2003 Tax Legislation

Internal Revenue cumulative bulletin 2003–3

Text of Laws
and
Committee Reports

Department of the Treasury
Internal Revenue Service

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The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

Cumulative Bulletin 2003-1 contains items from weekly Bulletins 2003-1 through 2003-26. Cumulative Bulletin 2003-2 contains items from weekly Bulletins 2003-27 through 2003-52.

Cumulative Bulletin 2003-3 is a consolidation of laws that were enacted during the 2003 calendar year that directly impact Title 26 of the United States Code.

Cumulative Bulletin 2003-3 includes the text and related committee reports of various Public Laws. It also includes the *General Explanation of Tax Legislation Enacted in the 108th Congress* (Blue Book) as prepared by the staff of the Joint Committee on Taxation.

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1986 Code Sections Affected by Public Laws

The following sections of the Internal Revenue Code of 1986 are affected by the Public Laws listed below.

P.L. 108-1
A bill to provide for a 5-month extension of the Temporary Extended Unemployment Compensation Act of 2002 and for a transition period for individuals receiving compensation when the program under such Act ends

1986 Code Section	Act Section
3304	1(a)
	1(b)

P.L. 108-7
Consolidated Appropriations Resolution, 2003

1986 Code Section	Act Section
6031	211
6103	103
7443	211
7804	102
9501	211

P.L. 108-11
Emergency Wartime Supplemental Appropriations Act, 2003

1986 Code Section	Act Section
3304	4002

P.L. 108-26
Unemployment Compensation Amendments of 2003

1986 Code Section	Act Section
1	1
3304	2(a)
	2(b)

P.L. 108-27
Jobs and Growth Tax Relief Reconciliation Act of 2003

1986 Code Section	Act Section
1	1(a)
	102(a), (b)(1)
	102(b)(2)
	102(c)
	103(b)
	104(a), (b)
	104(c)
	105(a)
	105(b)
	107
	301(a)(1)
	301(a)(2)(A)
	301(b)(1)
	301(c)
	301(d)
	302(a)
	302(e)(1)
	302(f)
	303
24	101(a)
	101(c)
55	106(a)
	106(b)
	301(a)(1)
	301(a)(2)(B)
	301(b)(2)
57	301(b)(3)
63	103(a)
	103(c)
163	302(b)
168	201(a)-(c)(1)
	201(d)
179	202(a)-(e)
	202(f)
301	302(e)(2)
306	302(e)(3)
331	302(e)(4)(B)(iii)
338	302(e)(4)(B)(i)
341	302(e)(4)(A)
	302(e)(4)(A)

1986 Code Section		Act Section
467	....	302(e)(4)(B)(ii)
531	....	302(e)(5)
541	....	302(e)(6)
584	....	302(e)(7)
702	....	302(e)(8)
854	....	302(c)
857	....	302(d)
1255	....	302(e)(4)(B)(ii)
1257	....	302(e)(4)(B)(ii)
1400L	....	201(c)(2)
1445	....	301(a)(2)(C)
6411	....	101(b)(2)
6429	....	101(b)(1)
7518	....	301(a)(2)(D)

P.L. 108-81
Museum and Library Services Act of 2003

1986 Code Section		Act Section
170	....	503

P.L. 108-88
Surface Transportation Extension Act of 2003

1986 Code Section		Act Section
9503	....	12(a)
	....	12(c)
9504	....	12(b)

P.L. 108-89
To extend the Temporary Assistance for Needy Families block grant program, and certain tax and trade programs, and for other purposes

1986 Code Section		Act Section
6103	....	201(a)
	....	201(b)
7501	....	202(b)(1)
7528	....	202(a)
	....	202(c)
	....	202(d)
7801	....	202(b)(2)
	....	202(b)(3)

P.L. 108-121
Military Family Tax Relief Act of 2003

1986 Code Section		Act Section
1	....	1(a)
5	....	110(a)(2)(A)
	....	110(a)(4)
62	....	109(b)
	....	109(c)
101	....	110(b)(1), (2)
	....	110(b)(3)
121	....	101(a)
	....	101(b)
132	....	103(a), (b)
	....	103(c)
134	....	102(b)(1), (2)
	....	102(b)(3)
	....	106(a), (b)(1)
	....	106(c)
	....	106(d)
162	....	109(a)
501	....	105(a)
	....	105(b)
	....	108(a)
	....	108(b)
530	....	107(a)
	....	107(b)
691	....	110(a)(3)(B)
692	....	110(a)(1)
	....	110(a)(3)(A)
2201	....	110(c)(1), (2)(A)
	....	110(c)(2)(B)
	....	110(c)(3)
3121	....	106(b)(2)
3306	....	106(b)(3)
3401	....	106(b)(4)
6013	....	110(a)(2)(B)
7501	....	104(b)(3)
7508	....	104(a)-(b)(2)
	....	104(c)

P.L. 108-173
Medicare Prescription Drug, Improvement, and Modernization Act of 2003

1986 Code Section		Act Section
56	....	1202(b)
	....	1202(d)

1986 Code Section	Act Section
62	1201(b)
	1201(k)
101	1202(c)
106	1201(d)(1)
125	1201(i)
139A	1202(a)
211	1201(j)
220	1201(c)
223	1201(a)
224	1201(a)
848	1201(h)
3231	1201(d)(2)(A)
3306	1201(d)(2)(B)
3401	1201(d)(2)(C)
4971	1201(d)(4)(B)
4973	1201(e)
4975	1201(f)
4980G	1201(d)(4)(A)
6041	1203(a)
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6051	1201(d)(3)
6103	101(e)(6)
	105(e)(1)-(3)
	811(c)(1)-(2)(B)
	900(e)(3)
6693	1201(g)
7213	105(e)(4)
	811(c)(2)(C)

P.L. 108-176
Vision 100—Century of Aviation Reauthorization Act

1986 Code Section	Act Section
4261	902(a)
	902(b)
9502	901

P.L. 108-178
To improve the United States Code

1986 Code Section	Act Section
7608	4(e)

P.L. 108-189
Servicemembers Civil Relief Act

1986 Code Section	Act Section
7654	2(d)

Act Sections of Public Laws Affecting 1986 Code Sections

The act sections of the Public Laws listed below affect the following sections of the Internal Revenue Code of 1986.

P.L. 108-1
A bill to provide for a 5-month extension of the Temporary Extended Unemployment Compensation Act of 2002 and for a transition period for individuals receiving compensation when the program under such Act ends

Act Section	1986 Code Section
1(a)	3304
1(b)	3304

P.L. 108-7
Consolidated Appropriations Resolution, 2003

Act Section	1986 Code Section
102	7804
103	6103
211	6031
	7443
	9501

P.L. 108-11
Emergency Wartime Supplemental Appropriations Act, 2003

Act Section	1986 Code Section
4002	3304

P.L. 108-26
Unemployment Compensation Amendments of 2003

Act Section	1986 Code Section
1	1
2(a)	3304
2(b)	3304

P.L. 108-27
Jobs and Growth Tax Relief Reconciliation Act of 2003

Act Section	1986 Code Section
1(a)	1
101(a)	24
101(b)(1)	6429
101(b)(2)	6411
101(c)	24
102(a), (b)(1)	1
102(b)(2)	1
102(c)	1
103(a)	63
103(b)	1
103(c)	63
104(a), (b)	1
104(c)	1
105(a)	1
105(b)	1
106(a)	55
106(b)	55
107	1
201(a)-(c)(1)	168
201(c)(2)	1400L
201(d)	168
202(a)-(e)	179
202(f)	179
301(a)(1)	1
	55
301(a)(2)(A)	1
301(a)(2)(B)	55
301(a)(2)(C)	1445
301(a)(2)(D)	7518
301(b)(1)	1
301(b)(2)	55
301(b)(3)	57
301(c)	1
301(d)	1
302(a)	1
302(b)	163
302(c)	854
302(d)	857

Act Section	1986 Code Section
302(e)(1)	1
302(e)(2)	301
302(e)(3)	306
302(e)(4)(A)	341
302(e)(4)(B)(i)	338
302(e)(4)(B)(ii)	467
	1255
	1257
302(e)(4)(B)(iii)	331
302(e)(5)	531
302(e)(6)	541
302(e)(7)	584
302(e)(8)	702
302(f)	1
303	1

P.L. 108-81
Museum and Library Services Act of 2003

Act Section	1986 Code Section
503	170

P.L. 108-88
Surface Transportation Extension Act of 2003

Act Section	1986 Code Section
12(a)	9503
12(b)	9504
12(c)	9503

P.L. 108-89
To extend the Temporary Assistance for Needy Families block grant program, and certain tax and trade programs, and for other purposes

Act Section	1986 Code Section
201(a)	6103
201(b)	6103
202(a)	7528
202(b)(1)	7501
202(b)(2)	7801
202(b)(3)	7801
202(c)	7528
202(d)	7528

P.L. 108-121
Military Family Tax Relief Act of 2003

Act Section	1986 Code Section
1(a)	1
101(a)	121
101(b)	121
102(b)(1), (2)	134
102(b)(3)	134
103(a), (b)	132
103(c)	132
104(a)-(b)(2)	7508
104(b)(3)	7501
104(c)	7508
105(a)	501
105(b)	501
106(a), (b)(1)	134
106(b)(2)	3121
106(b)(3)	3306
106(b)(4)	3401
106(c)	134
106(d)	134
107(a)	530
107(b)	530
108(a)	501
108(b)	501
109(a)	162
109(b)	62
109(c)	62
110(a)(1)	692
110(a)(2)(A)	5
110(a)(2)(B)	6013
110(a)(3)(A)	692
110(a)(3)(B)	691
110(a)(4)	5
110(b)(1), (2)	101
110(b)(3)	101
110(c)(1), (2)(A)	2201
110(c)(2)(B)	2201
110(c)(3)	2201

P.L. 108-173
Medicare Prescription Drug, Improvement, and Modernization Act of 2003

Act Section		1986 Code Section
101(e)(6)	....	6103
105(e)(1)-(3)	....	6103
105(e)(4)	....	7213
811(c)(1)-(2)(B)	....	6103
811(c)(2)(C)	....	7213
900(e)(3)	....	6103
1201(a)	....	223
	....	224
1201(b)	....	62
1201(c)	....	220
1201(d)(1)	....	106
1201(d)(2)(A)	....	3231
1201(d)(2)(B)	....	3306
1201(d)(2)(C)	....	3401
1201(d)(3)	....	6051
1201(d)(4)(A)	....	4980G
1201(d)(4)(B)	....	4971
1201(e)	....	4973
1201(f)	....	4975
1201(g)	....	6693
1201(h)	....	848
1201(i)	....	125
1201(j)	....	211
1201(k)	....	62
1202(a)	....	139A
1202(b)	....	56
1202(c)	....	101
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1203(a)	....	6041
1203(b)	....	6041

P.L. 108-176
Vision 100—Century of Aviation Reauthorization Act

Act Section		1986 Code Section
901	....	9502
902(a)	....	4261
902(b)	....	4261

P.L. 108-178
To improve the United States Code

Act Section		1986 Code Section
4(e)	....	7608

P.L. 108-189
Servicemembers Civil Relief Act

Act Section		1986 Code Section
2(d)	....	7654

Public Law 108–1
108th Congress

An Act

To provide for a 5-month extension of the Temporary Extended Unemployment Compensation Act of 2002 and for a transition period for individuals receiving compensation when the program under such Act ends.

Jan. 8, 2003
[S. 23]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.

(a) IN GENERAL.—Section 208 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30) is amended to read as follows:

note.

"SEC. 208. APPLICABILITY.

"(a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

"(1) beginning after the date on which such agreement is entered into; and

"(2) ending before June 1, 2003.

"(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), in the case of an individual who has amounts remaining in an account established under section 203 as of May 31, 2003, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title.

"(2) NO AUGMENTATION AFTER MAY 31, 2003.—If the account of an individual is exhausted after May 31, 2003, then section 203(c) shall not apply and such account shall not be augmented under such section, regardless of whether such individual's State is in an extended benefit period (as determined under paragraph (2) of such section).

"(3) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after August 30, 2003.".

26 USC 3304 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21).

Approved January 8, 2003.

LEGISLATIVE HISTORY—S. 23:

CONGRESSIONAL RECORD, Vol. 149 (2003):
Jan. 7, considered and passed Senate.
Jan. 8, considered and passed House.

○

PROVISION OF A 5-MONTH EXTENSION OF THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. 23, an unemployment insurance extension bill introduced today by Senators FITZGERALD, CLINTON, and others; further, that the bill be read the third time and passed, and the motion to reconsider be laid upon the table.

Mrs. CLINTON. Mr. President, reserving the right to object——

The PRESIDENT pro tempore. The Senator from New York.

Mrs. CLINTON. Mr. President, I ask unanimous consent that there be one amendment in order which would provide benefits for those who have previously exhausted their Federal unemployment benefits—approximately 1 million Americans and over 150,000 New Yorkers—that there be a time limitation on the amendment of 30 minutes for debate, equally divided in the usual form, and that no other amendments or motions be in order to the bill.

The PRESIDENT pro tempore. Is there objection?

Mr. NICKLES. Mr. President, I object.

Mr. FRIST. Mr. President, reserving the right to object, a number of Senators on both sides of the aisle have been very aggressively working on this legislation for, indeed, several months and most intensively over the last several days. I believe we have reached a bipartisan agreement to allow us to pass the bill today so that the House will consider it and in order for it to become public law this week.

As most of my colleagues in the Senate Chamber know, if this bill is not passed by Thursday and signed by the President of the United States, there will be tremendous dislocation among the American people. With that, I urge that we proceed with the underlying unanimous consent.

The PRESIDING OFFICER (Mr. ALLEN). Is there objection to the initial request?

Mrs. CLINTON. Mr. President, reserving the right to object, I thank the majority leader for bringing this very important matter to the floor so early in our session. I also thank my colleague from Oklahoma, Senator NICKLES, for working with me and others over the last week to try to reach consensus. While I do not object at all to this final bill—in fact, I am a lead Democratic sponsor—I would point out that passage of this bill, as important as it is, will leave many, many people without any means of support, and I think that we must turn our attention to these people who have exhausted their benefits. I look forward to working with the majority and minority leader in doing so.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, reserving the right to object, I would simply also commend those responsible for bringing the resolution to this point. We could have accomplished this in the last Congress, but we were unable to complete our work. I remind my colleagues that by simply passing this resolution we are leaving out over 1 million people who have absolutely no recourse and have no assistance whatsoever because their benefits have expired. We are leaving them out. This will only address those who are about to see their benefits expire—about one-half of the 1 million people who otherwise would be eligible for these benefits.

To simply say we are doing half means that we are doing half the job. We are leaving half on the table. We are leaving 1 million people with absolutely no recourse in their efforts to try to bring about any quality of life in these difficult times.

So I urge my colleagues to reconsider. We will continue to offer this with the hope that we can find some resolution, that we can include all 2 million unemployed workers, and that we do so as quickly as is possible.

The PRESIDING OFFICER. Is there objection?

The Senator from Rhode Island.

Mr. REED. Mr. President, reserving the right to object, as I understand it, if we do not accept the unanimous consent request proposed by the Senator from New York, we will leave 1 million Americans without unemployment compensation benefits at a time they desperately need it. I also understand her amendment simply calls for 30 minutes of debate and a vote. I think it would be appropriate to vote.

If the majority leader can give us some indication as to when we will deal with the issue of these 1 million people who will be without benefits, I think it might help us as we try to respond and decide on this issue.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, reserving the right to object, and I will not object, while the Senators who had expressed their concerns may be correct, I believe we should commend those who have worked so hard to get this bill here, and our majority leader for bringing it up today because, while we wait to do some more, if more is needed, we will leave all of the unemployed without any new benefits. That is the issue. To do it today is to do it the way it is proposed. To debate it, or send it back to committee for refinement, means none of them will get benefits—not only those who have run out of benefits, but there will be no extension and no money.

I believe it is good that we comment, but it is better that we proceed and get the bill done.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, prior to our taking a recess, we begged the administration to do something to allow us to pass unemployment benefits for the people we knew would be out of unemployment benefits. We in Nevada now have thousands of people who need those benefits. I heard my friend from New York say there are 150,000 people who need them in her State. I believe that is the figure she used. But regardless, there are thousands and thousands of people all over this country, adding up to a million, who need these benefits.

We on this side of the aisle believe we should do everything. I have to respectfully say to my friend, the majority leader, and his colleagues, the reason they are not going to allow us to vote is we would win the vote. We would win if we were allowed to vote to include all 2 million people who are desperately in need of these unemployment checks. We would win the vote.

I do not believe we should adjourn today until this matter is resolved. We want a vote. The people of America want a vote. The people we are leaving out are the ones who are in most need. There is no question the people we would help by passing this resolution need the help, but the million people are those who are chronically unemployed and are in desperate need of help.

We should not adjourn today until we are allowed to have a vote on this most

important resolution with the amendment that has been offered by the Senator from New York.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, reserving the right to object, it is important that we take care of these individuals who will be left out without the amendment by Senator CLINTON. The issue is, unemployment benefits not only help these individuals who have lost their jobs through no fault of their own—whether it is the Boeing Company in a downturn or other people impacted by 9/11 who have lost their jobs and need these unemployment benefits—but more importantly, unemployment benefits are also an economic stimulus. Economists have said every $1 spent on unemployment insurance generates $2.15 of economic stimulus.

I can think of no better package for us to support in a bipartisan fashion than putting more dollars into our local economies that are hurting. I know our State, with one of the highest unemployment rates in the country, has an economic forecast that says the next 6 months will not get any better. So if not today, I say to my colleagues on the other side of the aisle, when will we realize this is an economic stimulus package that we must support.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, my understanding is this unemployment extension mirrors the unemployment extension we did in the last session of Congress. We extended benefits for 13 weeks.

There are some for which the 26 weeks plus the 13 weeks have expired. I assume the million people we are talking about are those people in places where there is not high unemployment, who do not qualify for an additional 13 weeks above the 13 weeks that have already been extended.

As you know, under this bill, as under the prior bill, in States where there are high rates of unemployment, people do get 26 weeks, the 13 plus 13. So what you are talking about is a million people, in places where there are lower rates of unemployment, not getting an additional 13 weeks on top of the 13 weeks they now get on top of the 26 weeks which the original unemployment act provided.

So when we talk about people being left out, what we are talking about is a change in what the original extension is. I am not too sure that is being left out. Those are people who went through their 26 weeks, went through their 13 weeks, and have still not been able to find a job but are not in States with high unemployment.

So what we are doing is extending last year's unemployment benefits to this year. I think that is a fair way to start. It is a way to get things done. If you want to change unemployment extension and turn it into 26 weeks, we can have that debate. But to suggest we are leaving people out, I am not too sure that is really what is factually happening in this situation.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, in response to the question by the Senator from Rhode Island, it is clear we are not solving the problem today. Because of the reality of scheduling, and in part because of what happened in the last Congress, we are faced with the reality that if we do not act today, there are going to be as many as 750,000 people who will have a disruption in benefits as of Thursday. I believe the House is going out tomorrow.

We have a compromise on both sides of the aisle we have been working on that was agreed to—worked on by Senators CLINTON, FITZGERALD, NICKLES, SPECTER, CANTWELL, and a range of people.

I understand what we are doing today, if this is accepted by unanimous consent, is taking care of the 750,000 people who will be able to continue to receive their benefits. I know there is a lot more to do.

I am not sure it is necessary to go over everything that is in the bill. Basically, what the compromise does is extend unemployment benefits from December 28—which was while we were all out on vacation—up until June 1, 2003, which is an additional 5 months of coverage. That is what we would be agreeing to today, well recognizing there are other issues in addition to this that we are going to have to do as we go forward on this issue.

The compromise, I should also add, since some of the details were brought up, also provides coverage allowing benefits to be phased out rather than just shut off immediately when the program ends.

President Bush has made it very clear that the extension of unemployment benefits is a top priority. On both sides of the aisle, we have tried to come together. Given the circumstances of having been on our recent holiday, I would like to see us respond in a timely manner, meaning now, through the unanimous consent request, recognizing there is more work to do as we go forward.

The President, as we speak, or in the last hours, has addressed other parts of reemployment. At the end of the day, people want the checks, but what they really want are the jobs. There are other ways we will continue to address that in the future.

I urge my colleagues, very soon, to take the regular order—I will not call for it at this point—so we can take this first important step very significant to the American people, many of whom are not going to see their checks unless we act, and act today.

Mr. GRASSLEY. Mr. President, I rise today in support of extending the temporary extended unemployment compensation program.

In March of last year, Congress enacted the "Job Creation and Worker Assistance Act of 2002." This Act created a temporary program to provide additional unemployment benefits to workers in every State.

Specifically, this program provided up to 13 weeks of federally funded employment benefits for workers who become unemployed and exhaust their regular State unemployment benefits. In addition, the program provided up to 13 weeks of additional benefits in high unemployment States—that's a maximum of 26 weeks.

When this extended benefit program was originally enacted last year, it was scheduled to expire at the end of 2002.

Unfortunately, the economy has not performed as well as we all hoped and the unemployment rate in many States continued to rise throughout last year.

As my colleagues may recall, the Senate agreed to a unanimous consent request last year to extend the deadline. Unfortunately, the 107th Congress adjourned before reaching a final agreement on the extension.

So, we are here again today seeking unanimous consent to extend the temporary extended unemployment compensation program.

This agreement which has been cosponsored by Senators FITZGERALD, SPECTER, COLLINS, GREGG, NICKLES, and CLINTON would provide a 5-month extension of the program through the end of May. This agreement has been reached in consultation with the House Leadership.

I believe a 5-month extension is an appropriate timeframe to see how the economy will perform this year, as well as give Congress the opportunity to consider further economic stimulus legislation.

Our goal should be make sure that everyone who wants a job gets a paycheck, instead of just an unemployment check.

I also believe it is important to point out that although the program expired last week, if we can get this measure through the House and onto the President's desk by Thursday, no one will miss a check.

Unemployment benefits are the bridges that help people get from one job to another. These benefits are not huge, but they're certainly better than nothing for those who are out of work and desperately looking for jobs. People have to put food on the table. They have to heat their homes. They have to buy their kids clothes, shoes and school supplies. Their needs are immediate, and they need immediate relief.

While Congress is approving unemployment benefits, we need to do everything in our power to create jobs. I don't mean just any jobs, but quality opportunities that pay enough income to sustain families and build careers. I look forward to working with my colleagues and the President on creating jobs. Americans are the world's greatest workforce. Folks need and deserve

to use their abilities and skills to the fullest.

According to the Department of Labor, more than 780,000 individuals were collecting extended benefits in mid-December. If we act now to extend this program, workers who qualified before December 28th will be able to continue receiving their weekly benefit check without interruption.

I urge my colleagues to support this measure.

Mr. SARBANES. Mr. President, I am pleased to join my colleagues today as cosponsor of the measure that will extend unemployment insurance benefits. We have a long bipartisan tradition of extending unemployment benefits during periods of prolonged joblessness. We have this policy because it is the right thing to do for people and for the economy. Before I present the case for why extended unemployment benefits are needed—a case which by now almost everyone agrees with—I want to remind my colleagues why we are at this point today.

Led by the late Senator Wellstone, several of my colleagues and I, began this discussion last September. At that point it appeared clear that this economy was still in a weak, 'jobless recovery.' Yet, the administration failed to understand the basic economic reality, and consequently refused to support an extension of benefits. During the next 2 months the economy remained weak and more jobs were lost. My colleagues and I returned to the Senate floor repeatedly, attempting to pass a reasonable extension of unemployment insurance benefits. We asked for unanimous consent eight times, each time pointing out the weak economy, the lack of job creation, the growing number of Americans who had exhausted their benefits, and the upcoming cliff that more Americans were facing, should Congress fail to act. All this while the President remained silent.

Finally, at the eleventh hour of the last Congress, on November 14, we came to an agreement within the Senate. And I would like to thank Senators CLINTON, CANTWELL and NICKLES for their leadership in reaching that compromise. That compromise was needed in order to prevent almost 1 million Americans who should have received benefits from having their benefits terminated. But even that compromise, which passed the Senate by unanimous consent, failed to elicit the support of the President. And without his urging the House failed to act.

Now finally, today we are passing this compromise again. Actually we are passing a slightly improved version which will last for five months, providing individuals with the opportunity to begin receiving extended benefits until June 1st, and allowing all of those who begin to receive their benefits to receive the full 13 weeks, in the event that they are unable to find a job. And it is my understanding that if the House acts on this tomorrow, and the President signs this measure by Thursday, that everyone who should receive a benefit will continue to do so.

However, even with passage of this measure, there is still significant work that needs to be done. This legislation, despite the valiant efforts of some of my colleagues, fails to provide benefits to those who have already exhausted their benefits and are still unable to find a job. There are an estimated 1 million Americans who are in such a position. They are in such a position because the economy has continued to remain weak and is failing to create jobs.

The latest unemployment report showed unemployment at an 8 year high of six percent. We have 2.17 million fewer private sector jobs today than when President Bush took office. We lost 48,000 private sector jobs last month alone.

As a result of the lack of jobs, there are over 1.7 million Americans who have been unemployed and looking for work for more than 26 weeks. There are 150,000 more long-term unemployed than in September and over 1 million more than when President Bush took office. Over 20 percent of those who are unemployed have been so for more than 26 weeks, a greater percentage than at any point in the past eight years.

The premise of the unemployment insurance system is that you give people some short-term support, the labor market picks up, and they can go back and find a job. Today, they cannot find jobs. In fact, not only can they not find them, more people are losing their jobs. So the labor market is contracting, not expanding. Extending benefits in this situation is the proper economic policy. Fed Chairman Greenspan, before the Joint Economic Committee this past November stated: "I have always argued that in periods like that the economic restraints on the unemployment insurance system almost surely ought to the eased."

This easing ought to include extending benefits to those who have already exhausted all of their benefits. I can not understand why anyone is objecting to extending benefits to these individuals. It is not because we lack the resources to extend benefits. Extending benefits to these individuals is projected to cost around $7.5 billion. Our unemployment insurance trust funds, specifically designed to meet this kind of situation, are in strong financial condition with approximately $24 billion. Those moneys have been paid into the trust fund over a period of time. The whole system was structured to have these trust funds build up in good times, and then to utilize them in bad times.

We will spend much time debating the wisdom of various economic stimulus plans over the coming months, but one thing that everyone should be able to agree on is the stimulative effects of extending unemployment insurance benefits. As the Baltimore Sun wrote in an editorial on January 3, 2003, "Few dispute the clear returns from directing short-term relief to those who lose their jobs as a result of the fiscal turbulence. Giving money to people who need it to pay their bills ensures that it will be spent and multiply as it ripples through the economy."

In closing, I would like to thank all of those who have worked so hard to pass the measure that we passed today. As a result many Americans will receive the benefits that they deserve and our economy will receive some of the stimulus that it needs. And I will continue to work to extend benefits to the 1 million Americans who have exhausted their unemployment insurance coverage.

Ms. MIKULSKI. Mr. President, I rise in support of the Emergency Unemployment Compensation Act. On December 28, 2002, the Federal Government played Scrooge to nearly 800,000 Americans. We left town, and we left a lot of people holding no money for the new year. Because the House of Representatives failed to pass an extension of unemployment benefits, 780,000 unemployed Americans—including 10,000 unemployed Marylanders—had their benefits abruptly cut off just a few days after Christmas.

Yet the story gets even worse. One million Americans have already exhausted both Federal and state aid without finding a new job, and 2 million are expected to run out of state benefits in the next five months. We must act now to help these working Americans who have been hardest hit by the economic downturn.

That is why I am proud to cosponsor the Emergency Unemployment Compensation Act. This bill will give immediate assistance to those who need it most and it will put money back into the economy to keep it going. The Emergency Unemployment Compensation Act will help nearly 2.85 million Americans who are facing the highest unemployment rate since the recession during the first Bush Administration. It will restore benefits for those who were unfairly cut off in December and it will help those who will lose their benefits in the next five months. It will provide relief for approximately 30,000 people in my own state of Maryland who still have not been able to find a job.

Extending UI not only helps those who are hardest hit by bad economic times, it also helps turn the economy around. A good economic stimulus puts money in the hands of the people who will spend it. That is precisely what the Emergency Unemployment Compensation Act does. Workers who have lost their jobs because of September 11th or the economic downturn will spend this money. They will spend it on necessities, like rent and food, to keep the economy going. This bill will inject $7.25 billion into the economy as an immediate stimulus. I believe this will do more to help the people and stimulate the economy than the across the board tax cuts for the wealthy.

I am so pleased that the Senate is ready to pass this bill. But this measure doesn't go far enough. As long term unemployment balloons due to the weak economy, we can't forget about the 1 million Americans who have already exhausted both Federal and state unemployment benefits and have still not found a job. These people have no income, and now they have no safety net. I urge my colleagues to provide an additional 13 weeks of extended unemployment benefits for these Americans.

Mr. FITZGERALD. Mr. President, I rise today to urge the Senate to pass the extension of the Temporary Extended Unemployment Compensation, TEUC, Program.

In November, the Senate acted unanimously to extend the TEUC program through the end of March by passing a bill that I cosponsored along with Senators CLINTON, CANTWELL, SPECTER, SARBANES, KENNEDY, and DURBIN. However, the House and Senate were unable to reach a compromise that would have allowed President Bush to sign the extension into law. This is our last chance to act before there is an interruption in the receipt of benefits pursuant to the TEUC program.

November 2002, the nationwide unemployment level shot up to 6.0 percent from 5.7 percent in October. The law authorizing the TEUC program expired on December 28, 2002. If we do not act now to extend this program, as many as 800,000 workers who are receiving temporary benefits will not receive their full 13 weeks of extended unemployment benefits. 1.6 million workers will exhaust their regular unemployment benefits between December 28, 2002 and the end of May 2003 if we fail to act. If we act today to extend this important program, we will ensure that these workers will receive their next unemployment check.

The unemployment situation in my home State of Illinois is critical. It would be particularly adversely affected if we do not act. In November 2002, Illinois had a 6.7-percent unemployment rate, tying Mississippi with the third highest unemployment rate in the country behind Alaska and Oregon. Illinois' rate was substantially higher than the nationwide 6.0-percent unemployment rate. Over the 3-month period from September through November 2002, the average unemployment rate in Illinois was 6.6 percent, which is significantly higher than the national average of 5.8 percent over the same period. In November, there were 416,200 unemployed persons in Illinois.

I have introduced legislation that would extend the provisions of the Temporary Extended Unemployment Compensation Act of 2002 to allow individuals receiving benefits to continue collecting them until they expire in full. This bill is retroactive, and permits people who otherwise would have had their TEUC benefits cut off on December 28 to receive the full 13 weeks of TEUC benefits. Furthermore, this legislation would make individuals who have exhausted their regular 26 weeks of unemployment insurance eligible for a 13-week extension, and would allow these individuals to apply for such extensions through the end of May. Under my bill, even those who enrolled in the TEUC program just prior to the expiration of the program would be eligible to receive full 13 weeks of extended unemployment benefits.

This bill is a more generous extension of the TEUC program than the extension that the Senate approved last November. It provides for 5-month extension of the temporary unemployment insurance program, which is more than the 3 months of benefits provided by the extension that the Senate passed last year. Passing this legislation will help millions of families nationwide, easing the burden that these families might otherwise experience if their unemployment insurance were to have expired on December 28, 2002. It will help unemployed Americans feed their families and pay their bills while giving them an additional 5 months to find new jobs.

I would like to thank the Senators on both sides of the aisle who have helped to negotiate this bipartisan compromise bill that will extend unemployment insurance benefits to the millions of Americans who need them.

President Bush has called upon us to quickly pass legislation that will extend the TEUC program, a program whose benefits fell off a cliff on December 28, 2002. I urge may colleagues in the Senate to support this necessary legislation. I also urge the House of Representatives to take up and pass this bill in an expeditious manner so that President Bush can sign the measure into law by this Thursday and prevent any interruption in the receipt of temporary unemployment insurance benefits.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I fully appreciate the suggestion made by the distinguished Republican leader, the majority leader. Clearly, we have to resolve what we can resolve. I know a good deal of effort has been put forth in getting us to this point. But that does not acknowledge the urgency with which we have to address all of those people who are not considered in this resolution.

The Senator mentioned the fact that our Republican colleagues in the House have chosen to recess tomorrow. You do not have the luxury of recessing if you are unemployed. You do not have the luxury of recessing if there is no other option for you but to seek unemployment compensation.

I hope, as Senator REID has suggested, that we continue to find a way this afternoon to address this second group of people who need help, this 750,000 to 1 million people who are not covered in this resolution. I think he is right. I don't think we ought to leave until we get the job done this afternoon. There is no reason why we can't complete our work on both groups today, and I urge my colleagues to stay until we get the job done.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I yield to my friend and colleague.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I yield to my friend from Oklahoma.

Go ahead.

Mr. NICKLES. Mr. President, we have to talk about what is doable. If people want to revisit what we did last year, I am happy to do that. We passed temporary Federal unemployment compensation extension last March or April. We passed that. It was a benefit. It passed overwhelmingly in the Congress. It expired on December 28. Several people said we need to extend that. Last year some people wanted to double the program from a 13-week Federal program to 26 weeks. This Senator, along with others, objected to that. The cost of that program or expansion was about $17- or $18 billion. I objected to it several times. I will object to it today.

What I did agree to and what this Senate passed last year was a simple extension of present law. We agreed, Senator CLINTON and myself, Senator FITZGERALD, Senator SPECTER, Senator CANTWELL—by unanimous vote, the Senate agreed to a 3-month extension of the present program. That passed the Senate. It did not pass the House. The cost of that program was about $4.9 billion. The House had passed a program that cost a little less than $1 billion. I tried to work out the differences between the House and the Senate late in the legislative session. I was not successful. Some of us have been working, frankly, for some period of time trying to get something done now.

We have a letter from the Secretary of Labor, Elaine Chao. I ask unanimous consent to print this letter in the RECORD.

SECRETARY OF LABOR,
Washington, DC, January 6, 2002.

Hon. BILL FRIST,
Majority Leader, U.S. Senate,
Capitol Building, Washington, DC.

DEAR SENATOR FRIST: Although the economy is showing some positive signs, we believe that a short extension of Temporary Extended Unemployment Compensation (TEUC) benefits is needed to give many unemployed workers continued access to the necessities of life while they look for new jobs. As the 108th Congress convenes, we urge you to quickly pass an extension of the TEUC program retroactive to December 28, 2002. The only way for states to continue paying TEUC benefits without disruption is if a bill is presented to the President for signature no later than Thursday, January 9, 2003.

If you have any questions, please do not hesitate to have a member of your staff contact Mr. Anthony Bedell, Senior Legislative

Officer, Office of Congressional and Intergovernmental Affairs, who will coordinate a departmental response. Mr. Bedell can be reached at (202) 693-4600.

Sincerely,

ELAINE L. CHAO.

Mr. NICKLES. The essence of the letter says the only way for States to continue paying temporary unemployment compensation benefits without disruption is if a bill is presented to the President for signature no later than Thursday, January 9, the day after tomorrow.

We had to resolve the differences between the House and the Senate. The Senate passed a $4.9 billion bill; the House passed a $1 billion bill. We have worked with our colleagues in the House. I think we have been successful. I believe we have been successful in getting them to accept a straight extension of present law.

We were originally talking 3 months. After negotiations with the House, I consulted with my colleague and friend from New York and said, let's make it a 5-month extension. So we extended the program all the way through May, and then the phaseout would occur. So there would not be a shutoff date as there was December 28, a much better transition. It was my understanding that colleagues had agreed upon this 5-month extension. The cost of this proposal is estimated to be $7.2, $7.3 billion on a 2002 scoring base. It might go up if benefits go up on the calendar year. It might even be a little bit more than that.

That is a significant change that I believe we have the House concurring with to pass. We will not pass and they will not concur with a doubling of the program to 26 weeks. I will not agree with it, and I don't believe my House colleagues will, either.

If we are going to provide unemployment compensation extension benefits so it would be a seamless transition, so those people who are presently receiving Federal temporary unemployment compensation, if they are in this 13-week window, one week or 10, that they could continue to receive benefits without missing a week, we need to pass it. We need to pass it today. It needs to go to the House, and it needs to go to the President by Thursday for his signature. The only way that will happen will be by unanimous consent.

I believe the only bill that will pass will be basically a clean extension of present law, and I believe the proposal we have before us is deserving of all of our support, just as the bill we passed last November, maybe October, we passed by unanimous consent a 3-month extension, this is a unanimous consent extension for 5 months with a phaseout.

I urge my colleagues not to object to the majority leader's unanimous consent request.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Let me just see if we can resolve this issue. We have two questions. One is the substantive question about who ought to be included in the unemployment compensation package. We believe all of those who ought to benefit ought to be provided the coverage in this resolution. Our Republican colleagues say that half of those ought to benefit. The other question is whether we ought to be able to have a procedural vote, whether we ought to have an opportunity to vote on the amendment offered by the distinguished Senator from New York.

I again ask consent that we have the one vote on the amendment offered by the Senator from New York and then obviously whatever the Senate may decide on that amendment would give us an opportunity to come to closure on the resolution itself.

I see no reason why the Senate should be denied that opportunity on an issue this important on the very first day of the session. I ask unanimous consent that that amendment be allowed a vote at this time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I respond to the comments by the Senator from South Dakota by saying the Senator from Oklahoma laid out clearly why a vote and adoption of such an amendment would be devastating. It would be devastating for the million people we want to cover with the unanimous consent request we have proposed. The House will not accept it. I am not too sure, even if we did pass it here and send it over to the House, the House would not accept it. We will be in conference and the opportunity for us to pass an unemployment extension by Thursday will be lost. I think it is important for us to pass a bill which, I remind everybody in the Chamber, passed when the Senator from South Dakota was the majority leader and the Senator from Montana was the head of the Finance Committee. They passed this unemployment extension.

All we are saying is, let's continue the unemployment extension that you proposed and you passed in the last session of Congress. All of a sudden your handiwork is no longer sufficient today. I don't know what happened between what you did then and what we did today. I don't know what possibly changed the dynamic that would now cause what we are proposing to be insufficient, when what you did was sufficient.

The fact is, this is exactly what you passed under your leadership and what we should do today. We should stop playing politics out of the box with this very important issue to over 1 million people in this country and get the job done.

Mrs. BOXER. Will the Senator yield for a question?

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, the Senator from Pennsylvania has made a number of errors in his comment. Let me clarify. We passed the resolution that we passed in the last session of Congress over the objections of many of those on our side, all of those on our side who felt this very amendment should have been included then. We were told back then we would revisit this issue immediately upon coming back.

Well, we are doing that. But we had a clear understanding that there would be an occasion for us to have a debate and have the amendment we have suggested by the Senator from New York. That is No. 1.

No. 2, I hope this body will never be dictated to by the House of Representatives. We are the Senate of the United States. As the Senate of the United States, I don't want the House telling us what to do. We ought to do what is right. We ought to be the ones to dictate what our position is, not the House.

I would hope we could accommodate the need to address this resolution and the need to address the resolution offered by the Senator from New York. I will suggest a new approach. I would ask unanimous consent that we send two resolutions to the House, the resolution before us and the resolution offered by the Senator from New York. I make that request at this time.

Mr. NICKLES. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Montana.

Mr. BAUCUS. Mr. President, what is the present business? Is the request by the Senator from Tennessee the pending business?

The PRESIDING OFFICER. The original unanimous consent request of the majority leader is before the body.

Mr. BAUCUS. Mr. President, reserving the right to object, I have a couple of points. One, the Senator from Pennsylvania says, "what's changed?" A lot has changed. The unemployment rate is higher than it was last March. That is a significant change. Second, the nature of unemployment in America regrettably is becoming more long term. Economists debate why that is happening; nevertheless, it is a fact. It is becoming more long term. Some of it is Rust Belt jobs not being replaced. A lot of it is in the service industries, whether in technology and financial; but it is becoming more long term.

These people are having a hard time with the change in the nature of our economy and finding jobs. I think, frankly, the request by the Senator from New York is more than reasonable, that at least we should have an opportunity to vote on that; or we can take up the suggestion by the Senator from South Dakota, that we have two different options.

I might also add that this is stimulative. The Senator from Washington pointed out, quite correctly, that economists say for every dollar spent on unemployment, $2.15 is recirculated into the economy. Essentially, a lot of the discussion at the beginning of this year is stimulus—how are we going to

stimulate the economy? I think that at least helping people who don't have jobs gain a little bit of benefits is a good idea because it stimulates the economy. I further add that there will be a lot of discussion over the next weeks and months about the President's stimulus plan, which includes tremendous tax breaks, whether it is dividends or income-tax breaks for these people who have jobs and income.

What about the people who don't have jobs, the people who don't have income? If we are going to "stimulate" the economy by giving tax breaks, the very least we can do is help people who are unemployed in an economy whose very nature means there is longer unemployment.

People who do not have income don't pay income tax. I suggest that we find a way to have a vote on the amendment of the Senator from New York. Senators can vote against it. If Senators do not want to be "dictated" to by the House, they can vote their conscience and do what they think is right. If Senators believe the House trumps this body, they can vote against the amendment. They have that option. But at the very least, I believe that we, as responsible Senators—I heard a couple of great speeches not long ago about defending the Constitution of the United States and doing what is right. Clearly, doing what is right is helping people who need some help. That is what is right. That is why we are here.

I understand it is a little inconvenient, and I don't denigrate that because of the receptions and the parties that are going on here. I don't think the Constitution had that in mind when the Framers wrote the provisions in that document, the oath of office which we took to support and defend our country.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I hope the leaders will provide some time for debate. The majority leader has made a unanimous consent request. Senators are reserving the right to object. They have no right to yield to other Senators when they are reserving the right to object. Let's have an orderly procedure here.

The PRESIDING OFFICER. The Senator is correct.

Mr. SCHUMER. I will reserve the right to object.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I reserve the right to object, and I will not object. I think there is a lot of good debate points being raised. But I hope we don't start this session the way we ended much of last year, which was getting in great debates about big topics and at the end of the day not passing anything. I think that is really where we ended, and we fouled up on a lot of bills last year—big bills. There were significant bills that we would work for weeks and months on and we didn't get them done.

We have a chance to do something here. I think everybody is agreed that there is more that could be done. That would be good, but we don't have that agreement. We can start this session off with doing something or nothing. I hope at some point in time we can get to the point of doing something.

We have a reasonable proposal that is agreed to by the basic principles in this proposal at least. Let's pass that. Let's start this session off with getting something that is going to be helpful for people. It may not be perfect for everybody, and that is obvious, but we can get something done here. It will be significant and it will be important and helpful. I hope we can move that forward and get this cleared through.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, in my unanimous consent request, I wanted to close what has become some debate here and basically say that we have an opportunity—and I believe an obligation—to finish up the business that we didn't finish in the last Congress, on which we have an opportunity to take the next very important step, which will affect the lives of 750,000 people after next Thursday, which doesn't have anything to do with the House or the Senate. Thursday is the deadline for these checks. If they don't go out, it affects 750,000 people. The 5 months' extension that is being proposed here also affects the lives of about 2½ million other people who will be enrolling over that period. Because we worked so hard on both sides of the aisle over so many months and weeks—and over the last several days—I didn't recognize that we would get to a point now where we would have so many reservations of the right to object. We are talking about Thursday, checks not going out, a dislocation affecting 750,000 people, an additional 2½ million, if we don't address this today. With that, I will call for the regular order.

The PRESIDING OFFICER. The regular order has been called for. Is there objection?

Mr. DURBIN. I object.

Mr. BYRD. What is the regular order?

The PRESIDING OFFICER. The regular order is a unanimous consent request made by the majority leader. The Senator can object.

Mr. BYRD. Parliamentary inquiry: Is the resolution before the Senate?

The PRESIDING OFFICER. The request is to have the measure sent to the desk and passed.

Mr. BYRD. Then the resolution is not before the Senate. There is nothing before the Senate that can be amended at this point.

The PRESIDING OFFICER. The Senator is correct. A request has been made that it be granted so it can be brought for a vote.

Mr. BYRD. The request is an all-encompassing request. It doesn't give the Senate a chance to amend the resolution? That is what I am trying to find out.

The PRESIDING OFFICER. The Senator from West Virginia is correct.

The majority leader has asked for regular order. Senators may not reserve the right to object when the regular order has been called for. They either must object or permit the request to be granted. Is there objection?

Mrs. BOXER. Mr. President, may I make a further unanimous consent request?

Mr. BYRD. Mr. President, do I have the floor?

The PRESIDING OFFICER. The majority leader has the floor.

Mr. BYRD. He made a request, but he sent something to the desk, didn't he?

The PRESIDING OFFICER. The majority leader has made a unanimous consent request and he retains the floor.

Mr. BYRD. Yes, he does. I understand that. I had hoped to suggest the absence of a quorum, but he does retain the floor. I ask unanimous consent that I may speak for 1 minute.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object, I ask to speak for a minute following the Senator——

The PRESIDING OFFICER. The Chair believes that objection is heard. Is there objection to the majority leader's request?

Mr. DURBIN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The majority leader has the floor.

Mr. FRIST. Mr. President, I am obviously disappointed with this objection for the reasons that I have set out. There are 750,000 people and their dependents who depend on these distributions, as well as another 2½ million people. We had been told this had been cleared on both sides after a lot of hard work. I am obviously disappointed, because this is the first move out for me, after it had been cleared on both sides, but I guess that is what I can come to expect. I do hope that my colleagues will rethink today's objection and allow us, for the reasons I have said, to have this cleared later today.

Mr. DASCHLE addressed the Chair.

Mr. FRIST. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. I renew my original request.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Reserving the right to object—and I will not object the objection I raised earlier within the caucus has been discussed at length and it is

clear to me that the Democratic leadership, Senator DASCHLE through the membership, will continue to fight for the million people who are not covered by this resolution, but we cannot turn our backs on the 2.8 million who need this check on Thursday.

I will not object to this unanimous consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 23) was read the third time and passed.

* * * * *

H. Res. 14

In the House of Representatives, U.S.,

January 8, 2003.

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (S. 23) to provide for a 5-month extension of the Temporary Extended Unemployment Compensation Act of 2002 and for a transition period for individuals receiving compensation when the program under such Act ends. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by Representative Thomas of California and Representative Rangel of New York; and (2) one motion to recommit.

SEC. 2. The allocations referred to in section 3(a)(4)(B)(i) of House Resolution 5 may be submitted by Representative Nussle of Iowa.

Attest:

Clerk.

108TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 108–1

PROVIDING FOR CONSIDERATION OF S. 23, TO PROVIDE FOR A 5-MONTH EXTENSION OF THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002 AND FOR A TRANSITION PERIOD FOR INDIVIDUALS RECEIVING COMPENSATION WHEN THE PROGRAM UNDER SUCH ACT ENDS

JANUARY 7, 2003.—Referred to the House Calendar and ordered to be printed

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

REPORT

[To accompany H. Res. 14]

The Committee on Rules, having had under consideration House Resolution 14, 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 consideration of S. 23, to provide for a 5-month extension of the Temporary Extended Unemployment Compensation Act of 2002 and for a transition period for individuals receiving compensation when the program under such Act ends, under a closed rule. The rule provides one hour of debate in the House, equally divided and controlled by Representative Thomas of California and Representative Rangel of New York.

The rule waives all points of order against consideration of the bill. The rule provides that the bill shall be considered as read for amendment. The rule provides one motion to recommit.

Finally, Section 2 of the rule provides that the allocations referred to in section 3(a)(4)(B)(i) of H. Res. 5 may be submitted by Representative Nussle of Iowa.

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. 1

Date: January 7, 2003.

19–008

Measure: S. 23.
Motion by: Mr. Frost.
Summary of motion: To make in order the amendment in the nature of a substitute offered by Mr. Rangel of New York, to extend unemployment benefits by 26 weeks.
Results: Defeated 4 to 7.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

○

Public Law 108–7
108th Congress

Joint Resolution

Making consolidated appropriations for the fiscal year ending September 30, 2003, and for other purposes.

Feb. 20, 2003
[H.J. Res. 2]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Consolidated Appropriations Resolution, 2003.

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Consolidated Appropriations Resolution, 2003".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this joint resolution is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. References.

* * * * *

DIVISION G—LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS, 2003

Title I—Department of Labor

DIVISION H—LEGISLATIVE BRANCH APPROPRIATIONS, 2003

Title II—General Provisions

* * * * *

DIVISION J—TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS, 2003

Title I—Department of the Treasury

Title IV—Independent Agencies

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BLACK LUNG DISABILITY TRUST FUND

(INCLUDING TRANSFER OF FUNDS)

26 USC 9501 note.

Beginning in fiscal year 2003 and thereafter, such sums as may be necessary from the Black Lung Disability Trust Fund, to remain available until expended, for payment of all benefits authorized by section 9501(d)(1), (2), (4), and (7) of the Internal Revenue Code of 1954, as amended; and interest on advances, as authorized by section 9501(c)(2) of that Act. In addition, the following amounts shall be available from the Fund for fiscal year 2003 for expenses of operation and administration of the Black Lung Benefits program, as authorized by section 9501(d)(5): $31,987,000 for transfer to the Employment Standards Administration, "Salaries and Expenses"; $22,952,000 for transfer to Departmental Management, "Salaries and Expenses"; $334,000 for transfer to Departmental Management, "Office of Inspector General"; and $356,000 for payments into miscellaneous receipts for the expenses of the Department of the Treasury.

* * * * *

26 USC note prec. 6031.

SEC. 211. (a) Each office in the legislative branch, except the House and the Senate, which is responsible for preparing any written statement furnished under part 3 of subchapter A of chapter 61 of the Internal Revenue Code of 1986 on behalf of a person shall make the statement available to the person in an electronic format (at the direction of the person) which will enable the person to provide the statement electronically to a tax preparer or other provider of financial services.

Applicability.

(b) Subsection (a) shall apply with respect to statements prepared for taxable years ending on or after December 31, 2004.

* * * * *

* * * * *

ADMINISTRATIVE PROVISIONS—INTERNAL REVENUE SERVICE

SEC. 101. Not to exceed 5 percent of any appropriation made available in this Act to the Internal Revenue Service may be transferred to any other Internal Revenue Service appropriation upon the advance approval of the Committees on Appropriations.

26 USC 7804 note.

SEC. 102. The Internal Revenue Service shall maintain a training program to ensure that Internal Revenue Service employees are trained in taxpayers' rights, in dealing courteously with the taxpayers, and in cross-cultural relations.

Procedures. 26 USC 6103 note.

SEC. 103. The Internal Revenue Service shall institute and enforce policies and procedures that will safeguard the confidentiality of taxpayer information.

SEC. 104. Funds made available by this or any other Act to the Internal Revenue Service shall be available for improved facilities and increased manpower to provide sufficient and effective 1–800 help line service for taxpayers. The Commissioner shall continue to make the improvement of the Internal Revenue Service 1–800 help line service a priority and allocate resources necessary to increase phone lines and staff to improve the Internal Revenue Service 1–800 help line service.

* * * * *

UNITED STATES TAX COURT

SALARIES AND EXPENSES

26 USC 7443 note.

For necessary expenses, including contract reporting and other services as authorized by 5 U.S.C. 3109, $37,305,000: *Provided*, That travel expenses of the judges shall be paid upon the written certificate of the judge.

* * * * *

Public Law 108–11
108th Congress

An Act

Making emergency wartime supplemental appropriations for the fiscal year 2003, and for other purposes.

Apr. 16, 2003
[H.R. 1559]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, and for other purposes, namely:

Emergency Wartime Supplemental Appropriations Act, 2003.

* * * * *

SEC. 4002. ADDITIONAL TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION FOR DISPLACED AIRLINE RELATED WORKERS.

26 USC 3304 note.

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

(1) the term "eligible individual" means an individual whose eligibility for temporary extended unemployment compensation under the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21), as amended by Public Law 108–1 (117 Stat. 3), is or would be based on the exhaustion of regular compensation under State law, entitlement to which was based in whole or in part on qualifying employment performed during such individual's base period;

(2) the term "qualifying employment", with respect to an eligible individual, means employment—

(A) with an air carrier, employment at a facility at an airport, or with an upstream producer or supplier for an air carrier; and

(B) as determined by the Secretary, separation from which was due, in whole or in part, to—

(i) reductions in service by an air carrier as a result of a terrorist action or security measure;

(ii) a closure of an airport in the United States as a result of a terrorist action or security measure; or

(iii) a military conflict with Iraq that has been authorized by Congress;

(3) the term "air carrier" means an air carrier that holds a certificate issued under chapter 411 of title 49, United States Code;

(4) the term "upstream producer" means a firm that performs additional, value-added, production processes, including firms that perform final assembly, finishing, or packaging of articles, for another firm;

(5) the term "supplier" means a firm that produces component parts for, or articles and contract services considered to be a part of the production process or services for, another firm;

(6) the term "Secretary" means the Secretary of Labor; and

(7) the term "terrorist action or security measure" means a terrorist attack on the United States on September 11, 2001, or a security measure taken in response to such attack.

Applicability.

(b) ADDITIONAL TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION FOR ELIGIBLE INDIVIDUAL.—In the case of an eligible individual, the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21), as amended by Public Law 108–1 (117 Stat. 3), shall be applied as if it had been amended in accordance with subsection (c).

(c) MODIFICATIONS.—

(1) IN GENERAL.—For purposes of subsection (b), the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21), as amended by Public Law 108–1 (117 Stat. 3), shall be treated as if it had been amended as provided in this subsection.

(2) PROGRAM EXTENSION.—Deem section 208 of the Temporary Extended Unemployment Compensation Act of 2002,

26 USC 3304 note.

as amended by Public Law 108–1 (117 Stat. 3), to be amended to read as follows:

"SEC. 208. APPLICABILITY.

"(a) IN GENERAL.—Subject to subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

"(1) beginning after the date on which such agreement is entered into; and

"(2) ending before December 29, 2003.

"(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

"(1) IN GENERAL.—Subject to paragraph (2), in the case of an individual who has amounts remaining in an account established under section 203 as of December 28, 2003, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title, including such compensation payable by reason of amounts deposited in such account after such date pursuant to the application of subsection (c) of such section.

"(2) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after December 26, 2004.".

(3) ADDITIONAL WEEKS OF BENEFITS.—Deem section 203 of the Temporary Extended Unemployment Compensation Act of 2002, as amended by Public Law 108–1 (117 Stat. 3), to be amended—

26 USC 3304 note.

(A) in subsection (b)(1)—

(i) in subparagraph (A), by striking "50" and inserting "150"; and

(ii) by striking "13" and inserting "39"; and

(B) in subsection (c)(1), by inserting "⅓ of" after "equal to".

(4) EFFECTIVE DATE OF MODIFICATIONS DESCRIBED IN PARAGRAPH (3).—

(A) IN GENERAL.—The amendments described in paragraph (3)—

(i) shall be deemed to have taken effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002; but

(ii) shall be treated as applying only with respect to weeks of unemployment beginning on or after the date of enactment of this Act, subject to subparagraph (B).

(B) SPECIAL RULES.—In the case of an eligible individual for whom a temporary extended unemployment account was established before the date of enactment of this Act, the Temporary Extended Unemployment Compensation Act of 2002 (as amended by this section) shall be applied subject to the following:

(i) Any amounts deposited in the individual's temporary extended unemployment compensation account by reason of section 203(c) of such Act (commonly known as "TEUC–X amounts") before the date of enactment of this Act shall be treated as amounts deposited by reason of section 203(b) of such Act (commonly

known as "TEUC amounts"), as deemed to have been amended by paragraph (3)(A).

(ii) For purposes of determining whether the individual is eligible for any TEUC–X amounts under such Act, as deemed to be amended by this subsection—

(I) any determination made under section 203(c) of such Act before the application of the amendment described in paragraph (3)(B) shall be disregarded; and

(II) any such determination shall instead be made by applying section 203(c) of such Act, as deemed to be amended by paragraph (3)(B), as of the time that all amounts established in such account in accordance with section 203(b) of such Act (as deemed to be amended under this subsection, and including any amounts described in clause (i)) are in fact exhausted.

* * * * *

Public Law 108–27
108th Congress

An Act

May 28, 2003
[H.R. 2]

To provide for reconciliation pursuant to section 201 of the concurrent resolution on the budget for fiscal year 2004.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Jobs and Growth Tax Relief Reconciliation Act of 2003.
26 USC 1 note.

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

(a) SHORT TITLE.—This Act may be cited as the "Jobs and Growth Tax Relief Reconciliation Act of 2003".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed 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.—The table of contents of this Act is as follows:

Sec. 1. Short title; references; table of contents.

TITLE I—ACCELERATION OF CERTAIN PREVIOUSLY ENACTED TAX REDUCTIONS

Sec. 101. Acceleration of increase in child tax credit.
Sec. 102. Acceleration of 15-percent individual income tax rate bracket expansion for married taxpayers filing joint returns.
Sec. 103. Acceleration of increase in standard deduction for married taxpayers filing joint returns.
Sec. 104. Acceleration of 10-percent individual income tax rate bracket expansion.
Sec. 105. Acceleration of reduction in individual income tax rates.
Sec. 106. Minimum tax relief to individuals.
Sec. 107. Application of EGTRRA sunset to this title.

TITLE II—GROWTH INCENTIVES FOR BUSINESS

Sec. 201. Increase and extension of bonus depreciation.
Sec. 202. Increased expensing for small business.

TITLE III—REDUCTION IN TAXES ON DIVIDENDS AND CAPITAL GAINS

Sec. 301. Reduction in capital gains rates for individuals; repeal of 5-year holding period requirement.
Sec. 302. Dividends of individuals taxed at capital gain rates.
Sec. 303. Sunset of title.

TITLE IV—TEMPORARY STATE FISCAL RELIEF

Sec. 401. Temporary State fiscal relief.

TITLE V—CORPORATE ESTIMATED TAX PAYMENTS FOR 2003

Sec. 501. Time for payment of corporate estimated taxes.

TITLE I—ACCELERATION OF CERTAIN PREVIOUSLY ENACTED TAX REDUCTIONS

SEC. 101. ACCELERATION OF INCREASE IN CHILD TAX CREDIT.

(a) IN GENERAL.—The item relating to calendar years 2001 through 2004 in the table contained in paragraph (2) of section 24(a) (relating to per child amount) is amended to read as follows: 26 USC 24.

"2003 or 2004 .... $1,000".

(b) ADVANCE PAYMENT OF PORTION OF INCREASED CREDIT IN 2003.—

(1) IN GENERAL.—Subchapter B of chapter 65 (relating to abatements, credits, and refunds) is amended by inserting after section 6428 the following new section:

"SEC. 6429. ADVANCE PAYMENT OF PORTION OF INCREASED CHILD CREDIT FOR 2003. 26 USC 6429.

"(a) IN GENERAL.—Each taxpayer who was allowed a credit under section 24 on the return for the taxpayer's first taxable year beginning in 2002 shall be treated as having made a payment against the tax imposed by chapter 1 for such taxable year in an amount equal to the child tax credit refund amount (if any) for such taxable year.

"(b) CHILD TAX CREDIT REFUND AMOUNT.—For purposes of this section, the child tax credit refund amount is the amount by which the aggregate credits allowed under part IV of subchapter A of chapter 1 for such first taxable year would have been increased if—

"(1) the per child amount under section 24(a)(2) for such year were $1,000,

"(2) only qualifying children (as defined in section 24(c)) of the taxpayer for such year who had not attained age 17 as of December 31, 2003, were taken into account, and

"(3) section 24(d)(1)(B)(ii) did not apply.

"(c) TIMING OF PAYMENTS.—In the case of any overpayment attributable to this section, the Secretary shall, subject to the provisions of this title, refund or credit such overpayment as rapidly as possible and, to the extent practicable, before October 1, 2003. No refund or credit shall be made or allowed under this section after December 31, 2003.

"(d) COORDINATION WITH CHILD TAX CREDIT.—

"(1) IN GENERAL.—The amount of credit which would (but for this subsection and section 26) be allowed under section 24 for the taxpayer's first taxable year beginning in 2003 shall be reduced (but not below zero) by the payments made to the taxpayer under this section. Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

"(2) JOINT RETURNS.—In the case of a payment under this section with respect to a joint return, half of such payment shall be treated as having been made to each individual filing such return.

"(e) NO INTEREST.—No interest shall be allowed on any overpayment attributable to this section.".

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end the following new item:

"Sec. 6429. Advance payment of portion of increased child credit for 2003.".

26 USC 24 note. Applicability.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2002.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall take effect on the date of the enactment of this Act.

SEC. 102. ACCELERATION OF 15-PERCENT INDIVIDUAL INCOME TAX RATE BRACKET EXPANSION FOR MARRIED TAXPAYERS FILING JOINT RETURNS.

26 USC 1.

(a) IN GENERAL.—The table contained in subparagraph (B) of section 1(f)(8) (relating to applicable percentage) is amended by inserting before the item relating to 2005 the following new item:

"2003 and 2004 .... 200".

(b) CONFORMING AMENDMENTS.—

(1) Section 1(f)(8)(A) is amended by striking "2004" and inserting "2002".

26 USC 1 note.

(2) Section 302(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking "2004" and inserting "2002".

Applicability. 26 USC 1 note.

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

SEC. 103. ACCELERATION OF INCREASE IN STANDARD DEDUCTION FOR MARRIED TAXPAYERS FILING JOINT RETURNS.

(a) IN GENERAL.—The table contained in paragraph (7) of section 63(c) (relating to applicable percentage) is amended by inserting before the item relating to 2005 the following new item:

"2003 and 2004 .... 200".

26 USC 1 note.

(b) CONFORMING AMENDMENT.—Section 301(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking "2004" and inserting "2002".

Applicability. 26 USC 63 note.

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

SEC. 104. ACCELERATION OF 10-PERCENT INDIVIDUAL INCOME TAX RATE BRACKET EXPANSION.

(a) IN GENERAL.—Clause (i) of section 1(i)(1)(B) (relating to the initial bracket amount) is amended by striking "($12,000 in the case of taxable years beginning before January 1, 2008)" and inserting "($12,000 in the case of taxable years beginning after December 31, 2004, and before January 1, 2008)".

(b) INFLATION ADJUSTMENT.—Subparagraph (C) of section 1(i)(1) is amended to read as follows:

"(C) INFLATION ADJUSTMENT.—In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2000—

"(i) except as provided in clause (ii), the Secretary shall make no adjustment to the initial bracket amounts for any taxable year beginning before January 1, 2009,

"(ii) there shall be an adjustment under subsection (f) of such amounts which shall apply only to taxable years beginning in 2004, and such adjustment shall be determined under subsection (f)(3) by substituting '2002' for '1992' in subparagraph (B) thereof,

"(iii) the cost-of-living adjustment used in making adjustments to the initial bracket amounts for any taxable year beginning after December 31, 2008, shall be determined under subsection (f)(3) by substituting '2007' for '1992' in subparagraph (B) thereof, and

"(iv) the adjustments under clauses (ii) and (iii) shall not apply to the amount referred to in subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.".

(c) EFFECTIVE DATE.— 26 USC 1 note.

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002. Applicability.

(2) TABLES FOR 2003.—The Secretary of the Treasury shall modify each table which has been prescribed under section 1(f) of the Internal Revenue Code of 1986 for taxable years beginning in 2003 and which relates to the amendment made by subsection (a) to reflect such amendment.

SEC. 105. ACCELERATION OF REDUCTION IN INDIVIDUAL INCOME TAX RATES.

(a) IN GENERAL.—The table contained in paragraph (2) of section 1(i) (relating to reductions in rates after June 30, 2001) is amended to read as follows: 26 USC 1.

"In the case of taxable years beginning during calendar year:	The corresponding percentages shall be substituted for the following percentages:			
	28%	31%	36%	39.6%
2001	27.5%	30.5%	35.5%	39.1%
2002	27.0%	30.0%	35.0%	38.6%
2003 and thereafter	25.0%	28.0%	33.0%	35.0%".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2002. Applicability. 26 USC 1 note.

SEC. 106. MINIMUM TAX RELIEF TO INDIVIDUALS.

(a) IN GENERAL.—

(1) Subparagraph (A) of section 55(d)(1) is amended by striking "$49,000 in the case of taxable years beginning in 2001, 2002, 2003, and 2004" and inserting "$58,000 in the case of taxable years beginning in 2003 and 2004".

(2) Subparagraph (B) of section 55(d)(1) is amended by striking "$35,750 in the case of taxable years beginning in 2001, 2002, 2003, and 2004" and inserting "$40,250 in the case of taxable years beginning in 2003 and 2004".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2002. Applicability. 26 USC 55 note.

SEC. 107. APPLICATION OF EGTRRA SUNSET TO THIS TITLE. 26 USC 1 note.

Each amendment made by this title shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of

2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

TITLE II—GROWTH INCENTIVES FOR BUSINESS

SEC. 201. INCREASE AND EXTENSION OF BONUS DEPRECIATION.

26 USC 168.

(a) IN GENERAL.—Section 168(k) (relating to special allowance for certain property acquired after September 10, 2001, and before September 11, 2004) is amended by adding at the end the following new paragraph:

"(4) 50-PERCENT BONUS DEPRECIATION FOR CERTAIN PROPERTY.—

"(A) IN GENERAL.—In the case of 50-percent bonus depreciation property—

Applicability.

"(i) paragraph (1)(A) shall be applied by substituting '50 percent' for '30 percent', and

"(ii) except as provided in paragraph (2)(C), such property shall be treated as qualified property for purposes of this subsection.

"(B) 50-PERCENT BONUS DEPRECIATION PROPERTY.—For purposes of this subsection, the term '50-percent bonus depreciation property' means property described in paragraph (2)(A)(i)—

"(i) the original use of which commences with the taxpayer after May 5, 2003,

"(ii) which is acquired by the taxpayer after May 5, 2003, and before January 1, 2005, but only if no written binding contract for the acquisition was in effect before May 6, 2003, and

"(iii) which is placed in service by the taxpayer before January 1, 2005, or, in the case of property described in paragraph (2)(B) (as modified by subparagraph (C) of this paragraph), before January 1, 2006.

Applicability.

"(C) SPECIAL RULES.—Rules similar to the rules of subparagraphs (B) and (D) of paragraph (2) shall apply for purposes of this paragraph; except that references to September 10, 2001, shall be treated as references to May 5, 2003.

Applicability.

"(D) AUTOMOBILES.—Paragraph (2)(E) shall be applied by substituting '$7,650' for '$4,600' in the case of 50-percent bonus depreciation property.

"(E) ELECTION OF 30-PERCENT BONUS.—If a taxpayer makes an election under this subparagraph with respect to any class of property for any taxable year, subparagraph (A)(i) shall not apply to all property in such class placed in service during such taxable year.".

(b) EXTENSION OF CERTAIN DATES FOR 30-PERCENT BONUS DEPRECIATION PROPERTY.—

(1) PORTION OF BASIS TAKEN INTO ACCOUNT.—

(A) Subparagraphs (B)(ii) and (D)(i) of section 168(k)(2) are each amended by striking "September 11, 2004" each place it appears in the text and inserting "January 1, 2005".

(B) Clause (ii) of section 168(k)(2)(B) is amended by striking "PRE-SEPTEMBER 11, 2004" in the heading and inserting "PRE-JANUARY 1, 2005". 26 USC 168.

(2) ACQUISITION DATE.—Clause (iii) of section 168(k)(2)(A) is amended by striking "September 11, 2004" each place it appears and inserting "January 1, 2005".

(3) ELECTION.—Clause (iii) of section 168(k)(2)(C) is amended by adding at the end the following: "The preceding sentence shall be applied separately with respect to property treated as qualified property by paragraph (4) and other qualified property.". Applicability.

(c) CONFORMING AMENDMENTS.—

(1) The subsection heading for section 168(k) is amended by striking "SEPTEMBER 11, 2004" and inserting "JANUARY 1, 2005".

(2) The heading for clause (i) of section 1400L(b)(2)(C) is amended by striking "30-PERCENT ADDITIONAL ALLOWANCE PROPERTY" and inserting "BONUS DEPRECIATION PROPERTY UNDER SECTION 168(k)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after May 5, 2003. Applicability. 26 USC 168 note.

SEC. 202. INCREASED EXPENSING FOR SMALL BUSINESS.

(a) IN GENERAL.—Paragraph (1) of section 179(b) (relating to dollar limitation) is amended to read as follows:

"(1) DOLLAR LIMITATION.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $25,000 ($100,000 in the case of taxable years beginning after 2002 and before 2006).".

(b) INCREASE IN QUALIFYING INVESTMENT AT WHICH PHASEOUT BEGINS.—Paragraph (2) of section 179(b) (relating to reduction in limitation) is amended by inserting "($400,000 in the case of taxable years beginning after 2002 and before 2006)" after "$200,000".

(c) OFF-THE-SHELF COMPUTER SOFTWARE.—Paragraph (1) of section 179(d) (defining section 179 property) is amended to read as follows:

"(1) SECTION 179 PROPERTY.—For purposes of this section, the term 'section 179 property' means property—

"(A) which is—

"(i) tangible property (to which section 168 applies), or

"(ii) computer software (as defined in section 197(e)(3)(B)) which is described in section 197(e)(3)(A)(i), to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2006,

"(B) which is section 1245 property (as defined in section 1245(a)(3)), and

"(C) which is acquired by purchase for use in the active conduct of a trade or business.

Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.".

(d) ADJUSTMENT OF DOLLAR LIMIT AND PHASEOUT THRESHOLD FOR INFLATION.—Subsection (b) of section 179 (relating to limitations) is amended by adding at the end the following new paragraph:

"(5) INFLATION ADJUSTMENTS.—

"(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2003 and before 2006, the $100,000 and $400,000 amounts in paragraphs (1) and (2) shall each 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, by substituting 'calendar year 2002' for 'calendar year 1992' in subparagraph (B) thereof.

"(B) ROUNDING.—

"(i) DOLLAR LIMITATION.—If the amount in paragraph (1) as increased under subparagraph (A) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

"(ii) PHASEOUT AMOUNT.—If the amount in paragraph (2) as increased under subparagraph (A) is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.".

26 USC 179.

(e) REVOCATION OF ELECTION.—Paragraph (2) of section 179(c) (relating to election irrevocable) is amended by adding at the end the following new sentence: "Any such election or specification with respect to any taxable year beginning after 2002 and before 2006 may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.".

Applicability.
26 USC 179 note.

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

TITLE III—REDUCTION IN TAXES ON DIVIDENDS AND CAPITAL GAINS

SEC. 301. REDUCTION IN CAPITAL GAINS RATES FOR INDIVIDUALS; REPEAL OF 5-YEAR HOLDING PERIOD REQUIREMENT.

(a) IN GENERAL.—

(1) Sections 1(h)(1)(B) and 55(b)(3)(B) are each amended by striking "10 percent" and inserting "5 percent (0 percent in the case of taxable years beginning after 2007)".

(2) The following sections are each amended by striking "20 percent" and inserting "15 percent":

(A) Section 1(h)(1)(C).

(B) Section 55(b)(3)(C).

(C) Section 1445(e)(1).

(D) The second sentence of section 7518(g)(6)(A).

(E) The second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936.

46 USC app. 1177.

(b) CONFORMING AMENDMENTS.—

(1) Section 1(h) is amended—

(A) by striking paragraphs (2) and (9),

(B) by redesignating paragraphs (3) through (8) as paragraphs (2) through (7), respectively, and

(C) by redesignating paragraphs (10), (11), and (12) as paragraphs (8), (9), and (10), respectively.

(2) Paragraph (3) of section 55(b) is amended by striking "In the case of taxable years beginning after December 31, 2000, rules similar to the rules of section 1(h)(2) shall apply for purposes of subparagraphs (B) and (C).".

(3) Paragraph (7) of section 57(a) is amended— 26 USC 57.

(A) by striking "42 percent" the first place it appears and inserting "7 percent", and

(B) by striking the last sentence.

(c) TRANSITIONAL RULES FOR TAXABLE YEARS WHICH INCLUDE MAY 6, 2003.—For purposes of applying section 1(h) of the Internal Revenue Code of 1986 in the case of a taxable year which includes May 6, 2003— 26 USC 1 note.

(1) The amount of tax determined under subparagraph (B) of section 1(h)(1) of such Code shall be the sum of—

(A) 5 percent of the lesser of—

(i) the net capital gain determined by taking into account only gain or loss properly taken into account for the portion of the taxable year on or after May 6, 2003 (determined without regard to collectibles gain or loss, gain described in section 1(h)(6)(A)(i) of such Code, and section 1202 gain), or

(ii) the amount on which a tax is determined under such subparagraph (without regard to this subsection),

(B) 8 percent of the lesser of—

(i) the qualified 5-year gain (as defined in section 1(h)(9) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act) properly taken into account for the portion of the taxable year before May 6, 2003, or

(ii) the excess (if any) of—

(I) the amount on which a tax is determined under such subparagraph (without regard to this subsection), over

(II) the amount on which a tax is determined under subparagraph (A), plus

(C) 10 percent of the excess (if any) of—

(i) the amount on which a tax is determined under such subparagraph (without regard to this subsection), over

(ii) the sum of the amounts on which a tax is determined under subparagraphs (A) and (B).

(2) The amount of tax determined under subparagraph (C) of section (1)(h)(1) of such Code shall be the sum of—

(A) 15 percent of the lesser of—

(i) the excess (if any) of the amount of net capital gain determined under subparagraph (A)(i) of paragraph (1) of this subsection over the amount on which a tax is determined under subparagraph (A) of paragraph (1) of this subsection, or

(ii) the amount on which a tax is determined under such subparagraph (C) (without regard to this subsection), plus

(B) 20 percent of the excess (if any) of—

(i) the amount on which a tax is determined under such subparagraph (C) (without regard to this subsection), over

(ii) the amount on which a tax is determined under subparagraph (A) of this paragraph.

(3) For purposes of applying section 55(b)(3) of such Code, rules similar to the rules of paragraphs (1) and (2) of this subsection shall apply. Applicability.

(4) In applying this subsection with respect to any pass-thru entity, the determination of when gains and losses are properly taken into account shall be made at the entity level.

(5) For purposes of applying section 1(h)(11) of such Code, as added by section 302 of this Act, to this subsection, dividends which are qualified dividend income shall be treated as gain properly taken into account for the portion of the taxable year on or after May 6, 2003.

(6) Terms used in this subsection which are also used in section 1(h) of such Code shall have the respective meanings that such terms have in such section.

Applicability. 26 USC 1 note.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided by this subsection, the amendments made by this section shall apply to taxable years ending on or after May 6, 2003.

(2) WITHHOLDING.—The amendment made by subsection (a)(2)(C) shall apply to amounts paid after the date of the enactment of this Act.

(3) SMALL BUSINESS STOCK.—The amendments made by subsection (b)(3) shall apply to dispositions on or after May 6, 2003.

SEC. 302. DIVIDENDS OF INDIVIDUALS TAXED AT CAPITAL GAIN RATES.

26 USC 1.

(a) IN GENERAL.—Section 1(h) (relating to maximum capital gains rate), as amended by section 301, is amended by adding at the end the following new paragraph:

"(11) DIVIDENDS TAXED AS NET CAPITAL GAIN.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'net capital gain' means net capital gain (determined without regard to this paragraph) increased by qualified dividend income.

"(B) QUALIFIED DIVIDEND INCOME.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified dividend income' means dividends received during the taxable year from—

"(I) domestic corporations, and

"(II) qualified foreign corporations.

"(ii) CERTAIN DIVIDENDS EXCLUDED.—Such term shall not include—

"(I) any dividend from a corporation which for the taxable year of the corporation in which the distribution is made, or the preceding taxable year, is a corporation exempt from tax under section 501 or 521,

"(II) any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.), and

"(III) any dividend described in section 404(k).

"(iii) COORDINATION WITH SECTION 246(c).—Such term shall not include any dividend on any share of stock—

"(I) with respect to which the holding period requirements of section 246(c) are not met (determined by substituting in section 246(c)(1) '60 days' for '45 days' each place it appears and by substituting '120-day period' for '90-day period'), or

"(II) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

"(C) QUALIFIED FOREIGN CORPORATIONS.—

"(i) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'qualified foreign corporation' means any foreign corporation if—

"(I) such corporation is incorporated in a possession of the United States, or

"(II) such corporation is eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this paragraph and which includes an exchange of information program.

"(ii) DIVIDENDS ON STOCK READILY TRADABLE ON UNITED STATES SECURITIES MARKET.—A foreign corporation not otherwise treated as a qualified foreign corporation under clause (i) shall be so treated with respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States.

"(iii) EXCLUSION OF DIVIDENDS OF CERTAIN FOREIGN CORPORATIONS.—Such term shall not include any foreign corporation which for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, is a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in section 1246(b)), or a passive foreign investment company (as defined in section 1297).

Applicability.

"(iv) COORDINATION WITH FOREIGN TAX CREDIT LIMITATION.—Rules similar to the rules of section 904(b)(2)(B) shall apply with respect to the dividend rate differential under this paragraph.

"(D) SPECIAL RULES.—

"(i) AMOUNTS TAKEN INTO ACCOUNT AS INVESTMENT INCOME.—Qualified dividend income shall not include any amount which the taxpayer takes into account as investment income under section 163(d)(4)(B).

"(ii) EXTRAORDINARY DIVIDENDS.—If an individual receives, with respect to any share of stock, qualified dividend income from 1 or more dividends which are extraordinary dividends (within the meaning of section 1059(c)), any loss on the sale or exchange of such share shall, to the extent of such dividends, be treated as long-term capital loss.

"(iii) TREATMENT OF DIVIDENDS FROM REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—A dividend received from a regulated investment company or a real estate investment trust shall be subject to the limitations prescribed in sections 854 and 857.".

26 USC 163.

(b) EXCLUSION OF DIVIDENDS FROM INVESTMENT INCOME.—Subparagraph (B) of section 163(d)(4) (defining net investment income) is amended by adding at the end the following flush sentence:

"Such term shall include qualified dividend income (as defined in section 1(h)(11)(B)) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.".

(c) TREATMENT OF DIVIDENDS FROM REGULATED INVESTMENT COMPANIES.—

(1) Subsection (a) of section 854 (relating to dividends received from regulated investment companies) is amended by inserting "section 1(h)(11) (relating to maximum rate of tax on dividends) and" after "For purposes of".

(2) Paragraph (1) of section 854(b) (relating to other dividends) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) MAXIMUM RATE UNDER SECTION 1(h).—

Applicability.

"(i) IN GENERAL.—If the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the maximum rate under section 1(h)(11), rules similar to the rules of subparagraph (A) shall apply.

"(ii) GROSS INCOME.—For purposes of clause (i), in the case of 1 or more sales or other dispositions of stock or securities, the term 'gross income' includes only the excess of—

"(I) the net short-term capital gain from such sales or dispositions, over

"(II) the net long-term capital loss from such sales or dispositions.

"(iii) DIVIDENDS FROM REAL ESTATE INVESTMENT TRUSTS.—For purposes of clause (i)—

"(I) paragraph (3)(B)(ii) shall not apply, and

"(II) in the case of a distribution from a trust described in such paragraph, the amount of such distribution which is a dividend shall be subject to the limitations under section 857(c).

"(iv) DIVIDENDS FROM QUALIFIED FOREIGN CORPORATIONS.—For purposes of clause (i), dividends received from qualified foreign corporations (as defined in section 1(h)(11)) shall also be taken into account in computing aggregate dividends received.".

(3) Subparagraph (C) of section 854(b)(1), as redesignated by paragraph (2), is amended by striking "subparagraph (A)" and inserting "subparagraph (A) or (B)".

(4) Paragraph (2) of section 854(b) is amended by inserting "the maximum rate under section 1(h)(11) and" after "for purposes of".

(5) Subsection (b) of section 854 is amended by adding at the end the following new paragraph:

"(5) COORDINATION WITH SECTION 1(h)(11).—For purposes of paragraph (1)(B), an amount shall be treated as a dividend only if the amount is qualified dividend income (within the meaning of section 1(h)(11)(B)).".

(d) TREATMENT OF DIVIDENDS RECEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—Section 857(c) (relating to restrictions applicable to dividends received from real estate investment trusts) is amended to read as follows:

26 USC 857.

"(c) RESTRICTIONS APPLICABLE TO DIVIDENDS RECEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—

"(1) SECTION 243.—For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered a dividend.

"(2) SECTION 1(h)(11).—For purposes of section 1(h)(11) (relating to maximum rate of tax on dividends)—

Applicability.

"(A) rules similar to the rules of subparagraphs (B) and (C) of section 854(b)(1) shall apply to dividends received from a real estate investment trust which meets the requirements of this part, and

"(B) for purposes of such rules, such a trust shall be treated as receiving qualified dividend income during any taxable year in an amount equal to the sum of—

"(i) the excess of real estate investment trust taxable income computed under section 857(b)(2) for the preceding taxable year over the tax payable by the trust under section 857(b)(1) for such preceding taxable year, and

"(ii) the excess of the income subject to tax by reason of the application of the regulations under section 337(d) for the preceding taxable year over the tax payable by the trust on such income for such preceding taxable year.".

(e) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 1(h), as redesignated by section 301, is amended to read as follows:

"(3) ADJUSTED NET CAPITAL GAIN.—For purposes of this subsection, the term 'adjusted net capital gain' means the sum of—

"(A) net capital gain (determined without regard to paragraph (11)) reduced (but not below zero) by the sum of—

"(i) unrecaptured section 1250 gain, and

"(ii) 28-percent rate gain, plus

"(B) qualified dividend income (as defined in paragraph (11)).".

(2) Subsection (f) of section 301 is amended adding at the end the following new paragraph:

"(4) For taxation of dividends received by individuals at capital gain rates, see section 1(h)(11).".

(3) Paragraph (1) of section 306(a) is amended by adding at the end the following new subparagraph:

"(D) TREATMENT AS DIVIDEND.—For purposes of section 1(h)(11) and such other provisions as the Secretary may specify, any amount treated as ordinary income under this paragraph shall be treated as a dividend received from the corporation.".

(4)(A) Subpart C of part II of subchapter C of chapter 1 (relating to collapsible corporations) is repealed.

26 USC 341.

(B)(i) Section 338(h) is amended by striking paragraph (14).

26 USC 467, 1255, 1257.

(ii) Sections 467(c)(5)(C), 1255(b)(2), and 1257(d) are each amended by striking ", 341(e)(12),".

(iii) The table of subparts for part II of subchapter C of chapter 1 is amended by striking the item related to subpart C.

(5) Section 531 is amended by striking "equal to" and all that follows and inserting "equal to 15 percent of the accumulated taxable income.".

(6) Section 541 is amended by striking "equal to" and all that follows and inserting "equal to 15 percent of the undistributed personal holding company income.".

(7) Section 584(c) is amended by adding at the end the following new flush sentence:

"The proportionate share of each participant in the amount of dividends received by the common trust fund and to which section 1(h)(11) applies shall be considered for purposes of such paragraph as having been received by such participant.".

(8) Paragraph (5) of section 702(a) is amended to read as follows:

"(5) dividends with respect to which section 1(h)(11) or part VIII of subchapter B applies,".

Applicability. 26 USC 1 note.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2002.

(2) REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—In the case of a regulated investment company or a real estate investment trust, the amendments made by this section shall apply to taxable years ending after December 31, 2002; except that dividends received by such a company or trust on or before such date shall not be treated as qualified dividend income (as defined in section 1(h)(11)(B) of the Internal Revenue Code of 1986, as added by this Act).

26 USC 1 note.

SEC. 303. SUNSET OF TITLE.

All provisions of, and amendments made by, this title shall not apply to taxable years beginning after December 31, 2008, and the Internal Revenue Code of 1986 shall be applied and administered to such years as if such provisions and amendments had never been enacted.

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TITLE V—CORPORATE ESTIMATED TAX PAYMENTS FOR 2003

SEC. 501. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

Notwithstanding section 6655 of the Internal Revenue Code of 1986, 25 percent of the amount of any required installment of corporate estimated tax which is otherwise due in September 2003 shall not be due until October 1, 2003.

Approved May 28, 2003.

LEGISLATIVE HISTORY—H.R. 2 (S. 2) (S. 1054):
HOUSE REPORTS: Nos. 108–94 (Comm. on Ways and Means) and 108–126 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 149 (2003):
May 9, considered and passed House.
May 14, 15, considered and passed Senate, amended, in lieu of S. 1054.
May 22, House agreed to conference report.
May 23, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 39 (2003):
May 28, Presidential remarks.

○

108TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
108–94

JOBS AND GROWTH RECONCILIATION TAX ACT OF 2003

MAY 8, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 2]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2) to amend the Internal Revenue Code of 1986 to provide additional tax incentives to encourage economic growth, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

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

(a) SHORT TITLE.—This Act may be cited as the "Jobs and Growth Reconciliation Tax Act of 2003".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed 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.—The table of contents of this Act is as follows:

Sec. 1. Short title; references; table of contents.

TITLE I—ACCELERATION OF CERTAIN PREVIOUSLY ENACTED TAX REDUCTIONS

Sec. 101. Acceleration of increase in child tax credit.
Sec. 102. Acceleration of 15-percent individual income tax rate bracket expansion for married taxpayers filing joint returns.
Sec. 103. Acceleration of increase in standard deduction for married taxpayers filing joint returns.
Sec. 104. Acceleration of 10-percent individual income tax rate bracket expansion.
Sec. 105. Acceleration of reduction in individual income tax rates.
Sec. 106. Minimum tax relief to individuals.

TITLE II—GROWTH INCENTIVES FOR BUSINESS

Sec. 201. Increase and extension of bonus depreciation.
Sec. 202. Increased expensing for small business.
Sec. 203. 5-year carryback of certain net operating losses.

TITLE III—REDUCTIONS IN TAXES ON DIVIDENDS AND CAPITAL GAINS

Sec. 301. Reduction in capital gains rates for individuals; repeal of 5-year holding period requirement.
Sec. 302. Dividends of individuals taxed at capital gain rates.
Sec. 303. Sunset of title.

TITLE IV—CORPORATE ESTIMATED TAX PAYMENTS FOR 2003.

Sec. 401. Time for payment of corporate estimated taxes.

TITLE I—ACCELERATION OF CERTAIN PREVIOUSLY ENACTED TAX REDUCTIONS

SEC. 101. ACCELERATION OF INCREASE IN CHILD TAX CREDIT.

(a) IN GENERAL.—The items relating to calendar years 2001 through 2008 in the table contained in paragraph (2) of section 24(a) (relating to per child amount) are amended to read as follows:

"2003, 2004, 2005	$1,000
2006, 2007, or 2008	700".

(b) ADVANCE PAYMENT OF PORTION OF INCREASED CREDIT IN 2003.—

(1) IN GENERAL.—Subchapter B of chapter 65 (relating to abatements, credits, and refunds) is amended by inserting after section 6428 the following new section:

"SEC. 6429. ADVANCE PAYMENT OF PORTION OF INCREASED CHILD CREDIT FOR 2003.

"(a) IN GENERAL.—Each taxpayer who claimed a credit under section 24 on the return for the taxpayer's first taxable year beginning in 2002 shall be treated as having made a payment against the tax imposed by chapter 1 for such taxable year in an amount equal to the child tax credit refund amount (if any) for such taxable year.

"(b) CHILD TAX CREDIT REFUND AMOUNT.—For purposes of this section, the child tax credit refund amount is the amount by which the aggregate credits allowed under part IV of subchapter A of chapter 1 for such first taxable year would have been increased if—

"(1) the per child amount under section 24(a)(2) for such year were $1,000,

"(2) only qualifying children (as defined in section 24(c)) of the taxpayer for such year who had not attained age 17 as of December 31, 2003, were taken into account, and

"(3) section 24(d)(1)(B)(ii) did not apply.

"(c) TIMING OF PAYMENTS.—In the case of any overpayment attributable to this section, the Secretary shall, subject to the provisions of this title, refund or credit such overpayment as rapidly as possible and, to the extent practicable, before October 1, 2003. No refund or credit shall be made or allowed under this section after December 31, 2003.

"(d) COORDINATION WITH CHILD TAX CREDIT.—

"(1) IN GENERAL.—The amount of credit which would (but for this subsection and section 26) be allowed under section 24 for the taxpayer's first taxable year beginning in 2003 shall be reduced (but not below zero) by the payments made to the taxpayer under this section. Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

"(2) JOINT RETURNS.—In the case of a payment under this section with respect to a joint return, half of such payment shall be treated as having been made to each individual filing such return.

"(e) NO INTEREST.—No interest shall be allowed on any overpayment attributable to this section.".

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end the following new item:

"Sec. 6429. Advance payment of portion of increased child credit for 2003.".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2002.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall take effect on the date of the enactment of this Act.

SEC. 102. ACCELERATION OF 15-PERCENT INDIVIDUAL INCOME TAX RATE BRACKET EXPANSION FOR MARRIED TAXPAYERS FILING JOINT RETURNS.

(a) IN GENERAL.—The item relating to 2005 in the table contained in subparagraph (B) of section 1(f)(8) (relating to applicable percentage) is amended to read as follows:

"2003, 2004, and 2005	200".

(b) CONFORMING AMENDMENTS.—

(1) Section 1(f)(8)(A) is amended by striking "2004" and inserting "2002".

(2) Section 302(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking "2004" and inserting "2002".

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

SEC. 103. ACCELERATION OF INCREASE IN STANDARD DEDUCTION FOR MARRIED TAXPAYERS FILING JOINT RETURNS.

(a) IN GENERAL.—The item relating to 2005 in the table contained in paragraph (7) of section 63(c) (relating to applicable percentage) is amended to read as follows:

"2003, 2004, and 2005 .... 200".

(b) CONFORMING AMENDMENT.—Section 301(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking "2004" and inserting "2002".

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

SEC. 104. ACCELERATION OF 10-PERCENT INDIVIDUAL INCOME TAX RATE BRACKET EXPANSION.

(a) IN GENERAL.—Clause (i) of section 1(i)(1)(B) (relating to the initial bracket amount) is amended by striking "($12,000 in the case of taxable years beginning before January 1, 2008)" and inserting "($12,000 in the case of taxable years beginning after December 31, 2005, and before January 1, 2008)".

(b) INFLATION ADJUSTMENT.—Subparagraph (C) of section 1(i)(1) is amended to read as follows:

"(C) INFLATION ADJUSTMENT.—In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2000—

"(i) the Secretary shall make no adjustment to the $12,000 initial bracket amount for any taxable year,

"(ii)(I) the Secretary shall make no adjustment to the $14,000 initial bracket amount for any taxable year beginning before January 1, 2004,

"(II) the cost-of-living adjustment used in making adjustments to the $14,000 initial bracket amount for any taxable year beginning during 2004 or 2005 shall be determined under subsection (f)(3) by substituting '2002' for '1992' in subparagraph (B) thereof, and

"(III) the cost-of-living adjustment used in making adjustments to the $14,000 initial bracket amount for any taxable year beginning after December 31, 2008, shall be determined under subsection (f)(3) by substituting '2007' for '1992' in subparagraph (B) thereof, and

"(iii) the adjustments under clause (ii) shall not apply to the amount referred to in subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

(2) TABLES FOR 2003.—The Secretary of the Treasury shall modify each table which has been prescribed under section 1(f) of the Internal Revenue Code of 1986 for taxable years beginning in 2003 and which relates to the amendment made by this section to reflect such amendment.

SEC. 105. ACCELERATION OF REDUCTION IN INDIVIDUAL INCOME TAX RATES.

(a) IN GENERAL.—The table in paragraph (2) of section 1(i) (relating to reductions in rates after June 30, 2001) is amended to read as follows:

"In the case of taxable years beginning during calendar year:	The corresponding percentages shall be substituted for the following percentages:			
	28%	31%	36%	39.6%
2001	27.5%	30.5%	35.5%	39.1%
2002	27.0%	30.0%	35.0%	38.6%
2003 and thereafter	25.0%	28.0%	33.0%	35.0%".

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

SEC. 106. MINIMUM TAX RELIEF TO INDIVIDUALS.

(a) IN GENERAL.—

(1) Subparagraph (A) of section 55(d)(1) is amended by striking "$49,000 in the case of taxable years beginning in 2001, 2002, 2003, and 2004" and inserting "$64,000 in the case of taxable years beginning in 2003, 2004, and 2005".

(2) Subparagraph (B) of section 55(d)(1) is amended by striking "$35,750 in the case of taxable years beginning in 2001, 2002, 2003, and 2004" and inserting "$43,250 in the case of taxable years beginning in 2003, 2004, and 2005".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2002.

TITLE II—GROWTH INCENTIVES FOR BUSINESS

SEC. 201. INCREASE AND EXTENSION OF BONUS DEPRECIATION.

(a) IN GENERAL.—Section 168(k) (relating to special allowance for certain property acquired after September 10, 2001, and before September 11, 2004) is amended by adding at the end the following new paragraph:

"(4) 50-PERCENT BONUS DEPRECIATION FOR CERTAIN PROPERTY.—

"(A) IN GENERAL.—In the case of 50-percent bonus depreciation property—

"(i) paragraph (1)(A) shall be applied by substituting '50 percent' for '30 percent', and

"(ii) except as provided in paragraph (2)(C), such property shall be treated as qualified property for purposes of this subsection.

"(B) 50-PERCENT BONUS DEPRECIATION PROPERTY.—For purposes of this subsection, the term '50-percent bonus depreciation property' means property described in paragraph (2)(A)(i)—

"(i) the original use of which commences with the taxpayer after May 5, 2003,

"(ii) which is acquired by the taxpayer after May 5, 2003, and before January 1, 2006, but only if no written binding contract for the acquisition was in effect before May 6, 2003, and

"(iii) which is placed in service by the taxpayer before January 1, 2006, or, in the case of property described in paragraph (2)(B) (as modified by subparagraph (C) of this paragraph), before January 1, 2007.

"(C) SPECIAL RULES.—Rules similar to the rules of subparagraphs (B) and (D) of paragraph (2) shall apply for purposes of this paragraph; except that references to September 10, 2001, shall be treated as references to May 5, 2003.

"(D) AUTOMOBILES.—Paragraph (2)(E) shall be applied by substituting '$9,200' for '$4,600' in the case of 50-percent bonus depreciation property.

"(E) ELECTION OF 30 PERCENT BONUS.—If a taxpayer makes an election under this subparagraph with respect to any class of property for any taxable year, subparagraph (A)(i) shall not apply to all property in such class placed in service during such taxable year."

(b) EXTENSION OF PLACED IN SERVICE DATES, ETC. FOR 30-PERCENT BONUS DEPRECIATION PROPERTY.—

(1) IN GENERAL.—Clause (iv) of section 168(k)(2)(A) is amended—

(A) by striking "January 1, 2005" and inserting "January 1, 2006", and

(B) by striking "January 1, 2006" (as in effect before the amendment made by subparagraph (A)) and inserting "January 1, 2007".

(2) PORTION OF BASIS TAKEN INTO ACCOUNT.—

(A) Subparagraphs (B)(ii) and (D)(i) of section 168(k)(2) are each amended by striking "September 11, 2004" each place it appears in the text and inserting "January 1, 2006".

(B) Clause (ii) of section 168(k)(2)(B) is amended by striking "PRE-SEPTEMBER 11, 2004" in the heading and inserting "PRE-JANUARY 1, 2006".

(3) ACQUISITION DATE.—Clause (iii) of section 168(k)(2)(A) is amended by striking "September 11, 2004" each place it appears and inserting "January 1, 2006".

(4) ELECTION.—Clause (iii) of section 168(k)(2)(C) is amended by adding at the end the following: "The preceding sentence shall be applied separately with respect to property treated as qualified property by paragraph (4) and other qualified property."

(c) CONFORMING AMENDMENTS.—

(1) The subsection heading for section 168(k) is amended by striking "SEPTEMBER 11, 2004" and inserting "JANUARY 1, 2006".

(2) The heading for clause (i) of section 1400L(b)(2)(C) is amended by striking "30-PERCENT ADDITIONAL ALLOWABLE PROPERTY" and inserting "BONUS DEPRECIATION PROPERTY UNDER SECTION 168(k)".

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

SEC. 202. INCREASED EXPENSING FOR SMALL BUSINESS.

(a) IN GENERAL.—Paragraph (1) of section 179(b) (relating to dollar limitation) is amended to read as follows:

"(1) DOLLAR LIMITATION.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $25,000 ($100,000 in the case of taxable years beginning after 2002 and before 2008).".

(b) INCREASE IN QUALIFYING INVESTMENT AT WHICH PHASEOUT BEGINS.—Paragraph (2) of section 179(b) (relating to reduction in limitation) is amended by inserting "($400,000 in the case of taxable years beginning after 2002 and before 2008)" after "$200,000".

(c) OFF-THE-SHELF COMPUTER SOFTWARE.—Paragraph (1) of section 179(d) (defining section 179 property) is amended to read as follows:

"(1) SECTION 179 PROPERTY.—For purposes of this section, the term 'section 179 property' means property—

"(A) which is—

"(i) tangible property (to which section 168 applies), or

"(ii) computer software (as defined in section 197(e)(3)(B)) which is described in section 197(e)(3)(A)(i), to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2008,

"(B) which is section 1245 property (as defined in section 1245(a)(3)), and

"(C) which is acquired by purchase for use in the active conduct of a trade or business.

Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.".

(d) ADJUSTMENT OF DOLLAR LIMIT AND PHASEOUT THRESHOLD FOR INFLATION.—Subsection (b) of section 179 (relating to limitations) is amended by adding at the end the following new paragraph:

"(5) INFLATION ADJUSTMENTS.—

"(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2003 and before 2008, the $100,000 and $400,000 amounts in paragraphs (1) and (2) shall each 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, by substituting 'calendar year 2002' for 'calendar year 1992' in subparagraph (B) thereof.

"(B) ROUNDING.—

"(i) DOLLAR LIMITATION.—If the amount in paragraph (1) as increased under subparagraph (A) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

"(ii) PHASEOUT AMOUNT.—If the amount in paragraph (2) as increased under subparagraph (A) is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.".

(e) REVOCATION OF ELECTION.—Paragraph (2) of section 179(c) (relating to election irrevocable) is amended to read as follows:

"(2) REVOCATION OF ELECTION.—An election under paragraph (1) with respect to any taxable year beginning after 2002 and before 2008, and any specification contained in any such election, may be revoked by the taxpayer with respect to any property. Such revocation, once made, shall be irrevocable.".

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

SEC. 203. 5-YEAR CARRYBACK OF CERTAIN NET OPERATING LOSSES.

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

(1) by inserting "5-YEAR CARRYBACK OF CERTAIN LOSSES.—" after "(H)", and

(2) by striking "or 2002" and inserting ", 2002, 2003, 2004 or 2005".

(b) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT ON CERTAIN NOL CARRYBACKS.—Subclause (I) of section 56(d)(1)(A)(ii) is amended—

(1) by striking "or 2002" and inserting ", 2002, 2003, 2004, or 2005", and

(2) by striking "and 2002" and inserting ", 2002, 2003, 2004, or 2005".

(c) TECHNICAL CORRECTIONS.—

(1) Subparagraph (H) of section 172(b)(1) is amended by striking "a taxpayer which has".

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

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

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

(i) by striking "for taxable years" and inserting "from taxable years", and

(ii) by striking "carryforwards" and inserting "carryovers".

(d) EFFECTIVE DATES.—

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

(2) TECHNICAL CORRECTIONS.—The amendments made by subsection (c) shall take effect as if included in the amendments made by section 102 of the Job Creation and Worker Assistance Act of 2002.

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

(A) any election made under section 172(b)(3) of such Code may (notwithstanding such section) be revoked before November 1, 2003, and

(B) any election made under section 172(j) of such Code shall (notwithstanding such section) be treated as timely made if made before November 1, 2003.

TITLE III—REDUCTION IN TAXES ON DIVIDENDS AND CAPITAL GAINS

SEC. 301. REDUCTION IN CAPITAL GAINS RATES FOR INDIVIDUALS; REPEAL OF 5-YEAR HOLDING PERIOD REQUIREMENT.

(a) IN GENERAL.—

(1) Sections 1(h)(1)(B) and 55(b)(3)(B) are each amended by striking "10 percent" and inserting "5 percent".

(2) The following sections are each amended by striking "20 percent" and inserting "15 percent":

(A) Section 1(h)(1)(C).

(B) Section 55(b)(3)(C).

(C) Section 1445(e)(1).

(D) The second sentence of section 7518(g)(6)(A).

(E) The second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936.

(b) CONFORMING AMENDMENTS.—

(1) Section 1(h) is amended—

(A) by striking paragraphs (2) and (9),

(B) by redesignating paragraphs (3) through (8) as paragraphs (2) through (7), respectively, and

(C) by redesignating paragraphs (10), (11), and (12) as paragraphs (8), (9), and (10), respectively.

(2) Paragraph (3) of section 55(b) is amended by striking "In the case of taxable years beginning after December 31, 2000, rules similar to the rules of section 1(h)(2) shall apply for purposes of subparagraphs (B) and (C).".

(3) Paragraph (7) of section 57(a) is amended—

(A) by striking "42 percent" the first place it appears and inserting "7 percent", and

(B) by striking the last sentence.

(c) TRANSITIONAL RULES FOR TAXABLE YEARS WHICH INCLUDE MAY 6, 2003.—For purposes of applying section 1(h) of the Internal Revenue Code of 1986 in the case of a taxable year which includes May 6, 2003—

(1) The amount of tax determined under subparagraph (B) of section 1(h)(1) of such Code shall be the sum of—

(A) 5 percent of the lesser of—

(i) the net capital gain determined by taking into account only gain or loss properly taken into account for the portion of the taxable year on or after May 6, 2003 (determined without regard to collectibles gain or loss, gain described in section 1(h)(6)(A)(i) of such Code, and section 1202 gain), or

(ii) the amount on which a tax is determined under such subparagraph (without regard to this subsection),

(B) 8 percent of the lesser of—

(i) the qualified 5-year gain (as defined in section 1(h)(9) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act) properly taken into account for the portion of the taxable year before May 6, 2003, over

(ii) the excess (if any) of—

(I) the amount on which a tax is determined under such subparagraph (without regard to this subsection), over

(II) the amount on which a tax is determined under subparagraph (A), plus

(C) 10 percent of the excess (if any) of—

(i) the amount on which a tax is determined under such subparagraph (without regard to this subsection), over

(ii) the sum of the amounts on which a tax is determined under subparagraphs (A) and (B).

(2) The amount of tax determined under subparagraph (C) of section (1)(h)(1) of such Code shall be the sum of—

(A) 15 percent of the lesser of—

(i) the excess (if any) of the amount of net capital gain determined under subparagraph (A)(i) of paragraph (1) of this subsection over the amount on which a tax is determined under subparagraph (A) of paragraph (1) of this subsection, or

(ii) the amount on which a tax is determined under such subparagraph (C) (without regard to this subsection), plus

(B) 20 percent of the excess (if any) of—

(i) the amount on which a tax is determined under such subparagraph (C) (without regard to this subsection), over

(ii) the amount on which a tax is determined under subparagraph (A) of this paragraph.

(3) For purposes of applying section 55(b)(3) of such Code, rules similar to the rules of paragraphs (1) and (2) of this subsection shall apply.

(4) In applying this subsection with respect to any pass-thru entity, the determination of when gains and loss are properly taken into account shall be made at the entity level.

(5) For purposes of applying section 1(h)(11) of such Code, as added by section 302 of this Act, to this subsection, dividends which are qualified dividend income shall be treated as gain properly taken into account for the portion of the taxable year on or after May 6, 2003.

(6) Terms used in this subsection which are also used in section 1(h) of such Code shall have the respective meanings that such terms have in such section.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided by this subsection, the amendments made by this section shall apply to taxable years ending on or after May 6, 2003.

(2) WITHHOLDING.—The amendment made by subsection (a)(2)(C) shall apply to amounts paid after the date of the enactment of this Act.

(3) SMALL BUSINESS STOCK.—The amendments made by subsection (b)(3) shall apply to dispositions on or after May 6, 2003.

SEC. 302. DIVIDENDS OF INDIVIDUALS TAXED AT CAPITAL GAIN RATES.

(a) IN GENERAL.—Section 1(h) (relating to maximum capital gains rate), as amended by section 301, is amended by adding at the end the following new paragraph:

"(11) DIVIDENDS TAXED AS NET CAPITAL GAIN.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'net capital gain' means net capital gain (determined without regard to this paragraph), increased by qualified dividend income.

"(B) QUALIFIED DIVIDEND INCOME.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified dividend income' means dividends received during the taxable year from domestic corporations.

"(ii) CERTAIN DIVIDENDS EXCLUDED.—Such term shall not include—

"(I) any dividend from a corporation which for the taxable year of the corporation in which the distribution is made, or the preceding taxable year, is a corporation exempt from tax under section 501 or 521,

"(II) any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.), and

"(III) any dividend described in section 404(k).

"(iii) EXCLUSION OF CERTAIN DIVIDENDS.—Such term shall not include any dividend on any share of stock—

"(I) with respect to which the holding period requirements of section 246(c) are not met, or

"(II) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

"(C) SPECIAL RULES.—

"(i) AMOUNTS TAKEN INTO ACCOUNT AS INVESTMENT INCOME.—Qualified dividend income shall not include any amount which the taxpayer takes into account as investment income under section 163(d)(4)(B).

"(ii) EXTRAORDINARY DIVIDENDS.—If an individual receives, with respect to any share of stock, qualified dividend income from 1 or more dividends which are extraordinary dividends (within the meaning of section 1059(c)), any loss on the sale or exchange of such share shall, to the extent of such dividends, be treated as long-term capital loss.

"(iii) TREATMENT OF DIVIDENDS FROM REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—A dividend received from a regulated investment company or a real estate investment trust shall be subject to the limitations prescribed in sections 854 and 857."

(b) EXCLUSION OF DIVIDENDS FROM INVESTMENT INCOME.—Subparagraph (B) of section 163(d)(4) (defining net investment income) is amended by adding at the end the following flush sentence:

"Such term shall include qualified dividend income (as defined in section 1(h)(11)(B)) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection."

(c) TREATMENT OF DIVIDENDS FROM REGULATED INVESTMENT COMPANIES.—

(1) Subsection (a) of section 854 (relating to dividends received from regulated investment companies) is amended by inserting "section 1(h)(11) (relating to maximum rate of tax on dividends and interest) and" after "For purposes of".

(2) Paragraph (1) of section 854(b) (relating to other dividends) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) MAXIMUM RATE UNDER SECTION 1(h).—

"(i) IN GENERAL.—If the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the maximum rate under section 1(h)(11), rules similar to the rules of subparagraph (A) shall apply.

"(ii) GROSS INCOME.—For purposes of clause (i), in the case of 1 or more sales or other dispositions of stock or securities, the term 'gross income' includes only the excess of—

"(I) the net short-term capital gain from such sales or dispositions, over

"(II) the net long-term capital loss from such sales or dispositions."

(3) Subparagraph (C) of section 854(b)(1), as redesignated by paragraph (2), is amended by striking "subparagraph (A)" and inserting "subparagraph (A) or (B)".

(4) Paragraph (2) of section 854(b) is amended by inserting "the maximum rate under section 1(h)(11) and" after "for purposes of".

(5) Subsection (b) of section 854 is amended by adding at the end the following new paragraph:

"(5) COORDINATION WITH SECTION 1(h)(11).—For purposes of paragraph (1)(B), an amount shall be treated as a dividend only if the amount is qualified dividend income (within the meaning of section 1(h)(11)(B))."

(d) TREATMENT OF DIVIDENDS RECEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—Section 857(c) (relating to restrictions applicable to dividends received from real estate investment trusts) is amended to read as follows:

"(c) RESTRICTIONS APPLICABLE TO DIVIDENDS RECEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—

"(1) SECTION 243.—For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered a dividend.

"(2) SECTION 1(h)(11).—For purposes of section 1(h)(11) (relating to maximum rate of tax on dividends), rules similar to the rules of section 854(b)(1)(B) shall apply to dividends received from a real estate trust which meets the requirements of this part."

(e) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 1(h), as redesignated by section 301, is amended to read as follows:

"(3) ADJUSTED NET CAPITAL GAIN.—For purposes of this subsection, the term 'adjusted net capital gain' means the sum of—

"(A) net capital gain (determined without regard to paragraph (11)) reduced (but not below zero) by the sum of—

"(i) unrecaptured section 1250 gain, and

"(ii) 28-percent rate gain, plus

"(B) qualified dividend income (as defined in paragraph (11))."

(2) Subsection (f) of section 301 is amended adding at the end the following new paragraph:

"(4) For taxation of dividends received by individuals at capital gain rates, see section 1(h)(11)."

(3) Paragraph (1) of section 306(a) is amended by adding at the end the following new subparagraph:

"(D) TREATMENT AS DIVIDEND.—For purposes of section 1(h)(11), any amount treated as ordinary income under this paragraph shall be treated as a dividend received from the corporation."

(4)(A) Subpart C of part II of subchapter C of chapter 1 (relating to collapsible corporations) is repealed.

(B)(i) Section 338(h) is amended by striking paragraph (14).

(ii) Sections 467(c)(5)(C), 1255(b)(2), and 1257(d) are each amended by striking ", 341(e)(12),".

(iii) The table of subparts for part II of subchapter C of chapter 1 is amended by striking the item related to subpart C.

(5) Section 531 is amended by striking "equal to" and all that follows and inserting "equal to 15 percent of the accumulated taxable income."

(6) Section 541 is amended by striking "equal to" and all that follows and inserting "equal to 15 percent of the undistributed personal holding company income."

(7) Section 584(c) is amended by adding at the end the following new flush sentence:

"The proportionate share of each participant in the amount of dividends received by the common trust fund and to which section 1(h)(11) applies shall be considered for purposes of such paragraph as having been received by such participant."

(8) Paragraph (5) of section 702(a) is amended to read as follows:

"(5) dividends with respect to which section 1(h)(11) or part VII of subchapter B applies,".

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

SEC. 303. SUNSET OF TITLE.

All provisions of, and amendments made by, this title shall not apply to taxable years beginning after December 31, 2012, and the Internal Revenue Code of 1986 shall be applied and administered to such years as if such provisions and amendments had never been enacted.

TITLE IV—CORPORATE ESTIMATED TAX PAYMENTS FOR 2003

SEC. 401. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

Notwithstanding section 6655 of the Internal Revenue Code of 1986, 52 percent of the amount of any required installment of corporate estimated tax which is otherwise due in September 2003 shall not be due until October 1, 2003.

Amend the title so as to read:

A bill to provide for reconciliation pursuant to section 201 of the concurrent resolution on the budget for fiscal year 2004.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 2, as amended, provides needed economic growth incentives and makes other necessary changes to the tax laws.

The bill provides net tax reductions of over $475 billion over fiscal years 2003–2008. This will provide needed income tax relief, stimulate the economy, and promote long-term economic growth.

The amount of the child credit is increased to $1,000 for 2003 through 2005. For 2003, the increased amount of the child credit will be paid in advance beginning in July 2003 on the basis of information on each taxpayer's 2002 return filed in 2003. Advance payments will be made in a similar manner to the advance payment checks issued by the Treasury in 2001 to reflect the creation of the 10-percent regular income tax rate bracket.

The accelerates the increase in the basic standard deduction amount for joint returns to twice the basic standard deduction amount for single returns effective for 2003, 2004, and 2005. Also, the bill accelerates the increase of the size of the 15-percent regular income tax rate bracket for joint returns to twice the width of the 15-percent regular income tax rate bracket for single returns effective for 2003, 2004, and 2005.

The bill accelerates the scheduled increase in the taxable income levels for the ten-percent rate bracket from 2008 to 2003, 2004, and 2005. Also, the bill accelerates the reductions in the regular income tax rates in excess of the 15-percent regular income tax rate that are scheduled for 2004 and 2006. The bill increases the AMT exemption amount for married taxpayers filing a joint return and surviving spouses to $64,000, and for unmarried taxpayers to $43,250, for taxable years beginning in 2003, 2004, and 2005.

The bill provides an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified property. Qualified property is defined in the same manner as for purposes of the 30-percent additional first-year depreciation deduction provided by the Job Creation and Workers Assistance Act of 2002, except that the applicable time period for acquisition (or self construction) of the property is modified. In general, in order to qualify the property must be acquired after May 5, 2003, and before January 1, 2006, and no binding written contract for the acquisition is in effect before May 6, 2003. Property eligible for the 50-percent additional first year depreciation deduction is not eligible for the 30-percent additional first year depreciation deduction.

The bill provides that the maximum dollar amount that may be deducted under section 179 is increased to $100,000 for property placed in service in 2003 through 2007. In addition, the $200,000 amount is increased to $400,000 for property placed in service in 2003 through 2007. Both of these dollar limitations are indexed annually for inflation for taxable years beginning after 2003 and before 2008. The bill also includes off-the-shelf computer software placed in service beginning in 2003 through 2007, as qualifying property. With respect to a taxable year beginning after 2002 and before 2008, the bill permits taxpayers to make or revoke expensing elections on amended returns without the consent of the Commissioner.

The bill reduces the 10- and 20-percent rates on the adjusted net capital gain to five and 15 percent, respectively. These lower rates apply to both the regular tax and the alternative minimum tax. The lower rates apply to assets held more than one year. The bill applies to taxable years ending on or after May 6, 2003, and beginning before January 1, 2013.

Finally, under the bill, dividends received by an individual shareholder from domestic corporations are treated as net capital gain for purposes of applying the capital gain tax rates. This treatment applies for purposes of both the regular tax and the alternative minimum tax. Thus, under the proposal, dividends will be taxed at rates of five and 15 percent, the same rates applicable to net capital gain.

B. Background and Need for Legislation

The provisions of the bill reflect the need for an economic stimulus and growth package in a financially prudent manner. The provisions of the bill should serve to improve the economy. The bill also comports with the continuing goal to provide additional tax relief to the American people.

C. Legislative History

The House Committee on Ways and Means marked up the Jobs and Growth Reconciliation Tax Act of 2003 on May 6, 2003, and ordered the bill, as amended, favorably reported by a vote of 24 to 15.

II. EXPLANATION OF THE BILL

TITLE I—ACCELERATION OF CERTAIN PREVIOUSLY ENACTED TAX REDUCTIONS

A. Accelerate the Increase in the Child Tax Credit

(Sec. 101 of the bill and sec. 224 of the Code)

PRESENT LAW

In general

For 2003, an individual may claim a $600 tax credit for each qualifying child under the age of 17. In general, a qualifying child is an individual for whom the taxpayer can claim a dependency exemption and who is the taxpayer's son or daughter (or descendent of either), stepson or stepdaughter (or descendent of either), or eligible foster child.

The child tax credit is scheduled to increase to $1,000, phased in over several years.

Table 1, below, shows the scheduled increases of the child tax credit as provided under the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA").

TABLE 1.—SCHEDULED INCREASE OF THE CHILD TAX CREDIT

Taxable year	Credit amount per child
2003–2004	$600
2005–2008	700
2009	800
2010[1]	1,000

[1] The credit reverts to $500 in taxable years beginning after December 31, 2010, under the sunset provision of EGTRRA.

The child tax credit is phased out for individuals with income over certain thresholds. Specifically, the otherwise allowable child

tax credit is reduced by $50 for each $1,000 (or fraction thereof) of modified adjusted gross income over $75,000 for single individuals or heads of households, $110,000 for married individuals filing joint returns, and $55,000 for married individuals filing separate returns.[1] The length of the phase-out range depends on the number of qualifying children. For example, the phase-out range for a single individual with one qualifying child is between $75,000 and $85,000 of modified adjusted gross income. The phase-out range for a single individual with two qualifying children is between $75,000 and $95,000.

The amount of the tax credit and the phase-out ranges are not adjusted annually for inflation.

Refundability

For 2003, the child credit is refundable to the extent of 10 percent of the taxpayer's earned income in excess of $10,500.[2] The percentage is increased to 15 percent for taxable years beginning in 2005 and thereafter. Families with three or more children are allowed a refundable credit for the amount by which the taxpayer's social security taxes exceed the taxpayer's earned income credit, if that amount is greater than the refundable credit based on the taxpayer's earned income in excess of $10,500 (for 2003). The refundable portion of the child credit does not constitute income and is not treated as resources for purposes of determining eligibility or the amount or nature of benefits or assistance under any Federal program or any State or local program financed with Federal funds. For taxable years beginning after December 31, 2010, the sunset provision of EGTRRA applies to the rules allowing refundable child credits.

Alternative minimum tax liability

The child credit is allowed against the individual's regular income tax and alternative minimum tax. For taxable years beginning after December 31, 2010, the sunset provision of EGTRRA applies to the rules allowing the child credit against alternative minimum tax.

REASONS FOR CHANGE

This provision accelerates the increase in the child tax credit in order to provide additional tax relief to families to help offset the significant costs of raising a child. Further, the bill provides immediate tax relief to American taxpayers in the form of the advance payment of the increased amount of the child credit. The Committee believes that such immediate tax relief may encourage short-term growth in the economy by providing individuals with additional cash to spend.

EXPLANATION OF PROVISION

The amount of the child credit is increased to $1,000 for 2003 through 2005. After 2005, the child credit will revert to the levels

[1] Modified adjusted gross income is the taxpayer's total gross income plus certain amounts excluded from gross income (i.e., excluded income of U.S. citizens or residents living abroad (sec. 911); residents of Guam, American Samoa, and the Northern Mariana Islands (sec. 931); and residents of Puerto Rico (sec. 933)).

[2] The $10,500 amount is indexed for inflation.

provided under present law. For 2003, the increased amount of the child credit will be paid in advance beginning in July, 2003, on the basis of information on each taxpayer's 2002 return filed in 2003. Such payments will be made in a manner similar to the advance payment checks issued by the Treasury in 2001 to reflect the creation of the 10-percent regular income tax rate bracket.[3]

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2002, and before January 1, 2006.

B. ACCELERATE MARRIAGE PENALTY RELIEF

(Secs. 102 and 103 of the bill and secs. 1 and 63 of the Code)

1. Standard deduction marriage penalty relief

PRESENT LAW

Marriage penalty

A married couple generally is treated as one tax unit that must pay tax on the couple's total taxable income. Although married couples may elect to file separate returns, the rate schedules and other provisions are structured so that filing separate returns usually results in a higher tax than filing a joint return. Other rare schedules apply to single persons and to single heads of households.

A "marriage penalty" exists when the combined tax liability of a married couple filing a joint return is greater than the sum of the tax liabilities of each individual computed as if they were not married. A "marriage bonus" exists when the combined tax liability of a married couple filing a joint return is less than the sum of the tax liabilities of each individual computed as if they were not married.

Basic standard deduction

Taxpayers who do not itemize deductions may choose the basic standard deduction (and additional standard deductions, if applicable),[4] which is subtracted from adjusted gross income ("AGI") in arriving at taxable income. The size of the basic standard deduction varies according to filing status and is adjusted annually for inflation.[5] For 2003, the basic standard deduction for married couples filing a joint return is 167 percent of the basic standard deduction for single filers. (Alternatively, the basic standard deduction amount for single filers is 60 percent of the basic standard deduction amount for married couples filing joint returns.) Thus, two unmarried individuals have standard deductions whose sum exceeds the standard deduction for a married couple filing a joint return.

The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") increased the basic standard deduction for a married couple filing a joint return to twice the basic standard deduction

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[3] The increase in refundability to 15 percent of the taxpayer's earned income, scheduled for calendar years 2005 and thereafter, is not accelerated under the provision.

[4] Additional standard deductions are allowed with respect to any individual who is elderly (age 65 or over) or blind.

[5] For 2003 the basic standard deduction amounts are: (1) $4,750 for unmarried individuals; (2) $7,950 for married individuals filing a joint return; (3) $7,000 for heads of households; and (4) $3,975 for married individuals filing separately.

for an unmarried individual filing a single return.[6] The increase in the standard deduction for married taxpayers filing a joint return is scheduled to be phased-in over five years beginning in 2005 and will be fully phased-in for 2009 and thereafter. Table 2, below, shows the standard deduction for married couples filing a joint return as a percentage of the standard deduction for single individuals during the phase-in period.

TABLE 2.—SCHEDULED PHASE-IN OF INCREASE OF THE BASIC STANDARD DEDUCTION FOR MARRIED COUPLES FILING JOINT RETURNS

Taxable year	Standard deduction for married couples filing joint returns as percentage of standard deduction for unmarried individual returns
2005	174
2006	184
2007	187
2008	190
2009 and 2010 [1]	200

[1] The basic standard deduction increases are repealed for taxable years beginning after December 31, 2010, under the sunset provision of EGTRRA.

REASONS FOR CHANGE

The Committee remains concerned about the inequity that arises when two working single individuals marry and experience a tax increase solely be reason of their marriage. Any attempt to address the marriage tax penalty involves the balancing of several competing principles, including equal tax treatment of married couples with equal incomes, the determination of equitable relative tax burdens of single individuals and married couples with equal incomes, and the goal of simplicity in compliance and administration. The Committee believes that the acceleration of the increase in the standard deduction for married couples filing a joint return is a responsible reduction of the marriage tax penalty.

EXPLANATION OF PROVISION

The bill accelerates the increase in the basic standard deduction amount for joint returns to twice the basic standard deduction amount for single returns effective for 2003, 2004, and 2005. For taxable years beginning after 2005, the applicable percentages will revert to those allowed under present law, as described above.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2002, and before January 1, 2006.

[6] The basic standard deduction for a married taxpayer filing separately will continue to equal one-half of the basic standard deduction for a married couple filing jointly; thus, the basic standard deduction for unmarried individuals filing a single return and for married couples filing separately will be the same after the phase-in period.

2. Accelerate the expansion of the 15-percent rate bracket for married couples filing joint returns

PRESENT LAW

In general

Under the Federal individual income tax system, an individual who is a citizen or resident of the United States generally is subject to tax on worldwide taxable income. Taxable income is total gross income less certain less certain exclusions, exemptions, and deductions. An individual may claim either a standard deduction or itemized deductions.

An individual's income tax liability is determined by computing his or her regular income tax liability and, if applicable, alternative minimum tax liability.

Regular income tax liability

Regular income tax liability is determined by applying the regular income tax rate schedules (or tax tables) to the individual's taxable income and then is reduced by any applicable tax credits. The regular income tax rate schedules are divided into several ranges of income, known as income brackets, and the marginal tax rate increases as the individual's income increases. The income bracket amounts are adjusted annually for inflation. Separate rate schedules apply based on filing status: single individuals (other than heads of households and surviving spouses), heads of households, married individuals filing joint returns (including surviving spouses), married individuals filing separate returns, and estates and trusts. Lower rates may apply to capital gains.

In general, the bracket breakpoints for single individuals are approximately 60 percent of the rate bracket breakpoints for married couples filing joint returns.[7] The rate bracket breakpoints for married individuals filing separate returns are exactly one-half of the rate brackets for married individuals filing joint returns. A separate, compressed rate schedule applies to estates and trusts.

15-percent regular income tax rate bracket

The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") increased the size of the 15-percent regular income tax rate bracket for a married couple filing a joint return to twice the size of the corresponding rate bracket for a single individual filing a single return. The increase is phased-in over four years, beginning in 2005. Therefore, this provision is fully effective (i.e., the size of the 15-percent regular income tax rate bracket for a married couple filing a joint return is twice the size of the 15-percent regular income tax rate bracket for an unmarried individual filing a single return) for taxable years beginning after December 31, 2007, Table 3, below, shows the increase in the size of the 15-percent bracket during the phase-in period.

[7] Under present law, the rate bracket breakpoint for the 38.6 percent marginal tax rate is the same for single individuals and married couples filing joint returns. Present-law rate changes do not alter this breakpoint.

TABLE 3.—SCHEDULED INCREASE IN SIZE OF THE 15-PERCENT RATE BRACKET FOR MARRIED COUPLES FILING JOINT RETURNS

Taxable year	End point of 15-percent rate bracket for married couples filing joint returns as percentage of end point of 15-percent rate bracket for unmarried individuals
2005	180
2006	187
2007	193
2008 through 2010 [1]	200

[1] The increases in the 15-percent rate bracket for married couples filing a joint return are repealed for taxable years beginning after December 31, 2010, under the sunset of EGTRRA.

REASONS FOR CHANGE

The Committee believes that accelerating the expansion of the 15-percent rate bracket for married couples filing joint returns, in conjunction with the expansion of the standard deduction amount for joint filers, will alleviate the effects of the present-law marriage tax penalty. These provisions significantly reduce the most widely applicable marriage penalties.

EXPLANATION OF PROVISION

The bill accelerates the increase of the size of the 15-percent regular income tax rate bracket for joint returns to twice the width of the 15-percent regular income tax rate bracket for single returns for taxable years beginning in 2003, 2004, and 2005. For taxable years beginning after 2005, the applicable percentages will revert to those allowed under present law, as described above.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2002, and before January 1, 2006.

C. ACCELERATE REDUCTIONS IN INDIVIDUAL INCOME TAX RATES (SECS. 104, 105, AND 106 OF THE BILL AND SECS. 1 AND 55 OF THE CODE)

PRESENT LAW

In general

Under the Federal individual incomes tax system, an individual who is a citizen or a resident of the United States generally is subject to tax on worldwide taxable income. Taxable income is total gross income less certain exclusions, exemptions, and deductions. An individual may claim either a standard deduction or itemized deductions.

An individual's income tax liability is determined by computing his or her regular income tax liability and, if applicable, alternative minimum tax liability.

Regular income tax liability

Regular income tax liability is determined by applying the regular income tax rate schedules (or tax tables) to the individual's taxable income. This tax liability is then reduced by any applicable tax credits. The regular income tax schedules are divided into sev-

eral ranges of income, known as income brackets, and the marginal tax rate increases as the individual's income increases. The income bracket amounts are adjusted annually for inflation. Separate rate schedules apply based on filing status: single individuals (other than heads of households and surviving spouses), head of households, married individuals filing joint returns (including surviving spouses), married individuals filing separate returns, and estates and trusts. Lower rates may apply to capital gains.

For 2003, the regular income tax rate schedules for individuals are shown in Table 4, below. The rate bracket breakpoints for married individuals filing separate returns are exactly one-half of the rate brackets for married individuals filing joint returns. A separate, compressed rate schedule applies to estates and trusts.

TABLE 4.—INDIVIDUAL REGULAR INCOME TAX RATES FOR 2003

If taxable income is over	But not over	Then regular income tax equals
		Single individuals
$0	$6,000	10% of taxable income.
$6,000	$28,400	$600 plus 15% of the amount over $6,000.
$28,400	$68,800	$3,960, plus 27% of the amount over $28,400.
$68,800	$143,500	$14,868, plus 30% of the amount over $68,800.
$143,500	$311,950	$37,278, plus 35% of the amount over $143,500.
Over $311,950		$96,235.50, plus 38.6% of the amount over $311,950.
		Head of households
$0	$10,000	10% of taxable income.
$10,000	$38,050	$1,000, plus 15% of the amount over $10,000.
$38,050	$98.250	$5,207.50, plus 27% of the amount over $38,050.
$98,250	$159,100	$21,461.50, plus 30% of the amount over $98,250.
$159,100	$311,950	$39,716.50 plus 35% of the amount over $159,100.
Over $311,950		$93,214, plus 38.6% of the amount over $311,950.
		Married individuals filing joint returns
$0	$12,000	10% of taxable income.
$12,000	$47,450	$1,200 plus 15% of the amount over $12,000.
$47,450	$114,650	$6,517.50, plus 27% of the amount over $47,450.
$114,650	$174,700	$24,661.50, plus 30% of the amount over $114,650.
$174,700	$311,950	$42,676.50, plus 35% of the amount over $174,700.
Over $311,950		$90,714, plus 38.6% of the amount over $311,950.

Ten-percent regular income tax rate

Under present law, the 10-percent rate applies to the first $6,000 of taxable income for single individuals, $10,000 of taxable income for heads of households, and $12,000 for married couples filing joint returns. Effective beginning in 2008, the $6,000 amount will increase to $7,000 and the $12,000 amount will increase to $14,000.

The taxable income levels for the 10-percent rate bracket will be adjusted annually for inflation for taxable years beginning after December 31, 2008. The bracket for single individuals and married individuals filing separately is one-half for joint returns (after adjustment of that bracket for inflation).

The 10-percent rate bracket will expire for taxable years beginning after December 31, 2010, the sunset provision of EGTRRA.

Reduction of other regular income tax rates

Prior to EGTRRA the regular income tax rates were 15 percent, 28 percent, 31 percent, 36 percent, and 39.6 percent.[8] EGTRRA added the 10-percent regular income tax rate, described above, and retained the 15-percent regular income tax rate. Also, the 15-percent regular income tax bracket was modified to begin at the end of the 10-percent regular income tax bracket. EGTRRA also made other changes to the 15-percent regular income tax bracket.[9]

Also, under EGTRRA, the 28 percent, 31 percent, 36 percent, and 39.6 percent rates are phased down over six years to 25 percent, 28 percent, 33 percent, and 35 percent, effective after June 30, 2001. The taxable income levels for the rates above the 15-percent rate in all taxable years are the same as the taxable income levels that apply under the prior-law rates.

Table 5, below, shows the schedule of regular income tax rate reductions.

TABLE 5.—SCHEDULED REGULAR INCOME TAX RATE REDUCTIONS

Calendar year	28% rate reduced to	31% rate reduced to	36% rate reduced to	39.6% rate reduced to
2001[1]–2003	27%	30%	35%	38.6%
2004–2005	26%	29%	34%	37.6%
2006–2010[2]	25	28%	35%	35.0%

[1] Effective July 1, 2001.
[2] The reductions in the regular income tax rates are repealed for taxable years beginning after December 31, 2010, under the sunset of EGTRRA.

Alternative minimum tax

The alternative minimum tax is the amount by which the tentative minimum tax exceeds the regular income tax. An individual's tentative minimum tax is an amount equal (1) 26 percent of the first $175,000 ($87,500 in the case in the case of a married individual filing a separate return) of alternative minimum taxable income ("AMTI") in excess of a phased-out exemption amount and (2) 28 percent of the remaining ATMI. The maximum tax rates on the net capital gain used in computing the tentative minimum tax are the same as under the regular tax. AMTI is the individual's taxable income adjusted to take account of specified preferences and adjustments. The exemption amounts are: (1) $49,000 ($45,000 in taxable years beginning after 2004) in the case of married individuals filing joint returns and surving spouses (2) $35,750 ($33,750 in taxable years, beginning after 2004) in the case of other unmarried individuals; (3) $24,500 ($22,500 in txable years beginning after 2004) in the case of married individuals filing a separate return; and (4) $22,500 in the case of an estate or trust. The exemption amounts are phased out by an amount equal to 25 percent of the amount by which the individual's AMTI exceeds (1) $150,000 in the case of married individuals filing joint returns and surviving spouses, (2) $112,500 in the case of other unmarried individuals, and (3) 75,0000 in the case of married individuals filing separate

[8] The regular income tax rates will revert to these percentages for taxable years beginning after December 31, 2010 under the sunset provision of EGTRRA.
[9] See the discussion of the provision regarding marriage penalty relief in the 15-percent regular income tax bracket, above.

returns or an estate or a trust. These amounts are not indexed for inflation.

REASONS FOR CHANGE

The Committee believes that high marginal individual income tax rates reduce incentives for taxpayers to work, to save, and to invest and, thereby, have a negative effect on the long-term health of the economy. The higher that marginal tax rates are, the greater is the disincentive for individuals to increase their work effort. Lower marginal tax rates provide greater incentives to taxpayers to be entrepreneurial risk takers; the Committee believes that the high marginal tax rates of prior-law discourage success. The Committee believes that this tax cut will lead to increased investment by these businesses, promoting long-term growth and stability in the economy and rewarding the businessmen and women who provide a foundation for our country's success.

In addition, lower marginal tax rates help remove the barriers that lower-income families face as they try to enter the middle class. The lower the marginal tax rates for lower-income families, the greater is the incentive to work. The expanded 10-percent rate bracket provides an incentive for these taxpayers to increase their work effort.

Finally, there are signs that the economy is not growing as fast as desirable. The Committee believes that immediate tax relief could encourage growth in the economy by providing individuals with additional tax relief.

EXPLANATION OF PROVISIONS

10-percent regular income tax rate

The bill accelerates the increase in the taxable income levels for the 10-percent rate bracket now scheduled for 2008 to be effective in 2003, 2004, and 2005. Specifically, for 2003, 2004, and 2005, the proposal increases the taxable income level for the 10-percent regular income tax rate brackets for unmarried individuals from $6,000 to $7,000 and for married individuals filing jointly from $12,000 to $14,000. The taxable income levels for the 10-percent regular income tax rate bracket will be adjusted annually for inflation for taxable years beginning after December 31, 2003.

For taxable years beginning after December 31, 2005, the taxable income levels for the 10-percent rate bracket will revert to the levels allowed under present law. Therefore, for 2006 and 2007, the levels will revert to $6,000 for unmarried individuals and $12,000 for married individuals filing jointly. In 2008, the taxable income levels for the 10-percent regular income tax rate brackets will be $7,000 for unmarried individuals and $12,000 for married individuals filing jointly. The taxable income levels for the 10-percent rate bracket will be adjusted annually for inflation for taxable years beginning after December 31, 2008.

Reduction of other regular income tax rates

The bill accelerates the reductions in the regular income tax rates in excess of the 15-percent regular income tax rate that are scheduled for 2004 and 2006. Therefore, for 2003 and thereafter,

the regular income tax rates in excess of 15 percent under the proposal are 25 percent, 28 percent, 33 percent, and 35 percent.

Alternative minimum tax exemption amounts

The bill increases the AMT exemption amount for married taxpayers filing joint returns and surviving spouses to $64,000, and for unmarried taxpayers to $43,250, for taxable years beginning in 2003, 2004, and 2005.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2002 and before January 1, 2006.

TITLE II—GROWTH INCENTIVES FOR BUSINESS

A. SPECIAL DEPRECIATION ALLOWANCE FOR CERTAIN PROPERTY

(Sec. 201 of the bill and sec. 168 of the Code)

PRESENT LAW

In general

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system ("MACRS"). Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property (generally tangible property other than residential rental property and nonresidential real property) range from 3 to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

Section 280F limits the annual depreciation deductions with respect to passenger automobiles to specified dollar amounts, indexed for inflation.

Section 167(f)(1) provides that capitalized computer software costs, other than computer software to which section 197 applies, are recovered ratably over 36 months.

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment generally may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year (sec. 179). In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business.

Additional first year depreciation deduction

The Job Creation and Worker Assistance Act of 2002 [10] ("JCWAA") allows an additional first-year depreciation deduction

[10] Pub. Law No. 107–147, sec. 101 (2002).

equal to 30 percent of the adjusted basis of qualified property.[11] The amount of the additional first-year depreciation deduction is not affected by a short taxable year. The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service.[12] The basis for the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, there are no adjustments to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year.

In order for property to qualify for the additional first-year depreciation deduction it must meet all of the following requirements. First, the property must be property (1) to which MACRS applies with an applicable recovery period of 20 years or less, (2) water utility property (as defined in section 168(e)(5)), (3) computer software other than computer software covered by section 197, or (4) qualified leasehold improvement property (as defined in section 168(k)(3)).[13] Second, the original use [14] of the property must commence with the taxpayer on or after September 11, 2001.[15] Third, the taxpayer must purchase the property within the applicable time period. Finally, the property must be placed in service before January 1, 2005. An extension of the placed in service date of one year (i.e., January 1, 2006) is provided for certain property with a recovery period of ten years or longer and certain transportation property.[16] Transportation property is defined as tangible personal property used in the trade or business of transporting persons or property.

The applicable time period for acquired property is (1) after September 10, 2001 and before September 11, 2004, but only if no binding written contract for the acquisition is in effect before September 11, 2001, or (2) pursuant to a binding written contract which was entered into after September 10, 2001, and before Sep-

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[11] The additional first-year depreciation deduction is subject to the general rules regarding whether an item is deductible under section 162 or subject to capitalization under section 263 or section 263A.

[12] However, the additional first-year depreciation deduction is not allowed for purposes of computing earnings and profits.

[13] A special rule precludes the additional first-year depreciation deduction for any property that is required to be depreciated under the alternative depreciation system of MACRS.

[14] The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.

If in the normal course of its business a taxpayer sells fractional interests in property to unrelated third parties, then the original use of such property begins with the first user of each fractional interest (i.e., each fractional owner is considered the original user of its proportionate share of the property.

[15] A special rule applies in the case of certain leased property. In the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property would be treated as originally placed in service by the taxpayer not earlier than the date that the property misused under the lease back.

If property is originally placed in service by a lessor (including by operation of section 168(k)(2)(D)(i), such property is sold within three months after the date that the property was placed service,and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale. A technical correction may be needed so the statute reflects this intent.

[16] In order for property to qualify for the extended placed in service data, the property is required to have a production period exceeding two years or an estimated production period exceeding one year and a cost exceeding $1 million.

tember 11, 2004.[17] With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production or the property after September 10, 2001, and before September 11, 2004. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer. For property eligible for the extended placed in service date, a special rule limits the amount of costs eligible for the additional first year depreciation. With respect to such property, only the portion of the basis that is properly attributable to the costs incurred before September 11, 2004 ("progress expenditures") is eligible for the additional first-year depreciation.[18]

Property does not qualify for the additional first-year depreciation deduction when the user of such property (or a related party) would not have been eligible for the additional first-year depreciation deduction if the user (or a related party) were treated as the owner.[19] For example, if a taxpayer sells to a related party property that was under construction prior to September 11, 2001, the property does not qualify for the additional first-year depreciation deduction. Similarly, if a taxpayer sells to a related party property that was subject to a binding written contract prior to September 11, 2001, the property does not qualify for the additional first-year depreciation deduction. As a further example, if a taxpayer (the lessee) sells property in a sale-leaseback arrangement, and the property otherwise would not have qualified for the additional first-year depreciation deduction if it were owned by the taxpayer-lessee, then the lessor is not entitled to the additional first-year depreciation deduction.

The limitation on the amount of depreciation deductions allowed with respect to certain passenger automobiles (sec. 280F) is increased in the first year by $4,600 for automobiles that qualify (and do not elect out of the increased first year deduction). The $4,600 increase is not indexed for inflation.

REASONS FOR CHANGE

The Committee believes that increasing and extending the additional first-year depreciation will accelerate purchases of equipment, promote capital investment, modernization, and growth, and will help to spur an economic recovery. As businesses accelerate their purchases of equipment current employment will increase to produce that equipment. Current business expansion also will increase employment opportunities in the years ahead.

EXPLANATION OF PROVISION

The provision provides an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified prop-

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[17] Property does not fail to qualify for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to September 11, 2001.

[18] For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to sec. 46(d)(3) as in effect prior to the Tax Reform Act of 1986 shall apply.

[19] A technical correction may be needed so that the statute reflects this intent.

erty.[20] Qualified property is defined in the same manner as for purposes of the 30-percent additional first-year depreciation deduction provided by the JCWAA except that the applicable time period for acquisition (or self construction) of the property is modified. In addition, property must be placed in service before January 1, 2006 to qualify.[21] Property eligible for the 50-percent additional first year depreciation deduction is not eligible for the 30-percent additional first year depreciation deduction.

Under the provision, in order to qualify the property must be acquired after May 5, 2003 and before January 1, 2006, and no binding written contract for the acquisition is in effect before May 6, 2003.[22] With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after May 5, 2003. For property eligible for the extended placed in service date (i.e., certain property with a recovery period of ten years or longer and certain transportation property), a special rule limits the amount of costs eligible for the additional first year depreciation. With respect to such property, only progress expenditures properly attributable to the costs incurred before January 1, 2006 shall be eligible for the additional first year depreciation.[23]

The Committee wishes to clarify that the adjusted basis of qualified property acquired by a taxpayer in a like kind exchange or an involuntary conversion is eligible for the additional first year depreciation deduction.

The provision also increases the limitation on the amount of depreciation deductions allowed with respect to certain passenger automobiles (sec. 280F of the Code) in the first year by $9,200 (in lieu of the $4,600 provided under the JCWAA) for automobiles that qualify (and do not elect out of the increased first year deduction). The $9,200 increase is not indexed for inflation.

For property eligible for the present law 30-percent additional first year depreciation, the provision extends the date of the placed in service requirement to property placed in service prior to January 1, 2006 (from January 1, 2005). Thus, property otherwise qualifying for the 30-percent additional first year depreciation deduction will now qualify if placed in service prior to January 1, 2006. The provision also extends the placed in service date requirement for certain property with a recovery period of ten years or longer and certain transportation property to property placed in service prior to January 1, 2007 (instead of January 1, 2006). In addition, progress expenditures eligible for the 30-percent additional first year depreciation is extended to include costs incurred prior to January 1, 2006 (instead of September 11, 2004).

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[20] A taxpayer is permitted to elect out of the additional first-year depreciation deduction for any class of property for any taxable year.

[21] An extension of the placed in service date of one year (i.e., January 1, 2007) is provided for certain property with a recovery period of ten years or longer and certain transportation property as defined for purposes of the JCWAA.

[22] Property does not fail to qualify for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to May 6, 2003. However, no additional first-year depreciation is permitted on any such component. No inference is intended as to the proper treatment of components placed in service under the 30% additional first-year depreciation provided by the JCWAA.

[23] For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to sec. 46(d)(3) as in effect prior to the Tax Reform Act of 1986 shall apply.

EFFECTIVE DATE

The provision applies to property placed in service after May 5, 2003.

B. INCREASE SECTION 179 EXPENSING

(Sec. 202 of the bill and sec. 179 of the Code)

PRESENT LAW

Present law provides that, in lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 (for taxable years beginning in 2003 and thereafter) of the cost of qualifying property placed in service for the taxable year (sec. 179).[24] In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. An election to expense these items generally is made on the taxpayer's original return for the taxable year to which the election relates, and may be revoked only with the consent of the Commissioner.[25] In general, taxpayers may not elect to expense off-the-shelf computer software.[26]

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.

REASONS FOR CHANGE

The Committee believes that section 179 expensing provides two important benefits for small businesses. First, it lowers the cost of capital for tangible property used in a trade or business. With a lower cost of capital, the Committee believes small business will invest in more equipment and employ more workers. Second, it eliminates depreciation recordkeeping requirements with respect to expensed property. In order to increase the value of these benefits and to increase the number of taxpayers eligible, the Committee bill increases the amount allowed to be expensed under section 179 and increases the amount of the phase-out threshold, as well as indexing these amounts.

The Committee also believes that purchased computer software should be included in the section 179 expensing provision so that it is not disadvantaged relative to developed software. In addition, the Committee believes that the process of making and revoking section 179 elections should be made simpler and more efficient for

[24] Additional section 179 incentives are provided with respect to a qualified property used by a business in the New York Liberty Zone (sec. 1400(f)) or an empowerment zone (sec. 1397A).

[25] Section 179(c)(2).

[26] Section 179(d)(1) requires that property be tangible to be eligible for expensing; in general, computer software is intangible property.

taxpayers by eliminating the requirement for the consent of the Commissioner.

EXPLANATION OF PROVISION

The provision provides that the maximum dollar amount that may be deducted under section 179 is increased to $100,000 for property placed in service in taxable years beginning in 2003, 2004, 2005, 2006, and 2007. In addition, the $200,000 amount is increased to $400,000 for property placed in service in taxable years beginning in 2003, 2004, 2005, 2006, and 2007. The dollar limitations are indexed annually for inflation for taxable years beginning after 2003 and before 2008. The provision also includes off-the-shelf computer software placed in service in a taxable year beginning in 2003, 2004, 2005, 2006, or 2007, as qualifying property. With respect to a taxable year beginning after 2002 and before 2008, the provision permits taxpayers to make or revoke expensing elections on amended returns without the consent of the Commissioner.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2002.

C. Five-Year Carryback of Net Operating Losses

(Sec. 203 of the bill and secs. 172 and 56 of the Code)

PRESENT LAW

A net operating loss ("NOL") is, generally, the amount by which a taxpayer's allowable deductions exceed the taxpayer's gross income. A carryback of an NOL generally results in the refund of Federal income tax for the carryback year. A carryforward of an NOL reduces Federal income tax for the carryforward year.

In general, an NOL may be carried back two years and carried forward 20 years to offset taxable income in such years.[27] Different rules apply with respect to NOLs arising in certain circumstances. For example, a three-year carryback applies with respect to NOLs (1) arising from casualty or theft losses of individuals, or (2) attributable to Presidentially declared disasters for taxpayers engaged in a farming business or a small business. A five-year carryback period applies to NOLs from a farming loss (regardless of whether the loss was incurred in a Presidentially declared disaster area). Special rules also apply to real estate investment trusts (no carryback), specified liability losses (10-year carryback), and excess interest losses (no carryback to any year preceding a corporate equity reduction transaction).

The alternative minimum tax rules provide that a taxpayer's NOL deduction cannot reduce the taxpayer's alternative minimum taxable income ("AMTI") by more than 90 percent of the AMTI (determined without regard to the NOL deduction).

Section 202 of the Job Creation and Worker Assistance Act of 2002[28] ("JCWAA") provided a temporary extension of the general NOL carryback period to five years (from two years) for NOLs aris-

[27] Sec. 172.
[28] Pub. Law No. 107–147.

ing in taxable years ending in 2001 and 2002. In addition, the five-year carryback period applies to NOLs from these years that qualify under present law for a three-year carryback period (i.e., NOLs arising from casualty or theft losses of individuals or attributable to certain Presidentially declared disaster areas).

A taxpayer can elect to forgo the five-year carryback period. The election to forgo the five-year carryback period is made in the manner prescribed by the Secretary of the Treasury and must be made by the due date of the return (including extensions) for the year of the loss. The election is irrevocable. If a taxpayer elects to forgo the five-year carryback period, then the losses are subject to the rules that otherwise would apply under section 172 absent the provision.[29]

JCWAA also provided that an NOL deduction attributable to NOL carrybacks arising in taxable years ending in 2001 and 2002, as well as NOL carryforwards to these taxable years, may offset 100 percent of a taxpayer's AMTI.[30]

REASONS FOR CHANGE

The NOL carryback and carryover rules are designed to allow taxpayers to smooth out swings in business income (and Federal income taxes thereon) that result from business cycle fluctuations and unexpected financial losses. The uncertain economic conditions that resulted in the enactment of the five-year carryback of NOLs as part of the JCWAA have continued with many taxpayers continuing to incur unexpected financial losses. A temporary extension of the five-year NOL carryback period provides taxpayers in all sectors of the economy who are experiencing such losses the ability to increase their cash flow through the refund of income taxes paid in prior years. This increased cash flow can be used for employing workers and for capital investments that will provide stimulus to the economy.

EXPLANATION OF PROVISION

The provision extends the provisions of the five-year carryback of NOLs enacted in JCWAA to NOLs arising in taxable years ending in 2003, 2004, and 2005.[31]

The provision also allows an NOL deduction attributable to NOL carrybacks arising in taxable years ending in 2003, 2004, and 2005, as well as NOL carryforwards to these taxable years, to offset 100 percent of a taxpayer's AMTI.

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[29] Because JCWAA was enacted after some taxpayers had filed tax returns for years affected by the provision, as technical correction is needed to provide for a period of time in which prior decisions regarding the NOL carryback may be reviewed. Similarly, a technical correction is needed to modify the carryback adjustment procedures of sec. 6411 for NOLs arising in 2001 and 2002. These issues were addressed in a letter dated April 15, 2002, sent by the Chairmen and Ranking Members of the House Ways and Means Committee and Senate Finance Committee, as well as in guidance issued by the IRS pursuant to the Congressional letter (Rev. Proc. 2002–40, 2002–23 I.R.B. 1096, June 10, 2002).

[30] Section 172(b)(2) should be appropriately applied in computing AMTI to take proper account of the order that the NOL carryovers and carrybacks are used as a result of this provision. See section 56(d)(1)(B)(ii).

[31] Because certain taxpayers may have already filed tax returns (or be in the process of filing tax returns) for taxable years ending in 2003, the proposal contains special rules to provide until November 1, 2003 in which prior decisions regarding the NOL carryback may be reviewed by taxpayers.

EFFECTIVE DATE

The five-year carryback provision is effective for net operating losses generated in taxable years ending in 2003, 2004 and 2005.

The provision relating to AMTI is effective for NOL carrybacks arising in, and NOL carryforwards to, taxable years ending in 2003, 2004 and 2005.

TITLE III—DIVIDENDS AND CAPITAL GAINS

A. Reduce Individual Capital Gains Rates

(Sec. 301 of the bill and sec. 1(h) of the Code)

PRESENT LAW

In general, gain or loss reflected in the value of an asset is not recognized for income tax purposes until a taxpayer disposes of the asset. On the sale or exchange of a capital asset, any gain generally is included in income. Any net capital gain of an individual is taxed at maximum rates lower than the rates applicable to ordinary income. Net capital gain is the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for the year. Gain or loss is treated as long-term if the asset is held for more than one year.

Capital losses generally are deductible in full against capital gains. In addition, individual taxpayers may deduct capital losses against up to $3,000 of ordinary income in each year. Any remaining unused capital losses may be carried forward indefinitely to another taxable year.

A capital asset generally means any property except (1) inventory, stock in trade, or property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business, (2) depreciable or real property used in the taxpayer's trade or business, (3) specified literary or artistic property, (4) business accounts or notes receivable, (5) certain U.S. publications, (6) certain commodity derivative financial instruments, (7) hedging transactions, and (8) business supplies. In addition, the net gain from the disposition of certain property used in the taxpayer's trade or business is treated as long-term capital gain. Gain from the disposition of depreciable personal property is not treated as capital gain to the extent of all previous depreciation allowances. Gain from the disposition of depreciable real property is generally not treated as capital gain to the extent of the depreciation allowances in excess of the allowances that would have been available under the straight-line method of depreciation.

The maximum rate of tax on the adjusted net capital gain of an individual is 20 percent. In addition, any adjusted net capital gain which otherwise would be taxed at a 15-percent rate is taxed at a 10-percent rate. These rates apply for purposes of both the regular tax and the alternative minimum tax.

The "adjusted net capital gain" of an individual is the net capital gain reduced (but not below zero) by the sum of the 28-percent rate gain and the unrecaptured section 1250 gain. The net capital gain is reduced by the amount of gain that the individual treats as investment income for purposes of determining the investment interest limitation under section 163(d).

The term "28-percent rate gain" means the amount of net gain attributable to long-term capital gains and losses from the sale or exchange of collectibles (as defined in section 408(m) without regard to paragraph (3) thereof), an amount of gain equal to the amount of gain excluded from gross income under section 1202 (relating to certain small business stock),[32] the net short-term capital loss for the taxable year, and any long-term capital loss carryover to the taxable year.

"Unrecaptured section 1250 gain" means any long-term capital gain from the sale or exchange of section 1250 property (i.e., depreciable real estate) held more than one year to the extent of the gain that would have been treated as ordinary income if section 1250 applied to all depreciation, reduced by the net loss (if any) attributable to the items taken into account in computing 28=percent rate gain. The amount of unrecaptured section 1250 gain (before the reduction for the net loss) attributable to the disposition of property to which section 1231 applies shall not exceed the net section 1231 gain for the year.

The unrecaptured section 1250 gain is taxed at a maximum rate of 25p percent, and the 28-percent rate gain is taxed at a maximum rate of 28 percent. Any amount of unrecaptured section 1250 gain or 28=percent rate gain otherwise taxed at a 15-percent rate is taxed at the 15-percent rate.

Any gain from the sale or exchange of property held more than five years that would otherwise be taxed at the 10-percent rate is taxed at an 8-percent rate. Any gain from the sale or exchange of property held more than five years and the holding period for which begins after December 31, 2000, which would otherwise be taxed at a 20-percent rate is taxed at an 18-percent rate.

REASONS FOR CHANGE

The Committee believes it is important that tax policy be conducive to economic growth. The Committee believes that reducing the capital gains tax lowers the cost of capital and will lead to economic growth and the creation of jobs. Economic growth cannot occur without savings, investment, and the willingness of individuals to take risks. The greater the pool of savings, the greater will be the monies available for business investment. It is through such investment that the United States' economy can increase output, productivity, and employment. It is through increases in productivity that workers earn higher real wages. Increases in investment create more employment opportunities. Hence, a greater saving rate is necessary for all Americans to benefit from a higher standard of living.

The Committee believes that, by reducing the effective tax rates on capital gains, American households will respond by increasing savings. The Committee believes it is important to encourage risk-taking and believes a reduction in the taxation of capital gains will have that effect. The Committee also believes that a reduction in the taxation of capital gains will improve the efficiency of the markets, because the taxation of capital gains upon realization encourages investors who have accrued past gains to keep their monies

[32] This results in a maximum effective regular tax rate on qualified gain from small business stock of 14 percent.

"locked in" to such investments even when better investment opportunities present themselves. A reduction in the taxation of capital gains should reduce this "look in" effect.

EXPLANATION OF PROVISION

The provision reduces the 10 and 20 percent rates on the adjusted net capital gain to five and 15 percent, respectively. These lower rates apply to both the regular tax and the alternative minimum tax. The lower rates apply to assets held more than one year.

EFFECTIVE DATE

The provision applies to taxable years ending on or after May 6, 2003, and beginning before January 1, 2013.

For taxable years that include May 6, 2003, the lower rates apply to amounts properly taken into account for the portion of the year on or after that date. This generally has the effect of applying the lower rates to capital assets sold or exchanged (and installment payments received) on or after May 6, 2003. In the case of gain and loss taken into account by a pass-through entity, the date taken into account by the entity is the appropriate date for applying this rule.

B. Dividend Income of Individuals Taxed at Capital Gain Rates

(Sec. 302 of the bill and sec. 1(h) of the Code)

PRESENT LAW

Under present law, dividends received by an individual are included in gross income and taxed as ordinary income at rates up to 38.6 percent.[33]

The rate of tax on the net capital gain of an individual generally is 20 percent (10 percent[34] with respect to income which would otherwise be taxed at the 10- or 15-percent rate).[35] Net capital gain means net gain from the sale or exchange of capital assets held for more than one year in excess of net loss from the sale or exchange of capital assets held not more than one year.

REASONS FOR CHANGE

The Committee believes it is important that tax policy be conducive to economic growth. The Committee believes that reducing the individual tax on dividends lowers the cost of capital and will lead to economic growth and the creation of jobs. Economic growth is impeded by tax-induced distortions in the capital markets. Mitigating these distortions will improve the efficiency of the capital markets. In addition, reducing the aggregate tax burden on investments made by corporations will lower the cost of capital needed to finance new investments and lead to increases in aggregate national investment and increases in private sector employment. It is through such investment that the United States' economy can increase output, employment, and productivity. It is through in-

[33] Section 105 of the bill reduces the maximum rate to 35 percent.
[34] An eight percent rate applies to property held more than five years.
[35] Section 301 of the bill reduces the capital gain rates to five and 15 percent, respectively.

creases in productivity that workers earn higher real wages and all Americans benefit from a higher standard of living.

The Committee observes that present law imposes different total tax burdens on income from different investments. The Committee believes that, by placing different tax burdens on different investments, the present system results in economic distortions. The Committee observes that present law distorts individual and corporate financial decisions. The Committee observes that because interest payments on the debt are deductible, present law encourages corporations to finance using debt rather than equity. The Committee believes that the increase in corporate leverage, while beneficial to each corporation from a tax perspective, may place the economy at risk of more bankruptcies during an economic downturn. In addition, the Committee finds that present law, by taxing dividend income at a higher rate than income from capital gains, encourages corporations to retain earnings rather than to distribute them as taxable dividends. If dividends are discouraged, shareholders may prefer that corporate management retain and reinvest earnings rather than pay out dividends, even if the shareholder might have an alternative use for the funds that could offer a higher rate of return than that earned on the retained earnings. This is another source of inefficiency as the opportunity to earn higher pre-tax returns is bypassed in favor of lower pre-tax returns.

EXPLANATION OF PROVISION

Under the provision, dividends received by an individual shareholder from domestic corporations are taxed at the same rates that apply to net capital gain. This treatment applies for purposes of both the regular tax and the alternative minimum tax. Thus, under the provision, dividends will be taxed at rates of five and 15 percent.[36]

If a shareholder does not hold a share of stock for more than 45 days during the 90-day period beginning 45 days before the ex-dividend date (as measured under section 246(c)),[37] dividends received on the stock are not eligible for the reduced rates. Also, the reduced rates are not available for dividends to the extent that the taxpayer is obligated to make related payments with respect to positions in substantially similar or related property.

If an individual receives an extraordinary dividend (within the meaning of section 1059(c)) eligible for the reduced rates with respect to any share of stock, any loss on the sale of the stock is treated as a long-term capital loss to the extent of the dividend.

A dividend is treated as investment income for purposes of determining the amount of deductible investment interest only if the taxpayer elects to treat the dividend as not eligible for the reduced rates.

The amount of dividends qualifying for reduced rates that may be paid by a regulated investment company or real estate investment trust, for any taxable year that the aggregate qualifying dividends received by the company or trust are less than 95 percent of its gross income (as specially computed), may not exceed the

[36] Payments in lieu of dividends are not eligible for the lower rates. See section 6045(d) relating to statements required to be furnished by brokers regarding these payments.

[37] In the case of preferred stock, the periods are doubled.

amount of the aggregate qualifying dividends received by the company or trust.

The reduced rates do not apply to dividends received from an organization that was exempt from tax under section 501 or was a tax-exempt farmers' cooperative in either the taxable year of the distribution or the preceding taxable year; dividends received from a mutual savings bank that received a deduction under section 591; or deductible dividends paid on employer securities.

The tax rate for the accumulated earnings tax (sec. 531) and the personal holding company tax (sec. 541) is reduced to 15 percent.

Amounts treated as ordinary income on the disposition of certain preferred stock (sec. 306) are treated as dividends for purposes of applying the reduced rates.

The collapsible corporation rules (sec. 341) are repealed.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2002, and beginning before January 1, 2013.

TITLE IV—MODIFICATION TO CORPORATE ESTIMATED TAX REQUIREMENTS

(Sec. 401 of the bill)

PRESENT LAW

In general, corporations are required to make quarterly estimated tax payments of their income tax liability (section 6655). For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

REASONS FOR CHANGE

The Committee believes that it is appropriate to modify these corporate estimated tax requirements.

EXPLANATION OF PROVISION

With respect to corporate estimated tax payments due on September 15, 2003, 52 percent is required to be paid by October 1, 2003.

EFFECTIVE DATE

The provision is effective on the date of enactment.

III. VOTES ON THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 2.

MOTION TO REPORT THE BILL

The bill, H.R. 2, as amended, was ordered favorably reported by a rollcall vote of 24 yeas to 15 nays (with a quorum being present). The vote was a follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel		X	
Mr. Crane	X			Mr. Stark		X	
Mr. Shaw	X			Mr. Matsui		X	
Mrs. Johnson	X			Mr. Levin		X	
Mr. Houghton	X			Mr. Cardin		X	
Mr. Herger	X			Mr. McDermott		X	
Mr. McCrery	X			Mr. Kleczka		X	
Mr. Camp	X			Mr. Lewis (GA)		X	
Mr. Ramstad	X			Mr. Neal		X	
Mr. Nussle	X			Mr. McNulty		X	
Mr. Johnson	X			Mr. Jefferson			
Ms. Dunn	X			Mr. Tanner			
Mr. Collins	X			Mr. Becerra		X	
Mr. Portman	X			Mr. Doggett		X	
Mr. English	X			Mr. Pomeroy		X	
Mr. Hayworth	X			Mr. Sandlin		X	
Mr. Weller	X			Ms. Tubbs Jones		X	
Mr. Hulshof	X						
Mr. McInnis	X						
Mr. Lewis (KY)	X						
Mr. Foley	X						
Mr. Brady	X						
Mr. Ryan	X						
Mr. Cantor	X						

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendments to the Chairman's amendment in the nature of a substitute.

An amendment by Mr. Stark to suspend the rate reductions on capital gains and dividend income until the director of OMB certifies that the federal budget is in surplus, was defeated by a rollcall vote of 14 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui			
Mrs. Johnson		X		Mr. Levin	X		
Mr. Houghton		X		Mr. Cardin	X		
Mr. Herger		X		Mr. McDermott	X		
Mr. McCrery		X		Mr. Kleczka	X		
Mr. Camp		X		Mr. Lewis (GA)	X		
Mr. Ramstad		X		Mr. Neal	X		
Mr. Nussle		X		Mr. McNulty			
Mr. Johnson		X		Mr. Jefferson	X		
Ms. Dunn		X		Mr. Tanner			
Mr. Collins		X		Mr. Becerra	X		
Mr. Portman		X		Mr. Doggett	X		
Mr. English		X		Mr. Pomeroy	X		
Mr. Hayworth		X		Mr. Sandlin	X		
Mr. Weller		X		Ms. Tubbs Jones	X		
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					
Mr. Cantor		X					

An amendment by Mr. Cardin to have amendments in Title III of the bill take effect only if the Secretary of the Treasury certifies, in consultation with the Secretary of Labor, that the Temporary Extended Unemployment Compensation Act of 2002 has been ex-

tended and modified in the manner proposed by the bill, H.R. 1652 (108th Congress), was defeated by a rollcall vote of 14 yeas to 23 nays.

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui			
Mrs. Johnson		X		Mr. Levin	X		
Mr. Houghton		X		Mr. Cardin	X		
Mr. Herger		X		Mr. McDermott	X		
Mr. McCrery		X		Mr. Kleczka	X		
Mr. Camp				Mr. Lewis (GA)	X		
Mr. Ramstad		X		Mr. Neal	X		
Mr. Nussle		X		Mr. McNulty			
Mr. Johnson		X		Mr. Jefferson	X		
Ms. Dunn		X		Mr. Tanner			
Mr. Collins		X		Mr. Becerra	X		
Mr. Portman		X		Mr. Doggett	X		
Mr. English		X		Mr. Pomeroy	X		
Mr. Hayworth		X		Mr. Sandlin	X		
Mr. Weller		X		Ms. Tubbs Jones	X		
Mr. Hulshop		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					
Mr. Cantor		X					

An amendment by Mr. McDermott, which would provide to individuals, a refundable tax credit equal to the amount of payroll taxes paid on the first $20,000 of wages, was defeated by a rollcall vote of 13 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui			
Mrs. Johnson		X		Mr. Levin	X		
Mr. Houghton		X		Mr. Cardin	X		
Mr. Herger		X		Mr. McDermott	X		
Mr. McCrery		X		Mr. Kleczka	X		
Mr. Camp		X		Mr. Lewis (GA)	X		
Mr. Ramstad		X		Mr. Neal	X		
Mr. Nussle		X		Mr. McNulty			
Mr. Johnson		X		Mr. Jefferson	X		
Ms. Dunn		X		Mr. Tanner			
Mr. Collins		X		Mr. Becerra	X		
Mr. Portman		X		Mr. Doggett	X		
Mr. English		X		Mr. Pomeroy		X	
Mr. Hayworth		X		Mr. Sandlin	X		
Mr. Weller		X		Ms. Tubbs Jones	X		
Mr. Hulshof		X					
Mr. McInnis							
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					
Mr. Cantor		X					

An amendment by Mr. Becerra, which would accelerate the earned income credit phase-out amount increase under current law for joint filers to $3,000, effective in taxable years beginning after December 31, 2002, and reduces the capital gains rate reductions

in the bill by the appropriate amount to offset the revenue reduction caused by this acceleration, was defeated by a rollcall vote of 15 yeas to 22 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui			
Mrs. Johnson		X		Mr. Levin	X		
Mr. Houghton		X		Mr. Cardin	X		
Mr. Herger		X		Mr. McDermott	X		
Mr. McCrery		X		Mr. Kleczka	X		
Mr. Camp		X		Mr. Lewis (GA)	X		
Mr. Ramstad		X		Mr. Neal	X		
Mr. Nussle		X		Mr. McNulty	X		
Mr. Johnson		X		Mr. Jefferson	X		
Ms. Dunn		X		Mr. Tanner			
Mr. Collins		X		Mr. Becerra	X		
Mr. Portman		X		Mr. Doggett	X		
Mr. English		X		Mr. Pomeroy	X		
Mr. Hayworth		X		Mr. Sandlin	X		
Mr. Weller				Ms. Tubbs Jones	X		
Mr. Hulshof		X					
Mr. McInnis							
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					
Mr. Cantor		X					

An amendment by Mr. Neal to raise the AMT exclusion to $64,000 for married couples, and indexes it for inflation through the end of the decade, and strikes Title III, was defeated by a rollcall vote of 15 yeas to 23 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui			
Mrs. Johnson		X		Mr. Levin	X		
Mr. Houghton		X		Mr. Cardin	X		
Mr. Herger		X		Mr. McDermott	X		
Mr. McCrery		X		Mr. Kleczka	X		
Mr. Camp		X		Mr. Lewis (GA)	X		
Mr. Ramstad		X		Mr. Neal	X		
Mr. Nussle		X		Mr. McNulty	X		
Mr. Johnson		X		Mr. Jefferson	X		
Ms. Dunn		X		Mr. Tanner			
Mr. Collins		X		Mr. Becerra	X		
Mr. Portman		X		Mr. Doggett	X		
Mr. English		X		Mr. Pomeroy	X		
Mr. Hayworth		X		Mr. Sandlin	X		
Mr. Weller		X		Ms. Tubbs Jones	X		
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley							
Mr. Brady		X					
Mr. Ryan		X					
Mr. Cantor		X					

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 2 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2003–2008:

ESTIMATED BUDGET EFFECTS OF H.R. 2, THE "JOBS AND GROWTH RECONCILIATION TAX ACT OF 2003," AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

[Fiscal years 2003–2008, in millions of dollars]

Provision	Effective	2003	2004	2005	2006	2007	2008	2003–08
I. Acceleration of Certain Previously Enacted Tax Reductions:								
1. Expand the child credit to $1,000 for 2003 through 2005; revert to present-law phase in for 2006[1].	tyba 12/31/02	−13,711	−5,820	−15,468	−10,046			−45,045
2. Accelerate the expansion of the 15% individual income tax rate bracket and the increase in the standard deduction for married taxpayers filing joint returns; revert to present-law phase in for 2006.	tyba 12/31/02	−4,936	−24,904	−11,045	−2,491			−43,376
3. Accelerate the expansion of the 10% bracket; revert to present-law phase in for 2006	tyba 12/31/02	−1,549	−8,445	−6,596	−2,007			−18,597
4. Accelerate the 2006 rate schedule	tyba 12/31/02	−9,531	−38,809	−19,811	−5,864			−74,015
5. Increase individual AMT exemption amount by $7,500 single and $15,000 joint for 2003 and 2004, maintain level for 2005.	tyba 12/31/02	−1,540	−13,496	−20,045	−17,900			−52,981
Total of Title I		−31,267	−91,474	−72,965	−38,308			−234,014
II. Depreciation and Expensing Provisions:								
1. Increase bonus depreciation to 50% and extend through 12/31/05	ppisa 5/5/03[2]	−9,467	−23,733	−62,552	−21,729	19,121	19,847	−78,512
2. Increase section 179 expensing—increase the amount that can be expensed from $25,000 to $100,000 and increase the phaseout threshold amount from $200,000 to $400,000; include software in section 179 property; and index both the deduction limit and the phase-out threshold after 2003 (sunset after 2007).	tyba 12/31/02	−1,602	−2,657	−1,983	−3,673	−4,930	392	−14,454
3. Extend 5-year NOL carryback from 2002 bill for 2003 through 2005 and waive the AMT 90% limitation on the allowance of losses (including losses carried forward into tax years ending in 2003 through 2005 (sunset after 2005).	NOLs gi tyea 12/31/02	−711	−20,202	−10,915	−10,217	8,618	6,407	−27,021
Total of Title II		−11,780	−46,592	−75,450	−35,619	22,809	26,646	−119,987
III. Dividends and Capital Gains:								
1. Tax dividends with an 15%/5% rate structure; sunset 12/31/12[3]	dri tyba 12/31/02	−4,315	−17,773	−19,507	−20,387	−21,587	−22,983	−106,552
2. Tax capital gains with an 15%/5% rate structure; sunset 12/31/12	so/a doi	−62	−928	−1,335	−3,042	−4,454	−4,660	−14,481
Total of Title III.		−4,377	−18,701	−20,842	−23,429	−26,041	−27,643	−121,033
IV. Special Estimated Tax Rules for Certain 2003 Corporate Estimated Tax Payments	DOE	−12,826	12,826					
Net Total[4,5]		−60,250	−143,941	−169,257	−97,356	−3,232	−997	−475,034

[1] Advance payment of 2003 child credit paid by rebate with safe harbor.

[2] Does not apply to any property with binding contract in place before May 6, 2003.

[3] The estimate assumes that any dividend from a foreign corporation or any dividend described in Internal Revenue Code section 404(k) would be taxed at ordinary rates. RIC and REIT shareholders receive tax relief to the extent that dividends paid by the RIC or REIT are qualified dividends received by the RIC or REIT. Also, we have assumed that the proposal would exclude qualified dividends from investment income for the purpose of Internal Revenue Code Section 163(d). We have assumed that certain anti-abuse rules, including the imposition of a 45-day holding period, would be adopted.

	2003	2004	2005	2006	2007	2008	2003–08
[4] Includes the following outlay effects	3,618	1,042	4,653	4,244	45	44	13,646

[5] Returns with AMT liability (millions):	2003	2004	2005	2006	2007	2008
Present law	2.2	3.7	9.7	14.9	19.2	23.8
Change due to proposal	−0.7	−1.9	−7.3	....	....	....

Legend for "Effective" column: DOE = date of enactment; doi = date of introduction; dri = dividends received in; gi = generated in; NOLs = net operating losses; ppisa = property placed in service after.

Note.—Details may not add to totals due to rounding.

Source: Joint Committee on Taxation.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue reducing income tax provisions involved increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 8, 2003.

Hon. WILLIAM "BILL" M. THOMAS,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2, the Jobs and Growth Tax Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Annie Bartsch.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 2—Jobs and Growth Tax Act of 2003

Summary: The Jobs and Growth Tax Act of 2003 would amend numerous provisions of existing tax law. The bill would accelerate to 2003 the income tax rate reductions scheduled for 2004 and 2006. The bill would also accelerate previously enacted tax changes to increase the child tax credit and expand the 10- and 15-percent tax brackets. Those changes would revert to tax law currently scheduled for 2006. In addition, H.R. 2 would increase the exemption amount for the individual alternative minimum tax (AMT), decrease the tax rates for income from dividends and capital gains, modify tax law relating to bonus depreciation and expensing, and allow certain 2003 corporate estimated tax payments to be shifted into 2004.

The Joint Committee on Taxation (JCT) estimates that enacting the bill would decrease governmental receipts by about $57 billion in 2003, by about $461 billion over the 2003–2008 period, and by about $536 billion over the 2003–2013 period. JCT estimates enacting the bill also would increase outlays by about $3.6 billion in 2003, by about $13.6 billion over the 2003–2008 period, and by about $13.8 billion over the 2003–2013 period.

JCT has determined that H.R. 2 contains no private-sector or intergovernmental mandates as defined by the Unfunded Mandates

Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of the H.R. 2 is shown in the following table. Most of the budgetary effects of the legislation are reduced in revenues. However, the bill also would increase outlays by making various changes to the income tax brackets and rates of taxation. By reducing the amount of taxes owed, those changes would result in a larger portion of tax credits being refundable—and thus recorded as outlays rather than reductions in revenues. The act also would increase the child credit, which is refundable under the tax code and counted as outlays in the budget to the extent that it results in "refunds" of income taxes not actually paid. The spending effects of this legislation would fall within budget function 600 (income security).

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
CHANGES IN REVENUES AND OUTLAYS FROM REFUNDABLE TAX PROVISIONS						
Title I: Acceleration of Previously Enacted Tax Reductions [1]	−31,267	−91,474	−72,965	−38,308	0	0
Title II: Growth Incentives for Businesses	−11,780	−46,592	−75,450	−35,619	22,809	26,646
Title III: Reductions in Taxes on Dividends and Capital Gain [1]	−4,377	−18,701	−20,842	−23,429	−26,041	−27,643
Title IV: Modification to Corporate Estimated Tax Payments for 2003	−12,826	12,826	0	0	0	0
Total effect on revenues and outlays	−60,250	−143,941	−169,257	−97,356	−3,232	−997
Outlays for refundable tax credits [1]	3,618	1,042	4,653	4,244	45	44
Total changes in revenues [1]	−56,632	−142,899	−164,604	−93,112	−3,187	−953
CHANGES IN DIRECT SPENDING						
Outlays for refundable tax credits [1]	3,618	1,042	4,653	4,244	45	44
TOTAL CHANGES						
Net increase in budget deficits	−60,250	−143,941	−169,257	−97,356	−3,232	−997

[1] The Joint Committee on Taxation has determined that certain revenue provisions in Titles I and III have direct spending effects from the refundable tax credits. Separate estimates of the effect of each proposal on revenues and outlays are not available.

Note.—Components may not sum to totals because of rounding.

Source: The Joint Committee on Taxation.

Basis of estimate

Revenues

All the estimates for the revenue provisions were provided by JCT. H.R. 2 contains numerous provisions altering existing individual and corporate tax law. JCT estimates that, together, the provisions contained in the bill would decrease federal revenues by about $57 billion in 2003, by about $461 billion over the 2003–2008 period, and by about $536 billion over the 2003–2013 period.

Title I: Acceleration of Certain Previously Enacted Tax Reductions. Provisions contained in this title would:

- Accelerate to 2003 the cuts in individual income tax rates currently scheduled to take place in 2004 and 2006;
- Expand the child credit to $1,000 for 2003 through 2005 and include an advance payment mechanism (rebate) for 2003;
- Accelerate the expansion of the 15 percent tax bracket and increase in the standard deduction for married taxpayers filing a joint return to 2003, and revert to present law in 2006;

• Accelerate the expansion of the 10 percent tax bracket for all taxpayers to 2003, and revert to present law in 2006; and
• Increase the exemption amount for the individual AMT for 2003 through 2005.

JCT estimates that these provisions would decrease governmental receipts and increase refundable outlays by about $31 billion in 2003 and by about $234 billion over the 2003–2006 period.

The provision for a child credit rebate in 2003 is proposed in such a way that some of what is classified as reduced revenue in this estimate could have instead been classified as increased outlays. The bill would provide for 2003 taxpayers to receive a higher child credit of $1,000 per qualifying child instead of the $600 allowed under current law. Qualifying taxpayers who filed tax returns for tax year 2002 would receive an advance payment (rebate) of the increased credit during 2003. For some taxpayers, the amounts they would receive as advance payments based on their 2002 tax returns would exceed allowable amounts based on their 2003 circumstances because they had insufficient tax liabilities in 2002. Such taxpayers would not be required by law to repay the excess. That excess might properly be considered an outlay because the amount could not be considered as a refund of 2003 taxes (the taxpayer did not own this amount as 2003 liability) and the provision does not stipulate that any advance payments exceeding the 2003 allowed credit for such a taxpayer are to be deemed as refunds of prior years' taxes. In this cost estimate, however, those excesses are considered reductions in revenues based on the final budget treatment for an analogous rebate provision enacted in 2001.

Title II: Growth Incentives for Businesses. The provisions contained in this title would:

• Increase bonus depreciation to 50 percent and extend it through 2005;
• Extend the five-year period for carryback refunds to losses incurred in 2003 through 2005, and waive the limitation on losses for the alternative minimum tax; and
• Increase the amounts and types of investment that qualify for immediate deductibility ("expensing") under section 179 of the Internal Revenue Code.

JCT estimates that these provisions would decrease governmental receipts by about $12 billion in 2003, by about $120 billion over the 2003–2008 period, and by about $39 billion over the 2003–2013 period.

Title III: Reductions in Taxes on Dividends and Capital Gains. Title III would apply tax rates of 15 percent and 5 percent for income from dividends and long-term capital gains through 2012. JCT estimates that these rate changes would decrease government receipts and increase refundable outlays by $4 billion in 2003, by almost $121 billion over the 2003–2008 period, and by about $277 billion over the 2003–2013 period.

Title IV: Modification to Corporate Estimated Tax Payments for 2003. Title IV would allow certain 2003 corporate estimated tax payments to be paid in 2004, which JCT estimates would decrease federal revenues by about $13 billion in 2003, but then increase revenues by the same amount in 2004.

Direct spending

JCT provided the outlay effects resulting from the refundable tax credits contained in titles I and III of the bill. JCT estimates that enacting those provisions would increase outlays by about $3.6 billion in 2003, by about $13.6 billion over the 2003–2008 period, and by about $13.8 billion over the 2003–2013 period.

Summary of the effect on revenues and direct spending: The overall effects of the bill on revenues and direct spending over the 2003–2013 period are shown in the following table.

	By fiscal year, in millions of dollars—										
	203	204	205	206	207	208	209	210	211	212	213
Changes in receipts	−56,632	−142,899	−164,604	−93,112	−3187	−953	−2,245	−10,134	−18,757	−26,622	−16,572
Changes in outlays	3,618	1,042	4,653	4,244	45	44	45	52	65	9	8

Source: The Joint Committee on Taxation.

Intergovernmental and private-sector impact: JCT has determined that H.R. 2 contains no private-sector or intergovernmental mandates as defined by UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Annie Bartsch.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the macroeconomic impact analysis required under such rule will be printed in the Congressional Record before consideration of the bill.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning the tax burden on American taxpayers that the Committee concluded that it is appropriate and timely to enact the revenue provision included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises * * *"), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not

be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. Tax Complexity Analysis

The following tax complexity analysis is provided pursuant to section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998, which requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service ("IRS") and the Treasury Department) to provide a complexity analysis of tax legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or a Conference Report containing tax provisions. The complexity analysis is required to report on the complexity and administrative issues raised by provisions that directly or indirectly amend the Internal Revenue Code and that have widespread applicability to individuals or small businesses. For each such provision identified by the staff of the Joint Committee on Taxation, a summary description of the provision is provided along with an estimate of the number and type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues.

Following the analysis of the staff of the Joint Committee on Taxation are the comments of the IRS and the Treasury Department regarding each of the provisions included in the complexity analysis, including a discussion of the likely effect on IRS forms and any expected impact on the IRS.

1. Increase the child tax credit (sec. 101 of the bill)

Summary description of provision

The amount of the child credit is increased to $1,000 for 2003 through 2005. For 2003, the increased amount of the child credit will be paid in advance beginning in July 2003 on the basis of information on each taxpayer's 2002 return filed in 2003. Advance payments will be made in a similar manner to the advance payment checks issued by the Treasury in 2001 to reflect the creation of the 10-percent regular income tax rate bracket. After 2005 the child credit will revert to the levels provided in present law (e.g., $700 for 2006).

Number of affected taxpayers

It is estimated that the provisions will affect approximately 27 million individual tax returns.

Discussion

Individuals should not have to keep additional records due to this provision, nor will additionally regulatory guidance be necessary to implement this provision.

The IRS will need to add to the individual income tax forms package a new worksheet so that taxpayers can reconcile the amount of the check they receive from the Department of the Treasury with the credit they are allowed as an acceleration of the

child tax credit for 2003. This worksheet should be relatively simple and many taxpayers will not need to fill it out completely because they will have received the full amount by check.

2. Expansion of the 15-percent rate bracket (sec. 102 of the bill)

Summary description of provision

The bill accelerates the increase of the size of the 15-percent regular income tax rate bracket for joint returns to twice the width of the 15-percent regular income tax rate bracket for unmarried individual returns effective for 2003, 2004, and 2005. For taxable years beginning after 2005, the end point of the 15-percent rate bracket for married couples filing joint returns as a percentage of the end point of the 15-percent rate bracket for unmarried individuals will revert to present-law levels (e.g., 187 percent of the end point of the 15-percent rate bracket for unmarried individuals for 2006).

Number of affected taxpayers

It is estimated that the provision will affect approximately 19 million individual tax returns.

Discussion

It is not anticipated that individuals will need to keep additional records due to this provision. The increased size of the 15-percent regular income tax rate bracket for married individuals filing joint returns should not result in an increase in disputes with the IRS, nor will regulatory guidance be necessary to implement this provision.

3. Standard deduction tax relief (sec. 103 of the bill)

Summary description of provision

The bill accelerates the increase in the basic standard deduction amount for joint returns to twice the basic standard deduction amount of unmarried individual returns effective for 2003, 2004, and 2005. For taxable years beginning after 2005, the applicable percentages will prevent to present-law levels (e.g., 184 percent of the basic standard deduction for unmarried individuals for 2006).

Number of affected taxpayers

It is estimate that the provision will affect approximately 22 million individual returns.

Discussion

It is not anticipated that individual will need to keep additional records due to this provision. The higher basic standard deduction should not result in an increase in disputes with the IRS, nor will regulatory guidance be necessary to implement this provision. In addition, the provision should not increase individuals' tax preparation costs.

Some taxpayers who currently itemize deductions may respond to the provision by claiming the increased standard deduction in lieu of itemizing. According to estimates by the staff of the Joint Committee on Taxation, approximately three million individual tax returns will realize greater tax savings from the increased standard deduction than form itemizing their deductions. In addition to the

tax savings, such taxpayers will no longer have to file schedule A to Form 1040 and a significant number of which will no longer need to engage in the record keeping inherent in itemizing below-the-line deductions. Moreover, by claiming the standard deduction, such taxpayers may qualify to use simpler versions of the Form 1040 (i.e., Form 1040EZ or Form 1040A) that are not available to individual who itemize their deductions. These forms simplify the return preparation process by eliminating from the Form 1040 those items that do not apply to particular taxpayers.

This reduction in complexity and record keeping also may result in a decline in the number of individual using a tax preparation service or a decline in the cost of using such a service. Furthermore, if the provision results in a taxpayer qualifying go us one of the simpler version of the Form 1040, the taxpayer may be eligible to file a paperless Federal tax return by telephone. The provision also should reduce the number of disputes between taxpayers and the IRS regarding substantiation of itemized deductions.

4. Reduction in income tax rates for individuals (secs. 104 and 105 of the bill)

Summary description of provision

The bill accelerates the scheduled increase in the taxable income levels for the 10-percent rate bracket from 2008 to 2003, 2004, and 2005. Specifically, the bill increases the taxable income level for the 10-percent regular income tax rate brackets for unmarried individuals from $6,000 to $7,000 and for married individuals filing jointly from $12,000 to $14,000, respectively. The taxable income levels for the 10-percent regular income tax rate bracket will be adjusted annually for inflation for taxable years beginning after December 31, 2003. For taxable years beginning after 2005, the amounts will revert to the levels provided in present-law (e.g., $7,000 for unmarried individuals and $12,000 for married couples filing jointly for 2006).

Also, the bill accelerates the reductions in the regular income tax rates excess of the 15-percent regular income tax rate that are scheduled for 2004 and 2006. Therefore, the regular income tax rates in excess of 15 percent under the bill are 25 percent, 28 percent, 33 percent, and 35 percent for 2003 and thereafter.

Number of affected taxpayers

It is estimated that the provision will affect approximately 76 million individual tax returns.

Discussion

It is not anticipated that individuals will need to keep additional records due to this provision. It should not result in an increase in disputes with the IRS, nor will regulatory guidance be necessary to implement this provision. In addition, the provision should not increase the tax preparation costs for most individuals. Reductions in the regular income tax as a result of these rate reductions as well as the expansion of the child credit, standard deduction, and 10-percent bracket, will cause some taxpayers to become subject to the alternative minimum tax.

The Secretary of the Treasury is expected to make appropriate revisions to the wage withholding tables to reflect the proposed rate reduction for calendar year 2003 as expeditiously as possible. To implement the effects of the additional amount of child tax credit for 2003, employers would be required to use a new (second) set of withholding rate tables to determine the correct withholding amounts for each employee. Switching to the new withholding rate tables during the year can be expected to result in a one-time additional burden for employers (or additional costs for employers that rely on a bookkeeping or payroll service).

5. Bonus depreciation (sec. 201 of the bill)

Summary description of provision

The bill provides an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified property. Qualified property is defined in the same manner as for purposes of the 30-percent additional first-year depreciation deduction provided by the Job Creation and Workers Assistance Act of 2002, except that the applicable time period for acquisition (or self construction) of the property is modified. In general, in order to qualify the property must be acquired after May 5, 2003, and before January 1, 2006, and no binding written contract for the acquisition is in effect before May 6, 2003. Property eligible for the 50-percent additional first year depreciation deduction is not eligible for the 30-percent additional first year depreciation deduction.

Number of affected taxpayers

It is estimated that more than 10 percent of small businesses will be affected by the provision.

Discussion

It is not anticipated that small businesses will have to keep additional records due to this provision, nor will additional regulatory guidance be necessary to implement this provision. It is not anticipated that the provision will result in an increase in disputes between small businesses and the IRS. However, small businesses will have to perform additional analysis to determine whether property qualifies for the provision. In addition, for qualified property, small businesses will be required to perform additional calculations to determine the proper amount of allowable depreciation. Complexity may also be increased because the provision is temporary. For example, different tax treatment will apply for identical equipment based on the acquisition and placed in service date. Further, the Secretary of the Treasury is expected to have to make appropriate revisions to the applicable depreciation tax forms.

6. Capital gain rate reduction (sec. 301 of the bill)

Summary description of provision

The bill reduces the 10- and 20-percent rates on the adjusted net capital gain to five and 15 percent, respectively. These lower rates apply to both the regular tax and the alternative minimum tax. The lower rates apply to assets held more than one year. The bill applies to taxable years ending on or after May 6, 2003, and beginning before January 1, 2013.

For taxable years that include May 6, 2003, the lower rates apply to amounts properly taken into account for the portion of the year on or after that date. This generally has the effect of applying the lower rates to capital assets sold or exchanged (and installment payments received) on or after May 6, 2003. In the case of gain and loss taken into account by a pass-through entity, the date taken into account by the entity is the appropriate date for applying this rule.

Number of affected taxpayers

It is estimated that the provisions will affect over 15 million individual tax returns.

Discussion

The elimination of the five-year holding period means that taxpayers with gains on assets held for more than 5 years will no longer need to separately compute tax for such gain on schedule D of form 1040. Additionally, the form will not need to be expanded beginning in 2006 to separate out gain of capital assets held more than five years that were purchased after 2000. This may reduce tax preparation costs. Mutual fund reporting on the Form 1099 will be made easier by the elimination of the five-year holding period.

For 2003, multiple rates will be in effect depending on whether gain was realized before or after May 6, 2003. This will make the schedule D more complicated for tax year 2003, and may increase tax preparation costs.

7. Dividend tax relief (sec. 302 of the bill)

Summary description of provision

Under the bill, qualified dividends received by an individual shareholder from domestic corporations are taxed at the rates that apply to net capital gain. This treatment applies for purposes of both the regular tax and the alternative minimum tax. Thus, under the bill, dividends will be taxed at rates of five and 15 percent, the same rates applicable to net capital gain.

If a shareholder does not hold a share of stock for more than 45 days during the 90-day period beginning 45 days before the ex-dividend date, dividends, received on the stock are not eligible for the capital gain rates. Also, the capital gain rates are not available for dividends to the extent that the taxpayer is obligated to make related payments with respect to positions in substantially similar or related property.

Number of affected taxpayers

It is estimated that the provisions will affect over 20 million individual tax returns.

Discussion

Individuals computing their tax will need to add qualified dividends to net capital gain in computing their income tax using the tax computation portion of Schedule D of Form 1040 (or other tax computation forms or schedules as the Internal Revenue Service may prescribe). Additional individuals will need to use the tax computation schedule, which may increase tax preparation costs.

New Form 1099s will need to differentiate qualified from non-qualified dividends. Additional record keeping will be necessary with respect to compliance with the 45-day holding period rules. It is likely that there will be increased taxpayer errors with respect to the proper reporting of dividends as a result.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC, May 7, 2003.

Ms. MARY SCHMITT,
Acting Chief of Staff, Joint Committee on Taxation,
Washington, DC.

DEAR MS. SCHMITT: Enclosed are the combined comments of the Internal Revenue Service and the Treasury Department on the seven provisions from the House Committee on Ways and Means markup of H.R. 2, the "Jobs and Growth Tax Act of 2003," that you identified for complexity analysis in your letter of May 7, 2003.

Our comments are based on the description of those provisions in your letter and JCX–40–03, the Joint Committee on Taxation's Description of the Chairman's Amendment in the Nature of a Substitute to Jobs and Growth Tax Act of 2003; and the statutory language for the Chairman's amendment published by the Daily Tax Report on May 7, 2003.

Due to the short turnaround time, our comments are provisional and subject to change upon a more complete and in-depth analysis of the provisions. Our ability to implement any tax changes this year will, of course, depend upon timely enactment.

Sincerely,

MARK W. EVERSON,
Commissioner.

Enclosure.

COMPLEXITY ANALYSIS OF THE JOBS AND GROWTH TAX ACT OF 2003

ACCELERATION OF THE INCREASE IN THE CHILD TAX CREDIT

Provision

The amount of the child tax credit is increased to $1,000 for 2003, 2004, and 2005. For 2003, the increased amount ($400) will be paid in advance beginning in July 2003 on the basis of information on each taxpayer's 2002 return. Advance payments are to be made in a similar manner to the advance payment checks issued by the Treasury in 2001 to reflect the creation of the 10-percent regular income tax rate bracket. After 2005 the child tax credit will revert to the levels provided in present law (e.g., $700 for 2006).

IRS and Treasury comments

- No new forms would be required as a result of the child tax credit provisions mentioned above.
- The increased amount of the child tax credit would be incorporated in the instructions for Forms 1040, 1040A, 1040NR, 1040–PR, and 1040–SS for 2003, 2004, and 2005.
- The applicable amount of the child tax credit for 2006 and later years would be incorporated in the instructions for Forms

1040, 1040A, 1040NR, 1040–PR, and 1040–SS and on Form 1040–ES for 2006 and later years.

• Subsequent to enactment, the IRS would have to advise taxpayers who make estimated tax payments for 2003 how they can adjust their estimated tax payments for 2003 to reflect the increased child tax credit and required reduction for those who receive advance payments.

• Supplemental programming changes would be required to reflect the increased child tax credit for 2003 and the required reduction for those who receive advance payments.

• Programming changes would be required to reflect the applicable amount of the child tax credit for 2006 and later years. Currently, the IRS computation programs are updated annually to incorporate mandated inflation adjustments. Programming changes necessitated by the provision would be included during that process.

Advance payment feature

• An estimated 26 million checks will be mailed beginning in July 2003.

• It will take three weeks to mail checks to those taxpayers whose 2002 tax returns have already been filed and processed. Checks for taxpayers whose returns are filed and processed later in the year will be mailed weekly, through the end of December 2003.

• Some taxpayers may be entitled to more than their advance payment checks due to changes in financial or family status between 2002 and 2003. For example, IRS will not know if a taxpayer gives birth to a child or adopts a child in 2003 until the taxpayer files the 2003 tax return. If they are entitled to a larger increase in the child tax credit than they received in their advance payment checks, they will get the additional amounts as a credit on their 2003 tax returns.

• Notices will be sent to taxpayers informing them of the amount of their advance payment, the number of children used to compute the amount, if the amount was limited due to the phase-out range, tax liability, or earned income. The notices will also advise taxpayers that this amount will have to be taken into account in determining the amount of their child tax credit on the 2003 tax return.

• Two lines would be added to the Child Tax Credit Worksheet for 2003. One line would be added for the taxpayer to reduce the amount of child tax credit computed by the advance payment received. Based on experience with the 2001 rate reduction credit and advance payment, it is anticipated that a number of taxpayers will make errors in this computation on their 2003 tax returns.

The advance payment will require programming changes to compute the amount and resources to answer taxpayer questions, print and mail notices, and correct errors made on 2003 returns as a result of the advance payment.

ACCELERATION OF THE STANDARD DEDUCTION TAX RELIEF

Provision

The basic standard deduction amount for joint returns is increased to twice the basic standard deduction amount for unmarried individual returns, effective for 2003, 2004, and 2005. After 2005, the applicable percentages will revert to present-law levels (e.g., 184 percent of the basic standard deduction for unmarried individuals for 2006).

IRS and Treasury comments

• The increased basic standards deduction for married taxpayers would be incorporated in the instructions for Forms 1040, 1040A, 1040EZ, and on Forms 1040, 1040A, and 1040EZ for 2003, 2004, and 2005. No new forms would be required.

• The amount of the basic standard deduction for married taxpayers after 2005 would be incorporated in the instructions for Forms 1040, 1040A, 1040EZ, and on Forms W-4, 1040, 1040A, 1040EZ, and 1040-ES for 2006 and later years.

• Subsequent to enactment, the IRS would have to advise taxpayers how they can adjust their estimated tax payment or Federal income tax withholding for 2003 to reflect the increased basic standard deduction.

• Supplemental programming changes would be required to reflect the increased basic standard deduction for 2003.

• Programming changes would be required to reflect the applicable amount of the standard deduction applicable for 2006 and later years. Currently, the IRS computation programs are updated annually to incorporate mandated inflation adjustments. Programming changes necessitated by the provision would be included during that process.

• The larger basic standard deduction would reduce the number of taxpayers who itemize their deductions.

• The larger standard deduction would reduce the number of taxpayers required to file tax returns.

• The provision would increase the number of AMT filers and would also cause additional taxpayers to perform AMT calculations to determine whether their liability is affected by the AMT.

• The provision would require new withholding rate tables and schedules to update the current Circular E for use by employers during the remainder of calendar year 2003.

ACCELERATION OF THE EXPANSION OF THE 15-PERCENT RATE BRACKET

Provision

The width of the 15-percent regular income tax rate bracket for joint returns is increased to twice the width of the 15-percent regular income tax rate bracket for unmarried individual returns, effective for 2003, 2004, and 2005. After 2005, the end point of the 15-percent rate bracket for married couples filing joint returns as a percentage of the end point of the 15-percent rate bracket for unmarried individuals will revert to present-law levels (e.g., 187 percent of the end point of the 15-percent rate bracket for unmarried individuals for 2006).

IRS and Treasury comments

- The expanded 15-percent rate bracket for married taxpayers would be incorporated in the tax tables and the tax rate schedules shown in the instructions for Forms 1040, 1040A, 1040EZ, and 1040NR for 2003, 2004, and 2005. No new forms would be required.
- The applicable width of the 15-percent rate bracket for married taxpayers after 2005 would be incorporated in the tax tables and tax rate schedules shown in the instructions for Forms 1040, 1040A, 1040EZ, and 1040NR and on Form 1040–ES for 2006 and later years.
- The expanded 15-percent rate bracket would also be incorporated in the tax rate schedules shown on Form 1040–ES for 2004. Subsequent to enactment, the IRS would have to advise taxpayers who make estimated tax payments for 2003 how they can adjust their estimated tax payments for 2003 to reflect the expanded 15-percent rate bracket.
- Supplemental programming changes would be required to reflect the expanded 15-percent rate bracket for 2003.
- Programming changes would be required to reflect the applicable width of the 15-percent rate bracket for 2006 and later years. Currently, the IRS computation programs are updated annually to incorporate mandated inflation adjustments. Programming changes necessitated by the provision would be included during that process.
- New withholding rate tables and schedules to update the current Circular E for use by employers during the remainder of calendar year 2003 would be required.
- The provision would increase the number of AMT filers and would also cause additional taxpayers to perform AMT calculations to determine whether their liability is affected by the AMT.

ACCELERATION OF THE REDUCTION OF REGULAR INDIVIDUAL INCOME TAX RATES

Provision

Increases in the taxable income levels for the 10-percent rate bracket now scheduled for 2008 are accelerated to 2003, 2004, and 2005. Specifically, for 2003 the taxable income level for the 10-percent regular income tax rate brackets will increase for unmarried individuals from $6,000 to $7,000 and for married individuals filing jointly from $12,000 to $14,000, respectively. For taxable years beginning after 2003 the 10-percent regular income tax rate bracket will be adjusted annually for inflation. For taxable years beginning after 2005, the bracket will revert to the levels provided in present law (e.g., $7,000 for unmarried individuals and $12,000 for married couples filing jointly for 2006).

The reductions in the regular income tax rates in excess of the 15-percent regular income tax rate now scheduled for 2004 and 2006 are accelerated to 2003. Therefore, the regular income tax rates in excess of 15 percent under the bill will be 25 percent, 28 percent, 33 percent, and 35 percent for 2003 and thereafter.

IRS and Treasury comments

- No new forms would be required as a result of the above-mentioned provisions.

• The increased taxable income levels for the 10-percent rate bracket would be incorporated in the tax tables and tax rate schedules shown in the instructions for Forms 1040, 1040A, 1040EZ, 1040NR, and 1040NR–EZ for 2003, 2004, and 2005.

• The reduced tax rates would be incorporated in the tax tables and tax rate schedules shown in the instructions for Forms 1040, 1040A, 1040EZ, 1040NR, 1040NR–EZ, and 1041 for 2003 and later years.

• The increased taxable income levels for the 10-percent rate bracket and the reduced tax rates would also be incorporated in the tax rate schedules shown on Form 1040–ES for 2004. Subsequent to enactment, the IRS would have to advise taxpayers who make estimated tax payments for 2003 how then can adjust their estimated tax payments for 2003 to reflect the increased taxable income levels for the 10-percent rate bracket and the reduced rates.

• The provision would require new withholding rate tables and schedules to update the current Circular E for use by employers during the remainder of calendar year 2003.

SPECIAL DEPRECIATION ALLOWANCE FOR CERTAIN PROPERTY

Provision

The bill provides an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified property. Qualified property is defined in the same manner as for purposes of the 30-percent additional first-year depreciation deduction provided by the Job Creation and Workers Assistance Act of 2002, except that the applicable time period for acquisition (or self construction) of the property is modified. In general, in order to qualify, the property must be acquired after May 5, 2003 and before January 1, 2006, and no binding written contract for the acquisition is in effect before May 6, 2003. Property eligible for the 50-percent additional first-year depreciation deduction is not eligible for the 30-percent additional first-year depreciation deduction.

IRS and Treasury comments

• The increase and extension of additional first-year depreciation would have no significant impact on Form 4562 or any other tax forms. The instructions for Form 4562 and other instructions and publications would be expanded to explain and implement the new rules. No new forms would be required.

• No programming changes would be required by this provision.

REDUCED INDIVIDUAL CAPITAL GAINS RATES

Provision

The 10 and 20 percent rates on the adjusted net capital gain are reduced to 5 and 15 percent, respectively, effective in taxable years ending on or after May 6, 2003 and beginning before January 1, 2013.

For taxable years that include May 6, 2003, the lower rates apply to amounts properly taken into account for the portion of the year on or after that date. This generally has the effect of applying the lower rates to capital assets sold or exchanged (and installments payments received) on or after May 6, 2003.

IRS and Treasury comments

• The mid-year effective date of May 6, 2003, creates complexity and burden for taxpayers, and will likely result in a large number of errors (as occurred in 1997 when similar mid-year changes were made to the capital gains tax rate). A January 1, 2003 would greatly simplify matters in 2003.
• To figure the amount of gain taxed at 5% and 15% for 2003, 8 lines would be added to: Schedule D (Form 1040); the Schedule D Tax Worksheet; Form 6251 (alternative minimum tax); and Form 8801 (credit for prior year minimum tax).
• Column (g) of Schedule D would be revised to request information for amounts applicable to the portion of the tax year after May 5, 2003. Additional instructions and a 6-line worksheet would be added to figure 28% rate gain or loss, as that amount is currently figured in column (g).
• Rules would have to be developed and applied for 2003 to account for the limit on net section 1231 losses, capital loss carryforwards, carryforwards not allowed due to passive activity rules or at-risk rules, etc.
• The amount of net capital gain for the portion of the tax year after May 5, 2003, would have to be transcribed from the tax return and programming changes would be required to figure the amount of gain taxed at 5% and 15%.
• For 2003, Form 1099–DIV filers would be required to figure and report to recipients the amount of gain after May 5, 2003.
• Taxpayers whose only capital gains are capital gain distributions would not be able to use the shorter Capital Gain Tax Worksheet in the instructions for Form 1040 and Form 1040A, but instead would be required to file Form 1040 and attach Schedule D, to report the amount of their capital gain distributions properly taken into account after May 5, 2003, and figure their tax using the 5%, 10%, 15%, and 20% capital gains tax rates. This provision would therefore increase the number of taxpayers filing Schedule D by up to 6 million.
• For 2004, the 8 lines added for 2003 and 4 current lines (used to figure the 8% rate) would be removed from: Schedule D; the Schedule D Tax Worksheet; Form 6251; and Form 8801.
• The 8-line Qualified 5-Year Gain Worksheet in the Instructions for Schedule D would not be necessary after 2003.
• For 2006, when the 18% capital gains tax rate becomes effective for individuals, this provision would also prevent us from having to add 4 lines to Schedule D, the Schedule D Tax Worksheet, Form 6251, Form 8801, and the Qualified 5-Year Gain Worksheet.
• Form 1099–DIV filers would not be required to report qualified 5-year gain after 2003, and would not be required in 2005 to begin reporting qualified 5-year gain eligible for the 18% rate.

DIVIDEND INCOME OF INDIVIDUALS

Provision

Dividends received by an individual shareholder from domestic corporations are taxed at the rates for net capital gain (5 or 15 percent per the above reduction in the capital gains rate), effective for taxable years beginning after 2002 and before 2013.

If a shareholder does not hold a share of stock for more than 45 days during the 90-day period beginning 45 days before the ex-dividend date, dividends received on the stock are not eligible for the capital gain rates. Also, the capital gain rates are not available for dividends to the extent that the taxpayer is obligated to make related payments with respect to positions in substantially similar or related property. Other rules apply.

IRS and Treasury comments

- No new forms would be required as a result of the above-mentioned provision.
- A box to report qualified dividends would be added to Form 1099–DIV for 2004 through 2012.
- Subsequent to enactment, the IRS would have to issue a revised Form 1099–DIV for 2003 and advise taxpayers who make estimated tax payments for 2003 how they can adjust their estimated tax payments to reflect the new tax rates applicable to qualified dividends.
- Two lines would be added to Part IV of Schedule D (and the Schedule D Tax Worksheet) for 2003 through 2012 to increase net capital gain by the amount of qualified dividends.
- The new tax rates applicable to qualified dividends would be reflected in the instructions for Forms 1040 and 1040A for 2003 through 2012.
- Taxpayers who have qualified dividends would be required to report them on Schedule D and complete up to 19 lines (23 lines for 2003) in Part IV of Schedule D to figure their tax using the 15% and 5% capital gains tax rates, even if they did not otherwise have a net capital gain. For example, taxpayers whose only income was wages, interest, and dividends reported on Form 1040A would now be required to file Form 1040 and attach Schedule D to report the amount of qualified dividends and figure their tax.
- Supplemental programming changes would be required to reflect the new tax rates applicable to qualified dividends for 2003.
- Programming changes would be required to reflect the tax rates applicable to qualified dividends after 2012. Currently, the IRS tax computation programs are updated annually to incorporate mandated inflation adjustments. Programming changes necessitated by the provision would be included during that process.
- Technical guidance (regulations, revenue rulings, etc.) will probably be needed to implement the anti-abuse rules.

EFFECT OF ALL BILL PROVISIONS ON AMT

Despite specific changes which tend to increase the number of AMT taxpayers, the bill's increases in the AMT exemption amounts for 2003–2005 would significantly reduce the number of AMT taxpayers in those years relative to current law.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE ACT OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter A—Determination of Tax Liability

* * * * * * *

PART I—TAX ON INDIVIDUALS

* * * * * * *

SEC. 1. TAX IMPOSED.

(a) * * *

* * * * * * *

(f) PHASEOUT OF MARRIAGE PENALTY IN 15-PERCENT BRACKET; ADJUSTMENTS IN TAX TABLES SO THAT INFLATION WILL NOT RESULT IN TAX INCREASES.—

(1) * * *

* * * * * * *

(8) PHASEOUT OF MARRIAGE PENALTY IN 15-PERCENT BRACKET.—

(A) IN GENERAL.—With respect to taxable years beginning after December 31, [2004] *2002*, in prescribing the tables under paragraph (1)—

(i) * * *

* * * * * * *

(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

For taxable years beginning calendar year	The applicable in percentage is
[2005	180]
2003, 2004, and 2005	*200*
2006	187
2007	193
2008 and thereafter	200.

* * * * * * *

(h) MAXIMUM CAPITAL GAINS RATE.—

(1) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of—

(A) * * *

(B) [10] *5* percent of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of—

(i) * * *

* * * * * * *

(C) [20] *15* percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);

* * * * * * *

[(2) REDUCED CAPITAL GAIN RATES FOR QUALIFIED 5-YEAR GAIN.—

[(A) REDUCTION IN 10-PERCENT RATE.—In the case of any taxable year beginning after December 31, 2000, the rate under paragraph (1)(B) shall be 8 percent with respect to so much of the amount to which the 10-percent rate would otherwise apply as does not exceed qualified 5-year gain, and 10 percent with respect to the remainder of such amount.

[(B) REDUCTION IN 20-PERCENT RATE.—The rate under paragraph (1)(C) shall be 18 percent with respect to so much of the amount to which the 20-percent rate would otherwise apply as does not exceed the lesser of—

[(i) the excess of qualified 5-year gain over the amount of such gain taken into account under subparagraph (A) of this paragraph; or

[(ii) the amount of qualified 5-year gain (determined by taking into account only property the holding period for which begins after December 31, 2000), and 20 percent with respect to the remainder of such amount. For purposes of determining under the preceding sentence whether the holding period of property begins after December 31, 2000, the holding period of property acquired pursuant to the exercise of an option (or other right or obligation to acquire property) shall include the period such option (or other right or obligation) was held.]

[(3)] *(2)* NET CAPITAL GAIN TAKEN INTO ACCOUNT AS INVESTMENT INCOME.—For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

[(4) ADJUSTED NET CAPITAL GAIN.—For purposes of this subsection, the term "adjusted net capital gain" means net capital gain reduced (but not below zero) by the sum of—

[(A) unrecaptured section 1250 gain; and

[(B) 28-percent rate gain.]

(3) ADJUSTED NET CAPITAL GAIN.—For purposes of this subsection, the term "adjusted net capital gain" means the sum of—

(A) net capital gain (determined without regard to paragraph (11)) reduced (but not below zero) by the sum of—

(i) unrecaptured section 1250 gain, and

(ii) 28-percent rate gain, plus

(B) qualified dividend income (as defined in paragraph (11)).

[(5)] *(4)* 28-PERCENT RATE GAIN.—For purposes of this subsection, the term "28-percent rate gain" means the excess (if any) of—

(A) * * *

* * * * * * *

[(6)] *(5)* COLLECTIBLES GAIN AND LOSS.—For purposes of this subsection—

(A) * * *

* * * * * * *

[(7)] *(6)* UNRECAPTURED SECTION 1250 GAIN.—For purposes of this subsection—

(A) IN GENERAL.—The term "unrecaptured section 1250 gain" means the excess (if any) of—

(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, over

* * * * * * *

[(8)] *(7)* SECTION 1202 GAIN.—For purposes of this subsection, the term "section 1202 gain" means the excess of—

(A) the gain which would be excluded from gross income under section 1202 but for the percentage limitation in section 1202(a), over

(B) the gain excluded from gross income under section 1202.

[(9) QUALIFIED 5-YEAR GAIN.—For purposes of this subsection, the term "qualified 5-year gain" means the aggregate long-term capital gain from property held for more than 5 years. The determination under the preceding sentence shall be made without regard to collectibles gain, gain described in paragraph (7)(A)(i), and section 1202 gain.]

[(10)] *(8)* COORDINATION WITH RECAPTURE OF NET ORDINARY LOSSES UNDER SECTION 1231.—If any amount is treated as ordinary income under section 1231(c), such amount shall be allocated among the separate categories of net section 1231 gain (as defined in section 1231(c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

[(11)] *(9)* REGULATIONS.—The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

[(12)] *(10)* PASS-THRU ENTITY DEFINED.—

For purposes of this subsection, the term "pass-thru entity" means—

(A) a regulated investment company;

* * * * * * *

(11) DIVIDENDS TAXED AS NET CAPITAL GAIN.—

(A) IN GENERAL.—For purposes of this subsection, the term "net capital gain' means net capital gain (determined

without regard to this paragraph), increased by qualified dividend income.

(B) QUALIFIED DIVIDEND INCOME.—For purposes of this paragraph—

(i) IN GENERAL.—The term "qualified dividend income' means dividends received during the taxable year from domestic corporations.

(ii) CERTAIN DIVIDENDS EXCLUDED.—Such term shall not include—

(I) any dividend from a corporation which for the taxable year of the corporation in which the distribution is made, or the preceding taxable year, is a corporation exempt from tax under section 501 or 521,

(II) any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.), and

(III) any dividend described in section 404(k).

(iii) EXCLUSION OF CERTAIN DIVIDENDS.—Such term shall not include any dividend on any share of stock—

(I) with respect to which the holding period requirements of section 246(c) are not met, or

(II) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(C) SPECIAL RULES.—

(i) AMOUNTS TAKEN INTO ACCOUNT AS INVESTMENT INCOME.—Qualified dividend income shall not include any amount which the taxpayer takes into account as investment income under section 163(d)(4)(B).

(ii) EXTRAORDINARY DIVIDENDS.—If an individual receives, with respect to any share of stock, qualified dividend income from 1 or more dividends which are extraordinary dividends (within the meaning of section 1059(c)), any loss on the sale or exchange of such share shall, to the extent of such dividends, be treated as long-term capital loss.

(iii) TREATMENT OF DIVIDENDS FROM REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—A dividend received from a regulated investment company or a real estate investment trust shall be subject to the limitations prescribed in sections 854 and 857.

(i) RATE REDUCTIONS AFTER 2000.—

(1) 10-PERCENT RATE BRACKET.—

(A) * * *

(B) INITIAL BRACKET AMOUNT.—For purposes of this paragraph, the initial bracket amount is—

(i) $14,000 [($12,000 in the case of taxable years beginning before January 1, 2008)] *($12,000 in the case of taxable years beginning after December 31, 2005,*

and before January 1, 2008) in the case of subsection (a),

* * * * * * *

[(C) INFLATION ADJUSTMENT.—In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2000—

[(i) the Secretary shall make no adjustment to the initial bracket amount for any taxable year beginning before January 1, 2009,

[(ii) the cost-of-living adjustment used in making adjustments to the initial bracket amount for any taxable year beginning after December 31, 2008, shall be determined under subsection (f)(3) by substituting '2007' for '1992' in subparagraph (B) thereof, and

[(iii) such adjustment shall not apply to the amount referred to in subparagraph (B)(iii). If any amount after adjustment under the preceding sentence is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.]

(C) INFLATION ADJUSTMENT.—In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2000—

(i) the Secretary shall make no adjustment to the $12,000 initial bracket amount for any taxable year,

(ii)(I) the Secretary shall make no adjustment to the $14,000 initial bracket amount for any taxable year beginning before January 1, 2004,

(II) the cost-of-living adjustment used in making adjustments to the $14,000 initial bracket amount for any taxable year beginning during 2004 or 2005 shall be determined under subsection (f)(3) by substituting "2002" for "1992" in subparagraph (B) thereof, and

(III) the cost-of-living adjustment used in making adjustments to the $14,000 initial bracket amount for any taxable year beginning after December 31, 2008, shall be determined under subsection (f)(3) by substituting "2007" for "1992" in subparagraph (B) thereof, and

(iii) the adjustments under clause (ii) shall not apply to the amount referred to in subparagraph (B)(iii).

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

(2) REDUCTIONS IN RATES AFTER JUNE 30, 2001.—In the case of taxable years beginning in a calendar year after 2000, the corresponding percentage specified for such calendar year in the following table shall be substituted for the otherwise applicable tax rate in the tables under subsections (a), (b), (c), (d), and (e).

[In the case of taxable years beginning during calendar year:	The corresponding percentages shall be substituted for the following percentages:			
	28%	31%	36%	39.6%
2001	27.5%	30.5%	35.5%	39.1%

[In the case of taxable years beginning during calendar year:	The corresponding percentages shall be substituted for the following percentages:			
	28%	31%	36%	39.6%
2002 and 2003	27.0%	30.0%	35.0%	38.6%
2004 and 2005	26.0%	29.0%	34.0%	37.6%
2006 and thereafter	25.0%	28.0%	33.0%	35.0%]

In the case of taxable years beginning during calendar year:	*The corresponding percentages shall be substituted for the following percentages:*			
	28%	*31%*	*36%*	*39.6%*
2001	*27.5%*	*30.5%*	*35.5%*	*39.1%*
2002	*27.0%*	*30.0%*	*35.0%*	*38.6%*
2003 and thereafter	*25.0%*	*28.0%*	*33.0%*	*35.0%*

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart A—Nonrefundable Personal Credits

* * * * * * *

SEC. 24. CHILD TAX CREDIT.

(a) ALLOWANCE OF CREDIT.—

(1) IN GENERAL.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year with respect to each qualifying child of the taxpayer an amount equal to the per child amount.

(2) PER CHILD AMOUNT.—For purposes of paragraph (1), the per child amount shall be determined as follows:

In the case of any taxable year beginning in	The per child amount is
[2001, 2002, 2003, or 2004	$600
[2005, 2006, 2007, or 2008	700]
2003, 2004, 2005	*$1,000*
2006, 2007, or 2008	*700*
2009	800
2010 or thereafter	1,000

* * * * * * *

PART VI—MINIMUM TAX FOR TAX PREFERENCES

* * * * * * *

SEC. 55. ALTERNATIVE MINIMUM TAX IMPOSED.

(a) * * *

(b) TENTATIVE MINIMUM TAX.—For purposes of this part—

(1) * * *

* * * * * * *

(3) MAXIMUM OF TAX ON NET CAPITAL GAIN OF NONCORPORATE TAXPAYERS.—The amount determined under the first sentence of paragraph (1)(A)(i) shall not exceed the sum of—

(A) * * *

(B) [10] *5* percent of so much of the adjusted net capital gain (or, if less, taxable excess) as does not exceed the amount on which a tax is determined under section 1(h)(1)(B), plus

(C) [20] *15* percent of the adjusted net capital gain (or, if less, taxable excess) in excess of the amount on which tax is determined under subparagraph (B), plus

(D) 25 percent of the amount of taxable excess in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

[In the case of taxable years beginning after December 31, 2000, rules similar to the rules of section 1(h)(2) shall apply for purposes of subparagraphs (B) and (C).] Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h) but computed with the adjustments under this part.

* * * * * * *

(d) EXEMPTION AMOUNT.—For purposes of this section—

(1) EXEMPTION AMOUNT FOR TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation, the term "exemption amount" means—

(A) $45,000 ([$49,000 in the case of taxable years beginning in 2001, 2002, 2003, and 2004] *$64,000 in the case of taxable years beginning in 2003, 2004, and 2005*) in the case of—

(i) * * *

* * * * * * *

(B) $33,750 ([$35,750 in the case of taxable years beginning in 2001, 2002, 2003, and 2004] *$43,250 in the case of taxable years beginning in 2003, 2004, and 2005*) in the case of an individual who—

(i) * * *

* * * * * * *

SEC. 56. ADJUSTMENTS IN COMPUTING ALTERNATIVE MINIMUM TAXABLE INCOME.

(a) * * *

* * * * * * *

(d) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION DEFINED.—

(1) IN GENERAL.—For purposes of subsection (a)(4), the term "alternative tax net operating loss deduction" means the net operating loss deduction allowable for the taxable year under section 172, except that—

(A) the amount of such deduction shall not exceed the sum of—

(i) the lesser of—

(I) the amount of such deduction attributable to net operating losses (other than the deduction [attributable to carryovers] described in clause (ii)(I)), or

* * * * * * *

(ii) the lesser of—

(I) the amount of such deduction attributable to the sum of carrybacks of net operating losses [for] *from* taxable years ending during 2001 [or 2002], *2002, 2003, 2004, or 2005* and [carryforwards] *carryovers* of net operating losses to taxable years ending during 2001 [and 2002], *2002, 2003, 2004, or 2005*, or

* * * * * * *

SEC. 57. ITEMS OF TAX PREFERENCE.

(a) GENERAL RULE.—For purposes of this part, the items of tax preference determined under this section are—

(1) * * *

* * * * * * *

(7) EXCLUSION FOR GAINS ON SALE OF CERTAIN SMALL BUSINESS STOCK.—An amount equal to [42] *7* percent of the amount excluded from gross income for the taxable year under section 1202. [In the case of stock the holding period of which begins after December 31, 2000 (determined with the application of the last sentence of section 1(h)(2)(B)), the preceding sentence shall be applied by substituting "28 percent" for "42 percent".]

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

* * * * * * *

SEC. 63. TAXABLE INCOME DEFINED.

(a) * * *

* * * * * * *

(c) STANDARD DEDUCTION.—For purposes of this subtitle—

(1) * * *

* * * * * * *

(7) APPLICABLE PERCENTAGE.—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
[2005	174]
2003, 2004, and 2005	*200*
2006	184
2007	187
2008	190
2009 and thereafter	200

* * * * * * *

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

* * * * * * *

SEC. 163. INTEREST.

(a) * * *

* * * * * * *

(d) LIMITATION ON INVESTMENT INTEREST.—

(1) * * *

* * * * * * *

(4) NET INVESTMENT INCOME.—For purposes of this subsection—

(A) * * *

(B) INVESTMENT INCOME.—The term "investment income" means the sum of—

(i) * * *

* * * * * * *

Such term shall include qualified dividend income (as defined in section 1(h)(11)(B)) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.

* * * * * * *

SEC. 168. ACCELERATED COST RECOVERY SYSTEM.

(a) * * *

* * * * * * *

(k) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001, AND BEFORE [SEPTEMBER 11, 2004] *JANUARY 1, 2006.—*

(1) * * *

(2) QUALIFIED PROPERTY.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified property" means property—

(i)(I) * * *

* * * * * * *

(iii) which is—

(I) acquired by the taxpayer after September 10, 2001, and before [September 11, 2004] *January 1, 2006*, but only if no written binding contract for the acquisition was in effect before September 11, 2001, or

(II) acquired by the taxpayer pursuant to a written binding contract which was entered into after September 10, 2001, and before [September 11, 2004] *January 1, 2006*, and

(iv) which is placed in service by the taxpayer before [January 1, 2005] *January 1, 2006*, or, in the case of property described in subparagraph (B), before [January 1, 2006] *January 1, 2007.*

(B) CERTAIN PROPERTY HAVING LONGER PRODUCTION PERIODS TREATED AS QUALIFIED PROPERTY.—

(i) * * *

(ii) ONLY [PRE-SEPTEMBER 11, 2004] *PRE-JANUARY 1, 2006,* BASIS ELIGIBLE FOR ADDITIONAL ALLOWANCE.—In the case of property which is qualified property solely by reason of clause (i), paragraph (1) shall apply only to the extent of the adjusted basis thereof attributable to manufacture, construction, or production before [September 11, 2004] *January 1, 2006.*

(C) EXCEPTIONS.—

(i) * * *

* * * * * * *

(iii) ELECTION OUT.—If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year. *The preceding sentence shall be applied separately with respect to property treated as qualified property by paragraph (4) and other qualified property.*

(D) SPECIAL RULES.—

(i) SELF-CONSTRUCTED PROPERTY.—In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iii) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after September 10, 2001, and before [September 11, 2004] *January 1, 2006.*

* * * * * * *

(4) 50-PERCENT BONUS DEPRECIATION FOR CERTAIN PROPERTY.—

(A) IN GENERAL.—In the case of 50-percent bonus depreciation property—

(i) paragraph (1)(A) shall be applied by substituting "50 percent" for "30 percent", and

(ii) except as provided in paragraph (2)(C), such property shall be treated as qualified property for purposes of this subsection.

(B) 50-PERCENT BONUS DEPRECIATION PROPERTY.—For purposes of this subsection, the term "50-percent bonus depreciation property" means property described in paragraph (2)(A)(i)—

(i) the original use of which commences with the taxpayer after May 5, 2003,

(ii) which is acquired by the taxpayer after May 5, 2003, and before January 1, 2006, but only if no written binding contract for the acquisition was in effect before May 6, 2003, and

(iii) which is placed in service by the taxpayer before January 1, 2006, or, in the case of property described in paragraph (2)(B) (as modified by subparagraph (C) of this paragraph), before January 1, 2007.

(C) SPECIAL RULES.—Rules similar to the rules of subparagraphs (B) and (D) of paragraph (2) shall apply for purposes of this paragraph; except that—

(i) references to September 10, 2001, shall be treated as references to May 5, 2003, and

(ii) references to September 11, 2001, shall be treated as references to May 6, 2003.

(D) AUTOMOBILES.—Paragraph (2)(E) shall be applied by substituting "$9,200" for "$4,600" in the case of 50-percent bonus depreciation property.

(E) ELECTION OF 30 PERCENT BONUS.—If a taxpayer makes an election under this subparagraph with respect to any class of property for any taxable year, subparagraph (A)(i) shall not apply to all property in such class placed in service during such taxable year.

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SEC. 172. NET OPERATING LOSS DEDUCTION.

(a) * * *

(b) NET OPERATING CARRYBACKS AND CARRYOVERS.—

(1) YEARS TO WHICH LOSS MAY BE CARRIED.—

(A) * * *

* * * * * * *

(H) *5-YEAR CARRYBACK OF CERTAIN LOSSES*.—In the case of [a taxpayer which has] a net operating loss for any taxable year ending during 2001 [or 2002], *2002, 2003, 2004 or 2005*, subparagraph (A)(i) shall be applied by substituting "5" for "2" and subparagraph (F) shall not apply.

* * * * * * *

SEC. 179. ELECTION TO EXPENSE CERTAIN DEPRECIABLE BUSINESS ASSETS.

(a) * * *

(b) LIMITATIONS.—

[(1) DOLLAR LIMITATION.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed the following applicable amount:

[If the taxable year begins in:	The applicable amount is:
1997	18,000
1998	18,500
1999	19,000
2000	20,000
2001 or 2002	24,000
2003 or thereafter	25,000]

(1) DOLLAR LIMITATION.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $25,000 ($100,000 in the case of taxable years beginning after 2002 and before 2008).

(2) REDUCTION IN LIMITATION.—The limitation under paragraph (1) for any taxable year shall be reduced (but not below zero) by the amount by which the cost of section 179 property placed in service during such taxable year exceeds $200,000 *($400,000 in the case of taxable years beginning after 2002 and before 2008)*.

* * * * * * *

(5) INFLATION ADJUSTMENTS.—

(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2003 and before 2008, the $100,000 and $400,000 amounts in paragraphs (1) and (2) shall each 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, by substituting "calendar year 2002" for "calendar year 1992" in subparagraph (B) thereof.

(B) ROUNDING.—

(i) DOLLAR LIMITATION.—If the amount in paragraph (1) as increased under subparagraph (A) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

(ii) PHASEOUT AMOUNT.—If the amount in paragraph (2) as increased under subparagraph (A) is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.

(c) ELECTION.—

(1) * * *

[(2) ELECTION IRREVOCABLE.—Any election made under this section, and any specification contained in any such election, may not be revoked except with the consent of the Secretary.]

(2) REVOCATION OF ELECTION.—An election under paragraph (1) with respect to any taxable year beginning after 2002 and before 2008, and any specification contained in any such election, may be revoked by the taxpayer with respect to any property. Such revocation, once made, shall be irrevocable.

(d) DEFINITIONS AND SPECIAL RULES.—

[(1) SECTION 179 PROPERTY.—For purposes of this section, the term "section 179 property" means any tangible property (to which section 168 applies) which is section 1245 property (as defined in section 1245(a)(3)) and which is acquired by purchase for use in the active conduct of a trade or business. Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.]

(1) SECTION 179 PROPERTY.—For purposes of this section, the term "section 179 property" means property—

(A) which is—

(i) tangible property (to which section 168 applies), or

(ii) computer software (as defined in section 197(e)(3)(B)) which is described in section 197(e)(3)(A)(i), to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2008,

(B) which is section 1245 property (as defined in section 1245(a)(3)), and

(C) which is acquired by purchase for use in the active conduct of a trade or business.

Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.

* * * * * * *

Subchapter C—Corporate Distributions and Adjustments

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PART I—DISTRIBUTIONS BY CORPORATIONS

Subpart A. Effects on recipients.

* * * * * * *

[Subpart C. Definitions; constructive ownership of stock.]

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Subpart A—Effects on Recipients

* * * * * * *

SEC. 301. DISTRIBUTIONS OF PROPERTY.

(a) * * *

* * * * * * *

(f) SPECIAL RULES.—

(1) * * *

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(4) For taxation of dividends received by individuals at capital gain rates, see section 1(h)(11).

* * * * * * *

SEC. 306. DISPOSITIONS OF CERTAIN STOCK.

(a) GENERAL RULE.—If a shareholder sells or otherwise disposes of section 306 stock (as defined in subsection (c))—

(1) Dispositions other than redemptionsIf such disposition is not a redemption (within the meaning of section 317(b))—

(A) * * *

* * * * * * *

(D) TREATMENT AS DIVIDEND.—For purposes of section 1(h)(11), any amount treated as ordinary income under this paragraph shall be treated as a dividend received from the corporation.

* * * * * * *

PART II—CORPORATE LIQUIDATIONS

* * * * * * *

Subpart B—Effects on Corporation

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SEC. 338. CERTAIN STOCK PURCHASES TREATED AS ASSET ACQUISITIONS.

(a) * * *

* * * * * * *

(h) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

[(14) COORDINATION WITH SECTION 341.—For purposes of determining whether section 341 applies to a disposition within 1 year after the acquisition date of stock by a shareholder (other than the acquiring corporation) who held stock in the target corporation on the acquisition date, section 341 shall be applied without regard to this section.]

* * * * * * *

[Subpart C—Collapsible Corporations

[Sec. 341. Collapsible corporations.

[SEC. 341. COLLAPSIBLE CORPORATIONS.

[(a) TREATMENT OF GAIN TO SHAREHOLDERS.—Gain from—

[(1) the sale or exchange of stock of a collapsible corporation,

[(2) a distribution—

[(A) in complete liquidation of a collapsible corporation if such distribution is treated under this part as in part or full payment in exchange for stock, or

[(B) in partial liquidation (within the meaning of section 302(e)) of a collapsible corporation if such distribution is treated under section 302(b)(4) as in part or full payment in exchange for the stock, and

[(3) a distribution made by a collapsible corporation which, under section 301(c)(3)(A), is treated, to the extent it exceeds the basis of the stock, in the same manner as a gain from the sale or exchange of property,to the extent that it would be considered (but for the provisions of this section) as gain from the sale or exchange of a capital asset shall, except as otherwise provided in this section, be considered as ordinary income.

[(b) DEFINITIONS.—

[(1) COLLAPSIBLE CORPORATION.—For purposes of this section, the term "collapsible corporation" means a corporation formed or availed of principally for the manufacture, construction, or production of property, for the purchase of property which (in the hands of the corporation) is property described in paragraph (3), or for the holding of stock in a corporation so formed or availed of, with a view to—

[(A) the sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, before the realization by the corporation manufacturing, constructing, producing, or purchasing the property of 2/3 of the taxable income to be derived from such property, and

[(B) the realization by such shareholders of gain attributable to such property.

[(2) PRODUCTION OR PURCHASE OF PROPERTY.—For purposes of paragraph (1), a corporation shall be deemed to have manufactured, constructed, produced, or purchased property, if—

[(A) it engaged in the manufacture, construction, or production of such property to any extent,

[(B) it holds property having a basis determined, in whole or in part, by reference to the cost of such property in the hands of a person who manufactured, constructed, produced, or purchased the property, or

[(C) it holds property having a basis determined, in whole or in part, by reference to the cost of property manufactured, constructed, produced, or purchased by the corporation.

[(3) SECTION 341 ASSETS.—For purposes of this section, the term "section 341 assets" means property held for a period of less than 3 years which is—

[(A) stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year;

[(B) property held by the corporation primarily for sale to customers in the ordinary course of its trade or business;

[(C) unrealized receivables or fees, except receivables from sales of property other than property described in this paragraph; or

[(D) property described in section 1231(b) (without regard to any holding period therein provided), except such property which is or has been used in connection with the manufacture, construction, production, or sale of property described in subparagraph (A) or (B).

In determining whether the 3-year holding period specified in this paragraph has been satisfied, section 1223 shall apply, but no such period shall be deemed to begin before the completion of the manufacture, construction, production, or purchase.

[(4) UNREALIZED RECEIVABLES.—For purposes of paragraph (3)(C), the term "unrealized receivables or fees" means, to the extent not previously includible in income under the method of accounting used by the corporation, any rights (contractual or otherwise) to payment for—

[(A) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

[(B) services rendered or to be rendered.

[(c) PRESUMPTION IN CERTAIN CASES.—

[(1) IN GENERAL.—For purposes of this section, a corporation shall, unless shown to the contrary, be deemed to be a collapsible corporation if (at the time of the sale or exchange, or the distribution, described in subsection (a)) the fair market value of its section 341 assets (as defined in subsection (b)(3)) is—

[(A) 50 percent or more of the fair market value of its total assets, and

[(B) 120 percent or more of the adjusted basis of such section 341 assets.

Absence of the conditions described in subparagraphs (A) and (B) shall not give rise to a presumption that the corporation was not a collapsible corporation.

[(2) DETERMINATION OF TOTAL ASSETS.—In determining the fair market value of the total assets of a corporation for purposes of paragraph (1)(A), there shall not be taken into account—

[(A) cash,

[(B) obligations which are capital assets in the hands of the corporation, and

[(C) stock in any other corporation.

[(d) LIMITATIONS ON APPLICATION OF SECTION.—In the case of gain realized by a shareholder with respect to his stock in a collapsible corporation, this section shall not apply—

[(1) unless, at any time after the commencement of the manufacture, construction, or production of the property, or at the time of the purchase of the property described in subsection (b)(3) or at any time thereafter, such shareholder (A) owned (or was considered as owning) more than 5 percent in value of the outstanding stock of the corporation, or (B) owned stock which was considered as owned at such time by another shareholder who then owned (or was considered as owning) more than 5 percent in value of the outstanding stock of the corporation;

[(2) to the gain recognized during a taxable year, unless more than 70 percent of such gain is attributable to the property described in subsection (b)(1); and

[(3) to gain realized after the expiration of 3 years following the completion of such manufacture, construction, production, or purchase.

For purposes of paragraph (1), the ownership of stock shall be determined in accordance with the rules prescribed in paragraphs (1), (2), (3), (5), and (6) of section 544(a) (relating to personal holding companies); except that, in addition to the persons prescribed by paragraph (2) of that section, the family of an individual shall include the spouses of that individual's brothers and sisters (whether by the whole or half blood) and the spouses of that individual's lineal descendants. In determining whether property is described in subsection (b)(1) for purposes of applying paragraph (2), all property described in section 1221(a)(1) shall, to the extent provided in regulations prescribed by the Secretary, be treated as one item of property.

[(e) EXCEPTIONS TO APPLICATION OF SECTION.—

[(1) SALES OR EXCHANGES OF STOCK.—For purposes of subsection (a)(1), a corporation shall not be considered to be a collapsible corporation with respect to any sale or exchange of stock of the corporation by a shareholder, if, at the time of such sale or exchange, the sum of—

[(A) the net unrealized appreciation in subsection (e) assets of the corporation (as defined in paragraph (5)(A)), plus

[(B) if the shareholder owns more than 5 percent in value of the outstanding stock of the corporation the net unrealized appreciation in assets of the corporation (other than assets described in subparagraph (A)) which would be subsection (e) assets under clauses (i) and (iii) of paragraph (5)(A) if the shareholder owned more than 20 percent in value of such stock, plus

[(C) if the shareholder owns more than 20 percent in value of the outstanding stock of the corporation and owns, or at any time during the preceding 3-year period owned, more than 20 percent in value of the outstanding stock of any other corporation more than 70 percent in value of the assets of which are, or were at any time during which such

shareholder owned during such 3-year period more than 20 percent in value of the outstanding stock, assets similar or related in service or use to assets comprising more than 70 percent in value of the assets of the corporation, the net unrealized appreciation in assets of the corporation (other than assets described in subparagraph (A)) which would be subsection (e) assets under clauses (i) and (iii) of paragraph (5)(A) if the determination whether the property, in the hands of such shareholder, would be property gain from the sale or exchange of which would under any provision of this chapter be considered in whole or in part as ordinary income, were made—

[(i) by treating any sale or exchange by such shareholder of stock in such other corporation within the preceding 3-year period (but only if at the time of such sale or exchange the shareholder owned more than 20 percent in value of the outstanding stock in such other corporation) as a sale or exchange by such shareholder of his proportionate share of the assets of such other corporation, and

[(ii) by treating any liquidating sale or exchange of property by such other corporation within such 3-year period (but only if at the time of such sale or exchange the shareholder owned more than 20 percent in value of the outstanding stock in such other corporation) as a sale or exchange by such shareholder of his proportionate share of the property sold or exchanged,does not exceed an amount equal to 15 percent of the net worth of the corporation. This paragraph shall not apply to any sale or exchange of stock to the issuing corporation or, in the case of a shareholder who owns more than 20 percent in value of the outstanding stock of the corporation, to any sale or exchange of stock by such shareholder to any person related to him (within the meaning of paragraph (8)).

[(5) SUBSECTION (E) ASSET DEFINED.—

[(A) For purposes of paragraph (1), the term "subsection (e) asset" means, with respect to property held by any corporation—

[(i) property (except property used in the trade or business, as defined in paragraph (9)) which in the hands of the corporation is, or, in the hands of a shareholder who owns more than 20 percent in value of the outstanding stock of the corporation, would be property gain from the sale or exchange of which would under any provision of this chapter be considered in whole or in part as ordinary income;

[(ii) property used in the trade or business (as defined in paragraph (9)), but only if the unrealized depreciation on all such property on which there is unrealized depreciation exceeds the unrealized appreciation on all such property on which there is unrealized appreciation;

[(iii) if there is net unrealized appreciation on all property used in the trade or business (as defined in

paragraph (9)), property used in the trade or business (as defined in paragraph (9)) which, in the hands of a shareholder who owns more than 20 percent in value of the outstanding stock of the corporation, would be property gain from the sale or exchange of which would under any provision of this chapter be considered in whole or in part as ordinary income; and

[(iv) property (unless included under clause (i), (ii), or (iii)) which consists of a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, or any interest in any such property, if the property was created in whole or in part by the personal efforts of, or (in the case of a letter, memorandum, or similar property) was prepared, or produced in whole or in part for, any individual who owns more than 5 percent in value of the stock of the corporation.

The determination as to whether property of the corporation in the hands of the corporation is, or in the hands of a shareholder would be, property gain from the sale or exchange of which would under any provision of this chapter be considered in whole or in part as ordinary income; shall be made as if all property of the corporation had been sold or exchanged to one person in one transaction.

[(6) NET UNREALIZED APPRECIATION DEFINED.—

[(A) For purposes of this subsection, the term "net unrealized appreciation" means, with respect to the assets of a corporation, the amount by which—

[(i) the unrealized appreciation in such assets on which there is unrealized appreciation, exceeds

[(ii) the unrealized depreciation in such assets on which there is unrealized depreciation.

[(B) For purposes of subparagraph (A) and paragraph (5)(A), the term "unrealized appreciation" means, with respect to any asset, the amount by which—

[(i) the fair market value of such asset, exceeds

[(ii) the adjusted basis for determining gain from the sale or other disposition of such asset.

[(C) For purposes of subparagraph (A) and paragraph (5)(A), the term "unrealized depreciation" means, with respect to any asset, the amount by which—

[(i) the adjusted basis for determining gain from the sale or other disposition of such asset, exceeds

[(ii) the fair market value of such asset.

[(D) For purposes of this paragraph (but not paragraph (5)(A)), in the case of any asset on the sale or exchange of which only a portion of the gain would under any provision of this chapter be considered as ordinary income, there shall be taken into account only an amount of the unrealized appreciation in such asset which is equal to such portion of the gain.

[(7) NET WORTH DEFINED.—For purposes of this subsection, the net worth of a corporation, as of any day, is the amount by which—

[(A)(i) the fair market value of all its assets at the close of such day, plus

[(ii) the amount of any distribution in complete liquidation made by it on or before such day, exceeds

[(B) all its liabilities at the close of such day.

For purposes of this paragraph, the net worth of a corporation as of any day shall not take into account any increase in net worth during the one-year period ending on such day to the extent attributable to any amount received by it for stock, or as a contribution to capital or as paid-in surplus, if it appears that there was not a bona fide business purpose for the transaction in respect of which such amount was received.

[(8) RELATED PERSON DEFINED.—For purposes of paragraphs (1) and (4), the following persons shall be considered to be related to a shareholder:

[(A) If the shareholder is an individual—

[(i) his spouse, ancestors, and lineal descendants, and

[(ii) a corporation which is controlled by such shareholder.

[(B) If the shareholder is a corporation—

[(i) a corporation which controls, or is controlled by, the shareholder, and

[(ii) if more than 50 percent in value of the outstanding stock of the shareholder is owned by any person, a corporation more than 50 percent in value of the outstanding stock of which is owned by the same person.

For purposes of determining the ownership of stock in applying subparagraphs (A) and (B), the rules of section 267(c) shall apply, except that the family of an individual shall include only his spouse, ancestors, and lineal descendants. For purposes of this paragraph, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of the corporation.

[(9) PROPERTY USED IN THE TRADE OR BUSINESS.—For purposes of this subsection, the term "property used in the trade or business" means property described in section 1231(b), without regard to any holding period therein provided.

[(10) OWNERSHIP OF STOCK.—For purposes of this subsection (other than paragraph (8)), the ownership of stock shall be determined in the manner prescribed in subsection (d).

[(11) CORPORATIONS AND SHAREHOLDERS NOT MEETING REQUIREMENTS.—In determining whether or not any corporation is a collapsible corporation within the meaning of subsection (b), the fact that such corporation, or such corporation with respect to any of its shareholders, does not meet the requirements of paragraph (1), (2), (3), or (4) of this subsection shall not be taken into account, and such determination, in the case of a corporation which does not meet such requirements, shall be made as if this subsection had not been enacted.

[(12) NONAPPLICATION OF SECTION 1245(A), ETC.—For purposes of this subsection, the determination of whether gain

from the sale or exchange of property would under any provision of this chapter be considered as ordinary income, shall be made without regard to the application of sections 617(d)(1), 1245(a), 1250(a), 1252(a), 1254(a), and 1276(a).

[(f) CERTAIN SALES OF STOCK OF CONSENTING CORPORATIONS.—

[(1) IN GENERAL.— Subsection (a)(1) shall not apply to a sale of stock of a corporation (other than a sale to the issuing corporation) if such corporation (hereinafter in this subsection referred to as "consenting corporation") consents (at such time and in such manner as the Secretary may by regulations prescribe) to have the provisions of paragraph (2) apply. Such consent shall apply with respect to each sale of stock of such corporation made within the 6-month period beginning with the date on which such consent is filed.

[(2) RECOGNITION OF GAIN.—Except as provided in paragraph (3), if a subsection (f) asset (as defined in paragraph (4)) is disposed of at any time by a consenting corporation (or, if paragraph (3) applies, by a transferee corporation), then the amount by which—

[(A) in the case of a sale, exchange, or involuntary conversion, the amount realized, or

[(B) in the case of any other disposition, the fair market value of such asset,exceeds the adjusted basis of such asset shall be treated as gain from the sale or exchange of such asset. Such gain shall be recognized notwithstanding any other provision of this subtitle, but only to the extent such gain is not recognized under any other provision of this subtitle.

[(3) EXCEPTION FOR CERTAIN TAX-FREE TRANSACTIONS.—If the basis of a subsection (f) asset in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, or 361, then the amount of gain taken into account by the transferor under paragraph (2) shall not exceed the amount of gain recognized to the transferor on the transfer of such asset (determined without regard to this subsection). This paragraph shall apply only if the transferee—

[(A) is not an organization which is exempt from tax imposed by this chapter, and

[(B) agrees (at such time and in such manner as the Secretary may by regulations prescribe) to have the provisions of paragraph (2) apply to any disposition by it of such subsection (f) asset.

[(4) SUBSECTION (F) ASSET DEFINED.—For purposes of this subsection—

[(A) IN GENERAL.—The term "subsection (f) asset" means any property which, as of the date of any sale of stock referred to in paragraph (1), is not a capital asset and is property owned by, or subject to an option to acquire held by, the consenting corporation. For purposes of this subparagraph, land or any interest in real property (other than a security interest), and unrealized receivables or fees (as defined in subsection (b)(4)), shall be treated as property which is not a capital asset.

[(B) PROPERTY UNDER CONSTRUCTION.—If manufacture, construction, or production with respect to any property described in subparagraph (A) has commenced before any date of sale described therein, the term "subsection (f) asset" includes the property resulting from such manufacture, construction, or production.

[(C) SPECIAL RULE FOR LAND.—In the case of land or any interest in real property (other than a security interest) described in subparagraph (A), the term "subsection (f) asset" includes any improvements resulting from construction with respect to such property if such construction is commenced (by the consenting corporation or by a transferee corporation which has agreed to the application of paragraph (2)) within 2 years after the date of any sale described in subparagraph (A).

[(5) 5-YEAR LIMITATION AS TO SHAREHOLDER.—Paragraph (1) shall not apply to the sale of stock of a corporation by a shareholder if, during the 5-year period ending on the date of such sale, such shareholder (or any related person within the meaning of subsection (e)(8)(A)) sold any stock of another consenting corporation within any 6-month period beginning on a date on which a consent was filed under paragraph (1) by such other corporation.

[(6) SPECIAL RULE FOR STOCK OWNERSHIP IN OTHER CORPORATIONS.—If a corporation (hereinafter in this paragraph referred to as "owning corporation") owns 5 percent or more in value of the outstanding stock of another corporation on the date of any sale of stock of the owning corporation during a 6-month period with respect to which a consent under paragraph (1) was filed by the owning corporation, such consent shall not be valid with respect to such sale unless such other corporation has (within the 6-month period ending on the date of such sale) filed a valid consent under paragraph (1) with respect to sales of its stock. For purposes of applying paragraph (4) to such other corporation, a sale of stock of the owning corporation to which paragraph (1) applies shall be treated as a sale of stock of such other corporation. In the case of a chain of corporations connected by the 5-percent ownership requirements of this paragraph, rules similar to the rules of the two preceding sentences shall be applied.

[(7) ADJUSTMENTS TO BASIS.—The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under paragraph (2).

[(8) SPECIAL RULE FOR FOREIGN CORPORATIONS.—Except to the extent provided in regulations prescribed by the Secretary—

[(A) any consent given by a foreign corporation under paragraph (1) shall not be effective, and

[(B) paragraph (3) shall not apply if the transferee is a foreign corporation.]

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Subchapter E—Accounting Periods and Methods of Accounting

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PART II—METHODS OF ACCOUNTING

*   *   *   *   *   *   *

Subpart C—Taxable Year for Which Deductions Taken

*   *   *   *   *   *   *

SEC. 467. CERTAIN PAYMENTS FOR THE USE OF PROPERTY OR SERVICES.

(a) * * *

*   *   *   *   *   *   *

(c) RECAPTURE OF PRIOR UNDERSTATED INCLUSIONS UNDER LEASEBACK OR LONG-TERM AGREEMENTS.—

(1) * * *

*   *   *   *   *   *   *

(5) SPECIAL RULES.—Under regulations prescribed by the Secretary—

(A) * * *

*   *   *   *   *   *   *

(C) for purposes of sections 170(e)[, 341(e)(12),] and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245 or 1250.

*   *   *   *   *   *   *

Subchapter G—Corporations Used To Avoid Income Tax on Shareholders

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PART I—CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

*   *   *   *   *   *   *

SEC. 531. IMPOSITION OF ACCUMULATED EARNINGS TAX.

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of each corporation described in section 532, an accumulated earnings tax [equal to the product of the highest rate of tax under section 1(c) and the accumulated taxable income.] *equal to 15 percent of the accumulated taxable income.*

*   *   *   *   *   *   *

PART II—PERSONAL HOLDING COMPANIES

*   *   *   *   *   *   *

SEC. 541. IMPOSITION OF PERSONAL HOLDING COMPANY TAX.

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the undistributed personal holding company income (as defined in section 545) of every personal holding company (as defined in section 542) a personal holding company tax [equal to the product of the highest rate of tax under section 1(c) and the undistributed personal holding company income.] *equal to 15 percent of the undistributed personal holding company income.*

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Subchapter H—Banking Institutions

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PART I—RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

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SEC. 584. COMMON TRUST FUNDS.

(a) * * *

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(c) INCOME OF PARTICIPANTS IN FUND.—Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

(1) * * *

* * * * * * *

The proportionate share of each participant in the amount of dividends received by the common trust fund and to which section 1(h)(11) applies shall be considered for purposes of such paragraph as having been received by such participant.

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Subchapter K—Partners and Partnerships

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PART I—DETERMINATION OF TAX LIABILITY

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SEC. 702. INCOME AND CREDITS OF PARTNER.

(a) GENERAL RULE.—In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(1) * * *

* * * * * * *

[(5) dividends with respect to which there is a deduction under part VIII of subchapter B,]

(5) dividends with respect to which section 1(h)(11) or part VII of subchapter B applies,

* * * * * * *

Subchapter M—Regulated Investment Companies and Real Estate Investment Trusts

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PART I—REGULATED INVESTMENT COMPANIES

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SEC. 854. LIMITATIONS APPLICABLE TO DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANY.

(a) CAPITAL GAIN DIVIDEND.—For purposes of *section 1(h)(11) (relating to maximum rate of tax on dividends and interest) and* section 243 (relating to deductions for dividends received by corporations), a capital gain dividend (as defined in section 852(b)(3)) received from a regulated investment company shall not be considered as a dividend.

(b) OTHER DIVIDENDS.—

(1) AMOUNT TREATED AS DIVIDEND.—

(A) * * *

(B) MAXIMUM RATE UNDER SECTION 1(h).—

(i) IN GENERAL.—If the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the maximum rate under section 1(h)(11), rules similar to the rules of subparagraph (A) shall apply.

(ii) GROSS INCOME.—For purposes of clause (i), in the case of 1 or more sales or other dispositions of stock or securities, the term "gross income" includes only the excess of—

(I) the net short-term capital gain from such sales or dispositions, over

(II) the net long-term capital loss from such sales or dispositions.

[(B)] *(C)* LIMITATION.—The aggregate amount which may be designated as dividends under subparagraph (A) *or (B)* shall not exceed the aggregate dividends received by the company for the taxable year.

(2) NOTICE TO SHAREHOLDERS.—The amount of any distribution by a regulated investment company which may be taken into account as a dividend for purposes of *the maximum rate under section 1(h)(11) and* the deduction under section 243 shall not exceed the amount so designated by the company in a written notice to its shareholders mailed not later than 60 days after the close of its taxable year.

* * * * * * *

(5) COORDINATION WITH SECTION 1(h)(11).—For purposes of paragraph (1)(B), an amount shall be treated as a dividend only if the amount is qualified dividend income (within the meaning of section 1(h)(11)(B)).

* * * * * * *

PART II—REAL ESTATE INVESTMENT TRUSTS

* * * * * * *

SEC. 857. TAXATION OF REAL ESTATE INVESTMENT TRUSTS AND THEIR BENEFICIARIES.

(a) * * *

* * * * * * *

[(c) RESTRICTIONS APPLICABLE TO DIVIDENDS RECEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend.]

(c) RESTRICTIONS APPLICABLE TO DIVIDENDS RECEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—

(1) SECTION 243.—For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered a dividend.

(2) SECTION 1(h)(11).—For purposes of section 1(h)(11) (relating to maximum rate of tax on dividends), rules similar to the rules of section 854(b)(1)(B) shall apply to dividends received from a real estate trust which meets the requirements of this part.

* * * * * * *

Subchapter P—Capital Gains and Losses

* * * * * * *

PART IV—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

* * * * * * *

SEC. 1255. GAIN FROM DISPOSITION OF SECTION 126 PROPERTY.

(a) * * *

(b) SPECIAL RULES.—Under regulations prescribed by the Secretary—

(1) * * *

(2) for purposes of sections 170(e)[, 341(e)(12),] and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245.

* * * * * * *

SEC. 1257. DISPOSITION OF CONVERTED WETLANDS OR HIGHLY ERODIBLE CROPLANDS.

(a) * * *

* * * * * * *

(d) SPECIAL RULES.—Under regulations prescribed by the Secretary, rules similar to the rules applicable under section 1245 shall apply for purposes of subsection (a). For purposes of sections 170(e)[, 341(e)(12),] and 751(c), amounts treated as ordinary income under subsection (a) shall be treated in the same manner as amounts treated as ordinary income under section 1245.

* * * * * * *

Subchapter Y—New York Liberty Zone Benefits

* * * * * * *

SEC. 1400L. TAX BENEFITS FOR NEW YORK LIBERTY ZONE.

(a) * * *

(b) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001.—

(1) * * *

(2) QUALIFIED NEW YORK LIBERTY ZONE PROPERTY.—For purposes of this subsection—

(A) * * *

* * * * * * *

(C) EXCEPTIONS.—

(i) [30 PERCENT ADDITIONAL ALLOWANCE PROPERTY] *BONUS DEPRECIATION PROPERTY UNDER SECTION 168(k).*—Such term shall not include property to which section 168(k) applies.

* * * * * * *

CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

* * * * * * *

Subchapter A—Nonresident Aliens and Foreign Corporations

* * * * * * *

SEC. 1445. WITHHOLDING OF TAX ON DISPOSITIONS OF UNITED STATES REAL PROPERTY INTERESTS.

(a) * * *

* * * * * * *

(e) SPECIAL RULES RELATING TO DISTRIBUTIONS, ETC., BY CORPORATIONS, PARTNERSHIPS, TRUSTS, OR ESTATES.—

(1) CERTAIN DOMESTIC PARTNERSHIPS, TRUSTS, AND ESTATES.—In the case of any disposition of a United States real property interest as defined in section 897(c) (other than a disposition described in paragraph (4) or (5)) by a domestic partnership, domestic trust, or domestic estate, such partnership, the trustee of such trust, or the executor of such estate (as the case may be) shall be required to deduct and withhold under subsection (a) a tax equal to 35 percent (or, to the extent provided in regulations, [20] *15* percent) of the gain realized to the extent such gain—

(A) * * *

* * * * * * *

Subtitle F—Procedure and Administration

* * * * * * *

CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

* * * * * * *

Subchapter B—Rules of Special Application

Sec. 6411. Tentative carryback and refund adjustments.

* * * * * * *

Sec. 6429. Advance payment of portion of increased child credit for 2003.

* * * * * * *

SEC. 6429. ADVANCE PAYMENT OF PORTION OF INCREASED CHILD CREDIT FOR 2003.

(a) IN GENERAL.—Each taxpayer who claimed a credit under section 24 on the return for the taxpayer's first taxable year beginning in 2002 shall be treated as having made a payment against the tax imposed by chapter 1 for such taxable year in an amount equal to the child tax credit refund amount (if any) for such taxable year.

(b) CHILD TAX CREDIT REFUND AMOUNT.—For purposes of this section, the child tax credit refund amount is the amount by which the aggregate credits allowed under part IV of subchapter A of chapter 1 for such first taxable year would have been increased if—

(1) the per child amount under section 24(a)(2) for such year were $1,000,

(2) only qualifying children (as defined in section 24(c)) of the taxpayer for such year who had not attained age 17 as of December 31, 2003, were taken into account, and

(3) section 24(d)(1)(B)(ii) did not apply.

(c) TIMING OF PAYMENTS.—In the case of any overpayment attributable to this section, the Secretary shall, subject to the provisions of this title, refund or credit such overpayment as rapidly as possible and, to the extent practicable, before October 1, 2003. No refund or credit shall be made or allowed under this section after December 31, 2003.

(d) COORDINATION WITH CHILD TAX CREDIT.—

(1) IN GENERAL.—The amount of credit which would (but for this subsection and section 26) be allowed under section 24 for the taxpayer's first taxable year beginning in 2003 shall be reduced (but not below zero) by the payments made to the taxpayer under this section. Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

(2) JOINT RETURNS.—In the case of a payment under this section with respect to a joint return, half of such payment shall be treated as having been made to each individual filing such return.

(e) NO INTEREST.—No interest shall be allowed on any overpayment attributable to this section.

* * * * * * *

CHAPTER 77—MISCELLANEOUS PROVISIONS

* * * * * * *

SEC. 7518. TAX INCENTIVES RELATING TO MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS.

(a) * * *

* * * * * * *

(g) TAX TREATMENT OF NONQUALIFIED WITHDRAWALS.—

(1) * * *

* * * * * * *

(6) NONQUALIFIED WITHDRAWALS TAXED AT HIGHEST MARGINAL RATE.—

(A) IN GENERAL.—In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 shall be determined—

(i) * * *

* * * * * * *

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(h) or 1201(a) applies, the rate of tax taken into account under the preceding sentence shall not exceed [20] *15* percent (34 percent in the case of a corporation).

* * * * * * *

ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001

* * * * * * *

TITLE III—MARRIAGE PENALTY RELIEF

SEC. 301. ELIMINATION OF MARRIAGE PENALTY IN STANDARD DEDUCTION.

(a) * * *

* * * * * * *

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, [2004] *2002.*

SEC. 302. PHASEOUT OF MARRIAGE PENALTY IN 15-PERCENT BRACKET.

(a) * * *

* * * * * * *

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, [2004] *2002.*

* * * * * * *

SECTION 102 OF THE JOB CREATION AND WORKER ASSISTANCE ACT OF 2002

SEC. 102. CARRYBACK OF CERTAIN NET OPERATING LOSSES ALLOWED FOR 5 YEARS; TEMPORARY SUSPENSION OF 90 PERCENT AMT LIMIT.

(a) * * *

* * * * * * *

(c) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT ON CERTAIN NOL CARRYOVERS.—

(1) * * *

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years ending [before January 1, 2003] *after December 31, 1990.*

* * * * * * *

SECTION 607 OF THE MERCHANT MARINE ACT, 1936

SEC. 607. (a) * * *

* * * * * * *

(h) TAX TREATMENT OF NONQUALIFIED WITHDRAWALS.—

(1) * * *

* * * * * * *

(6) NONQUALIFIED WITHDRAWALS TAXED AT HIGHEST MARGINAL RATE.—

(A) IN GENERAL.—In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 shall be determined—

(i) * * *

* * * * * * *

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code applies, the rate of tax taken into account under the preceding sentence shall not exceed [20] *15* percent (34 percent in the case of a corporation).

* * * * * * *

VII. DISSENTING VIEWS

We are united in our opposition to the committee bill. It is difficult to imagine a bill that could be more unfair and fiscally irresponsible than the one reported by the Committee. The Committee bill is as reckless as the President's proposal, it uses gimmicks to pretend to cut its cost. The Committee bill is even more unfair than the President's proposal.

The unfairness of the Committee bill is apparent on its face, no sophisticated distributional analysis is necessary. All of the benefits in the Committee bill that are targeted for low- and moderate-income individuals, such as expansion of the lowest income tax rate bracket, marriage penalty relief and child credit increase last only three years. In contrast, the new tax reduction for capital gains and dividends (totaling $276 billion), is sunsetted at the end of the budget window. Seventy percent of all capital gain and dividend income is enjoyed by the fortunate 2.5 percent of taxpayers with annual incomes over $200,000. Those fortunate taxpayers will find that their Federal tax rate on that income will be one-half of the combined Federal income and payroll tax rate on wages earned by moderate income working families.

The Committee bill will result in persistent long-term deficits that could reduce economic growth in the future. Even Federal Reserve Chairman Alan Greenspan has cautioned against costly new tax reductions at a time when the Government is facing exploding deficits. The Committee bill is particularly irresponsible now that we are faced with the uncertain cost of continued occupation of Iraq and its reconstruction.

Normally in time of war, this country has a sense of shared sacrifice. Now the Administration and its congressional Republican allies are pursuing a course that calls for sacrifices from some, but rewards for others. Individuals in the military are being asked to risk their lives in Iraq. The elderly, poor and unemployed will see reductions in Medicare, Medicaid and other programs. The ability to meet our commitment to Social Security beneficiaries will be reduced by the irresponsible nature of the Committee bill. In contrast, upper income individuals will receive large tax reductions from the Committee bill. Households with annual income over $1 million will receive a $93,500 increase in their "take-home" income in 2003 and more in later years.

The individuals in the military who risked their lives in Iraq deserve more than a welcoming speech and a parade when they come back. They should receive educational and other benefits commensurate with those that we have provided to the veterans of prior conflicts. Their children should not face diminished opportunities for an education because the Congress and the President have failed to meet the bold promises they made in enacting the No Child Left Behind Act. Above all, the military returning from Iraq

should not be presented with a bill for the party that was held in their absence and that provided little assistance to them or their families.

The President in his State of the Union Address earlier this year said that "* * * we will not pass along our problems to other Congresses, other Presidents, and other generations." The President's program and the Committee bill are totally inconsistent with that pledge. The Wall Street firm, Goldman Sachs, estimates that annual deficits over the next ten years could total $4 trillion. Notwithstanding the President's rhetoric, the problem of paying a very large bill will be passed on to our children.

The Committee bill arguably will be the third "economic stimulus" package recommended by the Bush Administration. Part of the sales pitch for the 2001, $1.35 trillion tax cut was its stimulative effect on the economy. When the economy continued to experience sluggish growth, another economic stimulus plan was enacted in March, 2002.

Now we are continuing to see slow economic growth. The Committee Republicans and the Bush Administration are using those economic conditions to justify proposals that will provide little short-term help to our economy, but advance their long-term agenda of reducing taxes on upper income individuals and eliminating all income taxes on investment income. Their ultimate goal is a tax system that only taxes wages and does so without progressive rates. The Committee bill is a step in a plan to reach that goal, a goal that we do not share.

The recent analysis by the Congressional Budget Office demonstrates that these proposals will do little to improve the economy and add jobs. CBO found that the President's proposals would probably reduce, not increase, investment. Even the Republican-appointed head of CBO concluded that the President's proposals would have little impact on the economy.

Following is an elaboration of some of the reasons why we oppose this bill.

Persistent long-term deficits

All of the $5.6 trillion projected surpluses used in 2001 to defend the Bush position that we could afford a large tax cut and other priorities, such as a prescription drug benefit, now are all gone. Instead, we will have large budget deficits for the foreseeable future even without taking into account the cost of indefinite occupation of Iraq. The bipartisan commitment to preserve the Social Security and Medicare surpluses has been totally abandoned by the Bush Administration and its Congressional Republican allies.

Each new budget projection from the Congressional Budget Office brings increasingly bad news. The most recent report indicates that the deficit for the current fiscal year will be $47 billion greater than what CBO estimated only two months earlier. The 10-year budget picture has worsened by $446 billion, again compared to estimates made only two months earlier. Since that time, Congress appropriated approximately $80 billion for the short-term cost of the war in Iraq. In addition, income tax receipts from the April 15 filing season are substantially smaller than earlier estimated. The deficit for this fiscal year could easily set a record. Analysts at

Citibank are now suggesting that this year's deficit could approach $500 billion. Already we have seen record levels of Federal borrowing in the first quarter of this year.

The current projections dramatically understate the long-term fiscal problems. They do not take into account any of the costs of indefinite occupation of Iraq or of its reconstruction. The projections do not take into account the costs of fixing the individual alternative minimum tax nor the cost of extending widely popular tax benefits. They also assume that the Congressional Republicans will not provide a significant Medicare prescription drug benefit.

The Administration has argued that deficits don't matter. Federal Reserve Chairman Alan Greenspan clearly does not agree. "There is no question that as deficits go up, contrary to what some have said, it does affect long-term interest rates. It does have a negative impact on the economy."

The Committee has attempted to hide the true cost of its bill through gimmicks, following the example of the 2001 tax cut legislation. In 2001, Congress used temporary provisions and the overall sunset to hide the cost of the bill. Now, we have legislation that temporarily accelerates the temporary provisions of the 2001 Act, gimmicks piled on top of gimmicks. The true cost of the Committee bill is far greater than the promised total of $550 billion because of the implicit promise to extend its tax benefits in the future. If all of its provisions were extended indefinitely, the cost would exceed $1 trillion over the next 10 years.

We can finance the cost of the irresponsible Committee bill only if foreign investors continue to be willing to lend us money. The value of our currency is a barometer of confidence in our fiscal policies and a strong dollar is necessary for continued foreign investment in this country. There has been a steady decline in the value of the dollar. The European currency has risen twenty-six percent against the dollar since the beginning 2002. If the recent declines in the value of the dollar continue, we could face dramatic interest rate increases in order to borrow the $1.5 billion a day that we need from foreign investors to fund our trade and budget deficits. Even officials at the International Monetary Fund have raised concerns over our fiscal policies.

State and local fiscal crisis

State and local governments are grappling with unprecedented budget crises. Unlike the Federal government, those governments do not have the luxury of borrowing money to cover their deficits. The tax increases and spending cuts at the State and local level could offset totally any beneficial effect from Federal action. The Republicans refused to provide any significant assistance to assist States in meeting that crisis, even though previous excessive Republican tax cuts for the wealthy have contributed to those growing State deficits.

The tax cuts are tremendously skewed to the affluent

The Committee bill is tremendously skewed to the affluent. Its capital-gains/dividend tax cut is even more skewed than the President's dividend tax cut. Capital gains are even more concentrated at the top than are dividends.

The middle-class oriented tax breaks (e.g., greater child credit, wider 10% tax-rate bracket, and marriage relief) expire after only three years, but not the tax breaks for dividends and capital gains, nor the cut in the top tax rate from 38.6% to 35%.

While the income and payroll tax rates on an extra dollar of ordinary wages earned by families with median income typically add to 30% (15% each), and stay that way under the Committee bill plan, the maximum tax rates on capital gains and dividends go down to only 15%—half as much. This is another big step on the road to changing the income tax into a tax on only wages, while continuing to "double tax" wages under both the income and the payroll taxes.

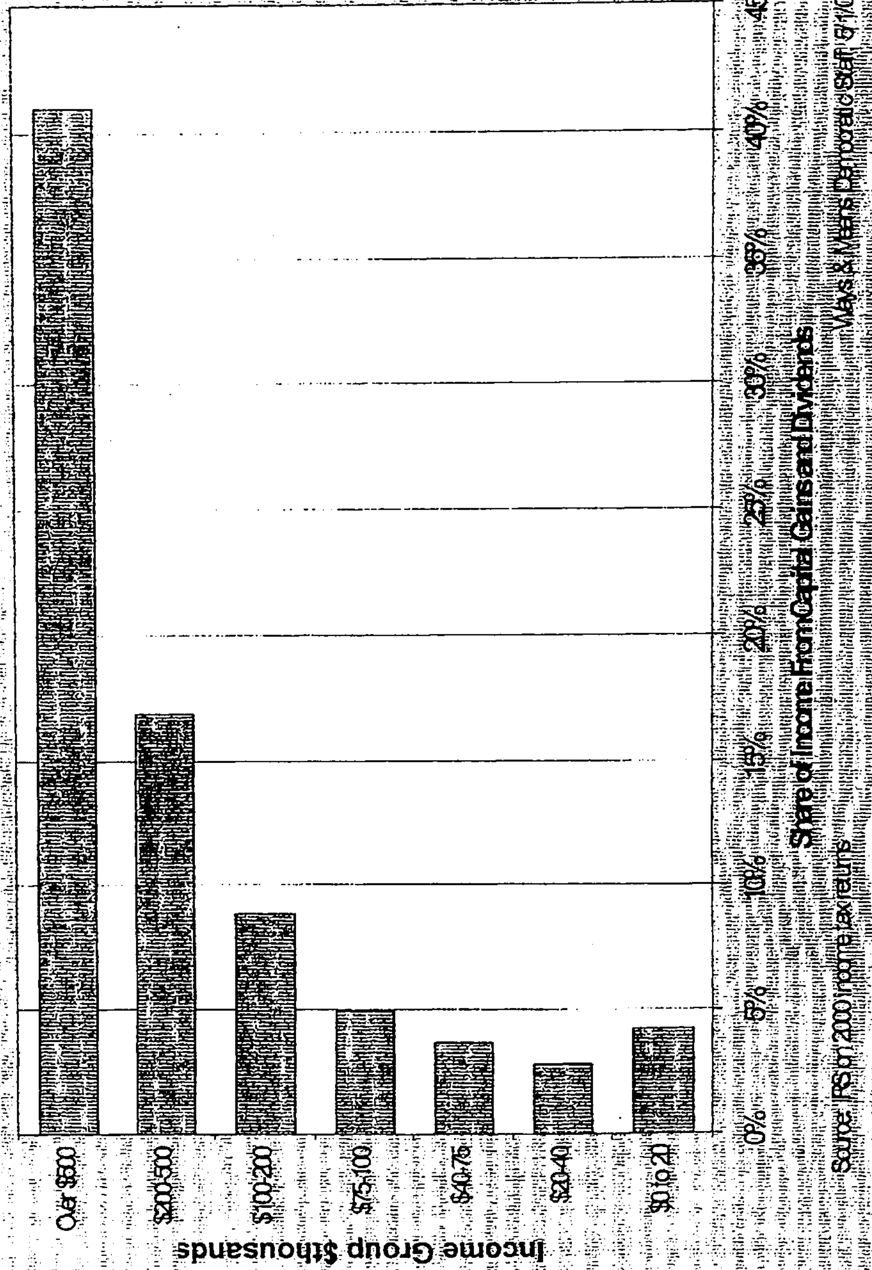
Famous investor Warren Buffett recently told Senators that getting rid of the tax on dividends, as the President proposed, would reduce his federal tax bill by $300 million a year. Mr. Buffett said that would mean he would pay proportionately less in taxes than his secretary. Mr. Buffet would get this tax break for doing nothing differently than he does already. House Republicans are forging ahead to give Mr. Buffett much of that dividends tax cut and a bigger capital gains tax cut.

A study by the Brookings/Urban Institutes' Tax Policy Center quantifies the skewed benefits of the Committee bill. According to that study—

- For tax-year 2003, $93,500 is the average tax cut for those with incomes of one million or more. $452 is the tax cut for households with incomes between $40,000 and $50,000. For the millionaires, this is like a "bonus" equal to 4.4% of their take-home income, almost four times as much as for the middle-class group that gets a 1.1% increase.
- A clear indication of what will happen later, after the middle-class relief expires, comes from looking at the capital-gains/dividends tax cut which persists.
- In tax year 2003, the capital-gains tax cut which only covers eight months of the year is worth $30,700 to millionaires, but only $42 to households with incomes between $40,000 and $50,000.
- 61% of the benefits from the capital-gains dividend tax cut go to the only 2% of households with incomes over $200,000.
- Only 21% of households within the $40,000–$50,000 income group get any thing at all, because so few even have capital-gains or dividend income.

The affluent benefit so much because they get most of the capital gains and dividend income in society, and because such a large share of their total income is from capital gains and dividends, which the Committee bill favors.

Households with incomes over $500,000 get 41% of their income from capital gains and dividends, which are favored by the Committee bill. Households with incomes between $40,000 and $75,000 get only 4% of their income from the sources favored by the Committee bill. (See graph.)



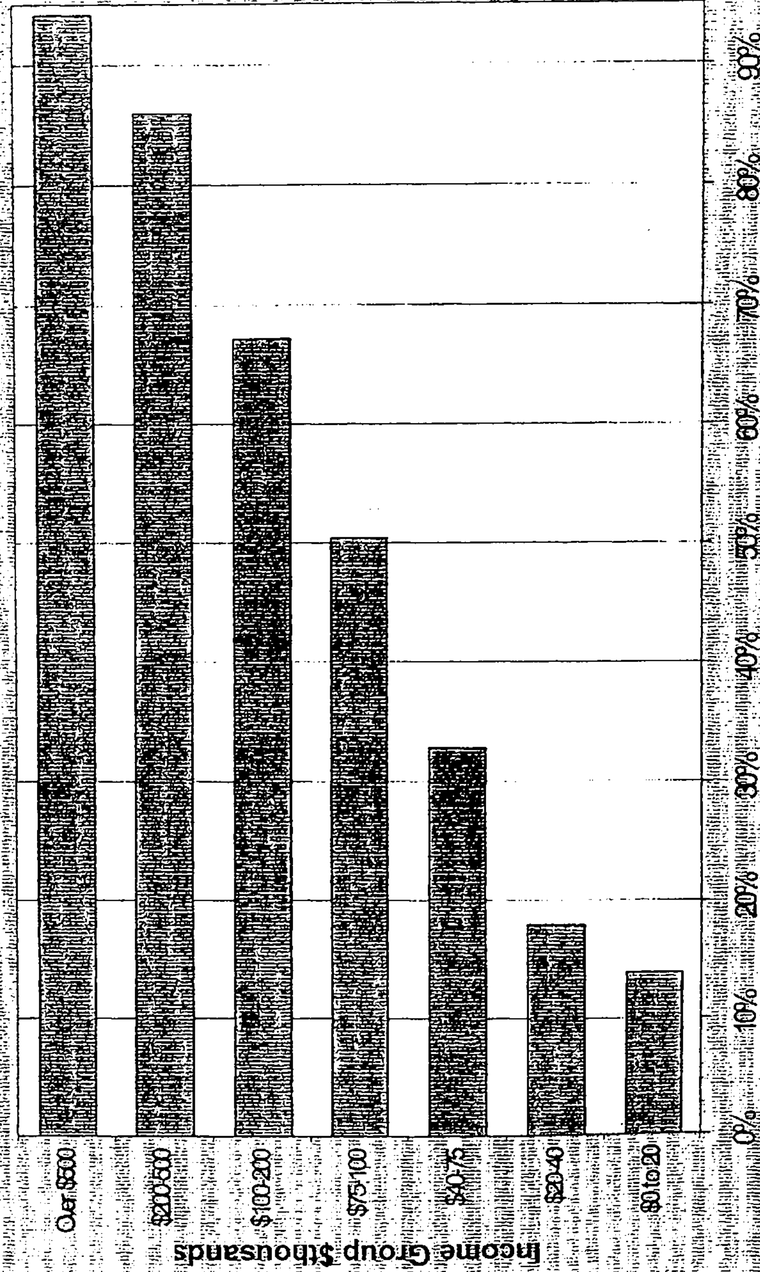
Capital Gains and Dividends Matter the Most to the Affluent Who Therefore Benefit the Most From the Thomas Plan
Over $500
$200-500
$100-200
$75-100
$40-75
$20-40
$0 to 20
Income Group $thousands
0%
5%
10%
15%
20%
25%
30%
35%
40%
45%
Share of Income From Capital Gains and Dividends
Source: IRS on 2000 income tax returns
Ways & Means Democratic Staff 5/1/03

The very affluent have a large share of total capital gains and dividend income even though they are a small share of households. IRS data for 2000 show that those with incomes over $500,000 accounted for 57% of all capital gains and dividends, but comprised only 0.5% of taxpayers and accounted for only 17% of income from all sources. The opposite is true for taxpayers with incomes between $40,000 and $75,000. They comprised 21% of all taxpayers and accounted for 24% of all income, but only 7% of capital gains and dividends.

(Percent)

Income group year 2000	Share of capital gains and dividends	Share of total taxpayers	Share of total income (adjusted gross income)
Over $500,000	57	0.5	17
$200,000–500,000	13	2	10
$100,000–200,000	12	6	17
$75,000–100,000	5	7	11
$40,000–75,000	7	21	24
$20,000–40,000	3	25	14
$1 to $20,000	3	39	8

A very high percentage of affluent households have either capital gains or dividend income that is favored under the Committee plan. This is not true of middle-income households. For example, 94% of households with incomes over $500,000 have dividends or capital gains. Only 33% of households with incomes between $40,000 and $75,000 have dividends or capital gains. (See graph.)


Much Higher Percentages of Affluent Households Have Capital Gains or Dividend Income Than Others
Over $500
$200-500
$100-200
$75-100
$40-75
$20-40
$0 to 20
Income Group $thousands
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
Share of Households with Either Capital Gains or Dividends
Source: IRS on 2000 income tax returns.
Ways & Means Democratic Staff, 5/1/03

CONCLUSION

Earlier this year, Mr. Rangel sent a "Dear Colleague" letter describing the President's tax cuts as being reckless and unfair. The Committee has produced a bill equally reckless, and even more unfair. It is easy to vote no.

CHARLES B. RANGEL.
ROBERT MATSUI.
JIM MCDERMOTT.
GERALD KLECZKA.
RICHARD E. NEAL.
MAX SANDLIN.
STEPHANIE TUBBS JONES.
LLOYD DOGGETT.
PETE STARK.
BEN CARDIN.
SANDER M. LEVIN.
JOHN LEWIS.
WILLIAM J. JEFFERSON.
EARL POMEROY
XAVIER BECERRA.
MICHAEL R. MCNULTY.
JOHN TANNER.

○

Public Law 108–81
108th Congress

An Act

To reauthorize the Museum and Library Services Act, and for other purposes.

Sept. 25, 2003
[H.R. 13]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Museum and Library Services Act of 2003.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Museum and Library Services Act of 2003".

note.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

* * * * *

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 503. Conforming amendment.

* * * * *

TITLE V—MISCELLANEOUS PROVISIONS

* * * * *

SEC. 503. CONFORMING AMENDMENT.

Section 170(e)(6)(B)(i)(III) of the Internal Revenue Code of 1986 (relating to the special rule for contributions of computer technology and equipment for educational purposes) is amended by striking

26 USC 170.

"section 213(2)(A) of the Library Services and Technology Act (2
U.S.C. 9122(2)(A)" and inserting "section 213(1)(A) of the Librar
Services and Technology Act (20 U.S.C. 9122(1)(A))".

* * * * *

Approved September 25, 2003.

LEGISLATIVE HISTORY—H.R. 13 (S. 888):

HOUSE REPORTS: No. 108–16 (Comm. on Education and the Workforce).
SENATE REPORTS: No. 108–83 accompanying S. 888 (Comm. on Health, Education, Labor, and Pensions).
CONGRESSIONAL RECORD, Vol. 149 (2003):
Mar. 6, considered and passed House.
Aug. 1, consi
Sept. 16, Ho

108TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 108–16

MUSEUM AND LIBRARY SERVICES ACT OF 2003

FEBRUARY 25, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BOEHNER, from the Committee on Education and the Workforce, submitted the following

REPORT

[To accompany H.R. 13]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 13) to reauthorize the Museum and Library Services Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

H.R. 13, the Museum and Library Services Act of 2003, authorizes federal assistance to museums and libraries through fiscal year 2009. H.R. 13 maintains the modest but essential federal support for museums and libraries across the country; authorizes funds for the one federal agency—the Institute of Museum and Library Services—devoted exclusively to museums and libraries, which are natural partners with our nation's schools; and encourages model cooperation between museums and libraries. The Institute of Museum and Library Services and the Committee on Education and the Workforce note that funds allocated under the Museum and Library Services Act are not authorized for construction of facilities. Instead, the intent of authorized funds is to increase access to—and cooperation among—our nation's museums and libraries. Last Congress, the Committee on Education and the Workforce reported H.R. 3784, the Museum and Library Services Act of 2002. However, H.R. 3784 was not scheduled for Floor consideration. H.R. 13 is a similar bill and a bipartisan attempt to reauthorize the Museum and Library Services Act.

19–006

COMMITTEE ACTION

107TH CONGRESS

Subcommittee hearing

On Thursday, February 14, 2002, the Subcommittee on Select Education held a hearing in Washington, D.C. on "Equipping Museums and Libraries for the 21st Century." The purpose of the hearing was to learn about activities and initiatives currently funded under the Museum and Library Services Act and to discuss issues related to its reauthorization.

Legislative action

On February 26, 2002, Representatives Peter Hoekstra (R–MI) and Tim Roemer (D–IN) introduced H.R. 3784, the Museum and Library Services Act of 2002, a bipartisan bill to reauthorize the Museum and Library Services Act through fiscal year 2008.

On March 6, 2002, the Subcommittee on Select Education considered H.R. 3784 in legislative session and reported it favorably, without amendment, to the Committee on Education and the Workforce by voice vote.

On March 20, 2002, the Committee on Education and the Workforce considered H.R. 3784 in legislative session and reported it favorably, as amended, to the House of Representatives by voice vote. The Committee considered two amendments:

- The Committee adopted, by voice vote, a bipartisan substitute amendment offered by Representatives Peter Hoekstra (R–MI) and Tim Roemer (D–IN). The substitute amendment was drafted with input from the Institute of Museum and Library Services, the American Library Association, the Chief Officers of State Library Agencies, and the American Association of Museums. Specifically, the amendment: (1) authorizes a total of $350 million for the Museum and Library Services Act, with $300 million for library services and $50 million for museum services; (2) increases the minimum allotment for the United States Virgin Islands, Guam, and American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau to $60,000 as long as each State receives its new minimum allotment of $500,000; and (3) makes technical and typographical changes to the legislation.
- The Committee rejected, by voice vote, an amendment offered by Representative Major Owens (D–NY) to add language to H.R. 3784 to require that the National Commission on Libraries and Information Science advise the Institute of Museum and Library Services Director on library programs.

108TH CONGRESS

The Committee on Education and the Workforce did not hold hearings on the Museum and Library Services Act during the 108th Congress.

Legislative action

On January 7, 2003, Representative Peter Hoekstra (R–MI) introduced H.R. 13, the Museum and Library Services Act of 2003,

a bipartisan bill to reauthorize the Museum and Library Services Act through fiscal year 2009.

On February 13, 2003, the Committee on Education and the Workforce considered H.R. 13 in legislative session and reported it favorably, without amendment, to the House of Representatives by voice vote.

SUMMARY

TITLE I—GENERAL PROVISIONS

H.R. 13, the Museum and Library Services Act of 2003 authorizes the federal library and museums programs under the Institute of Museum and Library Services. Specifically, this title: requires the Institute of Museum and Library Services Director to establish procedural standards for making grants available to museums and libraries (ensuring that the criteria are consistent with the statutory purposes of the Act); prohibits projects that are determined to be obscene from receiving funding; ensures that library activities are coordinated with activities under P.L. 107–110, the No Child Left Behind Act of 2001; consolidates museum and library advisory board activities under a single statute; authorizes the Institute of Museum and Library Services Director to issue National Awards for Library Service and National Awards for Museum Service; and ensures that administrative funds are also used to conduct annual analyses of the impact of museum and library services.

TITLE II—LIBRARY SERVICES AND TECHNOLOGY

The purposes of this title are to: (1) consolidate federal library service programs; (2) promote improvement in library services in all types of libraries to better serve the people of the United States; (3) facilitate access to resources in all types of libraries toward an educated and informed citizenry; and (4) encourage resource sharing among all types of libraries toward economic and efficient delivery of library services to the public.

Under this title, 3.75 percent of funds are reserved for national leadership competitive grants; 1.75 percent of funds are reserved for library services for Native Americans; up to 3.5 percent of funds for federal administration; and the remainder of funds are allotted by formula to States via State Library Agencies.

H.R. 13 increases the minimum State allotment for library programs to $680,000 and also ensures that no State's allotment falls below its FY 2003 level. If funding were insufficient to raise the minimum State allotment to $680,000, and, at the same time, hold all States harmless so they do not lose funds from their FY 2003 level, then the minimum State allotment is set at $340,000 (current law minimum State allotment). Additional funding would be distributed equally among the States until the minimum amount of $680,000 per State is reached and any funding above the State minimum of $680,000 would be awarded to States based on population (as under current law). H.R. 13 also increases the minimum allotment for the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau to $60,000 as long as each State receives its new minimum allotment of $680,000.

State grants under this title can be used for: (1) expanding services for learning and access to information and educational resources in a variety of formats in all types of libraries for individuals of all ages; (2) developing library services that provide all users access to information through electronic networks; (3) providing electronic and other linkages among and between all types of libraries; (4) developing public and private partnerships with other agencies and community-based organizations; (5) targeting library services to people of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to people with limited functional literacy or information skills; and (6) targeting library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children from families with incomes below the poverty level.

This title authorizes 3.75 percent of funds for national leadership grant to enhance the quality of library services nationwide and to provide coordination between libraries and museums. These competitive grants are used for activities that include: (1) education, recruitment, and training of persons in library and information science; (2) research and demonstration projects related to the improvement of libraries, education in library and information science, enhancement of library services through effective and efficient use of new technologies, and dissemination of information derived from such projects; (3) preservation or digitization of library materials and resources; and (4) model programs demonstrating cooperative efforts between libraries and museums.

The Library Services and Technology title is authorized at $210 million for fiscal year 2004 and such sums as may be necessary for fiscal years 2005 through 2009.

TITLE III—MUSEUM SERVICES

The purposes of this title are to: (1) encourage and support museums in carrying out their public service role of connecting the whole of society to the cultural, artistic, historical, natural, and scientific understandings that constitute our heritage; (2) encourage and support museums in carrying out their educational role; (3) encourage leadership, innovation and applications of the most current technologies and practices to enhance museum services; (4) assist, encourage, and support museums in carrying out their stewardship responsibilities to achieve the highest standards in conservation and care of the cultural, historic, natural, and scientific heritage of the United States; (5) assist, encourage, and support museums in achieving the highest standards of management and service to the public; and (6) support resource sharing and partnerships among museums, libraries, schools, and other community organizations.

H.R. 13 authorizes the Institute of Museum and Library Services Director, subject to the policy direction of the expanded Museum and Library Services Board, to enter into arrangements, including grants, contracts, cooperative agreements, and other forms of assistance to museums and to other entities to pay for the federal share of the cost to support activities, that among other things: (1) support museums in providing learning and access to collections, information, and educational resources in a variety of formats; (2) support museums in building learning partnerships with the na-

tion's schools; (3) support museums in assessing, conserving, researching, maintaining, and exhibiting their collections; (4) stimulate greater collaboration among museums, libraries, schools, and other community organizations; and (5) encourage, support, and disseminate model programs of museum and library collaboration.

The Museum Services title is authorized at $35 million for fiscal year 2004 and such sums as may be necessary for fiscal years 2005 through 2009.

TITLE IV—TECHNICAL CORRECTIONS; REPEALS; AND EFFECTIVE DATE

This title makes technical corrections to the Museum and Library Services Act; consolidates museum and library advisory board activities within the Institute of Museum and Library Services; and states that the amendments made by this Act shall take effect on the date of enactment except that sections 203, 204, and 305 shall take effect on October 1, 2003.

COMMITTEE VIEWS

Museums and libraries have become a fundamental part of our society. Attendance at American museums is now at more than 865 million visits per year and today's 21st century library is not just a provider of books; instead, the typical American library coordinates a complete and comprehensive approach to community development and services.

Museums play a vital role in the education of people of all ages and most American museums provide K–12 educational programming. Museums are an important source of cultural and historical knowledge for people, as they learn about the history and traditions of our country and our shared identity as Americans. Museums also serve as places where people of different backgrounds, economic levels, and home locations come together and not only share the experience of viewing their community's artifacts and natural objects, but also discuss community issues.

Throughout our nation, libraries are at the forefront of reading and family literacy programs. Libraries serve as essential links to the business community, assisting with job creation, training programs, and business development initiatives. They are also critical to many people with disabilities, providing them with specialized materials and resources that are obtainable in a single location. For older Americans, libraries provide a place to interact with others, use the Internet, and receive services. For economically disadvantaged persons, or persons living in underserved and rural communities, libraries are the greater equalizer, providing access to books and reference materials, computer services, and community-based services that might not otherwise be available.

H.R. 13, the Museum and Library Services Act of 2003 has the support of the Institute of Museum and Library Services, the American Library Association, the Chief Officers of State Library Agencies, and the American Association of Museums. In particular, the American Association of Museums sent a letter to the Committee on Education and the Workforce on February 6, 2003 to offer its strong support of the bill. In the letter, Edward H. Able, Jr., the President and Chief Executive Officer of the Association, wrote:

> I commend the members of the committee for their bipartisan efforts to craft a bill that reaffirms federal support for the public service responsibilities of America's museums, particularly with regard to K through 12 [education] * * * This legislation also provides great flexibility to address current and future challenges, such as the use of new technologies and broadcast media to enhance public access to museum collections, programs and services.

In addition, the American Library Association noted in a letter sent to the Committee on Education and the Workforce on February 13, 2003 that it "applauds the Committee's efforts over the past 2 years to craft a forward thinking, bi-partisan bill that unites the entire library community."

H.R. 13 continues the main objectives of the Museum and Library Services Act of 1996 and makes several modifications to current law to streamline and strengthen museum and library services across the country.

* * * * *

Calendar No. 178

108TH CONGRESS
1ST SESSION

S. 888

[Report No. 108–83]

To reauthorize the Museum and Library Services Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2003

Mr. GREGG (for himself, Mr. REED, Mr. FRIST, Mr. KENNEDY, Mr. ENZI, Mr. JEFFORDS, Mr. ALEXANDER, Mr. EDWARDS, Mr. DEWINE, Mrs. CLINTON, Ms. COLLINS, Mr. COCHRAN, Mr. SMITH, Mr. DODD, Mr. SCHUMER, Mr. LEVIN, Mr. LAUTENBERG, Mr. GRAHAM of South Carolina, Mr. CHAFEE, Mrs. FEINSTEIN, Mr. ROCKEFELLER, Mr. HOLLINGS, Mr. KERRY, Mr. LIEBERMAN, Mrs. BOXER, Mr. CORZINE, Mr. INOUYE, Mr. CARPER, Mr. LEAHY, Ms. MIKULSKI, Mr. JOHNSON, Mr. NELSON of Nebraska, Mr. DURBIN, Ms. SNOWE, Ms. STABENOW, Mr. DAYTON, Mr. AKAKA, Mr. HARKIN, Mr. ALLEN, Mr. GRAHAM of Florida, Mr. SUNUNU, Mr. PRYOR, Mr. REID, Mr. SANTORUM, Mr. DASCHLE, Mr. CHAMBLISS, Mr. NELSON of Florida, Mr. GRASSLEY, Mr. MILLER, Ms. MURKOWSKI, Mr. BAYH, and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

JUNE 26, 2003

Reported by Mr. GREGG, without amendment

A BILL

To reauthorize the Museum and Library Services Act, and for other purposes.

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Museum and Library

5 Services Act of 2003".

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

* * * * *

1 **SEC. 503. CONFORMING AMENDMENT.**

2 Section 170(e)(6)(B)(i)(III) of the Internal Revenue
3 Code of 1986 (relating to the special rule for contributions
4 of computer technology and equipment for educational
5 purposes) is amended by striking "section 213(2)(A) of
6 the Library Services and Technology Act (20 U.S.C.
7 9122(2)(A)" and inserting "section 213(1)(A) of the Li-
8 brary Services and Technology Act (20 U.S.C.
9 9122(1)(A))".

* * * * *

SURFACE TRANSPORTATION EXTENSION ACT OF 2003

Public Law 108–88
108th Congress

An Act

Sept. 30, 2003
[H.R. 3087]

To provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Surface Transportation Extension Act of 2003.
23 USC 101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Surface Transportation Extension Act of 2003".

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SEC. 12. EXTENSION OF AUTHORIZATION FOR USE OF TRUST FUNDS FOR OBLIGATIONS UNDER TEA-21.

(a) HIGHWAY TRUST FUND.—

(1) IN GENERAL.—Paragraph (1) of section 9503(c) of the Internal Revenue Code of 1986 is amended—

26 USC 9503.

(A) in the matter before subparagraph (A), by striking "October 1, 2003" and inserting "March 1, 2004",

(B) by striking "or" at the end of subparagraph (D),

(C) by striking the period at the end of subparagraph (E) and inserting ", or",

(D) by inserting after subparagraph (E), the following new subparagraph:

"(F) authorized to be paid out of the Highway Trust Fund under the Surface Transportation Extension Act of 2003.", and

(E) in the matter after subparagraph (F), as added by this paragraph, by striking "TEA 21 Restoration Act" and inserting "Surface Transportation Extension Act of 2003".

(2) MASS TRANSIT ACCOUNT.—Paragraph (3) of section 9503(e) of such Code is amended—

(A) in the matter before subparagraph (A), by striking "October 1, 2003" and inserting "March 1, 2004",

(B) in subparagraph (B), by striking "or" at the end of such subparagraph,

(C) in subparagraph (C), by inserting "or" after "Century,",

(D) by inserting after subparagraph (C) the following new subparagraph:

"(D) the Surface Transportation Extension Act of 2003,", and

(E) in the matter after subparagraph (D), as added by this paragraph, by striking "TEA 21 Restoration Act" and inserting "Surface Transportation Extension Act of 2003".

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Subparagraph (B) of section 9503(b)(5) of such Code is amended by striking "October 1, 2003" and inserting "March 1, 2004". 26 USC 9503.

(b) AQUATIC RESOURCES TRUST FUND.—

(1) SPORT FISH RESTORATION ACCOUNT.—Paragraph (2) of section 9504(b) of the Internal Revenue Code of 1986 is amended— 26 USC 9504.

(A) in subparagraph (A), by striking "Wildlife and Sport Fish Restoration Programs Improvement Act of 2000" and inserting "Surface Transportation Extension Act of 2003", and

(B) in subparagraphs (B) and (C), by striking "TEA 21 Restoration Act" in each such subparagraph and inserting "Surface Transportation Extension Act of 2003".

(2) BOAT SAFETY ACCOUNT.—Subsection (c) of section 9504 of such Code is amended—

(A) by striking "October 1, 2003" and inserting "March 1, 2004", and

(B) by striking "TEA 21 Restoration Act" and inserting "Surface Transportation Extension Act of 2003".

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Paragraph (2) of section 9504(d) of such Code is amended by striking "October 1, 2003" and inserting "March 1, 2004".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act. 26 USC 9503 note.

(d) TEMPORARY RULE REGARDING ADJUSTMENTS.—During the period beginning on the date of the enactment of this Act and ending on February 29, 2004, for purposes of making any estimate under section 9503(d) of the Internal Revenue Code of 1986 of receipts of the Highway Trust Fund, the Secretary of the Treasury shall treat—

(1) each expiring provision of paragraphs (1) through (4) of section 9503(b) of such Code which is related to appropriations or transfers to such Fund to have been extended through the end of the 24-month period referred to in section 9503(d)(1)(B) of such Code, and

(2) with respect to each tax imposed under the section referred to in section 9503(b)(1) of such Code, the rate of suc tax during the 24-month period referred to in sectio 9503(d)(1)(B) of such Code to be the same as the rate of suc tax as in effect on the date of the enactment of this Ac

Approved September 30, 2003.

LEGISLATIVE HISTORY—H.R. 3087 (S. 1640):

SENATE REPORTS: No. 108–54 accompanying S. 1640 (Comm. on Environmen and Public Works).

CONGRESSIONAL RECORD, Vol. 149 (2003):

Sept. 24, considered and passed House.

Sept. 26, considered and passed Senate.

Calendar No. 287

108TH CONGRESS } 1st Session } SENATE { REPORT 108–154

TRANSPORTATION EXTENSION ACT OF 2003

SEPTEMBER 24, 2003.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany S. 1640]

The Committee on Environment and Public Works, to which was referred the bill (S. 1640) to provide an extension of highway programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century, having considered the same, reports favorably theron with amendments, and recommends that the bill, as amended, do pass.

GENERAL STATEMENT

Background

The Transportation Equity Act for the 21st Century was enacted June 9, 1998 as Public Law 105-178. It authorized the Federal surface transportation programs for highways, highway safety, and transit for the 6-year period between 1998-2003. The TEA-21 Restoration Act, enacted July 22, 1998, provided technical corrections to the original law.

TEA-21 was the successor of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which was landmark authorizing legislation for surface transportation. TEA-21 combined the continuation and improvement of ISTEA with new initiatives to meet greater challenges of improving mobility and safety, while protecting and enhancing the human and natural environments.

With the expiration of TEA-21, transportation remains a vital investment in the American economy. Present challenges make the

19–010

timely reauthorization of TEA-21 a top priority. According to a survey of the American Association of State Highway and Transportation Officials, a delay in passage of a full six-year reauthorization bill could compound state budget problems and result in delayed construction projects, added construction costs, and lost jobs. The Committee on Environment and Public Works is committed to completing a six-year comprehensive bill. In the interim, this short-term extension is necessary to continue the Federal surface transportation programs while work continues on the six-year bill. The extension authorizes funding for five months based on the 2004 budget resolution figures. This amounts to a 7 percent increase in highway funding over 2003 levels, which results in an estimated 100,000 new jobs. A comprehensive reauthorization bill drafted at $255 billion over six years, as proposed by the Committee, will create approximately two million new jobs.

* * * * *

Public Law 108–89
108th Congress

An Act

To extend the Temporary Assistance for Needy Families block grant program, and certain tax and trade programs, and for other purposes.

Oct. 1, 2003
[H.R. 3146]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

* * * * *

TITLE II—TAX PROVISIONS

SEC. 201. DISCLOSURE OF RETURN INFORMATION TO CARRY OU INCOME CONTINGENT REPAYMENT OF STUDENT LOAN

26 USC 6103.

(a) IN GENERAL.—Subparagraph (D) of section 6103(l)(13) o the Internal Revenue Code of 1986 (relating to termination) i amended by striking "September 30, 2003" and inserting "Decembe 31, 2004".

Applicability. 26 USC 6103 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a shall apply to requests made after September 30, 2003.

SEC. 202. EXTENSION OF INTERNAL REVENUE SERVICE USER FEE

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Cod of 1986 (relating to miscellaneous provisions) is amended by addin at the end the following new section:

26 USC 7528.

"SEC. 7528. INTERNAL REVENUE SERVICE USER FEES.

"(a) GENERAL RULE.—The Secretary shall establish a progran requiring the payment of user fees for—

"(1) requests to the Internal Revenue Service for rulin letters, opinion letters, and determination letters, and

"(2) other similar requests.

"(b) PROGRAM CRITERIA.—

"(1) IN GENERAL.—The fees charged under the progran required by subsection (a)—

"(A) shall vary according to categories (or subcat egories) established by the Secretary,

"(B) shall be determined after taking into account th average time for (and difficulty of) complying with request in each category (and subcategory), and

"(C) shall be payable in advance.

"(2) EXEMPTIONS, ETC.—

"(A) IN GENERAL.—The Secretary shall provide for suc exemptions (and reduced fees) under such program as th Secretary determines to be appropriate.

"(B) EXEMPTION FOR CERTAIN REQUESTS REGARDIN PENSION PLANS.—The Secretary shall not require paymen of user fees under such program for requests for determina tion letters with respect to the qualified status of a pensior benefit plan maintained solely by 1 or more eligibl employers or any trust which is part of the plan. Th preceding sentence shall not apply to any request—

"(i) made after the later of—

"(I) the fifth plan year the pension benefit plan is in existence, or

"(II) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years, or

"(ii) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

"(C) DEFINITIONS AND SPECIAL RULES.—For purposes of subparagraph (B)—

"(i) PENSION BENEFIT PLAN.—The term 'pension benefit plan' means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

"(ii) ELIGIBLE EMPLOYER.—The term 'eligible employer' means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under subparagraph (B) shall be made as of the date of the request described in such subparagraph.

"(iii) DETERMINATION OF AVERAGE FEES CHARGED.—For purposes of any determination of average fees charged, any request to which subparagraph (B) applies shall not be taken into account.

"(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

"Category	Average Fee
Employee plan ruling and opinion	$250
Exempt organization ruling	$350
Employee plan determination	$300
Exempt organization determination	$275
Chief counsel ruling	$200.

"(c) TERMINATION.—No fee shall be imposed under this section with respect to requests made after December 31, 2004.".

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 77 of such Code is amended by adding at the end the following new item:

"Sec. 7528. Internal Revenue Service user fees.".

(2) Section 10511 of the Revenue Act of 1987 is repealed.

26 USC 7801 note.

(3) Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

26 USC 7801 note.

26 USC 7528 note.

(c) LIMITATIONS.—Notwithstanding any other provision of law, any fees collected pursuant to section 7528 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Internal Revenue Service unless provided by an appropriations Act.

Applicability. 26 USC 7528 note.

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

* * * * *

Approved October 1, 2003.

LEGISLATIVE HISTORY—H.R. 3146:

CONGRESSIONAL RECORD, Vol. 149 (2003):
- Sept. 24, considered and passed House.
- Sept. 30, considered and passed Senate, amended. House concurred in Senate amendment.

○

EXTENDING TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT PROGRAM

Mrs. JOHNSON of Connecticut (during special order of Mr. CHOCOLA). Madam Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3146) to extend the Temporary Assistance for Needy Families block grant program, and certain tax and trade programs, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment:

Page 10, after line 16, insert:

SEC. 402. EXTENSION OF PROVISION EQUALIZING URBAN AND RURAL STANDARDIZED MEDICARE INPATIENT HOSPITAL PAYMENTS.

(a) IN GENERAL.- Paragraphs (1) and (2) of section 402(b) of the Miscellaneous Appropriations Act, 2003 (Public Law 108-7; 117 Stat. 548) are each amended by striking "September 30, 2003" and insert "March 31, 2004".

(b) EFFECTIVE DATE.-

(1) IN GENERAL.- Subject to paragraph (2), the amendments made by subsection (a) shall take effect as if included in the enactment of the Miscellaneous Appropriations Act, 2003.

(2) AUTHORITY TO DELAY IMPLEMENTATION.-

(a) IN GENERAL.- If the Secretary of Health and Human Services (in this subsection referred to as the "Secretary") determines that it is not administratively feasible to implement the amendments made by subsection (a), notwithstanding such amendments and in order to comply with Congressional intent, the Secretary may delay the implementation of such amendments until such time as the Secretary determines to be appropriate, but in no case later than November 1, 2003.

(B) TEMPORARY ADJUSTMENT FOR REMAINDER OF FISCAL YEAR 2004 TO EFFECT FULL RATE CHANGE.- If the Secretary delays implementation of the amendments made by subsection (a) under subparagraph (A), the Secretary shall make such adjustment to the amount of payments affected by such delay, for the portion of fiscal year 2004 after the date of the delayed implementation, in such manner as the Secretary estimates will ensure that the total payments for inpatient hospital services so affected with respect to such fiscal year is the same as would have been made if this paragraph had not been enacted.

(C) NO EFFECT ON PAYMENTS FOR SUBSEQUENT PAYMENT PERIODS.- The application of subparagraphs (A) and (B) shall not affect payment rates and shall not be taken into account in calculating payment amounts for services furnished for periods after September 30, 2004.

administrative or judicial review under section 1869 or 1878 of the Social Security Act (42 U.S.C. 1395ff and 1395oo), or otherwise of any delay or determination made by the Secretary under this paragraph or the application of the payment rates determined under this paragraph.

Mrs. JOHNSON of Connecticut (during the reading). Madam Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mrs. MILLER of Michigan). Is there objection to the request of the gentlewoman from Connecticut?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentlewoman from Connecticut?

Mr. CARDIN. Madam Speaker, reserving the right to object, I do not intend to object, but under my reservation, I yield to the gentleman from Oregon (Mr. WU).

Mr. WU. I thank the gentleman from Maryland for yielding. Madam Speaker, I rise to express my grave concern with the potential termination of the successful Welfare Waiver Program in my State of Oregon because of Federal action or inaction. Today we are moving forward again on legislation to extend the Temporary Assistance for Needy Families, or TANF, Program through a period of time until we can do the full reauthorization. Also today in Oregon, a successful State-designed welfare-to-work program which has provided a gateway from welfare to work for thousands of Oregonians may expire through our action or inaction.

My State of Oregon currently operates its welfare program under a Federal waiver. In Oregon, the program is known as the Oregon option and in the last 6 years, it has seen caseload reduction rates above the national average. Our innovative program allows Oregon the flexibility to consider individuals on a case-by-case basis. Some folks simply need a little job training or job search skills and then they are ready to transition back into the workforce. Others need more extensive drug and alcohol treatments or basic education before they are able to hold down a job. This combination of rehabilitative services to the most needy and more education and job training activities for others has proved to be a great success. For 18 months, I have sought to protect and extend the successful State innovation. My friends and colleagues have acknowledged the success of the Oregon program and the importance of preserving individual State innovation. However, with the passage of today's extension, we find ourselves punishing, rather than rewarding, innov[illegible]

I ask the gentlewoman [illegible] necticut to assist the citi[illegible]

Oregon's concern with his State's inventive approach and successful program in support of women on welfare, individuals on welfare seeking the independence of returning to the workforce. I am pleased that the next round of welfare reform will allow a great deal more flexibility in State programs.

As the gentleman is aware, a number of State waiver programs have expired in recent years. In June 2003, Oregon Senators were informed by Secretary Thompson that, despite the expiration of Oregon's waiver that month, Oregon was not in danger of failing to satisfy work rate requirements in the future. The reason is because Oregon's caseload reduction credits totally wipe out any effective work rate requirement in the State.

Here is how Secretary Thompson put it:

"Oregon is not in violation and, based on Oregon's history, is not expected to be in violation, and, therefore, Oregon will not be subject to penalties for the next 3 months or until reauthorization. Even without its waiver, Oregon's program would have met its all-family work participation requirement in 2002 because it effectively had no participation requirement. Should reauthorization not occur prior to the end of the fiscal year and current law be extended again, I would remain confident, based on the facts that I have before me, that Oregon could continue to operate its program without becoming subject to participation rate penalties."

As the gentleman knows, the House-passed welfare reauthorization bill, H.R. 4, includes provisions that would allow States to apply for new waivers of the TANF program. That reflects additional flexibility for States and is a positive step. I will fight in conference for enhanced waiver authority for States in conference with the Senate.

Mr. WU. If the gentleman will yield further, I would make inquiry of the gentlewoman from Connecticut, I would like to make two inquiries, and let me do them separately. Oregon has had a terrible unemployment situation. Out of the last 24 months, we have topped the Nation in unemployment 17 out of those 24 months. We have oscillated between 8.1 percent unemployment and 8.8 percent unemployment. I believe we are currently at a seasonally-adjusted 8.5 percent unemployment rate.

My first inquiry of the gentlewoman from Connecticut is that the factual predicate, upon which the Secretary's letter is written, is based on weighted averages of caseload reduction. Given

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Mrs. JOHNSON of [illegible]
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Mr. CARDIN. Madar[illegible]
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Mrs. JOHNSON of
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☐ 2115

Mr. WU. Madam Sp[illegible]
make my second inqui[illegible]
woman from Connectic[illegible]
to inquire of the gentle[illegible]
intent to assist Ore[illegible]

[illegible] rently being considered before this Congress and this body and the other body.

Mr. CARDIN. Madam Speaker, before I yield to the gentlewoman from Connecticut, it has been the position at least of this body by its formal actions to expand the authority to what is known as a superwaiver. That is controversial, and I am not sure there is certainly not an agreement on a bipartisan basis for a superwaiver; however, the superwaiver sort of consumes the individual State waivers. It is certainly the position of the majority of this House on both sides of the aisle that the States have at least the waiver authorities that they had under the expiring TANF laws. I will be glad to yield to the gentlewoman from Connecticut, but I am not certain that there is an agreement right now as to individual State waivers as compared to broader authority. I can tell the position that I would like to see is individual States, but I understand there is no consensus yet on that issue.

Mrs. JOHNSON of Connecticut. Madam Speaker, will the gentleman yield?

Mr. CARDIN. Further reserving the right to object, I yield to the gentlewoman from Connecticut.

Mrs. JOHNSON of Connecticut. Madam Speaker, I agree with the gentleman from Maryland. There is a lot of interest in the States having flexibility to tailor their programs to their own specific needs, but exactly the structure of that authority is a matter of disagreement at this time; and we will look to see how the Senate resolves those issues and then in conference find an agreement that we think will meet the needs of the majority of the States.

Mr. CARDIN. Madam Speaker, I appreciate what the gentlewoman said. I think it is, in fairness to the gentleman from Oregon, certainly our desire to make sure the States maintain the type of authority Oregon has been able to use to create creative programs, and I really do thank the gentleman for bringing this to our attention. It is a very important issue to our States.

Mr. WU. Madam Speaker, will the gentleman yield?

Mr. CARDIN. Further reserving the right to object, I yield to the gentleman from Oregon.

Mr. WU. Madam Speaker, I thank the gentleman for yielding.

I would like to inquire one more time of the gentlewoman from Connecticut as to her intention to work in this body in conference and with the Senate with respect to specific State waiver authority as we go forward with this reauthorization.

Mr. CARDIN. Madam Speaker, I think the gentlewoman has already answered that. Further reserving the right to object, I yield to the gentlewoman from Connecticut again if she wants to further clarify it.

Mrs. JOHNSON of Connecticut. Madam Speaker, I would indicate to the gentleman that the bill that passed the House has a very broad waiver of authority in it. There are some that think it is too broad and would like narrower waiver authority. We will see what the Senate has done, and then we will see if the conference committee can come to a conclusion about the structure of the waiver authority in the future. But there was a waiver authority in the last welfare bill. I think there is universal agreement that States need flexibility to structure their programs to meet the specific needs and circumstances of their own people, and so this will be a significant issue that will be addressed.

I cannot tell the gentleman at this point whether there will be precisely the narrow State waiver authority there is under current law, but I would also remind the gentleman that that waiver authority under current law has a defect. The waivers expire and are not reauthorizable. Under current law, they have to reapply for them. So under current law there is a problem about how do we move the successful waivered program into the mainstream, and I think that is an issue that the conference needs to resolve as well because my State also has a waiver that has expired as well as the same kind of unemployment rate, unfortunately, that Oregon has.

So there will be a number of people in conference concerned about this issue, but I certainly cannot assure the gentleman that there will be exactly the same kind of state-based waiver authority in the reauthorization that there has been in the past bill. There is a lot more interest amongst many in a broader waiver authority that encompasses a greater variety of bills so that they could better integrate broad services for people coming off welfare. So it is a long debate. We are not going to resolve it here, but I do appreciate the gentleman from Oregon bringing to this floor his concern about his State's rights to tailor its welfare program to meet the needs of its people. In the end that is really what makes a Federal program successful or not successful is that local control and local power, and I agree with the gentleman that that is terribly important to the quality of Federal programs and their success.

Mr. WU. Madam Speaker, will the gentleman yield?

Mr. CARDIN. Further reserving the right to object, I yield to the gentleman from Oregon.

Mr. WU. Madam Speaker, I thank the gentleman for yielding.

The language of this body is beautiful for its specificity and nonspecificity, and I fully appreciate that. I certainly do not expect a solution to the problems of this particular reauthorization this evening. I would like to simply note that under the plenary authority that Congress has over many issues, including this one, that it is within the ability of Congress in this bill to extend expired waivers, and I would just like to log that as a point of departure for States like Connecticut and Oregon, the waivers for which have expired; and if there is a will, there will be a way.

Mr. CARDIN. Madam Speaker, further reserving my right to object, just to respond to the gentleman, I agree completely with what he has said, and it has been the position of some of us to do the extension of individual States that had it prior to the expiration of the bill. There has been a consensus, as I have indicated before, to give States at least that flexibility; and the majority has decided to go beyond that with the superwaiver in this body. So the gentleman's point is very well stated, which I happen to personally agree with; and I appreciate his bringing it to our attention.

Mr. WU. Madam Speaker, I thank the gentleman and I thank the gentlewoman.

THE SECRETARY OF HEALTH
AND HUMAN SERVICES,
Washington, DC, June 24, 2003.

Hon. RON WYDEN,
U.S. Senate,
Washington, DC.

DEAR SENATOR WYDEN: Oregon has been operating its Temporary Assistance for Needy Families (TANF) program under a waiver since 1996 and this waiver is due to expire at the end of this month. I thank you for raising with the Administration your concerns about your State's TANF program and its waiver, and I admire the tremendous efforts you have been making on Oregon's behalf to see that your State has the ability to operate the best TANF program it can. I believe that Oregon will be able to maintain its current program through the end of this fiscal year, and ask you to continue working with me to complete reauthorization legislation that will improve TANF for families across the nation.

The rigorous evaluation of your Portland program has documented some of the most impressive impacts on increased earnings, improved job quality and reductions in welfare dependency of any program that has ever been evaluated. This impressive record of accomplishment is one of which you can be proud.

I know that your efforts in support of Oregon's program are grounded in the lessons you have learned from the evaluation of your State's success and these lessons will be important in informing the debate on issues that will be considered in TANF reauthorization. Your commitment and leadership on these issues continues to benefit the people of Oregon.

Oregon's TANF program operates with a waiver granted under the former Aid to Families with Dependent Children (AFDC) program. When AFDC was converted into TANF as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the new law enabled States such as Oregon that had previously approved waiver programs to continue operating those waivers. However, there is no provision in law that would permit the Administration to extend such waivers, as it was anticipated that these programs would eventually align themselves with the larger TANF reforms upon completion of their waivers. Therefore, extending existing waivers would require changing current law.

TANF is currently authorized only through the end of this month, and legislation is before the Senate that would temporarily extend the program through September, 2003,

week.

I understand Oregon will maintain its current program while Congress completes work on reauthorization. Oregon is not in violation and based on Oregon's history is not expected to be in violation and therefore Oregon will not be subject to penalties for the next three months or until reauthorization.

Let me explain. Oregon's current TANF program has many elements, most of which are accommodated under TANF and are permissible under current law. However, I understand the State is concerned about its ability to continue operating two particular policies when its waiver expires. Oregon's waiver allows the State to count toward its required work participation rate certain types of activities, such as participation in substance abuse treatment and extended education and training, which would not otherwise be countable under TANF. Your State's waiver also permits counting of certain adults who are participating but have not attained at least 30 hours of participation per week, which is also required under TANF law.

Importantly, even without its waiver, TANF would not prohibit Oregon from engaging clients in the activities they currently do, nor does it prohibit the State from assigning hours for particular clients at levels below the current-law standard. These issues are relevant in that States must meet minimum participation rates. However, according to Oregon's current data, the State would be likely to meet its required participation in FY 2003, even though Oregon's ability to count certain activities and clients under its waiver will end at the end of this month.

Oregon achieved a participation rate for all its families of 61.1% in FY 2002. It would have achieved only an 8.0% all-family rate if it had operated the same way, but counted participation without its current waiver. However, because Oregon achieved such a dramatic reduction in TANF caseload over the past several years, it enjoys a caseload reduction credit that reduced its effective all-family participation rate requirement to 0% in FY 2002. Thus, even without its waiver, Oregon's program would have met its all-family participation requirement in FY 2002 because it effectively had no participation requirement.

Oregon's caseload reduction credit in FY 2001 was 56.2%, and in FY 2002 was 58.3%. I would anticipate that this would not change considerably in FY 2003, and because the required all-family rate for FY 2003 remained at only 50%, the State is very likely facing no participation requirement for the current year as well. Furthermore, work participation rates are measured on a full year basis, meaning that for FY 2003 Oregon's rate would be an average of what it achieved throughout the year. Given Oregon's extremely high participation rates under its waiver, and the fact it will have operated under the waiver for three of the four quarters of FY 2003, it should achieve a very high rate even if the final quarter is calculated without the waiver.

Oregon also must meet a separate participation rate for its 2-parent families. With its waiver, the State achieved a 53.8% 2-parent rate in FY 2002, but due to the caseload reduction credit it earned, only ne
a 31.7% standard. Again, given
likely high 2-parent participat

not occur prior to the end of the fiscal year and current law be extended again, I would remain confident based on the facts that I have before me that Oregon could continue to operate its program without becoming subject to participation rate penalties.

TANF is a great program, and with your help we can make it work even better in the future. TANF provides States tremendous flexibility to fund and operate work and job preparation activities, and to provide supportive services and benefits so clients can find work, support themselves and build a better life for their families. I know you share my interest in seeing the program reauthorized as quickly as possible, and seeing that important improvements are made to enable States to engage all cases in meaningful and helpful activities so they can move into work quickly and successfully. Reauthorization is crucial for Oregon. As you know, the President's reauthorization proposal includes changes that would enable States to count various barrier removal activities toward their participation rates, as Oregon is doing now. It would also eliminate the separate 2-parent participation rate.

I appreciate the impressive work you are doing for the State of Oregon, and particularly your attention to this critical program that has become so important to helping our neediest families build better lives. The State of Oregon has done a wonderful job with its TANF program over the years, and we will continue to work with you on reauthorization legislation to see that we build the best program for Oregon and all of America.

The Office of Management and Budget advises that it has no objection to this letter from the standpoint of the Administration's program.

Sincerely,

TOMMY G. THOMPSON.

Mr. CARDIN. Madam Speaker, this is very important legislation. It extends the TANF programs and related programs for the next 6 months so that we can try to work out a long-term, multiyear extension of the TANF programs and related programs. I thank the gentlewoman for bringing this legislation forward.

Mrs. JOHNSON of Connecticut. Madam Speaker, will the gentleman yield?

Mr. CARDIN. I yield to the gentlewoman from Connecticut.

Mrs. JOHNSON of Connecticut. Madam Speaker, this legislation is nearly identical to H.R. 3146, a bill the House unanimously approved last week. The only change is the addition of a 6-month extension of expiring Medicare payment provisions affecting hospitals in small cities and rural areas. These provisions need to be passed today and signed into law immediately to ensure the continued smooth operation of programs affecting health, welfare, and commerce throughout the country. I urge the support of this body.

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medical assistance progr
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and urban hospitals.

The Rural Health Care
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result in $3.8 million for
according to the Nebrask
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to Nebraska this year.

In closing, this Member
to support H.R. 3146. Red
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areas for six more months.

Mr. CARDIN. Mad
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The SPEAKER pro
MILLER of Michigan). I
to the initial request
woman from Connectic

There was no objecti

A motion to reconsi
the table.

Public Law 108–121
108th Congress

An Act

To amend title 10, United States Code, and the Internal Revenue Code of 1986 to increase the death gratuity payable with respect to deceased members of the Armed Forces and to exclude such gratuity from gross income, to provide additional tax relief for members of the Armed Forces and their families, and for other purposes.

Nov. 11, 2003
[H.R. 3365]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Military Family Tax Relief Act of 2003.
26 USC 1 note.

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Military Family Tax Relief Act of 2003".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed 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.—The table of contents for this Act is as follows:

Sec. 1. Short title, etc.

TITLE I—IMPROVING TAX EQUITY FOR MILITARY PERSONNEL

Sec. 101. Exclusion of gain from sale of a principal residence by a member of the uniformed services or the Foreign Service.
Sec. 102. Treatment of death gratuities payable with respect to deceased members of the Armed Forces.
Sec. 103. Exclusion for amounts received under Department of Defense homeowners assistance program.
Sec. 104. Expansion of combat zone filing rules to contingency operations.
Sec. 105. Modification of membership requirement for exemption from tax for certain veterans' organizations.
Sec. 106. Clarification of the treatment of certain dependent care assistance programs.
Sec. 107. Clarification relating to exception from additional tax on certain distributions from qualified tuition programs, etc., on account of attendance at military academy.
Sec. 108. Suspension of tax-exempt status of terrorist organizations.
Sec. 109. Above-the-line deduction for overnight travel expenses of National Guard and Reserve members.
Sec. 110. Tax relief and assistance for families of Space Shuttle Columbia heroes.

TITLE II—REVENUE PROVISION

Sec. 201. Extension of customs user fees.

TITLE I—IMPROVING TAX EQUITY FOR MILITARY PERSONNEL

SEC. 101. EXCLUSION OF GAIN FROM SALE OF A PRINCIPAL RES DENCE BY A MEMBER OF THE UNIFORMED SERVICI OR THE FOREIGN SERVICE.

26 USC 121.

(a) IN GENERAL.—Subsection (d) of section 121 (relating exclusion of gain from sale of principal residence) is amended l redesignating paragraph (9) as paragraph (10) and by insertir after paragraph (8) the following new paragraph:

"(9) MEMBERS OF UNIFORMED SERVICES AND FOREIG SERVICE.—

"(A) IN GENERAL.—At the election of an individual wit respect to a property, the running of the 5-year peric described in subsections (a) and (c)(1)(B) and paragrap (7) of this subsection with respect to such property sha be suspended during any period that such individual (such individual's spouse is serving on qualified offici: extended duty as a member of the uniformed services (of the Foreign Service of the United States.

"(B) MAXIMUM PERIOD OF SUSPENSION.—The 5-yeε period described in subsection (a) shall not be extende more than 10 years by reason of subparagraph (A).

"(C) QUALIFIED OFFICIAL EXTENDED DUTY.—For pu: poses of this paragraph—

"(i) IN GENERAL.—The term 'qualified officiε extended duty' means any extended duty while servin at a duty station which is at least 50 miles froı such property or while residing under Governmer orders in Government quarters.

"(ii) UNIFORMED SERVICES.—The term 'uniforme services' has the meaning given such term by sectio 101(a)(5) of title 10, United States Code, as in effe(on the date of the enactment of this paragraph.

"(iii) FOREIGN SERVICE OF THE UNITED STATES.– The term 'member of the Foreign Service of the Unite States' has the meaning given the term 'member (the Service' by paragraph (1), (2), (3), (4), or (5) (section 103 of the Foreign Service Act of 1980, a in effect on the date of the enactment of this paragrapl

"(iv) EXTENDED DUTY.—The term 'extended dut means any period of active duty pursuant to a ca or order to such duty for a period in excess of 9 days or for an indefinite period.

"(D) SPECIAL RULES RELATING TO ELECTION.—

"(i) ELECTION LIMITED TO 1 PROPERTY AT A TIME.– An election under subparagraph (A) with respect t any property may not be made if such an electio: is in effect with respect to any other property.

"(ii) REVOCATION OF ELECTION.—An election unde subparagraph (A) may be revoked at any time.".

26 USC 121 note.

(b) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendments made by this sec tion shall take effect as if included in the amendments mad by section 312 of the Taxpayer Relief Act of 1997.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

SEC. 102. TREATMENT OF DEATH GRATUITIES PAYABLE WITH RESPECT TO DECEASED MEMBERS OF THE ARMED FORCES.

(a) INCREASE IN AMOUNT OF DEATH GRATUITY.—

(1) IN GENERAL.—Section 1478(a) of title 10, United States Code, is amended by striking "$6,000" and inserting "$12,000".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as of September 11, 2001, and shall apply with respect to deaths occurring on or after that date.

Applicability. 10 USC 1478 note.

(b) EXCLUSION FROM GROSS INCOME.—

(1) IN GENERAL.—Subsection (b)(3) of section 134 (relating to certain military benefits) is amended by adding at the end the following new subparagraph:

26 USC 134.

"(C) EXCEPTION FOR DEATH GRATUITY ADJUSTMENTS MADE BY LAW.—Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted after September 9, 1986.".

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 134(b)(3) is amended by striking "subparagraph (B)" and inserting "subparagraphs (B) and (C)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to deaths occurring after September 10, 2001.

Applicability. 26 USC 134 note.

SEC. 103. EXCLUSION FOR AMOUNTS RECEIVED UNDER DEPARTMENT OF DEFENSE HOMEOWNERS ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 132(a) (relating to the exclusion from gross income of certain fringe benefits) is amended by striking "or" at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting ", or", and by adding at the end the following new paragraph:

"(8) qualified military base realignment and closure fringe.".

(b) QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.—Section 132 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified military base realignment and closure fringe' means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) (as in effect on the date of the enactment of this subsection) to offset the adverse effects on housing values as a result of a military base realignment or closure.

"(2) LIMITATION.—With respect to any property, such term shall not include any payment referred to in paragraph (1)

to the extent that the sum of all of such payments relat
to such property exceeds the maximum amount described
clause (1) of subsection (c) of such section (as in effect
such date).".

Applicability. 26 USC 132 note.

(c) EFFECTIVE DATE.—The amendments made by this sectic shall apply to payments made after the date of the enactme of this Act.

SEC. 104. EXPANSION OF COMBAT ZONE FILING RULES TO CONTI GENCY OPERATIONS.

26 USC 7508.

(a) IN GENERAL.—Section 7508(a) (relating to time for pe forming certain acts postponed by reason of service in comb zone) is amended—

(1) by inserting ", or when deployed outside the Unit States away from the individual's permanent duty station whi participating in an operation designated by the Secretary Defense as a contingency operation (as defined in sectic 101(a)(13) of title 10, United States Code) or which becan such a contingency operation by operation of law" after "sectic 112",

(2) by inserting in the first sentence "or at any time durir the period of such contingency operation" after "for purpos of such section",

(3) by inserting "or operation" after "such an area", an

(4) by inserting "or operation" after "such area".

(b) CONFORMING AMENDMENTS.—

(1) Section 7508(d) is amended by inserting "or contingen operation" after "area".

(2) The heading for section 7508 is amended by insertin "OR CONTINGENCY OPERATION" after "COMBAT ZONE".

(3) The item relating to section 7508 in the table of sectior for chapter 77 is amended by inserting "or contingency ope ation" after "combat zone".

Applicability. 26 USC 7508 note.

(c) EFFECTIVE DATE.—The amendments made by this sectio shall apply to any period for performing an act which has n expired before the date of the enactment of this Act.

SEC. 105. MODIFICATION OF MEMBERSHIP REQUIREMENT FOR EXEM TION FROM TAX FOR CERTAIN VETERANS' ORGANIZ TIONS.

(a) IN GENERAL.—Subparagraph (B) of section 501(c)(1 (relating to list of exempt organizations) is amended by strikin "or widowers" and inserting ", widowers, ancestors, or line descendants".

Applicability. 26 USC 501 note.

(b) EFFECTIVE DATE.—The amendments made by this sectio shall apply to taxable years beginning after the date of the enac ment of this Act.

SEC. 106. CLARIFICATION OF THE TREATMENT OF CERTAI DEPENDENT CARE ASSISTANCE PROGRAMS.

(a) IN GENERAL.—Section 134(b) (defining qualified militar benefit) is amended by adding at the end the following new par graph:

"(4) CLARIFICATION OF CERTAIN BENEFITS.—For purpose of paragraph (1), such term includes any dependent care assis ance program (as in effect on the date of the enactment this paragraph) for any individual described in paragrap (1)(A).".

(b) CONFORMING AMENDMENTS.—

(1) Section 134(b)(3)(A), as amended by section 102, is amended by inserting "and paragraph (4)" after "subparagraphs (B) and (C)". 26 USC 134.

(2) Section 3121(a)(18) is amended by striking "or 129" and inserting ", 129, or 134(b)(4)".

(3) Section 3306(b)(13) is amended by striking "or 129" and inserting ", 129, or 134(b)(4)".

(4) Section 3401(a)(18) is amended by striking "or 129" and inserting ", 129, or 134(b)(4)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002. Applicability. 26 USC 134 note.

(d) NO INFERENCE.—No inference may be drawn from the amendments made by this section with respect to the tax treatment of any amounts under the program described in section 134(b)(4) of the Internal Revenue Code of 1986 (as added by this section) for any taxable year beginning before January 1, 2003. 26 USC 134 note.

SEC. 107. CLARIFICATION RELATING TO EXCEPTION FROM ADDITIONAL TAX ON CERTAIN DISTRIBUTIONS FROM QUALIFIED TUITION PROGRAMS, ETC., ON ACCOUNT OF ATTENDANCE AT MILITARY ACADEMY.

(a) IN GENERAL.—Subparagraph (B) of section 530(d)(4) (relating to exceptions from additional tax for distributions not used for educational purposes) is amended by striking "or" at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

"(iv) made on account of the attendance of the designated beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by section 2005(e)(3) of title 10, United States Code, as in effect on the date of the enactment of this section) attributable to such attendance, or".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002. Applicability. 26 USC 530 note.

SEC. 108. 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 tl Immigration and Nationality Act as a terrorist organizatic or foreign terrorist organization,

"(B) in or pursuant to an Executive order which related to terrorism and issued under the authority the International Emergency Economic Powers Act or se tion 5 of the United Nations Participation Act of 194 for the purpose of imposing on such organization an ec nomic or other sanction, or

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

"(i) the organization is designated or otherwis individually identified in or pursuant to such Executi order as supporting or engaging in terrorist activit (as defined in section 212(a)(3)(B) of the Immigratio and Nationality Act) or supporting terrorism (a defined in section 140(d)(2) of the Foreign Relatior Authorization Act, Fiscal Years 1988 and 1989); an

"(ii) such Executive order refers to this subsectio

"(3) PERIOD OF SUSPENSION.—With respect to any organiza tion described in paragraph (2), the period of suspension-

"(A) begins on the later of—

"(i) the date of the first publication of a designatio or identification described in paragraph (2) wit respect to such organization, or

"(ii) the date of the enactment of this subsectio and

"(B) ends on the first date that all designations an identifications described in paragraph (2) with respect t such organization are rescinded pursuant to the law c Executive order under which such designation or identifica tion was made.

"(4) DENIAL OF DEDUCTION.—No deduction shall be allowe under any provision of this title, including sections 17(545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), and 2522, wit respect to any contribution to an organization described i paragraph (2) during the period described in paragraph (3

"(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENG OF SUSPENSION OR DENIAL OF DEDUCTION.—Notwithstandin section 7428 or any other provision of law, no organizatio or other person may challenge a suspension under paragrap (1), a designation or identification described in paragraph (2 the period of suspension described in paragraph (3), or a denia of a deduction under paragraph (4) in any administrative o judicial proceeding relating to the Federal tax liability of suc organization or other person.

"(6) ERRONEOUS DESIGNATION.—

"(A) IN GENERAL.—If—

"(i) the tax exemption of any organizatio described in paragraph (2) is suspended under para graph (1),

"(ii) each designation and identification describe in paragraph (2) which has been made with respec to such organization is determined to be erroneou pursuant to the law or Executive order under whic 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).

Publication.

"(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.".

Applicability. 26 USC 501 note.

(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. 109. ABOVE-THE-LINE DEDUCTION FOR OVERNIGHT TRAVEL EXPENSES OF NATIONAL GUARD AND RESERVE MEMBERS.

26 USC 162.

(a) DEDUCTION ALLOWED.—Section 162 (relating to certain trade or business expenses) is amended by redesignating subsection (p) as subsection (q) and inserting after subsection (o) the following new subsection:

"(p) TREATMENT OF EXPENSES OF MEMBERS OF RESERVE COMPONENT OF ARMED FORCES OF THE UNITED STATES.—For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such service.".

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.—Section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by adding at the end the following new subparagraph:

"(E) CERTAIN EXPENSES OF MEMBERS OF RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.".

Applicability.
26 USC 62 note.

(c) EFFECTIVE DATE.—The amendments made by this sectic shall apply to amounts paid or incurred in taxable years beginnir after December 31, 2002.

SEC. 110. TAX RELIEF AND ASSISTANCE FOR FAMILIES OF SPAC SHUTTLE COLUMBIA HEROES.

(a) INCOME TAX RELIEF.—

26 USC 692.

(1) IN GENERAL.—Subsection (d) of section 692 (relatir to income taxes of members of Armed Forces and victims certain terrorist attacks on death) is amended by adding the end the following new paragraph:

Applicability.

"(5) RELIEF WITH RESPECT TO ASTRONAUTS.—The provisior of this subsection shall apply to any astronaut whose deat occurs in the line of duty, except that paragraph (3)(B) sha be applied by using the date of the death of the astronau rather than September 11, 2001.".

(2) CONFORMING AMENDMENTS.—

(A) Section 5(b)(1) is amended by inserting ", astro nauts," after "Forces".

(B) Section 6013(f)(2)(B) is amended by inserting astronauts," after "Forces".

(3) CLERICAL AMENDMENTS.—

(A) The heading of section 692 is amended by insertin "**, ASTRONAUTS,**" after "**FORCES**".

(B) The item relating to section 692 in the table sections for part II of subchapter J of chapter 1 is amende by inserting ", astronauts," after "Forces".

Applicability.
26 USC 5 note.

(4) EFFECTIVE DATE.—The amendments made by this sub section shall apply with respect to any astronaut whose deat occurs after December 31, 2002.

(b) DEATH BENEFIT RELIEF.—

(1) IN GENERAL.—Subsection (i) of section 101 (relatin to certain death benefits) is amended by adding at the en the following new paragraph:

Applicability.

"(4) RELIEF WITH RESPECT TO ASTRONAUTS.—The provision of this subsection shall apply to any astronaut whose deat occurs in the line of duty.".

(2) CLERICAL AMENDMENT.—The heading for subsection (i of section 101 is amended by inserting "OR ASTRONAUTS" afte "VICTIMS".

Applicability.
26 USC 101 note.

(3) EFFECTIVE DATE.—The amendments made by this sub section shall apply to amounts paid after December 31, 2002 with respect to deaths occurring after such date.

(c) ESTATE TAX RELIEF.—

(1) IN GENERAL.—Section 2201(b) (defining qualifie decedent) is amended by striking "and" at the end of paragrap (1)(B), by striking the period at the end of paragraph (2) an inserting ", and", and by adding at the end the following nev paragraph:

"(3) any astronaut whose death occurs in the line of duty."

(2) CLERICAL AMENDMENTS.—

(A) The heading of section 2201 is amended by inserting "**, DEATHS OF ASTRONAUTS,**" after "**FORCES**".

(B) The item relating to section 2201 in the table of sections for subchapter C of chapter 11 is amended by inserting ", deaths of astronauts," after "Forces".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to estates of decedents dying after December 31, 2002.

Applicability. 26 USC 2201 note.

TITLE II—REVENUE PROVISION

SEC. 201. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking "March 31, 2004" and inserting "March 1, 2005".

Approved November 11, 2003.

LEGISLATIVE HISTORY—H.R. 3365:

CONGRESSIONAL RECORD, Vol. 149 (2003):

Oct. 29, considered and passed House.
Nov. 3, considered and passed Senate, amended.
Nov. 4, further amended in Senate.
Nov. 5, House concurred in Senate amendments.

FALLEN PATRIOTS TAX RELIEF ACT

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3365.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

islation to rectify a
ties faced by member
armed services.

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sacrifices. They have
and friends behind
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harm's way. Whether
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against terrorism n
these courageous pa
their lives on the lin
freedoms.

While I realize that
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Americans- not to m
ones they leave behind
an opportunity tonig
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during the 107th Cong
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are on active duty stat
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other areas of the world

This legislation will
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The Armed Forces Tax Fairness Act also ensures that military personnel serving in Secretary of Defense designated "contingency operations" receive appropriate relief from the administrative burdens of our tax laws during participation in those operations.

What's more, this legislation is completely offset. All of the military tax fairness provisions in this legislation are fully funded by extending Customs user fees.

As we consider this legislation tonight, the men and women of our armed forces remain in hostile situations, battling terrorism wherever that battle may lead. At the same time, their loved ones- wives, husbands, parents, children- remain at home, making equally demanding sacrifices as they struggle to make ends meet. It is deeply regrettable that Congress has delayed so long to enact this commonsense legislation.

We must delay no longer. I urge my colleagues to support this legislation to provide the tax relief that our military personnel need and deserve.

Mr. BAUCUS. Mr. President, I rise today in support of this amendment to the Fallen Patriots Tax Benefit Act of 2003. The bill that we received from the House includes two important provisions that the Senate has already approved this year. However, it does not include the numerous other provisions that the Senate has passed to ensure equity for military personnel. This amendment would add these important provisions.

First, the House bill doubles the amount of the death gratuity payments for members of our military. Under current law, the families of military personnel receive a death gratuity benefit of $6,000. This bill would increase that amount to $12,000. The Senate included this provision in the defense authorization bill that is currently in conference.

Second, the House bill ensures that these payments will not be subject to taxation. Under current law, death gratuity benefits are excludable from income only to the extent they were as of September 9, 1986, which was $3,000.

In 1991, the benefit was increased to $6,000, but the Tax Code was never adjusted to exclude the additional $3,000 from income. Because of this oversight, the U.S. Government has been taxing families for the death of a family member who died in combat.

The House bill would make the entire $12,000 death gratuity benefit tax-free, and ensure that families are not hit with a tax bill during their most difficult hour. This provision was included in the Senate passed Armed Forces Tax Fairness Act.

That is what this bill does. Now let me talk about what the House bill does not do.

This bill does not include the numerous other provisions for military personnel that were included in the Armed Forces Tax Fairness Act of 2003, which was passed by the Senate in May. These provisions are vital to ensuring tax equity for our active duty military and reservists.

Let me explain these provisions.

First, the House bill does not include the exclusion of gain on the sale of a principal residence.

In 1997, Congress passed legislation revising the taxation of capital gains on the sale of a person's principal residence.

The new law provides that up to $250,000- or $500,000 for a married couple- is excluded on the sale of a principal residence if the individual has lived in the house for at least 2 of the previous 5 years.

However, when enacted, Congress failed to provide a special rule for military and Foreign Service personnel who are required to move either within the U.S. or abroad.

Our proposal in the Armed Forces Tax Fairness Act would permit service personnel and members of the Foreign Service to suspend the 5-year period while away on assignment. That means that those years would not count toward either the 2 years or the 5-year periods. Senators MCCAIN, GRAHAM, and LINCOLN proposed a bill in the last session to correct this.

Second, the House bill does not allow for the exclusion from taxable income of amounts received under the Military Housing Assistance Program. The Department of Defense provides payments to members of the Armed Services to offset diminution in housing values due to military base realignment or closure.

For example, if a house near a base was worth $140,000 prior to the base closure and $100,000 after the base closure, DOD may provide the owner with a payment to offset some, but not all, of the $40,000 diminution in value. Under current law, those amounts are taxable as compensation.

We should ensure that those men and women losing value in their homes due to a Federal Government decision are not adversely affected financially.

The proposal in the Armed Forces Tax Fairness Act would provide that payments for this type of lost value are not includible into income.

Third, the House bill does not expand the combat zone filing rules to include contingency operations. Under current law, military personnel in a combat zone are afforded an extended period for filing tax returns.

However, this does not apply to contingency operations. This proposal in the Armed Forces Taxes Fairness Act would extend the same benefits to military personnel assigned to contingency operations.

It cannot be easy trying to figure out our complicated tax system while you are overseas and protecting our nation's freedom. Those men and women who are sent to uphold democracy and freedom in other countries are confronted with the same filing complications as combat zone personnel.

Contingency operations are just as demanding as combat zone deployment, although not always in the same manner. For example, in our current war on terrorism, this proposal would help members of our Special Forces in the Philippines supporting Operation Enduring Freedom. These troops are just as focused on accomplishing their critical mission as our troops in the Iraqi combat zone.

Fourth, the House bill does not provide an above-the-line deduction for overnight travel expenses of National Guard and Reserve members. Some reservists who travel one weekend per month and two weeks in the summer for Reserve duty incur significant travel and lodging expenses.

For the most part, these expenses are not reimbursed. Under current law, these are deductible as itemized deductions but must exceed 2 percent of adjusted gross income.

For lower income reservists, this deduction does not provide a benefit, because they do not itemize. For higher income reservists, the 2 percent floor limits the amount of the benefit of the deductions.

In my home State of Montana, we have approximately 3,500 reservists- 800 of whom travel each month across the State for their training. These 800 reservists pay travel and lodging expenses out of their own pocket.

Montana ranks 48th in the Nation for per capita personal income. So that $200 expense for Reserve duty every month means a lot to the Montana reservist. Yet, they continue selflessly to provide their services to our country at their own expense. For those reservists who travel out of State for their training, this expense is even higher.

The proposal in the Armed Forces Tax Fairness Act would provide an above the line deduction for overnight travel costs and would be available for all reservists and members of the National Guard.

Fifth, the House bill does not expand the rules to qualify for membership of veterans organizations. Currently, qualified veterans organizations under section 501(c)(19) of the tax code both tax-exempt and contributions to the organization are tax deductible.

In order to qualify under 501(c)(19), the organization must meet several tests. For example, 75 percent of the members must be current or former military, and substantially all of the other members must be either spouses, widows, or widowers of current or former military.

The proposal in the Armed Forces Tax Fairness Act would permit lineal descendants and ancestors to qualify as eligible members of these important groups.

It is important that our veterans organizations continue the good work that they do. But, as the organizations age, they are in danger of losing tax-exempt status. The Armed Forces Tax Fairness Act helps ensure the vitality of these organizations.

childcare benefits to its employees. Employees at DoD-owned facilities provide childcare services while other areas with non-DoD owned facilities contract out their childcare.

When Congress passed the Tax Reform Act of 1986, we included a provision stating that qualified military benefits are excluded from income. It is not absolutely clear whether childcare provisions are covered under this provision.

The proposal in the Armed Forces Tax Fairness Act would clarify that any childcare benefit provided to military personnel would be excludable from income.

Seventh, the House bill does not allow students at the Service Academies to use their education savings account funds. In contrast, the Armed Forces Tax Fairness Act does permit penalty-free withdrawals from education savings accounts and qualified tuition programs made on account of the attendance of the account holder or beneficiary at any of the Service Academies. The amount of the funds that can be withdrawn penalty-free is limited to the costs of advanced education in that calendar year.

Eighth, the House does not allow the IRS to suspend the tax-exempt status of terrorist organizations. Under current law, there is no procedure for the IRS to suspend the tax-exempt status of an organization.

The Armed Forces Tax Fairness Act would allow the suspension of the tax-exempt status of an organization for any period during which the organization is designated or identified by Executive Order as a terrorist organization.

Ninth, the House bill does not provide tax relief for families of those killed in the Space Shuttle *Columbia*. Current law provides for income tax, estate tax, and death benefit relief to soldiers who are killed in a combat zone, victims of the September 11 attacks, the Oklahoma City bombing victims, and the victims of the anthrax attacks.

The crew of the Space Shuttle *Columbia* was heroic in every sense of the word. We have a duty to those who lost their lives for the advancement of science and increasing our knowledge of the world we live in. The Armed Forces Tax Fairness Act would make all of the above benefits available to the families of the *Columbia* crew.

The tenth and final difference between the House bill before us and the Armed Forces Tax Fairness Act is that the bill before us is not offset. In contrast, the Armed Forces Tax Fairness Act is completely offset by strengthening the collection of taxes
ple who have renounced their
zenship in order to avoid U.S.
fees.

The Senate amendment to the House bill would add these very important nine provisions. In addition, it would add an offset that the House has not opposed this offset in the past. We hope that this compromise on our part will allow them to pass the provisions from the Armed Forces Tax Fairness Act that we have included in this amendment.

The passage of the death gratuity payments provision is an important first step. However, there are thousands of men and women in uniform that are depending on us to pass the other ten provisions included in the Armed Forces Tax Fairness Act.

Simply put, there is absolutely no excuse if Congress fails to pass the Armed Forces Tax Fairness Act this year.

Everyday, our military men and women fight for our freedom and the freedom of every American. Their sacrifices are great. Passing the other ten provisions included in the Armed Forces Tax Fairness Act is not a lot for them to ask of Congress.

I urge my colleagues in the House to pass the Senate amendment to the Fallen Patriots Act of 2003.

Ms. COLLINS. Mr. President, I want to express my full support for the passage of H.R. 3365, the Fallen Patriots Tax Relief Act. Earlier this year, the Senate passed S. 704, introduced by myself, Senator WARNER, Senator MCCAIN, Senator ALLEN, and Senator BEN NELSON, which would have increased the death gratuity paid to the survivors of deceased members of our military from $6,000 to $12,000. Further, it would make this increase retroactive to September 11, 2001. I am pleased that H.R. 3365 incorporates this legislation.

There is no better way to honor the memories of fallen soldiers than to ensure that their loved ones receive the support they deserve. The death gratuity is provided within days to the family of the servicemember killed while on active duty. These funds help the family to deal with immediate needs during this difficult time. Given the sacrifices of our troops currently in Iraq. I believe that this increase in assistance is far past due.

H.R. 3365 also ensures that the death gratuity is tax free. I fully support this legislation, and believe that it sends a strong message of support to our troops. As the brave men and women of our military continue to go in harm's way in defense of our Nation, it is crucial that they do so with the confidence that their families will have our full support should tragedy occur.

Mr. MCCONNELL. Mr. President, I

objection, it is so order

The amendment (No.
to.

(The amendment is pr
RECORD under "Text of

The title amendment
agreed to, as follows:

Amend the title so as to
amend title 10, United Sta
Internal Revenue Code of 1
death gratuity payable wi
ceased members of the Ar
exclude such gratuity from
provide additional tax reli
the Armed Forces and thei
other purposes.".

The bill (H.R. 3365), a
read the third time and

(The bill will be prin
edition of the RECORD.)

PUBLIC LAW 108–173—DEC. 8, 2003

MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003

Public Law 108–173
108th Congress

An Act

Dec. 8, 2003
[H.R. 1]

To amend title XVIII of the Social Security Act to provide for a voluntary progran for prescription drug coverage under the Medicare Program, to modernize the Medicare Program, to amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings security ac counts and health savings accounts, to provide for the disposition of unusec health benefits in cafeteria plans and flexible spending arrangements, and fo other purposes.

Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

Be it enacted by the Senate and House of Representatives o the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECURITY ACT REFERENCES TO BIPA AND SECRETARY; TABLE OF CONTENTS.

42 USC 1305 note.

(a) SHORT TITLE.—This Act may be cited as the "Medicare Prescription Drug, Improvement, and Modernization Act of 2003".

(b) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in division A of this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

42 USC 1301 note.

(c) BIPA; SECRETARY.—In this Act:

(1) BIPA.—The term "BIPA" means the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted into law by section 1(a)(6) of Public Law 106–554.

(2) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(d) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; amendments to Social Security Act; references to BIPA and Secretary; table of contents.

TITLE I—MEDICARE PRESCRIPTION DRUG BENEFIT

Sec. 101. Medicare prescription drug benefit.

* * * * *

Sec. 105. Additional provisions relating to medicare prescription drug discount card and transitional assistance program.

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* * * * *

TITLE XII—TAX INCENTIVES FOR HEALTH AND RETIREMENT SECURITY

Sec. 1201. Health savings accounts.
Sec. 1202. Exclusion from gross income of certain Federal subsidies for prescription drug plans.
Sec. 1203. Exception to information reporting requirements related to certain health arrangements.

TITLE I—MEDICARE PRESCRIPTION DRUG BENEFIT

SEC. 101. MEDICARE PRESCRIPTION DRUG BENEFIT.

* * * * *

(6) DISCLOSURE.—Section 6103(l)(7)(D)(ii) of the Internal Revenue Code of 1986 is amended by inserting "or subsidies provided under section 1860D–14 of such Act" after "Social Security Act".

26 USC 6103.

* * * * *

*   *   *   *

(e) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF PROVIDING TRANSITIONAL ASSISTANCE UNDER MEDICARE DISCOUNT CARD PROGRAM.—

(1) IN GENERAL.—Subsection (l) of section 6103 of the Internal Revenue Code of 1986 (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

26 USC 6103.

"(19) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF PROVIDING TRANSITIONAL ASSISTANCE UNDER MEDICARE DISCOUNT CARD PROGRAM.—

"(A) IN GENERAL.—The Secretary, upon written request from the Secretary of Health and Human Services pursuant to carrying out section 1860D–31 of the Social Security Act, shall disclose to officers, employees, and contractors of the Department of Health and Human Services with respect to a taxpayer for the applicable year—

"(i)(I) whether the adjusted gross income, as modified in accordance with specifications of the Secretary of Health and Human Services for purposes of carrying out such section, of such taxpayer and, if applicable, such taxpayer's spouse, for the applicable year, exceeds the amounts specified by the Secretary of Health and Human Services in order to apply the 100 and 135 percent of the poverty lines under such section, (II) whether the return was a joint return, and (III) the applicable year, or

"(ii) if applicable, the fact that there is no return filed for such taxpayer for the applicable year.

"(B) DEFINITION OF APPLICABLE YEAR.—For the purposes of this subsection, the term 'applicable year' means the most recent taxable year for which information is available in the Internal Revenue Service's taxpayer data information systems, or, if there is no return filed for such taxpayer for such year, the prior taxable year.

"(C) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information disclosed under this paragraph may be used only for the purposes of determining eligibility for and administering transitional assistance under section 1860D–31 of the Social Security Act.".

(2) CONFIDENTIALITY.—Paragraph (3) of section 6103(a) of such Code is amended by striking "or (16)" and inserting "(16), or (19)".

(3) PROCEDURES AND RECORDKEEPING RELATED TO DISCLOSURES.—Subsection (p)(4) of section 6103 of such Code is amended by striking "(l)(16) or (17)" each place it appears and inserting "(l)(16), (17), or (19)".

(4) UNAUTHORIZED DISCLOSURE OR INSPECTION.—Paragraph (2) of section 7213(a) of such Code is amended by striking "or (16)" and inserting "(16), or (19)".

26 USC 7213.

* * * * *

26 USC 6103.

(c) REPORTING REQUIREMENTS FOR SECRETARY OF THE TREASURY.—

(1) IN GENERAL.—Subsection (l) of section 6103 of the Internal Revenue Code of 1986 (relating to disclosure of returns and return information for purposes other than tax administration), as amended by section 105(e), is amended by adding at the end the following new paragraph:

"(20) DISCLOSURE OF RETURN INFORMATION TO CARRY OUT MEDICARE PART B PREMIUM SUBSIDY ADJUSTMENT.—

"(A) IN GENERAL.—The Secretary shall, upon written request from the Commissioner of Social Security, disclose to officers, employees, and contractors of the Social Security Administration return information of a taxpayer whose premium (according to the records of the Secretary) may be subject to adjustment under section 1839(i) of the Social Security Act. Such return information shall be limited to—

"(i) taxpayer identity information with respect to such taxpayer,

"(ii) the filing status of such taxpayer,

"(iii) the adjusted gross income of such taxpayer,

"(iv) the amounts excluded from such taxpayer's gross income under sections 135 and 911 to the extent such information is available,

"(v) the interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1 to the extent such information is available,

"(vi) the amounts excluded from such taxpayer's gross income by sections 931 and 933 to the extent such information is available,

"(vii) such other information relating to the liability of the taxpayer as is prescribed by the Secretary by regulation as might indicate in the case of a taxpayer who is an individual described in subsection (i)(4)(B)(iii) of section 1839 of the Social Security Act that the amount of the premium of the taxpayer under such section may be subject to adjustment under subsection (i) of such section and the amount of such adjustment, and

"(viii) the taxable year with respect to which the preceding information relates.

"(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information disclosed under subparagraph

(A) may be used by officers, employees, and contractors of the Social Security Administration only for the purposes of, and to the extent necessary in, establishing the appropriate amount of any premium adjustment under such section 1839(i)."

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (3) of section 6103(a) of such Code, as amended by section 105(e)(1), is amended by striking "or (19)" and inserting "(19), or (20)". 26 USC 6103.

(B) Paragraph (4) of section 6103(p) of such Code, as amended by section 105(e)(3), is amended by striking "(l)(16), (17), or (19)" each place it appears and inserting "(l)(16), (17), (19), or (20)".

(C) Paragraph (2) of section 7213(a) of such Code, as amended by section 105(e)(4), is amended by striking "or (19)" and inserting "(19), or (20)". 26 USC 7213.

* * * * *

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (3) of section 6103(a) of such Code, as amended by section 105(e)(1), is amended by striking "or (19)" and inserting "(19), or (20)". 26 USC 6103.

(B) Paragraph (4) of section 6103(p) of such Code, as amended by section 105(e)(3), is amended by striking "(l)(16), (17), or (19)" each place it appears and inserting "(l)(16), (17), (19), or (20)".

(C) Paragraph (2) of section 7213(a) of such Code, as amended by section 105(e)(4), is amended by striking "or (19)" and inserting "(19), or (20)". 26 USC 7213.

TITLE IX—ADMINISTRATIVE IMPROVEMENTS, REGULATORY REDUCTION, AND CONTRACTING REFORM

* * * * *

PUBLIC LAW 108-173 — DEC. 8, 2003 117 STAT. 2372

* * * * *

26 USC 6103.

(3) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—Section 6103(l)(12) of the Internal Revenue Code of 1986 is amended—

(A) in subparagraph (B), by striking "Health Care Financing Administration" in the matter preceding clause (i) and inserting "Centers for Medicare & Medicaid Services"; and

(B) in subparagraph (C)—

(i) by striking "HEALTH CARE FINANCING ADMINISTRATION" in the heading and inserting "CENTERS FOR MEDICARE & MEDICAID SERVICES"; and

(ii) by striking "Health Care Financing Administration" in the matter preceding clause (i) and inserting "Centers for Medicare & Medicaid Services".

(4) AMENDMENTS TO TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended—

(A) in section 1086(d)(4), by striking "administrator of the Health Care Financing Administration" in the last sentence and inserting "Administrator of the Centers for Medicare & Medicaid Services"; and

(B) in section 1095(k)(2), by striking "Health Care Financing Administration" in the second sentence and inserting "Centers for Medicare & Medicaid Services".

(5) AMENDMENTS TO THE ALZHEIMER'S DISEASE AND RELATED DEMENTIAS SERVICES RESEARCH ACT OF 1992.—The Alzheimer's Disease and Related Dementias Research Act of 1992 (42 U.S.C. 11271 et seq.) is amended—

(A) in the heading of subpart 3 of part D to read as follows:

"Subpart 3—Responsibilities of the Centers for Medicare & Medicaid Services";

(B) in section 937 (42 U.S.C. 11271)—

(i) in subsection (a), by striking "National Health Care Financing Administration" and inserting "Centers for Medicare & Medicaid Services";

(ii) in subsection (b)(1), by striking "Health Care Financing Administration" and inserting "Centers for Medicare & Medicaid Services";

(iii) in subsection (b)(2), by striking "Health Care Financing Administration" and inserting "Centers for Medicare & Medicaid Services"; and

(iv) in subsection (c), by striking "Health Care Financing Administration" and inserting "Centers for Medicare & Medicaid Services"; and

(C) in section 938 (42 U.S.C. 11272), by striking "Health Care Financing Administration" and inserting "Centers for Medicare & Medicaid Services".

(6) MISCELLANEOUS AMENDMENTS.—

(A) REHABILITATION ACT OF 1973.—Section 202(b)(8) of the Rehabilitation Act of 1973 (29 U.S.C. 762(b)(8)) is amended by striking "Health Care Financing Administration" and inserting "Centers for Medicare & Medicaid Services".

(B) INDIAN HEALTH CARE IMPROVEMENT ACT.—Section 405(d)(1) of the Indian Health Care Improvement Act (25 U.S.C. 1645(d)(1)) is amended by striking "Health Care Financing Administration" in the matter preceding subparagraph (A) and inserting "Centers for Medicare & Medicaid Services".

(C) INDIVIDUALS WITH DISABILITIES EDUCATION ACT.—Section 644(b)(5) of the Individuals with Disabilities Education Act (20 U.S.C. 1444(b)(5)) is amended by striking "Health Care Financing Administration" and inserting "Centers for Medicare & Medicaid Services".

(D) THE HOME HEALTH CARE AND ALZHEIMER'S DISEASE AMENDMENTS OF 1990.—Section 302(a)(9) of the Home Health Care and Alzheimer's Disease Amendments of 1990 (42 U.S.C. 242q–1(a)(9)) is amended by striking "Health

Care Financing Administration" and inserting "Centers Medicare & Medicaid Services".

(E) THE CHILDREN'S HEALTH ACT OF 2000.—Sect 2503(a) of the Children's Health Act of 2000 (42 U.S 247b–3a(a)) is amended by striking "Health Care Financ Administration" and inserting "Centers for Medicare Medicaid Services".

(F) THE NATIONAL INSTITUTES OF HEALTH REVITALI TION ACT OF 1993.—Section 1909 of the National Institu of Health Revitalization Act of 1993 (42 U.S.C. 299a no is amended by striking "Health Care Financing Administ tion" and inserting "Centers for Medicare & Medicaid Se ices".

(G) THE OMNIBUS BUDGET RECONCILIATION ACT 1990.—Section 4359(d) of the Omnibus Budget Reconc ation Act of 1990 (42 U.S.C. 1395b–3(d)) is amended striking "Health Care Financing Administration" a inserting "Centers for Medicare & Medicaid Services".

(H) THE MEDICARE, MEDICAID, AND SCHIP BENEFI IMPROVEMENT AND PROTECTION ACT OF 2000.—Secti 104(d)(4) of the Medicare, Medicaid, and SCHIP Benef Improvement and Protection Act of 2000 (42 U.S.C. 1395 note) is amended by striking "Health Care Financi Administration" and inserting "Health Care".

(7) ADDITIONAL AMENDMENT.—Section 403 of the Act en tled, "An Act to authorize certain appropriations for the ter tories of the United States, to amend certain Acts relati thereto, and for other purposes", enacted October 15, 19 (48 U.S.C. 1574–1; 48 U.S.C. 1421q–1), is amended by striki "Health Care Financing Administration" and inserting "Cente for Medicare & Medicaid Services".

* * * * *

TITLE XII—TAX INCENTIVES FOR HEALTH AND RETIREMENT SECURI

SEC. 1201. HEALTH SAVINGS ACCOUNTS.

(a) IN GENERAL.—Part VII of subchapter B of chapter the Internal Revenue Code of 1986 (relating to additional iten deductions for individuals) is amended by redesignating se 223 as section 224 and by inserting after section 222 the follo new section:

"SEC. 223. HEALTH SAVINGS ACCOUNTS.

"(a) DEDUCTION ALLOWED.—In the case of an individual is an eligible individual for any month during the taxable there shall be allowed as a deduction for the taxable yea amount equal to the aggregate amount paid in cash during taxable year by or on behalf of such individual to a health sav account of such individual.

"(b) LIMITATIONS.—

"(1) IN GENERAL.—The amount allowable as a deduc under subsection (a) to an individual for the taxable year s not exceed the sum of the monthly limitations for mo during such taxable year that the individual is an elig

"(A) in the case of an eligible individual who has self-only coverage under a high deductible health plan as of the first day of such month, the lesser of—

"(i) the annual deductible under such coverage, or

"(ii) $2,250, or

"(B) in the case of an eligible individual who has family coverage under a high deductible health plan as of the first day of such month, the lesser of—

"(i) the annual deductible under such coverage, or

"(ii) $4,500.

"(3) ADDITIONAL CONTRIBUTIONS FOR INDIVIDUALS 55 OR OLDER.—

"(A) IN GENERAL.—In the case of an individual who has attained age 55 before the close of the taxable year, the applicable limitation under subparagraphs (A) and (B) of paragraph (2) shall be increased by the additional contribution amount.

"(B) ADDITIONAL CONTRIBUTION AMOUNT.—For purposes of this section, the additional contribution amount is the amount determined in accordance with the following table:

"For taxable years beginning in:	The additional contribution amount is:
2004	$500
2005	$600
2006	$700
2007	$800
2008	$900
2009 and thereafter	$1,000.

"(4) COORDINATION WITH OTHER CONTRIBUTIONS.—The limitation which would (but for this paragraph) apply under this subsection to an individual for any taxable year shall be reduced (but not below zero) by the sum of—

"(A) the aggregate amount paid for such taxable year to Archer MSAs of such individual, and

"(B) the aggregate amount contributed to health savings accounts of such individual which is excludable from the taxpayer's gross income for such taxable year under section 106(d) (and such amount shall not be allowed as a deduction under subsection (a)).

Subparagraph (A) shall not apply with respect to any individual to whom paragraph (5) applies.

"(5) SPECIAL RULE FOR MARRIED INDIVIDUALS.—In the case of individuals who are married to each other, if either spouse has family coverage—

"(A) both spouses shall be treated as having only such family coverage (and if such spouses each have family coverage under different plans, as having the family coverage with the lowest annual deductible), and

"(B) the limitation under paragraph (1) (after the application of subparagraph (A) and without regard to any additional contribution amount under paragraph (3))—

"(i) shall be reduced by the aggregate amount paid to Archer MSAs of such spouses for the taxable year, and

"(ii) after such reduction, shall be divided equally between them unless they agree on a different division.

"(6) DENIAL OF DEDUCTION TO DEPENDENTS.—No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

"(7) MEDICARE ELIGIBLE INDIVIDUALS.—The limitation under this subsection for any month with respect to an individual shall be zero for the first month such individual is entitled to benefits under title XVIII of the Social Security Act and for each month thereafter.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—

"(A) IN GENERAL.—The term 'eligible individual' means, with respect to any month, any individual if—

"(i) such individual is covered under a high deductible health plan as of the 1st day of such month, and

"(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan—

"(I) which is not a high deductible health plan, and

"(II) which provides coverage for any benefit which is covered under the high deductible health plan.

"(B) CERTAIN COVERAGE DISREGARDED.—Subparagraph (A)(ii) shall be applied without regard to—

"(i) coverage for any benefit provided by permitted insurance, and

"(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

"(2) HIGH DEDUCTIBLE HEALTH PLAN.—

"(A) IN GENERAL.—The term 'high deductible health plan' means a health plan—

"(i) which has an annual deductible which is not less than—

"(I) $1,000 for self-only coverage, and

"(II) twice the dollar amount in subclause (I) for family coverage, and

"(ii) the sum of the annual deductible and the other annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed—

"(I) $5,000 for self-only coverage, and

"(II) twice the dollar amount in subclause (I) for family coverage.

"(B) EXCLUSION OF CERTAIN PLANS.—Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

"(C) SAFE HARBOR FOR ABSENCE OF PREVENTIVE CARE DEDUCTIBLE.—A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of section 1871 of the Social Security Act, except as otherwise provided by the Secretary).

"(D) SPECIAL RULES FOR NETWORK PLANS.—In the case of a plan using a network of providers—

"(i) ANNUAL OUT-OF-POCKET LIMITATION.—Such plan shall not fail to be treated as a high deductible health plan by reason of having an out-of-pocket limitation for services provided outside of such network which exceeds the applicable limitation under subparagraph (A)(ii).

"(ii) ANNUAL DEDUCTIBLE.—Such plan's annual deductible for services provided outside of such network shall not be taken into account for purposes of subsection (b)(2).

"(3) PERMITTED INSURANCE.—The term 'permitted insurance' means—

"(A) insurance if substantially all of the coverage provided under such insurance relates to—

"(i) liabilities incurred under workers' compensation laws,

"(ii) tort liabilities,

"(iii) liabilities relating to ownership or use of property, or

"(iv) such other similar liabilities as the Secretary may specify by regulations,

"(B) insurance for a specified disease or illness, and

"(C) insurance paying a fixed amount per day (or other period) of hospitalization.

"(4) FAMILY COVERAGE.—The term 'family coverage' means any coverage other than self-only coverage.

"(5) ARCHER MSA.—The term 'Archer MSA' has the meaning given such term in section 220(d).

"(d) HEALTH SAVINGS ACCOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'health savings account' means a trust created or organized in the United States as a health savings account exclusively for the purpose of paying the qualified medical expenses of the account beneficiary, but only if the written governing instrument creating the trust meets the following requirements:

"(A) Except in the case of a rollover contribution described in subsection (f)(5) or section 220(f)(5), no contribution will be accepted—

"(i) unless it is in cash, or

"(ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds the sum of—

"(I) the dollar amount in effect under subsection (b)(2)(B)(ii), and

"(II) the dollar amount in effect under subsection (b)(3)(B).

"(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of

the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

"(C) No part of the trust assets will be invested in life insurance contracts.

"(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(E) The interest of an individual in the balance in his account is nonforfeitable.

"(2) QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—The term 'qualified medical expenses' means, with respect to an account beneficiary, amounts paid by such beneficiary for medical care (as defined in section 213(d) for such individual, the spouse of such individual, and any dependent (as defined in section 152) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise.

"(B) HEALTH INSURANCE MAY NOT BE PURCHASED FROM ACCOUNT.—Subparagraph (A) shall not apply to any payment for insurance.

"(C) EXCEPTIONS.—Subparagraph (B) shall not apply to any expense for coverage under—

"(i) a health plan during any period of continuation coverage required under any Federal law,

"(ii) a qualified long-term care insurance contract (as defined in section 7702B(b)),

"(iii) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law, or

"(iv) in the case of an account beneficiary who has attained the age specified in section 1811 of the Social Security Act, any health insurance other than a medicare supplemental policy (as defined in section 1882 of the Social Security Act).

"(3) ACCOUNT BENEFICIARY.—The term 'account beneficiary' means the individual on whose behalf the health savings account was established.

"(4) CERTAIN RULES TO APPLY.—Rules similar to the following rules shall apply for purposes of this section:

"(A) Section 219(d)(2) (relating to no deduction for rollovers).

"(B) Section 219(f)(3) (relating to time when contributions deemed made).

"(C) Except as provided in section 106(d), section 219(f)(5) (relating to employer payments).

"(D) Section 408(g) (relating to community property laws).

"(E) Section 408(h) (relating to custodial accounts).

"(e) TAX TREATMENT OF ACCOUNTS.—

"(1) IN GENERAL.—A health savings account is exempt from taxation under this subtitle unless such account has ceased to be a health savings account. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

"(2) ACCOUNT TERMINATIONS.—Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to health savings accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

"(f) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) AMOUNTS USED FOR QUALIFIED MEDICAL EXPENSES.—Any amount paid or distributed out of a health savings account which is used exclusively to pay qualified medical expenses of any account beneficiary shall not be includible in gross income.

"(2) INCLUSION OF AMOUNTS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—Any amount paid or distributed out of a health savings account which is not used exclusively to pay the qualified medical expenses of the account beneficiary shall be included in the gross income of such beneficiary.

"(3) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—

"(A) IN GENERAL.—If any excess contribution is contributed for a taxable year to any health savings account of an individual, paragraph (2) shall not apply to distributions from the health savings accounts of such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if—

"(i) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

"(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the individual for the taxable year in which it is received.

"(B) EXCESS CONTRIBUTION.—For purposes of subparagraph (A), the term 'excess contribution' means any contribution (other than a rollover contribution described in paragraph (5) or section 220(f)(5)) which is neither excludable from gross income under section 106(d) nor deductible under this section.

"(4) ADDITIONAL TAX ON DISTRIBUTIONS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—The tax imposed by this chapter on the account beneficiary for any taxable year in which there is a payment or distribution from a health savings account of such beneficiary which is includible in gross income under paragraph (2) shall be increased by 10 percent of the amount which is so includible.

"(B) EXCEPTION FOR DISABILITY OR DEATH.—Subparagraph (A) shall not apply if the payment or distribution is made after the account beneficiary becomes disabled within the meaning of section 72(m)(7) or dies.

"(C) EXCEPTION FOR DISTRIBUTIONS AFTER MEDICARE ELIGIBILITY.—Subparagraph (A) shall not apply to any payment or distribution after the date on which the account

beneficiary attains the age specified in section 1811 of the Social Security Act.

"(5) ROLLOVER CONTRIBUTION.—An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

"(A) IN GENERAL.—Paragraph (2) shall not apply to any amount paid or distributed from a health savings account to the account beneficiary to the extent the amount received is paid into a health savings account for the benefit of such beneficiary not later than the 60th day after the day on which the beneficiary receives the payment or distribution.

"(B) LIMITATION.—This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from a health savings account if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from a health savings account which was not includible in the individual's gross income because of the application of this paragraph.

"(6) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—For purposes of determining the amount of the deduction under section 213, any payment or distribution out of a health savings account for qualified medical expenses shall not be treated as an expense paid for medical care.

"(7) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE.—The transfer of an individual's interest in a health savings account to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest shall, after such transfer, be treated as a health savings account with respect to which such spouse is the account beneficiary.

"(8) TREATMENT AFTER DEATH OF ACCOUNT BENEFICIARY.—

"(A) TREATMENT IF DESIGNATED BENEFICIARY IS SPOUSE.—If the account beneficiary's surviving spouse acquires such beneficiary's interest in a health savings account by reason of being the designated beneficiary of such account at the death of the account beneficiary, such health savings account shall be treated as if the spouse were the account beneficiary.

"(B) OTHER CASES.—

"(i) IN GENERAL.—If, by reason of the death of the account beneficiary, any person acquires the account beneficiary's interest in a health savings account in a case to which subparagraph (A) does not apply—

"(I) such account shall cease to be a health savings account as of the date of death, and

"(II) an amount equal to the fair market value of the assets in such account on such date shall be includible if such person is not the estate of such beneficiary, in such person's gross income for the taxable year which includes such date, or if such person is the estate of such beneficiary,

in such beneficiary's gross income for the last taxable year of such beneficiary.

"(ii) SPECIAL RULES.—

"(I) REDUCTION OF INCLUSION FOR PREDEATH EXPENSES.—The amount includible in gross income under clause (i) by any person (other than the estate) shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within 1 year after such date.

"(II) DEDUCTION FOR ESTATE TAXES.—An appropriate deduction shall be allowed under section 691(c) to any person (other than the decedent or the decedent's spouse) with respect to amounts included in gross income under clause (i) by such person.

"(g) COST-OF-LIVING ADJUSTMENT.—

"(1) IN GENERAL.—Each dollar amount in subsections (b)(2) and (c)(2)(A) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins determined by substituting for 'calendar year 1992' in subparagraph (B) thereof—

"(i) except as provided in clause (ii), 'calendar year 1997', and

"(ii) in the case of each dollar amount in subsection (c)(2)(A), 'calendar year 2003'.

"(2) ROUNDING.—If any increase under paragraph (1) is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

"(h) REPORTS.—The Secretary may require—

"(1) the trustee of a health savings account to make such reports regarding such account to the Secretary and to the account beneficiary with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary determines appropriate, and

"(2) any person who provides an individual with a high deductible health plan to make such reports to the Secretary and to the account beneficiary with respect to such plan as the Secretary determines appropriate.

The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.".

(b) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 of such Code is amended by inserting after paragraph (18) the following new paragraph:

26 USC 62.

"(19) HEALTH SAVINGS ACCOUNTS.—The deduction allowed by section 223.".

(c) ROLLOVERS FROM ARCHER MSAS PERMITTED.—Subparagraph (A) of section 220(f)(5) of such Code (relating to rollover contribution) is amended by inserting "or a health savings account (as defined in section 223(d))" after "paid into an Archer MSA".

26 USC 220.

(d) EXCLUSIONS FOR EMPLOYER CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS.—

(1) EXCLUSION FROM INCOME TAX.—Section 106 of such Code (relating to contributions by employer to accident and health plans) is amended by adding at the end the following new subsection:

26 USC 106.

"(d) CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS.—

"(1) IN GENERAL.—In the case of an employee who is an eligible individual (as defined in section 223(c)(1)), amounts contributed by such employee's employer to any health savings account (as defined in section 223(d)) of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under section 223(b) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

"(2) SPECIAL RULES.—Rules similar to the rules of paragraphs (2), (3), (4), and (5) of subsection (b) shall apply for purposes of this subsection.

"(3) CROSS REFERENCE.—

"For penalty on failure by employer to make comparable contributions to the health savings accounts of comparable employees, see section 4980G.".

(2) EXCLUSION FROM EMPLOYMENT TAXES.—

(A) RAILROAD RETIREMENT TAX.—Subsection (e) of section 3231 of such Code is amended by adding at the end the following new paragraph:

26 USC 3231.

"(11) HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.—The term 'compensation' shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).".

(B) UNEMPLOYMENT TAX.—Subsection (b) of section 3306 of such Code is amended by striking "or" at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting "; or", and by inserting after paragraph (17) the following new paragraph:

26 USC 3306.

"(18) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).".

(C) WITHHOLDING TAX.—Subsection (a) of section 3401 of such Code is amended by striking "or" at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting "; or", and by inserting after paragraph (21) the following new paragraph:

26 USC 3401.

"(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).".

(3) EMPLOYER CONTRIBUTIONS REQUIRED TO BE SHOWN ON W–2.—Subsection (a) of section 6051 of such Code is amended by striking "and" at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting ", and", and by inserting after paragraph (11) the following new paragraph:

26 USC 6051.

"(12) the amount contributed to any health savings account (as defined in section 223(d)) of such employee or such employee's spouse.".

(4) PENALTY FOR FAILURE OF EMPLOYER TO MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.—

(A) IN GENERAL.—Chapter 43 of such Code is amended by adding after section 4980F the following new section:

26 USC 4980G.

"SEC. 4980G. FAILURE OF EMPLOYER TO MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.

"(a) GENERAL RULE.—In the case of an employer who makes a contribution to the health savings account of any employee during a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (b) for such calendar year.

"(b) RULES AND REQUIREMENTS.—Rules and requirements similar to the rules and requirements of section 4980E shall apply for purposes of this section.

"(c) REGULATIONS.—The Secretary shall issue regulations to carry out the purposes of this section, including regulations providing special rules for employers who make contributions to Archer MSAs and health savings accounts during the calendar year.".

(B) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding after the item relating to section 4980F the following new item:

"Sec. 4980G. Failure of employer to make comparable health savings account contributions.".

26 USC 4973.

(e) TAX ON EXCESS CONTRIBUTIONS.—Section 4973 of such Code (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended—

(1) by striking "or" at the end of subsection (a)(3), by inserting "or" at the end of subsection (a)(4), and by inserting after subsection (a)(4) the following new paragraph:

"(5) a health savings account (within the meaning of section 223(d)),", and

(2) by adding at the end the following new subsection:

"(g) EXCESS CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS.— For purposes of this section, in the case of health savings accounts (within the meaning of section 223(d)), the term 'excess contributions' means the sum of—

"(1) the aggregate amount contributed for the taxable year to the accounts (other than a rollover contribution described in section 220(f)(5) or 223(f)(5)) which is neither excludable from gross income under section 106(d) nor allowable as a deduction under section 223 for such year, and

"(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

"(A) the distributions out of the accounts which were included in gross income under section 223(f)(2), and

"(B) the excess (if any) of—

"(i) the maximum amount allowable as a deduction under section 223(b) (determined without regard to section 106(d)) for the taxable year, over

"(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the health savings account in a distribution to which section 223(f)(3) applies shall be treated as an amount not contributed.".

(f) TAX ON PROHIBITED TRANSACTIONS.—

(1) Section 4975 of such Code (relating to tax on prohibited transactions) is amended by adding at the end of subsection (c) the following new paragraph: 26 USC 4975.

"(6) SPECIAL RULE FOR HEALTH SAVINGS ACCOUNTS.—An individual for whose benefit a health savings account (within the meaning of section 223(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a health savings account by reason of the application of section 223(e)(2) to such account.".

(2) Paragraph (1) of section 4975(e) of such Code 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) a health savings account described in section 223(d),".

(g) FAILURE TO PROVIDE REPORTS ON HEALTH SAVINGS ACCOUNTS.—Paragraph (2) of section 6693(a) of such Code (relating to reports) is amended by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following new subparagraph: 26 USC 6693.

"(C) section 223(h) (relating to health savings accounts),".

(h) EXCEPTION FROM CAPITALIZATION OF POLICY ACQUISITION EXPENSES.—Subparagraph (B) of section 848(e)(1) of such Code (defining specified insurance contract) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by adding at the end the following new clause: 26 USC 848.

"(v) any contract which is a health savings account (as defined in section 223(d)).".

(i) HEALTH SAVINGS ACCOUNTS MAY BE OFFERED UNDER CAFETERIA PLANS.—Paragraph (2) of section 125(d) (relating to cafeteria plan defined) is amended by adding at the end the following new subparagraph: 26 USC 125.

"(D) EXCEPTION FOR HEALTH SAVINGS ACCOUNTS.—Subparagraph (A) shall not apply to a plan to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a health savings account established on behalf of the employee.".

(j) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following:

"Sec. 223. Health savings accounts.
"Sec. 224. Cross reference.".

(k) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003. 26 USC 62 note

SEC. 1202. EXCLUSION FROM GROSS INCOME OF CERTAIN FEDERAL SUBSIDIES FOR PRESCRIPTION DRUG PLANS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139 the following new section:

26 USC 139A.

"SEC. 139A. FEDERAL SUBSIDIES FOR PRESCRIPTION DRUG PLANS.

"Gross income shall not include any special subsidy payment received under section 1860D–22 of the Social Security Act. This section shall not be taken into account for purposes of determining whether any deduction is allowable with respect to any cost taken into account in determining such payment.".

26 USC 56.

(b) ALTERNATIVE MINIMUM TAX RELIEF.—Section 56(g)(4)(B) of such Code is amended by inserting "or 139A" after "section 114".

(c) CONFORMING AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139 the following new item:

"Sec. 139A. Federal subsidies for prescription drug plans.".

26 USC 56 note.

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

SEC. 1203. EXCEPTION TO INFORMATION REPORTING REQUIREMENTS RELATED TO CERTAIN HEALTH ARRANGEMENTS.

26 USC 6041.

(a) IN GENERAL.—Section 6041 of the Internal Revenue Code of 1986 (relating to information at source) is amended by adding at the end the following new subsection:

"(f) SECTION DOES NOT APPLY TO CERTAIN HEALTH ARRANGEMENTS.—This section shall not apply to any payment for medical care (as defined in section 213(d)) made under—

"(1) a flexible spending arrangement (as defined in section 106(c)(2)), or

"(2) a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of section 106.".

26 USC 6041 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2002.

Approved December 8, 2003.

LEGISLATIVE HISTORY—H.R. 1 (S. 1):

HOUSE REPORTS: No. 108–391 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 149 (2003):
June 26, considered and passed House.
July 7, considered and passed Senate, amended, in lieu of S. 1.
Nov. 21, House agreed to conference report.
Nov. 25, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 39 (2003):
Dec. 8, Presidential remarks and statement.

VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT

Public Law 108–176
108th Congress

An Act

Dec. 12, 2003
[H.R. 2115]

To amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Vision 100—Century of Aviation Reauthorization Act.
49 USC 40101 note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Vision 100—Century of Aviation Reauthorization Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

* * * * *

TITLE IX—EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

Sec. 901. Extension of expenditure authority.
Sec. 902. Technical correction to flight segment.

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TITLE IX—EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

SEC. 901. EXTENSION OF EXPENDITURE AUTHORITY.

(a) IN GENERAL.—Paragraph (1) of section 9502(d) of the Internal Revenue Code of 1986 (relating to expenditures from Airport and Airway Trust Fund) is amended—

26 USC 9502.

(1) by striking "October 1, 2003" and inserting "October 1, 2007", and

(2) by inserting before the semicolon at the end of subpar graph (A) the following: "or the Vision 100—Century of Aviati Reauthorization Act".

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 9502 of the Internal Revenue Code of 1986 is amended by striki "October 1, 2003" and inserting "October 1, 2007".

SEC. 902. TECHNICAL CORRECTION TO FLIGHT SEGMENT.

26 USC 4261.

(a) SPECIAL RULE.—Section 4261(e)(4) of the Internal Reven Code of 1986 is amended by adding at the end the following ne subparagraph:

"(D) SPECIAL RULE FOR AMOUNTS PAID FOR DOMEST SEGMENTS BEGINNING AFTER 2002.—If an amount is pa during a calendar year for a domestic segment beginni in a later calendar year, then the rate of tax under su section (b) on such amount shall be the rate in effe for the calendar year in which such amount is paid

26 USC 4261 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (shall take effect as if included in the provisions of the Taxpay Relief Act of 1997 to which they relate.

Approved December 12, 2003.

LEGISLATIVE HISTORY—H.R. 2115 (S. 824):

HOUSE REPORTS: Nos. 108–143 (Comm. on Transportation and Infrastructur and 108–240 and 108–334 (both from Comm. of Conference).
SENATE REPORTS: No. 108–41 accompanying S. 824 (Comm. on Commerc Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 149 (2003):
June 11, considered and passed House.
June 12, considered and passed Senate, amended, in lieu of S. 824.
Oct. 28, House recommitted conference report pursuant to H. Res. 337.
Oct. 30, House agreed to conference report.
Nov. 21, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 39 (2003):
Dec. 12, Presidential statement.

108TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 108–391

MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003

NOVEMBER 21, (legislative day, NOVEMBER 20), 2003.—Ordered to be printed

Mr. THOMAS, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 1]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1), to amend title XVIII of the Social Security Act to provide for a voluntary program for prescription drug coverage under the Medicare Program, to modernize the Medicare Program, to amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings security accounts and health savings accounts, to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following.

SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECURITY ACT; REFERENCES TO BIPA AND SECRETARY; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Medicare Prescription Drug, Improvement, and Modernization Act of 2003".

(b) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in division A of this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(c) BIPA; SECRETARY.—In this Act:

90–299

(1) BIPA.—The term "BIPA" means the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted into law by section 1(a)(6) of Public Law 106–554.

(2) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(d) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; amendments to Social Security Act; references to BIPA and Secretary; table of contents.

TITLE I—MEDICARE PRESCRIPTION DRUG BENEFIT

Sec. 101. Medicare prescription drug benefit.

* * * * *

Sec. 105. Additional provisions relating to medicare prescription drug discount card and transitional assistance program.

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(e) ADDITIONAL CONFORMING CHANGES.—

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(6) DISCLOSURE.—Section 6103(l)(7)(D)(ii) of the Internal Revenue Code of 1986 is amended by inserting "or subsidies provided under section 1860D–14 of such Act" after "Social Security Act".

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SEC. 105. ADDITIONAL PROVISIONS RELATING TO MEDICARE PRESCRIPTION DRUG DISCOUNT CARD AND TRANSITIONAL ASSISTANCE PROGRAM.

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(e) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF PROVIDING TRANSITIONAL ASSISTANCE UNDER MEDICARE DISCOUNT CARD PROGRAM.—

(1) IN GENERAL.—Subsection (l) of section 6103 of the Internal Revenue Code of 1986 (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

"(19) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF PROVIDING TRANSITIONAL ASSISTANCE UNDER MEDICARE DISCOUNT CARD PROGRAM.—

"(A) IN GENERAL.—The Secretary, upon written request from the Secretary of Health and Human Services pursuant to carrying out section 1860D–31 of the Social Security Act, shall disclose to officers, employees, and contractors of the Department of Health and Human Services with respect to a taxpayer for the applicable year—

"(i)(I) whether the adjusted gross income, as modified in accordance with specifications of the Secretary of Health and Human Services for purposes of carrying out such section, of such taxpayer and, if applicable, such taxpayer's spouse, for the applicable year, exceeds the amounts specified by the Secretary of Health and Human Services in order to apply the 100 and 135 percent of the poverty lines under such section, (II) whether the return was a joint return, and (III) the applicable year, or

"(ii) if applicable, the fact that there is no return filed for such taxpayer for the applicable year.

"(B) DEFINITION OF APPLICABLE YEAR.—For the purposes of this subsection, the term 'applicable year' means the most recent taxable year for which information is available in the Internal Revenue Service's taxpayer data information systems, or, if there is no return filed for such taxpayer for such year, the prior taxable year.

"(C) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information disclosed under this paragraph may be used only for the purposes of determining eligibility for and administering transitional assistance under section 1860D–31 of the Social Security Act."

(2) CONFIDENTIALITY.—Paragraph (3) of section 6103(a) of such Code is amended by striking "or (16)" and inserting "(16), or (19)".

(3) PROCEDURES AND RECORDKEEPING RELATED TO DISCLOSURES.—Subsection (p)(4) of section 6103 of such Code is amended by striking "(l)(16) or (17)" each place it appears and inserting "(l)(16), (17), or (19)".

(4) UNAUTHORIZED DISCLOSURE OR INSPECTION.—Paragraph (2) of section 7213(a) of such Code is amended by striking "or (16)" and inserting "(16), or (19)".

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TITLE XII—TAX INCENTIVES FOR HEALTH AND RETIREMENT SECURITY

SEC. 1201. HEALTH SAVINGS ACCOUNTS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 223 as section 224 and by inserting after section 222 the following new section:

"SEC. 223. HEALTH SAVINGS ACCOUNTS.

"(a) DEDUCTION ALLOWED.—In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by or on behalf of such individual to a health savings account of such individual.

"(b) LIMITATIONS.—

"(1) IN GENERAL.—The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the sum of the monthly limitations for months during such taxable year that the individual is an eligible individual.

"(2) MONTHLY LIMITATION.—The monthly limitation for any month is $^{1}/_{12}$ of—

"(A) in the case of an eligible individual who has self-only coverage under a high deductible health plan as of the first day of such month, the lesser of—

"(i) the annual deductible under such coverage, or

"(ii) $2,250, or

"(B) in the case of an eligible individual who has family coverage under a high deductible health plan as of the first day of such month, the lesser of—

"(i) the annual deductible under such coverage, or

"(ii) $4,500.

"(3) ADDITIONAL CONTRIBUTIONS FOR INDIVIDUALS 55 OR OLDER.—

"(A) IN GENERAL.—In the case of an individual who has attained age 55 before the close of the taxable year, the applicable limitation under subparagraphs (A) and (B) of

paragraph (2) shall be increased by the additional contribution amount.

"(B) ADDITIONAL CONTRIBUTION AMOUNT.—For purposes of this section, the additional contribution amount is the amount determined in accordance with the following table:

"For taxable years beginning in:	*The additional contribution amount is:*
2004	*$500*
2005	*$600*
2006	*$700*
2007	*$800*
2008	*$900*
2009 and thereafter	*$1,000.*

"(4) COORDINATION WITH OTHER CONTRIBUTIONS.—The limitation which would (but for this paragraph) apply under this subsection to an individual for any taxable year shall be reduced (but not below zero) by the sum of—

"(A) the aggregate amount paid for such taxable year to Archer MSAs of such individual, and

"(B) the aggregate amount contributed to health savings accounts of such individual which is excludable from the taxpayer's gross income for such taxable year under section 106(d) (and such amount shall not be allowed as a deduction under subsection (a)).

Subparagraph (A) shall not apply with respect to any individual to whom paragraph (5) applies.

"(5) SPECIAL RULE FOR MARRIED INDIVIDUALS.—In the case of individuals who are married to each other, if either spouse has family coverage—

"(A) both spouses shall be treated as having only such family coverage (and if such spouses each have family coverage under different plans, as having the family coverage with the lowest annual deductible), and

"(B) the limitation under paragraph (1) (after the application of subparagraph (A) and without regard to any additional contribution amount under paragraph (3))—

"(i) shall be reduced by the aggregate amount paid to Archer MSAs of such spouses for the taxable year, and

"(ii) after such reduction, shall be divided equally between them unless they agree on a different division.

"(6) DENIAL OF DEDUCTION TO DEPENDENTS.—No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

"(7) MEDICARE ELIGIBLE INDIVIDUALS.—The limitation under this subsection for any month with respect to an individual shall be zero for the first month such individual is entitled to benefits under title XVIII of the Social Security Act and for each month thereafter.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—

"(A) IN GENERAL.—The term 'eligible individual' means, with respect to any month, any individual if—

"(i) such individual is covered under a high deductible health plan as of the 1st day of such month, and

"(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan—

"(I) which is not a high deductible health plan, and

"(II) which provides coverage for any benefit which is covered under the high deductible health plan.

"(B) CERTAIN COVERAGE DISREGARDED.—Subparagraph (A)(ii) shall be applied without regard to—

"(i) coverage for any benefit provided by permitted insurance, and

"(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

"(2) HIGH DEDUCTIBLE HEALTH PLAN.—

"(A) IN GENERAL.—The term 'high deductible health plan' means a health plan—

"(i) which has an annual deductible which is not less than—

"(I) $1,000 for self-only coverage, and

"(II) twice the dollar amount in subclause (I) for family coverage, and

"(ii) the sum of the annual deductible and the other annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed—

"(I) $5,000 for self-only coverage, and

"(II) twice the dollar amount in subclause (I) for family coverage.

"(B) EXCLUSION OF CERTAIN PLANS.—Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

"(C) SAFE HARBOR FOR ABSENCE OF PREVENTIVE CARE DEDUCTIBLE.—A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of section 1871 of the Social Security Act, except as otherwise provided by the Secretary).

"(D) SPECIAL RULES FOR NETWORK PLANS.—In the case of a plan using a network of providers—

"(i) ANNUAL OUT-OF-POCKET LIMITATION.—Such plan shall not fail to be treated as a high deductible health plan by reason of having an out-of-pocket limitation for services provided outside of such network which exceeds the applicable limitation under subparagraph (A)(ii).

"(ii) ANNUAL DEDUCTIBLE.—Such plan's annual deductible for services provided outside of such network

shall not be taken into account for purposes of subsection (b)(2).

"(3) PERMITTED INSURANCE.—The term 'permitted insurance' means—

"(A) insurance if substantially all of the coverage provided under such insurance relates to—

"(i) liabilities incurred under workers' compensation laws,

"(ii) tort liabilities,

"(iii) liabilities relating to ownership or use of property, or

"(iv) such other similar liabilities as the Secretary may specify by regulations,

"(B) insurance for a specified disease or illness, and

"(C) insurance paying a fixed amount per day (or other period) of hospitalization.

"(4) FAMILY COVERAGE.—The term 'family coverage' means any coverage other than self-only coverage.

"(5) ARCHER MSA.—The term 'Archer MSA' has the meaning given such term in section 220(d).

"(d) HEALTH SAVINGS ACCOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'health savings account' means a trust created or organized in the United States as a health savings account exclusively for the purpose of paying the qualified medical expenses of the account beneficiary, but only if the written governing instrument creating the trust meets the following requirements:

"(A) Except in the case of a rollover contribution described in subsection (f)(5) or section 220(f)(5), no contribution will be accepted—

"(i) unless it is in cash, or

"(ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds the sum of—

"(I) the dollar amount in effect under subsection (b)(2)(B)(ii), and

"(II) the dollar amount in effect under subsection (b)(3)(B).

"(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

"(C) No part of the trust assets will be invested in life insurance contracts.

"(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(E) The interest of an individual in the balance in his account is nonforfeitable.

"(2) QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—The term 'qualified medical expenses' means, with respect to an account beneficiary, amounts paid by such beneficiary for medical care (as de-

fined in section 213(d) for such individual, the spouse of such individual, and any dependent (as defined in section 152) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise.

"(B) HEALTH INSURANCE MAY NOT BE PURCHASED FROM ACCOUNT.—Subparagraph (A) shall not apply to any payment for insurance.

"(C) EXCEPTIONS.—Subparagraph (B) shall not apply to any expense for coverage under—

"(i) a health plan during any period of continuation coverage required under any Federal law,

"(ii) a qualified long-term care insurance contract (as defined in section 7702B(b)),

"(iii) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law, or

"(iv) in the case of an account beneficiary who has attained the age specified in section 1811 of the Social Security Act, any health insurance other than a medicare supplemental policy (as defined in section 1882 of the Social Security Act).

"(3) ACCOUNT BENEFICIARY.—The term 'account beneficiary' means the individual on whose behalf the health savings account was established.

"(4) CERTAIN RULES TO APPLY.—Rules similar to the following rules shall apply for purposes of this section:

"(A) Section 219(d)(2) (relating to no deduction for rollovers).

"(B) Section 219(f)(3) (relating to time when contributions deemed made).

"(C) Except as provided in section 106(d), section 219(f)(5) (relating to employer payments).

"(D) Section 408(g) (relating to community property laws).

"(E) Section 408(h) (relating to custodial accounts).

"(e) TAX TREATMENT OF ACCOUNTS.—

"(1) IN GENERAL.—A health savings account is exempt from taxation under this subtitle unless such account has ceased to be a health savings account. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

"(2) ACCOUNT TERMINATIONS.—Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to health savings accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

"(f) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) AMOUNTS USED FOR QUALIFIED MEDICAL EXPENSES.—Any amount paid or distributed out of a health savings account which is used exclusively to pay qualified medical expenses of any account beneficiary shall not be includible in gross income.

"(2) INCLUSION OF AMOUNTS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—Any amount paid or distributed out of a

health savings account which is not used exclusively to pay the qualified medical expenses of the account beneficiary shall be included in the gross income of such beneficiary.

"(3) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—

"(A) IN GENERAL.—If any excess contribution is contributed for a taxable year to any health savings account of an individual, paragraph (2) shall not apply to distributions from the health savings accounts of such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if—

"(i) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

"(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the individual for the taxable year in which it is received.

"(B) EXCESS CONTRIBUTION.—For purposes of subparagraph (A), the term 'excess contribution' means any contribution (other than a rollover contribution described in paragraph (5) or section 220(f)(5)) which is neither excludable from gross income under section 106(d) nor deductible under this section.

"(4) ADDITIONAL TAX ON DISTRIBUTIONS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—The tax imposed by this chapter on the account beneficiary for any taxable year in which there is a payment or distribution from a health savings account of such beneficiary which is includible in gross income under paragraph (2) shall be increased by 10 percent of the amount which is so includible.

"(B) EXCEPTION FOR DISABILITY OR DEATH.—Subparagraph (A) shall not apply if the payment or distribution is made after the account beneficiary becomes disabled within the meaning of section 72(m)(7) or dies.

"(C) EXCEPTION FOR DISTRIBUTIONS AFTER MEDICARE ELIGIBILITY.—Subparagraph (A) shall not apply to any payment or distribution after the date on which the account beneficiary attains the age specified in section 1811 of the Social Security Act.

"(5) ROLLOVER CONTRIBUTION.—An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

"(A) IN GENERAL.—Paragraph (2) shall not apply to any amount paid or distributed from a health savings account to the account beneficiary to the extent the amount received is paid into a health savings account for the benefit of such beneficiary not later than the 60th day after the day on which the beneficiary receives the payment or distribution.

"(B) LIMITATION.—This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from a health savings account if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from a health savings account which was not includible in the individual's gross income because of the application of this paragraph.

"(6) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—For purposes of determining the amount of the deduction under section 213, any payment or distribution out of a health savings account for qualified medical expenses shall not be treated as an expense paid for medical care.

"(7) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE.—The transfer of an individual's interest in a health savings account to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest shall, after such transfer, be treated as a health savings account with respect to which such spouse is the account beneficiary.

"(8) TREATMENT AFTER DEATH OF ACCOUNT BENEFICIARY.—

"(A) TREATMENT IF DESIGNATED BENEFICIARY IS SPOUSE.—If the account beneficiary's surviving spouse acquires such beneficiary's interest in a health savings account by reason of being the designated beneficiary of such account at the death of the account beneficiary, such health savings account shall be treated as if the spouse were the account beneficiary.

"(B) OTHER CASES.—

"(i) IN GENERAL.— If, by reason of the death of the account beneficiary, any person acquires the account beneficiary's interest in a health savings account in a case to which subparagraph (A) does not apply—

"(I) such account shall cease to be a health savings account as of the date of death, and

"(II) an amount equal to the fair market value of the assets in such account on such date shall be includible if such person is not the estate of such beneficiary, in such person's gross income for the taxable year which includes such date, or if such person is the estate of such beneficiary, in such beneficiary's gross income for the last taxable year of such beneficiary.

"(ii) SPECIAL RULES.—

"(I) REDUCTION OF INCLUSION FOR PREDEATH EXPENSES.—The amount includible in gross income under clause (i) by any person (other than the estate) shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within 1 year after such date.

"(II) DEDUCTION FOR ESTATE TAXES.— An appropriate deduction shall be allowed under section 691(c) to any person (other than the decedent or the decedent's spouse) with respect to amounts included in gross income under clause (i) by such person.

"(g) COST-OF-LIVING ADJUSTMENT.—

"(1) IN GENERAL.—Each dollar amount in subsections (b)(2) and (c)(2)(A) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins determined by substituting for 'calendar year 1992' in subparagraph (B) thereof—

"(i) except as provided in clause (ii), 'calendar year 1997', and

"(ii) in the case of each dollar amount in subsection (c)(2)(A), 'calendar year 2003'.

"(2) ROUNDING.—If any increase under paragraph (1) is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

"(h) REPORTS.—The Secretary may require—

"(1) the trustee of a health savings account to make such reports regarding such account to the Secretary and to the account beneficiary with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary determines appropriate, and

"(2) any person who provides an individual with a high deductible health plan to make such reports to the Secretary and to the account beneficiary with respect to such plan as the Secretary determines appropriate.

The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.".

(b) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 of such Code is amended by inserting after paragraph (18) the following new paragraph:

"(19) HEALTH SAVINGS ACCOUNTS.—The deduction allowed by section 223.".

(c) ROLLOVERS FROM ARCHER MSAs PERMITTED.—Subparagraph (A) of section 220(f)(5) of such Code (relating to rollover contribution) is amended by inserting "or a health savings account (as defined in section 223(d))" after "paid into an Archer MSA".

(d) EXCLUSIONS FOR EMPLOYER CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS.—

(1) EXCLUSION FROM INCOME TAX.—Section 106 of such Code (relating to contributions by employer to accident and health plans) is amended by adding at the end the following new subsection:

"(d) CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS.—

"(1) IN GENERAL.—In the case of an employee who is an eligible individual (as defined in section 223(c)(1)), amounts contributed by such employee's employer to any health savings account (as defined in section 223(d)) of such employee shall be

treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under section 223(b) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

"(2) SPECIAL RULES.—Rules similar to the rules of paragraphs (2), (3), (4), and (5) of subsection (b) shall apply for purposes of this subsection.

"(3) CROSS REFERENCE.—

"For penalty on failure by employer to make comparable contributions to the health savings accounts of comparable employees, see section 4980G.".

(2) EXCLUSION FROM EMPLOYMENT TAXES.—

(A) RAILROAD RETIREMENT TAX.—Subsection (e) of section 3231 of such Code is amended by adding at the end the following new paragraph:

"(11) HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.—The term 'compensation' shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).".

(B) UNEMPLOYMENT TAX.—Subsection (b) of section 3306 of such Code is amended by striking "or" at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting "; or", and by inserting after paragraph (17) the following new paragraph:

"(18) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).".

(C) WITHHOLDING TAX.—Subsection (a) of section 3401 of such Code is amended by striking "or" at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting "; or", and by inserting after paragraph (21) the following new paragraph:

"(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).".

(3) EMPLOYER CONTRIBUTIONS REQUIRED TO BE SHOWN ON W–2.—Subsection (a) of section 6051 of such Code is amended by striking "and" at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting ", and", and by inserting after paragraph (11) the following new paragraph:

"(12) the amount contributed to any health savings account (as defined in section 223(d)) of such employee or such employee's spouse.".

(4) PENALTY FOR FAILURE OF EMPLOYER TO MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.—

(A) IN GENERAL.—Chapter 43 of such Code is amended by adding after section 4980F the following new section:

"SEC. 4980G. FAILURE OF EMPLOYER TO MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.

"(a) GENERAL RULE.—In the case of an employer who makes a contribution to the health savings account of any employee during

a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (b) for such calendar year.

"(b) RULES AND REQUIREMENTS.—Rules and requirements similar to the rules and requirements of section 4980E shall apply for purposes of this section.

"(c) REGULATIONS.—The Secretary shall issue regulations to carry out the purposes of this section, including regulations providing special rules for employers who make contributions to Archer MSAs and health savings accounts during the calendar year.".

(B) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding after the item relating to section 4980F the following new item:

"Sec. 4980G. Failure of employer to make comparable health savings account contributions.".

(e) TAX ON EXCESS CONTRIBUTIONS.—Section 4973 of such Code (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended—

(1) by striking "or" at the end of subsection (a)(3), by inserting "or" at the end of subsection (a)(4), and by inserting after subsection (a)(4) the following new paragraph:

"(5) a health savings account (within the meaning of section 223(d)),", and

(2) by adding at the end the following new subsection:

"(g) EXCESS CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS.—For purposes of this section, in the case of health savings accounts (within the meaning of section 223(d)), the term 'excess contributions' means the sum of—

"(1) the aggregate amount contributed for the taxable year to the accounts (other than a rollover contribution described in section 220(f)(5) or 223(f)(5)) which is neither excludable from gross income under section 106(d) nor allowable as a deduction under section 223 for such year, and

"(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

"(A) the distributions out of the accounts which were included in gross income under section 223(f)(2), and

"(B) the excess (if any) of—

"(i) the maximum amount allowable as a deduction under section 223(b) (determined without regard to section 106(d)) for the taxable year, over

"(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the health savings account in a distribution to which section 223(f)(3) applies shall be treated as an amount not contributed.".

(f) TAX ON PROHIBITED TRANSACTIONS.—

(1) Section 4975 of such Code (relating to tax on prohibited transactions) is amended by adding at the end of subsection (c) the following new paragraph:

"(6) SPECIAL RULE FOR HEALTH SAVINGS ACCOUNTS.—An individual for whose benefit a health savings account (within the meaning of section 223(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction

concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a health savings account by reason of the application of section 223(e)(2) to such account.".

(2) Paragraph (1) of section 4975(e) of such Code 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) a health savings account described in section 223(d),".

(g) FAILURE TO PROVIDE REPORTS ON HEALTH SAVINGS ACCOUNTS.—Paragraph (2) of section 6693(a) of such Code (relating to reports) is amended by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following new subparagraph:

"(C) section 223(h) (relating to health savings accounts),".

(h) EXCEPTION FROM CAPITALIZATION OF POLICY ACQUISITION EXPENSES.—Subparagraph (B) of section 848(e)(1) of such Code (defining specified insurance contract) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by adding at the end the following new clause:

"(v) any contract which is a health savings account (as defined in section 223(d)).".

(i) HEALTH SAVINGS ACCOUNTS MAY BE OFFERED UNDER CAFETERIA PLANS.—Paragraph (2) of section 125(d) (relating to cafeteria plan defined) is amended by adding at the end the following new subparagraph:

"(D) EXCEPTION FOR HEALTH SAVINGS ACCOUNTS.—Subparagraph (A) shall not apply to a plan to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a health savings account established on behalf of the employee.".

(j) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following:

"Sec. 223. Health savings accounts.
"Sec. 224. Cross reference.".

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

SEC. 1202. EXCLUSION FROM GROSS INCOME OF CERTAIN FEDERAL SUBSIDIES FOR PRESCRIPTION DRUG PLANS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139 the following new section:

"SEC. 139A. FEDERAL SUBSIDIES FOR PRESCRIPTION DRUG PLANS.

"Gross income shall not include any special subsidy payment received under section 1860D–22 of the Social Security Act. This section shall not be taken into account for purposes of determining whether any deduction is allowable with respect to any cost taken into account in determining such payment.".

(b) ALTERNATIVE MINIMUM TAX RELIEF.—Section 56(g)(4)(B) of such Code is amended by inserting "or 139A" after "section 114".

(c) CONFORMING AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139 the following new item:

"Sec. 139A. Federal subsidies for prescription drug plans.".

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

SEC. 1203. EXCEPTION TO INFORMATION REPORTING REQUIREMENTS RELATED TO CERTAIN HEALTH ARRANGEMENTS.

(a) IN GENERAL.—Section 6041 of the Internal Revenue Code of 1986 (relating to information at source) is amended by adding at the end the following new subsection:

"(f) SECTION DOES NOT APPLY TO CERTAIN HEALTH ARRANGEMENTS.—This section shall not apply to any payment for medical care (as defined in section 213(d)) made under—

"(1) a flexible spending arrangement (as defined in section 106(c)(2)), or

"(2) a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of section 106.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2002.

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment to the title of the bill insert the following: "An Act to amend title XVIII of the Social Security Act to provide for a voluntary prescription drug coverage program under the medicare program, to modernize, strengthen, and improve the medicare program, to amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings accounts, to amend the Federal Food, Drug, and Cosmetic Act with respect to abbreviated applications for the approval of new drugs and the importation of prescription drugs, and for other purposes.".

And the Senate agree to the same.

BILLY TAUZIN,
WILLIAM THOMAS,
MICHAEL BILIRAKIS,
NANCY L. JOHNSON,
TOM DELAY,
Managers on the Part of the House.

CHUCK GRASSLEY,
ORRIN HATCH,
DON NICKLES,
BILL FRIST,
JON KYL,
MAX BAUCUS,
JOHN BREAUX,
Managers on the Part of the Senate.

JOINT EXPLANATION STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1) to amend title XVIII of the Social Security Act to provide for a voluntary program for prescription drug coverage under the Medicare Program, to modernize the Medicare Program to amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings security accounts and health savings accounts, to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003

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TITLE I—MEDICARE PRESCRIPTION DRUG BENEFIT

Voluntary Prescription Drug Benefit Program (Section 101 of Conference agreement, Section 101 of House bill; Section 101 of Senate bill).

Present Law

Medicare does not cover most outpatient prescription drugs. Beneficiaries who are inpatients of hospitals or skilled nursing facilities may receive drugs as part of their treatment. Medicare payments made to the facilities cover these costs. Medicare also makes payments to physicians for drugs or biologicals, which cannot be self-administered. This means that coverage is generally limited to drugs or biologicals administered by infusion or injection. However, if the injection is generally self-administered (e.g., insulin), it is not covered.

Despite the general limitation on coverage for outpatient drugs, the law specifically authorizes coverage for the following: (1) drugs used in immunosuppressive therapy (such as cyclosporin) following discharge from a hospital for a Medicare covered organ transplant; (2) erythropoietin (EPO) for the treatment of anemia for persons with chronic renal failure who are on dialysis; (3) drugs taken orally during cancer chemotherapy providing they have the same active ingredients and are used for the same indications as chemotherapy drugs which would be covered if they were not self-administered and were administered as incident to a physician's professional service; and (4) hemophilia clotting factors for hemophilia patients competent to use such factors to control bleeding without medical supervision, and items related to the administration of such factors. The program also pays for supplies (including drugs) that are necessary for the effective use of covered durable medical equipment, including those which must be put directly into

the equipment (e.g., tumor chemotherapy agents used with an infusion pump). Medicare also covers pneumococcal pneumonia vaccines, hepatitis B vaccines, and influenza virus vaccines.

The Committee on Ways and Means, the Committee on Energy and Commerce and the Senate Finance Committee have held numerous hearings on providing prescription drug benefits to seniors, modernizing the program by making benefits, cost sharing and the delivery of care more rational, and strengthening Medicare financially for current and future generations.

The typical senior now takes more than 20 prescriptions a year to improve their health or manage their diseases. While seniors are taking more drugs than any other demographic group, they are often paying the highest prices because about twenty-five percent of seniors have no prescription drug coverage. Similarly, low-income beneficiaries must often make unacceptable choices between life-saving medicines and other essentials.

The addition of a prescription drug benefit to Medicare, while providing seniors additional choices in how they receive their health services, is a critical modernization of the program.

Legislation to achieve these goals passed the House in 2000 (H.R. 4680, the Medicare Rx 2000 Act), in 2002 (H.R. 4954, the Medicare Modernization and Prescription Drug Act), and in 2003 (H.R. 1, the Medicare Prescription Drug and Modernization Act). The Senate passed legislation (S.1, the Prescription Drug and Medicare Improvement Act) to modernize the program and provide prescription drugs in 2003.

The conference report is the culmination of this legislative process.

House Bill

The provision would establish a new Voluntary Prescription Drug Benefit Program under a new Part D of Title XVIII of the Social Security Act. Effective January 1, 2006, a new optional benefit would be established under a new Part D. Beneficiaries could purchase either "standard coverage" or actuarially equivalent coverage. In 2006, "standard coverage" would have a $250 deductible, 20% cost-sharing for costs between $251 and $2,000, then no coverage until the beneficiary had out-of-pocket costs of $3,500 when full coverage would be provided. The out-of-pocket limit would be higher for higher income beneficiaries. Low-income subsidies would be provided for persons with incomes below 150% of poverty. Coverage would be provided through prescription drug plans (PDPs) or Medicare Advantage (MA) Rx plans or Enhanced Fee-For-Service (EFFS) Rx plans. The program would rely on private plans to provide coverage and to bear some of the financial risk for drug costs; federal subsidies would be provided to encourage participation. Plans would determine payments and would be expected to negotiate prices. The new Medicare Benefits Administration (MBA), within the Department of Health and Human Services (HHS) would administer the benefit.

Senate Bill

Effective January 1, 2006, a new optional benefit would be established under a new Part D. Beneficiaries could purchase either

"standard coverage" or actuarially equivalent coverage. In 2006, "standard coverage" would have a $275 deductible, 50% cost-sharing for costs between $276 and $4,500, then no coverage until the beneficiary had out-of-pocket costs of $3,700; and 10% cost-sharing thereafter. Individuals with incomes below 160% of poverty would receive additional assistance. The bill would rely on private plans to provide coverage and to bear a portion of the financial risk for drug costs. Federal subsidies would be provided to encourage participation. (A fallback mechanism would be provided in areas where private risk bearing plans were not available. Under the fallback mechanism, Medicare would contract with a private plan to provide the benefit in the area; the plan would not be at financial risk, except for a small portion of management fees tied to performance). Coverage would be provided through Medicare Prescription Drug Plans (PDPs) or MedicareAdvantage plans (MAs). A new Center for Medicare Choices (CMC) would be established within the Department of Health and Human Services (HHS) to administer the Part D benefit and the new MA program.

Conference Agreement

The provision establishes a new voluntary prescription drug benefit under a new Part D of Title XVIII of the Social Security Act. Effective January 1, 2006, a new optional benefit will be established under a new Part D. Beneficiaries could purchase either "standard coverage" or alternative coverage with actuarially equivalent benefits. In 2006, "standard coverage" will have a $250 deductible, 25% coinsurance for costs between $251 and $2,250, and catastrophic coverage after out of pocket expenses of $3,600. Once the beneficiary reached the catastrophic limit, the program would pay all costs except for nominal cost-sharing. Low-income subsidies would be provided for persons with incomes below 150% of poverty. Coverage would be provided through prescription drug plans or Medicare Advantage prescription drug (MA–PD) plans. The program will rely on private plans to provide coverage and to bear some of the financial risk for drug costs; federal subsidies will be provided to encourage participation. Plans will determine premiums through a bid process and will compete based on premiums and negotiated prices.

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Medicare Prescription Drug Discount Card and Transitional Assistance Program (New Section 1860D–31 of Conference agreement; Section 105 of House Bill; Section 111 of Senate Bill).

Present Law

On July 12, 2001, the President announced a new national drug discount card program for Medicare beneficiaries. Under this program, CMS would endorse drug card programs meeting certain requirements. This program was viewed as an interim step until a legislative reform package, including both a drug benefit and other Medicare reforms, was enacted. Implementation of the drug discount card program was suspended by court action.

House Bill

The provision would require the Secretary to establish a program to: (1) endorse prescription drug discount card programs meeting certain requirements; (2) provide for prescription drug accounts; and (3) make available information on such programs to beneficiaries. The Secretary would begin operation of the endorsement program within 90 days of enactment. The account part of the program would begin no later than September 2004. The Secretary would provide for an appropriate transition and termination of the program on January 1, 2006. The program would be voluntary.

Eligible beneficiaries would be defined as persons eligible under Part A or enrolled in Part B, but not enrolled in an MA plan offering qualified prescription drug coverage. The Secretary would establish a process through which an Part D eligible individual could make an election to enroll under the new Section 1807 with an endorsed program. The beneficiary would have to enroll for a year in order to receive the benefits for the year. An individual would, in general have only one opportunity for enrollment. This would occur during an initial, general enrollment period as soon as possible after enactment, and annually thereafter. The annual open enrollment periods would be coordinated with those for MA. An individual who enrolled in the new Section 1807, subsequently enrolled in an MA plan with drug coverage, and then discontinued such MA enrollment would be permitted to reenroll under Section 1807.

In general, eligible beneficiaries would not be permitted to enroll after their initial enrollment period (as defined under Part B). The Secretary would establish an open enrollment period for current beneficiaries.

The Secretary would establish a process through which an Part D eligible individual, enrolled under the new Section 1807, would select an eligible entity to provide access to negotiated prices. The entity would be one, which had been awarded a contract and served the state in which the beneficiary resided. Eligible entities would be pharmaceutical benefit management companies, wholesale and retail pharmacy delivery systems, insurers, MA organizations, other entities, or any combination of these.

The enrollment process, established by the Secretary, would use rules similar to those established for MA. Individuals could not select more than one entity at a time and, except for unusual circumstances (including changing residential setting, such as nursing home placement.) change the selection once a year. The process would provide for selecting eligible entities for individuals who enrolled in the New Section 1807, but failed to select an entity. Entities would compete for beneficiaries on the basis of discounts, formularies, pharmacy networks, and other services.

The Secretary would broadly disseminate information to eligible beneficiaries regarding enrollment, selection of eligible entities, and the coverage made available by entities. The enrollment fee would be $30 with the 2004 fee including any portion of 2003 covered by the program. The fee would be collected in the same manner as Part B premiums are collected from Social Security payments, except the collection would be made only once a year. States could pay the fee for some or all low-income enrollees in the state. No federal matching payments would be available. The Secretary would make 2/3 of the fee collected available to the eligible entity.

Each eligible entity would be required to issue a card and an enrollment number to each enrolled beneficiary and to provide for electronic methods to coordinate with prescription drug accounts established under the New Section 1807A.

Beneficiary protections would be established including guaranteed issue and nondiscrimination provisions. If an eligible entity served a state, it would be required to serve the entire state. Entities would be required to disseminate, to each beneficiary who se-

lected the entity, summary information on negotiated prices, access to such prices through pharmacy networks, and how the formulary functioned. Upon request, entities would be required to provide general coverage, utilization, and grievance information. In addition, entities would be required to have a mechanism for providing specific information upon request. The new Part D provisions relating to pharmacy access would apply to eligible entities. To the extent the Secretary determined they could be implemented on a timely basis, entities would be required to meet the new Part D provisions with respect to development and application of formularies and the requirements to have in place an effective cost and drug utilization management program, quality assurance measures and systems, and a program to control fraud, abuse and waste. Each entity would be required to have in place meaningful procedures for hearing and resolving grievances and for expedited determinations and reconsiderations of coverage determinations. Entities would be required to provide pharmaceutical support services. They would also be required to provide for confidentiality and accuracy of enrollee records and periodic reports to the Secretary.

Entities would be required to provide beneficiaries with access to negotiated prices (including applicable discounts). Such discounts would not be taken into account in establishing "best price" for purposes of Medicaid calculations. If the entity used a formulary, negotiated prices would only be available for formulary drugs. Negotiated prices could not be limited to mail order drugs. Entities and contracting pharmacies could not charge beneficiaries for any required services. Entities would be required to disclose to the Secretary the extent to which discounts, or rebates or other remuneration or price concessions made available by a manufacturer were passed through to enrollees; such information would be confidential. Entities would be required to notify enrollees at the time of purchase of the differential between any prescribed drug and the cost of the lowest cost available generic drug that was therapeutically equivalent and bioequivalent.

The Secretary would be required to establish a prescription drug account for each enrolled individual and deposit into the account the federal contribution amount. This amount would be $800 for an accountholder with income under 135% of poverty, $500 for an accountholder with income between 135% and 150% of poverty, and $100 for all other persons. Income would be determined under the state Medicaid program or by the Social Security Administration (SSA). Such sums as may be necessary would be authorized to be appropriated to the SSA. If the program was not in effect for all of 2004, the amounts would be prorated. Persons would not be eligible for a federal contribution if they were eligible for drug coverage under Medicaid, group health plan, Medigap, medical care for members of the uniformed services, veterans' medical care, Federal Employees Health Benefits program, or the Indian Health Care Improvement Act. The provision would authorize appropriations to the Part B trust fund of an amount equal to the amount by which benefits and administrative costs exceeded the portion of enrollment fees retained by the Secretary.

The provision would establish a new Section 1807A, Prescription Drug Accounts, that would be established for each enrolled

beneficiary. Contributions to the account would include federal contributions, any state contributions, private contributions (including employer and individual contributions) and spousal rollover contributions. If the accountholder was married at the time of death, the amount in the account attributable to public contributions would be credited to the account, if any, of the surviving spouse, or if the spouse was not an Part D eligible individual, into a reserve account to be held for when the spouse became an Part D eligible individual.

Costs of the voluntary prescription drug discount card program would not be considered in calculating the Part B premium.

By March 1, 2005, the Administrator would be required to submit a report to Congress on the progress made in implementing the new prescription drug benefit, including specific steps that had been taken, and need to be taken, to ensure timely start of the program on January 1, 2006.

Senate Bill

Section 111 would add a new Section 1807 to the Social Security Act, *Medicare Prescription Drug Discount Card Endorsement Program*. The Secretary would establish a program under which the Secretary would endorse card programs offered by prescription drug card sponsors meeting certain requirements and would make available information on such programs to beneficiaries. Eligible sponsors would be entities with demonstrated experience and expertise in operating a prescription drug discount card program or similar program that the Secretary determined to be appropriate to provide benefits to Medicare beneficiaries. Such entities would include pharmaceutical benefit management companies, wholesale or retail pharmacist delivery systems, insurers, other entities, or any combination of these.

Any individual entitled to Part A and enrolled in Part B would be eligible to enroll in an endorsed prescription drug card program. The Secretary would be required to establish procedures for identifying eligible beneficiaries. The Secretary would also be required to establish procedures under which beneficiaries could make an election to enroll and disenroll in an endorsed card program. A beneficiary could only be enrolled in one endorsed program at a time. Card sponsors could charge annual enrollment fees, not to exceed $25. The fee would be the same for all eligible Medicare beneficiaries enrolled in the program and would be collected by the card sponsor.

The Secretary would provide information, which compared the costs and benefits of various programs. This information dissemination, intended to promote informed choice, would be coordinated with the dissemination of other educational information on other Medicare options. Each card sponsor would make available to each beneficiary (through the Internet or otherwise) information that the Secretary identified as being necessary to provide for informed choice by beneficiaries among endorsed programs; this would include information on enrollment fees, negotiated prices, and services related to drugs offered under the program. The sponsor would have to provide information on how the formulary functioned. The

Medicare toll-free number, 1–800–MEDICARE, would be used to receive and respond to inquiries and complaints.

Each endorsed drug card program would have to meet beneficiary protection requirements, including those relating to beneficiary appeals and marketing practices. They would also have to ensure that beneficiaries were not charged more than the lower of the negotiated retail price or the usual and customary price. Each card sponsor would secure the participation of a sufficient number of pharmacies that distributed drugs directly to patients to ensure convenient access (including adequate emergency access) for beneficiaries enrolled in the program. Convenient access would be determined by the Secretary and would take into account reasonable distances to pharmacy services in both urban and rural areas. Each card sponsor would be required to have in place procedures for assuring that quality service was provided to eligible beneficiaries enrolled in a prescription drug discount card program. They would also have to safeguard individually identifiable information in accordance with the Health Insurance Portability and Accountability Act (HIPAA). Sponsors would be prohibited from charging any fees, except for the annual enrollment fee. Card sponsors could not recommend switching a Part D eligible individual to a drug with a higher negotiated price, unless a licensed health professional recommended a switch based on a clinical indication. Negotiated prices could not change more than once every 60 days.

Card sponsors would provide enrolled beneficiaries with access to negotiated prices used by the sponsor for payment for prescription drugs, provided such drugs were not excluded under the program's formulary. The term negotiated price, would include all discounts, direct or indirect subsidies, rebates, price concessions, and direct or indirect remunerations. Medicaid negotiation rules, including rebate requirements, would not apply.

Each card program would be required to provide pharmaceutical support services such as education, counseling, and services to prevent adverse drug interactions. Each card sponsor would issue a discount card to program enrollees.

Sponsors seeking endorsement of a card program would submit required information to the Secretary. The Secretary would review the information and determine whether to endorse the program. A program could not be approved unless it and the sponsor complied with the requirements of the new Section 1807.

Sponsors could use a formulary. Sponsors electing to use a formulary would be required to establish a pharmaceutical and therapeutic committee (that included at least one academic expert, at least one practicing physician and at least one practicing pharmacist) to develop and review the formulary. The committee would base clinical decisions on the strength of scientific evidence and standards of practice. The formulary would have to include drugs within each therapeutic category and class of covered drugs (as defined by the Secretary) although not necessarily for all drugs within such categories and classes. The committee would establish policies and procedures to educate and inform health care providers concerning the formulary. Drugs could not be removed from the formulary until after appropriate notice had been provided to beneficiaries, physicians, and pharmacies. The Secretary would provide

appropriate oversight to ensure compliance of programs; including verification of the negotiated prices and services provided. Each program sponsor would be required to report to the Secretary on program performance, use of drugs by beneficiaries, financial information of the sponsor, and other information required by the Secretary. The Secretary could not disclose any proprietary data that was reported. The Secretary could use Parts A and B claims data for purposes of conducting a drug utilization review program.

Section 111 would add a new Section 1807A to the Social Security Act, *Transitional Prescription Drug Assistance Card Program for Eligible Low-Income Beneficiaries*. The Secretary would award contracts to prescription drug card sponsors, offering a program that was endorsed by the Secretary under the new Section 1807, to offer a prescription drug card assistance program to eligible low-income beneficiaries. The program would begin no later than January 1, 2004. The Secretary would provide for a transition and discontinuation of the drug card program and the low-income assistance card program when the new Part D program became effective. The transitional programs would continue to operate at least 6 months after the date benefits first became available under Part D.

All individuals meeting the definition of QMB, SLMB, or QI–1, or those with income below 135 percent of poverty who were not eligible to receive drug benefits under Medicaid, could receive assistance with their prescription drug costs, effective January 1, 2004. In addition, those determined to have income below 135 percent of poverty could receive assistance with their prescription drug costs. These persons would have access, through a drug discount card, to up to $600 per year. The entire $600 benefit would be available for the entire year; any balance left on the card in one year could be carried forward. Beneficiaries would be subject to cost-sharing requirements, which could not be less than 5% of the negotiated price for a drug, or 10% for a transitional assistance eligible individual. Cost-sharing charges would not count against the $600. At a minimum, card sponsors would provide low-income enrollees with a minimum of a 20% discount from the average wholesale price for each covered drug.

In general, the enrollment procedures established for the drug discount card program would apply for this program. Each sponsor offering an assistance card program would be required to enroll any low-income person wishing to enroll if the program served the geographic area where the beneficiary resides. An individual enrolling in an assistance card program would be simultaneously enrolled in a discount card program offered by the sponsor. Enrollment fees would be waived for these individuals and would instead be paid by the Secretary.

Eligible beneficiaries would have to be provided the information required for the discount card program. In addition, sponsors would be required to notify low-income enrollees, on a periodic basis, of the amount of coverage remaining and on the grievance and appeals process under the program.

Each card sponsor would secure the participation of a sufficient number of pharmacies that distributed drugs directly to patients to ensure convenient access for beneficiaries enrolled in the program. The Secretary would determine whether convenient access was pro-

vided; mail order pharmacies would not be included in the determination. Further, the Secretary could not make a determination that convenient access had been provided, unless an appropriate arrangement was in place for low-income persons in long-term care facilities.

The Secretary would be required to establish procedures under which benefits under the assistance card program were coordinated with coverage under a state pharmaceutical assistance program or Medicare+Choice plan.

Drug discount card managers could establish formularies. A low-income enrollee would have the right to appeal to obtain coverage for a drug not on the formulary if the prescribing physician determined that the formulary drug was not as effective for the individual or had adverse effects for the individual. If a plan offered tiered cost-sharing for covered drugs, an enrollee would have the right to request that a nonpreferred drug be treated on terms applicable for a preferred drug if the prescribing physician determined that the preferred drug was not as effective for the individual or had adverse effects for the individual.

Sponsors offering assistance card programs would be required to process claims negotiate with brand name and generic manufacturers and others for price concessions, track individual beneficiary expenditures, and perform other functions specified by the Secretary. Each sponsor would receive data exchanges in a format specified by the Secretary.

Entities would be required to assure that low-income beneficiaries were informed at the time of purchase of any difference between the price of the prescribed drug and the lowest cost generic drug that was therapeutically equivalent and bioequivalent and that was available at the pharmacy or other dispenser. Entities would also be required to have meaningful procedures for hearing and resolving grievances, comparable to those established for Medicare+Choice plans. In addition, eligible entities would be required to meet Medicare+Choice requirements relating to coverage determinations.

Sponsors seeking to offer an assistance program would be required to submit information to the Secretary, in the manner specified by the Secretary. The Secretary could not approve a program unless the sponsor and program met the requirements of the new Section 1807A. Further, the Secretary would have to determine that the entity was appropriate to provide benefits to low-income beneficiaries, was able to manage the monetary assistance provided under the program, agreed to submit to audits by the Secretary, and provided other assurances require by the Secretary. There would be no limit on the number of sponsors who could be awarded contracts. The contract would be for the lifetime of the program and cover the same service area served by the sponsor under the card program under Section 1807. The sponsor could submit an application for endorsement under both programs simultaneously.

The Secretary would pay sponsors the amount agreed to in the contract between the sponsor and the Secretary. Payments would be made from the Part B trust fund but would not be considered in the calculation of the Part B premium.

The Secretary would implement New Sections 1807 and 1807A to assure that discounts and benefits were available no later than January 1, 2004. The Secretary would provide for an appropriate transition and discontinuation of the programs; such transition would ensure that benefits continue to operate until the first Part D enrollment period ended.

Conference Agreement

a. Establishment of Program. The conference agreement adds a new Section 1860D–31 to the Social Security Act, Medicare Prescription Drug Discount Card and Transitional Assistance Program. The Section requires the Secretary to establish a program to endorse prescription drug discount card programs meeting certain requirements. Discount card eligible individuals would receive access to prescription drug discounts through card sponsors throughout the U.S. The program will also provide transitional assistance for low-income persons enrolled in endorsed programs. The program is voluntary for eligible individuals.

The agreement requires the Secretary to implement the program so that discount cards and transitional assistance are available no later than 6 months after enactment. The Secretary is required to promulgate regulations to carry out the program. They could be promulgated on an interim final basis which could be effective on the date of issuance. In the case interim final regulations are promulgated, a public comment period would be provided. The Secretary could change or revise the regulations after conclusion of the comment period.

The conference agreement specifies that the new program would not, except as provided for during an individual's transition period, apply to covered discount card drugs dispensed after December 31, 2005. However, any transitional assistance for low income persons would be available after that date to the extent the assistance was for drugs dispensed on or before that date.

Special rules may apply for an individual in a transition period who is also enrolled under a card program as of December 31, 2005. The transition period to the new Part D is the period beginning January 1, 2006 and ending on the effective date of the individual's coverage under Part D or at the close of the individual's initial enrollment period for Part D. During this period, discounts may continue to apply for drugs dispensed to the individual, no annual enrollment fee would be applicable, the individual could not change the endorsed plan in which they were enrolled, and the balance of any transitional assistance remaining on January 1, 2006 would remain available for drugs dispensed during this period.

b. Eligibility. The conference agreement specifies that persons eligible for the discount card are those entitled to or enrolled under Part A or enrolled under Part B. However individuals enrolled in Medicaid (or under any Section 1115 Medicaid waiver) who are entitled to any medical assistance for outpatient prescribed drugs would not be a discount card eligible individual.

An individual eligible for transitional assistance is a discount card eligible individual, residing in one of the 50 states or the District of Columbia, whose income is not more than 135% of the official poverty line applicable to the family size involved. Certain per-

sons would not be eligible for transitional assistance. These are persons who had coverage for, or assistance with, covered discount card drugs under: (1) a group health insurance plan or health insurance plan (other than coverage under a plan under Medicare Part C or coverage consisting only of excepted benefits as that term is defined under Section 2791 of the Public Health Service Act); (2) Chapter 55 of the United States Code relating to medical and dental care for members of the uniformed services; and (3) a plan under the Federal employees health benefits program.

Certain transitional eligible assistance eligible individuals may also qualify as special transitional assistance eligible individuals. These are persons with incomes below 100% of the official poverty line.

The Secretary is required to provide for appropriate rules for the treatment of medically needy persons as discount eligible individuals and as transitional assistance eligible individuals.

c. Enrollment. The conference agreement requires the Secretary to establish a process through which a discount card eligible individual is enrolled and disenrolled in a discount card program. An individual not enrolled in a card program may enroll in any card program, serving residents of the state at any time beginning on the initial enrollment date and before January 1, 2006. Completion of a standard enrollment form, specified by the Secretary, is required. Each program sponsor is required to transmit to the Secretary (in a form and manner specified by the Secretary) information on persons completing the enrollment forms. They are also required to provide certain information relating to the certification as a transitional assistance eligible individual.

The conference agreement specifies that a discount eligible individual may only be enrolled in one endorsed card program at a time. An individual enrolled in one program in 2004 could change the election for 2005. The Secretary will establish a process for making this change, which will be similar to, and coordinated with, that established for annual coordinated elections for Medicare+Choice plans under Part C. The agreement requires the Secretary to permit individuals to change programs in which they were enrolled if they changed residence outside the service area of the plan or under other exceptional circumstances. The Secretary is permitted to consider a change in residential setting (such as placement in a nursing facility) as an exceptional circumstance. Also meeting this criteria would be enrollment or disenrollment from a Medicare+Choice plan through which an individual was enrolled in an endorsed program.

An individual could voluntarily disenroll from an endorsed program at any time. Such individual could not enroll under another endorsed program except during the open enrollment period or under the exceptional circumstances specified by the Secretary. An individual, who was not a transitional assistance eligible individual, could be disenrolled by the program sponsor, if the individual failed to pay the annual enrollment fee.

A Medicare+Choice organization or organization operating under a reasonable cost contract that wishes to become a prescription drug card sponsor may elect to limit enrollment in its endorsed discount card program to eligible enrollees enrolled in the plan. If

the organization elects this option, its enrollees can only enroll in the endorsed discount card program offered by that sponsor.

A card sponsor may charge an annual enrollment fee, not to exceed $30, for each enrollee. The fee for either 2004 or 2005 could not be prorated. The sponsor will ensure that the annual enrollment fee (if any) is the same for all enrollees residing in the state. The annual enrollment fee is to be collected by the program sponsor. The annual enrollment fee for a transitional assistance eligible individual is to be paid by the Secretary on the individual's behalf.

The Secretary will establish an arrangement under which a state could pay for some, or all, of the enrollment fee for some or all enrollees who are not transitional assistance eligible individuals. The payment would be paid directly by the state to the sponsor. No federal matching payments would be available.

The Secretary will establish special rules for individuals who change, during a year, the endorsed program in which they are enrolled.

Each card sponsor will issue, in a standard format specified by the Secretary, a discount card to each enrollee. The card will establish proof of enrollment. It may be used in a coordinated manner to identify the sponsor, program, and individual. The Secretary will specify the effective date that card enrollees will have access to negotiated prices and transitional assistance, if any.

d. Information. The conference agreement requires the Secretary to provide for activities that broadly disseminate information to discount card eligible individuals and prospective eligible individuals. These persons would receive information on enrollment in endorsed card programs and on the features of the drug discount card and transitional assistance program. In order to promote informed choice, the Secretary will provide for the dissemination of information, which compares the annual enrollment fee and other features of such programs, which could include comparative prices for covered drugs. To the extent practicable, this will be coordinated with the dissemination of educational material on other Medicare options. The required information will also include educational materials on the variability of discounts on covered drugs under an endorsed program. To the extent practicable, the Secretary will ensure the provision of required information at least 30 days prior to the initial enrollment date. The Secretary, through the use of 1–800–MEDICARE, will provide for the receipt and response to inquiries and complaints concerning the discount card program and endorsed programs.

The conference agreement requires each card sponsor to make available to discount card eligible individuals (through the Internet and otherwise) information the Secretary identifies as being necessary to promote informed choice. This includes information on enrollment fees and negotiated prices for covered drugs. Each sponsor is required to have a mechanism (including a toll free number) for providing, on request, specific information to individuals enrolled in the program. Specific information includes information on negotiated prices and the amount of transitional assistance remaining to the individual. The sponsor is required to inform transitional assistance eligible individuals of the availability of such toll-free numbers to provide information on the amount of available assist-

ance to the individual. Information on the balance of transitional assistance available will have to be available at the point-of-sale, either electronically or by telephone.

The conference report requires sponsors to provide that each pharmacy that dispensed a covered discount drug to inform program enrollees of any difference between the price of the drug provided to the enrollee and the price of the lowest priced generic drug covered under the program that is therapeutically equivalent and bioequivalent and available at such pharmacy. The notice is to be provided at the time of purchase, or in the case of a mail order drug, at the time of delivery. The Secretary may waive this requirement under circumstances specified by the Secretary.

e. Discount Card Program. The conference agreement requires each card sponsor to provide each enrollee with access to negotiated prices. These negotiated prices would take into account negotiated price concessions such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations for covered drugs. Negotiated prices include any dispensing fees. Seniors currently benefit from prescription drug assistance programs offered by pharmaceutical companies. Conferees intend that these programs continue to be offered until the full implementation of the prescription drug benefit. Nothing in this conference report shall be interpreted as encouraging the discontinuation or diminution of these benefits.

Each prescription drug card sponsor must secure the participation of a sufficient number of pharmacies that dispense drugs directly to enrollees to ensure convenient access to covered drugs at negotiated prices. This requirement may only be met by entities dispensing drugs other than solely by mail order. Conferees intend for seniors to have access to a bricks and mortar pharmacy. The Secretary will establish convenient access rules that are no less favorable than standards for convenient access to pharmacies applicable under TRICARE. Applicable TRICARE standards are those specified in the statement of work solicitation (#MDA906–03–R–0002) as of March 13, 2003.

A prescription drug card sponsor (and any pharmacy contracting with the sponsor to provide covered discount card drugs) may not charge enrollees for any items and services required to be provided under the program. This prohibition would not apply to the annual enrollment fee for persons who are not transitional assistance eligible individuals or for the charge for the drug (consistent with the negotiated price) reduced by any transitional assistance.

The agreement further provides that negotiated prices will not be taken into account for purposes of making best price calculations under the Medicaid rebate program.

Each endorsed card program is required to implement a system to reduce the likelihood of medication errors and adverse drug interactions and to improve medication use.

f. Eligibility Procedures. The conference agreement requires the Secretary to establish procedures for eligibility determinations for endorsed programs and for those eligible as a transitional assistance eligible individual or a special transitional eligible individual. The Secretary is to define the terms income and family size

and specify the methods and period for which they are determined. If such methods provide for use of information for prior time periods, the Secretary is required to permit an individual whose circumstances changed to have eligibility for transitional assistance determined for a more recent period. The Secretary may use a reconsideration process or other method.

An individual wishing to be treated as a transitional assistance eligible individual or special transitional eligible individual could self-certify through a simplified means as to their income, family size, and prescription drug coverage (if any). The certification could also be done by another qualified person, acting on the individual's behalf. The certification could be provided before, on or after the time of enrollment in an endorsed program. The self-certification would be deemed as consent to have the information verified by the Secretary. A verified self-certification for as a transitional assistance or special transitional assistance eligible individual would be applicable for the entire period of enrollment in any endorsed program.

The Secretary is required to establish verification methods, which could include sampling and use of information on Medicaid eligibility provided by the states, financial information from the Commissioner of Social Security, and financial information from the Secretary of the Treasury. The Secretary could find that an individual met the income requirements for transitional assistance if the individual is within a category of discount card eligible individuals who are enrolled under Medicaid (such as qualified Medicare beneficiaries, specified low-income Medicare beneficiaries, and certain qualified individuals). States will be required, as a condition of Federal Medicaid assistance to provide, on a timely basis, information that allows the Secretary to identify persons eligible for drug coverage under Medicaid, or who are transitional assistance eligible individuals, or special transitional eligible individuals. The Secretary is required to establish a reconsideration process for persons determined not to be transitional eligible or special transitional assistance eligible individuals. The results are to be communicated to the individual and drug card sponsor involved. The Secretary may enter into contracts to perform the reconsideration function.

g. Transitional Assistance. The conference agreement provides special provisions for low-income persons. A transitional assistance eligible individual will be entitled to have his or her discount card enrollment fee paid. Those individuals with incomes below 100% of poverty (special transitional assistance eligible individuals) would be liable for coinsurance charges of 5% of incurred costs up to $600 in both 2004 and 2005. Other transitional assistance eligible individuals (those with incomes between 100% and 135% of poverty) would be liable for coinsurance charges of 10% of incurred costs up to $600 in both 2004 and 2005. Thus, the program will pay 95% of a special transitional eligible individual's incurred drug costs up to $600 in 2004 and 90% of other transitional eligible individual's incurred drug costs up to $600 in 2004. Similarly, payment would be made for 95% or 90%, whichever is appropriate, of the individual's incurred drug costs up to $600 in 2005. In addition, any balance left over from 2004 may be added to the amount available in

2005, except no rollover would be permitted if the individual voluntarily disenrolled from an endorsed plan. No funds will be available under this program for covered discount card drugs dispensed after December 31, 2005. The Secretary will provide a method for the reimbursement of card sponsors for transitional assistance.

The $600 annual amount is to be prorated in 2004, for persons not enrolling in an endorsed program and providing self-certification prior to the program's initial implementation date. For 2005, the amount is to be prorated for persons not enrolling in an endorsed program and providing self-certification prior to February 1, 2005.

The conference agreement permits a pharmacy to reduce the coinsurance otherwise applicable. It also permits states to pay some or all of the coinsurance for some or all transitional assistance eligible enrollees. The payment would be made directly by the state to the pharmacy. No federal matching payments would be available for these costs; further they could not be considered as Medicare cost-sharing for purposes of the qualified Medicare beneficiary program.

The conference agreement includes provisions to ensure access to transitional assistance for qualified residents of long-tem care facilities and American Indians. It requires the Secretary to establish procedures to ensure such access for qualified residents of long-term care facilities. The Secretary could waive requirements of the new Section 1860D–31, as necessary, to negotiate arrangements with sponsors to provide arrangements with pharmacies that support long-term care facilities. The Secretary is also required to establish procedures to ensure that pharmacies operated by the Indian Health Service, Indian tribes and tribal organizations, and urban Indian organizations have the opportunity to participate in the pharmacy networks of at least two endorsed programs in each of the 50 states and the District of Columbia where such a pharmacy operates. Where necessary, the Secretary could waive requirements of the new Section 1860D–31.

The availability of negotiated prices or transitional assistance could not be taken into account in determining an individual's eligibility for or benefits under any other Federal program. Any nonuniformity of benefits resulting from the implementation of the new Section 1807 (such as the waiver of an enrollment fee) would not be taken into account in calculations of any required additional benefits under Part C.

h. Qualifications for Card Sponsors. The conference agreement defines entities eligible to be card sponsors and establishes criteria that such entities would have to meet. The agreement specifies that a card sponsor could be any nongovernmental entity that the Secretary determines is appropriate to offer an endorsed discount card program. An entity which could qualify includes a pharmaceutical benefit management company, a wholesale or retail pharmacy delivery system, an insurer (including one that offered Medigap policies), an organization under Part C, or any combination of these. Each program would have to be operated directly, or through arrangements with an affiliated organization (or organizations), by one or more organizations with demonstrated experience and expertise in operating such a program. Further, the program

would have to meet business stability and integrity requirements specified by the Secretary. The sponsor will be required to have arrangements, satisfactory to the Secretary, to account for transitional assistance provided to eligible individuals.

The conference agreement requires each sponsor seeking endorsement to submit an application to the Secretary. The Secretary would review the application and determine whether to endorse the program. The Secretary could not endorse the program unless the program and sponsor comply with the applicable requirements of the new Section 1860D–31 and the sponsor enters into a contract with the Secretary to carry out such requirements. An endorsement would be for the duration of the discount card and transitional assistance program. The Secretary could make an exception for cause.

The conference agreement requires the Secretary to ensure that at least 2 endorsed programs (each offered by a different sponsor) are available to each eligible individual. The Secretary may limit (but not below 2) the number of sponsors in a state that were awarded contracts.

Card sponsors enrolling individuals in any part of a state would be required to permit eligible individuals in all parts of the state to enroll. An exception would apply in the case of a Medicare+Choice organization, which elects to limit enrollment in its endorsed discount card program to eligible enrollees enrolled in its Medicare+Choice plan.

Each prescription drug card sponsor will be required to pass on to discount eligible enrollees the negotiated prices for covered drugs, including discounts negotiated with pharmacies and manufacturers, to the extent such discounts are disclosed under required disclosure rules. Each card sponsor will be required to provide meaningful procedures for hearing and resolving grievances between the sponsor and enrollees in a manner similar to that required for Medicare+Choice. The operations of an endorsed card program are covered functions and a card sponsor is a covered entity for purposes of applying the administrative simplification provisions established in Part C of Title XI of the Social Security Act. Included are regulations promulgated under that Part including privacy regulations. The Secretary could waive the relevant portions of privacy regulations for an appropriate limited period of time in order to promote participation of sponsors.

The sponsor of an endorsed card program may not provide or market services under the program except if the product or service is directly related to a covered discount card drug or a discount price for a nonprescription drug. Sponsors will also be required to meet additional requirements as the Secretary identifies are needed to ensure that enrollees are not charged more than the lower of the negotiated price or the usual and customary price.

Special rules apply to Medicare+Choice organizations or organizations offering enrollment under a reasonable cost contract. An organization could elect to limit enrollment in its endorsed discount card program to eligible enrollees enrolled in its plan. In this case, special rules would apply. The sponsor could not enroll individuals not enrolled in the plan. The pharmacy access requirements applicable to card sponsors would be deemed to be met if access is made available through a pharmacy network (and not only through mail

order) and the network is approved by the Secretary. The Secretary could waive requirements applicable to card sponsors to the extent he determined they were duplicative or conflicted with a Medicare+Choice or cost contract requirement or were necessary in order to improve coordination of the card program with Medicare+Choice or cost contract benefits.

Each card sponsor will be required to disclose to the Secretary information relating to: (1) program performance; (2) use of drugs by card program enrollees; (3) extent to which negotiated price concessions made available by the manufacturer are passed through to enrollees through pharmacies or otherwise; and (4) other information specified by the Secretary. The Medicaid provision providing for the confidentiality of drug information will apply to any drug pricing information (other than aggregate data) disclosed under these requirements.

The Secretary will provide appropriate oversight to ensure compliance of card programs and sponsors with the requirements of the new Section 1860D–31. The Secretary would have the right to audit and inspect any books and records of sponsors (and any affiliated organization) that pertain to the card program, including amounts payable to the sponsor. The Secretary could impose sanctions for abusive practices.

i. Territories. The conference agreement provides federal assistance to territories, which establish a plan to provide transitional assistance for covered discount drugs to some or all eligible persons residing in the state. Eligible persons are those entitled to benefits under Part A or enrolled in Part B with incomes below 135% of the poverty line. The total amount of available federal assistance is $35 million. The amount available for each territory would be determined using the ratio of the total number of Medicare residents in the territory to Medicare residents in all the territories.

j. Funding. The conference agreement creates a separate Transitional Assistance Account in the Part B Trust Fund. Funds in this account are to be kept separate from other funds within the Trust fund. Payments are to be made from the Account in such amounts as the Secretary certifies are necessary to make payments for transitional assistance. Appropriations are to be made to the Account equal to the amount of payments from the Account. Such sums as are necessary would be authorized to be appropriated for the Secretary's administrative expenses. Payments could not be made to sponsors for administrative expenses, except for payment of the enrollment fee for transitional eligible individuals. Costs associated with the Medicare prescription drug card and the transitional assistance program would be excluded from the calculation of the Part B premium.

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TITLE XII—HEALTH SAVINGS INCENTIVES

Health Savings Accounts and Health Savings Security Accounts (sec. 1202 of the House bill and new sec. 223 of the Code)

Present Law

OVERVIEW

Present law contains a number of provisions dealing with the Federal tax treatment of health expenses and health insurance coverage.

EMPLOYER-PROVIDED HEALTH COVERAGE

In general, employer contributions to an accident or health plan are excludable from an employee's gross income (and wages for employment tax purposes).[1] This exclusion generally applies to coverage provided to employees (including former employees) and their spouses, dependents, and survivors. Benefits paid under employer-provided accident or health plans are also generally excludable from income to the extent they are reimbursements for medical care.[2] If certain requirements are satisfied, employer-provided accident or health coverage offered under a cafeteria plan is also excludable from an employee's gross income and wages.[3] Present law provides for two general employer-provided arrangements that can be used to pay for or reimburse medical expenses of employees on a tax-favored basis: flexible spending arrangements ("FSAs") and health reimbursement arrangements ("HRAs"). While these arrangements provide similar tax benefits (i.e., the amounts paid under the arrangements for medical care are excludable from gross income and wages for employment tax purposes), they are subject to different rules. A main distinguishing feature between the two arrangements is that while FSAs are generally part of a cafeteria plan and contributions to FSAs are made on a salary reduction basis, HRAs cannot be part of a cafeteria plan and contributions cannot be made on a salary-reduction basis.[4]

Amounts paid or accrued by an employer within a taxable year for a sickness, accident, hospitalization, medical expense, or similar health plan for its employees are generally deductible as ordinary and necessary business expenses.[5]

SELF-EMPLOYED INDIVIDUALS

The exclusion for employer-provided health coverage does not apply to self-employed individuals. However, under present law, self-employed individuals (i.e., sole proprietors or partners in a partnership)[6] are entitled to deduct 100 percent of the amount paid for health insurance for themselves and their spouse and dependents.[7]

ITEMIZED DEDUCTION FOR MEDICAL EXPENSES

Under present law, individuals who itemize deductions may deduct amounts paid during the taxable year (to the extent not reimbursed by insurance or otherwise) for medical care of the taxpayer, the taxpayer's spouse, and dependents, to the extent that

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[1] Secs. 106, 3121(a)(2), and 3306(b)(2). All "section," "sec.," and "Code" references are to the Internal Revenue Code of 1986, as amended.

[2] Sec. 105. In the case of a self-insured medical reimbursement arrangement, the exclusion applies to highly compensated employees only if certain nondiscrimination rules are satisfied. Sec. 105(h). Medical care is defined as under section 213(d) and generally includes amounts paid for qualified long-term care insurance and services.

[3] Secs. 125, 3121(a)(5)(G), and 3306(b)(5)(G). Long-term care insurance and services may not be provided through a cafeteria plan.

[4] Notice 2002–45, 2002–28 I.R.B. 93 (July 15, 2002); Rev. Rul. 2002–41, 2002–28 I.R.B. 75 (July 15, 2002).

[5] Sec. 162.

[6] Self-employed individuals include more than two-percent shareholders of S corporations who are treated as partners for purposes of fringe benefit rules pursuant to section 1372.

[7] Sec. 162(l).

the total of such expenses exceeds 7.5 percent of the taxpayer's adjusted gross income.[8]

ARCHER MEDICAL SAVINGS ACCOUNTS

In General

In general, an Archer medical savings account ("MSA") is a tax-exempt trust or custodial account created exclusively for the benefit of the account holder that is subject to rules similar to those applicable to individual retirement arrangements.[9]

Within limits, contributions to an Archer MSA are deductible in determining adjusted gross income if made by an eligible individual and are excludable from gross income and wages for employment tax purposes if made by the employer of an eligible individual. Earnings on amounts in an Archer MSA are not includible in gross income in the year earned (i.e., inside buildup is not taxable). Distributions from an Archer MSA for qualified medical expenses are not includible in gross income. Distributions not used for qualified medical expenses are includible in gross income and subject to an additional 15-percent tax unless the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65).

Qualified medical expenses are generally defined as under section 213(d), except that qualified medical expenses do not include expenses for health insurance other than long-term care insurance, premiums for health coverage during any period of continuation coverage required by Federal law, and premiums for health care coverage while an individual is receiving unemployment compensation under Federal or State law. For purposes of determining the itemized deduction for medical expenses, distributions from an Archer MSA for qualified medical expenses are not treated as expenses paid for medical care under section 213.

ELIGIBLE INDIVIDUALS

Archer MSAs are available only to employees of a small employer who are covered under an employer-sponsored high deductible health plan and to self-employed individuals covered under a high deductible health plan.[10] An employer is a small employer if it employed, on average, no more than 50 employees on business days during either of the two preceding calendar years. An individual is not eligible for an Archer MSA if he or she is covered under any other health plan that is not a high deductible health plan (other than a plan providing certain limited types of coverage). Individuals entitled to benefits under Medicare are not eligible individuals. Eligible individuals do not include individuals who may be claimed as a dependent on another person's tax return.

[8] Sec. 213. The adjusted gross income percentage is 10 percent for purposes of the alternative minimum tax. Sec. 56(b)(1)(B).

[9] Sec. 220.

[10] Self-employed individuals include more than two-percent sharholders of S corporations who are treated as partners for purposes of fringe benefit rules pursuant to section 1372.

TREATMENT OF CONTRIBUTIONS

Individual contributions to an Archer MSA are deductible (within limits) in determining adjusted gross income (i.e., "above-the-line"). In addition, employer contributions are excludable from gross income and wages for employment tax purposes (within the same limits), except that this exclusion does not apply to contributions made through a cafeteria plan. In the case of an employee, contributions can be made to an Archer MSA either by the individual or by the individual's employer, but not by both.

The maximum annual contribution that can be made to an Archer MSA for a year is 65 percent of the annual deductible under the high deductible health plan in the case of self-only coverage and 75 percent of the annual deductible in the case of family coverage.

If an employer provides a high deductible health plan coupled with Archer MSAs for employees and makes employer contributions to the Archer MSAs, the employer must make available a comparable contribution on behalf of all employees with comparable coverage during the same period. Contributions are considered comparable if they are either of the same amount or the same percentage of the deductible under the high deductible health plan. If employer contributions do not satisfy the comparability rule during a period, then the employer is subject to an excise tax equal to 35 percent of the aggregate amount contributed by the employer to Archer MSAs of the employer for that period.

DEFINITION OF HIGH DEDUCTIBLE HEALTH PLAN

A high deductible health plan is a health plan with an annual deductible of at least $1,700 and no more than $2,500 in the case of self-only coverage and at least $3,350 and no more than $5,050 in the case of family coverage. In addition, the maximum out-of-pocket expenses with respect to allowed costs must be no more than $3,350 in the case of self-only coverage and no more than $6,150 in the case of family coverage.[11] Out-of-pocket expenses include deductibles, co-payments, and other amounts (other than premiums) that the individual must pay for covered benefits under the plan. A plan does not fail to qualify as a high deductible health plan merely because it does not have a deductible for preventive care as required under State law. A plan does not qualify as a high deductible health plan if substantially all of the coverage under the plan is certain permitted insurance or is coverage (whether provided through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

TREATMENT OF DEATH OF ACCOUNT HOLDER

Upon death, any balance remaining in the decedent's Archer MSA is includible in his or her gross estate. If the account holder's surviving spouse is the named beneficiary of the Archer MSA, then, after the death of the account holder, the Archer MSA becomes the Archer MSA of the surviving spouse and the amount of the Archer

[11] The deductible and out-of-pocket expenses dollar amounts are for 2003. These amounts are indexed for inflation in 450 increments.

MSA balance may be deducted in computing the decedent's taxable estate, pursuant to the estate tax marital deduction.[12] If, upon the account holder's death, the Archer MSA passes to a named beneficiary other than the decedent's surviving spouse, the Archer MSA ceases to be an Archer MSA as of the date of the decedent's death, and the beneficiary is required to include the fair market value of the Archer MSA assets as of the date of death in gross income for the taxable year that includes the date of death. The amount includible in gross income is reduced by the amount in the Archer MSA used, within one year after death, to pay qualified medical expenses incurred prior to the death. If there is no named beneficiary for the decedent's Archer MSA, the Archer MSA ceases to be an Archer MSA as of the date of death, and the fair market value of the assets in the Archer MSA as of such date is includible in the decedent's gross income for the year of the death.

LIMIT ON NUMBER OF MSAS; TERMINATION OF MSA AVAILABILITY

The number of taxpayers benefiting annually from an Archer MSA contribution is limited to a threshold level (generally 750,000 taxpayers). The number of Archer MSAs established has not exceeded the threshold level.

After 2003, no new contributions can be made to Archer MSAs except by or on behalf of individuals who previously had Archer MSA contributions and employees who are employed by a participating employer.

House Bill

In General

The House bill creates health savings accounts ("HSAs") and health savings security accounts ("HSSAs"), which provide tax-favored treatment for current medical expenses as well as the ability to save on a tax-favored basis for future medical expenses. In general, HSAs and HSSAs are tax-exempt trusts or custodial accounts created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents that are subject to rules similar to those applicable to individual retirement arrangements.[13] Unless otherwise provided, the following description applies to both HSAs and HSSAs (jointly referred to as "health accounts").

Within limits, contributions to health accounts are deductible if made by an eligible individual and are excludable from gross income and wages for employment tax purposes if made by the employer of an eligible individual. In the case of HSSAs only, family members may make nondeductible contributions on behalf of an eligible individual. Distributions from health accounts for qualified medical expenses are not includible in gross income. Distributions that are not for qualified medical expenses are includible in gross income and subject to an additional 15 percent tax. The additional

[12] Sec. 2056.
[13] As under Archer MSAs, the House bill provision provides that the present-law requirement applicable to insurance companies that certain policy acquisition expenses must be capitalized and amortized (sec. 848) does not apply in the case of any contract that is a health account.

15 percent tax does not apply after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65).

Eligible Individuals

HSAS

Eligible individuals for HSAs are individuals who are covered by a high deductible health plan and no other health plan that is not a high deductible health plan. Individuals entitled to benefits under Medicare are not eligible to make contributions to an HSA. Eligible individuals do not include individuals who may be claimed as a dependent on another person's tax return.

An individual with other coverage in addition to a high deductible health plan is still eligible for an HSA if such other coverage is certain permitted insurance or permitted coverage. Permitted insurance is: (1) insurance if substantially all of the coverage provided under such insurance relates to (a) liabilities incurred under worker's compensation law, (b) tort liabilities, (c) liabilities relating to ownership or use of property (e.g., auto insurance), or (d) such other similar liabilities as the Secretary may prescribe by regulations; (2) insurance for a specified disease or illness; and (3) insurance that provides a fixed payment for hospitalization. Permitted coverage is coverage (whether provided through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

A high deductible health plan is a health plan that in the case of self-only coverage has an annual deductible between $1,000 and $2,500 and in the case of family coverage has an annual deductible between $2,000 and $5,050 (for 2003).[14] The maximum out-of-pocket expenses must be no more than $3,350 in the case of self-only coverage and no more than $6,150 in the case of family coverage. The annual deductible maximum and minimum and out-of-pocket expense amounts are indexed for inflation. A plan is not a high deductible health plan if substantially all of the coverage is for permitted coverage or coverage that may be provided by permitted insurance, as described above.

HSSAS

Individuals eligible for HSSAs are individuals who (1) are covered under a health plan meeting minimum deductible requirements and no other health plan that does not meet the minimum deductible requirements, or (2) are uninsured. Individuals entitled to benefits under Medicare are not eligible to make contributions to an HSSA. Eligible individuals do not include individuals who may be claimed as a dependent on another person's tax return.

An individual with other coverage in addition to a plan meeting the minimum deductible requirements is still eligible for an HSSA if such other coverage is for permitted coverage or coverage that may be provided by permitted insurance, as described above. In addition, an individual is treated as uninsured if his or her only

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[14] Special rules apply for determining whether a health plan that is a preferred provider organization plan meets the requirements of a high deductible plan.

coverage is permitted coverage or coverage that may be provided by permitted insurance.

A plan meets the minimum deductible requirements if the plan is a health plan with an annual deductible of at least $500 in the case of self-only coverage and at least $1,000 in the case of family coverage. These dollar amounts are indexed for inflation. There are no maximum deductible requirements and no limits on out-of-pocket expenses. A plan is not a minimum deductible plan if substantially all of the coverage is for permitted coverage or coverage that may be provided by permitted insurance, as described above.

TAX TREATMENT OF AND LIMITS ON CONTRIBUTIONS

Contributions to a health account made by an eligible individual are deductible (within limits) in determining adjusted gross income (i.e., "above-the-line"). In addition, employer contributions to a health account (including salary reduction contributions made through a cafeteria plan) are excludable from gross income and wages for employment tax purposes to the extent the contribution would be deductible if made by the employee (e.g., in the case of an HSSA, subject to the adjusted gross income limits).[15] Nondeductible contributions may be made to an HSSA by a family member of an eligible individual. In the case of an employee, contributions to a health account may be made by both the individual (and family members in the case of an HSSA) and the individual's employer. All contributions are aggregated for purposes of the maximum annual contribution limit.

The maximum aggregate annual contribution that can be made to an HSA is 100 percent of the annual deductible under the high deductible plan.[16]

The maximum aggregate annual contribution that can be made to an HSSA is (1) $2,000 for (a) persons with self-only coverage and (b) uninsured individuals with no dependents[17] who do not file a joint return, and (2) $4,000 for (a) individuals with family coverage and (b) uninsured individuals with dependents or who file a joint return. In the case of individuals age 55 and older, the $2,000 and $4,000 HSSA annual contribution limits are increased by $500 in 2004, $600 in 2005, $700 in 2006, $800 in 2007, $900 in 2008, and $1,000 in 2009 and thereafter.

The maximum allowable contribution to an HSSA is phased out for taxpayers with adjusted gross income[18] above certain levels. In the case of individuals with self-only coverage (other than individuals filing a joint return), the phase-out range is $75,000 to $85,000. For individuals with family coverage and individuals filing a joint return, the phase-out range is $150,000 to $170,000. The ad-

[15] Employer contributions to a health account are excludable from wages for employment tax purposes if, at the time of payment, it is reasonable to believe that the employee will be able to exclude such payment from income (e.g., a reasonable basiss to believe that the employee's income is within the applicable adjusted gross income limits for an HSSA).

[16] The annual contribution limit for a health account is the sum of the limits determined separately for each month, based on the individual's status and health plan coverage as of the first day of the month.

[17] Written declarations releasing a claim to a dependency exemption under section 152(e)(2) are disregarded in determining whether an individual has dependents.

[18] Adjusted gross income is defined generally as under the rules relating to individual retirement arrangements ("IRAs"), and is computed after the deduction for contributions to IRAs and before the deductions provided by the provision.

justed gross income limits apply to HSSA contributions from all sources (e.g., both individual and employer contributions).

The maximum annual contribution limits for the health accounts are coordinated so that contributions to one type of health account reduce the annual contribution limit for the other type of health account.[19]

An excise tax applies to contributions in excess of the maximum contribution amount for the health account. The excise tax is generally equal to six percent of the cumulative amount of excess contributions that are not distributed from the health account to the contributor.[20]

Amounts can be rolled over into a health account from an Archer MSA or a health FSA on a tax-free basis. Amounts can be rolled over into an HSA from another HSA or HSSA and into an HSSA from another HSSA on a tax-free basis. Rollovers from an HSA into an HSSA are not permitted. Amounts transferred from another health account or Archer MSA are not taken into account under the annual contribution limits.

If an employer makes contributions to employees' health accounts, the employer must make available comparable contributions on behalf of all employees with comparable coverage during the same period. Contributions are considered comparable if they are either of the same amount or the same percentage of the deductible under the plan. The comparability rule is applied separately to part-time employees (i.e., employees who are customarily employed for fewer than 30 hours per week). The comparability rule does not apply to amounts transferred from an employee's health account, health FSA, or Archer MSA or to contributions made through a cafeteria plan.

If employer contributions do not satisfy the comparability rule during a period, then the employer is subject to an excise tax equal to 35 percent of the aggregate amount contributed by the employer to health accounts of the employer for that period. The excise tax is designed as a proxy for the denial of the deduction for employer contributions. In the case of a failure to comply with the comparability rule which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed to the extent that the payment of the tax would be excessive relative to the failure involved. For purposes of the comparability rule, employers under common control are aggregated.

TAXATION OF DISTRIBUTIONS

Distributions from a health account for qualified medical expenses of the individual and his or her spouse or dependents generally are excludable from gross income. In general, amounts in a health account can be used for qualified medical expenses even if the individual is not currently eligible for contributions to the health account.[21]

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[19] The contribution limits are also coordinated with contributions to Archer MSAs.

[20] Ordering rules apply to determine the nature of any distributed excess contributions (e.g., nondeductible family contributions in the case of an HSSA or employer contributions).

[21] However, in any year for which a contribution is made to an HSA, withdrawals from the HSA maintained by that individual generally are excludable from income only if the individual for whom the expenses were incurred was covered under a high deductible plan for the month

Continued

Qualified medical expenses generally are defined as under section 213(d) and include expenses for diagnosis, cure, mitigation, treatment, or prevention of disease, including prescription drugs, transportation primarily for and essential to such care, and qualified long-term care expenses. Qualified medical expenses do not include expenses for insurance other than for (1) long-term care insurance, (2) premiums for health coverage during any period of continuation coverage required by Federal law, and (3) premiums for health care coverage while an individual is receiving unemployment compensation under Federal or State law. In the case of HSSAs, qualified medical expenses also include (1) health insurance meeting the minimum deductible requirements if no portion of the cost of the insurance is paid by the employer or former employer of the individual or the individual's spouse,[22] and (2) health insurance for individuals who are older than age 65 (including Medicare expenses). For purposes of determining the itemized deduction for medical expenses, distributions from a health account for qualified medical expenses are not treated as expenses paid for medical care under section 213.

Distributions from a health account that are not for qualified medical expenses are includible in gross income (except to the extent that the distribution is attributable to a return of nondeductible family contributions in the case of an HSSA).[23] Distributions includible in gross income are also subject to an additional 15-percent tax unless made after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65).

TAX TREATMENT OF HSAS AND HSSAS AFTER DEATH

Upon death, any balance remaining in the decedent's health account is includible in his or her gross estate.

If the health account holder's surviving spouse is the named beneficiary of the health account, then, after the death of the health account holder, the health account becomes the health account of the surviving spouse and the amount of the health account balance may be deducted in computing the decedent's taxable estate, pursuant to the estate tax marital deduction.[24] The surviving spouse is not required to include any amount in gross income as a result of the death; the general rules applicable to the health account apply to the surviving spouse's health account (e.g., the surviving spouse is subject to income tax only on distributions from the health account for nonqualified expenses). The surviving spouse can exclude from gross income amounts withdrawn from the health account for expenses incurred by the decedent prior to death, to the extent they otherwise are qualified medical expenses.

If, upon death, the health account passes to a named beneficiary other than the decedent's surviving spouse, the health account ceases to be a health account as of the date of the decedent's death, and the beneficiary is required to include the fair market

in which the expenses were incurred. The rule does not apply for continuation coverage or coverage while the individual is receiving unemployment compensation even if for an individual who is not an eligible individual.

[22] Amounts paid by the employer include salary reduction contributions.

[23] Ordering rules apply to determine the extent to which distributions are attributable to nondeductible contributions.

[24] Sec. 2056.

value of health account assets as of the date of death in gross income for the taxable year that includes the date of death. The amount includible in income is reduced by the amount in the health account used, within one year after death, to pay qualified medical expenses incurred by the decedent prior to the death. As is the case with other health account distributions, whether the expenses are qualified medical expenses is determined as of the time the expenses were incurred. In computing taxable income, the beneficiary may claim a deduction for that portion of the Federal estate tax on the decedent's estate that was attributable to the amount of the health account balance.[25]

If there is no named beneficiary of the decedent's health account, the health account ceases to be a health account as of the date of death, and the fair market value of the assets in the health account as of such date is includible in the decedent's gross income for the year of the death.

This rule applies in all cases in which there is no named beneficiary, even if the surviving spouse ultimately obtains the right to the health account assets (e.g., if the surviving spouse is the sole beneficiary of the decedent's estate).

REPORTING REQUIREMENTS

Employer contributions are required to be reported on the employee's Form W–2. Trustees of health accounts may be required to report to the Secretary of the Treasury amounts with respect to contributions, distributions, and other matters as determined appropriate by the Secretary. In addition, providers of health insurance are required to report information as may be prescribed by the Secretary.

Effective date.—The House bill provision is effective for taxable years beginning after December 31, 2003.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision relating to HSSAs. The conference agreement includes the HSA provision from the House bill, with the following modifications.[26]

The conference agreement modifies the definition of a high deductible health plan applicable to HSAs by removing the limitation on the maximum amount of the deductible and increasing the limit on out-of-pocket expenses. Under the conference agreement, a high deductible health plan is a health plan that has a deductible that is at least $1,000 for self-only coverage or $2,000 for family coverage[27] and that has an out-of-pocket expense limit that is no more than $5,000 in the case of self-only coverage and $10,000 in the

[25] The deduction is calculated in accordance with the present-law rules relating to income in respect of a decedent set forth in section 691(c).
[26] The rules for HSAs generally follow those of Archer MSAs unless otherwise provided.
[27] The $1,000 limit is indexed for inflation. The family coverage limit will always be twice the individual limit (as indexed for inflation).

case of family coverage.[28] As under present law, out-of-pocket expenses include deductibles, co-payments, and other amounts (other than premiums) that the individual must pay for covered benefits under the plan.

Under the conference agreement, the maximum aggregate annual contribution[29] that can be made to an HSA is the lesser of (1) 100 percent of the annual deductible under the high deductible health plan, or (2) the maximum deductible permitted under an Archer MSA high deductible health plan under present law, as adjusted for inflation. For 2004, the amount of the maximum high deductible is estimated to be $2,600 in the case of self-only coverage and $5,150 in the case of family coverage.

Under the conference agreement, contributions made by or on behalf of an eligible individual are deductible by the individual. Thus, for example, contributions made by an eligible individual's family members are deductible by the eligible individual to the extent the contributions would be deductible if made by the individual.[30] As under the House bill, all contributions by or on behalf of an eligible individual are aggregated for purposes of the maximum annual contribution limit. Contributions to Archer MSAs reduce the annual contribution limit for HSAs.

The conference agreement increases the annual contribution limits for individuals who have attained age 55 by the end of the taxable year. In the case of policyholders and covered spouses who are age 55 or older, the HSA annual contribution limit is greater than the otherwise applicable limit by $500 in 2004, $600 in 2005, $700 in 2006, $800 in 2007, $900 in 2008, and $1,000 in 2009 and thereafter.[31] As under the House bill, contributions, including catch-up contributions, cannot be made once an individual is eligible for Medicare. Under the conference agreement, qualified medical expenses are expanded to include health insurance premiums for individuals eligible for Medicare, other than premiums for Medigap policies. Qualified health insurance premiums include, for example, Medicare Part A and Part B premiums, Medicare HMO premiums, and the employee share of premiums for employer-sponsored health insurance including employer-sponsored retiree health insurance.

Except as otherwise provide by the Secretary, preventative care is defined as under section 1871 of the Social Security Act. It is intended that the Secretary of the Treasury will amend the definition of preventative care if the definition used under the Social Security Act is inconsistent with the purposes of the provision. Under the conference agreement, the additional tax on nonqualified

[28] In the case of the plan using a network of providers, the plan does not fail to be a high deductible health plan (if it would otherwise meet the requirements of a high deductible health plan) solely because the out of-pocket expense limit for services provised outside of the network exceeds the $5,000 and $10,000 out-of-pocket expense limits. In addition, such plan's deductible for out-of-network services is not taken into account in determining the annual contribution limit (i.e., the deductible for services within the network is used for such purpose).

[29] The maximum annual contribution limit is calculated as the sum of limits determined for each month based on the individual's health plan coverage on the first day of the month.

[30] Under present law, contributions made on behalf of another individual are generally treated as gifts. The present-law gift tax rules apply to contributions made on behalf of another individual.

[31] As in determining the general annual contribution limit, the increase in the annual contribution limit for individuals who have attained age 55 is also determined on a monthly basis.

distributions is reduced to 10 percent (rather than 15 percent as in the House bill).

Under the conference agreement, amounts can be rolled over into an HSA from another HSA or from an Archer MSA. The conference agreement also clarifies information reporting requirements in the House bill.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

Disposition of Unused Health Benefits in Flexible Spending Arrangements (sec. 1203 of the House bill and sec. 125 of the Code)

Present Law

A flexible spending arrangement ("FSA") is defined under the Code as a benefit program which provides employees with coverage under which specified incurred expenses may be reimbursed and the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 500 percent of the value of such coverage.[32] A health FSA is an FSA that provides for reimbursement of medical expenses.[33] Health FSAs are typically part of a cafeteria plan and may be funded through salary reduction.[34] Health FSAs are commonly used, for example, to reimburse employees for medical expenses not covered by insurance. There is no special exclusion for benefits provided under an FSA. Thus, health benefits provided under an FSA are excludable from income only if they qualify for exclusion under sections 105 or 106.

FSAs that are part of a cafeteria plan must comply with the rules applicable to cafeteria plans generally. One of these rules is that a cafeteria plan may not offer deferred compensation except through a qualified cash or deferred arrangement.[35] Under proposed Treasury regulations, a cafeteria plan is considered to permit the deferral of compensation if it includes a health FSA which reimburses participants for medical expenses incurred beyond the end of the plan year.[36] Thus, amounts in an employee's health account that are not used for medical expenses incurred before the end of a plan year must be forfeited. This rule is often referred to as the "use it or lose it" rule.

House Bill

The House bill allows up to $500 of unused health benefits in an employee's health FSA to be carried forward to the employee's health account for the next plan year of the health FSA or transferred to an HSA or HSSA maintained for the benefit of the employee.[37] Amounts transferred to an HSA or HSSA are treated as employer contributions for purposes of the HSA and HSSA rules. Under the House bill, if an individual is not eligible to contribute to an HSA or HSSA for the taxable year, the individual may transfer up to $500 of unused health benefits in the employee's health

[32] Sec. 106(c).
[33] FSAs may also be used to provide certain other nontaxable benefits, such as dependent care.
[34] Long-term care insurance cannot be offered through a cafeteria plan. Sec. 125(f).
[35] Sec. 401(k).
[36] Prop. Treas. Reg. sec. 1.125–2 Q&A–5(a).
[37] Section 2 of the bill provides the eligibility rules for contributions to an HSA or HSSA.

FSA to a tax-qualified retirement plan, a tax-sheltered annuity (section 403(b)), an individual retirement arrangement ("IRA"), or an eligible deferred compensation plan of a State or local government (section 457). An employee's unused health benefit is the excess of the maximum amount of reimbursement allowable to the employee over the actual amount of reimbursement made during the year. Amounts transferred are subject to the rules and limits on contributions that would otherwise apply to contributions to the transferee plan.

Effective date.—The House bill provision applies to taxable years beginning after December 31, 2003.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

Exclusion from Gross Income of Certain Federal Subsidies for Prescription Drug Plans (new sec. 139A of the Code)

Present Law

Gross income includes all income from whatever source derived unless a specific exclusion applies.[38]

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides that gross income does not include any special subsidy payment received under section 1860D–22 of the Social Security Act. The exclusion applies for purposes of both the regular tax and the alternative minimum tax (including the adjustment for adjusted current earnings).

The exclusion is not taken into account in determining whether a deduction is allowable with respect to costs taken into account in determining the subsidy payment. Accordingly, a taxpayer could claim a deduction for prescription drug expenses incurred even though the taxpayer also received an excludible subsidy related to the same expenses.

Effective date.—The provision is effective for taxable years ending after the date of enactment.

[38] Sec. 61.

Exception to Information Reporting Requirements for Certain Health Arrangements (sec. 1204 of the House bill and sec. 6041 of the Code)

Present Law

Any person in a trade or business who, in the course of that trade or business, makes specified payments to another person totaling $600 or more in a year, must provide an information report to the IRS (as well as a copy to the recipient) on the payments.[39] Reporting is required to be done on Form 1099. In general, these information reports remind taxpayers of amounts of income that should be reflected on their tax returns and assist the IRS in verifying that taxpayers have correctly reported these amounts.

Treasury regulations specify that fees for professional services, including the services of physicians, must be reported.[40] Treasury regulations also provide a general exception from these information reporting requirements for payments made to corporations, except that this exception is inapplicable if the corporation is "engaged in providing medical and health care services."[41] Earlier this year, the IRS issued a revenue ruling describing whether employer-provided expense reimbursements made through debit or credit cards or other electronic media are excludible from gross income.[42] The ruling states that "payments made to medical service providers through the use of debit, credit, and stored value cards are reportable by the employer on Form 1099–MISC under section 6041."[43]

House Bill

The House bill provides an exception from the generally applicable information reporting provisions for payments for medical care made under either: (1) a flexible spending arrangement,[44] or (2) a health reimbursement arrangement that is treated as employer-provided coverage.

Effective date.—The House bill provision applies to payments made after December 31, 2002.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legisla-

[39] Sec. 6041.
[40] Treas. Reg. sec. 1.6041–1(d)(2).
[41] Treas. Reg. sec. 1.6041–3(p)(1). These regulations also provide an exception from these information reporting requirements if the payment is made to a hospital that is tax-exempt or that is owned and operated by a government entity.
[42] Rev. Rul. 2003–43, 2003–21 I.R.B. 935 (May 27, 2003).
[43] *Id.*
[44] This term is defined in sec. 106(c)(2).

tion reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the "Code") and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have "widespread applicability" to individuals or small businesses

BILLY TAUZIN,
WILLIAM THOMAS,
MICHAEL BILIRAKIS,
NANCY L. JOHNSON,
TOM DELAY,
Managers on the Part of the House.

CHUCK GRASSLEY,
ORRIN HATCH,
DON NICKLES,
BILL FRIST,
JON KYL,
MAX BAUCUS,
JOHN BREAUX,
Managers on the Part of the Senate.

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108TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
108–334

VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT

OCTOBER 29, 2003.—Ordered to be printed

Mr. YOUNG of Alaska, from the committee on conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2115]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2115), to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Vision 100—Century of Aviation Reauthorization Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

* * * * *

29–006

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TITLE IX—EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

Sec. 901. Extension of expenditure authority.
Sec. 902. Technical correction to flight segment.

* * * * *

TITLE IX—EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

SEC. 901. EXTENSION OF EXPENDITURE AUTHORITY.

(a) IN GENERAL.—Paragraph (1) of section 9502(d) of the Internal Revenue Code of 1986 (relating to expenditures from Airport and Airway Trust Fund) is amended—

(1) by striking "October 1, 2003" and inserting "October 1, 2007", and

(2) by inserting before the semicolon at the end of subparagraph (A) the following: "or the Vision 100—Century of Aviation Reauthorization Act".

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 9502(f) of the Internal Revenue Code of 1986 is amended by striking "October 1, 2003" and inserting "October 1, 2007".

SEC. 902. TECHNICAL CORRECTION TO FLIGHT SEGMENT.

(a) SPECIAL RULE.—Section 4261(e)(4) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(D) SPECIAL RULE FOR AMOUNTS PAID FOR DOMESTIC SEGMENTS BEGINNING AFTER 2002.—If an amount is paid during a calendar year for a domestic segment beginning in a later calendar year, then the rate of tax under subsection (b) on such amount shall be the rate in effect for the calendar year in which such amount is paid.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 to which they relate.

And the Senate agree to the same.

From the Committee on Transportation and Infrastructure, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

DON YOUNG,
JOHN MICA,
VERNON J. EHLERS,
ROBIN HAYES,
DENNY REHBERG,
JOHNNY ISAKSON,

From the Committee on Energy and Commerce, for consideration of sec. 521 of the House bill and sec. 508 of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
JOE BARTON,

From the Committee on Government Reform, for consideration of secs. 404 and 438 of the House bill and sec. 108 of the Senate amendment, and modifications committed to conference:

TOM DAVIS,
CHRISTOPHER SHAYS,

From the Committee on the Judiciary, for consideration of secs. 106, 301, 405, 505, and 507 of the Senate amendment, and modifications committed to conference:

JAMES SENSENBRENNER, Jr.,
HOWARD COBLE,

From the Committee on Resources, for consideration of secs. 204 and 409 of the House bill and sec. 201 of the Senate amendment, and modifications committed to conference:

RICHARD POMBO,
JIM GIBBONS,

Provided that Mr. Renzi is appointed in lieu of Mr. Pombo for consideration of section 409 of the House bill, and modifications committed to conference:

RICK RENZI,

From the Committee on Science, for consideration of sec. 102 of the House bill and secs. 102, 104, 621, 622, 641, 642, 661, 662, 663, 667, and 669 of the Senate amendment, and modifications committed to conference:

SHERWOOD BOEHLERT,
DANA ROHRABACHER,

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2115), to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. SHORT TITLE

House bill

"Flight 100—Century of Aviation Reauthorization Act".

Senate amendment

"Aviation Investment and Revitalization Vision Act".

Conference substitute

"Vision 100—Century of Aviation Reauthorization Act".

2. LENGTH OF AUTHORIZATION

House bill

4 years.

Senate amendment

3 years.

Conference substitute

House bill.

3. FINDINGS

House bill

No provision.

* * * * *

179. EXTENSION OF EXPENDITURE AUTHORITY

House bill

Allows grants to be made from the aviation trust fund for the purposes specified in this Act.

Senate amendment

Similar provision but adds a conforming amendment to section 9502(f).

Conference substitute

Senate amendment plus additional language making a technical correction to the domestic flight segment portion of the airline ticket tax. Beginning with calendar year 2003, the domestic flight segment portion of the airline ticket tax is adjusted for inflation annually. The technical correction clarifies that, in the case of amounts paid for transportation before the beginning of the year in which the transportation is to occur, the rate of tax is the rate in effect for the calendar year in which the amount is paid. The provision is effective for flight segments beginning after December 31, 2002.

180. ADDITIONAL MATTERS

The Managers strongly encourage the FAA and the Occupational Safety and Health Administration to continue to work under the framework established in the August 2000 Memorandum of Understanding and establish a coordination mechanism to determine which existing and future OSHA regulations can be applied to an aircraft in operation without compromising aviation safety.

The Managers are aware of concerns about the impact of aircraft noise on residential areas, including those surrounding the communities of the four airports of the Port Authority of New York and New Jersey (PANYNJ). Although the FAA determined that aircraft noise pollution was the strongest and most widespread concern raised by the public at its twenty-eight public scoping meetings in five states in 2001, the PANYNJ has not undertaken action to mitigating residential complaints in the neighborhoods surrounding its airports. Therefore, it is the hope of the Conference Committee that the PANYNJ will work in good faith with the New York and New Jersey Congressional delegations to address these issues, including undertaking a part 150 study to qualify for Federal residential soundproofing dollars or to begin undertaking residential soundproofing in the most affected areas in the footprint with particular focus on the neighborhoods surrounding LaGuardia Airport.

The Managers strongly encourage the FAA to work with state aviation agencies and universities to develop a national, innovative program that would offer practical training and information resources for those who operate, maintain, and administer public use airports across the nation on topics such as pavement maintenance, snow and ice control, project development and funding, wildlife control and safety and operations. To further this program, the Committee recommends that FAA consult with state aviation agencies and universities that have created similar programs for general aviation airports in their state.

The legislation includes a section that amends section 4(b) of the Rivers and Harbors Appropriations Act of 1884 to clarify that the restriction in that section with respect to taxes on vessels or other water craft does not apply to property taxes on vessels or water craft, other than vessels or water craft that are primarily engaged in foreign commerce, so long as those taxes are constitutionally permissible under long-standing judicial interpretations of the Commerce Clause. To assure the consistent application of legal principles concerning non-Federal taxation of interstate transpor-

tation equipment, the amendment in this section is effective as of November 25, 2002. Over the years, the U.S. Supreme Court has ruled on the constitutionality of property taxes on various forms of interstate and international transportation equipment in a number of cases, including but not limited to *Pullman's Palace Car Co.* v. *Pennsylvania,* 141 U.S. 18 (1891) (railroad rolling stock); *Ott* v. *Mississippi Valley Barge Line Co.,* 336 U.S. 169 (1949) (barges on inland waterways); and *Braniff Airways, Inc.* v. *Nebraska State Board of Equalization,* 347 U.S. 590 (1954) (domestic aircraft); *Complete Auto Transit, Inc.* v. *Brady,* 430 U.S. 274 (1977); and *Japan Line* v. *County of Los Angeles,* 441 U.S. 434 (1979). This line of decisions has sustained property taxes in interstate transportation cases when the tax is applied to an activity with a substantial nexus with the taxing entity, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the taxing entity. The exception for state and local taxes on vessels or watercraft that are primarily engaged in foreign commerce implements the holding of the Japan Line case. The committee notes that section 4(b) does not affect whether sales or income taxes are applicable with respect to vessels. The purpose of section 4(b) was to clarify existing law with respect to Constitutionally permitted fees and taxes on a vessel, but also to prohibit fees and taxes imposed on a vessel simply because that vessel sails through a given jurisdiction.

The Managers are aware of the concerns raised about the recent increase in shipment interruptions during the transportation of essential radiopharmaceuticals due to new air transportation security mandates. The Committee recommends that the Secretary of Homeland Security, in consultation with the Secretary of Transportation, review current procedures for shipment of radiopharmaceuticals and recommend actions to ensure the timely delivery of them. If the Secretary of DHS undertakes this study, the Secretary shall also submit recommendations to the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation on the actions taken to ensure that timely delivery of these medical products by commercial aircraft no later than 180 days after the enactment of the Act.

From the Committee on Transportation and Infrastructure, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

DON YOUNG,
JOHN MICA,
VERNON J. EHLERS,
ROBIN HAYES,
DENNY REHBERG,
JOHNNY ISAKSON,

From the Committee on Energy and Commerce, for consideration of sec. 521 of the House bill and sec. 508 of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
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RICHARD POMBO,
JIM GIBBONS,

Provided that Mr. Renzi is appointed in lieu of Mr. Pombo for consideration of section 409 of the House bill, and modifications committed to conference:

RICK RENZI,

From the Committee on Science, for consideration of sec. 102 of the House bill and secs. 102, 104, 621, 622, 641, 642, 661, 662, 663, 667, and 669 of the Senate amendment, and modifications committed to conference:

SHERWOOD BOEHLERT,
DANA ROHRABACHER,

From the Committee on Ways and Means, for consideration of title VI of the House bill and title VII of the Senate amendment, and modifications committed to conference:

BILL THOMAS,
DAVE CAMP,
Managers on the Part of the House.

JOHN MCCAIN,
TED STEVENS,
CONRAD BURNS,
TRENT LOTT,
KAY BAILEY HUTCHISON,
Managers on the Part of the Senate.

○

Public Law 108–178
108th Congress

An Act

To improve the United States Code.

Dec. 15, 2003
[H.R. 1437]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEGISLATIVE PURPOSE AND CONSTRUCTION.

40 USC note prec. 101.

(a) PURPOSE.—The purpose of this Act is to improve the United States Code by making necessary technical changes.

(b) NO SUBSTANTIVE CHANGE.—This Act makes no substantive change in existing law and may not be construed as making a substantive change in existing law.

(c) SEVERABILITY.—If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

* * * * *

(e) THE INTERNAL REVENUE CODE OF 1986.—In section 7608(c)(1)(A)(i)(IV) of the Internal Revenue Code of 1986 (26 U.S.C. 7608(c)(1)(A)(i)(IV)), as amended by section 3(f) of Public Law 107–217 (116 Stat. 1299), strike "title 40" and substitute "title 40, United States Code".

26 USC 7608.

* * * * *

Approved December 15, 2003.

LEGISLATIVE
HOUSE REPO
CONGRESSIO
July 21,
Nov. 25,

Public Law 108–189
108th Congress

An Act

To restate, clarify, and revise the Soliders' and Sailors' Civil Relief Act of 1940.

Dec. 19, 2003
[H.R. 100]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RESTATEMENT OF ACT.

The Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) is amended to read as follows:

"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Servicemembers Civil Relief Act'.

50 USC app. 501.

"(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

* * * * *

"Sec. 706. Business or trade obligations.

* * * * *

* * * * *

26 USC 7654.

(d) INTERNAL REVENUE CODE.—Section 7654(d)(1) of t Internal Revenue Code of 1986 is amended by striking "Soldie and Sailors' Civil Relief Act" and inserting "Servicemembers Ci Relief Act".

* * * * *

Approved December 19, 2003.

LEGISLATIVE HISTORY—H.R. 100 (S. 1136):

HOUSE REPORTS: No. 108–81 (Comm. on Veterans' Affairs).
SENATE REPORTS: No. 108–197 accompanying S. 1136 (Comm. on Veterans' . fairs).
CONGRESSIONAL RECORD, Vol. 149 (2003):
May 7, considered and passed House.
Nov. 21, considered and passed Senate, amended, in lieu of S. 1136.
Dec. 8, House concurred in Senate amendment.

○

108TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 108–81

SERVICEMEMBERS CIVIL RELIEF ACT

APRIL 30, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of New Jersey, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany H.R. 100]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 100) to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. RESTATEMENT OF ACT.

The Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) is amended to read as follows:

"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Servicemembers Civil Relief Act'.

"(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

* * * * *

"TITLE VII—FURTHER RELIEF

19–006

"SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL.

"For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

"(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

"(2) be deemed to have acquired a residence or domicile in any other State; or

"(3) be deemed to have become a resident in or a resident of any other State.".

SEC. 2. CONFORMING AMENDMENTS.

* * * * *

(d) INTERNAL REVENUE CODE.—Section 7654(d)(1) of the Internal Revenue Code of 1986 is amended by striking "Soldiers' and Sailors' Civil Relief Act" and inserting "Servicemembers Civil Relief Act".

* * * * *

INTRODUCTION

The reported bill reflects the Committee's consideration of H.R. 100, as amended.

On January 7, 2003, the Chairman and Ranking Member of the Veterans' Affairs Committee, the Honorable Christopher H. Smith and the Honorable Lane Evans, introduced H.R. 100 to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940.

On July 24 and July 25, 2002, the Subcommittee on Benefits held hearings on H.R. 5111, the Servicemembers' Civil Relief Act, and H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act. H.R. 5111, introduced on July 7, 2002, was a restatement and clarification of the Soldiers' and Sailors' Civil Relief Act of 1940, and is nearly identical to H.R. 100. H.R. 4017, introduced on March 20, 2002, added coverage under the Soldiers' and Sailors' Civil Relief Act of 1940 for those National Guard members called up under title 32, United States Code, for 30 days or more.

On July 24, the witnesses were Mr. Craig W. Duehring, Acting Assistant Secretary of Defense (Reserve Affairs); Ms. Judy Wilson,

Deputy Director, Government Relations, The Enlisted Association of the National Guard; Mr. Bob Manhan, Assistant Director, National Legislative Service, Veterans of Foreign Wars; Mr. Richard Jones, National Legislative Director, AMVETS; and Ms. Joyce Wessel Raezer, Director, Government Relations, the National Military Family Association, Inc.

On July 25, the witnesses were Robert Hirshon, Esq., President, American Bar Association; Eugene R. Fidell, Esq., Feldeman, Tucker, Leifer, Fidell & Bank, LLP; Mr. James Murphy, Chairman, Mortgage Bankers Association of America; Henry R. Desmarais, MD, M.P.A., Senior Vice President, Health Insurance Association of America; Ms. Kimberlee D. Vockel, Director of Legislative Affairs, Non Commissioned Officers Association; Mr. William B. Loper, Director of Government Affairs, Association of the United States Army; and Mr. James P. Tierney, Deputy Director of Legislative Programs, National Guard Association of the United States.

The Administration supported both bills in concept while opposing some specific provisions. Other witnesses also generally supported the bills in concept with suggestions for substantive or technical improvements.

On April 3, 2003, the full Committee met and ordered H.R. 100, with an amendment in the nature of a substitute, reported favorably to the House by unanimous voice vote.

SUMMARY OF THE REPORTED BILL

H.R. 100, as amended, would:

1. Rename the Soldiers' and Sailors' Civil Relief Act of 1940 as the Servicemembers Civil Relief Act (the Act).
2. Restate the purposes of the Act and include among the purposes the temporary suspension of administrative proceedings.

* * * * *

* * * * *

TITLE VII—FURTHER RELIEF

1. Allow a servicemember to apply for anticipatory relief from any obligation or liability incurred before the servicemember's military service, or from a tax or assessment falling due before or during the servicemember's military service or within 180 days of termination from military service. It would provide that in a case covered by this provision, if the ability of the servicemember to comply with the terms of an obligation or liability or pay a tax or assessment has been materially affected by military service, after appropriate notice and hearing, a court may grant: (1) a stay of enforcement of certain real estate contracts, and (2) a stay of enforcement of certain other contracts. It also would provide that, if a court grants a stay under this provision, no fine or penalty may accrue during the period of compliance with the terms and conditions of the stay.

2. Extend automatically a servicemember's power of attorney when the servicemember is in a missing status.
3. Provide for suspension of a professional liability insurance policy for the period of active duty military service in the case of a person providing professional health care or legal services (or other services determined by the Secretary of Defense to be professional services) under a professional liability insurance contract and who entered into certain active duty under title 10, United States Code. It would establish requirements for suspension of coverage and reinstatement of coverage, and prohibit the insurance carrier from requiring payments to be made during the period of such suspended coverage. It would define for the purposes of this provision the terms "active duty," "profession," and "professional."
4. Provide that a servicemember entitled to the rights and protections of the Act is also entitled upon termination of military service to reinstatement of any health insurance that: (1) was in effect on the day before service commenced, and (2) was terminated effective on a date during the period of service. It would prohibit any exclusions or waiting periods from being imposed upon a returning servicemember for health insurance coverage if: (1) the condition arouse before or during the servicemember's military service, (2) such exclusion or waiting period would not have been imposed for the condition during the period of coverage, and (3) such condition is not determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty. It would require that an application for reinstatement be filed not later than 120 days after termination of military service.
5. Provide a guarantee of residency for military personnel for purposes of voting for any Federal office or a State or local office, if that person is absent from a State in compliance with military or naval orders.

BACKGROUND AND DISCUSSION

Congress has long recognized that the men and women of our military services should have civil legal protections so they can "devote their entire energy to the defense needs of the Nation." With hundreds of thousands of servicemembers fighting in the war on terrorism and the war in Iraq, many of them mobilized from the reserve components, the Committee believes the Soldiers' and Sailors' Civil Relief Act (SSCRA) should be restated and strengthened to ensure that its protections meet their needs in the 21st century.

The earliest recognition of the need to provide civil protections for servicemembers in the United States dates back to the "stay laws" promulgated by Louisiana during the War of 1812. Louisiana suspended all proceedings in civil cases for four months as the British were advancing on New Orleans. Experience of persons serving in the military during the Civil War led the Federal government and some states to enact stay laws which had the effect of suspending legal actions to which the soldier or sailor was a party. *Soldiers' and Sailors' Civil Relief Bill: Hearing on S. 2859 and H.R.*

6361 Before the Senate Subcommittee on the Judiciary, 65th Cong., 38 (1917). Following the decision of the United States to enter the war in Europe in 1917, the first modern version of the Soldiers' and Sailors' Civil Relief Act was drafted in six weeks by Major John Wigmore, the eminent Dean of Northwestern University's Law School and author of the authoritative treatise, Wigmore on Evidence. He had been called to active duty and attached to the Army Judge Advocate General Corps (JAGC). *Id.* at 83–84.

The original SSCRA provisions covered default judgments, stays of proceedings, evictions, mortgage foreclosure, insurance, and installment contracts. In a letter transmitting the draft bill to Congress, Newton Baker, Secretary of War, and Josephus Daniels, Secretary of the Navy, summed up the purpose of the legislation, "On the whole, the method of the act consists mainly in suspending proceedings and transactions during the soldier's or sailor's absence, so that he may have an opportunity, when he returns, to be heard and to take measures to protect his interests." *Id.* at 5.

The Senate hearings considered the authority of Congress to enact this type of legislation under the authority of the Constitution's war powers, as well as provisions on protection of insurance premiums. The Senate Subcommittee on the Judiciary in the end determined in a resolution "that the Congress has the power to enact a reasonable stay law, which may control the processes and proceedings of State courts." *Id.* This conclusion relied on *Stewart* v. *Kahn*, 78 U.S. 493, 11 Wallace 493 (1870), a decision in which the U.S. Supreme Court expressly held that the Federal statutes of the Civil War (13 Stat. L., 123, June 11, 1864) were controlling upon the state as well as the Federal courts. *Id.* at 89. The SSCRA of 1918 terminated under its own provisions six months after World War I ended.

In 1940, with the looming involvement of the United States in World War II, Congress re-enacted the SSCRA almost verbatim. *Civil Liabilities of Military Personnel: Hearing on S. 4270 Before the Senate Committee on Military Affairs*, 76th Cong. Vol. 8, 7 (1940). The 1940 version added the method for administering insurance protection and protections with respect to public lands, and raised the rent eviction ceiling from $50 to $80. *Civil Liabilities of Military Personnel: Hearing on S. 4270 Before the Senate Committee on Military Affairs*, 76th Cong., Vol. 8, 18 (1940).

Within two years it became apparent that new social and business realities made a major update necessary. While the amendments were being considered, Congressman Overton Brooks (D-LA), observed on the floor of the House:

> This bill springs from the desire of the people of the United States to make sure as far as possible that men in service are not placed at a civil disadvantage during their absence. It springs from the inability of men who are in service to properly manage their normal business affairs while away. It likewise arises from the differences in pay which a soldier receives and what the same man normally earns in civil life. (Cong. Rec. H. 5553, June 11, 1942).

The U.S. Supreme Court later supported this interpretation when it declared that the Act must be read with "an eye friendly to those

who dropped their affairs to answer their country's call." *Le Maistre* v. *Leffers*, 333 U.S. 1, 6 (1948).

A team headed by Major William Partlow, U.S. Army, JAGC, drafted major revisions to the SSCRA. During the 1942 hearings, Major Partlow reaffirmed that the purpose of the Act was "toward the withholding of remedies, rather than the extinguishments of rights." *Soldiers' and Sailors' Civil Relief Act: Hearings on H.R. 7029 Before the House Committee on Military Affairs*, 77th Cong., 11 (1942). The 1942 amendments modified existing provisions and expanded protections of the Act. The most notable of these was the creation of the 6 percent interest rate cap on indebtedness and the prohibition on multiple state taxation of the property and income of a servicemember.

Not until 1953 was the constitutionality of the Act challenged. The U.S. Supreme Court in *Dameron* v. *Brodhead*, 345 U.S. 322 (1953), settled the issue by holding that Congress could pass legislation such as the Act by virtue of its power "to declare war" (U.S. Const. Art. I, sec. 8, cl. 11) and "to raise and support armies" (U.S. Const. Art. I, sec. 8, cl. 12).

Including the major 1942 revisions, Congress has amended the SSCRA 13 times. Lt. Colonel Gregory M. Huckabee, *Operations Desert Shield and Desert Storm: Resurrection of the Soldiers' and Sailors' Civil Relief Act*, 132 Mil. L. Rev. 141 154–157 (1991). The SSCRA tolling provision was amended again in 1942 to exclude the Internal Revenue Service, thus allowing the collection of taxes from all citizens for the war effort regardless of status. (56 Stat. 964, ch. 619 (1942)). In 1944, Congress provided that servicemembers did not lose their domicile by being absent due to military orders. (58 Stat. 722, ch. 397, sec. 1 (1944)). In 1948, Congress changed the way life insurance premium refunds were credited in an attempt to make the funds self-sustaining. (62 Stat. 160, ch. 170, Sec. 6 (1948)).

Four years later, Congress added a criminal penalty for anyone who sold, foreclosed or seized property under a mortgage or trust deed involving a servicemember without a court order. (66 Stat. 151, ch. 450 (1952)). In 1958, Congress made a minor change removing the requirement by the Administrator of the Veterans Administration to make annual reports to Congress on the guaranteed life insurance program. (72 Stat. 1272, ch. 857, Sec. 14(76) (1958)).

In 1960, Congress permitted a declaration under penalty of perjury instead of an affidavit in default proceedings. This amendment conformed federal law to state law for the purposes of default proceedings. (74 Stat. 820 (1960)). A new protection was added in 1962 excluding from taxation by nondomiciliary states personal property belonging to a servicemember who resided outside of their domicile due to military orders. (76 Stat. 768, ch. 771 (1962)). In 1966, Congress raised the eviction rent ceiling from $80 to $150. (80 Stat. 28, ch. 358, sec. 10 (1966)).

In 1972, Congress indefinitely extended the effective life of powers of attorney executed during the Vietnam era (1963–1972). This was in response to the prisoner of war issues from the Vietnam War. (86 Stat. 1098, ch. 540, tit. V, sec. 504 (1972)). As a consequence of the Persian Gulf War in 1990, Congress amended several sections of the SSCRA. Amy J. McDonough, et al., *Crisis of the Soldiers' and Sailors' Civil Relief Act: A Call for the Ghost of Major*

(Professor) John Wigmore, 43 Mercer L. Rev. 667, 671–76 (Winter 1992). The 1991 amendments raised the eviction rent ceiling again from $150 to $1,200, created a new section suspending professional liability insurance for medical professionals, and enacted another new section to prohibit retaliatory action by creditors and insurers if the servicemember requested relief under the Act. (105 Stat. 34).

In 2001, in response to a legal challenge to absentee military votes cast in the November 1996 election, Congress again amended the Act with a new section to guarantee residency for servicemembers for voting purposes. (115 Stat. 1023, tit. XVI, sec. 1603). The most recent amendment in 2002 came about after the terrorist attacks of September 11, 2001, and extended the protections of the Act to certain members of the National Guard called to active duty under section 502(f) of title 32, United States Code, in response to national emergencies. (116 Stat. 2821, tit. III, sec. 305).

The Soldiers' and Sailors' Civil Relief Act of 1940 was to remain in force until May 15, 1945, or six months after the President proclaimed a treaty of peace. In 1948, after the SSCRA had expired, Congress added a provision to the Military Selective Service Act, requiring that the Soldiers' and Sailors' Civil Relief Act continue in force until it was "repealed or otherwise terminated by a subsequent Act of Congress. . . ." (50 U.S.C. App. 464 (1948)). Congress has not repealed or terminated the Act, and it continues in effect.

RESTATEMENT OF THE ACT

The Committee intends H.R. 100, as amended, to be a comprehensive restatement of the Act. The bill would clarify and strengthen many of its protections. Section 1 of the bill would give the Act a more inclusive short title, the "Servicemembers Civil Relief Act," because soldiers, sailors, marines and airmen are collectively referred to as "servicemembers" in other statutes. The bill updates and restates the current provisions of the Act in plain English for improved comprehension. It is drafted in modern legislative form with "titles" rather than "articles," and divides many of the sections into subsections and paragraphs for improved readability. Descriptive headings are added throughout the bill. The same general order of subject matter is preserved.

Section 2 of the bill restates the purposes of the Act for greater clarity, removes redundant language, and expands the statement of purposes to provide for the temporary suspension of administrative proceedings.

* * * * *

STATEMENT OF THE VIEWS OF THE ADMINISTRATION

1. The Committee held hearings on H.R. 5111, a bill to which H.R. 100 is nearly identical. The statement of Mr. Craig W. Duehring, Acting Assistant Secretary of Defense, Reserve Affairs, Department of Defense, before the Subcommittee on Benefits, Committee on Veterans' Affairs, July 24, 2002:

Mr. Chairman and members of the Subcommittee, thank you for giving me the opportunity to come before you this morning to discuss H.R. 5111, the Servicemembers' Civil Relief Act and H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act.

The Department of Defense supports H.R. 5111's restatement of the Soldiers' and Sailors' Civil Relief Act as the Servicemembers' Civil Relief Act. The need to modernize the language of the Act, incorporate over 60 years of case law, and add generally accepted practices is evident. The Department of Defense believes H.R. 5111 accomplishes this goal and would like to thank the Committee and its staff for their work on this important bill.

The Soldiers' and Sailors' Civil Relief Act of 1940 has been an essential ingredient in the total quality of life package for our military men and women, and their families, since its passage. In passing this Act and its Civil War and World War I era predecessors, Congress recognized that active military service may cause severe, often insurmountable, problems in handling personal affairs back home: frequent involuntary moves, extended deployments overseas, long separations from families sometimes with little advance notice. Congress also recognized the need to have military men and women focused on their operational mission free from worry about the welfare of their families or their personal affairs.

Congress addressed these problems adequately and equitably through the Act's skillfully crafted balance among the needs of our nation for a strong national defense, the needs of Servicemembers—and their families—for security in their personal affairs, and the needs of those who have dealt with and depend upon Servicemembers for fulfillment of their obligations.

H.R. 5111 maintains this important balance while addressing three areas where our experience with the Act indicates that change is needed: clarifying and simplifying the language; incorporating generally accepted procedures; and updating the Act to reflect 60 years of change in America. With the on-going war and reserve mobilization, now is a good time to update and clarify the Act so it can remain vital and continue to serve the needs of military members and those with whom they do business.

The questions most frequently asked by Servicemembers, their families, and those who deal with them reveal that parts of the Act are difficult to read and understand, and therefore difficult to follow. It is apparent from these questions that the entire Act needs to be rewritten in plain English and in modern legislative drafting

form. H.R. 5111 redrafts each section, updating the language and removing much ambiguity.

Additionally, the Act fails to provide necessary procedural guidance in many areas. For example, although the Act specifically provides protections for Servicemembers in the form of a request for a stay of proceedings, it does not explain how to go about obtaining the needed relief. H.R. 5111 provides this missing procedural guidance.

Finally, the world of 1940 could not have foreseen all the changes in American life that more than 60 years of technological advances and business practices would bring. The extensive use of leases for automobiles and business equipment could not possibly have been imagined over 60 years ago. H.R. 5111 reflects over 60 years of progress in America.

The Department of Defense has only a few concerns with H.R. 5111. First, the requirement of Section 105 that all persons in military service and entering military service be notified in writing of the benefits of this Act is unnecessary and would impose a significant administrative burden that would accomplish little. As under the current law, Congress should allow the Military Services to choose the most appropriate means for notifying servicemembers of their civil liability protections. Our experience indicates that handing everyone a list of the many provisions of this lengthy law would not be effective. Currently, the most widely used provisions are typically explained in briefings by legal assistance attorneys and in command newspapers and other command information forums. Also, servicemembers having civil legal problems are routinely referred to a legal assistance office, where even the infrequently used provisions of the Act are explained, if applicable to a servicemember's situation.

Additionally, the Department would like the Committee to consider adding language to H.R. 5111 that would define the meaning of the important term "material effect," incorporate case law holding that the Act's protections apply to business debts for which a servicemember is personally liable, and index the maximum rental amount covered by section 301 to account for inflation.

Finally, it appears that both sections 302 and 303 may have inadvertently been drafted to include a reference to section 108. We believe that the reference should be to section 107.

Before moving to H.R. 4017, I would again like to thank the Committee and its staff for all of the effort that has gone into this important bill.

The Department of Defense opposes H.R. 4017.

Members of the National Guard called or ordered to duty by a governor under section 502(f) of title 32 of the United States Code are under the command and control of state authorities and are subject to the laws and protections afforded by that state. This is true even though National Guard members serving in this status are paid by the United States. A Congressional determination of which

civil liability protections to provide to Guardsmen serving under state control is inconsistent with our federal system. The Department believes the states should make this determination.

The Department would support a concurrent resolution in which Congress would urge the states, territories, and government of the District of Columbia to enact laws and implement policies to provide civil liability protections similar to those provided under the Soldiers' and Sailors' Civil Relief Act (SSCRA) to members of their respective National Guard when serving other than on active duty under title 10 of the United States Code. We recently canvassed the states and territories and found that 21 of them have laws providing some type of SSCRA protections, with 12 of those states providing protections that are identical or nearly identical to those provided under SSCRA; several other states currently are considering legislation that would extend such protections to its Guardsmen. We appreciate this opportunity to discuss these bills with you.

2. A letter from Mr. Hector V. Barreto, Administrator, U.S. Small Business Administration:

U.S. SMALL BUSINESS ADMINISTRATION,
Washington, DC, April 2, 2003

Hon. CHRISTOPHER H. SMITH
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: This letter expresses the views of the U.S. Small Business Administration (SBA) on H.R. 100, intended to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940.

SBA does not have any objections to the proposed legislation. However, we note that both the current law and the bill reduce the interest rate of a debt to six percent only when an individual incurs the debt in his or her own personal capacity before being called up to active military duty. The interest rate is not reduced to six percent, under either the current law or H.R. 100, if the debt was incurred by the small legal entity, (e.g. a partnership, professional corporation, or limited liability company) owned and operated by the individual who is called to active military service, and who is an essential employee of the business. This issue was of interest during the Gulf War.

SBA is authorized through the Veterans Entrepreneurship and Small Business Development Act of 1999, PL 106–50, to provide economic injury disaster loan assistance to small businesses that employ a military reservist. Small businesses may apply for SBA's Military Reservist Economic Injury Disaster Loan (MREIDL) for up to $1.5 million if they have been financially affected by essential employees that have been called up for active duty during a period of military conflict. To date, SBA has approved approximately $3 million in loans for this program and has

on-going outreach activities to inform the Armed Forces and business community of these services.

Thank your for your continued interest in issues affecting the small business community.

Sincerely,

HECTOR V. BARRETO,
Administrator

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 11, 2003

Hon. CHRISTOPHER H. SMITH
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 100, the Servicemembers Civil Relief Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Michelle S. Patterson, who can be reached at 226–2840.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director

Enclosure.

Congressional Budget Office Cost Estimate

H.R. 100, Servicemembers Civil Relief Act, As ordered reported by the House Committee on Veterans' Affairs on April 3, 2003

Summary

H.R. 100 would restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940, which provides for financial protection and temporary suspension of certain judicial proceedings for servicemembers on active duty. The bill contains provisions that would increase the rent level under which a servicemember or family members are protected from eviction, limit a state's ability to increase the tax liability of a servicemember's spouse, and increase the value of life insurance coverage that is protected by the government if premiums are not paid. CBO estimates that implementing H.R. 100 would cost $2 million in 2004 and $4 million over the 2004–2008 period, assuming appropriation of the necessary amounts. Enacting this legislation would not affect direct spending or receipts.

H.R. 100 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost would not exceed the threshold established by UMRA ($59 million in 2003, adjusted annually for inflation).

The bill also contains a private-sector mandate as defined by UMRA, but CBO estimates that the cost would not exceed the threshold established by UMRA for private-sector mandates ($117 million in 2003, adjusted annually for inflation).

Estimated cost to the Federal Government

Under current law, a servicemember may apply to the Department of Veterans Affairs (VA) for protection to prevent a life insurance policy from being terminated for nonpayment of the premiums. If VA determines the servicemember is entitled to protection, then it will guarantee the payment of the premiums and attempt to collect any amounts paid by VA from the servicemember. Section 402 of the bill would increase the maximum value of a life insurance policy that is eligible for protection from cancellation for nonpayment of premiums from $10,000 to an amount equal to the Servicemembers' Group Life Insurance limit, which is currently $250,000.

CBO estimates that implementing this legislation would cost $2 million in 2004 and $4 million over the 2004–2008 period, assuming appropriation of the necessary amounts. Almost all of that amount would result from payments made by VA to guarantee life insurance protection. According to VA, the costs of providing this additional protection would be $186,000 a year for every 10,000 reservists called to active duty. According to the Department of Defense, as of April 9, 2003, there were over 220,000 reservists mobilized to fight the war with Iraq and support the global war on terrorism. For this estimate, CBO assumes that the number of reservists on active duty will decline to about 100,000 in 2004 and about 15,000 by 2008 as tensions around the globe subside. If the number of reservists called to active duty were to remain at current levels over the 2004–2008 period, then the estimated costs would be correspondingly higher. CBO also estimates that VA's cost to administer this guarantee would increase somewhat—but by less than $100,000 a year. The costs of this legislation fall within budget function 700 (veterans benefits and services).

Estimated impact on state, local, and tribal governments

H.R. 100 contains an intergovernmental mandate as defined in UMRA because it would prohibit jurisdictions from imposing income taxes in certain instances. Under the current Soldiers' and Sailors' Relief Act (section 574), servicemembers may only be taxed on their military income by the tax jurisdiction of which they are a resident. Servicemembers may not be taxed on their military pay by the state in which they are stationed if it is not their state of legal residence. However, if a servicemember or a servicemember's spouse earns additional payoff-base, the nonresident state may tax that off-base income.

In certain states with graduated income tax rates, the income tax rate which is applied to the off-base pay may be based on the servicemembers' total income, including military pay, and not the off-base pay only. Including military pay in the calculation can push the off-base pay into a higher tax bracket. That method of calculating state income tax is, sometimes called the "California Method" (although as many as 18 or more other states also use it). If the servicemember's state of legal residence also charges income tax, the resident state will offer an income tax credit for the income tax on the off-base pay that the individual paid to the nonresident state.

Section 511 would prohibit a tax jurisdiction from using the military compensation of a nonresident servicemember to increase the

tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction. Thus, a state where a servicemember is stationed could not use the "California method" to determine the income tax rate for the off-base pay, which may result in a lower income tax rate on that off-base pay. This provision would preempt state law under UMRA and would impose costs (in the form of lost revenues) in certain cases.

For states with a graduated tax structure that use the "California method" to calculate nonresident income taxes, enacting section 511 could result in a lower income tax rate on off-base earnings. But the net effect on the servicemember's overall income tax payments to states would depend on the income tax structure of the servicemember's resident state. In no case would section 511 increase the overall income tax payments to states by the servicemember and their spouse. In some cases, the provision would have no net effect on income tax payments to states by servicemembers and their spouses, and in some cases the provision would reduce income tax payments to states. Thus, states as a group would lose some income tax revenue. CBO estimates that the cost of enacting section 511 would total about $20 million annually and thus would be below the threshold established by UMRA ($59 million in 2003, adjusted annually for inflation).

Other provisions in H.R. 100 would restate provisions in the Soldiers' and Sailors' Civil Relief Act of 1940 or would otherwise have no impact on state, local, or tribal governments.

Estimated impact on the private sector

H.R. 100 contains a private-sector mandate as defined by UMRA. The bill requires a landlord who wishes to evict an active-duty tenant or his or her dependents for nonpayment of rent to obtain a court order authorizing the eviction. If the court finds that the servicemember's military service materially affects the ability to pay rent, it can stay eviction for up to three months. Under current law, the stay of eviction proceedings covers premises for which the rent does not exceed $1,200 per month. Section 301 of this bill would increase the mandate by raising the monthly lease amount that is protected to $1,700 and requiring that this amount be adjusted annually by a housing price index. CBO estimates, however, that the cost of complying with this mandate would not exceed the threshold as specified in UMRA for private-sector mandates ($117 million in 2003, adjusted annually for inflation).

Estimate prepared by:

Federal Costs: Michelle S. Patterson

Impact on State, Local, and Tribal Government: Victoria Heid Hall

Impact on the Private Sector: Adebayo Adedeji

Estimate approved by:

Peter H. Fontaine, Deputy Assistant Director for Budget Analysis

STATEMENT OF FEDERAL MANDATES

The foregoing Congressional Budget Office estimate states that the costs of the intergovernmental and private sector mandates of

the reported bill would not exceed the thresholds of the Unfunded Mandates Reform Act.

STATEMENT OF CONSTITUTIONAL AUTHORITY

The constitutional authority for the reported bill is the power of Congress "to . . . provide for the common defense" (U.S. Const. Art. I, sec. 8, cl. 1), "to declare war" (U.S. Const. Art. I, sec. 8, cl. 11) and "to raise and support armies" (U.S. Const. Art. I, sec. 8, cl. 12).

* * * * *

[JOINT COMMITTEE PRINT]

GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN THE 108TH CONGRESS

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

MAY 2005

JCS–5–05

GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN THE 108TH CONGRESS

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U.S. GOVERNMENT PRINTING OFFICE

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109TH CONGRESS, 1ST SESSION

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation in consultation with the staffs of the House Committee on Ways and Means and the Senate Committee on Finance, provides an explanation of tax legislation enacted in the 108th Congress. The explanation follows the chronological order of the tax legislation as signed into law.

For each provision, the document includes a description of present and prior law, explanation of the provision, and effective date. Present and prior law describes the law in effect immediately prior to enactment. Prior law indicates the portion of the law that was changed by the provision. For most provisions, the reasons for change are also included. In some instances, provisions included in legislation enacted in the 108th Congress were not reported out of committee before enactment. As a result, the legislative history of such provisions does not include the reasons for change normally included in a committee report. In the case of such provisions, no reasons for change are included with the explanation of the provision in this document.

Part One of this document is an explanation of the provisions of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Pub. L. No. 108–27), relating to the acceleration of certain previously enacted tax reductions, growth incentives for businesses, reduction in taxes on dividends and capital gains, and corporate estimated tax payments.

Part Two is an explanation of the provision of Surface Transportation Extension Act of 2003 (Pub. L. No. 108–88) relating to the extension of the Highway Trust Fund and Aquatic Resources Trust Fund expenditure authority.

Part Three is an explanation of provisions relating to disclosure of return information relating to student loans, extension of IRS user fees, and extension of custom user fees of an Act to extend the Temporary Assistance for Needy Families block grant program and certain tax and trade programs and for other purposes (Pub. L. No. 108–89).

Part Four is an explanation of the provisions of the Military Family Tax Relief Act of 2003 (Pub. L. No. 108–121), relating to improving tax equity for military personnel and extension of custom user fees.

Part Five is an explanation of the provisions of the Medicare Prescription Drug, Improvement, and Modernization Act (Pub. L. No. 108–173) relating to disclosure of return information for purposes under the Medicare discount card program, disclosure of return information relating to income-related reduction in Part B Premium

[1] This document may be cited as follows: Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 108th Congress (JCS–5–05), May 2005.

subsidy, health savings accounts, exclusion from gross income of certain Federal subsidies for prescription drug plans, and an exception to information reporting for certain health arrangements.

Part Six is an explanation of the provisions of the Vision 100-Century of Aviation Reauthorization Act (Pub. L. No. 108–176) relating to the extension of expenditure authority.

Part Seven is an explanation of the provision of the Servicemembers Civil Relief Act (Pub. L. No. 108–189) relating to tax collection of servicemembers.

Part Eight is an explanation of the provision of the Surface Transportation Extension Act of 2004 (Pub. L. No. 108–202) relating to extension of the Highway Trust Fund and Aquatic Resources Trust Fund expenditure authority.

Part Nine is an explanation of the revenue provisions of the Social Security Protection Act of 2004 (Pub. L. No. 108–203) relating to the treatment of individual work plans under the Ticket to Work program, FICA and SECA tax exemptions individuals subject to the laws of a tantalization agreement partner, and other technical amendments.

Part Ten is an explanation of the provisions of the Pension Funding Equity Act of 2004 (Pub. L. No. 108–218), relating to temporary replacement of the 30-year Treasury rate and election of alternative deficit reduction contribution, multiemployer plan funding notices, deferral of the charge for a portion of net experience loss of multiemployer plans, and other provisions.

Part Eleven is an explanation of the provision of the Surface Transportation Extension Act of 2004, Part II (Pub. L. No. 108–224) relating to the extension of the Highway Trust Fund and Aquatic Resources Trust Fund expenditure authority.

Part Twelve is an explanation of the provision of the Surface Transportation Extension Act of 2004, Part III (Pub. L. No. 108–263) relating to the extension of the Highway Trust Fund and Aquatic Resources Trust Fund expenditure authority.

Part Thirteen is an explanation of the provision of the Surface Transportation Extension Act of 2004, Part IV (Pub. L. No. 108–280) relating to the extension of the Highway Trust Fund and Aquatic Resources Trust Fund expenditure authority.

Part Fourteen is an explanation of the provision of the Surface Transportation Extension Act of 2004, Part V (Pub. L. No. 108–310) relating to the extension of the Highway Trust Fund and Aquatic Resources Trust Fund expenditure authority.

Part Fifteen is an explanation of the provisions of the Working Families Tax Relief Act of 2004 (Pub. L. No. 108–311), relating to extension of certain expiring provisions, uniform definition of child and tax technical corrections.

Part Sixteen is an explanation of the provision to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa (Pub. L. No. 108–326).

Part Seventeen is an explanation of the provisions of the America Jobs Creation Act of 2004 (Pub. L. No. 108–357), relating to the repeal of exclusion for extraterritorial income, business tax incentives, tax relief for agriculture and small manufacturers, tax reform and simplification for United States businesses, deduction of State and local sales taxes, miscellaneous and revenue provisions.

Part Eighteen is an explanation of the revenue provisions of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. No. 108–375) relating to the exclusion from gross income of travel benefits under Operation Hero Miles.

Part Nineteen is an explanation of the revenue provisions of the Consolidated Appropriations Act, 2005 (Pub. L. No. 108–447) relating to the application of ERISA anticutback rules to certain multi-employer plan amendments.

Part Twenty is an explanation of the provisions of the Act to treat certain arrangements maintained by the YMCA Retirement Fund as church plans for the purposes of certain provisions of the Internal Revenue Code of 1986, and for other purposes (Pub. L. No. 109–476).

Part Twenty-One is an explanation of the provision of the Act to modify the taxation of arrow components (Pub. L. No. 108–493).

The Appendix provides the estimated budget effects of tax legislation enacted in the 108th Congress.

The first footnote in each part gives the legislative history of each of the Acts of the 108th Congress discussed.

PART ONE: JOBS AND GROWTH TAX RELIEF RECONCILIATION ACT OF 2003 (PUBLIC LAW 108–27) [2]

I. ACCELERATION OF CERTAIN PREVIOUSLY ENACTED TAX REDUCTIONS

A. Accelerate the Increase in the Child Tax Credit (sec. 101 of the Act and sec. 24 of the Code)

Present and Prior Law

In general

For 2003, an individual may claim a $600 tax credit for each qualifying child under the age of 17. In general, a qualifying child is an individual for whom the taxpayer can claim a dependency exemption and who is the taxpayer's son or daughter (or descendent of either), stepson or stepdaughter (or descendent of either), or eligible foster child.

Under prior law, the child tax credit was scheduled to increase to $1,000, phased-in over several years.

Table 1, below, shows the scheduled increases of the child tax credit as provided under the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA").

Table 1.—Scheduled Increase of the Child Tax Credit

Taxable year	Credit amount per child
2003–2004	$600
2005–2008	$700
2009	$800
2010 [1]	$1,000

[1] The credit reverts to $500 in taxable years beginning after December 31, 2010, under the sunset provision of EGTRRA.

The child tax credit is phased-out for individuals with income over certain thresholds. Specifically, the otherwise allowable child tax credit is reduced by $50 for each $1,000 (or fraction thereof) of modified adjusted gross income over $75,000 for single individuals or heads of households, $110,000 for married individuals filing joint returns, and $55,000 for married individuals filing separate re-

[2] H.R. 2. The House Committee on Ways and Means reported the bill on May 8, 2003 (H.R. Rep. No. 108–94). The House passed the bill on May 9, 2003. The Senate Committee on Finance reported S. 1054 on May 13, 2003 (S. Prt. No. 108–26). The Senate passed H. R. 2, as amended by the provisions of S. 1054, on May 15, 2003. The conference report was filed on May 22, 2003 (H.R. Rep. No. 108–126), and was passed by the House on May 23, 2003, and the Senate on May 23, 2003. The President signed the bill on May 28, 2003.

turns.[3] The length of the phase-out range depends on the number of qualifying children. For example, the phase-out range for a single individual with one qualifying child is between $75,000 and $87,000 of modified adjusted gross income. The phase-out range for a single individual with two qualifying children is between $75,000 and $99,000.

The amount of the tax credit and the phase-out ranges are not adjusted annually for inflation.

Refundability

For 2003, the child credit is refundable to the extent of 10 percent of the taxpayer's earned income in excess of $10,500.[4] The percentage is increased to 15 percent for taxable years 2005 and thereafter. Families with three or more children are allowed a refundable credit for the amount by which the taxpayer's social security taxes exceed the taxpayer's earned income credit, if that amount is greater than the refundable credit based on the taxpayer's earned income in excess of $10,500 (for 2003). The refundable portion of the child credit does not constitute income and is not treated as resources for purposes of determining eligibility or the amount or nature of benefits or assistance under any Federal program or any State or local program financed with Federal funds. For taxable years beginning after December 31, 2010, the sunset provision of EGTRRA applies to the rules allowing refundable child credits.

Alternative minimum tax liability

The child credit is allowed against the individual's regular income tax and alternative minimum tax. For taxable years beginning after December 31, 2010, the sunset provision of EGTRRA applies to the rules allowing the child credit against the alternative minimum tax.

Reasons for Change

The Jobs and Growth Tax Relief Reconciliation Act of 2003 ("the Act") accelerated the increase in the child tax credit in order to provide additional tax relief to families to help offset the significant costs of raising a child. Further, the Act provided immediate tax relief to American taxpayers in the form of the advance payment of the increased amount of the child credit. The Congress believed that such immediate tax relief might encourage short-term growth in the economy by providing individuals with additional cash to spend.

Explanation of Provision

Under the Act, the amount of the child credit is increased to $1,000 for 2003 and 2004.[5] After 2004, the child credit will revert

[3] Modified adjusted gross income is the taxpayer's total gross income plus certain amounts excluded from gross income (i.e., excluded income of: U.S. citizens or residents living abroad (sec. 911), residents of Guam, American Samoa, and the Northern Mariana Islands (sec. 931), and residents of Puerto Rico (sec. 933)). Unless otherwise indicated, all section references are to the Internal Revenue Code.

[4] The $10,500 amount is indexed for inflation.

[5] The increase in refundability to 15 percent of the taxpayer's earned income, scheduled for calendar years 2005 and thereafter, is not accelerated under the provision.

to the levels provided under present and prior law, as described above. For 2003, the increased amount of the child credit will be paid in advance beginning in July, 2003, on the basis of information on each taxpayer's 2002 return filed in 2003. The IRS is not expected to issue advance payment checks to an individual who did not claim the child credit for 2002. Such payments will be made in a manner similar to the advance payment checks issued by the Treasury in 2001 to reflect the creation of the 10-percent regular income tax rate bracket.[6]

Effective Date

The provision is effective for taxable years beginning after December 31, 2002, and before January 1, 2005.

B. Accelerate Marriage Penalty Relief (secs. 102 and 103 of the Act and secs. 1 and 63 of the Code)

1. Standard deduction marriage penalty relief

Present and Prior Law

Marriage penalty

A married couple generally is treated as one tax unit that must pay tax on the couple's total taxable income. Although married couples may elect to file separate returns, the rate schedules and other provisions are structured so that filing separate returns usually results in a higher tax than filing a joint return. Other rate schedules apply to single persons and to single heads of households.

A "marriage penalty" exists when the combined tax liability of a married couple filing a joint return is greater than the sum of the tax liabilities of each individual computed as if they were not married. A "marriage bonus" exists when the combined tax liability of a married couple filing a joint return is less than the sum of the tax liabilities of each individual computed as if they were not married.

Basic standard deduction

Taxpayers who do not itemize deductions may choose the basic standard deduction (and additional standard deductions, if applicable),[7] which is subtracted from adjusted gross income ("AGI") in arriving at taxable income. The size of the basic standard deduction varies according to filing status and is adjusted annually for inflation.[8] Under prior law for 2003, the basic standard deduction for married couples filing a joint return was 167 percent of the basic standard deduction for single filers. (Stated alternatively, under prior law for 2003, the basic standard deduction amount for single filers was 60 percent of the basic standard deduction amount for married couples filing joint returns). Thus, two unmarried individ-

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[6] The size of the child credit for taxable years beginning after December 31, 2004, was modified by the Working Families Tax Relief Act of 2004, described in Part Fifteen of this document.

[7] Additional standard deductions are allowed with respect to any individual who is elderly (age 65 or over) or blind.

[8] For 2003 the basic standard deduction amounts are: (1) $4,750 for unmarried individuals; (2) $7,950 for married individuals filing a joint return; (3) $7,000 for heads of households; and (4) $3,975 for married individuals filing separately.

uals have standard deductions whose sum exceeds the standard deduction for a married couple filing a joint return.

EGTRRA increased the basic standard deduction for a married couple filing a joint return to twice the basic standard deduction for an unmarried individual filing a single return.[9] The increase in the standard deduction for married taxpayers filing a joint return is scheduled to be phased-in over five years beginning in 2005 and will be fully phased-in for 2009 and thereafter. Table 2, below, shows the standard deduction for married couples filing a joint return as a percentage of the standard deduction for single individuals.

Table 2.—Size of the Basic Standard Deduction for Married Couples Filing Joint Returns

Taxable year	Standard deduction for married couples filing joint returns as percentage of standard deduction for unmarried individual returns
2003–2004	167
2005	174
2006	184
2007	187
2008	190
2009 and 2010 [1]	200

[1] The basic standard deduction increases are repealed for taxable years beginning after December 31, 2010, under the sunset provision of EGTRRA.

Reasons for Change

The Congress remained concerned about the inequity that arises when two working single individuals marry and experience a tax increase solely by reason of their marriage. Any attempt to address the marriage tax penalty involves the balancing of several competing principles, including equal tax treatment of married couples with equal incomes, the determination of equitable relative tax burdens of single individuals and married couples with equal incomes, and the goal of simplicity in compliance and administration. The Congress believed that the acceleration of the increase in the standard deduction for married couples filing a joint return was a responsible reduction of the marriage tax penalty.

Explanation of Provision

The Act increases the basic standard deduction amount for joint returns to twice the basic standard deduction amount for single returns effective for 2003 and 2004. For taxable years beginning after

[9] The basic standard deduction for a married taxpayer filing separately will continue to equal one-half of the basic standard deduction for a married couple filing jointly; thus, the basic standard deduction for unmarried individuals filing a single return and for married couples filing separately will be the same after the phase-in period.

2004, the applicable percentages will revert to those allowed under present and prior law, as described above in Table 2.[10]

Effective Date

The provision is effective for taxable years beginning after December 31, 2002, and before January 1, 2005.

2. Accelerate the expansion of the 15-percent rate bracket for married couples filing joint returns

Present and Prior Law

In general

Under the Federal individual income tax system, an individual who is a citizen or resident of the United States generally is subject to tax on worldwide taxable income. Taxable income is total gross income less certain exclusions, exemptions, and deductions. An individual may claim either a standard deduction or itemized deductions.

An individual's income tax liability is determined by computing his or her regular income tax liability and, if applicable, alternative minimum tax liability.

Regular income tax liability

Regular income tax liability is determined by applying the regular income tax rate schedules (or tax tables) to the individual's taxable income and then is reduced by any applicable tax credits. The regular income tax rate schedules are divided into several ranges of income, known as income brackets, and the marginal tax rate increases as the individual's income increases. The income bracket amounts are adjusted annually for inflation. Separate rate schedules apply based on filing status: Single individuals (other than heads of households and surviving spouses), heads of households, married individuals filing joint returns (including surviving spouses), married individuals filing separate returns, and estates and trusts. Lower rates may apply to capital gains.

In general, the bracket breakpoints for single individuals are approximately 60 percent of the rate bracket breakpoints for married couples filing joint returns.[11] The rate bracket breakpoints for married individuals filing separate returns are exactly one-half of the rate brackets for married individuals filing joint returns. A separate, compressed rate schedule applies to estates and trusts.

15-percent regular income tax rate bracket

EGTRRA increased the size of the 15-percent regular income tax rate bracket for a married couple filing a joint return to twice the size of the corresponding rate bracket for a single individual filing a single return. The increase is phased-in over four years, beginning in 2005. Therefore, this provision is fully effective (i.e., the size of the 15-percent regular income tax rate bracket for a married

[10] The size of the basic standard deduction for taxable years beginning after December 31, 2004, was modified by the Working Families Tax Relief Act of 2004, described in Part Fifteen of this document.

[11] Under present law, the rate bracket breakpoint for the 38.6 percent marginal tax rate is the same for single individuals and married couples filing joint returns.

couple filing a joint return is twice the size of the 15-percent regular income tax rate bracket for an unmarried individual filing a single return) for taxable years beginning after December 31, 2007. Table 3, below, shows the size of the 15-percent bracket.

Table 3.—Size of the 15-Percent Rate Bracket for Married Couples Filing Joint Returns

Taxable year	End point of 15-percent rate bracket for married couples filing joint returns as percentage rate bracket for unmarried individuals
2003–2004	167
2005	180
2006	187
2007	193
2008 and 2010[1]	200

[1] The increases in the 15-percent rate bracket for married couples filing a joint return are repealed for taxable years beginning after December 31, 2010, under the sunset of EGTRRA.

Reasons for Change

The Congress believed that accelerating the expansion of the 15-percent rate bracket for married couples filing joint returns, in conjunction with the expansion of the standard deduction amount for joint filers, would alleviate the effects of the marriage tax penalty. These provisions significantly reduced the most widely applicable marriage penalties.

Explanation of Provision

The Act increases of the size of the 15-percent regular income tax rate bracket for joint returns to twice the width of the 15-percent regular income tax rate bracket for single returns for taxable years beginning in 2003 and 2004. For taxable years beginning after 2004, the applicable percentages will revert to those allowed under present and prior law, as described above.[12]

Effective Date

The provision is effective for taxable years beginning after December 31, 2002, and before January 1, 2005.

[12] The size of the 15-percent regular rate bracket for joint returns for taxable years beginning after December 31, 2004, was modified by the Working Families Tax Relief Act of 2004, described in Part Fifteen of this document.

C. Accelerate Reductions in Individual Income Tax Rates (secs. 104, 105, and 106 of the Act and secs. 1 and 55 of the Code)

Present and Prior Law

In general

Under the Federal individual income tax system, an individual who is a citizen or a resident of the United States generally is subject to tax on worldwide taxable income. Taxable income is total gross income less certain exclusions, exemptions, and deductions. An individual may claim either a standard deduction or itemized deductions.

An individual's income tax liability is determined by computing his or her regular income tax liability and, if applicable, alternative minimum tax liability.

Regular income tax liability

Regular income tax liability is determined by applying the regular income tax rate schedules (or tax tables) to the individual's taxable income. This tax liability is then reduced by any applicable tax credits. The regular income tax rate schedules are divided into several ranges of income, known as income brackets, and the marginal tax rate increases as the individual's income increases. The income bracket amounts are adjusted annually for inflation. Separate rate schedules apply based on filing status: single individuals (other than heads of households and surviving spouses), heads of households, married individuals filing joint returns (including surviving spouses), married individuals filing separate returns, and estates and trusts. Lower rates may apply to capital gains.

For 2003, the regular income tax rate schedules for individuals are shown in Table 4, below. The rate bracket breakpoints for married individuals filing separate returns are exactly one-half of the rate brackets for married individuals filing joint returns. A separate, compressed rate schedule applies to estates and trusts.

Table 4.—Individual Regular Income Tax Rates for 2003

If taxable income is over:	But not over:	Then regular income tax equals:
Single Individuals		
$0	$6,000	10% of taxable income
$6,000	$28,400	$600, plus 15% of the amount over $6,000
$28,400	$68,800	$3,960.00, plus 27% of the amount over $28,400
$68,800	$143,500	$14,868.00, plus 30% of the amount over $68,800
$143,500	$311,950	$37,278.00, plus 35% of the amount over $143,500

Table 4.—Individual Regular Income Tax Rates for 2003—Continued

If taxable income is over:	But not over:	Then regular income tax equals:
Over $311,950 ...	....	$96,235.50, plus 38.6% of the amount over $311,950
Head of Households		
$0	$10,000	10% of taxable income
$10,000	$38,050	$1,000, plus 15% of the amount over $10,000
$38,050	$98,250	$5,207.50, plus 27% of the amount over $38,050
$98,250	$159,100 ...	$21,461.50, plus 30% of the amount over $98,250
$159,100	$311,950 ...	$39,716.50, plus 35% of the amount over $159,100
Over $311,950 ...	....	93,214, plus 38.6% of the amount over $311,950
Married Individuals Filing Joint Returns		
$0	$12,000	10% of taxable income
$12,000	$47,450	$1,200, plus 15% of the amount over $12,000
$47,450	$114,650 ...	$6,517.50, plus 27% of the amount over $47,450
$114,650	$174,700 ...	$24,661.50, plus 30% of the amount over $114,650
$174,700	$311,950 ...	$42,676.50, plus 35% of the amount over $174,700
Over $311,950 ...	....	$90,714, plus 38.6% of the amount over $311,950

Ten-percent regular income tax rate

Under prior law, the 10-percent rate applied to the first $6,000 of taxable income for single individuals, $10,000 of taxable income for heads of households, and $12,000 for married couples filing joint returns. Effective beginning in 2008, the $6,000 amount will increase to $7,000 and the $12,000 amount will increase to $14,000.

The taxable income levels for the 10-percent rate bracket will be adjusted annually for inflation for taxable years beginning after December 31, 2008. The bracket for single individuals and married individuals filing separately is one-half for joint returns (after adjustment of that bracket for inflation).

The 10-percent rate bracket will expire for taxable years beginning after December 31, 2010, under the sunset provision of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA").

Reduction of other regular income tax rates

Prior to EGTRRA, the regular income tax rates were 15 percent, 28 percent, 31 percent, 36 percent, and 39.6 percent.[13] EGTRRA added the 10-percent regular income tax rate, described above, and retained the 15-percent regular income tax rate. Also, the 15-percent regular income tax bracket was modified to begin at the end of the 10-percent regular income tax bracket. EGTRRA also made other changes to the 15-percent regular income tax bracket.[14]

Also, under EGTRRA, the 28 percent, 31 percent, 36 percent, and 39.6 percent rates are phased down over six years to 25 percent, 28 percent, 33 percent, and 35 percent, effective after June 30, 2001. The taxable income levels for the rates above the 15-percent rate in all taxable years are the same as the taxable income levels that apply under the prior-law rates.

Table 5, below, shows the schedule of regular income tax rate reductions.

Table 5.—Scheduled Regular Income Tax Rate Reductions

Taxable year	28% rate reduced to:	31% rate reduced to:	36% rate reduced to:	39.6% rate reduced to:
2001–2003[1]	27	30	35	38.6
2004–2005	26	29	34	37.6
2006–2010[2]	25	28	33	35.0

[1] Effective July 1, 2001.
[2] The reduction in the regular income tax rates are repealed for taxable years beginning after December 31, 2010, under the sunset provision of EGTRRA.

Alternative minimum tax exemption amounts

The alternative minimum tax is the amount by which the tentative minimum tax exceeds the regular income tax. An individual's tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $175,000 ($87,500 in the case of a married individual filing a separate return) and (2) 28 percent of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income ("AMTI") as exceeds the exemption amount. The maximum tax rates on net capital gain and dividends used in computing the regular tax are used in computing the tentative minimum tax. AMTI is the individual's taxable income adjusted to take account of specified preferences and adjustments.

Under prior law, the exemption amounts were: (1) $49,000 ($45,000 in taxable years beginning after 2004) in the case of married individuals filing a joint return and surviving spouses; (2) $35,750 ($33,750 in taxable years beginning after 2004) in the case of other unmarried individuals; (3) $24,500 ($22,500 in taxable years beginning after 2004) in the case of married individuals filing

[13] The regular income tax rates will revert to these percentages for taxable years beginning after December 31, 2010, under the sunset of EGTRRA.
[14] See the discussion of the provision regarding marriage penalty relief in the 15–percent regular income tax bracket, above.

a separate return; and (4) $22,500 in the case of an estate or trust. The exemption amounts are phased out by an amount equal to 25 percent of the amount by which the individual's AMTI exceeds (1) $150,000 in the case of married individuals filing a joint return and surviving spouses, (2) $112,500 in the case of other unmarried individuals, and (3) $75,000 in the case of married individuals filing separate returns or an estate or a trust. These amounts are not indexed for inflation.

Reasons for Change

The Congress believed that high marginal individual income tax rates reduce incentives for taxpayers to work, to save, and to invest and, thereby, have a negative effect on the long-term health of the economy. The higher that marginal tax rates are, the greater is the disincentive for individuals to increase their work effort. Lower marginal tax rates provide greater incentives to taxpayers to be entrepreneurial risk takers; the Congress believed that the higher marginal tax rates of prior-law discourage success. The Congress believed that this tax cut will lead to increased investment by these businesses, promoting long-term growth and stability in the economy and rewarding the businessmen and women who provide a foundation for our country's success.

In addition, lower marginal tax rates help remove the barriers that lower-income families face as they try to enter the middle class. The lower the marginal tax rates for lower-income families, the greater is the incentive to work. The expanded 10-percent rate bracket provides an incentive for these taxpayers to increase their work effort.

Finally, there were signs that the economy was not growing as fast as desirable. The Congress believed that immediate tax relief could encourage growth in the economy by providing individuals with additional tax relief. The Congress recognized that it was important to act quickly so that taxpayers become aware of the commitment of the President and the Congress to enact this tax cut and to adjust income tax withholding tables.

Explanation of Provision

Ten-percent regular income tax rate

The Act accelerates the increase in the taxable income levels for the 10-percent rate bracket previously scheduled for 2008 to be effective in 2003 and 2004. Specifically, for 2003 and 2004, the Act increases the taxable income level for the 10-percent regular income tax rate brackets for unmarried individuals from $6,000 to $7,000 and for married individuals filing jointly from $12,000 to $14,000. The taxable income levels for the 10-percent regular income tax rate bracket will be adjusted annually for inflation for taxable years beginning after December 31, 2003.

For taxable years beginning after December 31, 2004, the taxable income levels for the 10-percent rate bracket will revert to the levels allowed under prior law. Therefore, for 2005, 2006, and 2007, the levels will revert to $6,000 for unmarried individuals and $12,000 for married individuals filing jointly. In 2008, the taxable income levels for the 10-percent regular income tax rate brackets

will be $7,000 for unmarried individuals and $14,000 for married individuals filing jointly. The taxable income levels for the 10-percent rate bracket will be adjusted annually for inflation for taxable years beginning after December 31, 2008.[15]

Reduction of other regular income tax rates

The Act accelerates the reductions in the regular income tax rates in excess of the 15-percent regular income tax rate that were scheduled for 2004 and 2006. Therefore, for 2003–2010, the regular income tax rates in excess of 15 percent under the bill are 25 percent, 28 percent, 33 percent, and 35 percent.

Alternative minimum tax exemption amounts

The Act increases the AMT exemption amount for married taxpayers filing a joint return and surviving spouses to $58,000, and for unmarried taxpayers to $40,250, for taxable years beginning in 2003 and 2004.

Effective Date

The provision generally is effective for taxable years beginning after December 31, 2002. The Congress recognized that withholding at statutorily mandated rates (such as pursuant to backup withholding under section 3406) had already occurred. The Congress intended that taxpayers who have been overwithheld as a consequence of this obtain a refund of this overwithholding through the normal process of filing an income tax return, and not through the payor. In addition, the Congress anticipated that the Treasury would provide a brief, reasonable period of transition for payors to implement these changes in these statutorily mandated withholding rates.

[15] The size of the 10-percent rate bracket for taxable years beginning after December 31, 2004, was modified by the Working Families Tax Relief Act of 2004, described in Part Fifteen of this document.

II. GROWTH INCENTIVES FOR BUSINESS

A. Increase and Extension of Bonus Depreciation (sec. 201 of the Act and sec. 168 of the Code)

Present and Prior Law

In general

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system ("MACRS"). Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property (generally tangible property other than residential rental property and nonresidential real property) range from 3 to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

Section 280F limits the annual depreciation deductions with respect to passenger automobiles to specified dollar amounts, indexed for inflation.

Section 167(f)(1) provides that capitalized computer software costs, other than computer software to which section 197 applies, are recovered ratably over 36 months.

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment generally may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year (sec. 179). In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business.

Additional first year depreciation deduction

The Job Creation and Worker Assistance Act of 2002 [16] ("JCWAA") allows an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified property.[17] The amount of the additional first-year depreciation deduction is not affected by a short taxable year. The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property

[16] Pub. L. No. 107-147, sec. 101 (2002).

[17] The additional first-year depreciation deduction is subject to the general rules regarding whether an item is deductible under section 162 or subject to capitalization under section 263 or section 263A.

is placed in service.[18] The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, there are no adjustments to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year.

In order for property to qualify for the additional first-year depreciation deduction it must meet all of the following requirements. First, the property must be (1) property to which MACRS applies with an applicable recovery period of 20 years or less, (2) water utility property (as defined in section 168(e)(5)), (3) computer software other than computer software covered by section 197, or (4) qualified leasehold improvement property (as defined in section 168(k)(3)).[19] Second, the original use[20] of the property must commence with the taxpayer on or after September 11, 2001.[21] Third, the taxpayer must purchase the property within the applicable time period. Finally, the property must be placed in service before January 1, 2005. An extension of the placed in service date of one year (i.e., to January 1, 2006) is provided for certain property with a recovery period of ten years or longer and certain transportation property.[22] Transportation property is defined as tangible personal property used in the trade or business of transporting persons or property.

The applicable time period for acquired property is (1) after September 10, 2001, and before September 11, 2004, but only if no binding written contract for the acquisition is in effect before September 11, 2001, or (2) pursuant to a binding written contract which was entered into after September 10, 2001, and before September 11, 2004.[23] With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after September 10, 2001, and before Sep-

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[18] However, the additional first-year depreciation deduction is not allowed for purposes of computing earnings and profits.

[19] A special rule precludes the additional first-year depreciation deduction for any property that is required to be depreciated under the alternative depreciation system of MACRS.

[20] The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.

If in the normal course of its business a taxpayer sells fractional interests in property to unrelated third parties, then the original use of such property begins with the first user of each fractional interest (i.e., each fractional owner is considered the original user of its proportionate share of the property).

[21] A special rule applies in the case of certain leased property. In the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property would be treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback.

If property is originally placed in service by a lessor (including by operation of section 168(k)(2)(D)(i)), such property is sold within three months after the date that the property was placed in service, and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale.

[22] In order for property to qualify for the extended placed in service date, the property is required to have a production period exceeding two years or an estimated production period exceeding one year and a cost exceeding $1 million.

[23] Property does not fail to qualify for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to September 11, 2001.

tember 11, 2004. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer. For property eligible for the extended placed in service date, a special rule limits the amount of costs eligible for the additional first year depreciation. With respect to such property, only the portion of the basis that is properly attributable to the costs incurred before September 11, 2004 ("progress expenditures") is eligible for the additional first-year depreciation.[24]

Property does not qualify for the additional first-year depreciation deduction when the user of such property (or a related party) would not have been eligible for the additional first-year depreciation deduction if the user (or a related party) were treated as the owner. For example, if a taxpayer sells to a related party property that was under construction prior to September 11, 2001, the property does not qualify for the additional first-year depreciation deduction. Similarly, if a taxpayer sells to a related party property that was subject to a binding written contract prior to September 11, 2001, the property does not qualify for the additional first-year depreciation deduction. As a further example, if a taxpayer (the lessee) sells property in a sale-leaseback arrangement, and the property otherwise would not have qualified for the additional first-year depreciation deduction if it were owned by the taxpayer-lessee, then the lessor is not entitled to the additional first-year depreciation deduction.

The limitation on the amount of depreciation deductions allowed with respect to certain passenger automobiles (sec. 280F) is increased in the first year by $4,600 for automobiles that qualify (and do not elect out of the increased first year deduction). The $4,600 increase is not indexed for inflation.

Reasons for Change

The Congress believed that increasing and extending the additional first-year depreciation would accelerate purchases of equipment, promote capital investment, modernization, and growth, and would help to spur an economic recovery.

Explanation of Provision

The Act provides an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified property.[25] Qualified property is defined in the same manner as for purposes of the 30-percent additional first-year depreciation deduction provided by the JCWAA except that the applicable time period for acquisition (or self construction) of the property is modified. In addition, property must be placed in service before January 1, 2005 to

[24] For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to sec. 46(d)(3) as in effect prior to the Tax Reform Act of 1986 shall apply.

[25] A taxpayer is permitted to elect out of the 50-percent additional first-year depreciation deduction for any class of property for any taxable year.

qualify.[26] Property for which the 50-percent additional first year depreciation deduction is claimed is not eligible for the 30-percent additional first year depreciation deduction.

Under the Act, in order to qualify the property must be acquired after May 5, 2003, and before January 1, 2005, and no binding written contract for the acquisition is in effect before May 6, 2003.[27] With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after May 5, 2003. For property eligible for the extended placed in service date (i.e., certain property with a recovery period of 10 years or longer and certain transportation property), a special rule limits the amount of costs eligible for the additional first year depreciation. With respect to such property, only progress expenditures properly attributable to the costs incurred before January 1, 2005, shall be eligible for the additional first year depreciation.[28]

The Congress wishes to clarify that the adjusted basis of qualified property acquired by a taxpayer in a like kind exchange or an involuntary conversion is eligible for the additional first year depreciation deduction.

The Act also increases the limitation on the amount of depreciation deductions allowed with respect to certain passenger automobiles (sec. 280F) in the first year by $7,650 (in lieu of the $4,600 provided under the JCWAA) for automobiles that qualify (and do not elect out of the increased first year deduction). The $7,650 increase is not indexed for inflation.

The Act also extends the placed in service date requirement for certain property with a recovery period of 10 years or longer and certain transportation property to property placed in service prior to January 1, 2006 (instead of January 1, 2005).[29] In addition, progress expenditures eligible for the 30-percent additional first year depreciation is extended to include costs incurred prior to January 1, 2005 (instead of September 11, 2004).

Effective Date

The provision applies to taxable years ending after May 5, 2003.

[26] An extension of the placed in service date of one year (i.e., January 1, 2006) is provided for certain property with a recovery period of 10 years or longer and certain transportation property as defined for purposes of the JCWAA.

[27] Property does not fail to qualify for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to May 6, 2003. However, no 50-percent additional first-year depreciation is permitted on any such component. No inference is intended as to the proper treatment of components placed in service under the 30 percent additional first-year depreciation provided by the JCWAA.

[28] For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to sec. 46(d)(3) as in effect prior to the Tax Reform Act of 1986 are to apply.

[29] Property that is otherwise eligible for the extended placed-in-service rules, and that is acquired and placed in service during 2005 pursuant to a written binding contract which was entered into after May 5, 2003, and before January 1, 2005, is eligible for the 50-percent additional first-year depreciation deduction. A technical correction may be necessary so that the statute reflects this intent.

B. Increased Expensing for Small Business (sec. 202 of the Act and sec. 179 of the Code)

Present and Prior Law

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 (for taxable years beginning in 2003 and thereafter) of the cost of qualifying property placed in service for the taxable year (sec. 179).[30] In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. An election to expense these items generally is made on the taxpayer's original return for the taxable year to which the election relates, and may be revoked only with the consent of the Commissioner.[31] In general, taxpayers may not elect to expense off-the-shelf computer software.[32]

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.

Reasons for Change

The Congress believed that section 179 expensing provides two important benefits for small businesses. First, it lowers the cost of capital for tangible property used in a trade or business. With a lower cost of capital, the Congress believed small business will invest in more equipment and employ more workers. Second, it eliminates depreciation recordkeeping requirements with respect to expensed property. In order to increase the value of these benefits and to increase the number of taxpayers eligible, the Act increases the amount allowed to be expensed under section 179 and increases the amount of the phase-out threshold, as well as indexing these amounts.

The Congress also believed that purchased computer software should be included in the section 179 expensing provision so that it is not disadvantaged relative to developed software. In addition, the Congress believed that the process of making and revoking section 179 elections should be made simpler and more efficient for

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[30] Additional section 179 incentives are provided with respect to a qualified property used by a business in the New York Liberty Zone (sec. 1400L(f)), an empowerment zone (sec. 1397A), or a renewal community (sec. 1400J).

[31] Section 179(c)(2). A taxpayer may make the election on the original return (whether or not the return is timely), or on an amended return filed by the due date (including extensions) for filing the return for the tax year the property was placed in service. If the taxpayer timely filed an original return without making the election, the taxpayer may still make the election by filing an amended return within six months of the due date of the return (excluding extensions). Treas. Reg. sec. 1.179-5.

[32] Section 179(d)(1) requires that property be tangible to be eligible for expensing; in general, computer software is intangible property.

taxpayers by eliminating the requirement of the consent of the Commissioner.

Explanation of Provision [33]

The Act provides that the maximum dollar amount that may be deducted under section 179 is increased to $100,000 for property placed in service in taxable years beginning in 2003, 2004, and 2005. In addition, the $200,000 amount is increased to $400,000 for property placed in service in taxable years beginning in 2003, 2004, and 2005. The dollar limitations are indexed annually for inflation for taxable years beginning after 2003 and before 2006. The provision also includes off-the-shelf computer software placed in service in a taxable year beginning in 2003, 2004, or 2005, as qualifying property. With respect to a taxable year beginning after 2002 and before 2006, the provision permits taxpayers to make or revoke expensing elections on amended returns without the consent of the Commissioner.

Effective Date

The provision is effective for taxable years beginning after December 31, 2002.

[33] The provision was subsequently extended in section 201 of the American Jobs Creation Act of 2004, Pub. L. No. 108-357, described in Part Seventeen.

III. REDUCTION IN TAXES ON DIVIDENDS AND CAPITAL GAINS

A. Reduction in Capital Gains Rates for Individuals; Repeal of Five-Year Holding Period Requirement (sec. 301 of the Act and sec. 1(h) of the Code)

Present and Prior Law

In general, gain or loss reflected in the value of an asset is not recognized for income tax purposes until a taxpayer disposes of the asset. On the sale or exchange of a capital asset, any gain generally is included in income. Any net capital gain of an individual is taxed at maximum rates lower than the rates applicable to ordinary income. Net capital gain is the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for the year. Gain or loss is treated as long-term if the asset is held for more than one year.

Capital losses generally are deductible in full against capital gains. In addition, individual taxpayers may deduct capital losses against up to $3,000 of ordinary income in each year. Any remaining unused capital losses may be carried forward indefinitely to another taxable year.

A capital asset generally means any property except: (1) inventory, stock in trade, or property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business; (2) depreciable or real property used in the taxpayer's trade or business; (3) specified literary or artistic property; (4) business accounts or notes receivable; (5) certain U.S. publications; (6) certain commodity derivative financial instruments; (7) hedging transactions; and (8) business supplies. In addition, the net gain from the disposition of certain property used in the taxpayer's trade or business is treated as long-term capital gain. Gain from the disposition of depreciable personal property is not treated as capital gain to the extent of all previous depreciation allowances. Gain from the disposition of depreciable real property is generally not treated as capital gain to the extent of the depreciation allowances in excess of the allowances that would have been available under the straight-line method of depreciation.

Under prior law, the maximum rate of tax on the adjusted net capital gain of an individual was 20 percent. In addition, any adjusted net capital gain which otherwise would have been taxed at a 15-percent rate was taxed at a 10-percent rate. These rates applied for purposes of both the regular tax and the alternative minimum tax.

The "adjusted net capital gain" of an individual is the net capital gain reduced (but not below zero) by the sum of the 28-percent rate gain and the unrecaptured section 1250 gain. The net capital gain

is reduced by the amount of gain that the individual treats as investment income for purposes of determining the investment interest limitation under section 163(d).

The term "28-percent rate gain" means the amount of net gain attributable to long-term capital gains and losses from the sale or exchange of collectibles (as defined in section 408(m) without regard to paragraph (3) thereof), an amount of gain equal to the amount of gain excluded from gross income under section 1202 (relating to certain small business stock),[34] the net short-term capital loss for the taxable year, and any long-term capital loss carryover to the taxable year.

"Unrecaptured section 1250 gain" means any long-term capital gain from the sale or exchange of section 1250 property (i.e., depreciable real estate) held more than one year to the extent of the gain that would have been treated as ordinary income if section 1250 applied to all depreciation, reduced by the net loss (if any) attributable to the items taken into account in computing 28-percent rate gain. The amount of unrecaptured section 1250 gain (before the reduction for the net loss) attributable to the disposition of property to which section 1231 applies shall not exceed the net section 1231 gain for the year.

The unrecaptured section 1250 gain is taxed at a maximum rate of 25 percent, and the 28-percent rate gain is taxed at a maximum rate of 28 percent. Any amount of unrecaptured section 1250 gain or 28-percent rate gain otherwise taxed at a 10- or 15-percent rate is taxed at that rate.

Under prior law, any gain from the sale or exchange of property held more than five years that would otherwise have been taxed at the 10-percent rate was taxed at an 8-percent rate. Any gain from the sale or exchange of property held more than five years and the holding period for which began after December 31, 2000, which would otherwise have been taxed at a 20-percent rate was taxed at an 18-percent rate.

Reasons for Change

The Congress believed that, by reducing the effective tax rates on capital gains, American households will respond by increasing savings. The Congress believed it is important to encourage risk-taking and believed that a reduction in the taxation of capital gains will have that effect. The Congress also believed that a reduction in the taxation of capital gains will improve the efficiency of the markets, because the taxation of capital gains upon realization encourages investors who have accrued past gains to keep their monies "locked in" to such investments even when better investment opportunities present themselves. A reduction in the taxation of capital gains should reduce this "lock in" effect.

The Congress believed it is important that tax policy be conducive to economic growth. Economic growth cannot occur without savings, investment, and the willingness of individuals to take risks. The greater the pool of savings, the greater will be the monies available for business investment. It is through such invest-

[34] This results in a maximum effective regular tax rate on qualified gain from small business stock of 14 percent.

ment that the United States' economy can increase output and productivity. It is through increases in productivity that workers earn higher real wages. Hence, a greater saving rate is necessary for all Americans to benefit from a higher standard of living.

Explanation of Provision

The Act reduces the 10- and 20-percent rates on the adjusted net capital gain of an individual to five (zero for taxable years beginning after 2007) and 15 percent, respectively. These lower rates apply to both the regular tax and the alternative minimum tax. The lower rates apply to assets held more than one year.

Effective Date

The provision applies to taxable years ending on or after May 6, 2003, and beginning before January 1, 2009.

For taxable years that include May 6, 2003, the lower rates apply to amounts properly taken into account for the portion of the year on or after that date. This generally has the effect of applying the lower rates to capital assets sold or exchanged (and installment payments received) on or after May 6, 2003. In the case of gain and loss taken into account by a pass-through entity, the date taken into account by the entity is the appropriate date for applying this rule.

B. Dividend Income of Individuals Taxed at Capital Gain Rates (sec. 302 of the Act and sec. 1(h) of the Code)

Present and Prior Law

Under prior law, dividends received by an individual[35] were included in gross income and taxed as ordinary income at rates up to 38.6 percent.[36]

Under prior law, the rate of tax on the net capital gain of an individual generally was 20 percent (10 percent[37] with respect to income which would otherwise be taxed at the 10- or 15-percent rate).[38] Net capital gain means net gain from the sale or exchange of capital assets held for more than one year in excess of net loss from the sale or exchange of capital assets held not more than one year.

Reasons for Change

Under prior law, the United States had a "classical" system of taxing corporate income. Under this system, corporations and their shareholders are treated as separate persons. A tax was imposed on the corporation on its taxable income, and after-tax earnings distributed to individual shareholders as dividends are included in the individual's income and taxed at the individual's tax rate. This system created the so-called "double taxation of dividends."

[35] The rates applicable to individuals also apply to trusts and estates.
[36] Section 105 of the Act reduced the maximum rate to 35 percent.
[37] An eight-percent rate applied to property held more than five years.
[38] Section 301 of the Act reduced the capital gain rates to five (zero for taxable years beginning after 2007) and 15 percent, respectively.

The Congress noted that economically, the issue was not that dividends were taxed twice, but rather the magnitude of the total tax burden on income from different investments. The Congress believed the prior system, by placing different tax burdens on different investments, resulted in economic distortions. The Congress observed that prior law distorted corporate financial decisions. The Congress observed that because interest payments on the debt are deductible, prior law encouraged corporations to finance using debt rather than equity and created incentives for financial engineering to achieve interest deductions from financial instruments with substantial equity characteristics. The Congress believed that the increase in corporate leverage, while beneficial to each corporation from a tax perspective, may have placed the economy at risk of more bankruptcies during an economic downturn. In addition, the Congress found that prior law encouraged corporations to retain earnings rather than to distribute them as taxable dividends. If dividends are discouraged, shareholders may prefer that corporate management retain and reinvest earnings rather than pay out dividends, even if the shareholder might have an alternative use for the funds that could offer a higher rate of return than that earned on the retained earnings. This was another source of inefficiency as the opportunity to earn higher pre-tax returns was by-passed in favor of lower pre-tax returns.

The Congress believed it is important that tax policy be conducive to economic growth. Economic growth is impeded by tax-induced distortions in the capital markets. Mitigating these distortions will improve the efficiency of the capital markets. In addition, reducing the aggregate tax burden on investments made by corporations will lower the cost of capital needed to finance new investments and lead to increases in aggregate national investment by the private sector. It is through such investment that the United States' economy can increase output and productivity. It is through increases in productivity that workers earn higher real wages and all Americans benefit from a higher standard of living.

Explanation of Provision [39]

Under the Act, dividends received by a non-corporate shareholder from domestic corporations and qualified foreign corporations are taxed at the same rates that apply to net capital gain. This treatment applies for purposes of both the regular tax and the alternative minimum tax. Thus, under the Act, dividends received by an individual, estate, or trust are taxed at rates of five (zero for taxable years beginning after 2007) and 15 percent.[40]

If a shareholder does not hold a share of stock for more than 60 days during the 121-day period beginning 60 days before the ex-dividend date (as measured under section 246(c)),[41] dividends received on the stock are not eligible for the reduced rates. Also, the reduced rates are not available for dividends to the extent that the

[39] The provision is described as amended by the technical corrections enacted by section 402 of the Working Families Relief Act of 2004. See H.R. Rep. No. 108–696, the Conference Report to accompany H.R. 1308, pp. 87–88 (Sept. 23, 2004).

[40] Payments in lieu of dividends are not eligible for the lower rates. See section 6045(d) relating to statements required to be furnished by brokers regarding these payments.

[41] In the case of preferred stock, the period is 90 days within a 181-day period beginning 90 days before the ex-dividend date.

taxpayer is obligated to make related payments with respect to positions in substantially similar or related property.

Qualified dividend income includes otherwise qualified dividends received from a qualified foreign corporation. The term "qualified foreign corporation" includes a foreign corporation that is eligible for the benefits of a comprehensive income tax treaty with the United States which the Treasury Department determines to be satisfactory and which includes an exchange of information program.[42] In addition, a foreign corporation is treated as a qualified foreign corporation with respect to any dividend paid by the corporation with respect to stock that is readily tradable on an established securities market in the United States.[43]

Dividends received from a foreign corporation that was a foreign investment company (as defined in section 1246(b)), a passive foreign investment company (as defined in section 1297), or a foreign personal holding company (as defined in section 552) in either the taxable year of the distribution or the preceding taxable year are not qualified dividends.[44]

Special rules apply in determining a taxpayer's foreign tax credit limitation under section 904 in the case of qualified dividend income. For these purposes, rules similar to the rules of section 904(b)(2)(B) concerning adjustments to the foreign tax credit limitation to reflect any capital gain rate differential will apply to any qualified dividend income. Additionally, it is anticipated that regulations promulgated under this provision will coordinate the operation of the rules applicable to qualified dividend income and capital gain.

If an individual, estate, or trust receives an extraordinary dividend (within the meaning of section 1059(c)) eligible for the reduced rates with respect to any share of stock, any loss on the sale of the stock is treated as a long-term capital loss to the extent of the dividend.

A dividend is treated as investment income for purposes of determining the amount of deductible investment interest only if the taxpayer elects to treat the dividend as not eligible for the reduced rates.

The deduction for estate taxes under section 691(c) paid on any qualified dividend that is income in respect of a decedent reduces the amount eligible for the lower tax rates.

The amount of dividends qualifying for reduced rates that may be paid by a regulated investment company ("RIC") for any taxable year in which the qualified dividend income received by the company is less than 95 percent of its gross income (as specially computed) may not exceed the sum of (i) the qualified dividend income of the RIC for the taxable year and (ii) the amount of earnings and profits accumulated in a non-RIC taxable year that were distributed by the RIC during the taxable year.

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[42] IRS Notice 2003–69 (I.R.B. 2003–42, Oct. 20, 2003) provides a list of treaties satisfying this requirement.

[43] IRS Notice 2003–71 (I.R.B. 2003–43, Oct. 27, 2003), IRS Notice 2003–79 (I.R.B. 2003–50, December 15, 2003), and IRS Notice 2004–71 (I.R.B. 2004–45, November 8, 2004) provide guidance on when stock of a foreign corporation is considered readily tradable on an established securities market in the United States for this purpose.

[44] IRS Notice 2004–70 (I.R.B. 2004–44, Nov. 1, 2004) provides guidance on dividend treatment for amounts received by shareholders from foreign corporations subject to anti-deferral regimes.

The amount of dividends qualifying for reduced rates that may be paid by a real estate investment trust ("REIT") for any taxable year may not exceed the sum of (i) the qualified dividend income of the REIT for the taxable year, (ii) an amount equal to the excess of the income subject to the taxes imposed by section 857(b)(1) and the regulations prescribed under section 337(d) for the preceding taxable year over the amount of these taxes for the preceding taxable year, and (iii) the amount of earnings and profits accumulated in a non-REIT taxable year that were distributed by the REIT during the taxable year.

The reduced rates do not apply to dividends received from an organization that was exempt from tax under section 501 or was a tax-exempt farmers' cooperative in either the taxable year of the distribution or the preceding taxable year; dividends received from a mutual savings bank that received a deduction under section 591; or deductible dividends paid on employer securities.

In the case of brokers and dealers who engage in securities lending transactions, short sales, or other similar transactions on behalf of their customers in the normal course of their trade or business, the Congress intended that the IRS would exercise its authority under section 6724(a) to waive penalties where dealers and brokers attempt in good faith to comply with the information reporting requirements under sections 6042 and 6045, but were unable to reasonably comply because of the period necessary to conform their information reporting systems to the retroactive rate reductions on qualified dividends provided by the Act. In addition, the Congress expected that individual taxpayers who received payments in lieu of dividends from these transactions could treat the payments as dividend income to the extent that the payments were reported to them as dividend income on their Forms 1099–DIV received for calendar year 2003, unless they knew or had reason to know that the payments were in fact payments in lieu of dividends rather than actual dividends.[45]

The tax rate for the accumulated earnings tax (sec. 531) and the personal holding company tax (sec. 541) is reduced to 15 percent.

Amounts treated as ordinary income on the disposition of certain preferred stock (sec. 306) are treated as dividends for purposes of applying the reduced rates.

The collapsible corporation rules (sec. 341) are repealed.

Effective Date

The provision is effective for taxable years beginning after December 31, 2002. In the case of a RIC, REIT, S corporation, partnership, estate, trust, or common trust fund, the provision applies to taxable years ending after December 31, 2002, with respect to dividends received after that date.

The provision does not apply to taxable years beginning after December 31, 2008.

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[45] IRS Notice 2003–67 (I.R.B. 2003–40, Oct. 6, 2003) provides guidance to brokers and individuals regarding information reporting for payments in lieu of dividends. IRS Notice 2003–79 (I.R.B 2003–50, December 15, 2003) and IRS Notice 2004–71 (I.R.B. 2004–45, November 8, 2004) provide guidance to brokers and individuals regarding information reporting for foreign dividends.

IV. CORPORATE ESTIMATED TAX PAYMENTS FOR 2003

A. Time for Payment of Corporate Estimated Taxes (sec. 501 of the Act)

Present and Prior Law

In general, corporations are required to make quarterly estimated tax payments of their income tax liability (sec. 6655). For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

Reasons for Change

The Congress believed it was appropriate to modify the corporate estimated tax requirements.

Explanation of Provision

With respect to corporate estimated tax payments otherwise due on September 15, 2003, 25 percent is not required to be paid until October 1, 2003.

Effective Date

The provision is effective on the date of enactment (May 26, 2003)

PART TWO: SURFACE TRANSPORTATION EXTENSION ACT OF 2003 (PUBLIC LAW 108–88) [46]

A. Extension of Highway Trust Fund and Aquatic Resources Trust Fund Expenditure Authority (sec. 12 of the Act)

Present and Prior Law

Under prior law, the Internal Revenue Code (sec. 9503) authorized expenditures (subject to appropriations) to be made from the Highway Trust Fund through September 30, 2003, for purposes provided in specified authorizing legislation as in effect on the date of enactment of the most recent authorizing Act (the Transportation Equity Act for the 21st Century).

Under prior law, expenditures also were authorized from the Aquatic Resources Trust Fund through September 30, 2003.

Highway Trust Fund spending is limited by anti-deficit provisions internal to the Highway Trust Fund, the so-called "Harry Byrd rule." The rule requires the Treasury Department to determine, on a quarterly basis, the amount (if any) by which unfunded highway authorizations exceed projected net Highway Trust Fund tax receipts for the 24-month period beginning at the close of each fiscal year (sec. 9503(d)). Similar rules apply to unfunded Mass Transit Account authorizations. If unfunded authorizations exceed projected 24-month receipts, apportionments to the States for specified programs funded by the relevant Trust Fund Account are to be reduced proportionately. Because of the Harry Byrd rule, taxes dedicated to the Highway Trust Fund typically are scheduled to expire at least two years after current authorizing Acts.

Explanation of Provision [47]

The Act extends the authority to make expenditures (subject to appropriations) from the Highway Trust Fund through February 29, 2004. The Act also updates the Highway Trust Fund cross references to authorizing legislation to include expenditure purposes in this Act and prior authorizing legislation as in effect on the date of enactment.

Instead of extending the taxes dedicated to the Highway Trust Fund, the Act creates a temporary rule (through February 29, 2004) for purposes of the anti-deficit provisions of the Highway Trust Fund. For purposes of determining 24 months of projected

[46] H.R. 3087. The House passed the bill on the suspension calendar on September 24, 2003. The Senate passed the bill by unanimous consent on September 26, 2003. The President signed the bill on September 30, 2003.

[47] The expiration dates described herein were subsequently extended by the Surface Transportation Extension Act of 2004; the Surface Transportation Extension Act of 2004, Part II; the Surface Transportation Extension Act of 2004, Part III; the Surface Transportation Extension Act of 2004, Part IV; and the Surface Transportation Extension Act of 2004, Part V, described in Part Eight, Part Eleven, Part Twelve, Part Thirteen, and Part Fourteen, respectively.

revenues for the anti-deficit provisions, the Secretary of the Treasury is instructed to treat each expiring provision relating to appropriations and transfers to the Highway Trust Fund to have been extended through the end of the 24-month period and to assume that the rate of tax during such 24-month period remains the same as the rate in effect on the date of enactment of the Act.

The Act extends the authority to make expenditures (subject to appropriations) from the Aquatics Resources Trust Fund through February 29, 2004. The Act also updates the Aquatics Resources Trust Fund cross references to authorizing legislation to include expenditure purposes as in effect on the date of enactment of this Act.

Effective Date

The provision is effective on the date of enactment (September 30, 2003).

PART THREE: TO EXTEND THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT PROGRAM, AND CERTAIN TAX AND TRADE PROGRAMS, AND FOR OTHER PURPOSES (PUBLIC LAW 108–89)[48]

A. Disclosure of Return Information Relating to Student Loans (sec. 201 of the Act and sec. 6103(l) of the Code)

Present and Prior Law

Present and prior law prohibit the disclosure of returns and return information, except to the extent specifically authorized by the Code.[49] An exception is provided for disclosure to the Department of Education (but not to contractors thereof) of a taxpayer's filing status, adjusted gross income and identity information (i.e., name, mailing address, taxpayer identifying number) to establish an appropriate repayment amount for an applicable student loan.[50] Under prior law, the Department of Education disclosure authority was scheduled to expire after September 30, 2003.

Explanation of Provision

The Act extends the disclosure authority relating to the disclosure of return information to carry out income-contingent repayment of student loans. The disclosure authority does not apply to any request made after December 31, 2004.[51]

Effective Date

The provision is effective with respect to requests for disclosures made after September 30, 2003.

B. Extension of IRS User Fees (sec. 202 of the Act and new sec. 7528 of the Code)

Present and Prior Law

The IRS provides written responses to questions of individuals, corporations, and organizations relating to their tax status or the effects of particular transactions for tax purposes. The IRS generally charges a fee[52] for requests for a letter ruling, determination

[48] H.R. 3146. The House passed the bill on the suspension calendar on September 24, 2003. The Senate passed the bill with an amendment by unanimous consent on September 30, 2003. The House passed the bill as amended by the Senate by unanimous consent on September 30, 2003. The President signed the bill on October 1, 2003.

[49] Sec. 6103.

[50] Sec. 6103(l)(13).

[51] The provision predated the enactment of H.R. 1308, Pub. L. No. 108–311 (the "Working Families Tax Relief Act of 2004"), which further extended the disclosure authority through December 31, 2005.

[52] These user fees were originally enacted in section 10511 of the Revenue Act of 1987 (Pub. L. No. 100–203, December 22, 1987) but were not originally placed in the Code.

letter, opinion letter, or other similar ruling or determination. Under prior law,[53] the statutory authorization for these user fees was extended through September 30, 2003.

Explanation of Provision

The Act extends the statutory authorization for IRS user fees through December 31, 2004.[54] The Act also moves the statutory authorization for these fees into the Code[55] and repeals the off-Code statutory authorization for these fees.

Effective Date

The provision is effective for requests made after the date of enactment (October 1, 2003).

C. Extension of Customs User Fees (sec. 301 of the Act)

Present and Prior Law

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)[56] authorized the Secretary of the Treasury to collect certain service fees. Section 412 of the Homeland Security Act of 2002[57] authorized the Secretary of the Treasury to delegate such authority to the Secretary of Homeland Security. Provided for under 19 U.S.C. 58c, these fees include: processing fees for air and sea passengers, commercial trucks, rail cars, private aircraft and vessels, commercial vessels, dutiable mail packages, barges and bulk carriers, merchandise, and Customs broker permits. COBRA was amended on several occasions but most recently by Pub. L. No. 103–182, which extended authorization for collection of these fees through September 30, 2003.

Explanation of Provision

The Act extends the authorization for the collection of customs user fees though March 31, 2004.[58]

Effective Date

The provision is effective on the date of enactment (October 1, 2003).

[53] Pub. L. No. 104–117, an Act to provide that members of the Armed Forces performing services for the peacekeeping efforts in Bosnia and Herzegovina, Croatia, and Macedonia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes (March 20, 1996).

[54] Section 891 of the American Jobs Creation Act of 2004 (Pub. L. No. 108–357, October 22, 2004) further extended the statutory authorization for these user fees through September 30, 2014.

[55] Sec. 7528. The Act also moved into the Code the user fee provision relating to pension plans that was enacted in section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. No. 107–16, June 7, 2001).

[56] Pub. L. No. 99–272.

[57] Pub. L. No. 107–296.

[58] The expiration date was subsequently extended by the Military Family Tax Relief Act of 2003, and the American Jobs Creation Act of 2004, described in Part Four and Part Seventeen, respectively. Present law provides authorization for the collection of these fees through September 30, 2014 (sec. 201; 117 Stat. 1335).

PART FOUR: MILITARY FAMILY TAX RELIEF ACT OF 2003 (PUBLIC LAW 108–121)[59]

I. IMPROVING TAX EQUITY FOR MILITARY PERSONNEL

A. Exclusion of Gain on Sale of a Principal Residence by a Member of the Uniformed Services or the Foreign Service (sec. 101 of the Act and sec. 121 of the Code)

Present and Prior Law

Under present and prior law, an individual taxpayer may exclude up to $250,000 ($500,000 if married filing a joint return) of gain realized on the sale or exchange of a principal residence. To be eligible for the exclusion, the taxpayer must have owned and used the residence as a principal residence for at least two of the five years ending on the sale or exchange. A taxpayer who fails to meet these requirements by reason of a change of place of employment, health, or, to the extent provided under regulations, unforeseen circumstances is able to exclude an amount equal to the fraction of the $250,000 ($500,000 if married filing a joint return) that is equal to the fraction of the two years that the ownership and use requirements are met. Under prior law, there were no special rules relating to members of the uniformed services or the Foreign Service of the United States.

Reasons for Change[60]

The Congress believed that members of the uniformed services and the Foreign Service of the United States who would otherwise qualify for the exclusion of the gain on the sale of a principal residence should not be deprived the exclusion because of service to their country. The Congress believed that it is unfair that members of the uniformed services and the Foreign Service of the United States are unable to avail themselves of the exclusion due to relocations required by service to their country.

Explanation of Provision

Under the Act, an individual may elect to suspend for a maximum of 10 years the five-year test period for ownership and use during certain absences due to service in the uniformed services or the Foreign Service of the United States. The uniformed services

[59] H.R. 3365. The House passed the bill on the suspension calendar on October 29, 2003. The Senate passed the bill with an amendment by unanimous consent on November 3, 2003. The House passed the bill as amended by the Senate on the suspension calendar on November 5, 2003. The President signed the bill on November 11, 2003.

[60] See S. 351, the "Armed Forces Tax Fairness Act of 2003," which was reported by the Senate Committee on Finance on February 11, 2003 (S. Rep. No. 108–3) and H.R. 878, the "Armed Forces Tax Fairness Act of 2003," which was reported by the House Committee on Ways and Means on March 5, 2003 (H.R. Rep. No. 108–23).

include: (1) the Armed Forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard); (2) the commissioned corps of the National Oceanic and Atmospheric Administration; and (3) the commissioned corps of the Public Health Service. If the election is made, the five-year period ending on the date of the sale or exchange of a principal residence does not include any period up to five years during which the taxpayer or the taxpayer's spouse is on qualified official extended duty as a member of the uniformed services or in the Foreign Service of the United States. For these purposes, qualified official extended duty is any period of extended duty while serving at a place of duty at least 150 miles away from the taxpayer's principal residence or under orders compelling residence in Government furnished quarters. Extended duty is defined as any period of duty pursuant to a call or order to such duty for a period in excess of 180 days or for an indefinite period. The election may be made with respect to only one property for a suspension period.

Effective Date

The provision is effective for sales or exchanges after May 6, 1997.

B. Exclusion from Gross Income of Certain Death Gratuity Payments (sec. 102 of the Act and sec. 134 of the Code)

Present and Prior Law

Present and prior law provides that qualified military benefits are not included in gross income. Generally, a qualified military benefit is any allowance or in-kind benefit (other than personal use of a vehicle) which: (1) is received by any member or former member of the uniformed services of the United States or any dependent of such member by reason of such member's status or service as a member of such uniformed services; and (2) was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice which was in effect on such date. Generally, other than certain cost of living adjustments, no modification or adjustment of any qualified military benefit after September 9, 1986, is taken into account for purposes of this exclusion from gross income. Qualified military benefits include certain death gratuities. The amount of the military death gratuity benefit has been increased since September 9, 1986, to $6,000 pursuant to Chapter 75 of Title 10 of the United States Code. Under prior law, the amount of the exclusion from gross income was not increased to take into account this change.

Reasons for Change[61]

The Congress believed that the amount of the exclusion for these death gratuities should be conformed to the levels of such death gratuities. Further, the Congress believed that the amount of the

[61] See S. 351, the "Armed Forces Tax Fairness Act of 2003," which was reported by the Senate Committee on Finance on February 11, 2003 (S. Rep. No. 108–3) and H.R. 878, the "Armed Forces Tax Fairness Act of 2003," which was reported by the House Committee on Ways and Means on March 5, 2003 (H.R. Rep. No. 108–23).

exclusion should be automatically adjusted for future changes in these death gratuities.

Explanation of Provision

The Act extends the exclusion from gross income for military benefits to any adjustment to the amount of the death gratuity payable under Chapter 75 of Title 10 of the United States Code that is pursuant to a provision of law enacted after September 9, 1986, with respect to the death of certain members of the Armed services on active duty, inactive duty training, or engaged in authorized travel.[62]

Effective Date

The provision is effective with respect to deaths occurring after September 10, 2001.

C. Exclusion for Amounts Received Under Department of Defense Homeowners Assistance Program (sec. 103 of the Act and sec. 132 of the Code)

Present and Prior Law

Homeowners Assistance Program payment

The Department of Defense Homeowners Assistance Program ("HAP") provides payments to certain employees and members of the Armed Forces to offset the adverse effects on housing values that result from a military base realignment or closure.[63]

In general, under HAP, eligible individuals receive either: (1) a cash payment as compensation for losses that may be or have been sustained in a private sale, in an amount not to exceed the difference between (a) 95 percent of the fair market value of their property prior to public announcement of intention to close all or part of the military base or installation and (b) the fair market value of such property at the time of the sale; or (2) as the purchase price for their property, an amount not to exceed 90 percent of the prior fair market value as determined by the Secretary of Defense, or the amount of the outstanding mortgages.

Tax treatment

Unless specifically excluded, gross income for Federal income tax purposes includes all income from whatever source derived. Amounts received under HAP are received in connection with the performance of services. Under prior law, these amounts were includible in gross income as compensation for services to the extent such payments exceed the fair market value of the property relinquished in exchange for such payments. Additionally under prior law, such payments were wages for Federal Insurance Contributions Act ("FICA") tax purposes (including Medicare).

[62] The Act also increases the death gratuity benefit from $6,000 to $12,000.
[63] The payments are authorized under the provisions of 42 U.S.C. sec. 3374.

Reasons for Change[64]

The Congress believed that an exclusion from gross income and FICA taxes was necessary to provide full compensation for the losses in home values incurred as a result of military base realignment or closure. The Congress further believed that this would help to facilitate necessary military base realignment or closure.

Explanation of Provision

The Act generally exempts from gross income amounts received under the HAP (as in effect on the date of enactment of this Act). Amounts received under the program also are not considered wages for FICA tax purposes (including Medicare). The excludable amount is limited to the reduction in the fair market value of property.

Effective Date

The provision is effective for payments made after the date of enactment (November 11, 2003).

D. Expansion of Combat Zone Filing Rules to Contingency Operations (sec. 104 of the Act and sec. 7508 of the Code)

Present and Prior Law

General time limits for filing tax returns

Individuals generally must file their Federal income tax returns by April 15 of the year following the close of a taxable year. The Secretary may grant reasonable extensions of time for filing such returns. Treasury regulations provide an additional automatic two-month extension (until June 15 for calendar-year individuals) for United States citizens and residents in military or naval service on duty on April 15 of the following year (the otherwise applicable due date of the return) outside the United States. No action is necessary to apply for this extension, but taxpayers must indicate on their returns (when filed) that they are claiming this extension. Unlike most extensions of time to file, this extension applies to both filing returns and paying the tax due.

Treasury regulations also provide, upon application on the proper form, an automatic four-month extension (until August 15 for calendar-year individuals) for any individual timely filing that form and paying the amount of tax estimated to be due.

In general, individuals must make quarterly estimated tax payments by April 15, June 15, September 15, and January 15 of the following taxable year. Wage withholding is considered to be a payment of estimated taxes.

Suspension of time periods

In general, the period of time for performing various acts under the Code, such as filing tax returns, paying taxes, or filing a claim

[64] See S. 351, the "Armed Forces Tax Fairness Act of 2003," which was reported by the Senate Committee on Finance on February 11, 2003 (S. Rep. No. 108–3) and H.R. 878, the "Armed Forces Tax Fairness Act of 2003," which was reported by the House Committee on Ways and Means on March 5, 2003 (H.R. Rep. No. 108–23).

for credit or refund of tax, is suspended for any individual serving in the Armed Forces of the United States in an area designated as a "combat zone" during the period of combatant activities. An individual who becomes a prisoner of war is considered to continue in active service and is therefore also eligible for these suspension of time provisions. The suspension of time also applies to an individual serving in support of such Armed Forces in the combat zone, such as Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the Armed Forces in support of those Forces. The designation of a combat zone must be made by the President in an Executive Order. The President must also designate the period of combatant activities in the combat zone (the starting date and the termination date of combat).

The suspension of time encompasses the period of service in the combat zone during the period of combatant activities in the zone, as well as (1) any time of continuous qualified hospitalization resulting from injury received in the combat zone[65] or (2) time in missing in action status, plus the next 180 days.

The suspension of time applies to the following acts:

1. Filing any return of income, estate, or gift tax (except employment and withholding taxes);
2. Payment of any income, estate, or gift tax (except employment and withholding taxes);
3. Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;
4. Allowance of a credit or refund of any tax;
5. Filing a claim for credit or refund of any tax;
6. Bringing suit upon any such claim for credit or refund;
7. Assessment of any tax;
8. Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;
9. Collection of the amount of any liability in respect of any tax;
10. Bringing suit by the United States in respect of any liability in respect of any tax; and
11. Any other act required or permitted under the internal revenue laws specified by the Secretary of the Treasury.

Individuals may, if they choose, perform any of these acts during the period of suspension. Spouses of qualifying individuals are entitled to the same suspension of time, except that the spouse is ineligible for this suspension for any taxable year beginning more than two years after the date of termination of combatant activities in the combat zone.

[65] Two special rules apply to continuous hospitalization inside the United States. First, the suspension of time provisions based on continuous hospitalization inside the United States are applicable only to the hospitalized individual; they are not applicable to the spouse of such individual. Second, in no event do the suspension of time provisions based on continuous hospitalization inside the United States extend beyond five years from the date the individual returns to the United States. These two special rules do not apply to continuous hospitalization outside the United States.

Reasons for Change[66]

The Congress believed that military personnel deployed outside the United States away from their permanent duty station while participating in a contingency operation should be entitled to utilize the same suspension of time provisions as those deployed in a combat zone.

Explanation of Provision

The Act applies the special suspension of time period rules to persons deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation or that becomes a contingency operation. A contingency operation is defined[67] as a military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force, or results in the call or order to (or retention of) active duty of members of the uniformed services during a war or a national emergency declared by the President or Congress.

Effective Date

The provision applies to any period for performing an act that has not expired before the date of enactment (November 11, 2003).

E. Modification of Membership Requirement for Exemption from Tax for Certain Veterans' Organizations (sec. 105 of the Act and sec. 501(c)(19) of the Code)

Present and Prior Law

Under present and prior law, a veterans' organization as described in section 501(c)(19) of the Code generally is exempt from taxation. The Code defines such an organization as a post or organization of past or present members of the Armed Forces of the United States: (1) that is organized in the United States or any of its possessions; (2) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and (3) that meets certain membership requirements. The membership requirements are that (1) at least 75 percent of the organization's members are past or present members of the Armed Forces of the United States, and, under prior law, that (2) substantially all of the remaining members are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets. Under present and prior law, no more than 2.5 percent of an organization's total members may consist of individuals who are not veterans, cadets, or spouses, widows, or widowers of such individuals.

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[66] See S. 351, the "Armed Forces Tax Fairness Act of 2003," which was reported by the Senate Committee on Finance on February 11, 2003 (S. Rep. No. 108–3) and H.R. 878, the "Armed Forces Tax Fairness Act of 2003," which was reported by the House Committee on Ways and Means on March 5, 2003 (H.R. Rep. No. 108–23).

[67] The definition is by cross-reference to 10 U.S.C. sec. 101.

Contributions to an organization described in section 501(c)(19) may be deductible for Federal income or gift tax purposes if the organization is a post or organization of war veterans.

Reasons for Change [68]

As the membership of veterans' organizations changes due to aging and the deaths of members, veterans' organizations that currently qualify for tax exemption under section 501(c)(19) may cease to qualify for exempt status under that section, even though the membership, apart from changes due to deaths, remains the same. The Congress believed that a limited expansion of the membership of veterans' organizations will enable certain of such organizations to retain exempt status, which might otherwise be in jeopardy, and will not unduly expand the membership base beyond persons with a close connection to members of the Armed Forces or cadets.

Explanation of Provision

The Act permits ancestors or lineal descendants of past or present members of the Armed Forces of the United States or of cadets to qualify as members for purposes of the "substantially all" test. The Act does not change the requirement that 75 percent of the organization's members must be past or present members of the Armed Forces of the United States or the 2.5 percent rule.

Effective Date

The provision is effective for taxable years beginning after the date of enactment (November 11, 2003).

F. Clarification of Treatment of Certain Dependent Care Assistance Programs Provided to Members of the Uniformed Services of the United States (sec. 106 of the Act and sec. 134 of the Code)

Present and Prior Law

Present and prior law provides that qualified military benefits are not included in gross income. Generally, a qualified military benefit is any allowance or in-kind benefit (other than personal use of a vehicle) which: (1) is received by any member or former member of the uniformed services of the United States or any dependent of such member by reason of such member's status or service as a member of such uniformed services; and (2) was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice which was in effect on such date. Generally, other than certain cost of living adjustments, no modification or adjustment of any qualified military benefit after September 9, 1986, is taken into account for purposes of this exclusion from gross income. Under prior law, questions arose as to the scope of the exclusion with respect to the dependent care credit.

[68] See S. 351, the "Armed Forces Tax Fairness Act of 2003," which was reported by the Senate Committee on Finance on February 11, 2003 (S. Rep. No. 108–3) and H.R. 878, the "Armed Forces Tax Fairness Act of 2003," which was reported by the House Committee on Ways and Means on March 5, 2003 (H.R. Rep. No. 108–23).

Reasons for Change[69]

The Congress believed that it is important to remove any uncertainty regarding the tax treatment of dependent care assistance provided to members of the uniformed services.

Explanation of Provision

The Act clarifies that dependent care assistance provided under a dependent care assistance program (as in effect on the date of enactment of this Act) for a member of the uniformed services by reason of such member's status or service as a member of the uniformed services is excludable from gross income as a qualified military benefit subject to the present-law rules. The uniformed services include: (1) the Armed Forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard); (2) the commissioned corps of the National Oceanic and Atmospheric Administration; and (3) the commissioned corps of the Public Health Service. Amounts received under the program also are not considered wages for Federal Insurance Contributions Act tax purposes (including Medicare).

Effective Date

The provision is effective for taxable years beginning after December 31, 2002. No inference is intended as to the tax treatment of such amounts for prior taxable years.

G. Treatment of Service Academy Appointments as Scholarships for Purposes of Qualified Tuition Programs and Coverdell Education Savings Accounts (sec. 107 of the Act and secs. 529 and 530 of the Code)

Present and Prior Law

The Code provides tax-exempt status to qualified tuition programs, meaning programs established and maintained by a State or agency or instrumentality thereof or by one or more eligible educational institutions under which a person (1) may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or (2) in the case of a program established by and maintained by a State or agency or instrumentality thereof, may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account. Contributions to qualified tuition programs may be made only in cash. Qualified tuition programs must have adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of amounts necessary to provide for the qualified higher education expenses of the beneficiary.

The Code provides tax-exempt status to Coverdell education savings accounts ("ESAs"), meaning certain trusts or custodial ac-

[69] See S. 351, the "Armed Forces Tax Fairness Act of 2003," which was reported by the Senate Committee on Finance on February 11, 2003 (S. Rep. No. 108–3) and H.R. 878, the "Armed Forces Tax Fairness Act of 2003," which was reported by the House Committee on Ways and Means on March 5, 2003 (H.R. Rep. No. 108–23).

counts which are created or organized in the United States exclusively for the purpose of paying the qualified education expenses of a designated beneficiary. Contributions to ESAs may be made only in cash. Annual contributions to ESAs may not exceed $2,000 per beneficiary (except in cases involving certain tax-free rollovers) and may not be made after the designated beneficiary reaches age 18.

Earnings on contributions to an ESA or a qualified tuition program generally are subject to tax when withdrawn. However, distributions from an ESA or qualified tuition program are excludable from the gross income of the distributee to the extent that the total distribution does not exceed the qualified education expenses incurred by the beneficiary during the year the distribution is made.

If the qualified education expenses of the beneficiary for the year are less than the total amount of the distribution from an ESA or qualified tuition program, then the qualified education expenses are deemed to be paid from a pro-rata share of both the principal and earnings components of the distribution. In such a case, only a portion of the earnings is excludable (i.e., the portion of the earnings based on the ratio that the qualified education expenses bear to the total amount of the distribution) and the remaining portion of the earnings is includible in the beneficiary's gross income.

The earnings portion of a distribution from an ESA or a qualified tuition program that is includible in income is generally subject to an additional 10-percent tax. The 10-percent additional tax does not apply if a distribution is made on account of the death or disability of the designated beneficiary, or on account of a scholarship received by the designated beneficiary (to the extent it does not exceed the amount of the scholarship).

Service obligations are required of recipients of appointments to the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy. Because of these service obligations, appointments to the Academies are not considered scholarships for purposes of the waiver of the additional 10 percent tax on withdrawals from ESAs and qualified tuition programs that are not used for qualified education purposes.

Reasons for Change [70]

The Congress believed that it was appropriate to treat appointments to a United States Service Academy in a manner similar to the treatment of qualified scholarships. Accordingly, Congress believed that it was appropriate to waive the additional 10-percent tax on withdrawals from ESAs and qualified tuition programs that are not used for qualified education purposes because the designated beneficiary received an appointment to a United States Service Academy.

The Congress believed that imposing an additional tax on earnings from educational savings accounts and qualified tuition plans is inappropriate in the case of individuals who choose to serve their

[70] See S. 351, the "Armed Forces Tax Fairness Act of 2003," which was reported by the Senate Committee on Finance on February 11, 2003 (S. Rep. No. 108–3) and H.R. 878, the "Armed Forces Tax Fairness Act of 2003," which was reported by the House Committee on Ways and Means on March 5, 2003 (H.R. Rep. No. 108–23).

country as a member of the military and who, as a part of that service, obtain their education at one of the Service Academies.

Explanation of Provision

Under the Act, the additional 10-percent tax does not apply to withdrawals from Coverdell education savings accounts and qualified tuition programs made on account of the attendance of the beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy.

The amount of funds that can be withdrawn without the additional tax is limited to the costs of advanced education as defined in 10 U.S.C. section 2005(e)(3) (as in effect on the date of the enactment of the Act) at such Academies.

Effective Date

The provision applies to taxable years beginning after December 31, 2002.

H. Suspension of Tax-Exempt Status of Terrorist Organizations (sec. 108 of the Act and sec. 501 of the Code)

Present and Prior Law

Under present and prior law, the Internal Revenue Service generally issues a letter revoking recognition of an organization's tax-exempt status only after (1) conducting an examination of the organization, (2) issuing a letter to the organization proposing revocation, and (3) allowing the organization to exhaust the administrative appeal rights that follow the issuance of the proposed revocation letter. In the case of an organization described in section 501(c)(3), the revocation letter immediately is subject to judicial review under the declaratory judgment procedures of section 7428. To sustain a revocation of tax-exempt status under section 7428, the IRS must demonstrate that the organization is no longer entitled to exemption. Under prior law, there was no procedure for the IRS to suspend the tax-exempt status of an organization.

To combat terrorism, the Federal government has designated a number of organizations as terrorist organizations or supporters of terrorism under the Immigration and Nationality Act, the International Emergency Economic Powers Act, and the United Nations Participation Act of 1945.

Reasons for Change [71]

The Congress believed that an organization that has been designated or otherwise identified by the Federal government as a terrorist organization pursuant to certain authority should not be exempt from Federal income tax and that contributions to such organizations should not be deductible for Federal income tax purposes.

[71] See S. 351, the "Armed Forces Tax Fairness Act of 2003," which was reported by the Senate Committee on Finance on February 11, 2003 (S. Rep. No. 108–3) and H.R. 878, the "Armed Forces Tax Fairness Act of 2003," which was reported by the House Committee on Ways and Means on March 5, 2003 (H.R. Rep. No. 108–23).

The Congress believed that the Federal government's designation or identification of an organization as a terrorist organization is ground for suspension of tax-exempt status, and that in such cases a separate investigation of the organization by the Internal Revenue Service is not necessary. Further, because a terrorist organization may challenge the Federal government's designation or identification of the organization under the law authorizing the designation or identification, recourse to the declaratory judgment procedures of the Internal Revenue Code to challenge the suspension of tax-exemption is not appropriate.

Explanation of Provision

The Act suspends the tax-exempt status of an organization that is exempt from tax under section 501(a) for any period during which the organization is designated or identified by U.S. Federal authorities as a terrorist organization or supporter of terrorism. The Act also makes such an organization ineligible to apply for tax-exemption under section 501(a). The period of suspension runs from the date the organization is first designated or identified (or from the date of enactment of the bill, whichever is later) to the date when all designations or identifications with respect to the organization have been rescinded pursuant to the law or Executive Order under which the designation or identification was made.

The Act describes a terrorist organization as an organization that has been designated or otherwise individually identified (1) as a terrorist organization or foreign terrorist organization under the authority of section 212(a)(3)(B)(vi)(II) or section 219 of the Immigration and Nationality Act; (2) in or pursuant to an Executive Order that 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 for the purpose of imposing on such organization an economic or other sanction; or (3) in or pursuant to an Executive Order that refers to the provision and is issued under the authority of any Federal law if 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). During the period of suspension, no deduction for any contribution to a terrorist organization is allowed under the Code, including under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522.

No organization or other person may challenge, under section 7428 or any other provision of law, in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person, the suspension of tax-exemption, the ineligibility to apply for tax-exemption, a designation or identification described above, the timing of the period of suspension, or a denial of deduction described above. The suspended organization may maintain other suits or administrative actions against the agency or agencies that designated or identified the organization, for the purpose of challenging such designation or identification (but not the suspension of tax-exempt status under this provision).

If the tax-exemption of an organization is suspended and each designation and identification that has been made with respect to the organization is determined to be erroneous pursuant to the law or Executive Order making the designation or identification, and such erroneous designation results in an overpayment of income tax for any taxable year with respect to such organization, a credit or refund (with interest) with respect to such overpayment shall be made. If the operation of any law or rule of law (including res judicata) prevents the credit or refund at any time, the credit or refund may nevertheless be allowed or made if the claim for such credit or refund is filed before the close of the one-year period beginning on the date that the last remaining designation or identification with respect to the organization is determined to be erroneous.

The Act directs the IRS to update the listings of tax-exempt organizations to take account of organizations that have had their exemption suspended and to publish notice to taxpayers of the suspension of an organization's tax-exemption and the fact that contributions to such organization are not deductible during the period of suspension.

Effective Date

The provision is effective for designations made before, on, or after the date of enactment (November 11, 2003).

I. Above-the-Line Deduction for Overnight Travel Expenses of National Guard and Reserve Members (sec. 109 of the Act and sec. 162 of the Code)

Present and Prior Law

Under prior law, National Guard and Reserve members could claim itemized deductions for their nonreimbursable expenses for transportation, meals, and lodging when they must travel away from home (and stay overnight) to attend National Guard and Reserve meetings. These overnight travel expenses were combined with other miscellaneous itemized deductions on Schedule A of the individual's income tax return and were deductible only to the extent that the aggregate of these deductions exceeds two percent of the taxpayer's adjusted gross income. Under present and prior law, no deduction is generally permitted for commuting expenses to and from drill meetings.

Reasons for Change [72]

The Congress believed that all National Guard and Reserve members incurring unreimbursed overnight expenses to attend National Guard and Reserve meetings should be able to deduct these expenses from their income, not just those who itemize their deductions. Accordingly, the Congress provided an above-the-line deduction for these expenses.

[72] See S. 351, the "Armed Forces Tax Fairness Act of 2003," which was reported by the Senate Committee on Finance on February 11, 2003 (S. Rep. No. 108–3) and H.R. 878, the "Armed Forces Tax Fairness Act of 2003," which was reported by the House Committee on Ways and Means on March 5, 2003 (H.R. Rep. No. 108–23).

Explanation of Provision

The Act provides an above-the-line deduction for the overnight transportation, meals, and lodging expenses of National Guard and Reserve members who must travel away from home more than 100 miles (and stay overnight) to attend National Guard and Reserve meetings. Accordingly, these individuals incurring these expenses can deduct them from gross income regardless of whether they itemize their deductions. The amount of the expenses that may be deducted may not exceed $1,500 per taxable year and is only available for any period during which the individual is more than 100 miles from home in connection with such services.

Effective Date

The provision is effective with respect to amounts paid or incurred in taxable years beginning after December 31, 2002.

J. Extension of Certain Tax Relief Provisions to Astronauts (sec. 110 of the Act and secs. 101, 692, and 2201 of the Code)

Present and Prior Law

In general

The Victims of Terrorism Tax Relief Act of 2001 (the "Victims Act") provided certain income and estate tax relief to individuals who die from wounds or injury incurred as a result of the terrorist attacks against the United States on September 11, 2001, and April 19, 1995 (the bombing of the Alfred P. Murrah Federal Building in Oklahoma City), or as a result of illness incurred due to an attack involving anthrax that occurred on or after September 11, 2001, and before January 1, 2002.

Income tax relief

The Victims Act extended relief similar to the present-law treatment of military or civilian employees of the United States who die as a result of terrorist or military activity outside the United States to individuals who die as a result of wounds or injury which were incurred as a result of the terrorist attacks that occurred on September 11, 2001, or April 19, 1995, and individuals who die as a result of illness incurred due to an attack involving anthrax that occurs on or after September 11, 2001, and before January 1, 2002. Under the Victims Act, such individuals generally are exempt from income tax for the year of death and for prior taxable years beginning with the taxable year prior to the taxable year in which the wounds or injury occurred.[73] The exemption applies to these individuals whether killed in an attack (e.g., in the case of the September 11, 2001, attack in one of the four airplanes or on the ground) or in rescue or recovery operations.

Present and prior law provides tax relief of at least $10,000 to each eligible individual regardless of the income tax liability of the individual for the eligible tax years. If an eligible individual's income tax for years eligible for the exclusion under the provision is less than $10,000, the individual is treated as having made a tax

[73] Present law does not provide relief from self-employment tax liability.

payment for such individual's last taxable year in an amount equal to the excess of $10,000 over the amount of tax not imposed under the provision.

Subject to rules prescribed by the Secretary, the exemption from tax does not apply to the tax attributable to (1) deferred compensation which would have been payable after death if the individual had died other than as a specified terrorist victim, or (2) amounts payable in the taxable year which would not have been payable in such taxable year but for an action taken after September 11, 2001. Thus, for example, the exemption does not apply to amounts payable from a qualified plan or individual retirement arrangement to the beneficiary or estate of the individual. Similarly, amounts payable only as death or survivor's benefits pursuant to deferred compensation preexisting arrangements that would have been paid if the death had occurred for another reason are not covered by the exemption. In addition, if the individual's employer makes adjustments to a plan or arrangement to accelerate the vesting of restricted property or the payment of nonqualified deferred compensation after the date of the particular attack, the exemption does not apply to income received as a result of that action.[74] Also, if the individual's beneficiary cashed in savings bonds of the decedent, the exemption does not apply. On the other hand, the exemption does apply, for example, to a final paycheck of the individual or dividends on stock held by the individual when paid to another person or the individual's estate after the date of death but before the end of the taxable year of the decedent (determined without regard to the death). The exemption also applies to payments of an individual's accrued vacation and accrued sick leave.

The tax relief does not apply to any individual identified by the Attorney General to have been a participant or conspirator in any terrorist attack to which the provision applies, or a representative of such individual.

Exclusion of death benefits

The Victims Act generally provides an exclusion from gross income for amounts received if such amounts are paid by an employer (whether in a single sum or otherwise[75]) by reason of the death of an employee who dies as a result of wounds or injury which were incurred as a result of the terrorist attacks that occurred on September 11, 2001, or April 19, 1995, or as a result of illness incurred due to an attack involving anthrax that occurred on or after September 11, 2001, and before January 1, 2002. Subject to rules prescribed by the Secretary, the exclusion does not apply to amounts that would have been payable if the individual had died for a reason other than the attack. The exclusion does apply, however, to death benefits provided under a qualified plan that satisfy the incidental benefit rule.

For purposes of the exclusion, self-employed individuals are treated as employees. Thus, for example, payments by a partnership to the surviving spouse of a partner who died as a result of

[74] Such amounts may, however, be excludable from gross income under the death benefit exclusion provided in section 102 of the Victims Act.

[75] Thus, for example, payments made over a period of years could qualify for the exclusion.

the September 11, 2001, attacks may be excludable under the provision.

The tax relief does not apply to any individual identified by the Attorney General to have been a participant or conspirator in any terrorist attack to which the provision applies, or a representative of such individual.

Estate tax relief

Present and prior law provides a reduction in Federal estate tax for taxable estates of U.S. citizens or residents who are active members of the U.S. Armed Forces and who are killed in action while serving in a combat zone (sec. 2201). This provision also applies to active service members who die as a result of wounds, disease, or injury suffered while serving in a combat zone by reason of a hazard to which the service member was subjected as an incident of such service.

In general, the effect of section 2201 is to replace the Federal estate tax that would otherwise be imposed with a Federal estate tax equal to 125 percent of the maximum State death tax credit determined under section 2011(b). Credits against the tax, including the unified credit of section 2010 and the State death tax credit of section 2011, then apply to reduce (or eliminate) the amount of the estate tax payable.

Generally, the reduction in Federal estate taxes under section 2201 is equal in amount to the "additional estate tax." The additional estate tax is the difference between the Federal estate tax imposed by section 2001 and 125 percent of the maximum State death tax credit determined under section 2011(b) as in effect prior to its repeal by EGTRRA.

The Victims Act generally treats individuals who die from wounds or injury incurred as a result of the terrorist attacks that occurred on September 11, 2001, or April 19, 1995, or as a result of illness incurred due to an attack involving anthrax that occurred on or after September 11, 2001, and before January 1, 2002, in the same manner as if they were active members of the U.S. Armed Forces killed in action while serving in a combat zone or dying as a result of wounds or injury suffered while serving in a combat zone for purposes of section 2201. Consequently, the estates of these individuals are eligible for the reduction in Federal estate tax provided by section 2201. The tax relief does not apply to any individual identified by the Attorney General to have been a participant or conspirator in any terrorist attack to which the provision applies, or a representative of such individual.

The Victims Act also changed the general operation of section 2201, as it applies to both the estates of service members who qualify for special estate tax treatment under present and prior law and to the estates of individuals who qualify for the special treatment only under the Act. Under the Victims Act, the Federal estate tax is determined in the same manner for all estates that are eligible for Federal estate tax reduction under section 2201. In addition, the executor of an estate that is eligible for special estate tax treatment under section 2201 may elect not to have section 2201 apply to the estate. Thus, in the event that an estate may receive more favorable treatment without the application of section 2201 in the

year of death than it would under section 2201, the executor may elect not to apply the provisions of section 2201, and the estate tax owed (if any) would be determined pursuant to the generally applicable rules.

Under the Victims Act, section 2201 no longer reduces Federal estate tax by the amount of the additional estate tax. Instead, the Victims Act provides that the Federal estate tax liability of eligible estates is determined under section 2001 (or section 2101, in the case of decedents who were neither residents nor citizens of the United States), using a rate schedule that is equal to 125 percent of the pre-EGTRRA maximum State death tax credit amount. This rate schedule is used to compute the tax under section 2001(b) or section 2101(b) (i.e., both the tentative tax under section 2001(b)(1) and section 2101(b), and the hypothetical gift tax under section 2001(b)(2) are computed using this rate schedule). As a result of this provision, the estate tax is unified with the gift tax for purposes of section 2201 so that a single graduated (but reduced) rate schedule applies to transfers made by the individual at death, based upon the cumulative taxable transfers made both during lifetime and at death.

In addition, while the Victims Act provides an alternative reduced rate table for purposes of determining the tax under section 2001(b) or section 2101(b), the amount of the unified credit nevertheless is determined as if section 2201 did not apply, based upon the unified credit as in effect on the date of death. For example, in the case of victims of the September 11, 2001, terrorist attack, the applicable unified credit amount under section 2010(c) would be determined by reference to the actual section 2001(c) rate table.

Reasons for Change [76]

The Congress wished to honor the bravery of individuals who lost their lives in the space shuttle Columbia disaster. Further, the Congress believed it appropriate to provide these tax relief measures to those individuals and their families.

Explanation of Provision

The Act extends the exclusion from income tax, the exclusion for death benefits, and the estate tax relief available under the Victims of Terrorism Tax Relief Act of 2001 to astronauts who lose their lives on a space mission (including the individuals who lost their lives in the space shuttle Columbia disaster).

Effective Date

The provision is generally effective for qualified individuals whose lives are lost on a space mission after December 31, 2002.

[76] See S. 351, the "Armed Forces Tax Fairness Act of 2003," which was reported by the Senate Committee on Finance on February 11, 2003 (S. Rep. No. 108–3) and H.R. 878, the "Armed Forces Tax Fairness Act of 2003," which was reported by the House Committee on Ways and Means on March 5, 2003 (H.R. Rep. No. 108–23).

II. REVENUE PROVISION

A. Extension of Customs User Fees (sec. 201 of the Act)

Present and Prior Law

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. No. 99–272), authorized the Secretary of the Treasury to collect certain service fees. Section 412 of the Homeland Security Act of 2002 (Pub. L. No. 107–296) authorized the Secretary of the Treasury to delegate such authority to the Secretary of Homeland Security. Provided for under 19 U.S.C. sec. 58c, these fees include: processing fees for air and sea passengers, commercial trucks, rail cars, private aircraft and vessels, commercial vessels, dutiable mail packages, barges and bulk carriers, merchandise, and customs broker permits. COBRA was amended on several occasions but most recently by Pub. L. No. 108–89, which extended authorization for the collection of these fees through March 31, 2004.[77]

Explanation of Provision

The Act extends the authorization for the collection of customs user fees though March 1, 2005.[78]

Effective Date

The provision is effective on the date of enactment (November 11, 2003).

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[77] Sec. 201; 117 Stat. 1335.

[78] The expiration date was subsequently extended by the American Jobs Creation Act of 2004, described in Part Seventeen. Present law provides authorization for the collection of these fees through September 30, 2014 (sec. 201; 117 Stat. 1935).

PART FIVE: MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003 (PUBLIC LAW 108–173) [79]

A. Disclosure of Return Information for Purposes of Providing Transitional Assistance Under Medicare Discount Card Program (sec. 105(e) of the Act and sec. 6103(l)(19) of the Code)

Present and Prior Law

The Internal Revenue Code prohibits disclosure of returns and return information, except to the extent specifically authorized by the Code (sec. 6103(a)). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both, together with the costs of prosecution (sec. 7213). Unauthorized inspection of such information is a misdemeanor, punishable by a fine not exceeding $1,000 or imprisonment of not more than one year, or both, together with the costs of prosecution (sec. 7213A). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No return or return information may be furnished by the Internal Revenue Service ("IRS") to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the information it receives (sec. 6103(p)).

Explanation of Provision

The Act establishes a new optional Medicare prescription drug benefit program, effective January 1, 2006. Until the new permanent program is effective, the Secretary of Health and Human Services is required to establish a program to endorse prescription drug discount programs in order to provide access to prescription drug discounts for discount card-eligible individuals and to provide for transitional assistance for eligible individuals enrolled in such endorsed programs.

An individual who wishes to be treated as a "transitional assistance eligible individual" has the option of self-certifying under penalty of perjury as to the amount of the individual's income, family size, and prescription drug coverage (if any). The Secretary of Health and Human Services is authorized to verify eligibility for individuals seeking to enroll in an endorsed program and for individuals who provide self-certification as to the foregoing items. In its verification process, the Department of Health and Human

[79] H.R. 1. The House passed the bill, with the text of H.R. 2596 (a bill relating to Health Savings Accounts) appended thereto, on June 27, 2003. The Senate Committee on Finance reported S. 1 on June 13, 2003. The Senate passed H.R. 1, as amended by the provisions of S. 1, on July 7, 2003. The conference report was filed on November 21, 2003 (H.R. Rep. No. 108–391). The conference bill passed the House on November 22, 2003, and the Senate on November 25, 2003. The President signed the bill on December 8, 2003.

Services may obtain and use return information from the IRS. Specifically, the provision authorizes the IRS to disclose to employees and contractors of the Department of Health and Human Services whether adjusted gross income, as modified in accordance with definitions that will be specified by the Secretary of Health and Human Services, exceeds amounts that are 100 and 135 percent of the official poverty line.[80] The IRS also is authorized to disclose the applicable year (as defined below) and whether the return was a joint return. If no return has been filed for such year, the IRS is authorized to disclose the fact that no return has been filed for such taxpayer. "Applicable year" means the most recent taxable year for which information is available in the IRS data information systems generally for all taxpayers, or if there is no return filed for such taxpayer for such year, the prior taxable year. Return information disclosed may only be used for the purposes of determining eligibility for and administering the transitional assistance program as established under the provision. Employees and contractors of the Department of Health and Human Services are subject to the penalties for unauthorized disclosure and inspection, as well as the applicable safeguard requirements.

Effective Date

The provision is effective for disclosures made after the date of enactment (December 8, 2003).

B. Disclosure of Return Information Relating to Income-Related Reduction in Part B Premium Subsidy (sec. 811(c) of the Act and sec. 6103(l)(20) of the Code)

Present and Prior Law

The Internal Revenue Code prohibits disclosure of returns and return information, except to the extent specifically authorized by the Code (sec. 6103(a)). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both, together with the costs of prosecution (sec. 7213). Unauthorized inspection of such information is a misdemeanor, punishable by a fine not exceeding $1,000 or imprisonment of not more than one year, or both, together with the costs of prosecution (sec. 7213A). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No return or return information may be furnished by the Internal Revenue Service ("IRS") to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the information it receives (sec. 6103(p)).

Explanation of Provision

To facilitate the income-related reduction in Part B premium subsidy, the Act authorizes the disclosure of certain return information to employees and contractors of the Social Security Administration. Upon written request from the Commissioner of Social

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[80] For this purpose, the official poverty line is defined in section 673(3) of the Community Services Block Grant Act, 42 U.S.C. sec. 9902(2).

Security, the IRS may disclose certain items of return information with respect to a taxpayer whose premium may be subject to a subsidy adjustment.[81] With respect to such taxpayers, the IRS may disclose (1) taxpayer identity information; (2) filing status; (3) adjusted gross income; (4) the amounts excluded from such taxpayer's gross income under sections 135 and 911 of the Code (relating to income from United States Savings bonds used to pay higher education tuition and fees, and foreign earned income); (5) tax-exempt interest received or accrued during the taxable year to the extent such information is available; (6) amounts excluded from such taxpayer's gross income by sections 931 and 933 of the Code (relating to income from sources within Guam, American Samoa, the Northern Mariana Islands, or Puerto Rico); (7) for nonfilers only, such other information relating to the liability of the taxpayer as the Secretary may prescribe by regulation, as might indicate that the amount of the premium of the taxpayer may be subject to adjustment (including estimated tax payments and income information derived from Form W–2, Form 1099, and similar information returns); and (8) the taxable year with respect to which the preceding information relates. Return information disclosed under this authority may be used by employees and contractors of the Social Security Administration only for purposes of, and to the extent necessary in, establishing the appropriate amount of any Part B premium adjustment. Employees and contractors of the Social Security Administration are subject to the penalties for unauthorized disclosure and inspection, as well as the applicable safeguard requirements.

Effective Date

The provision is effective for premium adjustments under section 1839(i) of the Social Security Act for months beginning with January 2007.

C. Health Savings Accounts (sec. 1201 of the Act and new sec. 223 of the Code)

Present and Prior Law

Overview

A number of provisions dealing with the Federal tax treatment of health expenses and health insurance coverage exist under present and prior law.

Employer-provided health coverage

In general, employer contributions to an accident or health plan are excludable from an employee's gross income (and wages for employment tax purposes).[82] This exclusion generally applies to coverage provided to employees (including former employees) and their spouses, dependents, and survivors. Benefits paid under employer-provided accident or health plans are also generally excludable from income to the extent they are reimbursements for medical

[81] Adjustments are determined pursuant to section 1839(i) of the Social Security Act (as added by the provision).
[82] Secs. 106, 3121(a)(2), and 3306(b)(2).

care.[83] If certain requirements are satisfied, employer-provided accident or health coverage offered under a cafeteria plan is also excludable from an employee's gross income and wages.[84]

Two general employer-provided arrangements can be used to pay for or reimburse medical expenses of employees on a tax-favored basis: flexible spending arrangements ("FSAs") and health reimbursement arrangements ("HRAs"). While these arrangements provide similar tax benefits (i.e., the amounts paid under the arrangements for medical care are excludable from gross income and wages for employment tax purposes), they are subject to different rules. A main distinguishing feature between the two arrangements is that while FSAs are generally part of a cafeteria plan and contributions to FSAs are made on a salary reduction basis, HRAs cannot be part of a cafeteria plan and contributions cannot be made on a salary-reduction basis.[85]

Amounts paid or accrued by an employer within a taxable year for a sickness, accident, hospitalization, medical expense, or similar health plan for its employees are generally deductible as ordinary and necessary business expenses.[86]

Self-employed individuals

The exclusion for employer-provided health coverage does not apply to self-employed individuals. However, self-employed individuals (i.e., sole proprietors or partners in a partnership)[87] are entitled to deduct 100 percent of the amount paid for health insurance for themselves and their spouse and dependents.[88]

Itemized deduction for medical expenses

Individuals who itemize deductions may deduct amounts paid during the taxable year (to the extent not reimbursed by insurance or otherwise) for medical care of the taxpayer, the taxpayer's spouse, and dependents, to the extent that the total of such expenses exceeds 7.5 percent of the taxpayer's adjusted gross income.[89]

Archer medical savings accounts

In general

In general, an Archer medical savings account ("MSA") is a tax-exempt trust or custodial account created exclusively for the benefit of the account holder that is subject to rules similar to those applicable to individual retirement arrangements.[90]

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[83] Sec. 105. In the case of a self-insured medical reimbursement arrangement, the exclusion applies to highly compensated employees only if certain nondiscrimination rules are satisfied. Sec. 105(h). Medical care is defined as under section 213(d) and generally includes amounts paid for qualified long-term care insurance and services.

[84] Secs. 125, 3121(a)(5)(G), and 3306(b)(5)(G). Long-term care insurance and services may not be provided through a cafeteria plan.

[85] Notice 2002–45, 2002–28 I.R.B. 93 (July 15, 2002); Rev. Rul. 2002–41, 2002–28 I.R.B. 75 (July 15, 2002).

[86] Sec. 162.

[87] Self-employed individuals include more than two-percent shareholders of S corporations who are treated as partners for purposes of fringe benefits rules pursuant to section 1372.

[88] Sec. 162(1).

[89] Sec. 213. The adjusted gross income percentage is 10 percent for purposes of the alternative minimum tax. Sec. 56(b)(1)(B).

[90] Sec. 220.

Within limits, contributions to an Archer MSA are deductible in determining adjusted gross income if made by an eligible individual and are excludable from gross income and wages for employment tax purposes if made by the employer of an eligible individual. Earnings on amounts in an Archer MSA are not includible in gross income in the year earned (i.e., inside buildup is not taxable). Distributions from an Archer MSA for qualified medical expenses are not includible in gross income. Distributions not used for qualified medical expenses are includible in gross income and subject to an additional 15-percent tax unless the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65).

Qualified medical expenses are generally defined as under section 213(d), except that qualified medical expenses do not include expenses for health insurance other than long-term care insurance, premiums for health coverage during any period of continuation coverage required by Federal law, and premiums for health care coverage while an individual is receiving unemployment compensation under Federal or State law. For purposes of determining the itemized deduction for medical expenses, distributions from an Archer MSA for qualified medical expenses are not treated as expenses paid for medical care under section 213.

Eligible individuals

Archer MSAs are available only to employees of a small employer who are covered under an employer-sponsored high deductible health plan and to self-employed individuals covered under a high deductible health plan.[91] An employer is a small employer if it employed, on average, no more than 50 employees on business days during either of the two preceding calendar years. An individual is not eligible for an Archer MSA if he or she is covered under any other health plan that is not a high deductible health plan (other than a plan providing certain limited types of coverage). Individuals entitled to benefits under Medicare are not eligible individuals. Eligible individuals do not include individuals who may be claimed as a dependent on another person's tax return.

Treatment of contributions

Individual contributions to an Archer MSA are deductible (within limits) in determining adjusted gross income (i.e., "above-the-line"). In addition, employer contributions are excludable from gross income and wages for employment tax purposes (within the same limits). Contributions to an Archer MSA may not be made through a cafeteria plan. In the case of an employee, contributions can be made to an Archer MSA either by the individual or by the individual's employer, but not by both.

The maximum annual contribution that can be made to an Archer MSA for a year is 65 percent of the annual deductible under the high deductible health plan in the case of self-only coverage and 75 percent of the annual deductible in the case of family coverage.

[91] Self-employed individuals include more than two-percent shareholders of S corporations who are treated as partners for purposes of fringe benefit rules pursuant to section 1372.

If an employer provides a high deductible health plan coupled with Archer MSAs for employees and makes employer contributions to the Archer MSAs, the employer must make available a comparable contribution on behalf of all employees with comparable coverage during the same period. Contributions are considered comparable if they are either of the same amount or the same percentage of the deductible under the high deductible health plan. If employer contributions do not satisfy the comparability rule during a period, then the employer is subject to an excise tax equal to 35 percent of the aggregate amount contributed by the employer to Archer MSAs of the employer for that period.

Definition of high deductible health plan

For 2003, a high deductible health plan is a health plan with an annual deductible of at least $1,700 and no more than $2,500 in the case of self-only coverage and at least $3,350 and no more than $5,050 in the case of family coverage. In addition, the maximum out-of-pocket expenses with respect to allowed costs must be no more than $3,350 in the case of self-only coverage and no more than $6,150 in the case of family coverage (for 2003).[92] Out-of-pocket expenses include deductibles, co-payments, and other amounts (other than premiums) that the individual must pay for covered benefits under the plan. A plan does not fail to qualify as a high deductible health plan merely because it does not have a deductible for preventive care as required under State law. A plan does not qualify as a high deductible health plan if substantially all of the coverage under the plan is certain permitted insurance or is coverage (whether provided through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

Treatment of death of account holder

Upon death, any balance remaining in the decedent's Archer MSA is includible in his or her gross estate. If the account holder's surviving spouse is the named beneficiary of the Archer MSA, then, after the death of the account holder, the Archer MSA becomes the Archer MSA of the surviving spouse and the amount of the Archer MSA balance may be deducted in computing the decedent's taxable estate, pursuant to the estate tax marital deduction.[93] If, upon the account holder's death, the Archer MSA passes to a named beneficiary other than the decedent's surviving spouse, the Archer MSA ceases to be an Archer MSA as of the date of the decedent's death, and the beneficiary is required to include the fair market value of the Archer MSA assets as of the date of death in gross income for the taxable year that includes the date of death. The amount includible in gross income is reduced by the amount in the Archer MSA used, within one year after death, to pay qualified medical expenses incurred prior to the death. If there is no named beneficiary for the decedent's Archer MSA, the Archer MSA ceases to be an Archer MSA as of the date of death, and the fair market value of the

[92] The deductible and out-of-pocket expenses dollar amounts are indexed for inflation in $50 increments.
[93] Sec. 2056.

assets in the Archer MSA as of such date is includible in the decedent's gross income for the year of the death.

Limit on number of MSAs; termination of MSA availability

The number of taxpayers benefiting annually from an Archer MSA contribution is limited to a threshold level (generally 750,000 taxpayers). The number of Archer MSAs established has not exceeded the threshold level.

After 2003, no new contributions could be made to Archer MSAs except by or on behalf of individuals who previously had Archer MSA contributions and employees who are employed by a participating employer.[94]

Explanation of Provision

In general

The Act adds provisions for health savings accounts (HSAs), effective for taxable years beginning after December 31, 2003. In general, HSAs provide tax-favored treatment for current medical expenses as well as the ability to save on a tax-favored basis for future medical expenses. In general, HSAs are tax-exempt trusts or custodial accounts created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents that are subject to rules similar to those applicable to individual retirement arrangements.[95]

Within limits, contributions to an HSA made by or on behalf of an eligible individual are deductible by the individual. Contributions to an HSA are excludable from income and employment taxes if made by the employer. Earnings on amounts in HSAs are not taxable. Distributions from an HSA for qualified medical expenses are not includible in gross income. Distributions from an HSA that are not used for qualified medical expenses are includible in gross income and are subject to an additional tax of 10 percent, unless the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65).

Eligible individuals

Eligible individuals for HSAs are individuals who are covered by a high deductible health plan and no other health plan that is not a high deductible health plan and which provides coverage for any benefit which is covered under the high deductible health plan. Individuals entitled to benefits under Medicare are not eligible to make contributions to an HSA. Eligible individuals do not include individuals who may be claimed as a dependent on another person's tax return.

An individual with other coverage in addition to a high deductible health plan is still eligible for an HSA if such other coverage is certain permitted insurance or permitted coverage. Permitted insurance is: (1) insurance if substantially all of the coverage provided under such insurance relates to (a) liabilities incurred under

[94] Under Pub. L. No. 108–311, new contributions to Archer MSAs can be made through 2005.

[95] The present-law requirement applicable to insurance companies that certain policy acquisition expenses must be capitalized and amortized (sec. 848) does not apply in the case of any contract that is an HSA.

worker's compensation law, (b) tort liabilities, (c) liabilities relating to ownership or use of property (e.g., auto insurance), or (d) such other similar liabilities as the Secretary may prescribe by regulations; (2) insurance for a specified disease or illness; and (3) insurance that provides a fixed payment for hospitalization. Permitted coverage is coverage (whether provided through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

A high deductible health plan is a health plan that has a deductible that is at least $1,000 for self-only coverage or $2,000 for family coverage and that has an out-of-pocket expense limit that is no more than $5,000 in the case of self-only coverage and $10,000 in the case of family coverage.[96] As under present and prior law, out-of-pocket expenses include deductibles, co-payments, and other amounts (other than premiums) that the individual must pay for covered benefits under the plan. A plan is not a high deductible health plan if substantially all of the coverage is for permitted coverage or coverage that may be provided by permitted insurance, as described above.

A plan does not fail to be a high deductible health plan by reason of failing to have a deductible for preventive care. Except as otherwise provided by the Secretary, preventive care is defined as under section 1871 of the Social Security Act. It is intended that the Secretary of the Treasury will amend the definition of preventive care if the definition used under the Social Security Act is inconsistent with the purposes of the provision.

Tax treatment of and limits on contributions

Contributions to an HSA by or on behalf of an eligible individual are deductible (within limits) in determining adjusted gross income (i.e., "above-the-line") of the individual. Thus, for example, contributions made by an eligible individual's family members are deductible by the eligible individual to the extent the contributions would be deductible if made by the individual.[97] In addition, employer contributions to HSAs (including salary reduction contributions made through a cafeteria plan) are excludable from gross income and wages for employment tax purposes.[98] In the case of an employee, contributions to an HSA may be made by both the individual and the individual's employer. All contributions are aggregated for purposes of the maximum annual contribution limit. Contributions to Archer MSAs reduce the annual contribution limit for HSAs.

[96] The $1,000 and $5,000 limits are indexed for inflation. The family coverage limits will always be twice the self-only coverage limits (as indexed for inflation). In the case of the plan using a network of providers, the plan does not fail to be a high deductible health plan (if it would otherwise meet the requirements of a high deductible health plan) solely because the out-of-pocket expense limit for services provided outside of the network exceeds the $5,000 and $10,000 out-of-pocket expense limits. In addition, such plan's deductible for out-of-network services is not taken into account in determining the annual contribution limit (i.e., the deductible for services with the network is used for such purpose).

[97] Under present law, contributions made on behalf of another individual are generally treated as gifts. The present-law gift tax rules apply to contributions made on behalf of another individual.

[98] Employer contributions to an HSA are excludable from wages for employment tax purposes if, at the time of payment, it is reasonable to believe that the employee will be able to exclude such payment from income.

The maximum aggregate annual contribution that can be made to an HSA is the lesser of (1) 100 percent of the annual deductible under the high deductible health plan, or (2) the maximum deductible permitted under an Archer MSA high deductible health plan under present and prior law, as adjusted for inflation.[99] For 2004, the amount of the maximum deductible under an Archer MSA high deductible health plan is $2,600 in the case of self-only coverage and $5,150 in the case of family coverage. The annual contribution limits are increased for individuals who have attained age 55 by the end of the taxable year. In the case of policyholders and covered spouses who are age 55 or older, the HSA annual contribution limit is greater than the otherwise applicable limit by $500 in 2004, $600 in 2005, $700 in 2006, $800 in 2007, $900 in 2008, and $1,000 in 2009 and thereafter.[100] Contributions, including catch-up contributions, cannot be made once an individual is eligible for Medicare.

An excise tax applies to contributions in excess of the maximum contribution amount for the HSA. The excise tax is generally equal to six percent of the cumulative amount of excess contributions that are not distributed from the HSA.

Amounts can be rolled over into an HSA from another HSA or from an Archer MSA.

If an employer makes contributions to employees' HSAs, the employer must make available comparable contributions on behalf of all employees with comparable coverage during the same period. Contributions are considered comparable if they are either of the same amount or the same percentage of the deductible under the plan. The comparability rule is applied separately to part-time employees (i.e., employees who are customarily employed for fewer than 30 hours per week).

If employer contributions do not satisfy the comparability rule during a period, then the employer is subject to an excise tax equal to 35 percent of the aggregate amount contributed by the employer to HSAs for that period. The excise tax is designed as a proxy for the denial of the deduction for employer contributions. In the case of a failure to comply with the comparability rule which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed to the extent that the payment of the tax would be excessive relative to the failure involved. For purposes of the comparability rule, employers under common control are aggregated.

Taxation of distributions

Distributions from an HSA for qualified medical expenses of the individual and his or her spouse or dependents generally are excludable from gross income. In general, amounts in an HSA can be used for qualified medical expenses even if the individual is not currently eligible for contributions to the HSA.

[99] The annual contribution limit is the sum of the limits determined separately for each month, based on the individual's status and health plan coverage as of the first day of the month.

[100] As in determining the general annual contribution limit, the increase in the annual contribution limit for individuals who have attained age 55 is also determined on a monthly basis.

Qualified medical expenses generally are defined as under section 213(d) and include expenses for diagnosis, cure, mitigation, treatment, or prevention of disease, including prescription drugs, transportation primarily for and essential to such care, and qualified long-term care expenses of the account holder and his or her spouse or dependents. Qualified medical expenses do not include expenses for insurance other than for (1) long-term care insurance, (2) premiums for health coverage during any period of continuation coverage required by Federal law, (3) premiums for health care coverage while an individual is receiving unemployment compensation under Federal or State law, or (4) in the case of an account beneficiary who has attained the age of Medicare eligibility, health insurance premiums for Medicare, other than premiums for Medigap policies. Such qualified health insurance premiums include, for example, Medicare Part A and Part B premiums, Medicare HMO premiums, and the employee share of premiums for employer-sponsored health insurance including employer-sponsored retiree health insurance.

For purposes of determining the itemized deduction for medical expenses, distributions from an HSA for qualified medical expenses are not treated as expenses paid for medical care under section 213.

Distributions from an HSA that are not for qualified medical expenses are includible in gross income. Distributions includible in gross income are also subject to an additional 10-percent tax unless made after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65).

Tax treatment of HSAs after death

Upon death, any balance remaining in the decedent's HSA is includible in his or her gross estate.

If the HSA holder's surviving spouse is the named beneficiary of the HSA, then, after the death of the HSA holder, the HSA becomes the HSA of the surviving spouse and the amount of the HSA balance may be deducted in computing the decedent's taxable estate, pursuant to the estate tax marital deduction.[101] The surviving spouse is not required to include any amount in gross income as a result of the death; the general rules applicable to the HSA apply to the surviving spouse's HSA (e.g., the surviving spouse is subject to income tax only on distributions from the HSA for nonqualified expenses). The surviving spouse can exclude from gross income amounts withdrawn from the HSA for expenses incurred by the decedent prior to death, to the extent they otherwise are qualified medical expenses.

If, upon death, the HSA passes to a named beneficiary other than the decedent's surviving spouse, the HSA ceases to be an HSA as of the date of the decedent's death, and the beneficiary is required to include the fair market value of HSA assets as of the date of death in gross income for the taxable year that includes the date of death. The amount includible in income is reduced by the amount in the HSA used, within one year after death, to pay qualified medical expenses incurred by the decedent prior to the death.

[101] Sec. 2056.

As is the case with other HSA distributions, whether the expenses are qualified medical expenses is determined as of the time the expenses were incurred. In computing taxable income, the beneficiary may claim a deduction for that portion of the Federal estate tax on the decedent's estate that was attributable to the amount of the HSA balance.[102]

If there is no named beneficiary of the decedent's HSA, the HSA ceases to be an HSA as of the date of death, and the fair market value of the assets in the HSA as of such date is includible in the decedent's gross income for the year of the death. This rule applies in all cases in which there is no named beneficiary, even if the surviving spouse ultimately obtains the right to the HSA assets (e.g., if the surviving spouse is the sole beneficiary of the decedent's estate).

Reporting requirements

Employer contributions are required to be reported on the employee's Form W–2. Trustees of HSAs may be required to report to the Secretary of the Treasury amounts with respect to contributions, distributions, the return of excess contributions, and other matters as determined appropriate by the Secretary. In addition, the Secretary may require providers of high deductible health plans to make reports to the Secretary and to account beneficiaries as the Secretary determines appropriate.

Effective Date

The provision is effective for taxable years beginning after December 31, 2003.

D. Exclusion from Gross Income of Certain Federal Subsidies for Prescription Drug Plans (sec. 1202 of the Act and new sec. 139A of the Code)

Present and Prior Law

Gross income includes all income from whatever source derived unless a specific exclusion applies.[103]

Explanation of Provision

The Act provides that gross income does not include any special subsidy payment received under section 1860D–22 of the Social Security Act. The exclusion applies for purposes of both the regular tax and the alternative minimum tax (including the adjustment for adjusted current earnings).

The exclusion is not taken into account in determining whether a deduction is allowable with respect to costs taken into account in determining the subsidy payment. Accordingly, a taxpayer could claim a deduction for prescription drug expenses incurred even though the taxpayer also received an excludible subsidy related to the same expenses.

[102] The deduction is calculated in accordance with the present-law rules relating to income in respect of a decedent set forth in section 691(c).

[103] Sec. 61.

Effective Date

The provision is effective for taxable years ending after the date of enactment (December 8, 2003).

E. Exception to Information Reporting Requirements for Certain Health Arrangements (sec. 1203 of the Act and sec. 6041 of the Code)

Present and Prior Law

Any person in a trade or business who, in the course of that trade or business, makes specified payments to another person totaling $600 or more in a year, must provide an information report to the IRS (as well as a copy to the recipient) on the payments.[104] Reporting is required to be done on Form 1099. In general, these information reports remind taxpayers of amounts of income that should be reflected on their tax returns and assist the IRS in verifying that taxpayers have correctly reported these amounts.

Treasury regulations specify that fees for professional services, including the services of physicians, must be reported.[105] Treasury regulations also provide a general exception from these information reporting requirements for payments made to corporations, except that this exception is inapplicable if the corporation is "engaged in providing medical and health care services."[106]

In 2003, the IRS issued a revenue ruling describing when employer-provided expense reimbursements made through debit or credit cards or other electronic media are excludible from gross income.[107] The ruling stated that "payments made to medical service providers through the use of debit, credit, and stored value cards are reportable by the employer on Form 1099–MISC under section 6041."[108]

Reasons for Change[109]

The Congress wished to encourage electronic reimbursement of medical expenses through the use of debit or store-valued cards. The Congress believed that the regulatory reporting requirement discouraged the use of such cards and that such burden should be removed.

Explanation of Provision

The Act provides an exception from the generally applicable information reporting provisions for payments for medical care made under either: (1) a flexible spending arrangement,[110] or (2) a health reimbursement arrangement that is treated as employer-provided coverage.

[104] Sec. 6041.
[105] Treas. Reg. sec. 1.6041–1(d)(2).
[106] Treas. Reg. sec. 1.6041–3(p)(1). These regulations also provide an exception from these information reporting requirements if the payment is made to a hospital that is tax-exempt or that is owned and operated by a governmental entity.
[107] Rev. Rul. 2003–43, 2003–21 I.R.B. 935 (May 27, 2003).
[108] Id.
[109] See H.R. 2351, the "Health Savings Account Availability Act," which was reported by the House Committee on Ways and Means on June 25, 2003 (H.R. Rep. No. 108–177).
[110] This term is defined in sec. 106(c)(2).

Effective Date

The provision applies to payments made after December 31, 2002.

PART SIX: VISION 100–CENTURY OF AVIATION REAUTHORIZATION ACT (PUBLIC LAW 108–176) [111]

A. Extension of Expenditure Authority (secs. 901 and 902 of the Act)

Present and Prior Law

The Airport and Airway Trust Fund (the "Trust Fund") was created in 1970 to finance a major portion of the Federal expenditures on national aviation programs. Prior to that time, these expenditures had been financed with General Fund monies. The statutory provisions relating to the Trust Fund were placed in the Code in 1982.[112]

Under prior law, the Internal Revenue Code authorized expenditures to be made from the Trust Fund through September 30, 2003, for purposes provided in specified authorizing legislation as in effect on the date of enactment of the most recent authorizing Act (the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century).

To support the Trust Fund, the Code imposes taxes on both commercial and noncommercial aviation. Commercial aviation is the carriage of persons or property by air for compensation (air transportation "for hire"). All other air transportation is defined as noncommercial aviation.[113]

The taxes imposed to finance the aviation trust fund are:

1. ticket taxes imposed on commercial passenger transportation;
2. a waybill tax imposed on freight transportation; and
3. fuel taxes imposed on gasoline and jet fuel used in commercial aviation and non-commercial aviation.

Most domestic air passenger transportation is subject to a two-part ticket tax. First, the Code imposes a tax at the rate of 7.5 percent of the amount paid for taxable transportation. Second, the Code imposes a flight segment tax of $3 for each domestic segment of taxable transportation. Beginning with calendar year 2003, the domestic flight segment portion of the ticket tax is adjusted for inflation annually.

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[111] H.R. 2115. The House Committee on Transportation reported the bill on June 6, 2003 (H.R. Rep. No. 108–143). The House passed the bill on June 11, 2003. The Senate Committee on Commerce, Science, and Transportation reported S. 824 on May 2, 2003 (S. Rep. No. 108–41). The Senate passed H.R. 2115, as amended by the provisions of S. 824, on June 12, 2003. The conference report was filed on October 29, 2003 (H.R. Rep. No. 108–334). The conference report passed the House on October 30, 2003 and the Senate on November 21, 2003. The President signed the bill on December 12, 2003.

[112] Sec. 9502.

[113] Sec. 4041(c)(2). Because these definitions are based on whether an amount is paid for the transportation, it is possible for the same aircraft to be used at times in commercial aviation and at times in non-commercial aviation. This determination is made on a flight-by-flight basis. For example, a corporate-owned aircraft transporting employees of the corporation is engaged in non-commercial aviation (and subject only to fuels excise tax) while the same aircraft when transporting non-employees is engaged in commercial aviation (and subject to a mix of ticket and fuels taxes).

Explanation of Provisions

Trust Fund expenditure authority

The Act extends the authority to make expenditures (subject to appropriations) from the Trust Fund through September 30, 2007. The Act also updates the Trust Fund cross references to authorizing legislation to include expenditure purposes in this Act and prior authorizing legislation as in effect on the date of enactment of the Act.

Domestic flight segment tax

The Act makes a technical correction to the domestic flight segment portion of the airline ticket tax. Beginning with calendar year 2003, the domestic flight segment portion of the airline ticket tax is adjusted for inflation annually. The technical correction clarifies that, in the case of amounts paid for transportation before the beginning of the year in which the transportation is to occur, the rate of tax is the rate in effect for the calendar year in which the amount is paid.

Effective Dates

The provision extending expenditure authority is effective on the date of enactment (December 12, 2003).

The provision relating to the domestic flight segment tax for flight segments beginning after December 31, 2002, is effective as if included in the provisions of the Taxpayer Relief Act of 1997 to which it relates.

PART SEVEN: SERVICEMEMBERS CIVIL RELIEF ACT (PUBLIC LAW 108–189)[114]

A. Servicemembers Civil Relief (sec. 510 of the Act)

Explanation of Provision

Section 510 of the Servicemembers Civil Relief Act reenacts section 573 of the Soldiers' and Sailors' Civil Relief Act of 1940, with only minor technical changes. First, section 510 requires notice to the IRS or the tax authority of a State or a political subdivision thereof to be effective. Second, the six month maximum effective period under the 1940 Act has been changed to a 180–day period.

[114] H.R. 100. The House Committee on Veterans' Affairs reported the bill on April 30, 2003 (H.R. Rep. No. 108–81). The House passed the bill on the suspension calendar on May 7, 2003. The Senate Committee on Veterans' Affairs reported S. 1136 on November 11, 2003 (S. Rep. No. 108–197). The Senate passed H.R. 100, as amended by the provisions of S. 1136, by unanimous consent on November 21, 2003. The House passed the bill, as amended by the Senate, by unanimous consent on December 12, 2003. The President signed the bill on December 19, 2003.

APPENDIX:
ESTIMATED BUDGET EFFECTS OF TAX LEGISLATION ENACTED IN THE 108TH CONGRESS

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Fiscal Years 2003–2014

[Millions of dollars]

Provision	Effective	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2003–14
PART ONE: JOBS AND GROWTH TAX RELIEF RECONCILIATION ACT OF 2003 ("JGTRRA") (P.L. 108–27, signed into law by the President on May 28, 2003)														
I. Acceleration of Certain Previously Enacted Tax Reductions														
1. Expand the child credit to $1,000 for 2003 through 2004; revert to present-law phase in for 2005 (1)	tyba 12/31/02	−13,712	−5,820	−12,956										−32,488
2. Accelerate the expansion of the 15% individual income tax rate bracket and the increase in the standard deduction for married taxpayers filing joint returns; revert to present-law phase in for 2005	tyba 12/31/02	−4,936	−24,904	−5,234										−35,074
3. Accelerate the expansion of the 10% bracket; revert to present-law phase in for 2005	tyba 12/31/02	−1,549	−8,445	−1,912										−11,906
4. Accelerate the 2006 rate schedule	tyba 12/31/02	−9,531	−38,809	−19,930	−5,915									−74,185
5. Increase individual AMT exemption amount by $4,500 single and $9,000 joint for 2003 and 2004	tyba 12/31/02	−1,176	−10,346	−6,260										−17,782
Total of Acceleration of Certain Previously Enacted Tax Reductions		**−30,904**	**−88,324**	**−46,292**	**−5,915**									**−171,435**

II. Growth Incentives for Business														
1. Increase bonus depreciation to 50% and extend through 12/31/04	ppisa 5/5/03 (2)	−9,918	−33,298	−11,684	9,414	9,300	8,112	6,648	4,987	3,586	2,212	1,447		−9,194
2. Increase section 179 expensing—increase the amount that can be expensed from $25,000 to $100,000 and increase the phaseout threshold amount from $200,000 to $400,000; include software in section 179 property; and index both the deduction limit and the phaseout threshold after 2003 (sunset after 2005)	tyba 12/31/02	−1,647	−2,681	−3,690	−1,027	2,724	1,842	1,290	937	647	410	243		−952
Total of Growth Incentives for Business		**−11,565**	**−35,979**	**−15,374**	**8,387**	**12,024**	**9,954**	**7,938**	**5,924**	**4,233**	**2,622**	**1,690**		**−10,146**
III. Reductions in Taxes on Dividends and Capital Gains														
1. Tax capital gains with a 15%/5% rate structure for 2003 through 2007, and 15%/0% in 2008 (sunset 12/31/08)	so/a 5/6/03	−62	−928	−1,335	−3,042	−4,454	−3,544	509	−9,532					−22,386
2. Tax dividends with a 15%/5% rate structure for 2003 through 2007, and 15%/0% in 2008 (sunset 12/31/08) (3)	dri tyba 12/31/02	−4,250	−17,506	−19,215	−20,081	−21,263	−23,203	−19,689	−493					−125,700
Total of Reductions in Taxes on Dividends and Capital Gains		**−4,312**	**−18,434**	**−20,550**	**−23,123**	**−25,717**	**−26,747**	**−19,180**	**−10,025**					**−148,086**
IV. Temporary State Fiscal Relief Fund (outlay effects) (4)	**DOE**	*No Revenue Effect*												
V. Special Estimated Tax Rules for Certain Corporate Estimated Tax Payments (25% of estimated payments otherwise due on September 15, 2003 are payable on October 1, 2003)	**DOE**	**−6,325**	**6,325**											

APPENDIX:—Continued

ESTIMATED BUDGET EFFECTS OF TAX LEGISLATION ENACTED IN THE 108TH CONGRESS

Fiscal Years 2003–2014

[Millions of dollars]

Provision	Effective	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2003–14
TOTAL OF PART ONE: JOBS AND GROWTH TAX RELIEF RECONCILIATION ACT OF 2003		−53,106	−136,412	−82,216	−20,651	−13,693	−16,793	−11,242	−4,101	4,233	2,622	1,690		−329,667
PART TWO: SURFACE TRANSPORTATION EXTENSION ACT OF 2003—Extension of Highway Trust Fund and Aquatic Resources Trust Fund Expenditure Authority (P.L. 108–88, signed into law by the President on September 30, 2003)	DOE	*No Revenue Effect*												
PART THREE: EXTEND THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT PROGRAM, AND CERTAIN TAX AND TRADE PROGRAMS (P.L. 108–89, signed into law by the President on October 1, 2003)														
I. Disclosure of Return Information Relating to Student Loans (4)	DOE	*The Congressional Budget Office Did Not Estimate This Provision*												
II. Extension of IRS User Fees (through 12/31/04) (4).	rma DOE		33	8										41
III. Extension of Customs User Fees (through 3/31/04) (4)	DOE		698											698

Provision	Effective													
TOTAL OF PART THREE: EXTEND THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT PROGRAM, AND CERTAIN TAX AND TRADE PROGRAMS			731	8										739
PART FOUR: MILITARY FAMILY TAX RELIEF ACT OF 2003 (P.L. 108-121, signed into law by the President on November 11, 2003)														
I. Provisions to Improve Tax Equity for Military Personnel														
1. Exclusion of gain on sale of a principal residence by a member of the uniformed and foreign services	soea 5/6/97		−68	−14	−14	−15	−15	−16	−17	−17	−18	−18		−212
2. Treatment of death gratuities payable with respect to deceased members of the armed forces:														
a. Increase the death gratuity benefit for members of the armed forces to $12,000 (outlays)	Doo/a 9/11/01		−33	−9	−9	−9	−9	−8	−8	−8	−8	−8		−112
b. Exclusion from gross income of certain death gratuity payments	doa 9/10/01		−2	−1	−1	−1	−1	−1	−1	−1	−1	−1		−10
3. Exclusion for amounts received under Department of Defense Homeowners Assistance Program	pma DOE		(5)	−2	−2	−2	−2	−2	−2	−2	−2	−2		−19
4. Expansion of combat zone filing rules to contingency operations	(6)		−9	(5)	(5)	(5)	−1	−1	−1	−1	−1	−1		−13
5. Modification of membership requirement for exemption from tax for certain veterans' organizations	tyba DOE		(5)	−1	−1	−2	−2	−2	−2	−2	−2	−2		−17
6. Clarification of treatment of certain dependent care assistance programs provided to members of the uniformed services of the United States	tyba 12/31/02	No Revenue Effect												

APPENDIX:—Continued

ESTIMATED BUDGET EFFECTS OF TAX LEGISLATION ENACTED IN THE 108TH CONGRESS

Fiscal Years 2003–2014

[Millions of dollars]

Provision	Effective	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2003–14
7. Treatment of service academy appointments as scholarships for purposes of qualified tuition programs and Coverdell Education Savings Accounts	tyba 12/31/02	....	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	....	−2
8. Suspension of tax-exempt status of terrorist organizations	dmbo/a DOE	Negligible Revenue Effect												
9. Above-the-line deduction for overnight travel expenses (not exceeding per diem levels) of National Guard and reserve members traveling more than 100 miles from home	apoi tyba 12/31/02	....	−90	−77	−78	−80	−82	−84	−87	−89	−91	−93	....	−851
10. Tax relief and assistance for families of astronauts who lose their lives in the line of duty	[7]	....	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	....	[5]
Total of Provisions to Improve Tax Equity for Military Personnel	....	....	**−202**	**−104**	**−105**	**−109**	**−112**	**−114**	**−118**	**−120**	**−123**	**−125**	....	**−1,236**
II. Extension of Customs User Fees														
1. Passenger and conveyance processing fee (through 3/1/05)[4]	DOE	....	75	206	....	....	....	....	....	....	....	....	....	281
2. Merchandise processing fee (through 3/1/05)[4]	DOE	....	545	480	....	....	....	....	....	....	....	....	....	1,025
Total of Extension of Customs User Fees	....	....	**619**	**686**	....	....	....	....	....	....	....	....	....	**1,305**
TOTAL OF PART FOUR: MILITARY FAMILY TAX RELIEF ACT OF 2003	....	....	**417**	**582**	**−105**	**−109**	**−112**	**−114**	**−118**	**−120**	**−123**	**−125**	....	**69**

Provision	Effective													
PART FIVE: CERTAIN PROVISIONS CONTAINED IN THE MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003 (P.L. 108–173, signed into law by the President on December 8, 2003)														
A. Disclosure of Return Information for Purposes of Providing Transitional Assistance Under Medicare Discount Card Program	DMa DOE							*No Revenue Effect*						
B. Disclosure of Return Information Relating to Income-Related Reduction in Part B Premium Subsidy	(8)							*No Revenue Effect*						
C. Health Savings Accounts	tyba 12/31/03		−160	−474	−533	−597	−650	−704	−754	−801	−849	−897		−6,419
D. Indirect Tax Effects of Reductions in Employer Costs for Prescription Drug Insurance and Medicare Subsidies to Employers (4) (9)	(10)		2	4	1,580	2,301	2,648	2,903	3,264	3,569	4,102	4,571		24,944
E. Tax Exclusion for Certain Subsidies to Employers (4) (11)	tyba DOE				−1,130	−1,644	−1,889	−2,070	−2,322	−2,540	−2,923	−3,257		−17,775
F. Exception to Form 1099 Information Reporting Requirements for Certain Health Arrangements	pma 12/31/02		−23	−24	−24	−25	−26	−27	−27	−28	−29	−30		−263
TOTAL OF PART FIVE: CERTAIN PROVISIONS CONTAINED IN THE MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003			**−181**	**−494**	**−107**	**35**	**83**	**102**	**161**	**200**	**301**	**387**		**487**
PART SIX: VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT (P.L. 108–176, signed into law by the President on December 12, 2003)	**(12)**						***The Joint Committee on Taxation Did Not Estimate This Provision***							
PART SEVEN: SERVICE MEMBERS CIVIL RELIEF ACT (P.L. 108–189, signed into law by the President on December 19, 2003)	**DOE**							***No Revenue Effect***						

Legend for "Effective" column:

aa = acquisitions after
abiUSa = articles brought into the United States after
ada = amounts deferred after
aiiiTWWIIA = as if included in the Ticket to Work Incentives Improvement Act of 1999
aoa = acquisitions occurring after
apoamt = amounts paid or accrued more than
asa = articles sold after
asbmpoia = articles sold by the manufacturer, producer, or importer after
ata = actions taken after
ataro/a = amounts treated as received on or after
bi =bonds issued
bia = bonds issued after
bib = bonds issued before
ca = construction after
cma = contributions made after
cmd = contributions made during
coio/a = cancellations of indebtedness on or after
cpoii = costs paid or incurred in
ctada = contributions, transfers, and distributions after
da = day after
Da = distributions after
DA = dispositions after
di = distributions in
diia = debt instrument issued after
dma = distributions made after
Dma = deposits made after
DMa = disclosures made after
DMA = designations made after
dmo/a = disclosures made on or after
dmbo/a = designations made before, on, or after
doa = deaths occurring after
do/a = disclosures on or after
DOE = date of enactment
doo/a = distributions occurring on or after
Doo/a = deaths occurring on or after
Dpa = dividends paid after
dri = dividends received in
eia = expenses incurred after
ematma = elections made and terminations made after
epoia = expenditures paid or incurred after
epoid = expenditures paid or incurred during
eposfqfa = electricity produced or sold from qualifying facilities after
fpasoua = fuel produced, and sold or used, after
fpisa = facilities placed in service after
frsoua = fuel removed, sold or used after
fsa = fuel sold after
fsoua = fuel sold or used after
iaa = interest accrued after
iaeio/a = installment agreements entered into on or after
iwea = individuals who expatriate after
josoa = judgments or settlements occurring after
lf = losses for
lii = losses incurred in
oia = obligations issued after
pa = production after
Paa = penalties assessed after
PAa = property acquired after
pada = purchases and dispositions after
pao/a = payments accrued on or after
Pao/a = penalties assessed on or after
pca = productions commencing after
peo/a = positions established on or after
pfa = pleadings filed after
pi = production in
pia = penalties imposed after
pma = payments made after
ppisa = property placed in service after
pyba = plan years beginning after
ra = requests after
rma = requests made after
rra = risk reinsured after
sa = sales after
saptoea = stock acquired pursuant to options exercised after
so/a = sales on or after
soo/a = sales occurring on or after
soea = sales or exchanges after
sota = sales of timber after
ta = transactions after
tbpa = travel benefits provided after
teia = transactions entered into after
tma = transfers made after
toa = transactions occurring after
to/a = transactions on or after
tosa = transfers of stock after
tpba = taxable periods beginning after
trda = tax returns due after
tyba = taxable years beginning after
tyea = taxable years ending after
voa = violations occurring after
wma = wagers made after
wpoifibwa = wages paid or incurred for individuals beginning work after
15da = 15 days after
30da = 30 days after
90da = 90 days after

[1] Advance payment of 2003 child credit paid by rebate with safe harbor.
[2] Does not apply to any property with binding contract in place before May 6, 2003.
[3] Any dividend described in Internal Revenue Code section 404(k) would be taxed at ordinary rates. RIC and REIT shareholders receive tax relief to the extent that dividends paid by the RIC or REIT are qualified dividends received by the RIC or REIT. Taxed REIT income would receive the preferential tax rates when distributed as dividends. The provision excludes qualified dividends from investment income for the purpose of Internal Revenue Code Section 163(d). Certain anti-abuse rules, including the imposition of a 60-day holding period, apply. Certain foreign dividends would qualify for the preferential rates.
[4] Estimate provided by the Congressional Budget Office.
[5] Loss of less than $500,000.
[6] The provision applies to any period for performing an act which has not expired before the date of enactment.
[7] Generally effective for qualified individuals whose lives are lost in a space mission after December 31, 2002.
[8] Premium adjustments under Section 1839(i) of the Social Security Act for months beginning with January 2007.
[9] The estimate includes the indirect revenue effect that would exist if the Medicare subsidies to employers were taxable but the employers responded to the subsidies as if they were excludable.

[Footnotes for the Appendix are continued on the following page]

Footnotes for the Appendix continued:

[10] The indirect tax effects that begin in fiscal year 2004 are attributable to provisions in Title XI (enhancing generic competition, drug importation) which are effective upon the date of enactment. The provisions of Title I that affect employers (Part D program and related subsidies) are effective January 1, 2006.

[11] Although the tax exclusion will be effective for taxable years beginning after the date of enactment, the exclusion will have no effect until January 1, 2006, when the Medicare subsidies to employers will begin to be paid.

[12] The provision extending expenditure authority is effective on the date of enactment. The provision relating to the domestic flight segment tax for flight segments beginning after December 31, 2002, is effective as if included in the provisions of the Taxpayer Relief Act of 1997 to which it relates.

[13] The conference agreement also contains a provision relating to the antitrust status of graduate medical resident matching programs.

[14] Estimate does not include the effects on PBGC variable rate premiums which are the responsibility of the Congressional Budget Office.

[15] Provision includes interaction with item A.

[16] Provision provides penalty assessable by the Department of Labor for failure to provide notice.

[17] Negligible revenue effect.

[18] Estimate does not include the effects on PBGC which are the responsibility of the Congressional Budget Office.

[19] Provision applies to any employer that receives a notification under Section 4219(b)(1) of ERISA after October 31, 2003.

[20] For purposes of the child tax credit, effective for taxable years beginning after December 31, 2003; for purposes of earned income credit at taxpayer's election, effective for taxable years ending after the date of enactment and before January 1, 2006.

[21] This provision will have a negligible effect on penalty excise tax receipts. However it will have an indirect effect on income tax receipts through increases in employer-contributions for health insurance and corresponding decreases in cash wages. The table shows this indirect revenue effect, which was estimated by the Congressional Budget Office.

[22] The New York City Liberty Zone is defined as all business addresses located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan, New York, NY.

[23] Generally effective January 1, 2004, except for the bond provision which is effective for obligations issued after the date of enactment.

[24] The Economic Growth and Tax Relief Reconciliation Act of 2001 provides that the child tax credit and adoption tax credit are allowed for purposes of the alternative minimum tax for 2002 through 2010.

[25] Gain of less than $500,000.

[26] Effective as if included in section 201 of the Victims of Terrorism Tax Relief Act of 2001.

[27] Includes estimate for general transition and transition for binding contracts, if in effect on September 17, 2003, and for renewals of binding contracts if original contract was in effect on September 17, 2003.

[28] Effective as if included in the amendment made by section 101 of the Community Renewal Tax Relief Act of 2000.

[29] Gain of less than $1 million.

[30] Effective as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000.

[31] Effective for debt incurred after date of enactment by SBICs licensed after date of enactment.

[32] The bill provides that the excise tax credit expires after December 31, 2010. If this bill is enacted, the Congressional Budget Office's subsequent baseline would not assume extension of the excise tax credit beyond its expiration because the requirement to assume extension of excise taxes dedicated to trust funds does not apply to excise tax credits paid from the General Fund. For purposes of this revenue estimate, therefore, it is assumed that the excise tax credit would expire as scheduled. This treatment generates changes in revenues after December 31, 2010.

[33] The provision would result in an indirect increase in farm program outlays of $171 million in the fiscal years 2011 through 2014.

[34] Tax credits would be provided for on-road and off-road uses of biodiesel.

[35] The provision would result in an indirect increase in farm program outlays of $64 million in the fiscal years 2005 through 2007.

[36] Estimate does not include a reduction in outlays from the Wildlife Trust Fund of $8 million for 2005 through 2014.

[37] Estimate does not include a reduction in outlays from the Aquatic Resources Trust Fund of $10 million for 2005 through 2014.

[38] Estimate does not include a reduction in outlays from the Aquatic Resources Trust Fund of $3 million for 2005 through 2014.

[39] Provision is effective as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002.

[40] Loss of less than $1 million.

[41] Base difference change effective in taxable years beginning after 2004, for taxes paid or incurred after 2004. Basket change in taxable years beginning after 2006. Pre-effective date excess credits carried forward to new basket that would apply under new system.

[42] Effective for taxable years of foreign corporations beginning after December 31, 2004, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

[43] Effective for dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

[44] Estimate accounts for interaction with reduction to 2 foreign tax credit baskets.

[45] Effective for excess foreign taxes that may be carried forward to any taxable year ending after the date of enactment. Carryback period effective for credits arising in taxable years beginning after the date of enactment.

[Footnotes for the Appendix are continued on the following page]

Footnotes for the Appendix continued:

[46] Effective for the first taxable year beginning on or after date of enactment, or for the last taxable year beginning before date of enactment, at the taxpayer's election.

[47] Effective for taxable years of a foreign corporation seeking qualified foreign corporation status beginning after September 24, 2004.

[48] Estimate does not include an increase in outlays of $126 million over the fiscal years 2005 through 2014.

[49] Effective dates for provisions relating to reportable transactions and tax shelters: the penalty for failure to disclose reportable transactions is effective for returns and statements the due date of which is after the date of enactment; the modification to the accuracy-related penalty for listed or reportable transactions is effective for taxable years ending after the date of enactment; the tax shelter exception to confidentiality privileges is effective for communications made on or after the date of enactment; the statute of limitations for unreported listed transactions applies to all taxable years for which the statute of limitations under section 6501 has not run as of the date of enactment; the disclosure of reportable transactions by material advisors is effective for transactions with respect to which material aid, assistance or advice is provided after the date of enactment; the investor list penalty is effective for returns the due date for which is after the date of enactment; the modification of penalty for failure to maintain investor lists is effective for requests made after the date of enactment; and the penalty on promoters of tax shelters is effective for activities after the date of enactment.

[50] Effective for all taxable years, whether beginning before, on, or after the date of enactment.

[51] Generally effective for leases entered into after March 12, 2004 with exception for pending transportation leases with FTA.

[52] Generally effective after the date of enactment, except for fuel taxes, effective for taxable years beginning after the date of enactment.

[53] Effective for aviation-grade kerosene removed, entered into the United States, or sold after December 31, 2004.

[54] Effective 180 days after the date on which the Secretary issues the regulations, which are required no later than 180 days after the date of enactment.

[55] Bulk transfers to unregistered parties would be taxed at the time of the transfer. The Secretary would be required to publish a list of certain registered persons by January 1, 2005.

[56] The revenue neutral tax rate on each 10 pounds of tire capacity above 3,500 pounds is 9.45 cents on tires in general and 4.725 cents for biasply tires.

[57] Effective for sales in calendar years beginning more than 30 days after the date of enactment.

[58] Estimated outlay effects provided by the Congressional Budget Office.

[59] Effective for vaccines sold and used beginning on the first day of the first month beginning more than four weeks after the date of enactment.

[60] Effective for vaccines sold and used on or after the later of the first day of the first month beginning more than four weeks after the date of enactment, or the date on which the Secretary of Health and Human Services lists the vaccine in the Vaccine Injury Compensation Trust Fund.

[61] Generally effective for start-up and organizational expenditures incurred after the date of enactment.

[62] Applies to individuals subject to section 16 of the Securities and Exchange Act of 1934 for private and public companies.