS FOR USE OF DIESEL FUEL IN
11 CERTAIN INTERCITY BUSES.—

12 “(A) IN GENERAL.—With respect to any
13 fuel to which paragraph (2)(A) applies, if the
14 ultimate purchaser of such fuel waives (at such
15 time and in such form and manner as the Sec-
16 retary shall prescribe) the right to payment
17 under paragraph (1) and assigns such right to
18 the ultimate vendor, then the Secretary shall
19 pay the amount which would be paid under
20 paragraph (1) to such ultimate vendor, but only
21 if such ultimate vendor—

22 “(i) is registered under section 4101,
23 and

24 “(ii) meets the requirements of sub-
25 paragraph (A), (B), or (D) of section
26 6416(a)(1).

1 “(B) CREDIT CARDS.—For purposes of
2 this paragraph, if the sale of such fuel is made
3 by means of a credit card, the person extending
4 credit to the ultimate purchaser shall be
5 deemed to be the ultimate vendor.”.

6 (c) PAYMENT OF REFUNDS.—Subparagraph (A) of
7 section 6427(i)(4), as amended by section 5211 of this
8 Act, is amended by inserting “subsections (b)(4) and”
9 after “filed under”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to fuel sold after September 30,
12 2004.

13 **PART III—MODIFICATION OF INSPECTION OF**
14 **RECORDS PROVISIONS**

15 **SEC. 877. AUTHORITY TO INSPECT ON-SITE RECORDS.**

16 (a) IN GENERAL.—Section 4083(d)(1)(A) (relating
17 to administrative authority), as amended by section 5211
18 of this Act, is amended by striking “and” at the end of
19 clause (i) and by inserting after clause (ii) the following
20 new clause:

21 “(iii) inspecting any books and
22 records and any shipping papers pertaining
23 to such fuel, and”.

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

4 **SEC. 878. ASSESSABLE PENALTY FOR REFUSAL OF ENTRY.**

5 (a) IN GENERAL.—Part I of subchapter B of chapter
6 68 (relating to assessable penalties), as amended by sec-
7 tion 5221 of this Act, is amended by adding at the end
8 the following new section:

9 **“SEC. 6717. REFUSAL OF ENTRY.**

10 “(a) IN GENERAL.—In addition to any other penalty
11 provided by law, any person who refuses to admit entry
12 or refuses to permit any other action by the Secretary au-
13 thorized by section 4083(d)(1) shall pay a penalty of
14 \$1,000 for such refusal.

15 “(b) JOINT AND SEVERAL LIABILITY.—

16 “(1) IN GENERAL.—If a penalty is imposed
17 under this section on any business entity, each offi-
18 cer, employee, or agent of such entity or other con-
19 tracting party who willfully participated in any act
20 giving rise to such penalty shall be jointly and sever-
21 ally liable with such entity for such penalty.

22 “(2) AFFILIATED GROUPS.—If a business entity
23 described in paragraph (1) is part of an affiliated
24 group (as defined in section 1504(a)), the parent
25 corporation of such entity shall be jointly and sever-

1 ally liable with such entity for the penalty imposed
2 under this section.

3 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
4 shall be imposed under this section with respect to any
5 failure if it is shown that such failure is due to reasonable
6 cause.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 4083(d)(3), as amended by section
9 5211 of this Act, is amended—

10 (A) by striking “ENTRY.—The penalty”
11 and inserting: “ENTRY.—

12 “(A) FORFEITURE.—The penalty”, and

13 (B) by adding at the end the following new
14 subparagraph:

15 “(B) ASSESSABLE PENALTY.—For addi-
16 tional assessable penalty for the refusal to
17 admit entry or other refusal to permit an action
18 by the Secretary authorized by paragraph (1),
19 see section 6717.”.

20 (2) The table of sections for part I of sub-
21 chapter B of chapter 68, as amended by section
22 5221 of this Act, is amended by adding at the end
23 the following new item:

 “Sec. 6717. Refusal of entry.”.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall take effect on October 1, 2004.

1 **PART IV—REGISTRATION AND REPORTING**
2 **REQUIREMENTS**

3 **SEC. 879. REGISTRATION OF PIPELINE OR VESSEL OPERA-**
4 **TORS REQUIRED FOR EXEMPTION OF BULK**
5 **TRANSFERS TO REGISTERED TERMINALS OR**
6 **REFINERIES.**

7 (a) IN GENERAL.—Section 4081(a)(1)(B) (relating
8 to exemption for bulk transfers to registered terminals or
9 refineries) is amended—

10 (1) by inserting “by pipeline or vessel” after
11 “transferred in bulk”, and

12 (2) by inserting “, the operator of such pipeline
13 or vessel,” after “the taxable fuel”.

14 (b) CIVIL PENALTY FOR CARRYING TAXABLE FUELS
15 BY NONREGISTERED PIPELINES OR VESSELS.—

16 (1) IN GENERAL.—Part I of subchapter B of
17 chapter 68 (relating to assessable penalties), as
18 amended by section 5232 of this Act, is amended by
19 adding at the end the following new section:

20 **“SEC. 6718. CARRYING TAXABLE FUELS BY NONREG-**
21 **ISTERED PIPELINES OR VESSELS.**

22 “(a) IMPOSITION OF PENALTY.—If any person know-
23 ingly transfers any taxable fuel (as defined in section
24 4083(a)(1)) in bulk pursuant to section 4081(a)(1)(B) to
25 an unregistered, such person shall pay a penalty in addi-
26 tion to the tax (if any).

1 “(b) AMOUNT OF PENALTY.—

2 “(1) IN GENERAL.—Except as provided in para-
3 graph (2), the amount of the penalty under sub-
4 section (a) on each act shall be an amount equal to
5 the greater of—

6 “(A) \$10,000, or

7 “(B) \$1 per gallon.

8 “(2) MULTIPLE VIOLATIONS.—In determining
9 the penalty under subsection (a) on any person,
10 paragraph (1) shall be applied by increasing the
11 amount in paragraph (1) by the product of such
12 amount and the number of prior penalties (if any)
13 imposed by this section on such person (or a related
14 person or any predecessor of such person or related
15 person).

16 “(c) JOINT AND SEVERAL LIABILITY.—

17 “(1) IN GENERAL.—If a penalty is imposed
18 under this section on any business entity, each offi-
19 cer, employee, or agent of such entity or other con-
20 tracting party who willfully participated in any act
21 giving rise to such penalty shall be jointly and sever-
22 ally liable with such entity for such penalty.

23 “(2) AFFILIATED GROUPS.—If a business entity
24 described in paragraph (1) is part of an affiliated
25 group (as defined in section 1504(a)), the parent

1 corporation of such entity shall be jointly and sever-
2 ally liable with such entity for the penalty imposed
3 under this section.

4 “(d) REASONABLE CAUSE EXCEPTION.—No penalty
5 shall be imposed under this section with respect to any
6 failure if it is shown that such failure is due to reasonable
7 cause.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-
9 tions for part I of subchapter B of chapter 68, as
10 amended by section 5232 of this Act, is amended by
11 adding at the end the following new item:

“Sec. 6718. Carrying taxable fuels by nonregistered pipelines or
vessels.”.

12 (c) PUBLICATION OF REGISTERED PERSONS.—Not
13 later than June 30, 2004, the Secretary of the Treasury
14 shall publish a list of persons required to be registered
15 under section 4101 of the Internal Revenue Code of 1986.

16 (d) EFFECTIVE DATE.—The amendments made by
17 subsections (a) and (b) shall take effect on October 1,
18 2004.

19 **SEC. 880. DISPLAY OF REGISTRATION.**

20 (a) IN GENERAL.—Subsection (a) of section 4101
21 (relating to registration) is amended—

22 (1) by striking “Every” and inserting the fol-
23 lowing:

24 “(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 electronic identification device prescribed
7 by the Secretary on each vessel used by such oper-
8 ator to 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 section 5241 of this Act, is amended by
14 adding at the end the following new section:

15 **“SEC. 6719. FAILURE TO DISPLAY REGISTRATION OF VES-**
16 **SEL.**

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 number of
2 prior penalties (if any) imposed by this section on such
3 person (or a related person or any predecessor of such per-
4 son 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 section 5241 of this Act, is amended by
12 adding at the end the following new item:

“Sec. 6719. Failure to display registration of vessel.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on October 1, 2004.

15 **SEC. 881. REGISTRATION OF PERSONS WITHIN FOREIGN**
16 **TRADE ZONES, ETC..**

17 (a) IN GENERAL.—Section 4101(a), as amended by
18 section 5242 of this Act, is amended by redesignating
19 paragraph (2) as paragraph (3), and by inserting after
20 paragraph (1) the following new paragraph:

21 “(2) REGISTRATION OF PERSONS WITHIN FOR-
22 EIGN TRADE ZONES, ETC.—The Secretary shall re-
23 quire registration by any person which—

1 “(A) operates a terminal or refinery within
2 a foreign trade zone or within a customs bond-
3 ed storage facility, or

4 “(B) holds an inventory position with re-
5 spect to a taxable fuel in such a terminal.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect on October 1, 2004.

8 **SEC. 882. PENALTIES FOR FAILURE TO REGISTER AND**
9 **FAILURE TO REPORT.**

10 (a) INCREASED PENALTY.—Subsection (a) of section
11 7272 (relating to penalty for failure to register) is amend-
12 ed by inserting “(\$10,000 in the case of a failure to reg-
13 ister under section 4101)” after “\$50”.

14 (b) INCREASED CRIMINAL PENALTY.—Section 7232
15 (relating to failure to register under section 4101, false
16 representations of registration status, etc.) is amended by
17 striking “\$5,000” and inserting “\$10,000”.

18 (c) ASSESSABLE PENALTY FOR FAILURE TO REG-
19 ISTER.—

20 (1) IN GENERAL.—Part I of subchapter B of
21 chapter 68 (relating to assessable penalties), as
22 amended by section 5242 of this Act, is amended by
23 adding at the end the following new section:

1 **“SEC. 6720. FAILURE TO REGISTER.**

2 “(a) **FAILURE TO REGISTER.**—Every person who is
3 required to register under section 4101 and fails to do
4 so shall pay a penalty in addition to the tax (if any).

5 “(b) **AMOUNT OF PENALTY.**—The amount of the
6 penalty under subsection (a) shall be—

7 “(1) \$10,000 for each initial failure to register,
8 and

9 “(2) \$1,000 for each day thereafter such person
10 fails to register.

11 “(c) **REASONABLE CAUSE EXCEPTION.**—No penalty
12 shall be imposed under this section with respect to any
13 failure if it is shown that such failure is due to reasonable
14 cause.”.

15 (2) **CLERICAL AMENDMENT.**—The table of sec-
16 tions for part I of subchapter B of chapter 68, as
17 amended by section 5242 of this Act, is amended by
18 adding at the end the following new item:

“Sec. 6720. Failure to register.”.

19 (d) **ASSESSABLE PENALTY FOR FAILURE TO RE-**
20 **PORT.**—

21 (1) **IN GENERAL.**—Part II of subchapter B of
22 chapter 68 (relating to assessable penalties) is
23 amended by adding at the end the following new sec-
24 tion:

1 **“SEC. 6725. FAILURE TO REPORT INFORMATION UNDER**
2 **SECTION 4101.**

3 “(a) IN GENERAL.—In the case of each failure de-
4 scribed in subsection (b) by any person with respect to
5 a vessel or facility, such person shall pay a penalty of
6 \$10,000 in addition to the tax (if any).

7 “(b) FAILURES SUBJECT TO PENALTY.—For pur-
8 poses of subsection (a), the failures described in this sub-
9 section are—

10 “(1) any failure to make a report under section
11 4101(d) on or before the date prescribed therefor,
12 and

13 “(2) any failure to include all of the informa-
14 tion required to be shown on such report or the in-
15 clusion of incorrect information.

16 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
17 shall be imposed under this section with respect to any
18 failure if it is shown that such failure is due to reasonable
19 cause.”.

20 (2) CLERICAL AMENDMENT.—The table of sec-
21 tions for part II of subchapter B of chapter 68 is
22 amended by adding at the end the following new
23 item:

“Sec. 6725. Failure to report information under section 4101.”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to failures pending or occurring
3 after September 30, 2004.

4 **SEC. 883. INFORMATION REPORTING FOR PERSONS CLAIM-**
5 **ING CERTAIN TAX BENEFITS.**

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

9 **“SEC. 4104. INFORMATION REPORTING FOR PERSONS**
10 **CLAIMING CERTAIN TAX BENEFITS.**

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

13 “(1) under the provisions of section 34, 40, and
14 40B to file a return at the time such person claims
15 such benefits (in such manner as the Secretary may
16 prescribe), and

17 “(2) under the provisions of section 4041(b)(2),
18 6426, or 6427(e) to file a monthly return (in such
19 manner as the Secretary may prescribe).

20 “(b) CONTENTS OF RETURN.—Any return filed
21 under this section shall provide such information relating
22 to such benefits and the coordination of such benefits as
23 the Secretary may require to ensure the proper adminis-
24 tration and use of such benefits.

1 “(c) ENFORCEMENT.—With respect to any person
2 described in subsection (a) and subject to registration re-
3 quirements under this title, rules similar to rules of section
4 4222(c) shall apply with respect to any requirement under
5 this section.”.

6 (b) CONFORMING AMENDMENT.—The table of sec-
7 tions for subpart C of part III of subchapter A of chapter
8 32 is amended by adding at the end the following new
9 item:

“Sec. 4104. Information reporting for persons claiming certain tax bene-
fits.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall take effect on October 1, 2004.

12 **PART V—IMPORTS**

13 **SEC. 884. TAX AT POINT OF ENTRY WHERE IMPORTER NOT** 14 **REGISTERED.**

15 (a) TAX AT POINT OF ENTRY WHERE IMPORTER
16 NOT REGISTERED.—

17 (1) IN GENERAL.—Subpart C of part III of
18 subchapter A of chapter 31, as amended by section
19 5245 of this Act, is amended by adding at the end
20 the following new section:

21 **“SEC. 4105. TAX AT ENTRY WHERE IMPORTER NOT REG-** 22 **ISTERED.**

23 “(a) IN GENERAL.—Any tax imposed under this part
24 on any person not registered under section 4101 for the

1 entry of a fuel into the United States shall be imposed
2 at the time and point of entry.

3 “(b) ENFORCEMENT OF ASSESSMENT.—If any per-
4 son liable for any tax described under subsection (a) has
5 not paid the tax or posted a bond, the Secretary may—

6 “(1) seize the fuel on which the tax is due, or

7 “(2) detain any vehicle transporting such fuel,
8 until such tax is paid or such bond is filed.

9 “(c) LEVY OF FUEL.—If no tax has been paid or no
10 bond has been filed within 5 days from the date the Sec-
11 retary seized fuel pursuant to subsection (b), the Secretary
12 may sell such fuel as provided under section 6336.”.

13 (2) CONFORMING AMENDMENT.—The table of
14 sections for subpart C of part III of subchapter A
15 of chapter 31 of the Internal Revenue Code of 1986,
16 as amended by section 5245 of this Act, is amended
17 by adding after the last item the following new item:

“Sec. 4105. Tax at entry where importer not registered.”.

18 (b) DENIAL OF ENTRY WHERE TAX NOT PAID.—
19 The Secretary of Homeland Security is authorized to deny
20 entry into the United States of any shipment of a fuel
21 which is taxable under section 4081 of the Internal Rev-
22 enue Code of 1986 if the person entering such shipment
23 fails to pay the tax imposed under such section or post
24 a bond in accordance with the provisions of section 4105
25 of such Code.

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

4 **SEC. 885. RECONCILIATION OF ON-LOADED CARGO TO EN-**
5 **TERED CARGO.**

6 (a) IN GENERAL.—Subsection (a) of section 343 of
7 the Trade Act of 2002 is amended by inserting at the end
8 the following new paragraph:

9 “(4) IN GENERAL.—Subject to paragraphs (2)
10 and (3), not later than 1 year after the enactment
11 of this paragraph, the Secretary of Homeland Secu-
12 rity, together with the Secretary of the Treasury,
13 shall promulgate regulations providing for the trans-
14 mission to the Internal Revenue Service, through an
15 electronic data interchange system, of information
16 pertaining to cargo of taxable fuels (as defined in
17 section 4083 of the Internal Revenue Code of 1986)
18 destined for importation into the United States prior
19 to such importation.”.

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

1 **PART VI—MISCELLANEOUS PROVISIONS**

2 **SEC. 886. TAX ON SALE OF DIESEL FUEL WHETHER SUIT-**
3 **ABLE FOR USE OR NOT IN A DIESEL-POW-**
4 **ERED VEHICLE OR TRAIN.**

5 (a) IN GENERAL.—Section 4083(a)(3) is amended—

6 (1) by striking “The term” and inserting the
7 following:

8 “(A) IN GENERAL.—The term”, and

9 (2) by inserting at the end the following new
10 subparagraph:

11 “(B) LIQUID SOLD AS DIESEL FUEL.—The
12 term ‘diesel fuel’ includes any liquid which is
13 sold as or offered for sale as a fuel in a diesel-
14 powered highway vehicle or a diesel-powered
15 train.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 40B(b)(1)(B), as added by this Act,
18 is amended by striking “4083(a)(3)” and inserting
19 “4083(a)(3)(A)”.

20 (2) Section 6426(c)(3), as added by section
21 5102 of this Act, is amended by striking
22 “4083(a)(3)” and inserting “4083(a)(3)(A)”.

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

1 **SEC. 887. MODIFICATION OF ULTIMATE VENDOR REFUND**
2 **CLAIMS WITH RESPECT TO FARMING.**

3 (a) IN GENERAL.—

4 (1) REFUNDS.—Section 6427(1) is amended by
5 adding at the end the following new paragraph:

6 “(6) REGISTERED VENDORS PERMITTED TO AD-
7 MINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL
8 FUEL AND KEROSENE SOLD TO FARMERS.—

9 “(A) IN GENERAL.—In the case of diesel
10 fuel or kerosene used on a farm for farming
11 purposes (within the meaning of section
12 6420(c)), paragraph (1) shall not apply to the
13 aggregate amount of such diesel fuel or ker-
14 osene if such amount does not exceed 500 gal-
15 lons (as determined under subsection
16 (i)(5)(A)(iii)).

17 “(B) PAYMENT TO ULTIMATE VENDOR.—
18 The amount which would (but for subparagraph
19 (A)) have been paid under paragraph (1) with
20 respect to any fuel shall be paid to the ultimate
21 vendor of such fuel, if such vendor—

22 “(i) is registered under section 4101,
23 and

24 “(ii) meets the requirements of sub-
25 paragraph (A), (B), or (D) of section
26 6416(a)(1).”.

1 (2) FILING OF CLAIMS.—Section 6427(i) is
2 amended by inserting at the end the following new
3 paragraph:

4 “(5) SPECIAL RULE FOR VENDOR REFUNDS
5 WITH RESPECT TO FARMERS.—

6 “(A) IN GENERAL.—A claim may be filed
7 under subsection (l)(6) by any person with re-
8 spect to fuel sold by such person for any
9 period—

10 “(i) for which \$200 or more (\$100 or
11 more in the case of kerosene) is payable
12 under subsection (l)(6),

13 “(ii) which is not less than 1 week,
14 and

15 “(iii) which is for not more than 500
16 gallons for each farmer for which there is
17 a claim.

18 Notwithstanding subsection (l)(1), paragraph
19 (3)(B) shall apply to claims filed under the pre-
20 ceding sentence.

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

1 (3) CONFORMING AMENDMENTS.—

2 (A) Section 6427(l)(5)(A) is amended to
3 read as follows:

4 “(A) IN GENERAL.—Paragraph (1) shall
5 not apply to diesel fuel or kerosene used by a
6 State or local government.”.

7 (B) The heading for section 6427(l)(5) is
8 amended by striking “FARMERS AND”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to fuels sold for nontaxable use
11 after the date of the enactment of this Act.

12 **SEC. 888. TAXABLE FUEL REFUNDS FOR CERTAIN ULTI-**
13 **MATE VENDORS.**

14 (a) IN GENERAL.—Paragraph (4) of section 6416(a)
15 (relating to abatements, credits, and refunds) is amended
16 to read as follows:

17 “(4) REGISTERED ULTIMATE VENDOR TO AD-
18 MINISTER CREDITS AND REFUNDS OF GASOLINE
19 TAX.—

20 “(A) IN GENERAL.—For purposes of this
21 subsection, if an ultimate vendor purchases any
22 gasoline on which tax imposed by section 4081
23 has been paid and sells such gasoline to an ulti-
24 mate purchaser described in subparagraph (C)
25 or (D) of subsection (b)(2) (and such gasoline

1 is for a use described in such subparagraph),
2 such ultimate vendor shall be treated as the
3 person (and the only person) who paid such tax,
4 but only if such ultimate vendor is registered
5 under section 4101. For purposes of this sub-
6 paragraph, if the sale of gasoline is made by
7 means of a credit card, the person extending
8 the credit to the ultimate purchaser shall be
9 deemed to be the ultimate vendor.

10 “(B) TIMING OF CLAIMS.—The procedure
11 and timing of any claim under subparagraph
12 (A) shall be the same as for claims under sec-
13 tion 6427(i)(4), except that the rules of section
14 6427(i)(3)(B) regarding electronic claims shall
15 not apply unless the ultimate vendor has cer-
16 tified to the Secretary for the most recent quar-
17 ter of the taxable year that all ultimate pur-
18 chasers of the vendor are certified and entitled
19 to a refund under subparagraph (C) or (D) of
20 subsection (b)(2).”.

21 (b) CREDIT CARD PURCHASES OF DIESEL FUEL OR
22 KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Sec-
23 tion 6427(l)(5)(C) (relating to nontaxable uses of diesel
24 fuel, kerosene, and aviation fuel), as amended by section
25 5252 of this Act, is amended by adding at the end the

1 following new sentence: “For purposes of this subpara-
2 graph, if the sale of diesel fuel or kerosene is made by
3 means of a credit card, the person extending the credit
4 to the ultimate purchaser shall be deemed to be the ulti-
5 mate vendor.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect on October 1, 2004.

8 **SEC. 889. TWO-PARTY EXCHANGES.**

9 (a) IN GENERAL.—Subpart C of part III of sub-
10 chapter A of chapter 32, as amended by section 5251 of
11 this Act, is amended by adding at the end the following
12 new section:

13 **“SEC. 4106. TWO-PARTY EXCHANGES.**

14 “(a) IN GENERAL.—In a two-party exchange, the de-
15 livering person shall not be liable for the tax imposed
16 under of section 4081(a)(1)(A)(ii).

17 “(b) TWO-PARTY EXCHANGE.—The term ‘two-party
18 exchange’ means a transaction, other than a sale, in which
19 taxable fuel is transferred from a delivering person reg-
20 istered under section 4101 as a taxable fuel registrant to
21 a receiving person who is so registered where all of the
22 following occur:

23 “(1) The transaction includes a transfer from
24 the delivering person, who holds the inventory posi-

1 “(c) PRORATION OF TAX WHERE VEHICLE SOLD,
2 DESTROYED, OR STOLEN.—

3 “(1) IN GENERAL.—If in any taxable period a
4 highway motor vehicle is sold, destroyed, or stolen
5 before the first day of the last month in such period
6 and not subsequently used during such taxable pe-
7 riod, the tax shall be reckoned proportionately from
8 the first day of the month in such period in which
9 the first use of such highway motor vehicle occurs
10 to and including the last day of the month in which
11 such highway motor vehicle was sold, destroyed, or
12 stolen.

13 “(2) DESTROYED.—For purposes of paragraph
14 (1), a highway motor vehicle is destroyed if such ve-
15 hicle is damaged by reason of an accident or other
16 casualty to such an extent that it is not economic to
17 rebuild.”.

18 (2) CONFORMING AMENDMENTS.—

19 (A) Section 6156 (relating to installment
20 payment of tax on use of highway motor vehi-
21 cles) is repealed.

22 (B) The table of sections for subchapter A
23 of chapter 62 is amended by striking the item
24 relating to section 6156.

1 (b) DISPLAY OF TAX CERTIFICATE.—Paragraph (2)
2 of section 4481(d) (relating to one tax liability for period)
3 is amended to read as follows:

4 “(2) DISPLAY OF TAX CERTIFICATE.—Under
5 regulations by the Secretary, every taxpayer which
6 pays the tax imposed under this section with respect
7 to a highway motor vehicle shall, not later than 1
8 month after the due date of the return of tax with
9 respect to each taxable period, receive and display on
10 such vehicle an electronic identification device pre-
11 scribed by the Secretary.”.

12 (c) ELECTRONIC FILING.—Section 4481, as amended
13 by section 5001 of this Act, is amended by redesignating
14 subsection (e) as subsection (f) and by inserting after sub-
15 section (d) the following new subsection:

16 “(e) ELECTRONIC FILING.—Any taxpayer who files
17 a return under this section with respect to 25 or more
18 vehicles for any taxable period shall file such return elec-
19 tronically.”.

20 (d) REPEAL OF REDUCTION IN TAX FOR CERTAIN
21 TRUCKS.—Section 4483 of the Internal Revenue Code of
22 1986 is amended by striking subsection (f).

23 (e) 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 periods beginning after the
2 date of the enactment of this Act.

3 (2) REGULATIONS REGARDING DISPLAY OF TAX
4 CERTIFICATE.—The Secretary of the Treasury shall
5 issue regulations required under section 4481(d)(2)
6 of the Internal Revenue Code of 1986 (as added by
7 subsection (b)) not later than October 1, 2005.

8 **SEC. 891. DEDICATION OF REVENUES FROM CERTAIN PEN-**
9 **ALTIES TO THE HIGHWAY TRUST FUND.**

10 (a) IN GENERAL.—Subsection (b) of section 9503
11 (relating to transfer to Highway Trust Fund of amounts
12 equivalent to certain taxes), as amended by section 5001
13 of this Act, is amended by redesignating paragraph (5)
14 as paragraph (6) and inserting after paragraph (4) the
15 following new paragraph:

16 “(5) CERTAIN PENALTIES.—There are hereby
17 appropriated to the Highway Trust Fund amounts
18 equivalent to the penalties assessed under sections
19 6715, 6715A, 6717, 6718, 6719, 6720, 6725, 7232,
20 and 7272 (but only with regard to penalties under
21 such section related to failure to register under sec-
22 tion 4101).”.

23 (b) CONFORMING AMENDMENTS.—

1 (1) The heading of subsection (b) of section
2 9503 is amended by inserting “AND PENALTIES”
3 after “TAXES”.

4 (2) The heading of paragraph (1) of section
5 9503(b) is amended by striking “IN GENERAL” and
6 inserting “CERTAIN TAXES”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to penalties assessed after October
9 1, 2004.

10 **SEC. 892. NONAPPLICATION OF EXPORT EXEMPTION TO DE-**
11 **LIVERY OF FUEL TO MOTOR VEHICLES RE-**
12 **MOVED FROM UNITED STATES.**

13 (a) IN GENERAL.—Section 4221(d)(2) (defining ex-
14 port) is amended by adding at the end the following new
15 sentence: “Such term does not include the delivery of a
16 taxable fuel (as defined in section 4083(a)(1)) into a fuel
17 tank of a motor vehicle which is shipped or driven out
18 of the United States.”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 4041(g) (relating to other exemp-
21 tions) is amended by adding at the end the following
22 new sentence: “Paragraph (3) shall not apply to the
23 sale for delivery of a liquid into a fuel tank of a
24 motor vehicle which is shipped or driven out of the
25 United States.”.

1 (2) Clause (iv) of section 4081(a)(1)(A) (relat-
2 ing to tax on removal, entry, or sale) is amended by
3 inserting “or at a duty-free sales enterprise (as de-
4 fined in section 555(b)(8) of the Tariff Act of
5 1930)” after “section 4101”.

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

9 **PART VII—TOTAL ACCOUNTABILITY**

10 **SEC. 893. TOTAL ACCOUNTABILITY.**

11 (a) TAXATION OF REPORTABLE LIQUIDS.—

12 (1) IN GENERAL.—Section 4081(a), as amend-
13 ed by this Act, is amended—

14 (A) by inserting “or reportable liquid”
15 after “taxable fuel” each place it appears, and

16 (B) by inserting “such liquid” after “such
17 fuel” in paragraph (1)(A)(iv).

18 (2) RATE OF TAX.—Subparagraph (A) of sec-
19 tion 4081(a)(2), as amended by section 5211 of this
20 Act, is amended by striking “and” at the end of
21 clause (iii), by striking the period at the end of
22 clause (iv) and inserting “, and”, and by adding at
23 the end the following new clause:

1 “(v) in the case of reportable liquids,
2 the rate determined under section
3 4083(e)(2).”.

4 (3) EXEMPTION.—Section 4081(a)(1) is amend-
5 ed by adding at the end the following new subpara-
6 graph:

7 “(C) EXEMPTION FOR REGISTERED
8 TRANSFERS OF REPORTABLE LIQUIDS.—The
9 tax imposed by this paragraph shall not apply
10 to any removal, entry, or sale of a reportable
11 liquid if—

12 “(i) such removal, entry, or sale is to
13 a registered person who certifies that such
14 liquid will not be used as a fuel or in the
15 production of a fuel, or

16 “(ii) the sale is to the ultimate pur-
17 chaser of such liquid.”.

18 (4) REPORTABLE LIQUIDS.—Section 4083, as
19 amended by this Act, is amended by redesignating
20 subsections (c) and (d) (as redesignated by section
21 5211 of this Act) as subsections (d) and (e), respec-
22 tively, and by inserting after subsection (b) the fol-
23 lowing new section:

24 “(c) REPORTABLE LIQUID.—For purposes of this
25 subpart—

1 “(1) IN GENERAL.—The term ‘reportable liq-
2 uid’ means any petroleum-based liquid other than a
3 taxable fuel.

4 “(2) TAXATION.—

5 “(A) GASOLINE BLEND STOCKS AND ADDI-
6 TIVES.—Gasoline blend stocks and additives
7 which are reportable liquids (as defined in para-
8 graph (1)) shall be subject to the rate of tax
9 under clause (i) of section 4081(a)(2)(A).

10 “(B) OTHER REPORTABLE LIQUIDS.—Any
11 reportable liquid (as defined in paragraph (1))
12 not described in subparagraph (A) shall be sub-
13 ject to the rate of tax under clause (iii) of sec-
14 tion 4081(a)(2)(A).”.

15 (5) CONFORMING AMENDMENTS.—

16 (A) Section 4081(e) is amended by insert-
17 ing “or reportable liquid” after “taxable fuel”.

18 (B) Section 4083(d) (relating to certain
19 use defined as removal), as redesignated by
20 paragraph (4), is amended by inserting “or re-
21 portable liquid” after “taxable fuel”.

22 (C) Section 4083(e)(1) (relating to admin-
23 istrative authority), as redesignated by para-
24 graph (4), is amended—

25 (i) in subparagraph (A)—

1 (I) by inserting “or reportable
2 liquid” after “taxable fuel”, and

3 (II) by inserting “or such liquid”
4 after “such fuel” each place it ap-
5 pears, and

6 (ii) in subparagraph (B), by inserting
7 “or any reportable liquid” after “any tax-
8 able fuel”.

9 (D) Section 4101(a)(2), as added by sec-
10 tion 5243 of this Act, is amended by inserting
11 “or a reportable liquid” after “taxable fuel”.

12 (E) Section 4101(a)(3), as added by sec-
13 tion 5242 of this Act and redesignated by sec-
14 tion 5243 of this Act, is amended by inserting
15 “or any reportable liquid” before the period at
16 the end.

17 (F) Section 4102 is amended by inserting
18 “or any reportable liquid” before the period at
19 the end.

20 (G)(i) Section 6718, as added by section
21 5241 of this Act, is amended—

22 (I) in subsection (a), by inserting “or
23 any reportable liquid (as defined in section
24 4083(c)(1))” after “ section 4083(a)(1))”,
25 and

1 (II) in the heading, by inserting “or
2 reportable liquids” after “taxable fuel”.

3 (ii) The item relating to section 6718 in
4 table of sections for part I of subchapter B of
5 chapter 68, as added by section 5241 of this
6 Act, is amended by inserting “or reportable liq-
7 uids” after “taxable fuels”.

8 (H) Section 6427(h) is amended to read as
9 follows:

10 “(h) GASOLINE BLEND STOCKS OR ADDITIVES AND
11 REPORTABLE LIQUIDS.—Except as provided in subsection
12 (k)—

13 “(1) if any gasoline blend stock or additive
14 (within the meaning of section 4083(a)(2)) is not
15 used by any person to produce gasoline and such
16 person establishes that the ultimate use of such gas-
17 oline blend stock or additive is not to produce gaso-
18 line, or

19 “(2) if any reportable liquid (within the mean-
20 ing of section 4083(e)(1)) is not used by any person
21 to produce a taxable fuel and such person estab-
22 lishes that the ultimate use of such reportable liquid
23 is not to produce a taxable fuel,

24 then the Secretary shall pay (without interest) to such per-
25 son an amount equal to the aggregate amount of the tax

1 imposed on such person with respect to such gasoline
2 blend stock or additive or such reportable liquid.”.

3 (I) Section 7232, as amended by this Act,
4 is amended by inserting “or reportable liquid
5 (within the meaning of section 4083(c)(1))”
6 after “section 4083”).

7 (J) Section 343 of the Trade Act of 2002,
8 as amended by section 5252 of this Act, is
9 amended by inserting “and reportable liquids
10 (as defined in section 4083(c)(1) of such
11 Code)” after “Internal Revenue Code of
12 1986”).

13 (b) DYED DIESEL.—Section 4082(a) is amended by
14 striking “and” at the end of paragraph (2), by striking
15 the period at the end of paragraph (3) and inserting
16 “and”, and by inserting after paragraph (3) the following
17 new paragraph:

18 “(4) which is removed, entered, or sold by a
19 person registered under section 4101.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to reportable liquids (as defined
22 in section 4083(c) of the Internal Revenue Code) and fuel
23 sold or used after September 30, 2004.

1 **SEC. 894. EXCISE TAX REPORTING.**

2 (a) IN GENERAL.—Part II of subchapter A of chap-
3 ter 61 is amended by adding at the end the following new
4 subpart:

5 “SUBPART E—EXCISE TAX REPORTING

6 **“SEC. 6025. RETURNS RELATING TO FUEL TAXES.**

7 “(a) IN GENERAL.—The Secretary shall require any
8 person liable for the tax imposed under Part III of sub-
9 chapter A of chapter 32 to file a return of such tax on
10 a monthly basis. Not earlier than January 1, 2005, such
11 filings shall be in electronic form as prescribed by the Sec-
12 retary.

13 “(b) INFORMATION INCLUDED WITH RETURN.—The
14 Secretary shall require any person filing a return under
15 subsection (a) to provide information regarding any re-
16 fined product (whether or not such product is taxable
17 under this title) removed from a terminal during the pe-
18 riod for which such return applies.”.

19 (b) CONFORMING AMENDMENT.—The table of parts
20 for subchapter A of chapter 61 is amended by adding at
21 the end the following new item:

“Subpart E—Excise Tax Reporting”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to fuel sold or used after Sep-
24 tember 30, 2004.

1 **SEC. 895. INFORMATION REPORTING.**

2 (a) IN GENERAL.—Section 4101(d) is amended by
3 adding at the end the following new flush sentence:
4 “The Secretary shall require reporting under the previous
5 sentence with respect to taxable fuels removed, entered,
6 or transferred from any refinery, pipeline, or vessel which
7 is registered under this section. Any person who is re-
8 quired to report under this subsection and who has 25
9 or more reportable transactions in a month shall file such
10 report in electronic format.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply on October 1, 2004.

13 **Subtitle I—Mobile Machinery**

14 **SEC. 896. TREATMENT OF MOBILE MACHINERY.**

15 (a) TREATMENT OF MOBILE MACHINERY AS HIGH-
16 WAY VEHICLE.—

17 (1) IN GENERAL.—Section 7701(a) (relating to
18 definitions) is amended by adding at the end the fol-
19 lowing new paragraph:

20 “(48) TREATMENT OF MOBILE MACHINERY AS
21 HIGHWAY VEHICLE.—

22 “(A) IN GENERAL.—A vehicle described in
23 subparagraph (B) shall be treated as a highway
24 vehicle.

1 “(B) MOBILE MACHINERY.—A vehicle is
2 described in this subparagraph if such vehicle
3 consists of a chassis—

4 “(i) to which there has been perma-
5 nently mounted (by welding, bolting, riv-
6 eting, or other means) machinery or equip-
7 ment to perform a construction, manufac-
8 turing, processing, farming, mining, drill-
9 ing, timbering, or similar operation if the
10 operation of the machinery or equipment is
11 unrelated to transportation on or off the
12 public highways,

13 “(ii) which has been specially designed
14 to serve only as a mobile carriage and
15 mount (and a power source, where applica-
16 ble) for the particular machinery or equip-
17 ment involved, whether or not such ma-
18 chinery or equipment is in operation, and

19 “(iii) which, by reason of such special
20 design, could not, without substantial
21 structural modification, be used as a com-
22 ponent of a vehicle designed to perform a
23 function of transporting any load other
24 than that particular machinery or equip-
25 ment or similar machinery or equipment

1 requiring such a specially designed chas-
2 sis.”.

3 (2) EFFECTIVE DATE.—The amendment made
4 by this subsection shall take effect on the day after
5 the date of the enactment of this Act.

6 (b) ELIGIBILITY FOR REFUND IN CASE OF LIMITED
7 USE OF VEHICLE ON HIGHWAYS.—

8 (1) RETAIL SALES AND TIRE TAXES.—

9 (A) IN GENERAL.—Section 6416(b) (relat-
10 ing to special cases in which tax payments con-
11 sidered overpayments) is amended by adding at
12 the end the following new paragraph:

13 “(7) MOBILE MACHINERY.—

14 “(A) IN GENERAL.—If the tax imposed by
15 section 4051 or 4071 has been paid with re-
16 spect to any vehicle described in section
17 7701(a)(48)(B) which meets the use-based test
18 for each of the first 2 12-month periods after
19 such payment, 50 percent of such tax shall be
20 considered an overpayment for each such pe-
21 riod.

22 “(B) USE-BASED TEST.—For purposes of
23 subparagraph (A), the use-based test is met if
24 the use of the vehicle on public highways was

1 less than 5,000 miles during any 12-month pe-
2 riod.

3 “(iii) SPECIAL RULE FOR USE BY
4 CERTAIN TAX-EXEMPT ORGANIZATIONS.—
5 For purposes of clause (i), the use-based
6 test shall be determined without regard to
7 any use in a vehicle by an organization
8 which is described in section 501(e) and
9 exempt from tax under section 501(a).”.

10 (B) EFFECTIVE DATE.—The amendment
11 made by this paragraph shall take effect on the
12 day after the date of the enactment of this Act.

13 (2) FUEL TAXES.—

14 (A) IN GENERAL.—Section 6421(e)(2) (de-
15 fining off-highway business use) is amended by
16 adding at the end the following new subpara-
17 graph:

18 “(C) USES IN MOBILE MACHINERY.—

19 “(i) IN GENERAL.—The term ‘off-
20 highway business use’ shall include any use
21 in a vehicle described in section
22 7701(a)(48)(B) which meets the use-based
23 test.

24 “(ii) USE-BASED TEST.—For purposes
25 of clause (i), the use-based test is met if

1 the use of the vehicle on public highways
2 was less than 5,000 miles during the tax-
3 payer's taxable year.

4 “(iii) SPECIAL RULE FOR USE BY
5 CERTAIN TAX-EXEMPT ORGANIZATIONS.—
6 For purposes of clause (i), the use-based
7 test shall be determined without regard to
8 any use in a vehicle by an organization
9 which is described in section 501(c) and
10 exempt from tax under section 501(a).”.

11 (B) ANNUAL REFUND OF TAX PAID.—Sec-
12 tion 6427(i)(2) (relating to exceptions) is
13 amended by adding at the end the following
14 new subparagraph:

15 “(C) NONAPPLICATION OF PARAGRAPH.—
16 This paragraph shall not apply to any fuel used
17 in any off-highway business use described in
18 section 6421(e)(2)(C).”.

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

23 (3) CONFORMING AMENDMENT FOR TAX-EX-
24 EMPT USERS WITH RESPECT TO USE TAX.—

1 (A) IN GENERAL.—Section 4483(d)(1) (re-
2 relating to suspension of tax) is amended by add-
3 ing at the end the following new subparagraph:

4 “(C) SPECIAL RULE FOR USE BY CERTAIN
5 TAX-EXEMPT ORGANIZATIONS.—Subparagraph
6 (A) shall be determined without regard to any
7 use in a vehicle by an organization which is de-
8 scribed in section 501(c) and exempt from tax
9 under section 501(a).”.

10 (B) EFFECTIVE DATE.—The amendment
11 made by this paragraph shall take effect on the
12 day after the date of the enactment of this Act.

13 **Subtitle J—Additional Provisions**

14 **SEC. 897. STUDY OF EFFECTIVENESS OF CERTAIN PROVI-** 15 **SIONS BY GAO.**

16 (a) STUDY.—The Comptroller General of the United
17 States shall undertake an ongoing analysis of—

18 (1) the effectiveness of the alternative motor ve-
19 hicles and fuel incentives provisions under subtitle B
20 and the conservation and energy efficiency provisions
21 under subtitle C, and

22 (2) the recipients of the tax benefits contained
23 in such provisions, including an identification of
24 such recipients by income and other appropriate
25 measurements.

1 Such analysis shall quantify the effectiveness of such pro-
2 visions by examining and comparing the Federal Govern-
3 ment's forgone revenue to the aggregate amount of energy
4 actually conserved and tangible environmental benefits
5 gained as a result of such provisions.

6 (b) REPORTS.—The Comptroller General of the
7 United States shall report the analysis required under sub-
8 section (a) to Congress not later than December 31, 2004,
9 and annually thereafter.

10 **SEC. 898. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES**
11 **ON RAILROADS AND INLAND WATERWAY**
12 **TRANSPORTATION WHICH REMAIN IN GEN-**
13 **ERAL FUND.**

14 (a) TAXES ON TRAINS.—

15 (1) IN GENERAL.—Subparagraph (A) of section
16 4041(a)(1) is amended by striking “or a diesel-pow-
17 ered train” each place it appears and by striking “or
18 train”.

19 (2) CONFORMING AMENDMENTS.—

20 (A) Subparagraph (C) of section
21 4041(a)(1) is amended by striking clause (ii)
22 and by redesignating clause (iii) as clause (ii).

23 (B) Subparagraph (C) of section
24 4041(b)(1) is amended by striking all that fol-

1 lows “section 6421(e)(2)” and inserting a pe-
2 riod.

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

7 “(3) DIESEL FUEL USED IN TRAINS.—There is
8 hereby imposed a tax of 0.1 cent per gallon on any
9 liquid other than gasoline (as defined in section
10 4083)—

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

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

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

20 (D) Subsection (f) of section 4082 is
21 amended by striking “section 4041(a)(1)” and
22 inserting “subsections (d)(3) and (a)(1) of sec-
23 tion 4041, respectively”.

1 (E) Paragraph (3) of section 4083(a) is
2 amended by striking “or a diesel-powered
3 train”.

4 (F) Paragraph (3) of section 6421(f) is
5 amended to read as follows:

6 “(3) GASOLINE USED IN TRAINS.—In the case
7 of gasoline used as a fuel in a train, this section
8 shall not apply with respect to the Leaking Under-
9 ground Storage Tank Trust Fund financing rate
10 under section 4081.”

11 (G) Paragraph (3) of section 6427(l) is
12 amended to read as follows:

13 “(3) REFUND OF CERTAIN TAXES ON FUEL
14 USED IN DIESEL-POWERED TRAINS.—For purposes
15 of this subsection, the term ‘nontaxable use’ includes
16 fuel used in a diesel-powered train. The preceding
17 sentence shall not apply to the tax imposed by sec-
18 tion 4041(d) and the Leaking Underground Storage
19 Tank Trust Fund financing rate under section 4081
20 except with respect to fuel sold for exclusive use by
21 a State or any political subdivision thereof.”

22 (b) FUEL USED ON INLAND WATERWAYS.—

23 (1) IN GENERAL.—Paragraph (1) of section
24 4042(b) is amended by adding “and” at the end of
25 subparagraph (A), by striking “, and” at the end of

1 subparagraph (B) and inserting a period, and by
2 striking subparagraph (C).

3 (2) CONFORMING AMENDMENT.—Paragraph (2)
4 of section 4042(b) is amended by striking subpara-
5 graph (C).

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect on October 1, 2004.

8 **SEC. 899. DISTRIBUTIONS FROM PUBLICLY TRADED PART-**
9 **NEERSHIPS TREATED AS QUALIFYING INCOME**
10 **OF REGULATED INVESTMENT COMPANIES.**

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

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

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

1 investing in such stock, securities, or currencies,
2 and

3 “(B) distributions or other income derived
4 from an interest in a qualified publicly traded
5 partnership (as defined in subsection (h)); and”

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

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

15 “(5) The term ‘outstanding voting securities of
16 such issuer’ shall include the equity securities of a
17 qualified publicly traded partnership (as defined in
18 subsection (h)).”.

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

22 “(h) QUALIFIED PUBLICLY TRADED PARTNER-
23 SHIP.—For purposes of this section, the term ‘qualified
24 publicly traded partnership’ means a publicly traded part-
25 nership described in section 7704(b) other than a partner-

1 ship which would satisfy the gross income requirements
2 of section 7704(e)(2) if qualifying income included only
3 income described in subsection (b)(2)(A).”.

4 (e) DEFINITION OF QUALIFYING INCOME.—Section
5 7704(d)(4) is amended by striking “section 851(b)(2)”
6 and inserting “section 851(b)(2)(A)”.

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

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

12 “(i) the securities (other than Govern-
13 ment securities or the securities of other
14 regulated investment companies) of any
15 one issuer,

16 “(ii) the securities (other than the se-
17 curities of other regulated investment com-
18 panies) of two or more issuers which the
19 taxpayer controls and which are deter-
20 mined, under regulations prescribed by the
21 Secretary, to be engaged in the same or
22 similar trades or businesses or related
23 trades or businesses, or

1 “(iii) the securities of one or more
2 qualified publicly traded partnerships (as
3 defined in subsection (h)).”.

4 (g) APPLICATION OF SPECIAL PASSIVE ACTIVITY
5 RULE TO REGULATED INVESTMENT COMPANIES.—Sub-
6 section (k) of section 469 (relating to separate application
7 of section in case of publicly traded partnerships) is
8 amended by adding at the end the following new para-
9 graph:

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

18 (h) 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.

21 **SEC. 899A. CERTAIN BUSINESS RELATED CREDITS AL-**
22 **LOWED AGAINST REGULAR AND MINIMUM**
23 **TAX.**

24 (a) IN GENERAL.—Subsection (c) of section 38 (re-
25 lating to limitation based on amount of tax) is amended

1 by redesignating paragraph (4) as paragraph (5) and by
2 inserting after paragraph (3) the following new paragraph:

3 “(4) SPECIAL RULES FOR SPECIFIED CRED-
4 ITS.—

5 “(A) IN GENERAL.—In the case of speci-
6 fied credits—

7 “(i) this section and section 39 shall
8 be applied separately with respect to such
9 credits, and

10 “(ii) in applying paragraph (1) to
11 such credits—

12 “(I) the tentative minimum tax
13 shall be treated as being zero, and

14 “(II) the limitation under para-
15 graph (1) (as modified by subclause
16 (I)) shall be reduced by the credit al-
17 lowed under subsection (a) for the
18 taxable year (other than the specified
19 credits).

20 “(B) SPECIFIED CREDITS.—For purposes
21 of this subsection, the term ‘specified credits’
22 includes—

23 “(i) for taxable years beginning after
24 December 31, 2004, the credit determined
25 under section 40, and

1 “(ii) the credit determined under sec-
2 tion 45 to the extent that such credit is at-
3 tributable to electricity produced—

4 “(I) at a facility which is origi-
5 nally placed in service after the date
6 of the enactment of this paragraph,
7 and

8 “(II) during the 4-year period be-
9 ginning on the date that such facility
10 was originally placed in service.”.

11 (b) CONFORMING AMENDMENTS.—Paragraph
12 (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) are each
13 amended by inserting “or the specified credits” after “em-
14 ployee credit”.

15 (c) EFFECTIVE DATE.—Except as otherwise pro-
16 vided, the amendments made by this section shall apply
17 to taxable years ending after the date of the enactment
18 of this Act.