

108TH CONGRESS
2D SESSION

H. R. 5169

To amend the Internal Revenue Code of 1986 to provide tax relief for farmers and fishermen, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2004

Mr. NUSSLE (for himself, Mr. KING of Iowa, Mr. LATHAM, and Mr. LEACH) 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 provide tax relief for farmers and fishermen, 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 Empowerment and Relief for Farmers and Fisher-
6 men (TERFF) Act”.

7 (b) AMENDMENT OF 1986 CODE.—Except as other-
8 wise expressly provided, whenever in this Act an amend-
9 ment or repeal is expressed in terms of an amendment
10 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—

- Sec. 1. Short title; etc.
- Sec. 2. Farm, fishing, and ranch risk management accounts.
- Sec. 3. Exclusion of rental income from self-employment tax.
- Sec. 4. Exclusion of conservation reserve program payments from self-employment tax.
- Sec. 5. Exemption of agricultural bonds from private activity bond volume limits.
- Sec. 6. Modifications to section 512(b)(13).
- Sec. 7. Charitable deduction for contributions of food inventory.
- Sec. 8. Coordinate farmers and fishermen income averaging and the alternative minimum tax.
- Sec. 9. Modification to cooperative marketing rules to include value added processing involving animals.
- Sec. 10. Extension of declaratory judgment procedures to farmers' cooperative organizations.
- Sec. 11. Small ethanol producer credit.
- Sec. 12. Payment of dividends on stock of cooperatives without reducing patronage dividends.
- Sec. 13. Special rules for livestock sold on account of weather-related conditions.

4 **SEC. 2. FARM, FISHING, AND RANCH RISK MANAGEMENT**
 5 **ACCOUNTS.**

6 (a) IN GENERAL.—Subpart C of part II of sub-
 7 chapter E of chapter 1 (relating to taxable year for which
 8 deductions taken) is amended by inserting after section
 9 468B the following new section:

10 **“SEC. 468C. FARM, FISHING, AND RANCH RISK MANAGE-**
 11 **MENT ACCOUNTS.**

12 “(a) DEDUCTION ALLOWED.—In the case of an indi-
 13 vidual engaged in an eligible farming business or commer-
 14 cial fishing, there shall be allowed as a deduction for any
 15 taxable year the amount paid in cash by the taxpayer dur-
 16 ing the taxable year to a Farm, Fishing, and Ranch Risk

1 Management Account (hereinafter referred to as the
2 ‘FFARRM Account’).

3 “(b) LIMITATION.—

4 “(1) CONTRIBUTIONS.—The amount which a
5 taxpayer may pay into the FFARRM Account for
6 any taxable year shall not exceed 20 percent of so
7 much of the taxable income of the taxpayer (deter-
8 mined without regard to this section) which is at-
9 tributable (determined in the manner applicable
10 under section 1301) to any eligible farming business
11 or commercial fishing.

12 “(2) DISTRIBUTIONS.—Distributions from a
13 FFARRM Account may not be used to purchase,
14 lease, or finance any new fishing vessel, add capacity
15 to any fishery, or otherwise contribute to the over-
16 capitalization of any fishery. The Secretary of Com-
17 merce shall implement regulations to enforce this
18 paragraph.

19 “(c) ELIGIBLE BUSINESSES.—For purposes of this
20 section—

21 “(1) ELIGIBLE FARMING BUSINESS.—The term
22 ‘eligible farming business’ means any farming busi-
23 ness (as defined in section 263A(e)(4)) which is not
24 a passive activity (within the meaning of section
25 469(c)) of the taxpayer.

1 “(2) COMMERCIAL FISHING.—The term ‘com-
2 mercial fishing’ has the meaning given such term by
3 section (3) of the Magnuson-Stevens Fishery Con-
4 servation and Management Act (16 U.S.C. 1802)
5 but only if such fishing is not a passive activity
6 (within the meaning of section 469(c)) of the tax-
7 payer.

8 “(d) FFARRM ACCOUNT.—For purposes of this sec-
9 tion—

10 “(1) IN GENERAL.—The term ‘FFARRM Ac-
11 count’ means a trust created or organized in the
12 United States for the exclusive benefit of the tax-
13 payer, but only if the written governing instrument
14 creating the trust meets the following requirements:

15 “(A) No contribution will be accepted for
16 any taxable year in excess of the amount al-
17 lowed as a deduction under subsection (a) for
18 such year.

19 “(B) The trustee is a bank (as defined in
20 section 408(n)) or another person who dem-
21 onstrates to the satisfaction of the Secretary
22 that the manner in which such person will ad-
23 minister the trust will be consistent with the re-
24 quirements of this section.

1 “(C) The assets of the trust consist en-
 2 tirely of cash or of obligations which have ade-
 3 quate stated interest (as defined in section
 4 1274(c)(2)) and which pay such interest not
 5 less often than annually.

6 “(D) All income of the trust is distributed
 7 currently to the grantor.

8 “(E) The assets of the trust will not be
 9 commingled with other property except in a
 10 common trust fund or common investment
 11 fund.

12 “(2) ACCOUNT TAXED AS GRANTOR TRUST.—
 13 The grantor of a FFARRM Account shall be treated
 14 for purposes of this title as the owner of such Ac-
 15 count and shall be subject to tax thereon in accord-
 16 ance with subpart E of part I of subchapter J of
 17 this chapter (relating to grantors and others treated
 18 as substantial owners).

19 “(e) INCLUSION OF AMOUNTS DISTRIBUTED.—

20 “(1) IN GENERAL.—Except as provided in para-
 21 graph (2), there shall be includible in the gross in-
 22 come of the taxpayer for any taxable year—

23 “(A) any amount distributed from a
 24 FFARRM Account of the taxpayer during such
 25 taxable year, and

1 “(B) any deemed distribution under—

2 “(i) subsection (f)(1) (relating to de-
3 posits not distributed within 5 years),

4 “(ii) subsection (f)(2) (relating to ces-
5 sation in eligible farming business), and

6 “(iii) subparagraph (B) or (C) of sub-
7 section (f)(3) (relating to prohibited trans-
8 actions and pledging account as security).

9 “(2) EXCEPTIONS.—Paragraph (1)(A) shall not
10 apply to—

11 “(A) any distribution to the extent attrib-
12 utable to income of the Account, and

13 “(B) the distribution of any contribution
14 paid during a taxable year to a FFARRM Ac-
15 count to the extent that such contribution ex-
16 ceeds the limitation applicable under subsection
17 (b) if requirements similar to the requirements
18 of section 408(d)(4) are met.

19 For purposes of subparagraph (A), distributions
20 shall be treated as first attributable to income and
21 then to other amounts.

22 “(f) SPECIAL RULES.—

23 “(1) TAX ON DEPOSITS IN ACCOUNT WHICH
24 ARE NOT DISTRIBUTED WITHIN 5 YEARS.—

“(A) IN GENERAL.—If, at the close of any taxable year, there is a nonqualified balance in any FFARRM Account—

“(i) there shall be deemed distributed from such Account during such taxable year an amount equal to such balance, and

“(ii) the taxpayer’s tax imposed by this chapter for such taxable year shall be increased by 10 percent of such deemed distribution.

The preceding sentence shall not apply if an amount equal to such nonqualified balance is distributed from such Account to the taxpayer before the due date (including extensions) for filing the return of tax imposed by this chapter for such year (or, if earlier, the date the taxpayer files such return for such year).

“(B) NONQUALIFIED BALANCE.—For purposes of subparagraph (A), the term ‘nonqualified balance’ means any balance in the Account on the last day of the taxable year which is attributable to amounts deposited in such Account before the 4th preceding taxable year.

“(C) ORDERING RULE.—For purposes of this paragraph, distributions from a FFARRM

1 Account (other than distributions of current in-
2 come) shall be treated as made from deposits in
3 the order in which such deposits were made, be-
4 ginning with the earliest deposits.

5 “(2) CESSATION IN ELIGIBLE BUSINESS.—At
6 the close of the first disqualification period after a
7 period for which the taxpayer was engaged in an eli-
8 gible farming business or commercial fishing, there
9 shall be deemed distributed from the FFARRM Ac-
10 count of the taxpayer an amount equal to the bal-
11 ance in such Account (if any) at the close of such
12 disqualification period. For purposes of the pre-
13 ceding sentence, the term ‘disqualification period’
14 means any period of 2 consecutive taxable years for
15 which the taxpayer is not engaged in an eligible
16 farming business or commercial fishing.

17 “(3) CERTAIN RULES TO APPLY.—Rules similar
18 to the following rules shall apply for purposes of this
19 section:

20 “(A) Section 220(f)(8) (relating to treat-
21 ment after death of account holder).

22 “(B) Section 408(e)(2) (relating to loss of
23 exemption of account where individual engages
24 in prohibited transaction).

1 “(C) Section 408(e)(4) (relating to effect
2 of pledging account as security).

3 “(D) Section 408(g) (relating to commu-
4 nity property laws).

5 “(E) Section 408(h) (relating to custodial
6 accounts).

7 “(4) TIME WHEN PAYMENTS DEEMED MADE.—
8 For purposes of this section, a taxpayer shall be
9 deemed to have made a payment to a FFARRM Ac-
10 count on the last day of a taxable year if such pay-
11 ment is made on account of such taxable year and
12 is made on or before the due date (without regard
13 to extensions) for filing the return of tax for such
14 taxable year.

15 “(5) INDIVIDUAL.—For purposes of this sec-
16 tion, the term ‘individual’ shall not include an estate
17 or trust.

18 “(6) DEDUCTION NOT ALLOWED FOR SELF-EM-
19 PLOYMENT TAX.—The deduction allowable by reason
20 of subsection (a) shall not be taken into account in
21 determining an individual’s net earnings from self-
22 employment (within the meaning of section 1402(a))
23 for purposes of chapter 2.

24 “(g) REPORTS.—The trustee of a FFARRM Account
25 shall make such reports regarding such Account to the

1 Secretary and to the person for whose benefit the Account
2 is maintained with respect to contributions, distributions,
3 and such other matters as the Secretary may require
4 under regulations. The reports required by this subsection
5 shall be filed at such time and in such manner and fur-
6 nished to such persons at such time and in such manner
7 as may be required by such regulations.”.

8 (b) TAX ON EXCESS CONTRIBUTIONS.—

9 (1) Subsection (a) of section 4973 (relating to
10 tax on excess contributions to certain tax-favored ac-
11 counts and annuities) is amended by striking “or”
12 at the end of paragraph (4), by redesignating para-
13 graph (5) as paragraph (6), and by inserting after
14 paragraph (4) the following new paragraph:

15 “(5) a FFARRM Account (within the meaning
16 of section 468C(d)), or”.

17 (2) Section 4973 is amended by adding at the
18 end the following new subsection:

19 “(h) EXCESS CONTRIBUTIONS TO FFARRM AC-
20 COUNTS.—For purposes of this section, in the case of a
21 FFARRM Account (within the meaning of section
22 468C(d)), the term ‘excess contributions’ means the
23 amount by which the amount contributed for the taxable
24 year to the Account exceeds the amount which may be con-
25 tributed to the Account under section 468C(b) for such

1 taxable year. For purposes of this subsection, any con-
 2 tribution which is distributed out of the FFARRM Ac-
 3 count in a distribution to which section 468C(e)(2)(B) ap-
 4 plies shall be treated as an amount not contributed.”.

5 (3) The section heading for section 4973 is
 6 amended to read as follows:

7 **“SEC. 4973. EXCESS CONTRIBUTIONS TO CERTAIN AC-**
 8 **COUNTS, ANNUITIES, ETC.”.**

9 (4) The table of sections for chapter 43 is
 10 amended by striking the item relating to section
 11 4973 and inserting the following new item:

“Sec. 4973. Excess contributions to certain accounts, annuities,
 etc.”.

12 (c) TAX ON PROHIBITED TRANSACTIONS.—

13 (1) Subsection (c) of section 4975 (relating to
 14 tax on prohibited transactions) is amended by add-
 15 ing at the end the following new paragraph:

16 “(7) SPECIAL RULE FOR FFARRM ACCOUNTS.—

17 A person for whose benefit a FFARRM Account
 18 (within the meaning of section 468C(d)) is estab-
 19 lished shall be exempt from the tax imposed by this
 20 section with respect to any transaction concerning
 21 such account (which would otherwise be taxable
 22 under this section) if, with respect to such trans-
 23 action, the account ceases to be a FFARRM Ac-

1 count by reason of the application of section
2 468C(f)(3)(A) to such account.”.

3 (2) Paragraph (1) of section 4975(e) is amend-
4 ed by redesignating subparagraphs (F) and (G) as
5 subparagraphs (G) and (H), respectively, and by in-
6 serting after subparagraph (E) the following new
7 subparagraph:

8 “(F) a FFARRM Account described in
9 section 468C(d),”.

10 (d) FAILURE TO PROVIDE REPORTS ON FFARRM
11 ACCOUNTS.—Paragraph (2) of section 6693(a) (relating
12 to failure to provide reports on certain tax-favored ac-
13 counts or annuities) is amended by redesignating subpara-
14 graphs (D) and (E) as subparagraphs (E) and (F), respec-
15 tively, and by inserting after subparagraph (C) the fol-
16 lowing new subparagraph:

17 “(D) section 468C(g) (relating to
18 FFARRM Accounts),”.

19 (e) CLERICAL AMENDMENT.—The table of sections
20 for subpart C of part II of subchapter E of chapter 1 is
21 amended by inserting after the item relating to section
22 468B the following new item:

“Sec. 468C. Farm, Fishing and Ranch Risk Management Ac-
counts.”.

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

4 **SEC. 3. EXCLUSION OF RENTAL INCOME FROM SELF-EM-**
 5 **PLOYMENT TAX.**

6 (a) INTERNAL REVENUE CODE.—Section
 7 1402(a)(1)(A) (relating to net earnings from self-employ-
 8 ment) is amended by striking “an arrangement” and in-
 9 serting “a written lease agreement”.

10 (b) SOCIAL SECURITY ACT.—Section 211(a)(1)(A) of
 11 the Social Security Act is amended by striking “an ar-
 12 rangement” and inserting “a written lease agreement”.

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

16 **SEC. 4. EXCLUSION OF CONSERVATION RESERVE PRO-**
 17 **GRAM PAYMENTS FROM SELF-EMPLOYMENT**
 18 **TAX.**

19 (a) INTERNAL REVENUE CODE.—Section 1402(a)(1)
 20 (relating to net earnings from self-employment) is amend-
 21 ed by inserting “and including payments under section
 22 1233(2) of the Food Security Act of 1985 (16 U.S.C.
 23 3833(2))” after “crop shares”.

24 (b) SOCIAL SECURITY ACT.—Section 211(a)(1) of
 25 the Social Security Act is amended by inserting “and in-

cluding payments under section 1233(2) of the Food Security Act of 1985 (16 U.S.C. 3833(2))” after “crop shares”.

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

SEC. 5. EXEMPTION OF AGRICULTURAL BONDS FROM PRIVATE ACTIVITY BOND VOLUME LIMITS.

(a) IN GENERAL.—Section 146(g) (relating to exception for certain bonds) is amended by striking “and” at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting “, and”, and by inserting after paragraph (4) the following new paragraph:

“(5) any qualified small issue bond described in section 144(a)(12)(B)(ii).”.

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

SEC. 6. MODIFICATIONS TO SECTION 512(b)(13).

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

1 “(E) PARAGRAPH TO APPLY ONLY TO EX-
2 CESS PAYMENTS.—

3 “(i) IN GENERAL.—Subparagraph (A)
4 shall apply only to the portion of a speci-
5 fied payment received or accrued by the
6 controlling organization that exceeds the
7 amount which would have been paid or ac-
8 crued if such payment met the require-
9 ments prescribed under section 482.

10 “(ii) ADDITION TO TAX FOR VALU-
11 ATION MISSTATEMENTS.—The tax imposed
12 by this chapter on the controlling organiza-
13 tion shall be increased by an amount equal
14 to 20 percent of the larger of—

15 “(I) such excess determined with-
16 out regard to any amendment or sup-
17 plement to a return of tax, or

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

21 (b) EFFECTIVE DATE.—

22 (1) IN GENERAL.—The amendment made by
23 this section shall apply to payments received or ac-
24 crued after December 31, 2000.

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

11 **SEC. 7. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF**
 12 **FOOD INVENTORY.**

13 (a) IN GENERAL.—Subsection (e) of section 170 (re-
 14 lating to certain contributions of ordinary income and cap-
 15 ital gain property) is amended by adding at the end the
 16 following new paragraph:

17 “(7) APPLICATION OF PARAGRAPH (3) TO CER-
 18 TAIN CONTRIBUTIONS OF FOOD INVENTORY.—For
 19 purposes of this section—

20 “(A) EXTENSION TO INDIVIDUALS.—In the
 21 case of a charitable contribution of apparently
 22 wholesome food—

23 “(i) paragraph (3)(A) shall be applied
 24 without regard to whether the contribution
 25 is made by a C corporation, and

1 “(ii) in the case of a taxpayer other
2 than a C corporation, the aggregate
3 amount of such contributions from any
4 trade or business (or interest therein) of
5 the taxpayer for any taxable year which
6 may be taken into account under this sec-
7 tion shall not exceed 10 percent of the tax-
8 payer’s net income from any such trade or
9 business, computed without regard to this
10 section, for such taxable year.

11 “(B) LIMITATION ON REDUCTION.—In the
12 case of a charitable contribution of apparently
13 wholesome food, notwithstanding paragraph
14 (3)(B), the amount of the reduction determined
15 under paragraph (1)(A) shall not exceed the
16 amount by which the fair market value of such
17 property exceeds twice the basis of such prop-
18 erty.

19 “(C) DETERMINATION OF BASIS.—If a
20 taxpayer—

21 “(i) does not account for inventories
22 under section 471, and

23 “(ii) is not required to capitalize indi-
24 rect costs under section 263A,

1 the taxpayer may elect, solely for purposes of
2 paragraph (3)(B), to treat the basis of any ap-
3 parently wholesome food as being equal to 25
4 percent of the fair market value of such food.

5 “(D) DETERMINATION OF FAIR MARKET
6 VALUE.—In the case of a charitable contribu-
7 tion of apparently wholesome food which is a
8 qualified contribution (within the meaning of
9 paragraph (3), as modified by subparagraph
10 (A) of this paragraph) and which, solely by rea-
11 son of internal standards of the taxpayer or
12 lack of market, cannot or will not be sold, the
13 fair market value of such contribution shall be
14 determined—

15 “(i) without regard to such internal
16 standards or such lack of market and

17 “(ii) by taking into account the price
18 at which the same or substantially the
19 same food items (as to both type and qual-
20 ity) are sold by the taxpayer at the time of
21 the contribution (or, if not so sold at such
22 time, in the recent past).

23 “(E) APPARENTLY WHOLESOME FOOD.—
24 For purposes of this paragraph, the term ‘ap-
25 parently wholesome food’ has the meaning given

1 such term by section 22(b)(2) of the Bill Emer-
 2 son Good Samaritan Food Donation Act (42
 3 U.S.C. 1791(b)(2)), as in effect on the date of
 4 the enactment of this paragraph.”.

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

8 **SEC. 8. COORDINATE FARMERS AND FISHERMEN INCOME**
 9 **AVERAGING AND THE ALTERNATIVE MIN-**
 10 **IMUM TAX.**

11 (a) IN GENERAL.—Section 55(c) (defining regular
 12 tax) is amended by redesignating paragraph (2) as para-
 13 graph (3) and by inserting after paragraph (1) the fol-
 14 lowing new paragraph:

15 “(2) COORDINATION WITH INCOME AVERAGING
 16 FOR FARMERS AND FISHERMEN.—Solely for pur-
 17 poses of this section, section 1301 (relating to aver-
 18 aging of farm and fishing income) shall not apply in
 19 computing the regular tax.”.

20 (b) ALLOWING INCOME AVERAGING FOR FISHER-
 21 MEN.—

22 (1) IN GENERAL.—Section 1301(a) is amended
 23 by striking “farming business” and inserting “farm-
 24 ing business or fishing business”.

25 (2) DEFINITION OF ELECTED FARM INCOME.—

1 (A) IN GENERAL.—Clause (i) of section
 2 1301(b)(1)(A) is amended by inserting “or fish-
 3 ing business” before the semicolon.

4 (B) CONFORMING AMENDMENT.—Subpara-
 5 graph (B) of section 1301(b)(1) is amended by
 6 inserting “or fishing business” after “farming
 7 business” both places it occurs.

8 (3) DEFINITION OF FISHING BUSINESS.—Sec-
 9 tion 1301(b) is amended by adding at the end the
 10 following new paragraph:

11 “(4) FISHING BUSINESS.—The term ‘fishing
 12 business’ means the conduct of commercial fishing
 13 as defined in section 3 of the Magnuson-Stevens
 14 Fishery Conservation and Management Act (16
 15 U.S.C. 1802).”.

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

19 **SEC. 9. MODIFICATION TO COOPERATIVE MARKETING**
 20 **RULES TO INCLUDE VALUE ADDED PROC-**
 21 **ESSING INVOLVING ANIMALS.**

22 (a) IN GENERAL.—Section 1388 (relating to defini-
 23 tions and special rules) is amended by adding at the end
 24 the following new subsection:

1 “(k) COOPERATIVE MARKETING INCLUDES VALUE-
 2 ADDED PROCESSING INVOLVING ANIMALS.—For pur-
 3 poses of section 521 and this subchapter, the term ‘mar-
 4 keting the products of members or other producers’ in-
 5 cludes feeding the products of members or other producers
 6 to cattle, hogs, fish, chickens, or other animals and selling
 7 the resulting animals or animal products.”.

8 (b) CONFORMING AMENDMENT.—Section 521(b) is
 9 amended by adding at the end the following new para-
 10 graph:

11 “(7) CROSS REFERENCE.—

**“For treatment of value-added processing involv-
 ing animals, see section 1388(k).”.**

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

15 **SEC. 10. EXTENSION OF DECLARATORY JUDGMENT PROCE-**
 16 **DURES TO FARMERS’ COOPERATIVE ORGANI-**
 17 **ZATIONS.**

18 (a) IN GENERAL.—Section 7428(a)(1) (relating to
 19 declaratory judgments of tax exempt organizations) is
 20 amended by striking “or” at the end of subparagraph (B)
 21 and by adding at the end the following new subparagraph:

22 “(D) with respect to the initial classifica-
 23 tion or continuing classification of a cooperative

1 as described in section 521(b) which is exempt
 2 from tax under section 521(a), or”.

3 (b) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply with respect to pleadings filed after
 5 the date of the enactment of this Act.

6 **SEC. 11. SMALL ETHANOL PRODUCER CREDIT.**

7 (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO
 8 PATRONS OF A COOPERATIVE.—Section 40(g) (relating to
 9 alcohol used as fuel) is amended by adding at the end the
 10 following new paragraph:

11 “(6) ALLOCATION OF SMALL ETHANOL PRO-
 12 DUCER CREDIT TO PATRONS OF COOPERATIVE.—

13 “(A) ELECTION TO ALLOCATE.—

14 “(i) IN GENERAL.—In the case of a
 15 cooperative organization described in sec-
 16 tion 1381(a), any portion of the credit de-
 17 termined under subsection (a)(3) for the
 18 taxable year may, at the election of the or-
 19 ganization, be apportioned pro rata among
 20 patrons of the organization on the basis of
 21 the quantity or value of business done with
 22 or for such patrons for the taxable year.

23 “(ii) FORM AND EFFECT OF ELEC-
 24 TION.—An election under clause (i) for any
 25 taxable year shall be made on a timely

1 filed return for such year. Such election,
2 once made, shall be irrevocable for such
3 taxable year.

4 “(B) TREATMENT OF ORGANIZATIONS AND
5 PATRONS.—The amount of the credit appor-
6 tioned to patrons under subparagraph (A)—

7 “(i) shall not be included in the
8 amount determined under subsection (a)
9 with respect to the organization for the
10 taxable year,

11 “(ii) shall be included in the amount
12 determined under subsection (a) for the
13 taxable year of each patron for which the
14 patronage dividends for the taxable year
15 described in subparagraph (A) are included
16 in gross income, and

17 “(iii) shall be included in gross income
18 of such patrons for the taxable year in the
19 manner and to the extent provided in sec-
20 tion 87.

21 “(C) SPECIAL RULES FOR DECREASE IN
22 CREDITS FOR TAXABLE YEAR.—If the amount
23 of the credit of a cooperative organization de-
24 termined under subsection (a)(3) for a taxable
25 year is less than the amount of such credit

shown on the return of the cooperative organization for such year, an amount equal to the excess of—

“(i) such reduction, over

“(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.”.

(b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER CREDIT.—

(1) DEFINITION OF SMALL ETHANOL PRODUCER.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by striking “30,000,000” each place it appears and inserting “60,000,000”.

(2) SMALL ETHANOL PRODUCER CREDIT NOT A PASSIVE ACTIVITY CREDIT.—Clause (i) of section 469(d)(2)(A) is amended by striking “subpart D” and inserting “subpart D, other than section 40(a)(3),”.

1 (3) ALLOWING CREDIT AGAINST ENTIRE REG-
2 ULAR TAX AND MINIMUM TAX.—

3 (A) IN GENERAL.—Subsection (c) of sec-
4 tion 38 (relating to limitation based on amount
5 of tax) is amended by redesignating paragraph
6 (4) as paragraph (5) and by inserting after
7 paragraph (3) the following new paragraph:

8 “(4) SPECIAL RULES FOR SMALL ETHANOL
9 PRODUCER CREDIT.—

10 “(A) IN GENERAL.—In the case of the
11 small ethanol producer credit—

12 “(i) this section and section 39 shall
13 be applied separately with respect to the
14 credit, and

15 “(ii) in applying paragraph (1) to the
16 credit—

17 “(I) the amounts in subpara-
18 graphs (A) and (B) thereof shall be
19 treated as being zero, and

20 “(II) the limitation under para-
21 graph (1) (as modified by subclause
22 (I)) shall be reduced by the credit al-
23 lowed under subsection (a) for the
24 taxable year (other than the small
25 ethanol producer credit).

1 “(B) SMALL ETHANOL PRODUCER CRED-
 2 IT.—For purposes of this subsection, the term
 3 ‘small ethanol producer credit’ means the credit
 4 allowable under subsection (a) by reason of sec-
 5 tion 40(a)(3).”.

6 (B) CONFORMING AMENDMENTS.—Sub-
 7 clause (II) of section 38(c)(2)(A)(ii) and sub-
 8 clause (II) of section 38(c)(3)(A)(ii) are each
 9 amended by inserting “or the small ethanol pro-
 10 ducer credit” after “employee credit”.

11 (4) SMALL ETHANOL PRODUCER CREDIT NOT
 12 ADDED BACK TO INCOME UNDER SECTION 87.—Sec-
 13 tion 87 (relating to income inclusion of alcohol fuel
 14 credit) is amended to read as follows:

15 **“SEC. 87. ALCOHOL FUEL CREDIT.**

16 “Gross income includes an amount equal to the sum
 17 of—

18 “(1) the amount of the alcohol mixture credit
 19 determined with respect to the taxpayer for the tax-
 20 able year under section 40(a)(1), and

21 “(2) the alcohol credit determined with respect
 22 to the taxpayer for the taxable year under section
 23 40(a)(2).”.

24 (c) CONFORMING AMENDMENT.—Section 1388 (re-
 25 lating to definitions and special rules for cooperative orga-

1 nizations) is amended by adding at the end the following
 2 new subsection:

3 “(k) CROSS REFERENCE.—For provisions relating to
 4 the apportionment of the alcohol fuels credit between coop-
 5 erative organizations and their patrons, see section
 6 40(g)(6).”.

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

10 **SEC. 12. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**
 11 **TIVES WITHOUT REDUCING PATRONAGE**
 12 **DIVIDENDS.**

13 (a) IN GENERAL.—Subsection (a) of section 1388
 14 (relating to patronage dividend defined) is amended by
 15 adding at the end the following new sentence: “For pur-
 16 poses of paragraph (3), net earnings shall not be reduced
 17 by amounts paid during the year as dividends on capital
 18 stock or other proprietary capital interests of the organiza-
 19 tion to the extent that the articles of incorporation or by-
 20 laws of such organization or other contract with patrons
 21 provide that such dividends are in addition to amounts
 22 otherwise payable to patrons which are derived from busi-
 23 ness done with or for patrons during the taxable year.”.

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to distributions in taxable years
 3 beginning after the date of the enactment of this Act.

4 **SEC. 13. SPECIAL RULES FOR LIVESTOCK SOLD ON AC-**
 5 **COUNT OF WEATHER-RELATED CONDITIONS.**

6 (a) RULES FOR REPLACEMENT OF INVOLUNTARILY
 7 CONVERTED LIVESTOCK.—Subsection (e) of section 1033
 8 (relating to involuntary conversions) is amended—

9 (1) by striking “CONDITIONS.—For purposes”
 10 and inserting “CONDITIONS.—

11 “(1) IN GENERAL.—For purposes”, and

12 (2) by adding at the end the following new
 13 paragraph:

14 “(2) EXTENSION OF REPLACEMENT PERIOD.—

15 “(A) IN GENERAL.—In the case of
 16 drought, flood, or other weather-related condi-
 17 tions described in paragraph (1) which result in
 18 the area being designated as eligible for assist-
 19 ance by the Federal Government, subsection
 20 (a)(2)(B) shall be applied with respect to any
 21 converted property by substituting ‘4 years’ for
 22 ‘2 years’.

23 “(B) FURTHER EXTENSION BY SEC-
 24 RETARY.—The Secretary may extend on a re-
 25 gional basis the period for replacement under

1 this section (after the application of subpara-
2 graph (A)) for such additional time as the Sec-
3 retary determines appropriate if the weather-re-
4 lated conditions which resulted in such applica-
5 tion continue for more than 3 years.”.

6 (b) INCOME INCLUSION RULES.—Section 451(e) (re-
7 lating to special rule for proceeds from livestock sold on
8 account of drought, flood, or other weather-related condi-
9 tions) is amended by adding at the end the following new
10 paragraph:

11 “(3) SPECIAL ELECTION RULES.—If section
12 1033(e)(2) applies to a sale or exchange of livestock
13 described in paragraph (1), the election under para-
14 graph (1) shall be deemed valid if made during the
15 replacement period described in such section.”.

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

○