

Union Calendar No. 317

108TH CONGRESS
2^D SESSION

H. R. 4520

[Report No. 108-548, Part I]

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 2004

Mr. THOMAS (for himself, Mr. CRANE, Mr. SHAW, Mrs. JOHNSON of Connecticut, Mr. HOUGHTON, Mr. HERGER, Mr. MCCRERY, Mr. CAMP, Mr. RAMSTAD, Mr. SAM JOHNSON of Texas, Ms. DUNN, Mr. COLLINS, Mr. PORTMAN, Mr. ENGLISH, Mr. HAYWORTH, Mr. HULSHOF, Mr. MCINNIS, Mr. LEWIS of Kentucky, Mr. FOLEY, Mr. BRADY of Texas, and Mr. RYAN of Wisconsin) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on 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

JUNE 16, 2004

Additional sponsors: Mr. FEENEY, Mr. SESSIONS, Mr. BURR, Ms. HARRIS, Mrs. BLACKBURN, Mr. CANTOR, Mr. BROWN of South Carolina, Mr. JENKINS, Mr. ISAKSON, Mr. WAMP, Mr. WHITFIELD, Mr. DUNCAN, Mr. ROGERS of Kentucky, Mr. KINGSTON, Mr. SMITH of Texas, Mr. NEUGEBAUER, Mr. NETHERCUTT, Mr. CARTER, Ms. GRANGER, and Mr. CULBERSON

JUNE 16, 2004

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

JUNE 16, 2004

Referral to the Committee on Agriculture extended for a period ending not later than June 16, 2004

JUNE 16, 2004

The Committee on Agriculture discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on June 4, 2004]

A BILL

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

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

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

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

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

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

Sec. 1. Short title; etc.

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

Sec. 101. Repeal of exclusion for extraterritorial income.

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

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

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

Subtitle A—Small Business Expensing

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

Subtitle B—Depreciation

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

Sec. 212. Modification of depreciation allowance for aircraft.

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

Subtitle C—S Corporation Reform and Simplification

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

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

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

Sec. 224. Disregard of unexercised powers of appointment in determining potential current beneficiaries of ESBT.

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

Sec. 226. Use of passive activity loss and at-risk amounts by qualified subchapter S trust income beneficiaries.

Sec. 227. Exclusion of investment securities income from passive income test for bank S corporations.

Sec. 228. Treatment of bank director shares.

Sec. 229. Relief from inadvertently invalid qualified subchapter S subsidiary elections and terminations.

Sec. 230. Information returns for qualified subchapter S subsidiaries.

Sec. 231. Repayment of loans for qualifying employer securities.

Subtitle D—Alternative Minimum Tax Relief

Sec. 241. Foreign tax credit under alternative minimum tax.

Sec. 242. Expansion of exemption from alternative minimum tax for small corporations.

Sec. 243. Income averaging for farmers not to increase alternative minimum tax.

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

Sec. 251. Reduced rates of tax on gasohol replaced with excise tax credit; repeal of other alcohol-based fuel incentives; etc.

Sec. 252. Alcohol fuel subsidies borne by general fund.

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

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

Subtitle G—Incentives to Reinvest Foreign Earnings in United States

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

Subtitle H—Other Incentive Provisions

- Sec. 281. Special rules for livestock sold on account of weather-related conditions.*
- Sec. 282. Payment of dividends on stock of cooperatives without reducing patronage dividends.*
- Sec. 283. Capital gain treatment under section 631(b) to apply to outright sales by landowners.*
- Sec. 284. Distributions from publicly traded partnerships treated as qualifying income of regulated investment companies.*
- Sec. 285. Improvements related to real estate investment trusts.*
- Sec. 286. Treatment of certain dividends of regulated investment companies.*
- Sec. 287. Taxation of certain settlement funds.*
- Sec. 288. Expansion of human clinical trials qualifying for orphan drug credit.*
- Sec. 289. Simplification of excise tax imposed on bows and arrows.*
- Sec. 290. Repeal of excise tax on fishing tackle boxes.*
- Sec. 291. Sonar devices suitable for finding fish.*
- Sec. 292. Income tax credit to distilled spirits wholesalers for cost of carrying Federal excise taxes on bottled distilled spirits.*
- Sec. 293. Suspension of occupational taxes relating to distilled spirits, wine, and beer.*
- Sec. 294. Modification of unrelated business income limitation on investment in certain small business investment companies.*
- Sec. 295. Election to determine taxable income from certain international shipping activities using per ton rate.*
- Sec. 296. Charitable contribution deduction for certain expenses incurred in support of Native Alaskan subsistence whaling.*

TITLE III—TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

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

TITLE IV—EXTENSION OF CERTAIN EXPIRING PROVISIONS

- Sec. 401. Allowance of nonrefundable personal credits against regular and minimum tax liability.*
- Sec. 402. Extension of research credit.*
- Sec. 403. Extension of credit for electricity produced from certain renewable resources.*
- Sec. 404. Indian employment tax credit.*
- Sec. 405. Work opportunity credit.*
- Sec. 406. Welfare-to-work credit.*
- Sec. 407. Certain expenses of elementary and secondary school teachers.*
- Sec. 408. Extension of accelerated depreciation benefit for property on Indian reservations.*
- Sec. 409. Charitable contributions of computer technology and equipment used for educational purposes.*
- Sec. 410. Expensing of environmental remediation costs.*
- Sec. 411. Availability of medical savings accounts.*
- Sec. 412. Taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.*
- Sec. 413. Qualified zone academy bonds.*
- Sec. 414. District of Columbia.*
- Sec. 415. Extension of certain New York Liberty Zone bond financing.*
- Sec. 416. Disclosures relating to terrorist activities.*
- Sec. 417. Disclosure of return information relating to student loans.*
- Sec. 418. Cover over of tax on distilled spirits.*
- Sec. 419. Joint review of strategic plans and budget for the Internal Revenue Service.*
- Sec. 420. Parity in the application of certain limits to mental health benefits.*
- Sec. 421. Combined employment tax reporting project.*
- Sec. 422. Clean-fuel vehicles.*

TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

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

TITLE VI—REVENUE PROVISIONS

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

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

Subtitle B—Provisions Relating to Tax Shelters

PART I—TAXPAYER-RELATED PROVISIONS

- Sec. 611. Penalty for failing to disclose reportable transactions.*
- Sec. 612. Accuracy-related penalty for listed transactions, other reportable transactions having a significant tax avoidance purpose, etc.*

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

PART II—OTHER PROVISIONS

- Sec. 631. Treatment of stripped interests in bond and preferred stock funds, etc.*
- Sec. 632. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.*
- Sec. 633. Disallowance of certain partnership loss transfers.*
- Sec. 634. No reduction of basis under section 734 in stock held by partnership in corporate partner.*
- Sec. 635. Repeal of special rules for FASITs.*
- Sec. 636. Limitation on transfer of built-in losses on REMIC residuals.*
- Sec. 637. Clarification of banking business for purposes of determining investment of earnings in United States property.*
- Sec. 638. Alternative tax for certain small insurance companies.*
- Sec. 639. Denial of deduction for interest on underpayments attributable to non-disclosed reportable transactions.*
- Sec. 640. Clarification of rules for payment of estimated tax for certain deemed asset sales.*
- Sec. 641. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale.*
- Sec. 642. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.*
- Sec. 643. Exclusion from gross income for interest on overpayments of income tax by individuals.*
- Sec. 644. Deposits made to suspend running of interest on potential underpayments.*
- Sec. 645. Partial payment of tax liability in installment agreements.*
- Sec. 646. Affirmation of consolidated return regulation authority.*

PART III—LEASING

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

Subtitle C—Reduction of Fuel Tax Evasion

- Sec. 651. Exemption from certain excise taxes for mobile machinery.*
- Sec. 652. Taxation of aviation-grade kerosene.*

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

Subtitle D—Nonqualified Deferred Compensation Plans

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

Subtitle E—Other Revenue Provisions

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

TITLE VII—MARKET REFORM FOR TOBACCO GROWERS

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

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

- Sec. 711. Termination of tobacco quota program and related provisions.*
Sec. 712. Termination of tobacco price support program and related provisions.
Sec. 713. Liability.

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

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

TITLE VIII—TRADE PROVISIONS

- Sec. 801. Ceiling fans.*

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

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

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

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

9 *(b) CONFORMING AMENDMENTS.—*

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

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

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

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

20 *(5) Section 275(a) is amended—*

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

1 (B) by striking the last sentence.

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

4 (A) by striking:

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

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

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

11 (B) by striking subparagraph (B).

12 (7) Section 903 is amended by striking “114,
13 164(a),” and inserting “164(a)”.

14 (8) Section 999(c)(1) is amended by striking
15 “941(a)(5),”.

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

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

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

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

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

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

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

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

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

21 The Secretary of the Treasury (or such Secretary's delegate)
22 may prescribe such regulations as may be necessary to pre-
23 vent the abuse of the purposes of this subsection.

24 (f) *BINDING CONTRACTS.*—The amendments made by
25 this section shall not apply to any transaction in the ordi-

1 nary course of a trade or business which occurs pursuant
2 to a binding contract—

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

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

9 For purposes of this subsection, a binding contract shall in-
10 clude a purchase option, renewal option, or replacement op-
11 tion which is included in such contract and which is en-
12 forceable against the seller or lessor.

13 **SEC. 102. REDUCED CORPORATE INCOME TAX RATE FOR**
14 **DOMESTIC PRODUCTION ACTIVITIES INCOME.**

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

20 “(c) **LIMITATION ON TAX ON QUALIFIED PRODUCTION**
21 **ACTIVITIES INCOME.**—

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

1 “(A) a tax computed at the rates and in the
2 manner as if this subsection had not been en-
3 acted on the taxable income reduced by the
4 amount of qualified production activities income,
5 plus

6 “(B) a tax equal to 32 percent (34 percent
7 in the case of taxable years beginning before
8 January 1, 2007) of the qualified production ac-
9 tivities income (or, if less, taxable income).

10 “(2) QUALIFIED PRODUCTION ACTIVITIES IN-
11 COME.—

12 “(A) IN GENERAL.—The term ‘qualified
13 production activities income’ for any taxable
14 year means an amount equal to the excess (if
15 any) of—

16 “(i) the taxpayer’s domestic production
17 gross receipts for such taxable year, over

18 “(ii) the sum of—

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

21 “(II) other deductions, expenses,
22 or losses directly allocable to such re-
23 ceipts, and

24 “(III) a ratable portion of other
25 deductions, expenses, and losses that

1 *are not directly allocable to such re-*
2 *ceipts or another class of income.*

3 “(B) *ALLOCATION METHOD.*—*The Secretary*
4 *shall prescribe rules for the proper allocation of*
5 *items of income, deduction, expense, and loss for*
6 *purposes of determining income attributable to*
7 *domestic production activities.*

8 “(3) *DOMESTIC PRODUCTION GROSS RECEIPTS.*—
9 *For purposes of this subsection, the term ‘domestic*
10 *production gross receipts’ means the gross receipts of*
11 *the taxpayer which are derived from—*

12 “(A) *any lease, rental, license, sale, ex-*
13 *change, or other disposition of—*

14 “(i) *qualifying production property*
15 *which was manufactured, produced, grown,*
16 *or extracted in whole or in significant part*
17 *by the taxpayer within the United States,*
18 *or*

19 “(ii) *any qualified film produced by*
20 *the taxpayer, or*

21 “(B) *construction, engineering, or architec-*
22 *tural services performed in the United States for*
23 *construction projects in the United States.*

1 “(4) *QUALIFYING PRODUCTION PROPERTY.*—For
2 purposes of this subsection, the term ‘qualifying pro-
3 duction property’ means—

4 “(A) *tangible personal property,*

5 “(B) *any computer software, and*

6 “(C) *any property described in section*
7 *168(f)(4).*

8 “(5) *QUALIFIED FILM.*—For purposes of this
9 subsection—

10 “(A) *IN GENERAL.*—The term ‘qualified
11 film’ means any property described in section
12 168(f)(3) if not less than 50 percent of the total
13 compensation relating to the production of such
14 property is compensation for services performed
15 in the United States by actors, production per-
16 sonnel, directors, and producers.

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

21 “(6) *RELATED PERSONS.*—For purposes of this
22 subsection—

23 “(A) *IN GENERAL.*—The term ‘domestic pro-
24 duction gross receipts’ shall not include any
25 gross receipts of the taxpayer derived from prop-

1 *erty leased, licensed, or rented by the taxpayer*
2 *for use by any related person.*

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

11 *(b) SPECIAL RULE RELATING TO ELECTION TO TREAT*
12 *CUTTING OF TIMBER AS A SALE OR EXCHANGE.—In the*
13 *case of a corporation, any election under section 631(a) of*
14 *the Internal Revenue Code of 1986 made for a taxable year*
15 *ending on or before the date of the enactment of this Act*
16 *may be revoked by the taxpayer for any taxable year ending*
17 *after such date. For purposes of determining whether such*
18 *taxpayer may make a further election under such section,*
19 *such election (and any revocation under this section) shall*
20 *not be taken into account.*

21 *(c) EFFECTIVE DATE.—The amendment made by this*
22 *section shall apply to taxable years beginning after Decem-*
23 *ber 31, 2004.*

1 **SEC. 103. REDUCED CORPORATE INCOME TAX RATE FOR**
 2 **SMALL CORPORATIONS.**

3 (a) *IN GENERAL.*—Subsection (b) of section 11 (relat-
 4 ing to tax imposed on corporations) is amended by redesi-
 5 gnating paragraph (2) as paragraph (6) and by striking
 6 paragraph (1) and inserting the following new paragraphs:
 7 “(1) *FOR TAXABLE YEARS BEGINNING AFTER*
 8 *2012.*—In the case of taxable years beginning after
 9 2012, the amount of the tax imposed by subsection (a)
 10 shall be determined in accordance with the following
 11 table:

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

12 “(2) *FOR TAXABLE YEARS BEGINNING IN 2011 OR*
 13 *2012.*—In the case of taxable years beginning in 2011
 14 or 2012, the amount of the tax imposed by subsection
 15 (a) shall be determined in accordance with the fol-
 16 lowing table:

<i>“If taxable income is:</i>	<i>The tax is:</i>
<i>Not over \$50,000</i>	<i>15% of taxable income.</i>
<i>Over \$50,000 but not over \$75,000</i>	<i>\$7,500, plus 25% of the excess over</i> <i>\$50,000.</i>
<i>Over \$75,000 but not over</i> <i>\$5,000,000.</i>	<i>\$13,750, plus 32% of the excess over</i> <i>\$75,000.</i>
<i>Over \$5,000,000 but not over</i> <i>\$10,000,000.</i>	<i>\$1,589,750, plus 34% of the excess over</i> <i>\$5,000,000.</i>
<i>Over \$10,000,000</i>	<i>\$3,289,750, plus 35% of the excess over</i> <i>\$10,000,000.</i>

1 “(3) *FOR TAXABLE YEARS BEGINNING IN 2008,*
 2 *2009, OR 2010.—In the case of taxable years beginning*
 3 *in 2008, 2009, or 2010, the amount of the tax im-*
 4 *posed by subsection (a) shall be determined in accord-*
 5 *ance with the following table:*

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

6 “(4) *FOR TAXABLE YEARS BEGINNING IN 2005,*
 7 *2006, OR 2007.—In the case of taxable years beginning*
 8 *in 2005, 2006, or 2007, the amount of the tax im-*
 9 *posed by subsection (a) shall be determined in accord-*
 10 *ance with the following table:*

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

11 “(5) *PHASEOUT OF LOWER RATES FOR CERTAIN*
 12 *TAXPAYERS.—*
 13 “(A) *GENERAL RULE FOR YEARS BEFORE*
 14 *2013.—*

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

10 “(ii) *MAXIMUM INCREASE AMOUNT.*—
 11 *For purposes of clause (i)—*

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

12 “(B) *HIGHER INCOME CORPORATIONS.*—*In*
 13 *the case of a corporation which has taxable in-*
 14 *come in excess of \$20,000,000 (\$15,000,000 in*
 15 *the case of taxable years beginning before 2013),*
 16 *the amount of the tax determined under the fore-*
 17 *going provisions of this subsection shall be in-*
 18 *creased by an additional amount equal to the*
 19 *lesser of (i) 3 percent of such excess, or (ii)*
 20 *\$610,250 (\$100,000 in the case of taxable years*
 21 *beginning before 2013).”.*

22 (b) *CONFORMING AMENDMENTS.*—

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

3 “(ii) *in the case of a corporation, sec-*
4 *tion 1201(a) applies to such taxable year.*”.

5 (2) *Section 1201(a) is amended by striking “the*
6 *last 2 sentences of section 11(b)(1)” and inserting*
7 *“section 11(b)(5)”.*

8 (3) *Section 1561(a) is amended—*

9 (A) *by striking “the last 2 sentences of sec-*
10 *tion 11(b)(1)” and inserting “section 11(b)(5)”,*
11 *and*

12 (B) *by striking “such last 2 sentences” and*
13 *inserting “section 11(b)(5)”.*

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

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

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

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

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

12 **Subtitle B—Depreciation**

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

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

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

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

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

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

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

18 “(B) *EXCEPTION FOR CHANGES IN FORM OF*
19 *BUSINESS.*—*Property shall not cease to be quali-*
20 *fied leasehold improvement property under sub-*
21 *paragraph (A) by reason of—*

22 “(i) *death,*

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

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

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

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

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

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

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

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

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

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

20 “(G) Qualified leasehold improvement prop-
21 erty described in subsection (e)(6).

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

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

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

“(E)(iv)	39
“(E)(v)	39”.

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

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

12 (a) *AIRCRAFT TREATED AS QUALIFIED PROPERTY.—*

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

18 “(C) *CERTAIN AIRCRAFT.—The term ‘quali-*
 19 *fied property’ includes property—*

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

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

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

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

7 *“(I) 10 percent of the cost, or*

8 *“(II) \$100,000, and*

9 *“(iv) which has—*

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

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

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

17 *(b) CONFORMING AMENDMENTS.—*

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

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

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

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

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

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

13 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 14 *section shall take effect as if included in the amendments*
 15 *made by section 101 of the Job Creation and Worker Assist-*
 16 *ance Act of 2002.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *subparagraph (D), all members of the fam-*
2 *ily shall be treated as 1 shareholder.*

3 “(B) *MEMBERS OF THE FAMILY.*—*For pur-*
4 *pose of subparagraph (A)(i)—*

5 “(i) *IN GENERAL.*—*The term ‘members*
6 *of the family’ means the common ancestor,*
7 *lineal descendants of the common ancestor,*
8 *and the spouses (or former spouses) of such*
9 *lineal descendants or common ancestor.*

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

24 “(C) *EFFECT OF ADOPTION, ETC.*—*In deter-*
25 *mining whether any relationship specified in*

1 subparagraph (B) exists, the rules of section
2 152(b)(2) shall apply.

3 “(D) *ELECTION*.—An election under sub-
4 paragraph (A)(ii)—

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

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

11 (b) *RELIEF FROM INADVERTENT INVALID ELECTION*
12 *OR TERMINATION*.—Section 1362(f) (relating to inadvertent
13 invalid elections or terminations), as amended by section
14 229, is amended—

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

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

20 (c) *EFFECTIVE DATES*.—

21 (1) *SUBSECTION (a)*.—The amendment made by
22 subsection (a) shall apply to taxable years beginning
23 after December 31, 2004.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (a) **IN GENERAL.**—Section 1361(e)(2) (defining poten-
23 tial current beneficiary) is amended—

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

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

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

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

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

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

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

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

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

1 *stock shall be treated as incurred by the corpora-*
2 *tion in the succeeding taxable year with respect*
3 *to the transferee.”*

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

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

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

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

14 ***(2)*** *by striking the period at the end of subpara-*
15 *graph (B) and inserting “, and”, and*

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

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

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

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

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

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

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

19 “(ii) dividends on assets required to be
20 held by such bank or company, including
21 stock in the Federal Reserve Bank, the Fed-
22 eral Home Loan Bank, or the Federal Agri-
23 cultural Mortgage Bank or participation
24 certificates issued by a Federal Intermediate
25 Credit Bank.”.

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

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

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

8 “(f) *RESTRICTED BANK DIRECTOR STOCK.*—

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

13 “(2) *RESTRICTED BANK DIRECTOR STOCK.*—*For*
14 *purposes of this subsection, the term ‘restricted bank*
15 *director stock’ means stock in a bank (as defined in*
16 *section 581), a bank holding company (within the*
17 *meaning of section 2(a) of the Bank Holding Com-*
18 *pany Act of 1956 (12 U.S.C. 1841(a)), or a financial*
19 *holding company (within the meaning of section 2(p)*
20 *of such Act), registered with the Federal Reserve Sys-*
21 *tem, if such stock—*

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

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

8 “(3) CROSS REFERENCE.—

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

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

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

17 “(1) shall be includible in gross income of the di-
18 rector, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (a) *IN GENERAL.*—

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

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

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

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

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

20 (b) *EFFECTIVE DATE.*—*The amendment made by this*
21 *section shall apply to taxable years beginning after Decem-*
22 *ber 31, 2005.*

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

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

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

12 (b) *EFFECTIVE DATE.*—The amendment made by sub-
 13 section (a) shall apply to taxable years beginning after De-
 14 cember 31, 2003.

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

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

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

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

24 “(f) *ALCOHOL FUEL MIXTURES.*—

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

4 “(A) *shall, with respect to taxable events oc-*
5 *curring during such period, be treated—*

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

8 “(ii) *as received at the time of the tax-*
9 *able event, and*

10 “(B) *to the extent such amount of credit ex-*
11 *ceeds such liability for such period, shall (except*
12 *as provided in subsection (k)) be paid subject to*
13 *subsection (i)(3) by the Secretary without inter-*
14 *est.*

15 “(2) *SPECIAL RULES.*—

16 “(A) *ONLY CERTAIN ALCOHOL TAKEN INTO*
17 *ACCOUNT.*—*For purposes of paragraph (1), sec-*
18 *tion 40 shall be applied—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) *TRANSFERS TO HIGHWAY TRUST FUND.*—Para-
2 *graph (4) of section 9503(b) is amended by adding “or”*
3 *at the end of subparagraph (B), by striking the comma at*
4 *the end of subparagraph (C) and inserting a period, and*
5 *by striking subparagraphs (D), (E), and (F).*

6 (d) *CONFORMING AMENDMENTS.*—

7 (1) *Subsection (c) of section 40 is amended to*
8 *read as follows:*

9 “(c) *COORDINATION WITH EXCISE TAX BENEFITS.*—
10 *The amount of the credit determined under this section with*
11 *respect to any alcohol shall, under regulations prescribed*
12 *by the Secretary, be properly reduced to take into account*
13 *the benefit provided with respect to such alcohol under sec-*
14 *tion 6427(f).”*

15 (2) *Subparagraph (B) of section 40(d)(4) is*
16 *amended by striking “under section 4041(k) or*
17 *4081(c)” and inserting “under section 6427(f)”.*

18 (e) *EFFECTIVE DATES.*—

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

22 (2) *SUBSECTION (c).*—*The amendments made by*
23 *subsection (c) shall apply to taxes imposed after Sep-*
24 *tember 30, 2003.*

1 **SEC. 252. ALCOHOL FUEL SUBSIDIES BORNE BY GENERAL**
2 **FUND.**

3 (a) *TRANSFERS TO FUND.*—Section 9503(b)(1) is
4 amended by adding at the end the following new flush sen-
5 tence:

6 “For purposes of this paragraph, the amount of taxes
7 received under section 4081 shall include any amount
8 treated as a payment under section 6427(f)(1)(A) and
9 shall not be reduced by the amount paid under section
10 6427(f)(1)(B).”.

11 (b) *TRANSFERS FROM FUND.*—Subparagraph (A) of
12 section 9503(c)(2) is amended by adding at the end the fol-
13 lowing new sentence: “Clauses (i)(III) and (ii) shall not
14 apply to claims under section 6427(f)(1)(B).”

15 (c) *EFFECTIVE DATE.*—

16 (1) *SUBSECTION (a).*—The amendment made by
17 subsection (a) shall apply to taxes received after Sep-
18 tember 30, 2004.

19 (2) *SUBSECTION (b).*—The amendment made by
20 subsection (b) shall apply to amounts paid after Sep-
21 tember 30, 2004, and (to the extent related to section
22 34 of the Internal Revenue Code of 1986) to fuel used
23 after such date.

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

4 ***SEC. 261. EXCLUSION OF INCENTIVE STOCK OPTIONS AND***
5 ***EMPLOYEE STOCK PURCHASE PLAN STOCK***
6 ***OPTIONS FROM WAGES.***

7 *(a) EXCLUSION FROM EMPLOYMENT TAXES.—*

8 *(1) SOCIAL SECURITY TAXES.—*

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

15 *“(22) remuneration on account of—*

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

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

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

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

4 “(19) Remuneration on account of—

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

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

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

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

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

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

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

7 “(19) remuneration on account of—

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

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

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

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

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

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

9 ***Subtitle G—Incentives to Reinvest***
 10 ***Foreign Earnings in United States***

11 ***SEC. 271. INCENTIVES TO REINVEST FOREIGN EARNINGS IN***
 12 ***UNITED STATES.***

13 *(a) IN GENERAL.—Subpart F of part III of subchapter*
 14 *N of chapter 1 (relating to controlled foreign corporations)*
 15 *is amended by adding at the end the following new section:*

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

17 ***“(a) DEDUCTION.—***

18 ***“(1) IN GENERAL.—In the case of a corporation***
 19 ***which is a United States shareholder, there shall be***
 20 ***allowed as a deduction an amount equal to 85 percent***
 21 ***of the dividends which are received by such share-***
 22 ***holder from controlled foreign corporations during the***
 23 ***election period.***

24 ***“(2) DIVIDENDS PAID INDIRECTLY FROM CON-***
 25 ***TROLLED FOREIGN CORPORATIONS.—If, within the***

1 *election period, a United States shareholder receives a*
2 *distribution from a controlled foreign corporation*
3 *which is excluded from gross income under section*
4 *959(a), such distribution shall be treated for purposes*
5 *of this section as a dividend to the extent of any*
6 *amount included in income by such United States*
7 *shareholder under section 951(a)(1)(A) as a result of*
8 *any dividend paid during the election period to—*

9 *“(A) such controlled foreign corporation*
10 *from another controlled foreign corporation that*
11 *is in a chain of ownership described in section*
12 *958(a), or*

13 *“(B) any other controlled foreign corpora-*
14 *tion in such chain of ownership, but only to the*
15 *extent of distributions described in section 959(b)*
16 *which are made during the election period to the*
17 *controlled foreign corporation from which such*
18 *United States shareholder received such distribu-*
19 *tion.*

20 *“(b) LIMITATIONS.—*

21 *“(1) IN GENERAL.—The amount of dividends*
22 *taken into account under subsection (a) shall not ex-*
23 *ceed the greater of—*

24 *“(A) \$500,000,000,*

1 “(B) the amount shown on the applicable fi-
2 nancial statement as earnings permanently rein-
3 vested outside the United States, or

4 “(C) in the case of an applicable financial
5 statement which fails to show a specific amount
6 of earnings permanently reinvested outside the
7 United States and which shows a specific
8 amount of tax liability attributable to such earn-
9 ings, the amount of such earnings determined in
10 such manner as the Secretary may prescribe.

11 *Except as provided in subparagraph (C), if there is*
12 *no statement or such statement fails to show a specific*
13 *amount of such earnings or liability, such amount*
14 *shall be treated as being zero for purposes of this*
15 *paragraph.*

16 “(2) *DIVIDENDS MUST BE EXTRAORDINARY.—*
17 *The amount of dividends taken into account under*
18 *subsection (a) shall not exceed the excess (if any) of—*

19 “(A) *the dividends received during the tax-*
20 *able year by such shareholder from controlled*
21 *foreign corporations, over*

22 “(B) *the annual average for the base period*
23 *years of—*

1 “(i) the dividends received during each
2 base period year by such shareholder from
3 such corporations,

4 “(ii) the amounts includible in such
5 shareholder’s gross income for each base pe-
6 riod year under section 951(a)(1)(B) with
7 respect to such corporations, and

8 “(iii) the amounts that would have
9 been included for each base period year but
10 for section 959(a) with respect to such cor-
11 porations.

12 *The amount taken into account under clause*
13 *(iii) for any base period year shall not include*
14 *any amount which is not includible in gross in-*
15 *come by reason of an amount described in clause*
16 *(ii) with respect to a prior taxable year.*

17 “(3) *REQUIREMENT TO INVEST IN UNITED*
18 *STATES.—Subsection (a) shall not apply to any divi-*
19 *dend received by a United States shareholder unless*
20 *the amount of the dividend is invested in the United*
21 *States pursuant to a plan describing the expenditures*
22 *to be made with such amount—*

23 “(A) *which, before the dividend is received,*
24 *is approved by the president or chief executive of-*
25 *ficer of such shareholder, and*

1 “(B) which is approved by the Board of Di-
2 rectors (or management committee) of such
3 shareholder no later than its first meeting on or
4 after the date the dividend is received.

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

7 “(1) *ELECTION PERIOD.*—The term ‘election pe-
8 riod’ means—

9 “(A) if this section applies to the taxpayer’s
10 last taxable year beginning before the date of the
11 enactment of this section, any 6-month or shorter
12 period during such year which is after the date
13 of the enactment of this section and which is se-
14 lected by the taxpayer, and

15 “(B) if this section applies to the taxpayer’s
16 first taxable year beginning on or after such
17 date, the 1st 6 months of such taxable year.

18 “(2) *APPLICABLE FINANCIAL STATEMENT.*—The
19 term ‘applicable financial statement’ means the most
20 recently audited financial statement (including notes
21 and other documents which accompany such state-
22 ment)—

23 “(A) which is certified on or before March
24 31, 2003, as being prepared in accordance with
25 generally accepted accounting principles, and

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

3 “(i) to creditors,

4 “(ii) to shareholders, or

5 “(iii) for any other substantial nontax
6 purpose.

7 *In the case of a corporation required to file a finan-*
8 *cial statement with the Securities and Exchange*
9 *Commission, such term means the most recent such*
10 *statement filed on or before March 31, 2003.*

11 “(3) *BASE PERIOD YEARS.—The base period*
12 *years are the 3 taxable years—*

13 “(A) which are among the 5 most recent
14 taxable years ending on or before March 31,
15 2003, and

16 “(B) which are determined by dis-
17 regarding—

18 “(i) 1 taxable year for which the sum
19 of the amounts described in clauses (i), (ii),
20 and (iii) of subsection (b)(2)(B) is the larg-
21 est, and

22 “(ii) 1 taxable year for which such
23 sum is the smallest.

1 *Rules similar to the rules of subparagraphs (A) and*
2 *(B) of section 41(f)(3) shall apply for purposes of this*
3 *paragraph.*

4 “(4) *COORDINATION WITH DIVIDENDS RECEIVED*
5 *DEDUCTION.—No deduction shall be allowed under*
6 *section 243 or 245 for any dividend for which a de-*
7 *duction is allowed under this section.*

8 “(d) *DENIAL OF FOREIGN TAX CREDIT.—*

9 “(1) *IN GENERAL.—No credit shall be allowed*
10 *under section 901 for any taxes paid or accrued (or*
11 *treated as paid or accrued) with respect to the deduct-*
12 *ible portion of any dividend or of any amount de-*
13 *scribed in subsection (a)(2). No deduction shall be al-*
14 *lowed under this chapter for any tax for which credit*
15 *is not allowable by reason of the preceding sentence.*

16 “(2) *DEDUCTIBLE PORTION.—For purposes of*
17 *paragraph (1), unless the taxpayer otherwise specifies,*
18 *the deductible portion of any dividend is the amount*
19 *which bears the same ratio to the amount of such div-*
20 *idend as the amount allowed as a deduction under*
21 *subsection (a) for the taxable year bears to the*
22 *amount described in subsection (b)(2)(A) for such*
23 *year.*

24 “(e) *INCREASE IN TAX ON INCLUDED AMOUNTS NOT*
25 *REDUCED BY CREDITS, ETC.—*

1 “(1) *IN GENERAL.*—*Any tax under this chapter*
2 *by reason of nondeductible CFC dividends shall not be*
3 *treated as tax imposed by this chapter for purposes*
4 *of determining—*

5 “(A) *the amount of any credit allowable*
6 *under this chapter, or*

7 “(B) *the amount of the tax imposed by sec-*
8 *tion 55.*

9 *Subparagraph (A) shall not apply to the credit under*
10 *section 53 or to the credit under section 27(a) with*
11 *respect to taxes attributable to such dividends.*

12 “(2) *INCLUSIONS MAY NOT BE OFFSET BY NET*
13 *OPERATING LOSSES.*—

14 “(A) *IN GENERAL.*—*The taxable income of*
15 *any United States shareholder for any taxable*
16 *year shall in no event be less than the amount*
17 *of nondeductible CFC dividends received during*
18 *such year.*

19 “(B) *COORDINATION WITH SECTION 172.*—
20 *The nondeductible CFC dividends for any tax-*
21 *able year shall not be taken into account—*

22 “(i) *in determining under section 172*
23 *the amount of any net operating loss for*
24 *such taxable year, and*

1 “(i) in determining taxable income for
2 such taxable year for purposes of the 2nd
3 sentence of section 172(b)(2).

4 “(3) *NONDEDUCTIBLE CFC DIVIDENDS.*—For
5 purposes of this subsection, the term ‘nondeductible
6 CFC dividends’ means the excess of the amount of
7 dividends taken into account under subsection (a)
8 over the deduction allowed under subsection (a) for
9 such dividends.

10 “(f) *ELECTION.*—This section shall apply for the tax-
11 payer’s first taxable year beginning on or after the date
12 of the enactment of this section if the taxpayer elects its
13 application for such taxable year. The taxpayer may elect
14 to apply this section to the taxpayer’s last taxable year be-
15 ginning before the date of the enactment of this section in
16 lieu of such first taxable year.”

17 “(b) *ALTERNATIVE MINIMUM TAX.*—Subparagraph (C)
18 of section 56(g)(4) is amended by adding at the end the
19 following new clause:

20 “(v) *SPECIAL RULE FOR CERTAIN DIS-*
21 *TRIBUTIONS FROM CONTROLLED FOREIGN*
22 *CORPORATIONS.*—Clause (i) shall not apply
23 to any deduction allowable under section
24 965.”.

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

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

4 (d) *EFFECTIVE DATE.*—*The amendments made by this*
 5 *section shall apply to taxable years ending on or after the*
 6 *date of the enactment of this Act.*

7 ***Subtitle H—Other Incentive***
 8 ***Provisions***

9 ***SEC. 281. SPECIAL RULES FOR LIVESTOCK SOLD ON AC-***
 10 ***COUNT OF WEATHER-RELATED CONDITIONS.***

11 (a) *RULES FOR REPLACEMENT OF INVOLUNTARILY*
 12 *CONVERTED LIVESTOCK.*—*Subsection (e) of section 1033*
 13 *(relating to involuntary conversions) is amended—*

14 (1) *by striking “CONDITIONS.—For purposes”*
 15 *and inserting “CONDITIONS.—*

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

17 (2) *by adding at the end the following new para-*
 18 *graph:*

19 *“(2) EXTENSION OF REPLACEMENT PERIOD.—*

20 *“(A) IN GENERAL.—In the case of drought,*
 21 *flood, or other weather-related conditions de-*
 22 *scribed in paragraph (1) which result in the*
 23 *area being designated as eligible for assistance*
 24 *by the Federal Government, subsection (a)(2)(B)*

1 *shall be applied with respect to any converted*
2 *property by substituting ‘4 years’ for ‘2 years’.*

3 “(B) *FURTHER EXTENSION BY SEC-*
4 *RETARY.—The Secretary may extend on a re-*
5 *gional basis the period for replacement under*
6 *this section (after the application of subpara-*
7 *graph (A)) for such additional time as the Sec-*
8 *retary determines appropriate if the weather-re-*
9 *lated conditions which resulted in such applica-*
10 *tion continue for more than 3 years.”.*

11 (b) *INCOME INCLUSION RULES.—Subsection (e) of sec-*
12 *tion 451 (relating to special rule for proceeds from livestock*
13 *sold on account of drought, flood, or other weather-related*
14 *conditions) is amended by adding at the end the following*
15 *new paragraph:*

16 “(3) *SPECIAL ELECTION RULES.—If section*
17 *1033(e)(2) applies to a sale or exchange of livestock*
18 *described in paragraph (1), the election under para-*
19 *graph (1) shall be deemed valid if made during the*
20 *replacement period described in such section.”.*

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

1 **SEC. 282. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**
2 **TIVES WITHOUT REDUCING PATRONAGE DIVI-**
3 **DENDS.**

4 (a) *IN GENERAL.*—Subsection (a) of section 1388 (re-
5 lating to patronage dividend defined) is amended by adding
6 at the end the following: “For purposes of paragraph (3),
7 net earnings shall not be reduced by amounts paid during
8 the year as dividends on capital stock or other proprietary
9 capital interests of the organization to the extent that the
10 articles of incorporation or bylaws of such organization or
11 other contract with patrons provide that such dividends are
12 in addition to amounts otherwise payable to patrons which
13 are derived from business done with or for patrons during
14 the taxable year.”.

15 (b) *EFFECTIVE DATE.*—The amendment made by this
16 section shall apply to distributions in taxable years begin-
17 ning after the date of the enactment of this Act.

18 **SEC. 283. CAPITAL GAIN TREATMENT UNDER SECTION**
19 **631(b) TO APPLY TO OUTRIGHT SALES BY**
20 **LANDOWNERS.**

21 (a) *IN GENERAL.*—The first sentence of section 631(b)
22 (relating to disposal of timber with a retained economic in-
23 terest) is amended by striking “retains an economic interest
24 in such timber” and inserting “either retains an economic
25 interest in such timber or makes an outright sale of such
26 timber”.

1 (b) *CONFORMING AMENDMENTS.*—

2 (1) *The third sentence of section 631(b) is*
3 *amended by striking “The date of disposal” and in-*
4 *serting “In the case of disposal of timber with a re-*
5 *tained economic interest, the date of disposal”.*

6 (2) *The heading for section 631(b) is amended by*
7 *striking “WITH A RETAINED ECONOMIC INTEREST”.*

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

10 **SEC. 284. DISTRIBUTIONS FROM PUBLICLY TRADED PART-**
11 **NERSHIPS TREATED AS QUALIFYING INCOME**
12 **OF REGULATED INVESTMENT COMPANIES.**

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

16 “(2) *at least 90 percent of its gross income is de-*
17 *rived from—*

18 “(A) *dividends, interest, payments with re-*
19 *spect to securities loans (as defined in section*
20 *512(a)(5)), and gains from the sale or other dis-*
21 *position of stock or securities (as defined in sec-*
22 *tion 2(a)(36) of the Investment Company Act of*
23 *1940, as amended) or foreign currencies, or other*
24 *income (including but not limited to gains from*
25 *options, futures or forward contracts) derived*

1 *with respect to its business of investing in such*
2 *stock, securities, or currencies, and*

3 *“(B) distributions or other income derived*
4 *from an interest in a qualified publicly traded*
5 *partnership (as defined in subsection (h)); and”.*

6 ***(b) SOURCE FLOW-THROUGH RULE NOT TO APPLY.—***
7 *The last sentence of section 851(b) is amended by inserting*
8 *“(other than a qualified publicly traded partnership as de-*
9 *finied in subsection (h))” after “derived from a partner-*
10 *ship”.*

11 ***(c) LIMITATION ON OWNERSHIP.—****Subsection (c) of*
12 *section 851 is amended by redesignating paragraph (5) as*
13 *paragraph (6) and inserting after paragraph (4) the fol-*
14 *lowing new paragraph:*

15 *“(5) The term ‘outstanding voting securities of*
16 *such issuer’ shall include the equity securities of a*
17 *qualified publicly traded partnership (as defined in*
18 *subsection (h)).”.*

19 ***(d) DEFINITION OF QUALIFIED PUBLICLY TRADED***
20 ***PARTNERSHIP.—****Section 851 is amended by adding at the*
21 *end the following new subsection:*

22 ***“(h) QUALIFIED PUBLICLY TRADED PARTNERSHIP.—***
23 *For purposes of this section, the term ‘qualified publicly*
24 *traded partnership’ means a publicly traded partnership*
25 *described in section 7704(b) other than a partnership which*

1 *would satisfy the gross income requirements of section*
2 *7704(c)(2) if qualifying income included only income de-*
3 *scribed in subsection (b)(2)(A).”.*

4 *(e) DEFINITION OF QUALIFYING INCOME.—Section*
5 *7704(d)(4) is amended by striking “section 851(b)(2)” and*
6 *inserting “section 851(b)(2)(A)”.*

7 *(f) LIMITATION ON COMPOSITION OF ASSETS.—Sub-*
8 *paragraph (B) of section 851(b)(3) is amended to read as*
9 *follows:*

10 *“(B) not more than 25 percent of the value*
11 *of its total assets is invested in—*

12 *“(i) the securities (other than Govern-*
13 *ment securities or the securities of other reg-*
14 *ulated investment companies) of any one*
15 *issuer,*

16 *“(ii) the securities (other than the secu-*
17 *rities of other regulated investment compa-*
18 *nies) of two or more issuers which the tax-*
19 *payer controls and which are determined,*
20 *under regulations prescribed by the Sec-*
21 *retary, to be engaged in the same or similar*
22 *trades or businesses or related trades or*
23 *businesses, or*

1 “(iii) the securities of one or more
2 qualified publicly traded partnerships (as
3 defined in subsection (h)).”.

4 (g) *APPLICATION OF SPECIAL PASSIVE ACTIVITY RULE*
5 *TO REGULATED INVESTMENT COMPANIES.*—Subsection (k)
6 of section 469 (relating to separate application of section
7 in case of publicly traded partnerships) is amended by add-
8 ing at the end the following new paragraph:

9 “(4) *APPLICATION TO REGULATED INVESTMENT*
10 *COMPANIES.*—For purposes of this section, a regulated
11 investment company (as defined in section 851) hold-
12 ing an interest in a qualified publicly traded partner-
13 ship (as defined in section 851(h)) shall be treated as
14 a taxpayer described in subsection (a)(2) with respect
15 to items attributable to such interest.”.

16 (h) *EFFECTIVE DATE.*—The amendments made by this
17 section shall apply to taxable years beginning after the date
18 of the enactment of this Act.

19 **SEC. 285. IMPROVEMENTS RELATED TO REAL ESTATE IN-**
20 **VESTMENT TRUSTS.**

21 (a) *EXPANSION OF STRAIGHT DEBT SAFE HARBOR.*—
22 Section 856 (defining real estate investment trust) is
23 amended—

24 (1) in subsection (c) by striking paragraph (7),
25 and

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

3 “(m) *SAFE HARBOR IN APPLYING SUBSECTION*
4 *(c)(4).—*

5 “(1) *IN GENERAL.—In applying subclause (III)*
6 *of subsection (c)(4)(B)(iii), except as otherwise deter-*
7 *mined by the Secretary in regulations, the following*
8 *shall not be considered securities held by the trust:*

9 “(A) *Straight debt securities of an issuer*
10 *which meet the requirements of paragraph (2).*

11 “(B) *Any loan to an individual or an es-*
12 *tate.*

13 “(C) *Any section 467 rental agreement (as*
14 *defined in section 467(d)), other than with a per-*
15 *son described in subsection (d)(2)(B).*

16 “(D) *Any obligation to pay rents from real*
17 *property (as defined in subsection (d)(1)).*

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

1 *subparagraph or payments on any obligation*
2 *issued by such an entity.*

3 “(F) *Any security issued by a real estate*
4 *investment trust.*

5 “(G) *Any other arrangement as determined*
6 *by the Secretary.*

7 “(2) *SPECIAL RULES RELATING TO STRAIGHT*
8 *DEBT SECURITIES.—*

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

14 “(B) *SPECIAL RULES RELATING TO CERTAIN*
15 *CONTINGENCIES.—For purposes of subparagraph*
16 *(A), any interest or principal shall not be treat-*
17 *ed as failing to satisfy section 1361(c)(5)(B)(i)*
18 *solely by reason of the fact that—*

19 “(i) *the time of payment of such inter-*
20 *est or principal is subject to a contingency,*
21 *but only if—*

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

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

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

11 *“(ii) the time or amount of payment is*
12 *subject to a contingency upon a default or*
13 *the exercise of a prepayment right by the*
14 *issuer of the debt, but only if such contin-*
15 *gency is consistent with customary commer-*
16 *cial practice.*

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

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

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

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

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

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

16 “(ii) the trust shall be deemed to own
17 its proportionate share of each of the assets
18 of the partnership.

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

24 “(i) the trust’s interest in the partner-
25 ship assets shall be the trust’s proportionate

1 *interest in any securities issued by the part-*
2 *nership (determined without regard to sub-*
3 *paragraph (A)(i) and paragraph (4), but*
4 *not including securities described in para-*
5 *graph (1)), and*

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

9 “(4) *CERTAIN PARTNERSHIP DEBT INSTRUMENTS*
10 *NOT TREATED AS A SECURITY.—For purposes of ap-*
11 *plying subclause (III) of subsection (c)(4)(B)(iii)—*

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

17 “(B) *any debt instrument issued by a part-*
18 *nership and not described in paragraph (1) shall*
19 *not be considered a security if at least 75 percent*
20 *of the partnership’s gross income (excluding*
21 *gross income from prohibited transactions) is de-*
22 *rived from sources referred to in subsection*
23 *(c)(3).*

24 “(5) *SECRETARIAL GUIDANCE.—The Secretary is*
25 *authorized to provide guidance (including through the*

1 *issuance of a written determination, as defined in sec-*
2 *tion 6110(b)) that an arrangement shall not be con-*
3 *sidered a security held by the trust for purposes of ap-*
4 *plying subclause (III) of subsection (c)(4)(B)(iii) not-*
5 *withstanding that such arrangement otherwise could*
6 *be considered a security under subparagraph (F) of*
7 *subsection (c)(5).”.*

8 *(b) CLARIFICATION OF APPLICATION OF LIMITED*
9 *RENTAL EXCEPTION.—Subparagraph (A) of section*
10 *856(d)(8) (relating to special rules for taxable REIT sub-*
11 *sidaries) is amended to read as follows:*

12 *“(A) LIMITED RENTAL EXCEPTION.—*

13 *“(i) IN GENERAL.—The requirements*
14 *of this subparagraph are met with respect*
15 *to any property if at least 90 percent of the*
16 *leased space of the property is rented to per-*
17 *sons other than taxable REIT subsidiaries*
18 *of such trust and other than persons de-*
19 *scribed in paragraph (2)(B).*

20 *“(ii) RENTS MUST BE SUBSTANTIALLY*
21 *COMPARABLE.—Clause (i) shall apply only*
22 *to the extent that the amounts paid to the*
23 *trust as rents from real property (as defined*
24 *in paragraph (1) without regard to para-*
25 *graph (2)(B)) from such property are sub-*

1 *stantially comparable to such rents paid by*
2 *the other tenants of the trust’s property for*
3 *comparable space.*

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

11 “(I) *at the time such lease is en-*
12 *tered into,*

13 “(II) *at the time of each extension*
14 *of the lease, including a failure to exer-*
15 *cise a right to terminate, and*

16 “(III) *at the time of any modi-*
17 *fication of the lease between the trust*
18 *and the taxable REIT subsidiary if the*
19 *rent under such lease is effectively in-*
20 *creased pursuant to such modification.*

21 *With respect to subclause (III), if the tax-*
22 *able REIT subsidiary of the trust is a con-*
23 *trolled taxable REIT subsidiary of the trust,*
24 *the term ‘rents from real property’ shall not*
25 *in any event include rent under such lease*

1 to the extent of the increase in such rent on
2 account of such modification.

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

10 “(I) stock possessing more than 50
11 percent of the total voting power of the
12 outstanding stock of such subsidiary,
13 or

14 “(II) stock having a value of more
15 than 50 percent of the total value of the
16 outstanding stock of such subsidiary.

17 “(v) *CONTINUING QUALIFICATION*
18 *BASED ON THIRD PARTY ACTIONS.*—If the
19 requirements of clause (i) are met at a time
20 referred to in clause (iii), such requirements
21 shall continue to be treated as met so long
22 as there is no increase in the space leased
23 to any taxable REIT subsidiary of such
24 trust or to any person described in para-
25 graph (2)(B).

1 “(vi) *CORRECTION PERIOD.*—If there is
2 an increase referred to in clause (v) during
3 any calendar quarter with respect to any
4 property, the requirements of clause (iii)
5 shall be treated as met during the quarter
6 and the succeeding quarter if such require-
7 ments are met at the close of such suc-
8 ceeding quarter.”.

9 (c) *DELETION OF CUSTOMARY SERVICES EXCEP-*
10 *TION.*—Subparagraph (B) of section 857(b)(7) (relating to
11 *redetermined rents*) is amended by striking clause (ii) and
12 *by redesignating clauses (iii), (iv), (v), (vi), and (vii) as*
13 *clauses (ii), (iii), (iv), (v), and (vi), respectively.*

14 (d) *CONFORMITY WITH GENERAL HEDGING DEFINI-*
15 *TION.*—Subparagraph (G) of section 856(c)(5) (relating to
16 *treatment of certain hedging instruments*) is amended to
17 *read as follows:*

18 “(G) *TREATMENT OF CERTAIN HEDGING IN-*
19 *STRUMENTS.*—Except to the extent provided by
20 *regulations, any income of a real estate invest-*
21 *ment trust from a hedging transaction (as de-*
22 *defined in clause (ii) or (iii) of section*
23 *1221(b)(2)(A)) which is clearly identified pursu-*
24 *ant to section 1221(a)(7), including gain from*
25 *the sale or disposition of such a transaction,*

1 *shall not constitute gross income under para-*
2 *graph (2) to the extent that the transaction*
3 *hedges any indebtedness incurred or to be in-*
4 *curring by the trust to acquire or carry real estate*
5 *assets.”.*

6 *(e) CONFORMITY WITH REGULATED INVESTMENT*
7 *COMPANY RULES.—Clause (i) of section 857(b)(5)(A) (re-*
8 *lating to imposition of tax in case of failure to meet certain*
9 *requirements) is amended by striking “90 percent” and in-*
10 *serting “95 percent”.*

11 *(f) SAVINGS PROVISIONS.—*

12 *(1) RULES OF APPLICATION FOR FAILURE TO*
13 *SATISFY SECTION 856(c)(4).—Section 856(c) (relating*
14 *to definition of real estate investment trust) is amend-*
15 *ed by inserting after paragraph (6) the following new*
16 *paragraph:*

17 *“(7) RULES OF APPLICATION FOR FAILURE TO*
18 *SATISFY PARAGRAPH (4).—*

19 *“(A) DE MINIMIS FAILURE.—A corporation,*
20 *trust, or association that fails to meet the re-*
21 *quirements of paragraph (4)(B)(iii) for a par-*
22 *ticular quarter shall nevertheless be considered to*
23 *have satisfied the requirements of such para-*
24 *graph for such quarter if—*

1 “(i) such failure is due to the owner-
2 ship of assets the total value of which does
3 not exceed the lesser of—

4 “(I) 1 percent of the total value of
5 the trust’s assets at the end of the quar-
6 ter for which such measurement is
7 done, and

8 “(II) \$10,000,000, and

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

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

23 “(B) *FAILURES EXCEEDING DE MINIMIS*
24 *AMOUNT.*—A corporation, trust, or association
25 that fails to meet the requirements of paragraph

1 (4) for a particular quarter shall nevertheless be
2 considered to have satisfied the requirements of
3 such paragraph for such quarter if—

4 “(i) such failure involves the ownership
5 of assets the total value of which exceeds the
6 de minimis standard described in subpara-
7 graph (A)(i) at the end of the quarter for
8 which such measurement is done,

9 “(ii) following the corporation, trust,
10 or association’s identification of the failure
11 to satisfy the requirements of such para-
12 graph for a particular quarter, a descrip-
13 tion of each asset that causes the corpora-
14 tion, trust, or association to fail to satisfy
15 the requirements of such paragraph at the
16 close of such quarter of any taxable year is
17 set forth in a schedule for such quarter filed
18 in accordance with regulations prescribed
19 by the Secretary,

20 “(iii) the failure to meet the require-
21 ments of such paragraph for a particular
22 quarter is due to reasonable cause and not
23 due to willful neglect,

1 “(iv) the corporation, trust, or associa-
2 tion pays a tax computed under subpara-
3 graph (C), and

4 “(v)(I) the corporation, trust, or asso-
5 ciation disposes of the assets set forth on the
6 schedule specified in clause (ii) within 6
7 months after the last day of the quarter in
8 which the corporation, trust or association’s
9 identification of the failure to satisfy the re-
10 quirements of such paragraph occurred or
11 such other time period prescribed by the
12 Secretary and in the manner prescribed by
13 the Secretary, or

14 “(II) the requirements of such para-
15 graph are otherwise met within the time pe-
16 riod specified in subclause (I).

17 “(C) TAX.—For purposes of subparagraph
18 (B)(iv)—

19 “(i) TAX IMPOSED.—If a corporation,
20 trust, or association elects the application of
21 this subparagraph, there is hereby imposed
22 a tax on the failure described in subpara-
23 graph (B) of such corporation, trust, or as-
24 sociation. Such tax shall be paid by the cor-
25 poration, trust, or association.

1 “(ii) *TAX COMPUTED.*—*The amount of*
2 *the tax imposed by clause (i) shall be the*
3 *greater of—*

4 “(I) \$50,000, or

5 “(II) *the amount determined*
6 *(pursuant to regulations promulgated*
7 *by the Secretary) by multiplying the*
8 *net income generated by the assets de-*
9 *scribed in the schedule specified in sub-*
10 *paragraph (B)(ii) for the period speci-*
11 *fied in clause (iii) by the highest rate*
12 *of tax specified in section 11.*

13 “(iii) *PERIOD.*—*For purposes of clause*
14 *(ii)(II), the period described in this clause*
15 *is the period beginning on the first date*
16 *that the failure to satisfy the requirements*
17 *of such paragraph (4) occurs as a result of*
18 *the ownership of such assets and ending on*
19 *the earlier of the date on which the trust*
20 *disposes of such assets or the end of the first*
21 *quarter when there is no longer a failure to*
22 *satisfy such paragraph (4).*

23 “(iv) *ADMINISTRATIVE PROVISIONS.*—
24 *For purposes of subtitle F, the taxes im-*
25 *posed by this subparagraph shall be treated*

1 *as excise taxes with respect to which the de-*
2 *ficiency procedures of such subtitle apply.”.*

3 (2) *MODIFICATION OF RULES OF APPLICATION*
4 *FOR FAILURE TO SATISFY SECTIONS 856(c)(2) OR*
5 *856(c)(3).—Paragraph (6) of section 856(c) (relating*
6 *to definition of real estate investment trust) is amend-*
7 *ed by striking subparagraphs (A) and (B), by redesign-*
8 *ating subparagraph (C) as subparagraph (B), and*
9 *by inserting before subparagraph (B) (as so redesign-*
10 *ated) the following new subparagraph:*

11 *“(A) following the corporation, trust, or as-*
12 *sociation’s identification of the failure to meet*
13 *the requirements of paragraph (2) or (3), or of*
14 *both such paragraphs, for any taxable year, a*
15 *description of each item of its gross income de-*
16 *scribed in such paragraphs is set forth in a*
17 *schedule for such taxable year filed in accordance*
18 *with regulations prescribed by the Secretary,*
19 *and”.*

20 (3) *REASONABLE CAUSE EXCEPTION TO LOSS OF*
21 *REIT STATUS IF FAILURE TO SATISFY REQUIRE-*
22 *MENTS.—Subsection (g) of section 856 (relating to*
23 *termination of election) is amended—*

1 (A) in paragraph (1) by inserting before the
2 period at the end of the first sentence the fol-
3 lowing: “unless paragraph (5) applies”, and

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

6 “(5) ENTITIES TO WHICH PARAGRAPH AP-
7 PLIES.—This paragraph applies to a corporation,
8 trust, or association—

9 “(A) which is not a real estate investment
10 trust to which the provisions of this part apply
11 for the taxable year due to one or more failures
12 to comply with one or more of the provisions of
13 this part (other than subsection (c)(6) or (c)(7)
14 of section 856),

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

17 “(C) if such corporation, trust, or associa-
18 tion pays (as prescribed by the Secretary in reg-
19 ulations and in the same manner as tax) a pen-
20 alty of \$50,000 for each failure to satisfy a pro-
21 vision of this part due to reasonable cause and
22 not willful neglect.”.

23 (4) DEDUCTION OF TAX PAID FROM AMOUNT RE-
24 QUIRED TO BE DISTRIBUTED.—Subparagraph (E) of
25 section 857(b)(2) is amended by striking “(7)” and

1 *inserting “(7) of this subsection, section*
2 *856(c)(7)(B)(iii), and section 856(g)(1).”.*

3 *(5) EXPANSION OF DEFICIENCY DIVIDEND PRO-*
4 *CEDURE.—Subsection (e) of section 860 is amended*
5 *by striking “or” at the end of paragraph (2), by strik-*
6 *ing the period at the end of paragraph (3) and insert-*
7 *ing “; or”, and by adding at the end the following*
8 *new paragraph:*

9 *“(4) a statement by the taxpayer attached to its*
10 *amendment or supplement to a return of tax for the*
11 *relevant tax year.”.*

12 *(g) EFFECTIVE DATES.—*

13 *(1) IN GENERAL.—Except as provided in para-*
14 *graph (2), the amendments made by this section shall*
15 *apply to taxable years beginning after December 31,*
16 *2000.*

17 *(2) SUBSECTIONS (c) THROUGH (f).—The*
18 *amendments made by subsections (c), (d), (e), and (f)*
19 *shall apply to taxable years beginning after the date*
20 *of the enactment of this Act.*

21 **SEC. 286. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**
22 **LATED INVESTMENT COMPANIES.**

23 *(a) TREATMENT OF CERTAIN DIVIDENDS.—*

24 *(1) NONRESIDENT ALIEN INDIVIDUALS.—Section*
25 *871 (relating to tax on nonresident alien individuals)*

1 *is amended by redesignating subsection (k) as sub-*
2 *section (l) and by inserting after subsection (j) the fol-*
3 *lowing new subsection:*

4 “(k) *EXEMPTION FOR CERTAIN DIVIDENDS OF REGU-*
5 *LATED INVESTMENT COMPANIES.—*

6 “(1) *INTEREST-RELATED DIVIDENDS.—*

7 “(A) *IN GENERAL.—Except as provided in*
8 *subparagraph (B), no tax shall be imposed under*
9 *paragraph (1)(A) of subsection (a) on any inter-*
10 *est-related dividend received from a regulated in-*
11 *vestment company.*

12 “(B) *EXCEPTIONS.—Subparagraph (A)*
13 *shall not apply—*

14 “(i) *to any interest-related dividend re-*
15 *ceived from a regulated investment com-*
16 *pany by a person to the extent such divi-*
17 *dend is attributable to interest (other than*
18 *interest described in subparagraph (E) (i)*
19 *or (iii)) received by such company on in-*
20 *debtedness issued by such person or by any*
21 *corporation or partnership with respect to*
22 *which such person is a 10-percent share-*
23 *holder,*

24 “(ii) *to any interest-related dividend*
25 *with respect to stock of a regulated invest-*

1 *ment company unless the person who would*
2 *otherwise be required to deduct and with-*
3 *hold tax from such dividend under chapter*
4 *3 receives a statement (which meets require-*
5 *ments similar to the requirements of sub-*
6 *section (h)(5)) that the beneficial owner of*
7 *such stock is not a United States person,*
8 *and*

9 *“(iii) to any interest-related dividend*
10 *paid to any person within a foreign coun-*
11 *try (or any interest-related dividend pay-*
12 *ment addressed to, or for the account of,*
13 *persons within such foreign country) during*
14 *any period described in subsection (h)(6)*
15 *with respect to such country.*

16 *Clause (iii) shall not apply to any dividend with*
17 *respect to any stock which was acquired on or*
18 *before the date of the publication of the Sec-*
19 *retary’s determination under subsection (h)(6).*

20 *“(C) INTEREST-RELATED DIVIDEND.—For*
21 *purposes of this paragraph, an interest-related*
22 *dividend is any dividend (or part thereof) which*
23 *is designated by the regulated investment com-*
24 *pany as an interest-related dividend in a writ-*
25 *ten notice mailed to its shareholders not later*

1 *than 60 days after the close of its taxable year.*
2 *If the aggregate amount so designated with re-*
3 *spect to a taxable year of the company (includ-*
4 *ing amounts so designated with respect to divi-*
5 *dends paid after the close of the taxable year de-*
6 *scribed in section 855) is greater than the quali-*
7 *fied net interest income of the company for such*
8 *taxable year, the portion of each distribution*
9 *which shall be an interest-related dividend shall*
10 *be only that portion of the amounts so designated*
11 *which such qualified net interest income bears to*
12 *the aggregate amount so designated.*

13 “(D) *QUALIFIED NET INTEREST INCOME.*—
14 *For purposes of subparagraph (C), the term*
15 *‘qualified net interest income’ means the quali-*
16 *fied interest income of the regulated investment*
17 *company reduced by the deductions properly al-*
18 *locable to such income.*

19 “(E) *QUALIFIED INTEREST INCOME.*—*For*
20 *purposes of subparagraph (D), the term ‘quali-*
21 *fied interest income’ means the sum of the fol-*
22 *lowing amounts derived by the regulated invest-*
23 *ment company from sources within the United*
24 *States:*

1 “(i) Any amount includible in gross
2 income as original issue discount (within
3 the meaning of section 1273) on an obliga-
4 tion payable 183 days or less from the date
5 of original issue (without regard to the pe-
6 riod held by the company).

7 “(ii) Any interest includible in gross
8 income (including amounts recognized as
9 ordinary income in respect of original issue
10 discount or market discount or acquisition
11 discount under part V of subchapter P and
12 such other amounts as regulations may pro-
13 vide) on an obligation which is in registered
14 form; except that this clause shall not apply
15 to—

16 “(I) any interest on an obligation
17 issued by a corporation or partnership
18 if the regulated investment company is
19 a 10-percent shareholder in such cor-
20 poration or partnership, and

21 “(II) any interest which is treated
22 as not being portfolio interest under
23 the rules of subsection (h)(4).

24 “(iii) Any interest referred to in sub-
25 section (i)(2)(A) (without regard to the

1 *trade or business of the regulated investment*
2 *company).*

3 “(iv) *Any interest-related dividend in-*
4 *cludable in gross income with respect to*
5 *stock of another regulated investment com-*
6 *pany.*

7 “(F) *10-PERCENT SHAREHOLDER.—For*
8 *purposes of this paragraph, the term ‘10-percent*
9 *shareholder’ has the meaning given such term by*
10 *subsection (h)(3)(B).*

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

12 “(A) *IN GENERAL.—Except as provided in*
13 *subparagraph (B), no tax shall be imposed under*
14 *paragraph (1)(A) of subsection (a) on any short-*
15 *term capital gain dividend received from a regu-*
16 *lated investment company.*

17 “(B) *EXCEPTION FOR ALIENS TAXABLE*
18 *UNDER SUBSECTION (a)(2).—Subparagraph (A)*
19 *shall not apply in the case of any nonresident*
20 *alien individual subject to tax under subsection*
21 *(a)(2).*

22 “(C) *SHORT-TERM CAPITAL GAIN DIVI-*
23 *DEND.—For purposes of this paragraph, a short-*
24 *term capital gain dividend is any dividend (or*
25 *part thereof) which is designated by the regu-*

1 *lated investment company as a short-term cap-*
2 *ital gain dividend in a written notice mailed to*
3 *its shareholders not later than 60 days after the*
4 *close of its taxable year. If the aggregate amount*
5 *so designated with respect to a taxable year of*
6 *the company (including amounts so designated*
7 *with respect to dividends paid after the close of*
8 *the taxable year described in section 855) is*
9 *greater than the qualified short-term gain of the*
10 *company for such taxable year, the portion of*
11 *each distribution which shall be a short-term*
12 *capital gain dividend shall be only that portion*
13 *of the amounts so designated which such quali-*
14 *fied short-term gain bears to the aggregate*
15 *amount so designated.*

16 “(D) *QUALIFIED SHORT-TERM GAIN.*—*For*
17 *purposes of subparagraph (C), the term ‘quali-*
18 *fied short-term gain’ means the excess of the net*
19 *short-term capital gain of the regulated invest-*
20 *ment company for the taxable year over the net*
21 *long-term capital loss (if any) of such company*
22 *for such taxable year. For purposes of this sub-*
23 *paragraph—*

24 *“(i) the net short-term capital gain of*
25 *the regulated investment company shall be*

1 *computed by treating any short-term cap-*
2 *ital gain dividend includible in gross in-*
3 *come with respect to stock of another regu-*
4 *lated investment company as a short-term*
5 *capital gain, and*

6 “(ii) *the excess of the net short-term*
7 *capital gain for a taxable year over the net*
8 *long-term capital loss for a taxable year (to*
9 *which an election under section 4982(e)(4)*
10 *does not apply) shall be determined without*
11 *regard to any net capital loss or net short-*
12 *term capital loss attributable to trans-*
13 *actions after October 31 of such year, and*
14 *any such net capital loss or net short-term*
15 *capital loss shall be treated as arising on*
16 *the 1st day of the next taxable year.*

17 *To the extent provided in regulations, clause (ii)*
18 *shall apply also for purposes of computing the*
19 *taxable income of the regulated investment com-*
20 *pany.”*

21 (2) *FOREIGN CORPORATIONS.*—Section 881 (*re-*
22 *lating to tax on income of foreign corporations not*
23 *connected with United States business) is amended by*
24 *redesignating subsection (e) as subsection (f) and by*

1 *inserting after subsection (d) the following new sub-*
2 *section:*

3 “(e) *TAX NOT TO APPLY TO CERTAIN DIVIDENDS OF*
4 *REGULATED INVESTMENT COMPANIES.—*

5 “(1) *INTEREST-RELATED DIVIDENDS.—*

6 “(A) *IN GENERAL.—Except as provided in*
7 *subparagraph (B), no tax shall be imposed under*
8 *paragraph (1) of subsection (a) on any interest-*
9 *related dividend (as defined in section 871(k)(1))*
10 *received from a regulated investment company.*

11 “(B) *EXCEPTION.—Subparagraph (A) shall*
12 *not apply—*

13 “(i) *to any dividend referred to in sec-*
14 *tion 871(k)(1)(B), and*

15 “(ii) *to any interest-related dividend*
16 *received by a controlled foreign corporation*
17 *(within the meaning of section 957(a)) to*
18 *the extent such dividend is attributable to*
19 *interest received by the regulated investment*
20 *company from a person who is a related*
21 *person (within the meaning of section*
22 *864(d)(4)) with respect to such controlled*
23 *foreign corporation.*

24 “(C) *TREATMENT OF DIVIDENDS RECEIVED*
25 *BY CONTROLLED FOREIGN CORPORATIONS.—The*

1 *rules of subsection (c)(5)(A) shall apply to any*
2 *interest-related dividend received by a controlled*
3 *foreign corporation (within the meaning of sec-*
4 *tion 957(a)) to the extent such dividend is attrib-*
5 *utable to interest received by the regulated in-*
6 *vestment company which is described in clause*
7 *(ii) of section 871(k)(1)(E) (and not described in*
8 *clause (i) or (iii) of such section).*

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

10 *No tax shall be imposed under paragraph (1) of sub-*
11 *section (a) on any short-term capital gain dividend*
12 *(as defined in section 871(k)(2)) received from a regu-*
13 *lated investment company.”.*

14 (3) *WITHHOLDING TAXES.—*

15 (A) *Section 1441(c) (relating to exceptions)*
16 *is amended by adding at the end the following*
17 *new paragraph:*

18 “(12) *CERTAIN DIVIDENDS RECEIVED FROM REG-*

19 *ULATED INVESTMENT COMPANIES.—*

20 “(A) *IN GENERAL.—No tax shall be re-*
21 *quired to be deducted and withheld under sub-*
22 *section (a) from any amount exempt from the*
23 *tax imposed by section 871(a)(1)(A) by reason of*
24 *section 871(k).*

1 “(B) *SPECIAL RULE.*—For purposes of sub-
2 paragraph (A), clause (i) of section 871(k)(1)(B)
3 shall not apply to any dividend unless the regu-
4 lated investment company knows that such divi-
5 dend is a dividend referred to in such clause. A
6 similar rule shall apply with respect to the ex-
7 ception contained in section 871(k)(2)(B).”.

8 (B) Section 1442(a) (relating to with-
9 holding of tax on foreign corporations) is amend-
10 ed—

11 (i) by striking “and the reference in
12 section 1441(c)(10)” and inserting “the ref-
13 erence in section 1441(c)(10)”, and

14 (ii) by inserting before the period at
15 the end the following: “, and the references
16 in section 1441(c)(12) to sections 871(a)
17 and 871(k) shall be treated as referring to
18 sections 881(a) and 881(e) (except that for
19 purposes of applying subparagraph (A) of
20 section 1441(c)(12), as so modified, clause
21 (ii) of section 881(e)(1)(B) shall not apply
22 to any dividend unless the regulated invest-
23 ment company knows that such dividend is
24 a dividend referred to in such clause)”.

1 (b) *ESTATE TAX TREATMENT OF INTEREST IN CER-*
2 *TAIN REGULATED INVESTMENT COMPANIES.*—*Section 2105*
3 *(relating to property without the United States for estate*
4 *tax purposes) is amended by adding at the end the following*
5 *new subsection:*

6 “(d) *STOCK IN A RIC.*—

7 “(1) *IN GENERAL.*—*For purposes of this sub-*
8 *chapter, stock in a regulated investment company (as*
9 *defined in section 851) owned by a nonresident not*
10 *a citizen of the United States shall not be deemed*
11 *property within the United States in the proportion*
12 *that, at the end of the quarter of such investment*
13 *company’s taxable year immediately preceding a de-*
14 *cedent’s date of death (or at such other time as the*
15 *Secretary may designate in regulations), the assets of*
16 *the investment company that were qualifying assets*
17 *with respect to the decedent bore to the total assets of*
18 *the investment company.*

19 “(2) *QUALIFYING ASSETS.*—*For purposes of this*
20 *subsection, qualifying assets with respect to a dece-*
21 *dent are assets that, if owned directly by the decedent,*
22 *would have been—*

23 “(A) *amounts, deposits, or debt obligations*
24 *described in subsection (b) of this section,*

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

3 “(C) other property not within the United
4 States.”

5 (c) *TREATMENT OF REGULATED INVESTMENT COMPA-*
6 *NIES UNDER SECTION 897.*—

7 (1) Paragraph (1) of section 897(h) is amended
8 by striking “REIT” each place it appears and insert-
9 ing “qualified investment entity”.

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

12 “(2) *SALE OF STOCK IN DOMESTICALLY CON-*
13 *TROLLED ENTITY NOT TAXED.*—The term ‘United
14 *States real property interest*’ does not include any in-
15 *terest in a domestically controlled qualified invest-*
16 *ment entity.*

17 “(3) *DISTRIBUTIONS BY DOMESTICALLY CON-*
18 *TROLLED QUALIFIED INVESTMENT ENTITIES.*—In the
19 *case of a domestically controlled qualified investment*
20 *entity, rules similar to the rules of subsection (d)*
21 *shall apply to the foreign ownership percentage of any*
22 *gain.*”

23 (3) Subparagraphs (A) and (B) of section
24 897(h)(4) are amended to read as follows:

1 “(A) *QUALIFIED INVESTMENT ENTITY*.—The
2 term ‘qualified investment entity’ means any
3 real estate investment trust and any regulated
4 investment company.

5 “(B) *DOMESTICALLY CONTROLLED*.—The
6 term ‘domestically controlled qualified invest-
7 ment entity’ means any qualified investment en-
8 tity in which at all times during the testing pe-
9 riod less than 50 percent in value of the stock
10 was held directly or indirectly by foreign per-
11 sons.”

12 (4) Subparagraphs (C) and (D) of section
13 897(h)(4) are each amended by striking “REIT” and
14 inserting “qualified investment entity”.

15 (5) The subsection heading for subsection (h) of
16 section 897 is amended by striking “REITS” and in-
17 serting “CERTAIN INVESTMENT ENTITIES”.

18 (d) *EFFECTIVE DATE*.—

19 (1) *IN GENERAL*.—Except as otherwise provided
20 in this subsection, the amendments made by this sec-
21 tion shall apply to dividends with respect to taxable
22 years of regulated investment companies beginning
23 after December 31, 2004.

1 (2) *ESTATE TAX TREATMENT.*—*The amendment*
2 *made by subsection (b) shall apply to estates of dece-*
3 *dents dying after December 31, 2004.*

4 (3) *CERTAIN OTHER PROVISIONS.*—*The amend-*
5 *ments made by subsection (c) (other than paragraph*
6 *(1) thereof) shall take effect after December 31, 2004.*

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

8 (a) *IN GENERAL.*—*Subsection (g) of section 468B (re-*
9 *lating to clarification of taxation of certain funds) is*
10 *amended to read as follows:*

11 “(g) *CLARIFICATION OF TAXATION OF CERTAIN*
12 *FUNDS.*—

13 “(1) *IN GENERAL.*—*Except as provided in para-*
14 *graph (2), nothing in any provision of law shall be*
15 *construed as providing that an escrow account, settle-*
16 *ment fund, or similar fund is not subject to current*
17 *income tax. The Secretary shall prescribe regulations*
18 *providing for the taxation of any such account or*
19 *fund whether as a grantor trust or otherwise.*

20 “(2) *EXEMPTION FROM TAX FOR CERTAIN SET-*
21 *TLEMENT FUNDS.*—*An escrow account, settlement*
22 *fund, or similar fund shall be treated as beneficially*
23 *owned by the United States and shall be exempt from*
24 *taxation under this subtitle if—*

1 “(A) it is established pursuant to a consent
2 decree entered by a judge of a United States Dis-
3 trict Court,

4 “(B) it is created for the receipt of settle-
5 ment payments as directed by a government en-
6 tity for the sole purpose of resolving or satisfying
7 one or more claims asserting liability under the
8 Comprehensive Environmental Response, Com-
9 pensation, and Liability Act of 1980,

10 “(C) the authority and control over the ex-
11 penditure of funds therein (including the expend-
12 iture of contributions thereto and any net earn-
13 ings thereon) is with such government entity,
14 and

15 “(D) upon termination, any remaining
16 funds will be disbursed to such government enti-
17 ty for use in accordance with applicable law.

18 *For purposes of this paragraph, the term ‘government*
19 *entity’ means the United States, any State or polit-*
20 *ical subdivision thereof, the District of Columbia, any*
21 *possession of the United States, and any agency or*
22 *instrumentality of any of the foregoing.”.*

23 (b) *EFFECTIVE DATE.*—*The amendment made by this*
24 *section shall apply to taxable years beginning after Decem-*
25 *ber 31, 2004.*

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

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

6 “(C) *TREATMENT OF CERTAIN EXPENSES*
7 *INCURRED BEFORE DESIGNATION.*—For purposes
8 of subparagraph (A)(ii)(I), if a drug is des-
9 ignated under section 526 of the Federal Food,
10 Drug, and Cosmetic Act not later than the due
11 date (including extensions) for filing the return
12 of tax under this subtitle for the taxable year in
13 which the application for such designation of
14 such drug was filed, such drug shall be treated
15 as having been designated on the date that such
16 application was filed.”.

17 (b) *EFFECTIVE DATE.*—The amendment made by sub-
18 section (a) shall apply to expenses incurred after the date
19 of the enactment of this Act.

20 **SEC. 289. SIMPLIFICATION OF EXCISE TAX IMPOSED ON**
21 **BOWS AND ARROWS.**

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

24 “(1) *BOWS.*—

25 “(A) *IN GENERAL.*—There is hereby im-
26 posed on the sale by the manufacturer, producer,

1 *or importer of any bow which has a peak draw*
2 *weight of 30 pounds or more, a tax equal to 11*
3 *percent of the price for which so sold.*

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

7 “(i) *of any part or accessory suitable*
8 *for inclusion in or attachment to a bow de-*
9 *scribed in subparagraph (A), and*

10 “(ii) *of any quiver or broadhead suit-*
11 *able for use with an arrow described in*
12 *paragraph (2),*

13 *a tax equal to 11 percent of the price for which*
14 *so sold.”.*

15 “(b) *ARROWS.*—*Subsection (b) of section 4161 (relating*
16 *to bows and arrows, etc.) is amended by redesignating para-*
17 *graph (3) as paragraph (4) and inserting after paragraph*
18 *(2) the following:*

19 “(3) *ARROWS.*—

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

24 “(B) *EXCEPTION.*—*In the case of any arrow*
25 *of which the shaft or any other component has*

1 *been previously taxed under paragraph (1) or*
2 *(2)—*

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

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

8 *“(I) the amount of tax imposed by*
9 *this paragraph (determined without re-*
10 *gard to this subparagraph), over*

11 *“(II) the amount of tax paid with*
12 *respect to the tax imposed under para-*
13 *graph (1) or (2) on such shaft or com-*
14 *ponent.*

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

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

21 *(1) by inserting “(other than broadheads)” after*
22 *“point”, and*

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

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

4 **SEC. 290. REPEAL OF EXCISE TAX ON FISHING TACKLE**
5 **BOXES.**

6 (a) *REPEAL.*—*Paragraph (6) of section 4162(a) (de-*
7 *fining sport fishing equipment) is amended by striking sub-*
8 *paragraph (C) and by redesignating subparagraphs (D)*
9 *through (J) as subparagraphs (C) through (I), respectively.*

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

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

14 (a) *NOT TREATED AS SPORT FISHING EQUIPMENT.*—
15 *Subsection (a) of section 4162 (relating to sport fishing*
16 *equipment defined) is amended by inserting “and” at the*
17 *end of paragraph (8), by striking “, and” at the end of*
18 *paragraph (9) and inserting a period, and by striking*
19 *paragraph (10).*

20 (b) *CONFORMING AMENDMENT.*—*Section 4162 is*
21 *amended by striking subsection (b) and by redesignating*
22 *subsection (c) as subsection (b).*

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

1 **SEC. 292. INCOME TAX CREDIT TO DISTILLED SPIRITS**
 2 **WHOLESALEERS FOR COST OF CARRYING FED-**
 3 **ERAL EXCISE TAXES ON BOTTLED DISTILLED**
 4 **SPIRITS.**

5 (a) *IN GENERAL.*—Subpart A of part I of subchapter
 6 A of chapter 51 (relating to gallonage and occupational
 7 taxes) is amended by adding at the end the following new
 8 section:

9 **“SEC. 5011. INCOME TAX CREDIT FOR WHOLESALER’S AVER-**
 10 **AGE COST OF CARRYING EXCISE TAX.**

11 “(a) *IN GENERAL.*—For purposes of section 38, in the
 12 case of an eligible wholesaler, the amount of the distilled
 13 spirits wholesalers credit for any taxable year is the amount
 14 equal to the product of—

15 “(1) the number of cases of bottled distilled spir-
 16 its—

17 “(A) which were bottled in the United
 18 States, and

19 “(B) which are purchased by such whole-
 20 saler during the taxable year directly from the
 21 bottler of such spirits, and

22 “(2) the average tax-financing cost per case for
 23 the most recent calendar year ending before the begin-
 24 ning of such taxable year.

25 “(b) *ELIGIBLE WHOLESALER.*—For purposes of this
 26 section, the term ‘eligible wholesaler’ means any person who

1 *holds a permit under the Federal Alcohol Administration*
2 *Act as a wholesaler of distilled spirits.*

3 “(c) *AVERAGE TAX-FINANCING COST.*—

4 “(1) *IN GENERAL.*—*For purposes of this section,*
5 *the average tax-financing cost per case for any cal-*
6 *endar year is the amount of interest which would ac-*
7 *cruce at the deemed financing rate during a 60-day*
8 *period on an amount equal to the deemed Federal ex-*
9 *cise per case.*

10 “(2) *DEEMED FINANCING RATE.*—*For purposes*
11 *of paragraph (1), the deemed financing rate for any*
12 *calendar year is the average of the corporate overpay-*
13 *ment rates under paragraph (1) of section 6621(a)*
14 *(determined without regard to the last sentence of*
15 *such paragraph) for calendar quarters of such year.*

16 “(3) *DEEMED FEDERAL EXCISE TAX BASED ON*
17 *CASE.*—*For purposes of paragraph (1), the deemed*
18 *Federal excise tax per case of 12 80-proof 750ml bot-*
19 *tles is \$22.83.*

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

24 (b) *CONFORMING AMENDMENTS.*—

1 (1) *Subsection (b) of section 38 is amended by*
2 *striking “plus” at the end of paragraph (14), by*
3 *striking the period at the end of paragraph (15) and*
4 *inserting “, plus”, and by adding at the end the fol-*
5 *lowing new paragraph:*

6 “(16) *in the case of an eligible wholesaler (as de-*
7 *finied in section 5011(b)), the distilled spirits whole-*
8 *salers credit determined under section 5011(a).”*

9 (2) *Subsection (d) of section 39 (relating to*
10 *carryback and carryforward of unused credits) is*
11 *amended by adding at the end the following new*
12 *paragraph:*

13 “(11) *NO CARRYBACK OF SECTION 5011 CREDIT*
14 *BEFORE JANUARY 1, 2005.—No portion of the unused*
15 *business credit for any taxable year which is attrib-*
16 *utable to the credit determined under section 5011(a)*
17 *may be carried back to a taxable year beginning be-*
18 *fore January 1, 2005.”*

19 (3) *The table of sections for subpart A of part I*
20 *of subchapter A of chapter 51 is amended by adding*
21 *at the end the following new item:*

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

22 (c) *EFFECTIVE DATE.—The amendments made by this*
23 *section shall apply to taxable years beginning after Decem-*
24 *ber 31, 2004.*

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

3 (a) *IN GENERAL.*—Subpart G of part II of subchapter
4 A of chapter 51 is amended by redesignating section 5148
5 as section 5149 and by inserting after section 5147 the fol-
6 lowing new section:

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

8 “(a) *IN GENERAL.*—Notwithstanding sections 5081,
9 5091, 5111, 5121, and 5131, the rate of tax imposed under
10 such sections for the suspension period shall be zero. During
11 such period, persons engaged in or carrying on a trade or
12 business covered by such sections shall register under section
13 5141 and shall comply with the recordkeeping requirements
14 under this part.

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

18 (b) *CONFORMING AMENDMENT.*—Section 5117 is
19 amended by adding at the end the following new subsection:

20 “(d) *SPECIAL RULE DURING SUSPENSION PERIOD.*—
21 Except as provided in subsection (b) or by the Secretary,
22 during the suspension period (as defined in section 5148)
23 it shall be unlawful for any dealer to purchase distilled
24 spirits for resale from any person other than a wholesale
25 dealer in liquors who is required to keep records under sec-
26 tion 5114.”.

1 (c) *CLERICAL AMENDMENT.*—*The table of sections for*
 2 *subpart G of part II of subchapter A of chapter 51 is*
 3 *amended by striking the last item and inserting the fol-*
 4 *lowing new items:*

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

5 (d) *EFFECTIVE DATE.*—*The amendments made by this*
 6 *section shall take effect on the date of the enactment of this*
 7 *Act.*

8 **SEC. 294. MODIFICATION OF UNRELATED BUSINESS IN-**
 9 **COME LIMITATION ON INVESTMENT IN CER-**
 10 **TAIN SMALL BUSINESS INVESTMENT COMPA-**
 11 **NIES.**

12 (a) *IN GENERAL.*—*Paragraph (6) of section 514(c) (re-*
 13 *lating to acquisition indebtedness) is amended to read as*
 14 *follows:*

15 “(6) *CERTAIN FEDERAL FINANCING.*—

16 “(A) *IN GENERAL.*—*For purposes of this*
 17 *section, the term ‘acquisition indebtedness’ does*
 18 *not include—*

19 “(i) *an obligation, to the extent that it*
 20 *is insured by the Federal Housing Adminis-*
 21 *tration, to finance the purchase, rehabilita-*
 22 *tion, or construction of housing for low and*
 23 *moderate income persons, or*

1 “(ii) indebtedness incurred by a small
2 business investment company licensed under
3 the Small Business Investment Act of 1958
4 and formed after the date of the enactment
5 of the American Jobs Creation Act of 2004,
6 if such indebtedness is evidenced by a debenture—
7

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

10 “(II) held or guaranteed by the
11 Small Business Administration.

12 “(B) LIMITATION.—Subparagraph (A)(ii)
13 shall not apply with respect to any small busi-
14 ness investment company during any period
15 that—

16 “(i) any organization which is exempt
17 from tax under this title (other than a gov-
18 ernmental unit) owns more than 25 percent
19 of the capital or profits interest in such
20 company, or

21 “(ii) organizations which are exempt
22 from tax under this title (including govern-
23 mental units other than any agency or in-
24 strumentality of the United States) own, in
25 the aggregate, 50 percent or more of the

1 *capital or profits interest in such com-*
 2 *pany.”.*

3 **(b) EFFECTIVE DATE.**—*The amendment made by this*
 4 *section shall apply to indebtedness incurred by small busi-*
 5 *ness investment companies formed after the date of the en-*
 6 *actment of the American Jobs Creation Act of 2004.*

7 **SEC. 295. ELECTION TO DETERMINE TAXABLE INCOME**
 8 **FROM CERTAIN INTERNATIONAL SHIPPING**
 9 **ACTIVITIES USING PER TON RATE.**

10 **(a) IN GENERAL.**—*Chapter 1 of the Internal Revenue*
 11 *Code of 1986 is amended by inserting after subchapter Q*
 12 *the following new subchapter:*

13 **“Subchapter R—Election To Determine Tax-**
 14 **able Income From Certain International**
 15 **Shipping Activities Using per Ton Rate**

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

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

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

“Sec. 1355. Definitions and special rules.

“Sec. 1356. Qualifying shipping activities.

“Sec. 1357. Items not subject to regular tax; depreciation; interest.

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

“Sec. 1359. Disposition of qualifying shipping assets.

16 **“SEC. 1352. ALTERNATIVE TAX ON QUALIFYING SHIPPING**
 17 **ACTIVITIES.**

18 **“(a) IN GENERAL.**—*The taxable income of an electing*
 19 *corporation from qualifying shipping activities shall be the*
 20 *amount determined under this subchapter, and the cor-*
 21 *porate percentages of the items of income, gain, loss, deduc-*

1 *tion, or credit of an electing corporation and of other mem-*
2 *bers of the electing group of such corporation which would*
3 *otherwise be taken into account by reason of its qualifying*
4 *shipping activities shall be taken into account to the extent*
5 *provided in section 1357.*

6 “(b) *ALTERNATIVE TAX.*—*The taxable income of an*
7 *electing corporation from qualifying shipping activities, if*
8 *otherwise taxable under section 11, 55, 882, 887, or 1201(a)*
9 *shall be subject to tax only under this section at the max-*
10 *imum rate specified in section 11(b). The income of a for-*
11 *ign corporation shall not be subject to tax under this sub-*
12 *chapter to the extent its income is excludible from gross in-*
13 *come under section 883(a)(1).*

14 **“SEC. 1353. TAXABLE INCOME FROM QUALIFYING SHIPPING**
15 **ACTIVITIES.**

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

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

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

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

7 “(c) *DAILY NOTIONAL TAXABLE INCOME.*—For pur-
8 poses of subsection (b), the daily notional taxable income
9 from the operation of a qualifying vessel is 40 cents for each
10 100 tons of the net tonnage of the vessel, up to 25,000 net
11 tons, and 20 cents for each 100 tons of the net tonnage of
12 the vessel, in excess of 25,000 net tons.

13 “(d) *MULTIPLE OPERATORS OF VESSEL.*—If 2 or more
14 persons have a joint interest in a qualifying vessel and are
15 treated as operators of that vessel, the taxable income from
16 the operation of such vessel for that time (as determined
17 under this section) shall be allocated among such persons
18 on the basis of their ownership and charter interests in such
19 vessel or on such other basis as the Secretary may prescribe
20 by regulations.

21 “(e) *NONCORPORATE PERCENTAGE.*—Notwithstanding
22 any contrary provision of this subchapter, the noncorporate
23 percentage of any item of income, gain, loss, deduction, or
24 credit of any member of an electing group shall be taken

1 *into account for all purposes of this subtitle as if this sub-*
2 *chapter were not in effect.*

3 **“SEC. 1354. QUALIFYING SHIPPING TAX ELECTION; REVOCATION;**
4 **TERMINATION; TERMINATION.**

5 *“(a) IN GENERAL.—Except as provided in subsections*
6 *(b) and (f), a qualifying shipping tax election may be made*
7 *in respect of any qualifying entity.*

8 *“(b) CONDITION OF ELECTION.—An election may be*
9 *made by a member of a controlled group under this sub-*
10 *section for any taxable year only if all qualifying entities*
11 *that are members of the controlled group join in the election.*

12 *“(c) WHEN MADE.—An election under subsection (a)*
13 *may be made by a qualifying entity in such form as pre-*
14 *scribed by the Secretary. Such election shall be filed with*
15 *the qualifying entity’s return for the first taxable year to*
16 *which the election shall apply, by the due date for such re-*
17 *turn (including any applicable extensions).*

18 *“(d) YEARS FOR WHICH EFFECTIVE.—An election*
19 *under subsection (a) shall be effective for the taxable year*
20 *of the qualifying entity for which it is made and for all*
21 *succeeding taxable years of the entity, until such election*
22 *is terminated under subsection (e).*

23 *“(e) TERMINATION.—*

24 *“(1) BY REVOCATION.—*

1 “(A) *IN GENERAL.*—*An election under sub-*
2 *section (a) may be terminated by revocation.*

3 “(B) *WHEN EFFECTIVE.*—*Except as pro-*
4 *vided in subparagraph (C)—*

5 “(i) *a revocation made during the tax-*
6 *able year and on or before the 15th day of*
7 *the 3rd month thereof shall be effective on*
8 *the 1st day of such taxable year, and*

9 “(ii) *a revocation made during the tax-*
10 *able year but after such 15th day shall be*
11 *effective on the 1st day of the following tax-*
12 *able year.*

13 “(C) *REVOCATION MAY SPECIFY PROSPEC-*
14 *TIVE DATE.*—*If the revocation specifies a date for*
15 *revocation which is on or after the day on which*
16 *the revocation is made, the revocation shall be ef-*
17 *fective on and after the date so specified.*

18 “(2) *BY ENTITY CEASING TO BE QUALIFYING EN-*
19 *TITY.*—

20 “(A) *IN GENERAL.*—*An election under sub-*
21 *section (a) shall be terminated whenever (at any*
22 *time on or after the 1st day of the 1st taxable*
23 *year for which the entity is an electing entity)*
24 *such entity ceases to be a qualifying entity.*

1 “(B) *WHEN EFFECTIVE.*—Any termination
2 under this paragraph shall be effective on and
3 after the date of cessation.

4 “(f) *ELECTION AFTER TERMINATION.*—If a qualifying
5 entity has made an election under subsection (a) and if such
6 election has been terminated under subsection (e), such enti-
7 ty (and any successor entity) shall not be eligible to make
8 an election under subsection (a) for any taxable year before
9 its 5th taxable year which begins after the 1st taxable year
10 for which such termination is effective, unless the Secretary
11 consents to such election.

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

13 “(a) *DEFINITIONS.*—For purposes of this subchapter:

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

19 “(2) The term ‘corporate income percentage’
20 means the least aggregate share, expressed as a per-
21 centage, of any item of income or gain of an electing
22 corporation or electing group of which such corpora-
23 tion is a member from qualifying shipping activities
24 that would, but for an election in effect under this
25 subchapter, be required to be reported on the Federal

1 *income tax return of an electing corporation during*
2 *any taxable period. In the case of an electing group*
3 *which includes two or more electing corporations, the*
4 *corporate income percentage of each such corporation*
5 *shall be determined on the basis of such corporations'*
6 *direct and indirect ownership and charter interests in*
7 *qualifying vessels of the electing group or on such*
8 *other basis as the Secretary may prescribe by regula-*
9 *tions.*

10 *“(3) The term ‘corporate loss percentage’ means*
11 *the greatest aggregate share, expressed as a percent-*
12 *age, of any item of loss, deduction or credit of an*
13 *electing corporation or electing group of which such*
14 *corporation is a member from qualifying shipping ac-*
15 *tivities that would, but for an election in effect under*
16 *this subchapter, be required to be reported on the Fed-*
17 *eral income tax return of an electing corporation dur-*
18 *ing any taxable period.*

19 *“(4) The term ‘corporate percentages’ means the*
20 *corporate income percentage and the corporate loss*
21 *percentage.*

22 *“(5) The term ‘electing corporation’ means any*
23 *C corporation that is an electing entity or that would,*
24 *but for an election in effect under this subchapter, be*
25 *required to report any item of income, gain, loss, de-*

1 *duction, or credit of an electing entity on its Federal*
2 *income tax return.*

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

6 “(7) *The term ‘electing group’ means a controlled*
7 *group of which one or more members is an electing*
8 *entity.*

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

13 “(9) *The term ‘qualifying entity’ means a trust*
14 *or business entity that—*

15 “(A) *operates one or more qualifying ves-*
16 *sels, and*

17 “(B) *meets the shipping activity require-*
18 *ment in subsection (c).*

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

23 “(11) *The term ‘qualifying vessel’ means a self-*
24 *propelled (or a combination self-propelled and non-*
25 *self-propelled) United States flag vessel of not less*

1 *than 10,000 deadweight tons used in the United*
2 *States foreign trade.*

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

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

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

13 “(b) *OPERATING A VESSEL.—For purposes of this sub-*
14 *chapter:*

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

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

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

24 “(B) *the vessel is bareboat chartered to a*
25 *member of a controlled group which includes*

1 *such entity or to an unrelated third party that*
2 *sub-bareboats or time charters the vessel to a*
3 *member of such controlled group (including the*
4 *owner).*

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

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

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

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

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

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

8 *“(d) EFFECT OF TEMPORARILY CEASING TO OPERATE*
9 *A QUALIFYING VESSEL.—*

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

15 *“(A) that it has temporarily ceased to oper-*
16 *ate the qualifying vessel, and*

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

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

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

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

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

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

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

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

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

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

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

3 “(A) *the electing entity abandoning its in-*
4 *tention to resume operations of the vessel in the*
5 *United States foreign trade, or*

6 “(B) *the electing entity resuming operation*
7 *of the vessel in the United States foreign trade.*

8 “(f) *EFFECT OF CHANGE IN USE.—*

9 “(1) *Except as provided in subsection (e), a ves-*
10 *sel that is used other than for operations in the*
11 *United States foreign trade on other than a tem-*
12 *porary basis ceases to be a qualifying vessel when*
13 *such use begins.*

14 “(2) *For purposes of this subsection, a change in*
15 *use of a vessel, other than a commencement of oper-*
16 *ation in the United States domestic trade, is taken to*
17 *be permanent unless there are circumstances indi-*
18 *cating that it is temporary.*

19 “(g) *REGULATIONS.—The Secretary shall prescribe*
20 *such regulations as may be necessary or appropriate to*
21 *carry out the purposes of this section.*

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

23 “(a) *QUALIFYING SHIPPING ACTIVITIES.—For pur-*
24 *poses of this subchapter the ‘qualifying shipping activities’*
25 *of an electing entity consist of—*

- 1 “(1) *core qualifying activities,*
2 “(2) *qualifying secondary activities, and*
3 “(3) *qualifying incidental activities.*

4 “(b) *CORE QUALIFYING ACTIVITIES.—*

- 5 “(1) *The ‘core qualifying activities’ of an elect-*
6 *ing entity are—*

7 “(A) *its activities in operating qualifying*
8 *vessels in United States foreign trade, and*

9 “(B) *other activities of the electing entity*
10 *and other members of its electing group that are*
11 *an integral part of its business of operating*
12 *qualifying vessels in United States foreign trade,*
13 *including ownership or operation of barges, con-*
14 *tainers, chassis, and other equipment that are*
15 *the complement of, or used in connection with, a*
16 *qualifying vessel in United States foreign trade,*
17 *the inland haulage of cargo shipped, or to be*
18 *shipped, on qualifying vessels in United States*
19 *foreign trade, and the provision of terminal,*
20 *maintenance, repair, logistical, or other vessel,*
21 *container, or cargo-related services that are an*
22 *integral part of operating qualifying vessels in*
23 *United States foreign trade.*

1 “(2) ‘Core qualifying activities’ do not include
2 the provision by an entity of facilities or services to
3 any person, other than—

4 “(A) another member of such entity’s elect-
5 ing group,

6 “(B) a consignor, consignee, or other cus-
7 tomer of such entity’s business of operating
8 qualifying vessels in United States foreign trade,
9 or

10 “(C) a member of an alliance, joint venture,
11 pool, partnership or similar undertaking involv-
12 ing the operation of qualifying vessels in United
13 States foreign trade of which such entity is a
14 member.

15 “(c) *QUALIFYING SECONDARY ACTIVITIES.*—For pur-
16 poses of this subsection—

17 “(1) the term ‘secondary activities’ means activi-
18 ties that are not core qualifying activities, and—

19 “(A) are the active management or oper-
20 ation of vessels in the United States foreign
21 trade,

22 “(B) the provision of vessel, container, or
23 cargo-related facilities or services to any person,
24 or

1 “(C) *such other activities as may be pre-*
2 *scribed by the Secretary pursuant to regulations,*
3 *and*

4 “(2) *the ‘qualified secondary activities’ of an*
5 *electing entity are its secondary activities and the sec-*
6 *ondary activities of other members of its electing*
7 *group, but only to the extent that, without regard to*
8 *this subchapter, the aggregate gross income derived by*
9 *the electing entity and the other members of its elect-*
10 *ing group from such activities does not exceed 20 per-*
11 *cent of the aggregate gross income derived by the elect-*
12 *ing entity and the other members of its electing group*
13 *from their core qualifying activities.*

14 “(d) *QUALIFYING INCIDENTAL ACTIVITIES.—Ship-*
15 *ping-related activities carried on by an electing entity or*
16 *another member of its electing group are qualified inci-*
17 *dental activities of the electing entity if—*

18 “(1) *incidental to its core qualifying activities,*

19 “(2) *not qualifying secondary activities, and*

20 “(3) *without regard to this subchapter, the aggre-*
21 *gate gross income derived by the electing entity and*
22 *other members of its electing group from such activi-*
23 *ties does not exceed 0.1 percent of such entities’ aggre-*
24 *gate gross income from their core qualifying activi-*
25 *ties.*

1 **“SEC. 1357. ITEMS NOT SUBJECT TO REGULAR TAX; DEPRE-**
2 **CIATION; INTEREST.**

3 “(a) *EXCLUSION FROM GROSS INCOME.*—Gross in-
4 come of an electing entity shall not include the corporate
5 income percentage of—

6 “(1) *income from qualifying shipping activities*
7 *in the United States foreign trade,*

8 “(2) *income from money, bank deposits and*
9 *other temporary investments which are reasonably*
10 *necessary to meet the working capital requirements of*
11 *qualifying shipping activities, and*

12 “(3) *income from money or other intangible as-*
13 *sets accumulated pursuant to a plan to purchase*
14 *qualifying shipping assets.*

15 “(b) *ELECTING GROUP MEMBER.*—Gross income of a
16 member of an electing group that is not an electing entity
17 shall not include the corporate income percentage of its in-
18 come from qualifying shipping activities that are taken into
19 account under this subchapter as qualifying shipping ac-
20 tivities of an electing entity.

21 “(c) *DENIAL OF LOSSES, DEDUCTIONS, AND CRED-*
22 *ITS.*—

23 “(1) *GENERAL RULE.*—Subject to paragraph (2),
24 the corporate loss percentage of each item of loss, de-
25 duction (other than for interest expense), or credit of
26 any taxpayer with respect to any activity the income

1 *from which is excluded from gross income under this*
2 *section shall be disallowed.*

3 “(2) *DEPRECIATION.*—*Notwithstanding para-*
4 *graph (1), the deduction for depreciation of a quali-*
5 *fying shipping asset shall be allowed in determining*
6 *the adjusted basis of such asset for purposes of deter-*
7 *mining gain from its disposition.*

8 “(A) *Except as provided in subparagraph*
9 *(B), the straight line method of depreciation*
10 *shall apply to the corporate income percentage of*
11 *qualifying shipping assets the income from oper-*
12 *ation of which is excluded from gross income*
13 *under this section.*

14 “(B) *Subparagraph (A) shall not apply to*
15 *any qualifying shipping asset which is subject to*
16 *a charter entered into prior to the effective date*
17 *of this subchapter.*

18 “(3) *INTEREST.*—*The corporate loss percentage*
19 *of an electing entity’s interest expense shall be dis-*
20 *allowed in the ratio that the fair market value of its*
21 *qualifying vessel assets bears to the fair market value*
22 *of its total assets.*

23 “(d) *SECTION INAPPLICABLE TO UNRELATED PER-*
24 *SONS.*—*This section shall not apply to a taxpayer that is*
25 *not a member of an electing group.*

1 **“SEC. 1358. ALLOCATION OF CREDITS, INCOME, AND DE-**
2 **DUCTIONS.**

3 *“(a) QUALIFYING SHIPPING ACTIVITIES.—For pur-*
4 *poses of this chapter, the qualifying shipping activities of*
5 *an electing entity shall be treated as a separate trade or*
6 *business activity from all other activities conducted by the*
7 *entity.*

8 *“(b) EXCLUSION OF CREDITS OR DEDUCTIONS.—*

9 *“(1) No deduction shall be allowed against the*
10 *taxable income of an electing corporation from quali-*
11 *fying shipping activities, and no credit shall be al-*
12 *lowed against the tax imposed by section 1352(b).*

13 *“(2) No deduction shall be allowed for any net*
14 *operating loss attributable to the qualifying shipping*
15 *activities of a corporation to the extent that such loss*
16 *is carried forward by the corporation from a taxable*
17 *year preceding the first taxable year for which such*
18 *corporation was an electing corporation.*

19 *“(c) TRANSACTIONS NOT AT ARM’S LENGTH.—Section*
20 *482 shall apply in accordance with this subsection to a*
21 *transaction or series of transactions—*

22 *“(1) as between an electing entity and another*
23 *person, or*

24 *“(2) as between an entity’s qualifying shipping*
25 *activities and other activities carried on by it.*

1 **“SEC. 1359. DISPOSITION OF QUALIFYING SHIPPING AS-**
2 **SETS.**

3 “(a) *IN GENERAL.*—*If an electing entity sells or dis-*
4 *poses of qualifying shipping assets (as defined in subsection*
5 *(c)) in an otherwise taxable transaction, at the election of*
6 *the entity no gain shall be recognized if replacement quali-*
7 *fying shipping assets are acquired during the period speci-*
8 *fied in subsection (b), except to the extent that the amount*
9 *realized upon such sale or disposition exceeds the cost of*
10 *the replacement qualifying shipping assets.*

11 “(b) *PERIOD WITHIN WHICH PROPERTY MUST BE*
12 *REPLACED.*—*The period referred to in subsection (a) shall*
13 *be the period beginning one year prior to the disposition*
14 *of the qualifying shipping assets and ending—*

15 “(1) *3 years after the close of the first taxable*
16 *year in which the gain is realized, or*

17 “(2) *subject to such terms and conditions as may*
18 *be specified by the Secretary, on such later date as the*
19 *Secretary may designate on application by the tax-*
20 *payer. Such application shall be made at such time*
21 *and in such manner as the Secretary may by regula-*
22 *tions prescribe.*

23 “(c) *TIME FOR ASSESSMENT OF DEFICIENCY ATTRIB-*
24 *UTABLE TO GAIN.*—*If an electing entity has made the elec-*
25 *tion provided in subsection (a), then—*

1 “(1) the statutory period for the assessment of
2 any deficiency, for any taxable year in which any
3 part of the gain is realized, attributable to such gain
4 shall not expire prior to the expiration of 3 years
5 from the date the Secretary is notified by the entity
6 (in such manner as the Secretary may by regulations
7 prescribe) of the replacement tonnage tax property or
8 of an intention not to replace, and

9 “(2) such deficiency may be assessed before the
10 expiration of such 3-year period notwithstanding the
11 provisions of section 6212(c) or the provisions of any
12 other law or rule of law which would otherwise pre-
13 vent such assessment.

14 “(d) *BASIS OF REPLACEMENT QUALIFYING SHIPPING*
15 *ASSETS.*—In the case of replacement qualifying shipping
16 assets purchased by an electing entity which resulted in the
17 nonrecognition of any part of the gain realized as the result
18 of a sale or other disposition of qualifying shipping assets,
19 the basis shall be the cost of such property decreased in the
20 amount of the gain not so recognized; and if the property
21 purchased consists of more than one piece of property, the
22 basis determined under this sentence shall be allocated to
23 the purchased properties in proportion to their respective
24 costs.

1 “(e) *REPLACEMENT QUALIFYING SHIPPING ASSETS*
2 *MUST BE ACQUIRED FROM UNRELATED PERSON IN CER-*
3 *TAIN CASES.*—

4 “(1) *IN GENERAL.*—Subsection (a) shall not
5 apply if the replacement qualifying shipping assets
6 are acquired from a related person except to the ex-
7 tent that the related person acquired the replacement
8 qualifying shipping assets from an unrelated person
9 during the period applicable under subsection (b).

10 “(2) *RELATED PERSON.*—For purposes of this
11 subsection, a person is related to another person if the
12 person bears a relationship to the other person de-
13 scribed in section 267(b) or 707(b)(1).”

14 “(b) *TECHNICAL AND CONFORMING AMENDMENT.*—The
15 second sentence of section 56(g)(4)(B)(i), as amended by
16 this Act, is further amended by inserting “or 1357” after
17 “section 139A”.

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

21 **SEC. 296. CHARITABLE CONTRIBUTION DEDUCTION FOR**
22 **CERTAIN EXPENSES INCURRED IN SUPPORT**
23 **OF NATIVE ALASKAN SUBSISTENCE WHALING.**

24 “(a) *IN GENERAL.*—Section 170 (relating to charitable,
25 etc., contributions and gifts), as amended by this Act, is

1 *amended by redesignating subsection (n) as subsection (o)*
2 *and by inserting after subsection (m) the following new sub-*
3 *section:*

4 “(n) *EXPENSES PAID BY CERTAIN WHALING CAPTAINS*
5 *IN SUPPORT OF NATIVE ALASKAN SUBSISTENCE WHAL-*
6 *ING.—*

7 “(1) *IN GENERAL.—In the case of an individual*
8 *who is recognized by the Alaska Eskimo Whaling*
9 *Commission as a whaling captain charged with the*
10 *responsibility of maintaining and carrying out sanc-*
11 *tioned whaling activities and who engages in such ac-*
12 *tivities during the taxable year, the amount described*
13 *in paragraph (2) (to the extent such amount does not*
14 *exceed \$10,000 for the taxable year) shall be treated*
15 *for purposes of this section as a charitable contribu-*
16 *tion.*

17 “(2) *AMOUNT DESCRIBED.—*

18 “(A) *IN GENERAL.—The amount described*
19 *in this paragraph is the aggregate of the reason-*
20 *able and necessary whaling expenses paid by the*
21 *taxpayer during the taxable year in carrying out*
22 *sanctioned whaling activities.*

23 “(B) *WHALING EXPENSES.—For purposes of*
24 *subparagraph (A), the term ‘whaling expenses’*
25 *includes expenses for—*

1 “(i) the acquisition and maintenance
2 of whaling boats, weapons, and gear used in
3 sanctioned whaling activities,

4 “(ii) the supplying of food for the crew
5 and other provisions for carrying out such
6 activities, and

7 “(iii) storage and distribution of the
8 catch from such activities.

9 “(3) SANCTIONED WHALING ACTIVITIES.—For
10 purposes of this subsection, the term ‘sanctioned whal-
11 ing activities’ means subsistence bowhead whale hunt-
12 ing activities conducted pursuant to the management
13 plan of the Alaska Eskimo Whaling Commission.”.

14 (b) EFFECTIVE DATE.—The amendments made by sub-
15 section (a) shall apply to contributions made after Decem-
16 ber 31, 2004.

17 **TITLE III—TAX REFORM AND**
18 **SIMPLIFICATION FOR UNITED**
19 **STATES BUSINESSES**

20 **SEC. 301. INTEREST EXPENSE ALLOCATION RULES.**

21 (a) ELECTION TO ALLOCATE ON WORLDWIDE
22 BASIS.—Section 864 is amended by redesignating sub-
23 section (f) as subsection (g) and by inserting after sub-
24 section (e) the following new subsection:

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

4 “(1) *ALLOCATION AND APPORTIONMENT OF IN-*
5 *TEREST EXPENSE.*—

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

12 “(B) *TREATMENT OF WORLDWIDE AFFILI-*
13 *ATED GROUP.*—*The taxable income of the domes-*
14 *tic members of a worldwide affiliated group from*
15 *sources outside the United States shall be deter-*
16 *mined by allocating and apportioning the inter-*
17 *est expense of such domestic members to such in-*
18 *come in an amount equal to the excess (if any)*
19 *of—*

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

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

10 “(C) WORLDWIDE AFFILIATED GROUP.—For
11 purposes of this paragraph, the term ‘worldwide
12 affiliated group’ means a group consisting of—

13 “(i) the includible members of an af-
14 filiated group (as defined in section
15 1504(a), determined without regard to
16 paragraphs (2) and (4) of section 1504(b)),
17 and

18 “(ii) all controlled foreign corporations
19 in which such members in the aggregate
20 meet the ownership requirements of section
21 1504(a)(2) either directly or indirectly
22 through applying paragraph (2) of section
23 958(a) or through applying rules similar to
24 the rules of such paragraph to stock owned

1 *directly or indirectly by domestic partner-*
2 *ships, trusts, or estates.*

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

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

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

20 “(A) *IN GENERAL.—For purposes of para-*
21 *graph (1), any corporation described in subpara-*
22 *graph (B) shall be treated as an includible cor-*
23 *poration for purposes of section 1504 only for*
24 *purposes of applying this subsection separately*
25 *to corporations so described.*

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

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

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

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

14 “(C) *TREATMENT OF BANK AND FINANCIAL*
15 *HOLDING COMPANIES.*—*To the extent provided in*
16 *regulations—*

17 “(i) *a bank holding company (within*
18 *the meaning of section 2(a) of the Bank*
19 *Holding Company Act of 1956 (12 U.S.C.*
20 *1841(a)),*

21 “(ii) *a financial holding company*
22 *(within the meaning of section 2(p) of the*
23 *Bank Holding Company Act of 1956 (12*
24 *U.S.C. 1841(p)), and*

1 “(iii) any subsidiary of a financial in-
2 stitution described in section 581 or 591, or
3 of any such bank or financial holding com-
4 pany, if such subsidiary is predominantly
5 engaged (directly or indirectly) in the active
6 conduct of a banking, financing, or similar
7 business,

8 shall be treated as a corporation described in
9 subparagraph (B).

10 “(5) ELECTION TO EXPAND FINANCIAL INSTITU-
11 TION GROUP OF WORLDWIDE GROUP.—

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

15 “(i) are members of such worldwide af-
16 filiated group, but

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

19 shall be treated as described in paragraph (4)(B)
20 for purposes of applying paragraph (4)(A). This
21 subsection (other than this paragraph) shall
22 apply to any such group in the same manner as
23 this subsection (other than this paragraph) ap-
24 plies to the pre-election worldwide affiliated
25 group of which such group is a part.

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

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

19 “(i) *distributes dividends or makes*
20 *other distributions with respect to its stock*
21 *after the date of the enactment of this para-*
22 *graph to any member of the pre-election*
23 *worldwide affiliated group (other than to a*
24 *member of the electing financial institution*
25 *group) in excess of the greater of—*

1 “(I) its average annual dividend
2 (expressed as a percentage of current
3 earnings and profits) during the 5-tax-
4 able-year period ending with the tax-
5 able year preceding the taxable year, or
6 “(II) 25 percent of its average an-
7 nual earnings and profits for such 5-
8 taxable-year period, or
9 “(ii) deals with any person in any
10 manner not clearly reflecting the income of
11 the corporation (as determined under prin-
12 ciples similar to the principles of section
13 482),
14 an amount of indebtedness of the electing finan-
15 cial institution group equal to the excess dis-
16 tribution or the understatement or overstatement
17 of income, as the case may be, shall be re-
18 characterized (for the taxable year and subse-
19 quent taxable years) for purposes of this para-
20 graph as indebtedness of the worldwide affiliated
21 group (excluding the electing financial institu-
22 tion group). If a corporation has not been in ex-
23 istence for 5 taxable years, this subparagraph
24 shall be applied with respect to the period it was
25 in existence.

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

14 “(E) *DEFINITIONS RELATING TO GROUPS.*—
15 *For purposes of this paragraph—*

16 “(i) *PRE-ELECTION WORLDWIDE AF-*
17 *FILIATED GROUP.*—*The term ‘pre-election*
18 *worldwide affiliated group’ means, with re-*
19 *spect to a corporation, the worldwide affili-*
20 *ated group of which such corporation would*
21 *(but for an election under this paragraph)*
22 *be a member for purposes of applying para-*
23 *graph (1).*

24 “(ii) *ELECTING FINANCIAL INSTITU-*
25 *TION GROUP.*—*The term ‘electing financial*

1 *institution group’ means the group of cor-*
2 *porations to which this subsection applies*
3 *separately by reason of the application of*
4 *paragraph (4)(A) and which includes finan-*
5 *cial corporations by reason of an election*
6 *under subparagraph (A).*

7 “(F) *REGULATIONS.*—*The Secretary shall*
8 *prescribe such regulations as may be appropriate*
9 *to carry out this subsection, including regula-*
10 *tions—*

11 *“(i) providing for the direct allocation*
12 *of interest expense in other circumstances*
13 *where such allocation would be appropriate*
14 *to carry out the purposes of this subsection,*

15 *“(ii) preventing assets or interest ex-*
16 *penditure from being taken into account more*
17 *than once, and*

18 *“(iii) dealing with changes in members*
19 *of any group (through acquisitions or other-*
20 *wise) treated under this paragraph as an*
21 *affiliated group for purposes of this sub-*
22 *section.*

23 “(6) *ELECTION.*—*An election to have this sub-*
24 *section apply with respect to any worldwide affiliated*
25 *group may be made only by the common parent of the*

1 *domestic affiliated group referred to in paragraph*
2 *(1)(C) and may be made only for the first taxable*
3 *year beginning after December 31, 2008, in which a*
4 *worldwide affiliated group exists which includes such*
5 *affiliated group and at least 1 foreign corporation.*
6 *Such an election, once made, shall apply to such com-*
7 *mon parent and all other corporations which are*
8 *members of such worldwide affiliated group for such*
9 *taxable year and all subsequent years unless revoked*
10 *with the consent of the Secretary.”.*

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

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

17 *(2) by striking “and” at the end of subpara-*
18 *graph (E), by redesignating subparagraph (F) as sub-*
19 *paragraph (G), and by inserting after subparagraph*
20 *(E) the following new subparagraph:*

21 *“(F) preventing assets or interest expense*
22 *from being taken into account more than once,*
23 *and”.*

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

4 **SEC. 302. RECHARACTERIZATION OF OVERALL DOMESTIC**
5 **LOSS.**

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

10 “(g) *RECHARACTERIZATION OF OVERALL DOMESTIC*
11 *LOSS.*—

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

19 “(A) *the amount of such loss (to the extent*
20 *not used under this paragraph in prior taxable*
21 *years), or*

22 “(B) *50 percent of the taxpayer’s taxable*
23 *income from sources within the United States for*
24 *such succeeding taxable year,*

1 *shall be treated as income from sources without the*
2 *United States (and not as income from sources within*
3 *the United States).*

4 “(2) *OVERALL DOMESTIC LOSS DEFINED.—For*
5 *purposes of this subsection—*

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

19 “(B) *TAXPAYER MUST HAVE ELECTED FOR-*
20 *EIGN TAX CREDIT FOR YEAR OF LOSS.—The term*
21 *‘overall domestic loss’ shall not include any loss*
22 *for any taxable year unless the taxpayer chose*
23 *the benefits of this subpart for such taxable year.*

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

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

9 “(B) *INCOME CATEGORY.*—For purposes of
10 this paragraph, the term ‘income category’ has
11 the meaning given such term by subsection
12 (f)(5)(E)(i).

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

17 (b) *CONFORMING AMENDMENTS.*—

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

20 (2) Subparagraph (A) of section 936(a)(2) is
21 amended by striking “section 904(f)” and inserting
22 “subsections (f) and (g) of section 904”.

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

1 **SEC. 303. REDUCTION TO 2 FOREIGN TAX CREDIT BASKETS.**

2 (a) *IN GENERAL.*—Paragraph (1) of section 904(d)
3 (relating to separate application of section with respect to
4 certain categories of income) is amended to read as follows:

5 “(1) *IN GENERAL.*—The provisions of subsections
6 (a), (b), and (c) and sections 902, 907, and 960 shall
7 be applied separately with respect to—

8 “(A) *passive category income, and*

9 “(B) *general category income.*”

10 (b) *CATEGORIES.*—Paragraph (2) of section 904(d) is
11 amended by striking subparagraph (B), by redesignating
12 subparagraph (A) as subparagraph (B), and by inserting
13 before subparagraph (B) (as so redesignated) the following
14 new subparagraph:

15 “(A) *CATEGORIES.*—

16 “(i) *PASSIVE CATEGORY INCOME.*—The
17 term ‘passive category income’ means pas-
18 sive income and specified passive category
19 income.

20 “(ii) *GENERAL CATEGORY INCOME.*—
21 The term ‘general category income’ means
22 income other than passive category income.”

23 (c) *SPECIFIED PASSIVE CATEGORY INCOME.*—Sub-
24 paragraph (B) of section 904(d)(2), as so redesignated, is
25 amended by adding at the end the following new clause:

1 “(v) *SPECIFIED PASSIVE CATEGORY IN-*
2 *COME.—The term ‘specified passive category*
3 *income’ means—*

4 “(I) *dividends from a DISC or*
5 *former DISC (as defined in section*
6 *992(a)) to the extent such dividends*
7 *are treated as income from sources*
8 *without the United States,*

9 “(II) *taxable income attributable*
10 *to foreign trade income (within the*
11 *meaning of section 923(b)), and*

12 “(III) *distributions from a FSC*
13 *(or a former FSC) out of earnings and*
14 *profits attributable to foreign trade in-*
15 *come (within the meaning of section*
16 *923(b)) or interest or carrying charges*
17 *(as defined in section 927(d)(1)) de-*
18 *rived from a transaction which results*
19 *in foreign trade income (as defined in*
20 *section 923(b)).”*

21 (d) *TREATMENT OF FINANCIAL SERVICES.—Para-*
22 *graph (2) of section 904(d) is amended by striking subpara-*
23 *graph (D), by redesignating subparagraph (C) as subpara-*
24 *graph (D), and by inserting before subparagraph (D) (as*
25 *so redesignated) the following new subparagraph:*

1 “(C) *TREATMENT OF FINANCIAL SERVICES*
2 *INCOME AND COMPANIES.—*

3 “(i) *IN GENERAL.—Financial services*
4 *income shall be treated as general category*
5 *income in the case of—*

6 “(I) *a member of a financial serv-*
7 *ices group, and*

8 “(II) *any other person if such per-*
9 *son is predominantly engaged in the*
10 *active conduct of a banking, insurance,*
11 *financing, or similar business.*

12 “(ii) *FINANCIAL SERVICES GROUP.—*
13 *The term ‘financial services group’ means*
14 *any affiliated group (as defined in section*
15 *1504(a) without regard to paragraphs (2)*
16 *and (3) of section 1504(b)) which is pre-*
17 *dominantly engaged in the active conduct of*
18 *a banking, insurance, financing, or similar*
19 *business. In determining whether such a*
20 *group is so engaged, there shall be taken*
21 *into account only the income of members of*
22 *the group that are—*

23 “(I) *United States corporations,*
24 *or*

1 “(II) controlled foreign corpora-
2 tions in which such United States cor-
3 porations own, directly or indirectly,
4 at least 80 percent of the total voting
5 power and value of the stock.

6 “(iii) *PASS-THRU ENTITIES*.—The Sec-
7 retary shall by regulation specify for pur-
8 poses of this subparagraph the treatment of
9 financial services income received or ac-
10 crued by partnerships and by other pass-
11 thru entities which are not members of a fi-
12 nancial services group.”

13 (e) *CONFORMING AMENDMENTS*.—

14 (1) Clause (iii) of section 904(d)(2)(B) (relating
15 to exceptions from passive income), as so redesign-
16 ated, is amended by striking subclause (I) and by
17 redesignating subclauses (II) and (III) as subclauses
18 (I) and (II), respectively.

19 (2) Clause (i) of section 904(d)(2)(D) (defining
20 financial services income), as so redesignated, is
21 amended by adding “or” at the end of subclause (I)
22 and by striking subclauses (II) and (III) and insert-
23 ing the following new subclause:

1 “(II) *passive income (determined*
2 *without regard to subparagraph*
3 *(B)(iii)(II).*”

4 (3) *Section 904(d)(2)(D) (defining financial*
5 *services income), as so redesignated, is amended by*
6 *striking clause (iii).*

7 (4) *Paragraph (3) of section 904(d) is amended*
8 *to read as follows:*

9 “(3) *LOOK-THRU IN CASE OF CONTROLLED FOR-*
10 *EIGN CORPORATIONS.—*

11 “(A) *IN GENERAL.—Except as otherwise*
12 *provided in this paragraph, dividends, interest,*
13 *rents, and royalties received or accrued by the*
14 *taxpayer from a controlled foreign corporation*
15 *in which the taxpayer is a United States share-*
16 *holder shall not be treated as passive category in-*
17 *come.*

18 “(B) *SUBPART F INCLUSIONS.—Any*
19 *amount included in gross income under section*
20 *951(a)(1)(A) shall be treated as passive category*
21 *income to the extent the amount so included is*
22 *attributable to passive category income.*

23 “(C) *INTEREST, RENTS, AND ROYALTIES.—*
24 *Any interest, rent, or royalty which is received*
25 *or accrued from a controlled foreign corporation*

1 *in which the taxpayer is a United States share-*
2 *holder shall be treated as passive category in-*
3 *come to the extent it is properly allocable (under*
4 *regulations prescribed by the Secretary) to pas-*
5 *sive category income of the controlled foreign cor-*
6 *poration.*

7 “(D) *DIVIDENDS.*—*Any dividend paid out*
8 *of the earnings and profits of any controlled for-*
9 *foreign corporation in which the taxpayer is a*
10 *United States shareholder shall be treated as pas-*
11 *sive category income in proportion to the ratio*
12 *of—*

13 “(i) *the portion of the earnings and*
14 *profits attributable to passive category in-*
15 *come, to*

16 “(ii) *the total amount of earnings and*
17 *profits.*

18 “(E) *LOOK-THRU APPLIES ONLY WHERE*
19 *SUBPART F APPLIES.*—*If a controlled foreign cor-*
20 *poration meets the requirements of section*
21 *954(b)(3)(A) (relating to de minimis rule) for*
22 *any taxable year, for purposes of this paragraph,*
23 *none of its foreign base company income (as de-*
24 *finied in section 954(a) without regard to section*
25 *954(b)(5)) and none of its gross insurance in-*

1 *come (as defined in section 954(b)(3)(C)) for*
2 *such taxable year shall be treated as passive cat-*
3 *egory income, except that this sentence shall not*
4 *apply to any income which (without regard to*
5 *this sentence) would be treated as financial serv-*
6 *ices income. Solely for purposes of applying sub-*
7 *paragraph (D), passive income of a controlled*
8 *foreign corporation shall not be treated as pas-*
9 *sive category income if the requirements of sec-*
10 *tion 954(b)(4) are met with respect to such in-*
11 *come.*

12 “(F) COORDINATION WITH HIGH-TAXED IN-
13 COME PROVISIONS.—

14 “(i) *In determining whether any in-*
15 *come of a controlled foreign corporation is*
16 *passive category income, subclause (II) of*
17 *paragraph (2)(B)(iii) shall not apply.*

18 “(ii) *Any income of the taxpayer*
19 *which is treated as passive category income*
20 *under this paragraph shall be so treated*
21 *notwithstanding any provision of para-*
22 *graph (2); except that the determination of*
23 *whether any amount is high-taxed income*
24 *shall be made after the application of this*
25 *paragraph.*

1 “(G) *DIVIDEND.*—For purposes of this
2 paragraph, the term ‘dividend’ includes any
3 amount included in gross income in section
4 951(a)(1)(B). Any amount included in gross in-
5 come under section 78 to the extent attributable
6 to amounts included in gross income in section
7 951(a)(1)(A) shall not be treated as a dividend
8 but shall be treated as included in gross income
9 under section 951(a)(1)(A).

10 “(H) *LOOK-THRU APPLIES TO PASSIVE FOR-*
11 *EIGN INVESTMENT COMPANY INCLUSION.*—If—

12 “(i) a passive foreign investment com-
13 pany is a controlled foreign corporation,
14 and

15 “(ii) the taxpayer is a United States
16 shareholder in such controlled foreign cor-
17 poration,

18 any amount included in gross income under sec-
19 tion 1293 shall be treated as income in a sepa-
20 rate category to the extent such amount is attrib-
21 utable to income in such category.”

22 (5) *TREATMENT OF INCOME TAX BASE DIF-*
23 *FERENCES.*—Paragraph (2) of section 904(d) is
24 amended by redesignating subparagraphs (H) and (I)
25 as subparagraphs (I) and (J), respectively, and by in-

1 *serting after subparagraph (G) the following new sub-*
2 *paragraph:*

3 *“(H) TREATMENT OF INCOME TAX BASE*
4 *DIFFERENCES.—Tax imposed under the law of a*
5 *foreign country or possession of the United*
6 *States on an amount which does not constitute*
7 *income under United States tax principles shall*
8 *be treated as imposed on income described in*
9 *paragraph (1)(B).”*

10 *(6) Paragraph (2) of section 904(d) is amended*
11 *by adding at the end the following new subparagraph:*

12 *“(K) TRANSITIONAL RULES FOR 2007*
13 *CHANGES.—For purposes of paragraph (1)—*

14 *“(i) taxes carried from any taxable*
15 *year beginning before January 1, 2007, to*
16 *any taxable year beginning on or after such*
17 *date, with respect to any item of income,*
18 *shall be treated as described in the subpara-*
19 *graph of paragraph (1) in which such in-*
20 *come would be described were such taxes*
21 *paid or accrued in a taxable year beginning*
22 *on or after such date, and*

23 *“(ii) the Secretary may by regulations*
24 *provide for the allocation of any carryback*
25 *of taxes with respect to income to such a*

1 taxable year for purposes of allocating such
2 income among the separate categories in ef-
3 fect for such taxable year.”.

4 (7) Section 904(j)(3)(A)(i) is amended by strik-
5 ing “subsection (d)(2)(A)” and inserting “subsection
6 (d)(2)(B)”.

7 (f) *EFFECTIVE DATE.*—The amendments made by this
8 section shall apply to taxable years beginning after Decem-
9 ber 31, 2006.

10 **SEC. 304. LOOK-THRU RULES TO APPLY TO DIVIDENDS**
11 **FROM NONCONTROLLED SECTION 902 COR-**
12 **PORATIONS.**

13 (a) *IN GENERAL.*—Section 904(d)(4) (relating to look-
14 thru rules apply to dividends from noncontrolled section
15 902 corporations) is amended to read as follows:

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

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

1 “(i) the portion of earnings and profits
2 attributable to income described in such
3 subparagraph, to

4 “(ii) the total amount of earnings and
5 profits.

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

16 “(C) *SPECIAL RULES.*—*For purposes of this*
17 *paragraph—*

18 “(i) *EARNINGS AND PROFITS.*—

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

21 “(II) *REGULATIONS.*—*The Sec-*
22 *retary may prescribe regulations re-*
23 *garding the treatment of distributions*
24 *out of earnings and profits for periods*

1 *before the taxpayer's acquisition of the*
2 *stock to which the distributions relate.*

3 “(ii) *INADEQUATE SUBSTANTIATION.—*
4 *If the Secretary determines that the proper*
5 *subparagraph of paragraph (1) in which a*
6 *dividend is described has not been substan-*
7 *tiated, such dividend shall be treated as in-*
8 *come described in paragraph (1)(A).*

9 “(iii) *COORDINATION WITH HIGH-*
10 *TAXED INCOME PROVISIONS.—Rules similar*
11 *to the rules of paragraph (3)(F) shall apply*
12 *for purposes of this paragraph.*

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

1 *allocating such dividend among the separate*
2 *categories in effect for such taxable year.”.*

3 **(b) CONFORMING AMENDMENTS.—**

4 (1) *Subparagraph (E) of section 904(d)(1) is*
5 *hereby repealed.*

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

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

13 (4) *Section 904(d)(2)(E) is amended—*

14 (A) *by inserting “or (4)” after “paragraph*
15 (3)” in clause (i), and

16 (B) *by striking clauses (ii) and (iv) and by*
17 *redesignating clause (iii) as clause (ii).*

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

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

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

1 **SEC. 305. ATTRIBUTION OF STOCK OWNERSHIP THROUGH**
2 **PARTNERSHIPS TO APPLY IN DETERMINING**
3 **SECTION 902 AND 960 CREDITS.**

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

8 “(7) *CONSTRUCTIVE OWNERSHIP THROUGH*
9 *PARTNERSHIPS.*—Stock owned, directly or indirectly,
10 by or for a partnership shall be considered as being
11 owned proportionately by its partners. Stock consid-
12 ered to be owned by a person by reason of the pre-
13 ceding sentence shall, for purposes of applying such
14 sentence, be treated as actually owned by such person.
15 The Secretary may prescribe such regulations as may
16 be necessary to carry out the purposes of this para-
17 graph, including rules to account for special partner-
18 ship allocations of dividends, credits, and other inci-
19 dents of ownership of stock in determining propor-
20 tionate ownership.”.

21 (b) *CLARIFICATION OF COMPARABLE ATTRIBUTION*
22 *UNDER SECTION 901(b)(5).*—Paragraph (5) of section
23 901(b) is amended by striking “any individual” and insert-
24 ing “any person”.

25 (c) *EFFECTIVE DATE.*—The amendments made by this
26 section shall apply to taxes of foreign corporations for tax-

1 *able years of such corporations beginning after the date of*
2 *the enactment of this Act.*

3 **SEC. 306. CLARIFICATION OF TREATMENT OF CERTAIN**
4 **TRANSFERS OF INTANGIBLE PROPERTY.**

5 *(a) IN GENERAL.—Subparagraph (C) of section*
6 *367(d)(2) is amended by adding at the end the following*
7 *new sentence: “For purposes of applying section 904(d),*
8 *any such amount shall be treated in the same manner as*
9 *if such amount were a royalty.”.*

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

14 **SEC. 307. UNITED STATES PROPERTY NOT TO INCLUDE**
15 **CERTAIN ASSETS OF CONTROLLED FOREIGN**
16 **CORPORATION.**

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

23 *“(L) securities acquired and held by a con-*
24 *trolled foreign corporation in the ordinary course*
25 *of its business as a dealer in securities if—*

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

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

11 “(M) an obligation of a United States per-
12 son which—

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

14 “(ii) is not—

15 “(I) a United States shareholder
16 (as defined in section 951(b)) of the
17 controlled foreign corporation, or

18 “(II) a partnership, estate, or
19 trust in which the controlled foreign
20 corporation, or any related person (as
21 defined in section 954(d)(3)), is a
22 partner, beneficiary, or trustee imme-
23 diately after the acquisition of any ob-
24 ligation of such partnership, estate, or

1 *trust by the controlled foreign corpora-*
2 *tion.”.*

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

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

11 **SEC. 308. ELECTION NOT TO USE AVERAGE EXCHANGE**
12 **RATE FOR FOREIGN TAX PAID OTHER THAN**
13 **IN FUNCTIONAL CURRENCY.**

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

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

22 “(i) *IN GENERAL.*—*At the election of*
23 *the taxpayer, subparagraph (A) shall not*
24 *apply to any foreign income taxes the li-*
25 *ability for which is denominated in any*

1 *currency other than in the taxpayer's func-*
2 *tional currency.*

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

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

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

17 **SEC. 309. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**
18 **FROM CERTAIN FOREIGN CORPORATIONS.**

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

23 “(D) *Dividends paid by a foreign corpora-*
24 *tion which are treated under section*

1 861(a)(2)(B) as income from sources within the
2 United States.”.

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

6 **SEC. 310. PROVIDE EQUAL TREATMENT FOR INTEREST PAID**
7 **BY FOREIGN PARTNERSHIPS AND FOREIGN**
8 **CORPORATIONS.**

9 (a) *IN GENERAL.*—Paragraph (1) of section 861(a) is
10 amended by striking “and” at the end of subparagraph (A),
11 by striking the period at the end of subparagraph (B) and
12 inserting “, and”, and by adding at the end the following
13 new subparagraph:

14 “(C) in the case of a foreign partnership,
15 which is predominantly engaged in the active
16 conduct of a trade or business outside the United
17 States, any interest not paid by a trade or busi-
18 ness engaged in by the partnership in the United
19 States and not allocable to income which is effec-
20 tively connected (or treated as effectively con-
21 nected) with the conduct of a trade or business
22 in the United States.”.

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

1 **SEC. 311. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN**
2 **RELATED CONTROLLED FOREIGN CORPORA-**
3 **TIONS UNDER FOREIGN PERSONAL HOLDING**
4 **COMPANY INCOME RULES.**

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

8 “(5) *LOOK-THRU IN THE CASE OF RELATED CON-*
9 *TROLLED FOREIGN CORPORATIONS.*—For purposes of
10 this subsection, dividends, interest, rents, and royal-
11 ties received or accrued from a controlled foreign cor-
12 poration which is a related person (as defined in sub-
13 section (b)(9)) shall not be treated as foreign personal
14 holding company income to the extent attributable or
15 properly allocable (determined under rules similar to
16 the rules of subparagraphs (C) and (D) of section
17 904(d)(3)) to income of the related person which is
18 not subpart F income (as defined in section 952). For
19 purposes of this paragraph, interest shall include fac-
20 toring income which is treated as income equivalent
21 to interest for purposes of paragraph (1)(E). The Sec-
22 retary shall prescribe such regulations as may be ap-
23 propriate to prevent the abuse of the purposes of this
24 paragraph.”.

25 (b) *EFFECTIVE DATE.*—The amendment made by this
26 section shall apply to taxable years of foreign corporations

1 *beginning after December 31, 2004, and to taxable years*
2 *of United States shareholders with or within which such*
3 *taxable years of foreign corporations end.*

4 **SEC. 312. LOOK-THRU TREATMENT FOR SALES OF PART-**
5 **nership INTERESTS.**

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

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

12 *“(A) IN GENERAL.—In the case of any sale*
13 *by a controlled foreign corporation of an interest*
14 *in a partnership with respect to which such cor-*
15 *poration is a 25-percent owner, such corporation*
16 *shall be treated for purposes of this subsection as*
17 *selling the proportionate share of the assets of the*
18 *partnership attributable to such interest. The*
19 *Secretary shall prescribe such regulations as*
20 *may be appropriate to prevent abuse of the pur-*
21 *poses of this paragraph, including regulations*
22 *providing for coordination of this paragraph*
23 *with the provisions of subchapter K.*

24 *“(B) 25-PERCENT OWNER.—For purposes of*
25 *this paragraph, the term ‘25-percent owner’*

1 *means a controlled foreign corporation which*
2 *owns directly 25 percent or more of the capital*
3 *or profits interest in a partnership. For purposes*
4 *of the preceding sentence, if a controlled foreign*
5 *corporation is a shareholder or partner of a cor-*
6 *poration or partnership, the controlled foreign*
7 *corporation shall be treated as owning directly*
8 *its proportionate share of any such capital or*
9 *profits interest held directly or indirectly by such*
10 *corporation or partnership.”.*

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

16 **SEC. 313. REPEAL OF FOREIGN PERSONAL HOLDING COM-**
17 **PANY RULES AND FOREIGN INVESTMENT**
18 **COMPANY RULES.**

19 **(a) GENERAL RULE.**—*The following provisions are*
20 *hereby repealed:*

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

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

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

3 (b) *EXEMPTION OF FOREIGN CORPORATIONS FROM*
4 *PERSONAL HOLDING COMPANY RULES.—*

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

7 (A) *by striking paragraph (5) and inserting*
8 *the following:*

9 “(5) *a foreign corporation,*”

10 (B) *by striking paragraphs (7) and (10)*
11 *and by redesignating paragraphs (8) and (9) as*
12 *paragraphs (7) and (8), respectively,*

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

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

18 (2) *TREATMENT OF INCOME FROM PERSONAL*
19 *SERVICE CONTRACTS.—Paragraph (1) of section*
20 *954(c) is amended by adding at the end the following*
21 *new subparagraph:*

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

23 “(i) *Amounts received under a contract*
24 *under which the corporation is to furnish*
25 *personal services if—*

1 “(I) some person other than the
2 corporation has the right to designate
3 (by name or by description) the indi-
4 vidual who is to perform the services,
5 or

6 “(II) the individual who is to per-
7 form the services is designated (by
8 name or by description) in the con-
9 tract, and

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

12 *This subparagraph shall apply with respect to*
13 *amounts received for services under a particular*
14 *contract only if at some time during the taxable*
15 *year 25 percent or more in value of the out-*
16 *standing stock of the corporation is owned, di-*
17 *rectly or indirectly, by or for the individual who*
18 *has performed, is to perform, or may be des-*
19 *ignated (by name or by description) as the one*
20 *to perform, such services.”.*

21 (c) *CONFORMING AMENDMENTS.*—

22 (1) *Section 1(h) is amended—*

23 (A) *in paragraph (10), by inserting “and”*
24 *at the end of subparagraph (F), by striking sub-*

1 paragraph (G), and by redesignating subpara-
2 graph (H) as subparagraph (G), and

3 (B) by striking “a foreign personal holding
4 company (as defined in section 552), a foreign
5 investment company (as defined in section
6 1246(b)), or” in paragraph (11)(C)(iii).

7 (2) Section 163(e)(3)(B), as amended by section
8 642(a) of this Act, is amended by striking “which is
9 a foreign personal holding company (as defined in
10 section 552), a controlled foreign corporation (as de-
11 fined in section 957), or” and inserting “which is a
12 controlled foreign corporation (as defined in section
13 957) or”.

14 (3) Paragraph (2) of section 171(c) is amend-
15 ed—

16 (A) by striking “, or by a foreign personal
17 holding company, as defined in section 552”,
18 and

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

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

23 (5) Section 267(a)(3)(B), as amended by section
24 642(b) of this Act, is amended by striking “to a for-
25 eign personal holding company (as defined in section

1 552), a controlled foreign corporation (as defined in
2 section 957), or” and inserting “to a controlled for-
3 eign corporation (as defined in section 957) or”.

4 (6) Section 312 is amended by striking sub-
5 section (j).

6 (7) Subsection (m) of section 312 is amended by
7 striking “, a foreign investment company (within the
8 meaning of section 1246(b)), or a foreign personal
9 holding company (within the meaning of section
10 552)”.

11 (8) Subsection (e) of section 443 is amended by
12 striking paragraph (3) and by redesignating para-
13 graphs (4) and (5) as paragraphs (3) and (4), respec-
14 tively.

15 (9) Subparagraph (B) of section 465(c)(7) is
16 amended by adding “or” at the end of clause (i), by
17 striking clause (ii), and by redesignating clause (iii)
18 as clause (ii).

19 (10) Paragraph (1) of section 543(b) is amended
20 by inserting “and” at the end of subparagraph (A),
21 by striking “, and” at the end of subparagraph (B)
22 and inserting a period, and by striking subparagraph
23 (C).

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

4 (12) Section 563 is amended—

5 (A) by striking subsection (c),

6 (B) by redesignating subsection (d) as sub-
7 section (c), and

8 (C) by striking “subsection (a), (b), or (c)”
9 in subsection (c) (as so redesignated) and insert-
10 ing “subsection (a) or (b)”.

11 (13) Subsection (d) of section 751 is amended by
12 adding “and” at the end of paragraph (2), by strik-
13 ing paragraph (3), by redesignating paragraph (4) as
14 paragraph (3), and by striking “paragraph (1), (2),
15 or (3)” in paragraph (3) (as so redesignated) and in-
16 serting “paragraph (1) or (2)”.

17 (14) Paragraph (2) of section 864(d) is amended
18 by striking subparagraph (A) and by redesignating
19 subparagraphs (B) and (C) as subparagraphs (A)
20 and (B), respectively.

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

23 “(A) which is treated as a controlled foreign
24 corporation for any purpose under subpart F of
25 part III of this subchapter, and”.

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

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

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

15 (D) Subsection (c) of section 898 is amended to
16 read as follows:

17 “(c) DETERMINATION OF REQUIRED YEAR.—

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

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

20 “(B) if there is no majority U.S. share-
21 holder year, the taxable year prescribed under
22 regulations.

23 “(2) 1-MONTH DEFERRAL ALLOWED.—A specified
24 foreign corporation may elect, in lieu of the taxable
25 year under paragraph (1)(A), a taxable year begin-

1 *ning 1 month earlier than the majority U.S. share-*
2 *holder year.*

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

4 “(A) *IN GENERAL.*—*For purposes of this*
5 *subsection, the term ‘majority U.S. shareholder*
6 *year’ means the taxable year (if any) which, on*
7 *each testing day, constituted the taxable year*
8 *of—*

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

11 “(ii) *each United States shareholder*
12 *not described in clause (i) whose stock was*
13 *treated as owned under subsection (b)(2)(B)*
14 *by any shareholder described in such clause.*

15 “(B) *TESTING DAY.*—*The testing days shall*
16 *be—*

17 “(i) *the first day of the corporation’s*
18 *taxable year (determined without regard to*
19 *this section), or*

20 “(ii) *the days during such representa-*
21 *tive period as the Secretary may pre-*
22 *scribe.”.*

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

1 “(ii) *CERTAIN AMOUNTS INCLUDED.*—
2 *Except as provided in clause (iii), the term*
3 *‘passive income’ includes, except as pro-*
4 *vided in subparagraph (E)(iii) or para-*
5 *graph (3)(I), any amount includible in*
6 *gross income under section 1293 (relating to*
7 *certain passive foreign investment compa-*
8 *nies).’.*”

9 (17)(A) *Subparagraph (A) of section 904(h)(1),*
10 *as redesignated by section 302, is amended by adding*
11 *“or” at the end of clause (i), by striking clause (ii),*
12 *and by redesignating clause (iii) as clause (ii).*

13 (B) *The paragraph heading of paragraph (2) of*
14 *section 904(h), as so redesignated, is amended by*
15 *striking “FOREIGN PERSONAL HOLDING OR”.*

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

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

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

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

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

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

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

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

10 (B) The amendment made by subparagraph (A)
11 shall apply to taxable years beginning after December
12 31, 2004.

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

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

20 (25) Paragraph (2) of section 1260(c) is amend-
21 ed by striking subparagraphs (H) and (I) and by re-
22 designating subparagraph (J) as subparagraph (H).

23 (26)(A) Subparagraph (F) of section 1291(b)(3)
24 is amended by striking “551(d), 959(a),” and insert-
25 ing “959(a)”.

1 (B) Subsection (e) of section 1291 is amended by
2 inserting “(as in effect on the day before the date of
3 the enactment of the American Jobs Creation Act of
4 2004)” after “section 1246”.

5 (27) Paragraph (2) of section 1294(a) is amend-
6 ed to read as follows:

7 “(2) *ELECTION NOT PERMITTED WHERE*
8 *AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION*
9 *951.—The taxpayer may not make an election under*
10 *paragraph (1) with respect to the undistributed PFIC*
11 *earnings tax liability attributable to a qualified elect-*
12 *ing fund for the taxable year if any amount is in-*
13 *cludible in the gross income of the taxpayer under sec-*
14 *tion 951 with respect to such fund for such taxable*
15 *year.”.*

16 (28) Section 6035 is hereby repealed.

17 (29) Subparagraph (D) of section 6103(e)(1) is
18 amended by striking clause (iv) and redesignating
19 clauses (v) and (vi) as clauses (iv) and (v), respec-
20 tively.

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

23 “(B) *CONSTRUCTIVE DIVIDENDS.—If the*
24 *taxpayer omits from gross income an amount*
25 *properly includible therein under section 951(a),*

1 *the tax may be assessed, or a proceeding in court*
2 *for the collection of such tax may be done with-*
3 *out assessing, at any time within 6 years after*
4 *the return was filed.”.*

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

6 *(A) by striking “6035, 6046, and 6046A” in*
7 *paragraph (1) and inserting “6046 and 6046A”,*
8 *and*

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

10 *(32) Sections 170(f)(10)(A), 508(d), 4947, and*
11 *4948(c)(4) are each amended by striking “556(b)(2),”*
12 *each place it appears.*

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

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

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

22 *(d) EFFECTIVE DATES.—*

23 *(1) IN GENERAL.—Except as provided in para-*
24 *graph (2), the amendments made by this section shall*
25 *apply to taxable years of foreign corporations begin-*

1 *ning after December 31, 2004, and to taxable years*
2 *of United States shareholders with or within which*
3 *such taxable years of foreign corporations end.*

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

8 **SEC. 314. DETERMINATION OF FOREIGN PERSONAL HOLD-**
9 **ING COMPANY INCOME WITH RESPECT TO**
10 **TRANSACTIONS IN COMMODITIES.**

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

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

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

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

1 “(4) *DEFINITION AND SPECIAL RULES RELATING*
2 *TO COMMODITY TRANSACTIONS.*—

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

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

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

12 “(II) *by applying subparagraph*
13 *(A)(i) thereof by substituting ‘ordinary*
14 *property or property described in sec-*
15 *tion 1231(b)’ for ‘ordinary property’,*
16 *and*

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

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

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

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

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

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

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

18 **SEC. 315. MODIFICATIONS TO TREATMENT OF AIRCRAFT**
19 **LEASING AND SHIPPING INCOME.**

20 *(a) ELIMINATION OF FOREIGN BASE COMPANY SHIP-*
21 *PING INCOME.—Section 954 (relating to foreign base com-*
22 *pany income) is amended—*

23 *(1) by striking paragraph (4) of subsection (a)*
24 *(relating to foreign base company shipping income),*
25 *and*

1 (2) by striking subsection (f) (relating to foreign
2 base company shipping income).

3 (b) *SAFE HARBOR FOR CERTAIN LEASING ACTIVI-*
4 *TIES.*—Subparagraph (A) of section 954(c)(2) is amended
5 by adding at the end the following new sentence: “For pur-
6 poses of the preceding sentence, rents derived from leasing
7 an aircraft or vessel in foreign commerce shall not fail to
8 be treated as derived in the active conduct of a trade or
9 business if, as determined under regulations prescribed by
10 the Secretary, the active leasing expenses are not less than
11 10 percent of the profit on the lease.”

12 (c) *CONFORMING AMENDMENTS.*—

13 (1) Section 952(c)(1)(B)(iii) is amended by
14 striking subclause (I) and redesignating subclauses
15 (II) through (VI) as subclauses (I) through (V), re-
16 spectively.

17 (2) Subsection (b) of section 954 is amended—

18 (A) by striking “the foreign base company
19 shipping income,” in paragraph (5),

20 (B) by striking paragraphs (6) and (7), and

21 (C) by redesignating paragraph (8) as
22 paragraph (6).

23 (d) *EFFECTIVE DATE.*—The amendments made by this
24 section shall apply to taxable years of foreign corporations
25 beginning after December 31, 2004, and to taxable years

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

3 **SEC. 316. MODIFICATION OF EXCEPTIONS UNDER SUBPART**
4 **F FOR ACTIVE FINANCING.**

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

7 “(E) *DIRECT CONDUCT OF ACTIVITIES.*—
8 For purposes of subparagraph (A)(ii)(II), an ac-
9 tivity shall be treated as conducted directly by
10 an eligible controlled foreign corporation or
11 qualified business unit in its home country if the
12 activity is performed by employees of a related
13 person and—

14 “(i) the related person is an eligible
15 controlled foreign corporation the home
16 country of which is the same as the home
17 country of the corporation or unit to which
18 subparagraph (A)(ii)(II) is being applied,

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

21 “(iii) the related person is compensated
22 on an arm’s-length basis for the perform-
23 ance of the activity by its employees and
24 such compensation is treated as earned by

1 *such person in its home country for pur-*
2 *poses of the home country's tax laws."*

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

8 **TITLE IV—EXTENSION OF**
9 **CERTAIN EXPIRING PROVISIONS**

10 **SEC. 401. ALLOWANCE OF NONREFUNDABLE PERSONAL**
11 **CREDITS AGAINST REGULAR AND MINIMUM**
12 **TAX LIABILITY.**

13 **(a) IN GENERAL.**—*Paragraph (2) of section 26(a) is*
14 *amended—*

15 **(1)** *by striking "RULE FOR 2000, 2001, 2002, AND*
16 *2003.—" and inserting "RULE FOR TAXABLE YEARS*
17 *2000 THROUGH 2005.—", and*

18 **(2)** *by striking "or 2003," and inserting "2003,*
19 *2004, or 2005,".*

20 **(b) CONFORMING PROVISIONS.**—

21 **(1)** *Section 904(h) is amended by striking "or*
22 *2003" and inserting "2003, 2004, or 2005".*

23 **(2)** *The amendments made by sections 201(b),*
24 *202(f), and 618(b) of the Economic Growth and Tax*

1 *Relief Reconciliation Act of 2001 shall not apply to*
2 *taxable years beginning during 2004 or 2005.*

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

6 **SEC. 402. EXTENSION OF RESEARCH CREDIT.**

7 (a) *EXTENSION.*—

8 (1) *IN GENERAL.*—*Section 41(h)(1)(B) (relating*
9 *to termination) is amended by striking “June 30,*
10 *2004” and inserting “December 31, 2005”.*

11 (2) *CONFORMING AMENDMENT.*—*Section*
12 *45C(b)(1)(D) is amended by striking “June 30, 2004”*
13 *and inserting “December 31, 2005”.*

14 (b) *EFFECTIVE DATE.*—*The amendments made by sub-*
15 *section (a) shall apply to amounts paid or incurred after*
16 *June 30, 2004.*

17 **SEC. 403. EXTENSION OF CREDIT FOR ELECTRICITY PRO-**
18 **DUCED FROM CERTAIN RENEWABLE RE-**
19 **SOURCES.**

20 (a) *IN GENERAL.*—*Subparagraphs (A) and (B) of sec-*
21 *tion 45(c)(3) (defining qualified facility) are both amended*
22 *by striking “2004” and inserting “2006”.*

23 (b) *EFFECTIVE DATE.*—*The amendments made by this*
24 *section shall apply to facilities placed in service after De-*
25 *cember 31, 2003.*

1 **SEC. 404. INDIAN EMPLOYMENT TAX CREDIT.**

2 Section 45A(f) (relating to termination) is amended
3 by striking “December 31, 2004” and inserting “December
4 31, 2005”.

5 **SEC. 405. WORK OPPORTUNITY CREDIT.**

6 (a) *IN GENERAL.*—Subparagraph (B) of section
7 51(c)(4) is amended by striking “December 31, 2003” and
8 inserting “December 31, 2005”.

9 (b) *EFFECTIVE DATE.*—The amendment made by sub-
10 section (a) shall apply to individuals who begin work for
11 the employer after December 31, 2003.

12 **SEC. 406. WELFARE-TO-WORK CREDIT.**

13 (a) *IN GENERAL.*—Subsection (f) of section 51A is
14 amended by striking “December 31, 2003” and inserting
15 “December 31, 2005”.

16 (b) *EFFECTIVE DATE.*—The amendment made by sub-
17 section (a) shall apply to individuals who begin work for
18 the employer after December 31, 2003.

19 **SEC. 407. CERTAIN EXPENSES OF ELEMENTARY AND SEC-**
20 **ONDARY SCHOOL TEACHERS.**

21 (a) *IN GENERAL.*—Subparagraph (D) of section
22 62(a)(2) (relating to certain trade and business deductions
23 of employees) is amended by striking “or 2003” and insert-
24 ing “, 2003, 2004, or 2005”.

1 (b) *EFFECTIVE DATE.*—The amendment made by sub-
2 section (a) shall apply to taxable years beginning after De-
3 cember 31, 2003.

4 **SEC. 408. EXTENSION OF ACCELERATED DEPRECIATION**
5 **BENEFIT FOR PROPERTY ON INDIAN RES-**
6 **ERVATIONS.**

7 Paragraph (8) of section 168(j) (relating to termi-
8 nation) is amended by striking “December 31, 2004” and
9 inserting “December 31, 2005”.

10 **SEC. 409. CHARITABLE CONTRIBUTIONS OF COMPUTER**
11 **TECHNOLOGY AND EQUIPMENT USED FOR**
12 **EDUCATIONAL PURPOSES.**

13 (a) *IN GENERAL.*—Subparagraph (G) of section
14 170(e)(6) (relating to special rule for contributions of com-
15 puter technology and equipment for educational purposes)
16 is amended by striking “December 31, 2003” and inserting
17 “December 31, 2005”.

18 (b) *EFFECTIVE DATE.*—The amendment made by sub-
19 section (a) shall apply to taxable years beginning after De-
20 cember 31, 2003.

21 **SEC. 410. EXPENSING OF ENVIRONMENTAL REMEDIATION**
22 **COSTS.**

23 (a) *IN GENERAL.*—Subsection (h) of section 198 (relat-
24 ing to termination) is amended by striking “December 31,
25 2003” and inserting “December 31, 2005”.

1 (b) *EFFECTIVE DATE.*—*The amendments made by sub-*
2 *section (a) shall apply to expenditures paid or incurred*
3 *after December 31, 2003.*

4 **SEC. 411. AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.**

5 (a) *IN GENERAL.*—*Paragraphs (2) and (3)(B) of sec-*
6 *tion 220(i) (defining cut-off year) are each amended by*
7 *striking “2003” each place it appears in the text and head-*
8 *ings and inserting “2005”.*

9 (b) *CONFORMING AMENDMENTS.*—

10 (1) *Paragraph (2) of section 220(j) is amend-*
11 *ed—*

12 (A) *in the text by striking “or 2002” each*
13 *place it appears and inserting “2002, or 2004”,*
14 *and*

15 (B) *in the heading by striking “OR 2002”*
16 *and inserting “2002, OR 2004”.*

17 (2) *Subparagraph (A) of section 220(j)(4) is*
18 *amended by striking “and 2002” and inserting*
19 *“2002, and 2004”.*

20 (3) *Subparagraph (C) of section 220(j)(2) is*
21 *amended to read as follows:*

22 “(C) *NO LIMITATION FOR 2000 OR 2003.*—
23 *The numerical limitation shall not apply for*
24 *2000 or 2003.”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall take effect on January 1, 2004.*

3 (d) *TIME FOR FILING REPORTS, ETC.*—

4 (1) *The report required by section 220(j)(4) of*
5 *the Internal Revenue Code of 1986 to be made on Au-*
6 *gust 1, 2004, shall be treated as timely if made before*
7 *the close of the 90-day period beginning on the date*
8 *of the enactment of this Act.*

9 (2) *The determination and publication required*
10 *by section 220(j)(5) of such Code with respect to cal-*
11 *endar year 2004 shall be treated as timely if made be-*
12 *fore the close of the 120-day period beginning on the*
13 *date of the enactment of this Act. If the determination*
14 *under the preceding sentence is that 2004 is a cut-off*
15 *year under section 220(i) of such Code, the cut-off*
16 *date under such section 220(i) shall be the last day*
17 *of such 120-day period.*

18 **SEC. 412. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLE-**
19 **TION FOR OIL AND NATURAL GAS PRODUCED**
20 **FROM MARGINAL PROPERTIES.**

21 (a) *IN GENERAL.*—*Subparagraph (H) of section*
22 *613A(c)(6) is amended by striking “January 1, 2004” and*
23 *inserting “January 1, 2006”.*

1 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
2 *section (a) shall apply to taxable years beginning after De-*
3 *cember 31, 2003.*

4 **SEC. 413. QUALIFIED ZONE ACADEMY BONDS.**

5 (a) *IN GENERAL.*—*Paragraph (1) of section 1397E(e)*
6 *is amended by striking “and 2003” and inserting “2003,*
7 *2004, and 2005”.*

8 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
9 *section (a) shall apply to obligations issued after the date*
10 *of the enactment of this Act.*

11 **SEC. 414. DISTRICT OF COLUMBIA.**

12 (a) *DISTRICT OF COLUMBIA ENTERPRISE ZONE.*—
13 *Subsection (f) of section 1400 is amended by striking “De-*
14 *cember 31, 2003” both places it appears and inserting “De-*
15 *cember 31, 2005”.*

16 (b) *TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.*—
17 *Subsection (b) of section 1400A is amended by striking “De-*
18 *cember 31, 2003” and inserting “December 31, 2005”.*

19 (c) *ZERO PERCENT CAPITAL GAINS RATE.*—

20 (1) *Section 1400B is amended by striking “Jan-*
21 *uary 1, 2004” each place it appears and inserting*
22 *“January 1, 2006”.*

23 (2) *Subsections (e)(2) and (g)(2) of section*
24 *1400B are each amended by striking “2008” each*

1 *place it appears in the headings and text and insert-*
2 *ing “2010”.*

3 (3) *Subsection (d) of section 1400F is amended*
4 *by striking “December 31, 2008” and inserting “De-*
5 *cember 31, 2010”.*

6 (d) *FIRST-TIME HOMEBUYER CREDIT.*—*Subsection (i)*
7 *of section 1400C is amended by striking “January 1, 2004”*
8 *and inserting “January 1, 2006”.*

9 (e) *EFFECTIVE DATES.*—

10 (1) *IN GENERAL.*—*Except as otherwise provided*
11 *in this subsection, the amendments made by this sec-*
12 *tion shall take effect on the date of the enactment of*
13 *this Act.*

14 (2) *TAX-EXEMPT ECONOMIC DEVELOPMENT*
15 *BONDS.*—*The amendment made by subsection (b)*
16 *shall apply to obligations issued after December 31,*
17 *2003.*

18 **SEC. 415. EXTENSION OF CERTAIN NEW YORK LIBERTY**

19 **ZONE BOND FINANCING.**

20 *Subparagraph (D) of section 1400L(d)(2) is amended*
21 *by striking “2005” and inserting “2010”.*

22 **SEC. 416. DISCLOSURES RELATING TO TERRORIST ACTIVI-**
23 **TIES.**

24 (a) *IN GENERAL.*—*Clause (iv) of section 6103(i)(3)(C)*
25 *and subparagraph (E) of section 6103(i)(7) are both*

1 *amended by striking “December 31, 2003” and inserting*
2 *“December 31, 2005”.*

3 *(b) DISCLOSURE OF TAXPAYER IDENTITY TO LAW EN-*
4 *FORCEMENT AGENCIES INVESTIGATING TERRORISM.—Sub-*
5 *paragraph (A) of section 6103(i)(7) is amended by adding*
6 *at the end the following new clause:*

7 *“(v) TAXPAYER IDENTITY.—For pur-*
8 *poses of this subparagraph, a taxpayer’s*
9 *identity shall not be treated as taxpayer re-*
10 *turn information.”.*

11 *(c) EFFECTIVE DATES.—*

12 *(1) IN GENERAL.—The amendments made by*
13 *subsection (a) shall apply to disclosures on or after*
14 *the date of the enactment of this Act.*

15 *(2) SUBSECTION (b).—The amendment made by*
16 *subsection (b) shall take effect as if included in section*
17 *201 of the Victims of Terrorism Tax Relief Act of*
18 *2001.*

19 **SEC. 417. DISCLOSURE OF RETURN INFORMATION RELAT-**
20 **ING TO STUDENT LOANS.**

21 *Section 6103(l)(13)(D) (relating to termination) is*
22 *amended by striking “December 31, 2004” and inserting*
23 *“December 31, 2005”.*

1 **SEC. 418. COVER OVER OF TAX ON DISTILLED SPIRITS.**

2 (a) *IN GENERAL.*—Paragraph (1) of section 7652(f) is
3 amended by striking “January 1, 2004” and inserting
4 “January 1, 2006”.

5 (b) *EFFECTIVE DATE.*—The amendment made by sub-
6 section (a) shall apply to articles brought into the United
7 States after December 31, 2003.

8 **SEC. 419. JOINT REVIEW OF STRATEGIC PLANS AND BUDG-**
9 **ET FOR THE INTERNAL REVENUE SERVICE.**

10 (a) *IN GENERAL.*—Paragraph (2) of section 8021(f)
11 (relating to joint reviews) is amended by striking “2004”
12 and inserting “2005”.

13 (b) *REPORT.*—Subparagraph (C) of section 8022(3)
14 (regarding reports) is amended—

15 (1) by striking “2004” and inserting “2005”,
16 and

17 (2) by striking “with respect to—” and all that
18 follows and inserting “with respect to the matters ad-
19 dressed in the joint review referred to in section
20 8021(f)(2).”.

21 (c) *TIME FOR JOINT REVIEW.*—The joint review re-
22 quired by section 8021(f)(2) of the Internal Revenue Code
23 of 1986 to be made before June 1, 2004, shall be treated
24 as timely if made before June 1, 2005.

1 **SEC. 420. PARITY IN THE APPLICATION OF CERTAIN LIMITS**
2 **TO MENTAL HEALTH BENEFITS.**

3 (a) *IN GENERAL.*—Subsection (f) of section 9812 is
4 amended by striking “and” at the end of paragraph (1),
5 by striking paragraph (2), and by inserting after para-
6 graph (1) the following new paragraphs:

7 “(2) on or after January 1, 2004, and before the
8 date of the enactment of American Jobs Creation Act
9 of 2004, and

10 “(3) after December 31, 2005.”

11 (b) *EFFECTIVE DATE.*—The amendments made by this
12 section shall apply to benefits for services furnished on or
13 after December 31, 2003.

14 **SEC. 421. COMBINED EMPLOYMENT TAX REPORTING**
15 **PROJECT.**

16 (a) *IN GENERAL.*—Paragraph (1) of section 976(b) of
17 the Taxpayer Relief Act of 1997 (111 Stat. 898) is amended
18 by striking “for a period ending with the date which is 5
19 years after the date of the enactment of this Act” and insert-
20 ing “during the period ending on December 31, 2005”.

21 (b) *EFFECTIVE DATE.*—The amendment made by sub-
22 section (a) shall apply to disclosures on or after the date
23 of the enactment of this Act.

1 **SEC. 422. CLEAN-FUEL VEHICLES.**

2 (a) *CREDIT FOR QUALIFIED ELECTRIC VEHICLES.*—
3 Paragraph (2) of section 30(b) (relating to phaseout) is
4 amended to read as follows:

5 “(2) *PHASEOUT.*—In the case of any qualified
6 electric vehicle placed in service after December 31,
7 2005, the credit otherwise allowable under subsection
8 (a) (determined after the application of paragraph
9 (1)) shall be reduced by 75 percent.”.

10 (b) *DEDUCTION FOR QUALIFIED CLEAN-FUEL VEHI-*
11 *CLE PROPERTY.*—Subparagraph (B) of section 179A(b)(1)
12 (relating to phaseout) is amended to read as follows:

13 “(B) *PHASEOUT.*—In the case of any quali-
14 fied clean-fuel vehicle property placed in service
15 after December 31, 2005, the limit otherwise ap-
16 plicable under subparagraph (A) shall be reduced
17 by 75 percent.”.

18 (c) *EFFECTIVE DATE.*—The amendments made by this
19 section shall apply to property placed in service after De-
20 cember 31, 2003.

1 **TITLE V—DEDUCTION OF STATE**
 2 **AND LOCAL GENERAL SALES**
 3 **TAXES**

4 **SEC. 501. DEDUCTION OF STATE AND LOCAL GENERAL**
 5 **SALES TAXES IN LIEU OF STATE AND LOCAL**
 6 **INCOME TAXES.**

7 *(a) IN GENERAL.—Subsection (b) of section 164 (relat-*
 8 *ing to definitions and special rules) is amended by adding*
 9 *at the end the following:*

10 *“(5) GENERAL SALES TAXES.—For purposes of*
 11 *subsection (a)—*

12 *“(A) ELECTION TO DEDUCT STATE AND*
 13 *LOCAL SALES TAXES IN LIEU OF STATE AND*
 14 *LOCAL INCOME TAXES.—*

15 *“(i) IN GENERAL.—At the election of*
 16 *the taxpayer for the taxable year, subsection*
 17 *(a) shall be applied—*

18 *“(I) without regard to the ref-*
 19 *erence to State and local income taxes,*
 20 *and*

21 *“(II) as if State and local general*
 22 *sales taxes were referred to in a para-*
 23 *graph thereof.*

24 *“(B) DEFINITION OF GENERAL SALES*
 25 *TAX.—The term ‘general sales tax’ means a tax*

1 *imposed at one rate with respect to the sale at*
2 *retail of a broad range of classes of items.*

3 “(C) *SPECIAL RULES FOR FOOD, ETC.—In*
4 *the case of items of food, clothing, medical sup-*
5 *plies, and motor vehicles—*

6 “(i) *the fact that the tax does not*
7 *apply with respect to some or all of such*
8 *items shall not be taken into account in de-*
9 *termining whether the tax applies with re-*
10 *spect to a broad range of classes of items,*
11 *and*

12 “(ii) *the fact that the rate of tax appli-*
13 *cable with respect to some or all of such*
14 *items is lower than the general rate of tax*
15 *shall not be taken into account in deter-*
16 *mining whether the tax is imposed at one*
17 *rate.*

18 “(D) *ITEMS TAXED AT DIFFERENT*
19 *RATES.—Except in the case of a lower rate of tax*
20 *applicable with respect to an item described in*
21 *subparagraph (C), no deduction shall be allowed*
22 *under this paragraph for any general sales tax*
23 *imposed with respect to an item at a rate other*
24 *than the general rate of tax.*

1 “(E) *COMPENSATING USE TAXES.*—A com-
2 *pensating use tax with respect to an item shall*
3 *be treated as a general sales tax. For purposes of*
4 *the preceding sentence, the term ‘compensating*
5 *use tax’ means, with respect to any item, a tax*
6 *which—*

7 “(i) *is imposed on the use, storage, or*
8 *consumption of such item, and*

9 “(ii) *is complementary to a general*
10 *sales tax, but only if a deduction is allow-*
11 *able under this paragraph with respect to*
12 *items sold at retail in the taxing jurisdic-*
13 *tion which are similar to such item.*

14 “(F) *SPECIAL RULE FOR MOTOR VEHI-*
15 *CLES.*—*In the case of motor vehicles, if the rate*
16 *of tax exceeds the general rate, such excess shall*
17 *be disregarded and the general rate shall be*
18 *treated as the rate of tax.*

19 “(G) *SEPARATELY STATED GENERAL SALES*
20 *TAXES.*—*If the amount of any general sales tax*
21 *is separately stated, then, to the extent that the*
22 *amount so stated is paid by the consumer (other*
23 *than in connection with the consumer’s trade or*
24 *business) to the seller, such amount shall be*

1 *treated as a tax imposed on, and paid by, such*
2 *consumer.*

3 “(H) *AMOUNT OF DEDUCTION TO BE DE-*
4 *TERMINED UNDER TABLES.—*

5 “(i) *IN GENERAL.—The amount of the*
6 *deduction allowed under this paragraph*
7 *shall be determined under tables prescribed*
8 *by the Secretary.*

9 “(ii) *REQUIREMENTS FOR TABLES.—*
10 *The tables prescribed under clause (i)—*

11 “(I) *shall reflect the provisions of*
12 *this paragraph,*

13 “(II) *shall be based on the average*
14 *consumption by taxpayers on a State-*
15 *by-State basis, as determined by the*
16 *Secretary, taking into account filing*
17 *status, number of dependents, adjusted*
18 *gross income, and rates of State and*
19 *local general sales taxation, and*

20 “(III) *need only be determined*
21 *with respect to adjusted gross incomes*
22 *up to the applicable amount (as deter-*
23 *mined under section 68(b)).*

24 “(I) *APPLICATION OF PARAGRAPH.—This*
25 *paragraph shall apply to taxable years begin-*

1 *ning after December 31, 2003, and before Janu-*
 2 *ary 1, 2006.”.*

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

6 **TITLE VI—REVENUE**

7 **PROVISIONS**

8 ***Subtitle A—Provisions to Reduce*** 9 ***Tax Avoidance Through Indi-*** 10 ***vidual and Corporate Expatria-*** 11 ***tion***

12 **SEC. 601. TAX TREATMENT OF EXPATRIATED ENTITIES AND** 13 **THEIR FOREIGN PARENTS.**

14 *(a) IN GENERAL.—Subchapter C of chapter 80 (relat-*
 15 *ing to provisions affecting more than one subtitle) is*
 16 *amended by adding at the end the following new section:*

17 **“SEC. 7874. RULES RELATING TO EXPATRIATED ENTITIES** 18 **AND THEIR FOREIGN PARENTS.**

19 *“(a) TAX ON INVERSION GAIN OF EXPATRIATED ENTI-*
 20 *TIES.—*

21 *“(1) IN GENERAL.—The taxable income of an ex-*
 22 *patriated entity for any taxable year which includes*
 23 *any portion of the applicable period shall in no event*
 24 *be less than the inversion gain of the entity for the*
 25 *taxable year.*

1 “(2) *EXPATRIATED ENTITY.*—*For purposes of*
2 *this subsection—*

3 “(A) *IN GENERAL.*—*The term ‘expatriated*
4 *entity’ means—*

5 “(i) *the domestic corporation or part-*
6 *nership referred to in subparagraph (B)(i)*
7 *with respect to which a foreign corporation*
8 *is a surrogate foreign corporation, and*

9 “(ii) *any United States person who is*
10 *related (within the meaning of section*
11 *267(b) or 707(b)(1)) to a domestic corpora-*
12 *tion or partnership described in clause (i).*

13 “(B) *SURROGATE FOREIGN CORPORATION.*—
14 *A foreign corporation shall be treated as a surro-*
15 *gate foreign corporation if, pursuant to a plan*
16 *(or a series of related transactions)—*

17 “(i) *the entity completes after March 4,*
18 *2003, the direct or indirect acquisition of*
19 *substantially all of the properties held di-*
20 *rectly or indirectly by a domestic corpora-*
21 *tion or substantially all of the properties*
22 *constituting a trade or business of a domes-*
23 *tic partnership,*

1 “(ii) after the acquisition at least 60
2 percent of the stock (by vote or value) of the
3 entity is held—

4 “(I) in the case of an acquisition
5 with respect to a domestic corporation,
6 by former shareholders of the domestic
7 corporation by reason of holding stock
8 in the domestic corporation, or

9 “(II) in the case of an acquisition
10 with respect to a domestic partnership,
11 by former partners of the domestic
12 partnership by reason of holding a
13 capital or profits interest in the domes-
14 tic partnership, and

15 “(iii) after the acquisition the ex-
16 panded affiliated group which includes the
17 entity does not have substantial business ac-
18 tivities in the foreign country in which, or
19 under the law of which, the entity is created
20 or organized, when compared to the total
21 business activities of such expanded affili-
22 ated group.

23 An entity otherwise described in clause (i) with
24 respect to any domestic corporation or partner-
25 ship trade or business shall be treated as not so

1 *described if, on or before March 4, 2003, such en-*
2 *tity acquired directly or indirectly more than*
3 *half of the properties held directly or indirectly*
4 *by such corporation or more than half of the*
5 *properties constituting such partnership trade or*
6 *business, as the case may be.*

7 “(b) *DEFINITIONS AND SPECIAL RULES.—*

8 “(1) *EXPANDED AFFILIATED GROUP.—The term*
9 *‘expanded affiliated group’ means an affiliated group*
10 *as defined in section 1504(a) but without regard to*
11 *section 1504(b)(3), except that section 1504(a) shall*
12 *be applied by substituting ‘more than 50 percent’ for*
13 *‘at least 80 percent’ each place it appears.*

14 “(2) *CERTAIN STOCK DISREGARDED.—There*
15 *shall not be taken into account in determining owner-*
16 *ship under subsection (a)(2)(B)(ii)—*

17 “(A) *stock held by members of the expanded*
18 *affiliated group which includes the foreign cor-*
19 *poration, or*

20 “(B) *stock of such foreign corporation which*
21 *is sold in a public offering related to the acquisi-*
22 *tion described in subsection (a)(2)(B)(i).*

23 “(3) *PLAN DEEMED IN CERTAIN CASES.—If a*
24 *foreign corporation acquires directly or indirectly*
25 *substantially all of the properties of a domestic cor-*

1 *poration or partnership during the 4-year period be-*
2 *ginning on the date which is 2 years before the owner-*
3 *ship requirements of subsection (a)(2)(B)(ii) are met,*
4 *such actions shall be treated as pursuant to a plan.*

5 *“(4) CERTAIN TRANSFERS DISREGARDED.—The*
6 *transfer of properties or liabilities (including by con-*
7 *tribution or distribution) shall be disregarded if such*
8 *transfers are part of a plan a principal purpose of*
9 *which is to avoid the purposes of this section.*

10 *“(5) SPECIAL RULE FOR RELATED PARTNER-*
11 *SHIPS.—For purposes of applying subsection*
12 *(a)(2)(B)(ii) to the acquisition of a trade or business*
13 *of a domestic partnership, except as provided in regu-*
14 *lations, all partnerships which are under common*
15 *control (within the meaning of section 482) shall be*
16 *treated as 1 partnership.*

17 *“(6) REGULATIONS.—The Secretary shall pre-*
18 *scribe such regulations as may be appropriate to de-*
19 *termine whether a corporation is a surrogate foreign*
20 *corporation, including regulations—*

21 *“(A) to treat warrants, options, contracts to*
22 *acquire stock, convertible debt interests, and*
23 *other similar interests as stock, and*

24 *“(B) to treat stock as not stock.*

1 “(c) *OTHER DEFINITIONS.*—*For purposes of this sec-*
2 *tion—*

3 “(1) *APPLICABLE PERIOD.*—*The term ‘applicable*
4 *period’ means the period—*

5 “(A) *beginning on the first date properties*
6 *are acquired as part of the acquisition described*
7 *in subsection (a)(2)(B)(i), and*

8 “(B) *ending on the date which is 10 years*
9 *after the last date properties are acquired as*
10 *part of such acquisition.*

11 “(2) *INVERSION GAIN.*—*The term ‘inversion*
12 *gain’ means the income or gain recognized by reason*
13 *of the transfer during the applicable period of stock*
14 *or other properties by an expatriated entity, and any*
15 *income received or accrued during the applicable pe-*
16 *riod by reason of a license of any property by an ex-*
17 *patriated entity—*

18 “(A) *as part of the acquisition described in*
19 *subsection (a)(2)(B)(i), or*

20 “(B) *after such acquisition if the transfer or*
21 *license is to a foreign related person.*

22 *Subparagraph (B) shall not apply to property de-*
23 *scribed in section 1221(a)(1) in the hands of the expa-*
24 *triated entity.*

1 “(3) *FOREIGN RELATED PERSON.*—The term ‘for-
2 *foreign related person*’ means, with respect to any expa-
3 *triated entity, a foreign person which—*

4 “(A) *is related (within the meaning of sec-*
5 *tion 267(b) or 707(b)(1)) to such entity, or*

6 “(B) *is under the same common control*
7 *(within the meaning of section 482) as such enti-*
8 *ty.*

9 “(d) *SPECIAL RULES.*—

10 “(1) *CREDITS NOT ALLOWED AGAINST TAX ON IN-*
11 *VERSION GAIN.*—Credits (other than the credit allowed
12 *by section 901) shall be allowed against the tax im-*
13 *posed by this chapter on an expatriated entity for*
14 *any taxable year described in subsection (a) only to*
15 *the extent such tax exceeds the product of—*

16 “(A) *the amount of the inversion gain for*
17 *the taxable year, and*

18 “(B) *the highest rate of tax specified in sec-*
19 *tion 11(b)(1).*

20 *For purposes of determining the credit allowed by sec-*
21 *tion 901, inversion gain shall be treated as from*
22 *sources within the United States.*

23 “(2) *SPECIAL RULES FOR PARTNERSHIPS.*—*In*
24 *the case of an expatriated entity which is a partner-*
25 *ship—*

1 “(A) subsection (a)(1) shall apply at the
2 partner rather than the partnership level,

3 “(B) the inversion gain of any partner for
4 any taxable year shall be equal to the sum of—

5 “(i) the partner’s distributive share of
6 inversion gain of the partnership for such
7 taxable year, plus

8 “(ii) gain recognized for the taxable
9 year by the partner by reason of the trans-
10 fer during the applicable period of any
11 partnership interest of the partner in such
12 partnership to the surrogate foreign cor-
13 poration, and

14 “(C) the highest rate of tax specified in the
15 rate schedule applicable to the partner under this
16 chapter shall be substituted for the rate of tax re-
17 ferred to in paragraph (1).

18 “(3) COORDINATION WITH SECTION 172 AND MIN-
19 IMUM TAX.—Rules similar to the rules of paragraphs
20 (3) and (4) of section 860E(a) shall apply for pur-
21 poses of subsection (a).

22 “(4) STATUTE OF LIMITATIONS.—

23 “(A) IN GENERAL.—The statutory period
24 for the assessment of any deficiency attributable
25 to the inversion gain of any taxpayer for any

1 *pre-inversion year shall not expire before the ex-*
2 *piration of 3 years from the date the Secretary*
3 *is notified by the taxpayer (in such manner as*
4 *the Secretary may prescribe) of the acquisition*
5 *described in subsection (a)(2)(B)(i) to which*
6 *such gain relates and such deficiency may be as-*
7 *essed before the expiration of such 3-year period*
8 *notwithstanding the provisions of any other law*
9 *or rule of law which would otherwise prevent*
10 *such assessment.*

11 “(B) *PRE-INVERSION YEAR.*—*For purposes*
12 *of subparagraph (A), the term ‘pre-inversion*
13 *year’ means any taxable year if—*

14 “(i) *any portion of the applicable pe-*
15 *riod is included in such taxable year, and*

16 “(ii) *such year ends before the taxable*
17 *year in which the acquisition described in*
18 *subsection (a)(2)(B)(i) is completed.*

19 “(e) *SPECIAL RULE FOR TREATIES.*—*Nothing in sec-*
20 *tion 894 or 7852(d) or in any other provision of law shall*
21 *be construed as permitting an exemption, by reason of any*
22 *treaty obligation of the United States heretofore or hereafter*
23 *entered into, from the provisions of this section.*

24 “(f) *REGULATIONS.*—*The Secretary shall provide such*
25 *regulations as are necessary to carry out this section, in-*

1 *cluding regulations providing for such adjustments to the*
 2 *application of this section as are necessary to prevent the*
 3 *avoidance of the purposes of this section, including the*
 4 *avoidance of such purposes through—*

5 “(1) *the use of related persons, pass-through or*
 6 *other noncorporate entities, or other intermediaries,*
 7 *or*

8 “(2) *transactions designed to have persons cease*
 9 *to be (or not become) members of expanded affiliated*
 10 *groups or related persons.”.*

11 **(b) CONFORMING AMENDMENT.**—*The table of sections*
 12 *for subchapter C of chapter 80 is amended by adding at*
 13 *the end the following new item:*

*“Sec. 7874. Rules relating to expatriated entities and their foreign
 parents.”*

14 **(c) EFFECTIVE DATE.**—*The amendments made by this*
 15 *section shall apply to taxable years ending after March 4,*
 16 *2003.*

17 **SEC. 602. EXCISE TAX ON STOCK COMPENSATION OF INSID-**
 18 **ERS IN EXPATRIATED CORPORATIONS.**

19 **(a) IN GENERAL.**—*Subtitle D is amended by inserting*
 20 *after chapter 44 end the following new chapter:*

21 **“CHAPTER 45—PROVISIONS RELATING TO**
 22 **EXPATRIATED ENTITIES**

*“Sec. 4985. Stock compensation of insiders in expatriated corpora-
 tions.*

1 **“SEC. 4985. STOCK COMPENSATION OF INSIDERS IN EXPA-**
2 **TRIATED CORPORATIONS.**

3 “(a) *IMPOSITION OF TAX.*—*In the case of an indi-*
4 *vidual who is a disqualified individual with respect to any*
5 *expatriated corporation, there is hereby imposed on such*
6 *person a tax equal to 15 percent of the value (determined*
7 *under subsection (b)) of the specified stock compensation*
8 *held (directly or indirectly) by or for the benefit of such*
9 *individual or a member of such individual’s family (as de-*
10 *fin ed in section 267) at any time during the 12-month pe-*
11 *riod beginning on the date which is 6 months before the*
12 *expatriation date.*

13 “(b) *VALUE.*—*For purposes of subsection (a)—*

14 “(1) *IN GENERAL.*—*The value of specified stock*
15 *compensation shall be—*

16 “(A) *in the case of a stock option (or other*
17 *similar right) or a stock appreciation right, the*
18 *fair value of such option or right, and*

19 “(B) *in any other case, the fair market*
20 *value of such compensation.*

21 “(2) *DATE FOR DETERMINING VALUE.*—*The de-*
22 *termination of value shall be made—*

23 “(A) *in the case of specified stock compensa-*
24 *tion held on the expatriation date, on such date,*

25 “(B) *in the case of such compensation which*
26 *is canceled during the 6 months before the expa-*

1 *triation date, on the day before such cancella-*
2 *tion, and*

3 “(C) *in the case of such compensation which*
4 *is granted after the expatriation date, on the*
5 *date such compensation is granted.*

6 “(c) *TAX TO APPLY ONLY IF SHAREHOLDER GAIN*
7 *RECOGNIZED.—Subsection (a) shall apply to any disquali-*
8 *fied individual with respect to an expatriated corporation*
9 *only if gain (if any) on any stock in such corporation is*
10 *recognized in whole or part by any shareholder by reason*
11 *of the acquisition referred to in section 7874(a)(2)(B)(i)*
12 *with respect to such corporation.*

13 “(d) *EXCEPTION WHERE GAIN RECOGNIZED ON COM-*
14 *PENSATION.—Subsection (a) shall not apply to—*

15 “(1) *any stock option which is exercised on the*
16 *expatriation date or during the 6-month period before*
17 *such date and to the stock acquired in such exercise,*
18 *if income is recognized under section 83 on or before*
19 *the expatriation date with respect to the stock ac-*
20 *quired pursuant to such exercise, and*

21 “(2) *any other specified stock compensation*
22 *which is exercised, sold, exchanged, distributed,*
23 *cashed-out, or otherwise paid during such period in*
24 *a transaction in which income, gain, or loss is recog-*
25 *nized in full.*

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

2 “(1) *DISQUALIFIED INDIVIDUAL.*—*The term ‘dis-*
3 *qualified individual’ means, with respect to a cor-*
4 *poration, any individual who, at any time during the*
5 *12-month period beginning on the date which is 6*
6 *months before the expatriation date—*

7 “(A) *is subject to the requirements of section*
8 *16(a) of the Securities Exchange Act of 1934*
9 *with respect to such corporation or any member*
10 *of the expanded affiliated group which includes*
11 *such corporation, or*

12 “(B) *would be subject to such requirements*
13 *if such corporation or member were an issuer of*
14 *equity securities referred to in such section.*

15 “(2) *EXPATRIATED CORPORATION; EXPATRIATION*
16 *DATE.—*

17 “(A) *EXPATRIATED CORPORATION.*—*The*
18 *term ‘expatriated corporation’ means any cor-*
19 *poration which is an expatriated entity (as de-*
20 *fined in section 7874(a)(2)). Such term includes*
21 *any predecessor or successor of such a corpora-*
22 *tion.*

23 “(B) *EXPATRIATION DATE.*—*The term ‘ex-*
24 *patriation date’ means, with respect to a cor-*

1 *poration, the date on which the corporation first*
2 *becomes an expatriated corporation.*

3 *“(3) SPECIFIED STOCK COMPENSATION.—*

4 *“(A) IN GENERAL.—The term ‘specified*
5 *stock compensation’ means payment (or right to*
6 *payment) granted by the expatriated corporation*
7 *(or by any member of the expanded affiliated*
8 *group which includes such corporation) to any*
9 *person in connection with the performance of*
10 *services by a disqualified individual for such cor-*
11 *poration or member if the value of such payment*
12 *or right is based on (or determined by reference*
13 *to) the value (or change in value) of stock in*
14 *such corporation (or any such member).*

15 *“(B) EXCEPTIONS.—Such term shall not in-*
16 *clude—*

17 *“(i) any option to which part II of*
18 *subchapter D of chapter 1 applies, or*

19 *“(ii) any payment or right to payment*
20 *from a plan referred to in section*
21 *280G(b)(6).*

22 *“(4) EXPANDED AFFILIATED GROUP.—The term*
23 *‘expanded affiliated group’ means an affiliated group*
24 *(as defined in section 1504(a) without regard to sec-*
25 *tion 1504(b)(3)); except that section 1504(a) shall be*

1 *applied by substituting ‘more than 50 percent’ for ‘at*
2 *least 80 percent’ each place it appears.*

3 “(f) *SPECIAL RULES.—For purposes of this section—*

4 “(1) *CANCELLATION OF RESTRICTION.—The can-*
5 *cellation of a restriction which by its terms will never*
6 *lapse shall be treated as a grant.*

7 “(2) *PAYMENT OR REIMBURSEMENT OF TAX BY*
8 *CORPORATION TREATED AS SPECIFIED STOCK COM-*
9 *PENSATION.—Any payment of the tax imposed by this*
10 *section directly or indirectly by the expatriated cor-*
11 *poration or by any member of the expanded affiliated*
12 *group which includes such corporation—*

13 “(A) *shall be treated as specified stock com-*
14 *ensation, and*

15 “(B) *shall not be allowed as a deduction*
16 *under any provision of chapter 1.*

17 “(3) *CERTAIN RESTRICTIONS IGNORED.—Wheth-*
18 *er there is specified stock compensation, and the value*
19 *thereof, shall be determined without regard to any re-*
20 *striction other than a restriction which by its terms*
21 *will never lapse.*

22 “(4) *PROPERTY TRANSFERS.—Any transfer of*
23 *property shall be treated as a payment and any right*
24 *to a transfer of property shall be treated as a right*
25 *to a payment.*

1 “(5) *OTHER ADMINISTRATIVE PROVISIONS.*—*For*
2 *purposes of subtitle F, any tax imposed by this sec-*
3 *tion shall be treated as a tax imposed by subtitle A.*

4 “(g) *REGULATIONS.*—*The Secretary shall prescribe*
5 *such regulations as may be necessary or appropriate to*
6 *carry out the purposes of this section.*”

7 (b) *DENIAL OF DEDUCTION.*—

8 (1) *IN GENERAL.*—*Paragraph (6) of section*
9 *275(a) is amended by inserting “45,” before “46.”*

10 (2) *\$1,000,000 LIMIT ON DEDUCTIBLE COM-*
11 *PENSATION REDUCED BY PAYMENT OF EXCISE TAX ON*
12 *SPECIFIED STOCK COMPENSATION.*—*Paragraph (4) of*
13 *section 162(m) is amended by adding at the end the*
14 *following new subparagraph:*

15 “(G) *COORDINATION WITH EXCISE TAX ON*
16 *SPECIFIED STOCK COMPENSATION.*—*The dollar*
17 *limitation contained in paragraph (1) with re-*
18 *spect to any covered employee shall be reduced*
19 *(but not below zero) by the amount of any pay-*
20 *ment (with respect to such employee) of the tax*
21 *imposed by section 4985 directly or indirectly by*
22 *the expatriated corporation (as defined in such*
23 *section) or by any member of the expanded affili-*
24 *ated group (as defined in such section) which in-*
25 *cludes such corporation.*”

1 (c) *CONFORMING AMENDMENTS.*—

2 (1) *The last sentence of section 3121(v)(2)(A) is*
3 *amended by inserting before the period “or to any*
4 *specified stock compensation (as defined in section*
5 *4985) on which tax is imposed by section 4985”.*

6 (2) *The table of chapters for subtitle D is amend-*
7 *ed by inserting after the item relating to chapter 44*
8 *the following new item:*

“Chapter 45. Provisions relating to expatriated entities.”

9 (d) *EFFECTIVE DATE.*—*The amendments made by this*
10 *section shall take effect on March 4, 2003; except that peri-*
11 *ods before such date shall not be taken into account in ap-*
12 *plying the periods in subsections (a) and (e)(1) of section*
13 *4985 of the Internal Revenue Code of 1986, as added by*
14 *this section.*

15 **SEC. 603. REINSURANCE OF UNITED STATES RISKS IN FOR-**
16 **EIGN JURISDICTIONS.**

17 (a) *IN GENERAL.*—*Section 845(a) (relating to alloca-*
18 *tion in case of reinsurance agreement involving tax avoid-*
19 *ance or evasion) is amended by striking “source and char-*
20 *acter” and inserting “amount, source, or character”.*

21 (b) *EFFECTIVE DATE.*—*The amendments made by this*
22 *section shall apply to any risk reinsured after the date of*
23 *the enactment of this Act.*

1 **SEC. 604. REVISION OF TAX RULES ON EXPATRIATION OF**
2 **INDIVIDUALS.**

3 *(a) EXPATRIATION TO AVOID TAX.—*

4 *(1) IN GENERAL.—Subsection (a) of section 877*
5 *(relating to treatment of expatriates) is amended to*
6 *read as follows:*

7 *“(a) TREATMENT OF EXPATRIATES.—*

8 *“(1) IN GENERAL.—Every nonresident alien in-*
9 *dividual to whom this section applies and who, with-*
10 *in the 10-year period immediately preceding the close*
11 *of the taxable year, lost United States citizenship*
12 *shall be taxable for such taxable year in the manner*
13 *provided in subsection (b) if the tax imposed pursu-*
14 *ant to such subsection (after any reduction in such*
15 *tax under the last sentence of such subsection) exceeds*
16 *the tax which, without regard to this section, is im-*
17 *posed pursuant to section 871.*

18 *“(2) INDIVIDUALS SUBJECT TO THIS SECTION.—*

19 *This section shall apply to any individual if—*

20 *“(A) the average annual net income tax (as*
21 *defined in section 38(c)(1)) of such individual*
22 *for the period of 5 taxable years ending before*
23 *the date of the loss of United States citizenship*
24 *is greater than \$124,000,*

25 *“(B) the net worth of the individual as of*
26 *such date is \$2,000,000 or more, or*

1 “(C) such individual fails to certify under
2 penalty of perjury that he has met the require-
3 ments of this title for the 5 preceding taxable
4 years or fails to submit such evidence of such
5 compliance as the Secretary may require.

6 *In the case of the loss of United States citizenship in*
7 *any calendar year after 2004, such \$124,000 amount*
8 *shall be increased by an amount equal to such dollar*
9 *amount multiplied by the cost-of-living adjustment*
10 *determined under section 1(f)(3) for such calendar*
11 *year by substituting ‘2003’ for ‘1992’ in subpara-*
12 *graph (B) thereof. Any increase under the preceding*
13 *sentence shall be rounded to the nearest multiple of*
14 *\$1,000.’”.*

15 (2) *REVISION OF EXCEPTIONS FROM ALTER-*
16 *NATIVE TAX.—Subsection (c) of section 877 (relating*
17 *to tax avoidance not presumed in certain cases) is*
18 *amended to read as follows:*

19 “(c) *EXCEPTIONS.—*

20 “(1) *IN GENERAL.—Subparagraphs (A) and (B)*
21 *of subsection (a)(2) shall not apply to an individual*
22 *described in paragraph (2) or (3).*

23 “(2) *DUAL CITIZENS.—*

24 “(A) *IN GENERAL.—An individual is de-*
25 *scribed in this paragraph if—*

1 “(i) the individual became at birth a
2 citizen of the United States and a citizen of
3 another country and continues to be a cit-
4 izen of such other country, and

5 “(ii) the individual has had no sub-
6 stantial contacts with the United States.

7 “(B) *SUBSTANTIAL CONTACTS.*—An indi-
8 vidual shall be treated as having no substantial
9 contacts with the United States only if the indi-
10 vidual—

11 “(i) was never a resident of the United
12 States (as defined in section 7701(b)),

13 “(ii) has never held a United States
14 passport, and

15 “(iii) was not present in the United
16 States for more than 30 days during any
17 calendar year which is 1 of the 10 calendar
18 years preceding the individual’s loss of
19 United States citizenship.

20 “(3) *CERTAIN MINORS.*—An individual is de-
21 scribed in this paragraph if—

22 “(A) the individual became at birth a cit-
23 izen of the United States,

1 “(B) neither parent of such individual was
2 a citizen of the United States at the time of such
3 birth,

4 “(C) the individual’s loss of United States
5 citizenship occurs before such individual attains
6 age 18^{1/2}, and

7 “(D) the individual was not present in the
8 United States for more than 30 days during any
9 calendar year which is 1 of the 10 calendar
10 years preceding the individual’s loss of United
11 States citizenship.”.

12 (3) *CONFORMING AMENDMENT.*—Section 2107(a)
13 is amended to read as follows:

14 “(a) *TREATMENT OF EXPATRIATES.*—A tax computed
15 in accordance with the table contained in section 2001 is
16 hereby imposed on the transfer of the taxable estate, deter-
17 mined as provided in section 2106, of every decedent non-
18 resident not a citizen of the United States if the date of
19 death occurs during a taxable year with respect to which
20 the decedent is subject to tax under section 877(b).”.

21 (b) *SPECIAL RULES FOR DETERMINING WHEN AN IN-*
22 *DIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR*
23 *LONG-TERM RESIDENT.*—Section 7701 (relating to defini-
24 tions) is amended by redesignating subsection (n) as sub-

1 *section (o) and by inserting after subsection (m) the fol-*
2 *lowing new subsection:*

3 “(n) *SPECIAL RULES FOR DETERMINING WHEN AN IN-*
4 *DIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR*
5 *LONG-TERM RESIDENT.*—*An individual who would (but*
6 *for this subsection) cease to be treated as a citizen or resi-*
7 *dent of the United States shall continue to be treated as*
8 *a citizen or resident of the United States, as the case may*
9 *be, until such individual—*

10 “(1) *gives notice of an expatriating act or termi-*
11 *nation of residency (with the requisite intent to relin-*
12 *quish citizenship or terminate residency) to the Sec-*
13 *retary of State or the Secretary of Homeland Secu-*
14 *rity, and*

15 “(2) *provides a statement in accordance with*
16 *section 6039G.*”.

17 “(c) *PHYSICAL PRESENCE IN THE UNITED STATES FOR*
18 *MORE THAN 30 DAYS.*—*Section 877 (relating to expatria-*
19 *tion to avoid tax) is amended by adding at the end the*
20 *following new subsection:*

21 “(g) *PHYSICAL PRESENCE.*—

22 “(1) *IN GENERAL.*—*This section shall not apply*
23 *to any individual to whom this section would other-*
24 *wise apply for any taxable year during the 10-year*
25 *period referred to in subsection (a) in which such in-*

1 *dividual is physically present in the United States at*
2 *any time on more than 30 days in the calendar year*
3 *ending in such taxable year, and such individual*
4 *shall be treated for purposes of this title as a citizen*
5 *or resident of the United States, as the case may be,*
6 *for such taxable year.*

7 “(2) *EXCEPTION.—*

8 “(A) *IN GENERAL.—In the case of an indi-*
9 *vidual described in any of the following subpara-*
10 *graphs of this paragraph, a day of physical pres-*
11 *ence in the United States shall be disregarded if*
12 *the individual is performing services in the*
13 *United States on such day for an employer. The*
14 *preceding sentence shall not apply if—*

15 “(i) *such employer is related (within*
16 *the meaning of section 267 and 707) to such*
17 *individual, or*

18 “(ii) *such employer fails to meet such*
19 *requirements as the Secretary may prescribe*
20 *by regulations to prevent the avoidance of*
21 *the purposes of this paragraph.*

22 *Not more than 30 days during any calendar*
23 *year may be disregarded under this subpara-*
24 *graph.*

1 “(B) *INDIVIDUALS WITH TIES TO OTHER*
2 *COUNTRIES.—An individual is described in this*
3 *subparagraph if—*

4 “(i) *the individual becomes (not later*
5 *than the close of a reasonable period after*
6 *loss of United States citizenship or termi-*
7 *nation of residency) a citizen or resident of*
8 *the country in which—*

9 “(I) *such individual was born,*

10 “(II) *if such individual is mar-*
11 *ried, such individual’s spouse was*
12 *born, or*

13 “(III) *either of such individual’s*
14 *parents were born, and*

15 “(ii) *the individual becomes fully liable*
16 *for income tax in such country.*

17 “(C) *MINIMAL PRIOR PHYSICAL PRESENCE*
18 *IN THE UNITED STATES.—An individual is de-*
19 *scribed in this subparagraph if, for each year in*
20 *the 10-year period ending on the date of loss of*
21 *United States citizenship or termination of resi-*
22 *dency, the individual was physically present in*
23 *the United States for 30 days or less. The rule*
24 *of section 7701(b)(3)(D)(ii) shall apply for pur-*
25 *poses of this subparagraph.”.*

1 (d) *TRANSFERS SUBJECT TO GIFT TAX.*—

2 (1) *IN GENERAL.*—*Subsection (a) of section 2501*
3 *(relating to taxable transfers) is amended by striking*
4 *paragraph (4), by redesignating paragraph (5) as*
5 *paragraph (4), and by striking paragraph (3) and*
6 *inserting the following new paragraph:*

7 “(3) *EXCEPTION.*—

8 “(A) *CERTAIN INDIVIDUALS.*—*Paragraph*
9 *(2) shall not apply in the case of a donor to*
10 *whom section 877(b) applies for the taxable year*
11 *which includes the date of the transfer.*

12 “(B) *CREDIT FOR FOREIGN GIFT TAXES.*—

13 *The tax imposed by this section solely by reason*
14 *of this paragraph shall be credited with the*
15 *amount of any gift tax actually paid to any for-*
16 *foreign country in respect of any gift which is tax-*
17 *able under this section solely by reason of this*
18 *paragraph.”*

19 (2) *TRANSFERS OF CERTAIN STOCK.*—*Subsection*
20 *(a) of section 2501 is amended by adding at the end*
21 *the following new paragraph:*

22 “(5) *TRANSFERS OF CERTAIN STOCK.*—

23 “(A) *IN GENERAL.*—*In the case of a trans-*
24 *fer of stock in a foreign corporation described in*
25 *subparagraph (B) by a donor to whom section*

1 877(b) applies for the taxable year which in-
2 cludes the date of the transfer—

3 “(i) section 2511(a) shall be applied
4 without regard to whether such stock is situ-
5 ated within the United States, and

6 “(ii) the value of such stock for pur-
7 poses of this chapter shall be its U.S.-asset
8 value determined under subparagraph (C).

9 “(B) FOREIGN CORPORATION DESCRIBED.—
10 A foreign corporation is described in this sub-
11 paragraph with respect to a donor if—

12 “(i) the donor owned (within the
13 meaning of section 958(a)) at the time of
14 such transfer 10 percent or more of the total
15 combined voting power of all classes of stock
16 entitled to vote of the foreign corporation,
17 and

18 “(ii) such donor owned (within the
19 meaning of section 958(a)), or is considered
20 to have owned (by applying the ownership
21 rules of section 958(b)), at the time of such
22 transfer, more than 50 percent of—

23 “(I) the total combined voting
24 power of all classes of stock entitled to
25 vote of such corporation, or

1 “(II) the total value of the stock of
2 such corporation.

3 “(C) U.S.-ASSET VALUE.—For purposes of
4 subparagraph (A), the U.S.-asset value of stock
5 shall be the amount which bears the same ratio
6 to the fair market value of such stock at the time
7 of transfer as—

8 “(i) the fair market value (at such
9 time) of the assets owned by such foreign
10 corporation and situated in the United
11 States, bears to

12 “(ii) the total fair market value (at
13 such time) of all assets owned by such for-
14 eign corporation.”

15 (e) ENHANCED INFORMATION REPORTING FROM INDI-
16 VIDUALS LOSING UNITED STATES CITIZENSHIP.—

17 (1) IN GENERAL.—Subsection (a) of section
18 6039G is amended to read as follows:

19 “(a) IN GENERAL.—Notwithstanding any other provi-
20 sion of law, any individual to whom section 877(b) applies
21 for any taxable year shall provide a statement for such tax-
22 able year which includes the information described in sub-
23 section (b).”.

24 (2) INFORMATION TO BE PROVIDED.—Subsection
25 (b) of section 6039G is amended to read as follows:

1 “(b) *INFORMATION TO BE PROVIDED.*—*Information*
2 *required under subsection (a) shall include—*

3 “(1) *the taxpayer’s TIN,*

4 “(2) *the mailing address of such individual’s*
5 *principal foreign residence,*

6 “(3) *the foreign country in which such indi-*
7 *vidual is residing,*

8 “(4) *the foreign country of which such individual*
9 *is a citizen,*

10 “(5) *information detailing the income, assets,*
11 *and liabilities of such individual,*

12 “(6) *the number of days during any portion of*
13 *which that the individual was physically present in*
14 *the United States during the taxable year, and*

15 “(7) *such other information as the Secretary*
16 *may prescribe.”.*

17 (3) *INCREASE IN PENALTY.*—*Subsection (d) of*
18 *section 6039G is amended to read as follows:*

19 “(d) *PENALTY.*—*If—*

20 “(1) *an individual is required to file a statement*
21 *under subsection (a) for any taxable year, and*

22 “(2) *fails to file such a statement with the Sec-*
23 *retary on or before the date such statement is required*
24 *to be filed or fails to include all the information re-*

1 *quired to be shown on the statement or includes incor-*
2 *rect information,*
3 *such individual shall pay a penalty of \$10,000 unless it*
4 *is shown that such failure is due to reasonable cause and*
5 *not to willful neglect.”.*

6 *(4) CONFORMING AMENDMENT.—Section 6039G*
7 *is amended by striking subsections (c), (f), and (g)*
8 *and by redesignating subsections (d) and (e) as sub-*
9 *section (c) and (d), respectively.*

10 *(f) EFFECTIVE DATE.—The amendments made by this*
11 *section shall apply to individuals who expatriate after June*
12 *3, 2004.*

13 **SEC. 605. REPORTING OF TAXABLE MERGERS AND ACQUI-**
14 **TIONS.**

15 *(a) IN GENERAL.—Subpart B of part III of subchapter*
16 *A of chapter 61 is amended by inserting after section 6043*
17 *the following new section:*

18 **“SEC. 6043A. RETURNS RELATING TO TAXABLE MERGERS**
19 **AND ACQUISITIONS.**

20 *“(a) IN GENERAL.—According to the forms or regula-*
21 *tions prescribed by the Secretary, the acquiring corporation*
22 *in any taxable acquisition shall make a return setting*
23 *forth—*

24 *“(1) a description of the acquisition,*

1 “(2) the name and address of each shareholder of
2 the acquired corporation who is required to recognize
3 gain (if any) as a result of the acquisition,

4 “(3) the amount of money and the fair market
5 value of other property transferred to each such share-
6 holder as part of such acquisition, and

7 “(4) such other information as the Secretary
8 may prescribe.

9 To the extent provided by the Secretary, the requirements
10 of this section applicable to the acquiring corporation shall
11 be applicable to the acquired corporation and not to the
12 acquiring corporation.

13 “(b) *NOMINEES*.—According to the forms or regula-
14 tions prescribed by the Secretary—

15 “(1) *REPORTING*.—Any person who holds stock
16 as a nominee for another person shall furnish in the
17 manner prescribed by the Secretary to such other per-
18 son the information provided by the corporation
19 under subsection (d).

20 “(2) *REPORTING TO NOMINEES*.—In the case of
21 stock held by any person as a nominee, references in
22 this section (other than in subsection (c)) to a share-
23 holder shall be treated as a reference to the nominee.

24 “(c) *TAXABLE ACQUISITION*.—For purposes of this sec-
25 tion, the term ‘taxable acquisition’ means any acquisition

1 *by a corporation of stock in or property of another corpora-*
2 *tion if any shareholder of the acquired corporation is re-*
3 *quired to recognize gain (if any) as a result of such acquisi-*
4 *tion.*

5 “(d) *STATEMENTS TO BE FURNISHED TO SHARE-*
6 *HOLDERS.—According to the forms or regulations pre-*
7 *scribed by the Secretary, every person required to make a*
8 *return under subsection (a) shall furnish to each share-*
9 *holder whose name is required to be set forth in such return*
10 *a written statement showing—*

11 “(1) *the name, address, and phone number of the*
12 *information contact of the person required to make*
13 *such return,*

14 “(2) *the information required to be shown on*
15 *such return with respect to such shareholder, and*

16 “(3) *such other information as the Secretary*
17 *may prescribe.*

18 *The written statement required under the preceding sen-*
19 *tence shall be furnished to the shareholder on or before Jan-*
20 *uary 31 of the year following the calendar year during*
21 *which the taxable acquisition occurred.”*

22 (b) *ASSESSABLE PENALTIES.—*

23 (1) *Subparagraph (B) of section 6724(d)(1) (re-*
24 *lating to definitions) is amended by redesignating*
25 *clauses (ii) through (xviii) as clauses (iii) through*

1 *(xix), respectively, and by inserting after clause (i)*
2 *the following new clause:*

3 “(ii) section 6043A(a) (relating to re-
4 turns relating to taxable mergers and acqui-
5 sitions),”.

6 (2) Paragraph (2) of section 6724(d) is amended
7 by redesignating subparagraphs (F) through (BB) as
8 subparagraphs (G) through (CC), respectively, and by
9 inserting after subparagraph (E) the following new
10 subparagraph:

11 “(F) subsections (b) and (d) of section
12 6043A (relating to returns relating to taxable
13 mergers and acquisitions).”.

14 (c) *CLERICAL AMENDMENT.*—The table of sections for
15 subpart B of part III of subchapter A of chapter 61 is
16 amended by inserting after the item relating to section 6043
17 the following new item:

 “Sec. 6043A. Returns relating to taxable mergers and acqui-
 sitions.”.

18 (d) *EFFECTIVE DATE.*—The amendments made by this
19 section shall apply to acquisitions after the date of the en-
20 actment of this Act.

21 **SEC. 606. STUDIES.**

22 (a) *TRANSFER PRICING RULES.*—The Secretary of the
23 Treasury or the Secretary’s delegate shall conduct a study
24 regarding the effectiveness of current transfer pricing rules

1 *and compliance efforts in ensuring that cross-border trans-*
2 *fers and other related-party transactions, particularly*
3 *transactions involving intangible assets, service contracts,*
4 *or leases cannot be used improperly to shift income out of*
5 *the United States. The study shall include a review of the*
6 *contemporaneous documentation and penalty rules under*
7 *section 6662 of the Internal Revenue Code of 1986, a review*
8 *of the regulatory and administrative guidance imple-*
9 *menting the principles of section 482 of such Code to trans-*
10 *actions involving intangible property and services and to*
11 *cost-sharing arrangements, and an examination of whether*
12 *increased disclosure of cross-border transactions should be*
13 *required. The study shall set forth specific recommendations*
14 *to address all abuses identified in the study. Not later than*
15 *June 30, 2005, such Secretary or delegate shall submit to*
16 *the Congress a report of such study.*

17 (b) *INCOME TAX TREATIES.*—*The Secretary of the*
18 *Treasury or the Secretary’s delegate shall conduct a study*
19 *of United States income tax treaties to identify any inap-*
20 *propriate reductions in United States withholding tax that*
21 *provide opportunities for shifting income out of the United*
22 *States, and to evaluate whether existing anti-abuse mecha-*
23 *nisms are operating properly. The study shall include spe-*
24 *cific recommendations to address all inappropriate uses of*
25 *tax treaties. Not later than June 30, 2005, such Secretary*

1 or delegate shall submit to the Congress a report of such
2 study.

3 (c) *IMPACT OF CORPORATE EXPATRIATION PROVI-*
4 *SIONS.—The Secretary of the Treasury or the Secretary’s*
5 *delegate shall conduct a study of the impact of the provi-*
6 *sions of this title on corporate expatriation. The study shall*
7 *include such recommendations as such Secretary or delegate*
8 *may have to improve the impact of such provisions in car-*
9 *rying out the purposes of this title. Not later than December*
10 *31, 2005, such Secretary or delegate shall submit to the Con-*
11 *gress a report of such study.*

12 ***Subtitle B—Provisions Relating to***
13 ***Tax Shelters***

14 ***PART I—TAXPAYER-RELATED PROVISIONS***

15 ***SEC. 611. PENALTY FOR FAILING TO DISCLOSE REPORT-***
16 ***ABLE TRANSACTIONS.***

17 (a) *IN GENERAL.—Part I of subchapter B of chapter*
18 *68 (relating to assessable penalties) is amended by inserting*
19 *after section 6707 the following new section:*

20 ***“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-***
21 ***ABLE TRANSACTION INFORMATION WITH RE-***
22 ***TURN.***

23 *“(a) IMPOSITION OF PENALTY.—Any person who fails*
24 *to include on any return or statement any information with*
25 *respect to a reportable transaction which is required under*

1 *section 6011 to be included with such return or statement*
2 *shall pay a penalty in the amount determined under sub-*
3 *section (b).*

4 “(b) *AMOUNT OF PENALTY.—*

5 “(1) *IN GENERAL.—Except as provided in para-*
6 *graph (2), the amount of the penalty under subsection*
7 *(a) shall be—*

8 “(A) *\$10,000 in the case of a natural per-*
9 *son, and*

10 “(B) *\$50,000 in any other case.*

11 “(2) *LISTED TRANSACTION.—The amount of the*
12 *penalty under subsection (a) with respect to a listed*
13 *transaction shall be—*

14 “(A) *\$100,000 in the case of a natural per-*
15 *son, and*

16 “(B) *\$200,000 in any other case.*

17 “(c) *DEFINITIONS.—For purposes of this section—*

18 “(1) *REPORTABLE TRANSACTION.—The term ‘re-*
19 *portable transaction’ means any transaction with re-*
20 *spect to which information is required to be included*
21 *with a return or statement because, as determined*
22 *under regulations prescribed under section 6011, such*
23 *transaction is of a type which the Secretary deter-*
24 *mines as having a potential for tax avoidance or eva-*
25 *sion.*

1 “(2) *LISTED TRANSACTION.*—*The term ‘listed*
2 *transaction’ means a reportable transaction which is*
3 *the same as, or substantially similar to, a transaction*
4 *specifically identified by the Secretary as a tax avoid-*
5 *ance transaction for purposes of section 6011.*

6 “(d) *AUTHORITY TO RESCIND PENALTY.*—

7 “(1) *IN GENERAL.*—*The Commissioner of Inter-*
8 *nal Revenue may rescind all or any portion of any*
9 *penalty imposed by this section with respect to any*
10 *violation if—*

11 “(A) *the violation is with respect to a re-*
12 *portable transaction other than a listed trans-*
13 *action, and*

14 “(B) *rescinding the penalty would promote*
15 *compliance with the requirements of this title*
16 *and effective tax administration.*

17 “(2) *NO JUDICIAL APPEAL.*—*Notwithstanding*
18 *any other provision of law, any determination under*
19 *this subsection may not be reviewed in any judicial*
20 *proceeding.*

21 “(3) *RECORDS.*—*If a penalty is rescinded under*
22 *paragraph (1), the Commissioner shall place in the*
23 *file in the Office of the Commissioner the opinion of*
24 *the Commissioner or the head of the Office of Tax*

1 *Shelter Analysis with respect to the determination,*
2 *including—*

3 “(A) *a statement of the facts and cir-*
4 *cumstances relating to the violation,*

5 “(B) *the reasons for the rescission, and*

6 “(C) *the amount of the penalty rescinded.*

7 “(e) *COORDINATION WITH OTHER PENALTIES.—The*
8 *penalty imposed by this section shall be in addition to any*
9 *other penalty imposed by this title.”*

10 (b) *CONFORMING AMENDMENT.—The table of sections*
11 *for part I of subchapter B of chapter 68 is amended by*
12 *inserting after the item relating to section 6707 the fol-*
13 *lowing:*

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

14 (c) *EFFECTIVE DATE.—The amendments made by this*
15 *section shall apply to returns and statements the due date*
16 *for which is after the date of the enactment of this Act.*

17 (d) *REPORT.—The Commissioner of Internal Revenue*
18 *shall annually report to the Committee on Ways and Means*
19 *of the House of Representatives and the Committee on Fi-*
20 *nance of the Senate—*

21 (1) *a summary of the total number and aggre-*
22 *gate amount of penalties imposed, and rescinded,*
23 *under section 6707A of the Internal Revenue Code of*
24 *1986, and*

1 (2) a description of each penalty rescinded under
2 section 6707(c) of such Code and the reasons therefor.

3 **SEC. 612. ACCURACY-RELATED PENALTY FOR LISTED**
4 **TRANSACTIONS, OTHER REPORTABLE TRANS-**
5 **ACTIONS HAVING A SIGNIFICANT TAX AVOID-**
6 **ANCE PURPOSE, ETC.**

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

10 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY**
11 **ON UNDERSTATEMENTS WITH RESPECT TO**
12 **REPORTABLE TRANSACTIONS.**

13 “(a) *IMPOSITION OF PENALTY.*—If a taxpayer has a
14 reportable transaction understatement for any taxable year,
15 there shall be added to the tax an amount equal to 20 per-
16 cent of the amount of such understatement.

17 “(b) *REPORTABLE TRANSACTION UNDERSTATE-*
18 *MENT.*—For purposes of this section—

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

21 “(A) the product of—

22 “(i) the amount of the increase (if any)
23 in taxable income which results from a dif-
24 ference between the proper tax treatment of
25 an item to which this section applies and

1 *the taxpayer's treatment of such item (as*
2 *shown on the taxpayer's return of tax), and*

3 *“(ii) the highest rate of tax imposed by*
4 *section 1 (section 11 in the case of a tax-*
5 *payer which is a corporation), and*

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

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

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

22 *“(A) any listed transaction, and*

23 *“(B) any reportable transaction (other than*
24 *a listed transaction) if a significant purpose of*

1 *such transaction is the avoidance or evasion of*
2 *Federal income tax.*

3 “(c) *HIGHER PENALTY FOR NONDISCLOSED TRANS-*
4 *ACTIONS.—Subsection (a) shall be applied by substituting*
5 *‘30 percent’ for ‘20 percent’ with respect to the portion of*
6 *any reportable transaction understatement with respect to*
7 *which the requirement of section 6664(d)(2)(A) is not met.*

8 “(d) *DEFINITIONS OF REPORTABLE AND LISTED*
9 *TRANSACTIONS.—For purposes of this section, the terms ‘re-*
10 *portable transaction’ and ‘listed transaction’ have the re-*
11 *spective meanings given to such terms by section 6707A(c).*

12 “(e) *SPECIAL RULES.—*

13 “(1) *COORDINATION WITH PENALTIES, ETC., ON*
14 *OTHER UNDERSTATEMENTS.—In the case of an under-*
15 *statement (as defined in section 6662(d)(2))—*

16 “(A) *the amount of such understatement*
17 *(determined without regard to this paragraph)*
18 *shall be increased by the aggregate amount of re-*
19 *portable transaction understatements for pur-*
20 *poses of determining whether such understate-*
21 *ment is a substantial understatement under sec-*
22 *tion 6662(d)(1), and*

23 “(B) *the addition to tax under section*
24 *6662(a) shall apply only to the excess of the*
25 *amount of the substantial understatement (if*

1 *any) after the application of subparagraph (A)*
2 *over the aggregate amount of reportable trans-*
3 *action understatements.*

4 “(2) *COORDINATION WITH OTHER PENALTIES.—*

5 “(A) *APPLICATION OF FRAUD PENALTY.—*

6 *References to an underpayment in section 6663*
7 *shall be treated as including references to a re-*
8 *portable transaction understatement.*

9 “(B) *NO DOUBLE PENALTY.—This section*
10 *shall not apply to any portion of an understate-*
11 *ment on which a penalty is imposed under sec-*
12 *tion 6663.*

13 “(3) *SPECIAL RULE FOR AMENDED RETURNS.—*

14 *Except as provided in regulations, in no event shall*
15 *any tax treatment included with an amendment or*
16 *supplement to a return of tax be taken into account*
17 *in determining the amount of any reportable trans-*
18 *action understatement if the amendment or supple-*
19 *ment is filed after the earlier of the date the taxpayer*
20 *is first contacted by the Secretary regarding the ex-*
21 *amination of the return or such other date as is speci-*
22 *fied by the Secretary.”*

23 (b) *DETERMINATION OF OTHER UNDERSTATE-*
24 *MENTS.—Subparagraph (A) of section 6662(d)(2) is*
25 *amended by adding at the end the following flush sentence:*

1 *“The excess under the preceding sentence shall be*
2 *determined without regard to items to which sec-*
3 *tion 6662A applies.”*

4 *(c) REASONABLE CAUSE EXCEPTION.—*

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

7 *“(d) REASONABLE CAUSE EXCEPTION FOR REPORT-*
8 *ABLE TRANSACTION UNDERSTATEMENTS.—*

9 *“(1) IN GENERAL.—No penalty shall be imposed*
10 *under section 6662A with respect to any portion of a*
11 *reportable transaction understatement if it is shown*
12 *that there was a reasonable cause for such portion*
13 *and that the taxpayer acted in good faith with respect*
14 *to such portion.*

15 *“(2) SPECIAL RULES.—Paragraph (1) shall not*
16 *apply to any reportable transaction understatement*
17 *unless—*

18 *“(A) the relevant facts affecting the tax*
19 *treatment of the item are adequately disclosed in*
20 *accordance with the regulations prescribed under*
21 *section 6011,*

22 *“(B) there is or was substantial authority*
23 *for such treatment, and*

1 “(C) the taxpayer reasonably believed that
2 such treatment was more likely than not the
3 proper treatment.

4 A taxpayer failing to adequately disclose in accord-
5 ance with section 6011 shall be treated as meeting the
6 requirements of subparagraph (A) if the penalty for
7 such failure was rescinded under section 6707A(d).

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

10 “(A) IN GENERAL.—A taxpayer shall be
11 treated as having a reasonable belief with respect
12 to the tax treatment of an item only if such be-
13 lief—

14 “(i) is based on the facts and law that
15 exist at the time the return of tax which in-
16 cludes such tax treatment is filed, and

17 “(ii) relates solely to the taxpayer’s
18 chances of success on the merits of such
19 treatment and does not take into account
20 the possibility that a return will not be au-
21 dited, such treatment will not be raised on
22 audit, or such treatment will be resolved
23 through settlement if it is raised.

24 “(B) CERTAIN OPINIONS MAY NOT BE RE-
25 LIED UPON.—

1 “(i) *IN GENERAL.*—*An opinion of a*
2 *tax advisor may not be relied upon to estab-*
3 *lish the reasonable belief of a taxpayer if—*

4 “(I) *the tax advisor is described*
5 *in clause (ii), or*

6 “(II) *the opinion is described in*
7 *clause (iii).*

8 “(ii) *DISQUALIFIED TAX ADVISORS.*—*A*
9 *tax advisor is described in this clause if the*
10 *tax advisor—*

11 “(I) *is a material advisor (within*
12 *the meaning of section 6111(b)(1)) and*
13 *participates in the organization, man-*
14 *agement, promotion, or sale of the*
15 *transaction or is related (within the*
16 *meaning of section 267(b) or*
17 *707(b)(1)) to any person who so par-*
18 *ticipates,*

19 “(II) *is compensated directly or*
20 *indirectly by a material advisor with*
21 *respect to the transaction,*

22 “(III) *has a fee arrangement with*
23 *respect to the transaction which is con-*
24 *tingent on all or part of the intended*

1 *tax benefits from the transaction being*
2 *sustained, or*

3 *“(IV) as determined under regula-*
4 *tions prescribed by the Secretary, has a*
5 *disqualifying financial interest with*
6 *respect to the transaction.*

7 *“(iii) DISQUALIFIED OPINIONS.—For*
8 *purposes of clause (i), an opinion is dis-*
9 *qualified if the opinion—*

10 *“(I) is based on unreasonable fac-*
11 *tual or legal assumptions (including*
12 *assumptions as to future events),*

13 *“(II) unreasonably relies on rep-*
14 *resentations, statements, findings, or*
15 *agreements of the taxpayer or any*
16 *other person,*

17 *“(III) does not identify and con-*
18 *sider all relevant facts, or*

19 *“(IV) fails to meet any other re-*
20 *quirement as the Secretary may pre-*
21 *scribe.”*

22 (2) *CONFORMING AMENDMENTS.—*

23 (A) *Paragraph (1) of section 6664(c) is*
24 *amended by striking “this part” and inserting*
25 *“section 6662 or 6663”.*

1 (B) *The heading for subsection (c) of section*
2 6664 *is amended by inserting “FOR UNDERPAY-*
3 *MENTS” after “EXCEPTION”.*

4 (d) *REDUCTION IN PENALTY FOR SUBSTANTIAL UN-*
5 *DERSTATEMENT OF INCOME TAX NOT TO APPLY TO TAX*
6 *SHELTERS.—Subparagraph (C) of section 6662(d)(2) (re-*
7 *lating to substantial understatement of income tax) is*
8 *amended to read as follows:*

9 “(C) *REDUCTION NOT TO APPLY TO TAX*
10 *SHELTERS.—*

11 “(i) *IN GENERAL.—Subparagraph (B)*
12 *shall not apply to any item attributable to*
13 *a tax shelter.*

14 “(ii) *TAX SHELTER.—For purposes of*
15 *clause (i), the term ‘tax shelter’ means—*

16 “(I) *a partnership or other entity,*

17 “(II) *any investment plan or ar-*
18 *rangement, or*

19 “(III) *any other plan or arrange-*
20 *ment,*

21 *if a significant purpose of such partnership,*
22 *entity, plan, or arrangement is the avoid-*
23 *ance or evasion of Federal income tax.”*

24 (e) *CONFORMING AMENDMENTS.—*

1 (1) Sections 461(i)(3)(C), 1274(b)(3), and
2 7525(b) are each amended by striking “section
3 6662(d)(2)(C)(iii)” and inserting “section
4 6662(d)(2)(C)(ii)”.

5 (2) The heading for section 6662 is amended to
6 read as follows:

7 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
8 **ON UNDERPAYMENTS.”**

9 (3) The table of sections for part II of subchapter
10 A of chapter 68 is amended by striking the item relat-
11 ing to section 6662 and inserting the following new
12 items:

 “Sec. 6662. Imposition of accuracy-related penalty on underpay-
 ments.

 “Sec. 6662A. Imposition of accuracy-related penalty on understatement-
 s with respect to reportable transactions.”

13 (f) *EFFECTIVE DATE.*—The amendments made by this
14 section shall apply to taxable years ending after the date
15 of the enactment of this Act.

16 **SEC. 613. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
17 **PRIVILEGES RELATING TO TAXPAYER COM-**
18 **MUNICATIONS.**

19 (a) *IN GENERAL.*—Section 7525(b) (relating to section
20 not to apply to communications regarding corporate tax
21 shelters) is amended to read as follows:

22 “(b) *SECTION NOT TO APPLY TO COMMUNICATIONS*
23 *REGARDING TAX SHELTERS.*—The privilege under sub-

1 *section (a) shall not apply to any written communication*
2 *which is—*

3 *“(1) between a federally authorized tax practi-*
4 *tioner and—*

5 *“(A) any person,*

6 *“(B) any director, officer, employee, agent,*
7 *or representative of the person, or*

8 *“(C) any other person holding a capital or*
9 *profits interest in the person, and*

10 *“(2) in connection with the promotion of the di-*
11 *rect or indirect participation of the person in any tax*
12 *shelter (as defined in section 6662(d)(2)(C)(ii)).”*

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

16 **SEC. 614. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**
17 **FOR WHICH REQUIRED LISTED TRANS-**
18 **ACTIONS NOT REPORTED.**

19 *(a) IN GENERAL.—Section 6501(c) (relating to excep-*
20 *tions) is amended by adding at the end the following new*
21 *paragraph:*

22 *“(10) LISTED TRANSACTIONS.—If a taxpayer*
23 *fails to include on any return or statement for any*
24 *taxable year any information with respect to a listed*
25 *transaction (as defined in section 6707A(c)(2)) which*

1 *is required under section 6011 to be included with*
2 *such return or statement, the time for assessment of*
3 *any tax imposed by this title with respect to such*
4 *transaction shall not expire before the date which is*
5 *1 year after the earlier of—*

6 *“(A) the date on which the Secretary is fur-*
7 *nished the information so required, or*

8 *“(B) the date that a material advisor (as*
9 *defined in section 6111) meets the requirements*
10 *of section 6112 with respect to a request by the*
11 *Secretary under section 6112(b) relating to such*
12 *transaction with respect to such taxpayer.”*

13 *(b) EFFECTIVE DATE.—The amendment made by this*
14 *section shall apply to taxable years with respect to which*
15 *the period for assessing a deficiency did not expire before*
16 *the date of the enactment of this Act.*

17 **SEC. 615. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

18 *(a) IN GENERAL.—Section 6111 (relating to registra-*
19 *tion of tax shelters) is amended to read as follows:*

20 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

21 *“(a) IN GENERAL.—Each material advisor with re-*
22 *spect to any reportable transaction shall make a return (in*
23 *such form as the Secretary may prescribe) setting forth—*

24 *“(1) information identifying and describing the*
25 *transaction,*

1 “(2) information describing any potential tax
2 benefits expected to result from the transaction, and

3 “(3) such other information as the Secretary
4 may prescribe.

5 Such return shall be filed not later than the date specified
6 by the Secretary.

7 “(b) DEFINITIONS.—For purposes of this section—

8 “(1) MATERIAL ADVISOR.—

9 “(A) IN GENERAL.—The term ‘material ad-
10 visor’ means any person—

11 “(i) who provides any material aid,
12 assistance, or advice with respect to orga-
13 nizing, managing, promoting, selling, im-
14 plementing, or carrying out any reportable
15 transaction, and

16 “(ii) who directly or indirectly derives
17 gross income in excess of the threshold
18 amount (or such other amount as may be
19 prescribed by the Secretary) for such advice
20 or assistance.

21 “(B) THRESHOLD AMOUNT.—For purposes
22 of subparagraph (A), the threshold amount is—

23 “(i) \$50,000 in the case of a reportable
24 transaction substantially all of the tax bene-

1 *fits from which are provided to natural per-*
2 *sons, and*

3 *“(ii) \$250,000 in any other case.*

4 *“(2) REPORTABLE TRANSACTION.—The term ‘re-*
5 *portable transaction’ has the meaning given to such*
6 *term by section 6707A(c).*

7 *“(c) REGULATIONS.—The Secretary may prescribe reg-*
8 *ulations which provide—*

9 *“(1) that only 1 person shall be required to meet*
10 *the requirements of subsection (a) in cases in which*
11 *2 or more persons would otherwise be required to meet*
12 *such requirements,*

13 *“(2) exemptions from the requirements of this*
14 *section, and*

15 *“(3) such rules as may be necessary or appro-*
16 *priate to carry out the purposes of this section.”*

17 *(b) CONFORMING AMENDMENTS.—*

18 *(1) The item relating to section 6111 in the table*
19 *of sections for subchapter B of chapter 61 is amended*
20 *to read as follows:*

“Sec. 6111. Disclosure of reportable transactions.”

21 *(2) So much of section 6112 as precedes sub-*
22 *section (c) thereof is amended to read as follows:*

1 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
2 **ACTIONS MUST KEEP LISTS OF ADVISEES,**
3 **ETC.**

4 *“(a) IN GENERAL.—Each material advisor (as defined*
5 *in section 6111) with respect to any reportable transaction*
6 *(as defined in section 6707A(c)) shall (whether or not re-*
7 *quired to file a return under section 6111 with respect to*
8 *such transaction) maintain (in such manner as the Sec-*
9 *retary may by regulations prescribe) a list—*

10 *“(1) identifying each person with respect to*
11 *whom such advisor acted as a material advisor with*
12 *respect to such transaction, and*

13 *“(2) containing such other information as the*
14 *Secretary may by regulations require.”*

15 *(3) Section 6112 is amended—*

16 *(A) by redesignating subsection (c) as sub-*
17 *section (b),*

18 *(B) by inserting “written” before “request”*
19 *in subsection (b)(1) (as so redesignated), and*

20 *(C) by striking “shall prescribe” in sub-*
21 *section (b)(2) (as so redesignated) and inserting*
22 *“may prescribe”.*

23 *(4) The item relating to section 6112 in the table*
24 *of sections for subchapter B of chapter 61 is amended*
25 *to read as follows:*

“Sec. 6112. Material advisors of reportable transactions must keep lists of advisees, etc.”

1 (5)(A) *The heading for section 6708 is amended*
2 *to read as follows:*

3 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
4 **WITH RESPECT TO REPORTABLE TRANS-**
5 **ACTIONS.”**

6 (B) *The item relating to section 6708 in the*
7 *table of sections for part I of subchapter B of chapter*
8 *68 is amended to read as follows:*

“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”

9 (c) *REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM*
10 *OF CONFIDENTIALITY.—Paragraph (1) of section 6112(b),*
11 *as redesignated by subsection (b), is amended by adding*
12 *at the end the following new flush sentence:*

13 *“For purposes of this section, the identity of any per-*
14 *son on such list shall not be privileged.”.*

15 (d) *EFFECTIVE DATE.—*

16 (1) *IN GENERAL.—Except as provided in para-*
17 *graph (2), the amendments made by this section shall*
18 *apply to transactions with respect to which material*
19 *aid, assistance, or advice referred to in section*
20 *6111(b)(1)(A)(i) of the Internal Revenue Code of 1986*
21 *(as added by this section) is provided after the date*
22 *of the enactment of this Act.*

1 (2) *NO CLAIM OF CONFIDENTIALITY AGAINST DIS-*
2 *CLOSURE.—The amendment made by subsection (c)*
3 *shall take effect as if included in the amendments*
4 *made by section 142 of the Deficit Reduction Act of*
5 *1984.*

6 **SEC. 616. FAILURE TO FURNISH INFORMATION REGARDING**
7 **REPORTABLE TRANSACTIONS.**

8 (a) *IN GENERAL.—Section 6707 (relating to failure to*
9 *furnish information regarding tax shelters) is amended to*
10 *read as follows:*

11 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
12 **ING REPORTABLE TRANSACTIONS.**

13 “(a) *IN GENERAL.—If a person who is required to file*
14 *a return under section 6111(a) with respect to any report-*
15 *able transaction—*

16 “(1) *fails to file such return on or before the date*
17 *prescribed therefor, or*

18 “(2) *files false or incomplete information with*
19 *the Secretary with respect to such transaction,*
20 *such person shall pay a penalty with respect to such return*
21 *in the amount determined under subsection (b).*

22 “(b) *AMOUNT OF PENALTY.—*

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

1 “(2) *LISTED TRANSACTIONS.*—*The penalty im-*
2 *posed under subsection (a) with respect to any listed*
3 *transaction shall be an amount equal to the greater*
4 *of—*

5 “(A) \$200,000, or

6 “(B) 50 percent of the gross income derived
7 *by such person with respect to aid, assistance, or*
8 *advice which is provided with respect to the list-*
9 *ed transaction before the date the return is filed*
10 *under section 6111.*

11 *Subparagraph (B) shall be applied by substituting*
12 *‘75 percent’ for ‘50 percent’ in the case of an inten-*
13 *tional failure or act described in subsection (a).*

14 “(c) *RESCISSION AUTHORITY.*—*The provisions of sec-*
15 *tion 6707A(d) (relating to authority of Commissioner to re-*
16 *scind penalty) shall apply to any penalty imposed under*
17 *this section.*

18 “(d) *REPORTABLE AND LISTED TRANSACTIONS.*—*For*
19 *purposes of this section, the terms ‘reportable transaction’*
20 *and ‘listed transaction’ have the respective meanings given*
21 *to such terms by section 6707A(c).”*

22 “(b) *CLERICAL AMENDMENT.*—*The item relating to sec-*
23 *tion 6707 in the table of sections for part I of subchapter*
24 *B of chapter 68 is amended by striking “tax shelters” and*
25 *inserting “reportable transactions”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to returns the due date for which is after*
3 *the date of the enactment of this Act.*

4 **SEC. 617. MODIFICATION OF PENALTY FOR FAILURE TO**
5 **MAINTAIN LISTS OF INVESTORS.**

6 (a) *IN GENERAL.*—*Subsection (a) of section 6708 is*
7 *amended to read as follows:*

8 “(a) *IMPOSITION OF PENALTY.*—

9 “(1) *IN GENERAL.*—*If any person who is re-*
10 *quired to maintain a list under section 6112(a) fails*
11 *to make such list available upon written request to*
12 *the Secretary in accordance with section 6112(b)*
13 *within 20 business days after the date of such request,*
14 *such person shall pay a penalty of \$10,000 for each*
15 *day of such failure after such 20th day.*

16 “(2) *REASONABLE CAUSE EXCEPTION.*—*No pen-*
17 *alty shall be imposed by paragraph (1) with respect*
18 *to the failure on any day if such failure is due to rea-*
19 *sonable cause.”.*

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

23 **SEC. 618. PENALTY ON PROMOTERS OF TAX SHELTERS.**

24 (a) *PENALTY ON PROMOTING ABUSIVE TAX SHEL-*
25 *TERS.*—*Section 6700(a) is amended by adding at the end*

1 *the following new sentence: “Notwithstanding the first sen-*
2 *tence, if an activity with respect to which a penalty im-*
3 *posed under this subsection involves a statement described*
4 *in paragraph (2)(A), the amount of the penalty shall be*
5 *equal to 50 percent of the gross income derived (or to be*
6 *derived) from such activity by the person on which the pen-*
7 *alty is imposed.”*

8 **(b) EFFECTIVE DATE.**—*The amendment made by this*
9 *section shall apply to activities after the date of the enact-*
10 *ment of this Act.*

11 **SEC. 619. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**
12 **MENT PENALTY FOR NONREPORTABLE**
13 **TRANSACTIONS.**

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

17 **“(B) SPECIAL RULE FOR CORPORATIONS.**—
18 *In the case of a corporation other than an S cor-*
19 *poration or a personal holding company (as de-*
20 *fined in section 542), there is a substantial un-*
21 *derstatement of income tax for any taxable year*
22 *if the amount of the understatement for the tax-*
23 *able year exceeds the lesser of—*

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

4 “(ii) \$10,000,000.”

5 (b) *EFFECTIVE DATE.*—The amendment made by this
6 section shall apply to taxable years beginning after the date
7 of the enactment of this Act.

8 **SEC. 620. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
9 **CONDUCT RELATED TO TAX SHELTERS AND**
10 **REPORTABLE TRANSACTIONS.**

11 (a) *IN GENERAL.*—Section 7408 (relating to action to
12 enjoin promoters of abusive tax shelters, etc.) is amended
13 by redesignating subsection (c) as subsection (d) and by
14 striking subsections (a) and (b) and inserting the following
15 new subsections:

16 “(a) *AUTHORITY TO SEEK INJUNCTION.*—A civil ac-
17 tion in the name of the United States to enjoin any person
18 from further engaging in specified conduct may be com-
19 menced at the request of the Secretary. Any action under
20 this section shall be brought in the district court of the
21 United States for the district in which such person resides,
22 has his principal place of business, or has engaged in speci-
23 fied conduct. The court may exercise its jurisdiction over
24 such action (as provided in section 7402(a)) separate and

1 *apart from any other action brought by the United States*
2 *against such person.*

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

5 “(1) *that the person has engaged in any specified*
6 *conduct, and*

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

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

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

16 (b) *CONFORMING AMENDMENTS.*—

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

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

22 (2) *The table of sections for subchapter A of*
23 *chapter 76 is amended by striking the item relating*
24 *to section 7408 and inserting the following new item:*

“*Sec. 7408. Actions to enjoin specified conduct related to tax shelters and re-*
portable transactions.”

1 (c) *EFFECTIVE DATE.*—*The amendment made by this*
2 *section shall take effect on the day after the date of the en-*
3 *actment of this Act.*

4 **SEC. 621. PENALTY ON FAILURE TO REPORT INTERESTS IN**
5 **FOREIGN FINANCIAL ACCOUNTS.**

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

8 “(5) *FOREIGN FINANCIAL AGENCY TRANSACTION*
9 *VIOLATION.*—

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

14 “(B) *AMOUNT OF PENALTY.*—

15 “(i) *IN GENERAL.*—*Except as provided*
16 *in subparagraph (C), the amount of any*
17 *civil penalty imposed under subparagraph*
18 *(A) shall not exceed \$5,000.*

19 “(ii) *REASONABLE CAUSE EXCEP-*
20 *TION.*—*No penalty shall be imposed under*
21 *subparagraph (A) with respect to any viola-*
22 *tion if—*

23 “(I) *such violation was due to*
24 *reasonable cause, and*

1 “(II) the amount of the trans-
2 action or the balance in the account at
3 the time of the transaction was prop-
4 erly reported.

5 “(C) WILLFUL VIOLATIONS.—In the case of
6 any person willfully violating, or willfully caus-
7 ing any violation of, any provision of section
8 5314—

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

12 “(I) \$25,000, or

13 “(II) the amount (not exceeding
14 \$100,000) determined under subpara-
15 graph (D), and

16 “(ii) subparagraph (B)(i) shall not
17 apply.

18 “(D) AMOUNT.—The amount determined
19 under this subparagraph is—

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

23 “(ii) in the case of a violation involv-
24 ing a failure to report the existence of an
25 account or any identifying information re-

1 *quired to be provided with respect to an ac-*
2 *count, the balance in the account at the*
3 *time of the violation.”*

4 **(b) EFFECTIVE DATE.**—*The amendment made by this*
5 *section shall apply to violations occurring after the date of*
6 *the enactment of this Act.*

7 **SEC. 622. REGULATION OF INDIVIDUALS PRACTICING BE-**
8 **FORE THE DEPARTMENT OF THE TREASURY.**

9 **(a) CENSURE; IMPOSITION OF PENALTY.**—

10 **(1) IN GENERAL.**—*Section 330(b) of title 31,*
11 *United States Code, is amended—*

12 **(A)** *by inserting “, or censure,” after “De-*
13 *partment”, and*

14 **(B)** *by adding at the end the following new*
15 *flush sentence:*

16 *“The Secretary may impose a monetary penalty on any*
17 *representative described in the preceding sentence. If the*
18 *representative was acting on behalf of an employer or any*
19 *firm or other entity in connection with the conduct giving*
20 *rise to such penalty, the Secretary may impose a monetary*
21 *penalty on such employer, firm, or entity if it knew, or*
22 *reasonably should have known, of such conduct. Such pen-*
23 *alty shall not exceed the gross income derived (or to be de-*
24 *rived) from the conduct giving rise to the penalty. Any such*
25 *penalty imposed on an individual may be in addition to,*

1 *or in lieu of, any suspension, disbarment, or censure of such*
 2 *individual.”*

3 (2) *EFFECTIVE DATE.*—*The amendments made*
 4 *by this subsection shall apply to actions taken after*
 5 *the date of the enactment of this Act.*

6 (b) *TAX SHELTER OPINIONS, ETC.*—*Section 330 of*
 7 *such title 31 is amended by adding at the end the following*
 8 *new subsection:*

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

16 **PART II—OTHER PROVISIONS**

17 **SEC. 631. TREATMENT OF STRIPPED INTERESTS IN BOND**
 18 **AND PREFERRED STOCK FUNDS, ETC.**

19 (a) *IN GENERAL.*—*Section 1286 (relating to tax treat-*
 20 *ment of stripped bonds) is amended by redesignating sub-*
 21 *section (f) as subsection (g) and by inserting after sub-*
 22 *section (e) the following new subsection:*

23 “(f) *TREATMENT OF STRIPPED INTERESTS IN BOND*
 24 *AND PREFERRED STOCK FUNDS, ETC.*—*In the case of an*
 25 *account or entity substantially all of the assets of which*

1 *consist of bonds, preferred stock, or a combination thereof,*
2 *the Secretary may by regulations provide that rules similar*
3 *to the rules of this section and 305(e), as appropriate, shall*
4 *apply to interests in such account or entity to which (but*
5 *for this subsection) this section or section 305(e), as the case*
6 *may be, would not apply.”*

7 (b) *CROSS REFERENCE.—Subsection (e) of section 305*
8 *is amended by adding at the end the following new para-*
9 *graph:*

10 “(7) *CROSS REFERENCE.—*

“For treatment of stripped interests in certain ac-
counts or entities holding preferred stock, see section
1286(f).”

11 (c) *EFFECTIVE DATE.—The amendments made by this*
12 *section shall apply to purchases and dispositions after the*
13 *date of the enactment of this Act.*

14 **SEC. 632. MINIMUM HOLDING PERIOD FOR FOREIGN TAX**
15 **CREDIT ON WITHHOLDING TAXES ON INCOME**
16 **OTHER THAN DIVIDENDS.**

17 (a) *IN GENERAL.—Section 901 is amended by redesign-*
18 *ating subsection (l) as subsection (m) and by inserting*
19 *after subsection (k) the following new subsection:*

20 “(l) *MINIMUM HOLDING PERIOD FOR WITHHOLDING*
21 *TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS*
22 *ETC.—*

23 “(1) *IN GENERAL.—In no event shall a credit be*
24 *allowed under subsection (a) for any withholding tax*

1 *(as defined in subsection (k)) on any item of income*
2 *or gain with respect to any property if—*

3 *“(A) such property is held by the recipient*
4 *of the item for 15 days or less during the 30-day*
5 *period beginning on the date which is 15 days*
6 *before the date on which the right to receive pay-*
7 *ment of such item arises, or*

8 *“(B) to the extent that the recipient of the*
9 *item is under an obligation (whether pursuant to*
10 *a short sale or otherwise) to make related pay-*
11 *ments with respect to positions in substantially*
12 *similar or related property.*

13 *This paragraph shall not apply to any dividend to*
14 *which subsection (k) applies.*

15 *“(2) EXCEPTION FOR TAXES PAID BY DEAL-*
16 *ERS.—*

17 *“(A) IN GENERAL.—Paragraph (1) shall*
18 *not apply to any qualified tax with respect to*
19 *any property held in the active conduct in a for-*
20 *foreign country of a business as a dealer in such*
21 *property.*

22 *“(B) QUALIFIED TAX.—For purposes of sub-*
23 *paragraph (A), the term ‘qualified tax’ means a*
24 *tax paid to a foreign country (other than the for-*

1 *eign country referred to in subparagraph (A))*
2 *if—*

3 “(i) *the item to which such tax is at-*
4 *tributable is subject to taxation on a net*
5 *basis by the country referred to in subpara-*
6 *graph (A), and*

7 “(ii) *such country allows a credit*
8 *against its net basis tax for the full amount*
9 *of the tax paid to such other foreign coun-*
10 *try.*

11 “(C) *DEALER.—For purposes of subpara-*
12 *graph (A), the term ‘dealer’ means—*

13 “(i) *with respect to a security, any*
14 *person to whom paragraphs (1) and (2) of*
15 *subsection (k) would not apply by reason of*
16 *paragraph (4) thereof if such security were*
17 *stock, and*

18 “(ii) *with respect to any other prop-*
19 *erty, any person with respect to whom such*
20 *property is described in section 1221(a)(1).*

21 “(D) *REGULATIONS.—The Secretary may*
22 *prescribe such regulations as may be appropriate*
23 *to carry out this paragraph, including regula-*
24 *tions to prevent the abuse of the exception pro-*

1 *vided by this paragraph and to treat other taxes*
2 *as qualified taxes.*

3 “(3) *EXCEPTIONS.*—*The Secretary may by regu-*
4 *lation provide that paragraph (1) shall not apply to*
5 *property where the Secretary determines that the ap-*
6 *plication of paragraph (1) to such property is not*
7 *necessary to carry out the purposes of this subsection.*

8 “(4) *CERTAIN RULES TO APPLY.*—*Rules similar*
9 *to the rules of paragraphs (5), (6), and (7) of sub-*
10 *section (k) shall apply for purposes of this subsection.*

11 “(5) *DETERMINATION OF HOLDING PERIOD.*—
12 *Holding periods shall be determined for purposes of*
13 *this subsection without regard to section 1235 or any*
14 *similar rule.”*

15 (b) *CONFORMING AMENDMENT.*—*The heading of sub-*
16 *section (k) of section 901 is amended by inserting “ON DIVI-*
17 *DENDS” after “TAXES”.*

18 (c) *EFFECTIVE DATE.*—*The amendments made by this*
19 *section shall apply to amounts paid or accrued more than*
20 *30 days after the date of the enactment of this Act.*

21 **SEC. 633. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS**
22 **TRANSFERS.**

23 (a) *TREATMENT OF CONTRIBUTED PROPERTY WITH*
24 *BUILT-IN LOSS.*—*Paragraph (1) of section 704(c) is*
25 *amended by striking “and” at the end of subparagraph (A),*

1 *by striking the period at the end of subparagraph (B) and*
2 *inserting “, and”, and by adding at the end the following:*

3 *“(C) if any property so contributed has a*
4 *built-in loss—*

5 *“(i) such built-in loss shall be taken*
6 *into account only in determining the*
7 *amount of items allocated to the contrib-*
8 *uting partner, and*

9 *“(ii) except as provided in regulations,*
10 *in determining the amount of items allo-*
11 *cated to other partners, the basis of the con-*
12 *tributed property in the hands of the part-*
13 *nership shall be treated as being equal to its*
14 *fair market value at the time of contribu-*
15 *tion.*

16 *For purposes of subparagraph (C), the term ‘built-in*
17 *loss’ means the excess of the adjusted basis of the*
18 *property (determined without regard to subparagraph*
19 *(C)(ii)) over its fair market value at the time of con-*
20 *tribution.”*

21 *(b) SPECIAL RULES FOR TRANSFERS OF PARTNER-*
22 *SHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN*
23 *LOSS.—*

24 *(1) ADJUSTMENT OF PARTNERSHIP BASIS RE-*
25 *QUIRED.—Subsection (a) of section 743 (relating to*

1 optional adjustment to basis of partnership property)
2 is amended by inserting before the period “or unless
3 the partnership has a substantial built-in loss imme-
4 diately after such transfer”.

5 (2) *ADJUSTMENT.*—Subsection (b) of section 743
6 is amended by inserting “or which has a substantial
7 built-in loss immediately after such transfer” after
8 “section 754 is in effect”.

9 (3) *SUBSTANTIAL BUILT-IN LOSS.*—Section 743
10 is amended by adding at the end the following new
11 subsection:

12 “(d) *SUBSTANTIAL BUILT-IN LOSS.*—

13 “(1) *IN GENERAL.*—For purposes of this section,
14 a partnership has a substantial built-in loss with re-
15 spect to a transfer of an interest in a partnership if
16 the partnership’s adjusted basis in the partnership
17 property exceeds by more than \$250,000 the fair mar-
18 ket value of such property.

19 “(2) *REGULATIONS.*—The Secretary shall pre-
20 scribe such regulations as may be appropriate to
21 carry out the purposes of paragraph (1) and section
22 734(d), including regulations aggregating related
23 partnerships and disregarding property acquired by
24 the partnership in an attempt to avoid such pur-
25 poses.”

1 (4) *ALTERNATIVE RULES FOR ELECTING INVEST-*
2 *MENT PARTNERSHIPS.—*

3 (A) *IN GENERAL.—*Section 743 is amended
4 by adding at the end the following new sub-
5 section:

6 “(e) *ALTERNATIVE RULES FOR ELECTING INVEST-*
7 *MENT PARTNERSHIPS.—*

8 “(1) *NO ADJUSTMENT OF PARTNERSHIP BASIS.—*
9 For purposes of this section, an electing investment
10 partnership shall not be treated as having a substan-
11 tial built-in loss with respect to any transfer occur-
12 ring while the election under paragraph (6)(A) is in
13 effect.

14 “(2) *LOSS DEFERRAL FOR TRANSFEREE PART-*
15 *NER.—*In the case of a transfer of an interest in an
16 electing investment partnership, the transferee part-
17 ner’s distributive share of losses (without regard to
18 gains) from the sale or exchange of partnership prop-
19 erty shall not be allowed except to the extent that it
20 is established that such losses exceed the loss (if any)
21 recognized by the transferor (or any prior transferor
22 to the extent not fully offset by a prior disallowance
23 under this paragraph) on the transfer of the partner-
24 ship interest.

1 “(3) *NO REDUCTION IN PARTNERSHIP BASIS.*—
2 *Losses disallowed under paragraph (2) shall not de-*
3 *crease the transferee partner’s basis in the partner-*
4 *ship interest.*

5 “(4) *EFFECT OF TERMINATION OF PARTNER-*
6 *SHIP.*—*This subsection shall be applied without re-*
7 *gard to any termination of a partnership under sec-*
8 *tion 708(b)(1)(B).*

9 “(5) *CERTAIN BASIS REDUCTIONS TREATED AS*
10 *LOSSES.*—*In the case of a transferee partner whose*
11 *basis in property distributed by the partnership is re-*
12 *duced under section 732(a)(2), the amount of the loss*
13 *recognized by the transferor on the transfer of the*
14 *partnership interest which is taken into account*
15 *under paragraph (2) shall be reduced by the amount*
16 *of such basis reduction.*

17 “(6) *ELECTING INVESTMENT PARTNERSHIP.*—
18 *For purposes of this subsection, the term ‘electing in-*
19 *vestment partnership’ means any partnership if—*

20 “(A) *the partnership makes an election to*
21 *have this subsection apply,*

22 “(B) *the partnership would be an invest-*
23 *ment company under section 3(a)(1)(A) of the*
24 *Investment Company Act of 1940 but for an ex-*

1 *emption under paragraph (1) or (7) of section*
2 *3(c) of such Act,*

3 “(C) *such partnership has never been en-*
4 *gaged in a trade or business,*

5 “(D) *substantially all of the assets of such*
6 *partnership are held for investment,*

7 “(E) *at least 95 percent of the assets con-*
8 *tributed to such partnership consist of money,*

9 “(F) *no assets contributed to such partner-*
10 *ship had an adjusted basis in excess of fair mar-*
11 *ket value at the time of contribution,*

12 “(G) *all partnership interests of such part-*
13 *nership are issued by such partnership pursuant*
14 *to a private offering and during the 24-month*
15 *period beginning on the date of the first capital*
16 *contribution to such partnership,*

17 “(H) *the partnership agreement of such*
18 *partnership has substantive restrictions on each*
19 *partner’s ability to cause a redemption of the*
20 *partner’s interest, and*

21 “(I) *the partnership agreement of such part-*
22 *nership provides for a term that is not in excess*
23 *of 15 years.*

1 *The election described in subparagraph (A), once*
2 *made, shall be irrevocable except with the consent of*
3 *the Secretary.*

4 “(7) *REGULATIONS.*—*The Secretary shall pre-*
5 *scribe such regulations as may be appropriate to*
6 *carry out the purposes of this subsection, including*
7 *regulations for applying this subsection to tiered*
8 *partnerships.”.*

9 (B) *INFORMATION REPORTING.*—*Section*
10 *6031 is amended by adding at the end the fol-*
11 *lowing new subsection:*

12 “(f) *ELECTING INVESTMENT PARTNERSHIPS.*—*In the*
13 *case of any electing investment partnership (as defined in*
14 *section 743(e)(6)), the information required under sub-*
15 *section (b) to be furnished to any partner to whom section*
16 *743(e)(2) applies shall include such information as is nec-*
17 *essary to enable the partner to compute the amount of losses*
18 *disallowed under section 743(e).”.*

19 (5) *CLERICAL AMENDMENTS.*—

20 (A) *The section heading for section 743 is*
21 *amended to read as follows:*

22 “**SEC. 743. SPECIAL RULES WHERE SECTION 754 ELECTION**
23 **OR SUBSTANTIAL BUILT-IN LOSS.**”

24 (B) *The table of sections for subpart C of*
25 *part II of subchapter K of chapter 1 is amended*

1 *by striking the item relating to section 743 and*
2 *inserting the following new item:*

*“Sec. 743. Special rules where section 754 election or substantial
built-in loss.”*

3 *(c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PART-*
4 *NERSHIP PROPERTY IF THERE IS SUBSTANTIAL BASIS RE-*
5 *DUCTION.—*

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

11 *(2) ADJUSTMENT.—Subsection (b) of section 734*
12 *is amended by inserting “or unless there is a substan-*
13 *tial basis reduction” after “section 754 is in effect”.*

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

17 *“(d) SUBSTANTIAL BASIS REDUCTION.—*

18 *“(1) IN GENERAL.—For purposes of this section,*
19 *there is a substantial basis reduction with respect to*
20 *a distribution if the sum of the amounts described in*
21 *subparagraphs (A) and (B) of subsection (b)(2) ex-*
22 *ceeds \$250,000.*

1 “(2) *REGULATIONS.*—

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

2 (4) *CLERICAL AMENDMENTS.*—

3 (A) *The section heading for section 734 is*
4 *amended to read as follows:*

5 “**SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED**
6 **PARTNERSHIP PROPERTY WHERE SECTION**
7 **754 ELECTION OR SUBSTANTIAL BASIS RE-**
8 **DUCTION.**”

9 (B) *The table of sections for subpart B of*
10 *part II of subchapter K of chapter 1 is amended*
11 *by striking the item relating to section 734 and*
12 *inserting the following new item:*

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

13 (d) *EFFECTIVE DATES.*—

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

17 (2) *SUBSECTION (b).*—

18 (A) *IN GENERAL.*—*Except as provided in*
19 *subparagraph (B), the amendments made by*
20 *subsection (b) shall apply to transfers after the*
21 *date of the enactment of this Act.*

1 (B) *TRANSITION RULE.*—*In the case of an*
2 *electing investment partnership which is in ex-*
3 *istence on June 4, 2004, section 743(e)(6)(H) of*
4 *the Internal Revenue Code of 1986, as added by*
5 *this section, shall not apply to such partnership*
6 *and section 743(e)(6)(I) of such Code, as so*
7 *added, shall be applied by substituting “20*
8 *years” for “15 years”.*

9 (3) *SUBSECTION (c).*—*The amendments made by*
10 *subsection (c) shall apply to distributions after the*
11 *date of the enactment of this Act.*

12 **SEC. 634. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
13 **STOCK HELD BY PARTNERSHIP IN COR-**
14 **PORATE PARTNER.**

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

17 “(c) *NO ALLOCATION OF BASIS DECREASE TO STOCK*
18 *OF CORPORATE PARTNER.*—*In making an allocation under*
19 *subsection (a) of any decrease in the adjusted basis of part-*
20 *nership property under section 734(b)—*

21 “(1) *no allocation may be made to stock in a*
22 *corporation (or any person related (within the mean-*
23 *ing of sections 267(b) and 707(b)(1)) to such corpora-*
24 *tion) which is a partner in the partnership, and*

1 “(2) any amount not allocable to stock by reason
2 of paragraph (1) shall be allocated under subsection
3 (a) to other partnership property.

4 Gain shall be recognized to the partnership to the extent
5 that the amount required to be allocated under paragraph
6 (2) to other partnership property exceeds the aggregate ad-
7 justed basis of such other property immediately before the
8 allocation required by paragraph (2).”

9 (b) *EFFECTIVE DATE.*—The amendment made by this
10 section shall apply to distributions after the date of the en-
11 actment of this Act.

12 **SEC. 635. REPEAL OF SPECIAL RULES FOR FASITS.**

13 (a) *IN GENERAL.*—Part V of subchapter M of chapter
14 1 (relating to financial asset securitization investment
15 trusts) is hereby repealed.

16 (b) *CONFORMING AMENDMENTS.*—

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

20 (2) Clause (ii) of section 382(l)(4)(B) is amended
21 by striking “a REMIC to which part IV of subchapter
22 M applies, or a FASIT to which part V of subchapter
23 M applies,” and inserting “or a REMIC to which
24 part IV of subchapter M applies,”.

1 (3) Paragraph (1) of section 582(c) is amended
2 by striking “, and any regular interest in a FASIT,”.

3 (4) Subparagraph (E) of section 856(c)(5) is
4 amended by striking the last sentence.

5 (5)(A) Section 860G(a)(1) is amended by adding
6 at the end the following new sentence: “An interest
7 shall not fail to qualify as a regular interest solely be-
8 cause the specified principal amount of the regular
9 interest (or the amount of interest accrued on the reg-
10 ular interest) can be reduced as a result of the non-
11 occurrence of 1 or more contingent payments with re-
12 spect to any reverse mortgage loan held by the
13 REMIC if, on the startup day for the REMIC, the
14 sponsor reasonably believes that all principal and in-
15 terest due under the regular interest will be paid at
16 or prior to the liquidation of the REMIC.”.

17 (B) The last sentence of section 860G(a)(3) is
18 amended by inserting “, and any reverse mortgage
19 loan (and each balance increase on such loan meeting
20 the requirements of subparagraph (A)(iii)) shall be
21 treated as an obligation secured by an interest in real
22 property” before the period at the end.

23 (6) Paragraph (3) of section 860G(a) is amended
24 by adding “and” at the end of subparagraph (B), by

1 *striking “, and” at the end of subparagraph (C) and*
2 *inserting a period, and by striking subparagraph (D).*

3 *(7) Section 860G(a)(3), as amended by para-*
4 *graph (6), is amended by adding at the end the fol-*
5 *lowing new sentence: “For purposes of subparagraph*
6 *(A), if more than 50 percent of the obligations trans-*
7 *ferred to, or purchased by, the REMIC are originated*
8 *by the United States or any State (or any political*
9 *subdivision, agency, or instrumentality of the United*
10 *States or any State) and are principally secured by*
11 *an interest in real property, then each obligation*
12 *transferred to, or purchased by, the REMIC shall be*
13 *treated as secured by an interest in real property.”.*

14 *(8)(A) Section 860G(a)(3)(A) is amended by*
15 *striking “or” at the end of clause (i), by inserting*
16 *“or” at the end of clause (ii), and by inserting after*
17 *clause (ii) the following new clause:*

18 *“(iii) represents an increase in the*
19 *principal amount under the original terms*
20 *of an obligation described in clause (i) or*
21 *(ii) if such increase—*

22 *“(I) is attributable to an advance*
23 *made to the obligor pursuant to the*
24 *original terms of the obligation,*

1 “(II) occurs after the startup day,
2 and

3 “(III) is purchased by the REMIC
4 pursuant to a fixed price contract in
5 effect on the startup day.”.

6 (B) Section 860G(a)(7)(B) is amended to read as
7 follows:

8 “(B) QUALIFIED RESERVE FUND.—For pur-
9 poses of subparagraph (A), the term ‘qualified
10 reserve fund’ means any reasonably required re-
11 serve to—

12 “(i) provide for full payment of ex-
13 penses of the REMIC or amounts due on
14 regular interests in the event of defaults on
15 qualified mortgages or lower than expected
16 returns on cash flow investments, or

17 “(ii) provide a source of funds for the
18 purchase of obligations described in clause
19 (ii) or (iii) of paragraph (3)(A).

20 The aggregate fair market value of the assets held
21 in any such reserve shall not exceed 50 percent
22 of the aggregate fair market value of all of the
23 assets of the REMIC on the startup day, and the
24 amount of any such reserve shall be promptly
25 and appropriately reduced to the extent the

1 *amount held in such reserve is no longer reason-*
2 *ably required for purposes specified in clause (i)*
3 *or (ii) of this subparagraph.”.*

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

7 (10) *Clause (xi) of section 7701(a)(19)(C) is*
8 *amended—*

9 (A) *by striking “and any regular interest in*
10 *a FASIT,” and*

11 (B) *by striking “or FASIT” each place it*
12 *appears.*

13 (11) *Subparagraph (A) of section 7701(i)(2) is*
14 *amended by striking “or a FASIT”.*

15 (12) *The table of parts for subchapter M of chap-*
16 *ter 1 is amended by striking the item relating to part*
17 *V.*

18 (c) *EFFECTIVE DATE.—*

19 (1) *IN GENERAL.—Except as provided in para-*
20 *graph (2), the amendments made by this section shall*
21 *take effect on January 1, 2005.*

22 (2) *EXCEPTION FOR EXISTING FASITS.—Para-*
23 *graph (1) shall not apply to any FASIT in existence*
24 *on the date of the enactment of this Act to the extent*
25 *that regular interests issued by the FASIT before such*

1 *date continue to remain outstanding in accordance*
2 *with the original terms of issuance.*

3 **SEC. 636. LIMITATION ON TRANSFER OF BUILT-IN LOSSES**
4 **ON REMIC RESIDUALS.**

5 *(a) IN GENERAL.—Section 362 (relating to basis to*
6 *corporations) is amended by adding at the end the following*
7 *new subsection:*

8 *“(e) LIMITATION ON TRANSFER OF BUILT-IN LOSSES*
9 *ON REMIC RESIDUALS IN SECTION 351 TRANSACTIONS.—*
10 *If—*

11 *“(1) a residual interest (as defined in section*
12 *860G(a)(2)) in a REMIC is transferred in any trans-*
13 *action which is described in subsection (a), and*

14 *“(2) the transferee’s adjusted basis in such resid-*
15 *ual interest would (but for this paragraph) exceed its*
16 *fair market value immediately after such transaction,*
17 *then, notwithstanding subsection (a), the transferee’s ad-*
18 *justed basis in such residual interest shall not exceed its*
19 *fair market value (whether or not greater than zero) imme-*
20 *diately after such transaction.”*

21 *(b) EFFECTIVE DATE.—The amendment made by this*
22 *section shall apply to transactions after the date of the en-*
23 *actment of this Act.*

1 **SEC. 637. CLARIFICATION OF BANKING BUSINESS FOR PUR-**
2 **POSES OF DETERMINING INVESTMENT OF**
3 **EARNINGS IN UNITED STATES PROPERTY.**

4 (a) *IN GENERAL.*—Subparagraph (A) of section
5 956(c)(2) is amended to read as follows:

6 “(A) obligations of the United States,
7 money, or deposits with persons described in
8 paragraph (4);”.

9 (b) *ELIGIBLE PERSONS.*—Section 956(c) (relating to
10 exceptions to definition of United States property) is
11 amended by adding at the end the following new paragraph:

12 “(4) *FINANCIAL SERVICES PROVIDERS.*—

13 “(A) *IN GENERAL.*—For purposes of para-
14 graph (2)(A), a person is described in this para-
15 graph if at least 80 percent of the person’s in-
16 come is from the active conduct of a banking
17 business which is derived from persons who are
18 not related persons.

19 “(B) *SPECIAL RULES.*—For purposes of
20 subparagraph (A) all related persons shall be
21 treated as 1 person in applying the 80-percent
22 test.

23 “(C) *RELATED PERSON.*—For purposes of
24 this paragraph, a person is a related person to
25 another person if—

1 “(i) the related person bears a relation-
2 ship to such person specified in section
3 267(b) or 707(b)(1), or

4 “(ii) such persons are members of the
5 same controlled group of corporations (as
6 defined in section 1563(a), except that ‘more
7 than 50 percent’ shall be substituted for ‘at
8 least 80 percent’ each place it appears
9 therein).”.

10 (c) *EFFECTIVE DATE.*—The amendment made by this
11 section shall take effect on the date of the enactment of this
12 Act.

13 **SEC. 638. ALTERNATIVE TAX FOR CERTAIN SMALL INSUR-**
14 **ANCE COMPANIES.**

15 (a) *IN GENERAL.*—Clause (i) of section 831(b)(2)(A)
16 is amended by striking “\$1,200,000” and inserting
17 “\$1,890,000”.

18 (b) *INFLATION ADJUSTMENT.*—Paragraph (2) of sec-
19 tion 831(b) is amended by adding at the end the following
20 new subparagraph:

21 “(C) *INFLATION ADJUSTMENT.*—In the case
22 of any taxable year beginning in a calendar year
23 after 2004, the \$1,890,000 amount in subpara-
24 graph (A) shall be increased by an amount equal
25 to—

1 “(i) \$1,890,000, multiplied by
2 “(ii) the cost-of-living adjustment de-
3 termined under section 1(f)(3) for such cal-
4 endar year by substituting ‘calendar year
5 2003’ for ‘calendar year 1992’ in subpara-
6 graph (B) thereof.

7 If the amount as adjusted under the preceding
8 sentence is not a multiple of \$1,000, such
9 amount shall be rounded to the next lowest mul-
10 tiple of \$1,000.”

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

14 **SEC. 639. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
15 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**
16 **CLOSED REPORTABLE TRANSACTIONS.**

17 (a) *IN GENERAL.*—Section 163 (relating to deduction
18 for interest) is amended by redesignating subsection (m) as
19 subsection (n) and by inserting after subsection (l) the fol-
20 lowing new subsection:

21 “(m) *INTEREST ON UNPAID TAXES ATTRIBUTABLE TO*
22 *NONDISCLOSED REPORTABLE TRANSACTIONS.*—No deduc-
23 tion shall be allowed under this chapter for any interest
24 paid or accrued under section 6601 on any underpayment
25 of tax which is attributable to the portion of any reportable

1 *transaction understatement (as defined in section*
2 *6662A(b)) with respect to which the requirement of section*
3 *6664(d)(2)(A) is not met.”.*

4 *(b) EFFECTIVE DATE.—The amendments made by this*
5 *section shall apply to transactions in taxable years begin-*
6 *ning after the date of the enactment of this Act.*

7 **SEC. 640. CLARIFICATION OF RULES FOR PAYMENT OF ESTI-**
8 **MATED TAX FOR CERTAIN DEEMED ASSET**
9 **SALES.**

10 *(a) IN GENERAL.—Paragraph (13) of section 338(h)*
11 *(relating to tax on deemed sale not taken into account for*
12 *estimated tax purposes) is amended by adding at the end*
13 *the following: “The preceding sentence shall not apply with*
14 *respect to a qualified stock purchase for which an election*
15 *is made under paragraph (10).”.*

16 *(b) EFFECTIVE DATE.—The amendment made by sub-*
17 *section (a) shall apply to transactions occurring after the*
18 *date of the enactment of this Act.*

19 **SEC. 641. RECOGNITION OF GAIN FROM THE SALE OF A**
20 **PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-**
21 **KIND EXCHANGE WITHIN 5 YEARS OF SALE.**

22 *(a) IN GENERAL.—Section 121(d) (relating to special*
23 *rules for exclusion of gain from sale of principal residence)*
24 *is amended by adding at the end the following new para-*
25 *graph:*

1 “(10) *PROPERTY ACQUIRED IN LIKE-KIND EX-*
2 *CHANGE.—If a taxpayer acquired property in an ex-*
3 *change to which section 1031 applied, subsection (a)*
4 *shall not apply to the sale or exchange of such prop-*
5 *erty if it occurs during the 5-year period beginning*
6 *with the date of the acquisition of such property.”.*

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

10 **SEC. 642. PREVENTION OF MISMATCHING OF INTEREST**
11 **AND ORIGINAL ISSUE DISCOUNT DEDUC-**
12 **TIONS AND INCOME INCLUSIONS IN TRANS-**
13 **ACTIONS WITH RELATED FOREIGN PERSONS.**

14 **(a) ORIGINAL ISSUE DISCOUNT.**—*Section 163(e)(3)*
15 *(relating to special rule for original issue discount on obli-*
16 *gation held by related foreign person) is amended by redес-*
17 *ignating subparagraph (B) as subparagraph (C) and by in-*
18 *serting after subparagraph (A) the following new subpara-*
19 *graph:*

20 **“(B) SPECIAL RULE FOR CERTAIN FOREIGN**
21 **ENTITIES.—**

22 **“(i) IN GENERAL.**—*In the case of any*
23 *debt instrument having original issue dis-*
24 *count which is held by a related foreign per-*
25 *son which is a foreign personal holding*

1 company (as defined in section 552), a con-
2 trolled foreign corporation (as defined in
3 section 957), or a passive foreign investment
4 company (as defined in section 1297), a de-
5 duction shall be allowable to the issuer with
6 respect to such original issue discount for
7 any taxable year before the taxable year in
8 which paid only to the extent such original
9 issue discount (reduced by properly allow-
10 able deductions and qualified deficits under
11 section 952(c)(1)(B)) is includible during
12 such prior taxable year in the gross income
13 of a United States person who owns (within
14 the meaning of section 958(a)) stock in such
15 corporation.

16 “(i) *SECRETARIAL AUTHORITY.*—The
17 Secretary may by regulation exempt trans-
18 actions from the application of clause (i),
19 including any transaction which is entered
20 into by a payor in the ordinary course of
21 a trade or business in which the payor is
22 predominantly engaged.”.

23 (b) *INTEREST AND OTHER DEDUCTIBLE AMOUNTS.*—

24 Section 267(a)(3) is amended—

25 (1) by striking “The Secretary” and inserting:

1 “(A) *IN GENERAL.—The Secretary*”, and
2 (2) *by adding at the end the following new sub-*
3 *paragraph:*

4 “(B) *SPECIAL RULE FOR CERTAIN FOREIGN*
5 *ENTITIES.—*

6 “(i) *IN GENERAL.—Notwithstanding*
7 *subparagraph (A), in the case of any item*
8 *payable to a foreign personal holding com-*
9 *pany (as defined in section 552), a con-*
10 *trolled foreign corporation (as defined in*
11 *section 957), or a passive foreign investment*
12 *company (as defined in section 1297), a de-*
13 *duction shall be allowable to the payor with*
14 *respect to such amount for any taxable year*
15 *before the taxable year in which paid only*
16 *to the extent that an amount attributable to*
17 *such item (reduced by properly allowable*
18 *deductions and qualified deficits under sec-*
19 *tion 952(c)(1)(B)) is includible during such*
20 *prior taxable year in the gross income of a*
21 *United States person who owns (within the*
22 *meaning of section 958(a)) stock in such*
23 *corporation.*

24 “(ii) *SECRETARIAL AUTHORITY.—The*
25 *Secretary may by regulation exempt trans-*

1 actions from the application of clause (i),
2 including any transaction which is entered
3 into by a payor in the ordinary course of
4 a trade or business in which the payor is
5 predominantly engaged and in which the
6 payment of the accrued amounts occurs
7 within 8½ months after accrual or within
8 such other period as the Secretary may pre-
9 scribe.”.

10 (c) *EFFECTIVE DATE.*—The amendments made by this
11 section shall apply to payments accrued on or after the date
12 of the enactment of this Act.

13 **SEC. 643. EXCLUSION FROM GROSS INCOME FOR INTEREST**
14 **ON OVERPAYMENTS OF INCOME TAX BY INDI-**
15 **VIDUALS.**

16 (a) *IN GENERAL.*—Part III of subchapter B of chapter
17 1 (relating to items specifically excluded from gross income)
18 is amended by inserting after section 139A the following
19 new section:

20 **“SEC. 139B. EXCLUSION FROM GROSS INCOME FOR INTER-**
21 **EST ON OVERPAYMENTS OF INCOME TAX BY**
22 **INDIVIDUALS.**

23 “(a) *IN GENERAL.*—In the case of an individual, gross
24 income shall not include interest paid under section 6611
25 on any overpayment of tax imposed by this subtitle.

1 “(b) *EXCEPTION.*—Subsection (a) shall not apply in
2 the case of a failure to claim items resulting in the overpay-
3 ment on the original return if the Secretary determines that
4 the principal purpose of such failure is to take advantage
5 of subsection (a).

6 “(c) *SPECIAL RULE FOR DETERMINING MODIFIED AD-*
7 *JUSTED GROSS INCOME.*—For purposes of this title, interest
8 not included in gross income under subsection (a) shall not
9 be treated as interest which is exempt from tax for purposes
10 of sections 32(i)(2)(B) and 6012(d) or any computation in
11 which interest exempt from tax under this title is added
12 to adjusted gross income.”.

13 (b) *CLERICAL AMENDMENT.*—The table of sections for
14 part III of subchapter B of chapter 1 is amended by insert-
15 ing after the item relating to section 139A the following
16 new item:

“Sec. 139B. Exclusion from gross income for interest on overpay-
ments of income tax by individuals.”.

17 (c) *EFFECTIVE DATE.*—The amendments made by this
18 section shall apply to interest received in calendar years
19 beginning after the date of the enactment of this Act.

20 **SEC. 644. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
21 **TEREST ON POTENTIAL UNDERPAYMENTS.**

22 (a) *IN GENERAL.*—Subchapter A of chapter 67 (relat-
23 ing to interest on underpayments) is amended by adding
24 at the end the following new section:

1 **“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
2 **TEREST ON POTENTIAL UNDERPAYMENTS,**
3 **ETC.**

4 “(a) *AUTHORITY TO MAKE DEPOSITS OTHER THAN*
5 *AS PAYMENT OF TAX.*—*A taxpayer may make a cash de-*
6 *posit with the Secretary which may be used by the Sec-*
7 *retary to pay any tax imposed under subtitle A or B or*
8 *chapter 41, 42, 43, or 44 which has not been assessed at*
9 *the time of the deposit. Such a deposit shall be made in*
10 *such manner as the Secretary shall prescribe.*

11 “(b) *NO INTEREST IMPOSED.*—*To the extent that such*
12 *deposit is used by the Secretary to pay tax, for purposes*
13 *of section 6601 (relating to interest on underpayments), the*
14 *tax shall be treated as paid when the deposit is made.*

15 “(c) *RETURN OF DEPOSIT.*—*Except in a case where*
16 *the Secretary determines that collection of tax is in jeop-*
17 *ardy, the Secretary shall return to the taxpayer any*
18 *amount of the deposit (to the extent not used for a payment*
19 *of tax) which the taxpayer requests in writing.*

20 “(d) *PAYMENT OF INTEREST.*—

21 “(1) *IN GENERAL.*—*For purposes of section 6611*
22 *(relating to interest on overpayments), a deposit*
23 *which is returned to a taxpayer shall be treated as a*
24 *payment of tax for any period to the extent (and only*
25 *to the extent) attributable to a disputable tax for such*
26 *period. Under regulations prescribed by the Secretary,*

1 *rules similar to the rules of section 6611(b)(2) shall*
2 *apply.*

3 *“(2) DISPUTABLE TAX.—*

4 *“(A) IN GENERAL.—For purposes of this*
5 *section, the term ‘disputable tax’ means the*
6 *amount of tax specified at the time of the deposit*
7 *as the taxpayer’s reasonable estimate of the max-*
8 *imum amount of any tax attributable to disput-*
9 *able items.*

10 *“(B) SAFE HARBOR BASED ON 30-DAY LET-*
11 *TER.—In the case of a taxpayer who has been*
12 *issued a 30-day letter, the maximum amount of*
13 *tax under subparagraph (A) shall not be less*
14 *than the amount of the proposed deficiency speci-*
15 *fied in such letter.*

16 *“(3) OTHER DEFINITIONS.—For purposes of*
17 *paragraph (2)—*

18 *“(A) DISPUTABLE ITEM.—The term ‘disput-*
19 *able item’ means any item of income, gain, loss,*
20 *deduction, or credit if the taxpayer—*

21 *“(i) has a reasonable basis for its*
22 *treatment of such item, and*

23 *“(ii) reasonably believes that the Sec-*
24 *retary also has a reasonable basis for dis-*

1 *allowing the taxpayer's treatment of such*
2 *item.*

3 “(B) *30-DAY LETTER.*—*The term ‘30-day*
4 *letter’ means the first letter of proposed defi-*
5 *ciency which allows the taxpayer an opportunity*
6 *for administrative review in the Internal Rev-*
7 *enue Service Office of Appeals.*

8 “(4) *RATE OF INTEREST.*—*The rate of interest*
9 *allowable under this subsection shall be the Federal*
10 *short-term rate determined under section 6621(b),*
11 *compounded daily.*

12 “(e) *USE OF DEPOSITS.*—

13 “(1) *PAYMENT OF TAX.*—*Except as otherwise*
14 *provided by the taxpayer, deposits shall be treated as*
15 *used for the payment of tax in the order deposited.*

16 “(2) *RETURNS OF DEPOSITS.*—*Deposits shall be*
17 *treated as returned to the taxpayer on a last-in, first-*
18 *out basis.”.*

19 “(b) *CLERICAL AMENDMENT.*—*The table of sections for*
20 *subchapter A of chapter 67 is amended by adding at the*
21 *end the following new item:*

“Sec. 6603. Deposits made to suspend running of interest on poten-
tial underpayments, etc.”.

22 “(c) *EFFECTIVE DATE.*—

1 (1) *IN GENERAL.*—*The amendments made by*
2 *this section shall apply to deposits made after the*
3 *date of the enactment of this Act.*

4 (2) *COORDINATION WITH DEPOSITS MADE UNDER*
5 *REVENUE PROCEDURE 84–58.*—*In the case of an*
6 *amount held by the Secretary of the Treasury or his*
7 *delegate on the date of the enactment of this Act as*
8 *a deposit in the nature of a cash bond deposit pursu-*
9 *ant to Revenue Procedure 84–58, the date that the*
10 *taxpayer identifies such amount as a deposit made*
11 *pursuant to section 6603 of the Internal Revenue*
12 *Code (as added by this Act) shall be treated as the*
13 *date such amount is deposited for purposes of such*
14 *section 6603.*

15 **SEC. 645. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALL-**
16 **MENT AGREEMENTS.**

17 (a) *IN GENERAL.*—

18 (1) *Section 6159(a) (relating to authorization of*
19 *agreements) is amended—*

20 (A) *by striking “satisfy liability for pay-*
21 *ment of” and inserting “make payment on”, and*

22 (B) *by inserting “full or partial” after “fa-*
23 *cilitate”.*

24 (2) *Section 6159(c) (relating to Secretary re-*
25 *quired to enter into installment agreements in certain*

1 cases) is amended in the matter preceding paragraph
2 (1) by inserting “full” before “payment”.

3 (b) *REQUIREMENT TO REVIEW PARTIAL PAYMENT*
4 *AGREEMENTS EVERY TWO YEARS.*—Section 6159 is
5 amended by redesignating subsections (d) and (e) as sub-
6 sections (e) and (f), respectively, and inserting after sub-
7 section (c) the following new subsection:

8 “(d) *SECRETARY REQUIRED TO REVIEW INSTALL-*
9 *MENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO*
10 *YEARS.*—In the case of an agreement entered into by the
11 Secretary under subsection (a) for partial collection of a
12 tax liability, the Secretary shall review the agreement at
13 least once every 2 years.”.

14 (c) *EFFECTIVE DATE.*—The amendments made by this
15 section shall apply to agreements entered into on or after
16 the date of the enactment of this Act.

17 **SEC. 646. AFFIRMATION OF CONSOLIDATED RETURN REGU-**
18 **LATION AUTHORITY.**

19 (a) *IN GENERAL.*—Section 1502 is amended by adding
20 at the end the following new sentence: “In carrying out the
21 preceding sentence, the Secretary may prescribe rules that
22 are different from the provisions of chapter 1 that would
23 apply if such corporations filed separate returns.”.

24 (b) *RESULT NOT OVERTURNED.*—Notwithstanding the
25 amendment made by subsection (a), the Internal Revenue

1 *Code of 1986 shall be construed by treating Treasury Regu-*
2 *lation § 1.1502-20(c)(1)(iii) (as in effect on January 1,*
3 *2001) as being inapplicable to the factual situation in Rite*
4 *Aid Corporation and Subsidiary Corporations v. United*
5 *States, 255 F.3d 1357 (Fed. Cir. 2001).*

6 (c) *EFFECTIVE DATE.*—*This section, and the amend-*
7 *ment made by this section, shall apply to taxable years be-*
8 *ginning before, on, or after the date of the enactment of this*
9 *Act.*

10 **PART III—LEASING**

11 **SEC. 647. REFORM OF TAX TREATMENT OF CERTAIN LEAS-** 12 **ING ARRANGEMENTS.**

13 (a) *CLARIFICATION OF RECOVERY PERIOD FOR TAX-*
14 *EXEMPT USE PROPERTY SUBJECT TO LEASE.*—*Subpara-*
15 *graph (A) of section 168(g)(3) (relating to special rules for*
16 *determining class life) is amended by inserting “(notwith-*
17 *standing any other subparagraph of this paragraph)” after*
18 *“shall”.*

19 (b) *LIMITATION ON DEPRECIATION PERIOD FOR SOFT-*
20 *WARE LEASED TO TAX-EXEMPT ENTITY.*—*Paragraph (1)*
21 *of section 167(f) is amended by adding at the end the fol-*
22 *lowing new subparagraph:*

23 “(C) *TAX-EXEMPT USE PROPERTY SUBJECT*
24 *TO LEASE.*—*In the case of computer software*
25 *which would be tax-exempt use property as de-*

1 *defined in subsection (h) of section 168 if such sec-*
2 *tion applied to computer software, the useful life*
3 *under subparagraph (A) shall not be less than*
4 *125 percent of the lease term (within the mean-*
5 *ing of section 168(i)(3)).”.*

6 (c) *LEASE TERM TO INCLUDE RELATED SERVICE*
7 *CONTRACTS.—Subparagraph (A) of section 168(i)(3) (relat-*
8 *ing to lease term) is amended by striking “and” at the end*
9 *of clause (i), by redesignating clause (ii) as clause (iii), and*
10 *by inserting after clause (i) the following new clause:*

11 *“(ii) the term of a lease shall include*
12 *the term of any service contract or similar*
13 *arrangement (whether or not treated as a*
14 *lease under section 7701(e))—*

15 *“(I) which is part of the same*
16 *transaction (or series of related trans-*
17 *actions) which includes the lease, and*

18 *“(II) which is with respect to the*
19 *property subject to the lease or substan-*
20 *tially similar property, and”.*

21 (d) *EXPANSION OF SHORT-TERM LEASE EXEMPTION*
22 *FOR QUALIFIED TECHNOLOGICAL EQUIPMENT.—Subpara-*
23 *graph (A) of section 168(h)(3) is amended by adding at*
24 *the end the following new sentence: “Notwithstanding sub-*
25 *section (i)(3)(A)(i), in determining a lease term for pur-*

1 *poses of the preceding sentence, there shall not be taken into*
2 *account any option of the lessee to renew at the fair market*
3 *value rent determined at the time of renewal; except that*
4 *the aggregate period not taken into account by reason of*
5 *this sentence shall not exceed 24 months.”*

6 **SEC. 648. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
7 **PROPERTY USED BY GOVERNMENTS OR**
8 **OTHER TAX-EXEMPT ENTITIES.**

9 *(a) IN GENERAL.—Subpart C of part II of subchapter*
10 *E of chapter 1 (relating to taxable year for which deduc-*
11 *tions taken) is amended by adding at the end the following*
12 *new section:*

13 **“SEC. 470. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
14 **PROPERTY USED BY GOVERNMENTS OR**
15 **OTHER TAX-EXEMPT ENTITIES.**

16 *“(a) LIMITATION ON LOSSES.—Except as otherwise*
17 *provided in this section, a tax-exempt use loss for any tax-*
18 *able year shall not be allowed.*

19 *“(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—*
20 *Any tax-exempt use loss with respect to any tax-exempt use*
21 *property which is disallowed under subsection (a) for any*
22 *taxable year shall be treated as a deduction with respect*
23 *to such property in the next taxable year.*

24 *“(c) DEFINITIONS.—For purposes of this section—*

1 “(1) *TAX-EXEMPT USE LOSS.*—*The term ‘tax-ex-*
2 *empt use loss’ means, with respect to any taxable*
3 *year, the amount (if any) by which—*

4 “(A) *the sum of—*

5 “(i) *the aggregate deductions (other*
6 *than interest) directly allocable to a tax-ex-*
7 *empt use property, plus*

8 “(ii) *the aggregate deductions for inter-*
9 *est properly allocable to such property, ex-*
10 *ceed*

11 “(B) *the aggregate income from such prop-*
12 *erty.*

13 “(2) *TAX-EXEMPT USE PROPERTY.*—*The term*
14 *‘tax-exempt use property’ has the meaning given to*
15 *such term by section 168(h) (without regard to para-*
16 *graphs (1)(C) and (3) thereof and determined as if*
17 *property described in section 167(f)(1)(B) were tan-*
18 *gible property). Such term shall not include property*
19 *which would (but for this sentence) be tax-exempt use*
20 *property solely by reason of section 168(h)(6) if any*
21 *credit is allowable under section 42 or 47 with respect*
22 *to such property.*

23 “(d) *EXCEPTION FOR CERTAIN LEASES.*—*This section*
24 *shall not apply to any lease of property which meets the*
25 *requirements of all of the following paragraphs:*

1 “(1) *AVAILABILITY OF FUNDS.*—

2 “(A) *IN GENERAL.*—*A lease of property*
3 *meets the requirements of this paragraph if (at*
4 *any time during the lease term) not more than*
5 *an allowable amount of funds are—*

6 “(i) *subject to any arrangement re-*
7 *ferred to in subparagraph (B), or*

8 “(ii) *set aside or expected to be set*
9 *aside,*

10 *to or for the benefit of the lessor or any lender,*
11 *or to or for the benefit of the lessee to satisfy the*
12 *lessee’s obligations or options under the lease.*
13 *For purposes of clause (ii), funds shall be treated*
14 *as set aside or expected to be set aside only if a*
15 *reasonable person would conclude, based on the*
16 *facts and circumstances, that such funds are set*
17 *aside or expected to be set aside.*

18 “(B) *ARRANGEMENTS.*—*The arrangements*
19 *referred to in this subparagraph include a defea-*
20 *sance arrangement, a loan by the lessee to the*
21 *lessor or any lender, a deposit arrangement, a*
22 *letter of credit collateralized with cash or cash*
23 *equivalents, a payment undertaking agreement,*
24 *prepaid rent (within the meaning of the regula-*
25 *tions under section 467), a sinking fund ar-*

1 *rangement, a guaranteed investment contract, fi-*
2 *nancial guaranty insurance, and any similar*
3 *arrangement (whether or not such arrangement*
4 *provides credit support).*

5 “(C) *ALLOWABLE AMOUNT.*—

6 “(i) *IN GENERAL.*—*Except as otherwise*
7 *provided in this subparagraph, the term ‘al-*
8 *lowable amount’ means an amount equal to*
9 *20 percent of the lessor’s adjusted basis in*
10 *the property at the time the lease is entered*
11 *into.*

12 “(ii) *HIGHER AMOUNT PERMITTED IN*
13 *CERTAIN CASES.*—*To the extent provided in*
14 *regulations, a higher percentage shall be*
15 *permitted under clause (i) where necessary*
16 *because of the credit-worthiness of the lessee.*
17 *In no event may such regulations permit a*
18 *percentage of more than 50 percent.*

19 “(iii) *OPTION TO PURCHASE OTHER*
20 *THAN AT FAIR MARKET VALUE.*—*If under*
21 *the lease the lessee has the option to pur-*
22 *chase the property for a fixed price or for*
23 *other than the fair market value of the*
24 *property (determined at the time of exer-*
25 *cise), the allowable amount at the time such*

1 *option may be exercised may not exceed 50*
2 *percent of the price at which such option*
3 *may be exercised.*

4 “(iv) *NO ALLOWABLE AMOUNT FOR*
5 *CERTAIN ARRANGEMENTS.—The allowable*
6 *amount shall be zero with respect to any ar-*
7 *rangement which involves—*

8 “(I) *a loan from the lessee to the*
9 *lessor or a lender,*

10 “(II) *any deposit received, letter*
11 *of credit issued, or payment under-*
12 *taking agreement entered into by a*
13 *lender otherwise involved in the trans-*
14 *action, or*

15 “(III) *in the case of a transaction*
16 *which involves a lender, any credit*
17 *support made available to the lessor in*
18 *which any such lender does not have a*
19 *claim that is senior to the lessor.*

20 *For purposes of subclause (I), the term*
21 *‘loan’ shall not include any amount treated*
22 *as a loan under section 467 with respect to*
23 *a section 467 rental agreement.*

24 “(2) *LESSOR MUST MAKE SUBSTANTIAL EQUITY*
25 *INVESTMENT.—*

1 “(A) *IN GENERAL.*—A lease of property
2 meets the requirements of this paragraph if—

3 “(i) the lessor—

4 “(I) has at the time the lease is
5 entered into an unconditional at-risk
6 equity investment (as determined by
7 the Secretary) in the property of at
8 least 20 percent of the lessor’s adjusted
9 basis in the property as of that time,
10 and

11 “(II) maintains such investment
12 throughout the term of the lease, and

13 “(ii) the fair market value of the prop-
14 erty at the end of the lease term is reason-
15 ably expected to be equal to at least 20 per-
16 cent of such basis.

17 “(B) *RISK OF LOSS.*—For purposes of
18 clause (ii), the fair market value at the end of
19 the lease term shall be reduced to the extent that
20 a person other than the lessor bears a risk of loss
21 in the value of the property.

22 “(C) *PARAGRAPH NOT TO APPLY TO SHORT-*
23 *TERM LEASES.*—This paragraph shall not apply
24 to any lease with a lease term of 5 years or less.

1 “(3) *LESSEE MAY NOT BEAR MORE THAN MINI-*
2 *MAL RISK OF LOSS.—*

3 “(A) *IN GENERAL.—A lease of property*
4 *meets the requirements of this paragraph if there*
5 *is no arrangement under which the lessee*
6 *bears—*

7 “(i) *any portion of the loss that would*
8 *occur if the fair market value of the leased*
9 *property were 25 percent less than its rea-*
10 *sonably expected fair market value at the*
11 *time the lease is terminated, or*

12 “(ii) *more than 50 percent of the loss*
13 *that would occur if the fair market value of*
14 *the leased property at the time the lease is*
15 *terminated were zero.*

16 “(B) *EXCEPTION.—The Secretary may by*
17 *regulations provide that the requirements of this*
18 *paragraph are not met where the lessee bears*
19 *more than a minimal risk of loss.*

20 “(C) *PARAGRAPH NOT TO APPLY TO SHORT-*
21 *TERM LEASES.—This paragraph shall not apply*
22 *to any lease with a lease term of 5 years or less.*

23 “(e) *SPECIAL RULES.—*

24 “(1) *TREATMENT OF FORMER TAX-EXEMPT USE*
25 *PROPERTY.—*

1 “(A) *IN GENERAL.*—*In the case of any*
2 *former tax-exempt use property—*

3 “(i) *any deduction allowable under*
4 *subsection (b) with respect to such property*
5 *for any taxable year shall be allowed only*
6 *to the extent of any net income (without re-*
7 *gard to such deduction) from such property*
8 *for such taxable year, and*

9 “(ii) *any portion of such unused de-*
10 *duction remaining after application of*
11 *clause (i) shall be treated as a deduction al-*
12 *lowable under subsection (b) with respect to*
13 *such property in the next taxable year.*

14 “(B) *FORMER TAX-EXEMPT USE PROP-*
15 *ERTY.*—*For purposes of this subsection, the term*
16 *‘former tax-exempt use property’ means any*
17 *property which—*

18 “(i) *is not tax-exempt use property for*
19 *the taxable year, but*

20 “(ii) *was tax-exempt use property for*
21 *any prior taxable year.*

22 “(2) *DISPOSITION OF ENTIRE INTEREST IN*
23 *PROPERTY.*—*If during the taxable year a taxpayer*
24 *disposes of the taxpayer’s entire interest in tax-ex-*
25 *empt use property (or former tax-exempt use prop-*

1 *erty), rules similar to the rules of section 469(g) shall*
2 *apply for purposes of this section.*

3 “(3) *COORDINATION WITH SECTION 469.*—*This*
4 *section shall be applied before the application of sec-*
5 *tion 469.*

6 “(4) *COORDINATION WITH SECTIONS 1031 AND*
7 *1033.*—

8 “(A) *IN GENERAL.*—*Sections 1031(a) and*
9 *1033(a) shall not apply if—*

10 “(i) *the exchanged or converted prop-*
11 *erty is tax-exempt use property subject to a*
12 *lease which was entered into before March*
13 *13, 2004, and which would not have met the*
14 *requirements of subsection (d) had such re-*
15 *quirements been in effect when the lease was*
16 *entered into, or*

17 “(ii) *the replacement property is tax-*
18 *exempt use property subject to a lease which*
19 *does not meet the requirements of subsection*
20 *(d).*

21 “(B) *ADJUSTED BASIS.*—*In the case of*
22 *property acquired by the lessor in a transaction*
23 *to which section 1031 or 1033 applies, the ad-*
24 *justed basis of such property for purposes of this*
25 *section shall be equal to the lesser of—*

1 “(i) the fair market value of the prop-
2 erty as of the beginning of the lease term,
3 or

4 “(ii) the amount which would be the
5 lessor’s adjusted basis if such sections did
6 not apply to such transaction.

7 “(f) *OTHER DEFINITIONS.*—For purposes of this sec-
8 *tion*—

9 “(1) *RELATED PARTIES.*—The terms ‘lessor’, ‘les-
10 see’, and ‘lender’ each include any related party
11 (within the meaning of section 197(f)(9)(C)(i)).

12 “(2) *LEASE TERM.*—The term ‘lease term’ has
13 the meaning given to such term by section 168(i)(3).

14 “(3) *LENDER.*—The term ‘lender’ means, with
15 respect to any lease, a person that makes a loan to
16 the lessor which is secured (or economically similar to
17 being secured) by the lease or the leased property.

18 “(4) *LOAN.*—The term ‘loan’ includes any simi-
19 lar arrangement.

20 “(g) *REGULATIONS.*—The Secretary shall prescribe
21 *such regulations as may be necessary or appropriate to*
22 *carry out the provisions of this section, including regula-*
23 *tions which*—

24 “(1) *allow in appropriate cases the aggregation*
25 *of property subject to the same lease, and*

1 “(2) provide for the determination of the alloca-
2 tion of interest expense for purposes of this section.”.

3 (b) *CONFORMING AMENDMENT.*—*The table of sections*
4 *for subpart C of part II of subchapter E of chapter 1 is*
5 *amended by adding at the end the following new item:*

*“Sec. 470. Limitation on deductions allocable to property used by
governments or other tax-exempt entities.”.*

6 **SEC. 649. EFFECTIVE DATE.**

7 (a) *IN GENERAL.*—*Except as provided in this section,*
8 *the amendments made by this part shall apply to leases*
9 *entered into after March 12, 2004.*

10 (b) *EXCEPTION.*—

11 (1) *IN GENERAL.*—*The amendments made by*
12 *this part shall not apply to qualified transportation*
13 *property.*

14 (2) *QUALIFIED TRANSPORTATION PROPERTY.*—
15 *For purposes of paragraph (1), the term “qualified*
16 *transportation property” means domestic property*
17 *subject to a lease with respect to which a formal ap-*
18 *plication—*

19 (A) *was submitted for approval to the Fed-*
20 *eral Transit Administration (an agency of the*
21 *Department of Transportation) after June 30,*
22 *2003, and before March 13, 2004,*

23 (B) *is approved by the Federal Transit Ad-*
24 *ministration before January 1, 2005, and*

1 (C) includes a description of such property
2 and the value of such property.

3 (3) *EXCHANGES AND CONVERSION OF TAX-EX-*
4 *EMPT USE PROPERTY.*—Section 470(e)(4) of the *Inter-*
5 *nal Revenue Code of 1986, as added by this section,*
6 *shall apply to property exchanged or converted after*
7 *the date of the enactment of this Act.*

8 ***Subtitle C—Reduction of Fuel Tax***
9 ***Evasion***

10 ***SEC. 651. EXEMPTION FROM CERTAIN EXCISE TAXES FOR***
11 ***MOBILE MACHINERY.***

12 (a) *EXEMPTION FROM TAX ON HEAVY TRUCKS AND*
13 *TRAILERS SOLD AT RETAIL.*—

14 (1) *IN GENERAL.*—Section 4053 (relating to ex-
15 *emptions) is amended by adding at the end the fol-*
16 *lowing new paragraph:*

17 “(8) *MOBILE MACHINERY.*—Any vehicle which
18 *consists of a chassis—*

19 “(A) *to which there has been permanently*
20 *mounted (by welding, bolting, riveting, or other*
21 *means) machinery or equipment to perform a*
22 *construction, manufacturing, processing, farm-*
23 *ing, mining, drilling, timbering, or similar oper-*
24 *ation if the operation of the machinery or equip-*

1 *ment is unrelated to transportation on or off the*
2 *public highways,*

3 “(B) *which has been specially designed to*
4 *serve only as a mobile carriage and mount (and*
5 *a power source, where applicable) for the par-*
6 *ticular machinery or equipment involved, wheth-*
7 *er or not such machinery or equipment is in op-*
8 *eration, and*

9 “(C) *which, by reason of such special de-*
10 *sign, could not, without substantial structural*
11 *modification, be used as a component of a vehicle*
12 *designed to perform a function of transporting*
13 *any load other than that particular machinery*
14 *or equipment or similar machinery or equipment*
15 *requiring such a specially designed chassis.”.*

16 (2) *EFFECTIVE DATE.*—*The amendment made by*
17 *this subsection shall take effect on the day after the*
18 *date of the enactment of this Act.*

19 (b) *EXEMPTION FROM TAX ON USE OF CERTAIN VEHI-*
20 *CLES.*—

21 (1) *IN GENERAL.*—*Section 4483 (relating to ex-*
22 *emptions) is amended by redesignating subsection (g)*
23 *as subsection (h) and by inserting after subsection (f)*
24 *the following new subsection:*

1 “(g) *EXEMPTION FOR MOBILE MACHINERY.*—No tax
2 shall be imposed by section 4481 on the use of any vehicle
3 described in section 4053(8).”.

4 (2) *EFFECTIVE DATE.*—The amendments made
5 by this subsection shall take effect on the day after the
6 date of the enactment of this Act.

7 “(c) *EXEMPTION FROM TAX ON TIRES.*—

8 (1) *IN GENERAL.*—Section 4072(b)(2) is amend-
9 ed by adding at the end the following flush sentence:
10 “Such term shall not include tires of a type used ex-
11 clusively on vehicles described in section 4053(8).”.

12 (2) *EFFECTIVE DATE.*—The amendment made by
13 this subsection shall take effect on the day after the
14 date of the enactment of this Act.

15 “(d) *REFUND OF FUEL TAXES.*—

16 (1) *IN GENERAL.*—Section 6421(e)(2) (defining
17 off-highway business use) is amended by adding at
18 the end the following new subparagraph:

19 “(C) *USES IN MOBILE MACHINERY.*—

20 “(i) *IN GENERAL.*—The term ‘off-high-
21 way business use’ shall include any use in
22 a vehicle which meets the requirements de-
23 scribed in clause (ii).

1 “(ii) *REQUIREMENTS FOR MOBILE MA-*
2 *CHINERY.—The requirements described in*
3 *this clause are—*

4 “(I) *the design-based test, and*

5 “(II) *the use-based test.*

6 “(iii) *DESIGN-BASED TEST.—For pur-*
7 *poses of clause (ii)(I), the design-based test*
8 *is met if the vehicle consists of a chassis—*

9 “(I) *to which there has been per-*
10 *manently mounted (by welding, bolt-*
11 *ing, riveting, or other means) machin-*
12 *ery or equipment to perform a con-*
13 *struction, manufacturing, processing,*
14 *farming, mining, drilling, timbering,*
15 *or similar operation if the operation of*
16 *the machinery or equipment is unre-*
17 *lated to transportation on or off the*
18 *public highways,*

19 “(II) *which has been specially de-*
20 *signed to serve only as a mobile car-*
21 *riage and mount (and a power source,*
22 *where applicable) for the particular*
23 *machinery or equipment involved,*
24 *whether or not such machinery or*
25 *equipment is in operation, and*

1 “(III) which, by reason of such
2 special design, could not, without sub-
3 stantial structural modification, be
4 used as a component of a vehicle de-
5 signed to perform a function of trans-
6 porting any load other than that par-
7 ticular machinery or equipment or
8 similar machinery or equipment re-
9 quiring such a specially designed chas-
10 sis.

11 “(iv) *USE-BASED TEST*.—For purposes
12 of clause (ii)(II), the use-based test is met if
13 the use of the vehicle on public highways
14 was less than 7,500 miles during the tax-
15 payer’s taxable year.”.

16 (2) *NO TAX-FREE SALES*.—Subsection (b) of sec-
17 tion 4082, as amended by section 652, is amended by
18 inserting before the period at the end “and such term
19 shall not include any use described in section
20 6421(e)(2)(C)”.

21 (3) *ANNUAL REFUND OF TAX PAID*.—Section
22 6427(i)(2) (relating to exceptions) is amended by add-
23 ing at the end the following new subparagraph:

24 “(C) *NONAPPLICATION OF PARAGRAPH*.—

25 This paragraph shall not apply to any fuel used

1 *solely in any off-highway business use described*
2 *in section 6421(e)(2)(C).”.*

3 (4) *EFFECTIVE DATE.*—*The amendments made*
4 *by this subsection shall apply to taxable years begin-*
5 *ning after the date of the enactment of this Act.*

6 **SEC. 652. TAXATION OF AVIATION-GRADE KEROSENE.**

7 (a) *RATE OF TAX.*—

8 (1) *IN GENERAL.*—*Subparagraph (A) of section*
9 *4081(a)(2) is amended by striking “and” at the end*
10 *of clause (ii), by striking the period at the end of*
11 *clause (iii) and inserting “, and”, and by adding at*
12 *the end the following new clause:*

13 *“(iv) in the case of aviation-grade ker-*
14 *osene, 21.8 cents per gallon.”.*

15 (2) *COMMERCIAL AVIATION.*—*Paragraph (2) of*
16 *section 4081(a) is amended by adding at the end the*
17 *following new subparagraph:*

18 *“(C) TAXES IMPOSED ON FUEL USED IN*
19 *COMMERCIAL AVIATION.*—*In the case of aviation-*
20 *grade kerosene which is removed from any refin-*
21 *ery or terminal directly into the fuel tank of an*
22 *aircraft for use in commercial aviation, the rate*
23 *of tax under subparagraph (A)(iv) shall be 4.3*
24 *cents per gallon.”.*

1 (3) *CERTAIN REFUELER TRUCKS, TANKERS, AND*
2 *TANK WAGONS TREATED AS TERMINAL.*—Subsection
3 *(a)* of section 4081 is amended by adding at the end
4 *the following new paragraph:*

5 “(3) *CERTAIN REFUELER TRUCKS, TANKERS,*
6 *AND TANK WAGONS TREATED AS TERMINAL.*—

7 “(A) *IN GENERAL.*—*In the case of aviation-*
8 *grade kerosene which is removed from any ter-*
9 *terminal directly into the fuel tank of an aircraft*
10 *(determined without regard to any refueler truck,*
11 *tanker, or tank wagon which meets the require-*
12 *ments of subparagraph (B)), a refueler truck,*
13 *tanker, or tank wagon shall be treated as part of*
14 *such terminal if—*

15 “(i) *such truck, tanker, or wagon meets*
16 *the requirements of subparagraph (B) with*
17 *respect to an airport, and*

18 “(ii) *except in the case of exigent cir-*
19 *cumstances identified by the Secretary in*
20 *regulations, no vehicle registered for high-*
21 *way use is loaded with aviation-grade ker-*
22 *osene at such terminal.*

23 “(B) *REQUIREMENTS.*—*A refueler truck,*
24 *tanker, or tank wagon meets the requirements of*

1 *this subparagraph with respect to an airport if*
2 *such truck, tanker, or wagon—*

3 “(i) *is loaded with aviation-grade ker-*
4 *osene at such terminal located within such*
5 *airport and delivers such kerosene only into*
6 *aircraft at such airport,*

7 “(ii) *has storage tanks, hose, and cou-*
8 *pling equipment designed and used for the*
9 *purposes of fueling aircraft,*

10 “(iii) *is not registered for highway use,*
11 *and*

12 “(iv) *is operated by—*

13 “(I) *the terminal operator of such*
14 *terminal, or*

15 “(II) *a person that makes a daily*
16 *accounting to such terminal operator*
17 *of each delivery of fuel from such truck,*
18 *tanker, or wagon.*

19 “(C) *REPORTING.—The Secretary shall re-*
20 *quire under section 4101(d) reporting by such*
21 *terminal operator of—*

22 “(i) *any information obtained under*
23 *subparagraph (B)(iv)(II), and*

24 “(ii) *any similar information main-*
25 *tained by such terminal operator with re-*

1 *spect to deliveries of fuel made by trucks,*
2 *tankers, or wagons operated by such ter-*
3 *minal operator.”.*

4 (4) *LIABILITY FOR TAX ON AVIATION-GRADE*
5 *KEROSENE USED IN COMMERCIAL AVIATION.—Sub-*
6 *section (a) of section 4081 is amended by adding at*
7 *the end the following new paragraph:*

8 “*(4) LIABILITY FOR TAX ON AVIATION-GRADE*
9 *KEROSENE USED IN COMMERCIAL AVIATION.—For*
10 *purposes of paragraph (2)(C), the person who uses the*
11 *fuel for commercial aviation shall pay the tax im-*
12 *posed under such paragraph. For purposes of the pre-*
13 *ceding sentence, fuel shall be treated as used when*
14 *such fuel is removed into the fuel tank.”.*

15 (5) *NONTAXABLE USES.—*

16 (A) *IN GENERAL.—Section 4082 is amended*
17 *by redesignating subsections (e) and (f) as sub-*
18 *sections (f) and (g), respectively, and by insert-*
19 *ing after subsection (d) the following new sub-*
20 *section:*

21 “*(e) AVIATION-GRADE KEROSENE.—In the case of*
22 *aviation-grade kerosene which is exempt from the tax im-*
23 *posed by section 4041(c) (other than by reason of a prior*
24 *imposition of tax) and which is removed from any refinery*

1 *or terminal directly into the fuel tank of an aircraft, the*
2 *rate of tax under section 4081(a)(2)(A)(iv) shall be zero.”.*

3 (B) *CONFORMING AMENDMENTS.—*

4 (i) *Subsection (b) of section 4082 is*
5 *amended by adding at the end the following*
6 *new flush sentence:*

7 *“The term ‘nontaxable use’ does not include the use of avia-*
8 *tion-grade kerosene in an aircraft.”.*

9 (ii) *Section 4082(d) is amended by*
10 *striking paragraph (1) and by redesign-*
11 *ating paragraphs (2) and (3) as para-*
12 *graphs (1) and (2), respectively.*

13 (6) *NONAIRCRAFT USE OF AVIATION-GRADE KER-*
14 *OSENE.—*

15 (A) *IN GENERAL.—Subparagraph (B) of*
16 *section 4041(a)(1) is amended by adding at the*
17 *end the following new sentence: “This subpara-*
18 *graph shall not apply to aviation-grade ker-*
19 *osene.”.*

20 (B) *CONFORMING AMENDMENT.—The head-*
21 *ing for paragraph (1) of section 4041(a) is*
22 *amended by inserting “AND KEROSENE” after*
23 *“DIESEL FUEL”.*

24 (b) *COMMERCIAL AVIATION.—Section 4083 is amended*
25 *by redesignating subsections (b) and (c) as subsections (c)*

1 *and (d), respectively, and by inserting after subsection (a)*
2 *the following new subsection:*

3 “(b) *COMMERCIAL AVIATION.*—*For purposes of this*
4 *subpart, the term ‘commercial aviation’ means any use of*
5 *an aircraft in a business of transporting persons or prop-*
6 *erty for compensation or hire by air, unless properly allo-*
7 *cable to any transportation exempt from the taxes imposed*
8 *by sections 4261 and 4271 by reason of section 4281 or 4282*
9 *or by reason of section 4261(h).”.*

10 (c) *REFUNDS.*—

11 (1) *IN GENERAL.*—*Paragraph (4) of section*
12 *6427(l) is amended to read as follows:*

13 “(4) *REFUNDS FOR AVIATION-GRADE KER-*
14 *OSENE.*—

15 “(A) *NO REFUND OF CERTAIN TAXES ON*
16 *FUEL USED IN COMMERCIAL AVIATION.*—*In the*
17 *case of aviation-grade kerosene used in commer-*
18 *cial aviation (as defined in section 4083(b))*
19 *(other than supplies for vessels or aircraft within*
20 *the meaning of section 4221(d)(3)), paragraph*
21 *(1) shall not apply to so much of the tax imposed*
22 *by section 4081 as is attributable to—*

23 “(i) *the Leaking Underground Storage*
24 *Tank Trust Fund financing rate imposed*
25 *by such section, and*

1 “(i) so much of the rate of tax speci-
2 fied in section 4081(a)(2)(A)(iv) as does not
3 exceed 4.3 cents per gallon.

4 “(B) PAYMENT TO ULTIMATE, REGISTERED
5 VENDOR.—With respect to aviation-grade ker-
6 osene, if the ultimate purchaser of such kerosene
7 waives (at such time and in such form and man-
8 ner as the Secretary shall prescribe) the right to
9 payment under paragraph (1) and assigns such
10 right to the ultimate vendor, then the Secretary
11 shall pay the amount which would be paid under
12 paragraph (1) to such ultimate vendor, but only
13 if such ultimate vendor—

14 “(i) is registered under section 4101,
15 and

16 “(ii) meets the requirements of sub-
17 paragraph (A), (B), or (D) of section
18 6416(a)(1).”.

19 (2) TIME FOR FILING CLAIMS.—Subparagraph
20 (A) of section 6427(i)(4) is amended—

21 (A) by striking “subsection (l)(5)” both
22 places it appears and inserting “paragraph
23 (4)(B) or (5) of subsection (l)”, and

24 (B) by striking “the preceding sentence”
25 and inserting “subsection (l)(5)”.

1 (3) *CONFORMING AMENDMENT.*—Subparagraph
2 (B) of section 6427(l)(2) is amended to read as fol-
3 lows:

4 “(B) in the case of aviation-grade ker-
5 osene—

6 “(i) any use which is exempt from the
7 tax imposed by section 4041(c) other than
8 by reason of a prior imposition of tax, or

9 “(ii) any use in commercial aviation
10 (within the meaning of section 4083(b)).”.

11 (d) *REPEAL OF PRIOR TAXATION OF AVIATION*
12 *FUEL.*—

13 (1) *IN GENERAL.*—Part III of subchapter A of
14 chapter 32 is amended by striking subpart B and by
15 redesignating subpart C as subpart B.

16 (2) *CONFORMING AMENDMENTS.*—

17 (A) Section 4041(c) is amended to read as
18 follows:

19 “(c) *AVIATION-GRADE KEROSENE.*—

20 “(1) *IN GENERAL.*—There is hereby imposed a
21 tax upon aviation-grade kerosene—

22 “(A) sold by any person to an owner, lessee,
23 or other operator of an aircraft for use in such
24 aircraft, or

1 “(B) used by any person in an aircraft un-
2 less there was a taxable sale of such fuel under
3 subparagraph (A).

4 “(2) EXEMPTION FOR PREVIOUSLY TAXED
5 FUEL.—No tax shall be imposed by this subsection on
6 the sale or use of any aviation-grade kerosene if tax
7 was imposed on such liquid under section 4081 and
8 the tax thereon was not credited or refunded.

9 “(3) RATE OF TAX.—The rate of tax imposed by
10 this subsection shall be the rate of tax specified in sec-
11 tion 4081(a)(2)(A)(iv) which is in effect at the time
12 of such sale or use.”.

13 (B) Section 4041(d)(2) is amended by strik-
14 ing “section 4091” and inserting “section 4081”.

15 (C) Section 4041 is amended by striking
16 subsection (e).

17 (D) Section 4041 is amended by striking
18 subsection (i).

19 (E) Sections 4101(a), 4103, 4221(a), and
20 6206 are each amended by striking “, 4081, or
21 4091” and inserting “or 4081”.

22 (F) Section 6416(b)(2) is amended by strik-
23 ing “4091 or”.

24 (G) Section 6416(b)(3) is amended by strik-
25 ing “or 4091” each place it appears.

1 (H) Section 6416(d) is amended by striking
2 “or to the tax imposed by section 4091 in the
3 case of refunds described in section 4091(d)”.

4 (I) Section 6427(j)(1) is amended by strik-
5 ing “, 4081, and 4091” and inserting “and
6 4081”.

7 (J)(i) Section 6427(l)(1) is amended to read
8 as follows:

9 “(1) IN GENERAL.—Except as otherwise provided
10 in this subsection and in subsection (k), if any diesel
11 fuel or kerosene on which tax has been imposed by
12 section 4041 or 4081 is used by any person in a non-
13 taxable use, the Secretary shall pay (without interest)
14 to the ultimate purchaser of such fuel an amount
15 equal to the aggregate amount of tax imposed on such
16 fuel under section 4041 or 4081, as the case may be,
17 reduced by any payment made to the ultimate vendor
18 under paragraph (4)(B).”.

19 (ii) Paragraph (5)(B) of section 6427(l) is
20 amended by striking “Paragraph (1)(A) shall
21 not apply to kerosene” and inserting “Para-
22 graph (1) shall not apply to kerosene (other than
23 aviation-grade kerosene)”.

1 (K) Subparagraph (B) of section 6724(d)(1)
2 is amended by striking clause (xv) and by redesi-
3 gnating the succeeding clauses accordingly.

4 (L) Paragraph (2) of section 6724(d) is
5 amended by striking subparagraph (W) and by
6 redesignating the succeeding subparagraphs ac-
7 cordingly.

8 (M) Paragraph (1) of section 9502(b) is
9 amended by adding “and” at the end of subpara-
10 graph (B) and by striking subparagraphs (C)
11 and (D) and inserting the following new sub-
12 paragraph:

13 “(C) section 4081 with respect to aviation
14 gasoline and aviation-grade kerosene, and”.

15 (N) The last sentence of section 9502(b) is
16 amended to read as follows:

17 “*There shall not be taken into account under paragraph*
18 *(1) so much of the taxes imposed by section 4081 as are*
19 *determined at the rate specified in section 4081(a)(2)(B).”.*

20 (O) Subsection (b) of section 9508 is
21 amended by striking paragraph (3) and by re-
22 designating paragraphs (4) and (5) as para-
23 graphs (3) and (4), respectively.

1 (P) Section 9508(c)(2)(A) is amended by
2 striking “sections 4081 and 4091” and inserting
3 “section 4081”.

4 (Q) The table of subparts for part III of
5 subchapter A of chapter 32 is amended to read
6 as follows:

“Subpart A. Motor and aviation fuels.

“Subpart B. Special provisions applicable to fuels tax.”.

7 (R) The heading for subpart A of part III
8 of subchapter A of chapter 32 is amended to read
9 as follows:

10 **“Subpart A—Motor and Aviation Fuels”.**

11 (S) The heading for subpart B of part III
12 of subchapter A of chapter 32, as redesignated by
13 paragraph (1), is amended to read as follows:

14 **“Subpart B—Special Provisions Applicable to Fuels**
15 **Tax”.**

16 (e) *EFFECTIVE DATE.*—The amendments made by this
17 section shall apply to aviation-grade kerosene removed, en-
18 tered, or sold after September 30, 2004.

19 (f) *FLOOR STOCKS TAX.*—

20 (1) *IN GENERAL.*—There is hereby imposed on
21 aviation-grade kerosene held on October 1, 2004, by
22 any person a tax equal to—

23 (A) the tax which would have been imposed
24 before such date on such kerosene had the amend-

1 *ments made by this section been in effect at all*
2 *times before such date, reduced by*

3 *(B) the tax imposed before such date under*
4 *section 4091 of the Internal Revenue Code of*
5 *1986, as in effect on the day before the date of*
6 *the enactment of this Act.*

7 (2) *LIABILITY FOR TAX AND METHOD OF PAY-*
8 *MENT.—*

9 *(A) LIABILITY FOR TAX.—The person hold-*
10 *ing the kerosene on October 1, 2004, to which the*
11 *tax imposed by paragraph (1) applies shall be*
12 *liable for such tax.*

13 *(B) METHOD AND TIME FOR PAYMENT.—*
14 *The tax imposed by paragraph (1) shall be paid*
15 *at such time and in such manner as the Sec-*
16 *retary of the Treasury (or the Secretary's dele-*
17 *gate) shall prescribe, including the nonapplica-*
18 *tion of such tax on de minimis amounts of ker-*
19 *osene.*

20 (3) *TRANSFER OF FLOOR STOCK TAX REVENUES*
21 *TO TRUST FUNDS.—For purposes of determining the*
22 *amount transferred to any trust fund, the tax im-*
23 *posed by this subsection shall be treated as imposed*
24 *by section 4081 of the Internal Revenue Code of*
25 *1986—*

1 (A) *at the Leaking Underground Storage*
2 *Tank Trust Fund financing rate under such sec-*
3 *tion to the extent of 0.1 cents per gallon, and*

4 (B) *at the rate under section*
5 *4081(a)(2)(A)(iv) to the extent of the remainder.*

6 (4) *HELD BY A PERSON.—For purposes of this*
7 *section, kerosene shall be considered as held by a per-*
8 *son if title thereto has passed to such person (whether*
9 *or not delivery to the person has been made).*

10 (5) *OTHER LAWS APPLICABLE.—All provisions of*
11 *law, including penalties, applicable with respect to*
12 *the tax imposed by section 4081 of such Code shall,*
13 *insofar as applicable and not inconsistent with the*
14 *provisions of this subsection, apply with respect to the*
15 *floor stock tax imposed by paragraph (1) to the same*
16 *extent as if such tax were imposed by such section.*

17 **SEC. 653. DYE INJECTION EQUIPMENT.**

18 (a) *IN GENERAL.—Section 4082(a)(2) (relating to ex-*
19 *emptions for diesel fuel and kerosene) is amended by insert-*
20 *ing “by mechanical injection” after “indelibly dyed”.*

21 (b) *DYE INJECTOR SECURITY.—Not later than 180*
22 *days after the date of the enactment of this Act, the Sec-*
23 *retary of the Treasury shall issue regulations regarding me-*
24 *chanical dye injection systems described in the amendment*

1 *made by subsection (a), and such regulations shall include*
 2 *standards for making such systems tamper resistant.*

3 *(c) PENALTY FOR TAMPERING WITH OR FAILING TO*
 4 *MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL*
 5 *DYE INJECTION SYSTEMS.—*

6 *(1) IN GENERAL.—Part I of subchapter B of*
 7 *chapter 68 (relating to assessable penalties) is amend-*
 8 *ed by adding after section 6715 the following new sec-*
 9 *tion:*

10 **“SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN**
 11 **SECURITY REQUIREMENTS FOR MECHANICAL**
 12 **DYE INJECTION SYSTEMS.**

13 *“(a) IMPOSITION OF PENALTY—*

14 *“(1) TAMPERING.—If any person tampers with a*
 15 *mechanical dye injection system used to indelibly dye*
 16 *fuel for purposes of section 4082, such person shall*
 17 *pay a penalty in addition to the tax (if any).*

18 *“(2) FAILURE TO MAINTAIN SECURITY REQUIRE-*
 19 *MENTS.—If any operator of a mechanical dye injec-*
 20 *tion system used to indelibly dye fuel for purposes of*
 21 *section 4082 fails to maintain the security standards*
 22 *for such system as established by the Secretary, then*
 23 *such operator shall pay a penalty in addition to the*
 24 *tax (if any).*

1 “(b) *AMOUNT OF PENALTY.*—*The amount of the pen-*
2 *alty under subsection (a) shall be—*

3 “(1) *for each violation described in paragraph*
4 *(1), the greater of—*

5 “(A) *\$25,000, or*

6 “(B) *\$10 for each gallon of fuel involved,*
7 *and*

8 “(2) *for each—*

9 “(A) *failure to maintain security standards*
10 *described in paragraph (2), \$1,000, and*

11 “(B) *failure to correct a violation described*
12 *in paragraph (2), \$1,000 per day for each day*
13 *after which such violation was discovered or such*
14 *person should have reasonably known of such*
15 *violation.*

16 “(c) *JOINT AND SEVERAL LIABILITY.*—

17 “(1) *IN GENERAL.*—*If a penalty is imposed*
18 *under this section on any business entity, each officer,*
19 *employee, or agent of such entity or other contracting*
20 *party who willfully participated in any act giving*
21 *rise to such penalty shall be jointly and severally lia-*
22 *ble with such entity for such penalty.*

23 “(2) *AFFILIATED GROUPS.*—*If a business entity*
24 *described in paragraph (1) is part of an affiliated*
25 *group (as defined in section 1504(a)), the parent cor-*

1 *poration of such entity shall be jointly and severally*
 2 *liable with such entity for the penalty imposed under*
 3 *this section.”.*

4 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
 5 *tions for part I of subchapter B of chapter 68 is*
 6 *amended by adding after the item related to section*
 7 *6715 the following new item:*

“Sec. 6715A. Tampering with or failing to maintain security re-
quirements for mechanical dye injection systems.”.

8 (d) *EFFECTIVE DATE.*—*The amendments made by*
 9 *subsections (a) and (c) shall take effect on the 180th day*
 10 *after the date on which the Secretary issues the regulations*
 11 *described in subsection (b).*

12 **SEC. 654. AUTHORITY TO INSPECT ON-SITE RECORDS.**

13 (a) *IN GENERAL.*—*Section 4083(d)(1)(A) (relating to*
 14 *administrative authority), as previously amended by this*
 15 *Act, is amended by striking “and” at the end of clause (i)*
 16 *and by inserting after clause (ii) the following new clause:*

17 *“(iii) inspecting any books and records*
 18 *and any shipping papers pertaining to such*
 19 *fuel, and”.*

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

1 **SEC. 655. REGISTRATION OF PIPELINE OR VESSEL OPERA-**
2 **TORS REQUIRED FOR EXEMPTION OF BULK**
3 **TRANSFERS TO REGISTERED TERMINALS OR**
4 **REFINERIES.**

5 (a) *IN GENERAL.*—Section 4081(a)(1)(B) (relating to
6 exemption for bulk transfers to registered terminals or refin-
7 eries) is amended—

8 (1) by inserting “by pipeline or vessel” after
9 “transferred in bulk”, and

10 (2) by inserting “, the operator of such pipeline
11 or vessel,” after “the taxable fuel”.

12 (b) *EFFECTIVE DATE.*—The amendments made by this
13 section shall take effect on October 1, 2004.

14 (c) *PUBLICATION OF REGISTERED PERSONS.*—Begin-
15 ning on July 1, 2004, the Secretary of the Treasury (or
16 the Secretary’s delegate) shall periodically publish a current
17 list of persons registered under section 4101 of the Internal
18 Revenue Code of 1986 who are required to register under
19 such section.

20 **SEC. 656. DISPLAY OF REGISTRATION.**

21 (a) *IN GENERAL.*—Subsection (a) of section 4101 (re-
22 lating to registration) is amended—

23 (1) by striking “Every” and inserting the fol-
24 lowing:

25 “(1) *IN GENERAL.*—Every”, and

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

3 “(2) *DISPLAY OF REGISTRATION.—Every oper-*
4 *ator of a vessel required by the Secretary to register*
5 *under this section shall display proof of registration*
6 *through an electronic identification device prescribed*
7 *by the Secretary on each vessel used by such operator*
8 *to transport any taxable fuel.”.*

9 **(b) CIVIL PENALTY FOR FAILURE TO DISPLAY REG-**
10 **ISTRATION.—**

11 (1) *IN GENERAL.—Part I of subchapter B of*
12 *chapter 68 (relating to assessable penalties) is amend-*
13 *ed by inserting after section 6716 the following new*
14 *section:*

15 **“SEC. 6717. FAILURE TO DISPLAY TAX REGISTRATION ON**
16 **VESSELS.**

17 “(a) *FAILURE TO DISPLAY REGISTRATION.—Every*
18 *operator of a vessel who fails to display proof of registration*
19 *pursuant to section 4101(a)(2) shall pay a penalty of \$500*
20 *for each such failure. With respect to any vessel, only one*
21 *penalty shall be imposed by this section during any cal-*
22 *endar month.*

23 “(b) *MULTIPLE VIOLATIONS.—In determining the pen-*
24 *alty under subsection (a) on any person, subsection (a) shall*
25 *be applied by increasing the amount in subsection (a) by*

1 *the product of such amount and the aggregate number of*
 2 *penalties (if any) imposed with respect to prior months by*
 3 *this section on such person (or a related person or any pred-*
 4 *ecessor of such person or related person).*

5 “(c) *REASONABLE CAUSE EXCEPTION.*—No penalty
 6 *shall be imposed under this section with respect to any fail-*
 7 *ure if it is shown that such failure is due to reasonable*
 8 *cause.”.*

9 (2) *CLERICAL AMENDMENT.*—The table of sec-
 10 *tions for part I of subchapter B of chapter 68 is*
 11 *amended by inserting after the item relating to sec-*
 12 *tion 6716 the following new item:*

“Sec. 6717. Failure to display tax registration on vessels.”.

13 (c) *EFFECTIVE DATES.*—

14 (1) *SUBSECTION (a).*—The amendments made by
 15 *subsection (a) shall take effect on October 1, 2004.*

16 (2) *SUBSECTION (b).*—The amendments made by
 17 *subsection (b) shall apply to penalties imposed after*
 18 *September 30, 2004.*

19 **SEC. 657. PENALTIES FOR FAILURE TO REGISTER AND FAIL-**
 20 **URE TO REPORT.**

21 (a) *INCREASED PENALTY.*—Subsection (a) of section
 22 *7272 (relating to penalty for failure to register) is amended*
 23 *by inserting “(\$10,000 in the case of a failure to register*
 24 *under section 4101)” after “\$50”.*

1 (b) *INCREASED CRIMINAL PENALTY.*—Section 7232
2 *(relating to failure to register under section 4101, false rep-*
3 *resentations of registration status, etc.) is amended by strik-*
4 *ing “\$5,000” and inserting “\$10,000”.*

5 (c) *ASSESSABLE PENALTY FOR FAILURE TO REG-*
6 *ISTER.*—

7 (1) *IN GENERAL.*—Part I of subchapter B of
8 *chapter 68 (relating to assessable penalties) is amend-*
9 *ed by inserting after section 6717 the following new*
10 *section:*

11 **“SEC. 6718. FAILURE TO REGISTER.**

12 “(a) *FAILURE TO REGISTER.*—Every person who is
13 *required to register under section 4101 and fails to do so*
14 *shall pay a penalty in addition to the tax (if any).*

15 “(b) *AMOUNT OF PENALTY.*—The amount of the pen-
16 *alty under subsection (a) shall be—*

17 “(1) \$10,000 for each initial failure to register,
18 *and*

19 “(2) \$1,000 for each day thereafter such person
20 *fails to register.*

21 “(c) *REASONABLE CAUSE EXCEPTION.*—No penalty
22 *shall be imposed under this section with respect to any fail-*
23 *ure if it is shown that such failure is due to reasonable*
24 *cause.”.*

1 (2) *CLERICAL AMENDMENT.*—The table of sec-
 2 tions for part I of subchapter B of chapter 68 is
 3 amended by inserting after the item relating to sec-
 4 tion 6717 the following new item:

 “Sec. 6718. Failure to register.”.

5 (d) *ASSESSABLE PENALTY FOR FAILURE TO RE-*
 6 *PORT.*—

7 (1) *IN GENERAL.*—Part II of subchapter B of
 8 chapter 68 (relating to assessable penalties) is amend-
 9 ed by adding at the end the following new section:

10 **“SEC. 6725. FAILURE TO REPORT INFORMATION UNDER**
 11 **SECTION 4101.**

12 “(a) *IN GENERAL.*—In the case of each failure de-
 13 scribed in subsection (b) by any person with respect to a
 14 vessel or facility, such person shall pay a penalty of \$10,000
 15 in addition to the tax (if any).

16 “(b) *FAILURES SUBJECT TO PENALTY.*—For purposes
 17 of subsection (a), the failures described in this subsection
 18 are—

19 “(1) any failure to make a report under section
 20 4101(d) on or before the date prescribed therefor, and

21 “(2) any failure to include all of the information
 22 required to be shown on such report or the inclusion
 23 of incorrect information.

24 “(c) *REASONABLE CAUSE EXCEPTION.*—No penalty
 25 shall be imposed under this section with respect to any fail-

1 ure if it is shown that such failure is due to reasonable
2 cause.”.

3 (2) *CLERICAL AMENDMENT.*—The table of sec-
4 tions for part II of subchapter B of chapter 68 is
5 amended by adding at the end the following new item:

“Sec. 6725. Failure to report information under section 4101.”.

6 (e) *EFFECTIVE DATE.*—The amendments made by this
7 section shall apply to penalties imposed after September 30,
8 2004.

9 **SEC. 658. COLLECTION FROM CUSTOMS BOND WHERE IM-
10 PORTER NOT REGISTERED.**

11 (a) *TAX AT POINT OF ENTRY WHERE IMPORTER NOT
12 REGISTERED.*—Subpart B of part III of subchapter A of
13 chapter 32, as redesignated by section 652(d), is amended
14 by adding after section 4103 the following new section:

15 **“SEC. 4104. COLLECTION FROM CUSTOMS BOND WHERE IM-
16 PORTER NOT REGISTERED.**

17 “(a) *IN GENERAL.*—The importer of record shall be
18 jointly and severally liable for the tax imposed by section
19 4081(a)(1)(A)(iii) if, under regulations prescribed by the
20 Secretary, any other person that is not a person who is
21 registered under section 4101 is liable for such tax.

22 “(b) *COLLECTION FROM CUSTOMS BOND.*—If any tax
23 for which any importer of record is liable under subsection
24 (a), or for which any importer of record that is not a person
25 registered under section 4101 is otherwise liable, is not paid

1 *on or before the last date prescribed for payment, the Sec-*
2 *retary may collect such tax from the Customs bond posted*
3 *with respect to the importation of the taxable fuel to which*
4 *the tax relates. For purposes of determining the jurisdiction*
5 *of any court of the United States or any agency of the*
6 *United States, any action by the Secretary described in the*
7 *preceding sentence shall be treated as an action to collect*
8 *the tax from a bond described in section 4101(b)(1) and*
9 *not as an action to collect from a bond relating to the im-*
10 *portation of merchandise.”.*

11 *(b) CONFORMING AMENDMENT.—The table of sections*
12 *for subpart B of part III of subchapter A of chapter 32,*
13 *as redesignated by section 652(d), is amended by adding*
14 *after the item related to section 4103 the following new*
15 *item:*

“Sec. 4104. Collection from Customs bond where importer not reg-
istered.”.

16 *(c) EFFECTIVE DATE.—The amendments made by this*
17 *section shall apply with respect to fuel entered after Sep-*
18 *tember 30, 2004.*

19 **SEC. 659. MODIFICATIONS OF TAX ON USE OF CERTAIN VE-**
20 **HICLES.**

21 *(a) PRORATION OF TAX WHERE VEHICLE SOLD.—*

22 *(1) IN GENERAL.—Subparagraph (A) of section*
23 *4481(c)(2) (relating to where vehicle destroyed or sto-*
24 *len) is amended by striking “destroyed or stolen” both*

1 *places it appears and inserting “sold, destroyed, or*
2 *stolen”.*

3 (2) *CONFORMING AMENDMENT.—The heading for*
4 *section 4481(c)(2) is amended by striking “DE-*
5 *STROYED OR STOLEN” and inserting “SOLD, DE-*
6 *STROYED, OR STOLEN”.*

7 (b) *REPEAL OF INSTALLMENT PAYMENT.—*

8 (1) *Section 6156 (relating to installment pay-*
9 *ment of tax on use of highway motor vehicles) is re-*
10 *pealed.*

11 (2) *The table of sections for subchapter A of*
12 *chapter 62 is amended by striking the item relating*
13 *to section 6156.*

14 (c) *ELECTRONIC FILING.—Section 4481 is amended by*
15 *redesignating subsection (e) as subsection (f) and by insert-*
16 *ing after subsection (d) the following new subsection:*

17 “(e) *ELECTRONIC FILING.—Any taxpayer who files a*
18 *return under this section with respect to 25 or more vehicles*
19 *for any taxable period shall file such return electronically.”.*

20 (d) *REPEAL OF REDUCTION IN TAX FOR CERTAIN*
21 *TRUCKS.—Section 4483 is amended by striking subsection*
22 *(f).*

23 (e) *EFFECTIVE DATE.—The amendments made by this*
24 *section shall apply to taxable periods beginning after the*
25 *date of the enactment of this Act.*

1 **SEC. 660. MODIFICATION OF ULTIMATE VENDOR REFUND**
2 **CLAIMS WITH RESPECT TO FARMING.**

3 *(a) IN GENERAL.—*

4 *(1) REFUNDS.—Section 6427(l) is amended by*
5 *adding at the end the following new paragraph:*

6 *“(6) REGISTERED VENDORS PERMITTED TO AD-*
7 *MINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL*
8 *FUEL AND KEROSENE SOLD TO FARMERS.—*

9 *“(A) IN GENERAL.—In the case of diesel fuel*
10 *or kerosene used on a farm for farming purposes*
11 *(within the meaning of section 6420(c)), para-*
12 *graph (1) shall not apply to the aggregate*
13 *amount of such diesel fuel or kerosene if such*
14 *amount does not exceed 250 gallons (as deter-*
15 *mined under subsection (i)(5)(A)(iii)).*

16 *“(B) PAYMENT TO ULTIMATE VENDOR.—The*
17 *amount which would (but for subparagraph (A))*
18 *have been paid under paragraph (1) with respect*
19 *to any fuel shall be paid to the ultimate vendor*
20 *of such fuel, if such vendor—*

21 *“(i) is registered under section 4101,*

22 *and*

23 *“(ii) meets the requirements of sub-*
24 *paragraph (A), (B), or (D) of section*
25 *6416(a)(1).”.*

1 (2) *FILING OF CLAIMS.*—Section 6427(i) is
2 amended by inserting at the end the following new
3 paragraph:

4 “(5) *SPECIAL RULE FOR VENDOR REFUNDS WITH*
5 *RESPECT TO FARMERS.*—

6 “(A) *IN GENERAL.*—A claim may be filed
7 under subsection (l)(6) by any person with re-
8 spect to fuel sold by such person for any pe-
9 riod—

10 “(i) for which \$200 or more (\$100 or
11 more in the case of kerosene) is payable
12 under subsection (l)(6),

13 “(ii) which is not less than 1 week,
14 and

15 “(iii) which is for not more than 250
16 gallons for each farmer for which there is a
17 claim.

18 Notwithstanding subsection (l)(1), paragraph
19 (3)(B) shall apply to claims filed under the pre-
20 ceding sentence.

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

1 (3) *CONFORMING AMENDMENTS.*—

2 (A) *Section 6427(l)(5)(A) is amended to*
3 *read as follows:*

4 “(A) *IN GENERAL.*—*Paragraph (1) shall*
5 *not apply to diesel fuel or kerosene used by a*
6 *State or local government.”.*

7 (B) *The heading for section 6427(l)(5) is*
8 *amended by striking “FARMERS AND”.*

9 (b) *EFFECTIVE DATE.*—*The amendment made by this*
10 *section shall apply to fuels sold for nontaxable use after the*
11 *date of the enactment of this Act.*

12 **SEC. 661. DEDICATION OF REVENUES FROM CERTAIN PEN-**
13 **ALTIES TO THE HIGHWAY TRUST FUND.**

14 (a) *IN GENERAL.*—*Subsection (b) of section 9503 (re-*
15 *lating to transfer to Highway Trust Fund of amounts*
16 *equivalent to certain taxes) is amended by redesignating*
17 *paragraph (5) as paragraph (6) and inserting after para-*
18 *graph (4) the following new paragraph:*

19 “(5) *CERTAIN PENALTIES.*—*There are hereby ap-*
20 *propriated to the Highway Trust Fund amounts*
21 *equivalent to the penalties paid under sections 6715,*
22 *6715A, 6717, 6718, 6725, 7232, and 7272 (but only*
23 *with regard to penalties under such section related to*
24 *failure to register under section 4101).”.*

25 (b) *CONFORMING AMENDMENTS.*—

1 (1) *The heading of subsection (b) of section 9503*
2 *is amended by inserting “AND PENALTIES” after*
3 *“TAXES”.*

4 (2) *The heading of paragraph (1) of section*
5 *9503(b) is amended by striking “IN GENERAL” and*
6 *inserting “CERTAIN TAXES”.*

7 (c) *EFFECTIVE DATE.—The amendments made by this*
8 *section shall apply to penalties assessed after October 1,*
9 *2004.*

10 **SEC. 662. TAXABLE FUEL REFUNDS FOR CERTAIN ULTIMATE**
11 **VENDORS.**

12 (a) *IN GENERAL.—Paragraph (4) of section 6416(a)*
13 *(relating to abatements, credits, and refunds) is amended*
14 *to read as follows:*

15 *“(4) REGISTERED ULTIMATE VENDOR TO ADMIN-*
16 *ISTER CREDITS AND REFUNDS OF GASOLINE TAX.—*

17 *“(A) IN GENERAL.—For purposes of this*
18 *subsection, if an ultimate vendor purchases any*
19 *gasoline on which tax imposed by section 4081*
20 *has been paid and sells such gasoline to an ulti-*
21 *mate purchaser described in subparagraph (C)*
22 *or (D) of subsection (b)(2) (and such gasoline is*
23 *for a use described in such subparagraph), such*
24 *ultimate vendor shall be treated as the person*
25 *(and the only person) who paid such tax, but*

1 *only if such ultimate vendor is registered under*
2 *section 4101. For purposes of this subparagraph,*
3 *if the sale of gasoline is made by means of a*
4 *credit card, the person extending the credit to the*
5 *ultimate purchaser shall be deemed to be the ulti-*
6 *mate vendor.*

7 “(B) *TIMING OF CLAIMS.*—*The procedure*
8 *and timing of any claim under subparagraph*
9 *(A) shall be the same as for claims under section*
10 *6427(i)(4), except that the rules of section*
11 *6427(i)(3)(B) regarding electronic claims shall*
12 *not apply unless the ultimate vendor has cer-*
13 *tified to the Secretary for the most recent quarter*
14 *of the taxable year that all ultimate purchasers*
15 *of the vendor covered by such claim are certified*
16 *and entitled to a refund under subparagraph (C)*
17 *or (D) of subsection (b)(2).”.*

18 (b) *CREDIT CARD PURCHASES OF DIESEL FUEL OR*
19 *KEROSENE BY STATE AND LOCAL GOVERNMENTS.*—*Section*
20 *6427(l)(5)(C) (relating to nontaxable uses of diesel fuel, ker-*
21 *osene, and aviation fuel) is amended by adding at the end*
22 *the following new flush sentence: “For purposes of this sub-*
23 *paragraph, if the sale of diesel fuel or kerosene is made by*
24 *means of a credit card, the person extending the credit to*

1 *the ultimate purchaser shall be deemed to be the ultimate*
2 *vendor.”.*

3 (c) *EFFECTIVE DATE.*—*The amendments made by this*
4 *section shall take effect on October 1, 2004.*

5 **SEC. 663. TWO-PARTY EXCHANGES.**

6 (a) *IN GENERAL.*—*Subpart B of part III of subchapter*
7 *A of chapter 32, as amended by this Act, is amended by*
8 *adding after section 4104 the following new section:*

9 **“SEC. 4105. TWO-PARTY EXCHANGES.**

10 “(a) *IN GENERAL.*—*In a two-party exchange, the de-*
11 *livering person shall not be liable for the tax imposed under*
12 *section 4081(a)(1)(A)(ii).*

13 “(b) *TWO-PARTY EXCHANGE.*—*The term ‘two-party*
14 *exchange’ means a transaction, other than a sale, in which*
15 *taxable fuel is transferred from a delivering person reg-*
16 *istered under section 4101 as a taxable fuel registrant fuel*
17 *to a receiving person who is so registered where all of the*
18 *following occur:*

19 “(1) *The transaction includes a transfer from the*
20 *delivering person, who holds the inventory position*
21 *for taxable fuel in the terminal as reflected in the*
22 *records of the terminal operator.*

23 “(2) *The exchange transaction occurs before or*
24 *contemporaneous with completion of removal across*
25 *the rack from the terminal by the receiving person.*

1 “(3) *The terminal operator in its books and*
2 *records treats the receiving person as the person that*
3 *removes the taxable fuel across the terminal rack for*
4 *purposes of reporting the transaction to the Secretary.*

5 “(4) *The transaction is the subject of a written*
6 *contract.*”.

7 **(b) CONFORMING AMENDMENT.**—*The table of sections*
8 *for subpart B of part III of subchapter A of chapter 32,*
9 *as amended by this Act, is amended by adding after the*
10 *item relating to section 4104 the following new item:*

“*Sec. 4105. Two-party exchanges.*”.

11 **(c) EFFECTIVE DATE.**—*The amendment made by this*
12 *section shall take effect on the date of the enactment of this*
13 *Act.*

14 **SEC. 664. SIMPLIFICATION OF TAX ON TIRES.**

15 **(a) IN GENERAL.**—*Subsection (a) of section 4071 is*
16 *amended to read as follows:*

17 “(a) **IMPOSITION AND RATE OF TAX.**—*There is hereby*
18 *imposed on taxable tires sold by the manufacturer, pro-*
19 *ducer, or importer thereof a tax at the rate of 9.4 cents (4.7*
20 *cents in the case of a biasply tire) for each 10 pounds so*
21 *much of the maximum rated load capacity thereof as ex-*
22 *ceeds 3,500 pounds.*”

23 **(b) TAXABLE TIRE.**—*Section 4072 is amended by re-*
24 *designating subsections (a) and (b) as subsections (b) and*

1 (c), respectively, and by inserting before subsection (b) (as
2 so redesignated) the following new subsection:

3 “(a) *TAXABLE TIRE*.—For purposes of this chapter,
4 the term ‘taxable tire’ means any tire of the type used on
5 highway vehicles if wholly or in part made of rubber and
6 if marked pursuant to Federal regulations for highway
7 use.”

8 (c) *EXEMPTION FOR TIRES SOLD TO DEPARTMENT OF*
9 *DEFENSE*.—Section 4073 is amended to read as follows:

10 **“SEC. 4073. EXEMPTIONS.**

11 “The tax imposed by section 4071 shall not apply to
12 tires sold for the exclusive use of the Department of Defense
13 or the Coast Guard.”

14 (d) *CONFORMING AMENDMENTS*.—

15 (1) Section 4071 is amended by striking sub-
16 section (c) and by moving subsection (e) after sub-
17 section (b) and redesignating subsection (e) as sub-
18 section (c).

19 (2) The item relating to section 4073 in the table
20 of sections for part II of subchapter A of chapter 32
21 is amended to read as follows:

“Sec. 4073. Exemptions.”

22 (e) *EFFECTIVE DATE*.—The amendments made by this
23 section shall apply to sales in calendar years beginning
24 more than 30 days after the date of the enactment of this
25 Act.

1 ***Subtitle D—Nonqualified Deferred***
2 ***Compensation Plans***

3 ***SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COM-***
4 ***PENSATION PLANS.***

5 *(a) IN GENERAL.—Subpart A of part I of subchapter*
6 *D of chapter 1 is amended by adding at the end the fol-*
7 *lowing new section:*

8 ***“SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED***
9 ***COMPENSATION UNDER NONQUALIFIED DE-***
10 ***FERRED COMPENSATION PLANS.***

11 *“(a) RULES RELATING TO CONSTRUCTIVE RECEIPT.—*

12 *“(1) IN GENERAL.—*

13 *“(A) GROSS INCOME INCLUSION.—In the*
14 *case of a nonqualified deferred compensation*
15 *plan, all compensation deferred under the plan*
16 *for all taxable years (to the extent not subject to*
17 *a substantial risk of forfeiture and not pre-*
18 *viously included in gross income) shall be in-*
19 *cludible in gross income for the taxable year un-*
20 *less at all times during the taxable year the plan*
21 *meets the requirements of paragraphs (2), (3),*
22 *and (4) and is operated in accordance with such*
23 *requirements.*

1 “(B) *INTEREST ON TAX LIABILITY PAYABLE*
2 *WITH RESPECT TO PREVIOUSLY DEFERRED COM-*
3 *PENSATION.—*

4 “(i) *IN GENERAL.—If compensation is*
5 *required to be included in gross income*
6 *under subparagraph (A) for a taxable year,*
7 *the tax imposed by this chapter for such*
8 *taxable year shall be increased by the*
9 *amount of interest determined under clause*
10 *(ii).*

11 “(ii) *INTEREST.—For purposes of*
12 *clause (i), the interest determined under*
13 *this clause for any taxable year is the*
14 *amount of interest at the underpayment*
15 *rate plus 1 percentage point on the under-*
16 *payments that would have occurred had the*
17 *deferred compensation been includible in*
18 *gross income for the taxable year in which*
19 *first deferred or, if later, the first taxable*
20 *year in which such deferred compensation is*
21 *not subject to a substantial risk of for-*
22 *feiture.*

23 “(2) *DISTRIBUTIONS.—*

24 “(A) *IN GENERAL.—The requirements of*
25 *this paragraph are met if the plan provides that*

1 *compensation deferred under the plan may not*
2 *be distributed earlier than—*

3 “(i) *separation from service as deter-*
4 *mined by the Secretary (except as provided*
5 *in subparagraph (B)(i)),*

6 “(ii) *the date the participant becomes*
7 *disabled (within the meaning of subpara-*
8 *graph (C)),*

9 “(iii) *death,*

10 “(iv) *a specified time (or pursuant to*
11 *a fixed schedule) specified under the plan at*
12 *the date of the deferral of such compensa-*
13 *tion,*

14 “(v) *to the extent provided by the Sec-*
15 *retary, a change in the ownership or effec-*
16 *tive control of the corporation, or in the*
17 *ownership of a substantial portion of the as-*
18 *sets of the corporation, or*

19 “(vi) *the occurrence of an unforeseeable*
20 *emergency.*

21 “(B) *SPECIAL RULES.—*

22 “(i) *SPECIFIED EMPLOYEES.—In the*
23 *case of specified employees, the requirement*
24 *of subparagraph (A)(i) is met only if dis-*
25 *tributions may not be made earlier than 6*

1 *months after the date of separation from*
2 *service. For purposes of the preceding sen-*
3 *tence, a specified employee is a key em-*
4 *ployee (as defined in section 416(i)) of a*
5 *corporation the stock in which is publicly*
6 *traded on an established securities market*
7 *or otherwise.*

8 “(ii) *UNFORESEEABLE EMERGENCY.—*
9 *For purposes of subparagraph (A)(vi)—*

10 “(I) *IN GENERAL.—The term ‘un-*
11 *foreseeable emergency’ means a severe*
12 *financial hardship to the participant*
13 *resulting from a sudden and unex-*
14 *pected illness or accident of the partici-*
15 *part, the participant’s spouse, or a de-*
16 *pendent (as defined in section 152(a))*
17 *of the participant, loss of the partici-*
18 *part’s property due to casualty, or*
19 *other similar extraordinary and un-*
20 *foreseeable circumstances arising as a*
21 *result of events beyond the control of*
22 *the participant.*

23 “(II) *LIMITATION ON DISTRIBUTIONS.—The requirement of subpara-*
24 *graph (A)(vi) is met only if, as deter-*
25

1 *mined under regulations of the Sec-*
2 *retary, the amounts distributed with*
3 *respect to an emergency do not exceed*
4 *the amounts necessary to satisfy such*
5 *emergency plus amounts necessary to*
6 *pay taxes reasonably anticipated as a*
7 *result of the distribution, after taking*
8 *into account the extent to which such*
9 *hardship is or may be relieved through*
10 *reimbursement or compensation by in-*
11 *surance or otherwise or by liquidation*
12 *of the participant's assets (to the extent*
13 *the liquidation of such assets would not*
14 *itself cause severe financial hardship).*

15 *“(C) DISABLED.—For purposes of subpara-*
16 *graph (A)(ii), a participant shall be considered*
17 *disabled if the participant—*

18 *“(i) is unable to engage in any sub-*
19 *stantial gainful activity by reason of any*
20 *medically determinable physical or mental*
21 *impairment which can be expected to result*
22 *in death or can be expected to last for a*
23 *continuous period of not less than 12*
24 *months, or*

1 “(ii) is, by reason of any medically de-
2 terminable physical or mental impairment
3 which can be expected to result in death or
4 can be expected to last for a continuous pe-
5 riod of not less than 12 months, receiving
6 income replacement benefits for a period of
7 not less than 3 months under an accident
8 and health plan covering employees of the
9 participant’s employer.

10 “(3) ACCELERATION OF BENEFITS.—The require-
11 ments of this paragraph are met if the plan does not
12 permit the acceleration of the time or schedule of any
13 payment under the plan, except as provided in regu-
14 lations by the Secretary.

15 “(4) ELECTIONS.—

16 “(A) IN GENERAL.—The requirements of
17 this paragraph are met if the requirements of
18 subparagraphs (B) and (C) are met.

19 “(B) INITIAL DEFERRAL DECISION.—The
20 requirements of this subparagraph are met if the
21 plan provides that compensation for services per-
22 formed during a taxable year may be deferred at
23 the participant’s election only if the election to
24 defer such compensation is made not later than
25 the close of the preceding taxable year or at such

1 *other time as provided in regulations. In the case*
2 *of the first year in which a participant becomes*
3 *eligible to participate in the plan, such election*
4 *may be made with respect to services to be per-*
5 *formed subsequent to the election within 30 days*
6 *after the date the participant becomes eligible to*
7 *participate in such plan.*

8 “(C) *CHANGES IN TIME AND FORM OF DIS-*
9 *TRIBUTION.—The requirements of this subpara-*
10 *graph are met if, in the case of a plan which*
11 *permits under a subsequent election a delay in*
12 *a payment or a change in the form of pay-*
13 *ment—*

14 “(i) *the plan requires that such election*
15 *may not take effect until at least 12 months*
16 *after the date on which the election is made,*

17 “(ii) *in the case an election related to*
18 *a payment not described in clause (ii), (iii),*
19 *or (vi) of paragraph (2)(A), the plan re-*
20 *quires that the first payment with respect to*
21 *which such election is made be deferred for*
22 *a period of not less than 5 years from the*
23 *date such payment would otherwise have*
24 *been made, and*

1 “(iii) the plan requires that any elec-
2 tion related to a payment described in
3 paragraph (2)(A)(iv) may not be made less
4 than 12 months prior to the date of the first
5 scheduled payment under such paragraph.

6 “(b) *RULES RELATING TO FUNDING.*—

7 “(1) *OFFSHORE PROPERTY IN A TRUST.*—In the
8 case of assets set aside (directly or indirectly) in a
9 trust (or other arrangement determined by the Sec-
10 retary) for purposes of paying deferred compensation
11 under a nonqualified deferred compensation plan, for
12 purposes of section 83 such assets shall be treated as
13 property transferred in connection with the perform-
14 ance of services whether or not such assets are avail-
15 able to satisfy claims of general creditors—

16 “(A) at the time set aside if such assets are
17 located outside of the United States, or

18 “(B) at the time transferred if such assets
19 are subsequently transferred outside of the
20 United States.

21 “(2) *EMPLOYER’S FINANCIAL HEALTH.*—In the
22 case of compensation deferred under a nonqualified
23 deferred compensation plan, there is a transfer of
24 property within the meaning of section 83 with re-
25 spect to such compensation as of the earlier of—

1 “(A) *the date on which the plan first pro-*
2 *vides that assets will become restricted to the*
3 *provision of benefits under the plan in connec-*
4 *tion with a change in the employer’s financial*
5 *health, or*

6 “(B) *the date on which assets are so re-*
7 *stricted.*

8 “(3) *INCOME INCLUSION FOR OFFSHORE TRUSTS*
9 *AND EMPLOYER’S FINANCIAL HEALTH.—For each tax-*
10 *able year that assets treated as transferred under this*
11 *subsection remain set aside in a trust or other ar-*
12 *rangement subject to paragraph (1) or (2), any in-*
13 *crease in value in, or earnings with respect to, such*
14 *assets shall be treated as an additional transfer of*
15 *property under this subsection (to the extent not pre-*
16 *viously included in income).*

17 “(4) *INTEREST ON TAX LIABILITY PAYABLE WITH*
18 *RESPECT TO TRANSFERRED PROPERTY.—*

19 “(A) *IN GENERAL.—If amounts are re-*
20 *quired to be included in gross income by reason*
21 *of paragraph (1) or (2) for a taxable year, the*
22 *tax imposed by this chapter for such taxable year*
23 *shall be increased by the amount of interest de-*
24 *termined under subparagraph (B).*

1 “(B) *INTEREST.*—*The interest determined*
2 *under this subparagraph for any taxable year is*
3 *the amount of interest at the underpayment rate*
4 *plus 1 percentage point on the underpayments*
5 *that would have occurred had the amounts so re-*
6 *quired to be included in gross income by para-*
7 *graph (1) or (2) been includible in gross income*
8 *for the taxable year in which first deferred or, if*
9 *later, the first taxable year in which such de-*
10 *ferred compensation is not subject to a substan-*
11 *tial risk of forfeiture.*

12 “(c) *NO INFERENCE ON EARLIER INCOME INCLUSION*
13 *OR REQUIREMENT OF LATER INCLUSION.*—*Nothing in this*
14 *section shall be construed to prevent the inclusion of*
15 *amounts in gross income under any other provision of this*
16 *chapter or any other rule of law earlier than the time pro-*
17 *vided in this section. Any amount included in gross income*
18 *under this section shall not be required to be included in*
19 *gross income under any other provision of this chapter or*
20 *any other rule of law later than the time provided in this*
21 *section.*

22 “(d) *OTHER DEFINITIONS AND SPECIAL RULES.*—*For*
23 *purposes of this section—*

24 “(1) *NONQUALIFIED DEFERRED COMPENSATION*
25 *PLAN.*—*The term ‘nonqualified deferred compensation*

1 *plan’ means any plan that provides for the deferral*
2 *of compensation, other than—*

3 *“(A) a qualified employer plan, and*

4 *“(B) any bona fide vacation leave, sick*
5 *leave, compensatory time, disability pay, or*
6 *death benefit plan.*

7 *“(2) QUALIFIED EMPLOYER PLAN.—The term*
8 *‘qualified employer plan’ means—*

9 *“(A) any plan, contract, pension, account,*
10 *or trust described in subparagraph (A) or (B) of*
11 *section 219(g)(5), and*

12 *“(B) any eligible deferred compensation*
13 *plan (within the meaning of section 457(b)) of*
14 *an employer described in section 457(e)(1)(A).*

15 *“(3) PLAN INCLUDES ARRANGEMENTS, ETC.—The*
16 *term ‘plan’ includes any agreement or arrangement,*
17 *including an agreement or arrangement that includes*
18 *one person.*

19 *“(4) SUBSTANTIAL RISK OF FORFEITURE.—The*
20 *rights of a person to compensation are subject to a*
21 *substantial risk of forfeiture if such person’s rights to*
22 *such compensation are conditioned upon the future*
23 *performance of substantial services by any individual.*

24 *“(5) TREATMENT OF EARNINGS.—References to*
25 *deferred compensation shall be treated as including*

1 *references to income (whether actual or notional) at-*
2 *tributable to such compensation or such income.*

3 “(e) *REGULATIONS.—The Secretary shall prescribe*
4 *such regulations as may be necessary or appropriate to*
5 *carry out the purposes of this section, including regula-*
6 *tions—*

7 “(1) *providing for the determination of amounts*
8 *of deferral in the case of a nonqualified deferred com-*
9 *penetration plan which is a defined benefit plan,*

10 “(2) *relating to changes in the ownership and*
11 *control of a corporation or assets of a corporation for*
12 *purposes of subsection (a)(2)(A)(v),*

13 “(3) *exempting arrangements from the applica-*
14 *tion of subsection (b) if such arrangements will not*
15 *result in an improper deferral of United States tax*
16 *and will not result in assets being effectively beyond*
17 *the reach of creditors,*

18 “(4) *defining financial health for purposes of*
19 *subsection (b)(2), and*

20 “(5) *disregarding a substantial risk of forfeiture*
21 *in cases where necessary to carry out the purposes of*
22 *this section.”.*

23 “(b) *W-2 FORMS.—*

24 “(1) *IN GENERAL.—Subsection (a) of section 6051*
25 *(relating to receipts for employees) is amended by*

1 striking “and” at the end of paragraph (11), by strik-
2 ing the period at the end of paragraph (12) and in-
3 sserting “, and”, and by inserting after paragraph
4 (12) the following new paragraph:

5 “(13) the total amount of deferrals under a non-
6 qualified deferred compensation plan (within the
7 meaning of section 409A(d)).”.

8 (2) *THRESHOLD.*—Subsection (a) of section 6051
9 is amended by adding at the end the following: “In
10 the case of the amounts required to be shown by para-
11 graph (13), the Secretary (by regulation) may estab-
12 lish a minimum amount of deferrals below which
13 paragraph (13) does not apply and may provide that
14 paragraph (13) does not apply with respect to
15 amounts of deferrals which are not reasonably ascer-
16 tainable.”.

17 (c) *CONFORMING AND CLERICAL AMENDMENTS.*—

18 (1) Section 414(b) is amended by inserting
19 “409A,” after “408(p),”.

20 (2) Section 414(c) is amended by inserting
21 “409A,” after “408(p),”.

22 (3) The table of sections for such subpart A of
23 part I of subchapter D of chapter 1 is amended by
24 adding at the end the following new item:

“Sec. 409A. Inclusion in gross income of deferred compensation
under nonqualified deferred compensation plans.”.

1 (d) *EFFECTIVE DATE.*—

2 (1) *IN GENERAL.*—*The amendments made by*
3 *this section shall apply to amounts deferred after*
4 *June 3, 2004.*

5 (2) *CERTAIN AMOUNTS DEFERRED IN 2004 UNDER*
6 *CERTAIN IRREVOCABLE ELECTIONS AND BINDING AR-*
7 *RANGEMENTS.*—*The amendments made by this section*
8 *shall not apply to amounts deferred after June 3,*
9 *2004, and before January 1, 2005, pursuant to an ir-*
10 *revocable election or binding arrangement made before*
11 *June 4, 2004.*

12 (3) *EARNINGS ATTRIBUTABLE TO AMOUNT PRE-*
13 *VIOUSLY DEFERRED.*—*The amendments made by this*
14 *section shall apply to earnings on deferred compensa-*
15 *tion only to the extent that such amendments apply*
16 *to such compensation.*

17 (e) *GUIDANCE RELATING TO CHANGE OF OWNERSHIP*
18 *OR CONTROL.*—*Not later than 90 days after the date of the*
19 *enactment of this Act, the Secretary of the Treasury shall*
20 *issue guidance on what constitutes a change in ownership*
21 *or effective control for purposes of section 409A of the Inter-*
22 *nal Revenue Code of 1986, as added by this section.*

23 (f) *GUIDANCE RELATING TO TERMINATION OF CER-*
24 *TAIN EXISTING ARRANGEMENTS.*—*Not later than 90 days*
25 *after the date of the enactment of this Act, the Secretary*

1 of the Treasury shall issue guidance providing a limited
2 period during which an individual participating in a non-
3 qualified deferred compensation plan adopted before June
4 4, 2004, may, without violating the requirements of para-
5 graphs (2), (3), and (4) of section 409A(a)(2) of the Internal
6 Revenue Code of 1986 (as added by this section), terminate
7 participation or cancel an outstanding deferral election
8 with regard to amounts earned after June 3, 2004, if such
9 amounts are includible in income as earned.

10 **Subtitle E—Other Revenue** 11 **Provisions**

12 **SEC. 681. QUALIFIED TAX COLLECTION CONTRACTS.**

13 (a) **CONTRACT REQUIREMENTS.**—

14 (1) **IN GENERAL.**—Subchapter A of chapter 64
15 (relating to collection) is amended by adding at the
16 end the following new section:

17 **“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.**

18 “(a) **IN GENERAL.**—Nothing in any provision of law
19 shall be construed to prevent the Secretary from entering
20 into a qualified tax collection contract.

21 “(b) **QUALIFIED TAX COLLECTION CONTRACT.**—For
22 purposes of this section, the term ‘qualified tax collection
23 contract’ means any contract which—

24 “(1) is for the services of any person (other than
25 an officer or employee of the Treasury Department)—

1 “(A) to locate and contact any taxpayer
2 specified by the Secretary,

3 “(B) to request full payment from such tax-
4 payer of an amount of Federal tax specified by
5 the Secretary and, if such request cannot be met
6 by the taxpayer, to offer the taxpayer an install-
7 ment agreement providing for full payment of
8 such amount during a period not to exceed 5
9 years, and

10 “(C) to obtain financial information speci-
11 fied by the Secretary with respect to such tax-
12 payer,

13 “(2) prohibits each person providing such serv-
14 ices under such contract from committing any act or
15 omission which employees of the Internal Revenue
16 Service are prohibited from committing in the per-
17 formance of similar services,

18 “(3) prohibits subcontractors from—

19 “(A) having contacts with taxpayers,

20 “(B) providing quality assurance services,
21 and

22 “(C) composing debt collection notices, and

23 “(4) permits subcontractors to perform other
24 services only with the approval of the Secretary.

1 “(c) *FEEES.*—*The Secretary may retain and use an*
2 *amount not in excess of 25 percent of the amount collected*
3 *under any qualified tax collection contract for the costs of*
4 *services performed under such contract. The Secretary shall*
5 *keep adequate records regarding amounts so retained and*
6 *used. The amount credited as paid by any taxpayer shall*
7 *be determined without regard to this subsection.*

8 “(d) *NO FEDERAL LIABILITY.*—*The United States*
9 *shall not be liable for any act or omission of any person*
10 *performing services under a qualified tax collection con-*
11 *tract.*

12 “(e) *APPLICATION OF FAIR DEBT COLLECTION PRAC-*
13 *TICES ACT.*—*The provisions of the Fair Debt Collection*
14 *Practices Act (15 U.S.C. 1692 et seq.) shall apply to any*
15 *qualified tax collection contract, except to the extent super-*
16 *seded by section 6304, section 7602(c), or by any other pro-*
17 *vision of this title.*

18 “(f) *CROSS REFERENCES.*—

 “(1) *For damages for certain unauthorized collec-*
 tion actions by persons performing services under a
 qualified tax collection contract, see section 7433A.

 “(2) *For application of Taxpayer Assistance Orders*
 to persons performing services under a qualified tax
 collection contract, see section 7811(a)(4).”.

19 (2) *CONFORMING AMENDMENTS.*—

20 (A) *Section 7809(a) is amended by insert-*
21 *ing “6306,” before “7651”.*

1 (B) *The table of sections for subchapter A of*
2 *chapter 64 is amended by adding at the end the*
3 *following new item:*

 “*Sec. 6306. Qualified Tax Collection Contracts.*”.

4 (b) *CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED*
5 *COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES*
6 *UNDER QUALIFIED TAX COLLECTION CONTRACTS.—*

7 (1) *IN GENERAL.—Subchapter B of chapter 76*
8 *(relating to proceedings by taxpayers and third par-*
9 *ties) is amended by inserting after section 7433 the*
10 *following new section:*

11 **“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED**
12 **COLLECTION ACTIONS BY PERSONS PER-**
13 **FORMING SERVICES UNDER QUALIFIED TAX**
14 **COLLECTION CONTRACTS.**

15 “(a) *IN GENERAL.—Subject to the modifications pro-*
16 *vided by subsection (b), section 7433 shall apply to the acts*
17 *and omissions of any person performing services under a*
18 *qualified tax collection contract (as defined in section*
19 *6306(b)) to the same extent and in the same manner as*
20 *if such person were an employee of the Internal Revenue*
21 *Service.*

22 “(b) *MODIFICATIONS.—For purposes of subsection*
23 *(a)—*

24 “(1) *Any civil action brought under section 7433*
25 *by reason of this section shall be brought against the*

1 *person who entered into the qualified tax collection*
2 *contract with the Secretary and shall not be brought*
3 *against the United States.*

4 *“(2) Such person and not the United States shall*
5 *be liable for any damages and costs determined in*
6 *such civil action.*

7 *“(3) Such civil action shall not be an exclusive*
8 *remedy with respect to such person.*

9 *“(4) Subsections (c), (d)(1), and (e) of section*
10 *7433 shall not apply.”.*

11 *(2) CLERICAL AMENDMENT.—The table of sec-*
12 *tions for subchapter B of chapter 76 is amended by*
13 *inserting after the item relating to section 7433 the*
14 *following new item:*

“Sec. 7433A. Civil damages for certain unauthorized collection ac-
tions by persons performing services under qualified
tax collection contracts.”.

15 *(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS*
16 *TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED*
17 *TAX COLLECTION CONTRACT.—Section 7811 (relating to*
18 *taxpayer assistance orders) is amended by adding at the*
19 *end the following new subsection:*

20 *“(g) APPLICATION TO PERSONS PERFORMING SERV-*
21 *ICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—*
22 *Any order issued or action taken by the National Taxpayer*
23 *Advocate pursuant to this section shall apply to persons*
24 *performing services under a qualified tax collection contract*

1 *(as defined in section 6306(b)) to the same extent and in*
2 *the same manner as such order or action applies to the Sec-*
3 *retary.”.*

4 *(d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT MIS-*
5 *CONDUCT TO PERFORM UNDER CONTRACT.—Section 1203*
6 *of the Internal Revenue Service Restructuring Act of 1998*
7 *(relating to termination of employment for misconduct) is*
8 *amended by adding at the end the following new subsection:*

9 *“(e) INDIVIDUALS PERFORMING SERVICES UNDER A*
10 *QUALIFIED TAX COLLECTION CONTRACT.—An individual*
11 *shall cease to be permitted to perform any services under*
12 *any qualified tax collection contract (as defined in section*
13 *6306(b) of the Internal Revenue Code of 1986) if there is*
14 *a final determination by the Secretary of the Treasury*
15 *under such contract that such individual committed any*
16 *act or omission described under subsection (b) in connection*
17 *with the performance of such services.”.*

18 *(e) EFFECTIVE DATE.—The amendments made to this*
19 *section shall take effect on the date of the enactment of this*
20 *Act.*

21 **SEC. 682. TREATMENT OF CHARITABLE CONTRIBUTIONS OF**
22 **PATENTS AND SIMILAR PROPERTY.**

23 *(a) IN GENERAL.—Subparagraph (B) of section*
24 *170(e)(1) is amended by striking “or” at the end of clause*

1 (i), by adding “or” at the end of clause (ii), and by insert-
2 ing after clause (ii) the following new clause:

3 “(iii) of any patent, copyright (other
4 than a copyright described in section
5 1221(a)(3) or 1231(b)(1)(C)), trademark,
6 trade name, trade secret, know-how, soft-
7 ware (other than software described in sec-
8 tion 197(e)(3)(A)(i)), or similar property,
9 or applications or registrations of such
10 property.”

11 (b) CERTAIN DONEE INCOME FROM INTELLECTUAL
12 PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CON-
13 TRIBUTION.—Section 170 is amended by redesignating sub-
14 section (m) as subsection (n) and by inserting after sub-
15 section (l) the following new subsection:

16 “(m) CERTAIN DONEE INCOME FROM INTELLECTUAL
17 PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CON-
18 TRIBUTION.—

19 “(1) TREATMENT AS ADDITIONAL CONTRIBU-
20 TION.—In the case of a taxpayer who makes a quali-
21 fied intellectual property contribution, the deduction
22 allowed under subsection (a) for each taxable year of
23 the taxpayer ending on or after the date of such con-
24 tribution shall be increased (subject to the limitations
25 under subsection (b)) by the applicable percentage of

1 *qualified donee income with respect to such contribu-*
2 *tion which is properly allocable to such year under*
3 *this subsection.*

4 “(2) *REDUCTION IN ADDITIONAL DEDUCTIONS TO*
5 *EXTENT OF INITIAL DEDUCTION.*—*With respect to any*
6 *qualified intellectual property contribution, the de-*
7 *duction allowed under subsection (a) shall be in-*
8 *creased under paragraph (1) only to the extent that*
9 *the aggregate amount of such increases with respect to*
10 *such contribution exceed the amount allowed as a de-*
11 *duction under subsection (a) with respect to such con-*
12 *tribution determined without regard to this sub-*
13 *section.*

14 “(3) *QUALIFIED DONEE INCOME.*—*For purposes*
15 *of this subsection, the term ‘qualified donee income’*
16 *means any net income received by or accrued to the*
17 *donee which is properly allocable to the qualified in-*
18 *tellectual property.*

19 “(4) *ALLOCATION OF QUALIFIED DONEE INCOME*
20 *TO TAXABLE YEARS OF DONOR.*—*For purposes of this*
21 *subsection, qualified donee income shall be treated as*
22 *properly allocable to a taxable year of the donor if*
23 *such income is received by or accrued to the donee for*
24 *the taxable year of the donee which ends within or*
25 *with such taxable year of the donor.*

1 “(5) *10-YEAR LIMITATION.*—*Income shall not be*
 2 *treated as properly allocable to qualified intellectual*
 3 *property for purposes of this subsection if such income*
 4 *is received by or accrued to the donee after the 10-*
 5 *year period beginning on the date of the contribution*
 6 *of such property.*

7 “(6) *BENEFIT LIMITED TO LIFE OF INTELLEC-*
 8 *TUAL PROPERTY.*—*Income shall not be treated as*
 9 *properly allocable to qualified intellectual property*
 10 *for purposes of this subsection if such income is re-*
 11 *ceived by or accrued to the donee after the expiration*
 12 *of the legal life of such property.*

13 “(7) *APPLICABLE PERCENTAGE.*—*For purposes*
 14 *of this subsection, the term ‘applicable percentage’*
 15 *means the percentage determined under the following*
 16 *table which corresponds to a taxable year of the donor*
 17 *ending on or after the date of the qualified intellectual*
 18 *property contribution:*

“Taxable Year of Donor Ending on or After Date of Contribution:	Applicable Percentage:
<i>1st</i>	<i>100</i>
<i>2nd</i>	<i>100</i>
<i>3rd</i>	<i>90</i>
<i>4th</i>	<i>80</i>
<i>5th</i>	<i>70</i>
<i>6th</i>	<i>60</i>
<i>7th</i>	<i>50</i>
<i>8th</i>	<i>40</i>
<i>9th</i>	<i>30</i>
<i>10th</i>	<i>20</i>
<i>11th</i>	<i>10</i>
<i>12th</i>	<i>10.</i>

1 “(8) *QUALIFIED INTELLECTUAL PROPERTY CON-*
2 *TRIBUTION.*—*For purposes of this subsection, the term*
3 *‘qualified intellectual property contribution’ means*
4 *any charitable contribution of qualified intellectual*
5 *property—*

6 “(A) *the amount of which taken into ac-*
7 *count under this section is reduced by reason of*
8 *subsection (e)(1), and*

9 “(B) *with respect to which the donor in-*
10 *forms the donee at the time of such contribution*
11 *that the donor intends to treat such contribution*
12 *as a qualified intellectual property contribution*
13 *for purposes of this subsection and section*
14 *6050L.*

15 “(9) *QUALIFIED INTELLECTUAL PROPERTY.*—*For*
16 *purposes of this subsection, the term ‘qualified intel-*
17 *lectual property’ means property described in sub-*
18 *section (e)(1)(B)(iii) (other than property contributed*
19 *to or for the use of an organization described in sub-*
20 *section (e)(1)(B)(ii)).*

21 “(10) *OTHER SPECIAL RULES.*—

22 “(A) *APPLICATION OF LIMITATIONS ON*
23 *CHARITABLE CONTRIBUTIONS.*—*Any increase*
24 *under this subsection of the deduction provided*
25 *under subsection (a) shall be treated for purposes*

1 of subsection (b) as a deduction which is attrib-
2 utable to a charitable contribution to the donee
3 to which such increase relates.

4 “(B) NET INCOME DETERMINED BY
5 DONEE.—The net income taken into account
6 under paragraph (3) shall not exceed the amount
7 of such income reported under section
8 6050L(b)(1).

9 “(C) DEDUCTION LIMITED TO 12 TAXABLE
10 YEARS.—Except as may be provided under sub-
11 paragraph (D)(i), this subsection shall not apply
12 with respect to any qualified intellectual prop-
13 erty contribution for any taxable year of the
14 donor after the 12th taxable year of the donor
15 which ends on or after the date of such contribu-
16 tion.

17 “(D) REGULATIONS.—The Secretary may
18 issue regulations or other guidance to carry out
19 the purposes of this subsection, including regula-
20 tions or guidance—

21 “(i) modifying the application of this
22 subsection in the case of a donor or donee
23 with a short taxable year, and

24 “(ii) providing for the determination
25 of an amount to be treated as net income of

1 the donee which is properly allocable to
2 qualified intellectual property in the case of
3 a donee who uses such property to further
4 a purpose or function constituting the basis
5 of the donee's exemption under section 501
6 (or, in the case of a governmental unit, any
7 purpose described in section 170(c)) and
8 does not possess a right to receive any pay-
9 ment from a third party with respect to
10 such property.”

11 (c) *REPORTING REQUIREMENTS.*—

12 (1) *IN GENERAL.*—Section 6050L (relating to re-
13 turns relating to certain dispositions of donated prop-
14 erty) is amended to read as follows:

15 **“SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED**
16 **PROPERTY.**

17 “(a) *DISPOSITIONS OF DONATED PROPERTY.*—

18 “(1) *IN GENERAL.*—If the donee of any chari-
19 table deduction property sells, exchanges, or otherwise
20 disposes of such property within 2 years after its re-
21 ceipt, the donee shall make a return (in accordance
22 with forms and regulations prescribed by the Sec-
23 retary) showing—

24 “(A) the name, address, and TIN of the
25 donor,

1 “(B) a description of the property,

2 “(C) the date of the contribution,

3 “(D) the amount received on the disposi-
4 tion, and

5 “(E) the date of such disposition.

6 “(2) DEFINITIONS.—For purposes of this sub-
7 section—

8 “(A) CHARITABLE DEDUCTION PROPERTY.—

9 The term ‘charitable deduction property’ means
10 any property (other than publicly traded securi-
11 ties) contributed in a contribution for which a
12 deduction was claimed under section 170 if the
13 claimed value of such property (plus the claimed
14 value of all similar items of property donated by
15 the donor to 1 or more donees) exceeds \$5,000.

16 “(B) PUBLICLY TRADED SECURITIES.—The
17 term ‘publicly traded securities’ means securities
18 for which (as of the date of the contribution)
19 market quotations are readily available on an es-
20 tablished securities market.

21 “(b) QUALIFIED INTELLECTUAL PROPERTY CONTRIBU-
22 TIONS.—

23 “(1) IN GENERAL.—Each donee with respect to a
24 qualified intellectual property contribution shall make
25 a return (at such time and in such form and manner

1 as the Secretary may by regulations prescribe) with
2 respect to each specified taxable year of the donee
3 showing—

4 “(A) the name, address, and TIN of the
5 donor,

6 “(B) a description of the qualified intellec-
7 tual property contributed,

8 “(C) the date of the contribution, and

9 “(D) the amount of net income of the donee
10 for the taxable year which is properly allocable
11 to the qualified intellectual property (determined
12 without regard to paragraph (10)(B) of section
13 170(m) and with the modifications described in
14 paragraphs (5) and (6) of such section).

15 “(2) DEFINITIONS.—For purposes of this sub-
16 section—

17 “(A) IN GENERAL.—Terms used in this sub-
18 section which are also used in section 170(m)
19 have the respective meanings given such terms in
20 such section.

21 “(B) SPECIFIED TAXABLE YEAR.—The term
22 ‘specified taxable year’ means, with respect to
23 any qualified intellectual property contribution,
24 any taxable year of the donee any portion of

1 *which is part of the 10-year period beginning on*
2 *the date of such contribution.*

3 “(c) *STATEMENT TO BE FURNISHED TO DONORS.—*
4 *Every person making a return under subsection (a) or (b)*
5 *shall furnish a copy of such return to the donor at such*
6 *time and in such manner as the Secretary may by regula-*
7 *tions prescribe.”.*

8 (2) *CLERICAL AMENDMENT.—The table of sec-*
9 *tions for subpart A of part II of subchapter A of*
10 *chapter 61 is amended by striking the item relating*
11 *to section 6050L and inserting the following new*
12 *item:*

“Sec. 6050L. Returns relating to certain donated property.”.

13 (d) *COORDINATION WITH APPRAISAL REQUIRE-*
14 *MENTS.—Subclause (I) of section 170(f)(11)(A)(ii), as*
15 *added by section 683, is amended by inserting “subsection*
16 *(e)(1)(B)(iii) or” before “section 1221(a)(1)”.*

17 (e) *ANTI-ABUSE RULES.—The Secretary of the Treas-*
18 *ury may prescribe such regulations or other guidance as*
19 *may be necessary or appropriate to prevent the avoidance*
20 *of the purposes of section 170(e)(1)(B)(iii) of the Internal*
21 *Revenue Code of 1986 (as added by subsection (a)), includ-*
22 *ing preventing—*

23 (1) *the circumvention of the reduction of the*
24 *charitable deduction by embedding or bundling the*
25 *patent or similar property as part of a charitable*

1 contribution of property that includes the patent or
2 similar property,

3 (2) the manipulation of the basis of the property
4 to increase the amount of the charitable deduction
5 through the use of related persons, pass-thru entities,
6 or other intermediaries, or through the use of any
7 provision of law or regulation (including the consoli-
8 dated return regulations), and

9 (3) a donor from changing the form of the patent
10 or similar property to property of a form for which
11 different deduction rules would apply.

12 (f) *EFFECTIVE DATE.*—The amendments made by this
13 section shall apply to contributions made after June 3,
14 2004.

15 **SEC. 683. INCREASED REPORTING FOR NONCASH CHARI-**
16 **TABLE CONTRIBUTIONS.**

17 (a) *IN GENERAL.*—Subsection (f) of section 170 (relat-
18 ing to disallowance of deduction in certain cases and spe-
19 cial rules) is amended by adding after paragraph (10) the
20 following new paragraph:

21 “(11) *QUALIFIED APPRAISAL AND OTHER DOCU-*
22 *MENTATION FOR CERTAIN CONTRIBUTIONS.*—

23 “(A) *IN GENERAL.*—

24 “(i) *DENIAL OF DEDUCTION.*—In the
25 case of an individual, partnership, or cor-

1 *poration, no deduction shall be allowed*
2 *under subsection (a) for any contribution of*
3 *property for which a deduction of more*
4 *than \$500 is claimed unless such person*
5 *meets the requirements of subparagraphs*
6 *(B), (C), and (D), as the case may be, with*
7 *respect to such contribution.*

8 *“(ii) EXCEPTIONS.—*

9 *“(I) READILY VALUED PROP-*
10 *ERTY.—Subparagraphs (C) and (D)*
11 *shall not apply to cash, property de-*
12 *scribed in section 1221(a)(1), and pub-*
13 *licly traded securities (as defined in*
14 *section 6050L(a)(2)(B)).*

15 *“(II) REASONABLE CAUSE.—*

16 *Clause (i) shall not apply if it is*
17 *shown that the failure to meet such re-*
18 *quirements is due to reasonable cause*
19 *and not to willful neglect.*

20 *“(B) PROPERTY DESCRIPTION FOR CON-*
21 *TRIBUTIONS OF MORE THAN \$500.—In the case of*
22 *contributions of property for which a deduction*
23 *of more than \$500 is claimed, the requirements*
24 *of this subparagraph are met if the individual,*
25 *partnership or corporation includes with the re-*

1 *turn for the taxable year in which the contribu-*
2 *tion is made a description of such property and*
3 *such other information as the Secretary may re-*
4 *quire. The requirements of this subparagraph*
5 *shall not apply to a C corporation which is not*
6 *a personal service corporation or a closely held*
7 *C corporation.*

8 *“(C) QUALIFIED APPRAISAL FOR CONTRIBU-*
9 *TIONS OF MORE THAN \$5,000.—In the case of con-*
10 *tributions of property for which a deduction of*
11 *more than \$5,000 is claimed, the requirements of*
12 *this subparagraph are met if the individual,*
13 *partnership, or corporation obtains a qualified*
14 *appraisal of such property and attaches to the*
15 *return for the taxable year in which such con-*
16 *tribution is made such information regarding*
17 *such property and such appraisal as the Sec-*
18 *retary may require.*

19 *“(D) SUBSTANTIATION FOR CONTRIBUTIONS*
20 *OF MORE THAN \$500,000.—In the case of contribu-*
21 *tions of property for which a deduction of more*
22 *than \$500,000 is claimed, the requirements of*
23 *this subparagraph are met if the individual,*
24 *partnership, or corporation attaches to the re-*

1 turn for the taxable year a qualified appraisal of
2 such property.

3 “(E) *QUALIFIED APPRAISAL.*—For purposes
4 of this paragraph, the term ‘qualified appraisal’
5 means, with respect to any property, an ap-
6 praisal of such property which is treated for
7 purposes of this paragraph as a qualified ap-
8 praisal under regulations or other guidance pre-
9 scribed by the Secretary.

10 “(F) *AGGREGATION OF SIMILAR ITEMS OF*
11 *PROPERTY.*—For purposes of determining thresh-
12 olds under this paragraph, property and all
13 similar items of property donated to 1 or more
14 donees shall be treated as 1 property.

15 “(G) *SPECIAL RULE FOR PASS-THRU ENTI-*
16 *TIES.*—In the case of a partnership or S cor-
17 poration, this paragraph shall be applied at the
18 entity level, except that the deduction shall be de-
19 nied at the partner or shareholder level.

20 “(H) *REGULATIONS.*—The Secretary may
21 prescribe such regulations as may be necessary
22 or appropriate to carry out the purposes of this
23 paragraph, including regulations that may pro-
24 vide that some or all of the requirements of this
25 paragraph do not apply in appropriate cases.”.

1 (b) *EFFECTIVE DATE.*—*The amendment made by this*
2 *section shall apply to contributions made after June 3,*
3 *2004.*

4 **SEC. 684. DONATIONS OF MOTOR VEHICLES, BOATS, AND**
5 **AIRCRAFT.**

6 (a) *IN GENERAL.*—*Subsection (f) of section 170 (relat-*
7 *ing to disallowance of deduction in certain cases and spe-*
8 *cial rules) is amended by adding after paragraph (11) the*
9 *following new paragraph:*

10 “(12) *CONTRIBUTIONS OF MOTOR VEHICLES,*
11 *BOATS, AND AIRCRAFT.*—

12 “(A) *IN GENERAL.*—*Except as provided in*
13 *regulations or other guidance, in the case of a*
14 *contribution of a specified vehicle to which para-*
15 *graph (8) applies, no deduction shall be allowed*
16 *under subsection (a) for such contribution unless*
17 *the taxpayer obtains a qualified appraisal of the*
18 *specified vehicle on or before the date of such*
19 *contribution.*

20 “(B) *EXCEPTION FOR INVENTORY PROP-*
21 *ERTY.*—*Subparagraph (A) shall not apply to*
22 *property which is described in section*
23 *1221(a)(1).*

1 “(C) *SPECIFIED VEHICLE*.—For purposes of
2 this paragraph, the term ‘specified vehicle’
3 means any—

4 “(i) motor vehicle manufactured pri-
5 marily for use on public streets, roads, and
6 highways,

7 “(ii) boat, or

8 “(iii) aircraft.

9 “(D) *QUALIFIED APPRAISAL*.—For purposes
10 of this paragraph, the term ‘qualified appraisal’
11 means any appraisal which is treated for pur-
12 poses of this paragraph as a qualified appraisal
13 under regulations or other guidance prescribed
14 by the Secretary.

15 “(E) *REGULATIONS OR OTHER GUID-*
16 *ANCE*.—The Secretary shall prescribe such regu-
17 lations or other guidance as may be necessary to
18 carry out the purposes of this paragraph.”.

19 (b) *EFFECTIVE DATE*.—The amendment made by sub-
20 section (a) shall apply to contributions made after June
21 3, 2004.

22 **SEC. 685. EXTENSION OF AMORTIZATION OF INTANGIBLES**
23 **TO SPORTS FRANCHISES.**

24 (a) *IN GENERAL*.—Section 197(e) (relating to excep-
25 tions to definition of section 197 intangible) is amended

1 *by striking paragraph (6) and by redesignating paragraphs*
2 *(7) and (8) as paragraphs (6) and (7), respectively.*

3 *(b) CONFORMING AMENDMENTS.—*

4 *(1)(A) Section 1056 (relating to basis limitation*
5 *for player contracts transferred in connection with*
6 *the sale of a franchise) is repealed.*

7 *(B) The table of sections for part IV of sub-*
8 *chapter O of chapter 1 is amended by striking the*
9 *item relating to section 1056.*

10 *(2) Section 1245(a) (relating to gain from dis-*
11 *position of certain depreciable property) is amended*
12 *by striking paragraph (4).*

13 *(3) Section 1253 (relating to transfers of fran-*
14 *chises, trademarks, and trade names) is amended by*
15 *striking subsection (e).*

16 *(c) EFFECTIVE DATES.—*

17 *(1) IN GENERAL.—Except as provided in para-*
18 *graph (2), the amendments made by this section shall*
19 *apply to property acquired after the date of the enact-*
20 *ment of this Act.*

21 *(2) SECTION 1245.—The amendment made by*
22 *subsection (b)(2) shall apply to franchises acquired*
23 *after the date of the enactment of this Act.*

1 **SEC. 686. MODIFICATION OF CONTINUING LEVY ON PAY-**
2 **MENTS TO FEDERAL VENDERS.**

3 (a) *IN GENERAL.*—Section 6331(h) (relating to con-
4 tinuing levy on certain payments) is amended by adding
5 at the end the following new paragraph:

6 “(3) *INCREASE IN LEVY FOR CERTAIN PAY-*
7 *MENTS.*—Paragraph (1) shall be applied by sub-
8 stituting ‘100 percent’ for ‘15 percent’ in the case of
9 any specified payment due to a vendor of goods or
10 services sold or leased to the Federal Government.”.

11 (b) *EFFECTIVE DATE.*—The amendment made by this
12 section shall take effect on the date of the enactment of this
13 Act.

14 **SEC. 687. MODIFICATION OF STRADDLE RULES.**

15 (a) *RULES RELATING TO IDENTIFIED STRADDLES.*—

16 (1) *IN GENERAL.*—Subparagraph (A) of section
17 1092(a)(2) (relating to special rule for identified
18 straddles) is amended to read as follows:

19 “(A) *IN GENERAL.*—In the case of any
20 straddle which is an identified straddle—

21 “(i) paragraph (1) shall not apply
22 with respect to identified positions com-
23 prising the identified straddle,

24 “(ii) if there is any loss with respect to
25 any identified position of the identified
26 straddle, the basis of each of the identified

1 *offsetting positions in the identified straddle*
2 *shall be increased by an amount which*
3 *bears the same ratio to the loss as the unrec-*
4 *ognized gain with respect to such offsetting*
5 *position bears to the aggregate unrecognized*
6 *gain with respect to all such offsetting posi-*
7 *tions, and*

8 *“(iii) any loss described in clause (ii)*
9 *shall not otherwise be taken into account for*
10 *purposes of this title.”.*

11 (2) *IDENTIFIED STRADDLE.—Section*
12 *1092(a)(2)(B) (defining identified straddle) is amend-*
13 *ed—*

14 *(A) by striking clause (ii) and inserting the*
15 *following:*

16 *“(ii) to the extent provided by regula-*
17 *tions, the value of each position of which (in*
18 *the hands of the taxpayer immediately be-*
19 *fore the creation of the straddle) is not less*
20 *than the basis of such position in the hands*
21 *of the taxpayer at the time the straddle is*
22 *created, and”*, and

23 *(B) by adding at the end the following new*
24 *flush sentence:*

1 *“The Secretary shall prescribe regulations which*
2 *specify the proper methods for clearly identifying*
3 *a straddle as an identified straddle (and the po-*
4 *sitions comprising such straddle), which specify*
5 *the rules for the application of this section for a*
6 *taxpayer which fails to properly identify the po-*
7 *sitions of an identified straddle, and which*
8 *specify the ordering rules in cases where a tax-*
9 *payer disposes of less than an entire position*
10 *which is part of an identified straddle.”.*

11 (3) *UNRECOGNIZED GAIN.*—Section 1092(a)(3)
12 *(defining unrecognized gain) is amended by redesign-*
13 *ating subparagraph (B) as subparagraph (C) and*
14 *by inserting after subparagraph (A) the following new*
15 *subparagraph:*

16 *“(B) SPECIAL RULE FOR IDENTIFIED*
17 *STRADDLES.—For purposes of paragraph*
18 *(2)(A)(i), the unrecognized gain with respect to*
19 *any identified offsetting position shall be the ex-*
20 *cess of the fair market value of the position at*
21 *the time of the determination over the fair mar-*
22 *ket value of the position at the time the taxpayer*
23 *identified the position as a position in an identi-*
24 *fied straddle.”.*

1 (4) *CONFORMING AMENDMENT.—Section*
2 *1092(c)(2) is amended by striking subparagraph (B)*
3 *and by redesignating subparagraph (C) as subpara-*
4 *graph (B).*

5 (b) *PHYSICALLY SETTLED POSITIONS.—Section*
6 *1092(d) (relating to definitions and special rules) is amend-*
7 *ed by adding at the end the following new paragraph:*

8 “(8) *SPECIAL RULES FOR PHYSICALLY SETTLED*
9 *POSITIONS.—For purposes of subsection (a), if a tax-*
10 *payer settles a position which is part of a straddle by*
11 *delivering property to which the position relates (and*
12 *such position, if terminated, would result in a real-*
13 *ization of a loss), then such taxpayer shall be treated*
14 *as if such taxpayer—*

15 “(A) *terminated the position for its fair*
16 *market value immediately before the settlement,*
17 *and*

18 “(B) *sold the property so delivered by the*
19 *taxpayer at its fair market value.”.*

20 (c) *REPEAL OF STOCK EXCEPTION.—*

21 (1) *IN GENERAL.—Paragraph (3) of section*
22 *1092(d) (relating to definitions and special rules) is*
23 *amended to read as follows:*

24 “(3) *SPECIAL RULES FOR STOCK.—For purposes*
25 *of paragraph (1)—*

1 “(A) *IN GENERAL.*—*The term ‘personal*
2 *property’ includes—*

3 “(i) *any stock which is a part of a*
4 *straddle at least 1 of the offsetting positions*
5 *of which is a position with respect to such*
6 *stock or substantially similar or related*
7 *property, or*

8 “(ii) *any stock of a corporation formed*
9 *or availed of to take positions in personal*
10 *property which offset positions taken by any*
11 *shareholder.*

12 “(B) *RULE FOR APPLICATION.*—*For pur-*
13 *poses of determining whether subsection (e) ap-*
14 *plies to any transaction with respect to stock de-*
15 *scribed in subparagraph (A)(ii), all includible*
16 *corporations of an affiliated group (within the*
17 *meaning of section 1504(a)) shall be treated as*
18 *1 taxpayer.”.*

19 (2) *CONFORMING AMENDMENT.*—*Section*
20 *1258(d)(1) is amended by striking “; except that the*
21 *term ‘personal property’ shall include stock”.*

22 (d) *HOLDING PERIOD FOR DIVIDEND EXCLUSION.*—*The*
23 *last sentence of section 246(c) is amended by inserting: “,*
24 *other than a qualified covered call option to which section*
25 *1092(f) applies” before the period at the end.*

1 (e) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to positions established on or after the*
3 *date of the enactment of this Act.*

4 **SEC. 688. ADDITION OF VACCINES AGAINST HEPATITIS A TO**
5 **LIST OF TAXABLE VACCINES.**

6 (a) *IN GENERAL.*—*Paragraph (1) of section 4132(a)*
7 *(defining taxable vaccine) is amended by redesignating sub-*
8 *paragraphs (I), (J), (K), and (L) as subparagraphs (J),*
9 *(K), (L), and (M), respectively, and by inserting after sub-*
10 *paragraph (H) the following new subparagraph:*

11 “(I) *Any vaccine against hepatitis A.*”

12 (b) *EFFECTIVE DATE.*—

13 (1) *SALES, ETC.*—*The amendments made by sub-*
14 *section (a) shall apply to sales and uses on or after*
15 *the first day of the first month which begins more*
16 *than 4 weeks after the date of the enactment of this*
17 *Act.*

18 (2) *DELIVERIES.*—*For purposes of paragraph*
19 *(1) and section 4131 of the Internal Revenue Code of*
20 *1986, in the case of sales on or before the effective date*
21 *described in such paragraph for which delivery is*
22 *made after such date, the delivery date shall be con-*
23 *sidered the sale date.*

1 **SEC. 689. ADDITION OF VACCINES AGAINST INFLUENZA TO**
2 **LIST OF TAXABLE VACCINES.**

3 (a) *IN GENERAL.*—Section 4132(a)(1) (defining tax-
4 able vaccine), as amended by this Act, is amended by add-
5 ing at the end the following new subparagraph:

6 “(N) Any trivalent vaccine against influ-
7 enza.”.

8 (b) *EFFECTIVE DATE.*—

9 (1) *SALES, ETC.*—The amendment made by this
10 section shall apply to sales and uses on or after the
11 later of—

12 (A) the first day of the first month which
13 begins more than 4 weeks after the date of the en-
14 actment of this Act, or

15 (B) the date on which the Secretary of
16 Health and Human Services lists any vaccine
17 against influenza for purposes of compensation
18 for any vaccine-related injury or death through
19 the Vaccine Injury Compensation Trust Fund.

20 (2) *DELIVERIES.*—For purposes of paragraph
21 (1) and section 4131 of the Internal Revenue Code of
22 1986, in the case of sales on or before the effective date
23 described in such paragraph for which delivery is
24 made after such date, the delivery date shall be con-
25 sidered the sale date.

1 **SEC. 690. EXTENSION OF IRS USER FEES.**

2 (a) *IN GENERAL.*—Section 7528(c) (relating to termi-
3 nation) is amended by striking “December 31, 2004” and
4 inserting “September 30, 2014”.

5 (b) *EFFECTIVE DATE.*—The amendment made by this
6 section shall apply to requests after the date of the enact-
7 ment of this Act.

8 **SEC. 691. COBRA FEES.**

9 (a) *USE OF MERCHANDISE PROCESSING FEE.*—Sec-
10 tion 13031(f) of the Consolidated Omnibus Budget Rec-
11 onciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

12 (1) in paragraph (1), by aligning subparagraph
13 (B) with subparagraph (A); and

14 (2) in paragraph (2), by striking “commercial
15 operations” and all that follows through “processing.”
16 and inserting “customs revenue functions as defined
17 in section 415 of the Homeland Security Act of 2002
18 (other than functions performed by the Office of Inter-
19 national Affairs referred to in section 415(8) of that
20 Act), and for automation (including the Automation
21 Commercial Environment computer system), and for
22 no other purpose. To the extent that funds in the Cus-
23 toms User Fee Account are insufficient to pay the
24 costs of such customs revenue functions, customs du-
25 ties in an amount equal to the amount of such insuf-
26 ficiency shall be available, to the extent provided for

1 *in appropriations Acts, to pay the costs of such cus-*
2 *toms revenue functions in the amount of such insuffi-*
3 *ciency, and shall be available for no other purpose.*
4 *The provisions of the first and second sentences of this*
5 *paragraph specifying the purposes for which amounts*
6 *in the Customs User Fee Account may be made avail-*
7 *able shall not be superseded except by a provision of*
8 *law which specifically modifies or supersedes such*
9 *provisions.”.*

10 *(b) REIMBURSEMENT OF APPROPRIATIONS FROM*
11 *COBRA FEES.—Section 13031(f)(3) of the Consolidated*
12 *Omnibus Budget Reconciliation Act of 1985 (19 U.S.C.*
13 *58c(f)(3)) is amended by adding at the end the following:*

14 *“(E) Nothing in this paragraph shall be construed to*
15 *preclude the use of appropriated funds, from sources other*
16 *than the fees collected under subsection (a), to pay the costs*
17 *set forth in clauses (i), (ii), and (iii) of subparagraph (A).”.*

18 *(c) SENSE OF CONGRESS; EFFECTIVE PERIOD FOR*
19 *COLLECTING FEES; STANDARD FOR SETTING FEES.—*

20 *(1) SENSE OF CONGRESS.—The Congress finds*
21 *that—*

22 *(A) the fees set forth in paragraphs (1)*
23 *through (8) of subsection (a) of section 13031 of*
24 *the Consolidated Omnibus Budget Reconciliation*
25 *Act of 1985 have been reasonably related to the*

1 costs of providing customs services in connection
2 with the activities or items for which the fees
3 have been charged under such paragraphs; and

4 (B) the fees collected under such paragraphs
5 have not exceeded, in the aggregate, the amounts
6 paid for the costs described in subsection
7 (f)(3)(A) incurred in providing customs services
8 in connection with the activities or items for
9 which the fees were charged under such para-
10 graphs.

11 (2) *EFFECTIVE PERIOD; STANDARD FOR SETTING*
12 *FEES.*—Section 13031(j)(3) of the Consolidated Om-
13 nibus Budget Reconciliation Act of 1985 is amended
14 to read as follows:

15 “(3)(A) Fees may not be charged under paragraphs (9)
16 and (10) of subsection (a) after September 30, 2014.

17 “(B)(i) Subject to clause (ii), Fees may not be charged
18 under paragraphs (1) through (8) of subsection (a) after
19 September 30, 2014.

20 “(ii) In fiscal year 2006 and in each succeeding fiscal
21 year for which fees under paragraphs (1) through (8) of
22 subsection (a) are authorized—

23 “(I) the Secretary of the Treasury shall charge
24 fees under each such paragraph in amounts that are
25 reasonably related to the costs of providing customs

1 *services in connection with the activity or item for*
2 *which the fee is charged under such paragraph, except*
3 *that in no case may the fee charged under any such*
4 *paragraph exceed by more than 10 percent the*
5 *amount otherwise prescribed by such paragraph;*

6 *“(II) the amount of fees collected under such*
7 *paragraphs may not exceed, in the aggregate, the*
8 *amounts paid in that fiscal year for the costs de-*
9 *scribed in subsection (f)(3)(A) incurred in providing*
10 *customs services in connection with the activity or*
11 *item for which the fees are charged under such para-*
12 *graphs;*

13 *“(III) a fee may not be collected under any such*
14 *paragraph except to the extent such fee will be ex-*
15 *pended to pay the costs described in subsection*
16 *(f)(3)(A) incurred in providing customs services in*
17 *connection with the activity or item for which the fee*
18 *is charged under such paragraph; and*

19 *“(IV) any fee collected under any such para-*
20 *graph shall be available for expenditure only to pay*
21 *the costs described in subsection (f)(3)(A) incurred in*
22 *providing customs services in connection with the ac-*
23 *tivity or item for which the fee is charged under such*
24 *paragraph.”.*

1 (d) *CLERICAL AMENDMENTS.*—Section 13031 of the
2 *Consolidated Omnibus Budget Reconciliation Act of 1985*
3 *is amended—*

4 (1) *in subsection (a)(5)(B), by striking “\$1.75”*
5 *and inserting “\$1.75.”;*

6 (2) *in subsection (b)—*

7 (A) *in paragraph (1)(A), by aligning clause*
8 *(iii) with clause (ii);*

9 (B) *in paragraph (7), by striking “para-*
10 *graphs” and inserting “paragraph”; and*

11 (C) *in paragraph (9), by aligning subpara-*
12 *graph (B) with subparagraph (A); and*

13 (3) *in subsection (e)(2), by aligning subpara-*
14 *graph (B) with subparagraph (A).*

15 (e) *STUDY OF ALL FEES COLLECTED BY DEPARTMENT*
16 *OF HOMELAND SECURITY.*—*The Secretary of the Treasury*
17 *shall conduct a study of all the fees collected by the Depart-*
18 *ment of Homeland Security, and shall submit to the Con-*
19 *gress, not later than September 30, 2005, a report con-*
20 *taining the recommendations of the Secretary on—*

21 (1) *what fees should be eliminated;*

22 (2) *what the rate of fees retained should be; and*

23 (3) *any other recommendations with respect to*
24 *the fees that the Secretary considers appropriate.*

1 **TITLE VII—MARKET REFORM**
2 **FOR TOBACCO GROWERS**

3 **SEC. 701. SHORT TITLE.**

4 *This title may be cited as the “Fair and Equitable*
5 *Tobacco Reform Act of 2004”.*

6 **SEC. 702. EFFECTIVE DATE.**

7 *This title and the amendments made by this title shall*
8 *apply beginning with the 2005 marketing year of each kind*
9 *of tobacco.*

10 **Subtitle A—Termination of Federal**
11 **Tobacco Quota and Price Sup-**
12 **port Programs**

13 **SEC. 711. TERMINATION OF TOBACCO QUOTA PROGRAM**
14 **AND RELATED PROVISIONS.**

15 (a) *MARKETING QUOTAS.*—*Part I of subtitle B of title*
16 *III of the Agricultural Adjustment Act of 1938 (7 U.S.C.*
17 *1311 et seq.) is repealed.*

18 (b) *PROCESSING.*—*Section 9(b) of the Agricultural Ad-*
19 *justment Act (7 U.S.C. 609(b)), reenacted with amendments*
20 *by the Agricultural Marketing Agreement Act of 1937, is*
21 *amended—*

22 (1) *in paragraph (2), by striking “tobacco,”; and*

23 (2) *in paragraph (6)(B)(i), by striking “, or, in*
24 *the case of tobacco, is less than the fair exchange value*
25 *by not more than 10 per centum,”.*

1 (c) *DECLARATION OF POLICY.*—Section 2 of the Agri-
2 *cultural Adjustment Act of 1938 (7 U.S.C. 1282)* is amend-
3 *ed by striking “tobacco,”.*

4 (d) *DEFINITIONS.*—Section 301(b) of the *Agricultural*
5 *Adjustment Act of 1938 (7 U.S.C. 1301(b))* is amended—

6 (1) *in paragraph (3)—*

7 (A) *by striking subparagraph (C); and*

8 (B) *by redesignating subparagraph (D) as*
9 *subparagraph (C);*

10 (2) *in paragraph (6)(A), by striking “tobacco,”;*

11 (3) *in paragraph (10)—*

12 (A) *by striking subparagraph (B); and*

13 (B) *by redesignating subparagraph (C) as*
14 *subparagraph (B);*

15 (4) *in paragraph (11)(B), by striking “and to-*
16 *bacco”;*

17 (5) *in paragraph (12), by striking “tobacco,”;*

18 (6) *in paragraph (14)—*

19 (A) *in subparagraph (A), by striking “(A)”;*

20 *and*

21 (B) *by striking subparagraphs (B), (C), and*

22 *(D);*

23 (7) *by striking paragraph (15);*

24 (8) *in paragraph (16)—*

25 (A) *by striking subparagraph (B); and*

1 (B) by redesignating subparagraph (C) as
2 subparagraph (B);

3 (9) by striking paragraph (17); and

4 (10) by redesignating paragraph (16) as para-
5 graph (15).

6 (e) *PARITY PAYMENTS*.—Section 303 of the *Agricul-*
7 *tural Adjustment Act of 1938 (7 U.S.C. 1303)* is amended
8 in the first sentence by striking “rice, or tobacco,” and in-
9 serting “or rice,”.

10 (f) *ADMINISTRATIVE PROVISIONS*.—Section 361 of the
11 *Agricultural Adjustment Act of 1938 (7 U.S.C. 1361)* is
12 amended by striking “tobacco,”.

13 (g) *ADJUSTMENT OF QUOTAS*.—Section 371 of the *Ag-*
14 *ricultural Adjustment Act of 1938 (7 U.S.C. 1371)* is
15 amended—

16 (1) in the first sentence of subsection (a), by
17 striking “rice, or tobacco” and inserting “or rice”;
18 and

19 (2) in the first sentence of subsection (b), by
20 striking “rice, or tobacco” and inserting “or rice”.

21 (h) *REGULATIONS*.—Section 375 of the *Agricultural*
22 *Adjustment Act of 1938 (7 U.S.C. 1375)* is amended—

23 (1) in subsection (a), by striking “peanuts, or to-
24 bacco” and inserting “or peanuts”; and

25 (2) by striking subsection (c).

1 (i) *EMINENT DOMAIN*.—Section 378 of the *Agricul-*
2 *tural Adjustment Act of 1938 (7 U.S.C. 1378)* is amended—

3 (1) *in the first sentence of subsection (c), by*
4 *striking “cotton, and tobacco” and inserting “and*
5 *cotton”;* and

6 (2) *by striking subsections (d), (e), and (f).*

7 (j) *BURLEY TOBACCO FARM RECONSTITUTION*.—Sec-
8 *tion 379 of the Agricultural Adjustment Act of 1938 (7*
9 *U.S.C. 1379)* is amended—

10 (1) *in subsection (a)—*

11 (A) *by striking “(a)”;* and

12 (B) *in paragraph (6), by striking “, but*
13 *this clause (6) shall not be applicable in the case*
14 *of burley tobacco”;* and

15 (2) *by striking subsections (b) and (c).*

16 (k) *ACREAGE-POUNDAGE QUOTAS*.—Section 4 of the
17 *Act of April 16, 1955 (Public Law 89–12; 7 U.S.C. 1314c*
18 *note), is repealed.*

19 (l) *BURLEY TOBACCO ACREAGE ALLOTMENTS*.—The
20 *Act of July 12, 1952 (7 U.S.C. 1315), is repealed.*

21 (m) *TRANSFER OF ALLOTMENTS*.—Section 703 of the
22 *Food and Agriculture Act of 1965 (7 U.S.C. 1316) is re-*
23 *pealed.*

1 (n) *ADVANCE RECOURSE LOANS*.—Section 13(a)(2)(B)
 2 *of the Food Security Improvements Act of 1986 (7 U.S.C.*
 3 *1433c–1(a)(2)(B)) is amended by striking “tobacco and”.*

4 (o) *TOBACCO FIELD MEASUREMENT*.—Section 1112 of
 5 *the Omnibus Budget Reconciliation Act of 1987 (Public*
 6 *Law 100–203) is amended by striking subsection (c).*

7 **SEC. 712. TERMINATION OF TOBACCO PRICE SUPPORT PRO-**
 8 **GRAM AND RELATED PROVISIONS.**

9 (a) *TERMINATION OF TOBACCO PRICE SUPPORT AND*
 10 *NO NET COST PROVISIONS*.—Sections 106, 106A, and 106B
 11 *of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445–1,*
 12 *1445–2) are repealed.*

13 (b) *PARITY PRICE SUPPORT*.—Section 101 of the *Agri-*
 14 *cultural Act of 1949 (7 U.S.C. 1441) is amended—*

15 (1) *in the first sentence of subsection (a), by*
 16 *striking “tobacco (except as otherwise provided here-*
 17 *in), corn,” and inserting “corn”;*

18 (2) *by striking subsections (c), (g), (h), and (i);*

19 (3) *in subsection (d)(3)—*

20 (A) *by striking “, except tobacco,”; and*

21 (B) *by striking “and no price support shall*
 22 *be made available for any crop of tobacco for*
 23 *which marketing quotas have been disapproved*
 24 *by producers;”;* and

1 (4) by redesignating subsections (d) and (e) as
2 subsections (c) and (d), respectively.

3 (c) *DEFINITION OF BASIC AGRICULTURAL COM-*
4 *MODITY.*—Section 408(c) of the Agricultural Act of 1949 (7
5 *U.S.C. 1428(c)*) is amended by striking “tobacco,”.

6 (d) *POWERS OF COMMODITY CREDIT CORPORATION.*—
7 *Section 5 of the Commodity Credit Corporation Charter Act*
8 *(15 U.S.C. 714e)* is amended by inserting “(other than to-
9 *bacco)*” after “*agricultural commodities*” each place it ap-
10 *pears.*

11 **SEC. 713. LIABILITY.**

12 *The amendments made by this subtitle shall not affect*
13 *the liability of any person under any provision of law so*
14 *amended with respect to any crop of tobacco planted before*
15 *the effective date of this Act.*

16 ***Subtitle B—Transitional Payments***
17 ***to Tobacco Quota Holders and***
18 ***Active Producers of Tobacco***

19 **SEC. 721. DEFINITIONS OF ACTIVE TOBACCO PRODUCER**
20 **AND QUOTA HOLDER.**

21 *In this subtitle:*

22 (1) *ACTIVE TOBACCO PRODUCER.*—*The term “ac-*
23 *tive tobacco producer” means an owner, operator,*
24 *landlord, tenant, or sharecropper who—*

1 (A) *shared in the risk of producing tobacco*
2 *on a farm where tobacco was produced or consid-*
3 *ered planted pursuant to a tobacco farm mar-*
4 *keting quota or farm acreage allotment estab-*
5 *lished under part I of subtitle B of title III of*
6 *the Agricultural Adjustment Act of 1938 (7*
7 *U.S.C. 1311 et seq.) for the 2004 marketing year;*
8 *and*

9 (B) *was actively engaged on that farm.*

10 (2) *CONSIDERED PLANTED.—The term “consid-*
11 *ered planted” means tobacco that was planted, but*
12 *failed to be produced as a result of a natural disaster,*
13 *as determined by the Secretary.*

14 (3) *TOBACCO QUOTA HOLDER.—The term “to-*
15 *bacco quota holder” means a person that was an*
16 *owner of a farm, as of July 1, 2004, for which a basic*
17 *tobacco farm marketing quota or farm acreage allot-*
18 *ment for quota tobacco was established for the 2004*
19 *tobacco marketing year.*

20 (4) *SECRETARY.—The term “Secretary” means*
21 *the Secretary of Agriculture.*

22 **SEC. 722. PAYMENTS TO TOBACCO QUOTA HOLDERS.**

23 (a) *PAYMENT REQUIRED.—The Secretary shall make*
24 *payments to each eligible tobacco quota holder for the termi-*
25 *nation of tobacco marketing quotas and related price sup-*

1 port under subtitle A, which shall constitute full and fair
2 compensation for any losses relating to such termination.

3 (b) *ELIGIBILITY.*—To be eligible to receive a payment
4 under this section, a person shall submit to the Secretary
5 an application containing such information as the Sec-
6 retary may require to demonstrate to the satisfaction of the
7 Secretary that the person satisfies the definition of tobacco
8 quota holder. The application shall be submitted within
9 such time, in such form, and in such manner as the Sec-
10 retary may require.

11 (c) *INDIVIDUAL BASE QUOTA LEVEL.*—

12 (1) *IN GENERAL.*—The Secretary shall establish
13 a base quota level applicable to each eligible tobacco
14 quota holder identified under subsection (b).

15 (2) *POUNDAGE QUOTAS.*—Subject to adjustment
16 under subsection (d), for each kind of tobacco for
17 which the marketing quota is expressed in pounds, the
18 base quota level for each tobacco quota holder shall be
19 equal to the basic tobacco marketing quota under the
20 Agriculture Adjustment Act of 1938 for the marketing
21 year in effect on the date of the enactment of this Act
22 for quota tobacco on the farm owned by the tobacco
23 quota holder.

24 (3) *MARKETING QUOTAS OTHER THAN POUND-*
25 *AGE QUOTAS.*—Subject to adjustment under sub-

1 *section (d), for each kind of tobacco for which there*
2 *is marketing quota or allotment on an acreage basis,*
3 *the base quota level for each tobacco quota holder shall*
4 *be the amount equal to the product obtained by multi-*
5 *plying—*

6 *(A) the basic tobacco farm marketing quota*
7 *or allotment for the marketing year in effect on*
8 *the date of the enactment of this Act, as estab-*
9 *lished by the Secretary for quota tobacco on the*
10 *farm owned by the tobacco quota holder; by*

11 *(B) the average county production yield per*
12 *acre for the county in which the farm is located*
13 *for the kind of tobacco for that marketing year.*

14 *(d) TREATMENT OF CERTAIN CONTRACTS AND AGREE-*
15 *MENTS.—*

16 *(1) EFFECT OF PURCHASE CONTRACT.—If there*
17 *was an agreement for the purchase of all or part of*
18 *a farm described in subsection (c) as of the date of*
19 *the enactment of this Act, and the parties to the sale*
20 *are unable to agree to the disposition of eligibility for*
21 *payments under this section, the Secretary, taking*
22 *into account any transfer of quota that has been*
23 *agreed to, shall provide for the equitable division of*
24 *the payments among the parties by adjusting the de-*

1 *termination of who is the tobacco quota holder with*
2 *respect to particular pounds of the quota.*

3 (2) *EFFECT OF AGREEMENT FOR PERMANENT*
4 *QUOTA TRANSFER.—If the Secretary determines that*
5 *there was in existence, as of the day before the date*
6 *of the enactment of this Act, an agreement for the per-*
7 *manent transfer of quota, but that the transfer was*
8 *not completed by that date, the Secretary shall con-*
9 *sider the tobacco quota holder to be the party to the*
10 *agreement that, as of that date, was the owner of the*
11 *farm to which the quota was to be transferred.*

12 (e) *TOTAL PAYMENT AMOUNTS BASED ON 2002 MAR-*
13 *KETING YEAR.—*

14 (1) *CALCULATION OF ANNUAL PAYMENT*
15 *AMOUNT.—During fiscal years 2005 through 2009, the*
16 *Secretary shall make payments to all eligible tobacco*
17 *quota holders identified under subsection (b) in an*
18 *annual amount equal to the product obtained by mul-*
19 *tiplying, for each kind of tobacco—*

20 (A) *\$1.40 per pound; by*

21 (B) *the total national basic marketing*
22 *quota established under the Agriculture Adjust-*
23 *ment Act of 1938 for the 2002 marketing year*
24 *for that kind of tobacco.*

1 (2) *MARKETING QUOTAS OTHER THAN POUND-*
2 *AGE QUOTAS.*—*For each kind of tobacco for which*
3 *there is a marketing quota or allotment on an acreage*
4 *basis, the Secretary shall convert the tobacco farm*
5 *marketing quotas or allotments established under the*
6 *Agriculture Adjustment Act of 1938 for the 2002 mar-*
7 *keting year for that kind of tobacco as the Secretary*
8 *considers appropriate.*

9 (f) *INDIVIDUAL PAYMENT AMOUNTS.*—*The annual*
10 *payment amount for each eligible tobacco quota holder with*
11 *respect to a kind of tobacco under this section shall bear*
12 *the same ratio to the amount determined by the Secretary*
13 *under subsection (e) with respect to that kind of tobacco*
14 *as the individual base quota level of that eligible tobacco*
15 *quota holder under subsection (c) with respect to that kind*
16 *of tobacco bears to the total base quota levels of all eligible*
17 *tobacco quota holders with respect to that kind of tobacco.*

18 (g) *DEATH OF TOBACCO QUOTA HOLDER.*—*If a to-*
19 *bacco quota holder who is entitled to payments under this*
20 *section dies and is survived by a spouse or one or more*
21 *dependents, the right to receive the payments shall transfer*
22 *to the surviving spouse or, if there is no surviving spouse,*
23 *to the estate of the tobacco quota holder.*

1 **SEC. 723. TRANSITION PAYMENTS FOR ACTIVE PRODUCERS**
2 **OF QUOTA TOBACCO.**

3 (a) *TRANSITION PAYMENTS REQUIRED.*—The Sec-
4 retary shall make transition payments under this section
5 to eligible active producers of quota tobacco.

6 (b) *ELIGIBILITY.*—To be eligible to receive a transition
7 payment under this section, a person shall submit to the
8 Secretary an application containing such information as
9 the Secretary may require to demonstrate to the satisfaction
10 of the Secretary that the person satisfies the definition of
11 active producer of quota tobacco. The application shall be
12 submitted within such time, in such form, and in such man-
13 ner as the Secretary may require.

14 (c) *CURRENT PRODUCTION BASE.*—The Secretary
15 shall establish a production base applicable to each eligible
16 active producer of quota tobacco identified under subsection
17 (b). A producer's production base shall be equal to the quan-
18 tity, in pounds, of quota tobacco subject to the basic mar-
19 keting quota marketed or considered planted by the pro-
20 ducer under the Agriculture Adjustment Act of 1938 for the
21 marketing year in effect on the date of the enactment of
22 this Act.

23 (d) *TOTAL PAYMENT AMOUNTS BASED ON 2002 MAR-*
24 *KETING YEAR.*—

25 (1) *CALCULATION OF ANNUAL PAYMENT*
26 *AMOUNT.*—During fiscal years 2005 through 2009, the

1 *Secretary shall make payments to all eligible active*
2 *producers of quota tobacco identified under subsection*
3 *(b) in an annual amount equal to the product ob-*
4 *tained by multiplying, for each kind of tobacco—*

5 *(A) \$0.60 per pound; by*

6 *(B) the total national effective marketing*
7 *quota established under the Agriculture Adjust-*
8 *ment Act of 1938 for the 2002 marketing year*
9 *for that kind of tobacco.*

10 *(2) MARKETING QUOTAS OTHER THAN POUND-*
11 *AGE QUOTAS.—For each kind of tobacco for which*
12 *there is a marketing quota or allotment on an acreage*
13 *basis, the Secretary shall convert the tobacco farm*
14 *marketing quotas or allotments established under the*
15 *Agriculture Adjustment Act of 1938 for the 2002 mar-*
16 *keting year for that kind of tobacco to a poundage*
17 *basis before executing the mathematical equation spec-*
18 *ified in paragraph (1).*

19 *(e) INDIVIDUAL PAYMENT AMOUNTS.—The annual*
20 *payment amount for each eligible active producer of quota*
21 *tobacco identified under subsection (b) with respect to a*
22 *kind of tobacco under this section shall bear the same ratio*
23 *to the amount determined by the Secretary under subsection*
24 *(d) with respect to that kind of tobacco as the individual*
25 *production base of that eligible active producer under sub-*

1 *section (c) with respect to that kind of tobacco bears to the*
2 *total production bases determined under that subsection for*
3 *all eligible active producers of that kind of tobacco.*

4 (f) *DEATH OF TOBACCO PRODUCER.*—*If a tobacco pro-*
5 *ducer who is entitled to payments under this section dies*
6 *and is survived by a spouse or one or more dependents, the*
7 *right to receive the payments shall transfer to the surviving*
8 *spouse or, if there is no surviving spouse, to the estate of*
9 *the tobacco producer.*

10 **SEC. 724. RESOLUTION OF DISPUTES.**

11 *Any dispute regarding the eligibility of a person to*
12 *receive a payment under this subtitle, or the amount of the*
13 *payment, shall be resolved by the county committee estab-*
14 *lished under section 8 of the Soil Conservation and Domes-*
15 *tic Allotment Act (16 U.S.C. 590h) for the county or other*
16 *area in which the farming operation of the person is lo-*
17 *cated.*

18 **SEC. 725. SOURCE OF FUNDS FOR PAYMENTS.**

19 *There is hereby appropriated to the Secretary, from*
20 *amounts in the general fund of the Treasury, such amounts*
21 *as the Secretary needs in order to make the payments re-*
22 *quired by sections 722 and 723, except that such amounts*
23 *shall not exceed the lesser of—*

24 (1) *amounts received in the Treasury under*
25 *chapter 52 of the Internal Revenue Code of 1986 (re-*

1 *lating to tobacco products and cigarette papers and*
 2 *tubes), or*

3 (2) \$9,600,000,000.

4 **TITLE VIII—TRADE PROVISIONS**

5 **SEC. 801. CEILING FANS.**

6 (a) *IN GENERAL.*—*Subchapter II of chapter 99 of the*
 7 *Harmonized Tariff Schedule of the United States is amend-*
 8 *ed by inserting in numerical sequence the following new*
 9 *heading:*

“	9902.84.14	Ceiling fans for permanent installa- tion (provided for in subheading 8414.51.00)	Free	No change	No change	On or before 12/31/2006	”.
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10 (b) *EFFECTIVE DATE.*—*The amendment made by this*
 11 *section applies to goods entered, or withdrawn from ware-*
 12 *house, for consumption on or after the 15th day after the*
 13 *date of enactment of this Act.*

14 **SEC. 802. CERTAIN STEAM GENERATORS, AND CERTAIN RE-**
 15 **ACTOR VESSEL HEADS, USED IN NUCLEAR FA-**
 16 **CILITIES.**

17 (a) *CERTAIN STEAM GENERATORS.*—*Heading*
 18 *9902.84.02 of the Harmonized Tariff Schedule of the United*
 19 *States is amended by striking “12/31/2006” and inserting*
 20 *“12/31/2008”.*

21 (b) *CERTAIN REACTOR VESSEL HEADS.*—*Subchapter*
 22 *II of chapter 99 of the Harmonized Tariff Schedule of the*

1 *United States is amended by inserting in numerical se-*
 2 *quence the following new heading:*

“	9902.84.03	Reactor vessel heads for nuclear reactors (provided for in subheading 8401.40.00)	Free	No change	No change	On or before 12/31/2008	”.
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3 (c) *EFFECTIVE DATE.*—

4 (1) *SUBSECTION (a).*—*The amendment made by*
 5 *subsection (a) shall take effect on the date of the en-*
 6 *actment of this Act.*

7 (2) *SUBSECTION (b).*—*The amendment made by*
 8 *subsection (b) shall apply to goods entered, or with-*
 9 *drawn from warehouse, for consumption on or after*
 10 *the 15th day after the date of the enactment of this*
 11 *Act.*

Union Calendar No. 317

108TH CONGRESS
2^D SESSION

H. R. 4520

[Report No. 108-548, Part I]

A BILL

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

JUNE 16, 2004

Reported from the Committee on Ways and Means with
an amendment

JUNE 16, 2004

Referral to the Committee on Agriculture extended for a
period ending not later than June 16, 2004

JUNE 16, 2004

The Committee on Agriculture discharged; committed to
the Committee of the Whole House on the State of the
Union and ordered to be printed