

108TH CONGRESS  
1ST SESSION

# H. R. 2615

To provide funding for infrastructure investment to restore the United States economy and to enhance the security of transportation and environmental facilities throughout the United States.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2003

Mr. COSTELLO (for himself, Mr. DAVIS of Tennessee, Mr. OBERSTAR, Mr. RAHALL, Mr. FILNER, Mr. MENENDEZ, Mr. CUMMINGS, Mr. LIPINSKI, Mrs. TAUSCHER, Mr. BISHOP of New York, Mr. BLUMENAUER, Mr. EMANUEL, Mr. NADLER, Mr. CLAY, Mr. HOLDEN, Ms. NORTON, Mr. HONDA, Mr. CAPUANO, Mr. BAIRD, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MICHAUD, Mr. LARSEN of Washington, Mr. WEINER, Mr. DEFazio, Ms. MILLENDER-McDONALD, Ms. BERKLEY, Mr. PASCARELL, Mr. BOSWELL, Ms. CORRINE BROWN of Florida, Ms. CARSON of Indiana, Mr. THOMPSON of California, Mr. HOEFFEL, Mr. LAMPSON, Mr. MATHESON, and Mr. CARSON of Oklahoma) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Ways and Means, Energy and Commerce, Financial Services, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide funding for infrastructure investment to restore the United States economy and to enhance the security of transportation and environmental facilities throughout the United States.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Rebuild America Act of 2003”.

4 (b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

**TITLE I—HIGHWAY INFRASTRUCTURE INVESTMENT**

Sec. 101. Federal-aid highway program obligation ceiling.

**TITLE II—TRANSIT INFRASTRUCTURE INVESTMENT**

Sec. 201. Additional authorizations for formula grants.

Sec. 202. Federal transit program obligation ceiling.

**TITLE III—AVIATION INFRASTRUCTURE INVESTMENT**

Sec. 301. Increased funding for airport planning and development.

Sec. 302. Airport security improvement projects.

**TITLE IV—RAIL INFRASTRUCTURE INVESTMENT**

**Subtitle A—Credit for Amtrak Bonds**

Sec. 401. Credit to holders of qualified Amtrak bonds.

**Subtitle B—High-Speed Rail Provisions**

Sec. 411. Department of transportation approval for qualified Amtrak projects.

Sec. 412. Multiyear capital spending plan and oversight.

Sec. 413. Issuance of regulations.

Sec. 414. Sense of Congress regarding effect on Amtrak funding.

Sec. 415. Effective date.

**Subtitle C—Amtrak Capital Investment**

Sec. 421. Authorization of appropriations.

**Subtitle D—Capital Investment for Railroad Rehabilitation**

Sec. 431. Capital grants for railroad track.

Sec. 432. Regulatory procedure amendments.

**TITLE V—PORT SECURITY INFRASTRUCTURE INVESTMENT**

Sec. 501. Authorization of appropriations for grants to implement security plans.

**TITLE VI—ENVIRONMENTAL INFRASTRUCTURE INVESTMENT**

Sec. 601. General authority for capitalization grants.

Sec. 602. Capitalization grants agreements.

Sec. 603. Water pollution control revolving funds.

Sec. 604. Authorization of appropriations for clean water State revolving funds.

- Sec. 605. Wet weather.
- Sec. 606. Safe drinking water State revolving funds.

#### TITLE VII—WATER RESOURCES INFRASTRUCTURE INVESTMENT

- Sec. 701. Increased funding for Corps of Engineers projects.

#### TITLE VIII—ECONOMIC DEVELOPMENT INFRASTRUCTURE INVESTMENT

- Sec. 801. Public works and economic development.
- Sec. 802. Appalachian regional development.
- Sec. 803. Delta regional development.
- Sec. 804. Northern Great Plains regional development.

#### TITLE IX—PUBLIC BUILDINGS INFRASTRUCTURE INVESTMENT

- Sec. 901. Security enhancements for GSA properties.

#### TITLE X—GENERAL PROVISIONS

- Sec. 1001. Priority consideration for security projects.
- Sec. 1002. Temporary waiver of non-Federal share.
- Sec. 1003. Maintenance of effort.
- Sec. 1004. Labor standards.
- Sec. 1005. Buy America.

#### TITLE XI—REVENUE OFFSETS

- Sec. 1100. Amendment of 1986 code.

##### Subtitle A—Provisions Designed To Curtail Tax Shelters

- Sec. 1101. Clarification of economic substance doctrine.
- Sec. 1102. Penalty for failing to disclose reportable transaction.
- Sec. 1103. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
- Sec. 1104. Penalty for understatements attributable to transactions lacking economic substance, etc.
- Sec. 1105. Modifications of substantial understatement penalty for nonreportable transactions.
- Sec. 1106. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
- Sec. 1107. Disclosure of reportable transactions.
- Sec. 1108. Modifications to penalty for failure to register tax shelters.
- Sec. 1109. Modification of penalty for failure to maintain lists of investors.
- Sec. 1110. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
- Sec. 1111. Understatement of taxpayer's liability by income tax return preparer.
- Sec. 1112. Penalty on failure to report interests in foreign financial accounts.
- Sec. 1113. Frivolous tax submissions.
- Sec. 1114. Regulation of individuals practicing before the Department of Treasury.
- Sec. 1115. Penalty on promoters of tax shelters.
- Sec. 1116. Statute of limitations for taxable years for which listed transactions not reported.

Sec. 1117. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.

Subtitle B—OTHER PROVISIONS

- Sec. 1121. Limitation on transfer or importation of built-in losses.  
 Sec. 1122. Disallowance of certain partnership loss transfers.  
 Sec. 1123. No reduction of basis under section 734 in stock held by partnership in corporate partner.  
 Sec. 1124. Repeal of special rules for FASITs.  
 Sec. 1125. Expanded disallowance of deduction for interest on convertible debt.  
 Sec. 1126. Expanded authority to disallow tax benefits under section 269.  
 Sec. 1127. Modifications of certain rules relating to controlled foreign corporations.  
 Sec. 1128. Basis for determining loss always reduced by nontaxed portion of dividends.  
 Sec. 1129. Affirmation of consolidated return regulation authority.  
 Sec. 1130. Extension of customs user fees.

Subtitle C—Prevention of Corporate Expatriation To Avoid United States  
Income Tax

Sec. 1131. Prevention of corporate expatriation to avoid United States income tax.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Since January 2001, the unemployment  
 4 rate has increased from 4.2 percent to 6.1 percent,  
 5 the highest level since July 1994.

6 (2) Since January 2001, the number of unem-  
 7 ployed people increased from 5,950,000 people to  
 8 9,000,000, an increase of more than 3,000,000, or  
 9 more than 50 percent.

10 (3) The increase in unemployment of the last  
 11 two and one-half years has had a disproportionate  
 12 effect on people of color. The rate of unemployment  
 13 for African Americans is 10.8 percent, twice the rate  
 14 for whites. The unemployment rate for Hispanic

1 Americans is 8.2 percent, more than 50 percent  
2 higher than the rate for whites.

3 (4) The number of unemployed private con-  
4 struction workers is 715,000, an 80 percent increase  
5 over the comparable period in calendar year 2000.  
6 The unemployment rate for construction workers is  
7 8.4 percent, 68 percent higher than the rate in May  
8 2000.

9 (5) Similarly, the number of unemployed manu-  
10 facturing workers is nearly 1,200,000, an increase of  
11 more than 25 percent since January 2001. In Janu-  
12 ary 2003, the number of production workers in man-  
13 ufacturing dropped below 11,000,000 for the first  
14 time since February 1946, and the number con-  
15 tinues to fall.

16 (6) Moreover, after workers have lost their jobs,  
17 they have had more trouble finding new jobs. The  
18 average length of unemployment is almost 20 weeks,  
19 the longest it has been in almost 2 decades. In the  
20 past 2 years, the number of workers who are unem-  
21 ployed for longer than 6 months has increased by  
22 1,300,000 to more than 1,900,000, an increase of  
23 more than 206 percent. One-half of the unemployed  
24 are out of work for more than 10 weeks and one in  
25 5 have been out of work for more than 6 months.

1           (7) In addition, 4,600,000 people seeking full-  
2           time employment are working only part-time. An ad-  
3           ditional 5,500,000 have completely dropped out of  
4           the labor force because they cannot find work, and  
5           therefore are not counted as unemployed.

6           (8) As labor markets tightened in the late  
7           1990's, even low- and middle-income workers seemed  
8           to gain some wage bargaining power. But, with the  
9           Bush recession, family incomes are falling across the  
10          board, and falling most rapidly among lower-income  
11          workers.

12          (9) In 75 urban areas, highway congestion  
13          alone costs travelers 3,600,000,000 hours of delay,  
14          5,700,000,000 gallons of wasted fuel, and  
15          \$67,500,000,000 in lost productivity and wasted fuel  
16          each year (more than three times the  
17          \$22,000,000,000 cost in 1982).

18          (10) Similarly, States indicate that 40 percent  
19          of assessed waters, or 20,000 discrete areas of the  
20          Nation's lakes, rivers, streams, and coastal waters,  
21          do not meet State water quality standards.

22          (11) States, cities, transit authorities, airport  
23          authorities, and other entities have thousands of  
24          ready-to-go infrastructure projects, which will create

1 long-term capital assets for the United States and  
2 which can help stimulate the Nation's economy.

3 (12) Each \$1,000,000,000 of Federal funding  
4 invested in infrastructure construction creates ap-  
5 proximately 47,500 jobs and \$6,200,000,000 in eco-  
6 nomic activity.

7 (b) PURPOSES.—The purposes of this Act are as fol-  
8 lows:

9 (1) To invest in the Nation's infrastructure to  
10 enhance the safety, security, and efficiency of high-  
11 way, transit, aviation, rail, port, environmental,  
12 water resources, and public buildings infrastructure.

13 (2) To create jobs and economic activity to put  
14 people back to work and stimulate the Nation's  
15 economy.

16 (3) To create long-term capital assets for the  
17 Nation that will help the United States address its  
18 enormous infrastructure needs and improve its eco-  
19 nomic productivity.

20 (4) To demonstrate the commitment of the  
21 Federal Government to economic recovery, thereby  
22 increasing the confidence of consumers and busi-  
23 nesses.

1                   **TITLE I—HIGHWAY**  
2                   **INFRASTRUCTURE INVESTMENT**

3                   **SEC. 101. FEDERAL-AID HIGHWAY PROGRAM OBLIGATION**  
4                   **CEILING.**

5                   Section 1102 of the Transportation Equity Act for  
6 the 21st Century (112 Stat. 115) is amended by adding  
7 at the end the following:

8                   “(j) INCREASE IN OBLIGATION LIMIT FOR FISCAL  
9 YEAR 2003.—Notwithstanding any other provision of law,  
10 limitations on obligations imposed by subsection (a) for  
11 fiscal year 2003 shall be \$36,600,000,000. Such sum shall  
12 be distributed in accordance with this section, except that  
13 a program subject to a reduction in funds under sub-  
14 section (f) shall receive an amount of obligation authority  
15 equal to the amount of contract authority available for  
16 such program in such fiscal year.”.

17                   **TITLE II—TRANSIT**  
18                   **INFRASTRUCTURE INVESTMENT**

19                   **SEC. 201. ADDITIONAL AUTHORIZATIONS FOR FORMULA**  
20                   **GRANTS.**

21                   (a) FROM THE TRUST FUND.—Section  
22 5338(a)(2)(A)(v) of title 49, United States Code, is  
23 amended by striking “\$3,071,200,000” and inserting  
24 “\$5,471,200,000”.



1 (b) FROM THE GENERAL FUND.—Section  
2 5338(a)(2)(B)(v) of title 49, United States Code, is  
3 amended by striking “\$767,800,000” and inserting  
4 “\$1,367,800,000”.

5 (c) AVAILABILITY OF AMOUNTS.—Notwithstanding  
6 sections 5307(k)(2) and section 5336(i), any increase in  
7 the amounts apportioned to a recipient attributable to the  
8 amendments made by subsections (a) and (b) of this sec-  
9 tion may be obligated by the recipient for 1 year after  
10 the last day of the fiscal year in which the amount is ap-  
11 portioned. Not later than 30 days after the end of the  
12 1-year period, an amount that is not obligated at the end  
13 of that period shall be added to the amount that may be  
14 apportioned under the urbanized area formula program of  
15 section 5336 of title 49, United States Code.

16 **SEC. 202. FEDERAL TRANSIT PROGRAM OBLIGATION CEIL-**  
17 **ING.**

18 Section 3040(5) of the Transportation Equity Act for  
19 the 21st Century (112 Stat. 394) is amended by striking  
20 “\$7,226,000,000” and inserting “\$10,226,000,000”.

1                   **TITLE III—AVIATION**  
2           **INFRASTRUCTURE INVESTMENT**

3   **SEC. 301. INCREASED FUNDING FOR AIRPORT PLANNING**  
4                   **AND DEVELOPMENT.**

5           (a) IN GENERAL.—Section 48103(5) of title 49,  
6 United States Code, is amended by striking  
7 “\$3,400,000,000” and inserting “\$5,400,000,000.”.

8   **SEC. 302. AIRPORT SECURITY IMPROVEMENT PROJECTS.**

9           (a) GRANT AUTHORITY.—Subject to the require-  
10 ments of this section, the Under Secretary for Border and  
11 Transportation Security shall make grants to airport  
12 sponsors—

13                   (1) for projects to replace baggage conveyer  
14 systems related to aviation security;

15                   (2) for projects to reconfigure terminal baggage  
16 areas as needed to install explosive detection sys-  
17 tems; and

18                   (3) for such other airport security improvement  
19 projects as the Under Secretary determines appro-  
20 priate.

21           (b) APPLICATIONS.—A sponsor seeking a grant  
22 under this section shall submit to the Under Secretary an  
23 application in such form and containing such information  
24 as the Under Secretary prescribes.

1           (c) APPROVAL.—The Under Secretary may approve  
2 an application of a sponsor for a grant under this section  
3 only if the Under Secretary determines that the project  
4 will improve security at an airport or improve the effi-  
5 ciency of the airport without lessening security.

6           (d) LETTERS OF INTENT.—

7           (1) ISSUANCE.—The Under Secretary may  
8 issue a letter of intent to a sponsor committing to  
9 obligate from future budget authority an amount,  
10 not more than the Federal Government’s share of  
11 the project’s cost, for an airport security improve-  
12 ment project (including interest costs and costs of  
13 formulating the project).

14           (2) SCHEDULE.—A letter of intent under this  
15 subsection shall establish a schedule under which the  
16 Under Secretary will reimburse the sponsor for the  
17 Government’s share of the project’s costs, as  
18 amounts become available, if the sponsor, after the  
19 Under Secretary issues the letter, carries out the  
20 project without receiving amounts under this section.

21           (3) PRIORITY.—In making grants under this  
22 section in a fiscal year, the Under Secretary shall  
23 fulfill intentions to obligate under this subsection.

24           (4) NOTICE TO UNDER SECRETARY.—A sponsor  
25 that has been issued a letter of intent under this

1 subsection shall notify the Under Secretary of the  
2 sponsors's intent to carry out an airport security im-  
3 provement project before the project begins.

4 (5) NOTICE TO CONGRESS.—The Under Sec-  
5 retary shall transmit to the Committees on Appro-  
6 priations and Transportation and Infrastructure of  
7 the House of Representatives and the Committees  
8 on Appropriations and Commerce, Science and  
9 Transportation of the Senate a written notification  
10 at least 3 days before the issuance of a letter of in-  
11 tent under this section.

12 (6) LIMITATIONS.—A letter of intent issued  
13 under this subsection is not an obligation of the  
14 Government under section 1501 of title 31, and the  
15 letter is not deemed to be an administrative commit-  
16 ment for financing. An obligation or administrative  
17 commitment may be made only as amounts are pro-  
18 vided in authorization and appropriations laws.

19 (7) APPLICABILITY OF CERTAIN REQUIRE-  
20 MENTS.—The requirements that apply to grants and  
21 letters of intent issued under chapter 471 shall  
22 apply to grants and letters of intent issued under  
23 this section.

24 (8) STATUTORY CONSTRUCTION.—Nothing in  
25 this subsection shall be construed to prohibit the ob-

1 ligation of amounts pursuant to a letter of intent  
2 under this subsection in the same fiscal year as the  
3 letter of intent is issued.

4 (e) FEDERAL SHARE.—The Government’s share of  
5 the cost of a project under this section shall be 90 percent  
6 for a project at an airport having at least 0.25 percent  
7 of the total number of passenger boardings each year at  
8 all airports and 95 percent for a project at any other air-  
9 port.

10 (f) SPONSOR DEFINED.—In this section, the term  
11 “sponsor” has the meaning given that term in section  
12 47102.

13 (g) AUTHORIZATION OF APPROPRIATIONS.—There is  
14 authorized to be appropriated \$1,000,000,000 for fiscal  
15 year 2003 to carry out this section.

16 **TITLE IV—RAIL**  
17 **INFRASTRUCTURE INVESTMENT**  
18 **Subtitle A—Credit for Amtrak**  
19 **Bonds**

20 **SEC. 401. CREDIT TO HOLDERS OF QUALIFIED AMTRAK**  
21 **BONDS.**

22 (a) IN GENERAL.—Part IV of subchapter A of chap-  
23 ter 1 of the Internal Revenue Code of 1986 (relating to  
24 credits against tax) is amended by adding at the end the  
25 following new subpart:

1     **“Subpart H—Nonrefundable Credit for Holders of**  
2                     **Qualified Amtrak Bonds**

“Sec. 54. Credit to holders of qualified Amtrak bonds.

3     **“SEC. 54. CREDIT TO HOLDERS OF QUALIFIED AMTRAK**  
4                     **BONDS.**

5             “(a) ALLOWANCE OF CREDIT.—In the case of a tax-  
6 payer who holds a qualified Amtrak bond on a credit al-  
7 lowance date of such bond which occurs during the taxable  
8 year, there shall be allowed as a credit against the tax  
9 imposed by this chapter for such taxable year an amount  
10 equal to the sum of the credits determined under sub-  
11 section (b) with respect to credit allowance dates during  
12 such year on which the taxpayer holds such bond.

13             “(b) AMOUNT OF CREDIT.—

14                 “(1) IN GENERAL.—The amount of the credit  
15 determined under this subsection with respect to any  
16 credit allowance date for a qualified Amtrak bond is  
17 25 percent of the annual credit determined with re-  
18 spect to such bond.

19                 “(2) ANNUAL CREDIT.—The annual credit de-  
20 termined with respect to any qualified Amtrak bond  
21 is the product of—

22                     “(A) the applicable credit rate, multiplied  
23                     by

24                     “(B) the outstanding face amount of the  
25                     bond.

1           “(3) APPLICABLE CREDIT RATE.—For purposes  
2 of paragraph (2), the applicable credit rate with re-  
3 spect to an issue is the rate equal to an average  
4 market yield (as of the day before the date of sale  
5 of the issue) on outstanding long-term corporate  
6 debt obligations (determined under regulations pre-  
7 scribed by the Secretary).

8           “(4) CREDIT ALLOWANCE DATE.—For purposes  
9 of this section, the term ‘credit allowance date’  
10 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           “(5) SPECIAL RULE FOR ISSUANCE AND RE-  
18 DEMPTION.—In the case of a bond which is issued  
19 during the 3-month period ending on a credit allow-  
20 ance date, the amount of the credit determined  
21 under this subsection with respect to such credit al-  
22 lowance date shall be a ratable portion of the credit  
23 otherwise determined based on the portion of the 3-  
24 month period during which the bond is outstanding.

1 A similar rule shall apply when the bond is re-  
2 deemed.

3 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

4 “(1) IN GENERAL.—The credit allowed under  
5 subsection (a) for any taxable year shall not exceed  
6 the excess of—

7 “(A) the sum of the regular tax liability  
8 (as defined in section 26(b)) plus the tax im-  
9 posed by section 55, over

10 “(B) the sum of the credits allowable  
11 under this part (other than this subpart and  
12 subpart C).

13 “(2) CARRYOVER OF UNUSED CREDIT.—If the  
14 credit allowable under subsection (a) exceeds the  
15 limitation imposed by paragraph (1) for such taxable  
16 year, such excess shall be carried to the succeeding  
17 taxable year and added to the credit allowable under  
18 subsection (a) for such taxable year.

19 “(d) CREDIT INCLUDED IN GROSS INCOME.—Gross  
20 income includes the amount of the credit allowed to the  
21 taxpayer under this section (determined without regard to  
22 subsection (c)) and the amount so included shall be treat-  
23 ed as interest income.



1       “(e) QUALIFIED AMTRAK BOND.—For purposes of  
2 this part, the term ‘qualified Amtrak bond’ means any  
3 bond issued as part of an issue if—

4           “(1) 95 percent or more of the proceeds from  
5 the sale of such issue are to be used for expenditures  
6 incurred after the date of the enactment of this sec-  
7 tion for any qualified project,

8           “(2) the bond is issued by the National Rail-  
9 road Passenger Corporation, is in registered form,  
10 and meets the bond limitation requirements under  
11 subsection (f),

12           “(3) the issuer designates such bond for pur-  
13 poses of this section,

14           “(4) the issuer certifies that it meets the State  
15 contribution requirement of subsection (k) with re-  
16 spect to such project, as in effect on the date of the  
17 enactment of this section,

18           “(5) the issuer certifies that it has obtained the  
19 written approval of the Secretary of Transportation  
20 for such project in accordance with section 26301 of  
21 title 49, United States Code, as in effect on the date  
22 of the enactment of this section,

23           “(6) the term of each bond which is part of  
24 such issue does not exceed 20 years,

1           “(7) the payment of principal with respect to  
2 such bond is the obligation of the National Railroad  
3 Passenger Corporation, and

4           “(8) the issue meets the requirements of sub-  
5 section (g) (relating to arbitrage).

6           “(f) LIMITATIONS ON AMOUNT OF BONDS DES-  
7 IGNATED.—

8           “(1) IN GENERAL.—There is a qualified Am-  
9 trak bond limitation for each fiscal year. Such limi-  
10 tation is—

11                   “(A) \$1,400,000,000 for each of the fiscal  
12 years 2003 through 2012, and

13                   “(B) zero after fiscal year 2012.

14           “(2) LIMITS ON BONDS FOR NORTHEAST RAIL  
15 CORRIDOR AND INDIVIDUAL STATES.—

16                   “(A) NORTHEAST RAIL CORRIDOR.—Not  
17 more than \$3,000,000,000 of the limitation  
18 under paragraph (1) may be designated for  
19 qualified projects on the northeast rail corridor  
20 between Washington, D.C., and Boston, Massa-  
21 chusetts.

22                   “(B) INDIVIDUAL STATES.—Not more  
23 than \$3,000,000,000 of the limitation under  
24 paragraph (1) may be designated for any indi-  
25 vidual State. The dollar limitation under this

1           subparagraph is in addition to the dollar limita-  
2           tion for the qualified projects described in sub-  
3           paragraph (A).

4           “(3) LIMIT ON BONDS FOR OTHER  
5 PROJECTS.—Not more than \$100,000,000 of the  
6 limitation under paragraph (1) for any fiscal year  
7 may be designated for all qualified projects described  
8 in subsection (j)(1)(C).

9           “(4) CARRYOVER OF UNUSED LIMITATION.—If  
10 for any fiscal year—

11                 “(A) the limitation amount under para-  
12 graph (1), exceeds

13                 “(B) the amount of bonds issued during  
14 such year which are designated under sub-  
15 section (e)(3),

16 the limitation amount under paragraph (1) for the  
17 following fiscal year (through fiscal year 2016) shall  
18 be increased by the amount of such excess.

19           “(g) SPECIAL RULES RELATING TO ARBITRAGE.—

20                 “(1) IN GENERAL.—Subject to paragraph (2),  
21 an issue shall be treated as meeting the require-  
22 ments of this subsection if as of the date of  
23 issuance, the issuer reasonably expects—

24                 “(A) to spend at least 95 percent of the  
25 proceeds from the sale of the issue for 1 or

1 more qualified projects within the 3-year period  
2 beginning on such date,

3 “(B) to incur a binding commitment with  
4 a third party to spend at least 10 percent of the  
5 proceeds from the sale of the issue, or to com-  
6 mence construction, with respect to such  
7 projects within the 6-month period beginning on  
8 such date, and

9 “(C) to proceed with due diligence to com-  
10 plete such projects and to spend the proceeds  
11 from the sale of the issue.

12 “(2) RULES REGARDING CONTINUING COMPLI-  
13 ANCE AFTER 3-YEAR DETERMINATION.—If at least  
14 95 percent of the proceeds from the sale of the issue  
15 is not expended for 1 or more qualified projects  
16 within the 3-year period beginning on the date of  
17 issuance, but the requirements of paragraph (1) are  
18 otherwise met, an issue shall be treated as con-  
19 tinuing to meet the requirements of this subsection  
20 if either—

21 “(A) the issuer uses all unspent proceeds  
22 from the sale of the issue to redeem bonds of  
23 the issue within 90 days after the end of such  
24 3-year period, or

25 “(B) the following requirements are met:

1           “(i) The issuer spends at least 75 per-  
2 cent of the proceeds from the sale of the  
3 issue for 1 or more qualified projects with-  
4 in the 3-year period beginning on the date  
5 of issuance.

6           “(ii) Either—

7                 “(I) the issuer spends at least 95  
8 percent of the proceeds from the sale  
9 of the issue for 1 or more qualified  
10 projects within the 4-year period be-  
11 ginning on the date of issuance, or

12                 “(II) the issuer pays to the Fed-  
13 eral Government any earnings on the  
14 proceeds from the sale of the issue  
15 that accrue after the end of the 3-year  
16 period beginning on the date of  
17 issuance and uses all unspent pro-  
18 ceeds from the sale of the issue to re-  
19 deem bonds of the issue within 90  
20 days after the end of the 4-year pe-  
21 riod beginning on the date of  
22 issuance.

23           “(h) RECAPTURE OF PORTION OF CREDIT WHERE  
24 CESSATION OF COMPLIANCE.—

1           “(1) IN GENERAL.—If any bond which when  
2 issued purported to be a qualified Amtrak bond  
3 ceases to be such a qualified bond, the issuer shall  
4 pay to the United States (at the time required by  
5 the Secretary) an amount equal to the sum of—

6           “(A) the aggregate of the credits allowable  
7 under this section with respect to such bond  
8 (determined without regard to subsection (e))  
9 for taxable years ending during the calendar  
10 year in which such cessation occurs and the 2  
11 preceding calendar years, and

12           “(B) interest at the underpayment rate  
13 under section 6621 on the amount determined  
14 under subparagraph (A) for each calendar year  
15 for the period beginning on the first day of  
16 such calendar year.

17           “(2) FAILURE TO PAY.—If the issuer fails to  
18 timely pay the amount required by paragraph (1)  
19 with respect to such bond, the tax imposed by this  
20 chapter on each holder of any such bond which is  
21 part of such issue shall be increased (for the taxable  
22 year of the holder in which such cessation occurs) by  
23 the aggregate decrease in the credits allowed under  
24 this section to such holder for taxable years begin-  
25 ning in such 3 calendar years which would have re-

1 sulted solely from denying any credit under this sec-  
2 tion with respect to such issue for such taxable  
3 years.

4 “(3) SPECIAL RULES.—

5 “(A) TAX BENEFIT RULE.—The tax for  
6 the taxable year shall be increased under para-  
7 graph (2) only with respect to credits allowed  
8 by reason of this section which were used to re-  
9 duce tax liability. In the case of credits not so  
10 used to reduce tax liability, the carryforwards  
11 and carrybacks under section 39 shall be appro-  
12 priately adjusted.

13 “(B) NO CREDITS AGAINST TAX.—Any in-  
14 crease in tax under paragraph (2) shall not be  
15 treated as a tax imposed by this chapter for  
16 purposes of determining—

17 “(i) the amount of any credit allow-  
18 able under this part, or

19 “(ii) the amount of the tax imposed  
20 by section 55.

21 “(i) TRUST ACCOUNT.—

22 “(1) IN GENERAL.—The following amounts  
23 shall be held in a trust account by a trustee inde-  
24 pendent of the National Railroad Passenger Cor-  
25 poration:

1           “(A) The proceeds from the sale of all  
2           bonds designated for purposes of this section.

3           “(B) The amount of any matching con-  
4           tributions with respect to such bonds.

5           “(C) The temporary period investment  
6           earnings on proceeds from the sale of such  
7           bonds.

8           “(D) Any earnings on any amounts de-  
9           scribed in subparagraph (A), (B), or (C).

10          “(2) USE OF FUNDS.—Amounts in the trust ac-  
11          count may be used only to pay costs of qualified  
12          projects and redeem qualified Amtrak bonds, except  
13          that amounts withdrawn from the trust account to  
14          pay costs of qualified projects may not exceed the  
15          aggregate proceeds from the sale of all qualified Am-  
16          trak bonds issued under this section.

17          “(3) USE OF REMAINING FUNDS IN TRUST AC-  
18          COUNT.—Upon the redemption of all qualified Am-  
19          trak bonds issued under this section, any remaining  
20          amounts in the trust account described in paragraph  
21          (1) shall be available to the issuer for any qualified  
22          project.

23          “(j) QUALIFIED PROJECT.—For purposes of this sec-  
24          tion—



1           “(1) IN GENERAL.—The term ‘qualified project’  
2 means—

3           “(A) the acquisition, financing, or refi-  
4 nancing of equipment, rolling stock, and other  
5 capital improvements (including the introduc-  
6 tion of new high-speed technologies such as  
7 magnetic levitation systems), including track or  
8 signal improvements or the elimination of grade  
9 crossings, for the northeast rail corridor be-  
10 tween Washington, D.C., and Boston, Massa-  
11 chusetts,

12           “(B) the acquisition, financing, or refi-  
13 nancing of equipment, rolling stock, and other  
14 capital improvements (including the introduc-  
15 tion of new high-speed technologies such as  
16 magnetic levitation systems), including develop-  
17 ment of intermodal facilities, track or signal im-  
18 provements, or the elimination of grade cross-  
19 ings, for the improvement of train speeds or  
20 safety (or both) on the high-speed rail corridors  
21 designated under section 104(d)(2) of title 23,  
22 United States Code, as in effect on the date of  
23 the enactment of this section, and

24           “(C) the acquisition, financing, or refi-  
25 nancing of equipment, rolling stock, and other

1 capital improvements, including station rehabili-  
2 tation or construction, development of inter-  
3 modal facilities, track or signal improvements,  
4 or the elimination of grade crossings, for the  
5 improvement of train speeds or safety (or both)  
6 for other intercity passenger rail corridors and  
7 for the Alaska Railroad.

8 “(2) REFINANCING RULES.—For purposes of  
9 paragraph (1), a refinancing shall constitute a quali-  
10 fied project only if the indebtedness being refinanced  
11 (including any obligation directly or indirectly refi-  
12 nanced by such indebtedness) was originally incurred  
13 by the issuer—

14 “(A) after the date of the enactment of  
15 this section,

16 “(B) for a term of not more than 3 years,

17 “(C) to finance or acquire capital improve-  
18 ments described in paragraph (1), and

19 “(D) in anticipation of being refinanced  
20 with proceeds of a qualified Amtrak bond.

21 “(k) STATE CONTRIBUTION REQUIREMENTS.—

22 “(1) IN GENERAL.—For purposes of subsection  
23 (e)(4), the State contribution requirement of this  
24 subsection is met with respect to any qualified  
25 project if the National Railroad Passenger Corpora-

1       tion has received from 1 or more States, not later  
2       than the date of issuance of the bond, matching con-  
3       tributions of not less than 20 percent of the cost of  
4       the qualified project.

5               “(2) NO STATE CONTRIBUTION REQUIREMENT  
6       FOR CERTAIN QUALIFIED PROJECTS.—The State  
7       contribution requirement of this subsection is zero  
8       with respect to the following projects:

9               “(A) Any qualified project for the acquisi-  
10       tion and installation of platform facilities, per-  
11       formance of railroad force account work nec-  
12       essary to complete improvements below street  
13       grade, and any other necessary improvements  
14       related to construction at the railroad station at  
15       the James A. Farley Post Office Building in  
16       New York City, New York.

17               “(B) Any project described in subsection  
18       (j)(1)(C) for the Alaska Railroad.

19               “(3) STATE MATCHING CONTRIBUTIONS MAY  
20       NOT INCLUDE FEDERAL FUNDS.—For purposes of  
21       this subsection, State matching contributions shall  
22       not be derived, directly or indirectly, from Federal  
23       funds, including any transfers from the Highway  
24       Trust Fund under section 9503.

1 “(1) OTHER DEFINITIONS AND SPECIAL RULES.—

2 For purposes of this section—

3 “(1) BOND.—The term ‘bond’ includes any ob-  
4 ligation.

5 “(2) TREATMENT OF CHANGES IN USE.—For  
6 purposes of subsection (e)(1), the proceeds from the  
7 sale of an issue shall not be treated as used for a  
8 qualified project to the extent that the issuer takes  
9 any action within its control which causes such pro-  
10 ceeds not to be used for a qualified project. The Sec-  
11 retary shall prescribe regulations specifying remedial  
12 actions that may be taken (including conditions to  
13 taking such remedial actions) to prevent an action  
14 described in the preceding sentence from causing a  
15 bond to fail to be a qualified Amtrak bond.

16 “(3) PARTNERSHIP; S CORPORATION; AND  
17 OTHER PASS-THRU ENTITIES.—Under regulations  
18 prescribed by the Secretary, in the case of a partner-  
19 ship, trust, S corporation, or other pass-thru entity,  
20 rules similar to the rules of section 41(g) shall apply  
21 with respect to the credit allowable under subsection  
22 (a).

23 “(4) BONDS HELD BY REGULATED INVEST-  
24 MENT COMPANIES.—If any qualified Amtrak bond is  
25 held by a regulated investment company, the credit

1 determined under subsection (a) shall be allowed to  
2 shareholders of such company under procedures pre-  
3 scribed by the Secretary.

4 “(5) REPORTING.—Issuers of qualified Amtrak  
5 bonds shall submit reports similar to the reports re-  
6 quired under section 149(e).”.

7 (b) AMENDMENTS TO OTHER CODE SECTIONS.—

8 (1) REPORTING.—Subsection (d) of section  
9 6049 of the Internal Revenue Code of 1986 (relating  
10 to returns regarding payments of interest) is amend-  
11 ed by adding at the end the following new para-  
12 graph:

13 “(8) REPORTING OF CREDIT ON QUALIFIED AM-  
14 TRAK BONDS.—

15 “(A) IN GENERAL.—For purposes of sub-  
16 section (a), the term ‘interest’ includes amounts  
17 includible in gross income under section 54(d)  
18 and such amounts shall be treated as paid on  
19 the credit allowance date (as defined in section  
20 54(b)(4)).

21 “(B) REPORTING TO CORPORATIONS,  
22 ETC.—Except as otherwise provided in regula-  
23 tions, in the case of any interest described in  
24 subparagraph (A), subsection (b)(4) shall be

1 applied without regard to subparagraphs (A),  
2 (H), (I), (J), (K), and (L)(i) of such subsection.

3 “(C) REGULATORY AUTHORITY.—The Sec-  
4 retary may prescribe such regulations as are  
5 necessary or appropriate to carry out the pur-  
6 poses of this paragraph, including regulations  
7 which require more frequent or more detailed  
8 reporting.”.

9 (2) TREATMENT FOR ESTIMATED TAX PUR-  
10 POSES.—

11 (A) INDIVIDUAL.—Section 6654 of such  
12 Code (relating to failure by individual to pay es-  
13 timated income tax) is amended by redesign-  
14 ating subsection (m) as subsection (n) and by  
15 inserting after subsection (l) the following new  
16 subsection:

17 “(m) SPECIAL RULE FOR HOLDERS OF QUALIFIED  
18 AMTRAK BONDS.—For purposes of this section, the credit  
19 allowed by section 54 to a taxpayer by reason of holding  
20 a qualified Amtrak bond on a credit allowance date shall  
21 be treated as if it were a payment of estimated tax made  
22 by the taxpayer on such date.”.

23 (B) CORPORATE.—Section 6655 of such  
24 Code (relating to failure by corporation to pay  
25 estimated income tax) is amended by adding at

1           the end of subsection (g) the following new  
2           paragraph:

3           “(5) SPECIAL RULE FOR HOLDERS OF QUALI-  
4           FIED AMTRAK BONDS.—For purposes of this section,  
5           the credit allowed by section 54 to a taxpayer by  
6           reason of holding a qualified Amtrak bond on a  
7           credit allowance date shall be treated as if it were  
8           a payment of estimated tax made by the taxpayer on  
9           such date.”.

10           (3) EXCLUSION FROM GROSS INCOME OF CON-  
11           TRIBUTIONS BY AMTRAK TO OTHER RAIL CAR-  
12           RIERS.—

13           (A) IN GENERAL.—Section 118 of the In-  
14           ternal Revenue Code of 1986 (relating to con-  
15           tributions to the capital of a corporation) is  
16           amended by redesignating subsections (d) and  
17           (e) as subsections (e) and (f), respectively, and  
18           by inserting after subsection (c) the following  
19           new subsection:

20           “(d) SPECIAL RULE FOR CONTRIBUTIONS BY AM-  
21           TRAK TO OTHER RAIL CARRIERS.—For purposes of this  
22           section, the term ‘contribution to the capital of the tax-  
23           payer’ does not include any contribution by the National  
24           Railroad Passenger Corporation of personal or real prop-

1 erty funded by the proceeds of qualified Amtrak bonds  
2 under section 54.”.

3 (B) CONFORMING AMENDMENT.—Sub-  
4 section (b) of such section 118 is amended by  
5 striking “subsection (c)” and inserting “sub-  
6 sections (c) and (d)”.

7 (4) PROTECTION OF HIGHWAY TRUST FUND.—  
8 Section 9503 of such Code (relating to Highway  
9 Trust Fund) is amended by adding at the end the  
10 following new subsection:

11 “(g) SPECIAL RULE RELATING TO NATIONAL RAIL-  
12 ROAD PASSENGER CORPORATION.—Except as provided in  
13 subsection (c), as in effect on the date of the enactment  
14 of this subsection, amounts in the Highway Trust Fund  
15 may not be used to provide funds to the National Railroad  
16 Passenger Corporation for any purpose, including issuance  
17 of any qualified Amtrak bond pursuant to section 54. The  
18 preceding sentence may not be waived by any provision  
19 of law which is not contained or referenced in this title,  
20 whether such provision of law is a subsequently enacted  
21 provision or directly or indirectly seeks to waive the appli-  
22 cation of such sentence.”.

23 (c) CLERICAL AMENDMENTS.—



1           (1) The table of subparts for part IV of sub-  
2           chapter A of chapter 1 is amended by adding at the  
3           end the following new item:

“Subpart H. Nonrefundable Credit for Holders of Qualified Am-  
trak Bonds.”.

4           (2) Section 6401(b)(1) is amended by striking  
5           “and G” and inserting “G, and H”.

6           (d) ANNUAL REPORT BY TREASURY ON AMTRAK  
7 TRUST ACCOUNT.—The Secretary of the Treasury shall  
8 annually report to Congress as to whether the amount de-  
9 posited in the trust account established by the National  
10 Railroad Passenger Corporation under section 54(i) of the  
11 Internal Revenue Code of 1986, as added by this section,  
12 is sufficient to fully repay at maturity the principal of any  
13 outstanding qualified Amtrak bonds issued pursuant to  
14 section 54 of such Code (as so added), together with  
15 amounts expected to be deposited into such account, as  
16 certified by the National Railroad Passenger Corporation  
17 in accordance with procedures prescribed by the Secretary  
18 of the Treasury.

19           (e) ISSUANCE OF REGULATIONS.—The Secretary of  
20 the Treasury shall issue regulations required under section  
21 54 of the Internal Revenue Code of 1986 (as added by  
22 this section) not later than 90 days after the date of the  
23 enactment of this Act.

1 (f) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to obligations issued after the date  
 3 of enactment of this Act.

4 **Subtitle B—High-Speed Rail**  
 5 **Provisions**

6 **SEC. 411. DEPARTMENT OF TRANSPORTATION APPROVAL**  
 7 **FOR QUALIFIED AMTRAK PROJECTS.**

8 (a) AMENDMENT.—Part D of subtitle V of title 49,  
 9 United States Code, is amended by adding at the end the  
 10 following new chapter:

11 **“CHAPTER 263—HIGH-SPEED RAIL**  
 12 **INITIATIVES**

“Sec.

“26301. Department of Transportation approval for qualified high-speed rail projects.

“26302. Qualified projects.

“26303. State contribution requirements.”.

13 **“§ 26301. Department of Transportation approval for**  
 14 **qualified high-speed rail projects**

15 “(a) IN GENERAL.—The written approval of a quali-  
 16 fied project by the Secretary of Transportation required  
 17 for purposes of subsection (e)(5) of section 54 of the Inter-  
 18 nal Revenue Code of 1986 (relating to credit to holders  
 19 of qualified Amtrak bonds) shall include—

20 “(1) the finding by the Inspector General of the  
 21 Department of Transportation described in sub-  
 22 section (b);

1           “(2) the certification by the Secretary of Trans-  
2           portation described in subsection (c); and

3           “(3) the agreement by the National Railroad  
4           Passenger Corporation described in subsection (d).

5           “(b) FINDING BY INSPECTOR GENERAL.—For pur-  
6           poses of subsection (a), the finding described in this sub-  
7           section is a finding by the Inspector General of the De-  
8           partment of Transportation that there is a reasonable like-  
9           lihood that the proposed project will result in a positive  
10          financial contribution to the National Railroad Passenger  
11          Corporation and that the investment evaluation process  
12          includes consideration of a return on investment,  
13          leveraging of funds (including State capital and operating  
14          contributions), cost effectiveness, safety improvement, mo-  
15          bility improvement, and feasibility.

16          “(c) CERTIFICATION.—For purposes of subsection  
17          (a), the certification described in this subsection is a cer-  
18          tification by the Secretary of Transportation that the  
19          issuer of the qualified Amtrak bond—

20                 “(1) except with respect to projects described in  
21                 section 54(j)(1)(C) of the Internal Revenue Code of  
22                 1986, has entered into a written agreement with the  
23                 owners of rail properties which are to be improved  
24                 by the project to be funded by the qualified Amtrak

1 bond, as to the scope and estimated cost of such  
2 project and the impact on rail freight capacity; and

3 “(2) has met the State contribution require-  
4 ments described in section 26303.

5 The National Railroad Passenger Corporation shall not  
6 exercise its rights under section 24308(a)(2) to resolve  
7 disputes with respect to a project to be funded by a quali-  
8 fied Amtrak bond, or with respect to the cost of such a  
9 project, unless the project is intended to result in railroad  
10 speeds of 79 miles per hour or less.

11 “(d) AGREEMENT BY AMTRAK TO ISSUE ADDI-  
12 TIONAL BONDS FOR PROJECTS OF OTHER CARRIERS.—

13 “(1) IN GENERAL.—For purposes of subsection  
14 (a), the agreement described in this subsection is an  
15 agreement by the National Railroad Passenger Cor-  
16 poration with the Secretary of Transportation to  
17 issue bonds which meet the requirements of section  
18 54 of the Internal Revenue Code of 1986 for use in  
19 financing projects described in paragraph (2).

20 “(2) PROJECTS COVERED.—For purposes of  
21 paragraph (1), the projects described in this para-  
22 graph are any project described in subsection  
23 (j)(1)(B) or (j)(1)(C) of section 54 of the Internal  
24 Revenue Code of 1986 for an intercity rail passenger

1 carrier other than the National Railroad Passenger  
2 Corporation or for the Alaska Railroad.

3 “(3) ADDITIONAL REQUIREMENTS.—Any  
4 project financed by bonds referred to in paragraph  
5 (1) shall be carried out by the intercity rail pas-  
6 senger carrier other than the National Railroad Pas-  
7 senger Corporation, through a contract entered into  
8 by the National Railroad Passenger Corporation  
9 with such carrier. Such other intercity rail passenger  
10 carrier, in carrying out the project, shall be subject  
11 to the provisions of this subtitle governing the Na-  
12 tional Railroad Passenger Corporation.

13 “(4) DEFINITION.—For purposes of this sub-  
14 section, the term ‘intercity rail passenger carrier’  
15 means any rail carrier (as such term is defined in  
16 section 24102(7)) that is part of the interstate sys-  
17 tem of rail transportation and that provides intercity  
18 rail passenger transportation (as such term is de-  
19 fined in section 24102(5)).

20 “(e) ADDITIONAL SELECTION CRITERIA.—In deter-  
21 mining projects to be approved under this section (other  
22 than projects for the Alaska Railroad), or to be included  
23 in an agreement under subsection (d), the Secretary of  
24 Transportation shall give preference to—

1           “(1) any project with a State matching con-  
2           tribution rate exceeding 20 percent;

3           “(2) projects expected to have a significant im-  
4           pact on air traffic congestion;

5           “(3) projects expected to also improve com-  
6           muter rail operations;

7           “(4) projects that anticipate fares designed to  
8           recover costs and generate a return on investment;  
9           and

10           “(5) projects that promote regional balance in  
11           infrastructure investment and the national interest  
12           in ensuring the development of a nationwide high-  
13           speed rail transportation network.

14   **“§ 26302. Qualified projects**

15           “For purposes of this chapter:

16           “(1) IN GENERAL.—The term ‘qualified project’  
17           means—

18                   “(A) the acquisition, financing, or refi-  
19                   nancing of equipment, rolling stock, and other  
20                   capital improvements (including the introduc-  
21                   tion of new high-speed technologies such as  
22                   magnetic levitation systems), including track or  
23                   signal improvements or the elimination of grade  
24                   crossings, for the northeast rail corridor be-

1           tween Washington, D.C., and Boston, Massa-  
2           chusetts;

3           “(B) the acquisition, financing, or refi-  
4           nancing of equipment, rolling stock, and other  
5           capital improvements (including the introduc-  
6           tion of new high-speed technologies such as  
7           magnetic levitation systems), including develop-  
8           ment of intermodal facilities, track or signal im-  
9           provements, or the elimination of grade cross-  
10          ings, for the improvement of train speeds or  
11          safety (or both) on the high-speed rail corridors  
12          designated under section 104(d)(2) of title 23,  
13          United States Code, as in effect on the date of  
14          the enactment of this section; and

15          “(C) the acquisition, financing, or refi-  
16          nancing of equipment, rolling stock, and other  
17          capital improvements, including station rehabili-  
18          tation or construction, development of inter-  
19          modal facilities, track or signal improvements,  
20          or the elimination of grade crossings, for the  
21          improvement of train speeds or safety (or both)  
22          for other intercity passenger rail corridors and  
23          for the Alaska Railroad.

24          “(2) REFINANCING RULES.—For purposes of  
25          paragraph (1), a refinancing shall constitute a quali-

1       fied project only if the indebtedness being refinanced  
2       (including any obligation directly or indirectly refi-  
3       nanced by such indebtedness) was originally incurred  
4       by the issuer—

5               “(A) after the date of the enactment of  
6       this section;

7               “(B) for a term of not more than 3 years;

8               “(C) to finance or acquire capital improve-  
9       ments described in paragraph (1); and

10              “(D) in anticipation of being refinanced  
11       with proceeds of a qualified Amtrak bond.

12   **“§ 26303. State contribution requirements**

13       “(a) IN GENERAL.—For purposes of section  
14 26301(c)(2), the State contribution requirement of this  
15 section is met with respect to any qualified project if the  
16 National Railroad Passenger Corporation has received  
17 from 1 or more States, not later than the date of issuance  
18 of the bond, matching contributions of not less than 20  
19 percent of the cost of the qualified project.

20       “(b) NO STATE CONTRIBUTION REQUIREMENT FOR  
21 CERTAIN QUALIFIED PROJECTS.—The State contribution  
22 requirement of this section is zero with respect to the fol-  
23 lowing projects:

24              “(1) Any qualified project for the acquisition  
25       and installation of platform facilities, performance of



1 railroad force account work necessary to complete  
 2 improvements below street grade, and any other nec-  
 3 essary improvements related to construction at the  
 4 railroad station at the James A. Farley Post Office  
 5 Building in New York City, New York.

6 “(2) Any project described in subsection  
 7 (j)(1)(C) of section 54 of the Internal Revenue Code  
 8 of 1986 for the Alaska Railroad.

9 “(c) STATE MATCHING CONTRIBUTIONS MAY NOT  
 10 INCLUDE FEDERAL FUNDS.—For purposes of this sec-  
 11 tion, State matching contributions shall not be derived, di-  
 12 rectly or indirectly, from Federal funds, including any  
 13 transfers from the Highway Trust Fund under section  
 14 9503 of the Internal Revenue Code of 1986.”.

15 (b) TABLE OF CHAPTERS AMENDMENT.—The table  
 16 of chapters of subtitle V of title 49, United States Code,  
 17 is amended by inserting after the item relating to chapter  
 18 261 the following new item:

“263. HIGH-SPEED RAIL INITIATIVES ..... 26301”.

19 **SEC. 412. MULTIYEAR CAPITAL SPENDING PLAN AND OVER-**  
 20 **SIGHT.**

21 (a) AMENDMENT.—Chapter 243 of title 49, United  
 22 States Code, is amended by adding at the end the fol-  
 23 lowing new section:

1 **“§ 24316. Multiyear capital spending plan and over-**  
2 **sight**

3 “(a) AMTRAK CAPITAL SPENDING PLAN.—

4 “(1) IN GENERAL.—The National Railroad  
5 Passenger Corporation shall annually submit to the  
6 President and Congress a multiyear capital spending  
7 plan, as approved by the Board of Directors of the  
8 Corporation.

9 “(2) CONTENTS OF PLAN.—Such plan shall  
10 identify the capital investment needs of the Corpora-  
11 tion over a period of not less than 5 years and the  
12 funding sources available to finance such needs and  
13 shall prioritize such needs according to corporate  
14 goals and strategies.

15 “(3) INITIAL SUBMISSION DATE.—The first  
16 plan shall be submitted before the issuance of any  
17 qualified Amtrak bonds by the National Railroad  
18 Passenger Corporation pursuant to section 54 of the  
19 Internal Revenue Code of 1986.

20 “(b) OVERSIGHT OF QUALIFIED PROJECTS.—The  
21 Secretary of Transportation shall contract for an annual  
22 independent assessment of the costs and benefits of the  
23 qualified projects financed by qualified Amtrak bonds pur-  
24 suant to section 54 of the Internal Revenue Code of 1986,  
25 including an assessment of the investment evaluation proc-

1 ess of the Corporation. The annual assessment shall be  
2 included in the plan submitted under subsection (a).”.

3 (b) TABLE OF SECTIONS AMENDMENT.—The table of  
4 sections of chapter 243 of title 49, United States Code,  
5 is amended by adding after the item relating to section  
6 24315 the following new item:

“24316. Multiyear capital spending plan and oversight.”.

7 **SEC. 413. ISSUANCE OF REGULATIONS.**

8 The Secretary of Transportation shall issue regula-  
9 tions for carrying out chapter 263 of title 49, United  
10 States Code (as added by section 411 of this Act), not  
11 later than 90 days after the date of the enactment of this  
12 Act.

13 **SEC. 414. SENSE OF CONGRESS REGARDING EFFECT ON**  
14 **AMTRAK FUNDING.**

15 It is the sense of the Congress that the proceeds of  
16 qualified Amtrak bonds issued under section 54 of the In-  
17 ternal Revenue Code of 1986 are intended to finance the  
18 construction of qualified projects (as defined in section  
19 26302 of title 49, United States Code, as added by section  
20 411 of this Act) and are not intended to meet the regular,  
21 ongoing capital funding needs of the National Railroad  
22 Passenger Corporation.

1 **SEC. 415. EFFECTIVE DATE.**

2 The amendments made by this subtitle shall apply to  
3 obligations issued after the date of the enactment of this  
4 Act.

5 **Subtitle C—Amtrak Capital**  
6 **Investment**

7 **SEC. 421. AUTHORIZATION OF APPROPRIATIONS.**

8 Section 24104(a) of title 49, United States Code, is  
9 amended—

10 (1) by inserting “(1)” after “IN GENERAL.—”;

11 (2) by redesignating paragraphs (1) through

12 (5) as subparagraphs (A) through (E), respectively;

13 and

14 (3) by adding at the end the following new  
15 paragraph:

16 “(2) There are authorized to be appropriated to the  
17 Secretary of Transportation \$2,500,000,000 for fiscal  
18 year 2003 for the benefit of Amtrak for capital expendi-  
19 tures including—

20 “(A) New York, Washington, D.C., and Balti-  
21 more tunnel life safety projects;

22 “(B) bridges, tracks, and other improvements  
23 to increase the capacity and reliability of rail pas-  
24 senger transportation; and

1           “(C) equipment, including acquisition of  
2           trainsets and rolling stock, for operation in federally  
3           designated corridors.

4           At least  $\frac{2}{3}$  of amounts expended under subparagraph (C)  
5           shall be for operations outside the Northeast Corridor.”.

6           **Subtitle D—Capital Investment for**  
7           **Railroad Rehabilitation**

8           **SEC. 431. CAPITAL GRANTS FOR RAILROAD TRACK.**

9           (a) CHAPTER 223.—

10           (1) AMENDMENT.—Chapter 223 of title 49,  
11           United States Code, is amended to read as follows:

12           **“CHAPTER 223—CAPITAL GRANTS FOR**  
13           **RAILROAD TRACK**

“Sec.

“22301. Capital grants for railroad track.

14           **“§ 22301. Capital grants for railroad track**

15           “(a) ESTABLISHMENT OF PROGRAM.—

16           “(1) ESTABLISHMENT.—The Secretary of  
17           Transportation shall establish a program of capital  
18           grants for the rehabilitation, preservation, or im-  
19           provement of railroad track (including roadbed,  
20           bridges, and related track structures) of class II and  
21           class III railroads. Such grants shall be for rehabili-  
22           tating, preserving, or improving track used primarily  
23           for freight transportation to a standard ensuring  
24           that the track can be operated safely and efficiently,

1 including grants for rehabilitating, preserving, or im-  
2 proving track to handle 286,000 pound rail cars.

3 Grants may be provided under this chapter—

4 “(A) directly to the class II or class III  
5 railroad; or

6 “(B) with the concurrence of the class II  
7 or class III railroad, to a State or local govern-  
8 ment.

9 “(2) STATE COOPERATION.—Class II and class  
10 III railroad applicants for a grant under this chap-  
11 ter are encouraged to utilize the expertise and assist-  
12 ance of State transportation agencies in applying for  
13 and administering such grants. State transportation  
14 agencies are encouraged to provide such expertise  
15 and assistance to such railroads.

16 “(3) INTERIM REGULATIONS.—Not later than  
17 December 31, 2003, the Secretary shall issue tem-  
18 porary regulations to implement the program under  
19 this section. Subchapter II of chapter 5 of title 5  
20 does not apply to a temporary regulation issued  
21 under this paragraph or to an amendment to such  
22 a temporary regulation.

23 “(4) FINAL REGULATIONS.—Not later than Oc-  
24 tober 1, 2004, the Secretary shall issue final regula-  
25 tions to implement the program under this section.

1       “(b) MAXIMUM FEDERAL SHARE.—The maximum  
2 Federal share for carrying out a project under this section  
3 shall be 80 percent of the project cost. The non-Federal  
4 share may be provided by any non-Federal source in cash,  
5 equipment, or supplies. Other in-kind contributions may  
6 be approved by the Secretary on a case by case basis con-  
7 sistent with this chapter.

8       “(c) PROJECT ELIGIBILITY.—For a project to be eli-  
9 gible for assistance under this section the track must have  
10 been operated or owned by a class II or class III railroad  
11 as of the date of the enactment of this section.

12       “(d) USE OF FUNDS.—Grants provided under this  
13 section shall be used to implement track capital projects  
14 as soon as possible. In no event shall grant funds be con-  
15 tractually obligated for a project later than the end of the  
16 third Federal fiscal year following the year in which the  
17 grant was awarded. Any funds not so obligated by the end  
18 of such fiscal year shall be returned to the Secretary for  
19 reallocation.

20       “(e) ADDITIONAL PURPOSE.—In addition to making  
21 grants for projects as provided in subsection (a), the Sec-  
22 retary may also make grants to supplement direct loans  
23 or loan guarantees made under title V of the Railroad Re-  
24 vitalization and Regulatory Reform Act of 1976 (45  
25 U.S.C. 821 et seq.), for projects described in the last sen-

1 tence of section 502(d) of such title. Grants made under  
2 this subsection may be used, in whole or in part, for pay-  
3 ing credit risk premiums, lowering rates of interest, or  
4 providing for a holiday on principal payments. Credit risk  
5 premiums funded under this section shall be exempt from  
6 the non-Federal source requirement of section 502(f)(1)  
7 of the Railroad Revitalization and Regulatory Reform Act  
8 of 1976 (45 U.S.C. 822(f)(1)).

9       “(f) EMPLOYEE PROTECTION.—The Secretary shall  
10 require as a condition of any grant made under this sec-  
11 tion that the recipient railroad provide a fair arrangement  
12 at least as protective of the interests of employees who  
13 are affected by the project to be funded with the grant  
14 as the terms imposed under section 11326(a), as in effect  
15 on the date of the enactment of this section.

16       “(g) LABOR STANDARDS.—

17               “(1) PREVAILING WAGES.—The Secretary shall  
18 ensure that laborers and mechanics employed by  
19 contractors and subcontractors in construction work  
20 financed by a grant made under this section will be  
21 paid wages not less than those prevailing on similar  
22 construction in the locality, as determined by the  
23 Secretary of Labor under section 3142 of title 40  
24 (known as the Davis-Bacon Act). The Secretary  
25 shall make a grant under this section only after



1 being assured that required labor standards will be  
2 maintained on the construction work.

3 “(2) WAGE RATES.—Wage rates in a collective  
4 bargaining agreement negotiated under the Railway  
5 Labor Act (45 U.S.C. 151 et seq.) are deemed for  
6 purposes of this subsection to comply with section  
7 3142 of title 40 (known as the Davis-Bacon Act).

8 “(h) AUTHORIZATION OF APPROPRIATIONS.—There  
9 is authorized to be appropriated to the Secretary of Trans-  
10 portation \$500,000,000 for fiscal year 2003 for carrying  
11 out this section.”.

12 (2) CONFORMING AMENDMENT.—The item re-  
13 lating to chapter 223 in the table of chapters of sub-  
14 title V of title 49, United States Code, is amended  
15 to read as follows:

“223. CAPITAL GRANTS FOR RAILROAD TRACK ..... 22301”.

16 (b) RAILROAD REHABILITATION AND IMPROVEMENT  
17 FINANCING.—Section 502 of the Railroad Revitalization  
18 and Regulatory Reform Act of 1976 (45 U.S.C. 822(d))  
19 is amended—

20 (1) in subsection (d)—

21 (A) by striking “\$3,500,000,000” and in-  
22 serting “\$5,000,000,000”; and

23 (B) by striking “\$1,000,000,000” and in-  
24 serting “\$1,500,000,000”; and

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

3           “(i) GRANTS.—The Secretary may make grants to  
4 supplement direct loans or loan guarantees made under  
5 this title. Grants made under this subsection may be used,  
6 in whole or in part, for paying credit risk premiums, low-  
7 ering rates of interest, or providing for a holiday on prin-  
8 cipal payments. Credit risk premiums funded under this  
9 subsection shall be exempt from the non-Federal source  
10 requirement of subsection (f)(1). There is authorized to  
11 be appropriated to the Secretary for fiscal year 2003 for  
12 carrying out this subsection \$250,000,000.”.

13 **SEC. 432. REGULATORY PROCEDURE AMENDMENTS.**

14           (a) COHORTS OF LOANS.—Section 502(f) of the Rail-  
15 road Revitalization and Regulatory Reform Act of 1976  
16 (45 U.S.C. 822(f)) is amended—

17           (1) in paragraph (2)—

18                   (A) by striking “and” at the end of sub-  
19           paragraph (D);

20                   (B) by redesignating subparagraph (E) as  
21           subparagraph (F); and

22                   (C) by adding after subparagraph (D) the  
23           following new subparagraph:

1           “(E) the size and characteristics of the co-  
2           hort of which the loan or loan guarantee is a  
3           member; and”;

4           (2) by adding at the end of paragraph (4) the  
5           following: “A cohort may include loans and loan  
6           guarantees. The Secretary shall not establish any  
7           limit on the proportion of a cohort that may be used  
8           for 1 loan or loan guarantee.”.

9           (b) CONDITIONS OF ASSISTANCE.—Section 502 of  
10          the Railroad Revitalization and Regulatory Reform Act of  
11          1976 (45 U.S.C. 822) is amended—

12           (1) in subsection (f)(2)(A), by inserting “, if  
13           any” after “collateral offered”; and

14           (2) by adding at the end of subsection (h) the  
15           following:

16          “The Secretary shall not require an applicant for a direct  
17          loan or loan guarantee under this section to provide collat-  
18          eral. The Secretary shall not require that an applicant for  
19          a direct loan or loan guarantee under this section have  
20          previously sought the financial assistance requested from  
21          another source. The Secretary shall require recipients of  
22          direct loans or loan guarantees under this section to apply  
23          the standards of section 26106(a)(5) of title 49, United  
24          States Code, to their projects, except for projects primarily  
25          benefiting Class III freight railroads.”.

1           (c) TIME LIMIT FOR APPROVAL OR DISAPPROVAL.—  
2 Section 502 of the Railroad Revitalization and Regulatory  
3 Reform Act of 1976 (45 U.S.C. 822), as amended by this  
4 Act, is further amended by adding at the end the following  
5 new subsection:

6           “(j) TIME LIMIT FOR APPROVAL OR DISAPPROVAL.—  
7 Not later than 30 days after receiving a complete applica-  
8 tion for a direct loan or loan guarantee under this section,  
9 the Secretary shall approve or disapprove the applica-  
10 tion.”.

11          (d) FEES AND CHARGES.—Section 503 of the Rail-  
12 road Revitalization and Regulatory Reform Act of 1976  
13 (45 U.S.C. 823) is amended by adding at the end the fol-  
14 lowing new subsection:

15          “(l) FEES AND CHARGES.—Except as provided in  
16 this title, the Secretary may not assess any fees, including  
17 user fees, or charges in connection with a direct loan or  
18 loan guarantee provided under section 502.”.

19          (e) SUBSTANTIVE CRITERIA AND STANDARDS.—Not  
20 later than 30 days after the date of the enactment of this  
21 Act, the Secretary of Transportation shall publish in the  
22 Federal Register and post on the Department of Trans-  
23 portation web site the substantive criteria and standards  
24 used by the Secretary to determine whether to approve  
25 or disapprove applications submitted under section 502 of

1 the Railroad Revitalization and Regulatory Reform Act of  
2 1976 (45 U.S.C. 822).

3 **TITLE V—PORT SECURITY**  
4 **INFRASTRUCTURE INVESTMENT**

5 **SEC. 501. AUTHORIZATION OF APPROPRIATIONS FOR**  
6 **GRANTS TO IMPLEMENT SECURITY PLANS.**

7 For grants under section 70107 of title 46, United  
8 States Code, there is authorized to be appropriated to the  
9 Secretary of Transportation (in addition to any amounts  
10 appropriated before the date of the enactment of this Act)  
11 \$2,500,000,000 for fiscal year 2003.

12 **TITLE VI—ENVIRONMENTAL**  
13 **INFRASTRUCTURE INVESTMENT**

14 **SEC. 601. GENERAL AUTHORITY FOR CAPITALIZATION**  
15 **GRANTS.**

16 Section 601(a) of the Federal Water Pollution Con-  
17 trol Act (33 U.S.C. 1381(a)) is amended by striking “(1)  
18 for construction” and all that follows through the period  
19 at the end and inserting “to accomplish the objectives,  
20 goals, and policies of this Act.”.

21 **SEC. 602. CAPITALIZATION GRANTS AGREEMENTS.**

22 (a) **REQUIREMENTS FOR CONSTRUCTION OF TREAT-**  
23 **MENT WORKS.**—Section 602(b)(6) of the Federal Water  
24 Pollution Control Act (33 U.S.C. 1382(b)(6)) is amend-  
25 ed—

1           (1) by striking “treatment works” the first  
2 place it appears and inserting “activities”;

3           (2) by striking “before fiscal year 1995” and all  
4 that follows through “section 205(m) of this Act”  
5 and inserting “with funds made available from a  
6 State water pollution control revolving fund under  
7 this title”; and

8           (3) by striking “201(b)” and all that follows  
9 through “218” and inserting “204(b)(1), 211”.

10       (b) ASSISTANCE FOR SMALL TREATMENT WORKS.—  
11 Section 602 of the Federal Water Pollution Control Act  
12 (33 U.S.C. 1382) is amended by adding at the end the  
13 following:

14       “(c) ASSISTANCE FOR SMALL TREATMENT  
15 WORKS.—

16           “(1) SIMPLIFIED PROCEDURES.—Not later than  
17 1 year after the date of the enactment of this sub-  
18 section, the Administrator shall assist the States in  
19 establishing simplified procedures for small treat-  
20 ment works to obtain assistance under this title.

21           “(2) PUBLICATION OF MANUAL.—Not later  
22 than 2 years after the date of the enactment of this  
23 subsection, and after providing notice and oppor-  
24 tunity for public comment, the Administrator shall  
25 publish a manual to assist small treatment works in

1 obtaining assistance under this title and publish in  
2 the Federal Register notice of the availability of the  
3 manual.

4 “(3) SMALL TREATMENT WORKS DEFINED.—  
5 For purposes of this title, the term ‘small treatment  
6 works’ means treatment works for which a municipi-  
7 pality or intermunicipal, interstate, or State agency  
8 seeks assistance under this title and which serves a  
9 population of 20,000 or fewer.”.

10 **SEC. 603. WATER POLLUTION CONTROL REVOLVING**  
11 **FUNDS.**

12 (a) PROJECTS AND ACTIVITIES ELIGIBLE FOR AS-  
13 SISTANCE.—Section 603(c) of the Federal Water Pollution  
14 Control Act (33 U.S.C. 1383(c)) is amended to read as  
15 follows:

16 “(c) PROJECTS AND ACTIVITIES ELIGIBLE FOR AS-  
17 SISTANCE.—

18 “(1) IN GENERAL.—The amounts of funds  
19 available to each State water pollution control re-  
20 volving fund shall be used only for providing finan-  
21 cial assistance—

22 “(A) to a municipality, intermunicipal  
23 agency, interstate agency, or State agency for  
24 construction of a publicly owned treatment  
25 works (as defined in section 212 of this Act);

1           “(B) for implementation of lake protection  
2 programs and projects under section 314;

3           “(C) for implementation of a management  
4 program established under section 319;

5           “(D) for implementation of a conservation  
6 and management plan established under section  
7 320;

8           “(E) for restoration or protection of pub-  
9 licly or privately owned riparian areas, includ-  
10 ing acquisition of property rights;

11           “(F) to a municipality, intermunicipal  
12 agency, interstate agency, or State agency for  
13 implementation of measures to improve the effi-  
14 ciency of public water use;

15           “(G) for development and implementation  
16 of plans by a public recipient to prevent water  
17 pollution;

18           “(H) for acquisition of lands necessary to  
19 meet any mitigation requirements related to  
20 construction of a publicly owned treatment  
21 works; and

22           “(I) for measures to increase the security  
23 of publicly owned treatment works.

24           “(2) FUND AMOUNTS.—The water pollution  
25 control revolving fund of a State shall be established,



1 maintained, and credited with repayments, and the  
2 fund balance shall be available in perpetuity for pro-  
3 viding financial assistance for activities described in  
4 paragraph (1). Fees charged by a State to recipients  
5 of such assistance may be deposited in the fund for  
6 the purpose of financing the cost of administration  
7 of this title.”.

8 (b) EXTENDED REPAYMENT PERIOD.—Section  
9 603(d)(1) of the Federal Water Pollution Control Act (33  
10 U.S.C. 1383(d)(1)) is amended—

11 (1) in subparagraph (A) by striking “20 years”  
12 and inserting “the lesser of 30 years or the expected  
13 life of the project to be financed with the proceeds  
14 of the loan”; and

15 (2) in subparagraph (B) by striking “not later  
16 than 20 years after project completion” and insert-  
17 ing “upon the expiration of the term of the loan”.

18 (c) ADMINISTRATIVE EXPENSES.—Section 603(d)(7)  
19 of the Federal Water Pollution Control Act (33 U.S.C.  
20 1383(d)(7)) is amended by inserting before the period at  
21 the end the following: “or \$400,000 per year, or  $\frac{1}{5}$  per-  
22 cent per year of the current valuation of the fund, which-  
23 ever is greatest, plus the amount of any fees collected by  
24 the State for such purpose regardless of the source”.

1 (d) TECHNICAL AND PLANNING ASSISTANCE FOR  
2 SMALL SYSTEMS.—Section 603(d) of the Federal Water  
3 Pollution Control Act (33 U.S.C. 1383(d)) is amended—

4 (1) by striking “and” at the end of paragraph  
5 (6);

6 (2) by striking the period at the end of para-  
7 graph (7) and inserting “; and”; and

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

9 “(8) to provide to owners and operators of  
10 small treatment works (as defined in section 602(e))  
11 with technical and planning assistance and assist-  
12 ance in financial management, user fee analysis,  
13 budgeting, capital improvement planning, facility op-  
14 eration and maintenance, repair schedules, and other  
15 activities to improve wastewater treatment plant op-  
16 erations; except that such amounts shall not exceed  
17 2 percent of all grant awards to such fund under  
18 this title.”.

19 (e) ADDITIONAL SUBSIDIZATION.—Section 603 of  
20 the Federal Water Pollution Control Act is amended by  
21 adding at the end the following:

22 “(i) ADDITIONAL SUBSIDIZATION.—

23 “(1) IN GENERAL.—In any case in which a  
24 State provides assistance to a municipality or inter-  
25 municipal, interstate, or State agency under sub-

1 section (d), the State may provide additional sub-  
2 sidization, including forgiveness of principal and  
3 negative interest loans—

4 “(A) to benefit a municipality that—

5 “(i) meets the State’s affordability  
6 criteria established under paragraph (2);

7 or

8 “(ii) does not meet the State’s afford-  
9 ability criteria if the recipient—

10 “(I) seeks additional subsidiza-  
11 tion to benefit individual ratepayers in  
12 the residential user rate class;

13 “(II) demonstrates to the State  
14 that such ratepayers will experience a  
15 significant hardship from the increase  
16 in rates necessary to finance the  
17 project or activity for which assistance  
18 is sought; and

19 “(III) ensures, as part of an as-  
20 sistance agreement between the State  
21 and the recipient, that the additional  
22 subsidization provided under this  
23 paragraph is directed through a user  
24 charge rate system (or other appro-  
25 priate method) to such ratepayers; or

1           “(B) to implement alternative processes,  
2 materials, and techniques (including non-  
3 structural protection of surface waters, new or  
4 improved methods of waste treatment, and pol-  
5 lutant trading) that may result in increased en-  
6 vironmental benefit when compared to standard  
7 processes, materials, and techniques.

8           “(2) AFFORDABILITY CRITERIA.—

9           “(A) ESTABLISHMENT.—On or before Sep-  
10 tember 30, 2004, and after providing notice  
11 and an opportunity for public comment, a State  
12 shall establish affordability criteria to assist in  
13 identifying municipalities that would experience  
14 a significant hardship raising the revenue nec-  
15 essary to finance a project or activity eligible  
16 for assistance under section 603(c)(1) if addi-  
17 tional subsidization is not provided. Such cri-  
18 teria shall be based on income data, population  
19 trends, and other data determined relevant by  
20 the State.

21           “(B) EXISTING CRITERIA.—If a State has  
22 previously established, after providing notice  
23 and an opportunity for public comment, afford-  
24 ability criteria that meet the requirements of  
25 subparagraph (A), the State may use the cri-

1           teria for the purposes of this subsection. For  
2           purposes of this Act, any such criteria shall be  
3           treated as affordability criteria established  
4           under this paragraph.

5           “(C) INFORMATION TO ASSIST STATES.—  
6           The Administrator may publish information to  
7           assist States in establishing affordability cri-  
8           teria under subparagraph (A).

9           “(3) PRIORITY.—A State may give priority to a  
10          recipient for a project or activity eligible for funding  
11          under section 603(c)(1) if the recipient meets the  
12          State’s affordability criteria.”.

13 **SEC. 604. AUTHORIZATION OF APPROPRIATIONS FOR**  
14 **CLEAN WATER STATE REVOLVING FUNDS.**

15          Section 607 of the Federal Water Pollution Control  
16 Act (33 U.S.C. 1387) is amended—

17           (1) by striking “and” at the end of paragraph  
18           (4);

19           (2) by striking the period at the end of para-  
20           graph (5) and inserting “; and”; and

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

22           “(6) \$8,500,000,000 for fiscal year 2003.”.

23 **SEC. 605. WET WEATHER.**

24          Section 221(f) of the Federal Water Pollution Con-  
25 trol Act (33 U.S.C. 1301(f)) is amended by inserting after

1 the first sentence the following: “In addition, there is au-  
 2 thorized to be appropriated to carry out this section an  
 3 additional \$1,500,000,000 for fiscal year 2003.”.

4 **SEC. 606. SAFE DRINKING WATER STATE REVOLVING**  
 5 **FUNDS.**

6 Section 1452(m) of title XIV of the Public Health  
 7 Service Act (commonly known as the “Safe Drinking  
 8 Water Act”) (42 U.S.C. 300j–12(m)) is amended by in-  
 9 serting after the first sentence the following: “In addition,  
 10 there is authorized to be appropriated to carry out this  
 11 section an additional \$1,500,000,000 for fiscal year  
 12 2003.”.

13 **TITLE VII—WATER RESOURCES**  
 14 **INFRASTRUCTURE INVESTMENT**

15 **SEC. 701. INCREASED FUNDING FOR CORPS OF ENGINEERS**  
 16 **PROJECTS.**

17 In addition to other amounts authorized to be appro-  
 18 priated, there are authorized to be appropriated to the  
 19 Secretary of the Army \$1,500,000,000 for fiscal year  
 20 2003, of which such sums as are necessary may be derived  
 21 from the Harbor Maintenance Trust Fund and the Inland  
 22 Waterways Trust Fund, to carry out construction, oper-  
 23 ation, and maintenance activities for authorized civil func-  
 24 tions under the supervision of the Chief of Engineers.

1 Such sums shall remain available until September 30,  
2 2004.

3 **TITLE VIII—ECONOMIC DEVELOP-**  
4 **MENT INFRASTRUCTURE**  
5 **INVESTMENT**

6 **SEC. 801. PUBLIC WORKS AND ECONOMIC DEVELOPMENT.**

7 Section 701 of the Public Works and Economic De-  
8 velopment Act of 1965 (42 U.S.C. 3231) is amended—

9 (1) by inserting “(a) IN GENERAL.—” before  
10 “There are authorized”; and

11 (2) by adding at the end the following:

12 “(b) ADDITIONAL AUTHORIZATION.—In addition to  
13 amounts authorized by subsection (a), there are author-  
14 ized to be appropriated to carry out this Act  
15 \$1,025,000,000 for fiscal year 2003. Such sums shall re-  
16 main available until September 30, 2004.”.

17 **SEC. 802. APPALACHIAN REGIONAL DEVELOPMENT.**

18 Section 401 of the Appalachian Regional Develop-  
19 ment Act of 1965 (40 U.S.C. App.) is amended by adding  
20 at the end the following:

21 “(c) ADDITIONAL AUTHORIZATION.—In addition to  
22 amounts authorized by subsection (a), there are author-  
23 ized to be appropriated to the Commission to carry out  
24 this Act \$175,000,000 for fiscal year 2003. Such sums  
25 shall remain available until September 30, 2004.”.

1 **SEC. 803. DELTA REGIONAL DEVELOPMENT.**

2 Section 382M of the Consolidated Farm and Rural  
3 Development Act (7 U.S.C. 2009aa–12) is amended—

4 (1) by redesignating subsection (b) as sub-  
5 section (c);

6 (2) by inserting after subsection (a) the fol-  
7 lowing:

8 “(b) **ADDITIONAL AUTHORIZATION.**—In addition to  
9 amounts authorized by subsection (a), there are author-  
10 ized to be appropriated to the Authority to carry out this  
11 subtitle \$175,000,000 for fiscal year 2003. Such sums  
12 shall remain available until September 30, 2004.”; and

13 (3) in subsection (c) (as so redesignated) by  
14 striking “subsection (a)” and inserting “subsections  
15 (a) and (b)”.

16 **SEC. 804. NORTHERN GREAT PLAINS REGIONAL DEVELOP-**  
17 **MENT.**

18 Section 383M of the Consolidated Farm and Rural  
19 Development Act (7 U.S.C. 2009bb–12) is amended—

20 (1) in subsection (b) by striking “subsection  
21 (a)” and inserting “this section”; and

22 (2) by adding at the end the following:

23 “(d) **ADDITIONAL AUTHORIZATION FOR FISCAL**  
24 **YEAR 2003.**—In addition to amounts authorized by sub-  
25 section (a), there is authorized to be appropriated to the  
26 Authority to carry out this subtitle \$175,000,000 for fiscal



1 year 2003. Such sums shall remain available until Sep-  
2 tember 30, 2004.”.

3 **TITLE IX—PUBLIC BUILDINGS**  
4 **INFRASTRUCTURE INVESTMENT**

5 **SEC. 901. SECURITY ENHANCEMENTS FOR GSA PROP-**  
6 **ERTIES.**

7 (a) AUTHORIZATION OF APPROPRIATIONS.—In addi-  
8 tion to other amounts credited to the Federal Buildings  
9 Fund established pursuant to section 210(f) of the Fed-  
10 eral Property and Administrative Services Act of 1949 (40  
11 U.S.C. 490(f)), there is authorized to be appropriated  
12 \$500,000,000 for fiscal year 2003 to be credited to the  
13 Fund. Such sums shall remain available until September  
14 30, 2004.

15 (b) USE OF FUNDS.—Amounts credited to the Fund  
16 under this section shall be available to the Administrator  
17 of General Services to carry out projects and activities for  
18 enhancing the security of properties under the control of  
19 the General Services Administration, including general  
20 purpose office space, courthouses, and border crossing sta-  
21 tions, and for other repair and alteration purposes.

**1 TITLE X—GENERAL PROVISIONS****2 SEC. 1001. PRIORITY CONSIDERATION FOR SECURITY**  
**3 PROJECTS.**

4 The head of a Federal department or agency may  
5 provide financial assistance with any increase in funds au-  
6 thorized or made available by, or with any increase in obli-  
7 gation authority made available by, this Act (including the  
8 amendments made by this Act) only if the recipient of  
9 such assistance certifies to the head of such department  
10 or agency that the recipient will give priority consideration  
11 to programs or projects that enhance security, to the ex-  
12 tent that such programs or projects are immediately ready  
13 to be implemented.

**14 SEC. 1002. TEMPORARY WAIVER OF NON-FEDERAL SHARE.**

15 (a) IN GENERAL.—Notwithstanding any other provi-  
16 sion of law and subject to subsection (b), in providing fi-  
17 nancial assistance for a program or project with any in-  
18 crease in funds authorized or made available by, or with  
19 any increase in obligation authority made available by, this  
20 Act (including the amendments made by this Act (other  
21 than subtitle A of title I of this Act)), the head of a Fed-  
22 eral department or agency, upon request of the recipient  
23 of such assistance, may increase the Federal share of the  
24 cost of the program or project to not to exceed 100 percent  
25 of such cost.

1 (b) REPAYMENTS.—Before increasing the Federal  
2 share of the cost of a program or project under subsection  
3 (a), the head of a Federal department or agency shall  
4 enter into a legally binding agreement with the recipient  
5 of financial assistance for the program or project under  
6 which the recipient agrees to repay the United States for  
7 the increased Federal share of the program or project on  
8 or before September 30, 2005.

9 **SEC. 1003. MAINTENANCE OF EFFORT.**

10 The head of a Federal department or agency may  
11 provide financial assistance for a program or project with  
12 any increase in funds authorized or made available by, or  
13 with any increase in obligation authority made available  
14 by, this Act (including the amendments made by this Act)  
15 for a fiscal year only if the recipient of such assistance  
16 certifies to the head of such department or agency that  
17 the aggregate expenditure of funds of the recipient, exclu-  
18 sive of Federal funds, for such program or project will be  
19 maintained at a level that does not fall below the average  
20 level of such expenditure for the preceding 2 fiscal years  
21 of the recipient.

22 **SEC. 1004. LABOR STANDARDS.**

23 (a) PREVAILING WAGES.—The head of a Federal de-  
24 partment or agency providing financial assistance with  
25 any increase in funds authorized or made available by, or

1 with any increase in obligation authority made available  
2 by, this Act (including the amendments made by this Act)  
3 shall ensure that laborers and mechanics employed by con-  
4 tractors and subcontractors in construction work financed  
5 by such financial assistance will be paid wages not less  
6 than those prevailing on similar construction in the local-  
7 ity, as determined by section 3142 of title 40, United  
8 States Code (known as the Davis-Bacon Act). The head  
9 of the department or agency shall provide such financial  
10 assistance only after being assured that required labor  
11 standards will be maintained on the construction work.

12 (b) WAGE RATES.—Wage rates in a collective bar-  
13 gaining agreement negotiated under the Railway Labor  
14 Act (45 U.S.C. 151 et seq.) are deemed for purposes of  
15 this section to comply with section 3142 of title 40, United  
16 States Code (known as the Davis-Bacon Act).

17 **SEC. 1005. BUY AMERICA.**

18 (a) PREFERENCE.—The head of a Federal depart-  
19 ment or agency may provide financial assistance for a  
20 project with any increase in funds authorized or made  
21 available by, or with any increase in obligation authority  
22 made available by, this Act (including the amendments  
23 made by this Act) only if steel and manufactured goods  
24 used in the project are produced in the United States.

1 (b) WAIVER.—The head of a Federal department or  
2 agency may waive subsection (a) if the head of the Federal  
3 department or agency finds that—

4 (1) applying subsection (a) would be incon-  
5 sistent with the public interest;

6 (2) the steel and goods produced in the United  
7 States are not produced in a sufficient and reason-  
8 ably available amount or are not of a satisfactory  
9 quality;

10 (3) when procuring a facility or equipment with  
11 any increase in funds or obligation authority de-  
12 scribed in subsection (a)—

13 (A) the cost of components and subcompo-  
14 nents produced in the United States is more  
15 than 60 percent of the cost of all components  
16 of the facility or equipment; and

17 (B) final assembly of the facility or equip-  
18 ment has occurred in the United States; or

19 (4) including domestic material will increase the  
20 cost of the overall project by more than 25 percent.

21 (c) LABOR COSTS.—In this section, labor costs in-  
22 volved in final assembly are not included in calculating the  
23 cost of components.

# 1     **TITLE XI—REVENUE OFFSETS**

## 2     **SEC. 1100. AMENDMENT OF 1986 CODE.**

3         Except as otherwise expressly provided, whenever in  
4 this title an amendment or repeal is expressed in terms  
5 of an amendment to, or repeal of, a section or other provi-  
6 sion, the reference shall be considered to be made to a  
7 section or other provision of the Internal Revenue Code  
8 of 1986.

## 9     **Subtitle A—Provisions Designed To** 10           **Curtail Tax Shelters**

### 11     **SEC. 1101. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-** 12           **TRINE.**

13         (a) IN GENERAL.—Section 7701 is amended by re-  
14 designating subsection (m) as subsection (n) and by in-  
15 serting after subsection (l) the following new subsection:

16         “(m) CLARIFICATION OF ECONOMIC SUBSTANCE  
17 DOCTRINE; ETC.—

18                 “(1) GENERAL RULES.—

19                         “(A) IN GENERAL.—In applying the eco-  
20 nomic substance doctrine, the determination of  
21 whether a transaction has economic substance  
22 shall be made as provided in this paragraph.

23                         “(B) DEFINITION OF ECONOMIC SUB-  
24 STANCE.—For purposes of subparagraph (A)—

1           “(i) IN GENERAL.—A transaction has  
2 economic substance only if—

3                   “(I) the transaction changes in a  
4 meaningful way (apart from Federal  
5 tax effects and, if there are any Fed-  
6 eral tax effects, also apart from any  
7 foreign, State, or local tax effects) the  
8 taxpayer’s economic position, and

9                   “(II) the taxpayer has a substan-  
10 tial nontax purpose for entering into  
11 such transaction and the transaction  
12 is a reasonable means of accom-  
13 plishing such purpose.

14           “(ii) SPECIAL RULE WHERE TAX-  
15 PAYER RELIES ON PROFIT POTENTIAL.—A  
16 transaction shall not be treated as having  
17 economic substance by reason of having a  
18 potential for profit unless—

19                   “(I) the present value of the rea-  
20 sonably expected pre-tax profit from  
21 the transaction is substantial in rela-  
22 tion to the present value of the ex-  
23 pected net tax benefits that would be  
24 allowed if the transaction were re-  
25 spected, and

1                   “(II) the reasonably expected  
2                   pre-tax profit from the transaction ex-  
3                   ceeds a risk-free rate of return.

4                   “(C) TREATMENT OF FEES AND FOREIGN  
5                   TAXES.—Fees and other transaction expenses  
6                   and foreign taxes shall be taken into account as  
7                   expenses in determining pre-tax profit under  
8                   subparagraph (B)(ii).

9                   “(2) SPECIAL RULES FOR TRANSACTIONS WITH  
10                  TAX-INDIFFERENT PARTIES.—

11                  “(A) SPECIAL RULES FOR FINANCING  
12                  TRANSACTIONS.—The form of a transaction  
13                  which is in substance the borrowing of money  
14                  or the acquisition of financial capital directly or  
15                  indirectly from a tax-indifferent party shall not  
16                  be respected if the present value of the deduc-  
17                  tions to be claimed with respect to the trans-  
18                  action is substantially in excess of the present  
19                  value of the anticipated economic returns of the  
20                  person lending the money or providing the fi-  
21                  nancial capital. A public offering shall be treat-  
22                  ed as a borrowing, or an acquisition of financial  
23                  capital, from a tax-indifferent party if it is rea-  
24                  sonably expected that at least 50 percent of the



1 offering will be placed with tax-indifferent par-  
2 ties.

3 “(B) ARTIFICIAL INCOME SHIFTING AND  
4 BASIS ADJUSTMENTS.—The form of a trans-  
5 action with a tax-indifferent party shall not be  
6 respected if—

7 “(i) it results in an allocation of in-  
8 come or gain to the tax-indifferent party in  
9 excess of such party’s economic income or  
10 gain, or

11 “(ii) it results in a basis adjustment  
12 or shifting of basis on account of over-  
13 stating the income or gain of the tax-indif-  
14 ferent party.

15 “(3) DEFINITIONS AND SPECIAL RULES.—For  
16 purposes of this subsection—

17 “(A) ECONOMIC SUBSTANCE DOCTRINE.—  
18 The term ‘economic substance doctrine’ means  
19 the common law doctrine under which tax bene-  
20 fits under subtitle A with respect to a trans-  
21 action are not allowable if the transaction does  
22 not have economic substance or lacks a business  
23 purpose.

24 “(B) TAX-INDIFFERENT PARTY.—The  
25 term ‘tax-indifferent party’ means any person

1 or entity not subject to tax imposed by subtitle  
2 A. A person shall be treated as a tax-indifferent  
3 party with respect to a transaction if the items  
4 taken into account with respect to the trans-  
5 action have no substantial impact on such per-  
6 son's liability under subtitle A.

7 “(C) SUBSTANTIAL NONTAX PURPOSE.—In  
8 applying subclause (II) of paragraph (1)(B)(i),  
9 a purpose of achieving a financial accounting  
10 benefit shall not be taken into account in deter-  
11 mining whether a transaction has a substantial  
12 nontax purpose if the origin of such financial  
13 accounting benefit is a reduction of income tax.

14 “(D) EXCEPTION FOR PERSONAL TRANS-  
15 ACTIONS OF INDIVIDUALS.—In the case of an  
16 individual, this subsection shall apply only to  
17 transactions entered into in connection with a  
18 trade or business or an activity engaged in for  
19 the production of income.

20 “(E) TREATMENT OF LESSORS.—In apply-  
21 ing subclause (I) of paragraph (1)(B)(ii) to the  
22 lessor of tangible property subject to a lease,  
23 the expected net tax benefits shall not include  
24 the benefits of depreciation, or any tax credit,  
25 with respect to the leased property and sub-

1 clause (II) of paragraph (1)(B)(ii) shall be dis-  
2 regarded in determining whether any of such  
3 benefits are allowable.

4 “(4) OTHER COMMON LAW DOCTRINES NOT AF-  
5 FECTED.—Except as specifically provided in this  
6 subsection, the provisions of this subsection shall not  
7 be construed as altering or supplanting any other  
8 rule of law, and the requirements of this subsection  
9 shall be construed as being in addition to any such  
10 other rule of law.

11 “(5) REGULATIONS.—The Secretary shall pre-  
12 scribe such regulations as may be necessary or ap-  
13 propriate to carry out the purposes of this sub-  
14 section. Such regulations may include exemptions  
15 from the application of this subsection.”

16 (b) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to transactions entered into after  
18 February 13, 2003.

19 **SEC. 1102. PENALTY FOR FAILING TO DISCLOSE REPORT-**  
20 **ABLE TRANSACTION.**

21 (a) IN GENERAL.—Part I of subchapter B of chapter  
22 68 (relating to assessable penalties) is amended by insert-  
23 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           “(E) rescinding the penalty would promote  
2           compliance with the requirements of this title  
3           and effective tax administration.

4           “(2) DISCRETION.—The exercise of authority  
5           under paragraph (1) shall be at the sole discretion  
6           of the Commissioner and may be delegated only to  
7           the head of the Office of Tax Shelter Analysis. The  
8           Commissioner, in the Commissioner’s sole discretion,  
9           may establish a procedure to determine if a penalty  
10          should be referred to the Commissioner or the head  
11          of such Office for a determination under paragraph  
12          (1).

13          “(3) NO APPEAL.—Notwithstanding any other  
14          provision of law, any determination under this sub-  
15          section may not be reviewed in any administrative or  
16          judicial proceeding.

17          “(4) RECORDS.—If a penalty is rescinded under  
18          paragraph (1), the Commissioner shall place in the  
19          file in the Office of the Commissioner the opinion of  
20          the Commissioner or the head of the Office of Tax  
21          Shelter Analysis with respect to the determination,  
22          including—

23                  “(A) the facts and circumstances of the  
24                  transaction,

25                  “(B) the reasons for the rescission, 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) CONFORMING AMENDMENT.—The table of sec-  
14 tions for part I of subchapter B of chapter 68 is amended  
15 by inserting after the item relating to section 6707 the  
16 following:

“Sec. 6707A. Penalty for failure to include reportable transaction  
information with return or statement.”.

17       (c) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to returns and statements the due  
19 date for which is after the date of the enactment of this  
20 Act.

1 **SEC. 1103. ACCURACY-RELATED PENALTY FOR LISTED**  
2 **TRANSACTIONS AND OTHER REPORTABLE**  
3 **TRANSACTIONS HAVING A SIGNIFICANT TAX**  
4 **AVOIDANCE PURPOSE.**

5 (a) IN GENERAL.—Subchapter A of chapter 68 is  
6 amended by inserting after section 6662 the following new  
7 section:

8 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**  
9 **ALTY ON UNDERSTATEMENTS WITH RESPECT**  
10 **TO REPORTABLE TRANSACTIONS.**

11 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a  
12 reportable transaction understatement for any taxable  
13 year, there shall be added to the tax an amount equal to  
14 20 percent of the amount of such understatement.

15 “(b) REPORTABLE TRANSACTION UNDERSTATE-  
16 MENT.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘reportable trans-  
18 action understatement’ means the sum of—

19 “(A) the product of—

20 “(i) the amount of the increase (if  
21 any) in taxable income which results from  
22 a difference between the proper tax treat-  
23 ment of an item to which this section ap-  
24 plies and the taxpayer’s treatment of such  
25 item (as shown on the taxpayer’s return of  
26 tax), and

1                   “(ii) the highest rate of tax imposed  
2                   by section 1 (section 11 in the case of a  
3                   taxpayer which is a corporation), and

4                   “(B) the amount of the decrease (if any)  
5                   in the aggregate amount of credits determined  
6                   under subtitle A which results from a difference  
7                   between the taxpayer’s treatment of an item to  
8                   which this section applies (as shown on the tax-  
9                   payer’s return of tax) and the proper tax treat-  
10                  ment of such item.

11                 For purposes of subparagraph (A), any reduction of  
12                 the excess of deductions allowed for the taxable year  
13                 over gross income for such year, and any reduction  
14                 in the amount of capital losses which would (without  
15                 regard to section 1211) be allowed for such year,  
16                 shall be treated as an increase in taxable income.

17                 “(2) ITEMS TO WHICH SECTION APPLIES.—This  
18                 section shall apply to any item which is attributable  
19                 to—

20                         “(A) any listed transaction, and

21                         “(B) any reportable transaction (other  
22                         than a listed transaction) if a significant pur-  
23                         pose of such transaction is the avoidance or  
24                         evasion of Federal income tax.

1       “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED  
2 AND OTHER AVOIDANCE TRANSACTIONS.—

3           “(1) IN GENERAL.—Subsection (a) shall be ap-  
4 plied by substituting ‘30 percent’ for ‘20 percent’  
5 with respect to the portion of any reportable trans-  
6 action understatement with respect to which the re-  
7 quirement of section 6664(d)(2)(A) is not met.

8           “(2) RULES APPLICABLE TO COMPROMISE OF  
9 PENALTY.—

10           “(A) IN GENERAL.—If the 1st letter of  
11 proposed deficiency which allows the taxpayer  
12 an opportunity for administrative review in the  
13 Internal Revenue Service Office of Appeals has  
14 been sent with respect to a penalty to which  
15 paragraph (1) applies, only the Commissioner  
16 of Internal Revenue may compromise all or any  
17 portion of such penalty.

18           “(B) APPLICABLE RULES.—The rules of  
19 paragraphs (3), (4), and (5) of section  
20 6707A(d) shall apply for purposes of subpara-  
21 graph (A).

22           “(d) DEFINITIONS OF REPORTABLE AND LISTED  
23 TRANSACTIONS.—For purposes of this section, the terms  
24 ‘reportable transaction’ and ‘listed transaction’ have the

1 respective meanings given to such terms by section  
2 6707A(e).

3 “(e) SPECIAL RULES.—

4 “(1) COORDINATION WITH PENALTIES, ETC.,  
5 ON OTHER UNDERSTATEMENTS.—In the case of an  
6 understatement (as defined in section 6662(d)(2))—

7 “(A) the amount of such understatement  
8 (determined without regard to this paragraph)  
9 shall be increased by the aggregate amount of  
10 reportable transaction understatements and  
11 noneconomic substance transaction understate-  
12 ments for purposes of determining whether  
13 such understatement is a substantial under-  
14 statement under section 6662(d)(1), and

15 “(B) the addition to tax under section  
16 6662(a) shall apply only to the excess of the  
17 amount of the substantial understatement (if  
18 any) after the application of subparagraph (A)  
19 over the aggregate amount of reportable trans-  
20 action understatements and noneconomic sub-  
21 stance transaction understatements.

22 “(2) COORDINATION WITH OTHER PEN-  
23 ALTIES.—

24 “(A) APPLICATION OF FRAUD PENALTY.—

25 References to an underpayment in section 6663

1 shall be treated as including references to a re-  
2 reportable transaction understatement and a non-  
3 economic substance transaction understatement.

4 “(B) NO DOUBLE PENALTY.—This section  
5 shall not apply to any portion of an understate-  
6 ment on which a penalty is imposed under sec-  
7 tion 6662B or 6663.

8 “(3) SPECIAL RULE FOR AMENDED RE-  
9 TURNS.—Except as provided in regulations, in no  
10 event shall any tax treatment included with an  
11 amendment or supplement to a return of tax be  
12 taken into account in determining the amount of any  
13 reportable transaction understatement or non-  
14 economic substance transaction understatement if  
15 the amendment or supplement is filed after the ear-  
16 lier of the date the taxpayer is first contacted by the  
17 Secretary regarding the examination of the return or  
18 such other date as is specified by the Secretary.

19 “(4) NONECONOMIC SUBSTANCE TRANS-  
20 ACTION UNDERSTATEMENT.—For purposes of  
21 this subsection, the term ‘noneconomic sub-  
22 stance transaction understatement’ has the  
23 meaning given such term by section 6662B(c).

1 “(5) CROSS REFERENCE.—

“For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).”

2 (b) DETERMINATION OF OTHER UNDERSTATE-  
3 MENTS.—Subparagraph (A) of section 6662(d)(2) is  
4 amended by adding at the end the following flush sen-  
5 tence:

6 “The excess under the preceding sentence shall  
7 be determined without regard to items to which  
8 section 6662A applies and without regard to  
9 items with respect to which a penalty is im-  
10 posed by section 6662B.”

11 (c) REASONABLE CAUSE EXCEPTION.—

12 (1) IN GENERAL.—Section 6664 is amended by  
13 adding at the end the following new subsection:

14 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-  
15 ABLE TRANSACTION UNDERSTATEMENTS.—

16 “(1) IN GENERAL.—No penalty shall be im-  
17 posed under section 6662A with respect to any por-  
18 tion of a reportable transaction understatement if it  
19 is shown that there was a reasonable cause for such  
20 portion and that the taxpayer acted in good faith  
21 with respect to such portion.

22 “(2) SPECIAL RULES.—Paragraph (1) shall not  
23 apply to any reportable transaction understatement  
24 unless—

1           “(A) the relevant facts affecting the tax  
2 treatment of the item are adequately disclosed  
3 in accordance with the regulations prescribed  
4 under section 6011,

5           “(B) there is or was substantial authority  
6 for such treatment, and

7           “(C) the taxpayer reasonably believed that  
8 such treatment was more likely than not the  
9 proper treatment.

10 A taxpayer failing to adequately disclose in accord-  
11 ance with section 6011 shall be treated as meeting  
12 the requirements of subparagraph (A) if the penalty  
13 for such failure was rescinded under section  
14 6707A(d).

15           “(3) RULES RELATING TO REASONABLE BE-  
16 LIEF.—For purposes of paragraph (2)(C)—

17           “(A) IN GENERAL.—A taxpayer shall be  
18 treated as having a reasonable belief with re-  
19 spect to the tax treatment of an item only if  
20 such belief—

21           “(i) is based on the facts and law that  
22 exist at the time the return of tax which  
23 includes such tax treatment is filed, and

24           “(ii) relates solely to the taxpayer’s  
25 chances of success on the merits of such



1 treatment and does not take into account  
2 the possibility that a return will not be au-  
3 dited, such treatment will not be raised on  
4 audit, or such treatment will be resolved  
5 through settlement if it is raised.

6 “(B) CERTAIN OPINIONS MAY NOT BE RE-  
7 LIED UPON.—

8 “(i) IN GENERAL.—An opinion of a  
9 tax advisor may not be relied upon to es-  
10 tablish the reasonable belief of a taxpayer  
11 if—

12 “(I) the tax advisor is described  
13 in clause (ii), or

14 “(II) the opinion is described in  
15 clause (iii).

16 “(ii) DISQUALIFIED TAX ADVISORS.—  
17 A tax advisor is described in this clause if  
18 the tax advisor—

19 “(I) is a material advisor (within  
20 the meaning of section 6111(b)(1))  
21 who participates in the organization,  
22 management, promotion, or sale of  
23 the transaction or who is related  
24 (within the meaning of section 267(b)

1 or 707(b)(1)) to any person who so  
2 participates,

3 “(II) is compensated directly or  
4 indirectly by a material advisor with  
5 respect to the transaction,

6 “(III) has a fee arrangement  
7 with respect to the transaction which  
8 is contingent on all or part of the in-  
9 tended tax benefits from the trans-  
10 action being sustained, or

11 “(IV) as determined under regu-  
12 lations prescribed by the Secretary,  
13 has a continuing financial interest  
14 with respect to the transaction.

15 “(iii) DISQUALIFIED OPINIONS.—For  
16 purposes of clause (i), an opinion is dis-  
17 qualified if the opinion—

18 “(I) is based on unreasonable  
19 factual or legal assumptions (includ-  
20 ing assumptions as to future events),

21 “(II) unreasonably relies on rep-  
22 resentations, statements, findings, or  
23 agreements of the taxpayer or any  
24 other person,

1 “(III) does not identify and con-  
2 sider all relevant facts, or

3 “(IV) fails to meet any other re-  
4 quirement as the Secretary may pre-  
5 scribe.”

6 (2) CONFORMING AMENDMENT.—The heading  
7 for subsection (c) of section 6664 is amended by in-  
8 serting “FOR UNDERPAYMENTS” after “EXCEP-  
9 TION”.

10 (d) CONFORMING AMENDMENTS.—

11 (1) Subparagraph (C) of section 461(i)(3) is  
12 amended by striking “section 6662(d)(2)(C)(iii)”  
13 and inserting “section 1274(b)(3)(C)”.

14 (2) Paragraph (3) of section 1274(b) is amend-  
15 ed—

16 (A) by striking “(as defined in section  
17 6662(d)(2)(C)(iii))” in subparagraph (B)(i),  
18 and

19 (B) by adding at the end the following new  
20 subparagraph:

21 “(C) TAX SHELTER.—For purposes of sub-  
22 paragraph (B), the term ‘tax shelter’ means—

23 “(i) a partnership or other entity,

24 “(ii) any investment plan or arrange-  
25 ment, or

1 “(iii) any other plan or arrangement,  
 2 if a significant purpose of such partnership, en-  
 3 tity, plan, or arrangement is the avoidance or  
 4 evasion of Federal income tax.”

5 (3) Section 6662(d)(2) is amended by striking  
 6 subparagraphs (C) and (D).

7 (4) Section 6664(c)(1) is amended by striking  
 8 “this part” and inserting “section 6662 or 6663”.

9 (5) Subsection (b) of section 7525 is amended  
 10 by striking “section 6662(d)(2)(C)(iii)” and insert-  
 11 ing “section 1274(b)(3)(C)”.

12 (6)(A) The heading for section 6662 is amend-  
 13 ed to read as follows:

14 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**  
 15 **ON UNDERPAYMENTS.”**

16 (B) The table of sections for part II of sub-  
 17 chapter A of chapter 68 is amended by striking the  
 18 item relating to section 6662 and inserting the fol-  
 19 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 transactions.”

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

1 **SEC. 1104. 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(m)(1)) for  
11 the transaction giving rise to the claimed tax  
12 benefit or the transaction was not respected  
13 under section 7701(m)(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           “(2) APPLICABLE RULES.—The rules of para-  
2           graphs (3), (4), and (5) of section 6707A(d) shall  
3           apply for purposes of paragraph (1).

4           “(e) COORDINATION WITH OTHER PENALTIES.—Ex-  
5           cept as otherwise provided in this part, the penalty im-  
6           posed by this section shall be in addition to any other pen-  
7           alty imposed by this title.

8           “(f) CROSS REFERENCES.—

**“(1) For coordination of penalty with understate-  
          ments under section 6662 and other special rules,  
          see section 6662A(e).**

**“(2) For reporting of penalty imposed under this  
          section to the Securities and Exchange Commission,  
          see section 6707A(e).”**

9           (b) CLERICAL AMENDMENT.—The table of sections  
10          for part II of subchapter A of chapter 68 is amended by  
11          inserting after the item relating to section 6662A the fol-  
12          lowing new item:

          “Sec. 6662B. Penalty for understatements attributable to trans-  
          actions lacking economic substance, etc.”

13          (c) EFFECTIVE DATE.—The amendments made by  
14          this section shall apply to transactions entered into after  
15          February 13, 2003.

16          **SEC. 1105. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**  
17   **MENT PENALTY FOR NONREPORTABLE**  
18   **TRANSACTIONS.**

19          (a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-  
20          TIONS.—Section 6662(d)(1)(B) (relating to special rule  
21          for corporations) is amended to read as follows:

1           “(B) SPECIAL RULE FOR CORPORA-  
2 TIONS.—In the case of a corporation other than  
3 an S corporation or a personal holding company  
4 (as defined in section 542), there is a substan-  
5 tial understatement of income tax for any tax-  
6 able year if the amount of the understatement  
7 for the taxable year exceeds the lesser of—

8                   “(i) 10 percent of the tax required to  
9 be shown on the return for the taxable  
10 year (or, if greater, \$10,000), or

11                   “(ii) \$10,000,000.”

12           (b) 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. 1106. 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. 1107. 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, promoting, selling, implementing,  
10 or carrying out any reportable transaction,  
11 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) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to transactions with respect to  
9 which material aid, assistance, or advice referred to in sec-  
10 tion 6111(b)(1)(A)(i) of the Internal Revenue Code of  
11 1986 (as added by this section) is provided after the date  
12 of the enactment of this Act.

13 **SEC. 1108. MODIFICATIONS TO PENALTY FOR FAILURE TO**  
14 **REGISTER TAX SHELTERS.**

15 (a) IN GENERAL.—Section 6707 (relating to failure  
16 to furnish information regarding tax shelters) is amended  
17 to read as follows:

18 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**  
19 **ING REPORTABLE TRANSACTIONS.**

20 “(a) IN GENERAL.—If a person who is required to  
21 file a return under section 6111(a) with respect to any  
22 reportable transaction—

23 “(1) fails to file such return on or before the  
24 date prescribed therefor, or

1           “(2) files false or incomplete information with  
2           the Secretary with respect to such transaction,  
3 such person shall pay a penalty with respect to such return  
4 in the amount determined under subsection (b).

5           “(b) AMOUNT OF PENALTY.—

6           “(1) IN GENERAL.—Except as provided in para-  
7           graph (2), the penalty imposed under subsection (a)  
8           with respect to any failure shall be \$50,000.

9           “(2) LISTED TRANSACTIONS.—The penalty im-  
10          posed under subsection (a) with respect to any listed  
11          transaction shall be an amount equal to the greater  
12          of—

13                   “(A) \$200,000, or

14                   “(B) 50 percent of the gross income de-  
15                   rived by such person with respect to aid, assist-  
16                   ance, or advice which is provided with respect  
17                   to the reportable transaction before the date the  
18                   return including the transaction is filed under  
19                   section 6111.

20          Subparagraph (B) shall be applied by substituting  
21          ‘75 percent’ for ‘50 percent’ in the case of an inten-  
22          tional failure or act described in subsection (a).

23          “(c) RESCISSION AUTHORITY.—The provisions of  
24          section 6707A(d) (relating to authority of Commissioner

1 to rescind penalty) shall apply to any penalty imposed  
2 under this section.

3 “(d) REPORTABLE AND LISTED TRANSACTIONS.—  
4 The terms ‘reportable transaction’ and ‘listed transaction’  
5 have the respective meanings given to such terms by sec-  
6 tion 6707A(c).”.

7 (b) CLERICAL AMENDMENT.—The item relating to  
8 section 6707 in the table of sections for part I of sub-  
9 chapter B of chapter 68 is amended by striking “tax shel-  
10 ters” and inserting “reportable transactions”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to returns the due date for which  
13 is after the date of the enactment of this Act.

14 **SEC. 1109. MODIFICATION OF PENALTY FOR FAILURE TO**  
15 **MAINTAIN LISTS OF INVESTORS.**

16 (a) IN GENERAL.—Subsection (a) of section 6708 is  
17 amended to read as follows:

18 “(a) IMPOSITION OF PENALTY.—

19 “(1) IN GENERAL.—If any person who is re-  
20 quired to maintain a list under section 6112(a) fails  
21 to make such list available upon written request to  
22 the Secretary in accordance with section  
23 6112(b)(1)(A) within 20 business days after the  
24 date of the Secretary’s request, such person shall



1 pay a penalty of \$10,000 for each day of such fail-  
2 ure after such 20th day.

3 “(2) REASONABLE CAUSE EXCEPTION.—No  
4 penalty shall be imposed by paragraph (1) with re-  
5 spect to the failure on any day if such failure is due  
6 to reasonable cause.”

7 (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to requests made after the date  
9 of the enactment of this Act.

10 **SEC. 1110. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**  
11 **CONDUCT RELATED TO TAX SHELTERS AND**  
12 **REPORTABLE TRANSACTIONS.**

13 (a) IN GENERAL.—Section 7408 (relating to action  
14 to enjoin promoters of abusive tax shelters, etc.) is amend-  
15 ed by redesignating subsection (c) as subsection (d) and  
16 by striking subsections (a) and (b) and inserting the fol-  
17 lowing new subsections:

18 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-  
19 tion in the name of the United States to enjoin any person  
20 from further engaging in specified conduct may be com-  
21 menced at the request of the Secretary. Any action under  
22 this section shall be brought in the district court of the  
23 United States for the district in which such person resides,  
24 has his principal place of business, or has engaged in spec-  
25 ified conduct. The court may exercise its jurisdiction over

1 such action (as provided in section 7402(a)) separate and  
2 apart from any other action brought by the United States  
3 against such person.

4 “(b) ADJUDICATION AND DECREE.—In any action  
5 under subsection (a), if the court finds—

6 “(1) that the person has engaged in any speci-  
7 fied conduct, and

8 “(2) that injunctive relief is appropriate to pre-  
9 vent recurrence of such conduct,

10 the court may enjoin such person from engaging in such  
11 conduct or in any other activity subject to penalty under  
12 this title.

13 “(c) SPECIFIED CONDUCT.—For purposes of this  
14 section, the term ‘specified conduct’ means any action, or  
15 failure to take action, subject to penalty under section  
16 6700, 6701, 6707, or 6708.”

17 (b) CONFORMING AMENDMENTS.—

18 (1) The heading for section 7408 is amended to  
19 read as follows:

20 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**  
21 **LATED TO TAX SHELTERS AND REPORTABLE**  
22 **TRANSACTIONS.”**

23 (2) The table of sections for subchapter A of  
24 chapter 67 is amended by striking the item relating

1 to section 7408 and inserting the following new  
2 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.”

3 (c) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall take effect on the day after the date of  
5 the enactment of this Act.

6 **SEC. 1111. UNDERSTATEMENT OF TAXPAYER’S LIABILITY**  
7 **BY INCOME TAX RETURN PREPARER.**

8 (a) **STANDARDS CONFORMED TO TAXPAYER STAND-**  
9 **ARDS.**—Section 6694(a) (relating to understatements due  
10 to unrealistic positions) is amended—

11 (1) by striking “realistic possibility of being  
12 sustained on its merits” in paragraph (1) and in-  
13 serting “reasonable belief that the tax treatment in  
14 such position was more likely than not the proper  
15 treatment”,

16 (2) by striking “or was frivolous” in paragraph  
17 (3) and inserting “or there was no reasonable basis  
18 for the tax treatment of such position”, and

19 (3) by striking “UNREALISTIC” in the heading  
20 and inserting “IMPROPER”.

21 (b) **AMOUNT OF PENALTY.**—Section 6694 is amend-  
22 ed—

23 (1) by striking “\$250” in subsection (a) and in-  
24 serting “\$1,000”, and

1           (2) by striking “\$1,000” in subsection (b) and  
2           inserting “\$5,000”.

3           (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to documents prepared after the  
5 date of the enactment of this Act.

6 **SEC. 1112. PENALTY ON FAILURE TO REPORT INTERESTS**  
7 **IN FOREIGN FINANCIAL ACCOUNTS.**

8           (a) IN GENERAL.—Section 5321(a)(5) of title 31,  
9 United States Code, is amended to read as follows:

10           “(5) FOREIGN FINANCIAL AGENCY TRANS-  
11 ACTION VIOLATION.—

12           “(A) PENALTY AUTHORIZED.—The Sec-  
13 retary of the Treasury may impose a civil  
14 money penalty on any person who violates, or  
15 causes any violation of, any provision of section  
16 5314.

17           “(B) AMOUNT OF PENALTY.—

18           “(i) IN GENERAL.—Except as pro-  
19 vided in subparagraph (C), the amount of  
20 any civil penalty imposed under subpara-  
21 graph (A) shall not exceed \$5,000.

22           “(ii) REASONABLE CAUSE EXCEP-  
23 TION.—No penalty shall be imposed under  
24 subparagraph (A) with respect to any vio-  
25 lation if—

1           “(I) such violation was due to  
2           reasonable cause, and

3           “(II) the amount of the trans-  
4           action or the balance in the account  
5           at the time of the transaction was  
6           properly reported.

7           “(C) WILLFUL VIOLATIONS.—In the case  
8           of any person willfully violating, or willfully  
9           causing any violation of, any provision of sec-  
10          tion 5314—

11           “(i) the maximum penalty under sub-  
12          paragraph (B)(i) shall be increased to the  
13          greater of—

14           “(I) \$25,000, or

15           “(II) the amount (not exceeding  
16          \$100,000) determined under subpara-  
17          graph (D), and

18           “(ii) subparagraph (B)(ii) shall not  
19          apply.

20          “(D) AMOUNT.—The amount determined  
21          under this subparagraph is—

22           “(i) in the case of a violation involving  
23          a transaction, the amount of the trans-  
24          action, or

1           “(ii) in the case of a violation involv-  
2           ing a failure to report the existence of an  
3           account or any identifying information re-  
4           quired to be provided with respect to an  
5           account, the balance in the account at the  
6           time of the violation.”

7           (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to violations occurring after the  
9 date of the enactment of this Act.

10 **SEC. 1113. FRIVOLOUS TAX SUBMISSIONS.**

11           (a) CIVIL PENALTIES.—Section 6702 is amended to  
12 read as follows:

13 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

14           “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-  
15 TURNS.—A person shall pay a penalty of \$5,000 if—

16                   “(1) such person files what purports to be a re-  
17                   turn of a tax imposed by this title but which—

18                           “(A) does not contain information on  
19                           which the substantial correctness of the self-as-  
20                           sessment may be judged, or

21                           “(B) contains information that on its face  
22                           indicates that the self-assessment is substan-  
23                           tially incorrect; and

24                   “(2) the conduct referred to in paragraph (1)—

1           “(A) is based on a position which the Sec-  
2           retary has identified as frivolous under sub-  
3           section (c), or

4           “(B) reflects a desire to delay or impede  
5           the administration of Federal tax laws.

6           “(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS  
7 SUBMISSIONS.—

8           “(1) IMPOSITION OF PENALTY.—Except as pro-  
9           vided in paragraph (3), any person who submits a  
10          specified frivolous submission shall pay a penalty of  
11          \$5,000.

12          “(2) SPECIFIED FRIVOLOUS SUBMISSION.—For  
13          purposes of this section—

14               “(A) SPECIFIED FRIVOLOUS SUBMIS-  
15               SION.—The term ‘specified frivolous submis-  
16               sion’ means a specified submission if any por-  
17               tion of such submission—

18                       “(i) is based on a position which the  
19                       Secretary has identified as frivolous under  
20                       subsection (c), or

21                       “(ii) reflects a desire to delay or im-  
22                       pede the administration of Federal tax  
23                       laws.

24               “(B) SPECIFIED SUBMISSION.—The term  
25               ‘specified submission’ means—

1 “(i) a request for a hearing under—

2 “(I) section 6320 (relating to no-  
3 tice and opportunity for hearing upon  
4 filing of notice of lien), or

5 “(II) section 6330 (relating to  
6 notice and opportunity for hearing be-  
7 fore levy), and

8 “(ii) an application under—

9 “(I) section 6159 (relating to  
10 agreements for payment of tax liabil-  
11 ity in installments),

12 “(II) section 7122 (relating to  
13 compromises), or

14 “(III) section 7811 (relating to  
15 taxpayer assistance orders).

16 “(3) OPPORTUNITY TO WITHDRAW SUBMIS-  
17 SION.—If the Secretary provides a person with no-  
18 tice that a submission is a specified frivolous sub-  
19 mission and such person withdraws such submission  
20 within 30 days after such notice, the penalty im-  
21 posed under paragraph (1) shall not apply with re-  
22 spect to such submission.

23 “(c) LISTING OF FRIVOLOUS POSITIONS.—The Sec-  
24 retary shall prescribe (and periodically revise) a list of po-  
25 sitions which the Secretary has identified as being frivo-



1 lous for purposes of this subsection. The Secretary shall  
2 not include in such list any position that the Secretary  
3 determines meets the requirement of section  
4 6662(d)(2)(B)(ii)(II).

5 “(d) REDUCTION OF PENALTY.—The Secretary may  
6 reduce the amount of any penalty imposed under this sec-  
7 tion if the Secretary determines that such reduction would  
8 promote compliance with and administration of the Fed-  
9 eral tax laws.

10 “(e) PENALTIES IN ADDITION TO OTHER PEN-  
11 ALTIES.—The penalties imposed by this section shall be  
12 in addition to any other penalty provided by law.”

13 (b) TREATMENT OF FRIVOLOUS REQUESTS FOR  
14 HEARINGS BEFORE LEVY.—

15 (1) FRIVOLOUS REQUESTS DISREGARDED.—  
16 Section 6330 (relating to notice and opportunity for  
17 hearing before levy) is amended by adding at the  
18 end the following new subsection:

19 “(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—  
20 Notwithstanding any other provision of this section, if the  
21 Secretary determines that any portion of a request for a  
22 hearing under this section or section 6320 meets the re-  
23 quirement of clause (i) or (ii) of section 6702(b)(2)(A),  
24 then the Secretary may treat such portion as if it were

1 never submitted and such portion shall not be subject to  
2 any further administrative or judicial review.”

3 (2) PRECLUSION FROM RAISING FRIVOLOUS  
4 ISSUES AT HEARING.—Section 6330(c)(4) is amend-  
5 ed—

6 (A) by striking “(A)” and inserting  
7 “(A)(i)”;

8 (B) by striking “(B)” and inserting “(ii)”;

9 (C) by striking the period at the end of the  
10 first sentence and inserting “; or”; and

11 (D) by inserting after subparagraph (A)(ii)  
12 (as so redesignated) the following:

13 “(B) the issue meets the requirement of  
14 clause (i) or (ii) of section 6702(b)(2)(A).”

15 (3) STATEMENT OF GROUNDS.—Section  
16 6330(b)(1) is amended by striking “under sub-  
17 section (a)(3)(B)” and inserting “in writing under  
18 subsection (a)(3)(B) and states the grounds for the  
19 requested hearing”.

20 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR  
21 HEARINGS UPON FILING OF NOTICE OF LIEN.—Section  
22 6320 is amended—

23 (1) in subsection (b)(1), by striking “under sub-  
24 section (a)(3)(B)” and inserting “in writing under

1 subsection (a)(3)(B) and states the grounds for the  
2 requested hearing”, and

3 (2) in subsection (c), by striking “and (e)” and  
4 inserting “(e), and (g)”.

5 (d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR  
6 OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-  
7 MENTS.—Section 7122 is amended by adding at the end  
8 the following new subsection:

9 “(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwith-  
10 standing any other provision of this section, if the Sec-  
11 retary determines that any portion of an application for  
12 an offer-in-compromise or installment agreement sub-  
13 mitted under this section or section 6159 meets the re-  
14 quirement of clause (i) or (ii) of section 6702(b)(2)(A),  
15 then the Secretary may treat such portion as if it were  
16 never submitted and such portion shall not be subject to  
17 any further administrative or judicial review.”

18 (e) CLERICAL AMENDMENT.—The table of sections  
19 for part I of subchapter B of chapter 68 is amended by  
20 striking the item relating to section 6702 and inserting  
21 the following new item:

“Sec. 6702. Frivolous tax submissions.”

22 (f) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to submissions made and issues  
24 raised after the date on which the Secretary first pre-

1 scribes a list under section 6702(e) of the Internal Rev-  
2 enue Code of 1986, as amended by subsection (a).

3 **SEC. 1114. REGULATION OF INDIVIDUALS PRACTICING BE-**  
4 **FORE THE DEPARTMENT OF TREASURY.**

5 (a) CENSURE; IMPOSITION OF PENALTY.—

6 (1) IN GENERAL.—Section 330(b) of title 31,  
7 United States Code, is amended—

8 (A) by inserting “, or censure,” after “De-  
9 partment”, and

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

12 “The Secretary may impose a monetary penalty on any  
13 representative described in the preceding sentence. If the  
14 representative was acting on behalf of an employer or any  
15 firm or other entity in connection with the conduct giving  
16 rise to such penalty, the Secretary may impose a monetary  
17 penalty on such employer, firm, or entity if it knew, or  
18 reasonably should have known, of such conduct. Such pen-  
19 alty shall not exceed the gross income derived (or to be  
20 derived) from the conduct giving rise to the penalty and  
21 may be in addition to, or in lieu of, any suspension, disbar-  
22 ment, or censure.”

23 (2) EFFECTIVE DATE.—The amendments made  
24 by this subsection shall apply to actions taken after  
25 the date of the enactment of this Act.

1 (b) TAX SHELTER OPINIONS, ETC.—Section 330 of  
2 such title 31 is amended by adding at the end the fol-  
3 lowing new subsection:

4 “(d) Nothing in this section or in any other provision  
5 of law shall be construed to limit the authority of the Sec-  
6 retary of the Treasury to impose standards applicable to  
7 the rendering of written advice with respect to any entity,  
8 transaction plan or arrangement, or other plan or arrange-  
9 ment, which is of a type which the Secretary determines  
10 as having a potential for tax avoidance or evasion.”

11 **SEC. 1115. PENALTY ON PROMOTERS OF TAX SHELTERS.**

12 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-  
13 TERS.—Section 6700(a) is amended by adding at the end  
14 the following new sentence: “Notwithstanding the first  
15 sentence, if an activity with respect to which a penalty  
16 imposed under this subsection involves a statement de-  
17 scribed in paragraph (2)(A), the amount of the penalty  
18 shall be equal to 50 percent of the gross income derived  
19 (or to be derived) from such activity by the person on  
20 which the penalty is imposed.”

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

1 **SEC. 1116. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**  
2 **FOR WHICH LISTED TRANSACTIONS NOT RE-**  
3 **PORTED.**

4 (a) IN GENERAL.—Section 6501(e)(1) (relating to  
5 substantial omission of items for income taxes) is amended  
6 by adding at the end the following new subparagraph:

7 “(C) LISTED TRANSACTIONS.—If a tax-  
8 payer fails to include on any return or state-  
9 ment for any taxable year any information with  
10 respect to a listed transaction (as defined in  
11 section 6707A(e)(2)) which is required under  
12 section 6011 to be included with such return or  
13 statement, the tax for such taxable year may be  
14 assessed, or a proceeding in court for collection  
15 of such tax may be begun without assessment,  
16 at any time within 6 years after the time the  
17 return is filed. This subparagraph shall not  
18 apply to any taxable year if the time for assess-  
19 ment or beginning the proceeding in court has  
20 expired before the time a transaction is treated  
21 as a listed transaction under section 6011.”

22 (b) EFFECTIVE DATE.—The amendment made by  
23 this section shall apply to transactions after the date of  
24 the enactment of this Act in taxable years ending after  
25 such date.

1 **SEC. 1117. DENIAL OF DEDUCTION FOR INTEREST ON UN-**  
2 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**  
3 **CLOSED REPORTABLE AND NONECONOMIC**  
4 **SUBSTANCE TRANSACTIONS.**

5 (a) IN GENERAL.—Section 163 (relating to deduction  
6 for interest) is amended by redesignating subsection (m)  
7 as subsection (n) and by inserting after subsection (l) the  
8 following new subsection:

9 “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE  
10 TO NONDISCLOSED REPORTABLE TRANSACTIONS AND  
11 NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduc-  
12 tion shall be allowed under this chapter for any interest  
13 paid or accrued under section 6601 on any underpayment  
14 of tax which is attributable to—

15 “(1) the portion of any reportable transaction  
16 understatement (as defined in section 6662A(b))  
17 with respect to which the requirement of section  
18 6664(d)(2)(A) is not met, or

19 “(2) any noneconomic substance transaction  
20 understatement (as defined in section 6662B(c)).”

21 (b) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to transactions after the date of  
23 the enactment of this Act in taxable years ending after  
24 such date.

1     **Subtitle B—OTHER PROVISIONS**

2     **SEC. 1121. LIMITATION ON TRANSFER OR IMPORTATION OF**  
3                     **BUILT-IN LOSSES.**

4             (a) IN GENERAL.—Section 362 (relating to basis to  
5 corporations) is amended by adding at the end the fol-  
6 lowing new subsection:

7             “(e) LIMITATIONS ON BUILT-IN LOSSES.—

8                     “(1) LIMITATION ON IMPORTATION OF BUILT-  
9 IN LOSSES.—

10                             “(A) IN GENERAL.—If in any transaction  
11 described in subsection (a) or (b) there would  
12 (but for this subsection) be an importation of a  
13 net built-in loss, the basis of each property de-  
14 scribed in subparagraph (B) which is acquired  
15 in such transaction shall (notwithstanding sub-  
16 sections (a) and (b)) be its fair market value  
17 immediately after such transaction.

18                             “(B) PROPERTY DESCRIBED.—For pur-  
19 poses of subparagraph (A), property is de-  
20 scribed in this paragraph if—

21                                     “(i) gain or loss with respect to such  
22 property is not subject to tax under this  
23 subtitle in the hands of the transferor im-  
24 mediately before the transfer, and



1           “(ii) gain or loss with respect to such  
2           property is subject to such tax in the  
3           hands of the transferee immediately after  
4           such transfer.

5           In any case in which the transferor is a part-  
6           nership, the preceding sentence shall be applied  
7           by treating each partner in such partnership as  
8           holding such partner’s proportionate share of  
9           the property of such partnership.

10           “(C) IMPORTATION OF NET BUILT-IN  
11           LOSS.—For purposes of subparagraph (A),  
12           there is an importation of a net built-in loss in  
13           a transaction if the transferee’s aggregate ad-  
14           justed bases of property described in subpara-  
15           graph (B) which is transferred in such trans-  
16           action would (but for this paragraph) exceed  
17           the fair market value of such property imme-  
18           diately after such transaction.”

19           “(2) LIMITATION ON TRANSFER OF BUILT-IN  
20           LOSSES IN SECTION 351 TRANSACTIONS.—

21           “(A) IN GENERAL.—If—

22           “(i) property is transferred in any  
23           transaction which is described in sub-  
24           section (a) and which is not described in  
25           paragraph (1) of this subsection, and

1           “(ii) the transferee’s aggregate ad-  
2           justed bases of the property so transferred  
3           would (but for this paragraph) exceed the  
4           fair market value of such property imme-  
5           diately after such transaction,  
6           then, notwithstanding subsection (a), the trans-  
7           feree’s aggregate adjusted bases of the property  
8           so transferred shall not exceed the fair market  
9           value of such property immediately after such  
10          transaction.

11          “(B) ALLOCATION OF BASIS REDUC-  
12          TION.—The aggregate reduction in basis by  
13          reason of subparagraph (A) shall be allocated  
14          among the property so transferred in proportion  
15          to their respective built-in losses immediately  
16          before the transaction.

17          “(C) EXCEPTION FOR TRANSFERS WITHIN  
18          AFFILIATED GROUP.—Subparagraph (A) shall  
19          not apply to any transaction if the transferor  
20          owns stock in the transferee meeting the re-  
21          quirements of section 1504(a)(2). In the case of  
22          property to which subparagraph (A) does not  
23          apply by reason of the preceding sentence, the  
24          transferor’s basis in the stock received for such

1           property shall not exceed its fair market value  
2           immediately after the transfer.”

3           (b) COMPARABLE TREATMENT WHERE LIQUIDA-  
4 TION.—Paragraph (1) of section 334(b) (relating to liq-  
5 uidation of subsidiary) is amended to read as follows:

6           “(1) IN GENERAL.—If property is received by a  
7           corporate distributee in a distribution in a complete  
8           liquidation to which section 332 applies (or in a  
9           transfer described in section 337(b)(1)), the basis of  
10          such property in the hands of such distributee shall  
11          be the same as it would be in the hands of the trans-  
12          feror; except that the basis of such property in the  
13          hands of such distributee shall be the fair market  
14          value of the property at the time of the distribu-  
15          tion—

16                  “(A) in any case in which gain or loss is  
17                  recognized by the liquidating corporation with  
18                  respect to such property, or

19                  “(B) in any case in which the liquidating  
20                  corporation is a foreign corporation, the cor-  
21                  porate distributee is a domestic corporation,  
22                  and the corporate distributee’s aggregate ad-  
23                  justed bases of property described in section  
24                  362(e)(1)(B) which is distributed in such liq-  
25                  uidation would (but for this subparagraph) ex-

1           ceed the fair market value of such property im-  
2           mediately after such liquidation.”

3           (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to transactions after the date of  
5 the enactment of this Act.

6 **SEC. 1122. DISALLOWANCE OF CERTAIN PARTNERSHIP**  
7 **LOSS TRANSFERS.**

8           (a) TREATMENT OF CONTRIBUTED PROPERTY WITH  
9 BUILT-IN LOSS.—Paragraph (1) of section 704(c) is  
10 amended by striking “and” at the end of subparagraph  
11 (A), by striking the period at the end of subparagraph  
12 (B) and inserting “, and”, and by adding at the end the  
13 following:

14                   “(C) if any property so contributed has a  
15           built-in loss—

16                           “(i) such built-in loss shall be taken  
17                   into account only in determining the  
18                   amount of items allocated to the contrib-  
19                   uting partner, and

20                           “(ii) except as provided in regulations,  
21                   in determining the amount of items allo-  
22                   cated to other partners, the basis of the  
23                   contributed property in the hands of the  
24                   partnership shall be treated as being equal

1                   to its fair market value immediately after  
2                   the contribution.

3           For purposes of subparagraph (C), the term ‘built-  
4           in loss’ means the excess of the adjusted basis of the  
5           property (determined without regard to subpara-  
6           graph (C)(ii)) over its fair market value immediately  
7           after the contribution.”

8           (b) ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-  
9           ERTY ON TRANSFER OF PARTNERSHIP INTEREST IF  
10          THERE IS SUBSTANTIAL BUILT-IN LOSS.—

11           (1) ADJUSTMENT REQUIRED.—Subsection (a)  
12           of section 743 (relating to optional adjustment to  
13           basis of partnership property) is amended by insert-  
14           ing before the period “or unless the partnership has  
15           a substantial built-in loss immediately after such  
16           transfer”.

17           (2) ADJUSTMENT.—Subsection (b) of section  
18           743 is amended by inserting “or with respect to  
19           which there is a substantial built-in loss immediately  
20           after such transfer” after “section 754 is in effect”.

21           (3) SUBSTANTIAL BUILT-IN LOSS.—Section 743  
22           is amended by adding at the end the following new  
23           subsection:

24           “(d) SUBSTANTIAL BUILT-IN LOSS.—

1           “(1) IN GENERAL.—For purposes of this sec-  
 2           tion, a partnership has a substantial built-in loss  
 3           with respect to a transfer of an interest in a part-  
 4           nership if the transferee partner’s proportionate  
 5           share of the adjusted basis of the partnership prop-  
 6           erty exceeds by more than \$250,000 the basis of  
 7           such partner’s interest in the partnership.

8           “(2) REGULATIONS.—The Secretary shall pre-  
 9           scribe such regulations as may be appropriate to  
 10          carry out the purposes of paragraph (1) and section  
 11          734(d), including regulations aggregating related  
 12          partnerships and disregarding property acquired by  
 13          the partnership in an attempt to avoid such pur-  
 14          poses.”

15          (4) CLERICAL AMENDMENTS.—

16                 (A) The section heading for section 743 is  
 17                 amended to read as follows:

18         **“SEC. 743. ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-**  
 19                 **ERTY WHERE SECTION 754 ELECTION OR**  
 20                 **SUBSTANTIAL BUILT-IN LOSS.”**

21                 (B) The table of sections for subpart C of  
 22                 part II of subchapter K of chapter 1 is amend-  
 23                 ed by striking the item relating to section 743  
 24                 and inserting the following new item:

                  “Sec. 743. Adjustment to basis of partnership property where sec-  
                   tion 754 election or substantial built-in loss.”

1           (c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED  
2 PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL  
3 BASIS REDUCTION.—

4           (1) ADJUSTMENT REQUIRED.—Subsection (a)  
5 of section 734 (relating to optional adjustment to  
6 basis of undistributed partnership property) is  
7 amended by inserting before the period “or unless  
8 there is a substantial basis reduction”.

9           (2) ADJUSTMENT.—Subsection (b) of section  
10 734 is amended by inserting “or unless there is a  
11 substantial basis reduction” after “section 754 is in  
12 effect”.

13           (3) SUBSTANTIAL BASIS REDUCTION.—Section  
14 734 is amended by adding at the end the following  
15 new subsection:

16           “(d) SUBSTANTIAL BASIS REDUCTION.—

17           “(1) IN GENERAL.—For purposes of this sec-  
18 tion, there is a substantial basis reduction with re-  
19 spect to a distribution if the sum of the amounts de-  
20 scribed in subparagraphs (A) and (B) of subsection  
21 (b)(2) exceeds \$250,000.

22           “(2) REGULATIONS.—

**“For regulations to carry out this subsection, see  
                  section 743(d)(2).”**

23           (4) CLERICAL AMENDMENTS.—

1 (A) The section heading for section 734 is  
2 amended to read as follows:

3 **“SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED**  
4 **PARTNERSHIP PROPERTY WHERE SECTION**  
5 **754 ELECTION OR SUBSTANTIAL BASIS RE-**  
6 **DUCTION.”**

7 (B) The table of sections for subpart B of  
8 part II of subchapter K of chapter 1 is amend-  
9 ed by striking the item relating to section 734  
10 and inserting the following new item:

“Sec. 734. Adjustment to basis of undistributed partnership prop-  
erty where section 754 election or substantial basis  
reduction.”

11 (d) EFFECTIVE DATES.—

12 (1) SUBSECTION (a).—The amendment made  
13 by subsection (a) shall apply to contributions made  
14 after the date of the enactment of this Act.

15 (2) SUBSECTION (b).—The amendments made  
16 by subsection (b) shall apply to transfers after the  
17 date of the enactment of this Act.

18 (3) SUBSECTION (c).—The amendments made  
19 by subsection (c) shall apply to distributions after  
20 the date of the enactment of this Act.



1 **SEC. 1123. NO REDUCTION OF BASIS UNDER SECTION 734 IN**  
2 **STOCK HELD BY PARTNERSHIP IN COR-**  
3 **PORATE PARTNER.**

4 (a) IN GENERAL.—Section 755 is amended by adding  
5 at the end the following new subsection:

6 “(c) NO ALLOCATION OF BASIS DECREASE TO  
7 STOCK OF CORPORATE PARTNER.—In making an alloca-  
8 tion under subsection (a) of any decrease in the adjusted  
9 basis of partnership property under section 734(b)—

10 “(1) no allocation may be made to stock in a  
11 corporation which is a partner in the partnership,  
12 and

13 “(2) any amount not allocable to stock by rea-  
14 son of paragraph (1) shall be allocated under sub-  
15 section (a) to other partnership property.

16 Gain shall be recognized to the partnership to the extent  
17 that the amount required to be allocated under paragraph  
18 (2) to other partnership property exceeds the aggregate  
19 adjusted basis of such other property immediately before  
20 the allocation required by paragraph (2).”

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

1 **SEC. 1124. REPEAL OF SPECIAL RULES FOR FASITS.**

2 (a) IN GENERAL.—Part V of subchapter M of chap-  
3 ter 1 (relating to financial asset securitization investment  
4 trusts) is hereby repealed.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Paragraph (6) of section 56(g) is amended  
7 by striking “REMIC, or FASIT” and inserting “or  
8 REMIC”.

9 (2) Clause (ii) of section 382(l)(4)(B) is amend-  
10 ed by striking “a REMIC to which part IV of sub-  
11 chapter M applies, or a FASIT to which part V of  
12 subchapter M applies,” and inserting “or a REMIC  
13 to which part IV of subchapter M applies,”.

14 (3) Paragraph (1) of section 582(e) is amended  
15 by striking “, and any regular interest in a  
16 FASIT,”.

17 (4) Subparagraph (E) of section 856(e)(5) is  
18 amended by striking the last sentence.

19 (5) Paragraph (5) of section 860G(a) is amend-  
20 ed by adding “and” at the end of subparagraph (B),  
21 by striking “, and” at the end of subparagraph (C)  
22 and inserting a period, and by striking subparagraph  
23 (D).

24 (6) Subparagraph (C) of section 1202(e)(4) is  
25 amended by striking “REMIC, or FASIT” and in-  
26 serting “or REMIC”.

1           (7) Subparagraph (C) of section 7701(a)(19) is  
2 amended by adding “and” at the end of clause (ix),  
3 by striking “, and” at the end of clause (x) and in-  
4 serting a period, and by striking clause (xi).

5           (8) The table of parts for subchapter M of  
6 chapter 1 is amended by striking the item relating  
7 to part V.

8           (c) EFFECTIVE DATE.—

9           (1) IN GENERAL.—Except as provided in para-  
10 graph (2), the amendments made by this section  
11 shall apply to taxable years beginning after Decem-  
12 ber 31, 2003.

13           (2) EXCEPTION FOR EXISTING FASITS.—

14           (A) IN GENERAL.—Paragraph (1) shall not  
15 apply to any FASIT in existence on the date of  
16 the enactment of this Act.

17           (B) TRANSFER OF ADDITIONAL ASSETS  
18 NOT PERMITTED.—Except as provided in regu-  
19 lations prescribed by the Secretary of the  
20 Treasury or the Secretary’s delegate, subpara-  
21 graph (A) shall cease to apply as of the earliest  
22 date after the date of the enactment of this Act  
23 that any property is transferred to the FASIT.

1 **SEC. 1125. EXPANDED DISALLOWANCE OF DEDUCTION FOR**  
2 **INTEREST ON CONVERTIBLE DEBT.**

3 (a) IN GENERAL.—Paragraph (2) of section 163(l)  
4 is amended by striking “or a related party” and inserting  
5 “or equity held by the issuer (or any related party) in any  
6 other person”.

7 (b) CONFORMING AMENDMENT.—Paragraph (3) of  
8 section 163(l) is amended by striking “or a related party”  
9 in the material preceding subparagraph (A) and inserting  
10 “or any other person”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to debt instruments issued after  
13 the date of the enactment of this Act.

14 **SEC. 1126. EXPANDED AUTHORITY TO DISALLOW TAX BENE-**  
15 **FITS UNDER SECTION 269.**

16 (a) IN GENERAL.—Subsection (a) of section 269 (re-  
17 lating to acquisitions made to evade or avoid income tax)  
18 is amended to read as follows:

19 “(a) IN GENERAL.—If—

20 “(1)(A) any person acquires stock in a corpora-  
21 tion, or

22 “(B) any corporation acquires, directly or indi-  
23 rectly, property of another corporation and the basis  
24 of such property, in the hands of the acquiring cor-  
25 poration, is determined by reference to the basis in  
26 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 by securing the benefit of a deduction,  
4           credit, or other allowance,  
5 then the Secretary may disallow such deduction, credit,  
6 or other allowance.”

7           (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to stock and property acquired  
9 after February 13, 2003.

10 **SEC. 1127. MODIFICATIONS OF CERTAIN RULES RELATING**  
11 **TO CONTROLLED FOREIGN CORPORATIONS.**

12           (a) LIMITATION ON EXCEPTION FROM PFIC RULES  
13 FOR UNITED STATES SHAREHOLDERS OF CONTROLLED  
14 FOREIGN CORPORATIONS.—Paragraph (2) of section  
15 1297(e) (relating to passive investment company) is  
16 amended by adding at the end the following flush sen-  
17 tence:

18           “Such term shall not include any period if there is  
19           only a remote likelihood of an inclusion in gross in-  
20           come under section 951(a)(1)(A)(i) of subpart F in-  
21           come of such corporation for such period.”

22           (b) DETERMINATION OF PRO RATA SHARE OF SUB-  
23 PART F INCOME.—Subsection (a) of section 951 (relating  
24 to amounts included in gross income of United States

1 shareholders) is amended by adding at the end the fol-  
2 lowing new paragraph:

3           “(4) SPECIAL RULES FOR DETERMINING PRO  
4           RATA SHARE OF SUBPART F INCOME.—The pro rata  
5           share under paragraph (2) shall be determined by  
6           disregarding—

7                   “(A) any rights lacking substantial eco-  
8                   nomic effect, and

9                   “(B) stock owned by a shareholder who is  
10                  a tax-indifferent party (as defined in section  
11                  7701(m)(3)) if the amount which would (but  
12                  for this paragraph) be allocated to such share-  
13                  holder does not reflect such shareholder’s eco-  
14                  nomic share of the earnings and profits of the  
15                  corporation.”

16           (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to taxable years on controlled for-  
18 eign corporation beginning after February 13, 2003, and  
19 to taxable years of United States shareholder in which or  
20 with which such taxable years of controlled foreign cor-  
21 porations end.

1 **SEC. 1128. BASIS FOR DETERMINING LOSS ALWAYS RE-**  
 2 **DUCED BY NONTAXED PORTION OF DIVI-**  
 3 **DENDS.**

4       (a) **IN GENERAL.**—Section 1059 (relating to cor-  
 5 porate shareholder's basis in stock reduced by nontaxed  
 6 portion of extraordinary dividends) is amended by redesignig-  
 7 nating subsection (g) as subsection (h) and by inserting  
 8 after subsection (f) the following new subsection:

9       “(g) **BASIS FOR DETERMINING LOSS ALWAYS RE-**  
 10 **DUCED BY NONTAXED PORTION OF DIVIDENDS.**—The  
 11 basis of stock in a corporation (for purposes of deter-  
 12 mining loss) shall be reduced by the nontaxed portion of  
 13 any dividend received with respect to such stock if this  
 14 section does not otherwise apply to such dividend.”

15       (b) **EFFECTIVE DATE.**—The amendment made by  
 16 this section shall apply to dividends received after the date  
 17 of the enactment of this Act.

18 **SEC. 1129. AFFIRMATION OF CONSOLIDATED RETURN REG-**  
 19 **ULATION AUTHORITY.**

20       (a) **IN GENERAL.**—Section 1502 (relating to consoli-  
 21 dated return regulations) is amended by adding at the end  
 22 the following new sentence: “In prescribing such regula-  
 23 tions, the Secretary may prescribe rules applicable to cor-  
 24 porations filing consolidated returns under section 1501  
 25 that are different from other provisions of this title that  
 26 would apply if such corporations filed separate returns.”

1 (b) RESULT NOT OVERTURNED.—Notwithstanding  
 2 subsection (a), the Internal Revenue Code of 1986 shall  
 3 be construed by treating Treasury regulation § 1.1502–  
 4 20(c)(1)(iii) (as in effect on January 1, 2001) as being  
 5 inapplicable to the type of factual situation in 255 F.3d  
 6 1357 (Fed. Cir. 2001).

7 (c) EFFECTIVE DATE.—The provisions of this section  
 8 shall apply to taxable years beginning before, on, or after  
 9 the date of the enactment of this Act.

10 **SEC. 1130. EXTENSION OF CUSTOMS USER FEES.**

11 Section 13031(j)(3) of the Consolidated Omnibus  
 12 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3))  
 13 is amended by striking “September 30, 2003” and insert-  
 14 ing “March 31, 2010”.

15 **Subtitle C—Prevention of Cor-**  
 16 **porate Expatriation To Avoid**  
 17 **United States Income Tax**

18 **SEC. 1131. PREVENTION OF CORPORATE EXPATRIATION TO**

19 **AVOID UNITED STATES INCOME TAX.**

20 (a) IN GENERAL.—Paragraph (4) of section 7701(a)  
 21 (defining domestic) is amended to read as follows:

22 “(4) DOMESTIC.—

23 “(A) IN GENERAL.—Except as provided in  
 24 subparagraph (B), the term ‘domestic’ when ap-  
 25 plied to a corporation or partnership means cre-



1           ated or organized in the United States or under  
2           the law of the United States or of any State  
3           unless, in the case of a partnership, the Sec-  
4           retary provides otherwise by regulations.

5           “(B) CERTAIN CORPORATIONS TREATED  
6           AS DOMESTIC.—

7           “(i) IN GENERAL.—The acquiring cor-  
8           poration in a corporate expatriation trans-  
9           action shall be treated as a domestic cor-  
10          poration.

11          “(ii) CORPORATE EXPATRIATION  
12          TRANSACTION.—For purposes of this sub-  
13          paragraph, the term ‘corporate expatria-  
14          tion transaction’ means any transaction  
15          if—

16                  “(I) a nominally foreign corpora-  
17                  tion (referred to in this subparagraph  
18                  as the ‘acquiring corporation’) ac-  
19                  quires, as a result of such transaction,  
20                  directly or indirectly substantially all  
21                  of the properties held directly or indi-  
22                  rectly by a domestic corporation, and

23                  “(II) immediately after the trans-  
24                  action, more than 80 percent of the  
25                  stock (by vote or value) of the acquir-

1           ing corporation is held by former  
2           shareholders of the domestic corpora-  
3           tion by reason of holding stock in the  
4           domestic corporation.

5           “(iii) LOWER STOCK OWNERSHIP RE-  
6           QUIREMENT IN CERTAIN CASES.—Sub-  
7           clause (II) of clause (ii) shall be applied by  
8           substituting ‘50 percent’ for ‘80 percent’  
9           with respect to any nominally foreign cor-  
10          poration if—

11                   “(I) such corporation does not  
12                   have substantial business activities  
13                   (when compared to the total business  
14                   activities of the expanded affiliated  
15                   group) in the foreign country in which  
16                   or under the law of which the corpora-  
17                   tion is created or organized, and

18                   “(II) the stock of the corporation  
19                   is publicly traded and the principal  
20                   market for the public trading of such  
21                   stock is in the United States.

22           “(iv) PARTNERSHIP TRANSACTIONS.—  
23           The term ‘corporate expatriation trans-  
24           action’ includes any transaction if—

1           “(I) a nominally foreign corpora-  
2           tion (referred to in this subparagraph  
3           as the ‘acquiring corporation’) ac-  
4           quires, as a result of such transaction,  
5           directly or indirectly properties consti-  
6           tuting a trade or business of a domes-  
7           tic partnership,

8           “(II) immediately after the trans-  
9           action, more than 80 percent of the  
10          stock (by vote or value) of the acquir-  
11          ing corporation is held by former  
12          partners of the domestic partnership  
13          or related foreign partnerships (deter-  
14          mined without regard to stock of the  
15          acquiring corporation which is sold in  
16          a public offering related to the trans-  
17          action), and

18          “(III) the acquiring corporation  
19          meets the requirements of subclauses  
20          (I) and (II) of clause (iii).

21          “(v) SPECIAL RULES.—For purposes  
22          of this subparagraph—

23          “(I) a series of related trans-  
24          actions shall be treated as 1 trans-  
25          action, and

1           “(II) stock held by members of  
2           the expanded affiliated group which  
3           includes the acquiring corporation  
4           shall not be taken into account in de-  
5           termining ownership.

6           “(vi) OTHER DEFINITIONS.—For pur-  
7           poses of this subparagraph—

8                   “(I) NOMINALLY FOREIGN COR-  
9                   PORATION.—The term ‘nominally for-  
10                   eign corporation’ means any corpora-  
11                   tion which would (but for this sub-  
12                   paragraph) be treated as a foreign  
13                   corporation.

14                   “(II) EXPANDED AFFILIATED  
15                   GROUP.—The term ‘expanded affili-  
16                   ated group’ means an affiliated group  
17                   (as defined in section 1504(a) without  
18                   regard to section 1504(b)).

19                   “(III) RELATED FOREIGN PART-  
20                   NERSHIP.—A foreign partnership is  
21                   related to a domestic partnership if  
22                   they are under common control (with-  
23                   in the meaning of section 482), or  
24                   they shared the same trademark or  
25                   tradename.”

1 (b) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendment made by  
3 this section shall apply to corporate expatriation  
4 transactions completed after September 11, 2001.

5 (2) SPECIAL RULE.—The amendment made by  
6 this section shall also apply to corporate expatriation  
7 transactions completed on or before September 11,  
8 2001, but only with respect to taxable years of the  
9 acquiring corporation beginning after December 31,  
10 2003.

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