

108TH CONGRESS
1ST SESSION

H. R. 2325

To amend the Internal Revenue Code of 1986 to accelerate the increase in the refundability of the child tax credit, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 2003

Ms. DELAURO (for herself, Mr. ALEXANDER, Mr. EMANUEL, Mr. RANGEL, Mr. HOYER, Mr. DAVIS of Alabama, Ms. SCHAKOWSKY, Mr. LEVIN, Mr. STARK, Mr. CARDIN, Mr. STENHOLM, Mr. JEFFERSON, Mr. NEAL of Massachusetts, Mr. LEWIS of Georgia, Mr. SPRATT, Mr. McDERMOTT, Mr. BROWN of Ohio, Mr. OBERSTAR, Mr. RODRIGUEZ, Mr. OLVER, Mr. MCGOVERN, Mr. GEORGE MILLER of California, Mr. MORAN of Virginia, Mr. CAPUANO, Mr. LANGEVIN, Mr. MENENDEZ, Mr. HINCHEY, Mr. SERRANO, Mr. GONZALEZ, Mr. BOUCHER, Mr. RYAN of Ohio, Ms. SLAUGHTER, Ms. WOOLSEY, Mrs. LOWEY, Mr. EVANS, Ms. ESHOO, Mr. FORD, Mr. ENGEL, Mr. TANNER, Ms. LEE, Mrs. DAVIS of California, Mr. TIERNEY, Mr. LANTOS, Mr. BAIRD, Ms. ROYBAL-ALLARD, Mr. McNULTY, Mr. SANDLIN, Mr. MICHAUD, Mr. INSLEE, Mr. MARKEY, Mr. GRIJALVA, Mr. DAVIS of Florida, Mr. BLUMENAUER, Mr. ISRAEL, Mr. DELAHUNT, Mr. HOEFFEL, Mr. REYES, Mr. CLYBURN, Mr. WYNN, Mr. PALLONE, Ms. BORDALLO, Mr. CONYERS, Mr. PASCRELL, Ms. SOLIS, Mr. COOPER, Mrs. MALONEY, Mr. TOWNS, Ms. CORRINE BROWN of Florida, Mr. POMEROY, Mr. DOGGETT, Mr. BERRY, Mr. DAVIS of Tennessee, Mr. TAYLOR of Mississippi, Mr. SKELTON, Mr. STRICKLAND, Mr. UDALL of New Mexico, Mr. DEFazio, Mr. SANDERS, Ms. KAPTUR, Mr. DOYLE, Mr. SCOTT of Virginia, Mr. ABERCROMBIE, Mrs. MCCARTHY of New York, Ms. DEGETTE, Mr. ACEVEDO-VILÁ, Mr. JOHN, Mrs. CAPPS, Mr. CROWLEY, Mr. EDWARDS, Mr. CUMMINGS, Mr. SCOTT of Georgia, Mr. FROST, Mr. KUCINICH, Mr. MATSUI, Mr. HASTINGS of Florida, Mr. THOMPSON of Mississippi, Mr. MEEHAN, Ms. MCCOLLUM, Mr. CASE, Mr. HINOJOSA, Mr. HOLT, Mr. OWENS, Mr. CARDOZA, Mr. RUPPERSBERGER, Mr. PRICE of North Carolina, Mr. OBEY, Mr. BOSWELL, Mr. JACKSON of Illinois, Mr. LAMPSON, Mr. PASTOR, Mr. ORTIZ, Mr. BECERRA, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to accelerate the increase in the refundability of the child tax credit, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Working Taxpayer Fairness Restoration Act of 2003”.

TITLE I—ACCELERATION OF INCREASE IN REFUNDABILITY OF THE CHILD TAX CREDIT

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

(a) IN GENERAL.—Section 24(d)(1)(B)(i) of the Internal Revenue Code of 1986 (relating to portion of credit refundable) is amended by striking “(10 percent in the case of taxable years beginning before January 1, 2005)”.

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

1 **TITLE II—REVENUE PROVISIONS**
 2 **Subtitle A—Enron-Related Tax**
 3 **Shelter Provisions**

4 **SEC. 201. LIMITATION ON TRANSFER OR IMPORTATION OF**
 5 **BUILT-IN LOSSES.**

6 (a) IN GENERAL.—Section 362 of the Internal Rev-
 7 enue Code of 1986 (relating to basis to corporations) is
 8 amended by adding at the end the following new sub-
 9 section:

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

11 “(1) LIMITATION ON IMPORTATION OF BUILT-
 12 IN LOSSES.—

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

21 “(B) PROPERTY DESCRIBED.—For pur-
 22 poses of subparagraph (A), property is de-
 23 scribed in this subparagraph if—

24 “(i) gain or loss with respect to such
 25 property is not subject to tax under this

1 subtitle in the hands of the transferor im-
 2 mediately before the transfer, and

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

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

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

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

23 “(A) IN GENERAL.—If—

24 “(i) property is transferred by a
 25 transferor in any transaction which is de-

scribed in subsection (a) and which is not described in paragraph (1) of this subsection, and

“(ii) the transferee’s aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee’s aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

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

“(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not

1 apply by reason of the preceding sentence, the
2 transferor's basis in the stock received for such
3 property shall not exceed its fair market value
4 immediately after the transfer.”.

5 (b) COMPARABLE TREATMENT WHERE LIQUIDA-
6 TION.—Paragraph (1) of section 334(b) of the Internal
7 Revenue Code of 1986 (relating to liquidation of sub-
8 sidiary) is amended to read as follows:

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

19 “(A) in any case in which gain or loss is
20 recognized by the liquidating corporation with
21 respect to such property, or

22 “(B) in any case in which the liquidating
23 corporation is a foreign corporation, the cor-
24 porate distributee is a domestic corporation,
25 and the corporate distributee's aggregate ad-

1 justed bases of property described in section
 2 362(e)(1)(B) which is distributed in such liq-
 3 uidation would (but for this subparagraph) ex-
 4 ceed the fair market value of such property im-
 5 mediately after such liquidation.”.

6 (c) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to transactions after February 13,
 8 2003.

9 **SEC. 202. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
 10 **STOCK HELD BY PARTNERSHIP IN COR-**
 11 **PORATE PARTNER.**

12 (a) IN GENERAL.—Section 755 of the Internal Rev-
 13 enue Code of 1986 is amended by adding at the end the
 14 following new subsection:

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

19 “(1) no allocation may be made to stock in a
 20 corporation (or any person which is related (within
 21 the meaning of section 267(b) or 707(b)(1)) to such
 22 corporation) which is a partner in the partnership,
 23 and

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

4 Gain shall be recognized to the partnership to the extent
5 that the amount required to be allocated under paragraph
6 (2) to other partnership property exceeds the aggregate
7 adjusted basis of such other property immediately before
8 the allocation required by paragraph (2).”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to distributions after February 13,
11 2003.

12 **SEC. 203. REPEAL OF SPECIAL RULES FOR FASITS.**

13 (a) IN GENERAL.—Part V of subchapter M of chap-
14 ter 1 of the Internal Revenue Code of 1986 (relating to
15 financial asset securitization investment trusts) is hereby
16 repealed.

17 (b) CONFORMING AMENDMENTS.—

18 (1) Paragraph (6) of section 56(g) of the Inter-
19 nal Revenue Code of 1986 is amended by striking
20 “REMIC, or FASIT” and inserting “or REMIC”.

21 (2) Clause (ii) of section 382(l)(4)(B) of such
22 Code is amended by striking “a REMIC to which
23 part IV of subchapter M applies, or a FASIT to
24 which part V of subchapter M applies,” and insert-

1 ing “or a REMIC to which part IV of subchapter M
2 applies,”.

3 (3) Paragraph (1) of section 582(c) of such
4 Code is amended by striking “, and any regular in-
5 terest in a FASIT,”.

6 (4) Subparagraph (E) of section 856(c)(5) of
7 such Code is amended by striking the last sentence.

8 (5) Paragraph (5) of section 860G(a) of such
9 Code is amended by adding “and” at the end of sub-
10 paragraph (B), by striking “, and” at the end of
11 subparagraph (C) and inserting a period, and by
12 striking subparagraph (D).

13 (6) Subparagraph (C) of section 1202(e)(4) of
14 such Code is amended by striking “REMIC, or
15 FASIT” and inserting “or REMIC”.

16 (7) Subparagraph (C) of section 7701(a)(19) of
17 such Code is amended by adding “and” at the end
18 of clause (ix), by striking “, and” at the end of
19 clause (x) and inserting a period, and by striking
20 clause (xi).

21 (8) The table of parts for subchapter M of
22 chapter 1 of such Code is amended by striking the
23 item relating to part V.

24 (c) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graph (2), the amendments made by this section
 3 shall take effect on February 14, 2003.

4 (2) EXCEPTION FOR EXISTING FASITS.—The
 5 amendments made by this section shall not apply to
 6 any FASIT in existence on the date of the enact-
 7 ment of this Act to the extent that regular interests
 8 issued by the FASIT before such date continue to
 9 remain outstanding in accordance with the original
 10 terms of issuance of such interests.

11 **SEC. 204. EXPANDED DISALLOWANCE OF DEDUCTION FOR**
 12 **INTEREST ON CONVERTIBLE DEBT.**

13 (a) IN GENERAL.—Paragraph (2) of section 163(l)
 14 of the Internal Revenue Code of 1986 is amended by strik-
 15 ing “or a related party” and inserting “or equity held by
 16 the issuer (or any related party) in any other person”.

17 (b) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED
 18 BY DEALERS IN SECURITIES.—Section 163(l) of the In-
 19 ternal Revenue Code of 1986 is amended by redesignating
 20 paragraphs (4) and (5) as paragraphs (5) and (6) and
 21 by inserting after paragraph (3) the following new para-
 22 graph:

23 “(4) EXCEPTION FOR CERTAIN INSTRUMENTS
 24 ISSUED BY DEALERS IN SECURITIES.—For purposes
 25 of this subsection, the term ‘disqualified debt instru-

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

(a) IN GENERAL.—Subsection (a) of section 269 of the Internal Revenue Code of 1986 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

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

1 “(B) any corporation acquires, directly or indi-
 2 rectly, property of another corporation and the basis
 3 of such property, in the hands of the acquiring cor-
 4 poration, is determined by reference to the basis in
 5 the hands of the transferor corporation, and

6 “(2) the principal purpose for which such acqui-
 7 sition was made is evasion or avoidance of Federal
 8 income tax by securing the benefit of a deduction,
 9 credit, or other allowance,
 10 then the Secretary may disallow such deduction, credit,
 11 or other allowance.”.

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

15 **SEC. 206. MODIFICATIONS OF CERTAIN RULES RELATING**
 16 **TO CONTROLLED FOREIGN CORPORATIONS.**

17 (a) LIMITATION ON EXCEPTION FROM PFIC RULES
 18 FOR UNITED STATES SHAREHOLDERS OF CONTROLLED
 19 FOREIGN CORPORATIONS.—Paragraph (2) of section
 20 1297(e) of the Internal Revenue Code of 1986 (relating
 21 to passive investment company) is amended by adding at
 22 the end the following flush sentence:

23 “Such term shall not include any period if there is
 24 only a remote likelihood of an inclusion in gross in-

1 come under section 951(a)(1)(A)(i) of subpart F in-
 2 come of such corporation for such period.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
 4 this section shall apply to taxable years on controlled for-
 5 eign corporation beginning after February 13, 2003, and
 6 to taxable years of United States shareholder in which or
 7 with which such taxable years of controlled foreign cor-
 8 porations end.

9 **SEC. 207. CONTROLLED ENTITIES INELIGIBLE FOR REIT**
 10 **STATUS.**

11 (a) **IN GENERAL.**—Subsection (a) of section 856 of
 12 the Internal Revenue Code of 1986 (relating to definition
 13 of real estate investment trust) is amended by striking
 14 “and” at the end of paragraph (6), by redesignating para-
 15 graph (7) as paragraph (8), and by inserting after para-
 16 graph (6) the following new paragraph:

17 “(7) which is not a controlled entity (as defined
 18 in subsection (l)); and”.

19 (b) **CONTROLLED ENTITY.**—Section 856 of the Inter-
 20 nal Revenue Code of 1986 is amended by adding at the
 21 end the following new subsection:

22 “(l) **CONTROLLED ENTITY.**—

23 “(1) **IN GENERAL.**—For purposes of subsection
 24 (a)(7), an entity is a controlled entity if, at any time

1 during the taxable year, one person (other than a
2 qualified entity)—

3 “(A) in the case of a corporation, owns
4 stock—

5 “(i) possessing at least 50 percent of
6 the total voting power of the stock of such
7 corporation, or

8 “(ii) having a value equal to at least
9 50 percent of the total value of the stock
10 of such corporation, or

11 “(B) in the case of a trust, owns beneficial
12 interests in the trust which would meet the re-
13 quirements of subparagraph (A) if such inter-
14 ests were stock.

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

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

18 “(B) any partnership in which one real es-
19 tate investment trust owns at least 50 percent
20 of the capital and profits interests in the part-
21 nership.

22 “(3) ATTRIBUTION RULES.—For purposes of
23 this paragraphs (1) and (2)—

24 “(A) IN GENERAL.—Rules similar to the
25 rules of subsections (d)(5) and (h)(3) shall

1 apply; except that section 318(a)(3)(C) shall
2 not be applied under such rules to treat stock
3 owned by a qualified entity as being owned by
4 a person which is not a qualified entity.

5 “(B) STAPLED ENTITIES.—A group of en-
6 tities which are stapled entities (as defined in
7 section 269B(c)(2)) shall be treated as one per-
8 son.

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

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

12 “(B) INCUBATOR REIT.—A corporation
13 shall be treated as an incubator REIT for any
14 taxable year during the eligibility period if it
15 meets all the following requirements for such
16 year:

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

19 “(ii) The corporation has only voting
20 common stock outstanding.

21 “(iii) Not more than 50 percent of the
22 corporation’s real estate assets consist of
23 mortgages.

24 “(iv) From not later than the begin-
25 ning of the last half of the second taxable

1 year, at least 10 percent of the corpora-
 2 tion’s capital is provided by lenders or eq-
 3 uity investors who are unrelated to the cor-
 4 poration’s largest shareholder.

5 “(v) The corporation annually in-
 6 creases the value of its real estate assets
 7 by at least 10 percent.

8 “(vi) The directors of the corporation
 9 adopt a resolution setting forth an intent
 10 to engage in a going public transaction.

11 No election may be made with respect to any
 12 REIT if an election under this subsection was
 13 in effect for any predecessor of such REIT.

14 “(C) ELIGIBILITY PERIOD.—

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

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

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

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

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

19 “(II) INTEREST.—Interest shall
20 be payable on any tax imposed by rea-
21 son of clause (ii) for any taxable year
22 but, unless there was a finding under
23 subparagraph (D), no substantial un-
24 derpayment penalties shall be im-
25 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) of the Internal Revenue Code of 1986 is
 14 amended by striking “and (6)” each place it appears and
 15 inserting “, (6), and (7)”.

16 (d) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
 18 this section shall apply to taxable years ending after
 19 May 8, 2003.

20 (2) EXCEPTION FOR EXISTING CONTROLLED
 21 ENTITIES.—The amendments made by this section
 22 shall not apply to any entity which is a controlled
 23 entity (as defined in section 856(l) of the Internal
 24 Revenue Code of 1986, as added by this section) as
 25 of May 8, 2003, which is a real estate investment

1 trust for the taxable year which includes such date,
 2 and which has significant business assets or activi-
 3 ties as of such date. For purposes of the preceding
 4 sentence, an entity shall be treated as such a con-
 5 trolled entity on May 8, 2003, if it becomes such an
 6 entity after such date in a transaction—

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

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

14 **Subtitle B—Extension of Internal** 15 **Revenue Service User Fees**

16 **SEC. 211. EXTENSION OF INTERNAL REVENUE SERVICE** 17 **USER FEES.**

18 (a) IN GENERAL.—Chapter 77 of the Internal Rev-
 19 enue Code of 1986 (relating to miscellaneous provisions)
 20 is amended by adding at the end the following new section:

21 **“SEC. 7528. INTERNAL REVENUE SERVICE USER FEES.**

22 “(a) GENERAL RULE.—The Secretary shall establish
 23 a program requiring the payment of user fees for—

1 “(1) requests to the Internal Revenue Service
2 for ruling letters, opinion letters, and determination
3 letters, and

4 “(2) other similar requests.

5 “(b) PROGRAM CRITERIA.—

6 “(1) IN GENERAL.—The fees charged under the
7 program required by subsection (a)—

8 “(A) shall vary according to categories (or
9 subcategories) established by the Secretary,

10 “(B) shall be determined after taking into
11 account the average time for (and difficulty of)
12 complying with requests in each category (and
13 subcategory), and

14 “(C) shall be payable in advance.

15 “(2) EXEMPTIONS, ETC.—

16 “(A) IN GENERAL.—The Secretary shall
17 provide for such exemptions (and reduced fees)
18 under such program as the Secretary deter-
19 mines to be appropriate.

20 “(B) EXEMPTION FOR CERTAIN REQUESTS
21 REGARDING PENSION PLANS.—The Secretary
22 shall not require payment of user fees under
23 such program for requests for determination
24 letters with respect to the qualified status of a
25 pension benefit plan maintained solely by 1 or

more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request—

“(i) made after the later of—

“(I) the fifth plan year the pension benefit plan is in existence, or

“(II) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years, or

“(ii) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

“(C) DEFINITIONS AND SPECIAL RULES.—

For purposes of subparagraph (B)—

“(i) PENSION BENEFIT PLAN.—The term ‘pension benefit plan’ means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

“(ii) ELIGIBLE EMPLOYER.—The term ‘eligible employer’ means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated

1 employee (as defined in section 414(q))
 2 and is participating in the plan. The deter-
 3 mination of whether an employer is an eli-
 4 gible employer under subparagraph (B)
 5 shall be made as of the date of the request
 6 described in such subparagraph.

7 “(iii) DETERMINATION OF AVERAGE
 8 FEES CHARGED.—For purposes of any de-
 9 termination of average fees charged, any
 10 request to which subparagraph (B) applies
 11 shall not be taken into account.

12 “(3) AVERAGE FEE REQUIREMENT.—The aver-
 13 age fee charged under the program required by sub-
 14 section (a) shall not be less than the amount deter-
 15 mined under the following table:

“Category	Average Fee
Employee plan ruling and opinion	\$250
Exempt organization ruling	\$350
Employee plan determination	\$300
Exempt organization determination	\$275
Chief counsel ruling	\$200.

16 “(c) TERMINATION.—No fee shall be imposed under
 17 this section with respect to requests made after September
 18 30, 2013.”.

19 (b) CONFORMING AMENDMENTS.—

1 (1) The table of sections for chapter 77 of the
2 Internal Revenue Code of 1986 is amended by add-
3 ing at the end the following new item:

 “Sec. 7528. Internal Revenue Service user fees.”.

4 (2) Section 10511 of the Revenue Act of 1987
5 is repealed.

6 (3) Section 620 of the Economic Growth and
7 Tax Relief Reconciliation Act of 2001 is repealed.

8 (c) LIMITATIONS.—Notwithstanding any other provi-
9 sion of law, any fees collected pursuant to section 7528
10 of the Internal Revenue Code of 1986, as added by sub-
11 section (a), shall not be expended by the Internal Revenue
12 Service unless provided by an appropriations Act.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to requests made after the date
15 of the enactment of this Act.

○