

108TH CONGRESS
2D SESSION

H. R. 3827

To amend the Internal Revenue Code of 1986 to protect American jobs.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 2004

Mr. RANGEL 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 protect
American jobs.

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 “Job Protection Act of 2004”.

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

1 (c) TABLE OF CONTENTS.—

Sec. 1. Short title, etc.

TITLE I—TRANSITION FROM FSC/ETI BENEFITS TO UNITED STATES PRODUCTION BENEFITS

Sec. 101. Repeal of exclusion for extraterritorial income.

Sec. 102. Deduction relating to income attributable to United States production activities.

TITLE II—EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESS

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

TITLE III—ENRON-RELATED TAX SHELTER PROVISIONS

Sec. 301. Limitation on transfer or importation of built-in losses.

Sec. 302. No reduction of basis under section 734 in stock held by partnership in corporate partner.

Sec. 303. Repeal of special rules for FASITS, etc.

Sec. 304. Expanded disallowance of deduction for interest on convertible debt.

Sec. 305. Expanded authority to disallow tax benefits under section 269.

Sec. 306. Modifications of certain rules relating to controlled foreign corporations.

TITLE IV—EXTENSION OF COBRA FEES

Sec. 401. Cobra fees.

2 **TITLE I—TRANSITION FROM**
3 **FSC/ETI BENEFITS TO UNITED**
4 **STATES PRODUCTION BENE-**
5 **FITS**

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

8 (a) IN GENERAL.—Section 114 of the Internal Rev-
9 enue Code of 1986 is hereby repealed.

10 (b) CONFORMING AMENDMENTS.—

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13 come) is hereby repealed.

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

3 (2) The table of sections for part III of sub-
4 chapter B of chapter 1 is amended by striking the
5 item relating to section 114.

6 (3) The second sentence of section
7 56(g)(4)(B)(i) is amended by striking “or under sec-
8 tion 114”.

9 (4) Section 275(a) is amended—

10 (A) by inserting “or” at the end of para-
11 graph (4)(A), by striking “or” at the end of
12 paragraph (4)(B) and inserting a period, and
13 by striking subparagraph (C), and

14 (B) by striking the last sentence.

15 (5) Paragraph (3) of section 864(e) is amend-
16 ed—

17 (A) by striking:

18 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
19 ACCOUNT.—

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

22 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
23 ACCOUNT.—For purposes of”, and

24 (B) by striking subparagraph (B).

1 (6) Section 903 is amended by striking “114,
2 164(a),” and inserting “164(a)”.

3 (7) Section 999(c)(1) is amended by striking
4 “941(a)(5),”.

5 (c) EFFECTIVE DATE.—

6 (1) IN GENERAL.—The amendments made by
7 this section shall apply to transactions occurring
8 after the date of the enactment of this Act.

9 (2) BINDING CONTRACTS.—The amendments
10 made by this section shall not apply to any trans-
11 action in the ordinary course of a trade or business
12 which occurs pursuant to a binding contract—

13 (A) which is between the taxpayer and a
14 person who is not a related person (as defined
15 in section 943(b)(3) of such Code, as in effect
16 on the day before the date of the enactment of
17 this Act), and

18 (B) which is in effect on September 17,
19 2003, and at all times thereafter.

20 (d) REVOCATION OF SECTION 943(e) ELECTIONS.—

21 (1) IN GENERAL.—In the case of a corporation
22 that elected to be treated as a domestic corporation
23 under section 943(e) of the Internal Revenue Code
24 of 1986 (as in effect on the day before the date of
25 the enactment of this Act)—

1 (A) the corporation may revoke such elec-
2 tion, effective as of the date of the enactment
3 of this Act, and

4 (B) if the corporation does revoke such
5 election—

6 (i) such corporation shall be treated
7 as a domestic corporation transferring (as
8 of the date of the enactment of this Act)
9 all of its property to a foreign corporation
10 in connection with an exchange described
11 in section 354 of the Internal Revenue
12 Code of 1986, and

13 (ii) no gain or loss shall be recognized
14 on such transfer.

15 (2) EXCEPTION.—Subparagraph (B)(ii) of
16 paragraph (1) shall not apply to gain on any asset
17 held by the revoking corporation if—

18 (A) the basis of such asset is determined
19 in whole or in part by reference to the basis of
20 such asset in the hands of the person from
21 whom the revoking corporation acquired such
22 asset,

23 (B) the asset was acquired by transfer (not
24 as a result of the election under section 943(e)
25 of such Code) occurring on or after the 1st day

1 on which its election under section 943(e) of
2 such Code was effective, and

3 (C) a principal purpose of the acquisition
4 was the reduction or avoidance of tax (other
5 than a reduction in tax under section 114 of
6 such Code, as in effect on the day before the
7 date of the enactment of this Act).

8 (e) GENERAL TRANSITION.—

9 (1) IN GENERAL.—In the case of a taxable year
10 ending after the date of the enactment of this Act
11 and beginning before January 1, 2007, for purposes
12 of chapter 1 of such Code, each current FSC/ETI
13 beneficiary shall be allowed a deduction equal to the
14 transition amount determined under this subsection
15 with respect to such beneficiary for such year.

16 (2) CURRENT FSC/ETI BENEFICIARY.—The
17 term “current FSC/ETI beneficiary” means any cor-
18 poration which entered into one or more transactions
19 during its taxable year beginning in calendar year
20 2001 with respect to which FSC/ETI benefits were
21 allowable.

22 (3) TRANSITION AMOUNT.—For purposes of
23 this subsection—

24 (A) IN GENERAL.—The transition amount
25 applicable to any current FSC/ETI beneficiary

1 for any taxable year is the phaseout percentage
2 of the base period amount.

3 (B) PHASEOUT PERCENTAGE.—

4 (i) IN GENERAL.—In the case of a
5 taxpayer using the calendar year as its
6 taxable year, the phaseout percentage shall
7 be determined under the following table:

“Years:	The phaseout percentage is:
2004 and 2005	80
2006	60
2007 and thereafter	0.

8 (ii) SPECIAL RULE FOR 2004.—The
9 phaseout percentage for 2004 shall be the
10 amount that bears the same ratio to 80
11 percent as the number of days after the
12 date of the enactment of this Act bears to
13 365.

14 (iii) SPECIAL RULE FOR FISCAL YEAR
15 TAXPAYERS.—In the case of a taxpayer
16 not using the calendar year as its taxable
17 year, the phaseout percentage is the
18 weighted average of the phaseout percent-
19 ages determined under the preceding provi-
20 sions of this paragraph with respect to cal-
21 endar years any portion of which is in-
22 cluded in the taxpayer’s taxable year. The
23 weighted average shall be determined on

1 the basis of the respective portions of the
2 taxable year in each calendar year.

3 (4) **BASE PERIOD AMOUNT.**—For purposes of
4 this subsection, the base period amount is the aggregate
5 FSC/ETI benefits for the taxpayer’s taxable
6 year beginning in calendar year 2001.

7 (5) **FSC/ETI BENEFIT.**—For purposes of this
8 subsection, the term ‘FSC/ETI benefit’ means—

9 (A) amounts excludable from gross income
10 under section 114 of such Code, and

11 (B) the exempt foreign trade income of re-
12 lated foreign sales corporations from property
13 acquired from the taxpayer (determined without
14 regard to section 923(a)(5) of such Code (relat-
15 ing to special rule for military property), as in
16 effect on the day before the date of the enact-
17 ment of the FSC Repeal and Extraterritorial
18 Income Exclusion Act of 2000).

19 In determining the FSC/ETI benefit there shall be
20 excluded any amount attributable to a transaction
21 with respect to which the taxpayer is the lessor un-
22 less the leased property was manufactured or pro-
23 duced in whole or in significant part by the tax-
24 payer.

1 (6) SPECIAL RULE FOR FARM AND HORTI-
2 CULTURAL COOPERATIVES.—Determinations under
3 this subsection with respect to an organization de-
4 scribed in section 943(g)(1) of such Code, as in ef-
5 fect on the day before the date of the enactment of
6 this Act, shall be made at the cooperative level and
7 the purposes of this subsection shall be carried out
8 in a manner similar to section 199(h)(2) of such
9 Code, as added by this Act. Such determinations
10 shall be in accordance with such requirements and
11 procedures as the Secretary may prescribe.

12 (7) CERTAIN RULES TO APPLY.—Rules similar
13 to the rules of section 41(f) of such Code shall apply
14 for purposes of this subsection.

15 (8) COORDINATION WITH BINDING CONTRACT
16 RULE.—The deduction determined under paragraph
17 (1) for any taxable year shall be reduced by the
18 phaseout percentage of any FSC/ETI benefit real-
19 ized for the taxable year by reason of subsection
20 (c)(2) or section 5(c)(1)(B) of the FSC Repeal and
21 Extraterritorial Income Exclusion Act of 2000.

22 (9) SPECIAL RULE FOR TAXABLE YEAR WHICH
23 INCLUDES DATE OF ENACTMENT.—In the case of a
24 taxable year which includes the date of the enact-
25 ment of this Act, the deduction allowed under this

1 subsection to any current FSC/ETI beneficiary shall
2 in no event exceed—

3 (A) 100 percent of such beneficiary’s base
4 period amount, reduced by

5 (B) the aggregate FSC/ETI benefits of
6 such beneficiary with respect to transactions oc-
7 ccurring during the portion of the taxable year
8 ending on the date of the enactment of this Act.

9 **SEC. 102. DEDUCTION RELATING TO INCOME ATTRIB-**
10 **UTABLE TO UNITED STATES PRODUCTION**
11 **ACTIVITIES.**

12 (a) IN GENERAL.—Part VII of subchapter B of chap-
13 ter 1 (relating to itemized deductions for individuals and
14 corporations) is amended by adding at the end the fol-
15 lowing new section:

16 **“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
17 **TION ACTIVITIES.**

18 “(a) IN GENERAL.—There shall be allowed as a de-
19 duction an amount equal to 10 percent of the qualified
20 production activities income of the taxpayer for the tax-
21 able year.

22 “(b) PHASEIN.—In the case of taxable years begin-
23 ning in 2004, 2005, 2006, or 2007, subsection (a) shall
24 be applied by substituting for the percentage contained

1 therein the transition percentage determined under the
 2 following table:

“Taxable years beginning in:	The transition percentage is:
2004	1
2005	3
2006	6
2007	9.

3 “(c) QUALIFIED PRODUCTION ACTIVITIES IN-
 4 COME.—For purposes of this section, the term ‘qualified
 5 production activities income’ means the product of—

6 “(1) the portion of the modified taxable income
 7 of the taxpayer which is attributable to domestic
 8 production activities, and

9 “(2) the domestic/worldwide fraction.

10 “(d) DETERMINATION OF INCOME ATTRIBUTABLE
 11 TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes
 12 of this section—

13 “(1) IN GENERAL.—The portion of the modified
 14 taxable income which is attributable to domestic pro-
 15 duction activities is so much of the modified taxable
 16 income for the taxable year as does not exceed—

17 “(A) the taxpayer’s domestic production
 18 gross receipts for such taxable year, reduced by

19 “(B) the sum of—

20 “(i) the costs of goods sold that are
 21 allocable to such receipts,

1 “(ii) other deductions, expenses, or
2 losses directly allocable to such receipts,
3 and

4 “(iii) a proper share of other deduc-
5 tions, expenses, and losses that are not di-
6 rectly allocable to such receipts or another
7 class of income.

8 “(2) ALLOCATION METHOD.—The Secretary
9 shall prescribe rules for the proper allocation of
10 items of income, deduction, expense, and loss for
11 purposes of determining income attributable to do-
12 mestic production activities.

13 “(3) SPECIAL RULE FOR DETERMINING
14 COSTS.—

15 “(A) For purposes of determining costs
16 under clause (i) of paragraph (1)(B), any item
17 or service brought into the United States shall
18 be treated as acquired by purchase, and its cost
19 shall be treated as not less than its value in the
20 United States, determined immediately after it
21 was brought into the United States. A similar
22 rule shall apply in determining the adjusted
23 basis of leased or rented property where the
24 lease or rental gives rise to domestic production
25 gross receipts.

1 “(B) In the case of any property described
2 in subparagraph (A) that had been exported by
3 the taxpayer for further manufacture, the in-
4 crease in cost (or adjusted basis) under sub-
5 paragraph (A) shall not exceed the difference
6 between the value of the property when ex-
7 ported and the value of the property when
8 brought back into the United States after the
9 further manufacture.

10 “(4) MODIFIED TAXABLE INCOME.—The term
11 ‘modified taxable income’ means taxable income
12 computed without regard to the deduction allowable
13 under this section.

14 “(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—
15 For purposes of this section—

16 “(1) IN GENERAL.—The term ‘domestic produc-
17 tion gross receipts’ means the gross receipts of the
18 taxpayer which are derived from—

19 “(A) any sale, exchange, or other disposi-
20 tion of, or

21 “(B) any lease, rental or license of—
22 qualifying production property which was manufac-
23 tured, produced, grown, or extracted in whole or in
24 significant part by the taxpayer within the United
25 States.

1 “(2) SPECIAL RULES FOR CERTAIN PROP-
2 ERTY.—In the case of any qualifying production
3 property described in subsection (f)(1)(C)—

4 (A) such property shall be treated for pur-
5 poses of paragraph (1) as produced in signifi-
6 cant part by the taxpayer within the United
7 States if more than 50 percent of the aggregate
8 development and production costs are incurred
9 by the taxpayer within the United States, and

10 (B) if a taxpayer acquires such property
11 before such property begins to generate sub-
12 stantial gross receipts, any development or pro-
13 duction costs incurred before the acquisition
14 shall be treated as incurred by the taxpayer for
15 purposes of subparagraph (A) and paragraph
16 (1).

17 “(f) QUALIFYING PRODUCTION PROPERTY.—For
18 purposes of this section—

19 “(1) IN GENERAL.—Except as otherwise pro-
20 vided in this subsection, the term ‘qualifying produc-
21 tion property’ means—

22 “(A) any tangible personal property,

23 “(B) any computer software, and

1 “(C) any property described in paragraph
2 (3) or (4) of section 168(f), including any un-
3 derlying copyright or trademark.

4 Subparagraph (C) shall not apply to any property
5 with respect to which records are required to be
6 maintained under section 2257 of title 18, United
7 States Code.

8 “(2) EXCLUSIONS FROM QUALIFYING PRODUC-
9 TION PROPERTY.—The term ‘qualifying production
10 property’ shall not include—

11 “(A) consumable property that is sold,
12 leased, or licensed by the taxpayer as an inte-
13 gral part of the provision of services,

14 “(B) oil or gas (or any primary product
15 thereof),

16 “(C) electricity,

17 “(D) water supplied by pipeline to the con-
18 sumer,

19 “(E) utility services, or

20 “(F) any property (not described in para-
21 graph (1)(B)) which is a film, tape, recording,
22 book, magazine, newspaper, or similar property
23 the market for which is primarily topical or oth-
24 erwise essentially transitory in nature.

1 “(3) SPECIAL RULE FOR NONCORPORATE TAX-
2 PAYERS.—In the case of a taxpayer other than a
3 corporation subject to tax under section 11, the term
4 ‘qualifying production property’ only includes—

5 “(A) agricultural or horticultural products, in-
6 cluding timber, and

7 “(B) other tangible personal property not de-
8 scribed in subparagraph (B) or (C) of paragraph (1)
9 and not described in section 1221(a)(3).

10 “(g) DOMESTIC/WORLDWIDE FRACTION.—For pur-
11 poses of this section—

12 “(1) IN GENERAL.—The term ‘domestic/world-
13 wide fraction’ means a fraction (not greater than
14 1)—

15 “(A) the numerator of which is the value
16 of the domestic production of the taxpayer, and

17 “(B) the denominator of which is the value
18 of the worldwide production of the taxpayer.

19 “(2) VALUE OF DOMESTIC PRODUCTION.—The
20 value of domestic production is the excess (if any)
21 of—

22 “(A) the domestic production gross re-
23 ceipts, over

1 “(B) the cost of purchased inputs allocable
2 to such receipts that are deductible under this
3 chapter for the taxable year.

4 “(3) PURCHASED INPUTS.—

5 “(A) IN GENERAL.—Purchased inputs are
6 any of the following items acquired by pur-
7 chase:

8 “(i) Services (other than services of
9 employees) used in manufacture, produc-
10 tion, growth, or extraction activities.

11 “(ii) Items consumed in connection
12 with such activities.

13 “(iii) Items incorporated as part of
14 the property being manufactured, pro-
15 duced, grown, or extracted.

16 “(B) SPECIAL RULE.—Rules similar to the
17 rules of subsection (d)(3) shall apply for pur-
18 poses of this subsection.

19 “(4) VALUE OF WORLDWIDE PRODUCTION.—

20 “(A) IN GENERAL.—The value of world-
21 wide production shall be determined under the
22 principles of paragraph (2), except that—

23 “(i) worldwide production gross re-
24 cepts shall be taken into account, and

25 “(ii) paragraph (3)(B) shall not apply.

1 “(B) WORLDWIDE PRODUCTION GROSS RE-
2 CEIPTS.—The worldwide production gross re-
3 ceipts is the amount that would be determined
4 under subsection (e) if such subsection were ap-
5 plied without any reference to the United
6 States.

7 “(h) DEFINITIONS AND SPECIAL RULES.—

8 “(1) UNITED STATES.—For purposes of this
9 section, the term ‘United States’ includes the Com-
10 monwealth of Puerto Rico and any other possession
11 of the United States.

12 “(2) EXCLUSION FOR PATRONS OF AGRICUL-
13 TURAL AND HORTICULTURAL COOPERATIVES.—

14 “(A) IN GENERAL.—If any amount de-
15 scribed in paragraph (1) or (3) of section 1385
16 (a)—

17 “(i) is received by a person from an
18 organization to which part I of subchapter
19 T applies which is engaged in the mar-
20 keting of agricultural or horticultural prod-
21 ucts, and

22 “(ii) is allocable to the portion of the
23 qualified production activities income of
24 the organization which is deductible under
25 subsection (a) (determined as if the organi-

1 zation were a corporation if it is not) and
2 designated as such by the organization in
3 a written notice mailed to its patrons dur-
4 ing the payment period described in section
5 1382(a),

6 then such person shall be allowed an exclusion
7 from gross income with respect to such amount.
8 The taxable income of the organization shall
9 not be reduced under section 1382 by the por-
10 tion of any such amount with respect to which
11 an exclusion is allowable to a person by reason
12 of this paragraph.

13 “(B) SPECIAL RULES.—For purposes of
14 applying subparagraph (A), in determining the
15 qualified production activities income of the or-
16 ganization under this section—

17 “(i) there shall not be taken into ac-
18 count in computing the organization’s
19 modified taxable income any deduction al-
20 lowable under subsection (b) or (c) of sec-
21 tion 1382 (relating to patronage dividends,
22 per-unit retain allocations, and nonpatron-
23 age distributions), and

24 “(ii) the organization shall be treated
25 as having manufactured, produced, grown,

1 or extracted in whole or significant part
2 any qualifying production property mar-
3 keted by the organization which its patrons
4 have so manufactured, produced, grown, or
5 extracted.

6 “(3) SPECIAL RULES FOR PARTNERSHIPS AND
7 S CORPORATIONS.—For purposes of this section, a
8 partner’s distributive share of any partnership item
9 shall be taken into account as if directly realized by
10 the partner. A rule similar to the rule of the pre-
11 ceding sentence shall apply in the case of a share-
12 holder in an S Corporation.

13 “(4) SPECIAL RULE FOR AFFILIATED
14 GROUPS.—

15 “(A) IN GENERAL.—All members of an ex-
16 panded affiliated group shall be treated as a
17 single corporation for purposes of this section.

18 “(B) EXPANDED AFFILIATED GROUP.—
19 The term ‘expanded affiliated group’ means an
20 affiliated group as defined in section 1504(a),
21 determined—

22 “(i) by substituting ‘50 percent’ for
23 ‘80 percent’ each place it appears, and

24 “(ii) without regard to paragraphs (2)
25 and (4) of section 1504(b).

1 For purposes of determining the domestic/
2 worldwide fraction under subsection (g), clause
3 (ii) shall be applied by also disregarding para-
4 graphs (3) and (8) of section 1504(b).

5 “(5) COORDINATION WITH MINIMUM TAX.—The
6 deduction under this section shall be allowed for
7 purposes of the tax imposed by section 55; except
8 that for purposes of section 55, alternative minimum
9 taxable income shall be taken into account in deter-
10 mining the deduction under this section.

11 “(6) ORDERING RULE.—The amount of any
12 other deduction allowable under this chapter shall be
13 determined as if this section had not been enacted.

14 “(7) TRADE OR BUSINESS REQUIREMENT.—
15 This section shall be applied by only taking into ac-
16 count items which are attributable to the actual con-
17 duct of a trade or business.

18 “(8) COORDINATION WITH TRANSITION
19 RULES.—For purposes of this section—

20 “(A) domestic production gross receipts
21 shall not include gross receipts from any trans-
22 action if the binding contract transition relief of
23 section 2(e)(2) of the Job Protection Act of
24 2003 applies to such transaction, and

1 “(B) any deduction allowed under section
2 2(e) of such Act shall be disregarded in deter-
3 mining the portion of the taxable income which
4 is attributable to domestic production gross re-
5 ceipts.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 for part VII of subchapter B of chapter 1 is amended by
8 adding at the end the following new item:

“Sec. 199. Income attributable to domestic production activi-
ties.”.

9 (c) EFFECTIVE DATE.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to taxable years ending after
12 2003.

13 (2) APPLICATION OF SECTION 15.—Section 15
14 of the Internal Revenue Code of 1986 shall apply to
15 the amendments made by this section as if they were
16 changes in a rate of tax.

17 **TITLE II—EXTENSION OF IN-**
18 **CREASED EXPENSING FOR**
19 **SMALL BUSINESS**

20 **SEC. 201. 2-YEAR EXTENSION OF INCREASED EXPENSING**
21 **FOR SMALL BUSINESS.**

22 Subsections (b), (c), and (d) of section 179 (as
23 amended by the Jobs and Growth Tax Relief Reconcili-

1 ation Act of 2003) are each amended by striking “2006”
 2 each place it appears and inserting “2008”.

3 **TITLE III—ENRON-RELATED TAX**
 4 **SHELTER PROVISIONS**

5 **SEC. 301. LIMITATION ON TRANSFER OR IMPORTATION OF**
 6 **BUILT-IN LOSSES.**

7 (a) IN GENERAL.—Section 362 (relating to basis to
 8 corporations) is amended by adding at the end the fol-
 9 lowing new subsection:

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-

1 scribed in subsection (a) and which is not
2 described in paragraph (1) of this sub-
3 section, and

4 “(ii) the transferee’s aggregate ad-
5 justed bases of such property so trans-
6 ferred would (but for this paragraph) ex-
7 ceed the fair market value of such property
8 immediately after such transaction,

9 then, notwithstanding subsection (a), the trans-
10 feree’s aggregate adjusted bases of the property
11 so transferred shall not exceed the fair market
12 value of such property immediately after such
13 transaction.

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

20 “(C) EXCEPTION FOR TRANSFERS WITHIN
21 AFFILIATED GROUP.—Subparagraph (A) shall
22 not apply to any transaction if the transferor
23 owns stock in the transferee meeting the re-
24 quirements of section 1504(a)(2). In the case of
25 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) (relating to liq-
7 uidation of subsidiary) is amended to read as follows:

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

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

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

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

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to transactions after the date of
7 the enactment of this Act.

8 **SEC. 302. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
9 **STOCK HELD BY PARTNERSHIP IN COR-**
10 **PORATE PARTNER.**

11 (a) IN GENERAL.—Section 755 is amended by adding
12 at the end the following new subsection:

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

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

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

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

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

9 **SEC. 303. REPEAL OF SPECIAL RULES FOR FASITS, ETC.**

10 (a) IN GENERAL.—Part V of subchapter M of chap-
11 ter 1 (relating to financial asset securitization investment
12 trusts) is hereby repealed.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Paragraph (6) of section 56(g) is amended
15 by striking “REMIC, or FASIT” and inserting “or
16 REMIC”.

17 (2) Clause (ii) of section 382(l)(4)(B) is amend-
18 ed by striking “a REMIC to which part IV of sub-
19 chapter M applies, or a FASIT to which part V of
20 subchapter M applies,” and inserting “or a REMIC
21 to which part IV of subchapter M applies,”.

22 (3) Paragraph (1) of section 582(c) is amended
23 by striking “, and any regular interest in a
24 FASIT,”.

1 (4) Subparagraph (E) of section 856(c)(5) is
2 amended by striking the last sentence.

3 (5)(A) Section 860G(a)(1) is amended by add-
4 ing at the end the following new sentence: “An inter-
5 est shall not fail to qualify as a regular interest sole-
6 ly because the specified principal amount of the reg-
7 ular interest (or the amount of interest accrued on
8 the regular interest) can be reduced as a result of
9 the nonoccurrence of 1 or more contingent payments
10 with respect to any reverse mortgage loan held by
11 the REMIC if, on the startup day for the REMIC,
12 the sponsor reasonably believes that all principal and
13 interest due under the regular interest will be paid
14 at or prior to the liquidation of the REMIC.”.

15 (B) The last sentence of section 860G(a)(3) is
16 amended by inserting “, and any reverse mortgage
17 loan (and each balance increase on such loan meet-
18 ing the requirements of subparagraph (A)(iii)) shall
19 be treated as an obligation secured by an interest in
20 real property” before the period at the end.

21 (6) Paragraph (3) of section 860G(a) is amend-
22 ed by adding “and” at the end of subparagraph (B),
23 by striking “, and” at the end of subparagraph (C)
24 and inserting a period, and by striking subparagraph
25 (D).

1 (7) Section 860G(a)(3), as amended by para-
2 graph (6), is amended by adding at the end the fol-
3 lowing new sentence: “For purposes of subparagraph
4 (A), if more than 50 percent of the obligations
5 transferred to, or purchased by, the REMIC are
6 originated by the United States or any State (or any
7 political subdivision, agency, or instrumentality of
8 the United States or any State) and are principally
9 secured by an interest in real property, then each
10 obligation transferred to, or purchased by, the
11 REMIC shall be treated as secured by an interest in
12 real property.”.

13 (8)(A) Section 860G(a)(3)(A) is amended by
14 striking “or” at the end of clause (i), by inserting
15 “or” at the end of clause (ii), and by inserting after
16 clause (ii) the following new clause:

17 “(iii) represents an increase in the
18 principal amount under the original terms
19 of an obligation described in clause (i) or
20 (ii) if such increase—

21 “(I) is attributable to an advance
22 made to the obligor pursuant to the
23 original terms of the obligation,

24 “(II) occurs after the startup
25 day, and

1 “(III) is purchased by the
2 REMIC pursuant to a fixed price con-
3 tract in effect on the startup day.”.

4 (B) Section 860G(a)(7)(B) is amended to read
5 as follows:

6 “(B) QUALIFIED RESERVE FUND.—For
7 purposes of subparagraph (A), the term ‘quali-
8 fied reserve fund’ means any reasonably re-
9 quired reserve to—

10 “(i) provide for full payment of ex-
11 penses of the REMIC or amounts due on
12 regular interests in the event of defaults on
13 qualified mortgages or lower than expected
14 returns on cash flow investments, or

15 “(ii) provide a source of funds for the
16 purchase of obligations described in clause
17 (ii) or (iii) of paragraph (3)(A).

18 The aggregate fair market value of the assets
19 held in any such reserve shall not exceed 50
20 percent of the aggregate fair market value of all
21 of the assets of the REMIC on the startup day,
22 and the amount of any such reserve shall be
23 promptly and appropriately reduced to the ex-
24 tent the amount held in such reserve is no

1 longer reasonably required for purposes speci-
2 fied in clause (i) or (ii) of paragraph (3)(A).”.

3 (9) Subparagraph (C) of section 1202(e)(4) is
4 amended by striking “REMIC, or FASIT” and in-
5 serting “or REMIC”.

6 (10) Section 1272(a)(6)(B) is amended by add-
7 ing at the end the following new flush sentence:

8 “For purposes of clause (iii), the Secretary
9 shall prescribe regulations permitting the use of
10 a current prepayment assumption, determined
11 as of the close of the accrual period (or such
12 other time as the Secretary may prescribe dur-
13 ing the taxable year in which the accrual period
14 ends).”.

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

19 (12) The table of parts for subchapter M of
20 chapter 1 is amended by striking the item relating
21 to part V.

22 (c) EFFECTIVE DATE.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), the amendments made by this section

1 shall take effect on the date of the enactment of this
2 Act.

3 (2) EXCEPTION FOR EXISTING FASITS.—

4 (A) IN GENERAL.—Paragraph (1) shall not
5 apply to any FASIT in existence on the date of
6 the enactment of this Act to the extent that
7 regular interests issued by the FASIT before
8 such date continue to remain outstanding in ac-
9 cordance with the original terms of issuance.

10 (B) TRANSFER OF ADDITIONAL ASSETS
11 NOT PERMITTED.—Except as provided in regu-
12 lations prescribed by the Secretary of the
13 Treasury or the Secretary’s delegate, subpara-
14 graph (A) shall cease to apply as of the earliest
15 date after the date of the enactment of this Act
16 that any property is transferred to the FASIT.

17 **SEC. 304. EXPANDED DISALLOWANCE OF DEDUCTION FOR**
18 **INTEREST ON CONVERTIBLE DEBT.**

19 (a) IN GENERAL.—Paragraph (2) of section 163(l)
20 is amended by striking “or a related party” and inserting
21 “or equity held by the issuer (or any related party) in any
22 other person”.

23 (b) CAPITALIZATION ALLOWED WITH RESPECT TO
24 EQUITY OF PERSONS OTHER THAN ISSUER AND RE-
25 LATED PARTIES.—Section 163(l) is amended by redesignig-

1 nating paragraphs (4) and (5) as paragraphs (5) and (6)
2 and by inserting after paragraph (3) the following new
3 paragraph:

4 “(4) CAPITALIZATION ALLOWED WITH RESPECT
5 TO EQUITY OF PERSONS OTHER THAN ISSUER AND
6 RELATED PARTIES.—If the disqualified debt instru-
7 ment of a corporation is payable in equity held by
8 the issuer (or any related party) in any other person
9 (other than a related party), the basis of such equity
10 shall be increased by the amount not allowed as a
11 deduction by reason of paragraph (1) with respect to
12 the instrument.”.

13 (c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED
14 BY DEALERS IN SECURITIES.—Section 163(l), as amend-
15 ed by subsection (b), is amended by redesignating para-
16 graphs (5) and (6) as paragraphs (6) and (7) and by in-
17 serting after paragraph (4) the following new paragraph:

18 “(5) EXCEPTION FOR CERTAIN INSTRUMENTS
19 ISSUED BY DEALERS IN SECURITIES.—For purposes
20 of this subsection, the term ‘disqualified debt instru-
21 ment’ does not include indebtedness issued by a
22 dealer in securities (or a related party) which is pay-
23 able in, or by reference to, equity (other than equity
24 of the issuer or a related party) held by such dealer
25 in its capacity as a dealer in securities. For purposes

1 of this paragraph, the term ‘dealer in securities’ has
2 the meaning given such term by section 475.”.

3 (c) CONFORMING AMENDMENTS.—Paragraph (3) of
4 section 163(l) is amended—

5 (1) by striking “or a related party” in the ma-
6 terial preceding subparagraph (A) and inserting “or
7 any other person”, and

8 (2) by striking “or interest” each place it ap-
9 pears.

10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to debt instruments issued after
12 the date of the enactment of this Act.

13 **SEC. 305. EXPANDED AUTHORITY TO DISALLOW TAX BENE-**
14 **FITS UNDER SECTION 269.**

15 (a) IN GENERAL.—Subsection (a) of section 269 (re-
16 lating to acquisitions made to evade or avoid income tax)
17 is amended to read as follows:

18 “(a) IN GENERAL.—If—

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

21 “(B) any corporation acquires, directly or indi-
22 rectly, property of another corporation and the basis
23 of such property, in the hands of the acquiring cor-
24 poration, is determined by reference to the basis in
25 the hands of the transferor corporation, and

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

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to stock and property acquired
9 after the date of the enactment of this Act.

10 **SEC. 306. MODIFICATIONS OF CERTAIN RULES RELATING**
11 **TO CONTROLLED FOREIGN CORPORATIONS.**

12 (a) LIMITATION ON EXCEPTION FROM PFIC RULES
13 FOR UNITED STATES SHAREHOLDERS OF CONTROLLED
14 FOREIGN CORPORATIONS.—Paragraph (2) of section
15 1297(e) (relating to passive investment company) is
16 amended by adding at the end the following flush sen-
17 tence:

18 “Such term shall not include any period if there is
19 only a remote likelihood of an inclusion in gross in-
20 come under section 951(a)(1)(A)(i) of subpart F in-
21 come of such corporation for such period.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to taxable years on controlled for-
24 eign corporation beginning after the date of the enactment
25 of this Act, and to taxable years of United States share-

1 holder in which or with which such taxable years of con-
2 trolled foreign corporations end.

3 **TITLE IV—EXTENSION OF COBRA** 4 **FEES**

5 **SEC. 401. COBRA FEES.**

6 (a) USE OF MERCHANDISE PROCESSING FEE.—Sec-
7 tion 13031(f) of the Consolidated Omnibus Budget Rec-
8 onciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

9 (1) in paragraph (1), by aligning subparagraph
10 (B) with subparagraph (A); and

11 (2) in paragraph (2), by striking “commercial
12 operations” and all that follows through “proc-
13 essing” and inserting “customs revenue functions as
14 defined in section 415 of the Homeland Security Act
15 of 2002 (other than functions performed by the Of-
16 fice of International Affairs referred to in section
17 415(8) of that Act), and for automation (including
18 the Automation Commercial Environment computer
19 system), and for no other purpose. To the extent
20 that funds in the Customs User Fee Account are in-
21 sufficient to pay the costs of such customs revenue
22 functions, customs duties in an amount equal to the
23 amount of such insufficiency shall be available, to
24 the extent provided for in appropriations Acts, to
25 pay the costs of such customs revenue functions in

1 the amount of such insufficiency, and shall be avail-
2 able for no other purpose. The provisions of the first
3 and second sentences of this paragraph specifying
4 the purposes for which amounts in the Customs
5 User Fee Account may be made available shall not
6 be superseded except by a provision of law which
7 specifically modifies or supersedes such provisions.”.

8 (b) REIMBURSEMENT OF APPROPRIATIONS FROM
9 COBRA FEES.—Section 13031(f)(3) of the Consolidated
10 Omnibus Budget Reconciliation Act of 1985 (19 U.S.C.
11 58c(f)(3)) is amended by adding at the end the following:

12 “(E) Nothing in this paragraph shall be construed
13 to preclude the use of appropriated funds, from sources
14 other than the fees collected under subsection (a), to pay
15 the costs set forth in clauses (i), (ii), and (iii) of subpara-
16 graph (A).”.

17 (c) SENSE OF CONGRESS; EFFECTIVE PERIOD FOR
18 COLLECTING FEES; STANDARD FOR SETTING FEES.—

19 (1) SENSE OF CONGRESS.—The Congress finds
20 that—

21 (A) the fees set forth in paragraphs (1)
22 through (8) of subsection (a) of section 13031
23 of the Consolidated Omnibus Budget Reconcili-
24 ation Act of 1985 have been reasonably related
25 to the costs of providing customs services in

1 connection with the activities or items for which
2 the fees have been charged under such para-
3 graphs; and

4 (B) the fees collected under such para-
5 graphs have not exceeded, in the aggregate, the
6 amounts paid for the costs described in sub-
7 section (f)(3)(A) incurred in providing customs
8 services in connection with the activities or
9 items for which the fees were charged under
10 such paragraphs.

11 (2) EFFECTIVE PERIOD; STANDARD FOR SET-
12 TING FEES.—Section 13031(j)(3) of the Consoli-
13 dated Omnibus Budget Reconciliation Act of 1985 is
14 amended to read as follows:

15 “(3)(A) Fees may not be charged under paragraphs
16 (9) and (10) of subsection (a) after September 30, 2013.

17 “(B)(i) Subject to clause (ii), fees may not be charged
18 under paragraphs (1) through (8) of subsection (a) after
19 September 30, 2006.

20 “(ii) In fiscal year 2006 and in each succeeding fiscal
21 year for which fees under paragraphs (1) through (8) of
22 subsection (a) are authorized—

23 “(I) the Secretary of the Treasury shall charge
24 fees under each such paragraph in amounts that are
25 reasonably related to the costs of providing customs

1 services in connection with the activity or item for
2 which the fee is charged under such paragraph;

3 “(II) the amount of fees collected under such
4 paragraphs may not exceed, in the aggregate, the
5 amounts paid in that fiscal year for the costs de-
6 scribed in subsection (f)(3)(A) incurred in providing
7 customs services in connection with the activity or
8 item for which the fees are charged under such
9 paragraphs;

10 “(III) a fee may not be collected under any
11 such paragraph except to the extent such fee will be
12 expended to pay the costs described in subsection
13 (f)(3)(A) incurred in providing customs services in
14 connection with the activity or item for which the fee
15 is charged under such paragraph; and

16 “(IV) any fee collected under any such para-
17 graph shall be available for expenditure only to pay
18 the costs described in subsection (f)(3)(A) incurred
19 in providing customs services in connection with the
20 activity or item for which the fee is charged under
21 such paragraph.”.

22 (d) CLERICAL AMENDMENTS.—Section 13031 of the
23 Consolidated Omnibus Budget Reconciliation Act of 1985
24 is amended—

- 1 (1) in subsection (a)(5)(B), by striking “\$1.75”
2 and inserting “\$1.75.”;
- 3 (2) in subsection (b)—
- 4 (A) in paragraph (1)(A), by aligning clause
5 (iii) with clause (ii);
- 6 (B) in paragraph (7), by striking “para-
7 graphs” and inserting “paragraph”; and
- 8 (C) in paragraph (9), by aligning subpara-
9 graph (B) with subparagraph (A); and
- 10 (3) in subsection (e)(2), by aligning subpara-
11 graph (B) with subparagraph (A).

○