

PROVIDING FOR CONSIDERATION OF H.R. 7, CHARITABLE
GIVING ACT OF 2003

SEPTEMBER 16, 2003.—Referred to the House Calendar and ordered to be printed

Mr. LINDER, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 370]

The Committee on Rules, having had under consideration House Resolution 370, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 7, the Charitable Giving Act of 2003, under a modified closed rule. The rule provides one hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

The rule waives all points of order against consideration of the bill. The rule provides that the amendment in the nature of a substitute recommended by the Committee on Ways and Means, as modified by the amendment printed in Part A of this report, shall be considered as adopted.

The rule provides for consideration of the amendment in the nature of a substitute printed in Part B of this report if offered by Representative Cardin or his designee, which shall be considered as read and shall be debatable for one hour equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment printed in Part B of this report. Finally, the rule provides one motion to recommit with or without instructions.

The waiver of all points of order against consideration of this bill in the rule includes a waiver of clause 4(a) of rule XIII (requiring a three-day layover of the committee report), which is necessary because the committee report (H. Rept. 108-270, Part 1) was not filed

until Tuesday, September 16, 2003, and the bill may be considered by the House as early as Wednesday, September 17, 2003.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 197

Date: September 16, 2003.

Measure: H.R. 7—Charitable Giving Act of 2003.

Motion by: Mrs. Slaughter.

Summary of motion: To make in order and provide the appropriate waivers for the amendment offered by Representative Maloney which holds the IRS accountable for the tax treatment of 9/11 CDBG relief grants for individuals and businesses in lower Manhattan. Clarifies that the grants should be exempt from federal tax and should not be considered as gross income. Refunds taxes already paid on grants and makes future grants tax exempt.

Results: Defeated 4 to 9.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

PART A—SUMMARY OF AMENDMENT TO BE CONSIDERED AS ADOPTED

Boehner: Strikes provisions contained in the section of the bill pertaining to maternity group homes which provide for contract evaluation and a separate authorization for appropriations. The amendment seeks to conform the language of H.R. 7 with the language of H.R. 1925 (Runaway, Homeless, and Missing Children Protection Act) as passed by the House (404–14).

PART B—SUMMARY OF AMENDMENT MADE IN ORDER

Cardin: Amendment in the Nature of a Substitute. Includes all the provisions of the underlying bill, as reported by the Committee on Ways and Means. Adds a provision increasing the funding for the Social Security Block Grant (SSBG) by \$1.1 billion next year. Adds revenue offset provisions to prevent abusive tax shelter transactions and also tightens penalties for egregious tax shelter behavior.

PART A—TEXT OF AMENDMENT TO BE CONSIDERED AS ADOPTED

In section 304 of the bill, strike subsections (b) and (c) and “(a) PERMISSIBLE USE OF FUNDS.—” (subsection heading of subsection (a)).

PART B—TEXT OF AMENDMENT MADE IN ORDER

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) **SHORT TITLE.**—This Act may be cited as the “Charitable Giving Act of 2003”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is ex-

pressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; etc.

TITLE I—CHARITABLE GIVING INCENTIVES

- Sec. 101. Deduction for portion of charitable contributions to be allowed to individuals who do not itemize deductions.
- Sec. 102. Tax-free distributions from individual retirement plans for charitable purposes.
- Sec. 103. Increase in cap on corporate charitable contributions.
- Sec. 104. Charitable deduction for contributions of food inventory.
- Sec. 105. Reform of certain excise taxes related to private foundations.
- Sec. 106. Excise tax on unrelated business taxable income of charitable remainder trusts.
- Sec. 107. Expansion of charitable contribution allowed for scientific property used for research and for computer technology and equipment used for educational purposes.
- Sec. 108. Adjustment to basis of s corporation stock for certain charitable contributions.
- Sec. 109. Charitable organizations permitted to make collegiate housing and infrastructure grants.
- Sec. 110. Conduct of certain games of chance not treated as unrelated trade or business.
- Sec. 111. Excise taxes exemption for blood collector organizations.
- Sec. 112. Nonrecognition of gain on the sale of property used in performance of an exempt function.
- Sec. 113. Exemption of qualified 501(c)(3) bonds for nursing homes from Federal guarantee prohibitions.

TITLE II—TAX REFORM AND IMPROVEMENTS RELATING TO CHARITABLE ORGANIZATIONS AND PROGRAMS

- Sec. 201. Suspension of tax-exempt status of terrorist organizations.
- Sec. 202. Clarification of definition of church tax inquiry.
- Sec. 203. Extension of declaratory judgment remedy to tax-exempt organizations.
- Sec. 204. Landowner incentives programs.
- Sec. 205. Modifications to section 512(b)(13).
- Sec. 206. Simplification of lobbying expenditure limitation.
- Sec. 207. Pilot project for forest conservation activities.

TITLE III—OTHER PROVISIONS

- Sec. 301. Compassion capital fund.
- Sec. 302. Reauthorization of assets for independence demonstration.
- Sec. 303. Sense of the Congress regarding corporate contributions to faith-based organizations, etc.

TITLE IV—SOCIAL SERVICES BLOCK GRANT

- Sec. 401. Restoration of funds for the social services block grant.
- Sec. 402. Restoration of authority to transfer up to 10 percent of TANF funds to the social services block grant.
- Sec. 403. Requirement to submit annual report on State activities.

TITLE V—ABUSIVE TAX SHELTERS

- Sec. 501. Short title.
- Sec. 502. Findings and purpose.

Subtitle A—Provisions Designed to Curtail Tax Shelters

- Sec. 511. Clarification of economic substance doctrine.
- Sec. 512. Penalty for failing to disclose reportable transaction.
- Sec. 513. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
- Sec. 514. Penalty for understatements attributable to transactions lacking economic substance, etc.
- Sec. 515. Modifications of substantial understatement penalty for nonreportable transactions.

- Sec. 516. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
- Sec. 517. Disclosure of reportable transactions.
- Sec. 518. Modifications to penalty for failure to register tax shelters.
- Sec. 519. Modification of penalty for failure to maintain lists of investors.
- Sec. 520. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
- Sec. 521. Understatement of taxpayer's liability by income tax return preparer.
- Sec. 522. Penalty on failure to report interests in foreign financial accounts.
- Sec. 523. Frivolous tax submissions.
- Sec. 524. Regulation of individuals practicing before the Department of Treasury.
- Sec. 525. Penalty on promoters of tax shelters.
- Sec. 526. Statute of limitations for taxable years for which listed transactions not reported.
- Sec. 527. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.
- Subtitle B—Affirmation of Consolidated Return Regulation Authority
- Sec. 531. Affirmation of consolidated return regulation authority.

TITLE I—CHARITABLE GIVING INCENTIVES

SEC. 101. DEDUCTION FOR PORTION OF CHARITABLE CONTRIBUTIONS TO BE ALLOWED TO INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS.

(a) **IN GENERAL.**—Section 170 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) **DEDUCTION FOR INDIVIDUALS NOT ITEMIZING DEDUCTIONS.**—

“(1) **IN GENERAL.**—In the case of an individual who does not itemize deductions for a taxable year, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the amount allowable under subsection (a) for the taxable year for cash contributions (determined without regard to any carryover), to the extent that such contributions exceed \$250 (\$500 in the case of a joint return) but do not exceed \$500 (\$1,000 in the case of a joint return).

“(2) **TERMINATION.**—Paragraph (1) shall not apply to any taxable year beginning after December 31, 2005.”.

(b) **DIRECT CHARITABLE DEDUCTION.**—

(1) **IN GENERAL.**—Subsection (b) of section 63 (defining taxable income) is amended by striking “and” at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting “, and”, and by adding at the end the following new paragraph:

“(3) the direct charitable deduction.”.

(2) **DEFINITION.**—Section 63 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

“(g) **DIRECT CHARITABLE DEDUCTION.**—For purposes of this section, the term ‘direct charitable deduction’ means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(m).”.

(3) **CONFORMING AMENDMENT.**—Subsection (d) of section 63 is amended by striking “and” at the end of paragraph (1), by

striking the period at the end of paragraph (2) and inserting “, and”, and by adding at the end the following new paragraph: “(3) the direct charitable deduction.”.

(c) **STUDY.**—

(1) **IN GENERAL.**—The Secretary of the Treasury shall study the effect of the amendments made by this section on increased charitable giving and taxpayer compliance, including a comparison of taxpayer compliance between taxpayers who itemize their charitable contributions and taxpayers who claim a direct charitable deduction.

(2) **REPORT.**—Not later than December 31, 2006, the Secretary of the Treasury shall report on the study required under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 102. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.

(a) **IN GENERAL.**—Subsection (d) of section 408 (relating to individual retirement accounts) is amended by adding at the end the following new paragraph:

“(8) **DISTRIBUTIONS FOR CHARITABLE PURPOSES.**—

“(A) **IN GENERAL.**—No amount shall be includible in gross income by reason of a qualified charitable distribution.

“(B) **QUALIFIED CHARITABLE DISTRIBUTION.**—For purposes of this paragraph, the term ‘qualified charitable distribution’ means any distribution from an individual retirement plan other than a plan described in subsection (k) or (p) of section 408—

“(i) which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70 $\frac{1}{2}$, and

“(ii) which is made directly by the trustee—

“(I) to an organization described in section 170(c), or

“(II) to a split-interest entity.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such plan is maintained, the spouse of such individual, or any organization described in section 170(c).

“(C) **CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE.**—

For purposes of this paragraph—

“(i) **DIRECT CONTRIBUTIONS.**—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable

under section 170 (determined without regard to subsection (b) thereof and this paragraph).

“(ii) SPLIT-INTEREST GIFTS.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

“(D) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts distributed from all individual retirement plans were treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion of such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

“(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES.—

“(i) CHARITABLE REMAINDER TRUSTS.—Notwithstanding section 664(b), distributions made from a trust described in subparagraph (G)(i) shall be treated as ordinary income in the hands of the beneficiary to whom is paid the annuity described in section 664(d)(1)(A) or the payment described in section 664(d)(2)(A).

“(ii) POOLED INCOME FUNDS.—No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)) by reason of a qualified charitable distribution to such fund, and all distributions from the fund which are attributable to qualified charitable distributions shall be treated as ordinary income to the beneficiary.

“(iii) CHARITABLE GIFT ANNUITIES.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

“(F) DENIAL OF DEDUCTION.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

“(G) SPLIT-INTEREST ENTITY DEFINED.—For purposes of this paragraph, the term ‘split-interest entity’ means—

“(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)) which must be funded exclusively by qualified charitable distributions,

“(ii) a pooled income fund (as defined in section 642(c)(5)), but only if the fund accounts separately for amounts attributable to qualified charitable distributions, and

“(iii) a charitable gift annuity (as defined in section 501(m)(5)).”.

(b) MODIFICATIONS RELATING TO INFORMATION RETURNS BY CERTAIN TRUSTS.—

(1) RETURNS.—Section 6034 (relating to returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)) is amended to read as follows:

“SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

“(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

“(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION UNDER SECTION 642(c).—

“(1) IN GENERAL.—Every trust not required to file a return under subsection (a) but claiming a deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including—

“(A) the amount of the deduction taken under section 642(c) within such year,

“(B) the amount paid out within such year which represents amounts for which deductions under section 642(c) have been taken in prior years,

“(C) the amount for which such deductions have been taken in prior years but which has not been paid out at the beginning of such year,

“(D) the amount paid out of principal in the current and prior years for the purposes described in section 642(c),

“(E) the total income of the trust within such year and the expenses attributable thereto, and

“(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to a trust for any taxable year if—

“(A) all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries, or

“(B) the trust is described in section 4947(a)(1).”.

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS.—Paragraph (2) of section 6652(c) (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

“(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

“(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

“(ii) in the case of any trust with gross income in excess of \$250,000, the first sentence of paragraph (1)(A) shall be applied by substituting ‘\$100’ for ‘\$20’, and

the second sentence thereof shall be applied by substituting ‘\$50,000’ for ‘\$10,000’, and

“(iii) the third sentence of paragraph (1)(A) shall be disregarded.

In addition to any penalty imposed on the trust pursuant to this subparagraph, if the person required to file such return knowingly fails to file the return, such penalty shall also be imposed on such person who shall be personally liable for such penalty.”.

(3) **CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES.**—Subsection (b) of section 6104 (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: “In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).”.

(c) **EFFECTIVE DATES.**—

(1) **SUBSECTION (a).**—The amendment made by subsection (a) shall apply to distributions made after December 31, 2003.

(2) **SUBSECTION (b).**—The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2003.

SEC. 103. INCREASE IN CAP ON CORPORATE CHARITABLE CONTRIBUTIONS.

(a) **IN GENERAL.**—Paragraph (2) of section 170(b) (relating to corporations) is amended by striking “10 percent” and inserting “the applicable percentage”.

(b) **APPLICABLE PERCENTAGE.**—Subsection (b) of section 170 is amended by adding at the end the following new paragraph:

“(3) **APPLICABLE PERCENTAGE DEFINED.**—For purposes of paragraph (2), the applicable percentage shall be determined in accordance with the following table:

“For taxable years beginning in calendar year—	The applicable percentage is—
2004	11
2005	12
2006	13
2007	14
2008 through 2011	15
2012 and thereafter	20.”.

(c) **CONFORMING AMENDMENTS.**—

(1) Sections 512(b)(10) and 805(b)(2)(A) are each amended by striking “10 percent” each place it occurs and inserting “the applicable percentage (determined under section 170(b)(3))”.

(2) Sections 545(b)(2) and 556(b)(2) are each amended by striking “10-percent limitation” and inserting “applicable percentage limitation”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 104. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.

(a) **IN GENERAL.**—Paragraph (3) of section 170(e) (relating to special rule for certain contributions of inventory and other property) is amended by redesignating subparagraph (C) as subparagraph

(D) and by inserting after subparagraph (B) the following new subparagraph:

“(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—

“(i) GENERAL RULE.—In the case of a charitable contribution of food from any trade or business (or interest therein) of the taxpayer, this paragraph shall be applied—

“(I) without regard to whether the contribution is made by a C corporation, and

“(II) only to food that is apparently wholesome food.

“(ii) LIMITATION.—In the case of a taxpayer other than a C corporation, the aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed the applicable percentage (within the meaning of subsection (b)(3)) of the taxpayer’s aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year, computed without regard to this section.

“(iii) DETERMINATION OF FAIR MARKET VALUE.—In the case of a qualified contribution of apparently wholesome food to which this paragraph applies and which, solely by reason of internal standards of the taxpayer or lack of market, cannot or will not be sold, the fair market value of such food shall be determined by taking into account the price at which the same or substantially the same food items (as to both type and quality) are sold by the taxpayer at the time of the contribution (or, if not so sold at such time, in the recent past).

“(iv) APPARENTLY WHOLESOME FOOD.—For purposes of this subparagraph, the term ‘apparently wholesome food’ has the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.”

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

SEC. 105. REFORM OF CERTAIN EXCISE TAXES RELATED TO PRIVATE FOUNDATIONS.

(a) REDUCTION OF TAX ON NET INVESTMENT INCOME.—Section 4940(a) (relating to tax-exempt foundations) is amended by striking “2 percent” and inserting “1 percent”.

(b) REPEAL OF REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.—Section 4940 (relating to excise tax based on investment income) is amended by striking subsection (e).

(c) MODIFICATION OF EXCISE TAX ON SELF-DEALING.—The second sentence of section 4941(a)(1) (relating to initial excise tax imposed on self-dealer) is amended by striking “5 percent” and inserting “25 percent”.

(d) MODIFICATION OF EXCISE TAX ON FAILURE TO DISTRIBUTE INCOME.—

(1) CERTAIN ADMINISTRATIVE EXPENSES NOT TREATED AS DISTRIBUTIONS.—Section 4942(g) is amended by striking paragraph (4) and inserting the following new paragraphs:

“(4) LIMITATION ON ADMINISTRATIVE EXPENSES TREATED AS DISTRIBUTIONS.—

“(A) IN GENERAL.—For purposes of paragraph (1)(A), the following administrative expenses shall not be treated as qualifying distributions:

“(i) Any administrative expense which is not directly attributable to direct charitable activities, grant selection activities, grant monitoring and administration activities, compliance with applicable Federal, State, or local law, or furthering public accountability of the private foundation.

“(ii) Any compensation paid to a disqualified person to the extent that such compensation exceeds an annual rate of \$100,000.

“(iii) Any expense incurred for transportation by air unless such transportation is regularly-scheduled commercial air transportation.

“(iv) Any expense incurred for regularly-scheduled commercial air transportation to the extent that such expense exceeds the cost of such transportation in coach-class accommodations.

“(B) ADJUSTMENT FOR INFLATION.—In the case of a taxable year beginning after December 31, 2004, the \$100,000 amount in subparagraph (A)(ii) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2003’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$50, such amount shall be rounded to the next lowest multiple of \$50.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of paragraph (4). Such regulations shall provide that administrative expenses which are excluded from qualifying distributions solely by reason of the limitations in paragraph (4) shall not for such reason subject a private foundation to any other excise taxes imposed by this subchapter.”.

(2) DISALLOWANCE NOT TO APPLY TO CERTAIN PRIVATE FOUNDATIONS.—

(A) IN GENERAL.—Section 4942(j)(3) (defining operating foundation) is amended—

(i) by striking “(within the meaning of paragraph (1) or (2) of subsection (g))” each place it appears, and

(ii) by adding at the end the following new sentence: “For purposes of this paragraph, the term ‘qualifying distributions’ means qualifying distributions within the meaning of paragraph (1) or (2) of subsection (g) (determined without regard to subsection (g)(4)).”.

(B) CONFORMING AMENDMENT.—Section 4942(f)(2)(C)(i) is amended by inserting “(determined without regard to subsection (g)(4))” after “within the meaning of subsection (g)(1)(A)”.

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

SEC. 106. EXCISE TAX ON UNRELATED BUSINESS TAXABLE INCOME OF CHARITABLE REMAINDER TRUSTS.

(a) IN GENERAL.—Subsection (c) of section 664 (relating to exemption from income taxes) is amended to read as follows:

“(c) TAXATION OF TRUSTS.—

“(1) INCOME TAX.—A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle.

“(2) EXCISE TAX.—

“(A) IN GENERAL.—In the case of a charitable remainder annuity trust or a charitable remainder unitrust that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

“(B) CERTAIN RULES TO APPLY.—The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

“(C) CHARACTER OF DISTRIBUTIONS AND COORDINATION WITH DISTRIBUTION REQUIREMENTS.—The amounts taken into account in determining unrelated business taxable income (as defined in subparagraph (A)) shall not be taken into account for purposes of—

“(i) subsection (b),

“(ii) determining the value of trust assets under subsection (d)(2), and

“(iii) determining income under subsection (d)(3).

“(D) TAX COURT PROCEEDINGS.—For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.”.

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

SEC. 107. EXPANSION OF CHARITABLE CONTRIBUTION ALLOWED FOR SCIENTIFIC PROPERTY USED FOR RESEARCH AND FOR COMPUTER TECHNOLOGY AND EQUIPMENT USED FOR EDUCATIONAL PURPOSES.

(a) SCIENTIFIC PROPERTY USED FOR RESEARCH.—

(1) IN GENERAL.—Clause (ii) of section 170(e)(4)(B) (defining qualified research contributions) is amended by inserting “or assembled” after “constructed”.

(2) CONFORMING AMENDMENT.—Clause (iii) of section 170(e)(4)(B) is amended by inserting “or assembling” after “construction”.

(b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.—

(1) **IN GENERAL.**—Clause (ii) of section 170(e)(6)(B) is amended by inserting “or assembled” after “constructed” and “or assembling” after “construction”.

(2) **SPECIAL RULE MADE PERMANENT.**—Section 170(e)(6) is amended by striking subparagraph (G).

(3) **CONFORMING AMENDMENTS.**—Subparagraph (D) of section 170(e)(6) is amended by inserting “or assembled” after “constructed” and “or assembling” after “construction”.

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

SEC. 108. ADJUSTMENT TO BASIS OF S CORPORATION STOCK FOR CERTAIN CHARITABLE CONTRIBUTIONS.

(a) **IN GENERAL.**—Paragraph (2) of section 1367(a) (relating to adjustments to basis of stock of shareholders, etc.) is amended by adding at the end the following new flush sentence:

“The decrease under subparagraph (B) by reason of a charitable contribution (as defined in section 170(c)) of property shall be the amount equal to the shareholder’s pro rata share of the adjusted basis of such property.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 109. CHARITABLE ORGANIZATIONS PERMITTED TO MAKE COLLEGIATE HOUSING AND INFRASTRUCTURE GRANTS.

(a) **IN GENERAL.**—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.), as amended by section 201, is further amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

“(q) **TREATMENT OF ORGANIZATIONS MAKING COLLEGIATE HOUSING AND INFRASTRUCTURE IMPROVEMENT GRANTS.**—

“(1) **IN GENERAL.**—For purposes of subsection (c)(3) and sections 170(c)(2)(B), 2055(a), and 2522(a)(2), an organization shall not fail to be treated as organized and operated exclusively for charitable or educational purposes solely because such organization makes collegiate housing and infrastructure grants to an organization described in subsection (c)(7), so long as, at the time of the grant, substantially all of the active members of the recipient organization are full-time students at the college or university with which such recipient organization is associated.

“(2) **HOUSING AND INFRASTRUCTURE GRANTS.**—For purposes of paragraph (1), collegiate housing and infrastructure grants are grants to provide, improve, operate, or maintain collegiate housing that may involve more than incidental social, recreational, or private purposes, so long as such grants are for purposes that would be permissible for a dormitory of the college or university referred to in paragraph (1). A grant shall not be treated as a collegiate housing and infrastructure grant for purposes of paragraph (1) to the extent that such grant is used to provide physical fitness equipment.

“(3) **GRANTS TO CERTAIN ORGANIZATIONS HOLDING TITLE TO PROPERTY, ETC.**—For purposes of this subsection, a collegiate housing and infrastructure grant to an organization described in subsection (c)(2) or (c)(7) holding title to property exclusively for the benefit of an organization described in subsection (c)(7)

shall be considered a grant to the organization described in subsection (c)(7) for whose benefit such property is held.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to grants made after December 31, 2003.

SEC. 110. CONDUCT OF CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS.

(a) **IN GENERAL.**—Paragraph (1) of section 513(f) (relating to certain bingo games) is amended to read as follows:

“(1) **IN GENERAL.**—The term ‘unrelated trade or business’ does not include—

“(A) any trade or business which consists of conducting bingo games, and

“(B) any trade or business which consists of conducting qualified games of chance if the net proceeds from such trade or business are paid or set aside for payment for purposes described in section 170(c)(2)(B), for the promotion of social welfare (within the meaning of section 501(c)(4)), or for a purpose for which State law specifically authorizes the expenditure of such proceeds.”.

(b) **QUALIFIED GAMES OF CHANCE.**—Subsection (f) of section 513 is amended by adding at the end the following new paragraph:

“(3) **QUALIFIED GAMES OF CHANCE.**—For purposes of paragraph (1), the term ‘qualified game of chance’ means any game of chance (other than bingo) conducted by an organization if—

“(A) such organization is licensed pursuant to State law to conduct such game,

“(B) only organizations which are organized as nonprofit corporations or are exempt from tax under section 501(a) may be so licensed to conduct such game within the State, and

“(C) the conduct of such game does not violate State or local law.”

(c) **CLERICAL AMENDMENT.**—The subsection heading of section 513(f) is amended by striking “BINGO GAMES” and inserting “GAMES OF CHANCE”.

(d) **EFFECTIVE DATE.**— The amendments made by this section shall apply to games conducted after December 31, 2003.

SEC. 111. EXCISE TAXES EXEMPTION FOR BLOOD COLLECTOR ORGANIZATIONS.

(a) **EXEMPTION FROM IMPOSITION OF SPECIAL FUELS TAX.**—Section 4041(g) (relating to other exemptions) is amended by striking “and” at the end of paragraph (3), by striking the period in paragraph (4) and inserting “; and”, and by inserting after paragraph (4) the following new paragraph:

“(5) with respect to the sale of any liquid to a qualified blood collector organization (as defined in section 7701(a)(48)) for such organization’s exclusive use, or with respect to the use by a qualified blood collector organization of any liquid as a fuel.”.

(b) **EXEMPTION FROM MANUFACTURERS EXCISE TAX.**—

(1) **IN GENERAL.**—Section 4221(a) (relating to certain tax-free sales) is amended by striking “or” at the end of paragraph (4), by adding “or” at the end of paragraph (5), and by inserting after paragraph (5) the following new paragraph:

“(6) to a qualified blood collector organization (as defined in section 7701(a)(48)) for such organization’s exclusive use.”.

(2) CONFORMING AMENDMENTS.—

(A) The second sentence of section 4221(a) is amended by striking “Paragraphs (4) and (5)” and inserting “Paragraphs (4), (5), and (6)”.

(B) Section 6421(c) is amended by striking “or (5)” and inserting “(5), or (6)”.

(c) EXEMPTION FROM COMMUNICATION EXCISE TAX.—

(1) IN GENERAL.—Section 4253 (relating to exemptions) is amended by redesignating subsection (k) as subsection (l) and inserting after subsection (j) the following new subsection:

“(k) EXEMPTION FOR QUALIFIED BLOOD COLLECTOR ORGANIZATIONS.—Under regulations provided by the Secretary, no tax shall be imposed under section 4251 on any amount paid by a qualified blood collector organization (as defined in section 7701(a)(48)) for services or facilities furnished to such organization.”

(2) CONFORMING AMENDMENT.—Section 4253(l), as redesignated by paragraph (1), is amended by striking “or (j)” and inserting “(j), or (k)”.

(d) CREDIT FOR REFUND FOR CERTAIN TAXES ON SALES AND SERVICES.—

(1) DEEMED OVERPAYMENT.—

(A) IN GENERAL.—Section 6416(b)(2) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (D) the following new subparagraph:

“(E) sold to a qualified blood collector organization (as defined in section 7701(a)(48)) for such organization’s exclusive use;”

(B) CONFORMING AMENDMENTS.—Section 6416(b)(2) is amended—

(i) by striking “Subparagraphs (C) and (D)” and inserting “Subparagraphs (C), (D), and (E)”, and

(ii) by striking “(C), and (D)” and inserting “(C), (D), and (E)”.

(2) SALES OF TIRES.—Clause (ii) of section 6416(b)(4)(B) is amended by inserting “sold to a qualified blood collector organization (as defined in section 7701(a)(48)) for its exclusive use,” after “for its exclusive use,”.

(e) DEFINITION OF QUALIFIED BLOOD COLLECTOR ORGANIZATION.—Section 7701(a) is amended by inserting at the end the following new paragraph:

“(48) QUALIFIED BLOOD COLLECTOR ORGANIZATION.—The term ‘qualified blood collector organization’ means an organization which is—

“(A) described in section 501(c)(3) and exempt from tax under section 501(a),

“(B) registered by the Food and Drug Administration to collect blood, and

“(C) primarily engaged in the activity of the collection of blood.”

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2004.

SEC. 112. NONRECOGNITION OF GAIN ON THE SALE OF PROPERTY USED IN PERFORMANCE OF AN EXEMPT FUNCTION.

(a) **IN GENERAL.**—Subparagraph (D) of section 512(a)(3) is amended to read as follows:

“(D) **NONRECOGNITION OF GAIN.**—

“(i) **IN GENERAL.**—If property used directly in the performance of the exempt function of an organization described in paragraph (7), (9), (17), or (20) of section 501(c) is sold by such organization, and within a period beginning 1 year before the date of such sale, and ending 3 years (10 years, in the case of an organization described in section 501(c)(7)) after such date, other property is purchased and used by such organization directly in the performance of its exempt function, gain (if any) from such sale shall be recognized only to the extent that such organization’s sales price of the old property exceeds the organization’s cost of purchasing the other property.

“(ii) **STATUTE OF LIMITATIONS.**—If an organization described in section 501(c)(7) sells property on which gain is not recognized, in whole or in part, by reason of clause (i), then the statutory period for the assessment of any deficiency attributable to such gain shall not expire until the end of the 3-year period beginning on the date that the Secretary is notified by such organization (in such manner as the Secretary may prescribe) that—

“(I) the organization has met the requirements of clause (i) with respect to gain which was not recognized,

“(II) the organization does not intend to meet such requirements, or

“(III) the organization failed to meet such requirements within the prescribed period.

For the purposes of this clause, any deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

“(iii) **DESTRUCTION AND LOSS.**—For purposes of this subparagraph, the destruction in whole or in part, theft, seizure, requisition, or condemnation of property, shall be treated as the sale of such property, and rules similar to the rules provided by subsections (b), (c), (e), and (j) of section 1034 (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) shall apply.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply with respect to the sale of any property for which the 3-year period for offsetting gain by purchasing other property under subparagraph (D) of section 512(a)(3) of the Internal Revenue Code (as in effect on the day before the date of the enactment of this Act) had not expired as of January 1, 2001.

SEC. 113. EXEMPTION OF QUALIFIED 501(c)(3) BONDS FOR NURSING HOMES FROM FEDERAL GUARANTEE PROHIBITIONS.

(a) **IN GENERAL.**—For purposes of section 149(b)(1) of the Internal Revenue Code of 1986, any qualified 501(c)(3) bond (as defined in section 145 of such Code) shall not be treated as federally guaranteed solely because such bond is part of an issue supported by a letter of credit, if such bond—

(1) is issued after December 31, 2003, and before the date which is 1 year after the date of the enactment of this Act, and

(2) is part of an issue 95 percent or more of the net proceeds of which are to be used to finance 1 or more of the following facilities primarily for the benefit of the elderly:

- (A) Licensed nursing home facility.
- (B) Licensed or certified assisted living facility.
- (C) Licensed personal care facility.
- (D) Continuing care retirement community.

(b) **LIMITATION ON ISSUER.**—Subsection (a) shall not apply to any bond described in such subsection if the aggregate authorized face amount of the issue of which such bond is a part, when increased by the outstanding amount of such bonds issued by the issuer during the period described in subsection (a)(1) exceeds \$15,000,000.

(c) **LIMITATION ON BENEFICIARY.**—Rules similar to the rules of section 144(a)(10) of the Internal Revenue Code of 1986 shall apply for purposes of this section, except that—

(1) “\$15,000,000” shall be substituted for “\$40,000,000” in subparagraph (A) thereof, and

(2) such rules shall be applied—

(A) only with respect to bonds described in this section, and

(B) with respect to the aggregate authorized face amount of all issues of such bonds which are allocable to the beneficiary.

(d) **CONTINUING CARE RETIREMENT COMMUNITY.**—For purposes of this section, the term “continuing care retirement community” means a community which provides, on the same campus, a consortium of residential living options and support services to persons at least 60 years of age under a written agreement. For purposes of the preceding sentence, the residential living options shall include independent living units, nursing home beds, and either assisted living units or personal care beds.

TITLE II—TAX REFORM AND IMPROVEMENTS RELATING TO CHARITABLE ORGANIZATIONS AND PROGRAMS

SEC. 201. SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.

(a) **IN GENERAL.**—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

“(p) **SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.**—

“(1) IN GENERAL.—The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall be suspended during the period described in paragraph (3).

“(2) TERRORIST ORGANIZATIONS.—An organization is described in this paragraph if such organization is designated or otherwise individually identified—

“(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

“(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

“(C) in or pursuant to an Executive order issued under the authority of any Federal law if—

“(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

“(ii) such Executive order refers to this subsection.

“(3) PERIOD OF SUSPENSION.—With respect to any organization described in paragraph (2), the period of suspension—

“(A) begins on the later of—

“(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

“(ii) the date of the enactment of this subsection, and

“(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

“(4) DENIAL OF DEDUCTION.—No deduction shall be allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

“(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION.—Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

“(6) ERRONEOUS DESIGNATION.—

“(A) IN GENERAL.—If—

“(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

“(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

“(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization,

credit or refund (with interest) with respect to such overpayment shall be made.

“(B) WAIVER OF LIMITATIONS.—If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including *res judicata*), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

“(7) NOTICE OF SUSPENSIONS.—If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to designations made before, on, or after the date of the enactment of this Act.

SEC. 202. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

Subsection (i) of section 7611 (relating to section not to apply to criminal investigations, etc.) is amended by striking “or” at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting “, or”, and by inserting after paragraph (5) the following:

“(6) information provided by the Secretary related to the standards for exemption from tax under this title and the requirements under this title relating to unrelated business taxable income.”.

SEC. 203. EXTENSION OF DECLARATORY JUDGMENT REMEDY TO TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (1) of section 7428(a) (relating to creation of remedy) is amended—

(1) in subparagraph (B) by inserting after “509(a)” the following: “or as a private operating foundation (as defined in section 4942(j)(3))”; and

(2) by amending subparagraph (C) to read as follows:

“(C) with respect to the initial qualification or continuing qualification of an organization as an organization described in subsection (c) (other than paragraph (3)) or (d) of section 501 which is exempt from tax under section 501(a), or”.

(b) COURT JURISDICTION.—Subsection (a) of section 7428 is amended in the material following paragraph (2) by striking “United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia” and inserting the following: “United States Tax Court (in the case of any such determination or failure) or the United States Claims Court or the district court of the United States for the District of Columbia (in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to pleadings filed with respect to determinations (or requests for determinations) made after the date of the enactment of this Act.

SEC. 204. LANDOWNER INCENTIVES PROGRAMS.

(a) IN GENERAL.—Subsection (a) of section 126 is amended by redesignating paragraph (10) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

“(10) Landowner initiatives programs to conserve threatened, endangered, or imperiled species, or protect or restore habitat carried out under—

“(A) the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.),

“(B) the Fish and Wildlife Act of 1956 (16 U.S.C. 742f),

or

“(C) section 6 of the Endangered Species Act (16 U.S.C. 11531 et seq.)”.

(b) EXCLUDABLE PORTION.—Subparagraph (A) of section 126(b)(1) is amended by inserting after “Secretary of Agriculture” the following: “(the Secretary of the Interior, in the case of the landowner incentives programs described in subsection (a)(10) and the programs described in subsection (a)(11) that are implemented by the Department of the Interior)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after December 31, 2003, in taxable years ending after such date.

SEC. 205. MODIFICATIONS TO SECTION 512(b)(13).

(a) IN GENERAL.—Paragraph (13) of section 512(b) (relating to special rules for certain amounts received from controlled entities) is amended by redesignating subparagraph (E) as subparagraph (F) and by inserting after subparagraph (D) the following new subparagraph:

“(E) PARAGRAPH TO APPLY ONLY TO EXCESS PAYMENTS.—

“(i) IN GENERAL.—Subparagraph (A) shall apply only to the portion of a specified payment received or accrued by the controlling organization that exceeds the amount which would have been paid or accrued if such payment met the requirements prescribed under section 482.

“(ii) ADDITION TO TAX FOR VALUATION MISSTATEMENTS.—The tax imposed by this chapter on the controlling organization shall be increased by an amount equal to 20 percent of the larger of—

“(I) such excess determined without regard to any amendment or supplement to a return of tax, or

“(II) such excess determined with regard to all such amendments and supplements.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to payments received or accrued after December 31, 2003.

(2) PAYMENTS SUBJECT TO BINDING CONTRACT TRANSITION RULE.—If the amendments made by section 1041 of the Taxpayer Relief Act of 1997 did not apply to any amount received or accrued in the first 2 taxable years beginning on or after the date of the enactment of the Taxpayer Relief Act of 1997 under any contract described in subsection (b)(2) of such section, such amendments also shall not apply to amounts received or accrued under such contract before January 1, 2001.

SEC. 206. SIMPLIFICATION OF LOBBYING EXPENDITURE LIMITATION.

(a) REPEAL OF GRASSROOTS EXPENDITURE LIMIT.—Paragraph (1) of section 501(h) (relating to expenditures by public charities to influence legislation) is amended to read as follows:

“(1) GENERAL RULE.—In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year.”.

(b) EXCESS LOBBYING EXPENDITURES.—Section 4911(b) is amended to read as follows:

“(b) EXCESS LOBBYING EXPENDITURES.—For purposes of this section, the term ‘excess lobbying expenditures’ means, for a taxable year, the amount by which the lobbying expenditures made by the organization during the taxable year exceed the lobbying non-taxable amount for such organization for such taxable year.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 501(h)(2) is amended by striking subparagraphs (C) and (D).

(2) Section 4911(c) is amended by striking paragraphs (3) and (4).

(3) Paragraph (1)(A) of section 4911(f) is amended by striking “limits of section 501(h)(1) have” and inserting “limit of section 501(h)(1) has”.

(4) Paragraph (1)(C) of section 4911(f) is amended by striking “limits of section 501(h)(1) are” and inserting “limit of section 501(h)(1) is”.

(5) Paragraphs (4)(A) and (4)(B) of section 4911(f) are each amended by striking “limits of section 501(h)(1)” and inserting “limit of section 501(h)(1)”.

(6) Paragraph (8) of section 6033(b) (relating to certain organizations described in section 501(c)(3)) is amended by inserting “and” at the end of subparagraph (A) and by striking subparagraphs (C) and (D).

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 207. PILOT PROJECT FOR FOREST CONSERVATION ACTIVITIES.

(a) **TAX-EXEMPT BOND FINANCING.**—

(1) **IN GENERAL.**—For purposes of the Internal Revenue Code of 1986, any qualified forest conservation bond shall be treated as an exempt facility bond under section 142 of such Code.

(2) **QUALIFIED FOREST CONSERVATION BOND.**—For purposes of this section, the term “qualified forest conservation bond” means any bond issued as part of an issue if—

(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3) of such Code) of such issue are to be used for qualified project costs,

(B) such bond is an obligation of the State of Washington or any political subdivision thereof, and

(C) such bond is issued for a qualified organization before December 31, 2006.

(3) **LIMITATION ON AGGREGATE AMOUNT ISSUED.**—The maximum aggregate face amount of bonds which may be issued under this subsection shall not exceed \$250,000,000.

(4) **QUALIFIED PROJECT COSTS.**—For purposes of this subsection, the term “qualified project costs” means the sum of—

(A) the cost of acquisition by the qualified organization from an unrelated person of forests and forest land located in the State of Washington which at the time of acquisition or immediately thereafter are subject to a conservation restriction described in subsection (c)(2),

(B) interest on the qualified forest conservation bonds for the 3-year period beginning on the date of issuance of such bonds, and

(C) credit enhancement fees which constitute qualified guarantee fees (within the meaning of section 148 of such Code).

(5) **SPECIAL RULES.**—In applying the Internal Revenue Code of 1986 to any qualified forest conservation bond, the following modifications shall apply:

(A) Section 146 of such Code (relating to volume cap) shall not apply.

(B) For purposes of section 147(b) of such Code (relating to maturity may not exceed 120 percent of economic life), the land and standing timber acquired with proceeds of qualified forest conservation bonds shall have an economic life of 35 years.

(C) Subsections (c) and (d) of section 147 of such Code (relating to limitations on acquisition of land and existing property) shall not apply.

(D) Section 57(a)(5) of such Code (relating to tax-exempt interest) shall not apply to interest on qualified forest conservation bonds.

(6) **TREATMENT OF CURRENT REFUNDING BONDS.**—Paragraphs (2)(C) and (3) shall not apply to any bond (or series of bonds) issued to refund a qualified forest conservation bond issued before December 31, 2006, if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A) of such Code.

(7) EFFECTIVE DATE.—This subsection shall apply to obligations issued on or after the date of enactment of this Act.

(b) ITEMS FROM QUALIFIED HARVESTING ACTIVITIES NOT SUBJECT TO TAX OR TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Income, gains, deductions, losses, or credits from a qualified harvesting activity conducted by a qualified organization shall not be subject to tax or taken into account under subtitle A of the Internal Revenue Code of 1986.

(2) LIMITATION.—The amount of income excluded from gross income under paragraph (1) for any taxable year shall not exceed the amount used by the qualified organization to make debt service payments during such taxable year for qualified forest conservation bonds.

(3) QUALIFIED HARVESTING ACTIVITY.—For purposes of paragraph (1)—

(A) IN GENERAL.—The term “qualified harvesting activity” means the sale, lease, or harvesting, of standing timber—

(i) on land owned by a qualified organization which was acquired with proceeds of qualified forest conservation bonds, and

(ii) pursuant to a qualified conservation plan adopted by the qualified organization.

(B) EXCEPTIONS.—

(i) CESSATION AS QUALIFIED ORGANIZATION.—The term “qualified harvesting activity” shall not include any sale, lease, or harvesting for any period during which the organization ceases to qualify as a qualified organization.

(ii) EXCEEDING LIMITS ON HARVESTING.—The term “qualified harvesting activity” shall not include any sale, lease, or harvesting of standing timber on land acquired with proceeds of qualified forest conservation bonds to the extent that—

(I) the average annual area of timber harvested from such land exceeds 2.5 percent of the total area of such land, or

(II) the quantity of timber removed from such land exceeds the quantity which can be removed from such land annually in perpetuity on a sustained-yield basis with respect to such land.

The limitations under subclauses (I) and (II) shall not apply to post-fire restoration and rehabilitation or sanitation harvesting of timber stands which are sub-

stantially damaged by fire, windthrow, or other catastrophes, or which are in imminent danger from insect or disease attack.

(4) TERMINATION.—This subsection shall not apply to any qualified harvesting activity occurring after the date on which there is no outstanding qualified forest conservation bond or any such bond ceases to be a tax-exempt bond.

(5) PARTIAL RECAPTURE OF BENEFITS IF HARVESTING LIMIT EXCEEDED.—If, as of the date that this subsection ceases to apply under paragraph (4), the average annual area of timber harvested from the land exceeds the requirement of paragraph (3)(B)(ii)(I), the tax imposed by chapter 1 of such Code shall be increased, under rules prescribed by the Secretary of the Treasury, by the sum of the tax benefits attributable to such excess and interest at the underpayment rate under section 6621 of such Code for the period of the underpayment.

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED CONSERVATION PLAN.—The term “qualified conservation plan” means a multiple land use program or plan which—

(A) is designed and administered primarily for the purposes of protecting and enhancing wildlife and fish, timber, scenic attributes, recreation, and soil and water quality of the forest and forest land,

(B) mandates that conservation of forest and forest land is the single-most significant use of the forest and forest land, and

(C) requires that timber harvesting be consistent with—

(i) restoring and maintaining reference conditions for the region’s ecotype,

(ii) restoring and maintaining a representative sample of young, mid, and late successional forest age classes,

(iii) maintaining or restoring the resources’ ecological health for purposes of preventing damage from fire, insect, or disease,

(iv) maintaining or enhancing wildlife or fish habitat, or

(v) enhancing research opportunities in sustainable renewable resource uses.

(2) CONSERVATION RESTRICTION.—The conservation restriction described in this paragraph is a restriction which—

(A) is granted in perpetuity to an unrelated person which is described in section 170(h)(3) of such Code and which, in the case of a nongovernmental unit, is organized and operated for conservation purposes,

(B) meets the requirements of clause (ii) or (iii)(II) of section 170(h)(4)(A) of such Code,

(C) obligates the qualified organization to pay the costs incurred by the holder of the conservation restriction in monitoring compliance with such restriction, and

(D) requires an increasing level of conservation benefits to be provided whenever circumstances allow it.

(3) QUALIFIED ORGANIZATION.—The term “qualified organization” means an organization—

- (A) which is a nonprofit organization substantially all the activities of which are charitable, scientific, or educational, including acquiring, protecting, restoring, managing, and developing forest lands and other renewable resources for the long-term charitable, educational, scientific and public benefit,
- (B) more than half of the value of the property of which consists of forests and forest land acquired with the proceeds from qualified forest conservation bonds,
- (C) which periodically conducts educational programs designed to inform the public of environmentally sensitive forestry management and conservation techniques,
- (D) which has at all times a board of directors—
- (i) at least 20 percent of the members of which represent the holders of the conservation restriction described in paragraph (2),
 - (ii) at least 20 percent of the members of which are public officials, and
 - (iii) not more than one-third of the members of which are individuals who are or were at any time within 5 years before the beginning of a term of membership on the board, an employee of, independent contractor with respect to, officer of, director of, or held a material financial interest in, a commercial forest products enterprise with which the qualified organization has a contractual or other financial arrangement,
- (E) the bylaws of which require at least two-thirds of the members of the board of directors to vote affirmatively to approve the qualified conservation plan and any change thereto, and
- (F) upon dissolution, is required to dedicate its assets to—
- (i) an organization described in section 501(c)(3) of such Code which is organized and operated for conservation purposes, or
 - (ii) a governmental unit described in section 170(c)(1) of such Code.
- (4) UNRELATED PERSON.—The term “unrelated person” means a person who is not a related person.
- (5) RELATED PERSON.—A person shall be treated as related to another person if—
- (A) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or 707(b)(1), of such Code, determined by substituting “25 percent” for “50 percent” each place it appears therein, and
 - (B) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.
- (d) REPORT.—
- (1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the pilot project for forest conservation activities under this section. Such study shall exam-

ine the extent to which forests and forest lands were managed during the 5-year period beginning on the date of the enactment of this Act to achieve the goals of such project.

(2) SUBMISSION OF REPORT TO CONGRESS.—Not later than six years after the date of the enactment of this Act, the Comptroller General shall submit a report of such study to the Committee on Ways and Means and the Committee on Resources of the House of Representatives and the Committee on Finance and the Committee on Energy and Natural Resources of the Senate.

TITLE III—OTHER PROVISIONS

SEC. 301. COMPASSION CAPITAL FUND.

Title IV of the Social Security Act (42 U.S.C. 601–679b) is amended by adding at the end the following:

“PART F—COMPASSION CAPITAL FUND

“SEC. 481. SECRETARY’S FUND TO SUPPORT AND REPLICATE PROMISING SOCIAL SERVICE PROGRAMS.

“(a) GRANT AUTHORITY.—

“(1) IN GENERAL.—The Secretary may make grants to support any private entity that operates a promising social services program.

“(2) APPLICATIONS.—An entity desiring to receive a grant under paragraph (1) shall submit to the Secretary an application for the grant, which shall contain such information as the Secretary may require.

“(b) CONTRACT AUTHORITY, ETC.—The Secretary may enter into a grant, contract, or cooperative agreement with any entity under which the entity would provide technical assistance to another entity to operate a social service program that assists persons and families in need, including by—

“(1) providing the other entity with—

“(A) technical assistance and information, including legal assistance and other business assistance;

“(B) information on capacity-building;

“(C) information and assistance in identifying and using best practices for serving persons and families in need; or

“(D) assistance in replicating programs with demonstrated effectiveness in assisting persons and families in need; or

“(2) supporting research on the best practices of social service organizations.

“(c) GUIDANCE AND TECHNICAL ASSISTANCE.—The Secretary may use not more than 25 percent of the amount appropriated under this section for a fiscal year to provide guidance and technical assistance to States and political subdivisions of States with respect to the implementation of any social service program.

“(d) SOCIAL SERVICES PROGRAM DEFINED.—In this section, the term ‘social services program’ means a program that provides benefits or services of any kind to persons and families in need.

“(e) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary \$150,000,000 for fiscal year 2004, and such sums as may be necessary for fiscal years 2005 through 2008.”.

SEC. 302. REAUTHORIZATION OF ASSETS FOR INDEPENDENCE DEMONSTRATION.

(a) IN GENERAL.—Section 416 of the Assets for Independence Act (title IV of Public Law 105–285; 42 U.S.C. 604 note) is amended by striking “and 2003” and inserting “2003, 2004, 2005, 2006, 2007, and 2008”.

(b) REMOVAL OF ECONOMIC LITERACY ACTIVITIES FROM LIMITATION ON USE OF AMOUNTS IN THE RESERVE FUND.—Section 407(c)(3) of such Act (title IV of Public Law 105–285; 42 U.S.C. 604 note) is amended by adding at the end the following: “The preceding sentences of this paragraph shall not apply to amounts used by an entity for any activity described in paragraph (1)(A).”.

(c) ELIGIBILITY EXPANDED TO INCLUDE INDIVIDUALS IN HOUSEHOLDS WITH INCOME NOT EXCEEDING 50 PERCENT OF AREA MEDIAN INCOME.—Section 408(a)(1) of such Act (title IV of Public Law 105–285; 42 U.S.C. 604 note) is amended to read as follows:

“(1) INCOME TEST.—The adjusted gross income of the household—

“(A) does not exceed 200 percent of the poverty line (as determined by the Office of Management and Budget) or the earned income amount described in section 32 of the Internal Revenue Code of 1986 (taking into account the size of the household); or

“(B) does not exceed 50 percent of the area median income (as determined by the Secretary of Housing and Urban Development) for the area in which the household is located.”.

(d) EXTENSION OF TIME FOR ACCOUNT HOLDERS TO ACCESS FEDERAL FUNDS.—Section 407(d) of such Act (title IV of Public Law 105–285; 42 U.S.C. 604 note) is amended—

(1) in the subsection heading, by striking “WHEN PROJECT TERMINATES”; and

(2) by striking “upon” and inserting “on the date that is 6 months after”.

(e) VERIFICATION OF POSTSECONDARY EDUCATION EXPENSES.—Section 404(8)(A) of such Act (title IV of Public Law 105–285; 42 U.S.C. 604 note) is amended in the 1st sentence by inserting “or a vendor, but only to the extent that the expenses are described in a document which explains the educational items to be purchased, and the document and the expenses are approved by the qualified entity” before the period.

(f) AUTHORITY TO USE EXCESS INTEREST TO FUND OTHER INDIVIDUAL DEVELOPMENT ACCOUNTS.—Section 410 of such Act (title IV of Public Law 105–285; 42 U.S.C. 604 note) is amended—

(1) in subsection (a)(3)—

(A) by striking “any interest that has accrued” and inserting “interest that has accrued during that period”; and

(B) by striking the period and inserting “, but only to the extent that the amount of the interest does not exceed the amount of interest that has accrued during that period on amounts deposited in the account by that individual.”; and

(2) by adding at the end the following:

“(f) USE OF EXCESS INTEREST TO FUND OTHER INDIVIDUAL DEVELOPMENT ACCOUNTS.—To the extent that a qualified entity has an amount that, but for the limitation in subsection (a)(3), would be required by that subsection to be deposited into the individual development account of an individual or into a parallel account maintained by the qualified entity, the qualified entity may deposit the amount into the individual development account of any individual or into any such parallel account maintained by the qualified entity.”.

SEC. 303. SENSE OF THE CONGRESS REGARDING CORPORATE CONTRIBUTIONS TO FAITH-BASED ORGANIZATIONS, ETC.

(a) FINDINGS.—The Congress finds as follows:

(1) America’s community of faith has long played a leading role in dealing with difficult societal problems that might otherwise have gone unaddressed.

(2) President Bush has called upon Americans “to revive the spirit of citizenship . . . to marshal the compassion of our people to meet the continuing needs of our Nation”.

(3) Although the work of faith-based organizations should not be used by government as an excuse for backing away from its historic and rightful commitment to help those who are disadvantaged and in need, such organizations can and should be seen as a valuable partner with government in meeting societal challenges.

(4) Every day faith-based organizations in the United States help people recover from drug and alcohol addiction, provide food and shelter for the homeless, rehabilitate prison inmates so that they can break free from the cycle of recidivism, and teach people job skills that will allow them to move from poverty to productivity.

(5) Faith-based organizations are often more successful in dealing with difficult societal problems than government and non-sectarian organizations.

(6) As President Bush has stated, “It is not sufficient to praise charities and community groups; we must support them. And this is both a public obligation and a personal responsibility.”.

(7) Corporate foundations contribute billions of dollars each year to a variety of philanthropic causes.

(8) According to a study produced by the Capital Research Center, the 10 largest corporate foundations in the United States contributed \$1,900,000,000 to such causes.

(9) According to the same study, faith-based organizations only receive a small fraction of the contributions made by corporations in the United States, and 6 of the 10 corporations that give the most to philanthropic causes explicitly ban or restrict contributions to faith-based organizations.

(b) CORPORATIONS ENCOURAGED TO CONTRIBUTE TO FAITH-BASED ORGANIZATIONS.—The Congress calls on corporations in the United States, in the words of the President, “to give more and to give better” by making greater contributions to faith-based organizations that are on the front lines battling some of the great societal challenges of our day.

(c) SENSE OF THE CONGRESS.—It is the sense of Congress that—

(1) corporations in the United States are important partners with government in efforts to overcome difficult societal problems; and

(2) no corporation in the United States should adopt policies that prohibit the corporation from contributing to an organization that is successfully advancing a philanthropic cause merely because such organization is faith based.

TITLE IV—SOCIAL SERVICES BLOCK GRANT

SEC. 401. RESTORATION OF FUNDS FOR THE SOCIAL SERVICES BLOCK GRANT.

(a) FINDINGS.—Congress makes the following findings:

(1) On August 22, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105) was signed into law.

(2) In enacting that law, Congress authorized \$2,800,000,000 for fiscal year 2003 and each fiscal year thereafter to carry out the Social Services Block Grant program established under title XX of the Social Security Act (42 U.S.C. 1397 et seq.).

(b) RESTORATION OF FUNDS.—Section 2003(c)(11) of the Social Security Act (42 U.S.C. 1397b(c)(11)) is amended by inserting “, except that, with respect to fiscal year 2004, the amount shall be \$2,800,000,000” after “thereafter”.

SEC. 402. RESTORATION OF AUTHORITY TO TRANSFER UP TO 10 PERCENT OF TANF FUNDS TO THE SOCIAL SERVICES BLOCK GRANT.

(a) IN GENERAL.—Section 404(d)(2) of the Social Security Act (42 U.S.C. 604(d)(2)) is amended to read as follows:

“(2) LIMITATION ON AMOUNT TRANSFERABLE TO TITLE XX PROGRAMS.—A State may use not more than 10 percent of the amount of any grant made to the State under section 403(a) for a fiscal year to carry out State programs pursuant to title XX.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to amounts made available for fiscal year 2004 and each fiscal year thereafter.

SEC. 403. REQUIREMENT TO SUBMIT ANNUAL REPORT ON STATE ACTIVITIES.

(a) IN GENERAL.—Section 2006(c) of the Social Security Act (42 U.S.C. 1397e(c)) is amended by adding at the end the following:

“The Secretary shall compile the information submitted by the States and submit that information to Congress on an annual basis.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to information submitted by States under section 2006 of the Social Security Act (42 U.S.C. 1397e) with respect to fiscal year 2004 and each fiscal year thereafter.

TITLE V—ABUSIVE TAX SHELTERS

SEC. 501. SHORT TITLE.

This title may be cited as the “Abusive Tax Shelter Shutdown and Taxpayer Accountability Act of 2003”.

SEC. 502. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress hereby finds that:

(1) Many corporate tax shelter transactions are complicated ways of accomplishing nothing aside from claimed tax benefits, and the legal opinions justifying those transactions take an inappropriately narrow and restrictive view of well-developed court doctrines under which—

(A) the taxation of a transaction is determined in accordance with its substance and not merely its form,

(B) transactions which have no significant effect on the taxpayer’s economic or beneficial interests except for tax benefits are treated as sham transactions and disregarded,

(C) transactions involving multiple steps are collapsed when those steps have no substantial economic meaning and are merely designed to create tax benefits,

(D) transactions with no business purpose are not given effect, and

(E) in the absence of a specific congressional authorization, it is presumed that Congress did not intend a transaction to result in a negative tax where the taxpayer’s economic position or rate of return is better after tax than before tax.

(2) Permitting aggressive and abusive tax shelters not only results in large revenue losses but also undermines voluntary compliance with the Internal Revenue Code of 1986.

(b) PURPOSE.—The purpose of this title is to eliminate abusive tax shelters by denying tax attributes claimed to arise from transactions that do not meet a heightened economic substance requirement and by repealing the provision that permits legal opinions to be used to avoid penalties on tax underpayments resulting from transactions without significant economic substance or business purpose.

Subtitle A—Provisions Designed to Curtail Tax Shelters

SEC. 511. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

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

“(1) GENERAL RULES.—

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

“(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

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

“(I) the transaction changes in a meaningful way (apart from Federal tax effects and, if there are any Federal tax effects, also apart from any foreign, State, or local tax effects) the taxpayer’s economic position, and

“(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

“(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

“(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

“(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

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

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

“(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

“(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

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

“(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

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

“(A) ECONOMIC SUBSTANCE DOCTRINE.—The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to

a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

“(B) TAX-INDIFFERENT PARTY.—The term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person’s liability under subtitle A.

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

“(D) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(E) TREATMENT OF LESSORS.—In applying subclause (I) of paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease, the expected net tax benefits shall not include the benefits of depreciation, or any tax credit, with respect to the leased property and subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

“(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.”

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

SEC. 512. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

“(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

“(b) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be \$50,000.

“(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be \$100,000.

“(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

“(A) IN GENERAL.—In the case of a failure under subsection (a) by—

“(i) a large entity, or

“(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

“(B) LARGE ENTITY.—For purposes of subparagraph (A), the term ‘large entity’ means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of \$10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

“(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term ‘high net worth individual’ means, with respect to a reportable transaction, a natural person whose net worth exceeds \$2,000,000 immediately before the transaction.

“(c) DEFINITIONS.—For purposes of this section—

“(1) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

“(2) LISTED TRANSACTION.—Except as provided in regulations, the term ‘listed transaction’ means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

“(d) AUTHORITY TO RESCIND PENALTY.—

“(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

“(A) the violation is with respect to a reportable transaction other than a listed transaction,

“(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

“(C) it is shown that the violation is due to an unintentional mistake of fact;

“(D) imposing the penalty would be against equity and good conscience, and

“(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

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

“(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

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

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

“(B) the reasons for the rescission, and

“(C) the amount of the penalty rescinded.

“(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

“(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

“(B) a description of each penalty rescinded under this subsection and the reasons therefor.

“(e) PENALTY REPORTED TO SEC.—In the case of a person—

“(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

“(2) which—

“(A) is required to pay a penalty under this section with respect to a listed transaction,

“(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

“(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

“(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.”.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

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

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

SEC. 513. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

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

“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

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

“(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘reportable transaction understatement’ means the sum of—

“(A) the product of—

“(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer’s treatment of such item (as shown on the taxpayer’s return of tax), and

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

“(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer’s treatment of an item to which this section applies (as shown on the taxpayer’s return of tax) and the proper tax treatment of such item.

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

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

“(A) any listed transaction, and

“(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

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

“(1) IN GENERAL.—Subsection (a) shall be applied by substituting ‘30 percent’ for ‘20 percent’ with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

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

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

“(B) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

“(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).

“(e) SPECIAL RULES.—

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

“(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

“(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

“(2) COORDINATION WITH OTHER PENALTIES.—

“(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

“(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

“(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

“(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term ‘noneconomic substance transaction understatement’ has the meaning given such term by section 6662B(c).

“(5) CROSS REFERENCE.—

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

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

“The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.”

(c) REASONABLE CAUSE EXCEPTION.—

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

“(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

“(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

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

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

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

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

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

“(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

“(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

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

“(ii) relates solely to the taxpayer’s chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

“(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

“(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

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

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

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

“(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

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

“(III) has a fee arrangement with respect to the transaction which is contingent on all or part of

the intended tax benefits from the transaction being sustained, or

“(IV) as determined under regulations prescribed by the Secretary, has a continuing financial interest with respect to the transaction.

“(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

“(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

“(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

“(III) does not identify and consider all relevant facts, or

“(IV) fails to meet any other requirement as the Secretary may prescribe.”

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting “FOR UNDERPAYMENTS” after “EXCEPTION”.

(d) CONFORMING AMENDMENTS.—

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

(2) Paragraph (3) of section 1274(b) is amended—

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

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

“(C) TAX SHELTER.—For purposes of subparagraph (B), the term ‘tax shelter’ means—

“(i) a partnership or other entity,

“(ii) any investment plan or arrangement, or

“(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.”

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

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

(5) Subsection (b) of section 7525 is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(6)(A) The heading for section 6662 is amended to read as follows:

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

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpayments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatement with respect to reportable transactions.”

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

SEC. 514. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

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

“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

“(a) **IMPOSITION OF PENALTY.**—If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

“(b) **REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.**—Subsection (a) shall be applied by substituting ‘20 percent’ for ‘40 percent’ with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

“(c) **NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘noneconomic substance transaction understatement’ means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

“(2) **NONECONOMIC SUBSTANCE TRANSACTION.**—The term ‘noneconomic substance transaction’ means any transaction if—

“(A) there is a lack of economic substance (within the meaning of section 7701(m)(1)) for the transaction giving rise to the claimed tax benefit or the transaction was not respected under section 7701(m)(2), or

“(B) the transaction fails to meet the requirements of any similar rule of law.

“(d) **RULES APPLICABLE TO COMPROMISE OF PENALTY.**—

“(1) **IN GENERAL.**—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(2) **APPLICABLE RULES.**—The rules of paragraphs (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

“(e) **COORDINATION WITH OTHER PENALTIES.**—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

“(f) **CROSS REFERENCES.**—

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

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

(b) **CLERICAL AMENDMENT.**—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

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

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

SEC. 515. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) **SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.**—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

“(B) **SPECIAL RULE FOR CORPORATIONS.**—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

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

“(ii) \$10,000,000.”

(b) **REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.**—

(1) **IN GENERAL.**—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

“(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or”.

(2) **CONFORMING AMENDMENT.**—Section 6662(d) is amended by adding at the end the following new paragraph:

“(3) **SECRETARIAL LIST.**—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.”

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

SEC. 516. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) **IN GENERAL.**—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

“(b) **SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.**—The privilege under subsection (a) shall not apply to any written communication which is—

“(1) between a federally authorized tax practitioner and—

“(A) any person,

“(B) any director, officer, employee, agent, or representative of the person, or

“(C) any other person holding a capital or profits interest in the person, and
 “(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 517. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

“(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

“(1) information identifying and describing the transaction,

“(2) information describing any potential tax benefits expected to result from the transaction, and

“(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

“(b) DEFINITIONS.—For purposes of this section—

“(1) MATERIAL ADVISOR.—

“(A) IN GENERAL.—The term ‘material advisor’ means any person—

“(i) who provides any material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, or carrying out any reportable transaction, and

“(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

“(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

“(i) \$50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

“(ii) \$250,000 in any other case.

“(2) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ has the meaning given to such term by section 6707A(c).

“(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

“(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

“(2) exemptions from the requirements of this section, and

“(3) such rules as may be necessary or appropriate to carry out the purposes of this section.”

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

“Sec. 6111. Disclosure of reportable transactions.”

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

“(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

“(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

“(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.”

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting “written” before “request” in paragraph (1)(A), and

(ii) by striking “shall prescribe” in paragraph (2) and inserting “may prescribe”.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.”

(3)(A) The heading for section 6708 is amended to read as follows:

“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.”

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

SEC. 518. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

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

“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

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

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

“(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

“(b) AMOUNT OF PENALTY.—

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

“(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

“(A) \$200,000, or

“(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the reportable transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting ‘75 percent’ for ‘50 percent’ in the case of an intentional failure or act described in subsection (a).

“(c) RESCISSION AUTHORITY.—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.

“(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).”

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking “tax shelters” and inserting “reportable transactions”.

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

SEC. 519. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

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

“(a) IMPOSITION OF PENALTY.—

“(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary’s request, such person shall pay a penalty of \$10,000 for each day of such failure after such 20th day.

“(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.”

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

SEC. 520. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

“(a) **AUTHORITY TO SEEK INJUNCTION.**—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

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

“(1) that the person has engaged in any specified conduct, and

“(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

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

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

(b) **CONFORMING AMENDMENTS.**—

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

“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.”

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

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

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

SEC. 521. UNDERSTATEMENT OF TAXPAYER’S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) **STANDARDS CONFORMED TO TAXPAYER STANDARDS.**—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

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

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

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

(b) **AMOUNT OF PENALTY.**—Section 6694 is amended—

(1) by striking “\$250” in subsection (a) and inserting “\$1,000”, and

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

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

SEC. 522. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

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

“(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

“(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

“(B) AMOUNT OF PENALTY.—

“(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed \$5,000.

“(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

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

“(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

“(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

“(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

“(I) \$25,000, or

“(II) the amount (not exceeding \$100,000) determined under subparagraph (D), and

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

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

“(i) in the case of a violation involving a transaction, the amount of the transaction, or

“(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.”

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

SEC. 523. FRIVOLOUS TAX SUBMISSIONS.

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

“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

“(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of \$5,000 if—

“(1) such person files what purports to be a return of a tax imposed by this title but which—

“(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

“(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

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

- “(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or
“(B) reflects a desire to delay or impede the administration of Federal tax laws.
- “(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—
- “(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of \$5,000.
- “(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—
- “(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term ‘specified frivolous submission’ means a specified submission if any portion of such submission—
- “(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or
“(ii) reflects a desire to delay or impede the administration of Federal tax laws.
- “(B) SPECIFIED SUBMISSION.—The term ‘specified submission’ means—
- “(i) a request for a hearing under—
- “(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or
“(II) section 6330 (relating to notice and opportunity for hearing before levy), and
- “(ii) an application under—
- “(I) section 6159 (relating to agreements for payment of tax liability in installments),
“(II) section 7122 (relating to compromises), or
“(III) section 7811 (relating to taxpayer assistance orders).
- “(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.
- “(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).
- “(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.
- “(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.”
- (b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—
- (1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

“(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

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

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

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

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

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

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

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

(1) in subsection (b)(1), by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”, and

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

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

“(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”

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

“Sec. 6702. Frivolous tax submissions.”

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 524. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

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

(A) by inserting “, or censure,” after “Department”, and

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

“The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure.”

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

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

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

SEC. 525. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: “Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.”

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

SEC. 526. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH LISTED TRANSACTIONS NOT REPORTED.

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

“(C) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the tax for such taxable year may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the time the return is filed. This subparagraph shall not apply to any taxable year if the time for assessment or beginning the proceeding in court has expired before the time a transaction is treated as a listed transaction under section 6011.”

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

SEC. 527. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.

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

“(m) **INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.**—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

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

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

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

Subtitle B—Affirmation of Consolidated Return Regulation Authority

SEC. 531. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

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

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

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