

110TH CONGRESS  
2D SESSION

# S. 3162

To amend the Internal Revenue Code of 1986 to provide tax relief to improve the competitiveness of United States corporations and small businesses, to eliminate tax incentives to move jobs and profits overseas, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 19, 2008

Mr. VOINOVICH introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide tax relief to improve the competitiveness of United States corporations and small businesses, to eliminate tax incentives to move jobs and profits overseas, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Manufacturing, Assembling, Development, and Export in  
6 the USA Tax Act” or the “MADE in the USA Tax Act”.

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

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

Sec. 1. Short title, etc.

TITLE I—TAX RELIEF TO IMPROVE THE COMPETITIVENESS OF  
 UNITED STATES CORPORATIONS AND SMALL BUSINESSES

Sec. 101. Phased in reduction of maximum corporate income tax rate to 28 percent.

Sec. 102. Modifications of deduction for income attributable to domestic production activities.

Sec. 103. Small business expensing provisions made permanent.

Sec. 104. Repeal of imposition of withholding on certain payments made to vendors by government entities.

Sec. 105. Repeal of certain modifications to exclusion for citizens living abroad.

TITLE II—ELIMINATION OF TAX INCENTIVES TO MOVE JOBS  
 AND PROFITS OVERSEAS

Subtitle A—Foreign Tax Credit Modifications

Sec. 201. Inclusion of all foreign-source royalties in passive category income in applying foreign tax credit limitation.

Sec. 202. Separate application of foreign tax credit limitation to financial services income.

Subtitle B—Classification of Foreign Entities

Sec. 211. Treatment of foreign corporations managed and controlled in the United States as domestic corporations.

Sec. 212. Entities with single owner treated as corporations.

Subtitle C—Proper Treatment and Allocation of Income and Deductions

Sec. 221. Limitation on treaty benefits for certain deductible payments.

Sec. 222. Repeal of special source rules for inventory property.

Sec. 223. Clarification of determination of foreign oil and gas extraction income.

Sec. 224. Modifications of limitation on excess interest deductions of certain corporations.

Sec. 225. Sense of Senate regarding certain reinsurance transactions with foreign related persons.

Sec. 226. Study on effectiveness of transfer pricing rules with respect to inbound transactions.

Subtitle D—Other Provisions

Sec. 231. Nonqualified deferred compensation from certain tax indifferent parties.

Sec. 232. Restrictions on refundable child tax credit to taxpayers outside the United States.

TITLE III—OTHER REVENUE MEASURES

Subtitle A—Accounting Provisions

Sec. 301. Repeal of lower of cost or market method of inventory.

Sec. 302. Repeal of percentage depletion.

Sec. 303. Amortization of goodwill and other intangibles.

Subtitle B—Codification of Economic Substance Doctrine

Sec. 311. Codification of economic substance doctrine.

Sec. 312. Penalties for underpayments.

Subtitle C—Extension of Certain Expiring Provisions

Sec. 321. Extension of FUTA tax.

Sec. 322. Permanent extension of custom user fees.

1 **TITLE I—TAX RELIEF TO IM-**  
 2 **PROVE THE COMPETITIVE-**  
 3 **NESS OF UNITED STATES**  
 4 **CORPORATIONS AND SMALL**  
 5 **BUSINESSES**

6 **SEC. 101. PHASED IN REDUCTION OF MAXIMUM COR-**  
 7 **PORATE INCOME TAX RATE TO 28 PERCENT.**

8 (a) PHASED REDUCTION.—

9 (1) IN GENERAL.—Paragraph (1) of section  
 10 11(b) (relating to amount of tax on corporations) is  
 11 amended to read as follows:

12 “(1) IN GENERAL.—The amount of the tax im-  
 13 posed by subsection (a) shall be the sum of—

1           “(A) 15 percent of so much of the taxable  
2 income as does not exceed \$50,000,

3           “(B) 25 percent of so much of the taxable  
4 income as exceeds \$50,000, but does not exceed  
5 \$75,000, and

6           “(C) the applicable percentage of so much  
7 of such taxable income as exceeds \$75,000.”.

8           (2) APPLICABLE PERCENTAGE.—Section 11(b)  
9 is amended by adding at the end the following new  
10 paragraph:

11           “(3) APPLICABLE PERCENTAGE.—For purposes  
12 of this subsection, the applicable percentage for any  
13 taxable year shall be determined in accordance with  
14 the following table:

<b>“In the case of a taxable year be- ginning in calendar year:</b>	<b>The applicable percentage is:</b>
2009 .....	33
2010 .....	32
2011 .....	31
2012 .....	30
2013 and thereafter .....	28”.

15           (b) PERSONAL SERVICE CORPORATIONS.—Para-  
16 graph (2) of section 11(b) is amended by striking “35 per-  
17 cent” and inserting “the applicable percentage”.

18           (c) CONFORMING AMENDMENTS.—

19           (1) Section 904(b)(3)(D)(ii) is amended by  
20 striking “(determined without regard to the last sen-  
21 tence of section 11(b)(1))”.

22           (2) Section 1201(a) is amended—

1 (A) by striking “35 percent” each place it  
2 appears and inserting “the applicable percent-  
3 age then in effect under section 11(b)(3)”, and

4 (B) by striking “(determined without re-  
5 gard to the last 2 sentences of section  
6 11(b)(1))”.

7 (3) Subparagraphs (A) and (B)(ii) of section  
8 1201(b)(1), as added by the Heartland, Habitat,  
9 Harvest, and Horticulture Act of 2008, are each  
10 amended by striking “35 percent” and inserting  
11 “the applicable percentage then in effect under sec-  
12 tion 11(b)(3)”.

13 (4)(A) Paragraph (1) of section 1445(e) is  
14 amended by striking “35 percent” and inserting  
15 “the applicable percentage in effect under section  
16 11(b)(3) on the 1st day of the calendar year in  
17 which the disposition occurs”.

18 (B) Paragraph (2) of section 1445(e) is amend-  
19 ed by striking “35 percent” and inserting “the ap-  
20 plicable percentage (in effect under section 11(b)(3)  
21 on the 1st day of the calendar year in which the dis-  
22 tribution occurs)”

23 (d) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to taxable years beginning after

1 December 31, 2008; except that the amendments made  
 2 by subsection (c)(4) shall take effect on January 1, 2009.

3 **SEC. 102. MODIFICATIONS OF DEDUCTION FOR INCOME AT-**  
 4 **TRIBUTABLE TO DOMESTIC PRODUCTION AC-**  
 5 **TIVITIES.**

6 (a) DEDUCTION LIMITED TO TAXPAYERS OTHER  
 7 THAN C CORPORATIONS.—Section 199(a)(1) (relating to  
 8 allowance of deduction for income attributable to domestic  
 9 production activities) is amended by striking “There” and  
 10 inserting “In the case of a taxpayer other than a C cor-  
 11 poration, there”.

12 (b) INCREASE IN AMOUNT OF DEDUCTION.—Section  
 13 199(a) is amended—

14 (1) by striking “9 percent” in paragraph (1)  
 15 and inserting “12 percent”, and

16 (2) in paragraph (2)—

17 (A) by striking “before 2010” and insert-  
 18 ing “before 2011”, and

19 (B) by striking the table and inserting the  
 20 following:

<b>“For taxable years beginning in:</b>	<b>The transition percentage</b>
	<b>is:</b>
2005 or 2006 .....	3
2007 or 2008 .....	6
2009 or 2010 .....	9”.

21 (c) CONFORMING AMENDMENTS.—

22 (1) Section 199(c)(4) is amended by striking  
 23 subparagraph (D).

1           (2) Section 199(c)(7)(B) is amended to read as  
2 follows:

3           “(B) RELATED PERSON.—For purposes of  
4 subparagraph (A), a person shall be treated as  
5 related to another person if such persons are  
6 treated as a single employer under section  
7 52(b) or subsection (m) or (o) of section 414,  
8 except that any determination under section  
9 52(b) shall be made without regard to section  
10 1563(b).”.

11           (3) Section 199(d)(4) is repealed.

12           (4) Section 199(d)(6) is amended to read as fol-  
13 lows:

14           “(6) COORDINATION WITH MINIMUM TAX.—For  
15 purposes of determining alternative minimum tax-  
16 able income under section 55, qualified production  
17 activities income shall be determined without regard  
18 to any adjustments under sections 56 through 59.”.

19           (5) Section 163(j)(6)(A)(i) is amended by in-  
20 sserting “and” at the end of subclause (II), by strik-  
21 ing subclause (III), and by redesignating subclause  
22 (IV) as subclause (III).

23           (6) Section 170(b)(2)(C) is amended by insert-  
24 ing “and” at the end of clause (iii), by striking

1 clause (iv), and by redesignating clause (v) as clause  
2 (iv).

3 (7) Section 246(b)(1) is amended by striking  
4 “199,”.

5 (d) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply to taxable years beginning after  
7 December 31, 2008.

8 **SEC. 103. SMALL BUSINESS EXPENSING PROVISIONS MADE**  
9 **PERMANENT.**

10 (a) INCREASE IN SMALL BUSINESS EXPENSING  
11 MADE PERMANENT.—Subsection (b) of section 179 is  
12 amended—

13 (1) by striking “\$25,000 (\$125,000 in the case  
14 of taxable years beginning after 2006 and before  
15 2011)” in paragraph (1) and inserting “\$125,000”,  
16 and

17 (2) by striking “\$200,000 (\$500,000 in the  
18 case of taxable years beginning after 2006 and be-  
19 fore 2011)” in paragraph (2) and inserting  
20 “\$500,000”.

21 (b) EXPENSING FOR COMPUTER SOFTWARE MADE  
22 PERMANENT.—Clause (ii) of section 179(d)(1)(A) is  
23 amended—

24 (1) by striking “, to which” and inserting “and  
25 to which”, and

1           (2) by striking “and which is placed in service  
2           in a taxable year beginning after 2002 and before  
3           2011,”.

4           (c) INFLATION ADJUSTMENT.—Subparagraph (A) of  
5           section 179(b)(5) is amended by striking “and before  
6           2011”.

7           (d) EFFECTIVE DATE.—

8           (1) IN GENERAL.—Except as provided in para-  
9           graph (2), the amendments made by this section  
10          shall apply to taxable years beginning after Decem-  
11          ber 31, 2008.

12          (2) COMPUTER SOFTWARE.—The amendment  
13          made by subsection (b) shall apply to property  
14          placed in service after December 31, 2008.

15 **SEC. 104. REPEAL OF IMPOSITION OF WITHHOLDING ON**  
16 **CERTAIN PAYMENTS MADE TO VENDORS BY**  
17 **GOVERNMENT ENTITIES.**

18          Section 511 of the Tax Increase Prevention and Rec-  
19          onciliation Act of 2005, and the amendment made by such  
20          section, are repealed, and the Internal Revenue Code of  
21          1986 shall be applied and administered as if such amend-  
22          ment had never been enacted.

23 **SEC. 105. REPEAL OF CERTAIN MODIFICATIONS TO EXCLU-**  
24 **SION FOR CITIZENS LIVING ABROAD.**

25          (a) MODIFICATION OF HOUSING COST AMOUNT.—

1           (1) HOUSING COST FLOOR.—Clause (i) of sec-  
2           tion 911(c)(1)(B) (relating to housing cost amount)  
3           is amended to read as follows:

4                   “(i) 16 percent of the salary (com-  
5                   puted on a daily basis) of an employee of  
6                   the United States who is compensated at a  
7                   rate equal to the annual rate for step 1 of  
8                   grade GS–14, multiplied by”.

9           (2) MAXIMUM AMOUNT OF EXCLUSION.—

10           (A) IN GENERAL.—Section 911(c) is  
11           amended—

12                   (i) in paragraph (1)(A), by striking  
13                   “to the extent such expenses do not exceed  
14                   the amount determined under paragraph  
15                   (2)”, and

16                   (ii) by striking paragraph (2) and re-  
17                   designating paragraphs (3) and (4) as  
18                   paragraphs (2) and (3), respectively.

19           (B) CONFORMING AMENDMENTS.—

20                   (i) Section 911(d)(4) is amended by  
21                   striking “, (c)(1)(B)(ii), and (c)(2)(A)(ii)”  
22                   and inserting “and (c)(1)(B)(ii)”.

23                   (ii) Section 911(d)(7) is amended by  
24                   striking “subsection (c)(4)” and inserting  
25                   “subsection (c)(3)”.

1 (b) RATES OF TAX APPLICABLE TO NONEXCLUDED  
 2 INCOME.—Section 911 (relating to exclusion of earned in-  
 3 come of citizens and residents of the United States living  
 4 abroad) is amended by striking subsection (f) and by re-  
 5 designating subsection (g) as subsection (f).

6 (c) EFFECTIVE DATE.—The amendments made by  
 7 this section shall apply to taxable years beginning after  
 8 December 31, 2008.

9 **TITLE II—ELIMINATION OF TAX**  
 10 **INCENTIVES TO MOVE JOBS**  
 11 **AND PROFITS OVERSEAS**

12 **Subtitle A—Foreign Tax Credit**  
 13 **Modifications**

14 **SEC. 201. INCLUSION OF ALL FOREIGN-SOURCE ROYALTIES**  
 15 **IN PASSIVE CATEGORY INCOME IN APPLYING**  
 16 **FOREIGN TAX CREDIT LIMITATION.**

17 (a) IN GENERAL.—Clause (i) of section 904(d)(2)(B)  
 18 (defining passive income) is amended to read as follows:

19 “(i) IN GENERAL.—Except as other-  
 20 wise provided in this subparagraph, the  
 21 term ‘passive income’ means—

22 “(I) any income received or ac-  
 23 crued by any person which is of a  
 24 kind which would be foreign personal

1 holding company income (as defined  
2 in section 954(c)), and

3 “(II) any royalties received or ac-  
4 crued by any person which are not de-  
5 scribed in subclause (I).”.

6 (b) LOOK-THRU RULES NOT TO APPLY TO ROYAL-  
7 TIES.—Section 904(d)(3) (relating to look-thru in the case  
8 of controlled foreign corporations) is amended—

9 (1) by striking “rents, and royalties” in sub-  
10 paragraph (A) and inserting “and rents”, and

11 (2) in subparagraph (C)—

12 (A) by striking “, rent, or royalty” and in-  
13 sserting “or rent”, and

14 (B) by striking “RENTS, AND ROYALTIES”  
15 in the heading and inserting “AND RENTS”.

16 (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to taxable years beginning after  
18 December 31, 2008.

19 **SEC. 202. SEPARATE APPLICATION OF FOREIGN TAX CRED-**  
20 **IT LIMITATION TO FINANCIAL SERVICES IN-**  
21 **COME.**

22 (a) IN GENERAL.—Section 904(d)(1) (relating to  
23 separate application of section with respect to certain cat-  
24 egories of income) is amended by striking “and” at the  
25 end of subparagraph (A), by redesignating subparagraph

1 (B) as subparagraph (C), and by inserting after subpara-  
2 graph (A) the following new subparagraph:

3                   “(B) financial services category income,  
4                   and”.

5 (b) FINANCIAL SERVICES CATEGORY INCOME.—

6           (1) IN GENERAL.—Section 904(d)(2)(A) (relat-  
7           ing to categories of income) is amended—

8                   (A) by redesignating clause (ii) as clause  
9                   (iii) and inserting after clause (i) the following  
10                  new clause:

11                               “(ii) FINANCIAL SERVICES CATEGORY  
12                               INCOME.—The term ‘financial services cat-  
13                               egory income’ means income described in  
14                               subparagraph (C).”, and

15                   (B) by inserting “or financial services cat-  
16                   egory income” before the period at the end of  
17                   clause (iii) (as redesignated by subparagraph  
18                   (A)).

19           (2) COORDINATION WITH PASSIVE INCOME.—  
20           Clause (iii) of section 904(d)(2)(B) (relating to ex-  
21           ceptions) is amended by striking “and” at the end  
22           of subclause (I), by striking the period at the end of  
23           subclause (II) and inserting “, and”, and by adding  
24           at the end the following new subclause:

1                   “(III) any financial services cat-  
2                   egory income.”.

3                   (3) FINANCIAL SERVICES CATEGORY INCOME  
4                   DEFINED.—So much of section 904(d)(2)(C) as pre-  
5                   cedes clause (ii) thereof is amended to read as fol-  
6                   lows:

7                   “(C) FINANCIAL SERVICES CATEGORY IN-  
8                   COME.—

9                   “(i) IN GENERAL.—Financial services  
10                  income shall be treated as financial serv-  
11                  ices category income in the case of—

12                  “(I) a member of a financial  
13                  services group, or

14                  “(II) any other person if such  
15                  person is predominantly engaged in  
16                  the active conduct of a banking, insur-  
17                  ance, financing, or similar business.

18                  Notwithstanding the preceding sentence, if  
19                  any portion of any financial services in-  
20                  come consists of any royalties received or  
21                  accrued by any person, then such portion  
22                  shall be treated as passive category in-  
23                  come.”.

24                  (4) CONFORMING AMENDMENTS.—

1 (A) Section 904(d)(2)(H)(i) is amended by  
2 striking “paragraph (1)(B)” and inserting  
3 “paragraph (1)(C), except that in the case of  
4 taxable years beginning after December 31,  
5 2008, the taxpayer may elect to treat such tax  
6 as tax imposed on income described in subpara-  
7 graph (B) or (C) of paragraph (1)”.

8 (B) Section 904(d)(3) is amended—

9 (i) in subparagraph (A), by striking  
10 “passive category income” and inserting  
11 “income in a separate category”,

12 (ii) in subparagraph (B)—

13 (I) by striking “passive category  
14 income” the first place it appears and  
15 inserting “income in a separate cat-  
16 egory”, and

17 (II) by striking “passive category  
18 income” the second place it appears  
19 and inserting “income in such cat-  
20 egory”,

21 (iii) in subparagraph (C)—

22 (I) by striking “passive category  
23 income” the first place it appears and  
24 inserting “income in a separate cat-  
25 egory”, and

1 (II) by striking “passive category  
2 income of the controlled foreign cor-  
3 poration” and inserting “income of  
4 the controlled foreign corporation in  
5 such category”,

6 (iv) in subparagraph (D)—

7 (I) by striking “passive category  
8 income” the first place it appears and  
9 inserting “income in a separate cat-  
10 egory”, and

11 (II) by striking “passive category  
12 income” the second place it appears  
13 and inserting “income in such cat-  
14 egory”,

15 (v) in subparagraph (E)—

16 (I) by striking “passive category  
17 income” each place it appears and in-  
18 serting “income in a separate cat-  
19 egory”, and

20 (II) by striking “financial serv-  
21 ices income” and inserting “financial  
22 services category income”, and

23 (vi) by striking subparagraph (F) and  
24 inserting the following new subparagraph:

1           “(F) SEPARATE CATEGORY; COORDINATION  
2 WITH HIGH-TAXED INCOME PROVISIONS.—For  
3 purposes of this paragraph—

4           “(i) IN GENERAL.—Except as pro-  
5 vided in clause (ii), the term ‘separate cat-  
6 egory’ means any category of income de-  
7 scribed in subparagraph (A) or (B) of  
8 paragraph (1).

9           “(ii) COORDINATION WITH HIGH-  
10 TAXED INCOME PROVISIONS.—

11           “(I) In determining whether any  
12 income of a controlled foreign cor-  
13 poration is in a separate category,  
14 subclause (II) of paragraph (2)(B)(iii)  
15 shall not apply.

16           “(II) Any income of the taxpayer  
17 which is treated as income in a sepa-  
18 rate category under this paragraph  
19 shall be so treated notwithstanding  
20 any provision of paragraph (2); except  
21 that the determination of whether any  
22 amount is high-taxed income shall be  
23 made after the application of this  
24 paragraph.”.

25           (c) EFFECTIVE DATE.—

1           (1) IN GENERAL.—The amendments made by  
2 this section shall apply to taxable years beginning  
3 after December 31, 2008.

4           (2) TRANSITION RULES.—The Secretary shall  
5 prescribe such rules or guidance as may be nec-  
6 essary or appropriate to provide for the proper treat-  
7 ment of items of income, gain, deductions, losses,  
8 and taxes arising in taxable years beginning before  
9 January 1, 2009, which are properly allocable to a  
10 different category of income for taxable years begin-  
11 ning on or after such date by reason of the amend-  
12 ments made by this section.

## 13           **Subtitle B—Classification of** 14           **Foreign Entities**

### 15   **SEC. 211. TREATMENT OF FOREIGN CORPORATIONS MAN-** 16                           **AGED AND CONTROLLED IN THE UNITED** 17                           **STATES AS DOMESTIC CORPORATIONS.**

18           (a) IN GENERAL.—Section 7701 (relating to defini-  
19 tions), as amended by section 311, is amended by redesi-  
20 gnating subsection (q) as subsection (r) and by inserting  
21 after subsection (p) the following new subsection:

22           “(q) CERTAIN PUBLICLY-TRADED CORPORATIONS  
23 MANAGED AND CONTROLLED IN THE UNITED STATES  
24 TREATED AS DOMESTIC FOR INCOME TAX.—

1           “(1) IN GENERAL.—Notwithstanding subsection  
2           (a)(4), in the case of a corporation the stock of  
3           which is regularly traded on an established securities  
4           market, if—

5                   “(A) the corporation would not otherwise  
6                   be treated as a domestic corporation for pur-  
7                   poses of this title, but

8                   “(B) the management and control of the  
9                   corporation occurs primarily within the United  
10                  States,

11          then, solely for purposes of chapter 1 (and any other  
12          provision of this title relating to chapter 1), the cor-  
13          poration shall be treated as a domestic corporation.

14           “(2) MANAGEMENT AND CONTROL.—The Sec-  
15          retary shall prescribe regulations for purposes of de-  
16          termining cases in which the management and con-  
17          trol of a corporation is to be treated as primarily oc-  
18          curring within the United States. Such regulations  
19          shall provide that—

20                   “(A) the management and control of a cor-  
21                   poration shall be treated as primarily occurring  
22                   within the United States if substantially all of  
23                   the executive officers and senior management of  
24                   the corporation who exercise day-to-day respon-  
25                   sibility for making decisions involving strategic,

1 financial, and operational policies of the cor-  
2 poration are primarily located within the United  
3 States, and

4 “(B) individuals who are not executive offi-  
5 cers and senior management of the corporation  
6 (including individuals who are officers or em-  
7 ployees of other corporations in the same chain  
8 of corporations as the corporation) shall be  
9 treated as executive officers and senior manage-  
10 ment if such individuals exercise the day-to day  
11 responsibilities of the corporation described in  
12 subparagraph (A).”.

13 (b) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to taxable years beginning on or  
15 after the date which is 2 years after the date of the enact-  
16 ment of this Act.

17 **SEC. 212. ENTITIES WITH SINGLE OWNER TREATED AS COR-**  
18 **PORATIONS.**

19 (a) IN GENERAL.—Section 7701 (relating to defini-  
20 tions), as amended by sections 211 and 311, is amended  
21 by redesignating subsection (r) as subsection (s) and by  
22 inserting after subsection (q) the following new subsection:

23 “(r) SPECIAL RULES FOR ENTITIES WITH SINGLE  
24 OWNERS.—

1           “(1) IN GENERAL.—Notwithstanding this sec-  
2           tion or any regulation issued thereunder, a business  
3           entity shall be treated as a corporation if the cor-  
4           poration is created or organized under the laws of  
5           any foreign country and has a single owner.

6           “(2) REGULATORY AUTHORITY.—

7           “(A) APPLICATION TO DOMESTIC ENTI-  
8           TIES.—The Secretary may issue regulations  
9           which apply the rule of paragraph (1) to a do-  
10          mestic business entity in cases where the single  
11          owner is a controlled foreign corporation (as de-  
12          fined in section 957(a)).

13          “(B) OTHER AUTHORITY.—The Secretary  
14          may issue such regulations as are necessary or  
15          appropriate to carry out the purposes of this  
16          section, including regulations which treat a  
17          business entity with more than one owner as  
18          having a single owner to the extent necessary to  
19          prevent the avoidance of the purposes of this  
20          section.”.

21          (b) EFFECTIVE DATES.—

22          (1) IN GENERAL.—Except as provided in para-  
23          graph (2), the amendments made by this section  
24          shall apply to taxable years beginning after the date  
25          of the enactment of this Act.

1           (2) TRANSITION RULE FOR CERTAIN EXISTING  
 2 ENTITIES.—In the case of an entity in existence on  
 3 the date of the enactment of this Act which is not  
 4 treated as a corporation for purposes of the Internal  
 5 Revenue Code of 1986 for the taxable year which in-  
 6 cludes such date, the amendments made by this sec-  
 7 tion shall apply to taxable years of such corporation  
 8 beginning on or after the date which is 1 year after  
 9 such date of enactment.

10 **Subtitle C—Proper Treatment and**  
 11 **Allocation of Income and Deduc-**  
 12 **tions**

13 **SEC. 221. LIMITATION ON TREATY BENEFITS FOR CERTAIN**  
 14 **DEDUCTIBLE PAYMENTS.**

15           (a) IN GENERAL.—Section 894 (relating to income  
 16 affected by treaty) is amended by adding at the end the  
 17 following new subsection:

18           “(d) LIMITATION ON TREATY BENEFITS FOR CER-  
 19 TAIN DEDUCTIBLE PAYMENTS.—

20           “(1) IN GENERAL.—In the case of any deduct-  
 21 ible related-party payment, any withholding tax im-  
 22 posed under chapter 3 (and any tax imposed under  
 23 subpart A or B of this part) with respect to such  
 24 payment may not be reduced under any treaty of the  
 25 United States unless any such withholding tax would

1 be reduced under a treaty of the United States if  
2 such payment were made directly to the foreign par-  
3 ent corporation.

4 “(2) DEDUCTIBLE RELATED-PARTY PAY-  
5 MENT.—For purposes of this subsection, the term  
6 ‘deductible related-party payment’ means any pay-  
7 ment made, directly or indirectly, by any person to  
8 any other person if the payment is allowable as a de-  
9 duction under this chapter and both persons are  
10 members of the same foreign controlled group of en-  
11 tities.

12 “(3) FOREIGN CONTROLLED GROUP OF ENTI-  
13 TIES.—For purposes of this subsection—

14 “(A) IN GENERAL.—The term ‘foreign  
15 controlled group of entities’ means a controlled  
16 group of entities the common parent of which  
17 is a foreign corporation.

18 “(B) CONTROLLED GROUP OF ENTITIES.—  
19 The term ‘controlled group of entities’ means a  
20 controlled group of corporations as defined in  
21 section 1563(a)(1), except that—

22 “(i) ‘more than 50 percent’ shall be  
23 substituted for ‘at least 80 percent’ each  
24 place it appears therein, and

1                   “(ii) the determination shall be made  
2                   without regard to subsections (a)(4) and  
3                   (b)(2) of section 1563.

4                   A partnership or any other entity (other than a  
5                   corporation) shall be treated as a member of a  
6                   controlled group of entities if such entity is con-  
7                   trolled (within the meaning of section  
8                   954(d)(3)) by members of such group (includ-  
9                   ing any entity treated as a member of such  
10                  group by reason of this sentence).

11                  “(4) FOREIGN PARENT CORPORATION.—For  
12                  purposes of this subsection, the term ‘foreign parent  
13                  corporation’ means, with respect to any deductible  
14                  related-party payment, the common parent of the  
15                  foreign controlled group of entities referred to in  
16                  paragraph (3)(A).

17                  “(5) REGULATIONS.—The Secretary may pre-  
18                  scribe such regulations or other guidance as are nec-  
19                  essary or appropriate to carry out the purposes of  
20                  this subsection, including regulations or other guid-  
21                  ance which provide for—

22                         “(A) the treatment of two or more persons  
23                         as members of a foreign controlled group of en-  
24                         tities if such persons would be the common par-

1 ent of such group if treated as one corporation,  
2 and

3 “(B) the treatment of any member of a  
4 foreign controlled group of entities as the com-  
5 mon parent of such group if such treatment is  
6 appropriate taking into account the economic  
7 relationships among such entities.”.

8 (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall apply to payments made after the date  
10 of the enactment of this Act.

11 **SEC. 222. REPEAL OF SPECIAL SOURCE RULES FOR INVEN-**  
12 **TORY PROPERTY.**

13 (a) IN GENERAL.—The following provisions are re-  
14 pealed:

15 (1) Section 861(a)(6).

16 (2) Section 862(a)(6).

17 (3) Section 865(b).

18 (b) SPECIAL RULES FOR DETERMINING SOURCE.—  
19 The last sentence of section 863(b) is amended to read  
20 as follows: “Gains, profits, and income from services ren-  
21 dered partly within and partly without the United States  
22 shall be treated as derived partly from sources within and  
23 partly from sources without the United States.”.

24 (c) CONFORMING AMENDMENTS.—

1           (1) Section 865 is amended by striking “(b),”  
2           in subsection (e).

3           (2) Section 865(i)(1) is repealed.

4           (3) Section 954(d)(4) is amended—

5                 (A) by striking subparagraph (A) and in-  
6                 serting the following new subparagraph:

7                         “(A) the sale of any unprocessed timber  
8                         which is a softwood and was cut from an area  
9                         in the United States, or”, and

10                        (B) by adding at the end the following new  
11                        sentence: “For purposes of subparagraph (A),  
12                        the term ‘unprocessed timber’ means any log,  
13                        cant, or similar form of timber.”.

14           (d) EFFECTIVE DATE.—The amendments made by  
15           this section shall apply to taxable years beginning after  
16           December 31, 2008.

17           **SEC. 223. CLARIFICATION OF DETERMINATION OF FOREIGN**  
18                                 **OIL AND GAS EXTRACTION INCOME.**

19           (a) IN GENERAL.—Paragraph (1) of section 907(c)  
20           is amended by redesignating subparagraph (B) as sub-  
21           paragraph (C), by striking “or” at the end of subpara-  
22           graph (A), and by inserting after subparagraph (A) the  
23           following new subparagraph:

1           “(B) so much of any transportation of  
2           such minerals as occurs before the fair market  
3           value event, or”.

4           (b) FAIR MARKET VALUE EVENT.—Subsection (c) of  
5           section 907 is amended by adding at the end the following  
6           new paragraph:

7           “(6) FAIR MARKET VALUE EVENT.—For pur-  
8           poses of this section, the term ‘fair market value  
9           event’ means, with respect to any mineral, the first  
10          point in time at which such mineral—

11           “(A) has a fair market value which can be  
12           determined on the basis of a transfer, which is  
13           an arm’s length transaction, of such mineral  
14           from the taxpayer to a person who is not re-  
15           lated (within the meaning of section 482) to  
16           such taxpayer, or

17           “(B) is at a location at which the fair mar-  
18           ket value is readily ascertainable by reason of  
19           transactions among unrelated third parties with  
20           respect to the same mineral (taking into ac-  
21           count source, location, quality, and chemical  
22           composition).”.

23           (c) SPECIAL RULE FOR CERTAIN PETROLEUM  
24           TAXES.—Subsection (c) of section 907, as amended by

1 subsection (b), is amended by adding at the end the fol-  
2 lowing new paragraph:

3           “(7) OIL AND GAS TAXES.—In the case of any  
4 tax imposed by a foreign country which is limited in  
5 its application to taxpayers engaged in oil or gas ac-  
6 tivities—

7                   “(A) the term ‘oil and gas extraction taxes’  
8 shall include such tax,

9                   “(B) the term ‘foreign oil and gas extrac-  
10 tion income’ shall include any taxable income  
11 which is taken into account in determining such  
12 tax (or is directly attributable to the activity to  
13 which such tax relates), and

14                   “(C) the term ‘foreign oil related income’  
15 shall not include any taxable income which is  
16 treated as foreign oil and gas extraction income  
17 under subparagraph (B).”.

18 (d) CONFORMING AMENDMENTS.—

19           (1) Subparagraph (C) of section 907(c)(1), as  
20 redesignated by this section, is amended by inserting  
21 “or used by the taxpayer in the activity described in  
22 subparagraph (B)” before the period at the end.

23           (2) Subparagraph (B) of section 907(c)(2) is  
24 amended to read as follows:

1           “(B) so much of the transportation of such  
2           minerals or primary products as is not taken  
3           into account under paragraph (1)(B),”.

4           (e) 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. 224. MODIFICATIONS OF LIMITATION ON EXCESS IN-**  
8                                   **TEREST DEDUCTIONS OF CERTAIN CORPORA-**  
9                                   **TIONS.**

10          (a) CORPORATIONS TO WHICH LIMITATION AP-  
11 PLIES.—Section 163(j)(2) (relating to corporations to  
12 which subsection applies) is amended to read as follows:

13                               “(2) CORPORATIONS TO WHICH SUBSECTION  
14 APPLIES.—

15                               “(A) IN GENERAL.—This subsection shall  
16 apply to any corporation for any taxable year if  
17 such corporation has excess interest expense for  
18 the taxable year.

19                               “(B) EXCESS INTEREST EXPENSE.—For  
20 purposes of this subsection, the term ‘excess in-  
21 terest expense’ means the excess (if any) of—

22                                       “(i) the corporation’s net interest ex-  
23 pense, over

24                                       “(ii) 25 percent of the adjusted tax-  
25 able income of the corporation.”.

1 (b) MODIFICATION OF CARRYFORWARD OF DIS-  
2 ALLOWED INTEREST.—Subparagraph (B) of section  
3 163(j)(1) is amended to read as follows:

4 “(B) DISALLOWED AMOUNT CARRIED TO  
5 SUCCEEDING TAXABLE YEAR.—

6 “(i) IN GENERAL.—Except as pro-  
7 vided in clause (ii), any amount disallowed  
8 under subparagraph (A) for any taxable  
9 year shall be treated as disqualified inter-  
10 est paid or accrued in the succeeding tax-  
11 able year.

12 “(ii) 10-YEAR CARRYFORWARD  
13 LIMIT.—Any disqualified interest dis-  
14 allowed under subparagraph (A) shall not  
15 be carried forward under clause (i) to any  
16 taxable year beginning after the 10th tax-  
17 able year following the taxable year in  
18 which the interest was paid or accrued (de-  
19 termined without regard to this subpara-  
20 graph). For purposes of the preceding sen-  
21 tence, any deduction under this section  
22 with respect to disqualified interest for  
23 which a deduction was previously dis-  
24 allowed under subparagraph (A) shall be

1 allocated to such interest on a first-in,  
2 first-out basis.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to interest paid or accrued in tax-  
5 able years beginning after December 31, 2008.

6 **SEC. 225. SENSE OF SENATE REGARDING CERTAIN REIN-**  
7 **SURANCE TRANSACTIONS WITH FOREIGN RE-**  
8 **LATED PERSONS.**

9 It is the sense of the Senate that Congress should  
10 enact legislation as soon as possible to address the tax  
11 treatment of reinsurance transactions with related persons  
12 (and other similar transactions), including the transfer  
13 offshore by reinsurance or otherwise of assets and earn-  
14 ings related to insurance of United States risks. In enact-  
15 ing such legislation, Congress should consider the effects  
16 of such practices on—

17 (1) the tax base of the United States, and

18 (2) the competitiveness of insurers and rein-  
19 surers based in the United States.

20 **SEC. 226. STUDY ON EFFECTIVENESS OF TRANSFER PRIC-**  
21 **ING RULES WITH RESPECT TO INBOUND**  
22 **TRANSACTIONS.**

23 (a) IN GENERAL.—The Secretary of the Treasury or  
24 the Secretary’s delegate shall conduct a study of the effec-  
25 tiveness of the transfer pricing rules under section 482

1 of the Internal Revenue Code of 1986 in properly allo-  
2 cating items of income and deduction in cases involving  
3 foreign persons conducting business within the United  
4 States or foreign persons selling goods and services into  
5 the United States. Such study shall include an analysis  
6 of the effectiveness of such rules in preventing income  
7 shifting, preventing the understatement of United States  
8 business profits, and ensuring taxation of income effec-  
9 tively connected with the United States.

10 (b) REPORT.—The Secretary shall, not later than the  
11 date which is 1 year after the date of the enactment of  
12 this Act, report the results of the study conducted under  
13 subsection (a) to the Committee on Finance of the Senate  
14 and the Committee on Ways and Means of the House of  
15 Representatives, including any specific recommendations  
16 for changes in legislation which the Secretary considers  
17 appropriate.

## 18 **Subtitle D—Other Provisions**

### 19 **SEC. 231. NONQUALIFIED DEFERRED COMPENSATION** 20 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

21 (a) IN GENERAL.—Subpart B of part II of sub-  
22 chapter E of chapter 1 is amended by inserting after sec-  
23 tion 457 the following new section:

1 **“SEC. 457A. NONQUALIFIED DEFERRED COMPENSATION**  
2 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

3 “(a) IN GENERAL.—Any compensation which is de-  
4 ferred under a nonqualified deferred compensation plan of  
5 a nonqualified entity shall be includible in gross income  
6 when there is no substantial risk of forfeiture of the rights  
7 to such compensation.

8 “(b) NONQUALIFIED ENTITY.—For purposes of this  
9 section, the term ‘nonqualified entity’ means—

10 “(1) any foreign corporation unless substan-  
11 tially all of its income is—

12 “(A) effectively connected with the conduct  
13 of a trade or business in the United States, or

14 “(B) subject to a comprehensive foreign in-  
15 come tax, and

16 “(2) any partnership unless substantially all of  
17 its income is allocated to persons other than—

18 “(A) foreign persons with respect to whom  
19 such income is not subject to a comprehensive  
20 foreign income tax, and

21 “(B) organizations which are exempt from  
22 tax under this title.

23 “(c) DETERMINABILITY OF AMOUNTS OF COMPENSA-  
24 TION.—

25 “(1) IN GENERAL.—If the amount of any com-  
26 pensation is not determinable at the time that such

1 compensation is otherwise includible in gross income  
2 under subsection (a)—

3 “(A) such amount shall be so includible in  
4 gross income when determinable, and

5 “(B) the tax imposed under this chapter  
6 for the taxable year in which such compensation  
7 is includible in gross income shall be increased  
8 by the sum of—

9 “(i) the amount of interest determined  
10 under paragraph (2), and

11 “(ii) an amount equal to 20 percent of  
12 the amount of such compensation.

13 “(2) INTEREST.—For purposes of paragraph  
14 (1)(B)(i), the interest determined under this para-  
15 graph for any taxable year is the amount of interest  
16 at the underpayment rate under section 6621 plus  
17 1 percentage point on the underpayments that would  
18 have occurred had the deferred compensation been  
19 includible in gross income for the taxable year in  
20 which first deferred or, if later, the first taxable year  
21 in which such deferred compensation is not subject  
22 to a substantial risk of forfeiture.

23 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—  
24 For purposes of this section—

1           “(1) SUBSTANTIAL RISK OF FORFEITURE.—The  
2 rights of a person to compensation shall be treated  
3 as subject to a substantial risk of forfeiture only if  
4 such person’s rights to such compensation are condi-  
5 tioned upon the future performance of substantial  
6 services by any individual.

7           “(2) COMPREHENSIVE FOREIGN INCOME TAX.—  
8 The term ‘comprehensive foreign income tax’ means,  
9 with respect to any foreign person, the income tax  
10 of a foreign country if—

11                   “(A) such person is eligible for the benefits  
12 of a comprehensive income tax treaty between  
13 such foreign country and the United States, or

14                   “(B) such person demonstrates to the sat-  
15 isfaction of the Secretary that such foreign  
16 country has a comprehensive income tax.

17           “(3) NONQUALIFIED DEFERRED COMPENSA-  
18 TION PLAN.—

19                   “(A) IN GENERAL.—The term ‘non-  
20 qualified deferred compensation plan’ has the  
21 meaning given such term under section  
22 409A(d), except that such term shall include  
23 any plan that provides a right to compensation  
24 based on the appreciation in value of a specified  
25 number of equity units of the service recipient.

1           “(B) EXCEPTION.—Compensation shall  
2           not be treated as deferred for purposes of this  
3           section if the service provider receives payment  
4           of such compensation not later than 12 months  
5           after the end of the taxable year of the service  
6           recipient during which the right to the payment  
7           of such compensation is no longer subject to a  
8           substantial risk of forfeiture.

9           “(4) EXCEPTION FOR CERTAIN COMPENSATION  
10          WITH RESPECT TO EFFECTIVELY CONNECTED IN-  
11          COME.—In the case a foreign corporation with in-  
12          come which is taxable under section 882, this section  
13          shall not apply to compensation which, had such  
14          compensation had been paid in cash on the date that  
15          such compensation ceased to be subject to a sub-  
16          stantial risk of forfeiture, would have been deduct-  
17          ible by such foreign corporation against such income.

18          “(5) APPLICATION OF RULES.—Rules similar to  
19          the rules of paragraphs (5) and (6) of section  
20          409A(d) shall apply.

21          “(e) REGULATIONS.—The Secretary shall prescribe  
22          such regulations as may be necessary or appropriate to  
23          carry out the purposes of this section, including regula-  
24          tions disregarding a substantial risk of forfeiture in cases

1 where necessary to carry out the purposes of this sec-  
2 tion.”.

3 (b) CONFORMING AMENDMENT.—Section 26(b)(2) is  
4 amended by striking “and” at the end of subparagraph  
5 (U), by striking the period at the end of subparagraph  
6 (V) and inserting “, and”, and by adding at the end the  
7 following new subparagraph:

8 “(W) section 457A(c)(1)(B) (relating to  
9 determinability of amounts of compensation).”.

10 (c) CLERICAL AMENDMENT.—The table of sections  
11 of subpart B of part II of subchapter E of chapter 1 is  
12 amended by inserting after the item relating to section  
13 457 the following new item:

“Sec. 457A. Nonqualified deferred compensation from certain tax indifferent  
parties.”.

14 (d) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as otherwise pro-  
16 vided in this subsection, the amendments made by  
17 this section shall apply to amounts deferred which  
18 are attributable to services performed after Decem-  
19 ber 31, 2008.

20 (2) APPLICATION TO EXISTING DEFERRALS.—

21 In the case of any amount deferred to which the  
22 amendments made by this section do not apply solely  
23 by reason of the fact that the amount is attributable  
24 to services performed before January 1, 2009, to the

1 extent such amount is not includible in gross income  
2 in a taxable year beginning before 2018, such  
3 amounts shall be includible in gross income in the  
4 later of—

5 (A) the last taxable year beginning before  
6 2018, or

7 (B) the taxable year in which there is no  
8 substantial risk of forfeiture of the rights to  
9 such compensation (determined in the same  
10 manner as determined for purposes of section  
11 457A of the Internal Revenue Code of 1986, as  
12 added by this section).

13 (3) ACCELERATED PAYMENTS.—No later than  
14 120 days after the date of the enactment of this Act,  
15 the Secretary shall issue guidance providing a lim-  
16 ited period of time during which a nonqualified de-  
17 ferred compensation arrangement attributable to  
18 services performed on or before December 31, 2008,  
19 may, without violating the requirements of section  
20 409A(a) of the Internal Revenue Code of 1986, be  
21 amended to conform the date of distribution to the  
22 date the amounts are required to be included in in-  
23 come.

24 (4) CERTAIN BACK-TO-BACK ARRANGEMENTS.—  
25 If the taxpayer is also a service recipient and main-

1 tains one or more nonqualified deferred compensa-  
 2 tion arrangements for its service providers under  
 3 which any amount is attributable to services per-  
 4 formed on or before December 31, 2008, the guid-  
 5 ance issued under paragraph (3) shall permit such  
 6 arrangements to be amended to conform the dates of  
 7 distribution under such arrangement to the date  
 8 amounts are required to be included in the income  
 9 of such taxpayer under this subsection.

10 (5) ACCELERATED PAYMENT NOT TREATED AS  
 11 MATERIAL MODIFICATION.—Any amendment to a  
 12 nonqualified deferred compensation arrangement  
 13 made pursuant to paragraph (3) or (4) shall not be  
 14 treated as a material modification of the arrange-  
 15 ment for purposes of section 409A of the Internal  
 16 Revenue Code of 1986.

17 **SEC. 232. RESTRICTIONS ON REFUNDABLE CHILD TAX**  
 18 **CREDIT TO TAXPAYERS OUTSIDE THE**  
 19 **UNITED STATES.**

20 (a) IN GENERAL.—Section 24(d) is amended by add-  
 21 ing at the end the following new paragraph:

22 “(4) APPLICATION TO TAXPAYERS OUTSIDE OF  
 23 THE UNITED STATES.—This subsection shall not  
 24 apply to any taxpayer who claims the benefits of sec-

1       tion 911 (relating to citizens or residents living  
2       abroad) for the taxable year.”.

3       (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2008.

6       (c) APPLICATION OF EGTRRA SUNSET.—The  
7 amendment made by this section shall be subject to title  
8 IX of the Economic Growth and Tax Relief Reconciliation  
9 Act of 2001 in the same manner and to the same extent  
10 as such title applies to the amendments made by section  
11 201(c) of such Act.

## 12       **TITLE III—OTHER REVENUE** 13       **MEASURES**

### 14       **Subtitle A—Accounting Provisions**

#### 15       **SEC. 301. REPEAL OF LOWER OF COST OR MARKET METH-** 16       **OD OF INVENTORY.**

17       (a) IN GENERAL.—Section 471 is amended by redес-  
18 ignating subsection (c) as subsection (d) and by inserting  
19 after subsection (b) the following new subsection:

20       “(c) INVENTORIES TAKEN INTO ACCOUNT AT  
21 COST.—A method of determining inventories shall not be  
22 treated as clearly reflecting income unless such method  
23 provides that inventories shall be taken into account at  
24 cost.”.

25       (b) EFFECTIVE DATE.—

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

4           (2) CHANGE IN METHOD OF ACCOUNTING.—In  
5 the case of any taxpayer required by the amend-  
6 ments made by this section to change its method of  
7 accounting for its first taxable year beginning after  
8 the date of the enactment of this Act—

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

11                   (B) such change shall be treated as made  
12 with the consent of the Secretary of the Treas-  
13 ury, and

14                   (C) if the net amount of the adjustments  
15 required to be taken into account by the tax-  
16 payer under section 481 of the Internal Rev-  
17 enue Code of 1986 is positive, such amount  
18 shall be taken into account over a period of 8  
19 years beginning with such first taxable year.

20 **SEC. 302. REPEAL OF PERCENTAGE DEPLETION.**

21           (a) IN GENERAL.—Section 613 (relating to percent-  
22 age depletion) is amended by adding at the end the fol-  
23 lowing new subsection:

24                   “(f) TERMINATION.—This section shall not apply to  
25 any taxable year beginning after December 31, 2008.”.

1 (b) LIMITATIONS ON PERCENTAGE DEPLETION IN  
 2 CASE OF OIL AND GAS WELLS.—Section 613A (relating  
 3 to limitations on percentage depletion in case of oil and  
 4 gas wells) is amended by adding at the end the following  
 5 new subsection:

6 “(f) TERMINATION.—This section shall not apply to  
 7 any taxable year beginning after December 31, 2008.”.

8 **SEC. 303. AMORTIZATION OF GOODWILL AND OTHER IN-**  
 9 **TANGIBLES.**

10 (a) IN GENERAL.—Subsection (a) of section 197 (re-  
 11 lating to general rule) is amended by striking “15-year”  
 12 and inserting “20-year”.

13 (b) CERTAIN INTERESTS OR RIGHTS ACQUIRED SEP-  
 14 ARATELY.—Clause (i) of section 197(e)(4)(D) is amended  
 15 by striking “15 years” and inserting “20 years”.

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

19 **Subtitle B—Codification of**  
 20 **Economic Substance Doctrine**

21 **SEC. 311. CODIFICATION OF ECONOMIC SUBSTANCE DOC-**  
 22 **TRINE.**

23 (a) IN GENERAL.—Section 7701 is amended by re-  
 24 designating subsection (p) as subsection (q) and by insert-  
 25 ing after subsection (o) the following new subsection:

1       “(p) CLARIFICATION OF ECONOMIC SUBSTANCE  
2 DOCTRINE.—

3               “(1) APPLICATION OF DOCTRINE.—In the case  
4 of any transaction to which the economic substance  
5 doctrine is relevant, such transaction shall be treated  
6 as having economic substance only if—

7                       “(A) the transaction changes in a mean-  
8 ingful way (apart from Federal income tax ef-  
9 fects) the taxpayer’s economic position, and

10                      “(B) the taxpayer has a substantial pur-  
11 pose (apart from Federal income tax effects)  
12 for entering into such transaction.

13               “(2) SPECIAL RULE WHERE TAXPAYER RELIES  
14 ON PROFIT POTENTIAL.—

15                      “(A) IN GENERAL.—The potential for  
16 profit of a transaction shall be taken into ac-  
17 count in determining whether the requirements  
18 of subparagraphs (A) and (B) of paragraph (1)  
19 are met with respect to the transaction only if  
20 the present value of the reasonably expected  
21 pre-tax profit from the transaction is substan-  
22 tial in relation to the present value of the ex-  
23 pected net tax benefits that would be allowed if  
24 the transaction were respected.

1           “(B) TREATMENT OF FEES AND FOREIGN  
2 TAXES.—Fees and other transaction expenses  
3 and foreign taxes shall be taken into account as  
4 expenses in determining pre-tax profit under  
5 subparagraph (A).

6           “(3) STATE AND LOCAL TAX BENEFITS.—For  
7 purposes of paragraph (1), any State or local income  
8 tax effect which is related to a Federal income tax  
9 effect shall be treated in the same manner as a Fed-  
10 eral income tax effect.

11           “(4) FINANCIAL ACCOUNTING BENEFITS.—For  
12 purposes of paragraph (1)(B), achieving a financial  
13 accounting benefit shall not be taken into account as  
14 a purpose for entering into a transaction if such  
15 transaction results in a Federal income tax benefit.

16           “(5) DEFINITIONS AND SPECIAL RULES.—For  
17 purposes of this subsection—

18           “(A) ECONOMIC SUBSTANCE DOCTRINE.—  
19 The term ‘economic substance doctrine’ means  
20 the common law doctrine under which tax bene-  
21 fits under subtitle A with respect to a trans-  
22 action are not allowable if the transaction does  
23 not have economic substance or lacks a business  
24 purpose.

1           “(B) EXCEPTION FOR PERSONAL TRANS-  
2           ACTIONS OF INDIVIDUALS.—In the case of an  
3           individual, paragraph (1) shall apply only to  
4           transactions entered into in connection with a  
5           trade or business or an activity engaged in for  
6           the production of income.

7           “(C) OTHER COMMON LAW DOCTRINES  
8           NOT AFFECTED.—Except as specifically pro-  
9           vided in this subsection, the provisions of this  
10          subsection shall not be construed as altering or  
11          supplanting any other rule of law, and the re-  
12          quirements of this subsection shall be construed  
13          as being in addition to any such other rule of  
14          law.

15          “(D) DETERMINATION OF APPLICATION OF  
16          DOCTRINE NOT AFFECTED.—The determination  
17          of whether the economic substance doctrine is  
18          relevant to a transaction shall be made in the  
19          same manner as if this subsection had never  
20          been enacted.

21          “(6) REGULATIONS.—The Secretary shall pre-  
22          scribe such regulations as may be necessary or ap-  
23          propriate to carry out the purposes of this sub-  
24          section. Such regulations may include exemptions  
25          from the application of this subsection.”.

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

4 **SEC. 312. PENALTIES FOR UNDERPAYMENTS.**

5 (a) PENALTY FOR UNDERPAYMENTS ATTRIBUTABLE  
6 TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE.—

7 (1) IN GENERAL.—Subsection (b) of section  
8 6662 is amended by inserting after paragraph (5)  
9 the following new paragraph:

10 “(6) Any disallowance of claimed tax benefits  
11 by reason of a transaction lacking economic sub-  
12 stance (within the meaning of section 7701(p)) or  
13 failing to meet the requirements of any similar rule  
14 of law.”.

15 (2) INCREASED PENALTY FOR NONDISCLOSED  
16 TRANSACTIONS.—Section 6662 is amended by add-  
17 ing at the end the following new subsection:

18 “(i) INCREASE IN PENALTY IN CASE OF NONDIS-  
19 CLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—

20 “(1) IN GENERAL.—To the extent that a por-  
21 tion of the underpayment to which this section ap-  
22 plies is attributable to one or more nondisclosed non-  
23 economic substance transactions, subsection (a) shall  
24 be applied with respect to such portion by sub-  
25 stituting ‘40 percent’ for ‘20 percent’.

1           “(2) NONDISCLOSED NONECONOMIC SUB-  
2           STANCE TRANSACTIONS.—For purposes of this sub-  
3           section, the term ‘nondisclosed noneconomic sub-  
4           stance transaction’ means any portion of a trans-  
5           action described in subsection (b)(6) with respect to  
6           which the relevant facts affecting the tax treatment  
7           are not adequately disclosed in the return nor in a  
8           statement attached to the return.

9           “(3) SPECIAL RULE FOR AMENDED RE-  
10          TURNS.—Except as provided in regulations, in no  
11          event shall any amendment or supplement to a re-  
12          turn of tax be taken into account for purposes of  
13          this subsection if the amendment or supplement is  
14          filed after the earlier of the date the taxpayer is first  
15          contacted by the Secretary regarding the examina-  
16          tion of the return or such other date as is specified  
17          by the Secretary.”.

18          (3) CONFORMING AMENDMENT.—Subparagraph  
19          (B) of section 6662A(e)(2) is amended by striking  
20          “section 6662(h)” and inserting “subsection (h) or  
21          (i) of section 6662”.

22          (b) REASONABLE CAUSE EXCEPTION NOT APPLICA-  
23          BLE TO NONECONOMIC SUBSTANCE TRANSACTIONS, TAX  
24          SHELTERS, AND CERTAIN LARGE CORPORATIONS.—Sec-  
25          tion 6664(c) is amended—

1 (1) by redesignating paragraphs (2) and (3) as  
2 paragraphs (3) and (4), respectively,

3 (2) by striking “paragraph (2)” in paragraph  
4 (4), as so redesignated, and inserting “paragraph  
5 (3)”, and

6 (3) by inserting after paragraph (1) the fol-  
7 lowing new paragraph:

8 “(2) EXCEPTION.—Paragraph (1) shall not  
9 apply to—

10 “(A) any portion of an underpayment to  
11 which is attributable to one or more trans-  
12 actions described in section 6662(b)(6),

13 “(B) to any portion of an underpayment  
14 which is attributable to one or more tax shelters  
15 (as defined in section 6662(d)(2)(C)), or

16 “(C) to any taxpayer if such taxpayer is a  
17 specified large corporation (as defined in section  
18 6662(d)(2)(D)(ii)).”.

19 (c) SPECIAL UNDERSTATEMENT REDUCTION RULE  
20 FOR CERTAIN LARGE CORPORATIONS.—

21 (1) IN GENERAL.—Paragraph (2) of section  
22 6662(d) is amended by adding at the end the fol-  
23 lowing new subparagraph:

24 “(D) SPECIAL REDUCTION RULE FOR CER-  
25 TAIN LARGE CORPORATIONS.—

1           “(i) IN GENERAL.—In the case of any  
2 specified large corporation—

3           “(I) subparagraph (B) shall not  
4 apply, and

5           “(II) the amount of the under-  
6 statement under subparagraph (A)  
7 shall be reduced by that portion of the  
8 understatement which is attributable  
9 to any item with respect to which the  
10 taxpayer has a reasonable belief that  
11 the tax treatment of such item by the  
12 taxpayer is more likely than not the  
13 proper tax treatment of such item.

14           “(ii) SPECIFIED LARGE CORPORA-  
15 TION.—

16           “(I) IN GENERAL.—For purposes  
17 of this subparagraph, the term ‘speci-  
18 fied large corporation’ means any cor-  
19 poration with gross receipts in excess  
20 of \$100,000,000 for the taxable year  
21 involved.

22           “(II) AGGREGATION RULE.—All  
23 persons treated as a single employer  
24 under section 52(a) shall be treated as

1                   one person for purposes of subclause  
2                   (I).”.

3                   (2) CONFORMING AMENDMENT.—Subparagraph  
4                   (C) of section 6662(d)(2) is amended by striking  
5                   “Subparagraph (B)” and inserting “Subparagraphs  
6                   (B) and (D)(i)(II)”.

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

## 10                   **Subtitle C—Extension of Certain** 11                   **Expiring Provisions**

### 12                   **SEC. 321. EXTENSION OF FUTA TAX.**

13                   Section 3301 of the Internal Revenue Code of 1986  
14 (relating to rate of tax) is amended—

15                   (1) by striking “2008” in paragraph (1) and in-  
16                   serting “2018”, and

17                   (2) by striking “2009” in paragraph (2) and in-  
18                   serting “2019”.

### 19                   **SEC. 322. PERMANENT EXTENSION OF CUSTOM USER FEES.**

20                   (a) IN GENERAL.—Section 13031(j)(3) of the Con-  
21 solidated Omnibus Budget Reconciliation Act of 1985 (19  
22 U.S.C. 58c(j)(3)) is amended to read as follows:

23                   “(3) In any fiscal year for which fees under  
24                   paragraphs (1) through (8) of subsection (a) are au-  
25                   thorized—

1           “(A) the Secretary of the Treasury shall  
2 charge fees under each such paragraph in  
3 amounts that are reasonably related to the  
4 costs of providing customs services in connec-  
5 tion with the activity or item for which the fee  
6 is charged under such paragraph, except that in  
7 no case may the fee charged under any such  
8 paragraph exceed by more than 10 percent the  
9 amount otherwise prescribed by such para-  
10 graph;

11           “(B) the amount of fees collected under  
12 such paragraphs may not exceed, in the aggre-  
13 gate, the amounts paid in that fiscal year for  
14 the costs described in subsection (f)(3)(A) in-  
15 curred in providing customs services in connec-  
16 tion with the activity or item for which the fees  
17 are charged under such paragraphs;

18           “(C) a fee may not be collected under any  
19 such paragraph except to the extent such fee  
20 will be expended to pay the costs described in  
21 subsection (f)(3)(A) incurred in providing cus-  
22 toms services in connection with the activity or  
23 item for which the fee is charged under such  
24 paragraph; and

1           “(D) any fee collected under any such  
2 paragraph shall be available for expenditure  
3 only to pay the costs described in subsection  
4 (f)(3)(A) incurred in providing customs services  
5 in connection with the activity or item for which  
6 the fee is charged under such paragraph.”.

7           (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to fees charged after December 31,  
9 2008.

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