

Calendar No. 21

108TH CONGRESS
1ST SESSION

S. 414

To provide an economic stimulus package, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2003

Mr. DASCHLE introduced the following bill; which was read the first time

FEBRUARY 24, 2003

Read the second time and placed on the calendar

A BILL

To provide an economic stimulus package, 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; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Economic Recovery Act of 2003”.

7 (b) AMENDMENT OF 1986 CODE.—Except as other-
8 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment
 2 to, or repeal of, a section or other provision, the reference
 3 shall be considered to be made to a section or other provi-
 4 sion of the Internal Revenue Code of 1986.

5 (c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—BROAD-BASED TAX CUT

Sec. 101. Broad-based tax cut.

TITLE II—BUSINESS TAX CUT

Sec. 201. Increased bonus depreciation.

Sec. 202. Modifications to expensing under section 179.

Sec. 203. Credit for employee health insurance expenses.

Sec. 204. Broadband Internet access tax credit.

TITLE III—STATE FISCAL RELIEF

Sec. 301. General revenue sharing with States and their local governments.

Sec. 302. Homeland security.

Sec. 303. Funding for education.

Sec. 304. Temporary State FMAP relief.

Sec. 305. Funding for transportation infrastructure.

TITLE IV—UNEMPLOYMENT ASSISTANCE

Subtitle A—Additional Weeks of Temporary Extended Unemployment
Compensation

Sec. 401. Entitlement to additional weeks of temporary extended unemployment
compensation.

Subtitle B—Temporary Enhanced Regular Unemployment Compensation

Sec. 411. Federal-State agreements.

Sec. 412. Payments to States having agreements under this title.

Sec. 413. Financing provisions.

Sec. 414. Definitions.

Sec. 415. Applicability.

Sec. 416. Coordination with the Temporary Extended Unemployment Com-
pensation Act of 2002.

TITLE V—LONG-TERM FISCAL DISCIPLINE

Subtitle A—Provisions Designed To Curtail Tax Shelters

Sec. 501. Clarification of economic substance doctrine.

Sec. 502. Penalty for failing to disclose reportable transaction.

Sec. 503. Accuracy-related penalty for listed transactions and other reportable
transactions having a significant tax avoidance purpose.

- Sec. 504. Penalty for understatements attributable to transactions lacking economic substance, etc.
- Sec. 505. Modifications of substantial understatement penalty for nonreportable transactions.
- Sec. 506. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
- Sec. 507. Disclosure of reportable transactions.
- Sec. 508. Modifications to penalty for failure to register tax shelters.
- Sec. 509. Modification of penalty for failure to maintain lists of investors.
- Sec. 510. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
- Sec. 511. Understatement of taxpayer's liability by income tax return preparer.
- Sec. 512. Penalty on failure to report interests in foreign financial accounts.
- Sec. 513. Frivolous tax submissions.
- Sec. 514. Regulation of individuals practicing before the Department of Treasury.
- Sec. 515. Penalty on promoters of tax shelters.
- Sec. 516. Statute of limitations for taxable years for which listed transactions not reported.
- Sec. 517. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.
- Sec. 518. Authorization of appropriations for tax law enforcement.

Subtitle B—Other Provisions

- Sec. 521. Affirmation of consolidated return regulation authority.
- Sec. 522. Signing of corporate tax returns by chief executive officer.
- Sec. 523. Disclosure of tax shelters to corporate audit committee.

Subtitle C—Budget Points of Order

- Sec. 531. Extension of pay-as-you-go enforcement in the Senate.

1 **TITLE I—BROAD-BASED TAX CUT**

2 **SEC. 101. BROAD-BASED TAX CUT.**

- 3 (a) IN GENERAL.—The Secretary of the Treasury
- 4 shall pay, out of any money in the Treasury not otherwise
- 5 appropriated, to each eligible taxpayer an amount equal
- 6 to 10 percent of the eligible portion of the taxpayer's ad-
- 7 justed gross income (as defined in section 62 of the Inter-
- 8 nal Revenue Code of 1986) for a taxable year beginning
- 9 in 2002.

1 (b) ELIGIBLE TAXPAYER.—For purposes of this sec-
2 tion, the term “eligible taxpayer” means any individual
3 other than—

4 (1) any estate or trust,

5 (2) any nonresident alien, or

6 (3) any individual with respect to whom a de-
7 duction under section 151 of such Code is allowable
8 to another taxpayer for a taxable year beginning in
9 2003.

10 (c) ELIGIBLE PORTION.—For purposes of this sec-
11 tion—

12 (1) IN GENERAL.—With respect to each eligible
13 taxpayer, the eligible portion shall be equal to the
14 sum of—

15 (A) \$3,000 (\$6,000 in the case of a tax-
16 payer filing a joint return under section 6013
17 of such Code), plus

18 (B) \$3,000 for each qualifying child of the
19 taxpayer, not to exceed \$6,000.

20 (2) QUALIFYING CHILD.—The term “qualifying
21 child” has the meaning given such term by section
22 24(c) of such Code.

23 (d) REMITTANCE OF PAYMENT.—The Secretary of
24 the Treasury shall remit the payment described in sub-

1 section (a) to the taxpayer as soon as practicable after
 2 the date of the enactment of this section.

3 **TITLE II—BUSINESS TAX CUT**

4 **SEC. 201. INCREASED BONUS DEPRECIATION.**

5 (a) IN GENERAL.—Subsection (k) of section 168 (re-
 6 lating to accelerated cost recovery system) is amended—

7 (1) by adding at the end of paragraph (1) the
 8 following new flush sentence:

9 “In the case of any qualified property acquired by
 10 the taxpayer pursuant to a written binding contract
 11 which was entered into after December 31, 2002,
 12 subparagraph (A) shall be applied by substituting
 13 ‘50 percent’ for ‘30 percent’.”,

14 (2) by striking “September 11, 2004” each
 15 place it appears and inserting “January 1, 2004”,

16 (3) by striking “SEPTEMBER 11, 2004” and in-
 17 serting “JANUARY 1, 2004”, and

18 (4) by striking “PRE-SEPTEMBER 11, 2004” and
 19 inserting “PRE-JANUARY 1, 2004”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) The heading for clause (i) of section
 22 1400L(b)(2)(C) of the Internal Revenue Code of
 23 1986 is amended by striking “30 PERCENT ADDI-
 24 TIONAL” and inserting “ADDITIONAL”.

(2) Section 1400L(b)(2)(D) of such Code is amended by inserting “(as in effect on the day after the date of the enactment of this section)” after “section 168(k)(2)(D)”.

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

8 **SEC. 202. MODIFICATIONS TO EXPENSING UNDER SECTION**
9 **179.**

10 (a) INCREASE OF AMOUNT WHICH MAY BE EX-
11 PENSED.—

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

15 “(1) DOLLAR LIMITATION.—The aggregate cost
16 which may be taken into account under subsection
17 (a) for any taxable year shall not exceed \$25,000
18 (\$75,000 in the case of any taxable year beginning
19 in 2003).”

(2) INCREASE IN PHASEOUT THRESHOLD.—
Paragraph (2) of section 179(b) is amended by
striking “\$200,000” and inserting “\$200,000
(\$325,000 in the case of any taxable year beginning
in 2003)”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to property placed in service in
 3 taxable years beginning after December 31, 2002.

4 **SEC. 203. CREDIT FOR EMPLOYEE HEALTH INSURANCE EX-**
 5 **PENSES.**

6 (a) IN GENERAL.—Subpart D of part IV of sub-
 7 chapter A of chapter 1 (relating to business-related cred-
 8 its) is amended by adding at the end the following:

9 **“SEC. 45G. EMPLOYEE HEALTH INSURANCE EXPENSES.**

10 “(a) GENERAL RULE.—For purposes of section 38,
 11 in the case of a qualified small employer, the employee
 12 health insurance expenses credit determined under this
 13 section is an amount equal to the applicable percentage
 14 of the amount paid by the taxpayer during the taxable
 15 year for qualified employee health insurance expenses.

16 “(b) APPLICABLE PERCENTAGE.—For purposes of
 17 subsection (a), the applicable percentage is equal to—

18 “(1) 50 percent in the case of an employer with
 19 less than 26 qualified employees,

20 “(2) 40 percent in the case of an employer with
 21 more than 25 but less than 36 qualified employees,
 22 and

23 “(3) 30 percent in the case of an employer with
 24 more than 35 but less than 51 qualified employees.

1 “(c) PER EMPLOYEE DOLLAR LIMITATION.—The
 2 amount of qualified employee health insurance expenses
 3 taken into account under subsection (a) with respect to
 4 any qualified employee for any taxable year shall not ex-
 5 ceed the maximum employer contribution for self-only cov-
 6 erage or family coverage (as applicable) determined under
 7 section 8906(a) of title 5, United States Code, for the cal-
 8 endar year in which such taxable year begins.

9 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
 10 poses of this section—

11 “(1) QUALIFIED SMALL EMPLOYER.—

12 “(A) IN GENERAL.—The term ‘qualified
 13 small employer’ means any small employer
 14 which provides eligibility for health insurance
 15 coverage (after any waiting period (as defined
 16 in section 9801(b)(4)) to all qualified employees
 17 of the employer.

18 “(B) SMALL EMPLOYER.—

19 “(i) IN GENERAL.—For purposes of
 20 this paragraph, the term ‘small employer’
 21 means, with respect to any calendar year,
 22 any employer if such employer employed
 23 an average of not less than 2 and not more
 24 than 50 qualified employees on business
 25 days during either of the 2 preceding cal-

endar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

“(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under clause (i) shall be based on the average number of qualified employees that it is reasonably expected such employer will employ on business days in the current calendar year.

“(2) QUALIFIED EMPLOYEE HEALTH INSURANCE EXPENSES.—

“(A) IN GENERAL.—The term ‘qualified employee health insurance expenses’ means any amount paid by an employer for health insurance coverage to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

“(B) EXCEPTION FOR AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred for health insurance coverage pursuant to a salary reduction

1 arrangement shall be taken into account under
2 subparagraph (A).

3 “(C) HEALTH INSURANCE COVERAGE.—
4 The term ‘health insurance coverage’ has the
5 meaning given such term by paragraph (1) of
6 section 9832(b) (determined by disregarding
7 the last sentence of paragraph (2) of such sec-
8 tion).

9 “(3) QUALIFIED EMPLOYEE.—The term ‘quali-
10 fied employee’ means an employee of an employer
11 who, with respect to any period, is not provided
12 health insurance coverage under—

13 “(A) a health plan of the employee’s
14 spouse,

15 “(B) title XVIII, XIX, or XXI of the So-
16 cial Security Act,

17 “(C) chapter 17 of title 38, United States
18 Code,

19 “(D) chapter 55 of title 10, United States
20 Code,

21 “(E) chapter 89 of title 5, United States
22 Code, or

23 “(F) any other provision of law.

24 “(4) EMPLOYEE—The term ‘employee’—

1 “(A) means any individual, with respect to
 2 any calendar year, who is reasonably expected
 3 to receive at least \$5,000 of compensation from
 4 the employer during such year,

5 “(B) does not include an employee within
 6 the meaning of section 401(c)(1), and

7 “(C) includes a leased employee within the
 8 meaning of section 414(n).

9 “(5) COMPENSATION.—The term ‘compensa-
 10 tion’ means amounts described in section
 11 6051(a)(3).

12 “(e) CERTAIN RULES MADE APPLICABLE.—For pur-
 13 poses of this section, rules similar to the rules of section
 14 52 shall apply.

15 “(f) DENIAL OF DOUBLE BENEFIT.—No deduction
 16 or credit under any other provision of this chapter shall
 17 be allowed with respect to qualified employee health insur-
 18 ance expenses taken into account under subsection (a).

19 “(g) TERMINATION.—This section shall not apply to
 20 taxable years beginning after December 31, 2003.”.

21 (b) CREDIT TO BE PART OF GENERAL BUSINESS
 22 CREDIT.—Section 38(b) (relating to current year business
 23 credit) is amended by striking “plus” at the end of para-
 24 graph (14), by striking the period at the end of paragraph

1 (15) and inserting “, plus”, and by adding at the end the
 2 following:

3 “(16) the employee health insurance expenses
 4 credit determined under section 45G.”.

5 (c) CREDIT ALLOWED AGAINST MINIMUM TAX.—

6 (1) IN GENERAL.—Subsection (c) of section 38
 7 (relating to limitation based on amount of tax) is
 8 amended by redesignating paragraph (3) as para-
 9 graph (4) and by inserting after paragraph (2) the
 10 following new paragraph:

11 “(3) SPECIAL RULES FOR EMPLOYEE HEALTH
 12 INSURANCE CREDIT.—

13 “(A) IN GENERAL.—In the case of the em-
 14 ployee health insurance credit—

15 “(i) this section and section 39 shall
 16 be applied separately with respect to the
 17 credit, and

18 “(ii) in applying paragraph (1) to the
 19 credit—

20 “(I) the amounts in subpara-
 21 graphs (A) and (B) thereof shall be
 22 treated as being zero, and

23 “(II) the limitation under para-
 24 graph (1) (as modified by subclause
 25 (I)) shall be reduced by the credit al-

1 lowed under subsection (a) for the
 2 taxable year (other than the employee
 3 health insurance credit).

4 “(B) EMPLOYEE HEALTH INSURANCE
 5 CREDIT.—For purposes of this subsection, the
 6 term ‘employee health insurance credit’ means
 7 the credit allowable under subsection (a) by rea-
 8 son of section 45G(a).”.

9 (2) CONFORMING AMENDMENT.—Subclause (II)
 10 of section 38(c)(2)(A)(ii) is amended by striking
 11 “(other” and all that follows through “credit)” and
 12 inserting “(other than the empowerment zone em-
 13 ployment credit or the employee health insurance
 14 credit)”.

15 (d) NO CARRYBACKS.—Subsection (d) of section 39
 16 (relating to carryback and carryforward of unused credits)
 17 is amended by adding at the end the following:

18 “(11) NO CARRYBACK OF SECTION 45G CREDIT
 19 BEFORE EFFECTIVE DATE.—No portion of the un-
 20 used business credit for any taxable year which is
 21 attributable to the employee health insurance ex-
 22 penses credit determined under section 45G may be
 23 carried back to a taxable year ending before the date
 24 of the enactment of section 45G.”.

1 (e) CLERICAL AMENDMENT.—The table of sections
 2 for subpart D of part IV of subchapter A of chapter 1
 3 is amended by adding at the end the following:

“Sec. 45G. Employee health insurance expenses.”.

4 (f) EMPLOYER OUTREACH.—The Internal Revenue
 5 Service shall, in conjunction with the Small Business Ad-
 6 ministration, develop materials and implement an edu-
 7 cational program to ensure that business personnel are
 8 aware of—

9 (1) the eligibility criteria for the tax credit pro-
 10 vided under section 45G of the Internal Revenue
 11 Code of 1986 (as added by this section),

12 (2) the methods to be used in calculating such
 13 credit,

14 (3) the documentation needed in order to claim
 15 such credit, and

16 (4) any available health plan purchasing alli-
 17 ances established under title II,

18 so that the maximum number of eligible businesses may
 19 claim the tax credit.

20 (g) EFFECTIVE DATE.—The amendments made by
 21 this section shall apply to amounts paid or incurred in tax-
 22 able years beginning after December 31, 2002.

23 **SEC. 204. BROADBAND INTERNET ACCESS TAX CREDIT.**

24 (a) IN GENERAL.—Subpart E of part IV of chapter
 25 1 (relating to rules for computing investment credit) is

1 amended by inserting after section 48 the following new
2 section:

3 **“SEC. 48A. BROADBAND INTERNET ACCESS CREDIT.**

4 “(a) GENERAL RULE.—For purposes of section 46,
5 the broadband credit for any taxable year is the sum of—

6 “(1) the current generation broadband credit,
7 plus

8 “(2) the next generation broadband credit.

9 “(b) CURRENT GENERATION BROADBAND CREDIT;
10 NEXT GENERATION BROADBAND CREDIT.—For purposes
11 of this section—

12 “(1) CURRENT GENERATION BROADBAND
13 CREDIT.—The current generation broadband credit
14 for any taxable year is equal to 10 percent of the
15 qualified expenditures incurred with respect to quali-
16 fied equipment providing current generation
17 broadband services to qualified subscribers and
18 taken into account with respect to such taxable year.

19 “(2) NEXT GENERATION BROADBAND CRED-
20 IT.—The next generation broadband credit for any
21 taxable year is equal to 20 percent of the qualified
22 expenditures incurred with respect to qualified
23 equipment providing next generation broadband
24 services to qualified subscribers and taken into ac-
25 count with respect to such taxable year.

1 “(c) WHEN EXPENDITURES TAKEN INTO AC-
2 COUNT.—For purposes of this section—

3 “(1) IN GENERAL.—Qualified expenditures with
4 respect to qualified equipment shall be taken into ac-
5 count with respect to the first taxable year in
6 which—

7 “(A) current generation broadband services
8 are provided through such equipment to quali-
9 fied subscribers, or

10 “(B) next generation broadband services
11 are provided through such equipment to quali-
12 fied subscribers.

13 “(2) LIMITATION.—

14 “(A) IN GENERAL.—Qualified expenditures
15 shall be taken into account under paragraph (1)
16 only with respect to qualified equipment—

17 “(i) the original use of which com-
18 mences with the taxpayer, and

19 “(ii) which is placed in service,
20 after December 31, 2002.

21 “(B) SALE-LEASEBACKS.—For purposes of
22 subparagraph (A), if property—

23 “(i) is originally placed in service
24 after December 31, 2002, by a person, and

1 “(ii) sold and leased back by such per-
 2 son within 3 months after the date such
 3 property was originally placed in service,
 4 such property shall be treated as originally
 5 placed in service not earlier than the date on
 6 which such property is used under the leaseback
 7 referred to in clause (ii).

8 “(d) SPECIAL ALLOCATION RULES.—

9 “(1) CURRENT GENERATION BROADBAND SERV-
 10 ICES.—For purposes of determining the current gen-
 11 eration broadband credit under subsection (a)(1)
 12 with respect to qualified equipment through which
 13 current generation broadband services are provided,
 14 if the qualified equipment is capable of serving both
 15 qualified subscribers and other subscribers, the
 16 qualified expenditures shall be multiplied by a frac-
 17 tion—

18 “(A) the numerator of which is the sum of
 19 the number of potential qualified subscribers
 20 within the rural areas and the underserved
 21 areas which the equipment is capable of serving
 22 with current generation broadband services, and

23 “(B) the denominator of which is the total
 24 potential subscriber population of the area

1 which the equipment is capable of serving with
2 current generation broadband services.

3 “(2) NEXT GENERATION BROADBAND SERV-
4 ICES.—For purposes of determining the next genera-
5 tion broadband credit under subsection (a)(2) with
6 respect to qualified equipment through which next
7 generation broadband services are provided, if the
8 qualified equipment is capable of serving both quali-
9 fied subscribers and other subscribers, the qualified
10 expenditures shall be multiplied by a fraction—

11 “(A) the numerator of which is the sum
12 of—

13 “(i) the number of potential qualified
14 subscribers within the rural areas and un-
15 derserved areas, plus

16 “(ii) the number of potential qualified
17 subscribers within the area consisting only
18 of residential subscribers not described in
19 clause (i),

20 which the equipment is capable of serving with
21 next generation broadband services, and

22 “(B) the denominator of which is the total
23 potential subscriber population of the area
24 which the equipment is capable of serving with
25 next generation broadband services.

1 “(e) DEFINITIONS.—For purposes of this section—

2 “(1) ANTENNA.—The term ‘antenna’ means
3 any device used to transmit or receive signals
4 through the electromagnetic spectrum, including sat-
5 ellite equipment.

6 “(2) CABLE OPERATOR.—The term ‘cable oper-
7 ator’ has the meaning given such term by section
8 602(5) of the Communications Act of 1934 (47
9 U.S.C. 522(5)).

10 “(3) COMMERCIAL MOBILE SERVICE CAR-
11 RIER.—The term ‘commercial mobile service carrier’
12 means any person authorized to provide commercial
13 mobile radio service as defined in section 20.3 of
14 title 47, Code of Federal Regulations.

15 “(4) CURRENT GENERATION BROADBAND SERV-
16 ICE.—The term ‘current generation broadband serv-
17 ice’ means the transmission of signals at a rate of
18 at least 1,000,000 bits per second to the subscriber
19 and at least 128,000 bits per second from the sub-
20 scriber.

21 “(5) MULTIPLEXING OR DEMULTIPLEXING.—
22 The term ‘multiplexing’ means the transmission of 2
23 or more signals over a single channel, and the term
24 ‘demultiplexing’ means the separation of 2 or more

1 signals previously combined by compatible multi-
2 plexing equipment.

3 “(6) NEXT GENERATION BROADBAND SERV-
4 ICE.—The term ‘next generation broadband service’
5 means the transmission of signals at a rate of at
6 least 22,000,000 bits per second to the subscriber
7 and at least 5,000,000 bits per second from the sub-
8 scriber.

9 “(7) NONRESIDENTIAL SUBSCRIBER.—The
10 term ‘nonresidential subscriber’ means a person who
11 purchases broadband services which are delivered to
12 the permanent place of business of such person.

13 “(8) OPEN VIDEO SYSTEM OPERATOR.—The
14 term ‘open video system operator’ means any person
15 authorized to provide service under section 653 of
16 the Communications Act of 1934 (47 U.S.C. 573).

17 “(9) OTHER WIRELESS CARRIER.—The term
18 ‘other wireless carrier’ means any person (other than
19 a telecommunications carrier, commercial mobile
20 service carrier, cable operator, open video system op-
21 erator, or satellite carrier) providing current genera-
22 tion broadband services or next generation
23 broadband service to subscribers through the wire-
24 less transmission of energy through radio or light
25 waves.

1 “(10) PACKET SWITCHING.—The term ‘packet
2 switching’ means controlling or routing the path of
3 a digitized transmission signal which is assembled
4 into packets or cells.

5 “(11) PROVIDER.—The term ‘provider’ means,
6 with respect to any qualified equipment—

7 “(A) a cable operator,

8 “(B) a commercial mobile service carrier,

9 “(C) an open video system operator,

10 “(D) a satellite carrier,

11 “(E) a telecommunications carrier, or

12 “(F) any other wireless carrier,

13 providing current generation broadband services or
14 next generation broadband services to subscribers
15 through such qualified equipment.

16 “(12) PROVISION OF SERVICES.—A provider
17 shall be treated as providing services to a subscriber
18 if—

19 “(A) a subscriber has been passed by the
20 provider’s equipment and can be connected to
21 such equipment for a standard connection fee,

22 “(B) the provider is physically able to de-
23 liver current generation broadband services or
24 next generation broadband services, as applica-
25 ble, to such subscribers without making more

1 than an insignificant investment with respect to
2 any such subscriber,

3 “(C) the provider has made reasonable ef-
4 forts to make such subscribers aware of the
5 availability of such services,

6 “(D) such services have been purchased by
7 one or more such subscribers, and

8 “(E) such services are made available to
9 such subscribers at average prices comparable
10 to those at which the provider makes available
11 similar services in any areas in which the pro-
12 vider makes available such services.

13 “(13) QUALIFIED EQUIPMENT.—

14 “(A) IN GENERAL.—The term ‘qualified
15 equipment’ means equipment which provides
16 current generation broadband services or next
17 generation broadband services—

18 “(i) at least a majority of the time
19 during periods of maximum demand to
20 each subscriber who is utilizing such serv-
21 ices, and

22 “(ii) in a manner substantially the
23 same as such services are provided by the
24 provider to subscribers through equipment

1 with respect to which no credit is allowed
2 under subsection (a)(1).

3 “(B) ONLY CERTAIN INVESTMENT TAKEN
4 INTO ACCOUNT.—Except as provided in sub-
5 paragraph (C) or (D), equipment shall be taken
6 into account under subparagraph (A) only to
7 the extent it—

8 “(i) extends from the last point of
9 switching to the outside of the unit, build-
10 ing, dwelling, or office owned or leased by
11 a subscriber in the case of a telecommuni-
12 cations carrier,

13 “(ii) extends from the customer side
14 of the mobile telephone switching office to
15 a transmission/receive antenna (including
16 such antenna) owned or leased by a sub-
17 scriber in the case of a commercial mobile
18 service carrier,

19 “(iii) extends from the customer side
20 of the headend to the outside of the unit,
21 building, dwelling, or office owned or
22 leased by a subscriber in the case of a
23 cable operator or open video system oper-
24 ator, or

1 “(iv) extends from a transmission/re-
2 ceive antenna (including such antenna)
3 which transmits and receives signals to or
4 from multiple subscribers, to a trans-
5 mission/receive antenna (including such
6 antenna) on the outside of the unit, build-
7 ing, dwelling, or office owned or leased by
8 a subscriber in the case of a satellite car-
9 rier or other wireless carrier, unless such
10 other wireless carrier is also a tele-
11 communications carrier.

12 “(C) PACKET SWITCHING EQUIPMENT.—
13 Packet switching equipment, regardless of loca-
14 tion, shall be taken into account under subpara-
15 graph (A) only if it is deployed in connection
16 with equipment described in subparagraph (B)
17 and is uniquely designed to perform the func-
18 tion of packet switching for current generation
19 broadband services or next generation
20 broadband services, but only if such packet
21 switching is the last in a series of such func-
22 tions performed in the transmission of a signal
23 to a subscriber or the first in a series of such
24 functions performed in the transmission of a
25 signal from a subscriber.

1 “(D) MULTIPLEXING AND
 2 DEMULTIPLEXING EQUIPMENT.—Multiplexing
 3 and demultiplexing equipment shall be taken
 4 into account under subparagraph (A) only to
 5 the extent it is deployed in connection with
 6 equipment described in subparagraph (B) and
 7 is uniquely designed to perform the function of
 8 multiplexing and demultiplexing packets or cells
 9 of data and making associated application
 10 adaptations, but only if such multiplexing or
 11 demultiplexing equipment is located between
 12 packet switching equipment described in sub-
 13 paragraph (C) and the subscriber’s premises.

14 “(14) QUALIFIED EXPENDITURE.—

15 “(A) IN GENERAL.—The term ‘qualified
 16 expenditure’ means any amount—

17 “(i) chargeable to capital account with
 18 respect to the purchase and installation of
 19 qualified equipment (including any up-
 20 grades thereto) for which depreciation is
 21 allowable under section 168, and

22 “(ii) incurred after December 31,
 23 2002, and before January 1, 2004.

24 “(B) CERTAIN SATELLITE EXPENDITURES
 25 EXCLUDED.—Such term shall not include any

1 expenditure with respect to the launching of
 2 any satellite equipment.

3 “(15) QUALIFIED SUBSCRIBER.—The term
 4 ‘qualified subscriber’ means—

5 “(A) with respect to the provision of cur-
 6 rent generation broadband services—

7 “(i) a nonresidential subscriber main-
 8 taining a permanent place of business in a
 9 rural area or underserved area, or

10 “(ii) a residential subscriber residing
 11 in a dwelling located in a rural area or un-
 12 derserved area which is not a saturated
 13 market, and

14 “(B) with respect to the provision of next
 15 generation broadband services—

16 “(i) a nonresidential subscriber main-
 17 taining a permanent place of business in a
 18 rural area or underserved area, or

19 “(ii) a residential subscriber.

20 “(16) RESIDENTIAL SUBSCRIBER.—The term
 21 ‘residential subscriber’ means an individual who pur-
 22 chases broadband services which are delivered to
 23 such individual’s dwelling.

24 “(17) RURAL AREA.—The term ‘rural area’
 25 means any census tract which—

1 “(A) is not within 10 miles of any incor-
2 porated or census designated place containing
3 more than 25,000 people, and

4 “(B) is not within a county or county
5 equivalent which has an overall population den-
6 sity of more than 500 people per square mile of
7 land.

8 “(18) RURAL SUBSCRIBER.—The term ‘rural
9 subscriber’ means a residential subscriber residing in
10 a dwelling located in a rural area or nonresidential
11 subscriber maintaining a permanent place of busi-
12 ness located in a rural area.

13 “(19) SATELLITE CARRIER.—The term ‘sat-
14 ellite carrier’ means any person using the facilities
15 of a satellite or satellite service licensed by the Fed-
16 eral Communications Commission and operating in
17 the Fixed-Satellite Service under part 25 of title 47
18 of the Code of Federal Regulations or the Direct
19 Broadcast Satellite Service under part 100 of title
20 47 of such Code to establish and operate a channel
21 of communications for distribution of signals, and
22 owning or leasing a capacity or service on a satellite
23 in order to provide such distribution.

1 “(20) SATURATED MARKET.—The term ‘satu-
 2 rated market’ means any census tract in which, as
 3 of the date of the enactment of this section—

4 “(A) current generation broadband services
 5 have been provided by one or more providers to
 6 85 percent or more of the total number of po-
 7 tential residential subscribers residing in dwell-
 8 ings located within such census tract, and

9 “(B) such services can be utilized—

10 “(i) at least a majority of the time
 11 during periods of maximum demand by
 12 each such subscriber who is utilizing such
 13 services, and

14 “(ii) in a manner substantially the
 15 same as such services are provided by the
 16 provider to subscribers through equipment
 17 with respect to which no credit is allowed
 18 under subsection (a)(1).

19 “(21) SUBSCRIBER.—The term ‘subscriber’
 20 means a person who purchases current generation
 21 broadband services or next generation broadband
 22 services.

23 “(22) TELECOMMUNICATIONS CARRIER.—The
 24 term ‘telecommunications carrier’ has the meaning

given such term by section 3(44) of the Communica-
tions Act of 1934 (47 U.S.C. 153(44)), but—

“(A) includes all members of an affiliated
group of which a telecommunications carrier is
a member, and

“(B) does not include a commercial mobile
service carrier.

“(23) TOTAL POTENTIAL SUBSCRIBER POPU-
LATION.—The term ‘total potential subscriber popu-
lation’ means, with respect to any area and based on
the most recent census data, the total number of po-
tential residential subscribers residing in dwellings
located in such area and potential nonresidential
subscribers maintaining permanent places of busi-
ness located in such area.

“(24) UNDERSERVED AREA.—The term ‘under-
served area’ means any census tract which is located
in—

“(A) an empowerment zone or enterprise
community designated under section 1391,

“(B) the District of Columbia Enterprise
Zone established under section 1400,

“(C) a renewal community designated
under section 1400E, or

1 “(D) a low-income community designated
2 under section 45D.

3 “(25) UNDERSERVED SUBSCRIBER.—The term
4 ‘underserved subscriber’ means a residential sub-
5 scriber residing in a dwelling located in an under-
6 served area or nonresidential subscriber maintaining
7 a permanent place of business located in an under-
8 served area.”.

9 (b) CREDIT TO BE PART OF INVESTMENT CREDIT.—
10 Section 46 (relating to the amount of investment credit)
11 is amended by striking “and” at the end of paragraph (2),
12 by striking the period at the end of paragraph (3) and
13 inserting “, and”, and by adding at the end the following:
14 “(4) the broadband Internet access credit.”

15 (c) SPECIAL RULE FOR MUTUAL OR COOPERATIVE
16 TELEPHONE COMPANIES.—Section 501(c)(12)(B) (relat-
17 ing to list of exempt organizations) is amended by striking
18 “or” at the end of clause (iii), by striking the period at
19 the end of clause (iv) and inserting “, or”, and by adding
20 at the end the following new clause:

21 “(v) from the sale of property subject
22 to a lease described in section
23 48A(c)(2)(B), but only to the extent such
24 income does not in any year exceed an
25 amount equal to the credit for qualified ex-

1 penditures which would be determined
 2 under section 48A for such year if the mu-
 3 tual or cooperative telephone company was
 4 not exempt from taxation and was treated
 5 as the owner of the property subject to
 6 such lease.”.

7 (d) CONFORMING AMENDMENT.—The table of sec-
 8 tions for subpart E of part IV of subchapter A of chapter
 9 1 is amended by inserting after the item relating to section
 10 48 the following:

“Sec. 48A. Broadband internet access credit.”.

11 (e) DESIGNATION OF CENSUS TRACTS.—

12 (1) IN GENERAL.—The Secretary of the Treas-
 13 ury shall, not later than 90 days after the date of
 14 the enactment of this Act, designate and publish
 15 those census tracts meeting the criteria described in
 16 paragraphs (17) and (24) of section 48A(e) of the
 17 Internal Revenue Code of 1986 (as added by this
 18 section). In making such designations, the Secretary
 19 of the Treasury shall consult with such other depart-
 20 ments and agencies as the Secretary determines ap-
 21 propriate.

22 (2) SATURATED MARKET.—

23 (A) IN GENERAL.—For purposes of desig-
 24 nating and publishing those census tracts meet-

ing the criteria described in subsection (e)(20)
of such section 48A—

(i) the Secretary of the Treasury shall
prescribe not later than 30 days after the
date of the enactment of this Act the form
upon which any provider which takes the
position that it meets such criteria with re-
spect to any census tract shall submit a
list of such census tracts (and any other
information required by the Secretary) not
later than 60 days after the date of the
publication of such form, and

(ii) the Secretary of the Treasury
shall publish an aggregate list of such cen-
sus tracts submitted and the applicable
providers not later than 30 days after the
last date such submissions are allowed
under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—

The Secretary of the Treasury shall not be re-
quired to publish any list of census tracts meet-
ing such criteria subsequent to the list de-
scribed in subparagraph (A)(ii).

(C) PENALTIES FOR SUBMISSION OF
FALSE INFORMATION.—The Secretary of the

1 Treasury shall designate appropriate penalties
2 for knowingly submitting false information on
3 the form described in subparagraph (A)(i).

4 (f) OTHER REGULATORY MATTERS.—

5 (1) PROHIBITION.—No Federal or State agency
6 or instrumentality shall adopt regulations or rate-
7 making procedures that would have the effect of
8 confiscating any credit or portion thereof allowed
9 under section 48A of the Internal Revenue Code of
10 1986 (as added by this section) or otherwise sub-
11 verting the purpose of this section.

12 (2) TREASURY REGULATORY AUTHORITY.—It is
13 the intent of Congress in providing the broadband
14 Internet access credit under section 48A of the In-
15 ternal Revenue Code of 1986 (as added by this sec-
16 tion) to provide incentives for the purchase, installa-
17 tion, and connection of equipment and facilities of-
18 fering expanded broadband access to the Internet for
19 users in certain low income and rural areas of the
20 United States, as well as to residential users nation-
21 wide, in a manner that maintains competitive neu-
22 trality among the various classes of providers of
23 broadband services. Accordingly, the Secretary of
24 the Treasury shall prescribe such regulations as may

1 be necessary or appropriate to carry out the pur-
 2 poses of section 48A of such Code, including—

3 (A) regulations to determine how and when
 4 a taxpayer that incurs qualified expenditures
 5 satisfies the requirements of section 48A of
 6 such Code to provide broadband services, and

7 (B) regulations describing the information,
 8 records, and data taxpayers are required to pro-
 9 vide the Secretary to substantiate compliance
 10 with the requirements of section 48A of such
 11 Code.

12 (g) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to expenditures incurred after De-
 14 cember 31, 2002, and before January 1, 2004.

15 **TITLE III—STATE FISCAL RELIEF**

16 **SEC. 301. GENERAL REVENUE SHARING WITH STATES AND** 17 **THEIR LOCAL GOVERNMENTS.**

18 (a) APPROPRIATION.—There is authorized to be ap-
 19 propriated and is appropriated to carry out this section
 20 \$15,000,000,000 for fiscal year 2003.

21 (b) ALLOTMENTS.—From the amount appropriated
 22 under subsection (a) for fiscal year 2003, the Secretary
 23 of the Treasury shall, as soon as practicable after the date
 24 of the enactment of this Act, allot to each of the States

1 as follows, except that no State shall receive less than $\frac{1}{2}$
 2 of 1 percent of such amount:

3 (1) STATE LEVEL.—\$12,000,000,000 shall be
 4 allotted among such States on the basis of the rel-
 5 ative population of each such State, as determined
 6 by the Secretary on the basis of the most recent sat-
 7 isfactory data.

8 (2) LOCAL GOVERNMENT LEVEL.—
 9 \$3,000,000,000 shall be allotted among such States
 10 as determined under paragraph (1) for distribution
 11 to the various units of general local government
 12 within such States on the basis of the relative popu-
 13 lation of each such unit within each such State, as
 14 determined by the Secretary on the basis of the most
 15 recent satisfactory data.

16 (c) DEFINITIONS.—For purposes of this section—

17 (1) STATE.—The term “State” means any of
 18 the several States, the District of Columbia, and the
 19 Commonwealth of Puerto Rico.

20 (2) UNIT OF GENERAL LOCAL GOVERNMENT.—

21 (A) IN GENERAL.—The term “unit of gen-
 22 eral local government” means—

23 (i) a county, parish, township, city, or
 24 political subdivision of a county, parish,
 25 township, or city, that is a unit of general

1 local government as determined by the Sec-
 2 retary of Commerce for general statistical
 3 purposes; and

4 (ii) the District of Columbia, the
 5 Commonwealth of Puerto Rico, and the
 6 recognized governing body of an Indian
 7 tribe or Alaskan native village that carries
 8 out substantial governmental duties and
 9 powers.

10 (B) TREATMENT OF SUBSUMED AREAS.—

11 For purposes of determining a unit of general
 12 local government under this section, the rules
 13 under section 6720(c) of title 31, United States
 14 Code, shall apply.

15 **SEC. 302. HOMELAND SECURITY.**

16 (a) SHORT TITLE; PURPOSE.—

17 (1) SHORT TITLE.—This section may be cited
 18 as the “First Responders Partnership Grant Act of
 19 2003”.

20 (2) PURPOSE.—The purpose of this section is
 21 to support first responders to protect homeland se-
 22 curity and prevent and respond to acts of terrorism.

23 (b) DEFINITIONS.—In this section:

24 (1) INDIAN TRIBE.—The term “Indian tribe”
 25 has the same meaning as in section 4(e) of the In-

1 dian Self-Determination and Education Assistance
2 Act (25 U.S.C. 450b(e)).

3 (2) LAW ENFORCEMENT OFFICER.—The term
4 “law enforcement officer” means any officer, agent,
5 or employee of a State, unit of local government,
6 public or private college or university, or Indian
7 tribe authorized by law or by a government agency
8 to engage in or supervise the prevention, detection,
9 or investigation of any violation of criminal law, or
10 authorized by law to supervise sentenced criminal of-
11 fenders.

12 (3) PUBLIC SAFETY OFFICER.—The term “pub-
13 lic safety officer” means any person serving a public
14 or private agency with or without compensation as
15 a law enforcement officer, as a firefighter, or as a
16 member of a rescue squad or ambulance crew.

17 (4) STATE.—The term “State” means each of
18 the 50 States, the District of Columbia, and the
19 Commonwealth of Puerto Rico.

20 (5) UNIT OF LOCAL GOVERNMENT.—The term
21 “unit of local government” means a county, munici-
22 pality, town, township, village, parish, borough, or
23 other unit of general government below the State
24 level.

1 (c) FIRST RESPONDERS PARTNERSHIP GRANT PRO-
2 GRAM FOR PUBLIC SAFETY OFFICERS.—

3 (1) IN GENERAL.—The Secretary of Homeland
4 Security (referred to in this section as the “Sec-
5 retary”) is authorized to make grants to States,
6 units of local government, and Indian tribes to sup-
7 port public safety officers in their efforts to protect
8 homeland security and prevent and respond to acts
9 of terrorism.

10 (2) USE OF FUNDS.—Grants awarded under
11 this subsection shall be—

12 (A) distributed directly to the State, unit
13 of local government, or Indian tribe; and

14 (B) used to fund personnel expenses,
15 equipment, training, and facilities to support
16 public safety officers in their efforts to protect
17 homeland security and prevent and respond to
18 acts of terrorism.

19 (3) ALLOCATION AND DISTRIBUTION OF
20 FUNDS.—

21 (A) SET-ASIDE FOR INDIAN TRIBES.—

22 (i) IN GENERAL.—The Secretary shall
23 reserve 1 percent of the amount appro-
24 priated for grants pursuant to this Act to
25 be used for grants to Indian tribes.

1 (ii) SELECTION OF INDIAN TRIBES.—

2 (I) IN GENERAL.—The Secretary
3 shall award grants under this sub-
4 paragraph to Indian tribes on the
5 basis of a competition conducted pur-
6 suant to specific criteria.

7 (II) RULEMAKING.—The criteria
8 under subclause (I) shall be contained
9 in a regulation promulgated by the
10 Attorney General after notice and
11 public comment.

12 (B) SET-ASIDE FOR RURAL STATES.—

13 (i) IN GENERAL.—The Secretary shall
14 reserve 5 percent of the amount appro-
15 priated for grants pursuant to this Act to
16 be used for grants to rural States.

17 (ii) SELECTION OF RURAL STATES.—
18 The Secretary shall award grants under
19 this subparagraph to rural States (as de-
20 fined in section 1501(b) of the Omnibus
21 Crime Control and Safe Streets Act of
22 1968 (42 U.S.C. 3796bb(b))).

23 (C) MINIMUM AMOUNT.—The Secretary
24 shall allocate, from the total amount appro-

1 appropriated for grants to States under this sub-
 2 section—

3 (i) not less than 0.75 percent for each
 4 State; and

5 (ii) not less than 0.25 percent for
 6 American Samoa, Guam, the Northern
 7 Mariana Islands, and the United States
 8 Virgin Islands, respectively.

9 (D) ALLOCATION TO METROPOLITAN CIT-
 10 IES AND URBAN COUNTIES.—

11 (i) ALLOCATION PERCENTAGE.—The
 12 balance of the total amount appropriated
 13 for grants to States under this subsection
 14 after allocations have been made to Indian
 15 tribes, rural States, and the minimum
 16 amount to each State pursuant to subpara-
 17 graphs (A) through (C), shall be allocated
 18 by the Secretary to metropolitan cities and
 19 urban counties.

20 (E) COMPUTATION OF AMOUNT ALLO-
 21 CATED TO METROPOLITAN CITIES.—

22 (i) COMPUTATION RATIOS.—The Sec-
 23 retary shall determine the amount to be al-
 24 located to each metropolitan city, which
 25 shall bear the same ratio to the allocation

1 for all metropolitan cities as the weighted
2 average of—

3 (I) the population of the metro-
4 politan city divided by the population
5 of all metropolitan cities;

6 (II) the potential chemical secu-
7 rity risk of the metropolitan city di-
8 vided by the potential chemical secu-
9 rity risk of all metropolitan cities;

10 (III) the proximity of the metro-
11 politan city to the nearest operating
12 nuclear power plant compared to the
13 proximity of all metropolitan cities to
14 the nearest operating nuclear power
15 plant to each such city;

16 (IV) the proximity of the metro-
17 politan cities to the nearest United
18 States land or water port compared
19 with the proximity of all metropolitan
20 cities to the nearest United States
21 land or water port to each such city;

22 (V) the proximity of the metro-
23 politan city to the nearest inter-
24 national border compared with the
25 proximity of all metropolitan cities to

1 the nearest international border to
 2 each such city; and

3 (VI) the proximity of the metro-
 4 politan city to the nearest Disaster
 5 Medical Assistance Team (referred to
 6 in this subsection as “DMAT”) com-
 7 pared with the proximity of all metro-
 8 politan cities to the nearest DMAT to
 9 each such city.

10 (ii) CLARIFICATION OF COMPUTATION
 11 RATIOS.—

12 (I) RELATIVE WEIGHT OF FAC-
 13 TOR.—In determining the average of
 14 the ratios under clause (i)—

15 (aa) the ratio involving pop-
 16 ulation shall constitute 50 per-
 17 cent of the formula in calculating
 18 the allocation; and

19 (bb) the remaining factors
 20 shall be equally weighted.

21 (II) POTENTIAL CHEMICAL SECU-
 22 RITY RISK.—If a metropolitan city is
 23 within the vulnerable zone of a worst-
 24 case chemical release (as specified in
 25 the most recent risk management

1 plans filed with the Environmental
2 Protection Agency, or another instru-
3 ment developed by the Environmental
4 Protection Agency or the Homeland
5 Security Department that captures
6 the same information for the same fa-
7 cilities), the ratio under clause (i)(II)
8 shall be 1 divided by the total number
9 of metropolitan cities that are within
10 such a zone.

11 (III) PROXIMITY AS IT PERTAINS
12 TO NUCLEAR SECURITY.—If a metro-
13 politan city is located within 50 miles
14 of an operating nuclear power plant
15 (as identified by the Nuclear Regu-
16 latory Commission), the ratio under
17 clause (i)(III) shall be 1 divided by
18 the total number of metropolitan cit-
19 ies, not to exceed 100, which are lo-
20 cated within 50 miles of an operating
21 nuclear power plant.

22 (IV) PROXIMITY AS IT PERTAINS
23 TO PORT SECURITY.—If a metropoli-
24 tan city is located within 50 miles of
25 1 of the 100 largest United States

ports (as stated by the Department of Transportation, Bureau of Transportation Statistics, United States Port Report by All Land Modes), or within 50 miles of 1 of the 30 largest United States water ports by metric tons and value (as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics), the ratio under clause (i)(IV) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of a United States land or water port.

(V) PROXIMITY TO INTERNATIONAL BORDER.—If a metropolitan city is located within 50 miles of an international border, the ratio under clause (i)(V) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of an international border.

(VI) PROXIMITY TO DISASTER MEDICAL ASSISTANCE TEAM.—If a

1 metropolitan city is located within 50
2 miles of a DMAT, as organized by the
3 National Disaster Medical System, the
4 ratio under clause (i)(VI) shall be 1
5 divided by the total number of metro-
6 politan cities that are located within
7 50 miles of a DMAT.

8 (F) COMPUTATION OF AMOUNT ALLO-
9 CATED TO URBAN COUNTIES.—

10 (i) COMPUTATION RATIOS.—The Sec-
11 retary shall determine the amount to be al-
12 located to each urban county, which shall
13 bear the same ratio to the allocation for all
14 urban counties as the weighted average
15 of—

16 (I) the population of the urban
17 county divided by the population of all
18 urban counties;

19 (II) the potential chemical secu-
20 rity risk of the urban county divided
21 by the potential chemical security risk
22 of all urban counties;

23 (III) the proximity of the urban
24 county to the nearest operating nu-
25 clear power plant compared to the

1 proximity of all urban counties to the
2 nearest operating nuclear power plant
3 to each such city;

4 (IV) the proximity of the urban
5 counties to the nearest United States
6 land or water port compared with the
7 proximity of all urban counties to the
8 nearest United States land or water
9 port to each such city;

10 (V) the proximity of the urban
11 county to the nearest international
12 border compared with the proximity of
13 all urban counties to the nearest
14 international border to each such city;
15 and

16 (VI) the proximity of the urban
17 county to the nearest Disaster Med-
18 ical Assistance Team (referred to in
19 this subsection as “DMAT”) com-
20 pared with the proximity of all urban
21 counties to the nearest DMAT to each
22 such city.

23 (ii) CLARIFICATION OF COMPUTATION

24 RATIOS.—

1 (I) RELATIVE WEIGHT OF FAC-
2 TOR.—In determining the average of
3 the ratios under clause (i)—

4 (aa) the ratio involving pop-
5 ulation shall constitute 50 per-
6 cent of the formula in calculating
7 the allocation; and

8 (bb) the remaining factors
9 shall be equally weighted.

10 (II) POTENTIAL CHEMICAL SECUR-
11 ITY RISK.—If an urban county is
12 within the vulnerable zone of a worst-
13 case chemical release (as specified in
14 the most recent risk management
15 plans filed with the Environmental
16 Protection Agency, or another instru-
17 ment developed by the Environmental
18 Protection Agency or the Homeland
19 Security Department that captures
20 the same information for the same fa-
21 cilities), the ratio under clause (i)(II)
22 shall be 1 divided by the total number
23 of urban counties that are within such
24 a zone.

1 (III) PROXIMITY AS IT PERTAINS
2 TO NUCLEAR SECURITY.—If an urban
3 county is located within 50 miles of
4 an operating nuclear power plant (as
5 identified by the Nuclear Regulatory
6 Commission), the ratio under clause
7 (i)(III) shall be 1 divided by the total
8 number of urban counties, not to ex-
9 ceed 100, which are located within 50
10 miles of an operating nuclear power
11 plant.

12 (IV) PROXIMITY AS IT PERTAINS
13 TO PORT SECURITY.—If an urban
14 county is located within 50 miles of 1
15 of the 100 largest United States ports
16 (as stated by the Department of
17 Transportation, Bureau of Transpor-
18 tation Statistics, United States Port
19 Report by All Land Modes), or within
20 50 miles of 1 of the 30 largest United
21 States water ports by metric tons and
22 value (as stated by the Department of
23 Transportation, Maritime Administra-
24 tion, United States Foreign Water-
25 borne Transportation Statistics), the

ratio under clause (i)(IV) shall be 1 divided by the total number of urban counties that are located within 50 miles of a United States land or water port.

(V) PROXIMITY TO INTERNATIONAL BORDER.—If an urban county is located within 50 miles of an international border, the ratio under clause (i)(V) shall be 1 divided by the total number of urban counties that are located within 50 miles of an international border.

(VI) PROXIMITY TO DISASTER MEDICAL ASSISTANCE TEAM.—If an urban county is located within 50 miles of a DMAT, as organized by the National Disaster Medical System, the ratio under clause (i)(VI) shall be 1 divided by the total number of urban counties that are located within 50 miles of a DMAT.

(G) EXCLUSIONS.—

(i) IN GENERAL.—In computing amounts or exclusions under subparagraph

(F) with respect to any urban county, units of general local government located in the county shall be excluded if the populations of such units are not counted to determine the eligibility of the urban county to receive a grant under this subsection.

(ii) INDEPENDENT CITIES.—

(I) IN GENERAL.—In computing amounts under clause (i), there shall be included any independent city (as defined by the Bureau of the Census) which—

(aa) is not part of any coun-

ty;

(bb) is not eligible for a

grant;

(cc) is contiguous to the

urban county;

(dd) has entered into co-

operation agreements with the

urban county which provide that

the urban county is to undertake

or to assist in the undertaking of

essential community development

and housing assistance activities

1 with respect to such independent
2 city; and

3 (ee) is not included as a
4 part of any other unit of general
5 local government for purposes of
6 this subsection.

7 (II) LIMITATION.—Any inde-
8 pendent city that is included in the
9 computation under this clause (i) shall
10 not be eligible to receive assistance
11 under this subsection for the fiscal
12 year for which such computation is
13 used to allocate such assistance.

14 (H) INCLUSION.—

15 (i) LOCAL GOVERNMENT STRADDLING
16 COUNTY LINE.—In computing amounts or
17 exclusions under subparagraph (F) with
18 respect to any urban county, all of the area
19 of any unit of local government shall be in-
20 cluded, which is part of, but is not located
21 entirely within the boundaries of, such
22 urban county if—

23 (I) the part of such unit of local
24 government that is within the bound-
25 aries of such urban county would oth-

erwise be included in computing the amount for such urban county under this paragraph; and

(II) the part of such unit of local government that is not within the boundaries of such urban county is not included as a part of any other unit of local government for the purpose of this paragraph.

(ii) USE OF GRANT FUNDS OUTSIDE URBAN COUNTY.—Any amount received under this subsection by an urban county described under clause (i) may be used with respect to the part of such unit of local government that is outside the boundaries of such urban county.

(I) POPULATION.—

(i) EFFECT OF CONSOLIDATION.—Where data are available, the amount to be allocated to a metropolitan city that has been formed by the consolidation of 1 or more metropolitan cities within an urban county shall be equal to the sum of the amounts that would have been allocated to the urban county or cities and the balance

1 of the consolidated government if such con-
2 solidation had not occurred.

3 (ii) LIMITATION.—Clause (i) shall
4 apply only to a consolidation that—

5 (I) included all metropolitan cit-
6 ies that received grants under this
7 subsection for the fiscal year pre-
8 ceding such consolidation and that
9 were located within the urban county;

10 (II) included the entire urban
11 county that received a grant under
12 this subsection for the fiscal year pre-
13 ceding such consolidation; and

14 (III) took place on or after Janu-
15 ary 1, 2003

16 (iii) GROWTH RATE.—The population
17 growth rate of all metropolitan cities de-
18 fined in this subsection shall be based on
19 the population of—

20 (I) metropolitan cities other than
21 consolidated governments the grant
22 for which is determined under this
23 paragraph; and

1 (II) cities that were metropolitan
2 cities before their incorporation into
3 consolidated governments.

4 (4) MAXIMUM AMOUNT PER GRANTEE.—

5 (A) IN GENERAL.—A qualifying State, unit
6 of local government, or Indian tribe may not re-
7 ceive more than 5 percent of the total amount
8 appropriated for grants under this section.

9 (B) AGGREGATE AMOUNT PER STATE.—A
10 State, together with the grantees within the
11 State may not receive more than 20 percent of
12 the total amount appropriated for grants under
13 this section.

14 (5) MATCHING FUNDS.—

15 (A) IN GENERAL.—The portion of the
16 costs of a program provided by a grant under
17 paragraph (1) may not exceed 90 percent.

18 (B) WAIVER.—If the Secretary determines
19 that a grantee is experiencing fiscal hardship,
20 the Secretary may waive, in whole or in part,
21 the matching requirement under subparagraph
22 (A).

23 (C) EXCEPTION.—Any funds appropriated
24 by Congress for the activities of any agency of
25 an Indian tribal government or the Bureau of

1 Indian Affairs performing law enforcement
2 functions on any Indian lands may be used to
3 provide the non-Federal share of a matching re-
4 quirement under subparagraph (A).

5 (d) APPLICATIONS.—

6 (1) IN GENERAL.—To request a grant under
7 this section, the chief executive of a State, unit of
8 local government, or Indian tribe shall submit an ap-
9 plication to the Secretary of the Bureau of Justice
10 Assistance in such form and containing such infor-
11 mation as the Secretary may reasonably require.

12 (2) REGULATIONS.—Not later than 90 days
13 after the date of enactment of this Act, the Attorney
14 General shall promulgate regulations to implement
15 this section (including the information that must be
16 included and the requirements that the States, units
17 of local government, and Indian tribes must meet) in
18 submitting the applications required under this sec-
19 tion.

20 (e) AUTHORIZATION AND APPROPRIATIONS.—There
21 are authorized to be appropriated and are appropriated
22 \$5,000,000,000 for fiscal year 2003 to carry out this sec-
23 tion.

1 **SEC. 303. FUNDING FOR EDUCATION.**

2 (a) BASIC PROGRAMS OPERATED BY LOCAL EDU-
3 CATIONAL AGENCIES.—In addition to amounts appro-
4 priated under the Departments of Labor, Health and
5 Human Services, and Education, and Related Agencies
6 Appropriations Act, 2003, the following sums are appro-
7 priated, out of any money in the Treasury not otherwise
8 appropriated, for the fiscal year ending September 30,
9 2003, for carrying out part A of title I of the Elementary
10 and Secondary Education Act of 1965, \$4,250,000,000.
11 The Secretary of Education shall reserve 1 percent of such
12 amount for the Secretary of the Interior for programs
13 under part B of title I of such Act in schools operated
14 or funded by the Bureau of Indian Affairs.

15 (b) HIGH QUALITY TEACHERS AND PRINCIPALS.—
16 In addition to amounts appropriated under the Depart-
17 ments of Labor, Health and Human Services, and Edu-
18 cation, and Related Agencies Appropriations Act, 2003,
19 the following sums are appropriated, out of any money in
20 the Treasury not otherwise appropriated, for the fiscal
21 year ending September 30, 2003, for carrying out part
22 A of title II (other than subpart 5) of the Elementary and
23 Secondary Education Act of 1965, \$550,000,000. The
24 Secretary of Education shall reserve 1 percent of such
25 amount for the Secretary of the Interior for programs

1 under such part A in schools operated or funded by the
2 Bureau of Indian Affairs.

3 (c) LANGUAGE INSTRUCTION FOR LIMITED ENGLISH
4 PROFICIENT AND IMMIGRANT STUDENTS.—In addition to
5 amounts appropriated under the Departments of Labor,
6 Health and Human Services, and Education, and Related
7 Agencies Appropriations Act, 2003, the following sums are
8 appropriated, out of any money in the Treasury not other-
9 wise appropriated, for the fiscal year ending September
10 30, 2003, for carrying out title III (other than subpart
11 4 of part B) of the Elementary and Secondary Education
12 Act of 1965, \$410,000,000. The Secretary of Education
13 shall reserve 1 percent of such amount for payment of en-
14 tities under section 3112(a) of such Act.

15 (d) 21ST CENTURY COMMUNITY LEARNING CEN-
16 TERS.—In addition to amounts appropriated under the
17 Departments of Labor, Health and Human Services, and
18 Education, and Related Agencies Appropriations Act,
19 2003, the following sums are appropriated, out of any
20 money in the Treasury not otherwise appropriated, for the
21 fiscal year ending September 30, 2003, for carrying out
22 part B of title IV of the Elementary and Secondary Edu-
23 cation Act of 1965, \$500,000,000. The Secretary of Edu-
24 cation shall reserve 1 percent of such amount for pay-

1 ments to the Bureau of Indian Affairs to enable the Bu-
2 reau to carry out the purposes of such part B.

3 (e) RURAL EDUCATION INITIATIVE.—In addition to
4 amounts appropriated under the Departments of Labor,
5 Health and Human Services, and Education, and Related
6 Agencies Appropriations Act, 2003, the following sums are
7 appropriated, out of any money in the Treasury not other-
8 wise appropriated, for the fiscal year ending September
9 30, 2003, for carrying out part B of title VI of the Ele-
10 mentary and Secondary Education Act of 1965,
11 \$131,000,000.

12 (f) STUDENT FINANCIAL ASSISTANCE.—

13 (1) IN GENERAL.—In addition to amounts ap-
14 propriated under the Departments of Labor, Health
15 and Human Services, and Education, and Related
16 Agencies Appropriations Act, 2003, the following
17 sums are appropriated, out of any money in the
18 Treasury not otherwise appropriated, for the fiscal
19 year ending September 30, 2003, for carrying out
20 subpart 1 of part A of title IV of the Higher Edu-
21 cation Act of 1965, \$200,000,000.

22 (2) MAXIMUM PELL GRANT.—The maximum
23 Pell Grant for which a student shall be eligible dur-
24 ing award year 2003–2004 shall be \$4,100.

1 **SEC. 304. TEMPORARY STATE FMAP RELIEF.**

2 (a) PERMITTING MAINTENANCE OF FISCAL YEAR
3 2002 FMAP FOR LAST 3 CALENDAR QUARTERS OF FIS-
4 CAL YEAR 2003.—Notwithstanding any other provision of
5 law, but subject to subsection (e), if the FMAP deter-
6 mined without regard to this subsection for a State for
7 fiscal year 2003 is less than the FMAP as so determined
8 for fiscal year 2002, the FMAP for the State for fiscal
9 year 2002 shall be substituted for the State's FMAP for
10 the second, third, and fourth calendar quarters of fiscal
11 year 2003, before the application of this section.

12 (b) PERMITTING MAINTENANCE OF FISCAL YEAR
13 2003 FMAP FOR FIRST CALENDAR QUARTER OF FISCAL
14 YEAR 2004.—Notwithstanding any other provision of law,
15 but subject to subsection (e), if the FMAP determined
16 without regard to this subsection for a State for fiscal year
17 2004 is less than the FMAP as so determined for fiscal
18 year 2003, the FMAP for the State for fiscal year 2003
19 shall be substituted for the State's FMAP for the first
20 calendar quarter of fiscal year 2004, before the application
21 of this section.

22 (c) GENERAL 3.76 PERCENTAGE POINTS INCREASE
23 FOR LAST 3 CALENDAR QUARTERS OF FISCAL YEAR 2003
24 AND FIRST CALENDAR QUARTER OF FISCAL YEAR
25 2004.—Notwithstanding any other provision of law, but
26 subject to subsections (e) and (f), for each State for the

1 second, third, and fourth calendar quarters of fiscal year
2 2003 and the first calendar quarter of fiscal year 2004,
3 the FMAP (taking into account the application of sub-
4 sections (a) and (b)) shall be increased by 3.76 percentage
5 points.

6 (d) INCREASE IN CAP ON MEDICAID PAYMENTS TO
7 TERRITORIES.—Notwithstanding any other provision of
8 law, but subject to subsection (f), with respect to the sec-
9 ond, third, and fourth calendar quarters of fiscal year
10 2003 and the first calendar quarter of fiscal year 2004,
11 the amounts otherwise determined for Puerto Rico, the
12 Virgin Islands, Guam, the Northern Mariana Islands, and
13 American Samoa under subsections (f) and (g) of section
14 1108 of the Social Security Act (42 U.S.C. 1308) shall
15 each be increased by an amount equal to 7.52 percent of
16 such amounts.

17 (e) SCOPE OF APPLICATION.—The increases in the
18 FMAP for a State under this section shall apply only for
19 purposes of title XIX of the Social Security Act and shall
20 not apply with respect to—

21 (1) disproportionate share hospital payments
22 described in section 1923 of such Act (42 U.S.C.
23 1396r–4);

24 (2) payments under title IV or XXI of such Act
25 (42 U.S.C. 601 et seq. and 1397aa et seq.); or

1 (3) the percentage described in the third sen-
2 tence of section 1905(b) of the Social Security Act
3 (42 U.S.C. 1396d(b)) (relating to amounts expended
4 as medical assistance for services received through
5 an Indian Health Service facility whether operated
6 by the Indian Health Service or by an Indian tribe
7 or tribal organization (as defined in section 4 of the
8 Indian Health Care Improvement Act)).

9 (f) STATE ELIGIBILITY.—

10 (1) IN GENERAL.—Subject to paragraph (2), a
11 State is eligible for an increase in its FMAP under
12 subsection (c) or an increase in a cap amount under
13 subsection (d) only if the eligibility under its State
14 plan under title XIX of the Social Security Act (in-
15 cluding any waiver under such title or under section
16 1115 of such Act (42 U.S.C. 1315)) is no more re-
17 strictive than the eligibility under such plan (or
18 waiver) as in effect on July 1, 2003.

19 (2) STATE REINSTATEMENT OF ELIGIBILITY
20 PERMITTED.—A State that has restricted eligibility
21 under its State plan under title XIX of the Social
22 Security Act (including any waiver under such title
23 or under section 1115 of such Act (42 U.S.C.
24 1315)) after July 1, 2003, but prior to the date of
25 enactment of this Act is eligible for an increase in

its FMAP under subsection (c) or an increase in a cap amount under subsection (d) in the first calendar quarter (and any subsequent calendar quarters) in which the State has reinstated eligibility that is no more restrictive than the eligibility under such plan (or waiver) as in effect on July 1, 2003.

(3) RULE OF CONSTRUCTION.—Nothing in paragraph (1) or (2) shall be construed as affecting a State’s flexibility with respect to benefits offered under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)).

(g) DEFINITIONS.—In this section:

(1) FMAP.—The term “FMAP” means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)).

(2) STATE.—The term “State” has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(h) REPEAL.—Effective as of January 1, 2004, this section is repealed.

1 **SEC. 305. FUNDING FOR TRANSPORTATION INFRASTRUC-**
2 **TURE.**

3 (a) HIGHWAY PROGRAMS.—

4 (1) APPROPRIATIONS.—Subject to subsection
5 (d), in addition to amounts appropriated under the
6 Department of Transportation and Related Agencies
7 Appropriations Act, 2003, there are appropriated to
8 the Secretary of Transportation, out of any money
9 in the Treasury not otherwise appropriated, for the
10 fiscal year ending September 30, 2003—

11 (A) \$2,480,000,000—

12 (i) to be apportioned among the
13 States in accordance with the formula
14 specified in section 104(b)(3) of title 23,
15 United States Code; and

16 (ii) to be used for projects eligible
17 under section 133 of that title, without re-
18 gard to section 133(d) of that title;

19 (B) \$80,000,000, to be used by the Sec-
20 retary in the same manner as funds are used
21 under section 118(c) of that title, except that
22 section 118(c)(2)(A) of that title shall not apply
23 to funds appropriated under this subparagraph;

24 (C) \$80,000,000, to be used by the Sec-
25 retary in the same manner as funds are used
26 under section 144(g)(2) of that title;

1 (D) \$80,000,000, to be used by the Sec-
 2 retary in the same manner as funds are used
 3 under subsections (a) through (c) and (e) of
 4 section 202 of that title;

5 (E) \$80,000,000, to be used by the Sec-
 6 retary in the same manner as funds are used
 7 under section 202(d) of that title; and

8 (F) \$80,000,000, to be used by the Sec-
 9 retary in the same manner as funds are used
 10 under sections 1118 and 1119 of the Transpor-
 11 tation Equity Act for the 21st Century (23
 12 U.S.C. 101 note; 112 Stat. 161).

13 (2) REDISTRIBUTION OF UNUSED OBLIGATION
 14 AUTHORITY.—Funds made available under para-
 15 graph (1)(A) that are not obligated within 180 days
 16 after the date of enactment of this Act shall be re-
 17 distributed in the manner described in section
 18 1102(d) of the Transportation Equity Act for the
 19 21st Century (23 U.S.C. 104 note; 112 Stat. 117).

20 (b) TRANSIT PROGRAM.—

21 (1) APPROPRIATIONS.—Subject to subsection
 22 (d)(1), in addition to amounts appropriated under
 23 the Department of Transportation and Related
 24 Agencies Appropriations Act, 2003, there are appro-
 25 priated to the Secretary of Transportation, out of

1 any money in the Treasury not otherwise appro-
2 priated, for the fiscal year ending September 30,
3 2003, \$720,000,000—

4 (A) to be distributed between and used for
5 projects eligible under sections 5307 and 5311
6 of title 49, United States Code, in the same
7 ratio as funds were distributed under section
8 5338 of that title for fiscal years 1998 through
9 2003; and

10 (B) to be apportioned among the States in
11 accordance with the formulas specified in sec-
12 tions 5307 and 5311 of title 49, United States
13 Code.

14 (2) REDISTRIBUTION OF UNUSED OBLIGATION
15 AUTHORITY.—Funds made available under para-
16 graph (1) that are not obligated within 180 days
17 after the date of enactment of this Act shall be re-
18 distributed among the States giving priority to those
19 States having large unobligated balances of funds
20 apportioned under sections 5307 and 5311 of title
21 49, United States Code.

22 (c) AIRPORT PROGRAMS.—Subject to subsection (d),
23 in addition to any amounts appropriated for fiscal year
24 2003, there is appropriated \$400,000,000 out of any
25 money in the Treasury not otherwise appropriated for the

1 fiscal year ending September 30, 2003, to the Secretary
2 of Transportation as discretionary funds to be used by the
3 Secretary for grants to make safety and security improve-
4 ments at airports in the same manner as funds are used
5 under subtitle VII of title 49, United States Code, except
6 that none of the funds may be used to expedite a letter
7 of intent in effect on the date of enactment of this Act.

8 (d) GENERAL PROVISIONS.—Notwithstanding any
9 other provision of law—

10 (1) the Federal share of the cost of a project
11 carried out with funds made available under this
12 section shall be 100 percent; and

13 (2) funds made available under subparagraphs
14 (B) through (F) of subsection (a)(1) and under sub-
15 section (c) shall be—

16 (A) obligated not later than 180 days after
17 the date of enactment of this Act; and

18 (B) expended as expeditiously as prac-
19 ticable.

1 **TITLE IV—UNEMPLOYMENT**
 2 **ASSISTANCE**
 3 **Subtitle A—Additional Weeks of**
 4 **Temporary Extended Unemploy-**
 5 **ment Compensation**

6 **SEC. 401. ENTITLEMENT TO ADDITIONAL WEEKS OF TEM-**
 7 **PORARY EXTENDED UNEMPLOYMENT COM-**
 8 **PENSATION.**

9 (a) ENTITLEMENT TO ADDITIONAL WEEKS.—

10 (1) IN GENERAL.—Paragraph (1) of section
 11 203(b) of the Temporary Extended Unemployment
 12 Compensation Act of 2002 (Public Law 107–147;
 13 116 Stat. 28) is amended—

14 (A) in subparagraph (A), by striking “50
 15 percent” and inserting “100 percent”; and

16 (B) in subparagraph (B), by striking “13
 17 times” and inserting “26 times”.

18 (2) REPEAL OF RESTRICTION ON AUGMENTA-
 19 TION DURING TRANSITIONAL PERIOD.—Section
 20 208(b) of the Temporary Extended Unemployment
 21 Compensation Act of 2002 (Public Law 107–147),
 22 as amended by Public Law 108–1 (117 Stat. 3), is
 23 amended—

24 (A) in paragraph (1)—

- 1 (i) by striking “paragraphs (2) and
 2 (3)” and inserting “paragraph (2)”; and
 3 (ii) by inserting before the period at
 4 the end the following: “, including such
 5 compensation by reason of amounts depos-
 6 ited in such account after such date pursu-
 7 ant to the application of subsection (c) of
 8 such section”;
- 9 (B) by striking paragraph (2); and
- 10 (C) by redesignating paragraph (3) as
 11 paragraph (2).

12 (3) EXTENSION OF TRANSITION LIMITATION.—
 13 Section 208(b)(2) of the Temporary Extended Un-
 14 employment Compensation Act of 2002 (Public Law
 15 107–147), as amended by Public Law 108–1 (117
 16 Stat. 3) and as redesignated by paragraph (2), is
 17 amended by striking “August 30, 2003” and insert-
 18 ing “December 31, 2003”.

19 (4) CONFORMING AMENDMENT FOR AUG-
 20 MENTED BENEFITS.—Section 203(c)(1) of the Tem-
 21 porary Extended Unemployment Compensation Act
 22 of 2002 (Public Law 107–147; 116 Stat. 28) is
 23 amended by striking “the amount originally estab-
 24 lished in such account (as determined under sub-
 25 section (b)(1))” and inserting “7 times the individ-

1 ual's average weekly benefit amount for the benefit
2 year".

3 (b) EFFECTIVE DATE AND APPLICATION.—

4 (1) IN GENERAL.—The amendments made by
5 subsection (a) shall apply with respect to weeks of
6 unemployment beginning on or after the date of en-
7 actment this Act.

8 (2) TEUC-X AMOUNTS DEPOSITED IN AC-
9 COUNT PRIOR TO DATE OF ENACTMENT DEEMED TO
10 BE THE ADDITIONAL TEUC AMOUNTS PROVIDED BY
11 THIS SECTION.—In applying the amendments made
12 by subsection (a) under the Temporary Extended
13 Unemployment Compensation Act of 2002 (Public
14 Law 107–147; 116 Stat. 26), the Secretary of Labor
15 shall deem any amounts deposited into an individ-
16 ual's temporary extended unemployment compensa-
17 tion account by reason of section 203(c) of such Act
18 (commonly known as "TEUC-X amounts") prior to
19 the date of enactment of this Act to be amounts de-
20 posited in such account by reason of section 203(b)
21 of such Act, as amended by subsection (a) (com-
22 monly known as "TEUC amounts").

23 (3) APPLICATION TO EXHAUSTEES AND CUR-
24 RENT BENEFICIARIES.—

1 (A) EXHAUSTEES.—In the case of any in-
2 dividual—

3 (i) to whom any temporary extended
4 unemployment compensation was payable
5 for any week beginning before the date of
6 enactment of this Act; and

7 (ii) who exhausted such individual's
8 rights to such compensation (by reason of
9 the payment of all amounts in such indi-
10 vidual's temporary extended unemployment
11 compensation account) before such date,
12 such individual's eligibility for any additional
13 weeks of temporary extended unemployment
14 compensation by reason of the amendments
15 made by subsection (a) shall apply with respect
16 to weeks of unemployment beginning on or
17 after the date of enactment of this Act.

18 (B) CURRENT BENEFICIARIES.—In the
19 case of any individual—

20 (i) to whom any temporary extended
21 unemployment compensation was payable
22 for any week beginning before the date of
23 enactment of this Act; and

1 (ii) as to whom the condition de-
2 scribed in subparagraph (A)(ii) does not
3 apply,

4 such individual shall be eligible for temporary
5 extended unemployment compensation (in ac-
6 cordance with the provisions of the Temporary
7 Extended Unemployment Compensation Act of
8 2002, as amended by subsection (a)) with re-
9 spect to weeks of unemployment beginning on
10 or after the date of enactment of this Act.

11 (4) REDETERMINATION OF ELIGIBILITY FOR
12 AUGMENTED AMOUNTS FOR INDIVIDUALS FOR WHOM
13 SUCH A DETERMINATION WAS MADE PRIOR TO THE
14 DATE OF ENACTMENT.—Any determination of
15 whether the individual's State is in an extended ben-
16 efit period under section 203(c) of the Temporary
17 Extended Unemployment Compensation Act of 2002
18 (Public Law 107–147; 116 Stat. 28) made prior to
19 the date of enactment of this Act shall be dis-
20 regarded and the determination under such section
21 shall be made as follows:

22 (A) INDIVIDUALS WHO EXHAUSTED 13
23 TEUC AND 13 TEUX–X WEEKS PRIOR TO THE
24 DATE OF ENACTMENT.—In the case of an indi-
25 vidual who, prior to the date of enactment of

1 this Act, received 26 times the individual’s aver-
 2 age weekly benefit amount through an account
 3 established under section 203 of the Temporary
 4 Extended Unemployment Compensation Act of
 5 2002 (Public Law 107–147; 116 Stat. 28) (by
 6 reason of augmentation under subsection (c) of
 7 such section), the determination shall be made
 8 as of the date of enactment of this Act.

9 (B) ALL OTHER INDIVIDUALS.—In the
 10 case of an individual who is not described in
 11 subparagraph (A), the determination shall be
 12 made at the time that the individual’s account
 13 established under such section 203, as amended
 14 by subsection (a), is exhausted.

15 **Subtitle B—Temporary Enhanced** 16 **Regular Unemployment Com-** 17 **ensation**

18 **SEC. 411. FEDERAL-STATE AGREEMENTS.**

19 (a) IN GENERAL.—Any State which desires to do so
 20 may enter into and participate in an agreement under this
 21 title with the Secretary of Labor (in this title referred to
 22 as the “Secretary”). Any State which is a party to an
 23 agreement under this title may, upon providing 30 days’
 24 written notice to the Secretary, terminate such agreement.

25 (b) PROVISIONS OF AGREEMENT.—

1 (1) IN GENERAL.—Subject to paragraph (3),
2 any agreement under subsection (a) shall provide
3 that the State agency of the State, in addition to
4 any amounts of regular compensation to which an
5 individual may be entitled under the State law, shall
6 make payments of temporary enhanced regular un-
7 employment compensation to an individual in an
8 amount and to the extent that the individual would
9 be entitled to regular compensation if the State law
10 were applied with the modifications described in
11 paragraph (2).

12 (2) MODIFICATIONS DESCRIBED.—The modi-
13 fications described in this paragraph are as follows:

14 (A) In the case of an individual who is not
15 eligible for regular compensation under the
16 State law because of the use of a definition of
17 base period that does not count wages earned
18 in the most recently completed calendar quar-
19 ter, then eligibility for compensation shall be
20 determined by applying a base period ending at
21 the close of the most recently completed cal-
22 endar quarter.

23 (B) In the case of an individual who is not
24 eligible for regular compensation under the
25 State law because such individual does not meet

1 requirements relating to availability for work,
2 active search for work, or refusal to accept
3 work, because such individual is seeking, or is
4 available for, less than full-time work, then
5 compensation shall not be denied by such State
6 to an otherwise eligible individual who seeks
7 less than full-time work or fails to accept full-
8 time work.

9 (3) REDUCTION OF AMOUNTS OF REGULAR
10 COMPENSATION AVAILABLE FOR INDIVIDUALS WHO
11 SOUGHT PART-TIME WORK OR FAILED TO ACCEPT
12 FULL-TIME WORK.—Any agreement under sub-
13 section (a) shall provide that the State agency of the
14 State shall reduce the amount of regular compensa-
15 tion available to an individual who has received tem-
16 porary enhanced regular unemployment compensa-
17 tion as a result of the application of the modification
18 described in paragraph (2)(B) by the amount of
19 such temporary enhanced regular unemployment
20 compensation.

21 (c) COORDINATION RULE.—The modifications de-
22 scribed in subsection (b)(2) shall also apply in determining
23 the amount of benefits payable under any Federal law to
24 the extent that those benefits are determined by reference

1 to regular compensation payable under the State law of
2 the State involved.

3 **SEC. 412. PAYMENTS TO STATES HAVING AGREEMENTS**
4 **UNDER THIS TITLE.**

5 (a) GENERAL RULE.—There shall be paid to each
6 State which has entered into an agreement under this title
7 an amount equal to—

8 (1) 100 percent of any temporary enhanced reg-
9 ular unemployment compensation; and

10 (2) 100 percent of any regular compensation
11 which is paid to individuals by such State by reason
12 of the fact that its State law contains provisions
13 comparable to the modifications described in sub-
14 paragraphs (A) and (B) of section 411(b)(2), but
15 only to the extent that those amounts would, if such
16 amounts were instead payable by virtue of the State
17 law's being deemed to be so modified pursuant to
18 section 411(b)(1), have been reimbursable under
19 paragraph (1).

20 (b) DETERMINATION OF AMOUNT.—Sums under sub-
21 section (a) payable to any State by reason of such State
22 having an agreement under this title shall be payable, ei-
23 ther in advance or by way of reimbursement (as may be
24 determined by the Secretary), in such amounts as the Sec-
25 retary estimates the State will be entitled to receive under

1 this title for each calendar month, reduced or increased,
2 as the case may be, by any amount by which the Secretary
3 finds that the Secretary's estimates for any prior calendar
4 month were greater or less than the amounts which should
5 have been paid to the State. Such estimates may be made
6 on the basis of such statistical, sampling, or other method
7 as may be agreed upon by the Secretary and the State
8 agency of the State involved.

9 **SEC. 413. FINANCING PROVISIONS.**

10 (a) IN GENERAL.—Funds in the extended unemploy-
11 ment compensation account (as established by section
12 905(a) of the Social Security Act (42 U.S.C. 1105(a))),
13 and the Federal unemployment account (as established by
14 section 904(g) of such Act (42 U.S.C. 1104(g))), of the
15 Unemployment Trust Fund (as established by section
16 904(a) of such Act (42 U.S.C. 1104(a))) shall be used
17 for the making of payments to States having agreements
18 entered into under this title.

19 (b) CERTIFICATION.—The Secretary shall from time
20 to time certify to the Secretary of the Treasury for pay-
21 ment to each State the sums which are payable to such
22 State under this title. The Secretary of the Treasury, prior
23 to audit or settlement by the General Accounting Office,
24 shall make payments to the State in accordance with such
25 certification by transfers from the extended unemployment

1 compensation account (as so established), or, to the extent
2 that there are insufficient funds in that account, from the
3 Federal unemployment account, to the account of such
4 State in the Unemployment Trust Fund (as so estab-
5 lished).

6 (c) ASSISTANCE TO STATES.—There are appro-
7 priated out of the employment security administration ac-
8 count of the Unemployment Trust Fund (as established
9 by section 901(a) of the Social Security Act (42 U.S.C.
10 1101(a))) \$500,000,000 to reimburse States for the costs
11 of the administration of agreements under this title (in-
12 cluding any improvements in technology in connection
13 therewith) and to provide reemployment services to unem-
14 ployment compensation claimants in States having agree-
15 ments under this title. Each State's share of the amount
16 appropriated by the preceding sentence shall be deter-
17 mined by the Secretary according to the factors described
18 in section 302(a) of the Social Security Act (42 U.S.C.
19 502(a)) and certified by the Secretary to the Secretary
20 of the Treasury.

21 (d) APPROPRIATIONS FOR CERTAIN PAYMENTS.—
22 There are appropriated from the general fund of the
23 Treasury, without fiscal year limitation, to the extended
24 unemployment compensation account (as so established)
25 of the Unemployment Trust Fund (as so established) such

1 sums as the Secretary estimates to be necessary to make
2 the payments under this section in respect of—

3 (1) compensation payable under chapter 85 of
4 title 5, United States Code; and

5 (2) compensation payable on the basis of serv-
6 ices to which section 3309(a)(1) of the Internal Rev-
7 enue Code of 1986 applies.

8 Amounts appropriated pursuant to the preceding sentence
9 shall not be required to be repaid.

10 **SEC. 414. DEFINITIONS.**

11 For purposes of this title, the terms “compensation”,
12 “base period”, “regular compensation”, “State”, “State
13 agency”, “State law”, and “week” have the respective
14 meanings given such terms under section 205 of the Fed-
15 eral-State Extended Unemployment Compensation Act of
16 1970.

17 **SEC. 415. APPLICABILITY.**

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

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

23 (2) ending before July 1, 2004.

24 (b) PHASE-OUT OF TERUC.—

1 (1) IN GENERAL.—Subject to paragraph (2), in
 2 the case of an individual who has established eligi-
 3 bility for temporary enhanced regular unemployment
 4 compensation, but who has not exhausted all rights
 5 to such compensation, as of the last day of the week
 6 ending before July 1, 2004, such compensation shall
 7 continue to be payable to such individual for any
 8 week beginning after such date for which the indi-
 9 vidual meets the eligibility requirements of this title.

10 (2) LIMITATION.—No compensation shall be
 11 payable by reason of paragraph (1) for any week be-
 12 ginning after December 31, 2004.

13 **SEC. 416. COORDINATION WITH THE TEMPORARY EX-**
 14 **TENDED UNEMPLOYMENT COMPENSATION**
 15 **ACT OF 2002.**

16 (a) IN GENERAL.—The Temporary Extended Unem-
 17 ployment Compensation Act of 2002 (Public Law 107–
 18 147; 116 Stat. 30) is amended—

19 (1) in section 202(b)(1), by inserting “, and
 20 who have exhausted all rights to temporary en-
 21 hanced regular unemployment compensation” before
 22 the semicolon at the end;

23 (2) in section 202(b)(2), by inserting “, tem-
 24 porary enhanced regular unemployment compensa-
 25 tion,” after “regular compensation”;

1 (3) in section 202(c), by inserting “(or, as the
2 case may be, such individual’s rights to temporary
3 enhanced regular unemployment compensation)”
4 after “State law” in the matter preceding paragraph
5 (1);

6 (4) in section 202(c)(1), by inserting “and no
7 payments of temporary enhanced regular unemploy-
8 ment compensation can be made” after “under such
9 law”;

10 (5) in section 202(d)(1), by inserting “or the
11 amount of any temporary enhanced regular unem-
12 ployment compensation (including dependents’ allow-
13 ances) payable to such individual for such a week,”
14 after “total unemployment”;

15 (6) in section 202(d)(2)(A), by inserting “, or,
16 as the case may be, to temporary enhanced regular
17 unemployment compensation,” after “State law”;

18 (7) in section 203(b)(1)(A), by inserting “plus
19 the amount of any temporary enhanced regular un-
20 employment compensation payable to such individual
21 for such week,” after “under such law”; and

22 (8) in section 203(b)(2), by inserting “or the
23 amount of any temporary enhanced regular unem-
24 ployment compensation payable to such individual
25 for such week,” after “total unemployment”.

1 (b) AMOUNT OF TEUC OFFSET BY AMOUNT OF
 2 TERUC.—Section 203(b)(1) of the Temporary Extended
 3 Unemployment Compensation Act of 2002 (Public Law
 4 107–147; 116 Stat. 28) is amended—

5 (1) in subparagraph (B), by striking the period
 6 at the end and inserting a comma; and

7 (2) by adding at the end the following:

8 “minus the number of weeks in which the individual
 9 was entitled to temporary enhanced regular unem-
 10 ployment compensation as a result of the application
 11 of the modification described in section 411(b)(2)(A)
 12 of the Economic Recovery Act of 2003 (relating to
 13 the alternative base period) multiplied by the indi-
 14 vidual’s average weekly benefit amount for the ben-
 15 efit year.”.

16 (c) TEMPORARY ENHANCED REGULAR UNEMPLOY-
 17 MENT COMPENSATION DEFINED.—Section 207 of the
 18 Temporary Extended Unemployment Compensation Act of
 19 2002 (Public Law 107–147; 116 Stat. 30) is amended to
 20 read as follows:

21 **“SEC. 207. DEFINITIONS.**

22 “In this title:

23 “(1) GENERAL DEFINITIONS.—The terms ‘com-
 24 pensation’, ‘regular compensation’, ‘extended com-
 25 pensation’, ‘additional compensation’, ‘benefit year’,

1 ‘base period’, ‘State’, ‘State agency’, ‘State law’, and
 2 ‘week’ have the respective meanings given such
 3 terms under section 205 of the Federal-State Ex-
 4 tended Unemployment Compensation Act of 1970
 5 (26 U.S.C. 3304 note).

6 “(2) TEMPORARY ENHANCED REGULAR UNEM-
 7 PLOYMENT COMPENSATION.—The term ‘temporary
 8 enhanced regular unemployment compensation’
 9 means temporary enhanced regular unemployment
 10 benefits payable under title IV of the Economic Re-
 11 covery Act of 2003.”.

12 **TITLE V—LONG-TERM FISCAL**
 13 **DISCIPLINE**
 14 **Subtitle A—Provisions Designed To**
 15 **Curtail Tax Shelters**

16 **SEC. 501. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**
 17 **TRINE.**

18 (a) IN GENERAL.—Section 7701 is amended by re-
 19 designating subsection (m) as subsection (n) and by in-
 20 serting after subsection (l) the following new subsection:

21 “(m) CLARIFICATION OF ECONOMIC SUBSTANCE
 22 DOCTRINE; ETC.—

23 “(1) GENERAL RULES.—

24 “(A) IN GENERAL.—In applying the eco-
 25 nomic substance doctrine, the determination of

1 whether a transaction has economic substance
2 shall be made as provided in this paragraph.

3 “(B) DEFINITION OF ECONOMIC SUB-
4 STANCE.—For purposes of subparagraph (A)—

5 “(i) IN GENERAL.—A transaction has
6 economic substance only if—

7 “(I) the transaction changes in a
8 meaningful way (apart from Federal
9 tax effects and, if there is any Federal
10 tax effects, also apart from any for-
11 eign, State, or local tax effects) the
12 taxpayer’s economic position, and

13 “(II) the taxpayer has a substan-
14 tial nontax purpose for entering into
15 such transaction and the transaction
16 is a reasonable means of accom-
17 plishing such purpose.

18 “(ii) SPECIAL RULE WHERE TAX-
19 PAYER RELIES ON PROFIT POTENTIAL.—A
20 transaction shall not be treated as having
21 economic substance by reason of having a
22 potential for profit unless—

23 “(I) the present value of the rea-
24 sonably expected pre-tax profit from
25 the transaction is substantial in rela-

1 tion to the present value of the ex-
 2 pected net tax benefits that would be
 3 allowed if the transaction were re-
 4 spected, and

5 “(II) the reasonably expected
 6 pre-tax profit from the transaction ex-
 7 ceeds a risk-free rate of return.

8 “(C) TREATMENT OF FEES AND FOREIGN
 9 TAXES.—Fees and other transaction expenses
 10 and foreign taxes shall be taken into account as
 11 expenses in determining pre-tax profit under
 12 subparagraph (B)(ii).

13 “(2) SPECIAL RULES FOR TRANSACTIONS WITH
 14 TAX-INDIFFERENT PARTIES.—

15 “(A) SPECIAL RULES FOR FINANCING
 16 TRANSACTIONS.—The form of a transaction
 17 which is in substance the borrowing of money
 18 or the acquisition of financial capital directly or
 19 indirectly from a tax-indifferent party shall not
 20 be respected if the present value of the deduc-
 21 tions to be claimed with respect to the trans-
 22 action is substantially in excess of the present
 23 value of the anticipated economic returns of the
 24 person lending the money or providing the fi-
 25 nancial capital. A public offering shall be treat-

ed as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

“(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

“(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party’s economic income or gain, or

“(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

“(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) ECONOMIC SUBSTANCE DOCTRINE.—

The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does

1 not have economic substance or lacks a business
2 purpose.

3 “(B) TAX-INDIFFERENT PARTY.—The
4 term ‘tax-indifferent party’ means any person
5 or entity not subject to tax imposed by subtitle
6 A. A person shall be treated as a tax-indifferent
7 party with respect to a transaction if the items
8 taken into account with respect to the trans-
9 action have no substantial impact on such per-
10 son’s liability under subtitle A.

11 “(C) EXCEPTION FOR PERSONAL TRANS-
12 ACTIONS OF INDIVIDUALS.—In the case of an
13 individual, this subsection shall apply only to
14 transactions entered into in connection with a
15 trade or business or an activity engaged in for
16 the production of income.

17 “(D) TREATMENT OF LESSORS.—In apply-
18 ing subclause (I) of paragraph (1)(B)(ii) to the
19 lessor of tangible property subject to a lease,
20 the expected net tax benefits shall not include
21 the benefits of depreciation, or any tax credit,
22 with respect to the leased property and sub-
23 clause (II) of paragraph (1)(B)(ii) shall be dis-
24 regarded in determining whether any of such
25 benefits are allowable.

1 “(4) OTHER COMMON LAW DOCTRINES NOT AF-
 2 FECTED.—Except as specifically provided in this
 3 subsection, the provisions of this subsection shall not
 4 be construed as altering or supplanting any other
 5 rule of law, and the requirements of this subsection
 6 shall be construed as being in addition to any such
 7 other rule of law.

8 “(5) REGULATIONS.—The Secretary shall pre-
 9 scribe such regulations as may be necessary or ap-
 10 propriate to carry out the purposes of this sub-
 11 section. Such regulations may include exemptions
 12 from the application of this subsection.”

13 (b) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to transactions entered into after
 15 February 15, 2004.

16 **SEC. 502. PENALTY FOR FAILING TO DISCLOSE REPORT-**
 17 **ABLE TRANSACTION.**

18 (a) IN GENERAL.—Part I of subchapter B of chapter
 19 68 (relating to assessable penalties) is amended by insert-
 20 ing after section 6707 the following new section:

21 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**
 22 **ABLE TRANSACTION INFORMATION WITH RE-**
 23 **TURN OR STATEMENT.**

24 “(a) IMPOSITION OF PENALTY.—Any person who
 25 fails to include on any return or statement any informa-

1 tion with respect to a reportable transaction which is re-
 2 quired under section 6011 to be included with such return
 3 or statement shall pay a penalty in the amount determined
 4 under subsection (b).

5 “(b) AMOUNT OF PENALTY.—

6 “(1) IN GENERAL.—Except as provided in para-
 7 graphs (2) and (3), the amount of the penalty under
 8 subsection (a) shall be \$50,000.

9 “(2) LISTED TRANSACTION.—The amount of
 10 the penalty under subsection (a) with respect to a
 11 listed transaction shall be \$100,000.

12 “(3) INCREASE IN PENALTY FOR LARGE ENTI-
 13 TIES AND HIGH NET WORTH INDIVIDUALS.—

14 “(A) IN GENERAL.—In the case of a fail-
 15 ure under subsection (a) by—

16 “(i) a large entity, or

17 “(ii) a high net worth individual,
 18 the penalty under paragraph (1) or (2) shall be
 19 twice the amount determined without regard to
 20 this paragraph.

21 “(B) LARGE ENTITY.—For purposes of
 22 subparagraph (A), the term ‘large entity’
 23 means, with respect to any taxable year, a per-
 24 son (other than a natural person) with gross re-
 25 cepts in excess of \$10,000,000 for the taxable

1 year in which the reportable transaction occurs
2 or the preceding taxable year. Rules similar to
3 the rules of paragraph (2) and subparagraphs
4 (B), (C), and (D) of paragraph (3) of section
5 448(c) shall apply for purposes of this subpara-
6 graph.

7 “(C) HIGH NET WORTH INDIVIDUAL.—The
8 term ‘high net worth individual’ means, with re-
9 spect to a transaction, a natural person whose
10 net worth exceeds \$2,000,000 immediately be-
11 fore the transaction.

12 “(c) DEFINITIONS.—For purposes of this section—

13 “(1) REPORTABLE TRANSACTION.—The term
14 ‘reportable transaction’ means any transaction with
15 respect to which information is required to be in-
16 cluded with a return or statement because, as deter-
17 mined under regulations prescribed under section
18 6011, such transaction is of a type which the Sec-
19 retary determines as having a potential for tax
20 avoidance or evasion.

21 “(2) LISTED TRANSACTION.—Except as pro-
22 vided in regulations, the term ‘listed transaction’
23 means a reportable transaction which is the same as,
24 or substantially similar to, a transaction specifically

1 identified by the Secretary as a tax avoidance trans-
2 action for purposes of section 6011.

3 “(d) AUTHORITY TO RESCIND PENALTY.—

4 “(1) IN GENERAL.—The Commissioner of In-
5 ternal Revenue may rescind all or any portion of any
6 penalty imposed by this section with respect to any
7 violation if—

8 “(A) the violation is with respect to a re-
9 portable transaction other than a listed trans-
10 action,

11 “(B) the person on whom the penalty is
12 imposed has a history of complying with the re-
13 quirements of this title,

14 “(C) it is shown that the violation is due
15 to an unintentional mistake of fact;

16 “(D) imposing the penalty would be
17 against equity and good conscience, and

18 “(E) rescinding the penalty would promote
19 compliance with the requirements of this title
20 and effective tax administration.

21 “(2) DISCRETION.—The exercise of authority
22 under paragraph (1) shall be at the sole discretion
23 of the Commissioner and may be delegated only to
24 the head of the Office of Tax Shelter Analysis. The
25 Commissioner, in the Commissioner’s sole discretion,

1 may establish a procedure to determine if a penalty
 2 should be referred to the Commissioner or the head
 3 of such Office for a determination under paragraph
 4 (1).

5 “(3) NO APPEAL.—Notwithstanding any other
 6 provision of law, any determination under this sub-
 7 section may not be reviewed in any administrative or
 8 judicial proceeding.

9 “(4) RECORDS.—If a penalty is rescinded under
 10 paragraph (1), the Commissioner shall place in the
 11 file in the Office of the Commissioner the opinion of
 12 the Commissioner or the head of the Office of Tax
 13 Shelter Analysis with respect to the determination,
 14 including—

15 “(A) the facts and circumstances of the
 16 transaction,

17 “(B) the reasons for the rescission, and

18 “(C) the amount of the penalty rescinded.

19 “(5) REPORT.—The Commissioner shall each
 20 year report to the Committee on Ways and Means
 21 of the House of Representatives and the Committee
 22 on Finance of the Senate—

23 “(A) a summary of the total number and
 24 aggregate amount of penalties imposed, and re-
 25 scinded, under this section, and

1 “(B) a description of each penalty re-
2 scinded under this subsection and the reasons
3 therefor.

4 “(e) PENALTY REPORTED TO SEC.—In the case of
5 a person—

6 “(1) which is required to file periodic reports
7 under section 13 or 15(d) of the Securities Ex-
8 change Act of 1934 or is required to be consolidated
9 with another person for purposes of such reports,
10 and

11 “(2) which—

12 “(A) is required to pay a penalty under
13 this section with respect to a listed transaction,

14 “(B) is required to pay a penalty under
15 section 6662A with respect to any reportable
16 transaction at a rate prescribed under section
17 6662A(c), or

18 “(C) is required to pay a penalty under
19 section 6662B with respect to any noneconomic
20 substance transaction,

21 the requirement to pay such penalty shall be disclosed in
22 such reports filed by such person for such periods as the
23 Secretary shall specify. Failure to make a disclosure in
24 accordance with the preceding sentence shall be treated

1 as a failure to which the penalty under subsection (b)(2)
 2 applies.

3 “(f) COORDINATION WITH OTHER PENALTIES.—The
 4 penalty imposed by this section is in addition to any pen-
 5 alty imposed under this title.”

6 (b) CONFORMING AMENDMENT.—The table of sec-
 7 tions for part I of subchapter B of chapter 68 is amended
 8 by inserting after the item relating to section 6707 the
 9 following:

“Sec. 6707A. Penalty for failure to include reportable transaction
 information with return or statement.”

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to returns and statements the due
 12 date for which is after the date of the enactment of this
 13 Act.

14 **SEC. 503. ACCURACY-RELATED PENALTY FOR LISTED**
 15 **TRANSACTIONS AND OTHER REPORTABLE**
 16 **TRANSACTIONS HAVING A SIGNIFICANT TAX**
 17 **AVOIDANCE PURPOSE.**

18 (a) IN GENERAL.—Subchapter A of chapter 68 is
 19 amended by inserting after section 6662 the following new
 20 section:

1 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**
 2 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
 3 **TO REPORTABLE TRANSACTIONS.**

4 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
 5 reportable transaction understatement for any taxable
 6 year, there shall be added to the tax an amount equal to
 7 20 percent of the amount of such understatement.

8 “(b) REPORTABLE TRANSACTION UNDERSTATE-
 9 MENT.—For purposes of this section—

10 “(1) IN GENERAL.—The term ‘reportable trans-
 11 action understatement’ means the sum of—

12 “(A) the product of—

13 “(i) the amount of the increase (if
 14 any) in taxable income which results from
 15 a difference between the proper tax treat-
 16 ment of an item to which this section ap-
 17 plies and the taxpayer’s treatment of such
 18 item (as shown on the taxpayer’s return of
 19 tax), and

20 “(ii) the highest rate of tax imposed
 21 by section 1 (section 11 in the case of a
 22 taxpayer which is a corporation), and

23 “(B) the amount of the decrease (if any)
 24 in the aggregate amount of credits determined
 25 under subtitle A which results from a difference
 26 between the taxpayer’s treatment of an item to

1 which this section applies (as shown on the tax-
 2 payer’s return of tax) and the proper tax treat-
 3 ment of such item.

4 For purposes of subparagraph (A), any reduction of
 5 the excess of deductions allowed for the taxable year
 6 over gross income for such year, and any reduction
 7 in the amount of capital losses which would (without
 8 regard to section 1211) be allowed for such year,
 9 shall be treated as an increase in taxable income.

10 “(2) ITEMS TO WHICH SECTION APPLIES.—This
 11 section shall apply to any item which is attributable
 12 to—

13 “(A) any listed transaction, and

14 “(B) any reportable transaction (other
 15 than a listed transaction) if a significant pur-
 16 pose of such transaction is the avoidance or
 17 evasion of Federal income tax.

18 “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED
 19 AND OTHER AVOIDANCE TRANSACTIONS.—

20 “(1) IN GENERAL.—Subsection (a) shall be ap-
 21 plied by substituting ‘30 percent’ for ‘20 percent’
 22 with respect to the portion of any reportable trans-
 23 action understatement with respect to which the re-
 24 quirement of section 6664(d)(2)(A) is not met.

1 “(2) RULES APPLICABLE TO COMPROMISE OF
2 PENALTY.—

3 “(A) IN GENERAL.—If the 1st letter of
4 proposed deficiency which allows the taxpayer
5 an opportunity for administrative review in the
6 Internal Revenue Service Office of Appeals has
7 been sent with respect to a penalty to which
8 paragraph (1) applies, only the Commissioner
9 of Internal Revenue may compromise all or any
10 portion of such penalty.

11 “(B) APPLICABLE RULES.—The rules of
12 paragraphs (2), (3), (4), and (5) of section
13 6707A(d) shall apply for purposes of subpara-
14 graph (A).

15 “(d) DEFINITIONS OF REPORTABLE AND LISTED
16 TRANSACTIONS.—For purposes of this section, the terms
17 ‘reportable transaction’ and ‘listed transaction’ have the
18 respective meanings given to such terms by section
19 6707A(c).

20 “(e) SPECIAL RULES.—

21 “(1) COORDINATION WITH PENALTIES, ETC.,
22 ON OTHER UNDERSTATEMENTS.—In the case of an
23 understatement (as defined in section 6662(d)(2))—

24 “(A) the amount of such understatement
25 (determined without regard to this paragraph)

shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

“(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

“(2) COORDINATION WITH OTHER PENALTIES.—

“(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

“(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

1 “(3) SPECIAL RULE FOR AMENDED RE-
 2 TURNS.—Except as provided in regulations, in no
 3 event shall any tax treatment included with an
 4 amendment or supplement to a return of tax be
 5 taken into account in determining the amount of any
 6 reportable transaction understatement or non-
 7 economic substance transaction understatement if
 8 the amendment or supplement is filed after the ear-
 9 lier of the date the taxpayer is first contacted by the
 10 Secretary regarding the examination of the return or
 11 such other date as is specified by the Secretary.

12 “(4) NONECONOMIC SUBSTANCE TRANSACTION
 13 UNDERSTATEMENT.—For purposes of this sub-
 14 section, the term ‘noneconomic substance trans-
 15 action understatement’ has the meaning given such
 16 term by section 6662B(c).

17 “(5) CROSS REFERENCE.—

**“For reporting of section 6662A(c) penalty to the
 Securities and Exchange Commission, see section
 6707A(e).”**

18 (b) DETERMINATION OF OTHER UNDERSTATE-
 19 MENTS.—Subparagraph (A) of section 6662(d)(2) is
 20 amended by adding at the end the following flush sen-
 21 tence:

22 “The excess under the preceding sentence shall
 23 be determined without regard to items to which
 24 section 6662A applies and without regard to

1 items with respect to which a penalty is im-
 2 posed by section 6662B.”

3 (c) REASONABLE CAUSE EXCEPTION.—

4 (1) IN GENERAL.—Section 6664 is amended by
 5 adding at the end the following new subsection:

6 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-
 7 ABLE TRANSACTION UNDERSTATEMENTS.—

8 “(1) IN GENERAL.—No penalty shall be im-
 9 posed under section 6662A with respect to any por-
 10 tion of a reportable transaction understatement if it
 11 is shown that there was a reasonable cause for such
 12 portion and that the taxpayer acted in good faith
 13 with respect to such portion.

14 “(2) SPECIAL RULES.—Paragraph (1) shall not
 15 apply to any reportable transaction understatement
 16 unless—

17 “(A) the relevant facts affecting the tax
 18 treatment of the item are adequately disclosed
 19 in accordance with the regulations prescribed
 20 under section 6011,

21 “(B) there is or was substantial authority
 22 for such treatment, and

23 “(C) the taxpayer reasonably believed that
 24 such treatment was more likely than not the
 25 proper treatment.

1 A taxpayer failing to adequately disclose in accord-
2 ance with section 6011 shall be treated as meeting
3 the requirements of subparagraph (A) if the penalty
4 for such failure was rescinded under section
5 6707A(d).

6 “(3) RULES RELATING TO REASONABLE BE-
7 LIEF.—For purposes of paragraph (2)(C)—

8 “(A) IN GENERAL.—A taxpayer shall be
9 treated as having a reasonable belief with re-
10 spect to the tax treatment of an item only if
11 such belief—

12 “(i) is based on the facts and law that
13 exist at the time the return of tax which
14 includes such tax treatment is filed, and

15 “(ii) relates solely to the taxpayer’s
16 chances of success on the merits of such
17 treatment and does not take into account
18 the possibility that a return will not be au-
19 dited, such treatment will not be raised on
20 audit, or such treatment will be resolved
21 through settlement if it is raised.

22 “(B) CERTAIN OPINIONS MAY NOT BE RE-
23 LIED UPON.—

24 “(i) IN GENERAL.—An opinion of a
25 tax advisor may not be relied upon to es-

1 tablish the reasonable belief of a taxpayer
2 if—

3 “(I) the tax advisor is described
4 in clause (ii), or

5 “(II) the opinion is described in
6 clause (iii).

7 “(ii) DISQUALIFIED TAX ADVISORS.—
8 A tax advisor is described in this clause if
9 the tax advisor—

10 “(I) is a material advisor (within
11 the meaning of section 6111(b)(1))
12 who participates in the organization,
13 management, promotion, or sale of
14 the transaction or who is related
15 (within the meaning of section 267(b)
16 or 707(b)(1)) to any person who so
17 participates,

18 “(II) is compensated directly or
19 indirectly by a material advisor with
20 respect to the transaction,

21 “(III) has a fee arrangement
22 with respect to the transaction which
23 is contingent on all or part of the in-
24 tended tax benefits from the trans-
25 action being sustained, or

1 “(IV) as determined under regu-
 2 lations prescribed by the Secretary,
 3 has a continuing financial interest
 4 with respect to the transaction.

5 “(iii) DISQUALIFIED OPINIONS.—For
 6 purposes of clause (i), an opinion is dis-
 7 qualified if the opinion—

8 “(I) is based on unreasonable
 9 factual or legal assumptions (includ-
 10 ing assumptions as to future events),

11 “(II) unreasonably relies on rep-
 12 resentations, statements, findings, or
 13 agreements of the taxpayer or any
 14 other person,

15 “(III) does not identify and con-
 16 sider all relevant facts, or

17 “(IV) fails to meet any other re-
 18 quirement as the Secretary may pre-
 19 scribe.”

20 (2) CONFORMING AMENDMENT.—The heading
 21 for subsection (c) of section 6664 is amended by in-
 22 serting “FOR UNDERPAYMENTS” after “EXCEP-
 23 TION”.

24 (d) CONFORMING AMENDMENTS.—

1 (1) Subparagraph (C) of section 461(i)(3) is
2 amended by striking “section 6662(d)(2)(C)(iii)”
3 and inserting “section 1274(b)(3)(C)”.

4 (2) Paragraph (3) of section 1274(b) is amend-
5 ed—

6 (A) by striking “(as defined in section
7 6662(d)(2)(C)(iii))” in subparagraph (B)(i),
8 and

9 (B) by adding at the end the following new
10 subparagraph:

11 “(C) TAX SHELTER.—For purposes of sub-
12 paragraph (B), the term ‘tax shelter’ means—

13 “(i) a partnership or other entity,

14 “(ii) any investment plan or arrange-
15 ment, or

16 “(iii) any other plan or arrangement,
17 if a significant purpose of such partnership, en-
18 tity, plan, or arrangement is the avoidance or
19 evasion of Federal income tax.”

20 (3) Section 6662(d)(2) is amended by striking
21 subparagraphs (C) and (D).

22 (4) Section 6664(c)(1) is amended by striking
23 “this part” and inserting “section 6662 or 6663”.

6 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
7 **ON UNDERPAYMENTS.”**

“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”

15 **SEC. 504. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
16 **UTABLE TO TRANSACTIONS LACKING ECO-**
17 **NOMIC SUBSTANCE, ETC.**

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1 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
2 **UTABLE TO TRANSACTIONS LACKING ECO-**
3 **NOMIC SUBSTANCE, ETC.**

4 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an
5 noneconomic substance transaction understatement for
6 any taxable year, there shall be added to the tax an
7 amount equal to 40 percent of the amount of such under-
8 statement.

9 “(b) REDUCTION OF PENALTY FOR DISCLOSED
10 TRANSACTIONS.—Subsection (a) shall be applied by sub-
11 stituting ‘20 percent’ for ‘40 percent’ with respect to the
12 portion of any noneconomic substance transaction under-
13 statement with respect to which the relevant facts affect-
14 ing the tax treatment of the item are adequately disclosed
15 in the return or a statement attached to the return.

16 “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-
17 DERSTATEMENT.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘noneconomic
19 substance transaction understatement’ means any
20 amount which would be an understatement under
21 section 6662A(b)(1) if section 6662A were applied
22 by taking into account items attributable to non-
23 economic substance transactions rather than items
24 to which section 6662A applies.

1 “(2) NONECONOMIC SUBSTANCE TRANS-
2 ACTION.—The term ‘noneconomic substance trans-
3 action’ means any transaction if—

4 “(A) there is a lack of economic substance
5 (within the meaning of section 7701(m)(1)) for
6 the transaction giving rise to the claimed ben-
7 efit or the transaction was not respected under
8 section 7701(m)(2), or

9 “(B) the transaction fails to meet the re-
10 quirements of any similar rule of law.

11 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-
12 ALTY.—

13 “(1) IN GENERAL.—If the 1st letter of pro-
14 posed deficiency which allows the taxpayer an oppor-
15 tunity for administrative review in the Internal Rev-
16 enue Service Office of Appeals has been sent with
17 respect to a penalty to which this section applies,
18 only the Commissioner of Internal Revenue may
19 compromise all or any portion of such penalty.

20 “(2) APPLICABLE RULES.—The rules of para-
21 graphs (2), (3), (4), and (5) of section 6707A(d)
22 shall apply for purposes of paragraph (1).

23 “(e) COORDINATION WITH OTHER PENALTIES.—Ex-
24 cept as otherwise provided in this part, the penalty im-

1 posed by this section shall be in addition to any other pen-
 2 alty imposed by this title.

3 “(f) CROSS REFERENCES.—

“**(1) For coordination of penalty with understate-
 ments under section 6662 and other special rules,
 see section 6662A(e).**

“**(2) For reporting of penalty imposed under this
 section to the Securities and Exchange Commission,
 see section 6707A(e).**”

4 (b) CLERICAL AMENDMENT.—The table of sections
 5 for part II of subchapter A of chapter 68 is amended by
 6 inserting after the item relating to section 6662A the fol-
 7 lowing new item:

“Sec. 6662B. Penalty for understatements attributable to trans-
 actions lacking economic substance, etc.”

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to transactions entered into after
 10 February 15, 2004.

11 **SEC. 505. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**
 12 **MENT PENALTY FOR NONREPORTABLE**
 13 **TRANSACTIONS.**

14 (a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-
 15 TIONS.—Section 6662(d)(1)(B) (relating to special rule
 16 for corporations) is amended to read as follows:

17 “(B) SPECIAL RULE FOR CORPORA-
 18 TIONS.—In the case of a corporation other than
 19 an S corporation or a personal holding company
 20 (as defined in section 542), there is a substan-
 21 tial understatement of income tax for any tax-

1 able year if the amount of the understatement
2 for the taxable year exceeds the lesser of—

3 “(i) 10 percent of the tax required to
4 be shown on the return for the taxable
5 year (or, if greater, \$10,000), or

6 “(ii) \$10,000,000.”

7 (b) REDUCTION FOR UNDERSTATEMENT OF TAX-
8 PAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED
9 ITEM.—

10 (1) IN GENERAL.—Section 6662(d)(2)(B)(i)
11 (relating to substantial authority) is amended to
12 read as follows:

13 “(i) the tax treatment of any item by
14 the taxpayer if the taxpayer had reason-
15 able belief that the tax treatment was more
16 likely than not the proper treatment, or”.

17 (2) CONFORMING AMENDMENT.—Section
18 6662(d) is amended by adding at the end the fol-
19 lowing new paragraph:

20 “(3) SECRETARIAL LIST.—For purposes of this
21 subsection, section 6664(d)(2), and section
22 6694(a)(1), the Secretary may prescribe a list of po-
23 sitions for which the Secretary believes there is not
24 substantial authority or there is no reasonable belief
25 that the tax treatment is more likely than not the

1 proper tax treatment. Such list (and any revisions
 2 thereof) shall be published in the Federal Register
 3 or the Internal Revenue Bulletin.”

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

7 **SEC. 506. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
 8 **PRIVILEGES RELATING TO TAXPAYER COM-**
 9 **MUNICATIONS.**

10 (a) IN GENERAL.—Section 7525(b) (relating to sec-
 11 tion not to apply to communications regarding corporate
 12 tax shelters) is amended to read as follows:

13 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS
 14 REGARDING TAX SHELTERS.—The privilege under sub-
 15 section (a) shall not apply to any written communication
 16 which is—

17 “(1) between a federally authorized tax practi-
 18 tioner and—

19 “(A) any person,

20 “(B) any director, officer, employee, agent,
 21 or representative of the person, or

22 “(C) any other person holding a capital or
 23 profits interest in the person, and

1 “(2) in connection with the promotion of the di-
 2 rect or indirect participation of the person in any
 3 tax shelter (as defined in section 1274(b)(3)(C)).”

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

7 **SEC. 507. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

8 (a) IN GENERAL.—Section 6111 (relating to registra-
 9 tion of tax shelters) is amended to read as follows:

10 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

11 “(a) IN GENERAL.—Each material advisor with re-
 12 spect to any reportable transaction shall make a return
 13 (in such form as the Secretary may prescribe) setting
 14 forth—

15 “(1) information identifying and describing the
 16 transaction,

17 “(2) information describing any potential tax
 18 benefits expected to result from the transaction, and

19 “(3) such other information as the Secretary
 20 may prescribe.

21 Such return shall be filed not later than the date specified
 22 by the Secretary.

23 “(b) DEFINITIONS.—For purposes of this section—

24 “(1) MATERIAL ADVISOR.—

1 “(A) IN GENERAL.—The term ‘material
2 advisor’ means any person—

3 “(i) who provides any material aid,
4 assistance, or advice with respect to orga-
5 nizing, promoting, selling, implementing,
6 or carrying out any reportable transaction,
7 and

8 “(ii) who directly or indirectly derives
9 gross income in excess of the threshold
10 amount for such advice or assistance.

11 “(B) THRESHOLD AMOUNT.—For purposes
12 of subparagraph (A), the threshold amount is—

13 “(i) \$50,000 in the case of a report-
14 able transaction substantially all of the tax
15 benefits from which are provided to nat-
16 ural persons, and

17 “(ii) \$250,000 in any other case.

18 “(2) REPORTABLE TRANSACTION.—The term
19 ‘reportable transaction’ has the meaning given to
20 such term by section 6707A(c).

21 “(c) REGULATIONS.—The Secretary may prescribe
22 regulations which provide—

23 “(1) that only 1 person shall be required to
24 meet the requirements of subsection (a) in cases in

1 which 2 or more persons would otherwise be re-
2 quired to meet such requirements,

3 “(2) exemptions from the requirements of this
4 section, and

5 “(3) such rules as may be necessary or appro-
6 priate to carry out the purposes of this section.”

7 (b) CONFORMING AMENDMENTS.—

8 (1) The item relating to section 6111 in the
9 table of sections for subchapter B of chapter 61 is
10 amended to read as follows:

 “Sec. 6111. Disclosure of reportable transactions.”

11 (2)(A) So much of section 6112 as precedes
12 subsection (c) thereof is amended to read as follows:

13 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
14 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

15 “(a) IN GENERAL.—Each material advisor (as de-
16 fined in section 6111) with respect to any reportable
17 transaction (as defined in section 6707A(c)) shall main-
18 tain, in such manner as the Secretary may by regulations
19 prescribe, a list—

20 “(1) identifying each person with respect to
21 whom such advisor acted as such a material advisor
22 with respect to such transaction, and

23 “(2) containing such other information as the
24 Secretary may by regulations require.

1 This section shall apply without regard to whether a mate-
 2 rial advisor is required to file a return under section 6111
 3 with respect to such transaction.”

4 (B) Section 6112 is amended by redesignating
 5 subsection (c) as subsection (b).

6 (C) Section 6112(b), as redesignated by sub-
 7 paragraph (B), is amended—

8 (i) by inserting “written” before “request”
 9 in paragraph (1)(A), and

10 (ii) by striking “shall prescribe” in para-
 11 graph (2) and inserting “may prescribe”.

12 (D) The item relating to section 6112 in the
 13 table of sections for subchapter B of chapter 61 is
 14 amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must
 keep lists of advisees.”

15 (3)(A) The heading for section 6708 is amend-
 16 ed to read as follows:

17 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
 18 **WITH RESPECT TO REPORTABLE TRANS-**
 19 **ACTIONS.”**

20 (B) The item relating to section 6708 in the
 21 table of sections for part I of subchapter B of chap-
 22 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to
 reportable transactions.”

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to transactions with respect to
3 which material aid, assistance, or advice referred to in sec-
4 tion 6111(b)(1)(A)(i) of the Internal Revenue Code of
5 1986 (as added by this section) is provided after the date
6 of the enactment of this Act.

7 **SEC. 508. MODIFICATIONS TO PENALTY FOR FAILURE TO**
8 **REGISTER TAX SHELTERS.**

9 (a) IN GENERAL.—Section 6707 (relating to failure
10 to furnish information regarding tax shelters) is amended
11 to read as follows:

12 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
13 **ING REPORTABLE TRANSACTIONS.**

14 “(a) IN GENERAL.—If a person who is required to
15 file a return under section 6111(a) with respect to any
16 reportable transaction—

17 “(1) fails to file such return on or before the
18 date prescribed therefor, or

19 “(2) files false or incomplete information with
20 the Secretary with respect to such transaction,

21 such person shall pay a penalty with respect to such return
22 in the amount determined under subsection (b).

23 “(b) AMOUNT OF PENALTY.—

1 “(1) IN GENERAL.—Except as provided in para-
 2 graph (2), the penalty imposed under subsection (a)
 3 with respect to any failure shall be \$50,000.

4 “(2) LISTED TRANSACTIONS.—The penalty im-
 5 posed under subsection (a) with respect to any listed
 6 transaction shall be an amount equal to the greater
 7 of—

8 “(A) \$200,000, or

9 “(B) 50 percent of the gross income de-
 10 rived by such person with respect to aid, assist-
 11 ance, or advice which is provided with respect
 12 to the reportable transaction before the date the
 13 return including the transaction is filed under
 14 section 6111.

15 Subparagraph (B) shall be applied by substituting
 16 ‘75 percent’ for ‘50 percent’ in the case of an inten-
 17 tional failure or act described in subsection (a).

18 “(c) RESCISSION AUTHORITY.—The provisions of
 19 section 6707A(d) (relating to authority of Commissioner
 20 to rescind penalty) shall apply to any penalty imposed
 21 under this section.

22 “(d) REPORTABLE AND LISTED TRANSACTIONS.—
 23 The terms ‘reportable transaction’ and ‘listed transaction’
 24 have the respective meanings given to such terms by sec-
 25 tion 6707A(c).”.

1 (b) CLERICAL AMENDMENT.—The item relating to
 2 section 6707 in the table of sections for part I of sub-
 3 chapter B of chapter 68 is amended by striking “tax shel-
 4 ters” and inserting “reportable transactions”.

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

8 **SEC. 509. MODIFICATION OF PENALTY FOR FAILURE TO**
 9 **MAINTAIN LISTS OF INVESTORS.**

10 (a) IN GENERAL.—Subsection (a) of section 6708 is
 11 amended to read as follows:

12 “(a) IMPOSITION OF PENALTY.—

13 “(1) IN GENERAL.—If any person who is re-
 14 quired to maintain a list under section 6112(a) fails
 15 to make such list available upon written request to
 16 the Secretary in accordance with section
 17 6112(b)(1)(A) within 20 business days after the
 18 date of the Secretary’s request, such person shall
 19 pay a penalty of \$10,000 for each day of such fail-
 20 ure after such 20th day.

21 “(2) REASONABLE CAUSE EXCEPTION.—No
 22 penalty shall be imposed by paragraph (1) with re-
 23 spect to the failure on any day if such failure is due
 24 to reasonable cause.”

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

4 **SEC. 510. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
5 **CONDUCT RELATED TO TAX SHELTERS AND**
6 **REPORTABLE TRANSACTIONS.**

7 (a) IN GENERAL.—Section 7408 (relating to action
8 to enjoin promoters of abusive tax shelters, etc.) is amend-
9 ed by redesignating subsection (c) as subsection (d) and
10 by striking subsections (a) and (b) and inserting the fol-
11 lowing new subsections:

12 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-
13 tion in the name of the United States to enjoin any person
14 from further engaging in specified conduct may be com-
15 menced at the request of the Secretary. Any action under
16 this section shall be brought in the district court of the
17 United States for the district in which such person resides,
18 has his principal place of business, or has engaged in spec-
19 ified conduct. The court may exercise its jurisdiction over
20 such action (as provided in section 7402(a)) separate and
21 apart from any other action brought by the United States
22 against such person.

23 “(b) ADJUDICATION AND DECREE.—In any action
24 under subsection (a), if the court finds—

1 “(1) that the person has engaged in any speci-
2 fied conduct, and

3 “(2) that injunctive relief is appropriate to pre-
4 vent recurrence of such conduct,

5 the court may enjoin such person from engaging in such
6 conduct or in any other activity subject to penalty under
7 this title.

8 “(c) SPECIFIED CONDUCT.—For purposes of this
9 section, the term ‘specified conduct’ means any action, or
10 failure to take action, subject to penalty under section
11 6700, 6701, 6707, or 6708.”

12 (b) CONFORMING AMENDMENTS.—

13 (1) The heading for section 7408 is amended to
14 read as follows:

15 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
16 **LATED TO TAX SHELTERS AND REPORTABLE**
17 **TRANSACTIONS.”**

18 (2) The table of sections for subchapter A of
19 chapter 67 is amended by striking the item relating
20 to section 7408 and inserting the following new
21 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and
reportable transactions.”

22 (c) EFFECTIVE DATE.—The amendment made by
23 this section shall take effect on the day after the date of
24 the enactment of this Act.

1 **SEC. 511. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY**
2 **INCOME TAX RETURN PREPARER.**

3 (a) STANDARDS CONFORMED TO TAXPAYER STAND-
4 ARDS.—Section 6694(a) (relating to understatements due
5 to unrealistic positions) is amended—

6 (1) by striking “realistic possibility of being
7 sustained on its merits” in paragraph (1) and in-
8 serting “reasonable belief that the tax treatment in
9 such position was more likely than not the proper
10 treatment”,

11 (2) by striking “or was frivolous” in paragraph
12 (3) and inserting “or there was no reasonable basis
13 for the tax treatment of such position”, and

14 (3) by striking “UNREALISTIC” in the heading
15 and inserting “IMPROPER”.

16 (b) AMOUNT OF PENALTY.—Section 6694 is amend-
17 ed—

18 (1) by striking “\$250” in subsection (a) and in-
19 serting “\$1,000”, and

20 (2) by striking “\$1,000” in subsection (b) and
21 inserting “\$5,000”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to documents prepared after the
24 date of the enactment of this Act.

1 **SEC. 512. PENALTY ON FAILURE TO REPORT INTERESTS IN**
2 **FOREIGN FINANCIAL ACCOUNTS.**

3 (a) IN GENERAL.—Section 5321(a)(5) of title 31,
4 United States Code, is amended to read as follows:

5 “(5) FOREIGN FINANCIAL AGENCY TRANS-
6 ACTION VIOLATION.—

7 “(A) PENALTY AUTHORIZED.—The Sec-
8 retary of the Treasury may impose a civil
9 money penalty on any person who violates, or
10 causes any violation of, any provision of section
11 5314.

12 “(B) AMOUNT OF PENALTY.—

13 “(i) IN GENERAL.—Except as pro-
14 vided in subparagraph (C), the amount of
15 any civil penalty imposed under subpara-
16 graph (A) shall not exceed \$5,000.

17 “(ii) REASONABLE CAUSE EXCEP-
18 TION.—No penalty shall be imposed under
19 subparagraph (A) with respect to any vio-
20 lation if—

21 “(I) such violation was due to
22 reasonable cause, and

23 “(II) the amount of the trans-
24 action or the balance in the account
25 at the time of the transaction was
26 properly reported.

1 “(C) WILLFUL VIOLATIONS.—In the case
2 of any person willfully violating, or willfully
3 causing any violation of, any provision of sec-
4 tion 5314—

5 “(i) the maximum penalty under sub-
6 paragraph (B)(i) shall be increased to the
7 greater of—

8 “(I) \$25,000, or

9 “(II) the amount (not exceeding
10 \$100,000) determined under subpara-
11 graph (D), and

12 “(ii) subparagraph (B)(ii) shall not
13 apply.

14 “(D) AMOUNT.—The amount determined
15 under this subparagraph is—

16 “(i) in the case of a violation involving
17 a transaction, the amount of the trans-
18 action, or

19 “(ii) in the case of a violation involv-
20 ing a failure to report the existence of an
21 account or any identifying information re-
22 quired to be provided with respect to an
23 account, the balance in the account at the
24 time of the violation.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to violations occurring after the
3 date of the enactment of this Act.

4 **SEC. 513. FRIVOLOUS TAX SUBMISSIONS.**

5 (a) CIVIL PENALTIES.—Section 6702 is amended to
6 read as follows:

7 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

8 “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-
9 TURNS.—A person shall pay a penalty of \$5,000 if—

10 “(1) such person files what purports to be a re-
11 turn of a tax imposed by this title but which—

12 “(A) does not contain information on
13 which the substantial correctness of the self-as-
14 sessment may be judged, or

15 “(B) contains information that on its face
16 indicates that the self-assessment is substan-
17 tially incorrect; and

18 “(2) the conduct referred to in paragraph (1)—

19 “(A) is based on a position which the Sec-
20 retary has identified as frivolous under sub-
21 section (c), or

22 “(B) reflects a desire to delay or impede
23 the administration of Federal tax laws.

24 “(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS
25 SUBMISSIONS.—

1 “(1) IMPOSITION OF PENALTY.—Except as pro-
 2 vided in paragraph (3), any person who submits a
 3 specified frivolous submission shall pay a penalty of
 4 \$5,000.

5 “(2) SPECIFIED FRIVOLOUS SUBMISSION.—For
 6 purposes of this section—

7 “(A) SPECIFIED FRIVOLOUS SUBMIS-
 8 SION.—The term ‘specified frivolous submis-
 9 sion’ means a specified submission if any por-
 10 tion of such submission—

11 “(i) is based on a position which the
 12 Secretary has identified as frivolous under
 13 subsection (c), or

14 “(ii) reflects a desire to delay or im-
 15 pede the administration of Federal tax
 16 laws.

17 “(B) SPECIFIED SUBMISSION.—The term
 18 ‘specified submission’ means—

19 “(i) a request for a hearing under—

20 “(I) section 6320 (relating to no-
 21 tice and opportunity for hearing upon
 22 filing of notice of lien), or

23 “(II) section 6330 (relating to
 24 notice and opportunity for hearing be-
 25 fore levy), and

1 “(ii) an application under—

2 “(I) section 6159 (relating to
3 agreements for payment of tax liabil-
4 ity in installments),

5 “(II) section 7122 (relating to
6 compromises), or

7 “(III) section 7811 (relating to
8 taxpayer assistance orders).

9 “(3) OPPORTUNITY TO WITHDRAW SUBMIS-
10 SION.—If the Secretary provides a person with no-
11 tice that a submission is a specified frivolous sub-
12 mission and such person withdraws such submission
13 within 30 days after such notice, the penalty im-
14 posed under paragraph (1) shall not apply with re-
15 spect to such submission.

16 “(c) LISTING OF FRIVOLOUS POSITIONS.—The Sec-
17 retary shall prescribe (and periodically revise) a list of po-
18 sitions which the Secretary has identified as being frivo-
19 lous for purposes of this subsection. The Secretary shall
20 not include in such list any position that the Secretary
21 determines meets the requirement of section
22 6662(d)(2)(B)(ii)(II).

23 “(d) REDUCTION OF PENALTY.—The Secretary may
24 reduce the amount of any penalty imposed under this sec-
25 tion if the Secretary determines that such reduction would

1 promote compliance with and administration of the Fed-
2 eral tax laws.

3 “(e) PENALTIES IN ADDITION TO OTHER PEN-
4 ALTIES.—The penalties imposed by this section shall be
5 in addition to any other penalty provided by law.”

6 (b) TREATMENT OF FRIVOLOUS REQUESTS FOR
7 HEARINGS BEFORE LEVY.—

8 (1) FRIVOLOUS REQUESTS DISREGARDED.—

9 Section 6330 (relating to notice and opportunity for
10 hearing before levy) is amended by adding at the
11 end the following new subsection:

12 “(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—
13 Notwithstanding any other provision of this section, if the
14 Secretary determines that any portion of a request for a
15 hearing under this section or section 6320 meets the re-
16 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
17 then the Secretary may treat such portion as if it were
18 never submitted and such portion shall not be subject to
19 any further administrative or judicial review.”

20 (2) PRECLUSION FROM RAISING FRIVOLOUS
21 ISSUES AT HEARING.—Section 6330(c)(4) is amend-
22 ed—

23 (A) by striking “(A)” and inserting
24 “(A)(i)”;

25 (B) by striking “(B)” and inserting “(ii)”;

1 (C) by striking the period at the end of the
 2 first sentence and inserting “; or”; and

3 (D) by inserting after subparagraph (A)(ii)
 4 (as so redesignated) the following:

5 “(B) the issue meets the requirement of
 6 clause (i) or (ii) of section 6702(b)(2)(A).”

7 (3) STATEMENT OF GROUNDS.—Section
 8 6330(b)(1) is amended by striking “under sub-
 9 section (a)(3)(B)” and inserting “in writing under
 10 subsection (a)(3)(B) and states the grounds for the
 11 requested hearing”.

12 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR
 13 HEARINGS UPON FILING OF NOTICE OF LIEN.—Section
 14 6320 is amended—

15 (1) in subsection (b)(1), by striking “under sub-
 16 section (a)(3)(B)” and inserting “in writing under
 17 subsection (a)(3)(B) and states the grounds for the
 18 requested hearing”, and

19 (2) in subsection (c), by striking “and (e)” and
 20 inserting “(e), and (g)”.

21 (d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR
 22 OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-
 23 MENTS.—Section 7122 is amended by adding at the end
 24 the following new subsection:

“Sec. 6702. Frivolous tax submissions.”

19 SEC. 514. REGULATION OF INDIVIDUALS PRACTICING BE-
20 FORE THE DEPARTMENT OF TREASURY.

(1) IN GENERAL.—Section 330(b) of title 31,
United States Code, is amended—

24 (A) by inserting “, or censure,” after “De-
25 partment”, and

1 (B) by adding at the end the following new
2 flush sentence:

3 “The Secretary may impose a monetary penalty on any
4 representative described in the preceding sentence. If the
5 representative was acting on behalf of an employer or any
6 firm or other entity in connection with the conduct giving
7 rise to such penalty, the Secretary may impose a monetary
8 penalty on such employer, firm, or entity if it knew, or
9 reasonably should have known, of such conduct. Such pen-
10 alty shall not exceed the gross income derived (or to be
11 derived) from the conduct giving rise to the penalty and
12 may be in addition to, or in lieu of, any suspension, disbar-
13 ment, or censure.”

14 (2) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply to actions taken after
16 the date of the enactment of this Act.

17 (b) TAX SHELTER OPINIONS, ETC.—Section 330 of
18 such title 31 is amended by adding at the end the fol-
19 lowing new subsection:

20 “(d) Nothing in this section or in any other provision
21 of law shall be construed to limit the authority of the Sec-
22 retary of the Treasury to impose standards applicable to
23 the rendering of written advice with respect to any entity,
24 transaction plan or arrangement, or other plan or arrange-

1 ment, which is of a type which the Secretary determines
 2 as having a potential for tax avoidance or evasion.”

3 **SEC. 515. PENALTY ON PROMOTERS OF TAX SHELTERS.**

4 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-
 5 TERS.—Section 6700(a) is amended by adding at the end
 6 the following new sentence: “Notwithstanding the first
 7 sentence, if an activity with respect to which a penalty
 8 imposed under this subsection involves a statement de-
 9 scribed in paragraph (2)(A), the amount of the penalty
 10 shall be equal to 50 percent of the gross income derived
 11 (or to be derived) from such activity by the person on
 12 which the penalty is imposed.”

13 (b) EFFECTIVE DATE.—The amendment made by
 14 this section shall apply to activities after the date of the
 15 enactment of this Act.

16 **SEC. 516. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**
 17 **FOR WHICH LISTED TRANSACTIONS NOT RE-**
 18 **PORTED.**

19 (a) IN GENERAL.—Section 6501(e)(1) (relating to
 20 substantial omission of items for income taxes) is amended
 21 by adding at the end the following new subparagraph:

22 “(C) LISTED TRANSACTIONS.—If a tax-
 23 payer fails to include on any return or state-
 24 ment for any taxable year any information with
 25 respect to a listed transaction (as defined in

1 section 6707A(c)(2)) which is required under
 2 section 6011 to be included with such return or
 3 statement, the tax for such taxable year may be
 4 assessed, or a proceeding in court for collection
 5 of such tax may be begun without assessment,
 6 at any time within 6 years after the time the
 7 return is filed. This subparagraph shall not
 8 apply to any taxable year if the time for assess-
 9 ment or beginning the proceeding in court has
 10 expired before the time a transaction is treated
 11 as a listed transaction under section 6011.”

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

15 **SEC. 517. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
 16 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**
 17 **CLOSED REPORTABLE AND NONECONOMIC**
 18 **SUBSTANCE TRANSACTIONS.**

19 (a) IN GENERAL.—Section 163 (relating to deduction
 20 for interest) is amended by redesignating subsection (m)
 21 as subsection (n) and by inserting after subsection (l) the
 22 following new subsection:

23 “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE
 24 TO NONDISCLOSED REPORTABLE TRANSACTIONS AND
 25 NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduc-

tion shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

“(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

“(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).”

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

SEC. 518. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated \$300,000,000 for each fiscal year beginning after September 30, 2002, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

Subtitle B—Other Provisions

SEC. 521. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) **IN GENERAL.**—Section 1502 (relating to consolidated return regulations) is amended by adding at the end

1 the following new sentence: “In prescribing such regula-
 2 tions, the Secretary may prescribe rules applicable to cor-
 3 porations filing consolidated returns under section 1501
 4 that are different from other provisions of this title that
 5 would apply if such corporations filed separate returns.”

6 (b) RESULT NOT OVERTURNED.—Notwithstanding
 7 subsection (a), the Internal Revenue Code of 1986 shall
 8 be construed by treating Treasury regulation § 1.1502–
 9 20(c)(1)(iii) (as in effect on January 1, 2001) as being
 10 inapplicable to the type of factual situation in 255 F.3d
 11 1357 (Fed. Cir. 2001).

12 (c) EFFECTIVE DATE.—The provisions of this section
 13 shall apply to taxable years beginning before, on, or after
 14 the date of the enactment of this Act.

15 **SEC. 522. SIGNING OF CORPORATE TAX RETURNS BY CHIEF**
 16 **EXECUTIVE OFFICER.**

17 (a) IN GENERAL.—Section 6062 (relating to signing
 18 of corporation returns) is amended by striking the first
 19 sentence and inserting the following new sentence: “The
 20 return of a corporation with respect to income shall be
 21 signed by the chief executive officer of such corporation
 22 (or other such officer of the corporation as the Secretary
 23 may designate if the corporation does not have a chief ex-
 24 ecutive officer). The preceding sentence shall not apply to

1 any return of a regulated investment company (within the
2 meaning of section 851).”.

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

6 **SEC. 523. DISCLOSURE OF TAX SHELTERS TO CORPORATE**
7 **AUDIT COMMITTEE.**

8 (a) IN GENERAL.—Subchapter B of chapter 61 (re-
9 lating to information and returns) is amended by inserting
10 after section 6111 the following new section:

11 **“SEC. 6111A. DISCLOSURE OF REPORTABLE TRANSACTIONS**
12 **TO CORPORATE AUDIT COMMITTEE.**

13 “If a corporation is required under section 6011 to
14 include on any return or statement any information with
15 respect to a reportable transaction (as defined in section
16 6707A(c)), the chief executive officer of such corporation
17 (or other such officer of the corporation as the Secretary
18 may designate if the corporation does not have a chief ex-
19 ecutive officer) shall disclose such information in a state-
20 ment to the audit committee of the board of directors of
21 such corporation or any similar committee or entity per-
22 forming auditing functions on behalf of such corpora-
23 tion.”.

24 (b) PENALTY FOR FAILURE TO DISCLOSE.—Section
25 6707A(a) (relating to penalty for failure to include report-

1 able transaction information with return or statement) is
 2 amended by inserting “, or fails to file a statement re-
 3 quired under section 6111A,” before “shall pay”.

4 (c) CLERICAL AMENDMENT.—The table of sections
 5 for subchapter B of chapter 61 is amended by inserting
 6 after the item relating to section 6111 the following new
 7 item:

“Sec. 6111A. Disclosure of reportable transactions to corporate
 audit committee.”

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

11 **Subtitle C—Budget Points of Order**

12 **SEC. 531. EXTENSION OF PAY-AS-YOU-GO ENFORCEMENT IN** 13 **THE SENATE.**

14 Section 2 of Senate Resolution 304 (107th Congress)
 15 is amended—

16 (1) in subsection (a)(1), by striking “April 15,
 17 2003” and inserting “the end of the 108th Con-
 18 gress”; and

19 (2) in subsection (b)(1)(B), by striking “April
 20 15, 2003” and inserting “at the end of the 108th
 21 Congress”.

Calendar No. 21

108TH CONGRESS
1ST SESSION

S. 414

A BILL

To provide an economic stimulus package, and for
other purposes.

FEBRUARY 24, 2003

Read the second time and placed on the calendar