

106TH CONGRESS
1ST SESSION

S. 1792

AN ACT

To amend the Internal Revenue Code of 1986 to extend expiring provisions, to fully allow the nonrefundable personal credits against regular tax liability, and for other purposes.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Tax Relief Extension Act of 1999”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-
 2 wise expressly provided, whenever in this Act an amend-
 3 ment or repeal is expressed in terms of an amendment
 4 to, or repeal of, a section or other provision, the reference
 5 shall be considered to be made to a section or other provi-
 6 sion of the Internal Revenue Code of 1986.

7 (c) TABLE OF CONTENTS.—The table of contents for
 8 this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—EXTENSION OF EXPIRED AND EXPIRING PROVISIONS

- Sec. 101. Extension of minimum tax relief for individuals.
- Sec. 102. Extension of exclusion for employer-provided educational assistance.
- Sec. 103. Extension of research and experimentation credit and increase in rates for alternative incremental research credit.
- Sec. 104. Extension of exceptions under subpart F for active financing income.
- Sec. 105. Extension of suspension of net income limitation on percentage depletion from marginal oil and gas wells.
- Sec. 106. Extension of work opportunity tax credit and welfare-to-work tax credit.
- Sec. 107. Extension and modification of tax credit for electricity produced from certain renewable resources.
- Sec. 108. Expansion of brownfields environmental remediation.
- Sec. 109. Temporary increase in amount of rum excise tax covered over to Puerto Rico and Virgin Islands.
- Sec. 110. Delay requirement that registered motor fuels terminals offer dyed fuel as a condition of registration.
- Sec. 111. Extension of production credit for fuel produced by certain gasification facilities.

TITLE II—REVENUE OFFSET PROVISIONS

Subtitle A—General Provisions

- Sec. 201. Modification of individual estimated tax safe harbor.
- Sec. 202. Modification of foreign tax credit carryover rules.
- Sec. 203. Clarification of tax treatment of income and loss on derivatives.
- Sec. 204. Inclusion of certain vaccines against streptococcus pneumoniae to list of taxable vaccines.
- Sec. 205. Expansion of reporting of cancellation of indebtedness income.
- Sec. 206. Imposition of limitation on prefunding of certain employee benefits.
- Sec. 207. Increase in elective withholding rate for nonperiodic distributions from deferred compensation plans.
- Sec. 208. Limitation on conversion of character of income from constructive ownership transactions.
- Sec. 209. Treatment of excess pension assets used for retiree health benefits.

- Sec. 210. Modification of installment method and repeal of installment method for accrual method taxpayers.
- Sec. 211. Limitation on use of nonaccrual experience method of accounting.
- Sec. 212. Denial of charitable contribution deduction for transfers associated with split-dollar insurance arrangements.
- Sec. 213. Prevention of duplication of loss through assumption of liabilities giving rise to a deduction.
- Sec. 214. Consistent treatment and basis allocation rules for transfers of intangibles in certain nonrecognition transactions.
- Sec. 215. Distributions by a partnership to a corporate partner of stock in another corporation.
- Sec. 216. Prohibited allocations of stock in S corporation ESOP.

Subtitle B—Provisions Relating to Real Estate Investment Trusts

PART I—TREATMENT OF INCOME AND SERVICES PROVIDED BY TAXABLE REIT SUBSIDIARIES

- Sec. 221. Modifications to asset diversification test.
- Sec. 222. Treatment of income and services provided by taxable REIT subsidiaries.
- Sec. 223. Taxable REIT subsidiary.
- Sec. 224. Limitation on earnings stripping.
- Sec. 225. 100 percent tax on improperly allocated amounts.
- Sec. 226. Effective date.

PART II—HEALTH CARE REITS

- Sec. 231. Health care REITs.

PART III—CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES

- Sec. 241. Conformity with regulated investment company rules.

PART IV—CLARIFICATION OF EXCEPTION FROM IMPERMISSIBLE TENANT SERVICE INCOME

- Sec. 251. Clarification of exception for independent operators.

PART V—MODIFICATION OF EARNINGS AND PROFITS RULES

- Sec. 261. Modification of earnings and profits rules.

PART VI—MODIFICATION OF ESTIMATED TAX RULES

- Sec. 271. Modification of estimated tax rules for closely held real estate investment trusts.

PART VII—MODIFICATION OF TREATMENT OF CLOSELY-HELD REIT'S

- Sec. 281. Controlled entities ineligible for REIT status.

TITLE III—BUDGET PROVISION

- Sec. 301. Exclusion from paygo scorecard.

1 **TITLE I—EXTENSION OF EX-**
2 **PIRED AND EXPIRING PROVI-**
3 **SIONS**

4 **SEC. 101. EXTENSION OF MINIMUM TAX RELIEF FOR INDI-**
5 **VIDUALS.**

6 (a) IN GENERAL.—The second sentence of section
7 26(a) (relating to limitations based on amount of tax) is
8 amended by striking “1998” and inserting “calendar year
9 1998, 1999, or 2000”.

10 (b) CHILD CREDIT.—Section 24(d)(2) (relating to re-
11 duction of credit to taxpayer subject to alternative min-
12 imum tax) is amended by striking “December 31, 1998”
13 and inserting “December 31, 2000”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 December 31, 1998.

17 **SEC. 102. EXTENSION OF EXCLUSION FOR EMPLOYER-PRO-**
18 **VIDED EDUCATIONAL ASSISTANCE.**

19 (a) IN GENERAL.—Section 127(d) (relating to termi-
20 nation) is amended by striking “May 31, 2000” and in-
21 serting “December 31, 2000”.

22 (b) REPEAL OF LIMITATION ON GRADUATE EDU-
23 CATION.—

24 (1) IN GENERAL.—The last sentence of section
25 127(c)(1) (defining educational assistance) is

1 amended by striking “, and such term also does not
2 include any payment for, or the provision of any
3 benefits with respect to, any graduate level course of
4 a kind normally taken by an individual pursuing a
5 program leading to a law, business, medical, or other
6 advanced academic or professional degree”.

7 (2) EFFECTIVE DATE.—The amendment made
8 by paragraph (1) shall apply with respect to ex-
9 penses relating to courses beginning after December
10 31, 1999.

11 **SEC. 103. EXTENSION OF RESEARCH AND EXPERIMEN-**
12 **TATION CREDIT AND INCREASE IN RATES**
13 **FOR ALTERNATIVE INCREMENTAL RE-**
14 **SEARCH CREDIT.**

15 (a) EXTENSION.—

16 (1) IN GENERAL.—Section 41(h) (relating to
17 termination) is amended—

18 (A) by striking “June 30, 1999” and in-
19 serting “December 31, 2000”,

20 (B) by striking “36-month” and inserting
21 “54-month”, and

22 (C) by striking “36 months” and inserting
23 “54 months”.

1 (2) CONFORMING AMENDMENT.—Section
2 45C(b)(1)(D) is amended by striking “June 30,
3 1999” and inserting “December 31, 2000”.

4 (3) EFFECTIVE DATE.—The amendments made
5 by this subsection shall apply to amounts paid or in-
6 curred after June 30, 1999.

7 (b) INCREASE IN PERCENTAGES UNDER ALTER-
8 NATIVE INCREMENTAL CREDIT.—

9 (1) IN GENERAL.—Subparagraph (A) of section
10 41(c)(4) is amended—

11 (A) by striking “1.65 percent” and insert-
12 ing “2.65 percent”,

13 (B) by striking “2.2 percent” and inserting
14 “3.2 percent”, and

15 (C) by striking “2.75 percent” and insert-
16 ing “3.75 percent”.

17 (2) EFFECTIVE DATE.—The amendments made
18 by this subsection shall apply to taxable years begin-
19 ning after June 30, 1999.

20 (c) EXTENSION OF RESEARCH CREDIT TO RESEARCH
21 IN PUERTO RICO AND THE POSSESSIONS OF THE UNITED
22 STATES.—

23 (1) IN GENERAL.—Section 41(d)(4)(F) (relat-
24 ing to foreign research) is amended by inserting “,

1 the Commonwealth of Puerto Rico, or any posses-
2 sion of the United States” after “United States”.

3 (2) DENIAL OF DOUBLE BENEFIT.—Section
4 280C(c)(1) is amended by inserting “or credit” after
5 “deduction” each place it appears.

6 (3) EFFECTIVE DATE.—The amendments made
7 by this subsection shall apply to amounts paid or in-
8 curred after June 30, 1999.

9 **SEC. 104. EXTENSION OF EXCEPTIONS UNDER SUBPART F**
10 **FOR ACTIVE FINANCING INCOME.**

11 (a) IN GENERAL.—Sections 953(e)(10) and
12 954(h)(9) (relating to application) are each amended—

13 (1) by striking “the first taxable year” and in-
14 serting “taxable years”,

15 (2) by striking “January 1, 2000” and insert-
16 ing “January 1, 2001”, and

17 (3) by striking “within which such” and insert-
18 ing “within which any such”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 1999.

1 **SEC. 105. EXTENSION OF SUSPENSION OF NET INCOME LIM-**
2 **ITATION ON PERCENTAGE DEPLETION FROM**
3 **MARGINAL OIL AND GAS WELLS.**

4 (a) IN GENERAL.—Subparagraph (H) of section
5 613A(c)(6) (relating to temporary suspension of taxable
6 limit with respect to marginal production) is amended by
7 striking “January 1, 2000” and inserting “January 1,
8 2001”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to taxable years beginning after
11 December 31, 1999.

12 **SEC. 106. EXTENSION OF WORK OPPORTUNITY TAX CREDIT**
13 **AND WELFARE-TO-WORK TAX CREDIT.**

14 (a) TEMPORARY EXTENSION.—Sections 51(c)(4)(B)
15 and 51A(f) (relating to termination) are each amended
16 by striking “June 30, 1999” and inserting “December 31,
17 2000”.

18 (b) CLARIFICATION OF FIRST YEAR OF EMPLOY-
19 MENT.—Paragraph (2) of section 51(i) is amended by
20 striking “during which he was not a member of a targeted
21 group”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to individuals who begin work for
24 the employer after June 30, 1999.

1 **SEC. 107. EXTENSION AND MODIFICATION OF TAX CREDIT**
2 **FOR ELECTRICITY PRODUCED FROM CER-**
3 **TAIN RENEWABLE RESOURCES.**

4 (a) EXTENSION AND MODIFICATION OF PLACED-IN-
5 SERVICE RULES.—Paragraph (3) of section 45(c) is
6 amended to read as follows:

7 “(3) QUALIFIED FACILITY.—

8 “(A) WIND FACILITY.—In the case of a fa-
9 cility using wind to produce electricity, the term
10 ‘qualified facility’ means any facility owned by
11 the taxpayer which is originally placed in serv-
12 ice after December 31, 1993, and before Janu-
13 ary 1, 2001.

14 “(B) CLOSED-LOOP BIOMASS FACILITY.—
15 In the case of a facility using closed-loop bio-
16 mass to produce electricity, the term ‘qualified
17 facility’ means any facility owned by the tax-
18 payer which is—

19 “(i) originally placed in service after
20 December 31, 1992, and before January 1,
21 2001, or

22 “(ii) originally placed in service before
23 December 31, 1992, and modified to use
24 closed-loop biomass to co-fire with coal
25 after such date and before January 1,
26 2001.

1 “(C) BIOMASS FACILITY.—In the case of a
2 facility using biomass (other than closed-loop
3 biomass) to produce electricity, the term ‘quali-
4 fied facility’ means any facility owned by the
5 taxpayer which is originally placed in service be-
6 fore January 1, 2001.

7 “(D) LANDFILL GAS OR POULTRY WASTE
8 FACILITY.—

9 “(i) IN GENERAL.—In the case of a
10 facility using landfill gas or poultry waste
11 to produce electricity, the term ‘qualified
12 facility’ means any facility of the taxpayer
13 which is originally placed in service after
14 December 31, 1999, and before January 1,
15 2001.

16 “(ii) LANDFILL GAS.—In the case of a
17 facility using landfill gas, such term shall
18 include equipment and housing (not includ-
19 ing wells and related systems required to
20 collect and transmit gas to the production
21 facility) required to generate electricity
22 which are owned by the taxpayer and so
23 placed in service.

24 “(E) SPECIAL RULE.—In the case of a
25 qualified facility described in subparagraph (B)

1 or (C) using coal to co-fire with biomass, the
 2 10-year period referred to in subsection (a)
 3 shall be treated as beginning no earlier than
 4 January 1, 2000.”.

5 (b) EXPANSION OF QUALIFIED ENERGY RE-
 6 SOURCES.—

7 (1) IN GENERAL.—Section 45(c)(1) (defining
 8 qualified energy resources) is amended by striking
 9 “and” at the end of subparagraph (A), by striking
 10 the period at the end of subparagraph (B) and in-
 11 sserting a comma, and by adding at the end the fol-
 12 lowing new subparagraphs:

13 “(C) biomass (other than closed-loop bio-
 14 mass),

15 “(D) landfill gas, and

16 “(E) poultry waste.”.

17 (2) DEFINITIONS.—Section 45(c), as amended
 18 by subsection (a), is amended by redesignating para-
 19 graph (3) as paragraph (6) and inserting after para-
 20 graph (2) the following new paragraphs:

21 “(3) BIOMASS.—The term ‘biomass’ means any
 22 solid, nonhazardous, cellulosic waste material which
 23 is segregated from other waste materials and which
 24 is derived from—

1 “(A) any of the following forest-related re-
2 sources: mill residues, precommercial thinnings,
3 slash, and brush, but not including old-growth
4 timber,

5 “(B) urban sources, including waste pal-
6 lets, crates, and dunnage, manufacturing and
7 construction wood wastes, and landscape or
8 right-of-way tree trimmings, but not including
9 unsegregated municipal solid waste (garbage)
10 or paper that is commonly recycled, or

11 “(C) agriculture sources, including orchard
12 tree crops, vineyard, grain, legumes, sugar, and
13 other crop by-products or residues.

14 “(4) LANDFILL GAS.—The term ‘landfill gas’
15 means gas from the decomposition of any household
16 solid waste, commercial solid waste, and industrial
17 solid waste disposed of in a municipal solid waste
18 landfill unit (as such terms are defined in regula-
19 tions promulgated under subtitle D of the Solid
20 Waste Disposal Act (42 U.S.C. 6941 et seq.)).

21 “(5) POULTRY WASTE.—The term ‘poultry
22 waste’ means poultry manure and litter, including
23 wood shavings, straw, rice hulls, and other bedding
24 material for the disposition of manure.”.

1 (c) SPECIAL RULES.—Section 45(d) (relating to defi-
2 nitions and special rules) is amended by adding at the end
3 the following new paragraphs:

4 “(6) CREDIT ELIGIBILITY IN THE CASE OF GOV-
5 ERNMENT-OWNED FACILITIES USING POULTRY
6 WASTE.—In the case of a facility using poultry
7 waste to produce electricity and owned by a govern-
8 mental unit, the person eligible for the credit under
9 subsection (a) is the lessor or the operator of such
10 facility.

11 “(7) PROPORTIONAL CREDIT FOR FACILITY
12 USING COAL TO CO-FIRE WITH BIOMASS.—In the
13 case of a qualified facility described in subparagraph
14 (B) or (C) of subsection (c)(6) using coal to co-fire
15 with biomass, the amount of the credit determined
16 under subsection (a) for the taxable year shall be re-
17 duced by the percentage coal comprises (on a Btu
18 basis) of the average fuel input of the facility for the
19 taxable year.

20 “(8) DENIAL OF DOUBLE BENEFIT.—No credit
21 shall be allowed under this section with respect to a
22 facility for any taxable year if the credit under sec-
23 tion 29 is allowed in such year or has been allowed
24 in any preceding taxable year with respect to any
25 fuel produced from such facility.”.

1 (d) CONFORMING AMENDMENT.—Section 29(d) (re-
 2 lating to other definitions and special rules) is amended
 3 by adding at the end the following new paragraph:

4 “(9) DENIAL OF DOUBLE BENEFIT.—No credit
 5 shall be allowed under this section with respect to
 6 any fuel produced from a facility for any taxable
 7 year if the credit under section 45 is allowed in such
 8 year or has been allowed in any preceding taxable
 9 year with respect to such facility.”.

10 (e) EFFECTIVE DATE.—The amendments made by
 11 this section shall take effect on the date of the enactment
 12 of this Act.

13 **SEC. 108. EXPANSION OF BROWNFIELDS ENVIRONMENTAL**
 14 **REMEDIATION.**

15 (a) IN GENERAL.—Section 198(c) is amended to read
 16 as follows:

17 “(c) QUALIFIED CONTAMINATED SITE.—For pur-
 18 poses of this section—

19 “(1) IN GENERAL.—The term ‘qualified con-
 20 taminated site’ means any area—

21 “(A) which is held by the taxpayer for use
 22 in a trade or business or for the production of
 23 income, or which is property described in sec-
 24 tion 1221(1) in the hands of the taxpayer, and

1 “(B) at or on which there has been a re-
2 lease (or threat of release) or disposal of any
3 hazardous substance.

4 “(2) NATIONAL PRIORITIES LISTED SITES NOT
5 INCLUDED.—Such term shall not include any site
6 which is on, or proposed for, the national priorities
7 list under section 105(a)(8)(B) of the Comprehen-
8 sive Environmental Response, Compensation, and
9 Liability Act of 1980 (as in effect on the date of the
10 enactment of this section).

11 “(3) TAXPAYER MUST RECEIVE STATEMENT
12 FROM STATE ENVIRONMENTAL AGENCY.—An area
13 shall be treated as a qualified contaminated site with
14 respect to expenditures paid or incurred during any
15 taxable year only if the taxpayer receives a state-
16 ment from the appropriate environmental agency of
17 the State in which such area is located that such
18 area meets the requirement of paragraph (1)(B).

19 “(4) APPROPRIATE STATE AGENCY.—For pur-
20 poses of paragraph (3), the chief executive officer of
21 each State may, in consultation with the Adminis-
22 trator of the Environmental Protection Agency, des-
23 ignate the appropriate State environmental agency
24 within 60 days of the date of the enactment of this
25 section. If the chief executive officer of a State has

1 not designated an appropriate State environmental
 2 agency within such 60-day period, the appropriate
 3 environmental agency for such State shall be des-
 4 ignated by the Administrator of the Environmental
 5 Protection Agency.”.

6 (b) EFFECTIVE DATE.—The amendment made by
 7 this section shall apply to expenditures paid or incurred
 8 after December 31, 1999.

9 **SEC. 109. TEMPORARY INCREASE IN AMOUNT OF RUM EX-**
 10 **CISE TAX COVERED OVER TO PUERTO RICO**
 11 **AND VIRGIN ISLANDS.**

12 (a) IN GENERAL.—Section 7652(f)(1) (relating to
 13 limitation on cover over of tax on distilled spirits) is
 14 amended to read as follows:

15 “(1) \$10.50 (\$13.50 in the case of distilled
 16 spirits brought into the United States after June 30,
 17 1999, and before January 1, 2001), or”.

18 (b) EFFECTIVE DATE.—

19 (1) IN GENERAL.—The amendment made by
 20 this section shall take effect on July 1, 1999.

21 (2) SPECIAL RULE.—

22 (A) IN GENERAL.—For the period begin-
 23 ning after June 30, 1999, and before January
 24 1, 2001, the treasury of Puerto Rico shall make
 25 a Conservation Trust Fund transfer within 30

1 days from the date of each cover over payment
2 made during such period to such treasury under
3 section 7652(e) of the Internal Revenue Code of
4 1986.

5 (B) CONSERVATION TRUST FUND TRANS-
6 FER.—

7 (i) IN GENERAL.—For purposes of
8 this paragraph, the term “Conservation
9 Trust Fund transfer” means a transfer to
10 the Puerto Rico Conservation Trust Fund
11 of an amount equal to 50 cents per proof
12 gallon of the taxes imposed under section
13 5001 or section 7652 of such Code on dis-
14 tilled spirits that are covered over to the
15 treasury of Puerto Rico under section
16 7652(e) of such Code.

17 (ii) TREATMENT OF TRANSFER.—
18 Each Conservation Trust Fund transfer
19 shall be treated as principal for an endow-
20 ment, the income from which to be avail-
21 able for use by the Puerto Rico Conserva-
22 tion Trust Fund for the purposes for
23 which the Trust Fund was established.

24 (iii) RESULT OF NONTRANSFER.—

1 (I) IN GENERAL.—Upon notifica-
2 tion by the Secretary of the Interior
3 that a Conservation Trust Fund
4 transfer has not been made by the
5 treasury of Puerto Rico during the pe-
6 riod described in subparagraph (A),
7 the Secretary of the Treasury shall,
8 except as provided in subclause (II),
9 deduct and withhold from the next
10 cover over payment to be made to the
11 treasury of Puerto Rico under section
12 7652(e) of such Code an amount
13 equal to the appropriate Conservation
14 Trust Fund transfer and interest
15 thereon at the underpayment rate es-
16 tablished under section 6621 of such
17 Code as of the due date of such trans-
18 fer. The Secretary of the Treasury
19 shall transfer such amount deducted
20 and withheld, and the interest there-
21 on, directly to the Puerto Rico Con-
22 servation Trust Fund.

23 (II) GOOD CAUSE EXCEPTION.—
24 If the Secretary of the Interior finds,
25 after consultation with the Governor

1 of Puerto Rico, that the failure by the
2 treasury of Puerto Rico to make a re-
3 quired transfer was for good cause,
4 and notifies the Secretary of the
5 Treasury of the finding of such good
6 cause before the due date of the next
7 cover over payment following the noti-
8 fication of nontransfer, then the Sec-
9 retary of the Treasury shall not de-
10 duct the amount of such nontransfer
11 from any cover over payment.

12 (C) PUERTO RICO CONSERVATION TRUST
13 FUND.—For purposes of this paragraph, the
14 term “Puerto Rico Conservation Trust Fund”
15 means the fund established pursuant to a
16 Memorandum of Understanding between the
17 United States Department of the Interior and
18 the Commonwealth of Puerto Rico, dated De-
19 cember 24, 1968.

20 **SEC. 110. DELAY REQUIREMENT THAT REGISTERED MOTOR**
21 **FUELS TERMINALS OFFER DYED FUEL AS A**
22 **CONDITION OF REGISTRATION.**

23 Subsection (f)(2) of section 1032 of the Taxpayer Re-
24 lief Act of 1997, as amended by section 9008 of the Trans-

1 portation Equity Act for the 21st Century, is amended by
2 striking “July 1, 2000” and inserting “January 1, 2001”.

3 **SEC. 111. EXTENSION OF PRODUCTION CREDIT FOR FUEL**
4 **PRODUCED BY CERTAIN GASIFICATION FA-**
5 **CILITIES.**

6 (a) IN GENERAL.—Section 29(g)(1)(A) (relating to
7 extension for certain facilities) is amended by striking
8 “July 1, 1998” and inserting “July 1, 2000”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to fuels produced on and after July
11 1, 1998.

12 (c) SPECIAL RULE.—

13 (1) IN GENERAL.—For purposes of the Internal
14 Revenue Code of 1986, the credit determined under
15 section 29 of such Code which is otherwise allowable
16 under such Code by reason of the amendment made
17 by subsection (a) and which is attributable to the
18 suspension period shall not be taken into account
19 prior to October 1, 2004. On or after such date,
20 such credit may be taken into account through the
21 filing of an amended return, an application for expe-
22 dited refund, an adjustment of estimated taxes, or
23 other means allowed by such Code. Interest shall not
24 be allowed under section 6511(a) of such Code on
25 any overpayment attributable to such credit for any

1 period before the 45th day after the credit is taken
2 into account under the preceding sentence.

3 (2) SUSPENSION PERIOD.—For purposes of this
4 subsection, the suspension period is the period be-
5 ginning on July 1, 1998, and ending on September
6 30, 2004.

7 (3) EXPEDITED REFUNDS.—

8 (A) IN GENERAL.—If there is an overpay-
9 ment of tax with respect to a taxable year by
10 reason of paragraph (1), the taxpayer may file
11 an application for a tentative refund of such
12 overpayment. Such application shall be in such
13 manner and form, and contain such informa-
14 tion, as the Secretary may prescribe.

15 (B) DEADLINE FOR APPLICATIONS.—Sub-
16 paragraph (A) shall apply only to applications
17 filed before October 1, 2005.

18 (C) ALLOWANCE OF ADJUSTMENTS.—Not
19 later than 90 days after the date on which an
20 application is filed under this paragraph, the
21 Secretary shall—

22 (i) review the application,

23 (ii) determine the amount of the over-
24 payment, and

1 (iii) apply, credit, or refund such over-
2 payment,
3 in a manner similar to the manner provided in
4 section 6411(b) of such Code.

5 (D) CONSOLIDATED RETURNS.—The provi-
6 sions of section 6411(c) of such Code shall
7 apply to an adjustment under this paragraph in
8 such manner as the Secretary may provide.

9 (4) CREDIT ATTRIBUTABLE TO SUSPENSION PE-
10 RIOD.—For purposes of this subsection, in the case
11 of a taxable year which includes a portion of the sus-
12 pension period, the amount of credit determined
13 under section 29 of such Code for such taxable year
14 which is attributable to such period is the amount
15 which bears the same ratio to the amount of credit
16 determined under such section 29 for such taxable
17 year as the number of months in the suspension pe-
18 riod which are during such taxable year bears to the
19 number of months in such taxable year.

20 (5) WAIVER OF STATUTE OF LIMITATIONS.—If,
21 on October 1, 2004 (or at any time within the 1-
22 year period beginning on such date) credit or refund
23 of any overpayment of tax resulting from the provi-
24 sions of this subsection is barred by any law or rule
25 of law, credit or refund of such overpayment shall,

1 nevertheless, be allowed or made if claim therefore
 2 is filed before the date 1 year after October 1, 2004.

3 (6) SECRETARY.—For purposes of this sub-
 4 section, the term “Secretary” means the Secretary
 5 of the Treasury (or such Secretary’s delegate).

6 **TITLE II—REVENUE OFFSET**
 7 **PROVISIONS**

8 **Subtitle A—General Provisions**

9 **SEC. 201. MODIFICATION OF INDIVIDUAL ESTIMATED TAX**

10 **SAFE HARBOR.**

11 (a) IN GENERAL.—The table contained in clause (i)
 12 of section 6654(d)(1)(C) (relating to limitation on use of
 13 preceding year’s tax) is amended by striking all matter
 14 beginning with the item relating to 1999 or 2000 and in-
 15 serting the following new items:

“1999	110.5
2000	106
2001	112
2002	110
2003	112
2004 or thereafter	110”.

16 (b) EFFECTIVE DATE.—The amendment made by
 17 this section shall apply with respect to any installment
 18 payment for taxable years beginning after December 31,
 19 1999.

1 **SEC. 202. MODIFICATION OF FOREIGN TAX CREDIT CARRY-**
2 **OVER RULES.**

3 (a) IN GENERAL.—Section 904(c) (relating to limita-
4 tion on credit) is amended—

5 (1) by striking “in the second preceding taxable
6 year,” and

7 (2) by striking “or fifth” and inserting “fifth,
8 sixth, or seventh”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall apply to credits arising in taxable
11 years beginning after December 31, 1999.

12 **SEC. 203. CLARIFICATION OF TAX TREATMENT OF INCOME**
13 **AND LOSS ON DERIVATIVES.**

14 (a) IN GENERAL.—Section 1221 (defining capital as-
15 sets) is amended—

16 (1) by striking “For purposes” and inserting
17 the following:

18 “(a) IN GENERAL.—For purposes”,

19 (2) by striking the period at the end of para-
20 graph (5) and inserting a semicolon, and

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

22 “(6) any commodities derivative financial in-
23 strument held by a commodities derivatives dealer,
24 unless—

25 “(A) it is established to the satisfaction of
26 the Secretary that such instrument has no con-

1 nection to the activities of such dealer as a
2 dealer, and

3 “(B) such instrument is clearly identified
4 in such dealer’s records as being described in
5 subparagraph (A) before the close of the day on
6 which it was acquired, originated, or entered
7 into (or such other time as the Secretary may
8 by regulations prescribe);

9 “(7) any hedging transaction which is clearly
10 identified as such before the close of the day on
11 which it was acquired, originated, or entered into (or
12 such other time as the Secretary may by regulations
13 prescribe); or

14 “(8) supplies of a type regularly used or con-
15 sumed by the taxpayer in the ordinary course of a
16 trade or business of the taxpayer.

17 “(b) DEFINITIONS AND SPECIAL RULES.—

18 “(1) COMMODITIES DERIVATIVE FINANCIAL IN-
19 STRUMENTS.—For purposes of subsection (a)(6)—

20 “(A) COMMODITIES DERIVATIVES DEAL-
21 ER.—The term ‘commodities derivatives dealer’
22 means a person which regularly offers to enter
23 into, assume, offset, assign, or terminate posi-
24 tions in commodities derivative financial instru-

1 ments with customers in the ordinary course of
2 a trade or business.

3 “(B) COMMODITIES DERIVATIVE FINAN-
4 CIAL INSTRUMENT.—

5 “(i) IN GENERAL.—The term ‘com-
6 modities derivative financial instrument’
7 means any contract or financial instrument
8 with respect to commodities (other than a
9 share of stock in a corporation, a beneficial
10 interest in a partnership or trust, a note,
11 bond, debenture, or other evidence of in-
12 debtedness, or a section 1256 contract (as
13 defined in section 1256(b)), the value or
14 settlement price of which is calculated by
15 or determined by reference to a specified
16 index.

17 “(ii) SPECIFIED INDEX.—The term
18 ‘specified index’ means any one or more or
19 any combination of—

20 “(I) a fixed rate, price, or
21 amount, or

22 “(II) a variable rate, price, or
23 amount,

24 which is based on any current, objectively
25 determinable financial or economic infor-

1 mation with respect to commodities which
2 is not within the control of any of the par-
3 ties to the contract or instrument and is
4 not unique to any of the parties' cir-
5 cumstances.

6 “(2) HEDGING TRANSACTION.—

7 “(A) IN GENERAL.—For purposes of this
8 section, the term ‘hedging transaction’ means
9 any transaction entered into by the taxpayer in
10 the normal course of the taxpayer’s trade or
11 business primarily—

12 “(i) to manage risk of price changes
13 or currency fluctuations with respect to or-
14 dinary property which is held or to be held
15 by the taxpayer,

16 “(ii) to manage risk of interest rate or
17 price changes or currency fluctuations with
18 respect to borrowings made or to be made,
19 or ordinary obligations incurred or to be
20 incurred, by the taxpayer, or

21 “(iii) to manage such other risks as
22 the Secretary may prescribe in regulations.

23 “(B) TREATMENT OF NONIDENTIFICATION
24 OR IMPROPER IDENTIFICATION OF HEDGING
25 TRANSACTIONS.—Notwithstanding subsection

1 (a)(7), the Secretary shall prescribe regulations
2 to properly characterize any income, gain, ex-
3 pense, or loss arising from a transaction—

4 “(i) which is a hedging transaction
5 but which was not identified as such in ac-
6 cordance with subsection (a)(7), or

7 “(ii) which was so identified but is not
8 a hedging transaction.

9 “(3) REGULATIONS.—The Secretary shall pre-
10 scribe such regulations as are appropriate to carry
11 out the purposes of paragraph (6) and (7) of sub-
12 section (a) in the case of transactions involving re-
13 lated parties.”.

14 (b) MANAGEMENT OF RISK.—

15 (1) Section 475(c)(3) is amended by striking
16 “reduces” and inserting “manages”.

17 (2) Section 871(h)(4)(C)(iv) is amended by
18 striking “to reduce” and inserting “to manage”.

19 (3) Clauses (i) and (ii) of section 988(d)(2)(A)
20 are each amended by striking “to reduce” and in-
21 sserting “to manage”.

22 (4) Paragraph (2) of section 1256(e) is amend-
23 ed to read as follows:

24 “(2) DEFINITION OF HEDGING TRANSACTION.—

25 For purposes of this subsection, the term ‘hedging

1 transaction’ means any hedging transaction (as de-
2 fined in section 1221(b)(2)(A)) if, before the close of
3 the day on which such transaction was entered into
4 (or such earlier time as the Secretary may prescribe
5 by regulations), the taxpayer clearly identifies such
6 transaction as being a hedging transaction.”.

7 (c) CONFORMING AMENDMENTS.—

8 (1) Each of the following sections are amended
9 by striking “section 1221” and inserting “section
10 1221(a)”:

11 (A) Section 170(e)(3)(A).

12 (B) Section 170(e)(4)(B).

13 (C) Section 367(a)(3)(B)(i).

14 (D) Section 818(c)(3).

15 (E) Section 865(i)(1).

16 (F) Section 1092(a)(3)(B)(ii)(II).

17 (G) Subparagraphs (C) and (D) of section
18 1231(b)(1).

19 (H) Section 1234(a)(3)(A).

20 (2) Each of the following sections are amended
21 by striking “section 1221(1)” and inserting “section
22 1221(a)(1)”:

23 (A) Section 198(c)(1)(A)(i).

24 (B) Section 263A(b)(2)(A).

- 1 (C) Clauses (i) and (iii) of section
2 267(f)(3)(B).
- 3 (D) Section 341(d)(3).
- 4 (E) Section 543(a)(1)(D)(i).
- 5 (F) Section 751(d)(1).
- 6 (G) Section 775(c).
- 7 (H) Section 856(c)(2)(D).
- 8 (I) Section 856(c)(3)(C).
- 9 (J) Section 856(e)(1).
- 10 (K) Section 856(j)(2)(B).
- 11 (L) Section 857(b)(4)(B)(i).
- 12 (M) Section 857(b)(6)(B)(iii).
- 13 (N) Section 864(c)(4)(B)(iii).
- 14 (O) Section 864(d)(3)(A).
- 15 (P) Section 864(d)(6)(A).
- 16 (Q) Section 954(c)(1)(B)(iii).
- 17 (R) Section 995(b)(1)(C).
- 18 (S) Section 1017(b)(3)(E)(i).
- 19 (T) Section 1362(d)(3)(C)(ii).
- 20 (U) Section 4662(c)(2)(C).
- 21 (V) Section 7704(c)(3).
- 22 (W) Section 7704(d)(1)(D).
- 23 (X) Section 7704(d)(1)(G).
- 24 (Y) Section 7704(d)(5).

1 (3) Section 818(b)(2) is amended by striking
2 “section 1221(2)” and inserting “section
3 1221(a)(2)”.

4 (4) Section 1397B(e)(2) is amended by striking
5 “section 1221(4)” and inserting “section
6 1221(a)(4)”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to any instrument held, acquired,
9 or entered into, any transaction entered into, and supplies
10 held or acquired on or after the date of the enactment
11 of this Act.

12 **SEC. 204. INCLUSION OF CERTAIN VACCINES AGAINST**
13 **STREPTOCOCCUS PNEUMONIAE TO LIST OF**
14 **TAXABLE VACCINES.**

15 (a) INCLUSION OF VACCINES.—

16 (1) IN GENERAL.—Section 4132(a)(1) (defining
17 taxable vaccine) is amended by adding at the end
18 the following new subparagraph:

19 “(L) Any conjugate vaccine against strep-
20 tococcus pneumoniae.”

21 (2) EFFECTIVE DATE.—

22 (A) SALES.—The amendment made by this
23 subsection shall apply to vaccine sales beginning
24 on the day after the date on which the Centers
25 for Disease Control makes a final recommenda-

1 tion for routine administration to children of
2 any conjugate vaccine against streptococcus
3 pneumoniae, but shall not take effect if sub-
4 section (b) does not take effect.

5 (B) DELIVERIES.—For purposes of sub-
6 paragraph (A), in the case of sales on or before
7 the date described in such subparagraph for
8 which delivery is made after such date, the de-
9 livery date shall be considered the sale date.

10 (b) VACCINE TAX AND TRUST FUND AMEND-
11 MENTS.—

12 (1) Sections 1503 and 1504 of the Vaccine In-
13 jury Compensation Program Modification Act (and
14 the amendments made by such sections) are hereby
15 repealed.

16 (2) Subparagraph (A) of section 9510(c)(1) is
17 amended by striking “August 5, 1997” and insert-
18 ing “October 21, 1998”.

19 (3) The amendments made by this subsection
20 shall take effect as if included in the provisions of
21 the Omnibus Consolidated and Emergency Supple-
22 mental Appropriations Act, 1999 to which they re-
23 late.

24 (c) REPORT.—Not later than January 31, 2000, the
25 Comptroller General of the United States shall prepare

1 and submit a report to the Committee on Ways and Means
2 of the House of Representatives and the Committee on
3 Finance of the Senate on the operation of the Vaccine In-
4 jury Compensation Trust Fund and on the adequacy of
5 such Fund to meet future claims made under the Vaccine
6 Injury Compensation Program.

7 **SEC. 205. EXPANSION OF REPORTING OF CANCELLATION**
8 **OF INDEBTEDNESS INCOME.**

9 (a) IN GENERAL.—Paragraph (2) of section
10 6050P(c) (relating to definitions and special rules) is
11 amended by striking “and” at the end of subparagraph
12 (B), by striking the period at the end of subparagraph
13 (C) and inserting “, and”, and by inserting after subpara-
14 graph (C) the following new subparagraph:

15 “(D) any organization a significant trade
16 or business of which is the lending of money.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall apply to discharges of indebtedness
19 after December 31, 1999.

20 **SEC. 206. IMPOSITION OF LIMITATION ON PREFUNDING OF**
21 **CERTAIN EMPLOYEE BENEFITS.**

22 (a) BENEFITS TO WHICH EXCEPTION APPLIES.—
23 Section 419A(f)(6)(A) (relating to exception for 10 or
24 more employer plans) is amended to read as follows:

1 “(A) IN GENERAL.—This subpart shall not
 2 apply to a welfare benefit fund which is part of
 3 a 10 or more employer plan if the only benefits
 4 provided through the fund are 1 or more of the
 5 following:

6 “(i) Medical benefits.

7 “(ii) Disability benefits.

8 “(iii) Group term life insurance bene-
 9 fits which do not provide directly or indi-
 10 rectly for any cash surrender value or
 11 other money that can be paid, assigned,
 12 borrowed, or pledged for collateral for a
 13 loan.

14 The preceding sentence shall not apply to any
 15 plan which maintains experience-rating arrange-
 16 ments with respect to individual employers.”.

17 (b) LIMITATION ON USE OF AMOUNTS FOR OTHER
 18 PURPOSES.—Section 4976(b) (defining disqualified ben-
 19 efit) is amended by adding at the end the following new
 20 paragraph:

21 “(5) SPECIAL RULE FOR 10 OR MORE EM-
 22 PLOYER PLANS EXEMPTED FROM PREFUNDING LIM-
 23 ITS.—For purposes of paragraph (1)(C), if—

24 “(A) subpart D of part I of subchapter D
 25 of chapter 1 does not apply by reason of section

1 419A(f)(6) to contributions to provide 1 or
2 more welfare benefits through a welfare benefit
3 fund under a 10 or more employer plan, and

4 “(B) any portion of the welfare benefit
5 fund attributable to such contributions is used
6 for a purpose other than that for which the con-
7 tributions were made,

8 then such portion shall be treated as reverting to the
9 benefit of the employers maintaining the fund.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to contributions paid or accrued
12 after June 9, 1999, in taxable years ending after such
13 date.

14 **SEC. 207. INCREASE IN ELECTIVE WITHHOLDING RATE FOR**
15 **NONPERIODIC DISTRIBUTIONS FROM DE-**
16 **FERRED COMPENSATION PLANS.**

17 (a) IN GENERAL.—Section 3405(b)(1) (relating to
18 withholding) is amended by striking “10 percent” and in-
19 serting “15 percent”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall apply to distributions after December
22 31, 2000.

1 **SEC. 208. LIMITATION ON CONVERSION OF CHARACTER OF**
2 **INCOME FROM CONSTRUCTIVE OWNERSHIP**
3 **TRANSACTIONS.**

4 (a) IN GENERAL.—Part IV of subchapter P of chap-
5 ter 1 (relating to special rules for determining capital
6 gains and losses) is amended by inserting after section
7 1259 the following new section:

8 **“SEC. 1260. GAINS FROM CONSTRUCTIVE OWNERSHIP**
9 **TRANSACTIONS.**

10 “(a) IN GENERAL.—If the taxpayer has gain from
11 a constructive ownership transaction with respect to any
12 financial asset and such gain would (without regard to this
13 section) be treated as a long-term capital gain—

14 “(1) such gain shall be treated as ordinary in-
15 come to the extent that such gain exceeds the net
16 underlying long-term capital gain, and

17 “(2) to the extent such gain is treated as a
18 long-term capital gain after the application of para-
19 graph (1), the determination of the capital gain rate
20 (or rates) applicable to such gain under section 1(h)
21 shall be determined on the basis of the respective
22 rate (or rates) that would have been applicable to
23 the net underlying long-term capital gain.

24 “(b) INTEREST CHARGE ON DEFERRAL OF GAIN
25 RECOGNITION.—

1 “(1) IN GENERAL.—If any gain is treated as
2 ordinary income for any taxable year by reason of
3 subsection (a)(1), the tax imposed by this chapter
4 for such taxable year shall be increased by the
5 amount of interest determined under paragraph (2)
6 with respect to each prior taxable year during any
7 portion of which the constructive ownership trans-
8 action was open. Any amount payable under this
9 paragraph shall be taken into account in computing
10 the amount of any deduction allowable to the tax-
11 payer for interest paid or accrued during such tax-
12 able year.

13 “(2) AMOUNT OF INTEREST.—The amount of
14 interest determined under this paragraph with re-
15 spect to a prior taxable year is the amount of inter-
16 est which would have been imposed under section
17 6601 on the underpayment of tax for such year
18 which would have resulted if the gain (which is
19 treated as ordinary income by reason of subsection
20 (a)(1)) had been included in gross income in the tax-
21 able years in which it accrued (determined by treat-
22 ing the income as accruing at a constant rate equal
23 to the applicable Federal rate as in effect on the day
24 the transaction closed). The period during which
25 such interest shall accrue shall end on the due date

1 (without extensions) for the return of tax imposed
2 by this chapter for the taxable year in which such
3 transaction closed.

4 “(3) APPLICABLE FEDERAL RATE.—For pur-
5 poses of paragraph (2), the applicable Federal rate
6 is the applicable Federal rate determined under
7 1274(d) (compounded semiannually) which would
8 apply to a debt instrument with a term equal to the
9 period the transaction was open.

10 “(4) NO CREDITS AGAINST INCREASE IN TAX.—
11 Any increase in tax under paragraph (1) shall not
12 be treated as tax imposed by this chapter for pur-
13 poses of determining—

14 “(A) the amount of any credit allowable
15 under this chapter, or

16 “(B) the amount of the tax imposed by
17 section 55.

18 “(c) FINANCIAL ASSET.—For purposes of this
19 section—

20 “(1) IN GENERAL.—The term ‘financial asset’
21 means—

22 “(A) any equity interest in any pass-thru
23 entity, and

24 “(B) to the extent provided in
25 regulations—

1 “(i) any debt instrument, and

2 “(ii) any stock in a corporation which
3 is not a pass-thru entity.

4 “(2) PASS-THRU ENTITY.—For purposes of
5 paragraph (1), the term ‘pass-thru entity’ means—

6 “(A) a regulated investment company,

7 “(B) a real estate investment trust,

8 “(C) an S corporation,

9 “(D) a partnership,

10 “(E) a trust,

11 “(F) a common trust fund,

12 “(G) a passive foreign investment company
13 (as defined in section 1297 without regard to
14 subsection (e) thereof),

15 “(H) a foreign personal holding company,

16 “(I) a foreign investment company (as de-
17 fined in section 1246(b)), and

18 “(J) a REMIC.

19 “(d) CONSTRUCTIVE OWNERSHIP TRANSACTION.—
20 For purposes of this section—

21 “(1) IN GENERAL.—The taxpayer shall be
22 treated as having entered into a constructive owner-
23 ship transaction with respect to any financial asset
24 if the taxpayer—

1 “(A) holds a long position under a notional
2 principal contract with respect to the financial
3 asset,

4 “(B) enters into a forward or futures con-
5 tract to acquire the financial asset,

6 “(C) is the holder of a call option, and is
7 the grantor of a put option, with respect to the
8 financial asset and such options have substan-
9 tially equal strike prices and substantially con-
10 temporaneous maturity dates, or

11 “(D) to the extent provided in regulations
12 prescribed by the Secretary, enters into one or
13 more other transactions (or acquires one or
14 more positions) that have substantially the
15 same effect as a transaction described in any of
16 the preceding subparagraphs.

17 “(2) EXCEPTION FOR POSITIONS WHICH ARE
18 MARKED TO MARKET.—This section shall not apply
19 to any constructive ownership transaction if all of
20 the positions which are part of such transaction are
21 marked to market under any provision of this title
22 or the regulations thereunder.

23 “(3) LONG POSITION UNDER NOTIONAL PRIN-
24 CIPAL CONTRACT.—A person shall be treated as
25 holding a long position under a notional principal

1 contract with respect to any financial asset if such
2 person—

3 “(A) has the right to be paid (or receive
4 credit for) all or substantially all of the invest-
5 ment yield (including appreciation) on such fi-
6 nancial asset for a specified period, and

7 “(B) is obligated to reimburse (or provide
8 credit for) all or substantially all of any decline
9 in the value of such financial asset.

10 “(4) FORWARD CONTRACT.—The term ‘forward
11 contract’ means any contract to acquire in the fu-
12 ture (or provide or receive credit for the future value
13 of) any financial asset.

14 “(e) NET UNDERLYING LONG-TERM CAPITAL
15 GAIN.—For purposes of this section, in the case of any
16 constructive ownership transaction with respect to any fi-
17 nancial asset, the term ‘net underlying long-term capital
18 gain’ means the aggregate net capital gain that the tax-
19 payer would have had if—

20 “(1) the financial asset had been acquired for
21 fair market value on the date such transaction was
22 opened and sold for fair market value on the date
23 such transaction was closed, and

1 “(2) only gains and losses that would have re-
2 sulted from the deemed ownership under paragraph
3 (1) were taken into account.

4 The amount of the net underlying long-term capital gain
5 with respect to any financial asset shall be treated as zero
6 unless the amount thereof is established by clear and con-
7 vincing evidence.

8 “(f) SPECIAL RULE WHERE TAXPAYER TAKES DE-
9 LIVERY.—Except as provided in regulations prescribed by
10 the Secretary, if a constructive ownership transaction is
11 closed by reason of taking delivery, this section shall be
12 applied as if the taxpayer had sold all the contracts, op-
13 tions, or other positions which are part of such transaction
14 for fair market value on the closing date. The amount of
15 gain recognized under the preceding sentence shall not ex-
16 ceed the amount of gain treated as ordinary income under
17 subsection (a). Proper adjustments shall be made in the
18 amount of any gain or loss subsequently realized for gain
19 recognized and treated as ordinary income under this sub-
20 section.

21 “(g) REGULATIONS.—The Secretary shall prescribe
22 such regulations as may be necessary or appropriate to
23 carry out the purposes of this section, including
24 regulations—

1 the enactment of the Tax Relief Extension Act
2 of 1999”.

3 (B) Section 403(c)(1) of such Act (29
4 U.S.C. 1103(c)(1)) is amended by striking
5 “January 1, 1995” and inserting “the date of
6 the enactment of the Tax Relief Extension Act
7 of 1999”.

8 (C) Paragraph (13) of section 408(b) of
9 such Act (29 U.S.C. 1108(b)(13)) is
10 amended—

11 (i) by striking “in a taxable year be-
12 ginning before January 1, 2001” and in-
13 serting “made before October 1, 2009”,
14 and

15 (ii) by striking “January 1, 1995”
16 and inserting “the date of the enactment
17 of the Tax Relief Extension Act of 1999”.

18 (b) APPLICATION OF MINIMUM COST REQUIRE-
19 MENTS.—

20 (1) IN GENERAL.—Paragraph (3) of section
21 420(c) is amended to read as follows:

22 “(3) MINIMUM COST REQUIREMENTS.—

23 “(A) IN GENERAL.—The requirements of
24 this paragraph are met if each group health
25 plan or arrangement under which applicable

1 health benefits are provided provides that the
2 applicable employer cost for each taxable year
3 during the cost maintenance period shall not be
4 less than the higher of the applicable employer
5 costs for each of the 2 taxable years imme-
6 diately preceding the taxable year of the quali-
7 fied transfer.

8 “(B) APPLICABLE EMPLOYER COST.—For
9 purposes of this paragraph, the term ‘applicable
10 employer cost’ means, with respect to any tax-
11 able year, the amount determined by dividing—

12 “(i) the qualified current retiree
13 health liabilities of the employer for such
14 taxable year determined—

15 “(I) without regard to any reduc-
16 tion under subsection (e)(1)(B), and

17 “(II) in the case of a taxable
18 year in which there was no qualified
19 transfer, in the same manner as if
20 there had been such a transfer at the
21 end of the taxable year, by

22 “(ii) the number of individuals to
23 whom coverage for applicable health bene-
24 fits was provided during such taxable year.

1 “(C) ELECTION TO COMPUTE COST SEPA-
2 RATELY.—An employer may elect to have this
3 paragraph applied separately with respect to in-
4 dividuals eligible for benefits under title XVIII
5 of the Social Security Act at any time during
6 the taxable year and with respect to individuals
7 not so eligible.

8 “(D) COST MAINTENANCE PERIOD.—For
9 purposes of this paragraph, the term ‘cost
10 maintenance period’ means the period of 5 tax-
11 able years beginning with the taxable year in
12 which the qualified transfer occurs. If a taxable
13 year is in two or more overlapping cost mainte-
14 nance periods, this paragraph shall be applied
15 by taking into account the highest applicable
16 employer cost required to be provided under
17 subparagraph (A) for such taxable year.”.

18 (2) CONFORMING AMENDMENTS.—

19 (A) Clause (iii) of section 420(b)(1)(C) is
20 amended by striking “benefits” and inserting
21 “cost”.

22 (B) Subparagraph (D) of section 420(e)(1)
23 is amended by striking “and shall not be sub-
24 ject to the minimum benefit requirements of
25 subsection (e)(3)” and inserting “or in calcu-

1 lating applicable employer cost under subsection
2 (c)(3)(B)”.

3 (c) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by
5 this section shall apply to qualified transfers occur-
6 ring after the date of the enactment of this Act.

7 (2) TRANSITION RULE.—If the cost mainte-
8 nance period for any qualified transfer after the date
9 of the enactment of this Act includes any portion of
10 a benefit maintenance period for any qualified trans-
11 fer on or before such date, the amendments made by
12 subsection (b) shall not apply to such portion of the
13 cost maintenance period (and such portion shall be
14 treated as a benefit maintenance period).

15 **SEC. 210. MODIFICATION OF INSTALLMENT METHOD AND**
16 **REPEAL OF INSTALLMENT METHOD FOR AC-**
17 **CRUAL METHOD TAXPAYERS.**

18 (a) REPEAL OF INSTALLMENT METHOD FOR AC-
19 CRUAL BASIS TAXPAYERS.—

20 (1) IN GENERAL.—Subsection (a) of section
21 453 (relating to installment method) is amended to
22 read as follows:

23 “(a) USE OF INSTALLMENT METHOD.—

24 “(1) IN GENERAL.—Except as otherwise pro-
25 vided in this section, income from an installment

1 sale shall be taken into account for purposes of this
2 title under the installment method.

3 “(2) ACCRUAL METHOD TAXPAYER.—The in-
4 stallment method shall not apply to income from an
5 installment sale if such income would be reported
6 under an accrual method of accounting without re-
7 gard to this section. The preceding sentence shall
8 not apply to a disposition described in subparagraph
9 (A) or (B) of subsection (l)(2).”.

10 (2) CONFORMING AMENDMENTS.—Sections
11 453(d)(1), 453(i)(1), and 453(k) are each amended
12 by striking “(a)” each place it appears and inserting
13 “(a)(1)”.

14 (b) MODIFICATION OF PLEDGE RULES.—Paragraph
15 (4) of section 453A(d) (relating to pledges, etc., of install-
16 ment obligations) is amended by adding at the end the
17 following: “A payment shall be treated as directly secured
18 by an interest in an installment obligation to the extent
19 an arrangement allows the taxpayer to satisfy all or a por-
20 tion of the indebtedness with the installment obligation.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to sales or other dispositions occur-
23 ring on or after the date of the enactment of this Act.

1 **SEC. 211. LIMITATION ON USE OF NONACCRUAL EXPERI-**
2 **ENCE METHOD OF ACCOUNTING.**

3 (a) IN GENERAL.—Section 448(d)(5) (relating to
4 special rule for services) is amended—

5 (1) by inserting “in fields described in para-
6 graph (2)(A)” after “services by such person”, and

7 (2) by inserting “CERTAIN PERSONAL” before
8 “SERVICES” in the heading.

9 (b) EFFECTIVE DATE.—

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

13 (2) CHANGE IN METHOD OF ACCOUNTING.—In
14 the case of any taxpayer required by the amend-
15 ments made by this section to change its method of
16 accounting for its first taxable year ending after the
17 date of the enactment of this Act—

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

20 (B) such change shall be treated as made
21 with the consent of the Secretary of the Treas-
22 ury, and

23 (C) the net amount of the adjustments re-
24 quired to be taken into account by the taxpayer
25 under section 481 of the Internal Revenue Code
26 of 1986 shall be taken into account over a pe-

1 riod (not greater than 4 taxable years) begin-
 2 ning with such first taxable year.

3 **SEC. 212. DENIAL OF CHARITABLE CONTRIBUTION DEDUC-**
 4 **TION FOR TRANSFERS ASSOCIATED WITH**
 5 **SPLIT-DOLLAR INSURANCE ARRANGEMENTS.**

6 (a) IN GENERAL.—Subsection (f) of section 170 (re-
 7 lating to disallowance of deduction in certain cases and
 8 special rules) is amended by adding at the end the fol-
 9 lowing new paragraph:

10 “(10) SPLIT-DOLLAR LIFE INSURANCE, ANNU-
 11 ITY, AND ENDOWMENT CONTRACTS.—

12 “(A) IN GENERAL.—Nothing in this sec-
 13 tion or in section 545(b)(2), 556(b)(2), 642(c),
 14 2055, 2106(a)(2), or 2522 shall be construed to
 15 allow a deduction, and no deduction shall be al-
 16 lowed, for any transfer to or for the use of an
 17 organization described in subsection (c) if in
 18 connection with such transfer—

19 “(i) the organization directly or indi-
 20 rectly pays, or has previously paid, any
 21 premium on any personal benefit contract
 22 with respect to the transferor, or

23 “(ii) there is an understanding or ex-
 24 pectation that any person will directly or
 25 indirectly pay any premium on any per-

1 sonal benefit contract with respect to the
2 transferor.

3 “(B) PERSONAL BENEFIT CONTRACT.—
4 For purposes of subparagraph (A), the term
5 ‘personal benefit contract’ means, with respect
6 to the transferor, any life insurance, annuity, or
7 endowment contract if any direct or indirect
8 beneficiary under such contract is the trans-
9 feror, any member of the transferor’s family, or
10 any other person (other than an organization
11 described in subsection (e)) designated by the
12 transferor.

13 “(C) APPLICATION TO CHARITABLE RE-
14 MAINDER TRUSTS.—In the case of a transfer to
15 a trust referred to in subparagraph (E), ref-
16 erences in subparagraphs (A) and (F) to an or-
17 ganization described in subsection (e) shall be
18 treated as a reference to such trust.

19 “(D) EXCEPTION FOR CERTAIN ANNUITY
20 CONTRACTS.—If, in connection with a transfer
21 to or for the use of an organization described
22 in subsection (e), such organization incurs an
23 obligation to pay a charitable gift annuity (as
24 defined in section 501(m)) and such organiza-
25 tion purchases any annuity contract to fund

1 such obligation, persons receiving payments
2 under the charitable gift annuity shall not be
3 treated for purposes of subparagraph (B) as in-
4 direct beneficiaries under such contract if—

5 “(i) such organization possesses all of
6 the incidents of ownership under such con-
7 tract,

8 “(ii) such organization is entitled to
9 all the payments under such contract, and

10 “(iii) the timing and amount of pay-
11 ments under such contract are substan-
12 tially the same as the timing and amount
13 of payments to each such person under
14 such obligation (as such obligation is in ef-
15 fect at the time of such transfer).

16 “(E) EXCEPTION FOR CERTAIN CON-
17 TRACTS HELD BY CHARITABLE REMAINDER
18 TRUSTS.—A person shall not be treated for pur-
19 poses of subparagraph (B) as an indirect bene-
20 ficiary under any life insurance, annuity, or en-
21 dowment contract held by a charitable remain-
22 der annuity trust or a charitable remainder
23 unitrust (as defined in section 664(d)) solely by
24 reason of being entitled to any payment re-

1 ferred to in paragraph (1)(A) or (2)(A) of sec-
2 tion 664(d) if—

3 “(i) such trust possesses all of the in-
4 cidents of ownership under such contract,
5 and

6 “(ii) such trust is entitled to all the
7 payments under such contract.

8 “(F) EXCISE TAX ON PREMIUMS PAID.—

9 “(i) IN GENERAL.—There is hereby
10 imposed on any organization described in
11 subsection (c) an excise tax equal to the
12 premiums paid by such organization on
13 any life insurance, annuity, or endowment
14 contract if the payment of premiums on
15 such contract is in connection with a trans-
16 fer for which a deduction is not allowable
17 under subparagraph (A), determined with-
18 out regard to when such transfer is made.

19 “(ii) PAYMENTS BY OTHER PER-
20 SONS.—For purposes of clause (i), pay-
21 ments made by any other person pursuant
22 to an understanding or expectation re-
23 ferred to in subparagraph (A) shall be
24 treated as made by the organization.

1 “(iii) REPORTING.—Any organization
2 on which tax is imposed by clause (i) with
3 respect to any premium shall file an an-
4 nual return which includes—

5 “(I) the amount of such pre-
6 miums paid during the year and the
7 name and TIN of each beneficiary
8 under the contract to which the pre-
9 mium relates, and

10 “(II) such other information as
11 the Secretary may require.

12 The penalties applicable to returns re-
13 quired under section 6033 shall apply to
14 returns required under this clause. Returns
15 required under this clause shall be fur-
16 nished at such time and in such manner as
17 the Secretary shall by forms or regulations
18 require.

19 “(iv) CERTAIN RULES TO APPLY.—
20 The tax imposed by this subparagraph
21 shall be treated as imposed by chapter 42
22 for purposes of this title other than sub-
23 chapter B of chapter 42.

24 “(G) SPECIAL RULE WHERE STATE RE-
25 QUIRES SPECIFICATION OF CHARITABLE GIFT

1 ANNUITANT IN CONTRACT.—In the case of an
2 obligation to pay a charitable gift annuity re-
3 ferred to in subparagraph (D) which is entered
4 into under the laws of a State which requires,
5 in order for the charitable gift annuity to be ex-
6 empt from insurance regulation by such State,
7 that each beneficiary under the charitable gift
8 annuity be named as a beneficiary under an an-
9 nuity contract issued by an insurance company
10 authorized to transact business in such State,
11 the requirements of clauses (i) and (ii) of sub-
12 paragraph (D) shall be treated as met if—

13 “(i) such State law requirement was
14 in effect on February 8, 1999,

15 “(ii) each such beneficiary under the
16 charitable gift annuity is a bona fide resi-
17 dent of such State at the time the obliga-
18 tion to pay a charitable gift annuity is en-
19 tered into, and

20 “(iii) the only persons entitled to pay-
21 ments under such contract are persons en-
22 titled to payments as beneficiaries under
23 such obligation on the date such obligation
24 is entered into.

1 “(H) MEMBER OF FAMILY.—For purposes
2 of this paragraph, an individual’s family con-
3 sists of the individual’s grandparents, the
4 grandparents of such individual’s spouse, the
5 lineal descendants of such grandparents, and
6 any spouse of such a lineal descendant.

7 “(I) REGULATIONS.—The Secretary shall
8 prescribe such regulations as may be necessary
9 or appropriate to carry out the purposes of this
10 paragraph, including regulations to prevent the
11 avoidance of such purposes.”.

12 (b) EFFECTIVE DATE.—

13 (1) IN GENERAL.—Except as otherwise pro-
14 vided in this section, the amendment made by this
15 section shall apply to transfers made after February
16 8, 1999.

17 (2) EXCISE TAX.—Except as provided in para-
18 graph (3) of this subsection, section 170(f)(10)(F)
19 of the Internal Revenue Code of 1986 (as added by
20 this section) shall apply to premiums paid after the
21 date of the enactment of this Act.

22 (3) REPORTING.—Clause (iii) of such section
23 170(f)(10)(F) shall apply to premiums paid after
24 February 8, 1999 (determined as if the tax imposed

1 by such section applies to premiums paid after such
2 date).

3 **SEC. 213. PREVENTION OF DUPLICATION OF LOSS**
4 **THROUGH ASSUMPTION OF LIABILITIES GIV-**
5 **ING RISE TO A DEDUCTION.**

6 (a) IN GENERAL.—Section 358 (relating to basis to
7 distributees) is amended by adding at the end the fol-
8 lowing new subsection:

9 “(h) SPECIAL RULES FOR ASSUMPTION OF LIABIL-
10 ITIES TO WHICH SUBSECTION (d) DOES NOT APPLY.—

11 “(1) IN GENERAL.—If, after application of the
12 other provisions of this section to an exchange or se-
13 ries of exchanges, the basis of property to which
14 subsection (a)(1) applies exceeds the fair market
15 value of such property, then such basis shall be re-
16 duced (but not below such fair market value) by the
17 amount (determined as of the date of the exchange)
18 of any liability—

19 “(A) which is assumed in exchange for
20 such property, and

21 “(B) with respect to which subsection
22 (d)(1) does not apply to the assumption.

23 “(2) EXCEPTION.—Paragraph (1) shall not
24 apply to any liability if the trade or business giving

1 rise to the liability is transferred to the person as-
2 suming the liability as part of the exchange.

3 “(3) LIABILITY.—For purposes of this sub-
4 section, the term ‘liability’ shall include any obliga-
5 tion to make payment, without regard to whether
6 the obligation is fixed or contingent or otherwise
7 taken into account for purposes of this title.

8 “(4) REGULATIONS.—The Secretary shall pre-
9 scribe such regulations as may be necessary to carry
10 out the provisions of this subsection.”.

11 (b) APPLICATION OF COMPARABLE RULES TO PART-
12 NERSHIPS.—The Secretary of the Treasury or his delegate
13 shall prescribe rules which provide appropriate adjust-
14 ments under subchapter K of chapter 1 of the Internal
15 Revenue Code of 1986 to prevent the acceleration or dupli-
16 cation of losses through the assumption of (or transfer of
17 assets subject to) liabilities described in section 358(h)(3)
18 of such Code (as added by subsection (a)) in transactions
19 involving partnerships.

20 (c) EFFECTIVE DATES.—

21 (1) IN GENERAL.—The amendments made by
22 this section shall apply to assumptions of liability
23 after October 18, 1999.

24 (2) RULES.—The rules prescribed under sub-
25 section (b) shall apply to assumptions of liability

1 after October 18, 1999, or such later date as may
 2 be prescribed in such rules.

3 **SEC. 214. CONSISTENT TREATMENT AND BASIS ALLOCA-**
 4 **TION RULES FOR TRANSFERS OF INTANGI-**
 5 **BLES IN CERTAIN NONRECOGNITION TRANS-**
 6 **ACTIONS.**

7 (a) TRANSFERS TO CORPORATIONS.—Section 351
 8 (relating to transfer to corporation controlled by trans-
 9 feror) is amended by redesignating subsection (h) as sub-
 10 section (i) and by inserting after subsection (g) the fol-
 11 lowing new subsection:

12 “(h) TREATMENT OF TRANSFERS OF INTANGIBLE
 13 PROPERTY.—

14 “(1) TRANSFERS OF LESS THAN ALL SUBSTAN-
 15 TIAL RIGHTS.

16 “(A) IN GENERAL.—A transfer of an inter-
 17 est in intangible property (as defined in section
 18 936(h)(3)(B)) shall be treated under this sec-
 19 tion as a transfer of property even if the trans-
 20 fer is of less than all of the substantial rights
 21 of the transferor in the property.

22 “(B) ALLOCATION OF BASIS.—In the case
 23 of a transfer of less than all of the substantial
 24 rights of the transferor in the intangible prop-
 25 erty, the transferor’s basis immediately before

1 the transfer shall be allocated among the rights
2 retained by the transferor and the rights trans-
3 ferred on the basis of their respective fair mar-
4 ket values.

5 “(2) NONRECOGNITION NOT TO APPLY TO IN-
6 TANGIBLE PROPERTY DEVELOPED FOR TRANS-
7 FEREE.—This section shall not apply to a transfer
8 of intangible property developed by the transferor or
9 any related person if such development was pursuant
10 to an arrangement with the transferee.”.

11 (b) TRANSFERS TO PARTNERSHIPS.—Subsection (d)
12 of section 721 is amended to read as follows:

13 “(d) TRANSFERS OF INTANGIBLE PROPERTY.—

14 “(1) IN GENERAL.—Rules similar to the rules
15 of section 351(h) shall apply for purposes of this
16 section.

17 “(2) TRANSFERS TO FOREIGN PARTNER-
18 SHIPS.—For regulatory authority to treat intangi-
19 bles transferred to a partnership as sold, see section
20 367(d)(3).”.

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

1 **SEC. 215. DISTRIBUTIONS BY A PARTNERSHIP TO A COR-**
2 **PORATE PARTNER OF STOCK IN ANOTHER**
3 **CORPORATION.**

4 (a) IN GENERAL.—Section 732 (relating to basis of
5 distributed property other than money) is amended by
6 adding at the end the following new subsection:

7 “(f) CORRESPONDING ADJUSTMENT TO BASIS OF AS-
8 SETS OF A DISTRIBUTED CORPORATION CONTROLLED BY
9 A CORPORATE PARTNER.—

10 “(1) IN GENERAL.—If—

11 “(A) a corporation (hereafter in this sub-
12 section referred to as the ‘corporate partner’)
13 receives a distribution from a partnership of
14 stock in another corporation (hereafter in this
15 subsection referred to as the ‘distributed cor-
16 poration’),

17 “(B) the corporate partner has control of
18 the distributed corporation immediately after
19 the distribution or at any time thereafter, and

20 “(C) the partnership’s adjusted basis in
21 such stock immediately before the distribution
22 exceeded the corporate partner’s adjusted basis
23 in such stock immediately after the distribution,
24 then an amount equal to such excess shall be applied
25 to reduce (in accordance with subsection (c)) the
26 basis of property held by the distributed corporation

1 at such time (or, if the corporate partner does not
2 control the distributed corporation at such time, at
3 the time the corporate partner first has such con-
4 trol).

5 “(2) EXCEPTION FOR CERTAIN DISTRIBUTIONS
6 BEFORE CONTROL ACQUIRED.—Paragraph (1) shall
7 not apply to any distribution of stock in the distrib-
8 uted corporation if—

9 “(A) the corporate partner does not have
10 control of such corporation immediately after
11 such distribution, and

12 “(B) the corporate partner establishes to
13 the satisfaction of the Secretary that such dis-
14 tribution was not part of a plan or arrangement
15 to acquire control of the distributed corpora-
16 tion.

17 “(3) LIMITATIONS ON BASIS REDUCTION.—

18 “(A) IN GENERAL.—The amount of the re-
19 duction under paragraph (1) shall not exceed
20 the amount by which the sum of the aggregate
21 adjusted bases of the property and the amount
22 of money of the distributed corporation exceeds
23 the corporate partner’s adjusted basis in the
24 stock of the distributed corporation.

1 “(B) REDUCTION NOT TO EXCEED AD-
2 JUSTED BASIS OF PROPERTY.—No reduction
3 under paragraph (1) in the basis of any prop-
4 erty shall exceed the adjusted basis of such
5 property (determined without regard to such re-
6 duction).

7 “(4) GAIN RECOGNITION WHERE REDUCTION
8 LIMITED.—If the amount of any reduction under
9 paragraph (1) (determined after the application of
10 paragraph (3)(A)) exceeds the aggregate adjusted
11 bases of the property of the distributed
12 corporation—

13 “(A) such excess shall be recognized by the
14 corporate partner as long-term capital gain, and

15 “(B) the corporate partner’s adjusted basis
16 in the stock of the distributed corporation shall
17 be increased by such excess.

18 “(5) CONTROL.—For purposes of this sub-
19 section, the term ‘control’ means ownership of stock
20 meeting the requirements of section 1504(a)(2).

21 “(6) INDIRECT DISTRIBUTIONS.—For purposes
22 of paragraph (1), if a corporation acquires (other
23 than in a distribution from a partnership) stock the
24 basis of which is determined in whole or in part by
25 reference to subsection (a)(2) or (b), the corporation

1 shall be treated as receiving a distribution of such
2 stock from a partnership.

3 “(7) SPECIAL RULE FOR STOCK IN CON-
4 TROLLED CORPORATION.—If the property held by a
5 distributed corporation is stock in a corporation
6 which the distributed corporation controls, this sub-
7 section shall be applied to reduce the basis of the
8 property of such controlled corporation. This sub-
9 section shall be reapplied to any property of any
10 controlled corporation which is stock in a corpora-
11 tion which it controls.

12 “(8) REGULATIONS.—The Secretary shall pre-
13 scribe such regulations as may be necessary to carry
14 out the purposes of this subsection, including regula-
15 tions to avoid double counting and to prevent the
16 abuse of such purposes.”.

17 (b) EFFECTIVE DATE.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), the amendment made by this section shall
20 apply to distributions made after July 14, 1999.

21 (2) PARTNERSHIPS IN EXISTENCE ON JULY 14,
22 1999.—In the case of a corporation which is a part-
23 ner in a partnership as of July 14, 1999, the
24 amendment made by this section shall apply to dis-

1 tributions made to such partner from such partner-
2 ship after the date of the enactment of this Act.

3 **SEC. 216. PROHIBITED ALLOCATIONS OF STOCK IN S COR-**
4 **PORATION ESOP.**

5 (a) IN GENERAL.—Section 409 (relating to qualifica-
6 tions for tax credit employee stock ownership plans) is
7 amended by redesignating subsection (p) as subsection (q)
8 and by inserting after subsection (o) the following new
9 subsection:

10 “(p) PROHIBITED ALLOCATIONS OF SECURITIES IN
11 AN S CORPORATION.—

12 “(1) IN GENERAL.—An employee stock owner-
13 ship plan holding employer securities consisting of
14 stock in an S corporation shall provide that no por-
15 tion of the assets of the plan attributable to (or allo-
16 cable in lieu of) such employer securities may, dur-
17 ing a nonallocation year, accrue (or be allocated di-
18 rectly or indirectly under any plan of the employer
19 meeting the requirements of section 401(a)) for the
20 benefit of any disqualified person.

21 “(2) FAILURE TO MEET REQUIREMENTS.—

22 “(A) IN GENERAL.—If a plan fails to meet
23 the requirements of paragraph (1), the plan
24 shall be treated as having distributed to any
25 disqualified person the amount allocated to the

1 account of such person in violation of para-
2 graph (1) at the time of such allocation.

3 “(B) CROSS REFERENCE.—

“**For excise tax relating to violations of paragraph
(1) and ownership of synthetic equity, see section
4979A.**

4 “(3) NONALLOCATION YEAR.—For purposes of
5 this subsection—

6 “(A) IN GENERAL.—The term ‘nonalloca-
7 tion year’ means any plan year of an employee
8 stock ownership plan if, at any time during
9 such plan year—

10 “(i) such plan holds employer securi-
11 ties consisting of stock in an S corpora-
12 tion, and

13 “(ii) disqualified persons own at least
14 50 percent of the number of shares of
15 stock in the S corporation.

16 “(B) CONTRIBUTION RULES.—For purposes
17 of subparagraph (A)—

18 “(i) IN GENERAL.—The rules of sec-
19 tion 318(a) shall apply for purposes of de-
20 termining ownership, except that—

21 “(I) in applying paragraph (1)
22 thereof, the members of an individ-
23 ual’s family shall include members of

1 the family described in paragraph
2 (4)(D), and

3 “(II) paragraph (4) thereof shall
4 not apply.

5 “(ii) DEEMED-OWNED SHARES.—Not-
6 withstanding the employee trust exception
7 in section 318(a)(2)(B)(i), individual shall
8 be treated as owning deemed-owned shares
9 of the individual.

10 Solely for purposes of applying paragraph (5),
11 this subparagraph shall be applied after the at-
12 tribution rules of paragraph (5) have been ap-
13 plied.

14 “(4) DISQUALIFIED PERSON.—For purposes of
15 this subsection—

16 “(A) IN GENERAL.—The term ‘disqualified
17 person’ means any person if—

18 “(i) the aggregate number of deemed-
19 owned shares of such person and the mem-
20 bers of such person’s family is at least 20
21 percent of the number of deemed-owned
22 shares of stock in the S corporation, or

23 “(ii) in the case of a person not de-
24 scribed in clause (i), the number of
25 deemed-owned shares of such person is at

1 least 10 percent of the number of deemed-
2 owned shares of stock in such corporation.

3 “(B) TREATMENT OF FAMILY MEMBERS.—

4 In the case of a disqualified person described in
5 subparagraph (A)(i), any member of such per-
6 son’s family with deemed-owned shares shall be
7 treated as a disqualified person if not otherwise
8 treated as a disqualified person under subpara-
9 graph (A).

10 “(C) DEEMED-OWNED SHARES.—

11 “(i) IN GENERAL.—The term
12 ‘deemed-owned shares’ means, with respect
13 to any person—

14 “(I) the stock in the S corpora-
15 tion constituting employer securities
16 of an employee stock ownership plan
17 which is allocated to such person
18 under the plan, and

19 “(II) such person’s share of the
20 stock in such corporation which is
21 held by such plan but which is not al-
22 located under the plan to participants.

23 “(ii) PERSON’S SHARE OF
24 UNALLOCATED STOCK.—For purposes of
25 clause (i)(II), a person’s share of

1 unallocated S corporation stock held by
2 such plan is the amount of the unallocated
3 stock which would be allocated to such per-
4 son if the unallocated stock were allocated
5 to all participants in the same proportions
6 as the most recent stock allocation under
7 the plan.

8 “(D) MEMBER OF FAMILY.—For purposes
9 of this paragraph, the term ‘member of the
10 family’ means, with respect to any individual—

11 “(i) the spouse of the individual,

12 “(ii) an ancestor or lineal descendant
13 of the individual or the individual’s spouse,

14 “(iii) a brother or sister of the indi-
15 vidual or the individual’s spouse and any
16 lineal descendant of the brother or sister,
17 and

18 “(iv) the spouse of any individual de-
19 scribed in clause (ii) or (iii).

20 A spouse of an individual who is legally sepa-
21 rated from such individual under a decree of di-
22 vorce or separate maintenance shall not be
23 treated as such individual’s spouse for purposes
24 of this subparagraph.

1 “(5) TREATMENT OF SYNTHETIC EQUITY.—For
2 purposes of paragraphs (3) and (4), in the case of
3 a person who owns synthetic equity in the S corpora-
4 tion, except to the extent provided in regulations, the
5 shares of stock in such corporation on which such
6 synthetic equity is based shall be treated as out-
7 standing stock in such corporation and deemed-
8 owned shares of such person if such treatment of
9 synthetic equity of 1 or more such persons results
10 in—

11 “(A) the treatment of any person as a dis-
12 qualified person, or

13 “(B) the treatment of any year as a non-
14 allocation year.

15 For purposes of this paragraph, synthetic equity
16 shall be treated as owned by a person in the same
17 manner as stock is treated as owned by a person
18 under the rules of paragraphs (2) and (3) of section
19 318(a). If, without regard to this paragraph, a per-
20 son is treated as a disqualified person or a year is
21 treated as a nonallocation year, this paragraph shall
22 not be construed to result in the person or year not
23 being so treated.

24 “(6) DEFINITIONS.—For purposes of this
25 subsection—

1 “(A) EMPLOYEE STOCK OWNERSHIP
2 PLAN.—The term ‘employee stock ownership
3 plan’ has the meaning given such term by sec-
4 tion 4975(e)(7).

5 “(B) EMPLOYER SECURITIES.—The term
6 ‘employer security’ has the meaning given such
7 term by section 409(l).

8 “(C) SYNTHETIC EQUITY.—The term ‘syn-
9 thetic equity’ means any stock option, warrant,
10 restricted stock, deferred issuance stock right,
11 or similar interest or right that gives the holder
12 the right to acquire or receive stock of the S
13 corporation in the future. Except to the extent
14 provided in regulations, synthetic equity also in-
15 cludes a stock appreciation right, phantom
16 stock unit, or similar right to a future cash
17 payment based on the value of such stock or
18 appreciation in such value.

19 “(7) REGULATIONS.—The Secretary shall pre-
20 scribe such regulations as may be necessary to carry
21 out the purposes of this subsection.”.

22 (b) COORDINATION WITH SECTION 4975(e)(7).—The
23 last sentence of section 4975(e)(7) (defining employee
24 stock ownership plan) is amended by inserting “, section
25 409(p),” after “409(n)”.

1 (c) EXCISE TAX.—

2 (1) APPLICATION OF TAX.—Subsection (a) of
3 section 4979A (relating to tax on certain prohibited
4 allocations of employer securities) is amended—

5 (A) by striking “or” at the end of para-
6 graph (1),

7 (B) by striking the period at the end of
8 paragraph (2) and inserting a comma, and

9 (C) by striking all that follows paragraph
10 (2) and inserting the following:

11 “(3) there is any allocation of employer securi-
12 ties which violates the provisions of section 409(p),
13 or a nonallocation year described in subsection
14 (c)(2)(C) with respect to an employee stock owner-
15 ship plan, or

16 “(4) any synthetic equity is owned by a dis-
17 qualified person in any nonallocation year,

18 there is hereby imposed a tax on such allocation or owner-
19 ship equal to 50 percent of the amount involved.”.

20 (2) LIABILITY.—Section 4979A(c) (defining li-
21 ability for tax) is amended to read as follows:

22 “(c) LIABILITY FOR TAX.—The tax imposed by this
23 section shall be paid—

24 “(1) in the case of an allocation referred to in
25 paragraph (1) or (2) of subsection (a), by—

1 “(A) the employer sponsoring such plan, or

2 “(B) the eligible worker-owned cooperative,
3 which made the written statement described in sec-
4 tion 664(g)(1)(E) or in section 1042(b)(3)(B) (as
5 the case may be), and

6 “(2) in the case of an allocation or ownership
7 referred to in paragraph (3) or (4) of subsection (a),
8 by the S corporation the stock in which was so allo-
9 cated or owned.”.

10 (3) DEFINITIONS.—Section 4979A(e) (relating
11 to definitions) is amended to read as follows:

12 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
13 poses of this section—

14 “(1) DEFINITIONS.—Except as provided in
15 paragraph (2), terms used in this section have the
16 same respective meanings as when used in sections
17 409 and 4978.

18 “(2) SPECIAL RULES RELATING TO TAX IM-
19 POSED BY REASON OF PARAGRAPH (3) OR (4) OF
20 SUBSECTION (a).—

21 “(A) PROHIBITED ALLOCATIONS.—The
22 amount involved with respect to any tax im-
23 posed by reason of subsection (a)(3) is the
24 amount allocated to the account of any person
25 in violation of section 409(p)(1).

1 “(B) SYNTHETIC EQUITY.—The amount
2 involved with respect to any tax imposed by rea-
3 son of subsection (a)(4) is the value of the
4 shares on which the synthetic equity is based.

5 “(C) SPECIAL RULE DURING FIRST NON-
6 ALLOCATION YEAR.—For purposes of subpara-
7 graph (A), the amount involved for the first
8 nonallocation year of any employee stock owner-
9 ship plan shall be determined by taking into ac-
10 count the total value of all the deemed-owned
11 shares of all disqualified persons with respect to
12 such plan.

13 “(D) STATUTE OF LIMITATIONS.—The
14 statutory period for the assessment of any tax
15 imposed by this section by reason of paragraph
16 (3) or (4) of subsection (a) shall not expire be-
17 fore the date which is 3 years from the later
18 of—

19 “(i) the allocation or ownership re-
20 ferred to in such paragraph giving rise to
21 such tax, or

22 “(ii) the date on which the Secretary
23 is notified of such allocation or owner-
24 ship.”.

25 (d) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to plan years beginning after
3 December 31, 2000.

4 (2) EXCEPTION FOR CERTAIN PLANS.—In the
5 case of any—

6 (A) employee stock ownership plan estab-
7 lished after July 14, 1999, or

8 (B) employee stock ownership plan estab-
9 lished on or before such date if employer securi-
10 ties held by the plan consist of stock in a cor-
11 poration with respect to which an election under
12 section 1362(a) of the Internal Revenue Code
13 of 1986 is not in effect on such date,

14 the amendments made by this section shall apply to
15 plan years ending after July 14, 1999.

16 **Subtitle B—Provisions Relating to**
17 **Real Estate Investment Trusts**

18 **PART I—TREATMENT OF INCOME AND SERVICES**

19 **PROVIDED BY TAXABLE REIT SUBSIDIARIES**

20 **SEC. 221. MODIFICATIONS TO ASSET DIVERSIFICATION**

21 **TEST.**

22 (a) IN GENERAL.—Subparagraph (B) of section
23 856(c)(4) is amended to read as follows:

24 “(B)(i) not more than 25 percent of the
25 value of its total assets is represented by securi-

1 ties (other than those includible under subpara-
2 graph (A)),

3 “(ii) not more than 20 percent of the value
4 of its total assets is represented by securities of
5 1 or more taxable REIT subsidiaries, and

6 “(iii) except with respect to a taxable
7 REIT subsidiary and securities includible under
8 subparagraph (A)—

9 “(I) not more than 5 percent of the
10 value of its total assets is represented by
11 securities of any one issuer,

12 “(II) the trust does not hold securities
13 possessing more than 10 percent of the
14 total voting power of the outstanding secu-
15 rities of any one issuer, and

16 “(III) the trust does not hold securi-
17 ties having a value of more than 10 per-
18 cent of the total value of the outstanding
19 securities of any one issuer.”.

20 (b) EXCEPTION FOR STRAIGHT DEBT SECURITIES.—

21 Subsection (c) of section 856 is amended by adding at the
22 end the following new paragraph:

23 “(7) STRAIGHT DEBT SAFE HARBOR IN APPLY-
24 ING PARAGRAPH (4).—Securities of an issuer which
25 are straight debt (as defined in section 1361(c)(5)

1 without regard to subparagraph (B)(iii) thereof
2 shall not be taken into account in applying para-
3 graph (4)(B)(ii)(III) if—

4 “(A) the issuer is an individual, or

5 “(B) the only securities of such issuer
6 which are held by the trust or a taxable REIT
7 subsidiary of the trust are straight debt (as so
8 defined), or

9 “(C) the issuer is a partnership and the
10 trust holds at least a 20 percent profits interest
11 in the partnership.”.

12 **SEC. 222. TREATMENT OF INCOME AND SERVICES PRO-**
13 **VIDED BY TAXABLE REIT SUBSIDIARIES.**

14 (a) **INCOME FROM TAXABLE REIT SUBSIDIARIES**
15 **NOT TREATED AS IMPERMISSIBLE TENANT SERVICE IN-**
16 **COME.**—Clause (i) of section 856(d)(7)(C) (relating to ex-
17 ceptions to impermissible tenant service income) is amend-
18 ed by inserting “or through a taxable REIT subsidiary
19 of such trust” after “income”.

20 (b) **CERTAIN INCOME FROM TAXABLE REIT SUB-**
21 **SIDIARIES NOT EXCLUDED FROM RENTS FROM REAL**
22 **PROPERTY.**—

23 (1) **IN GENERAL.**—Subsection (d) of section
24 856 (relating to rents from real property defined) is

1 amended by adding at the end the following new
2 paragraphs:

3 “(8) SPECIAL RULE FOR TAXABLE REIT SUB-
4 SIDIARIES.—For purposes of this subsection,
5 amounts paid to a real estate investment trust by a
6 taxable REIT subsidiary of such trust shall not be
7 excluded from rents from real property by reason of
8 paragraph (2)(B) if the requirements of either of the
9 following subparagraphs are met:

10 “(A) LIMITED RENTAL EXCEPTION.—The
11 requirements of this subparagraph are met with
12 respect to any property if at least 90 percent of
13 the leased space of the property is rented to
14 persons other than taxable REIT subsidiaries of
15 such trust and other than persons described in
16 section 856(d)(2)(B). The preceding sentence
17 shall apply only to the extent that the amounts
18 paid to the trust as rents from real property (as
19 defined in paragraph (1) without regard to
20 paragraph (2)(B)) from such property are sub-
21 stantially comparable to such rents made by the
22 other tenants of the trust’s property for com-
23 parable space.

24 “(B) EXCEPTION FOR CERTAIN LODGING
25 FACILITIES.—The requirements of this subpara-

1 graph are met with respect to an interest in
2 real property which is a qualified lodging facil-
3 ity leased by the trust to a taxable REIT sub-
4 sidiary of the trust if the property is operated
5 on behalf of such subsidiary by a person who is
6 an eligible independent contractor.

7 “(9) ELIGIBLE INDEPENDENT CONTRACTOR.—
8 For purposes of paragraph (8)(B)—

9 “(A) IN GENERAL.—The term ‘eligible
10 independent contractor’ means, with respect to
11 any qualified lodging facility, any independent
12 contractor if, at the time such contractor enters
13 into a management agreement or other similar
14 service contract with the taxable REIT sub-
15 sidiary to operate the facility, such contractor
16 (or any related person) is actively engaged in
17 the trade or business of operating qualified
18 lodging facilities for any person who is not a re-
19 lated person with respect to the real estate in-
20 vestment trust or the taxable REIT subsidiary.

21 “(B) SPECIAL RULES.—Solely for purposes
22 of this paragraph and paragraph (8)(B), a per-
23 son shall not fail to be treated as an inde-
24 pendent contractor with respect to any qualified

1 lodging facility by reason of any of the fol-
2 lowing:

3 “(i) The taxable REIT subsidiary
4 bears the expenses for the operation of the
5 facility pursuant to the management agree-
6 ment or other similar service contract.

7 “(ii) The taxable REIT subsidiary re-
8 ceives the revenues from the operation of
9 such facility, net of expenses for such oper-
10 ation and fees payable to the operator pur-
11 suant to such agreement or contract.

12 “(iii) The real estate investment trust
13 receives income from such person with re-
14 spect to another property that is attrib-
15 utable to a lease of such other property to
16 such person that was in effect as of the
17 later of—

18 “(I) January 1, 1999, or

19 “(II) the earliest date that any
20 taxable REIT subsidiary of such trust
21 entered into a management agreement
22 or other similar service contract with
23 such person with respect to such
24 qualified lodging facility.

1 “(C) RENEWALS, ETC., OF EXISTING
2 LEASES.—For purposes of subparagraph
3 (B)(iii)—

4 “(i) a lease shall be treated as in ef-
5 fect on January 1, 1999, without regard to
6 its renewal after such date, so long as such
7 renewal is pursuant to the terms of such
8 lease as in effect on whichever of the dates
9 under subparagraph (B)(iii) is the latest,
10 and

11 “(ii) a lease of a property entered into
12 after whichever of the dates under sub-
13 paragraph (B)(iii) is the latest shall be
14 treated as in effect on such date if—

15 “(I) on such date, a lease of such
16 property from the trust was in effect,
17 and

18 “(II) under the terms of the new
19 lease, such trust receives a substan-
20 tially similar or lesser benefit in com-
21 parison to the lease referred to in sub-
22 clause (I).

23 “(D) QUALIFIED LODGING FACILITY.—For
24 purposes of this paragraph—

1 “(i) IN GENERAL.—The term ‘quali-
2 fied lodging facility’ means any lodging fa-
3 cility unless wagering activities are con-
4 ducted at or in connection with such facil-
5 ity by any person who is engaged in the
6 business of accepting wagers and who is le-
7 gally authorized to engage in such business
8 at or in connection with such facility.

9 “(ii) LODGING FACILITY.—The term
10 ‘lodging facility’ means a hotel, motel, or
11 other establishment more than one-half of
12 the dwelling units in which are used on a
13 transient basis.

14 “(iii) CUSTOMARY AMENITIES AND FA-
15 CILITIES.—The term ‘lodging facility’ in-
16 cludes customary amenities and facilities
17 operated as part of, or associated with, the
18 lodging facility so long as such amenities
19 and facilities are customary for other prop-
20 erties of a comparable size and class owned
21 by other owners unrelated to such real es-
22 tate investment trust.

23 “(E) OPERATE INCLUDES MANAGE.—Ref-
24 erences in this paragraph to operating a prop-

1 erty shall be treated as including a reference to
2 managing the property.

3 “(F) RELATED PERSON.—Persons shall be
4 treated as related to each other if such persons
5 are treated as a single employer under sub-
6 section (a) or (b) of section 52.”.

7 (2) CONFORMING AMENDMENT.—Subparagraph
8 (B) of section 856(d)(2) is amended by inserting
9 “except as provided in paragraph (8),” after “(B)”.

10 (3) DETERMINING RENTS FROM REAL PROP-
11 PERTY.—

12 (A)(i) Paragraph (1) of section 856(d) is
13 amended by striking “adjusted bases” each
14 place it occurs and inserting “fair market val-
15 ues”.

16 (ii) The amendment made by this subpara-
17 graph shall apply to taxable years beginning
18 after December 31, 2000.

19 (B)(i) Clause (i) of section 856(d)(2)(B) is
20 amended by striking “number” and inserting
21 “value”.

22 (ii) The amendment made by this subpara-
23 graph shall apply to amounts received or ac-
24 crued in taxable years beginning after Decem-
25 ber 31, 2000, except for amounts paid pursuant

1 to leases in effect on July 12, 1999, or pursu-
2 ant to a binding contract in effect on such date
3 and at all times thereafter.

4 **SEC. 223. TAXABLE REIT SUBSIDIARY.**

5 (a) IN GENERAL.—Section 856 is amended by adding
6 at the end the following new subsection:

7 “(1) TAXABLE REIT SUBSIDIARY.—For purposes of
8 this part—

9 “(1) IN GENERAL.—The term ‘taxable REIT
10 subsidiary’ means, with respect to a real estate in-
11 vestment trust, a corporation (other than a real es-
12 tate investment trust) if—

13 “(A) such trust directly or indirectly owns
14 stock in such corporation, and

15 “(B) such trust and such corporation joint-
16 ly elect that such corporation shall be treated as
17 a taxable REIT subsidiary of such trust for
18 purposes of this part.

19 Such an election, once made, shall be irrevocable un-
20 less both such trust and corporation consent to its
21 revocation. Such election, and any revocation there-
22 of, may be made without the consent of the Sec-
23 retary.

24 “(2) 35 PERCENT OWNERSHIP IN ANOTHER
25 TAXABLE REIT SUBSIDIARY.—The term ‘taxable

1 REIT subsidiary’ includes, with respect to any real
2 estate investment trust, any corporation (other than
3 a real estate investment trust) with respect to which
4 a taxable REIT subsidiary of such trust owns di-
5 rectly or indirectly—

6 “(A) securities possessing more than 35
7 percent of the total voting power of the out-
8 standing securities of such corporation, or

9 “(B) securities having a value of more
10 than 35 percent of the total value of the out-
11 standing securities of such corporation.

12 The preceding sentence shall not apply to a qualified
13 REIT subsidiary (as defined in subsection (i)(2)).

14 The rule of section 856(c)(7) shall apply for pur-
15 poses of subparagraph (B).

16 “(3) EXCEPTIONS.—The term ‘taxable REIT
17 subsidiary’ shall not include—

18 “(A) any corporation which directly or in-
19 directly operates or manages a lodging facility
20 or a health care facility, and

21 “(B) any corporation which directly or in-
22 directly provides to any other person (under a
23 franchise, license, or otherwise) rights to any
24 brand name under which any lodging facility or
25 health care facility is operated.

1 Subparagraph (B) shall not apply to rights provided
2 to an eligible independent contractor to operate or
3 manage a lodging facility if such rights are held by
4 such corporation as a franchisee, licensee, or in a
5 similar capacity and such lodging facility is either
6 owned by such corporation or is leased to such cor-
7 poration from the real estate investment trust.

8 “(4) DEFINITIONS.—For purposes of paragraph
9 (3)—

10 “(A) LODGING FACILITY.—The term ‘lodg-
11 ing facility’ has the meaning given to such term
12 by paragraph (9)(D)(ii).

13 “(B) HEALTH CARE FACILITY.—The term
14 ‘health care facility’ has the meaning given to
15 such term by subsection (e)(6)(D)(ii).”.

16 (b) CONFORMING AMENDMENT.—Paragraph (2) of
17 section 856(i) is amended by adding at the end the fol-
18 lowing new sentence: “Such term shall not include a tax-
19 able REIT subsidiary.”.

20 **SEC. 224. LIMITATION ON EARNINGS STRIPPING.**

21 Paragraph (3) of section 163(j) (relating to limita-
22 tion on deduction for interest on certain indebtedness) is
23 amended by striking “and” at the end of subparagraph
24 (A), by striking the period at the end of subparagraph

1 (B) and inserting “, and”, and by adding at the end the
 2 following new subparagraph:

3 “(C) any interest paid or accrued (directly
 4 or indirectly) by a taxable REIT subsidiary (as
 5 defined in section 856(l)) of a real estate invest-
 6 ment trust to such trust.”.

7 **SEC. 225. 100 PERCENT TAX ON IMPROPERLY ALLOCATED**
 8 **AMOUNTS.**

9 (a) IN GENERAL.—Subsection (b) of section 857 (re-
 10 relating to method of taxation of real estate investment
 11 trusts and holders of shares or certificates of beneficial
 12 interest) is amended by redesignating paragraphs (7) and
 13 (8) as paragraphs (8) and (9), respectively, and by insert-
 14 ing after paragraph (6) the following new paragraph:

15 “(7) INCOME FROM REDETERMINED RENTS, RE-
 16 DETERMINED DEDUCTIONS, AND EXCESS INTER-
 17 EST.—

18 “(A) IMPOSITION OF TAX.—There is here-
 19 by imposed for each taxable year of the real es-
 20 tate investment trust a tax equal to 100 percent
 21 of redetermined rents, redetermined deductions,
 22 and excess interest.

23 “(B) REDETERMINED RENTS.—

24 “(i) IN GENERAL.—The term ‘redeter-
 25 mined rents’ means rents from real prop-

1 erty (as defined in subsection 856(d)) the
2 amount of which would (but for subpara-
3 graph (E)) be reduced on distribution, ap-
4 portionment, or allocation under section
5 482 to clearly reflect income as a result of
6 services furnished or rendered by a taxable
7 REIT subsidiary of the real estate invest-
8 ment trust to a tenant of such trust.

9 “(ii) EXCEPTION FOR CERTAIN SERV-
10 ICES.—Clause (i) shall not apply to
11 amounts received directly or indirectly by a
12 real estate investment trust for services de-
13 scribed in paragraph (1)(B) or (7)(C)(i) of
14 section 856(d).

15 “(iii) EXCEPTION FOR DE MINIMIS
16 AMOUNTS.—Clause (i) shall not apply to
17 amounts described in section 856(d)(7)(A)
18 with respect to a property to the extent
19 such amounts do not exceed the one per-
20 cent threshold described in section
21 856(d)(7)(B) with respect to such prop-
22 erty.

23 “(iv) EXCEPTION FOR COMPARABLY
24 PRICED SERVICES.—Clause (i) shall not
25 apply to any service rendered by a taxable

1 REIT subsidiary of a real estate invest-
2 ment trust to a tenant of such trust if—

3 “(I) such subsidiary renders a
4 significant amount of similar services
5 to persons other than such trust and
6 tenants of such trust who are unre-
7 lated (within the meaning of section
8 856(d)(8)(F)) to such subsidiary,
9 trust, and tenants, but

10 “(II) only to the extent the
11 charge for such service so rendered is
12 substantially comparable to the charge
13 for the similar services rendered to
14 persons referred to in subclause (I).

15 “(v) EXCEPTION FOR CERTAIN SEPA-
16 RATELY CHARGED SERVICES.—Clause (i)
17 shall not apply to any service rendered by
18 a taxable REIT subsidiary of a real estate
19 investment trust to a tenant of such trust
20 if—

21 “(I) the rents paid to the trust
22 by tenants (leasing at least 25 percent
23 of the net leasable space in the trust’s
24 property) who are not receiving such
25 service from such subsidiary are sub-

1 stantially comparable to the rents
2 paid by tenants leasing comparable
3 space who are receiving such service
4 from such subsidiary, and

5 “(II) the charge for such service
6 from such subsidiary is separately
7 stated.

8 “(vi) EXCEPTION FOR CERTAIN SERV-
9 ICES BASED ON SUBSIDIARY’S INCOME
10 FROM THE SERVICES.—Clause (i) shall not
11 apply to any service rendered by a taxable
12 REIT subsidiary of a real estate invest-
13 ment trust to a tenant of such trust if the
14 gross income of such subsidiary from such
15 service is not less than 150 percent of such
16 subsidiary’s direct cost in furnishing or
17 rendering the service.

18 “(vii) EXCEPTIONS GRANTED BY SEC-
19 RETARY.—The Secretary may waive the
20 tax otherwise imposed by subparagraph
21 (A) if the trust establishes to the satisfac-
22 tion of the Secretary that rents charged to
23 tenants were established on an arms’
24 length basis even though a taxable REIT

1 subsidiary of the trust provided services to
2 such tenants.

3 “(C) REDETERMINED DEDUCTIONS.—The
4 term ‘redetermined deductions’ means deduc-
5 tions (other than redetermined rents) of a tax-
6 able REIT subsidiary of a real estate invest-
7 ment trust if the amount of such deductions
8 would (but for subparagraph (E)) be decreased
9 on distribution, apportionment, or allocation
10 under section 482 to clearly reflect income as
11 between such subsidiary and such trust.

12 “(D) EXCESS INTEREST.—The term ‘ex-
13 cess interest’ means any deductions for interest
14 payments by a taxable REIT subsidiary of a
15 real estate investment trust to such trust to the
16 extent that the interest payments are in excess
17 of a rate that is commercially reasonable.

18 “(E) COORDINATION WITH SECTION 482.—
19 The imposition of tax under subparagraph (A)
20 shall be in lieu of any distribution, appor-
21 tionment, or allocation under section 482.

22 “(F) REGULATORY AUTHORITY.—The Sec-
23 retary shall prescribe such regulations as may
24 be necessary or appropriate to carry out the
25 purposes of this paragraph. Until the Secretary

1 prescribes such regulations, real estate invest-
2 ment trusts and their taxable REIT subsidi-
3 aries may base their allocations on any reason-
4 able method.”.

5 (b) AMOUNT SUBJECT TO TAX NOT REQUIRED TO
6 BE DISTRIBUTED.—Subparagraph (E) of section
7 857(b)(2) (relating to real estate investment trust taxable
8 income) is amended by striking “paragraph (5)” and in-
9 serting “paragraphs (5) and (7)”.

10 **SEC. 226. EFFECTIVE DATE.**

11 (a) IN GENERAL.—The amendments made by this
12 part shall apply to taxable years beginning after December
13 31, 2000.

14 (b) TRANSITIONAL RULES RELATED TO SECTION
15 221.—

16 (1) EXISTING ARRANGEMENTS.—

17 (A) IN GENERAL.—Except as otherwise
18 provided in this paragraph, the amendment
19 made by section 221 shall not apply to a real
20 estate investment trust with respect to—

21 (i) securities of a corporation held di-
22 rectly or indirectly by such trust on July
23 12, 1999,

24 (ii) securities of a corporation held by
25 an entity on July 12, 1999, if such trust

1 acquires control of such entity pursuant to
2 a written binding contract in effect on such
3 date and at all times thereafter before such
4 acquisition,

5 (iii) securities received by such trust
6 (or a successor) in exchange for, or with
7 respect to, securities described in clause (i)
8 or (ii) in a transaction in which gain or
9 loss is not recognized, and

10 (iv) securities acquired directly or in-
11 directly by such trust as part of a reorga-
12 nization (as defined in section 368(a)(1) of
13 the Internal Revenue Code of 1986) with
14 respect to such trust if such securities are
15 described in clause (i), (ii), or (iii) with re-
16 spect to any other real estate investment
17 trust.

18 (B) NEW TRADE OR BUSINESS OR SUB-
19 STANTIAL NEW ASSETS.—Subparagraph (A)
20 shall cease to apply to securities of a corpora-
21 tion as of the first day after July 12, 1999, on
22 which such corporation engages in a substantial
23 new line of business, or acquires any substantial
24 asset, other than—

1 (i) pursuant to a binding contract in
2 effect on such date and at all times there-
3 after before the acquisition of such asset,

4 (ii) in a transaction in which gain or
5 loss is not recognized by reason of section
6 1031 or 1033 of the Internal Revenue
7 Code of 1986, or

8 (iii) in a reorganization (as so de-
9 fined) with another corporation the securi-
10 ties of which are described in paragraph
11 (1)(A) of this subsection.

12 (C) LIMITATION ON TRANSITION RULES.—
13 Subparagraph (A) shall cease to apply to secu-
14 rities of a corporation held, acquired, or re-
15 ceived, directly or indirectly, by a real estate in-
16 vestment trust as of the first day after July 12,
17 1999, on which such trust acquires any addi-
18 tional securities of such corporation other
19 than—

20 (i) pursuant to a binding contract in
21 effect on July 12, 1999, and at all times
22 thereafter, or

23 (ii) in a reorganization (as so defined)
24 with another corporation the securities of

1 which are described in paragraph (1)(A) of
2 this subsection.

3 (2) TAX-FREE CONVERSION.—If—

4 (A) at the time of an election for a cor-
5 poration to become a taxable REIT subsidiary,
6 the amendment made by section 221 does not
7 apply to such corporation by reason of para-
8 graph (1), and

9 (B) such election first takes effect before
10 January 1, 2004,

11 such election shall be treated as a reorganization
12 qualifying under section 368(a)(1)(A) of such Code.

13 **PART II—HEALTH CARE REITS**

14 **SEC. 231. HEALTH CARE REITS.**

15 (a) SPECIAL FORECLOSURE RULE FOR HEALTH
16 CARE PROPERTIES.—Subsection (e) of section 856 (relat-
17 ing to special rules for foreclosure property) is amended
18 by adding at the end the following new paragraph:

19 “(6) SPECIAL RULE FOR QUALIFIED HEALTH
20 CARE PROPERTIES.—For purposes of this
21 subsection—

22 “(A) ACQUISITION AT EXPIRATION OF
23 LEASE.—The term ‘foreclosure property’ shall
24 include any qualified health care property ac-
25 quired by a real estate investment trust as the

1 result of the termination of a lease of such
2 property (other than a termination by reason of
3 a default, or the imminence of a default, on the
4 lease).

5 “(B) GRACE PERIOD.—In the case of a
6 qualified health care property which is fore-
7 closure property solely by reason of subpara-
8 graph (A), in lieu of applying paragraphs (2)
9 and (3)—

10 “(i) the qualified health care property
11 shall cease to be foreclosure property as of
12 the close of the second taxable year after
13 the taxable year in which such trust ac-
14 quired such property, and

15 “(ii) if the real estate investment
16 trust establishes to the satisfaction of the
17 Secretary that an extension of the grace
18 period in clause (i) is necessary to the or-
19 derly leasing or liquidation of the trust’s
20 interest in such qualified health care prop-
21 erty, the Secretary may grant one or more
22 extensions of the grace period for such
23 qualified health care property.

24 Any such extension shall not extend the grace
25 period beyond the close of the 6th year after

1 the taxable year in which such trust acquired
2 such qualified health care property.

3 “(C) INCOME FROM INDEPENDENT CON-
4 TRACTORS.—For purposes of applying para-
5 graph (4)(C) with respect to qualified health
6 care property which is foreclosure property by
7 reason of subparagraph (A) or paragraph (1),
8 income derived or received by the trust from an
9 independent contractor shall be disregarded to
10 the extent such income is attributable to—

11 “(i) any lease of property in effect on
12 the date the real estate investment trust
13 acquired the qualified health care property
14 (without regard to its renewal after such
15 date so long as such renewal is pursuant to
16 the terms of such lease as in effect on such
17 date), or

18 “(ii) any lease of property entered
19 into after such date if—

20 “(I) on such date, a lease of such
21 property from the trust was in effect,
22 and

23 “(II) under the terms of the new
24 lease, such trust receives a substan-
25 tially similar or lesser benefit in com-

1 parison to the lease referred to in sub-
2 clause (I).

3 “(D) QUALIFIED HEALTH CARE PROP-
4 PERTY.—

5 “(i) IN GENERAL.—The term ‘quali-
6 fied health care property’ means any real
7 property (including interests therein), and
8 any personal property incident to such real
9 property, which—

10 “(I) is a health care facility, or

11 “(II) is necessary or incidental to
12 the use of a health care facility.

13 “(ii) HEALTH CARE FACILITY.—For
14 purposes of clause (i), the term ‘health
15 care facility’ means a hospital, nursing fa-
16 cility, assisted living facility, congregate
17 care facility, qualified continuing care facil-
18 ity (as defined in section 7872(g)(4)), or
19 other licensed facility which extends med-
20 ical or nursing or ancillary services to pa-
21 tients and which, immediately before the
22 termination, expiration, default, or breach
23 of the lease of or mortgage secured by
24 such facility, was operated by a provider of
25 such services which was eligible for partici-

1 pation in the medicare program under title
2 XVIII of the Social Security Act with re-
3 spect to such facility.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to taxable years beginning after
6 December 31, 2000.

7 **PART III—CONFORMITY WITH REGULATED**
8 **INVESTMENT COMPANY RULES**

9 **SEC. 241. CONFORMITY WITH REGULATED INVESTMENT**
10 **COMPANY RULES.**

11 (a) DISTRIBUTION REQUIREMENT.—Clauses (i) and
12 (ii) of section 857(a)(1)(A) (relating to requirements ap-
13 plicable to real estate investment trusts) are each amended
14 by striking “95 percent (90 percent for taxable years be-
15 ginning before January 1, 1980)” and inserting “90 per-
16 cent”.

17 (b) IMPOSITION OF TAX.—Clause (i) of section
18 857(b)(5)(A) (relating to imposition of tax in case of fail-
19 ure to meet certain requirements) is amended by striking
20 “95 percent (90 percent in the case of taxable years begin-
21 ning before January 1, 1980)” and inserting “90 per-
22 cent”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 2000.

1 **PART IV—CLARIFICATION OF EXCEPTION FROM**
2 **IMPERMISSIBLE TENANT SERVICE INCOME**
3 **SEC. 251. CLARIFICATION OF EXCEPTION FOR INDE-**
4 **PENDENT OPERATORS.**

5 (a) IN GENERAL.—Paragraph (3) of section 856(d)
6 (relating to independent contractor defined) is amended
7 by adding at the end the following flush sentence:

8 “In the event that any class of stock of either the
9 real estate investment trust or such person is regu-
10 larly traded on an established securities market, only
11 persons who own, directly or indirectly, more than 5
12 percent of such class of stock shall be taken into ac-
13 count as owning any of the stock of such class for
14 purposes of applying the 35 percent limitation set
15 forth in subparagraph (B) (but all of the out-
16 standing stock of such class shall be considered out-
17 standing in order to compute the denominator for
18 purpose of determining the applicable percentage of
19 ownership).”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to taxable years beginning after
22 December 31, 2000.

1 **PART V—MODIFICATION OF EARNINGS AND**
2 **PROFITS RULES**

3 **SEC. 261. MODIFICATION OF EARNINGS AND PROFITS**
4 **RULES.**

5 (a) RULES FOR DETERMINING WHETHER REGU-
6 LATED INVESTMENT COMPANY HAS EARNINGS AND
7 PROFITS FROM NON-RIC YEAR.—Subsection (c) of sec-
8 tion 852 is amended by adding at the end the following
9 new paragraph:

10 “(3) DISTRIBUTIONS TO MEET REQUIREMENTS
11 OF SUBSECTION (a)(2)(B).—Any distribution which
12 is made in order to comply with the requirements of
13 subsection (a)(2)(B)—

14 “(A) shall be treated for purposes of this
15 subsection and subsection (a)(2)(B) as made
16 from the earliest earnings and profits accumu-
17 lated in any taxable year to which the provi-
18 sions of this part did not apply rather than the
19 most recently accumulated earnings and profits,
20 and

21 “(B) to the extent treated under subpara-
22 graph (A) as made from accumulated earnings
23 and profits, shall not be treated as a distribu-
24 tion for purposes of subsection (b)(2)(D) and
25 section 855.”.

1 (b) CLARIFICATION OF APPLICATION OF REIT
 2 SPILLOVER DIVIDEND RULES TO DISTRIBUTIONS TO
 3 MEET QUALIFICATION REQUIREMENT.—Subparagraph
 4 (B) of section 857(d)(3) is amended by inserting before
 5 the period “and section 858”.

6 (c) APPLICATION OF DEFICIENCY DIVIDEND PROCE-
 7 DURES.—Paragraph (1) of section 852(e) is amended by
 8 adding at the end the following new sentence: “If the de-
 9 termination under subparagraph (A) is solely as a result
 10 of the failure to meet the requirements of subsection
 11 (a)(2), the preceding sentence shall also apply for pur-
 12 poses of applying subsection (a)(2) to the non-RIC year.”.

13 (d) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to distributions after December 31,
 15 2000.

16 **PART VI—MODIFICATION OF ESTIMATED TAX**
 17 **RULES**

18 **SEC. 271. MODIFICATION OF ESTIMATED TAX RULES FOR**
 19 **CLOSELY HELD REAL ESTATE INVESTMENT**
 20 **TRUSTS.**

21 (a) IN GENERAL.—Subsection (e) of section 6655
 22 (relating to estimated tax by corporations) is amended by
 23 adding at the end the following new paragraph:

24 “(5) TREATMENT OF CERTAIN REIT DIVI-
 25 DENDS.—

1 “(A) IN GENERAL.—Any dividend received
2 from a closely held real estate investment trust
3 by any person which owns (after application of
4 subsections (d)(5) and (l)(3)(B) of section 856)
5 10 percent or more (by vote or value) of the
6 stock or beneficial interests in the trust shall be
7 taken into account in computing annualized in-
8 come installments under paragraph (2) in a
9 manner similar to the manner under which
10 partnership income inclusions are taken into ac-
11 count.

12 “(B) CLOSELY HELD REIT.—For purposes
13 of subparagraph (A), the term ‘closely held real
14 estate investment trust’ means a real estate in-
15 vestment trust with respect to which 5 or fewer
16 persons own (after application of subsections
17 (d)(5) and (l)(3)(B) of section 856) 50 percent
18 or more (by vote or value) of the stock or bene-
19 ficial interests in the trust.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall apply to estimated tax payments due
22 on or after November 15, 1999.

1 **PART VII—MODIFICATION OF TREATMENT OF**
2 **CLOSELY-HELD REITS**

3 **SEC. 281. CONTROLLED ENTITIES INELIGIBLE FOR REIT**
4 **STATUS.**

5 (a) IN GENERAL.—Subsection (a) of section 856 (re-
6 relating to definition of real estate investment trust) is
7 amended by striking “and” at the end of paragraph (6),
8 by redesignating paragraph (7) as paragraph (8), and by
9 inserting after paragraph (6) the following new paragraph:

10 “(7) which is not a controlled entity (as defined
11 in subsection (1)); and”.

12 (b) CONTROLLED ENTITY.—Section 856 is amended
13 by adding at the end the following new subsection:

14 “(1) CONTROLLED ENTITY.—

15 “(1) IN GENERAL.—For purposes of subsection
16 (a)(7), an entity is a controlled entity if, at any time
17 during the taxable year, one person (other than a
18 qualified entity)—

19 “(A) in the case of a corporation, owns
20 stock—

21 “(i) possessing at least 50 percent of
22 the total voting power of the stock of such
23 corporation, or

24 “(ii) having a value equal to at least
25 50 percent of the total value of the stock
26 of such corporation, or

1 “(B) in the case of a trust, owns beneficial
2 interests in the trust which would meet the re-
3 quirements of subparagraph (A) if such inter-
4 ests were stock.

5 “(2) QUALIFIED ENTITY.—For purposes of
6 paragraph (1), the term ‘qualified entity’ means—

7 “(A) any real estate investment trust, and

8 “(B) any partnership in which one real es-
9 tate investment trust owns at least 50 percent
10 of the capital and profits interests in the part-
11 nership.

12 “(3) CONTRIBUTION RULES.—For purposes of
13 this paragraphs (1) and (2)—

14 “(A) IN GENERAL.—Rules similar to the
15 rules of subsections (d)(5) and (h)(3) shall
16 apply; except that section 318(a)(3)(C) shall
17 not be applied under such rules to treat stock
18 owned by a qualified entity as being owned by
19 a person which is not a qualified entity.

20 “(B) STAPLED ENTITIES.—A group of en-
21 tities which are stapled entities (as defined in
22 section 269B(c)(2)) shall be treated as one per-
23 son.

24 “(4) EXCEPTION FOR CERTAIN NEW REITS.—

1 “(A) IN GENERAL.—The term ‘controlled
2 entity’ shall not include an incubator REIT.

3 “(B) INCUBATOR REIT.—A corporation
4 shall be treated as an incubator REIT for any
5 taxable year during the eligibility period if it
6 meets all the following requirements for such
7 year:

8 “(i) The corporation elects to be treat-
9 ed as an incubator REIT.

10 “(ii) The corporation has only voting
11 common stock outstanding.

12 “(iii) Not more than 50 percent of the
13 corporation’s real estate assets consist of
14 mortgages.

15 “(iv) From not later than the begin-
16 ning of the last half of the second taxable
17 year, at least 10 percent of the corpora-
18 tion’s capital is provided by lenders or eq-
19 uity investors who are unrelated to the cor-
20 poration’s largest shareholder.

21 “(v) The corporation annually in-
22 creases the value of its real estate assets
23 by at least 10 percent.

1 “(vi) The directors of the corporation
2 adopt a resolution setting forth an intent
3 to engage in a going public transaction.

4 No election may be made with respect to any
5 REIT if an election under this subsection was
6 in effect for any predecessor of such REIT. The
7 requirement of clause (ii) shall not fail to be
8 met merely because a going public transaction
9 is accomplished through a transaction described
10 in section 368(a)(1) with another corporation
11 which had another class of stock outstanding
12 prior to the transaction.

13 “(C) ELIGIBILITY PERIOD.—

14 “(i) IN GENERAL.—The eligibility pe-
15 riod (for which an incubator REIT election
16 can be made) begins with the REIT’s sec-
17 ond taxable year and ends at the close of
18 the REIT’s third taxable year, except that
19 the REIT may, subject to clauses (ii), (iii),
20 and (iv), elect to extend such period for an
21 additional 2 taxable years.

22 “(ii) GOING PUBLIC TRANSACTION.—
23 A REIT may not elect to extend the eligi-
24 bility period under clause (i) unless it en-
25 ters into an agreement with the Secretary

1 that if it does not engage in a going public
2 transaction by the end of the extended eli-
3 gibility period, it shall pay Federal income
4 taxes for the 2 years of the extended eligi-
5 bility period as if it had not made an incu-
6 bator REIT election and had ceased to
7 qualify as a REIT for those 2 taxable
8 years.

9 “(iii) RETURNS, INTEREST, AND NO-
10 TICE.—

11 “(I) RETURNS.—In the event the
12 corporation ceases to be treated as a
13 REIT by operation of clause (ii), the
14 corporation shall file any appropriate
15 amended returns reflecting the change
16 in status within 3 months of the close
17 of the extended eligibility period.

18 “(II) INTEREST.—Interest shall
19 be payable on any tax imposed by rea-
20 son of clause (ii) for any taxable year
21 but, unless there was a finding under
22 subparagraph (D), no substantial un-
23 derpayment penalties shall be im-
24 posed.

1 “(III) NOTICE.—The corporation
2 shall, at the same time it files its re-
3 turns under subclause (I), notify its
4 shareholders and any other persons
5 whose tax position is, or may reason-
6 ably be expected to be, affected by the
7 change in status so they also may file
8 any appropriate amended returns to
9 conform their tax treatment consistent
10 with the corporation’s loss of REIT
11 status.

12 “(IV) REGULATIONS.—The Sec-
13 retary shall provide appropriate regu-
14 lations setting forth transferee liabil-
15 ity and other provisions to ensure col-
16 lection of tax and the proper adminis-
17 tration of this provision.

18 “(iv) Clauses (ii) and (iii) shall not
19 apply if the corporation allows its incu-
20 bator REIT status to lapse at the end of
21 the initial 2-year eligibility period without
22 engaging in a going public transaction if
23 the corporation is not a controlled entity as
24 of the beginning of its fourth taxable year.
25 In such a case, the corporation’s directors

1 may still be liable for the penalties de-
2 scribed in subparagraph (D) during the eli-
3 gibility period.

4 “(D) SPECIAL PENALTIES.—If the Sec-
5 retary determines that an incubator REIT elec-
6 tion was filed for a principal purpose other than
7 as part of a reasonable plan to undertake a
8 going public transaction, an excise tax of
9 \$20,000 shall be imposed on each of the cor-
10 poration’s directors for each taxable year for
11 which an election was in effect.

12 “(E) GOING PUBLIC TRANSACTION.—For
13 purposes of this paragraph, a going public
14 transaction means—

15 “(i) a public offering of shares of the
16 stock of the incubator REIT;

17 “(ii) a transaction, or series of trans-
18 actions, that results in the stock of the in-
19 cubator REIT being regularly traded on an
20 established securities market and that re-
21 sults in at least 50 percent of such stock
22 being held by shareholders who are unre-
23 lated to persons who held such stock before
24 it began to be so regularly traded; or

1 “(iii) any transaction resulting in
2 ownership of the REIT by 200 or more
3 persons (excluding the largest single share-
4 holder) who in the aggregate own at least
5 50 percent of the stock of the REIT.

6 For the purposes of this subparagraph, the
7 rules of paragraph (3) shall apply in deter-
8 mining the ownership of stock.

9 “(F) DEFINITIONS.—The term ‘established
10 securities market’ shall have the meaning set
11 forth in the regulations under section 897.”.

12 (c) CONFORMING AMENDMENT.—Paragraph (2) of
13 section 856(h) is amended by striking “and (6)” each
14 place it appears and inserting “, (6), and (7)”.

15 (d) EFFECTIVE DATE.—

16 (1) IN GENERAL.—The amendments made by
17 this section shall apply to taxable years ending after
18 July 14, 1999.

19 (2) EXCEPTION FOR EXISTING CONTROLLED
20 ENTITIES.—The amendments made by this section
21 shall not apply to any entity which is a controlled
22 entity (as defined in section 856(l) of the Internal
23 Revenue Code of 1986, as added by this section) as
24 of July 14, 1999, which is a real estate investment
25 trust for the taxable year which includes such date,

1 and which has significant business assets or activi-
2 ties as of such date. For purposes of the preceding
3 sentence, an entity shall be treated as such a con-
4 trolled entity on July 14, 1999, if it becomes such
5 an entity after such date in a transaction—

6 (A) made pursuant to a written agreement
7 which was binding on such date and at all times
8 thereafter, or

9 (B) described on or before such date in a
10 filing with the Securities and Exchange Com-
11 mission required solely by reason of the trans-
12 action.

13 **TITLE III—BUDGET PROVISION**

14 **SEC. 301. EXCLUSION FROM PAYGO SCORECARD.**

15 Any net deficit increase or net surplus increase re-
16 sulting from the enactment of this Act shall not be count-
17 ed for purposes of section 252 of the Balanced Budget
18 and Emergency Deficit Control Act of 1985 (2 U.S.C.
19 902).

Passed the Senate October 29, 1999.

Attest:

Secretary.

106TH CONGRESS
1ST SESSION

S. 1792

AN ACT

To amend the Internal Revenue Code of 1986 to extend expiring provisions, to fully allow the non-refundable personal credits against regular tax liability, and for other purposes.