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110TH CONGRESS
1ST SESSION

S. 349

[Report No. 110-1]

To amend the Internal Revenue Code of 1986 to provide additional tax incentives to employers and employees of small businesses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2007

Mr. BAUCUS, from the Committee on Finance, reported the following original bill; which was read twice and placed on the calendar

A BILL

To amend the Internal Revenue Code of 1986 to provide additional tax incentives to employers and employees of small businesses, 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 CODE; TABLE**
4 **OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Small Business and Work Opportunity Act of 2007”.

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; amendment of Code; table of contents.

TITLE I—SMALL BUSINESS TAX RELIEF PROVISIONS

Subtitle A—General Provisions

- Sec. 101. Extension of increased expensing for small businesses.
- Sec. 102. Extension and modification of 15-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant improvements; 15-year straight-line cost recovery for certain improvements to retail space.
- Sec. 103. Clarification of cash accounting rules for small business.
- Sec. 104. Extension and modification of combined work opportunity tax credit and welfare-to-work credit.
- Sec. 105. Certified professional employer organizations.

Subtitle B—Subchapter S Provisions

- Sec. 111. Capital gain of S corporation not treated as passive investment income.
- Sec. 112. Treatment of bank director shares.
- Sec. 113. Special rule for bank required to change from the reserve method of accounting on becoming S corporation.
- Sec. 114. Treatment of the sale of interest in a qualified subchapter S subsidiary.
- Sec. 115. Elimination of all earnings and profits attributable to pre-1983 years for certain corporations.
- Sec. 116. Expansion of qualifying beneficiaries of an electing small business trust.

TITLE II—REVENUE PROVISIONS

- Sec. 201. Modification of effective date of leasing provisions of the American Jobs Creation Act of 2004.
- Sec. 202. Application of rules treating inverted corporations as domestic corporations to certain transactions occurring after March 20, 2002.
- Sec. 203. Denial of deduction for punitive damages.
- Sec. 204. Denial of deduction for certain fines, penalties, and other amounts.

- Sec. 205. Revision of tax rules on expatriation of individuals.
- Sec. 206. Limitation on annual amounts which may be deferred under non-qualified deferred compensation arrangements.
- Sec. 207. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud.
- Sec. 208. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements.
- Sec. 209. Increase in penalty for bad checks and money orders.
- Sec. 210. Treatment of contingent payment convertible debt instruments.
- Sec. 211. Extension of IRS user fees.
- Sec. 212. Modification of collection due process procedures for employment tax liabilities.
- Sec. 213. Modifications to whistleblower reforms.
- Sec. 214. Modifications of definition of employees covered by denial of deduction for excessive employee remuneration.

1 **TITLE I—SMALL BUSINESS TAX**
 2 **RELIEF PROVISIONS**
 3 **Subtitle A—General Provisions**

4 **SEC. 101. EXTENSION OF INCREASED EXPENSING FOR**
 5 **SMALL BUSINESSES.**

6 Section 179 (relating to election to expense certain
 7 depreciable business assets) is amended by striking
 8 “2010” each place it appears and inserting “2011”.

9 **SEC. 102. EXTENSION AND MODIFICATION OF 15-YEAR**
 10 **STRAIGHT-LINE COST RECOVERY FOR QUALI-**
 11 **FIED LEASEHOLD IMPROVEMENTS AND**
 12 **QUALIFIED RESTAURANT IMPROVEMENTS;**
 13 **15-YEAR STRAIGHT-LINE COST RECOVERY**
 14 **FOR CERTAIN IMPROVEMENTS TO RETAIL**
 15 **SPACE.**

16 (a) EXTENSION OF LEASEHOLD AND RESTAURANT
 17 IMPROVEMENTS.—

1 (1) IN GENERAL.—Clauses (iv) and (v) of sec-
2 tion 168(e)(3)(E) (relating to 15-year property) are
3 each amended by striking “January 1, 2008” and
4 inserting “April 1, 2008”.

5 (2) EFFECTIVE DATE.—The amendment made
6 by this subsection shall apply to property placed in
7 service after December 31, 2007.

8 (b) MODIFICATION OF TREATMENT OF QUALIFIED
9 RESTAURANT PROPERTY AS 15-YEAR PROPERTY FOR
10 PURPOSES OF DEPRECIATION DEDUCTION.—

11 (1) TREATMENT TO INCLUDE NEW CONSTRUC-
12 TION.—Paragraph (7) of section 168(e) (relating to
13 classification of property) is amended to read as fol-
14 lows:

15 “(7) QUALIFIED RESTAURANT PROPERTY.—The
16 term ‘qualified restaurant property’ means any sec-
17 tion 1250 property which is a building (or its struc-
18 tural components) or an improvement to such build-
19 ing if more than 50 percent of such building’s
20 square footage is devoted to preparation of, and
21 seating for on-premises consumption of, prepared
22 meals.”.

23 (2) EFFECTIVE DATE.—The amendment made
24 by this subsection shall apply to any property placed
25 in service after the date of the enactment of this

1 Act, the original use of which begins with the tax-
 2 payer after such date.

3 (c) RECOVERY PERIOD FOR DEPRECIATION OF CER-
 4 TAIN IMPROVEMENTS TO RETAIL SPACE.—

5 (1) 15-YEAR RECOVERY PERIOD.—Section
 6 168(e)(3)(E) (relating to 15-year property) is
 7 amended by striking “and” at the end of clause
 8 (vii), by striking the period at the end of clause (viii)
 9 and inserting “, and”, and by adding at the end the
 10 following new clause:

11 “(ix) any qualified retail improvement
 12 property placed in service before April 1,
 13 2008.”.

14 (2) QUALIFIED RETAIL IMPROVEMENT PROP-
 15 erty.—Section 168(e) is amended by adding at the
 16 end the following new paragraph:

17 “(8) QUALIFIED RETAIL IMPROVEMENT PROP-
 18 erty.—

19 “(A) IN GENERAL.—The term ‘qualified
 20 retail improvement property’ means any im-
 21 provement to an interior portion of a building
 22 which is nonresidential real property if—

23 “(i) such portion is open to the gen-
 24 eral public and is used in the retail trade

1 or business of selling tangible personal
2 property to the general public, and

3 “(ii) such improvement is placed in
4 service more than 3 years after the date
5 the building was first placed in service.

6 “(B) IMPROVEMENTS MADE BY OWNER.—

7 In the case of an improvement made by the
8 owner of such improvement, such improvement
9 shall be qualified retail improvement property
10 (if at all) only so long as such improvement is
11 held by such owner. Rules similar to the rules
12 under paragraph (6)(B) shall apply for pur-
13 poses of the preceding sentence.

14 “(C) CERTAIN IMPROVEMENTS NOT IN-
15 CLUDED.—Such term shall not include any im-
16 provement for which the expenditure is attrib-
17 utable to—

18 “(i) the enlargement of the building,

19 “(ii) any elevator or escalator,

20 “(iii) any structural component bene-
21 fitting a common area, or

22 “(iv) the internal structural frame-
23 work of the building.”.

1 (3) REQUIREMENT TO USE STRAIGHT LINE
2 METHOD.—Section 168(b)(3) is amended by adding
3 at the end the following new subparagraph:

4 “(I) Qualified retail improvement property
5 described in subsection (e)(8).”.

6 (4) ALTERNATIVE SYSTEM.—The table con-
7 tained in section 168(g)(3)(B) is amended by insert-
8 ing after the item relating to subparagraph (E)(viii)
9 the following new item:

“(E)(ix) 39”.

10 (5) EFFECTIVE DATE.—The amendments made
11 by this section shall apply to property placed in serv-
12 ice after the date of the enactment of this Act.

13 **SEC. 103. CLARIFICATION OF CASH ACCOUNTING RULES**
14 **FOR SMALL BUSINESS.**

15 (a) CASH ACCOUNTING PERMITTED.—

16 (1) IN GENERAL.—Section 446 (relating to gen-
17 eral rule for methods of accounting) is amended by
18 adding at the end the following new subsection:

19 “(g) CERTAIN SMALL BUSINESS TAXPAYERS PER-
20 MITTED TO USE CASH ACCOUNTING METHOD WITHOUT
21 LIMITATION.—

22 “(1) IN GENERAL.—An eligible taxpayer shall
23 not be required to use an accrual method of account-
24 ing for any taxable year.

1 “(2) ELIGIBLE TAXPAYER.—For purposes of
2 this subsection, a taxpayer is an eligible taxpayer
3 with respect to any taxable year if—

4 “(A) for each of the prior taxable years
5 ending on or after the date of the enactment of
6 this subsection, the taxpayer (or any prede-
7 cessor) met the gross receipts test in effect
8 under section 448(c) for such taxable year, and

9 “(B) the taxpayer is not subject to section
10 447 or 448.”.

11 (2) EXPANSION OF GROSS RECEIPTS TEST.—

12 (A) IN GENERAL.—Paragraph (3) of sec-
13 tion 448(b) (relating to entities with gross re-
14 cepts of not more than \$5,000,000) is amended
15 to read as follows:

16 “(3) ENTITIES MEETING GROSS RECEIPTS
17 TEST.—Paragraphs (1) and (2) of subsection (a)
18 shall not apply to any corporation or partnership for
19 any taxable year if, for each of the prior taxable
20 years ending on or after the date of the enactment
21 of the Small Business and Work Opportunity Act of
22 2007, the entity (or any predecessor) met the gross
23 receipts test in effect under subsection (c) for such
24 prior taxable year.”.

1 (B) CONFORMING AMENDMENTS.—Section
2 448(c) of such Code is amended—

3 (i) by striking “\$5,000,000” in the
4 heading thereof,

5 (ii) by striking “\$5,000,000” each
6 place it appears in paragraph (1) and in-
7 serting “\$10,000,000”, and

8 (iii) by adding at the end the fol-
9 lowing new paragraph:

10 “(4) INFLATION ADJUSTMENT.—In the case of
11 any taxable year beginning in a calendar year after
12 2008, the dollar amount contained in paragraph (1)
13 shall be increased by an amount equal to—

14 “(A) such dollar amount, multiplied by

15 “(B) the cost-of-living adjustment deter-
16 mined under section 1(f)(3) for the calendar
17 year in which the taxable year begins, by sub-
18 stituting ‘calendar year 2007’ for ‘calendar year
19 1992’ in subparagraph (B) thereof.

20 If any amount as adjusted under this subparagraph
21 is not a multiple of \$100,000, such amount shall be
22 rounded to the nearest multiple of \$100,000.”.

23 (b) CLARIFICATION OF INVENTORY RULES FOR
24 SMALL BUSINESS.—

1 (1) IN GENERAL.—Section 471 (relating to gen-
2 eral rule for inventories) is amended by redesignig-
3 nating subsection (c) as subsection (d) and by in-
4 serting after subsection (b) the following new sub-
5 section:

6 “(c) SMALL BUSINESS TAXPAYERS NOT REQUIRED
7 TO USE INVENTORIES.—

8 “(1) IN GENERAL.—A qualified taxpayer shall
9 not be required to use inventories under this section
10 for a taxable year.

11 “(2) TREATMENT OF TAXPAYERS NOT USING
12 INVENTORIES.—If a qualified taxpayer does not use
13 inventories with respect to any property for any tax-
14 able year beginning after the date of the enactment
15 of this subsection, such property shall be treated as
16 a material or supply which is not incidental.

17 “(3) QUALIFIED TAXPAYER.—For purposes of
18 this subsection, the term ‘qualified taxpayer’
19 means—

20 “(A) any eligible taxpayer (as defined in
21 section 446(g)(2)), and

22 “(B) any taxpayer described in section
23 448(b)(3).”.

24 (2) CONFORMING AMENDMENTS.—

1 (A) Subpart D of part II of subchapter E
2 of chapter 1 is amended by striking section
3 474.

4 (B) The table of sections for subpart D of
5 part II of subchapter E of chapter 1 is amend-
6 ed by striking the item relating to section 474.

7 (c) EFFECTIVE DATE AND SPECIAL RULES.—

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

11 (2) CHANGE IN METHOD OF ACCOUNTING.—In
12 the case of any taxpayer changing the taxpayer's
13 method of accounting for any taxable year under the
14 amendments made by this section—

15 (A) such change shall be treated as initi-
16 ated by the taxpayer;

17 (B) such change shall be treated as made
18 with the consent of the Secretary of the Treas-
19 ury; and

20 (C) the net amount of the adjustments re-
21 quired to be taken into account by the taxpayer
22 under section 481 of the Internal Revenue Code
23 of 1986 shall be taken into account over a pe-
24 riod (not greater than 4 taxable years) begin-
25 ning with such taxable year.

1 **SEC. 104. EXTENSION AND MODIFICATION OF COMBINED**
2 **WORK OPPORTUNITY TAX CREDIT AND WEL-**
3 **FARE-TO-WORK CREDIT.**

4 (a) **EXTENSION.**—Section 51(c)(4)(B) (relating to
5 termination) is amended by striking “2007” and inserting
6 “2012”.

7 (b) **INCREASE IN MAXIMUM AGE FOR DESIGNATED**
8 **COMMUNITY RESIDENTS.**—

9 (1) **IN GENERAL.**—Paragraph (5) of section
10 51(d) is amended to read as follows:

11 “(5) **DESIGNATED COMMUNITY RESIDENTS.**—

12 “(A) **IN GENERAL.**—The term ‘designated
13 community resident’ means any individual who
14 is certified by the designated local agency—

15 “(i) as having attained age 18 but not
16 age 40 on the hiring date, and

17 “(ii) as having his principal place of
18 abode within an empowerment zone, enter-
19 prise community, or renewal community.

20 “(B) **INDIVIDUAL MUST CONTINUE TO RE-**
21 **SIDE IN ZONE OR COMMUNITY.**—In the case of
22 a designated community resident, the term
23 ‘qualified wages’ shall not include wages paid or
24 incurred for services performed while the indi-
25 vidual’s principal place of abode is outside an

1 empowerment zone, enterprise community, or
2 renewal community.”.

3 (2) CONFORMING AMENDMENT.—Subparagraph
4 (D) of section 51(d)(1) is amended to read as fol-
5 lows:

6 “(D) a designated community resident,”.

7 (c) CLARIFICATION OF TREATMENT OF INDIVIDUALS
8 UNDER INDIVIDUAL WORK PLANS.—Subparagraph (B)
9 of section 51(d)(6) (relating to vocational rehabilitation
10 referral) is amended by striking “or” at the end of clause
11 (i), by striking the period at the end of clause (ii) and
12 inserting “, or”, and by adding at the end the following
13 new clause:

14 “(iii) an individual work plan devel-
15 oped and implemented by an employment
16 network pursuant to subsection (g) of sec-
17 tion 1148 of the Social Security Act with
18 respect to which the requirements of such
19 subsection are met.”.

20 (d) TREATMENT OF DISABLED VETERANS UNDER
21 THE WORK OPPORTUNITY TAX CREDIT.—

22 (1) DISABLED VETERANS TREATED AS MEM-
23 BERS OF TARGETED GROUP.—

24 (A) IN GENERAL.—Subparagraph (A) of
25 section 51(d)(3) (relating to qualified veteran)

1 is amended by striking “agency as being a
2 member of a family” and all that follows and
3 inserting “agency as—

4 “(i) being a member of a family re-
5 ceiving assistance under a food stamp pro-
6 gram under the Food Stamp Act of 1977
7 for at least a 3-month period ending dur-
8 ing the 12-month period ending on the hir-
9 ing date, or

10 “(ii) entitled to compensation for a
11 service-connected disability incurred after
12 September 10, 2001.”.

13 (B) DEFINITIONS.—Paragraph (3) of sec-
14 tion 51(d) is amended by adding at the end the
15 following new subparagraph:

16 “(C) OTHER DEFINITIONS.—For purposes
17 of subparagraph (A), the terms ‘compensation’
18 and ‘service-connected’ have the meanings given
19 such terms under section 101 of title 38,
20 United States Code.”.

21 (2) INCREASE IN AMOUNT OF WAGES TAKEN
22 INTO ACCOUNT FOR DISABLED VETERANS.—Para-
23 graph (3) of section 51(b) is amended—

24 (A) by inserting “(\$12,000 per year in the
25 case of any individual who is a qualified veteran

1 by reason of subsection (d)(3)(A)(ii))” before
 2 the period at the end, and

3 (B) by striking “ONLY FIRST \$6,000 OF”
 4 in the heading and inserting “LIMITATION ON”.

5 (e) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to individuals who begin work for
 7 the employer after the date of the enactment of this Act,
 8 in taxable years ending after such date.

9 **SEC. 105. CERTIFIED PROFESSIONAL EMPLOYER ORGANI-**
 10 **ZATIONS.**

11 (a) EMPLOYMENT TAXES.—Chapter 25 (relating to
 12 general provisions relating to employment taxes) is
 13 amended by adding at the end the following new section:

14 **“SEC. 3511. CERTIFIED PROFESSIONAL EMPLOYER ORGANI-**
 15 **ZATIONS.**

16 “(a) GENERAL RULES.—For purposes of the taxes,
 17 and other obligations, imposed by this subtitle—

18 “(1) a certified professional employer organiza-
 19 tion shall be treated as the employer (and no other
 20 person shall be treated as the employer) of any work
 21 site employee performing services for any customer
 22 of such organization, but only with respect to remun-
 23 eration remitted by such organization to such work
 24 site employee, and

1 “(2) exclusions, definitions, and other rules
2 which are based on the type of employer and which
3 would (but for paragraph (1)) apply shall apply with
4 respect to such taxes imposed on such remuneration.

5 “(b) SUCCESSOR EMPLOYER STATUS.—For purposes
6 of sections 3121(a)(1), 3231(e)(2)(C), and 3306(b)(1)—

7 “(1) a certified professional employer organiza-
8 tion entering into a service contract with a customer
9 with respect to a work site employee shall be treated
10 as a successor employer and the customer shall be
11 treated as a predecessor employer during the term
12 of such service contract, and

13 “(2) a customer whose service contract with a
14 certified professional employer organization is termi-
15 nated with respect to a work site employee shall be
16 treated as a successor employer and the certified
17 professional employer organization shall be treated
18 as a predecessor employer.

19 “(c) LIABILITY OF CERTIFIED PROFESSIONAL EM-
20 PLOYER ORGANIZATION.—Solely for purposes of its liabil-
21 ity for the taxes, and other obligations, imposed by this
22 subtitle—

23 “(1) a certified professional employer organiza-
24 tion shall be treated as the employer of any indi-
25 vidual (other than a work site employee or a person

1 described in subsection (f) who is performing serv-
2 ices covered by a contract meeting the requirements
3 of section 7705(e)(2), but only with respect to remu-
4 neration remitted by such organization to such indi-
5 vidual, and

6 “(2) exclusions, definitions, and other rules
7 which are based on the type of employer and which
8 would (but for paragraph (1)) apply shall apply with
9 respect to such taxes imposed on such remuneration.

10 “(d) TREATMENT OF CREDITS.—

11 “(1) IN GENERAL.—For purposes of any credit
12 specified in paragraph (2)—

13 “(A) such credit with respect to a work
14 site employee performing services for the cus-
15 tomer applies to the customer, not the certified
16 professional employer organization,

17 “(B) the customer, and not the certified
18 professional employer organization, shall take
19 into account wages and employment taxes—

20 “(i) paid by the certified professional
21 employer organization with respect to the
22 work site employee, and

23 “(ii) for which the certified profes-
24 sional employer organization receives pay-
25 ment from the customer, and

1 “(C) the certified professional employer or-
2 ganization shall furnish the customer with any
3 information necessary for the customer to claim
4 such credit.

5 “(2) CREDITS SPECIFIED.—A credit is specified
6 in this paragraph if such credit is allowed under—

7 “(A) section 41 (credit for increasing re-
8 search activity),

9 “(B) section 45A (Indian employment
10 credit),

11 “(C) section 45B (credit for portion of em-
12 ployer social security taxes paid with respect to
13 employee cash tips),

14 “(D) section 45C (clinical testing expenses
15 for certain drugs for rare diseases or condi-
16 tions),

17 “(E) section 51 (work opportunity credit),

18 “(F) section 51A (temporary incentives for
19 employing long-term family assistance recipi-
20 ents),

21 “(G) section 1396 (empowerment zone em-
22 ployment credit),

23 “(H) 1400(d) (DC Zone employment cred-
24 it),

1 “(I) Section 1400H (renewal community
2 employment credit), and

3 “(J) any other section as provided by the
4 Secretary.

5 “(e) SPECIAL RULE FOR RELATED PARTY.—This
6 section shall not apply in the case of a customer which
7 bears a relationship to a certified professional employer
8 organization described in section 267(b) or 707(b). For
9 purposes of the preceding sentence, such sections shall be
10 applied by substituting ‘10 percent’ for ‘50 percent’.

11 “(f) SPECIAL RULE FOR CERTAIN INDIVIDUALS.—
12 For purposes of the taxes imposed under this subtitle, an
13 individual with net earnings from self-employment derived
14 from the customer’s trade or business is not a work site
15 employee with respect to remuneration paid by a certified
16 professional employer organization.

17 “(g) REGULATIONS.—The Secretary shall prescribe
18 such regulations as may be necessary or appropriate to
19 carry out the purposes of this section.”.

20 (b) CERTIFIED PROFESSIONAL EMPLOYER ORGANI-
21 ZATION DEFINED.—Chapter 79 (relating to definitions) is
22 amended by adding at the end the following new section:

1 **“SEC. 7705. CERTIFIED PROFESSIONAL EMPLOYER ORGANI-**
2 **ZATIONS DEFINED.**

3 “(a) IN GENERAL.—For purposes of this title, the
4 term ‘certified professional employer organization’ means
5 a person who has been certified by the Secretary for pur-
6 poses of section 3511 as meeting the requirements of sub-
7 section (b).

8 “(b) GENERAL REQUIREMENTS.—A person meets the
9 requirements of this subsection if such person—

10 “(1) demonstrates that such person (and any
11 owner, officer, and such other persons as may be
12 specified in regulations) meets such requirements as
13 the Secretary shall establish with respect to tax sta-
14 tus, background, experience, business location, and
15 annual financial audits,

16 “(2) computes its taxable income using an ac-
17 crual method of accounting unless the Secretary ap-
18 proves another method,

19 “(3) agrees that it will satisfy the bond and
20 independent financial review requirements of sub-
21 section (c) on an ongoing basis,

22 “(4) agrees that it will satisfy such reporting
23 obligations as may be imposed by the Secretary,

24 “(5) agrees to verify on such periodic basis as
25 the Secretary may prescribe that it continues to
26 meet the requirements of this subsection, and

1 “(6) agrees to notify the Secretary in writing
2 within such time as the Secretary may prescribe of
3 any change that materially affects whether it con-
4 tinues to meet the requirements of this subsection.

5 “(c) BOND AND INDEPENDENT FINANCIAL REVIEW
6 REQUIREMENTS.—

7 “(1) IN GENERAL.—An organization meets the
8 requirements of this paragraph if such organiza-
9 tion—

10 “(A) meets the bond requirements of para-
11 graph (2), and

12 “(B) meets the independent financial re-
13 view requirements of paragraph (3).

14 “(2) BOND.—

15 “(A) IN GENERAL.—A certified profes-
16 sional employer organization meets the require-
17 ments of this paragraph if the organization has
18 posted a bond for the payment of taxes under
19 subtitle C (in a form acceptable to the Sec-
20 retary) in an amount at least equal to the
21 amount specified in subparagraph (B).

22 “(B) AMOUNT OF BOND.—For the period
23 April 1 of any calendar year through March 31
24 of the following calendar year, the amount of
25 the bond required is equal to the greater of—

1 “(i) 5 percent of the organization’s li-
2 ability under section 3511 for taxes im-
3 posed by subtitle C during the preceding
4 calendar year (but not to exceed
5 \$1,000,000), or

6 “(ii) \$50,000.

7 “(3) INDEPENDENT FINANCIAL REVIEW RE-
8 QUIREMENTS.—A certified professional employer or-
9 ganization meets the requirements of this paragraph
10 if such organization—

11 “(A) has, as of the most recent review
12 date, caused to be prepared and provided to the
13 Secretary (in such manner as the Secretary
14 may prescribe) an opinion of an independent
15 certified public accountant that the certified
16 professional employer organization’s financial
17 statements are presented fairly in accordance
18 with generally accepted accounting principles,
19 and

20 “(B) provides, not later than the last day
21 of the second month beginning after the end of
22 each calendar quarter, to the Secretary from an
23 independent certified public accountant an as-
24 sertion regarding Federal employment tax pay-

1 ments and an examination level attestation on
2 such assertion.

3 Such assertion shall state that the organization has
4 withheld and made deposits of all taxes imposed by
5 chapters 21, 22, and 24 of the Internal Revenue
6 Code in accordance with regulations imposed by the
7 Secretary for such calendar quarter and such exam-
8 ination level attestation shall state that such asser-
9 tion is fairly stated, in all material respects.

10 “(4) CONTROLLED GROUP RULES.—For pur-
11 poses of the requirements of paragraphs (2) and (3),
12 all professional employer organizations that are
13 members of a controlled group within the meaning
14 of sections 414(b) and (c) shall be treated as a sin-
15 gle organization.

16 “(5) FAILURE TO FILE ASSERTION AND ATTES-
17 TATION.—If the certified professional employer orga-
18 nization fails to file the assertion and attestation re-
19 quired by paragraph (3) with respect to any cal-
20 endar quarter, then the requirements of paragraph
21 (3) with respect to such failure shall be treated as
22 not satisfied for the period beginning on the due
23 date for such attestation.

1 “(6) REVIEW DATE.—For purposes of para-
2 graph (3)(A), the review date shall be 6 months
3 after the completion of the organization’s fiscal year.

4 “(d) SUSPENSION AND REVOCATION AUTHORITY.—
5 The Secretary may suspend or revoke a certification of
6 any person under subsection (b) for purposes of section
7 3511 if the Secretary determines that such person is not
8 satisfying the representations or requirements of sub-
9 sections (b) or (c), or fails to satisfy applicable accounting,
10 reporting, payment, or deposit requirements.

11 “(e) WORK SITE EMPLOYEE.—For purposes of this
12 title—

13 “(1) IN GENERAL.—The term ‘work site em-
14 ployee’ means, with respect to a certified profes-
15 sional employer organization, an individual who—

16 “(A) performs services for a customer pur-
17 suant to a contract which is between such cus-
18 tomer and the certified professional employer
19 organization and which meets the requirements
20 of paragraph (2), and

21 “(B) performs services at a work site
22 meeting the requirements of paragraph (3).

23 “(2) SERVICE CONTRACT REQUIREMENTS.—A
24 contract meets the requirements of this paragraph
25 with respect to an individual performing services for

1 a customer if such contract is in writing and pro-
2 vides that the certified professional employer organi-
3 zation shall—

4 “(A) assume responsibility for payment of
5 wages to such individual, without regard to the
6 receipt or adequacy of payment from the cus-
7 tomer for such services,

8 “(B) assume responsibility for reporting,
9 withholding, and paying any applicable taxes
10 under subtitle C, with respect to such individ-
11 ual’s wages, without regard to the receipt or
12 adequacy of payment from the customer for
13 such services,

14 “(C) assume responsibility for any em-
15 ployee benefits which the service contract may
16 require the organization to provide, without re-
17 gard to the receipt or adequacy of payment
18 from the customer for such services,

19 “(D) assume responsibility for hiring, fir-
20 ing, and recruiting workers in addition to the
21 customer’s responsibility for hiring, firing and
22 recruiting workers,

23 “(E) maintain employee records relating to
24 such individual, and

1 “(F) agree to be treated as a certified pro-
2 fessional employer organization for purposes of
3 section 3511 with respect to such individual.

4 “(3) WORK SITE COVERAGE REQUIREMENT.—

5 The requirements of this paragraph are met with re-
6 spect to an individual if at least 85 percent of the
7 individuals performing services for the customer at
8 the work site where such individual performs serv-
9 ices are subject to 1 or more contracts with the cer-
10 tified professional employer organization which meet
11 the requirements of paragraph (2) (but not taking
12 into account those individuals who are excluded em-
13 ployees within the meaning of section 414(q)(5)).

14 “(f) DETERMINATION OF EMPLOYMENT STATUS.—

15 Except to the extent necessary for purposes of section
16 3511, nothing in this section shall be construed to affect
17 the determination of who is an employee or employer for
18 purposes of this title.

19 “(g) REGULATIONS.—The Secretary shall prescribe
20 such regulations as may be necessary or appropriate to
21 carry out the purposes of this section.”.

22 (c) CONFORMING AMENDMENTS.—

23 (1) Section 3302 is amended by adding at the
24 end the following new subsection:

1 “(h) TREATMENT OF CERTIFIED PROFESSIONAL EM-
2 PLOYER ORGANIZATIONS.—If a certified professional em-
3 ployer organization (as defined in section 7705), or a cus-
4 tomer of such organization, makes a contribution to the
5 State’s unemployment fund with respect to a work site
6 employee, such organization shall be eligible for the credits
7 available under this section with respect to such contribu-
8 tion.”.

9 (2) Section 3303(a) is amended—

10 (A) by striking the period at the end of
11 paragraph (3) and inserting “; and” and by in-
12 serting after paragraph (3) the following new
13 paragraph:

14 “(4) if the taxpayer is a certified professional
15 employer organization (as defined in section 7705)
16 that is treated as the employer under section 3511,
17 such certified professional employer organization is
18 permitted to collect and remit, in accordance with
19 paragraphs (1), (2), and (3), contributions during
20 the taxable year to the State unemployment fund
21 with respect to a work site employee.”, and

22 (B) in the last sentence—

23 (i) by striking “paragraphs (1), (2),
24 and (3)” and inserting “paragraphs (1),
25 (2), (3), and (4)”, and

1 (ii) by striking “paragraph (1), (2), or
2 (3)” and inserting “paragraph (1), (2),
3 (3), or (4)”.

4 (3) Section 6053(c) (relating to reporting of
5 tips) is amended by adding at the end the following
6 new paragraph:

7 “(8) CERTIFIED PROFESSIONAL EMPLOYER OR-
8 GANIZATIONS.—For purposes of any report required
9 by this subsection, in the case of a certified profes-
10 sional employer organization that is treated under
11 section 3511 as the employer of a work site em-
12 ployee, the customer with respect to whom a work
13 site employee performs services shall be the employer
14 for purposes of reporting under this section and the
15 certified professional employer organization shall
16 furnish to the customer any information necessary
17 to complete such reporting no later than such time
18 as the Secretary shall prescribe.”.

19 (d) CLERICAL AMENDMENTS.—

20 (1) The table of sections for chapter 25 is
21 amended by adding at the end the following new
22 item:

“Sec. 3511. Certified professional employer organizations.”.

1 (2) The table of sections for chapter 79 is
2 amended by inserting after the item relating to sec-
3 tion 7704 the following new item:

“Sec. 7705. Certified professional employer organizations defined.”.

4 (e) REPORTING REQUIREMENTS AND OBLIGA-
5 TIONS.—The Secretary of the Treasury shall develop such
6 reporting and recordkeeping rules, regulations, and proce-
7 dures as the Secretary determines necessary or appro-
8 priate to ensure compliance with the amendments made
9 by this section with respect to entities applying for certifi-
10 cation as certified professional employer organizations or
11 entities that have been so certified. Such rules shall be
12 designed in a manner which streamlines, to the extent pos-
13 sible, the application of requirements of such amendments,
14 the exchange of information between a certified profes-
15 sional employer organization and its customers, and the
16 reporting and recordkeeping obligations of the certified
17 professional employer organization.

18 (f) USER FEES.—Subsection (b) of section 7528 (re-
19 lating to Internal Revenue Service user fees) is amended
20 by adding at the end the following new paragraph:

21 “(4) CERTIFIED PROFESSIONAL EMPLOYER OR-
22 GANIZATIONS.—The fee charged under the program
23 in connection with the certification by the Secretary
24 of a professional employer organization under sec-
25 tion 7705 shall not exceed \$500.”.

1 (g) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendments made by
3 this section shall apply with respect to wages for
4 services performed on or after January 1 of the first
5 calendar year beginning more than 12 months after
6 the date of the enactment of this Act.

7 (2) CERTIFICATION PROGRAM.—The Secretary
8 of the Treasury shall establish the certification pro-
9 gram described in section 7705(b) of the Internal
10 Revenue Code of 1986, as added by subsection (b),
11 not later than 6 months before the effective date de-
12 termined under paragraph (1).

13 (h) NO INFERENCE.—Nothing contained in this sec-
14 tion or the amendments made by this section shall be con-
15 strued to create any inference with respect to the deter-
16 mination of who is an employee or employer—

17 (1) for Federal tax purposes (other than the
18 purposes set forth in the amendments made by this
19 section), or

20 (2) for purposes of any other provision of law.

1 **Subtitle B—Subchapter S**
2 **Provisions**

3 **SEC. 111. CAPITAL GAIN OF S CORPORATION NOT TREATED**
4 **AS PASSIVE INVESTMENT INCOME.**

5 (a) IN GENERAL.—Section 1362(d)(3) is amended by
6 striking subparagraphs (B), (C), (D), (E), and (F) and
7 inserting the following new subparagraph:

8 “(B) PASSIVE INVESTMENT INCOME DE-
9 FINED.—

10 “(i) IN GENERAL.—Except as other-
11 wise provided in this subparagraph, the
12 term ‘passive investment income’ means
13 gross receipts derived from royalties, rents,
14 dividends, interest, and annuities.

15 “(ii) EXCEPTION FOR INTEREST ON
16 NOTES FROM SALES OF INVENTORY.—The
17 term ‘passive investment income’ shall not
18 include interest on any obligation acquired
19 in the ordinary course of the corporation’s
20 trade or business from its sale of property
21 described in section 1221(a)(1).

22 “(iii) TREATMENT OF CERTAIN LEND-
23 ING OR FINANCE COMPANIES.—If the S
24 corporation meets the requirements of sec-
25 tion 542(c)(6) for the taxable year, the

1 term ‘passive investment income’ shall not
2 include gross receipts for the taxable year
3 which are derived directly from the active
4 and regular conduct of a lending or finance
5 business (as defined in section 542(d)(1)).

6 “(iv) TREATMENT OF CERTAIN DIVI-
7 DENDS.—If an S corporation holds stock
8 in a C corporation meeting the require-
9 ments of section 1504(a)(2), the term ‘pas-
10 sive investment income’ shall not include
11 dividends from such C corporation to the
12 extent such dividends are attributable to
13 the earnings and profits of such C corpora-
14 tion derived from the active conduct of a
15 trade or business.

16 “(v) EXCEPTION FOR BANKS, ETC.—
17 In the case of a bank (as defined in section
18 581) or a depository institution holding
19 company (as defined in section 3(w)(1) of
20 the Federal Deposit Insurance Act (12
21 U.S.C. 1813(w)(1)), the term ‘passive in-
22 vestment income’ shall not include—

23 “(I) interest income earned by
24 such bank or company, or

1 “(II) dividends on assets required
2 to be held by such bank or company,
3 including stock in the Federal Reserve
4 Bank, the Federal Home Loan Bank,
5 or the Federal Agricultural Mortgage
6 Bank or participation certificates
7 issued by a Federal Intermediate
8 Credit Bank.”.

9 (b) CONFORMING AMENDMENT.—Clause (i) of sec-
10 tion 1042(c)(4)(A) is amended by striking “section
11 1362(d)(3)(C)” and inserting “section 1362(d)(3)(B)”.

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

15 **SEC. 112. TREATMENT OF BANK DIRECTOR SHARES.**

16 (a) IN GENERAL.—Section 1361 (defining S corpora-
17 tion) is amended by adding at the end the following new
18 subsection:

19 “(f) RESTRICTED BANK DIRECTOR STOCK.—

20 “(1) IN GENERAL.—Restricted bank director
21 stock shall not be taken into account as outstanding
22 stock of the S corporation in applying this sub-
23 chapter (other than section 1368(f)).

24 “(2) RESTRICTED BANK DIRECTOR STOCK.—

25 For purposes of this subsection, the term ‘restricted

1 bank director stock' means stock in a bank (as de-
 2 fined in section 581) or a depository institution
 3 holding company (as defined in section 3(w)(1) of
 4 the Federal Deposit Insurance Act (12 U.S.C.
 5 1813(w)(1)), if such stock—

6 “(A) is required to be held by an individual
 7 under applicable Federal or State law in order
 8 to permit such individual to serve as a director,
 9 and

10 “(B) is subject to an agreement with such
 11 bank or company (or a corporation which con-
 12 trols (within the meaning of section 368(e))
 13 such bank or company) pursuant to which the
 14 holder is required to sell back such stock (at
 15 the same price as the individual acquired such
 16 stock) upon ceasing to hold the office of direc-
 17 tor.

18 “(3) CROSS REFERENCE.—

“For treatment of certain distributions with respect to restricted bank director
 stock, see section 1368(f).”.

19 (b) DISTRIBUTIONS.—Section 1368 (relating to dis-
 20 tributions) is amended by adding at the end the following
 21 new subsection:

22 “(f) RESTRICTED BANK DIRECTOR STOCK.—If a di-
 23 rector receives a distribution (not in part or full payment
 24 in exchange for stock) from an S corporation with respect

1 to any restricted bank director stock (as defined in section
2 1361(f)), the amount of such distribution—

3 “(1) shall be includible in gross income of the
4 director, and

5 “(2) shall be deductible by the corporation for
6 the taxable year of such corporation in which or with
7 which ends the taxable year in which such amount
8 in included in the gross income of the director.”.

9 (c) EFFECTIVE DATES.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to taxable years beginning
12 after December 31, 2006.

13 (2) SPECIAL RULE FOR TREATMENT AS SECOND
14 CLASS OF STOCK.—In the case of any taxable year
15 beginning after December 31, 1996, restricted bank
16 director stock (as defined in section 1361(f) of the
17 Internal Revenue Code of 1986, as added by this
18 section) shall not be taken into account in deter-
19 mining whether an S corporation has more than 1
20 class of stock.

1 **SEC. 113. SPECIAL RULE FOR BANK REQUIRED TO CHANGE**
 2 **FROM THE RESERVE METHOD OF ACCOUNT-**
 3 **ING ON BECOMING S CORPORATION.**

4 (a) IN GENERAL.—Section 1361, as amended by this
 5 Act, is amended by adding at the end the following new
 6 subsection:

7 “(g) SPECIAL RULE FOR BANK REQUIRED TO
 8 CHANGE FROM THE RESERVE METHOD OF ACCOUNTING
 9 ON BECOMING S CORPORATION.—In the case of a bank
 10 which changes from the reserve method of accounting for
 11 bad debts described in section 585 or 593 for its first tax-
 12 able year for which an election under section 1362(a) is
 13 in effect, the bank may elect to take into account any ad-
 14 justments under section 481 by reason of such change for
 15 the taxable year immediately preceding such first taxable
 16 year.”.

17 (b) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to taxable years beginning after
 19 December 31, 2006.

20 **SEC. 114. TREATMENT OF THE SALE OF INTEREST IN A**
 21 **QUALIFIED SUBCHAPTER S SUBSIDIARY.**

22 (a) IN GENERAL.—Subparagraph (C) of section
 23 1361(b)(3) (relating to treatment of terminations of quali-
 24 fied subchapter S subsidiary status) is amended—

25 (1) by striking “For purposes of this title,” and
 26 inserting the following:

1 “(i) IN GENERAL.—For purposes of
2 this title,” and

3 (2) by inserting at the end the following new
4 clause:

5 “(ii) TERMINATION BY REASON OF
6 SALE OF STOCK.—If the failure to meet
7 the requirements of subparagraph (B) is
8 by reason of the sale of stock of a corpora-
9 tion which is a qualified subchapter S sub-
10 sidiary, the sale of such stock shall be
11 treated as if—

12 “(I) the sale were a sale of an
13 undivided interest in the assets of
14 such corporation (based on the per-
15 centage of the corporation’s stock
16 sold), and

17 “(II) the sale were followed by an
18 acquisition by such corporation of all
19 of its assets (and the assumption by
20 such corporation of all of its liabil-
21 ities) in a transaction to which section
22 351 applies.”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 2006 .

1 **SEC. 115. ELIMINATION OF ALL EARNINGS AND PROFITS**
2 **ATTRIBUTABLE TO PRE-1983 YEARS FOR CER-**
3 **TAIN CORPORATIONS.**

4 In the case of a corporation which is—

5 (1) described in section 1311(a)(1) of the Small
6 Business Job Protection Act of 1996, and

7 (2) not described in section 1311(a)(2) of such
8 Act,

9 the amount of such corporation's accumulated earnings
10 and profits (for the first taxable year beginning after the
11 date of the enactment of this Act) shall be reduced by an
12 amount equal to the portion (if any) of such accumulated
13 earnings and profits which were accumulated in any tax-
14 able year beginning before January 1, 1983, for which
15 such corporation was an electing small business corpora-
16 tion under subchapter S of the Internal Revenue Code of
17 1986.

18 **SEC. 116. EXPANSION OF QUALIFYING BENEFICIARIES OF**
19 **AN ELECTING SMALL BUSINESS TRUST.**

20 (a) NO LOOK THROUGH FOR ELIGIBILITY PUR-
21 POSES.—Clause (v) of section 1361(c)(2)(B) is amended
22 by adding at the end the following new sentence: “This
23 clause shall not apply for purposes of subsection
24 (b)(1)(C).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall take effect on the date of the enactment
3 of this Act.

4 **TITLE II—REVENUE PROVISIONS**

5 **SEC. 201. MODIFICATION OF EFFECTIVE DATE OF LEASING** 6 **PROVISIONS OF THE AMERICAN JOBS CRE-** 7 **ATION ACT OF 2004.**

8 (a) LEASES TO FOREIGN ENTITIES.—Section 849(b)
9 of the American Jobs Creation Act of 2004 is amended
10 by adding at the end the following new paragraph:

11 “(5) LEASES TO FOREIGN ENTITIES.—In the
12 case of tax-exempt use property leased to a tax-ex-
13 empt entity which is a foreign person or entity, the
14 amendments made by this part shall apply to taxable
15 years beginning after December 31, 2006, with re-
16 spect to leases entered into on or before March 12,
17 2004.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall take effect as if included in the enact-
20 ment of the American Jobs Creation Act of 2004.

1 **SEC. 202. APPLICATION OF RULES TREATING INVERTED**
2 **CORPORATIONS AS DOMESTIC CORPORA-**
3 **TIONS TO CERTAIN TRANSACTIONS OCCUR-**
4 **RING AFTER MARCH 20, 2002.**

5 (a) IN GENERAL.—Section 7874(b) (relating to in-
6 verted corporations treated as domestic corporations) is
7 amended to read as follows:

8 “(b) INVERTED CORPORATIONS TREATED AS DO-
9 MESTIC CORPORATIONS.—

10 “(1) IN GENERAL.—Notwithstanding section
11 7701(a)(4), a foreign corporation shall be treated for
12 purposes of this title as a domestic corporation if
13 such corporation would be a surrogate foreign cor-
14 poration if subsection (a)(2) were applied by sub-
15 stituting ‘80 percent’ for ‘60 percent’.

16 “(2) SPECIAL RULE FOR CERTAIN TRANS-
17 ACTIONS OCCURRING AFTER MARCH 20, 2002.—

18 “(A) IN GENERAL.—If—

19 “(i) paragraph (1) does not apply to
20 a foreign corporation, but

21 “(ii) paragraph (1) would apply to
22 such corporation if, in addition to the sub-
23 stitution under paragraph (1), subsection
24 (a)(2) were applied by substituting ‘March
25 20, 2002’ for ‘March 4, 2003’ each place
26 it appears,

1 then paragraph (1) shall apply to such corpora-
2 tion but only with respect to taxable years of
3 such corporation beginning after December 31,
4 2006.

5 “(B) SPECIAL RULES.—Subject to such
6 rules as the Secretary may prescribe, in the
7 case of a corporation to which paragraph (1)
8 applies by reason of this paragraph—

9 “(i) the corporation shall be treated,
10 as of the close of its last taxable year be-
11 ginning before January 1, 2007, as having
12 transferred all of its assets, liabilities, and
13 earnings and profits to a domestic corpora-
14 tion in a transaction with respect to which
15 no tax is imposed under this title,

16 “(ii) the bases of the assets trans-
17 ferred in the transaction to the domestic
18 corporation shall be the same as the bases
19 of the assets in the hands of the foreign
20 corporation, subject to any adjustments
21 under this title for built-in losses,

22 “(iii) the basis of the stock of any
23 shareholder in the domestic corporation
24 shall be the same as the basis of the stock
25 of the shareholder in the foreign corpora-

1 tion for which it is treated as exchanged,
2 and

3 “(iv) the transfer of any earnings and
4 profits by reason of clause (i) shall be dis-
5 regarded in determining any deemed divi-
6 dend or foreign tax creditable to the do-
7 mestic corporation with respect to such
8 transfer.

9 “(C) REGULATIONS.—The Secretary may
10 prescribe such regulations as may be necessary
11 or appropriate to carry out this paragraph, in-
12 cluding regulations to prevent the avoidance of
13 the purposes of this paragraph.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to taxable years beginning after
16 December 31, 2006.

17 **SEC. 203. DENIAL OF DEDUCTION FOR PUNITIVE DAMAGES.**

18 (a) DISALLOWANCE OF DEDUCTION.—

19 (1) IN GENERAL.—Section 162(g) (relating to
20 treble damage payments under the antitrust laws) is
21 amended—

22 (A) by redesignating paragraphs (1) and
23 (2) as subparagraphs (A) and (B), respectively,
24 (B) by striking “If” and inserting:

25 “(1) TREBLE DAMAGES.—If”, and

1 (C) by adding at the end the following new
2 paragraph:

3 “(2) PUNITIVE DAMAGES.—No deduction shall
4 be allowed under this chapter for any amount paid
5 or incurred for punitive damages in connection with
6 any judgment in, or settlement of, any action. This
7 paragraph shall not apply to punitive damages de-
8 scribed in section 104(c).”.

9 (2) CONFORMING AMENDMENT.—The heading
10 for section 162(g) is amended by inserting “OR PU-
11 NITIVE DAMAGES” after “LAWS”.

12 (b) INCLUSION IN INCOME OF PUNITIVE DAMAGES
13 PAID BY INSURER OR OTHERWISE.—

14 (1) IN GENERAL.—Part II of subchapter B of
15 chapter 1 (relating to items specifically included in
16 gross income) is amended by adding at the end the
17 following new section:

18 **“SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSUR-**
19 **ANCE OR OTHERWISE.**

20 “Gross income shall include any amount paid to or
21 on behalf of a taxpayer as insurance or otherwise by rea-
22 son of the taxpayer’s liability (or agreement) to pay puni-
23 tive damages.”.

1 to, or at the direction of, a government or entity de-
2 scribed in paragraph (4) in relation to the violation
3 of any law or the investigation or inquiry by such
4 government or entity into the potential violation of
5 any law.

6 “(2) EXCEPTION FOR AMOUNTS CONSTITUTING
7 RESTITUTION OR PAID TO COME INTO COMPLIANCE
8 WITH LAW.—Paragraph (1) shall not apply to any
9 amount which—

10 “(A) the taxpayer establishes—

11 “(i) constitutes restitution (including
12 remediation of property) for damage or
13 harm caused by or which may be caused by
14 the violation of any law or the potential
15 violation of any law, or

16 “(ii) is paid to come into compliance
17 with any law which was violated or in-
18 volved in the investigation or inquiry, and

19 “(B) is identified as restitution or as an
20 amount paid to come into compliance with the
21 law, as the case may be, in the court order or
22 settlement agreement.

23 A taxpayer shall not meet the requirements of sub-
24 paragraph (A) solely by reason an identification
25 under subparagraph (B). This paragraph shall not

1 apply to any amount paid or incurred as reimburse-
2 ment to the government or entity for the costs of
3 any investigation or litigation.

4 “(3) EXCEPTION FOR AMOUNTS PAID OR IN-
5 CURRED AS THE RESULT OF CERTAIN COURT OR-
6 DERS.—Paragraph (1) shall not apply to any
7 amount paid or incurred by order of a court in a
8 suit in which no government or entity described in
9 paragraph (4) is a party.

10 “(4) CERTAIN NONGOVERNMENTAL REGU-
11 LATORY ENTITIES.—An entity is described in this
12 paragraph if it is—

13 “(A) a nongovernmental entity which exer-
14 cises self-regulatory powers (including imposing
15 sanctions) in connection with a qualified board
16 or exchange (as defined in section 1256(g)(7)),
17 or

18 “(B) to the extent provided in regulations,
19 a nongovernmental entity which exercises self-
20 regulatory powers (including imposing sanc-
21 tions) as part of performing an essential gov-
22 ernmental function.

23 “(5) EXCEPTION FOR TAXES DUE.—Paragraph
24 (1) shall not apply to any amount paid or incurred
25 as taxes due.”.

1 (b) REPORTING OF DEDUCTIBLE AMOUNTS.—

2 (1) IN GENERAL.—Subpart B of part III of
3 subchapter A of chapter 61 is amended by inserting
4 after section 6050V the following new section:

5 **“SEC. 6050W. INFORMATION WITH RESPECT TO CERTAIN**
6 **FINES, PENALTIES, AND OTHER AMOUNTS.**

7 “(a) REQUIREMENT OF REPORTING.—

8 “(1) IN GENERAL.—The appropriate official of
9 any government or entity which is described in sec-
10 tion 162(f)(4) which is involved in a suit or agree-
11 ment described in paragraph (2) shall make a return
12 in such form as determined by the Secretary setting
13 forth—

14 “(A) the amount required to be paid as a
15 result of the suit or agreement to which para-
16 graph (1) of section 162(f) applies,

17 “(B) any amount required to be paid as a
18 result of the suit or agreement which con-
19 stitutes restitution or remediation of property,
20 and

21 “(C) any amount required to be paid as a
22 result of the suit or agreement for the purpose
23 of coming into compliance with any law which
24 was violated or involved in the investigation or
25 inquiry.

1 “(2) SUIT OR AGREEMENT DESCRIBED.—

2 “(A) IN GENERAL.—A suit or agreement is
3 described in this paragraph if—

4 “(i) it is—

5 “(I) a suit with respect to a vio-
6 lation of any law over which the gov-
7 ernment or entity has authority and
8 with respect to which there has been
9 a court order, or

10 “(II) an agreement which is en-
11 tered into with respect to a violation
12 of any law over which the government
13 or entity has authority, or with re-
14 spect to an investigation or inquiry by
15 the government or entity into the po-
16 tential violation of any law over which
17 such government or entity has author-
18 ity, and

19 “(ii) the aggregate amount involved in
20 all court orders and agreements with re-
21 spect to the violation, investigation, or in-
22 quiry is \$600 or more.

23 “(B) ADJUSTMENT OF REPORTING
24 THRESHOLD.—The Secretary may adjust the
25 \$600 amount in subparagraph (A)(ii) as nec-

1 essary in order to ensure the efficient adminis-
2 tration of the internal revenue laws.

3 “(3) TIME OF FILING.—The return required
4 under this subsection shall be filed not later than—

5 “(A) 30 days after the date on which a
6 court order is issued with respect to the suit or
7 the date the agreement is entered into, as the
8 case may be, or

9 “(B) the date specified Secretary.

10 “(b) STATEMENTS TO BE FURNISHED TO INDIVID-
11 UALS INVOLVED IN THE SETTLEMENT.—Every person re-
12 quired to make a return under subsection (a) shall furnish
13 to each person who is a party to the suit or agreement
14 a written statement showing—

15 “(1) the name of the government or entity, and

16 “(2) the information supplied to the Secretary
17 under subsection (a)(1).

18 The written statement required under the preceding sen-
19 tence shall be furnished to the person at the same time
20 the government or entity provides the Secretary with the
21 information required under subsection (a).

22 “(c) APPROPRIATE OFFICIAL DEFINED.—For pur-
23 poses of this section, the term ‘appropriate official’ means
24 the officer or employee having control of the suit, inves-

1 tigation, or inquiry or the person appropriately designated
2 for purposes of this section.”.

3 (2) CONFORMING AMENDMENT.—The table of
4 sections for subpart B of part III of subchapter A
5 of chapter 61 is amended by inserting after the item
6 relating to section 6050V the following new item:

“Sec. 6050W. Information with respect to certain fines, penalties, and other
amounts.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to amounts paid or incurred on
9 or after the date of the enactment of this Act, except that
10 such amendments shall not apply to amounts paid or in-
11 curred under any binding order or agreement entered into
12 before such date. Such exception shall not apply to an
13 order or agreement requiring court approval unless the ap-
14 proval was obtained before such date.

15 **SEC. 205. REVISION OF TAX RULES ON EXPATRIATION OF**
16 **INDIVIDUALS.**

17 (a) IN GENERAL.—Subpart A of part II of sub-
18 chapter N of chapter 1 is amended by inserting after sec-
19 tion 877 the following new section:

20 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

21 “(a) GENERAL RULES.—For purposes of this sub-
22 title—

23 “(1) MARK TO MARKET.—Except as provided in
24 subsections (d) and (f), all property of a covered ex-

1 patriate to whom this section applies shall be treated
2 as sold on the day before the expatriation date for
3 its fair market value.

4 “(2) RECOGNITION OF GAIN OR LOSS.—In the
5 case of any sale under paragraph (1)—

6 “(A) notwithstanding any other provision
7 of this title, any gain arising from such sale
8 shall be taken into account for the taxable year
9 of the sale, and

10 “(B) any loss arising from such sale shall
11 be taken into account for the taxable year of
12 the sale to the extent otherwise provided by this
13 title, except that section 1091 shall not apply to
14 any such loss.

15 Proper adjustment shall be made in the amount of
16 any gain or loss subsequently realized for gain or
17 loss taken into account under the preceding sen-
18 tence.

19 “(3) EXCLUSION FOR CERTAIN GAIN.—

20 “(A) IN GENERAL.—The amount which,
21 but for this paragraph, would be includible in
22 the gross income of any individual by reason of
23 this section shall be reduced (but not below
24 zero) by \$600,000. For purposes of this para-
25 graph, allocable expatriation gain taken into ac-

1 count under subsection (f)(2) shall be treated in
2 the same manner as an amount required to be
3 includible in gross income.

4 “(B) COST-OF-LIVING ADJUSTMENT.—

5 “(i) IN GENERAL.—In the case of an
6 expatriation date occurring in any calendar
7 year after 2007, the \$600,000 amount
8 under subparagraph (A) shall be increased
9 by an amount equal to—

10 “(I) such dollar amount, multi-
11 plied by

12 “(II) the cost-of-living adjust-
13 ment determined under section 1(f)(3)
14 for such calendar year, determined by
15 substituting ‘calendar year 2006’ for
16 ‘calendar year 1992’ in subparagraph
17 (B) thereof.

18 “(ii) ROUNDING RULES.—If any
19 amount after adjustment under clause (i)
20 is not a multiple of \$1,000, such amount
21 shall be rounded to the next lower multiple
22 of \$1,000.

23 “(4) ELECTION TO CONTINUE TO BE TAXED AS
24 UNITED STATES CITIZEN.—

1 “(A) IN GENERAL.—If a covered expatriate
2 elects the application of this paragraph—

3 “(i) this section (other than this para-
4 graph and subsection (i)) shall not apply to
5 the expatriate, but

6 “(ii) in the case of property to which
7 this section would apply but for such elec-
8 tion, the expatriate shall be subject to tax
9 under this title in the same manner as if
10 the individual were a United States citizen.

11 “(B) REQUIREMENTS.—Subparagraph (A)
12 shall not apply to an individual unless the indi-
13 vidual—

14 “(i) provides security for payment of
15 tax in such form and manner, and in such
16 amount, as the Secretary may require,

17 “(ii) consents to the waiver of any
18 right of the individual under any treaty of
19 the United States which would preclude as-
20 sessment or collection of any tax which
21 may be imposed by reason of this para-
22 graph, and

23 “(iii) complies with such other re-
24 quirements as the Secretary may prescribe.

1 “(C) ELECTION.—An election under sub-
2 paragraph (A) shall apply to all property to
3 which this section would apply but for the elec-
4 tion and, once made, shall be irrevocable. Such
5 election shall also apply to property the basis of
6 which is determined in whole or in part by ref-
7 erence to the property with respect to which the
8 election was made.

9 “(b) ELECTION TO DEFER TAX.—

10 “(1) IN GENERAL.—If the taxpayer elects the
11 application of this subsection with respect to any
12 property treated as sold by reason of subsection (a),
13 the payment of the additional tax attributable to
14 such property shall be postponed until the due date
15 of the return for the taxable year in which such
16 property is disposed of (or, in the case of property
17 disposed of in a transaction in which gain is not rec-
18 ognized in whole or in part, until such other date as
19 the Secretary may prescribe).

20 “(2) DETERMINATION OF TAX WITH RESPECT
21 TO PROPERTY.—For purposes of paragraph (1), the
22 additional tax attributable to any property is an
23 amount which bears the same ratio to the additional
24 tax imposed by this chapter for the taxable year
25 solely by reason of subsection (a) as the gain taken

1 into account under subsection (a) with respect to
2 such property bears to the total gain taken into ac-
3 count under subsection (a) with respect to all prop-
4 erty to which subsection (a) applies.

5 “(3) TERMINATION OF POSTPONEMENT.—No
6 tax may be postponed under this subsection later
7 than the due date for the return of tax imposed by
8 this chapter for the taxable year which includes the
9 date of death of the expatriate (or, if earlier, the
10 time that the security provided with respect to the
11 property fails to meet the requirements of paragraph
12 (4), unless the taxpayer corrects such failure within
13 the time specified by the Secretary).

14 “(4) SECURITY.—

15 “(A) IN GENERAL.—No election may be
16 made under paragraph (1) with respect to any
17 property unless adequate security is provided to
18 the Secretary with respect to such property.

19 “(B) ADEQUATE SECURITY.—For purposes
20 of subparagraph (A), security with respect to
21 any property shall be treated as adequate secu-
22 rity if—

23 “(i) it is a bond in an amount equal
24 to the deferred tax amount under para-
25 graph (2) for the property, or

1 “(ii) the taxpayer otherwise estab-
2 lishes to the satisfaction of the Secretary
3 that the security is adequate.

4 “(5) WAIVER OF CERTAIN RIGHTS.—No elec-
5 tion may be made under paragraph (1) unless the
6 taxpayer consents to the waiver of any right under
7 any treaty of the United States which would pre-
8 clude assessment or collection of any tax imposed by
9 reason of this section.

10 “(6) ELECTIONS.—An election under paragraph
11 (1) shall only apply to property described in the elec-
12 tion and, once made, is irrevocable. An election may
13 be made under paragraph (1) with respect to an in-
14 terest in a trust with respect to which gain is re-
15 quired to be recognized under subsection (f)(1).

16 “(7) INTEREST.—For purposes of section
17 6601—

18 “(A) the last date for the payment of tax
19 shall be determined without regard to the elec-
20 tion under this subsection, and

21 “(B) section 6621(a)(2) shall be applied by
22 substituting ‘5 percentage points’ for ‘3 per-
23 centage points’ in subparagraph (B) thereof.

24 “(c) COVERED EXPATRIATE.—For purposes of this
25 section—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), the term ‘covered expatriate’ means an
3 expatriate.

4 “(2) EXCEPTIONS.—An individual shall not be
5 treated as a covered expatriate if—

6 “(A) the individual—

7 “(i) became at birth a citizen of the
8 United States and a citizen of another
9 country and, as of the expatriation date,
10 continues to be a citizen of, and is taxed
11 as a resident of, such other country, and

12 “(ii) has not been a resident of the
13 United States (as defined in section
14 7701(b)(1)(A)(ii)) during the 5 taxable
15 years ending with the taxable year during
16 which the expatriation date occurs, or

17 “(B)(i) the individual’s relinquishment of
18 United States citizenship occurs before such in-
19 dividual attains age 18½, and

20 “(ii) the individual has been a resident of
21 the United States (as so defined) for not more
22 than 5 taxable years before the date of relin-
23 quishment.

24 “(d) EXEMPT PROPERTY; SPECIAL RULES FOR PEN-
25 SION PLANS.—

1 “(1) EXEMPT PROPERTY.—This section shall
2 not apply to the following:

3 “(A) UNITED STATES REAL PROPERTY IN-
4 TERESTS.—Any United States real property in-
5 terest (as defined in section 897(c)(1)), other
6 than stock of a United States real property
7 holding corporation which does not, on the day
8 before the expatriation date, meet the require-
9 ments of section 897(c)(2).

10 “(B) SPECIFIED PROPERTY.—Any prop-
11 erty or interest in property not described in
12 subparagraph (A) which the Secretary specifies
13 in regulations.

14 “(2) SPECIAL RULES FOR CERTAIN RETIRE-
15 MENT PLANS.—

16 “(A) IN GENERAL.—If a covered expatriate
17 holds on the day before the expatriation date
18 any interest in a retirement plan to which this
19 paragraph applies—

20 “(i) such interest shall not be treated
21 as sold for purposes of subsection (a)(1),
22 but

23 “(ii) an amount equal to the present
24 value of the expatriate’s nonforfeitable ac-
25 crued benefit shall be treated as having

1 been received by such individual on such
2 date as a distribution under the plan.

3 “(B) TREATMENT OF SUBSEQUENT DIS-
4 TRIBUTIONS.—In the case of any distribution
5 on or after the expatriation date to or on behalf
6 of the covered expatriate from a plan from
7 which the expatriate was treated as receiving a
8 distribution under subparagraph (A), the
9 amount otherwise includible in gross income by
10 reason of the subsequent distribution shall be
11 reduced by the excess of the amount includible
12 in gross income under subparagraph (A) over
13 any portion of such amount to which this sub-
14 paragraph previously applied.

15 “(C) TREATMENT OF SUBSEQUENT DIS-
16 TRIBUTIONS BY PLAN.—For purposes of this
17 title, a retirement plan to which this paragraph
18 applies, and any person acting on the plan’s be-
19 half, shall treat any subsequent distribution de-
20 scribed in subparagraph (B) in the same man-
21 ner as such distribution would be treated with-
22 out regard to this paragraph.

23 “(D) APPLICABLE PLANS.—This para-
24 graph shall apply to—

1 “(i) any qualified retirement plan (as
2 defined in section 4974(c)),

3 “(ii) an eligible deferred compensation
4 plan (as defined in section 457(b)) of an
5 eligible employer described in section
6 457(e)(1)(A), and

7 “(iii) to the extent provided in regula-
8 tions, any foreign pension plan or similar
9 retirement arrangements or programs.

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

11 “(1) EXPATRIATE.—The term ‘expatriate’
12 means—

13 “(A) any United States citizen who relin-
14 quishes citizenship, and

15 “(B) any long-term resident of the United
16 States who—

17 “(i) ceases to be a lawful permanent
18 resident of the United States (within the
19 meaning of section 7701(b)(6)), or

20 “(ii) commences to be treated as a
21 resident of a foreign country under the
22 provisions of a tax treaty between the
23 United States and the foreign country and
24 who does not waive the benefits of such

1 treaty applicable to residents of the foreign
2 country.

3 “(2) EXPATRIATION DATE.—The term ‘expa-
4 triation date’ means—

5 “(A) the date an individual relinquishes
6 United States citizenship, or

7 “(B) in the case of a long-term resident of
8 the United States, the date of the event de-
9 scribed in clause (i) or (ii) of paragraph (1)(B).

10 “(3) RELINQUISHMENT OF CITIZENSHIP.—A
11 citizen shall be treated as relinquishing United
12 States citizenship on the earliest of—

13 “(A) the date the individual renounces
14 such individual’s United States nationality be-
15 fore a diplomatic or consular officer of the
16 United States pursuant to paragraph (5) of sec-
17 tion 349(a) of the Immigration and Nationality
18 Act (8 U.S.C. 1481(a)(5)),

19 “(B) the date the individual furnishes to
20 the United States Department of State a signed
21 statement of voluntary relinquishment of
22 United States nationality confirming the per-
23 formance of an act of expatriation specified in
24 paragraph (1), (2), (3), or (4) of section 349(a)

1 of the Immigration and Nationality Act (8
2 U.S.C. 1481(a)(1)–(4)),

3 “(C) the date the United States Depart-
4 ment of State issues to the individual a certifi-
5 cate of loss of nationality, or

6 “(D) the date a court of the United States
7 cancels a naturalized citizen’s certificate of nat-
8 uralization.

9 Subparagraph (A) or (B) shall not apply to any indi-
10 vidual unless the renunciation or voluntary relin-
11 quishment is subsequently approved by the issuance
12 to the individual of a certificate of loss of nationality
13 by the United States Department of State.

14 “(4) LONG-TERM RESIDENT.—The term ‘long-
15 term resident’ has the meaning given to such term
16 by section 877(e)(2).

17 “(f) SPECIAL RULES APPLICABLE TO BENE-
18 FICIARIES’ INTERESTS IN TRUST.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), if an individual is determined under para-
21 graph (3) to hold an interest in a trust on the day
22 before the expatriation date—

23 “(A) the individual shall not be treated as
24 having sold such interest,

1 “(B) such interest shall be treated as a
2 separate share in the trust, and

3 “(C)(i) such separate share shall be treat-
4 ed as a separate trust consisting of the assets
5 allocable to such share,

6 “(ii) the separate trust shall be treated as
7 having sold its assets on the day before the ex-
8 patriation date for their fair market value and
9 as having distributed all of its assets to the in-
10 dividual as of such time, and

11 “(iii) the individual shall be treated as hav-
12 ing recontributed the assets to the separate
13 trust.

14 Subsection (a)(2) shall apply to any income, gain, or
15 loss of the individual arising from a distribution de-
16 scribed in subparagraph (C)(ii). In determining the
17 amount of such distribution, proper adjustments
18 shall be made for liabilities of the trust allocable to
19 an individual’s share in the trust.

20 “(2) SPECIAL RULES FOR INTERESTS IN QUALI-
21 FIED TRUSTS.—

22 “(A) IN GENERAL.—If the trust interest
23 described in paragraph (1) is an interest in a
24 qualified trust—

1 “(i) paragraph (1) and subsection (a)
2 shall not apply, and

3 “(ii) in addition to any other tax im-
4 posed by this title, there is hereby imposed
5 on each distribution with respect to such
6 interest a tax in the amount determined
7 under subparagraph (B).

8 “(B) AMOUNT OF TAX.—The amount of
9 tax under subparagraph (A)(ii) shall be equal to
10 the lesser of—

11 “(i) the highest rate of tax imposed by
12 section 1(e) for the taxable year which in-
13 cludes the day before the expatriation date,
14 multiplied by the amount of the distribu-
15 tion, or

16 “(ii) the balance in the deferred tax
17 account immediately before the distribution
18 determined without regard to any increases
19 under subparagraph (C)(ii) after the 30th
20 day preceding the distribution.

21 “(C) DEFERRED TAX ACCOUNT.—For pur-
22 poses of subparagraph (B)(ii)—

23 “(i) OPENING BALANCE.—The open-
24 ing balance in a deferred tax account with
25 respect to any trust interest is an amount

1 equal to the tax which would have been im-
2 posed on the allocable expatriation gain
3 with respect to the trust interest if such
4 gain had been included in gross income
5 under subsection (a).

6 “(ii) INCREASE FOR INTEREST.—The
7 balance in the deferred tax account shall
8 be increased by the amount of interest de-
9 termined (on the balance in the account at
10 the time the interest accrues), for periods
11 after the 90th day after the expatriation
12 date, by using the rates and method appli-
13 cable under section 6621 for underpay-
14 ments of tax for such periods, except that
15 section 6621(a)(2) shall be applied by sub-
16 stituting ‘5 percentage points’ for ‘3 per-
17 centage points’ in subparagraph (B) there-
18 of.

19 “(iii) DECREASE FOR TAXES PRE-
20 VIOUSLY PAID.—The balance in the tax de-
21 ferred account shall be reduced—

22 “(I) by the amount of taxes im-
23 posed by subparagraph (A) on any
24 distribution to the person holding the
25 trust interest, and

1 “(II) in the case of a person
2 holding a nonvested interest, to the
3 extent provided in regulations, by the
4 amount of taxes imposed by subpara-
5 graph (A) on distributions from the
6 trust with respect to nonvested inter-
7 ests not held by such person.

8 “(D) ALLOCABLE EXPATRIATION GAIN.—
9 For purposes of this paragraph, the allocable
10 expatriation gain with respect to any bene-
11 ficiary’s interest in a trust is the amount of
12 gain which would be allocable to such bene-
13 ficiary’s vested and nonvested interests in the
14 trust if the beneficiary held directly all assets
15 allocable to such interests.

16 “(E) TAX DEDUCTED AND WITHHELD.—
17 “(i) IN GENERAL.—The tax imposed
18 by subparagraph (A)(ii) shall be deducted
19 and withheld by the trustees from the dis-
20 tribution to which it relates.

21 “(ii) EXCEPTION WHERE FAILURE TO
22 WAIVE TREATY RIGHTS.—If an amount
23 may not be deducted and withheld under
24 clause (i) by reason of the distributee fail-

1 ing to waive any treaty right with respect
2 to such distribution—

3 “(I) the tax imposed by subpara-
4 graph (A)(ii) shall be imposed on the
5 trust and each trustee shall be person-
6 ally liable for the amount of such tax,
7 and

8 “(II) any other beneficiary of the
9 trust shall be entitled to recover from
10 the distributee the amount of such tax
11 imposed on the other beneficiary.

12 “(F) DISPOSITION.—If a trust ceases to be
13 a qualified trust at any time, a covered expa-
14 triate disposes of an interest in a qualified
15 trust, or a covered expatriate holding an inter-
16 est in a qualified trust dies, then, in lieu of the
17 tax imposed by subparagraph (A)(ii), there is
18 hereby imposed a tax equal to the lesser of—

19 “(i) the tax determined under para-
20 graph (1) as if the day before the expatria-
21 tion date were the date of such cessation,
22 disposition, or death, whichever is applica-
23 ble, or

24 “(ii) the balance in the tax deferred
25 account immediately before such date.

1 Such tax shall be imposed on the trust and
2 each trustee shall be personally liable for the
3 amount of such tax and any other beneficiary
4 of the trust shall be entitled to recover from the
5 covered expatriate or the estate the amount of
6 such tax imposed on the other beneficiary.

7 “(G) DEFINITIONS AND SPECIAL RULES.—
8 For purposes of this paragraph—

9 “(i) QUALIFIED TRUST.—The term
10 ‘qualified trust’ means a trust which is de-
11 scribed in section 7701(a)(30)(E).

12 “(ii) VESTED INTEREST.—The term
13 ‘vested interest’ means any interest which,
14 as of the day before the expatriation date,
15 is vested in the beneficiary.

16 “(iii) NONVESTED INTEREST.—The
17 term ‘nonvested interest’ means, with re-
18 spect to any beneficiary, any interest in a
19 trust which is not a vested interest. Such
20 interest shall be determined by assuming
21 the maximum exercise of discretion in
22 favor of the beneficiary and the occurrence
23 of all contingencies in favor of the bene-
24 ficiary.

1 “(iv) ADJUSTMENTS.—The Secretary
2 may provide for such adjustments to the
3 bases of assets in a trust or a deferred tax
4 account, and the timing of such adjust-
5 ments, in order to ensure that gain is
6 taxed only once.

7 “(v) COORDINATION WITH RETIRE-
8 MENT PLAN RULES.—This subsection shall
9 not apply to an interest in a trust which
10 is part of a retirement plan to which sub-
11 section (d)(2) applies.

12 “(3) DETERMINATION OF BENEFICIARIES’ IN-
13 TEREST IN TRUST.—

14 “(A) DETERMINATIONS UNDER PARA-
15 GRAPH (1).—For purposes of paragraph (1), a
16 beneficiary’s interest in a trust shall be based
17 upon all relevant facts and circumstances, in-
18 cluding the terms of the trust instrument and
19 any letter of wishes or similar document, histor-
20 ical patterns of trust distributions, and the ex-
21 istence of and functions performed by a trust
22 protector or any similar adviser.

23 “(B) OTHER DETERMINATIONS.—For pur-
24 poses of this section—

1 “(i) CONSTRUCTIVE OWNERSHIP.—If
2 a beneficiary of a trust is a corporation,
3 partnership, trust, or estate, the share-
4 holders, partners, or beneficiaries shall be
5 deemed to be the trust beneficiaries for
6 purposes of this section.

7 “(ii) TAXPAYER RETURN POSITION.—
8 A taxpayer shall clearly indicate on its in-
9 come tax return—

10 “(I) the methodology used to de-
11 termine that taxpayer’s trust interest
12 under this section, and

13 “(II) if the taxpayer knows (or
14 has reason to know) that any other
15 beneficiary of such trust is using a
16 different methodology to determine
17 such beneficiary’s trust interest under
18 this section.

19 “(g) TERMINATION OF DEFERRALS, ETC.—In the
20 case of any covered expatriate, notwithstanding any other
21 provision of this title—

22 “(1) any period during which recognition of in-
23 come or gain is deferred shall terminate on the day
24 before the expatriation date, and

1 “(2) any extension of time for payment of tax
2 shall cease to apply on the day before the expatria-
3 tion date and the unpaid portion of such tax shall
4 be due and payable at the time and in the manner
5 prescribed by the Secretary.

6 “(h) IMPOSITION OF TENTATIVE TAX.—

7 “(1) IN GENERAL.—If an individual is required
8 to include any amount in gross income under sub-
9 section (a) for any taxable year, there is hereby im-
10 posed, immediately before the expatriation date, a
11 tax in an amount equal to the amount of tax which
12 would be imposed if the taxable year were a short
13 taxable year ending on the expatriation date.

14 “(2) DUE DATE.—The due date for any tax im-
15 posed by paragraph (1) shall be the 90th day after
16 the expatriation date.

17 “(3) TREATMENT OF TAX.—Any tax paid under
18 paragraph (1) shall be treated as a payment of the
19 tax imposed by this chapter for the taxable year to
20 which subsection (a) applies.

21 “(4) DEFERRAL OF TAX.—The provisions of
22 subsection (b) shall apply to the tax imposed by this
23 subsection to the extent attributable to gain includ-
24 ible in gross income by reason of this section.

1 “(i) SPECIAL LIENS FOR DEFERRED TAX
2 AMOUNTS.—

3 “(1) IMPOSITION OF LIEN.—

4 “(A) IN GENERAL.—If a covered expatriate
5 makes an election under subsection (a)(4) or
6 (b) which results in the deferral of any tax im-
7 posed by reason of subsection (a), the deferred
8 amount (including any interest, additional
9 amount, addition to tax, assessable penalty, and
10 costs attributable to the deferred amount) shall
11 be a lien in favor of the United States on all
12 property of the expatriate located in the United
13 States (without regard to whether this section
14 applies to the property).

15 “(B) DEFERRED AMOUNT.—For purposes
16 of this subsection, the deferred amount is the
17 amount of the increase in the covered expatri-
18 ate’s income tax which, but for the election
19 under subsection (a)(4) or (b), would have oc-
20 curred by reason of this section for the taxable
21 year including the expatriation date.

22 “(2) PERIOD OF LIEN.—The lien imposed by
23 this subsection shall arise on the expatriation date
24 and continue until—

1 “(A) the liability for tax by reason of this
2 section is satisfied or has become unenforceable
3 by reason of lapse of time, or

4 “(B) it is established to the satisfaction of
5 the Secretary that no further tax liability may
6 arise by reason of this section.

7 “(3) CERTAIN RULES APPLY.—The rules set
8 forth in paragraphs (1), (3), and (4) of section
9 6324A(d) shall apply with respect to the lien im-
10 posed by this subsection as if it were a lien imposed
11 by section 6324A.

12 “(j) REGULATIONS.—The Secretary shall prescribe
13 such regulations as may be necessary or appropriate to
14 carry out the purposes of this section.”.

15 (b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS
16 RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS
17 FROM EXPATRIATES.—Section 102 (relating to gifts, etc.
18 not included in gross income) is amended by adding at
19 the end the following new subsection:

20 “(d) GIFTS AND INHERITANCES FROM COVERED EX-
21 PATRIATES.—

22 “(1) TREATMENT OF GIFTS AND INHERIT-
23 ANCES.—

24 “(A) IN GENERAL.—Subsection (a) shall
25 not exclude from gross income the value of any

1 property acquired by gift, bequest, devise, or in-
2 heritance from a covered expatriate after the
3 expatriation date.

4 “(B) DETERMINATION OF BASIS.—Not-
5 withstanding sections 1015 or 1022, the basis
6 of any property described in subparagraph (A)
7 in the hands of the donee or the person acquir-
8 ing such property from the decedent shall be
9 equal to the fair market value of the property
10 at the time of the gift, bequest, devise, or inher-
11 itance.

12 “(2) EXCEPTIONS FOR TRANSFERS OTHERWISE
13 SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1)
14 shall not apply to any property if either—

15 “(A) the gift, bequest, devise, or inherit-
16 ance is—

17 “(i) shown on a timely filed return of
18 tax imposed by chapter 12 as a taxable gift
19 by the covered expatriate, or

20 “(ii) included in the gross estate of
21 the covered expatriate for purposes of
22 chapter 11 and shown on a timely filed re-
23 turn of tax imposed by chapter 11 of the
24 estate of the covered expatriate, or

1 “(B) no such return was timely filed but
2 no such return would have been required to be
3 filed even if the covered expatriate were a cit-
4 izen or long-term resident of the United States.

5 “(3) DEFINITIONS.—For purposes of this sub-
6 section, any term used in this subsection which is
7 also used in section 877A shall have the same mean-
8 ing as when used in section 877A.”.

9 (c) DEFINITION OF TERMINATION OF UNITED
10 STATES CITIZENSHIP.—Section 7701(a) is amended by
11 adding at the end the following new paragraph:

12 “(50) TERMINATION OF UNITED STATES CITI-
13 ZENSHIP.—

14 “(A) IN GENERAL.—An individual shall
15 not cease to be treated as a United States cit-
16 izen before the date on which the individual’s
17 citizenship is treated as relinquished under sec-
18 tion 877A(e)(3).

19 “(B) DUAL CITIZENS.—Under regulations
20 prescribed by the Secretary, subparagraph (A)
21 shall not apply to an individual who became at
22 birth a citizen of the United States and a cit-
23 izen of another country.”.

24 (d) INELIGIBILITY FOR VISA OR ADMISSION TO
25 UNITED STATES.—

1 (1) IN GENERAL.—Section 212(a)(10)(E) of the
2 Immigration and Nationality Act (8 U.S.C.
3 1182(a)(10)(E)) is amended to read as follows:

4 “(E) FORMER CITIZENS NOT IN COMPLI-
5 ANCE WITH EXPATRIATION REVENUE PROVI-
6 SIONS.—Any alien who is a former citizen of
7 the United States who relinquishes United
8 States citizenship (within the meaning of sec-
9 tion 877A(e)(3) of the Internal Revenue Code
10 of 1986) and who is not in compliance with sec-
11 tion 877A of such Code (relating to expatria-
12 tion) is inadmissible.”.

13 (2) AVAILABILITY OF INFORMATION.—

14 (A) IN GENERAL.—Section 6103(l) (relat-
15 ing to disclosure of returns and return informa-
16 tion for purposes other than tax administration)
17 is amended by adding at the end the following
18 new paragraph:

19 “(21) DISCLOSURE TO DENY VISA OR ADMIS-
20 SION TO CERTAIN EXPATRIATES.—Upon written re-
21 quest of the Attorney General or the Attorney Gen-
22 eral’s delegate, the Secretary shall disclose whether
23 an individual is in compliance with section 877A
24 (and if not in compliance, any items of noncompli-
25 ance) to officers and employees of the Federal agen-

1 cy responsible for administering section
2 212(a)(10)(E) of the Immigration and Nationality
3 Act solely for the purpose of, and to the extent nec-
4 essary in, administering such section
5 212(a)(10)(E).”.

6 (B) SAFEGUARDS.—Section 6103(p)(4)
7 (relating to safeguards) is amended by striking
8 “or (20)” each place it appears and inserting
9 “(20), or (21)”.

10 (3) EFFECTIVE DATES.—The amendments
11 made by this subsection shall apply to individuals
12 who relinquish United States citizenship on or after
13 the date of the enactment of this Act.

14 (e) CONFORMING AMENDMENTS.—

15 (1) Section 877 is amended by adding at the
16 end the following new subsection:

17 “(h) APPLICATION.—This section shall not apply to
18 an expatriate (as defined in section 877A(e)) whose expa-
19 triation date (as so defined) occurs on or after the date
20 of the enactment of this subsection.”.

21 (2) Section 2107 is amended by adding at the
22 end the following new subsection:

23 “(f) APPLICATION.—This section shall not apply to
24 any expatriate subject to section 877A.”.

1 (3) Section 2501(a)(3) is amended by adding at
2 the end the following new subparagraph:

3 “(C) APPLICATION.—This paragraph shall
4 not apply to any expatriate subject to section
5 877A.”.

6 (4) Section 6039G(a) is amended by inserting
7 “or 877A” after “section 877(b)”.

8 (5) The second sentence of section 6039G(d) is
9 amended by inserting “or who relinquishes United
10 States citizenship (within the meaning of section
11 877A(e)(3))” after “section 877(a)”.

12 (f) CLERICAL AMENDMENT.—The table of sections
13 for subpart A of part II of subchapter N of chapter 1
14 is amended by inserting after the item relating to section
15 877 the following new item:

 “Sec. 877A. Tax responsibilities of expatriation.”.

16 (g) EFFECTIVE DATE.—

17 (1) IN GENERAL.—Except as provided in this
18 subsection, the amendments made by this section
19 shall apply to expatriates (within the meaning of
20 section 877A(e) of the Internal Revenue Code of
21 1986, as added by this section) whose expatriation
22 date (as so defined) occurs on or after the date of
23 the enactment of this Act.

24 (2) GIFTS AND BEQUESTS.—Section 102(d) of
25 the Internal Revenue Code of 1986 (as added by

1 subsection (b)) shall apply to gifts and bequests re-
2 ceived on or after the date of the enactment of this
3 Act, from an individual or the estate of an individual
4 whose expatriation date (as so defined) occurs after
5 such date.

6 (3) DUE DATE FOR TENTATIVE TAX.—The due
7 date under section 877A(h)(2) of the Internal Rev-
8 enue Code of 1986, as added by this section, shall
9 in no event occur before the 90th day after the date
10 of the enactment of this Act.

11 **SEC. 206. LIMITATION ON ANNUAL AMOUNTS WHICH MAY**
12 **BE DEFERRED UNDER NONQUALIFIED DE-**
13 **FERRED COMPENSATION ARRANGEMENTS.**

14 (a) IN GENERAL.—Section 409A(a) of the Internal
15 Revenue Code of 1986 (relating to inclusion of gross in-
16 come under nonqualified deferred compensation plans) is
17 amended—

18 (1) by striking “and (4)” in subclause (I) of
19 paragraph (1)(A)(i) and inserting “(4), and (5)”,
20 and

21 (2) by adding at the end the following new
22 paragraph:

23 “(5) ANNUAL LIMITATION ON AGGREGATE DE-
24 FERRED AMOUNTS.—

1 “(A) LIMITATION.—The requirements of
2 this paragraph are met if the plan provides that
3 the aggregate amount of compensation which is
4 deferred for any taxable year with respect to a
5 participant under the plan may not exceed the
6 applicable dollar amount for the taxable year.

7 “(B) INCLUSION OF FUTURE EARNINGS.—
8 If an amount is includible under paragraph (1)
9 in the gross income of a participant for any
10 taxable year by reason of any failure to meet
11 the requirements of this paragraph, any income
12 (whether actual or notional) for any subsequent
13 taxable year shall be included in gross income
14 under paragraph (1)(A) in such subsequent tax-
15 able year to the extent such income—

16 “(i) is attributable to compensation
17 (or income attributable to such compensa-
18 tion) required to be included in gross in-
19 come by reason of such failure (including
20 by reason of this subparagraph), and

21 “(ii) is not subject to a substantial
22 risk of forfeiture and has not been pre-
23 viously included in gross income.

24 “(C) AGGREGATION RULE.—For purposes
25 of this paragraph, all nonqualified deferred

1 compensation plans maintained by all employers
2 treated as a single employer under subsection
3 (d)(6) shall be treated as 1 plan.

4 “(D) APPLICABLE DOLLAR AMOUNT.—For
5 purposes of this paragraph—

6 “(i) IN GENERAL.—The term ‘applica-
7 ble dollar amount’ means, with respect to
8 any participant, the lesser of—

9 “(I) the average annual com-
10 pensation which was payable during
11 the base period to the participant by
12 the employer maintaining the non-
13 qualified deferred compensation plan
14 (or any predecessor of the employer)
15 and which was includible in the par-
16 ticipant’s gross income for taxable
17 years in the base period, or

18 “(II) \$1,000,000.

19 “(ii) BASE PERIOD.—

20 “(I) IN GENERAL.—The term
21 ‘base period’ means, with respect to
22 any computation year, the 5-taxable
23 year period ending with the taxable
24 year preceding the computation year.

1 “(II) ELECTIONS MADE BEFORE
2 COMPUTATION YEAR.—If, before the
3 beginning of the computation year, an
4 election described in paragraph (4)(B)
5 is made by the participant to have
6 compensation for services performed
7 in the computation year deferred
8 under a nonqualified deferred com-
9 pensation plan, the base period shall
10 be the 5-taxable year period ending
11 with the taxable year preceding the
12 taxable year in which the election is
13 made.

14 “(III) COMPUTATION YEAR.—For
15 purposes of this clause, the term
16 ‘computation year’ means any taxable
17 year of the participant for which the
18 limitation under subparagraph (A) is
19 being determined.

20 “(IV) SPECIAL RULE FOR EM-
21 PLOYEES OF LESS THAN 5 YEARS.—If
22 a participant did not perform services
23 for the employer maintaining the non-
24 qualified deferred compensation plan
25 (or any predecessor of the employer)

1 during the entire 5-taxable year pe-
2 riod referred to in subparagraph (A)
3 or (B), only the portion of such period
4 during which the participant per-
5 formed such services shall be taken
6 into account.”.

7 (b) EFFECTIVE DATE.—

8 (1) IN GENERAL.—The amendments made by
9 this section shall apply to taxable years beginning
10 after December 31, 2006, except that—

11 (A) the amendments shall only apply to
12 amounts deferred after December 31, 2006
13 (and to earnings on such amounts), and

14 (B) taxable years beginning on or before
15 December 31, 2006, shall be taken into account
16 in determining the average annual compensa-
17 tion of a participant during any base period for
18 purposes of section 409A(a)(5)(D) of the Inter-
19 nal Revenue Code of 1986 (as added by such
20 amendments).

21 (2) GUIDANCE RELATING TO CERTAIN EXISTING
22 ARRANGEMENTS.—Not later than 60 days after the
23 date of the enactment of this Act, the Secretary of
24 the Treasury shall issue guidance providing a limited
25 period during which a nonqualified deferred com-

1 pensation plan adopted before December 31, 2006,
2 may, without violating the requirements of section
3 409A(a) of such Code, be amended—

4 (A) to provide that a participant may, no
5 later than December 31, 2007, cancel or modify
6 an outstanding deferral election with regard to
7 all or a portion of amounts deferred after De-
8 cember 31, 2006, to the extent necessary for
9 the plan to meet the requirements of section
10 409A(a)(5) of such Code (as added by the
11 amendments made by this section), but only if
12 amounts subject to the cancellation or modifica-
13 tion are, to the extent not previously included
14 in gross income, includible in income of the par-
15 ticipant when no longer subject to substantial
16 risk of forfeiture, and

17 (B) to conform to the requirements of sec-
18 tion 409A(a)(5) of such Code (as added by the
19 amendments made by this section) with regard
20 to amounts deferred after December 31, 2006.

21 **SEC. 207. INCREASE IN CRIMINAL MONETARY PENALTY**
22 **LIMITATION FOR THE UNDERPAYMENT OR**
23 **OVERPAYMENT OF TAX DUE TO FRAUD.**

24 (a) IN GENERAL.—Section 7206 (relating to fraud
25 and false statements) is amended—

1 (1) by striking “Any person who—” and insert-
2 ing “(a) IN GENERAL.—”, and

3 (2) by adding at the end the following new sub-
4 section:

5 “(b) INCREASE IN MONETARY LIMITATION FOR UN-
6 DERPAYMENT OR OVERPAYMENT OF TAX DUE TO
7 FRAUD.—If any portion of any underpayment (as defined
8 in section 6664(a)) or overpayment (as defined in section
9 6401(a)) of tax required to be shown on a return is attrib-
10 utable to fraudulent action described in subsection (a), the
11 applicable dollar amount under subsection (a) shall in no
12 event be less than an amount equal to such portion. A
13 rule similar to the rule under section 6663(b) shall apply
14 for purposes of determining the portion so attributable.”.

15 (b) INCREASE IN PENALTIES.—

16 (1) ATTEMPT TO EVADE OR DEFEAT TAX.—

17 Section 7201 is amended—

18 (A) by striking “\$100,000” and inserting
19 “\$500,000”,

20 (B) by striking “\$500,000” and inserting
21 “\$1,000,000”, and

22 (C) by striking “5 years” and inserting
23 “10 years”.

1 (2) WILLFUL FAILURE TO FILE RETURN, SUP-
2 PLY INFORMATION, OR PAY TAX.—Section 7203 is
3 amended—

4 (A) in the first sentence—

5 (i) by striking “Any person” and in-
6 serting the following:

7 “(a) IN GENERAL.—Any person”, and

8 (ii) by striking “\$25,000” and insert-
9 ing “\$50,000”,

10 (B) in the third sentence, by striking “sec-
11 tion” and inserting “subsection”, and

12 (C) by adding at the end the following new
13 subsection:

14 “(b) AGGRAVATED FAILURE TO FILE.—

15 “(1) IN GENERAL.—In the case of any failure
16 described in paragraph (2), the first sentence of sub-
17 section (a) shall be applied by substituting—

18 “(A) ‘felony’ for ‘misdemeanor’,

19 “(B) ‘\$500,000 (\$1,000,000’ for ‘\$25,000
20 (\$100,000’, and

21 “(C) ‘10 years’ for ‘1 year.’.”

22 “(2) FAILURE DESCRIBED.—A failure described
23 in this paragraph is a failure to make a return de-
24 scribed in subsection (a) for a period of 3 or more

1 consecutive taxable years if the aggregate tax liability
2 for such period is not less than \$100,000.”.

3 (3) FRAUD AND FALSE STATEMENTS.—Section
4 7206(a) (as redesignated by subsection (a)) is
5 amended—

6 (A) by striking “\$100,000” and inserting
7 “\$500,000”,

8 (B) by striking “\$500,000” and inserting
9 “\$1,000,000”, and

10 (C) by striking “3 years” and inserting “5
11 years”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to actions, and failures to act, oc-
14 ccurring after the date of the enactment of this Act.

15 **SEC. 208. DOUBLING OF CERTAIN PENALTIES, FINES, AND**
16 **INTEREST ON UNDERPAYMENTS RELATED TO**
17 **CERTAIN OFFSHORE FINANCIAL ARRANGE-**
18 **MENTS.**

19 (a) DETERMINATION OF PENALTY.—

20 (1) IN GENERAL.—Notwithstanding any other
21 provision of law, in the case of an applicable tax-
22 payer—

23 (A) the determination as to whether any
24 interest or applicable penalty is to be imposed
25 with respect to any arrangement described in

1 paragraph (2), or to any underpayment of Fed-
2 eral income tax attributable to items arising in
3 connection with any such arrangement, shall be
4 made without regard to the rules of subsections
5 (b), (c), and (d) of section 6664 of the Internal
6 Revenue Code of 1986, and

7 (B) if any such interest or applicable pen-
8 alty is imposed, the amount of such interest or
9 penalty shall be equal to twice that determined
10 without regard to this section.

11 (2) APPLICABLE TAXPAYER.—For purposes of
12 this subsection—

13 (A) IN GENERAL.—The term “applicable
14 taxpayer” means a taxpayer which—

15 (i) has underreported its United
16 States income tax liability with respect to
17 any item which directly or indirectly in-
18 volves—

19 (I) any financial arrangement
20 which in any manner relies on the use
21 of offshore payment mechanisms (in-
22 cluding credit, debit, or charge cards)
23 issued by banks or other entities in
24 foreign jurisdictions, or

1 (II) any offshore financial ar-
2 rangement (including any arrange-
3 ment with foreign banks, financial in-
4 stitutions, corporations, partnerships,
5 trusts, or other entities), and

6 (ii) has neither signed a closing agree-
7 ment pursuant to the Voluntary Offshore
8 Compliance Initiative established by the
9 Department of the Treasury under Rev-
10 enue Procedure 2003–11 nor voluntarily
11 disclosed its participation in such arrange-
12 ment by notifying the Internal Revenue
13 Service of such arrangement prior to the
14 issue being raised by the Internal Revenue
15 Service during an examination.

16 (B) AUTHORITY TO WAIVE.—The Sec-
17 retary of the Treasury or the Secretary’s dele-
18 gate may waive the application of paragraph (1)
19 to any taxpayer if the Secretary or the Sec-
20 retary’s delegate determines that the use of
21 such offshore payment mechanisms is incidental
22 to the transaction and, in addition, in the case
23 of a trade or business, such use is conducted in
24 the ordinary course of the type of trade or busi-
25 ness of the taxpayer.

1 (C) ISSUES RAISED.—For purposes of sub-
2 paragraph (A)(ii), an item shall be treated as
3 an issue raised during an examination if the in-
4 dividual examining the return—

5 (i) communicates to the taxpayer
6 knowledge about the specific item, or

7 (ii) has made a request to the tax-
8 payer for information and the taxpayer
9 could not make a complete response to
10 that request without giving the examiner
11 knowledge of the specific item.

12 (b) APPLICABLE PENALTY.—For purposes of this
13 section, the term “applicable penalty” means any penalty,
14 addition to tax, or fine imposed under chapter 68 of the
15 Internal Revenue Code of 1986.

16 (c) EFFECTIVE DATE.—The provisions of this section
17 shall apply to interest, penalties, additions to tax, and
18 fines with respect to any taxable year if, as of the date
19 of the enactment of this Act, the assessment of any tax,
20 penalty, or interest with respect to such taxable year is
21 not prevented by the operation of any law or rule of law.

22 **SEC. 209. INCREASE IN PENALTY FOR BAD CHECKS AND**
23 **MONEY ORDERS.**

24 (a) IN GENERAL.—Section 6657 (relating to bad
25 checks) is amended—

1 (1) by striking “\$750” and inserting “\$1,250”,
2 and

3 (2) by striking “\$15” and inserting “\$25”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section apply to checks or money orders received after
6 the date of the enactment of this Act.

7 **SEC. 210. TREATMENT OF CONTINGENT PAYMENT CON-**
8 **VERTIBLE DEBT INSTRUMENTS.**

9 (a) IN GENERAL.—Section 1275(d) (relating to regu-
10 lation authority) is amended—

11 (1) by striking “The Secretary” and inserting
12 the following:

13 “(1) IN GENERAL.—The Secretary”, and

14 (2) by adding at the end the following new
15 paragraph:

16 “(2) TREATMENT OF CONTINGENT PAYMENT
17 CONVERTIBLE DEBT.—

18 “(A) IN GENERAL.—In the case of a debt
19 instrument which—

20 “(i) is convertible into stock of the
21 issuing corporation, into stock or debt of a
22 related party (within the meaning of sec-
23 tion 267(b) or 707(b)(1)), or into cash or
24 other property in an amount equal to the

1 approximate value of such stock or debt,
2 and

3 “(ii) provides for contingent pay-
4 ments,

5 any regulations which require original issue dis-
6 count to be determined by reference to the com-
7 parable yield of a noncontingent fixed-rate debt
8 instrument shall be applied as if the regulations
9 require that such comparable yield be deter-
10 mined by reference to a noncontingent fixed-
11 rate debt instrument which is convertible into
12 stock.

13 “(B) SPECIAL RULE.—For purposes of
14 subparagraph (A), the comparable yield shall be
15 determined without taking into account the
16 yield resulting from the conversion of a debt in-
17 strument into stock.”.

18 (b) CROSS REFERENCE.—Section 163(e)(6) (relating
19 to cross references) is amended by adding at the end the
20 following:

21 “For the treatment of contingent payment
22 convertible debt, see section 1275(d)(2).”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to debt instruments issued on or
25 after the date of the enactment of this Act.

1 **SEC. 211. EXTENSION OF IRS USER FEES.**

2 Subsection (c) of section 7528 (relating to Internal
3 Revenue Service user fees) is amended by striking “Sep-
4 tember 30, 2014” and inserting “September 30, 2016”.

5 **SEC. 212. MODIFICATION OF COLLECTION DUE PROCESS**

6 **PROCEDURES FOR EMPLOYMENT TAX LI-**

7 **ABILITIES.**

8 (a) **IN GENERAL.**—Section 6330(f) (relating to jeop-
9 ardy and State refund collection) is amended—

10 (1) by striking “; or” at the end of paragraph

11 (1) and inserting a comma,

12 (2) by adding “or” at the end of paragraph (2),

13 and

14 (3) by inserting after paragraph (2) the fol-
15 lowing new paragraph:

16 “(3) the Secretary has served a levy in connec-
17 tion with the collection of taxes under chapter 21,
18 22, 23, or 24.”.

19 (b) **EFFECTIVE DATE.**—The amendments made by
20 this section shall apply to levies issued on or after the date
21 that is 120 days after the date of the enactment of this
22 Act.

23 **SEC. 213. MODIFICATIONS TO WHISTLEBLOWER REFORMS.**

24 (a) **MODIFICATION OF TAX THRESHOLD FOR**
25 **AWARDS.**—Subparagraph (B) of section 7623(b)(5), as
26 added by the Tax Relief and Health Care Act of 2006,

1 is amended by striking “\$2,000,000” and inserting
2 “\$20,000”.

3 (b) WHISTLEBLOWER OFFICE.—

4 (1) IN GENERAL.—Section 7623 is amended by
5 adding at the end the following new subsections:

6 “(c) WHISTLEBLOWER OFFICE.—

7 “(1) IN GENERAL.—There is established in the
8 Internal Revenue Service an office to be known as
9 the ‘Whistleblower Office’ which—

10 “(A) shall at all times operate at the direc-
11 tion of the Commissioner and coordinate and
12 consult with other divisions in the Internal Rev-
13 enue Service as directed by the Commissioner,

14 “(B) shall analyze information received
15 from any individual described in subsection (b)
16 and either investigate the matter itself or assign
17 it to the appropriate Internal Revenue Service
18 office,

19 “(C) shall monitor any action taken with
20 respect to such matter,

21 “(D) shall inform such individual that it
22 has accepted the individual’s information for
23 further review,

1 “(E) may require such individual and any
2 legal representative of such individual to not
3 disclose any information so provided,

4 “(F) in its sole discretion, may ask for ad-
5 ditional assistance from such individual or any
6 legal representative of such individual, and

7 “(G) shall determine the amount to be
8 awarded to such individual under subsection
9 (b).

10 “(2) FUNDING FOR OFFICE.—There is author-
11 ized to be appropriated \$10,000,000 for each fiscal
12 year for the Whistleblower Office. These funds shall
13 be used to maintain the Whistleblower Office and
14 also to reimburse other Internal Revenue Service of-
15 fices for related costs, such as costs of investigation
16 and collection.

17 “(3) REQUEST FOR ASSISTANCE.—

18 “(A) IN GENERAL.—Any assistance re-
19 quested under paragraph (1)(F) shall be under
20 the direction and control of the Whistleblower
21 Office or the office assigned to investigate the
22 matter under subparagraph (A). No individual
23 or legal representative whose assistance is so re-
24 quested may by reason of such request rep-

1 resent himself or herself as an employee of the
2 Federal Government.

3 “(B) FUNDING OF ASSISTANCE.—From
4 the amounts available for expenditure under
5 subsection (b), the Whistleblower Office may,
6 with the agreement of the individual described
7 in subsection (b), reimburse the costs incurred
8 by any legal representative of such individual in
9 providing assistance described in subparagraph
10 (A).

11 “(d) REPORTS.—The Secretary shall each year con-
12 duct a study and report to Congress on the use of this
13 section, including—

14 “(1) an analysis of the use of this section dur-
15 ing the preceding year and the results of such use,
16 and

17 “(2) any legislative or administrative rec-
18 ommendations regarding the provisions of this sec-
19 tion and its application.”.

20 (2) CONFORMING AMENDMENT.—Section 406
21 of division A of the Tax Relief and Health Care Act
22 of 2006 is amended by striking subsections (b) and
23 (c).

24 (3) REPORT ON IMPLEMENTATION.—Not later
25 than 6 months after the date of the enactment of

1 this Act, the Secretary of the Treasury shall submit
2 to Congress a report on the establishment and oper-
3 ation of the Whistleblower Office under section
4 7623(e) of the Internal Revenue Code of 1986.

5 (c) PUBLICITY OF AWARD APPEALS.—Paragraph (4)
6 of section 7623(b), as added by the Tax Relief and Health
7 Care Act of 2006, is amended to read as follows:

8 “(4) APPEAL OF AWARD DETERMINATION.—

9 “(A) IN GENERAL.—Any determination re-
10 garding an award under paragraph (1), (2), or
11 (3) may, within 30 days of such determination,
12 be appealed to the Tax Court (and the Tax
13 Court shall have jurisdiction with respect to
14 such matter).

15 “(B) PUBLICITY OF APPEALS.—Notwith-
16 standing sections 7458 and 7461, the Tax
17 Court may, in order to preserve the anonymity,
18 privacy, or confidentiality of any person under
19 this subsection, provide by rules adopted under
20 section 7453 that portions of filings, hearings,
21 testimony, evidence, and reports in connection
22 with proceedings under this subsection may be
23 closed to the public or to inspection by the pub-
24 lic.”.

25 (d) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graph (2), the amendments made by this section
 3 shall apply to information provided on or after the
 4 date of the enactment of this Act.

5 (2) PUBLICITY OF AWARD APPEALS.—The
 6 amendment made by subsection (c) shall take effect
 7 as if included in the amendments made by section
 8 406 of the Tax Relief and Health Care Act of 2006.

9 **SEC. 214. MODIFICATIONS OF DEFINITION OF EMPLOYEES**
 10 **COVERED BY DENIAL OF DEDUCTION FOR EX-**
 11 **CESSIVE EMPLOYEE REMUNERATION.**

12 (a) IN GENERAL.—Paragraph (3) of section 162(m)
 13 is amended to read as follows:

14 “(3) COVERED EMPLOYEE.—For purposes of
 15 this subsection, the term ‘covered employee’ means,
 16 with respect to any taxpayer for any taxable year, an
 17 individual who—

18 “(A) was the chief executive officer of the
 19 taxpayer, or an individual acting in such a ca-
 20 pacity, at any time during the taxable year,

21 “(B) is 1 of the 4 highest compensated of-
 22 ficers of the taxpayer for the taxable year
 23 (other than the individual described in subpara-
 24 graph (A)), or

1 “(C) was a covered employee of the tax-
2 payer (or any predecessor) for any preceding
3 taxable year beginning after December 31,
4 2006.

5 In the case of an individual who was a covered em-
6 ployee for any taxable year beginning after Decem-
7 ber 31, 2006, the term ‘covered employee’ shall in-
8 clude a beneficiary of such employee with respect to
9 any remuneration for services performed by such
10 employee as a covered employee (whether or not
11 such services are performed during the taxable year
12 in which the remuneration is paid).”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to taxable years beginning after
15 December 31, 2006.

Calendar No. 10

110TH CONGRESS
1ST Session

S. 349

[Report No. 110-1]

A BILL

To amend the Internal Revenue Code of 1986 to provide additional tax incentives to employers and employees of small businesses, and for other purposes.

JANUARY 22, 2007

Read twice and placed on the calendar.