

to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2910. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. McCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2911. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. McCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2912. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. McCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2913. Mr. NICKLES (for himself and Mrs. LINCOLN) submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. McCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2914. Mr. COLEMAN submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. McCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2915. Mr. COLEMAN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2916. Mr. WYDEN (for himself and Mr. COLEMAN) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2917. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2918. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2919. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2920. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2921. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2922. Mr. DORGAN (for himself, Mr. MIKULSKI, Mr. KOHL, Mr. KENNEDY, Mr. EDWARDS, Mr. FEINGOLD, and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2923. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2924. Mr. DORGAN (for himself, Mr. COLEMAN, Ms. CANTWELL, Mrs. MURRAY, Mr. BINGAMAN, and Mr. NELSON, of Nebraska) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2891. Mr. BREAUX (for himself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rul-

ings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 137, between lines 8 and 9, insert:
“(4) DOLLAR LIMITATION.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), the excess qualified foreign distribution amount shall not exceed the lesser of—

“(i) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

“(ii) the excess (if any) of—

“(I) the estimated aggregate qualified expenditures of the corporation for taxable years ending in 2005, 2006, and 2007, over

“(II) the aggregate qualified expenditures of the corporation for taxable years ending in 2001, 2002, and 2003.

“(B) EARNINGS PERMANENTLY REINVESTED OUTSIDE THE UNITED STATES.—

“(i) IN GENERAL.—If an amount on an applicable financial statement is shown as Federal income taxes not required to be reserved by reason of the permanent reinvestment of earnings outside the United States, subparagraph (A)(i) shall be applied by reference to the earnings to which such taxes relate.

“(ii) NO STATEMENT OR STATED AMOUNT.—If there is no applicable financial statement or such a statement fails to show a specific amount described in subparagraph (A)(i) or clause (i), such amount shall be treated as being zero.

“(iii) APPLICABLE FINANCIAL STATEMENT.—For purposes of this paragraph, the term ‘applicable financial statement’ means the most recently audited financial statement (including notes and other documents which accompany such statement)—

“(I) which is certified on or before March 31, 2003, as being prepared in accordance with generally accepted accounting principles, and

“(II) which is used for the purposes of a statement or report to creditors, to shareholders, or for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before March 31, 2003.

“(C) QUALIFIED EXPENDITURES.—For purposes of this paragraph, the term ‘qualified expenditures’ means—

“(i) wages (as defined in section 3121(a)),

“(ii) additions to capital accounts for property located within the United States (including any amount which would be so added but for a provision of this title providing for the expensing of such amount),

“(iii) qualified research expenses (as defined in section 41(b)) and basic research payments (as defined in section 41(e)(2)), and

“(iv) irrevocable contributions to a qualified employer plan (as defined in section 72(p)(4)) but only if no deduction is allowed under this chapter with respect to such contributions.

“(D) RECAPTURE.—If the taxpayer’s estimate of qualified expenditures under subparagraph (A)(ii)(I) is greater than the actual expenditures, then the tax imposed by this chapter for the taxpayer’s last taxable year ending in 2007 shall be increased by the sum of—

“(i) the increase (if any) in tax which would have resulted in the taxable year for which the deduction under this section was allowed if the actual expenditures were used in lieu of the estimated expenditures, plus

“(ii) interest at the underpayment rate, determined as if the increase in tax described in clause (i) were an underpayment for the taxable year of the deduction.

“(5) LIMITATION ON CONTROLLED FOREIGN CORPORATIONS IN POSSESSIONS.—In computing the excess qualified foreign distribution amount under paragraph (1) and the base dividend amount under paragraph (2), there shall not be taken into account dividends received from any controlled foreign corporation created or organized under the laws of any possession of the United States.

SA 2892. Mr. BREAUX (for himself and Mr. HATCH) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, add the following:

SEC. . REPEAL OF 10 YEAR RULE FOR QUALIFIED MORTGAGE BONDS; HOLIDAY FOR USE OF CERTAIN REPAYMENTS.

(a) REPEAL.—Subparagraph (A) of section 143(a)(2) (relating to qualified mortgage issue defined) is amended by striking the last sentence thereof.

(b) HOLIDAY FOR PREPAYMENTS.—Subparagraph (A) of section 143(a)(2) is amended by adding at the end the following flush sentence: “Clause (iv) shall not apply to amounts received during 2004, 2005, and 2006.”.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to bonds issued after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to amounts received after December 31, 2003.

SEC. . MODIFICATION OF PURCHASE PRICE LIMITATION UNDER MORTGAGE SUBSIDY BOND RULES BASED ON MEDIAN FAMILY INCOME.

(a) IN GENERAL.—Paragraph (1) of section 143(e) (relating to purchase price requirement) is amended to read as follows:

“(1) IN GENERAL.—An issue meets the requirements of this subsection only if the acquisition cost of each residence the owner-financing of which is provided under the issue does not exceed the greater of—

“(A) 90 percent of the average area purchase price applicable to the residence, or

“(B) 3.5 times the applicable median family income (as defined in subsection (f)).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to financing provided, and mortgage credit certificates issued, after the date of the enactment of this Act.

SEC. . DETERMINATION OF AREA MEDIAN GROSS INCOME FOR LOW-INCOME HOUSING CREDIT PROJECTS.

(a) IN GENERAL.—Paragraph (4) of section 42(g) (relating to certain rules made applicable) is amended by striking the period at the end and inserting “and in areas designated by the housing credit agency as requiring higher income limits to support development costs and project feasibility, the term ‘area median gross income’ means the amount equal to the greater of—

“(A) the area median gross income determined under section 142(d)(2)(B), or

“(B) the statewide median gross income for the State in which the project is located.”.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 142(d)(2) (relating to income of individuals; area median gross income) is amended—

(1) by striking “—The income” and inserting “—

“(i) IN GENERAL.—Except as provided in clause (ii), the income”, and

(2) by adding at the end the following new clause:

“(ii) AREA MEDIAN GROSS INCOME FOR LOW-INCOME HOUSING CREDIT PROJECTS.—In the case of any building which receives a low-income housing credit allocation under section 42 in areas designated by the housing credit agency (as defined in section 42(h)(8)) as requiring higher income limits to support development costs and project feasibility, the term ‘area median gross income’ means the amount equal to the greater of—

“(I) the area median gross income determined under clause (i), or

“(II) the statewide median gross income for the State in which the project is located.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) housing credit dollar amounts allocated after the date of the enactment of this Act, and

(2) buildings placed in service after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof.

SA 2893. Mr. REID (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 179, after line 25, add the following:

SEC. ____. EXTENSION AND EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) EXPANSION OF QUALIFIED ENERGY RESOURCES.—Subsection (c) of section 45 (relating to electricity produced from certain renewable resources), as amended by section 514 of this Act (as added by amendment no. 2687, as agreed to) is amended to read as follows:

“(c) QUALIFIED ENERGY RESOURCES.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified energy resources’ means—

“(A) wind,

“(B) closed-loop biomass,

“(C) biomass (other than closed-loop biomass),

“(D) geothermal energy,

“(E) solar energy,

“(F) small irrigation power,

“(G) biosolids and sludge, and

“(H) municipal solid waste.”.

“(2) CLOSED-LOOP BIOMASS.—The term ‘closed-loop biomass’ means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

“(3) BIOMASS.—

“(A) IN GENERAL.—The term ‘biomass’ means—

“(i) any agricultural livestock waste nutrients, or

“(ii) any solid, nonhazardous, cellulosic waste material which is segregated from

other waste materials and which is derived from—

“(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,

“(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

“(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

“(B) AGRICULTURAL LIVESTOCK WASTE NUTRIENTS.—

“(i) IN GENERAL.—The term ‘agricultural livestock waste nutrients’ means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

“(ii) AGRICULTURAL LIVESTOCK.—The term ‘agricultural livestock’ includes bovine, swine, poultry, and sheep.

“(4) GEOTHERMAL ENERGY.—The term ‘geothermal energy’ means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

“(5) SMALL IRRIGATION POWER.—The term ‘small irrigation power’ means power—

“(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

“(B) the installed capacity of which is less than 5 megawatts.

“(6) BIOSOLIDS AND SLUDGE.—The term ‘biosolids and sludge’ means the residue or solids removed in the treatment of commercial, industrial, or municipal wastewater.

“(7) MUNICIPAL SOLID WASTE.—The term ‘municipal solid waste’ has the meaning given the term ‘solid waste’ under section 2(27) of the Solid Waste Disposal Act (42 U.S.C. 6903).”.

(b) EXTENSION AND EXPANSION OF QUALIFIED FACILITIES.—

(1) IN GENERAL.—Section 45 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

“(d) QUALIFIED FACILITIES.—For purposes of this section—

“(1) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2007.

“(2) CLOSED-LOOP BIOMASS FACILITY.—

“(A) IN GENERAL.—In the case of a facility using closed-loop biomass to produce electricity, the term ‘qualified facility’ means any facility—

“(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2007, or

“(ii) owned by the taxpayer which before January 1, 2007, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

“(B) SPECIAL RULES.—In the case of a qualified facility described in subparagraph (A)(i)—

“(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than October 1, 2004,

“(ii) the amount of the credit determined under subsection (a) with respect to the fa-

cility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and

“(iii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

“(3) BIOMASS FACILITY.—

“(A) IN GENERAL.—In the case of a facility using biomass (other than closed-loop biomass) to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which—

“(i) in the case of a facility using agricultural livestock waste nutrients, is originally placed in service after September 30, 2004 and before January 1, 2007, and

“(ii) in the case of any other facility, is originally placed in service before January 1, 2005.

“(B) SPECIAL RULES FOR PREEFFECTIVE DATE FACILITIES.—In the case of any facility described in subparagraph (A)(i) which is placed in service before October 1, 2004—

“(i) subsection (a)(1) shall be applied by substituting ‘1.2 cents’ for ‘1.5 cents’, and

“(ii) the 5-year period beginning on October 1, 2004, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

“(C) CREDIT ELIGIBILITY.—In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

“(4) GEOTHERMAL OR SOLAR ENERGY FACILITY.—

“(A) IN GENERAL.—In the case of a facility using geothermal or solar energy to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after September 30, 2004, and before January 1, 2007.

“(B) SPECIAL RULE.—In the case of any facility described in subparagraph (A), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

“(5) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after September 30, 2004, and before January 1, 2007.

“(6) BIOSOLIDS AND SLUDGE FACILITY.—In the case of a facility using waste heat from the incineration of biosolids and sludge to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after September 30, 2004, and before January 1, 2007. Such term shall not include any property described in section 48(a)(6) the basis of which is taken into account for purposes of the energy credit under section 46.

“(7) MUNICIPAL SOLID WASTE FACILITY.—

“(A) IN GENERAL.—In the case of a facility or unit incinerating municipal solid waste to produce electricity, the term ‘qualified facility’ means any facility or unit owned by the taxpayer which is originally placed in service after September 30, 2004, and before January 1, 2007.

“(B) SPECIAL RULE.—In the case of any facility or unit described in subparagraph (A), the 5-year period beginning on the date the facility or unit was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

“(C) CREDIT ELIGIBILITY.—In the case of any qualified facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.”.

(2) NO CREDIT FOR CERTAIN PRODUCTION.—Section 45(e) (relating to definitions and special rules), as redesignated by paragraph (1), is amended by striking paragraph (6) and inserting the following new paragraph:

“(6) OPERATIONS INCONSISTENT WITH SOLID WASTE DISPOSAL ACT.—In the case of a qualified facility described in subsection (d)(6)(A), subsection (a) shall not apply to electricity produced at such facility during any taxable year if, during a portion of such year, there is a certification in effect by the Administrator of the Environmental Protection Agency that such facility was permitted to operate in a manner inconsistent with section 4003(d) of the Solid Waste Disposal Act (42 U.S.C. 6943(d)).”.

(3) CONFORMING AMENDMENT.—Section 45(e), as so redesignated, is amended by striking “subsection (c)(3)(A)” in paragraph (7)(A)(i) and inserting “subsection (d)(1)”.

(c) CREDIT RATE FOR ELECTRICITY PRODUCED FROM NEW FACILITIES.—Section 45(a) is amended by adding at the end the following new flush sentence:

“In the case of electricity produced after September 30, 2004, at any qualified facility originally placed in service after such date, paragraph (1) shall be applied by substituting ‘1.8 cents’ for ‘1.5 cents’.”.

(d) ELIMINATION OF CERTAIN CREDIT REDUCTIONS.—Section 45(b)(3)(A) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by striking clause (ii),

(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii),

(3) by inserting “(other than proceeds of an issue of State or local government obligations the interest on which is exempt from tax under section 103, or any loan, debt, or other obligation incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act)” after “project” in clause (i) (as so redesignated),

(4) by adding at the end the following new sentence: “This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).”, and

(5) by striking “TAX-EXEMPT BONDS,” in the heading and inserting “CERTAIN”.

(e) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—Section 45(e) (relating to definitions and special rules), as redesignated by subsection (b)(1), is amended by adding at the end the following new paragraph:

“(8) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

“(A) ALLOWANCE OF CREDIT.—

“(i) IN GENERAL.—Except as otherwise provided in this subsection—

“(I) any credit allowable under subsection (a) with respect to a qualified facility owned by a person described in clause (ii) may be transferred or used as provided in this paragraph, and

“(II) the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

“(ii) PERSONS DESCRIBED.—A person is described in this clause if the person is—

“(I) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

“(II) an organization described in section 1381(a)(2)(C),

“(III) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

“(IV) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

“(V) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof.

“(B) TRANSFER OF CREDIT.—

“(i) IN GENERAL.—A person described in subparagraph (A)(ii) may transfer any credit to which subparagraph (A)(i) applies through an assignment to any other person not described in subparagraph (A)(ii). Such transfer may be revoked only with the consent of the Secretary.

“(ii) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in clause (i) is assigned once and not reassigned by such other person.

“(iii) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in subclause (III), (IV), or (V) of subparagraph (A)(ii) from the transfer of any credit under clause (i) shall be treated as arising from the exercise of an essential government function.

“(C) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in subclause (I), (II), or (V) of subparagraph (A)(ii), any credit to which subparagraph (A)(i) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act.

“(D) CREDIT NOT INCOME.—Any transfer under subparagraph (B) or use under subparagraph (C) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

“(E) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales of electricity among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.”.

(f) CREDIT ALLOWED AGAINST REGULAR AND MINIMUM TAX.—

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

“(4) SPECIAL RULES FOR SECTION 45 CREDIT.—

“(A) IN GENERAL.—In the case of any section 45 credit—

“(i) this section and section 39 shall be applied separately with respect to such credit, and

“(ii) in applying paragraph (1) to such credit—

“(I) the tentative minimum tax shall be treated as being zero, and

“(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the section 45 credit).

“(B) SECTION 45 CREDIT.—For purposes of this subsection, the term ‘section 45 credit’ means the credit determined under section 45 to the extent that such credit is attributable to electricity produced—

“(i) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

“(ii) during the 4-year period beginning on the date that such facility was originally placed in service.”.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (2)(A)(ii)(II) of section 38(c) of such Code is amended by striking “or” and inserting a comma and by inserting “, and the section 45 credit” after “employee credit”.

(B) Paragraph (3)(A)(ii)(II) of section 38(c) of such Code is amended by inserting “and the section 45 credit” after “employee credit”.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to electricity produced and sold—

(A) with respect to facilities described in paragraphs (1) and (2)(A)(i) of section 45(d), as amended by this section, after December 31, 2003, in taxable years ending after such date, and

(B) with respect to all other facilities described in section 45(d), as amended by this section, after September 30, 2004, in taxable years ending after such date.

(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after September 30, 2004, in taxable years ending after such date.

(3) CREDIT RATE FOR NEW FACILITIES.—The amendments made by subsection (c) shall apply to electricity produced and sold after September 30, 2004, in taxable years ending after such date.

(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on September 30, 2004) placed in service on or before such date.

SA 2894. Mr. KYL (for himself and Mr. NICKLES) submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the amendment contained in the instructions insert the following:

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Jumpstart Our Business Strength (JOBS) Act”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) **TABLE OF CONTENTS.**—

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Sec. 101. Repeal of exclusion for extraterritorial income.

TITLE II—REDUCTION OF TOP CORPORATE TAX RATE

Sec. 201. Reduction in corporate income tax rate.

TITLE III—ALTERNATIVE MINIMUM TAX RELIEF

Sec. 301. Reduction in corporate AMT rate.
Sec. 302. Increase in exemption from AMT for small corporations.
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TITLE IV—ADDITIONAL PROVISIONS

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Sec. 405. Modifications of substantial understatement penalty for non-reportable transactions.
Sec. 406. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
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Sec. 408. Modifications to penalty for failure to register tax shelters.
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Sec. 410. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
Sec. 411. Understatement of taxpayer's liability by income tax return preparer.
Sec. 412. Penalty on failure to report interests in foreign financial accounts.
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Sec. 414. Regulation of individuals practicing before the Department of Treasury.
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Sec. 418. Authorization of appropriations for tax law enforcement.

Subtitle B—Other Corporate Governance Provisions

Sec. 421. Affirmation of consolidated return regulation authority.
Sec. 422. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud.

Subtitle C—Enron-Related Tax Shelter Provisions

Sec. 431. Limitation on transfer or importation of built-in losses.
Sec. 432. No reduction of basis under section 734 in stock held by partnership in corporate partner.
Sec. 433. Repeal of special rules for FASITs.
Sec. 434. Expanded disallowance of deduction for interest on convertible debt.
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TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME

SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME.

(a) IN GENERAL.—Section 114 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) Subpart E of part III of subchapter N of chapter 1 (relating to qualifying foreign trade income) is hereby repealed.

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

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

(3) The second sentence of section 56(g)(4)(B)(i) is amended by striking “114 or”.

(4) Section 275(a) is amended—

(A) by inserting “or” at the end of paragraph (4)(A), by striking “or” at the end of paragraph (4)(B) and inserting a period, and by striking subparagraph (C), and
(B) by striking the last sentence.

(5) Paragraph (3) of section 864(e) is amended—

(A) by striking:

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

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

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

(B) by striking subparagraph (B).

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

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

(c) EFFECTIVE DATE.—

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

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

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

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

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

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

(A) the corporation may, during the 1-year period beginning on the date of the enactment of this Act, revoke such election, effective as of such date of enactment, and

(B) if the corporation does revoke such election—

(i) such corporation shall be treated as a domestic corporation transferring (as of such date of enactment) all of its property to a foreign corporation in connection with an exchange described in section 354 of such Code, and

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

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

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

(B) the asset was acquired by transfer (not as a result of the election under section 943(e) of such Code) occurring on or after the 1st day on which its election under section 943(e) of such Code was effective, and

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

(e) GENERAL TRANSITION.—

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

(2) CURRENT FSC/ETI BENEFICIARY.—The term “current FSC/ETI beneficiary” means any corporation which entered into one or more transactions during its taxable year beginning in calendar year 2002 with respect to which FSC/ETI benefits were allowable.

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

(A) IN GENERAL.—The transition amount applicable to any current FSC/ETI beneficiary for any taxable year is the phaseout percentage of the base period amount.

(B) PHASEOUT PERCENTAGE.—

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

| Years: | The phaseout percentage is: |
|------------|-----------------------------|
| 2004 | 80 |
| 2005 | 80 |
| 2006 | 60. |

(ii) SPECIAL RULE FOR 2004.—The phaseout percentage for 2004 shall be the amount that bears the same ratio to 100 percent as the number of days after the date of the enactment of this Act bears to 365.

(iii) SPECIAL RULE FOR FISCAL YEAR TAXPAYERS.—In the case of a taxpayer not using the calendar year as its taxable year, the phaseout percentage is the weighted average of the phaseout percentages determined under the preceding provisions of this paragraph with respect to calendar years any portion of which is included in the taxpayer's taxable year. The weighted average shall be determined on the basis of the re-

spective portions of the taxable year in each calendar year.

(C) SHORT TAXABLE YEAR.—The Secretary shall prescribe guidance for the computation of the transition amount in the case of a short taxable year.

(4) BASE PERIOD AMOUNT.—For purposes of this subsection, the base period amount is the FSC/ETI benefit for the taxpayer's taxable year beginning in calendar year 2002.

(5) FSC/ETI BENEFIT.—For purposes of this subsection, the term “FSC/ETI benefit” means—

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

(B) the exempt foreign trade income of related foreign sales corporations from property acquired from the taxpayer (determined without regard to section 923(a)(5) of such Code (relating to special rule for military property), as in effect on the day before the date of the enactment of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000).

In determining the FSC/ETI benefit there shall be excluded any amount attributable to a transaction with respect to which the taxpayer is the lessor unless the leased property was manufactured or produced in whole or in significant part by the taxpayer.

(6) SPECIAL RULE FOR AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—Determinations under this subsection with respect to an organization described in section 943(g)(1) of such Code, as in effect on the day before the date of the enactment of this Act, shall be made at the cooperative level and the purposes of this subsection shall be carried out in a manner similar to section 199(h)(2) of such Code, as added by this Act. Such determinations shall be in accordance with such requirements and procedures as the Secretary may prescribe.

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

(8) COORDINATION WITH BINDING CONTRACT RULE.—The deduction determined under paragraph (1) for any taxable year shall be reduced by the phaseout percentage of any FSC/ETI benefit realized for the taxable year by reason of subsection (c)(2) or section 5(c)(1)(B) of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000, except that for purposes of this paragraph the phaseout percentage for 2004 shall be treated as being equal to 100 percent.

(9) SPECIAL RULE FOR TAXABLE YEAR WHICH INCLUDES DATE OF ENACTMENT.—In the case of a taxable year which includes the date of the enactment of this Act, the deduction allowed under this subsection to any current FSC/ETI beneficiary shall in no event exceed—

(A) 100 percent of such beneficiary's base period amount for calendar year 2004, reduced by

(B) the FSC/ETI benefit of such beneficiary with respect to transactions occurring during the portion of the taxable year ending on the date of the enactment of this Act.

TITLE II—REDUCTION OF TOP CORPORATE TAX RATE

SEC. 201. REDUCTION IN CORPORATE INCOME TAX RATE.

(a) IN GENERAL.—Subsection (b) of section 11 (relating to tax imposed on corporations) is amended by redesignating paragraph (2) as paragraph (6) and by striking paragraph (1) and inserting the following new paragraphs:

“(1) FOR TAXABLE YEARS BEGINNING AFTER 2009.—In the case of taxable years beginning after 2009, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

| “If taxable income is: | The tax is: |
|---|--|
| Not over \$50,000 | 15% of taxable income. |
| Over \$50,000 but not over \$75,000 | \$7,500, plus 25% of the excess over \$50,000. |

| “If taxable income is: | The tax is: |
|------------------------|---|
| Over \$75,000 | \$13,750, plus 33% of the excess over \$75,000. |

“(2) FOR TAXABLE YEARS BEGINNING IN 2006, 2007, 2008, OR 2009.—In the case of taxable years beginning in 2006, 2007, 2008, or 2009, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

| “If taxable income is: | The tax is: |
|---|---|
| Not over \$50,000 | 15% of taxable income. |
| Over \$50,000 but not over \$75,000 | \$7,500, plus 25% of the excess over \$50,000. |
| Over \$75,000 | \$13,750, plus 33.5% of the excess over \$75,000. |

“(3) FOR TAXABLE YEARS BEGINNING IN 2005.—In the case of taxable years beginning in 2005, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

| “If taxable income is: | The tax is: |
|---|---|
| Not over \$50,000 | 15% of taxable income. |
| Over \$50,000 but not over \$75,000 | \$7,500, plus 25% of the excess over \$50,000. |
| Over \$75,000 | \$13,750, plus 34% of the excess over \$75,000. |

“(4) FOR TAXABLE YEARS BEGINNING IN 2004.—In the case of taxable years beginning in 2004, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

| “If taxable income is: | The tax is: |
|---|--|
| Not over \$50,000 | 15% of taxable income. |
| Over \$50,000 but not over \$75,000 | \$7,500, plus 25% of the excess over \$50,000. |
| Over \$75,000 but not over \$10,000,000 | \$13,750, plus 34% of the excess over \$75,000. |
| Over \$10,000,000 | \$3,388,250, plus 34.5% of the excess over \$10,000,000. |

“(5) PHASEOUT OF LOWER RATES FOR CERTAIN TAXPAYERS.—

“(A) GENERAL RULE.—In the case of a corporation which has taxable income in excess of \$100,000 for any taxable year, the amount of tax determined under paragraph (1), (2), (3) or (4) for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) \$11,000 (\$11,750 in the case of taxable years beginning before 2006 and \$11,375 in the case of taxable years beginning after 2005 and before 2010).

“(B) HIGHER INCOME CORPORATIONS.—In the case of a corporation which has taxable income in excess of \$15,000,000 for taxable years beginning in 2004, the amount of the tax determined under the foregoing provisions of this subsection shall be increased by an additional amount equal to the lesser of (i) 3 percent of such excess, or (ii) \$50,000.”

(b) CONFORMING AMENDMENTS.—

(1) Section 904(b)(3)(D)(ii) is amended to read as follows:

“(ii) in the case of a corporation, section 1201(a) applies to such taxable year.”

(2) Section 1201(a) is amended by striking “the last 2 sentences of section 11(b)(1)” and inserting “section 11(b)(5)”.

(3) Section 1561(a) is amended—

(A) by striking “the last 2 sentences of section 11(b)(1)” and inserting “section 11(b)(5)”, and

(B) by striking “such last 2 sentences” and inserting “section 11(b)(5)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

TITLE III—ALTERNATIVE MINIMUM TAX RELIEF

SEC. 301. REDUCTION IN CORPORATE AMT RATE.

(a) IN GENERAL.—Section 55(b)(1)(B)(i) (relating to amount of tentative tax for corporations) is amended by striking “20 percent” and inserting “19 percent (19.5 percent for taxable years beginning in 2004 or 2005)”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 302. INCREASE IN EXEMPTION FROM AMT FOR SMALL CORPORATIONS.

(a) IN GENERAL.—Paragraph (1) of section 55(e) (relating to exemption for small corporations) is amended—

(1) by striking “\$7,500,000” in the heading and the text of subparagraph (A) and inserting “\$15,000,000”,

(2) by striking subparagraph (B), and

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 303. FOREIGN TAX CREDIT UNDER ALTER-NATIVE MINIMUM TAX.

(a) IN GENERAL.—

(1) Subsection (a) of section 59 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) Section 53(d)(1)(B)(i)(II) is amended by striking “and if section 59(a)(2) did not apply”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

TITLE IV—ADDITIONAL PROVISIONS**Subtitle A—Provisions Designed To Curtail Tax Shelters****SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.**

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

“(1) GENERAL RULES.—

“(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

“(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

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

“(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer’s economic position, and

“(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

“(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

“(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

“(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

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

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

“(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

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

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

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

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

“(A) ECONOMIC SUBSTANCE DOCTRINE.—The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

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

“(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

“(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

“(I) depreciation,

“(II) any tax credit, or

“(III) any other deduction as provided in guidance by the Secretary, and

“(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

“(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.”

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

SEC. 402. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

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

“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.”

“(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

“(b) AMOUNT OF PENALTY.—

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

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

“(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

“(A) IN GENERAL.—In the case of a failure under subsection (a) by—

“(i) a large entity, or

“(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

“(B) LARGE ENTITY.—For purposes of subparagraph (A), the term ‘large entity’ means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of \$10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

“(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term ‘high net worth individual’ means, with respect to a reportable transaction, a natural person whose net worth exceeds \$2,000,000 immediately before the transaction.

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

“(1) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

“(2) LISTED TRANSACTION.—Except as provided in regulations, the term ‘listed transaction’ means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

“(d) AUTHORITY TO RESCIND PENALTY.—

“(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

“(A) the violation is with respect to a reportable transaction other than a listed transaction,

“(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

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

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

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

“(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner’s sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or

the head of such Office for a determination under paragraph (1).

“(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

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

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

“(B) the reasons for the rescission, and

“(C) the amount of the penalty rescinded.

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

“(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

“(B) a description of each penalty rescinded under this subsection and the reasons therefor.

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

“(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

“(2) which—

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

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

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

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

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

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

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

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

SEC. 403. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

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

“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

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

“(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘reportable transaction understatement’ means the sum of—

“(A) the product of—

“(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer’s treatment of such item (as shown on the taxpayer’s return of tax), and

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

“(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer’s treatment of an item to which this section applies (as shown on the taxpayer’s return of tax) and the proper tax treatment of such item.

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

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

“(A) any listed transaction, and

“(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

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

“(1) IN GENERAL.—Subsection (a) shall be applied by substituting ‘30 percent’ for ‘20 percent’ with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

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

“(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel’s delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

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

“(e) SPECIAL RULES.—

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

“(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

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

transaction understatements and noneconomic substance transaction understatements.

“(2) COORDINATION WITH OTHER PENALTIES.—

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

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

“(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

“(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term ‘noneconomic substance transaction understatement’ has the meaning given such term by section 6662B(c).

“(5) CROSS REFERENCE.—

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

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

“The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.”

(c) REASONABLE CAUSE EXCEPTION.—

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

“(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

“(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

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

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

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

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

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

“(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

“(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

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

“(ii) relates solely to the taxpayer’s chances of success on the merits of such treatment and does not take into account

the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

“(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

“(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

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

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

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

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

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

“(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

“(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

“(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

“(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

“(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

“(III) does not identify and consider all relevant facts, or

“(IV) fails to meet any other requirement as the Secretary may prescribe.”

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting “FOR UNDERPAYMENTS” after “EXCEPTION”.

(d) CONFORMING AMENDMENTS.—

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

(2) Paragraph (3) of section 1274(b) is amended—

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

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

“(C) TAX SHELTER.—For purposes of subparagraph (B), the term ‘tax shelter’ means—

“(i) a partnership or other entity,

“(ii) any investment plan or arrangement, or

“(iii) any other plan or arrangement, if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.”

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

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

(5) Subsection (b) of section 7525 is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(6)(A) The heading for section 6662 is amended to read as follows:

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

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpayments.

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

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 404. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

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

“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

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

“(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting ‘20 percent’ for ‘40 percent’ with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

“(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘noneconomic substance transaction understatement’ means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

“(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term ‘noneconomic substance transaction’ means any transaction if—

“(A) there is a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(n)(2), or

“(B) the transaction fails to meet the requirements of any similar rule of law.

“(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

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

“(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

“(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

“(f) CROSS REFERENCES.—

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

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

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

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

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

SEC. 405. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NON-REPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

“(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

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

“(ii) \$10,000,000.”

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

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

“(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or”

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

“(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.”

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

SEC. 406. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

“(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

“(1) between a federally authorized tax practitioner and—

“(A) any person,

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

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

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

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

SEC. 407. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

“(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

“(1) information identifying and describing the transaction,

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

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

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

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

“(1) MATERIAL ADVISOR.—

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

“(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and

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

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

“(i) \$50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

“(ii) \$250,000 in any other case.

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

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

“(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

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

“(3) such rules as may be necessary or appropriate to carry out the purposes of this section.”.

(b) CONFORMING AMENDMENTS.—

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

“Sec. 6111. Disclosure of reportable transactions.”.

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

“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

“(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

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

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

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.”.

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

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

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

(ii) by striking “shall prescribe” in paragraph (2) and inserting “may prescribe”.

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

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

(3)(A) The heading for section 6708 is amended to read as follows:

“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.”.

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

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

(c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Subparagraph (A) of section 6112(b)(1), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

“For purposes of this section, the identity of any person on such list shall not be privileged.”.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

(2) NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

SEC. 408. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

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

“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

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

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

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

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

“(b) AMOUNT OF PENALTY.—

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

“(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

“(A) \$200,000, or

“(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting ‘75 percent’ for ‘50 percent’ in the case of an intentional failure or act described in subsection (a).

“(c) CERTAIN RULES TO APPLY.—The provisions of section 6707A(d) shall apply to any penalty imposed under this section.

“(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).”.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking “tax shelters” and inserting “reportable transactions”.

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

SEC. 409. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

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

“(a) IMPOSITION OF PENALTY.—

“(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary’s request, such person shall pay a penalty of \$10,000 for each day of such failure after such 20th day.

“(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.”.

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

SEC. 410. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

“(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

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

“(1) that the person has engaged in any specified conduct, and

“(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

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

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

(b) CONFORMING AMENDMENTS.—

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

“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.”.

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

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

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

SEC. 411. UNDERSTATEMENT OF TAXPAYER’S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking “realistic possibility of being sustained on its merits” in paragraph (1) and inserting “reasonable belief that the

tax treatment in such position was more likely than not the proper treatment”.

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

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

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking “\$250” in subsection (a) and inserting “\$1,000”, and

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

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

SEC. 412. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

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

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

“(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

“(B) AMOUNT OF PENALTY.—

“(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed \$5,000.

“(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

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

“(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

“(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

“(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

“(I) \$25,000, or

“(II) the amount (not exceeding \$100,000) determined under subparagraph (D), and

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

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

“(i) in the case of a violation involving a transaction, the amount of the transaction, or

“(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.”.

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

SEC. 413. FRIVOLOUS TAX SUBMISSIONS.

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

“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

“(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of \$5,000 if—

“(1) such person files what purports to be a return of a tax imposed by this title but which—

“(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

“(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

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

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

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

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

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

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

“(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term ‘specified frivolous submission’ means a specified submission if any portion of such submission—

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

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

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

“(i) a request for a hearing under—

“(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

“(II) section 6330 (relating to notice and opportunity for hearing before levy), and

“(ii) an application under—

“(I) section 6159 (relating to agreements for payment of tax liability in installments),

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

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

“(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

“(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

“(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

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

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

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

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

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

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

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

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

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

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

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

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

(1) in subsection (b)(1), by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”, and

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

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

“(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

“Sec. 6702. Frivolous tax submissions.”.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 414. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

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

(A) by inserting “, or censure,” after “Department”, and

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

“The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.”.

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

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

“(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.”.

SEC. 415. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) **PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.**—Section 6700(a) is amended by adding at the end the following new sentence: “Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.”.

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

SEC. 416. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) **IN GENERAL.**—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

“(10) **LISTED TRANSACTIONS.**—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

“(A) the date on which the Secretary is furnished the information so required; or

“(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 417. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.

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

“(m) **INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.**—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

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

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

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

SEC. 418. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated \$300,000,000 for each fiscal year beginning after September 30, 2003, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

Subtitle B—Other Corporate Governance Provisions**SEC. 421. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.**

(a) **IN GENERAL.**—Section 1502 (relating to consolidated return regulations) is amended

by adding at the end the following new sentence: “In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.”.

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

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

SEC. 422. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

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

(1) by striking “Any person who—” and inserting “(a) **IN GENERAL.**—Any person who—”, and

(2) by adding at the end the following new subsection:

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

(b) **INCREASE IN PENALTIES.**—

(1) **ATTEMPT TO EVADE OR DEFEAT TAX.**—Section 7201 is amended—

(A) by striking “\$100,000” and inserting “\$250,000”,

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

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

(2) **WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.**—Section 7203 is amended—

(A) in the first sentence—

(i) by striking “misdemeanor” and inserting “felony”, and

(ii) by striking “1 year” and inserting “10 years”, and

(B) by striking the third sentence.

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

(A) by striking “\$100,000” and inserting “\$250,000”,

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

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

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

Subtitle C—Enron-Related Tax Shelter Provisions**SEC. 431. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.**

(a) **IN GENERAL.**—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

“(e) **LIMITATIONS ON BUILT-IN LOSSES.**—

“(1) **LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.**—

“(A) **IN GENERAL.**—If in any transaction described in subsection (a) or (b) there would

(but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

“(B) **PROPERTY DESCRIBED.**—For purposes of subparagraph (A), property is described in this subparagraph if—

“(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

“(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

“(C) **IMPORTATION OF NET BUILT-IN LOSS.**—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

“(2) **LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.**—

“(A) **IN GENERAL.**—If—

“(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

“(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

“(B) **ALLOCATION OF BASIS REDUCTION.**—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

“(C) **EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.**—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor's basis in the stock received for such property shall not exceed its fair market value immediately after the transfer.”.

(b) **COMPARABLE TREATMENT WHERE LIQUIDATION.**—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

“(1) **IN GENERAL.**—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

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

“(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation,

and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transactions after February 13, 2003.

SEC. 432. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

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

"(c) **NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.**—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

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

"(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property in such manner as the Secretary may prescribe.

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

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to distributions after February 13, 2003.

SEC. 433. REPEAL OF SPECIAL RULES FOR FASITS.

(a) **IN GENERAL.**—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) **CONFORMING AMENDMENTS.**—

(1) Paragraph (6) of section 56(g) is amended by striking "REMIC, or FASIT" and inserting "or REMIC".

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking "a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies," and inserting "or a REMIC to which part IV of subchapter M applies,".

(3) Paragraph (1) of section 582(c) is amended by striking ", and any regular interest in a FASIT,".

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

(5)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: "An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the start-up day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.".

(B) The last sentence of section 860G(a)(3) is amended by inserting ", and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property" before the period at the end.

(6) Paragraph (3) of section 860G(a) is amended by adding "and" at the end of subparagraph (B), by striking ", and" at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end

the following new sentence: "For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.".

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

"(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

"(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

"(II) occurs after the startup day, and

"(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day."

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

"(B) **QUALIFIED RESERVE FUND.**—For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to—

"(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

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

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of paragraph (3)(A)."

(9) Subparagraph (C) of section 1202(e)(4) is amended by striking "REMIC, or FASIT" and inserting "or REMIC".

(10) Clause (xi) of section 7701(a)(19)(C) is amended—

(A) by striking "and any regular interest in a FASIT," and

(B) by striking "or FASIT" each place it appears.

(11) Subparagraph (A) of section 7701(i)(2) is amended by striking "or a FASIT".

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

(c) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall take effect on February 14, 2003.

(2) **EXCEPTION FOR EXISTING FASITS.**—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

SEC. 434. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) **IN GENERAL.**—Paragraph (2) of section 163(l) is amended by inserting "or equity held by the issuer (or any related party) in any other person" after "(or a related party)".

(b) **CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.**—Section 163(l) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting

after paragraph (3) the following new paragraph:

"(4) **CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.**—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument."

(c) **EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.**—Section 163(l), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

"(5) **EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.**—For purposes of this subsection, the term 'disqualified debt instrument' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term 'dealer in securities' has the meaning given such term by section 475."

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

(1) by striking "or a related party" in the material preceding subparagraph (A) and inserting "or any other person", and

(2) by striking "or interest" each place it appears.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

SEC. 435. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) **IN GENERAL.**—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

"(a) **IN GENERAL.**—If—

"(1)(A) any person or persons acquire, directly or indirectly, control of a corporation, or

"(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

"(2) the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax, then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraph (1)(A), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock of the corporation."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.

SEC. 436. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) **LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.**—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

"Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i)."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable

years of controlled foreign corporations beginning after February 13, 2003, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

**Subtitle D—Provisions to Discourage
Expatriation**

SEC. 441. TAX TREATMENT OF INVERTED CORPORATE ENTITIES.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

“SEC. 7874. RULES RELATING TO INVERTED CORPORATE ENTITIES.

“(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

“(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

“(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

“(A) the entity completes after March 20, 2002, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

“(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

“(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

“(ii) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

“(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group. Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (A) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.

“(b) PRESERVATION OF DOMESTIC TAX BASE IN CERTAIN INVERSION TRANSACTIONS TO WHICH SUBSECTION (a) DOES NOT APPLY.—

“(1) IN GENERAL.—If a foreign incorporated entity would be treated as an inverted domestic corporation with respect to an acquired entity if either—

“(A) subsection (a)(2)(A) were applied by substituting ‘after December 31, 1996, and on or before March 20, 2002’ for ‘after March 20, 2002’ and subsection (a)(2)(B) were applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’, or

“(B) subsection (a)(2)(B) were applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’,

then the rules of subsection (c) shall apply to any inversion gain of the acquired entity during the applicable period and the rules of subsection (d) shall apply to any related party transaction of the acquired entity during the applicable period. This subsection shall not apply for any taxable year if subsection (a) applies to such foreign incorporated entity for such taxable year.

“(2) ACQUIRED ENTITY.—For purposes of this section—

“(A) IN GENERAL.—The term ‘acquired entity’ means the domestic corporation or partnership substantially all of the properties of which are directly or indirectly acquired in an acquisition described in subsection (a)(2)(A) to which this subsection applies.

“(B) AGGREGATION RULES.—Any domestic person bearing a relationship described in section 267(b) or 707(b) to an acquired entity shall be treated as an acquired entity with respect to the acquisition described in subparagraph (A).

“(3) APPLICABLE PERIOD.—For purposes of this section—

“(A) IN GENERAL.—The term ‘applicable period’ means the period—

“(i) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(A) to which this subsection applies, and

“(ii) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

“(B) SPECIAL RULE FOR INVERSIONS OCCURRING BEFORE MARCH 21, 2002.—In the case of any acquired entity to which paragraph (1)(A) applies, the applicable period shall be the 10-year period beginning on January 1, 2003.

“(c) TAX ON INVERSION GAINS MAY NOT BE OFFSET.—If subsection (b) applies—

“(1) IN GENERAL.—The taxable income of an acquired entity (or any expanded affiliated group which includes such entity) for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

“(2) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits shall be allowed against the tax imposed by this chapter on an acquired entity for any taxable year described in paragraph (1) only to the extent such tax exceeds the product of—

“(A) the amount of the inversion gain for the taxable year, and

“(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901 inversion gain shall be treated as from sources within the United States.

“(3) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an acquired entity which is a partnership—

“(A) the limitations of this subsection shall apply at the partner rather than the partnership level,

“(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

“(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

“(ii) income or gain required to be recognized for the taxable year by the partner under section 367(a), 741, or 1001, or under any other provision of chapter 1, by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the foreign incorporated entity, and

“(C) the highest rate of tax specified in the rate schedule applicable to the partner under chapter 1 shall be substituted for the rate of tax under paragraph (2)(B).

“(4) INVERSION GAIN.—For purposes of this section, the term ‘inversion gain’ means any income or gain required to be recognized under section 304, 311(b), 367, 1001, or 1248, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity—

“(A) as part of the acquisition described in subsection (a)(2)(A) to which subsection (b) applies, or

“(B) after such acquisition to a foreign related person.

The Secretary may provide that income or gain from the sale of inventories or other transactions in the ordinary course of a trade or business shall not be treated as inversion gain under subparagraph (B) to the extent the Secretary determines such treatment would not be inconsistent with the purposes of this section.

“(5) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of this section.

“(6) STATUTE OF LIMITATIONS.—

“(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(A) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

“(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term ‘pre-inversion year’ means any taxable year if—

“(i) any portion of the applicable period is included in such taxable year, and

“(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(A) is completed.

“(d) SPECIAL RULES APPLICABLE TO ACQUIRED ENTITIES TO WHICH SUBSECTION (b) APPLIES.—

“(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of tax of an acquired entity to which subsection (b) applies—

“(A) section 6662(a) shall be applied with respect to such underpayment by substituting ‘30 percent’ for ‘20 percent’, and

“(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

“(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an acquired entity to which subsection (b) applies, section 163(j) shall be applied—

“(A) without regard to paragraph (2)(A)(ii) thereof, and

“(B) by substituting ‘25 percent’ for ‘50 percent’ each place it appears in paragraph (2)(B) thereof.

“(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) RULES FOR APPLICATION OF SUBSECTION (a)(2).—In applying subsection (a)(2) for purposes of subsections (a) and (b), the following rules shall apply:

“(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (a)(2)(B)—

“(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

“(ii) stock of such entity which is sold in a public offering or private placement related to the acquisition described in subsection (a)(2)(A).

“(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B) are

met with respect to such domestic corporation or partnership, such actions shall be treated as pursuant to a plan.

“(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

“(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

“(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

“(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

“(ii) to treat stock as not stock.

“(2) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears.

“(3) FOREIGN INCORPORATED ENTITY.—The term ‘foreign incorporated entity’ means any entity which is, or but for subsection (a)(1) would be, treated as a foreign corporation for purposes of this title.

“(4) FOREIGN RELATED PERSON.—The term ‘foreign related person’ means, with respect to any acquired entity, a foreign person which—

“(A) bears a relationship to such entity described in section 267(b) or 707(b), or

“(B) is under the same common control (within the meaning of section 482) as such entity.

“(5) SUBSEQUENT ACQUISITIONS BY UNRELATED DOMESTIC CORPORATIONS.—

“(A) IN GENERAL.—Subject to such conditions, limitations, and exceptions as the Secretary may prescribe, if, after an acquisition described in subsection (a)(2)(A) to which subsection (b) applies, a domestic corporation stock of which is traded on an established securities market acquires directly or indirectly any properties of one or more acquired entities in a transaction with respect to which the requirements of subparagraph (B) are met, this section shall cease to apply to any such acquired entity with respect to which such requirements are met.

“(B) REQUIREMENTS.—The requirements of the subparagraph are met with respect to a transaction involving any acquisition described in subparagraph (A) if—

“(i) before such transaction the domestic corporation did not have a relationship described in section 267(b) or 707(b), and was not under common control (within the meaning of section 482), with the acquired entity, or any member of an expanded affiliated group including such entity, and

“(ii) after such transaction, such acquired entity—

“(I) is a member of the same expanded affiliated group which includes the domestic corporation or has such a relationship or is under such common control with any member of such group, and

“(II) is not a member of, and does not have such a relationship and is not under such common control with any member of, the expanded affiliated group which before such acquisition included such entity.

“(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to pre-

vent the avoidance of the purposes of this section, including the avoidance of such purposes through—

“(1) the use of related persons, pass-thru or other noncorporate entities, or other intermediaries, or

“(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.”.

(b) INFORMATION REPORTING.—The Secretary of the Treasury shall exercise the Secretary’s authority under the Internal Revenue Code of 1986 to require entities involved in transactions to which section 7874 of such Code (as added by subsection (a)) applies to report to the Secretary, shareholders, partners, and such other persons as the Secretary may prescribe such information as is necessary to ensure the proper tax treatment of such transactions.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

“Sec. 7874. Rules relating to inverted corporate entities.”.

(d) TRANSITION RULE FOR CERTAIN REGULATED INVESTMENT COMPANIES AND UNIT INVESTMENT TRUSTS.—Notwithstanding section 7874 of the Internal Revenue Code of 1986 (as added by subsection (a)), a regulated investment company, or other pooled fund or trust specified by the Secretary of the Treasury, may elect to recognize gain by reason of section 367(a) of such Code with respect to a transaction under which a foreign incorporated entity is treated as an inverted domestic corporation under section 7874(a) of such Code by reason of an acquisition completed after March 20, 2002, and before January 1, 2004.

SEC. 442. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

“(a) GENERAL RULES.—For purposes of this subtitle—

“(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

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

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

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

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

“(3) EXCLUSION FOR CERTAIN GAIN.—

“(A) IN GENERAL.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by \$600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

“(B) COST-OF-LIVING ADJUSTMENT.—

“(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2004, the \$600,000 amount under subparagraph (A) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting ‘calendar year 2003’ for ‘calendar year 1992’ in subparagraph (B) thereof.

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

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

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

“(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

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

“(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

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

“(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

“(iii) complies with such other requirements as the Secretary may prescribe.

“(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

“(b) ELECTION TO DEFER TAX.—

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

“(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

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

“(4) SECURITY.—

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

“(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

“(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

“(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

“(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

“(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

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

“(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

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

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

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

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

“(A) the individual—

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

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

“(B)(i) the individual’s relinquishment of United States citizenship occurs before such individual attains age 18½, and

“(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

“(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

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

“(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

“(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

“(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

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

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

“(ii) an amount equal to the present value of the expatriate’s nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

“(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross in-

come by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

“(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan’s behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

“(D) APPLICABLE PLANS.—This paragraph shall apply to—

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

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

“(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

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

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

“(A) any United States citizen who relinquishes citizenship, and

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

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

“(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

“(2) EXPATRIATION DATE.—The term ‘expatriation date’ means—

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

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

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

“(A) the date the individual renounces such individual’s United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

“(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

“(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

“(D) the date a court of the United States cancels a naturalized citizen’s certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

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

“(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES’ INTERESTS IN TRUST.—

“(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a

trust on the day before the expatriation date—

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

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

“(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

“(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

“(iii) the individual shall be treated as having recontributed the assets to the separate trust.

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

“(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

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

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

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

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

“(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

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

“(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

“(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

“(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

“(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

“(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

“(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary’s interest in a trust is the amount of gain which would be allocable to such beneficiary’s vested and nonvested interests in

the trust if the beneficiary held directly all assets allocable to such interests.

“(E) TAX DEDUCTED AND WITHHELD.—

“(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

“(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

“(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

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

“(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

“(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

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

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

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

“(i) QUALIFIED TRUST.—The term ‘qualified trust’ means a trust which is described in section 7701(a)(30)(E).

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

“(iii) NONVESTED INTEREST.—The term ‘nonvested interest’ means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

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

“(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

“(3) DETERMINATION OF BENEFICIARIES’ INTEREST IN TRUST.—

“(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary’s interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

“(B) OTHER DETERMINATIONS.—For purposes of this section—

“(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be

the trust beneficiaries for purposes of this section.

“(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

“(I) the methodology used to determine that taxpayer’s trust interest under this section, and

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

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

“(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

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

“(h) IMPOSITION OF TENTATIVE TAX.—

“(i) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

“(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

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

“(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

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

“(1) IMPOSITION OF LIEN.—

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

“(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate’s income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

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

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

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

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

“(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be nec-

essary or appropriate to carry out the purposes of this section.”.

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

“(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

“(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

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

“(A) the gift, bequest, devise, or inheritance is—

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

“(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

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

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

“(48) TERMINATION OF UNITED STATES CITIZENSHIP.—

“(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual’s citizenship is treated as relinquished under section 877A(e)(3).

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

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

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

“(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).”.

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

“(19) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General’s delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).”.

(B) SAFEGUARDS.—

(i) TECHNICAL AMENDMENTS.—Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986, as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107-210; 116 Stat. 961), is amended by striking “or (17)” after “any other person described in subsection (1)(16)” each place it appears and inserting “or (18)”.

(ii) CONFORMING AMENDMENTS.—Section 6103(p)(4) (relating to safeguards), as amended by clause (i), is amended by striking “or (18)” after “any other person described in subsection (1)(16)” each place it appears and inserting “(18), or (19)”.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(B) TECHNICAL AMENDMENTS.—The amendments made by paragraph (2)(B)(i) shall take effect as if included in the amendments made by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107-210; 116 Stat. 961).

(e) CONFORMING AMENDMENTS.—

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

“(g) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after January 1, 2004.”

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

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

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

“(F) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.”

(4)(A) Paragraph (1) of section 6039G(d) is amended by inserting “or 877A” after “section 877”.

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

(C) Section 6039G(f) is amended by inserting “or 877A(e)(2)(B)” after “877(e)(1)”.

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

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

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after January 1, 2004.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after January 1, 2004, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

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

SEC. 443. EXCISE TAX ON STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.

(a) IN GENERAL.—Subtitle D is amended by adding at the end the following new chapter:

“CHAPTER 48—STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS

“Sec. 5000A. Stock compensation of insiders in inverted corporations entities.

“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.

“(a) IMPOSITION OF TAX.—In the case of an individual who is a disqualified individual with respect to any inverted corporation, there is hereby imposed on such person a tax equal to 20 percent of the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual’s family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the inversion date.

“(b) VALUE.—For purposes of subsection (a)—

“(1) IN GENERAL.—The value of specified stock compensation shall be—

“(A) in the case of a stock option (or other similar right) or any stock appreciation right, the fair value of such option or right, and

“(B) in any other case, the fair market value of such compensation.

“(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

“(A) in the case of specified stock compensation held on the inversion date, on such date,

“(B) in the case of such compensation which is canceled during the 6 months before the inversion date, on the day before such cancellation, and

“(C) in the case of such compensation which is granted after the inversion date, on the date such compensation is granted.

“(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN RECOGNIZED.—Subsection (a) shall apply to any disqualified individual with respect to an inverted corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(A) (determined by substituting ‘July 10, 2002’ for ‘March 20, 2002’) with respect to such corporation.

“(d) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

“(1) any stock option which is exercised on the inversion date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the inversion date with respect to the stock acquired pursuant to such exercise, and

“(2) any specified stock compensation which is exercised, sold, exchanged, distributed, cashed out, or otherwise paid during such period in a transaction in which gain or loss is recognized in full.

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

“(1) DISQUALIFIED INDIVIDUAL.—The term ‘disqualified individual’ means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the inversion date—

“(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation, or

“(B) would be subject to such requirements if such corporation were an issuer of equity securities referred to in such section.

“(2) INVERTED CORPORATION; INVERSION DATE.—

“(A) INVERTED CORPORATION.—The term ‘inverted corporation’ means any corporation to which subsection (a) or (b) of section 7874 applies determined—

“(i) by substituting ‘July 10, 2002’ for ‘March 20, 2002’ in section 7874(a)(2)(A), and

“(ii) without regard to subsection (b)(1)(A). Such term includes any predecessor or successor of such a corporation.

“(B) INVERSION DATE.—The term ‘inversion date’ means, with respect to a corporation, the date on which the corporation first becomes an inverted corporation.

“(3) SPECIFIED STOCK COMPENSATION.—

“(A) IN GENERAL.—The term ‘specified stock compensation’ means payment (or right to payment) granted by the inverted corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

“(B) EXCEPTIONS.—Such term shall not include—

“(i) any option to which part II of subchapter D of chapter 1 applies, or

“(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

“(4) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section 1504(a) shall be applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears.

“(f) SPECIAL RULES.—For purposes of this section—

“(1) CANCELLATION OF RESTRICTION.—The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

“(2) PAYMENT OR REIMBURSEMENT OF TAX BY CORPORATION TREATED AS SPECIFIED STOCK COMPENSATION.—Any payment of the tax imposed by this section directly or indirectly by the inverted corporation or by any member of the expanded affiliated group which includes such corporation—

“(A) shall be treated as specified stock compensation, and

“(B) shall not be allowed as a deduction under any provision of chapter 1.

“(3) CERTAIN RESTRICTIONS IGNORED.—Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

“(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

“(5) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

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

(b) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (6) of section 275(a) is amended by inserting “48,” after “46.”

(2) \$1,000,000 LIMIT ON DEDUCTIBLE COMPENSATION REDUCED BY PAYMENT OF EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—Paragraph (4) of section 162(m) is amended by adding at the end the following new subparagraph:

“(G) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 5000A directly or indirectly by the inverted corporation (as defined in such section) or by any member of the expanded affiliated group

(as defined in such section) which includes such corporation.”.

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3121(v)(2)(A) is amended by inserting before the period “or to any specified stock compensation (as defined in section 5000A) on which tax is imposed by section 5000A”.

(2) The table of chapters for subtitle D is amended by adding at the end the following new item:

“Chapter 48. Stock compensation of insiders in inverted corporations.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 11, 2002; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 5000A of the Internal Revenue Code of 1986, as added by this section.

SEC. 444. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.

(a) IN GENERAL.—Section 845(a) (relating to allocation in case of reinsurance agreement involving tax avoidance or evasion) is amended by striking “source and character” and inserting “amount, source, or character”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any risk reinsured after April 11, 2002.

SEC. 445. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

“SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.

“(a) IN GENERAL.—The acquiring corporation in any taxable acquisition shall make a return (according to the forms or regulations prescribed by the Secretary) setting forth—

“(1) a description of the acquisition.

“(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition.

“(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

“(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

“(b) NOMINEE REPORTING.—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

“(c) TAXABLE ACQUISITION.—For purposes of this section, the term ‘taxable acquisition’ means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

“(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

“(1) the name, address, and phone number of the information contact of the person required to make such return,

“(2) the information required to be shown on such return with respect to such shareholder, and

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

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.”.

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (ii) through (xvii) as clauses (iii) through (xviii), respectively, and by inserting after clause (i) the following new clause:

“(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions).”.

(2) Paragraph (2) of section 6724(d) is amended by redesignating subparagraphs (F) through (AA) as subparagraphs (G) through (BB), respectively, and by inserting after subparagraph (E) the following new subparagraph:

“(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).”.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6043 the following new item:

“Sec. 6043A. Returns relating to taxable mergers and acquisitions.”.

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

Subtitle E—International Tax

SEC. 451. CLARIFICATION OF BANKING BUSINESS FOR PURPOSES OF DETERMINING INVESTMENT OF EARNINGS IN UNITED STATES PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 956(c)(2) is amended to read as follows:

“(A) obligations of the United States, money, or deposits with—

“(i) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), without regard to subparagraphs (C) and (G) of paragraph (2) of such section), or

“(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation.”.

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

SEC. 452. PROHIBITION ON NONRECOGNITION OF GAIN THROUGH COMPLETE LIQUIDATION OF HOLDING COMPANY.

(a) IN GENERAL.—Section 332 is amended by adding at the end the following new subsection:

“(d) RECOGNITION OF GAIN ON LIQUIDATION OF CERTAIN HOLDING COMPANIES.—

“(1) IN GENERAL.—In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

“(A) subsection (a) and section 331 shall not apply to such distribution, and

“(B) such distribution shall be treated as a distribution to which section 301 applies.

“(2) APPLICABLE HOLDING COMPANY.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘applicable holding company’ means any domestic corporation—

“(i) which is a common parent of an affiliated group.

“(ii) stock of which is directly owned by the distributee foreign corporation,

“(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

“(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

“(B) AFFILIATED GROUP.—For purposes of this subsection, the term ‘affiliated group’ has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) of section 1504(b)).

“(3) COORDINATION WITH SUBPART F.—If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

“(4) REGULATIONS.—The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act.

SEC. 453. PREVENTION OF MISMATCHING OF INTEREST AND ORIGINAL ISSUE DISCOUNT DEDUCTIONS AND INCOME INCLUSIONS IN TRANSACTIONS WITH RELATED FOREIGN PERSONS.

(a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

“(i) IN GENERAL.—In the case of any debt instrument having original issue discount which is held by a related foreign person which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount is included during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

“(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.”.

(b) INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—Section 267(a)(3) is amended—

(1) by striking “The Secretary” and inserting:

“(A) IN GENERAL.—The Secretary”, and

(2) by adding at the end the following new subparagraph:

“(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

“(i) IN GENERAL.—Notwithstanding subparagraph (A), in the case of any amount payable to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent such amount is included during such prior taxable year in the gross income of a United States person who owns (within the

meaning of section 958(a)) stock in such corporation.

“(i) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.”.

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

SEC. 454. EFFECTIVELY CONNECTED INCOME TO INCLUDE CERTAIN FOREIGN SOURCE INCOME.

(a) IN GENERAL.—Section 864(c)(4)(B) (relating to treatment of income from sources without the United States as effectively connected income) is amended by adding at the end the following new flush sentence:

“Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.”.

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

SEC. 455. RECAPTURE OF OVERALL FOREIGN LOSSES ON SALE OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 904(f)(3) (relating to dispositions) is amended by adding at the end the following new subparagraph:

“(D) APPLICATION TO DISPOSITIONS OF STOCK IN CONTROLLED FOREIGN CORPORATIONS.—In the case of any disposition by a taxpayer of any share of stock in a controlled foreign corporation (as defined in section 957), this paragraph shall apply to such disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.”.

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

SEC. 456. MINIMUM HOLDING PERIOD FOR FOREIGN TAX CREDIT ON WITHHOLDING TAXES ON INCOME OTHER THAN DIVIDENDS.

(a) IN GENERAL.—Section 901 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

“(l) MINIMUM HOLDING PERIOD FOR WITHHOLDING TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS ETC.—

“(1) IN GENERAL.—In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on any item of income or gain with respect to any property if—

“(A) such property is held by the recipient of the item for 15 days or less during the 30-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

“(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

“(2) EXCEPTION FOR TAXES PAID BY DEALERS.—

“(A) IN GENERAL.—Paragraph (1) shall not apply to any qualified tax with respect to any property held in the active conduct in a foreign country of a business as a dealer in such property.

“(B) QUALIFIED TAX.—For purposes of subparagraph (A), the term ‘qualified tax’ means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

“(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

“(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

“(C) DEALER.—For purposes of subparagraph (A), the term ‘dealer’ means—

“(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof if such security were stock, and

“(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

“(D) REGULATIONS.—The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

“(3) EXCEPTIONS.—The Secretary may by regulation provide that paragraph (1) shall not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

“(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

“(5) DETERMINATION OF HOLDING PERIOD.—Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.”.

(b) CONFORMING AMENDMENT.—The heading of subsection (k) of section 901 is amended by inserting “ON DIVIDENDS” after “TAXES”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act.

Subtitle F—Other Revenue Provisions

PART I—FINANCIAL INSTRUMENTS

SEC. 461. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.”.

(b) CROSS REFERENCE.—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

“(7) CROSS REFERENCE.—

“For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).”.

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

SEC. 462. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERSHIPS AND S CORPORATIONS.

(a) IN GENERAL.—Section 168(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

“(8) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—

“(A) IN GENERAL.—This subsection shall apply to partnerships and S corporations in the same manner as it applies to C corporations.

“(B) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

“(i) the corporation’s allocable share of indebtedness and interest income of the partnership shall be taken into account in applying this subsection to the corporation, and

“(ii) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation’s allocable share of such interest expense.”.

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

SEC. 463. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH PARTNERSHIP INTEREST.

(a) IN GENERAL.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)) is amended to read as follows:

“(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

“(A) a debtor corporation transfers stock, or

“(B) a debtor partnership transfers a capital or profits interest in such partnership, to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act.

SEC. 464. MODIFICATION OF STRADDLE RULES.

(a) RULES RELATING TO IDENTIFIED STRADDLES.—

(1) IN GENERAL.—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

“(A) IN GENERAL.—In the case of any straddle which is an identified straddle—

“(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

“(ii) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

“(iii) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.”.

(2) IDENTIFIED STRADDLE.—Section 1092(a)(2)(B) (defining identified straddle) is amended—

(A) by striking clause (ii) and inserting the following:

“(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and”, and

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

“The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.”.

(3) **UNRECOGNIZED GAIN.**—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) **SPECIAL RULE FOR IDENTIFIED STRADDLES.**—For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.”.

(4) **CONFORMING AMENDMENT.**—Section 1092(c)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) **PHYSICALLY SETTLED POSITIONS.**—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

“(8) **SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.**—For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

“(A) terminated the position for its fair market value immediately before the settlement, and

“(B) sold the property so delivered by the taxpayer at its fair market value.”.

(c) **REPEAL OF STOCK EXCEPTION.**—

(1) **IN GENERAL.**—Paragraph (3) of section 1092(d) (relating to definitions and special rules) is amended to read as follows:

“(3) **SPECIAL RULES FOR STOCK.**—For purposes of paragraph (1)—

“(A) **IN GENERAL.**—The term ‘personal property’ includes—

“(i) any stock which is a part of a straddle at least 1 of the offsetting positions of which is a position with respect to such stock or substantially similar or related property, or

“(ii) any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

“(B) **RULE FOR APPLICATION.**—For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.”.

(2) **CONFORMING AMENDMENT.**—Section 1258(d)(1) is amended by striking “; except that the term ‘personal property’ shall include stock”.

(d) **REPEAL OF QUALIFIED COVERED CALL EXCEPTION.**—Section 1092(c)(4) is amended by adding at the end the following new subparagraph:

“(I) **TERMINATION.**—This paragraph shall not apply to any position established on or after the date of the enactment of this subparagraph.”.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

SEC. 465. DENIAL OF INSTALLMENT SALE TREATMENT FOR ALL READILY TRADEABLE DEBT.

(a) **IN GENERAL.**—Section 453(f)(4)(B) (relating to purchaser evidences of indebtedness payable on demand or readily tradeable) is amended by striking “is issued by a corporation or a government or political subdivision thereof and”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to sales occurring on or after the date of the enactment of this Act.

PART II—CORPORATIONS AND PARTNERSHIPS

SEC. 466. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.

(a) **IN GENERAL.**—Section 361(b)(3) (relating to treatment of transfers to creditors) is amended by adding at the end the following new sentence: “In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.”.

(b) **LIABILITIES IN EXCESS OF BASIS.**—Section 357(c)(1)(B) is amended by inserting “with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355” after “section 368(a)(1)(D)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

SEC. 467. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) **IN GENERAL.**—Section 351(g)(3)(A) is amended by adding at the end the following: “Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to transactions after May 14, 2003.

SEC. 468. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) **IN GENERAL.**—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking “possessing—” and all that follows through “(B)” and inserting “possessing”.

(b) **APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.**—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

“(5) **BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.**—

“(A) **IN GENERAL.**—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

“(2) **BROTHER-SISTER CONTROLLED GROUP.**—Two or more corporations if 5 or fewer per-

sons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

“(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

“(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.”

“(B) **APPLICABLE PROVISION.**—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).”.

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

SEC. 469. MANDATORY BASIS ADJUSTMENTS IN CONNECTION WITH PARTNERSHIP DISTRIBUTIONS AND TRANSFERS OF PARTNERSHIP INTERESTS.

(a) **IN GENERAL.**—Section 754 is repealed.

(b) **ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY.**—Section 734 is amended—

(1) by striking “, with respect to which the election provided in section 754 is in effect,” in the matter preceding paragraph (1) of subsection (b),

(2) by striking “(as adjusted by section 732(d))” both places it appears in subsection (b),

(3) by striking the last sentence of subsection (b),

(4) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively, and

(5) by striking “optional” in the heading.

(c) **ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY.**—Section 743 is amended—

(1) by striking “with respect to which the election provided in section 754 is in effect” in the matter preceding paragraph (1) of subsection (b),

(2) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively,

(3) by adding at the end the following new subsection:

“(c) **ELECTION TO ADJUST BASIS FOR TRANSFERS UPON DEATH OF PARTNER.**—Subsection (a) shall not apply and no adjustments shall be made in the case of any transfer of an interest in a partnership upon the death of a partner unless an election to do so is made by the partnership. Such an election shall apply with respect to all such transfers of interests in the partnership. Any election under section 754 in effect on the date of the enactment of this subsection shall constitute an election made under this subsection. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.”, and

(4) by striking “optional” in the heading.

(d) **CONFORMING AMENDMENTS.**—

(1) Subsection (d) of section 732 is repealed.

(2) Section 755(a) is amended—

(A) by striking “section 734(b) (relating to the optional adjustment)” and inserting “section 734(a) (relating to the adjustment)”, and

(B) by striking “section 743(b) (relating to the optional adjustment)” and inserting “section 743(a) (relating to the adjustment)”.

(3) Section 755(c), as added by this Act, is amended by striking “section 734(b)” and inserting “section 734(a)”.

(4) Section 761(e)(2) is amended by striking “optional”.

(5) Section 774(a) is amended by striking “743(b)” both places it appears and inserting “743(a)”.

(6) The item relating to section 734 in the table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking “Optional”.

(7) The item relating to section 743 in the table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking “Optional”.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transfers and distributions made after the date of the enactment of this Act.

(2) REPEAL OF SECTION 732(d).—The amendments made by subsections (b)(2) and (d)(1) shall apply to—

(A) except as provided in subparagraph (B), transfers made after the date of the enactment of this Act, and

(B) in the case of any transfer made on or before such date to which section 732(d) applies, distributions made after the date which is 2 years after such date of enactment.

PART III—DEPRECIATION AND AMORTIZATION

SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1245(a) (relating to gain from disposition of certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property acquired after the date of the enactment of this Act.

(2) SECTION 1245.—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

SEC. 472. CLASS LIVES FOR UTILITY GRADING COSTS.

(a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E) (defining 15-year property) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by adding at the end the following new clause: “(iv) initial clearing and grading land improvements with respect to gas utility property.”

(b) ELECTRIC UTILITY PROPERTY.—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

“(F) 20-YEAR PROPERTY.—The term ‘20-year property’ means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.”

(c) CONFORMING AMENDMENTS.—The table contained in section 168(g)(3)(B) is amended—

(1) by inserting “or (E)(iv)” after “(E)(iii)”, and

(2) by adding at the end the following new item:

“(F) 25”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property

placed in service after the date of the enactment of this Act.

SEC. 473. EXPANSION OF LIMITATION ON DEPRECIATION OF CERTAIN PASSENGER AUTOMOBILES.

(a) IN GENERAL.—Section 179(b) (relating to limitations) is amended by adding at the end the following new paragraph:

“(6) LIMITATION ON COST TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—

“(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed \$25,000.

“(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—The term ‘sport utility vehicle’ means any 4-wheeled vehicle which—

“(I) is manufactured primarily for use on public streets, roads, and highways,

“(II) is not subject to section 280F, and

“(III) is rated at not more than 14,000 pounds gross vehicle weight.

“(ii) CERTAIN VEHICLES EXCLUDED.—Such term does not include any vehicle which—

“(I) does not have the primary load carrying device or container attached,

“(II) has a seating capacity of more than 12 individuals,

“(III) is designed for more than 9 individuals in seating rearward of the driver’s seat,

“(IV) is equipped with an open cargo area, or a covered box not readily accessible from the passenger compartment, of at least 72.0 inches in interior length, or

“(V) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver’s seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.”

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

SEC. 474. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.

(a) START-UP EXPENDITURES.—

(1) ALLOWANCE OF DEDUCTION.—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

“(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

“(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

“(i) the amount of start-up expenditures with respect to the active trade or business, or

“(ii) \$5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed \$50,000, and

“(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.”

(2) CONFORMING AMENDMENT.—Subsection (b) of section 195 is amended by striking “AMORTIZE” and inserting “DEDUCT” in the heading.

(b) ORGANIZATIONAL EXPENDITURES.—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

“(a) ELECTION TO DEDUCT.—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

“(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

“(A) the amount of organizational expenditures with respect to the taxpayer, or

“(B) \$5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed \$50,000, and

“(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.”

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—

(1) IN GENERAL.—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

“(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

“(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

“(i) the amount of organizational expenses with respect to the partnership, or

“(ii) \$5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed \$50,000, and

“(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

“(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.”

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking “AMORTIZATION” and inserting “DEDUCTION” in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. 475. REFORM OF TAX TREATMENT OF LEASING OPERATIONS.

(a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subparagraph (A) of section 168(g)(3) (relating to special rules for determining class life) is amended by inserting “(notwithstanding any other subparagraph of this paragraph)” after “shall”.

(b) LIMITATION ON DEPRECIATION PERIOD FOR SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Paragraph (1) of section 167(f) is amended by adding at the end the following new subparagraph:

“(C) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to computer software, the useful life under subparagraph (A) shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).”

(c) LEASE TERM TO INCLUDE RELATED SERVICE CONTRACTS.—Subparagraph (A) of section 168(i)(3) (relating to lease term) is amended by striking “and” at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

“(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

“(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

“(II) which is with respect to the property subject to the lease or substantially similar property, and”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to leases entered into after December 31, 2003.

SEC. 476. LIMITATION ON DEDUCTIONS ALLOWABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

(a) **IN GENERAL.**—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by adding at the end the following new section:

“SEC. 470. LIMITATIONS ON LOSSES FROM TAX-EXEMPT USE PROPERTY.

“(a) **LIMITATION ON LOSSES.**—Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

“(b) **DISALLOWED LOSS CARRIED TO NEXT YEAR.**—Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

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

“(1) **TAX-EXEMPT USE LOSS.**—The term ‘tax-exempt use loss’ means, with respect to any taxable year, the amount (if any) by which—

“(A) the sum of—

“(i) the aggregate deductions (other than interest) directly allocable to a tax-exempt use property, plus

“(ii) the aggregate deductions for interest properly allocable to such property, exceed

“(B) the aggregate income from such property.

“(2) **TAX-EXEMPT USE PROPERTY.**—The term ‘tax-exempt use property’ has the meaning given to such term by section 168(h) (without regard to paragraph (1)(C) or (3)(C) thereof and determined as if property described in section 167(f)(1)(B) were tangible property).

“(d) **EXCEPTION FOR CERTAIN LEASES.**—This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

“(1) **PROPERTY NOT FINANCED WITH TAX-EXEMPT BONDS.**—A lease of property meets the requirements of this paragraph if no part of the property was financed (directly or indirectly) from the proceeds of an obligation the interest on which is exempt from tax under section 103(a) and which (or any refunding bond of which) is outstanding when the lease is entered into. The Secretary may by regulations provide for a de minimis exception from this paragraph.

“(2) **AVAILABILITY OF FUNDS.**—

“(A) **IN GENERAL.**—A lease of property meets the requirements of this paragraph if (at any time during the lease term) not more than an allowable amount of funds are—

“(i) subject to any arrangement referred to in subparagraph (B), or

“(ii) otherwise reasonably expected to remain available,

to or for the benefit of the lessor or any lender, or to or for the benefit of the lessee to satisfy the lessee’s obligations or options under the lease.

“(B) **ARRANGEMENTS.**—The arrangements referred to in this subparagraph are—

“(i) a defeasance arrangement, a loan by the lessee to the lessor or any lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, a lease prepayment, a sinking fund arrangement, or any similar arrangement (whether or not

such arrangement provides credit support), and

“(ii) any other arrangement identified by the Secretary in regulations.

“(C) **ALLOWABLE AMOUNT.**—

“(i) **IN GENERAL.**—Except as otherwise provided in this subparagraph, the term ‘allowable amount’ means an amount equal to 20 percent of the lessor’s adjusted basis in the property at the time the lease is entered into.

“(ii) **HIGHER AMOUNT PERMITTED IN CERTAIN CASES.**—To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the credit-worthiness of the lessee. In no event may such regulations permit a percentage of more than 50 percent.

“(iii) **OPTION TO PURCHASE.**—If under the lease the lessee has the option to purchase the property for other than the fair market value of the property (determined at the time of exercise), the allowable amount at the time such option may be exercised may not exceed 50 percent of the price at which such option may be exercised.

“(3) **LESSOR MUST MAKE SUBSTANTIAL EQUITY INVESTMENT.**—A lease of property meets the requirements of this paragraph if—

“(A) the lessor—

“(i) has at the time the lease is entered into an unconditional at-risk equity investment (as determined by the Secretary) in the property of at least 20 percent of the lessor’s adjusted basis in the property as of that time, and

“(ii) maintains such investment throughout the term of the lease, and

“(B) the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.

“(4) **LESSEE MAY NOT BEAR MORE THAN MINIMAL RISK OF LOSS.**—

“(A) **IN GENERAL.**—A lease of property meets the requirements of this paragraph if there is no arrangement under which more than a minimal risk of loss (as determined under regulations) in the value of the property is borne by the lessee.

“(B) **CERTAIN ARRANGEMENTS FAIL REQUIREMENT.**—In no event will the requirements of this paragraph be met if there is any arrangement under which the lessee bears—

“(i) any portion of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were 25 percent less than its projected fair market value at the end of the lease term, or

“(ii) more than 50 percent of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were zero.

“(5) **REGULATORY REQUIREMENTS.**—A lease of property meets the requirements of this paragraph if such lease of property meets such requirements as the Secretary may prescribe by regulations.

“(e) **SPECIAL RULES.**—

“(1) **TREATMENT OF FORMER TAX-EXEMPT USE PROPERTY.**—

“(A) **IN GENERAL.**—In the case of any former tax-exempt use property—

“(i) any deduction allowable under subsection (b) with respect to such property for any taxable year shall be allowed only to the extent of any net income (without regard to such deduction) from such property for such taxable year, and

“(ii) any portion of such unused deduction remaining after application of clause (i) shall be treated as allowable under subsection (b) with respect to such property in the next taxable year.

“(B) **FORMER TAX-EXEMPT USE PROPERTY.**—For purposes of this subsection, the term ‘former tax-exempt use property’ means any property which—

“(i) is not tax-exempt use property for the taxable year, but

“(ii) was tax-exempt use property for any prior taxable year.

“(2) **DISPOSITION OF ENTIRE INTEREST IN PROPERTY.**—If during the taxable year a taxpayer disposes of the taxpayer’s entire interest in tax-exempt use property (or former tax-exempt use property), rules similar to the rules of section 469(g) shall apply for purposes of this section.

“(3) **COORDINATION WITH SECTION 469.**—This section shall be applied before the application of section 469.

“(f) **OTHER DEFINITIONS.**—For purposes of this section—

“(1) **RELATED PARTIES.**—The terms ‘lessor’, ‘lessee’, and ‘lender’ include any related party (within the meaning of section 197(f)(9)(C)(i)).

“(2) **LEASE TERM.**—The term ‘lease term’ has the meaning given to such term by section 168(i)(3).

“(3) **LENDER.**—The term ‘lender’ means, with respect to any lease, a person that makes a loan to the lessor which is secured (or economically similar to being secured) by the lease or the leased property.

“(4) **LOAN.**—The term ‘loan’ includes any similar arrangement.

“(g) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this section, including regulation which—

“(1) allow in appropriate cases the aggregation of property subject to the same lease, and

“(2) provide for the determination of the allocation of interest expense for purposes of this section.”

(b) **CONFORMING AMENDMENT.**—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end the following new item:

“Sec. 470. Limitations on losses from tax-exempt use property.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to leases entered into after December 31, 2003.

PART IV—ADMINISTRATIVE PROVISIONS

SEC. 481. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) **IN GENERAL.**—Paragraph (13) of section 338(h) (relating to tax on deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: “The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 482. EXTENSION OF IRS USER FEES.

(a) **IN GENERAL.**—Section 7528(c) (relating to termination) is amended by striking “December 31, 2004” and inserting “September 30, 2013”.

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

SEC. 483. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENT.

(a) **GENERAL RULE.**—If—

(1) a taxpayer eligible to participate in—

(A) the Department of the Treasury’s Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury’s voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer’s underreporting of United States income tax

liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A), and

(2) any interest or applicable penalty is imposed with respect to any arrangement to which any initiative described in paragraph (1) applied or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (1),

then, notwithstanding any other provision of law, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term “applicable penalty” means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term “Voluntary Offshore Compliance Initiative” means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

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

SEC. 484. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking “satisfy liability for payment of” and inserting “make payment on”, and

(B) by inserting “full or partial” after “facilitate”.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting “full” before “payment”.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

“(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 485. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking “March 31, 2004” and inserting “September 30, 2013”.

SEC. 486. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

“(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

“(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

“(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

“(d) PAYMENT OF INTEREST.—

“(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

“(2) DISPUTABLE TAX.—

“(A) IN GENERAL.—For purposes of this section, the term ‘disputable tax’ means the amount of tax specified at the time of the deposit as the taxpayer’s reasonable estimate of the maximum amount of any tax attributable to disputable items.

“(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

“(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

“(A) DISPUTABLE ITEM.—The term ‘disputable item’ means any item of income, gain, loss, deduction, or credit if the taxpayer—

“(i) has a reasonable basis for its treatment of such item, and

“(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer’s treatment of such item.

“(B) 30-DAY LETTER.—The term ‘30-day letter’ means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

“(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

“(e) USE OF DEPOSITS.—

“(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

“(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.”.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

“Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84-58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84-58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.

(a) CONTRACT REQUIREMENTS.—

(1) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by adding at the end the following new section:

“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.

“(a) IN GENERAL.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

“(b) QUALIFIED TAX COLLECTION CONTRACT.—For purposes of this section, the term ‘qualified tax collection contract’ means any contract which—

“(1) is for the services of any person (other than an officer or employee of the Treasury Department)—

“(A) to locate and contact any taxpayer specified by the Secretary,

“(B) to request full payment from such taxpayer of an amount of Federal tax specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 3 years, and

“(C) to obtain financial information specified by the Secretary with respect to such taxpayer,

“(2) prohibits each person providing such services under such contract from committing any act or omission which employees of the Internal Revenue Service are prohibited from committing in the performance of similar services,

“(3) prohibits subcontractors from—

“(A) having contacts with taxpayers,

“(B) providing quality assurance services, and

“(C) composing debt collection notices, and

“(4) permits subcontractors to perform other services only with the approval of the Secretary.

“(c) FEES.—The Secretary may retain and use an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract. The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this subsection.

“(d) NO FEDERAL LIABILITY.—The United States shall not be liable for any act or omission of any person performing services under a qualified tax collection contract.

“(e) APPLICATION OF FAIR DEBT COLLECTION PRACTICES ACT.—The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.

“(f) CROSS REFERENCES.—

“(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

“(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(a)(4).”

(2) CONFORMING AMENDMENTS.—

(A) Section 7809(a) is amended by inserting “6306,” before “7651”.

(B) The table of sections for subchapter A of chapter 64 is amended by adding at the end the following new item:

“Sec. 6306. Qualified Tax Collection Contracts.”

(b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.—

(1) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by inserting after section 7433 the following new section:

“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.

“(a) IN GENERAL.—Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

“(b) MODIFICATIONS.—For purposes of subsection (a)—

“(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

“(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

“(3) Such civil action shall not be an exclusive remedy with respect to such person.

“(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.”

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by inserting after the item relating to section 7433 the following new item:

“Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract.”

(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Section 7811 (relating to taxpayer assistance orders) is amended by adding at the end the following new subsection:

“(g) APPLICATION TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as such order or action applies to the Secretary.”

(d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT MISCONDUCT TO PERFORM UNDER CONTRACT.—Section 1203 of the Internal Revenue Service Restructuring Act of 1998 (relating to termination of employment for misconduct) is amended by adding at the end the following new subsection:

“(e) INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b) of the Internal Revenue Code of 1986) if there is a final determination

by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services.”

(e) EFFECTIVE DATE.—The amendments made to this section shall take effect on the date of the enactment of this Act.

PART V—MISCELLANEOUS PROVISIONS

SEC. 491. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

“(I) Any vaccine against hepatitis A.”

(b) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) is amended by striking “October 18, 2000” and inserting “May 8, 2003”.

(c) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by this section shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 492. RECOGNITION OF GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-KIND EXCHANGE WITHIN 5 YEARS OF SALE.

(a) IN GENERAL.—Section 121(d) (relating to special rules for exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

“(10) PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE.—If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

SEC. 493. CLARIFICATION OF EXEMPTION FROM TAX FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Section 501(c)(15)(A) is amended to read as follows:

“(A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if—

“(i) the gross receipts for the taxable year do not exceed \$600,000, and

“(ii) more than 50 percent of such gross receipts consist of premiums.”

(b) CONTROLLED GROUP RULE.—Section 501(c)(15)(C) is amended by inserting “, except that in applying section 1563 for purposes of section 831(b)(2)(B)(ii), subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded” before the period at the end.

(c) CONFORMING AMENDMENT.—Clause (i) of section 831(b)(2)(A) is amended by striking “exceed \$350,000 but”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 494. DEFINITION OF INSURANCE COMPANY FOR SECTION 831.

(a) IN GENERAL.—Section 831 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

“(c) INSURANCE COMPANY DEFINED.—For purposes of this section, the term ‘insurance

company’ has the meaning given to such term by section 816(a).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 495. LIMITATIONS ON DEDUCTION FOR CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.

(a) DEDUCTION ALLOWED ONLY TO THE EXTENT OF BASIS.—Section 170(e)(1)(B) (relating to certain contributions of ordinary income and capital gain property) is amended by striking “or” at the end of clause (i), by adding “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(iii) of any patent, copyright, trademark, trade name, trade secret, know-how, software, or similar property, or applications or registrations of such property.”

(b) TREATMENT OF CONTRIBUTIONS WHERE DONOR RECEIVES INTEREST.—Section 170(e) is amended by adding at the end the following new paragraph:

“(7) SPECIAL RULES FOR CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY WHERE DONOR RECEIVES INTEREST.—

“(A) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed under this section with respect to a contribution of property described in paragraph (1)(B)(iii) if the taxpayer after the contribution has any interest in the property other than a qualified interest.

“(B) CONTRIBUTIONS WITH QUALIFIED INTEREST.—If a taxpayer after a contribution of property described in paragraph (1)(B)(iii) has a qualified interest in the property—

“(i) any payment pursuant to the qualified interest shall be treated as ordinary income and shall be includible in gross income of the taxpayer for the taxable year in which the payment is received by the taxpayer, and

“(ii) subsection (f)(3) and section 1011(b) shall not apply to the transfer of the property from the taxpayer to the donee.

“(C) QUALIFIED INTEREST.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘qualified interest’ means, with respect to any taxpayer, a right to receive from the donee a percentage (not greater than 50 percent) of any royalty payment received by the donee with respect to property described in paragraph (1)(B)(iii) (other than copyrights which are described in section 1221(a)(3) or 1231(b)(1)(C)) contributed by the taxpayer to the donee.

“(ii) SECRETARIAL AUTHORITY.—

“(I) IN GENERAL.—Except as provided in subclause (II), the Secretary may by regulation or other administrative guidance treat as a qualified interest the right to receive other payments from the donee, but only if the donee does not possess a right to receive any payment (whether royalties or otherwise) from a third party with respect to the contributed property.

“(II) EXCEPTIONS.—The Secretary may not treat as a qualified interest the right to receive any payment which provides a benefit to the donor which is greater than the benefit retained by the donee or the right to receive any portion of the proceeds from the sale of the property contributed.

“(iii) LIMITATION.—An interest shall be treated as a qualified interest under this subparagraph only if the taxpayer has no right to receive any payment described in clause (i) or (ii)(I) after the earlier of the date on which the legal life of the contributed property expires or the date which is 20 years after the date of the contribution.”

(c) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Section 6050L(a) (relating to returns regarding certain dispositions of donated property) is amended—

(A) by striking “If” and inserting:

“(1) DISPOSITIONS OF DONATED PROPERTY.—If”.

(B) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and

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

“(2) PAYMENTS OF QUALIFIED INTERESTS.—Each donee of property described in section 170(e)(1)(B)(iii) which makes a payment to a donor pursuant to a qualified interest (as defined in section 170(e)(7)) during any calendar year shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

“(A) the name, address, and TIN of the payor and the payee with respect to such a payment,

“(B) a description, and date of contribution, of the property to which the qualified interest relates,

“(C) the dates and amounts of any royalty payments received by the donee with respect to such property,

“(D) the date and the amount of the payment pursuant to the qualified interest, and

“(E) a description of the terms of the qualified interest.”.

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 6050L is amended by striking “**certain dispositions of**”.

(B) The item relating to section 6050L in the table of sections for subpart B of part III of subchapter A of chapter 61 is amended by striking “certain dispositions of”.

(d) ANTI-ABUSE RULES.—The Secretary of the Treasury may prescribe such regulations or other administrative guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after October 1, 2003.

SEC. 496. REPEAL OF 10-PERCENT REHABILITATION TAX CREDIT.

Section 47 is amended by adding at the end the following new subsection:

“(e) TERMINATION.—This section shall not apply to expenditures described in subsection (a)(1) incurred in taxable years beginning after December 31, 2003.”.

SEC. 497. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking “age 14” and inserting “age 18”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SA 2895. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a man-

ner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, add the following:

SEC. ____ INCREASE IN HISTORIC REHABILITATION CREDIT FOR CERTAIN LOW-INCOME HOUSING FOR THE ELDERLY.

(a) IN GENERAL.—Section 47 (relating to rehabilitation credit) is amended by adding at the end the following new subsection:

“(e) SPECIAL RULE REGARDING CERTAIN HISTORIC STRUCTURES.—In the case of any qualified rehabilitation expenditure with respect to any certified historic structure—

“(1) which is placed in service after the date of the enactment of this subsection,

“(2) which is part of a qualified low-income building with respect to which a credit under section 42 is allowed, and

“(3) substantially all of the residential rental units of which are used for tenants who have attained the age of 65, subsection (a)(2) shall be applied by substituting ‘25 percent’ for ‘20 percent’.”.

(b) APPLICATION OF MACRS.—The Internal Revenue Code of 1986 shall be applied and administered as if paragraph (4)(X) of section 251(d) of the Tax Reform Act of 1986 as applied to the amendments made by section 201 of such Act had not been enacted with respect to any property described in such paragraph and placed in service after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property placed in service after the date of the enactment of this Act.

SA 2896. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, insert the following:

SEC. ____ NEW MARKETS TAX CREDIT FOR NATIVE AMERICAN RESERVATIONS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by redesignating sections 45E and 45F as sections 45F and 45G, respectively, and by inserting after section 45E the following new section:

“SEC. 45D. NEW MARKETS TAX CREDIT FOR NATIVE AMERICAN RESERVATIONS.

“(a) ALLOWANCE OF CREDIT.—

“(1) IN GENERAL.—For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the Native American new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the reservation development entity for such investment at its original issue.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

“(A) 5 percent with respect to the first 3 credit allowance dates, and

“(B) 6 percent with respect to the remainder of the credit allowance dates.

“(3) CREDIT ALLOWANCE DATE.—For purposes of paragraph (1), the term ‘credit allowance date’ means, with respect to any qualified equity investment—

“(A) the date on which such investment is initially made, and

“(B) each of the 6 anniversary dates of such date thereafter.

“(b) QUALIFIED EQUITY INVESTMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified equity investment’ means any equity investment in a reservation development entity if—

“(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

“(B) substantially all of such cash is used by the reservation development entity to make qualified low-income reservation investments, and

“(C) such investment is designated for purposes of this section by the reservation development entity.

Such term shall not include any equity investment issued by a reservation development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary under subsection (f).

“(2) LIMITATION.—The maximum amount of equity investments issued by a reservation development entity which may be designated under paragraph (1)(C) by such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

“(3) SAFE HARBOR FOR DETERMINING USE OF CASH.—The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the reservation development entity are invested in qualified low-income reservation investments.

“(4) TREATMENT OF SUBSEQUENT PURCHASERS.—The term ‘qualified equity investment’ includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

“(5) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

“(6) EQUITY INVESTMENT.—The term ‘equity investment’ means—

“(A) any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity which is a corporation, and

“(B) any capital interest in an entity which is a partnership.

“(c) RESERVATION DEVELOPMENT ENTITY.—For purposes of this section—

“(1) IN GENERAL.—The term ‘reservation development entity’ means any domestic corporation or partnership if—

“(A) the primary mission of the entity is serving, or providing investment capital for, low-income reservations,

“(B) the entity maintains accountability to residents of low-income reservations through their representation on any governing board of the entity or on any advisory board to the entity, and

“(C) the entity is certified by the Secretary for purposes of this section as being a reservation development entity.

“(2) EXCEPTION.—For purposes of subparagraph (C) of paragraph (1), the Secretary shall not certify an entity as a reservation development entity if such entity is also certified as a qualified community development entity under section 45D(c).

“(d) QUALIFIED LOW-INCOME RESERVATION INVESTMENTS.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified low-income reservation investment’ means—

“(A) any capital or equity investment in, or loan to, any qualified active low-income reservation business,

“(B) the purchase from another reservation development entity of any loan made by such entity which is a qualified low-income reservation investment,

“(C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income reservations, and

“(D) any equity investment in, or loan to, any reservation development entity.

“(2) QUALIFIED ACTIVE LOW-INCOME RESERVATION BUSINESS.—

“(A) IN GENERAL.—For purposes of paragraph (1), the term ‘qualified active low-income reservation business’ means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year—

“(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income reservation,

“(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income reservation,

“(iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income reservation,

“(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

“(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to non-qualified financial property (as defined in section 1397C(e)).

“(B) PROPRIETORSHIP.—Such term shall include any business carried on by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

“(C) PORTIONS OF BUSINESS MAY BE QUALIFIED ACTIVE LOW-INCOME RESERVATION BUSINESS.—The term ‘qualified active low-income reservation business’ includes any trades or businesses which would qualify as a qualified active low-income reservation business if such trades or businesses were separately incorporated.

“(3) QUALIFIED BUSINESS.—For purposes of this subsection, the term ‘qualified business’ has the meaning given to such term by section 45D(d)(3).

“(e) LOW-INCOME RESERVATION.—For purposes of this section, the term ‘low-income reservation’ means any Indian reservation (as defined in section 168(j)(6)) which has a poverty rate of at least 40 percent.

“(f) NATIONAL LIMITATION ON AMOUNT OF INVESTMENTS DESIGNATED.—

“(1) IN GENERAL.—There is a Native American new markets tax credit limitation of \$50,000,000 for each of calendar years 2004 through 2007.

“(2) ALLOCATION OF LIMITATION.—The limitation under paragraph (1) shall be allocated by the Secretary among reservation development entities selected by the Secretary. In making allocations under the preceding sentence, the Secretary shall give priority to any entity—

“(A) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or

“(B) which intends to satisfy the requirement under subsection (b)(1)(B) by making qualified low-income reservation investments in 1 or more businesses in which persons unrelated to such entity (within the meaning of section 267(b) or 707(b)(1)) hold the majority equity interest.

“(3) CARRYOVER OF UNUSED LIMITATION.—If the Native American new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such year, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after 2014.

“(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

“(1) IN GENERAL.—If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a reservation development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

“(2) CREDIT RECAPTURE AMOUNT.—For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

“(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

“(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

“(3) RECAPTURE EVENT.—For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a reservation development entity if—

“(A) such entity ceases to be a reservation development entity,

“(B) the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or

“(C) such investment is redeemed by such entity.

“(4) SPECIAL RULES.—

“(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

“(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

“(h) BASIS REDUCTION.—The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment. This subsection shall not apply for purposes of sections 1202, 1400B, and 1400F.

“(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations—

“(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal tax benefits (including the credit under section 42 and the exclusion from gross income under section 103),

“(2) which prevent the abuse of the purposes of this section,

“(3) which provide rules for determining whether the requirement of subsection (b)(1)(B) is treated as met,

“(4) which impose appropriate reporting requirements, and

“(5) which apply the provisions of this section to newly formed entities.”

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38 is amended by redesignating paragraphs (14) and (15) as paragraphs (15) and (16), respectively, and by inserting after paragraph (13) the following new paragraph:

“(14) the Native American new markets tax credit determined under section 45E(a).”

(2) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 is amended by redesignating paragraph (10) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

“(10) NO CARRYBACK OF NATIVE AMERICAN NEW MARKETS TAX CREDIT BEFORE JANUARY 1, 2004.—No portion of the unused business credit for any taxable year which is attributable to the credit under section 45E may be carried back to a taxable year ending before January 1, 2004.”

(c) DEDUCTION FOR UNUSED CREDIT.—Subsection (c) of section 196 is amended by redesignating paragraph (10) as paragraph (11), by striking “and” at the end of paragraph (9), and by inserting after paragraph (9) the following new paragraph:

“(10) the Native American new markets tax credit determined under section 45E(a), and”.

(d) CONFORMING AMENDMENTS.—

(1) Section 38(b)(15), as redesignated by subsection (b)(1), is amended—

(A) by striking “45E(c)” and inserting “45F(c)”, and

(B) by striking “45E(a)” and inserting “45F(a)”.

(2) Section 38(b)(16), as redesignated by subsection (b)(1), is amended by striking “45F(a)” and inserting “45G(a)”.

(3) Section 39(d)(11), as redesignated by subsection (b)(2), is amended by striking “section 45E” and inserting “section 45F”.

(4) Section 196(c)(11), as redesignated by subsection (c), is amended by striking “45E(a)” and inserting “45F(a)”.

(5) Section 1016(a)(28) is amended—

(A) by striking “under section 45F” and inserting “under section 45G”, and

(B) by striking “section 45F(f)(1)” and inserting “section 45G(f)(1)”.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by striking the items relating to sections 45E and 45F and inserting the following:

“Sec. 45E. Native American new markets tax credit.

“Sec. 45F. Small employer pension plan startup costs.

“Sec. 45G. Employer-provided child care credit.”

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to investments made after December 31, 2003.

(f) GUIDANCE ON ALLOCATION OF NATIONAL LIMITATION.—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate shall issue guidance which specifies—

(1) how entities shall apply for an allocation under section 45E(f)(2) of the Internal Revenue Code of 1986, as added by this section;

(2) the competitive procedure through which such allocations are made; and

(3) the actions that such Secretary or delegate shall take to ensure that such allocations are properly made to appropriate entities.

(g) AUDIT AND REPORT.—Not later than January 31 of 2007 and 2010, the Comptroller General of the United States shall, pursuant to an audit of the Native American new markets tax credit program established under section 45E of the Internal Revenue Code of 1986 (as added by subsection (a)), report to Congress on such program, including all reservation development entities that receive an allocation under the Native American new markets credit under such section.

(f) GRANTS IN COORDINATION WITH CREDIT.—

(1) IN GENERAL.—The Secretary of the Treasury is authorized to award a grant of not more than \$1,000,000 to the First Nations Oweesta Corporation.

(2) USE OF FUNDS.—The grant awarded under paragraph (1) may be used—

(A) to enhance the capacity of people living on low-income reservations (within the meaning of section 45E(e) of the Internal Revenue Code of 1986, as added by this section) to access, apply, control, create, leverage, utilize, and retain the financial benefits to such low-income reservations which are attributable to qualified low-income reservation investments (within the meaning of section 45E(d) of such Code), and

(B) to provide access to appropriate financial capital for the development of such low-income reservations.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$1,000,000 for fiscal years 2004 through 2014 to carry out the provisions of this subsection.

SA 2897. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . TRANSMISSION OF PERSONALLY IDENTIFIABLE INFORMATION TO FOREIGN AFFILIATES OR SUBCONTRACTORS.

(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

(1) BUSINESS ENTERPRISE.—The term “business enterprise” means any organization, association, or venture established to make a profit.

(2) COUNTRY WITH ADEQUATE PRIVACY PROTECTION.—The term “country with adequate privacy protection” means a country that has been certified by the Federal Trade Commission as having a legal system that provides adequate privacy protection for such information.

(3) HEALTH CARE BUSINESS.—The term “health care business” means any business enterprise that collects or retains personally identifiable information about consumers in relation to medical care, including—

- (A) hospitals;
- (B) health maintenance organizations;
- (C) medical partnerships;
- (D) emergency medical transportation companies;
- (E) medical transcription companies; and
- (F) subcontractors, or potential subcontractors, of the entities described in subparagraphs (A) through (E).

(4) PERSONALLY IDENTIFIABLE INFORMATION.—The term “personally identifiable information” includes—

- (A) name;
- (B) bank account information;

(C) social security number;

(D) address;

(E) telephone number;

(F) passwords;

(G) mother’s maiden name; and

(H) age.

(b) TRANSMISSION OF INFORMATION.—

(1) IN GENERAL.—A business enterprise may transmit personally identifiable information regarding a citizen of the United States to any foreign affiliate or subcontractor located in a country that is a country with adequate privacy protection.

(2) CONSENT REQUIRED.—A business enterprise may not transmit personally identifiable information regarding a citizen of the United States to any foreign affiliate or subcontractor located in a country that is not a country with adequate privacy protection, unless—

(A) the business enterprise obtains consent from the citizen, before a consumer relationship is established or before the effective date of this section, to transmit such information to such foreign affiliate or subcontractor; and

(B) the consent referred to in subparagraph (A) is renewed by the citizen within 1 year before such information is transmitted.

(3) LIABILITY.—A business enterprise shall be liable for any damages arising from the improper storage, duplication, sharing, or other misuse of personally identifiable information by the business enterprise or by any of its foreign affiliates or subcontractors that received such information from the business enterprise.

(4) RULEMAKING.—The Chairman of the Federal Trade Commission shall promulgate regulations through which the Chairman may enforce the provisions of this subsection and impose a fine for a violation of this subsection.

(c) HEALTH CARE INFORMATION.—

(1) IN GENERAL.—A health care business shall be liable for any damages arising from the improper storage, duplication, sharing, or other misuse of personally identifiable information by the business enterprise or by any of its foreign affiliates or subcontractors that received such information from the business enterprise.

(2) NO OPT OUT PROVISION.—A health care business may not terminate an existing relationship with a consumer of health care services to avoid the consent requirement under subsection (b)(2).

(3) RULEMAKING.—The Secretary of Health and Human Services shall promulgate regulations through which the Secretary may enforce the provisions of this subsection and impose a fine for the violation of this subsection.

(d) EFFECTIVE DATE.—This section shall take effect on the date which is 90 days after the date of enactment of this Act.

SA 2898. Mr. GRASSLEY proposed an amendment to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; as follows:

At the end of the instructions (Amdt. No. 2886) insert the following:

Sec. . This act shall become effective one day following enactment of the legislation.

SA 2899. Mr. GRASSLEY proposed an amendment to amendment SA 2898 pro-

posed by Mr. GRASSLEY to the amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; as follows:

in the pending amendment strike “one” and insert “two”.

SA 2900. Mr. THOMAS (for himself and Mr. DASCHLE) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, add the following:

SEC. ____ . SPECIAL RULES FOR LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

(a) REPLACEMENT OF LIVESTOCK WITH OTHER FARM PROPERTY.—Subsection (f) of section 1033 (relating to involuntary conversions) is amended—

(1) by inserting “drought, flood, or other weather-related conditions, or” after “because of”,

(2) by inserting “in the case of soil contamination or other environmental contamination” after “including real property”, and

(3) by striking “WHERE THERE HAS BEEN ENVIRONMENTAL CONTAMINATION” in the heading and inserting “IN CERTAIN CASES”.

(b) EXTENSION OF REPLACEMENT PERIOD OF INVOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e) of section 1033 (relating to involuntary conversions) is amended—

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

“(1) IN GENERAL.—For purposes”, and

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

“(2) EXTENSION OF REPLACEMENT PERIOD.—

“(A) IN GENERAL.—In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting ‘4 years’ for ‘2 years’.

“(B) FURTHER EXTENSION BY SECRETARY.—The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.”.

(c) INCOME INCLUSION RULES.—Section 451(e) (relating to special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions) is amended by adding at the end the following new paragraph:

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

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SA 2901. Mr. MILLER (for himself, Mr. ALLARD, Mrs. CLINTON, Mr. SCHUMER, and Mr. CHAMBLISS) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 179, after line 25, add the following:

SEC. ____ BROWNFIELDS DEMONSTRATION PROGRAM FOR QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.

(a) **TREATMENT AS EXEMPT FACILITY BOND.**—Subsection (a) of section 142 (relating to the definition of exempt facility bond) is amended by striking “or” at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting “, or”, and by inserting at the end the following new paragraph:

“(14) qualified green building and sustainable design projects.”.

(b) **QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.**—Section 142 (relating to exempt facility bonds) is amended by adding at the end thereof the following new subsection:

“(1) **QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.**—

“(1) **IN GENERAL.**—For purposes of subsection (a)(14), the term ‘qualified green building and sustainable design project’ means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

“(2) **DESIGNATIONS.**—

“(A) **IN GENERAL.**—Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

“(B) **MINIMUM CONSERVATION AND TECHNOLOGY INNOVATION OBJECTIVES.**—The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall—

“(i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,

“(ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,

“(iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and

“(iv) use at least 25 megawatts of fuel cell energy generation.

“(3) **LIMITED DESIGNATIONS.**—A project may not be designated under this subsection unless—

“(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and

“(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

“(4) **APPLICATION.**—

“(A) **IN GENERAL.**—A project may not be designated under this subsection unless the application for such designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

“(i) **GREEN BUILDING AND SUSTAINABLE DESIGN.**—At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council’s LEED certification and is reasonably expected (at the time of the designation) to receive such certification.

“(ii) **BROWNFIELD REDEVELOPMENT.**—The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

“(iii) **STATE AND LOCAL SUPPORT.**—The project receives specific State or local government resources which will support the project in an amount equal to at least \$5,000,000. For purposes of the preceding sentence, the term ‘resources’ includes tax abatement benefits and contributions in kind.

“(iv) **SIZE.**—The project includes at least one of the following:

“(I) At least 1,000,000 square feet of building.

“(II) At least 20 acres.

“(v) **USE OF TAX BENEFIT.**—The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

“(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

“(II) Compliance with LEED certification standards.

“(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

“(vi) **PROHIBITED FACILITIES.**—An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

“(vii) **EMPLOYMENT.**—The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project’s economic impact, including the amount of projected employment.

“(B) **PROJECT DESCRIPTION.**—Each application described in subparagraph (A) shall contain for each project a description of—

“(i) the amount of electric consumption reduced as compared to conventional construction,

“(ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,

“(iii) the amount of the gross installed capacity of the project’s solar photovoltaic capacity measured in megawatts, and

“(iv) the amount, in megawatts, of the project’s fuel cell energy generation.

“(5) **CERTIFICATION OF USE OF TAX BENEFIT.**—No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

“(6) **DEFINITIONS.**—For purposes of this subsection—

“(A) **RURAL STATE.**—The term ‘rural State’ means any State which has—

“(i) a population of less than 4,500,000 according to the 2000 census,

“(ii) a population density of less than 150 people per square mile according to the 2000 census, and

“(iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

“(B) **LOCAL GOVERNMENT.**—The term ‘local government’ has the meaning given such term by section 1393(a)(5).

“(C) **NET BENEFIT OF TAX-EXEMPT FINANCING.**—The term ‘net benefit of tax-exempt financing’ means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

“(7) **AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING.**—

“(A) **IN GENERAL.**—An issue shall not be treated as an issue described in subsection (a)(14) if the aggregate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

“(B) **LIMITATION ON AMOUNT OF BONDS.**—The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding \$2,000,000,000.

“(8) **TERMINATION.**—Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2009.

“(9) **TREATMENT OF CURRENT REFUNDING BONDS.**—Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2009, if—

“(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

“(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

“(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).”.

(c) **EXEMPTION FROM GENERAL STATE VOLUME CAPS.**—Paragraph (3) of section 146(g) (relating to exception for certain bonds) is amended—

(1) by striking “or (13)” and inserting “(13), or (14)”, and

(2) by striking “and qualified public educational facilities” and inserting “qualified public educational facilities, and qualified green building and sustainable design projects”.

(d) **ACCOUNTABILITY.**—Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued

under this section for such project. Not later than 5 years after the date of issuance, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(1)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(1)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.

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

SA 2902. Mr. BOND submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 218, of Senate amendment no. 2886, strike lines 13 through 19, and insert the following:

(c) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—The amendment made by subsection (a) shall apply to transactions after December 31, 2003.

(2) **LIQUIDATIONS.**—The amendment made by subsection (b)(1)(B) shall apply to liquidations after December 31, 2003.

SA 2903. Mr. BOND (for himself and Mr. TALENT) submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the instructions, add the following:

SEC. ____ . EXTENSION OF THE ADDITIONAL TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION FOR DISPLACED AIRLINE RELATED WORKERS.

(a) **IN GENERAL.**—Section 4002(c)(2) of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11; 26 U.S.C. 3304 note), in the deemed matter, is amended—

(1) by striking “December 29, 2003” and inserting “May 17, 2004”; and

(2) by striking “December 28, 2003” and inserting “May 16, 2004”.

EFFECTIVE DATE.—The amendments made by this section shall take effect as if in-

cluded in the enactment of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11; 26 U.S.C. 3304 note).

SA 2904. Mr. BOND submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 64, of Senate amendment no. 2645, as agreed to, strike lines 23 through 25, and insert the following:

(c) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—The amendment made by subsection (a) shall apply to transactions after December 31, 2003.

(2) **LIQUIDATIONS.**—The amendment made by subsection (b)(1)(B) shall apply to liquidations after December 31, 2003.

SA 2905. Mr. NICKLES (for himself and Mrs. LINCOLN) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, add the following:

SEC. ____ . RECOVERY PERIOD FOR CERTAIN WIRELESS TELECOMMUNICATIONS EQUIPMENT.

(a) **IN GENERAL.**—Subparagraph (A) of section 168(i)(2) (defining qualified technological equipment) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by inserting after clause (iii) the following new clause:

“(iv) any wireless telecommunications equipment.”.

(b) **WIRELESS TELECOMMUNICATIONS EQUIPMENT.**—Section 168(i)(2) is amended by inserting after subparagraph (C) the following new subparagraph:

“(D) **WIRELESS TELECOMMUNICATIONS EQUIPMENT.**—For purposes of this paragraph—

“(i) **IN GENERAL.**—The term ‘wireless telecommunications equipment’ means equipment which is used in the transmission, reception, coordination, or switching of wireless telecommunications service.

“(ii) **EXCEPTION.**—Such term does not include towers, buildings, T-1 lines, or other cabling which connects cell sites to mobile switching centers.

“(iii) **WIRELESS TELECOMMUNICATIONS SERVICE.**—For purposes of clause (i), the term ‘wireless telecommunications service’ includes any commercial mobile radio service as defined in title 47 of the Code of Federal Regulations.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to property placed in service after December 31, 2004, and before January 1, 2008.

SA 2906. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply

with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC.

(a) **IN GENERAL.**—Paragraph (1) of section 648 Public Law 98-369 (the Deficit Reduction Act of 1984) is amended to read as follows:

“(1) such securities obligations are held in a fund—

“(A) which, except to the extent of the investment earnings on such securities or obligations, cannot be used, under State constitutional or statutory restrictions continuously in effect since October 9, 1969, through the date of issue of the bond issue, to pay debt service on the bond issue or to finance the facilities that are to be financed with the proceeds of the bonds, or

“(B) the annual distributions from which cannot exceed 7 percent of the average fair market value of the assets held in such fund except to the extent distributions are necessary to pay debt service on the bond issue.”.

(b) **CONFORMING AMENDMENT.**—Paragraph (3) of such section is amended by striking “the investment earnings of” and inserting “distributions from.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 2000.

SA 2907. Mr. MCCONNELL submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

TITLE V—EXTENSION OF NORMAL TRADE RELATIONS TO ARMENIA

SEC. 501. FINDINGS.

Congress makes the following findings:

(1) Armenia has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974.

(2) Armenia acceded to the World Trade Organization on February 5, 2003.

(3) Since declaring its independence from the Soviet Union in 1991, Armenia has made considerable progress in enacting free-market reforms within a stable democratic framework.

(4) Armenia has demonstrated a strong desire to build a friendly and cooperative relationship with the United States and has concluded many bilateral treaties and agreements with the United States.

(5) United States-Armenia bilateral trade for 2002 totaled more than \$134,200,000.

SEC. 502. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ARMENIA.

(a) **PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.**—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title shall no longer apply to Armenia; and

(2) after making a determination under paragraph (1) with respect to Armenia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(b) **TERMINATION OF APPLICATION OF TITLE IV.**—On and after the effective date of the extension under subsection (a)(2) of non-discriminatory treatment to the products of Armenia, title IV of the Trade Act of 1974 shall cease to apply to that country.

SA 2908. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 68, strike lines 17 through 20, and insert:

(4) **BASE PERIOD AMOUNT.**—For purposes of this subsection, the base period amount is the average FSC/ETI benefit for the taxpayer's taxable years beginning in calendar years 2000, 2001, and 2002.

SA 2909. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE V—MISCELLANEOUS PROVISIONS.

SEC. 501. TEMPORARY WORKER PROVISIONS.

(a) **ATTESTATION REQUIREMENTS FOR H-1B WORKERS.**—Section 212(n)(1)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(E)(ii)) is amended by striking “October 1, 2003,” and inserting “October 1, 2005.”

(b) **H-1B EMPLOYER PETITIONS.**—Section 214(c)(9) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(9)) is amended—

(1) in subparagraph (A), by striking “October 1, 2003” and inserting “October 1, 2005.”; and

(2) by striking subparagraphs (B) and (C) and inserting the following:

“(B) The amount of the fee shall be \$2,000 for each such petition, of which—

“(i) \$1,000 shall be deposited in the H-1B Nonimmigrant Petitioner Account in accordance with paragraphs (1) through (5) of section 286(s); and

“(ii) \$1,000 shall be deposited in the H-1B Nonimmigrant Petitioner Account in accordance with paragraph (6) of section 286(s).”

(c) **H-1B NONIMMIGRANT PETITIONER ACCOUNT.**—Section 286(s) of the Immigration and Nationality Act (8 U.S.C. 1356(s)) is amended by adding at the end the following:

“(6) **TRADE ADJUSTMENT ASSISTANCE.**—One hundred percent of amounts deposited into the H-1B Nonimmigrant Petitioner Account in accordance with sections 214(c)(9)(B)(ii) and 214(c)(2)(F) shall remain available to the Secretary of Labor until expended for trade adjustment assistance programs under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.). Such amounts shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide trade adjustment assistance for workers.”

(d) **L VISA BLANKET PETITIONS.**—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

“(F) The Secretary of Homeland Security shall impose a fee on any employer that files a blanket petition to import aliens as non-immigrants described in section 101(a)(15)(L) in an amount equal to \$1,500 for each blanket petition filed by such employer. The fee shall be deposited in the H-1B Nonimmigrant Petitioner Account in accordance with paragraph (6) of section 286(s).”

(e) **TECHNICAL AND CONFORMING AMENDMENTS.**—Section 286(s) of the Immigration and Nationality Act (8 U.S.C. 1356(s)) is amended in paragraphs (2) through (5) by inserting “in accordance with section 214(c)(9)(B)(i)” after “H-1B Nonimmigrant Petitioner Account” each place that term appears.

SA 2910. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the instructions, add the following:

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. TEMPORARY DUTY REDUCTIONS FOR CERTAIN COTTON SHIRTING FABRIC.

(a) **CERTAIN COTTON SHIRTING FABRICS.**—

(1) **IN GENERAL.**—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

| | | | | | | | |
|---|------------|---|------|-----------|-----------|-------------------------|----|
| “ | 9902.52.08 | Woven fabrics of cotton, all the foregoing certified by the importer as suitable for use in making men's and boys' shirts and as imported by or for the benefit of a manufacturer of men's and boys' shirts, subject to the quantity limitations contained in general note 18 of this subchapter (provided for in section 204(b)(3)(B)(i)(III) of the Andean Trade Preference Act (19 U.S.C. 3203)) | Free | No change | No change | On or before 12/31/2005 | |
| | 9902.52.09 | Woven fabrics of cotton, all the foregoing certified by the importer as containing 100 percent pima cotton grown in the United States, as suitable for use in making men's and boys' shirts, and as imported by or for the benefit of a manufacturer of men's and boys' shirts (provided for in section 204(b)(3)(B)(i)(III) of the Andean Trade Preference Act (19 U.S.C. 3203)) | Free | No change | No change | On or before 12/31/2005 | ”. |

(2) **DEFINITIONS AND LIMITATION ON QUANTITY OF IMPORTS.**—The U.S. Notes to chapter 99 are amended by adding at the end the following:

“17. For purposes of subheadings 9902.52.08 and 9902.52.09, the term ‘making’ means cutting and sewing in the United States, and the term ‘manufacturer’ means a person or entity that cuts and sews in the United States.

“18. The aggregate quantity of cotton fabrics entered under subheading 9902.52.08 from January 1 to December 31 of each year, inclusive, by or on behalf of each manufacturer of men's and boys' shirts shall be limited to 85 percent of the total square meter equivalents of all imported cotton woven fabric used by such manufacturer in cutting and sewing men's and boys' cotton shirts in the United States and purchased by such manufacturer during calendar year 2000.”

(b) **DETERMINATION OF TARIFF-RATE QUOTAS.**—

(1) **AUTHORITY TO ISSUE LICENSES AND LICENSE USE.**—To implement the limitation on the quantity of imports of cotton woven fabrics under subheading 9902.52.08 of the Harmonized Tariff Schedule of the United States, as required by U.S. Note 18 to subchapter II of chapter 99 of such Schedule, for the entry, or withdrawal from warehouse for consumption, the Secretary of Commerce shall issue licenses designating eligible manufacturers and the annual quantity restrictions under each such license. A licensee may assign the authority (in whole or in part) to import fabric under subheading 9902.52.08 of such Schedule.

(2) **LICENSES UNDER U.S. NOTE 18.**—For purposes of U.S. Note 18 to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States, as added by subsection

(a)(2), a license shall be issued within 60 days of an application containing a notarized affidavit from an officer of the manufacturer that the manufacturer is eligible to receive a license and stating the quantity of imported cotton woven fabric purchased during calendar year 2000 for use in the cutting and sewing men's and boys' shirts in the United States.

(3) **AFFIDAVITS.**—For purposes of an affidavit described in this subsection, the date of purchase shall be—

(A) the invoice date if the manufacturer is not the importer of record; and

(B) the date of entry if the manufacturer is the importer of record.

SEC. 502. COTTON TRUST FUND.

(a) **IN GENERAL.**—There is established in the Treasury of the United States a trust fund to be known as the “Pima Cotton Trust Fund”, consisting of \$32,000,000 transferred to

the Pima Cotton Trust Fund from funds in the general fund of the Treasury.

(b) GRANTS.—

(1) GENERAL PURPOSE.—From amounts in the Pima Cotton Trust Fund, the Secretary of Commerce is authorized to provide grants to spinners of United States grown pima cotton, manufacturers of men's and boys' cotton shirting, and a nationally recognized association that promotes the use of pima cotton grown in the United States, to assist such spinners and manufacturers in maximizing United States employment in the production of textile or apparel products and to increase the promotion of the use of United States grown pima cotton respectively.

(2) TIMING FOR GRANT AWARDS.—The Secretary of the Treasury shall, not later than 90 days after the date of enactment of this section, establish guidelines for the application and awarding of the grants described in paragraph (1), and shall award such grants to qualified applicants not later than 180 days after the date of enactment of this section. Each grant awarded under this section shall be distributed to the qualified applicant in 2 equal annual installments.

(3) DISTRIBUTION OF FUNDS.—Of the amounts in the Pima Cotton Trust Fund—

(A) \$8,000,000 shall be made available to a nationally recognized association established for the promotion of pima cotton grown in the United States for the use in textile and apparel goods;

(B) \$8,000,000 shall be made available to yarn spinners of pima cotton grown in the United States, and shall be allocated to each spinner based on the percentage of the spinner's production of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), from pima cotton grown in the United States in single and plied form during calendar year 2002 (as evidenced by an affidavit provided by the spinner), compared to the production of such yarns for all spinners who qualify under this subparagraph; and

(C) \$16,000,000 shall be made available to manufacturers who cut and sew cotton shirts in the United States and that certify that they used imported cotton fabric during the period January 1, 1998, through July 1, 2003,

and shall be allocated to each manufacturer on the bases of the dollar value (excluding duty, shipping, and related costs) of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased by the manufacturer during calendar year 2002 (as evidenced by an affidavit from the manufacturer) used in the manufacturing of men's and boys' cotton shirts, compared to the dollar value (excluding duty, shipping, and related costs) of such fabric for all manufacturers who qualify under this subparagraph.

(4) AFFIDAVIT OF SHIRTING MANUFACTURERS.—For purposes of paragraph (3)(D), an officer of the manufacturer of men's and boys' shirts shall provide a notarized affidavit affirming—

(A) that the manufacturer used imported cotton fabric during the period January 1, 1998, through July 1, 2003, to cut and sew men's and boys' woven cotton shirts in the United States;

(B) the dollar value of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased during calendar year 2002;

(C) that the manufacturer maintains invoices along with other supporting documentation (such as price lists and other technical descriptions of the fabric qualities) showing the dollar value of such fabric purchased, the date of purchase, and evidencing the fabric as woven cotton fabric of 80s or higher count and 2-ply in warp; and

(D) that the fabric was suitable for use in the manufacturing of men's and boys' cotton shirts.

(5) DATE OF PURCHASE.—For purposes of the affidavit required by paragraph (4), the date of purchase shall be the invoice date, and the dollar value shall be determined excluding duty, shipping, and related costs.

(6) AFFIDAVIT OF YARN SPINNERS.—For purposes of paragraph (3)(B), an officer of a company that produces ring-spun yarns shall provide a notarized affidavit affirming—

(A) that the manufacturer used pima cotton grown in the United States during the period January 1, 2002, through December 31, 2002, to produce ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during 2002;

(B) the quantity, measured in pounds, of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during calendar year 2002; and

(C) that the manufacturer maintains supporting documentation showing the quantity of such yarns produced, and evidencing the yarns as ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during calendar year 2002.

(7) NO APPEAL.—Any grant awarded by the Secretary under this section shall be final and not subject to appeal or protest.

(c) AUTHORIZATION.—There are authorized to be appropriated, and are appropriated out of the amounts in the general fund of the Treasury not otherwise appropriated, such sums as are necessary to carry out the provisions of this section, including funds necessary for the administration and oversight of the grants provided for in this section.

SA 2911. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the instructions, add the following:

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. TEMPORARY DUTY REDUCTIONS FOR CERTAIN COTTON SHIRTING FABRIC.

(a) CERTAIN COTTON SHIRTING FABRICS.—

(1) IN GENERAL.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

| | | | | | | |
|---|------------|---|------|-----------|-----------|-------------------------|
| “ | 9902.52.08 | Woven fabrics of cotton, all the foregoing certified by the importer as suitable for use in making men's and boys' shirts and as imported by or for the benefit of a manufacturer of men's and boys' shirts, subject to the quantity limitations contained in general note 18 of this subchapter (provided for in section 204(b)(3)(B)(i)(III) of the Andean Trade Preference Act (19 U.S.C. 3203)) | Free | No change | No change | On or before 12/31/2005 |
| | 9902.52.09 | Woven fabrics of cotton, all the foregoing certified by the importer as containing 100 percent pima cotton grown in the United States, as suitable for use in making men's and boys' shirts, and as imported by or for the benefit of a manufacturer of men's and boys' shirts (provided for in section 204(b)(3)(B)(i)(III) of the Andean Trade Preference Act (19 U.S.C. 3203)) | Free | No change | No change | On or before 12/31/2005 |
| | | | | | | ”. |

(2) DEFINITIONS AND LIMITATION ON QUANTITY OF IMPORTS.—The U.S. Notes to chapter 99 are amended by adding at the end the following:

“17. For purposes of subheadings 9902.52.08 and 9902.52.09, the term ‘making’ means cutting and sewing in the United States, and the term ‘manufacturer’ means a person or entity that cuts and sews in the United States.

“18. The aggregate quantity of cotton fabrics entered under subheading 9902.52.08 from January 1 to December 31 of each year, inclusive, by or on behalf of each manufacturer of men's and boys' shirts shall be limited to 85 percent of the total square meter equivalents of all imported cotton woven fabric used by such manufacturer in cutting and sewing men's and boys' cotton shirts in the United States and purchased by such manufacturer during calendar year 2000.”.

(b) DETERMINATION OF TARIFF-RATE QUOTAS.—

(1) AUTHORITY TO ISSUE LICENSES AND LICENSE USE.—To implement the limitation on the quantity of imports of cotton woven fabrics under subheading 9902.52.08 of the Harmonized Tariff Schedule of the United States, as required by U.S. Note 18 to subchapter II of chapter 99 of such Schedule, for the entry, or withdrawal from warehouse for consumption, the Secretary of Commerce shall issue licenses designating eligible manufacturers and the annual quantity restrictions under each such license. A licensee may assign the authority (in whole or in part) to import fabric under subheading 9902.52.08 of such Schedule.

(2) LICENSES UNDER U.S. NOTE 18.—For purposes of U.S. Note 18 to subchapter II of chapter 99 of the Harmonized Tariff Schedule

of the United States, as added by subsection (a)(2), a license shall be issued within 60 days of an application containing a notarized affidavit from an officer of the manufacturer that the manufacturer is eligible to receive a license and stating the quantity of imported cotton woven fabric purchased during calendar year 2000 for use in the cutting and sewing men's and boys' shirts in the United States.

(3) AFFIDAVITS.—For purposes of an affidavit described in this subsection, the date of purchase shall be—

(A) the invoice date if the manufacturer is not the importer of record; and

(B) the date of entry if the manufacturer is the importer of record.

SEC. 502. COTTON TRUST FUND.

(a) IN GENERAL.—There is established in the Treasury of the United States a trust

fund to be known as the "Pima Cotton Trust Fund", consisting of \$32,000,000 transferred to the Pima Cotton Trust Fund from funds in the general fund of the Treasury.

(b) GRANTS.—

(1) GENERAL PURPOSE.—From amounts in the Pima Cotton Trust Fund, the Secretary of Commerce is authorized to provide grants to spinners of United States grown pima cotton, manufacturers of men's and boys' cotton shirting, and a nationally recognized association that promotes the use of pima cotton grown in the United States, to assist such spinners and manufacturers in maximizing United States employment in the production of textile or apparel products and to increase the promotion of the use of United States grown pima cotton respectively.

(2) TIMING FOR GRANT AWARDS.—The Secretary of the Treasury shall, not later than 90 days after the date of enactment of this section, establish guidelines for the application and awarding of the grants described in paragraph (1), and shall award such grants to qualified applicants not later than 180 days after the date of enactment of this section. Each grant awarded under this section shall be distributed to the qualified applicant in 2 equal annual installments.

(3) DISTRIBUTION OF FUNDS.—Of the amounts in the Pima Cotton Trust Fund—

(A) \$8,000,000 shall be made available to a nationally recognized association established for the promotion of pima cotton grown in the United States for the use in textile and apparel goods;

(B) \$8,000,000 shall be made available to yarn spinners of pima cotton grown in the United States, and shall be allocated to each spinner based on the percentage of the spinner's production of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), from pima cotton grown in the United States in single and plied form during calendar year 2002 (as evidenced by an affidavit provided by the spinner), compared to the production of such yarns for all spinners who qualify under this subparagraph; and

(C) \$16,000,000 shall be made available to manufacturers who cut and sew cotton shirts in the United States and that certify that they used imported cotton fabric during the period January 1, 1998, through July 1, 2003, and shall be allocated to each manufacturer on the bases of the dollar value (excluding duty, shipping, and related costs) of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased by the manufacturer during calendar year 2002 (as evidenced by an affidavit from the manufacturer) used in the manufacturing of men's and boys' cotton shirts, compared to the dollar value (excluding duty, shipping, and related costs) of such fabric for all manufacturers who qualify under this subparagraph.

(4) AFFIDAVIT OF SHIRTING MANUFACTURERS.—For purposes of paragraph (3)(D), an officer of the manufacturer of men's and boys' shirts shall provide a notarized affidavit affirming—

(A) that the manufacturer used imported cotton fabric during the period January 1, 1998, through July 1, 2003, to cut and sew men's and boys' woven cotton shirts in the United States;

(B) the dollar value of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased during calendar year 2002;

(C) that the manufacturer maintains invoices along with other supporting documentation (such as price lists and other technical descriptions of the fabric qualities) showing the dollar value of such fabric purchased, the date of purchase, and evidencing

the fabric as woven cotton fabric of 80s or higher count and 2-ply in warp; and

(D) that the fabric was suitable for use in the manufacturing of men's and boys' cotton shirts.

(5) DATE OF PURCHASE.—For purposes of the affidavit required by paragraph (4), the date of purchase shall be the invoice date, and the dollar value shall be determined excluding duty, shipping, and related costs.

(6) AFFIDAVIT OF YARN SPINNERS.—For purposes of paragraph (3)(B), an officer of a company that produces ring-spun yarns shall provide a notarized affidavit affirming—

(A) that the manufacturer used pima cotton grown in the United States during the period January 1, 2002, through December 31, 2002, to produce ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during 2002;

(B) the quantity, measured in pounds, of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during calendar year 2002; and

(C) that the manufacturer maintains supporting documentation showing the quantity of such yarns produced, and evidencing the yarns as ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during calendar year 2002.

(7) NO APPEAL.—Any grant awarded by the Secretary under this section shall be final and not subject to appeal or protest.

(c) AUTHORIZATION.—There are authorized to be appropriated, and are appropriated out of the amounts in the general fund of the Treasury not otherwise appropriated, such sums as are necessary to carry out the provisions of this section, including funds necessary for the administration and oversight of the grants provided for in this section.

SA 2912. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 22, strike lines 3 through 14 and insert the following:

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

“(1) IN GENERAL.—

“(A) RECEIPTS FROM QUALIFYING PRODUCTION PROPERTY.—The term ‘domestic production gross receipts’ means the gross receipts of the taxpayer which are derived from—

“(i) any sale, exchange, or other disposition of, or

“(ii) any lease, rental, or license of,

qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

“(B) RECEIPTS FROM CERTAIN SERVICES.—Such term also includes the gross receipts of the taxpayer which are derived from any construction, engineering, or architectural services performed in the United States for construction projects in the United States.

SA 2913. Mr. NICKLES (for himself and Mrs. LINCOLN) submitted an amendment intended to be proposed to

amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title III of the instructions, add the following:

SEC. ____ RECOVERY PERIOD FOR CERTAIN WIRELESS TELECOMMUNICATIONS EQUIPMENT.

(a) IN GENERAL.—Subparagraph (A) of section 168(i)(2) (defining qualified technological equipment) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by inserting after clause (iii) the following new clause:

“(iv) any wireless telecommunications equipment.”.

(b) WIRELESS TELECOMMUNICATIONS EQUIPMENT.—Section 168(i)(2) is amended by inserting after subparagraph (C) the following new subparagraph:

“(D) WIRELESS TELECOMMUNICATIONS EQUIPMENT.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘wireless telecommunications equipment’ means equipment which is used in the transmission, reception, coordination, or switching of wireless telecommunications service.

“(ii) EXCEPTION.—Such term does not include towers, buildings, T-1 lines, or other cabling which connects cell sites to mobile switching centers.

“(iii) WIRELESS TELECOMMUNICATIONS SERVICE.—For purposes of clause (i), the term ‘wireless telecommunications service’ includes any commercial mobile radio service as defined in title 47 of the Code of Federal Regulations.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, and before January 1, 2008.

SA 2914. Mr. COLEMAN submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the instructions, add the following:

TITLE V—NON-REVENUE PROVISIONS

SEC. 501. CUSTOMS SERVICES.

Section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1)) is amended—

(1) by striking “(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)),” and inserting:

“(1) IN GENERAL.—

“(A) SCHEDULED FLIGHTS.—Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than subparagraph (B) and paragraph (2)),”;

(2) by adding at the end the following:

“(B) CHARTER FLIGHTS.—If an air carrier (as defined in section 40102(2) of title 49, United States Code) specifically requests that customs border patrol services for passengers and their baggage be provided for a charter flight arriving after normal operating hours at a customs border patrol serviced airport and overtime funds for those services are not available, the appropriate customs border patrol officer may assign sufficient customs employees (if available) to perform any such services, which could lawfully be performed during regular hours of operation, and any overtime fees incurred in connection with such service shall be paid by the air carrier.”.

SA 2915. Mr. COLEMAN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1968 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE V—NON-REVENUE PROVISIONS

SEC. 501. CUSTOMS SERVICES.

Section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1)) is amended—

(1) by striking “(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)),” and inserting:

“(1) IN GENERAL.—

“(A) SCHEDULED FLIGHTS.—Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than subparagraph (B) and paragraph (2)),”;

(2) by adding at the end the following:

“(B) CHARTER FLIGHTS.—If an air carrier (as defined in section 40102(2) of title 49, United States Code) specifically requests that customs border patrol services for passengers and their baggage be provided for a charter flight arriving after normal operating hours at a customs border patrol serviced airport and overtime funds for those services are not available, the appropriate customs border patrol officer may assign sufficient customs employees (if available) to perform any such services, which could lawfully be performed during regular hours of operation, and any overtime fees incurred in connection with such service shall be paid by the air carrier.”.

SA 2916. Mr. WYDEN (for himself and Mr. COLEMAN) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE V—TRADE ADJUSTMENT ASSISTANCE

Subtitle A—Service Workers

SEC. 511. SHORT TITLE.

This subtitle may be cited as the “Trade Adjustment Assistance Equity For Service Workers Act of 2004”.

SEC. 512. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE TO SERVICES SECTOR.

(a) ADJUSTMENT ASSISTANCE FOR WORKERS.—Section 221(a)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2271(a)(1)(A)) is amended by striking “firm)” and inserting “firm, and workers in a service sector firm or subdivision of a service sector firm or public agency”.

(b) GROUP ELIGIBILITY REQUIREMENTS.—Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “agricultural firm)” and inserting “agricultural firm, and workers in a service sector firm or subdivision of a service sector firm or public agency”;

(B) in paragraph (1), by inserting “or public agency” after “of the firm”; and

(C) in paragraph (2)—

(i) in subparagraph (A)(ii), by striking “like or directly competitive with articles produced” and inserting “or services like or directly competitive with articles produced or services provided”; and

(ii) by striking subparagraph (B) and inserting the following:

“(B)(i) there has been a shift, by such workers’ firm, subdivision, or public agency to a foreign country, of production of articles, or in provision of services, like or directly competitive with articles which are produced, or services which are provided, by such firm, subdivision, or public agency; or

“(ii) such workers’ firm, subdivision, or public agency has obtained or is likely to obtain such services from a foreign country.”;

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking “agricultural firm)” and inserting “agricultural firm, and workers in a service sector firm or subdivision of a service sector firm or public agency”;

(B) in paragraph (2), by inserting “or service” after “related to the article”; and

(C) in paragraph (3)(A), by inserting “or services” after “component parts”;

(3) in subsection (c)—

(A) in paragraph (2), by adding at the end the following:

“(C) Taconite pellets produced in the United States shall be considered to be an article that is like or directly competitive with imports of semifinished steel slab.”.

(B) in paragraph (3)—

(i) by inserting “or services” after “value-added production processes”;

(ii) by striking “or finishing” and inserting “, finishing, or testing”;

(iii) by inserting “or services” after “for articles”; and

(iv) by inserting “(or subdivision)” after “such other firm”; and

(C) in paragraph (4)—

(i) by striking “for articles” and inserting “, or services, used in the production of articles or in the provision of services”; and

(ii) by inserting “(or subdivision)” after “such other firm”; and

(4) by adding at the end the following new subsection:

“(d) BASIS FOR SECRETARY’S DETERMINATIONS.—

“(1) INCREASED IMPORTS.—For purposes of subsection (a)(2)(A)(ii), the Secretary may determine that increased imports of like or directly competitive articles or services exist if the workers’ firm or subdivision or customers of the workers’ firm or subdivi-

sion accounting for not less than 20 percent of the sales of the workers’ firm or subdivision certify to the Secretary that they are obtaining such articles or services from a foreign country.

“(2) OBTAINING SERVICES ABROAD.—For purposes of subsection (a)(2)(B)(ii), the Secretary may determine that the workers’ firm, subdivision, or public agency has obtained or is likely to obtain like or directly competitive services from a firm in a foreign country based on a certification thereof from the workers’ firm, subdivision, or public agency.

“(3) AUTHORITY OF THE SECRETARY.—The Secretary may obtain the certifications under paragraphs (1) and (2) through questionnaires or in such other manner as the Secretary determines is appropriate.”.

(c) TRAINING.—Section 236(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2296(a)(2)(A)) is amended by striking “\$220,000,000” and inserting “\$440,000,000”.

(d) DEFINITIONS.—Section 247 of the Trade Act of 1974 (19 U.S.C. 2319) is amended—

(1) in paragraph (1)—

(A) by inserting “or public agency” after “of a firm”; and

(B) by inserting “or public agency” after “or subdivision”;

(2) in paragraph (2)(B), by inserting “or public agency” after “the firm”;

(3) by redesignating paragraphs (8) through (17) as paragraphs (9) through (18), respectively; and

(4) by inserting after paragraph (6) the following:

“(7) The term ‘public agency’ means a department or agency of a State or local government or of the Federal Government.

“(8) The term ‘service sector firm’ means an entity engaged in the business of providing services.”.

(e) TECHNICAL AMENDMENT.—Section 245(a) of the Trade Act of 1974 (19 U.S.C. 2317(a)) is amended by striking “, other than subchapter D”.

SEC. 513. TRADE ADJUSTMENT ASSISTANCE FOR FIRMS AND INDUSTRIES.

(a) FIRMS.—

(1) ASSISTANCE.—Section 251 of the Trade Act of 1974 (19 U.S.C. 2341) is amended—

(A) in subsection (a), by inserting “or service sector firm” after “(including any agricultural firm”;

(B) in subsection (c)(1)—

(i) in the matter preceding subparagraph (A), by inserting “or service sector firm” after “any agricultural firm”;

(ii) in subparagraph (B)(ii), by inserting “or service” after “of an article”; and

(iii) in subparagraph (C), by striking “articles like or directly competitive with articles which are produced” and inserting “articles or services like or directly competitive with articles or services which are produced or provided”; and

(C) by adding at the end the following:

“(e) BASIS FOR SECRETARY DETERMINATION.—

“(1) INCREASED IMPORTS.—For purposes of subsection (c)(1)(C), the Secretary may determine that increases of imports of like or directly competitive articles or services exist if customers accounting for not less than 20 percent of the sales of the workers’ firm certify to the Secretary that they are obtaining such articles or services from a foreign country.

“(2) AUTHORITY OF THE SECRETARY.—The Secretary may obtain the certifications under paragraph (1) through questionnaires or in such other manner as the Secretary determines is appropriate. The Secretary may exercise the authority under section 249 in carrying out this subsection.”.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 256(b) of the Trade Act of 1974 (19

U.S.C. 2346(b)) is amended by striking "\$16,000,000" and inserting "\$32,000,000".

(3) DEFINITION.—Section 261 of the Trade Act of 1974 (19 U.S.C. 2351) is amended—

(A) by striking "For purposes of" and inserting "(a) FIRM.—For purposes of"; and

(B) by adding at the end the following:

"(b) SERVICE SECTOR FIRM.—For purposes of this chapter, the term 'service sector firm' means a firm engaged in the business of providing services."

(b) INDUSTRIES.—Section 265(a) of the Trade Act of 1974 (19 U.S.C. 2355(a)) is amended by inserting "or service" after "new product".

SEC. 514. MONITORING AND REPORTING.

Section 282 of the Trade Act of 1974 (19 U.S.C. 2393) is amended—

(1) in the first sentence—

(A) by striking "The Secretary" and inserting "(a) MONITORING PROGRAMS.—The Secretary";

(B) by inserting "and services" after "imports of articles";

(C) by inserting "and domestic provision of services" after "domestic production";

(D) by inserting "or providing services" after "producing articles"; and

(E) by inserting "or provision of services," after "changes in production"; and

(2) by adding at the end the following:

"(b) COLLECTION OF DATA AND REPORTS ON SERVICES SECTOR.—

"(1) SECRETARY OF LABOR.—Not later than 3 months after the date of the enactment of the Trade Adjustment Assistance Equity For Service Workers Act of 2004, the Secretary of Labor shall implement a system to collect data on adversely affected service workers that includes the number of workers by State, industry, and cause of dislocation of each worker.

"(2) SECRETARY OF COMMERCE.—Not later than 6 months after such date of enactment, the Secretary of Commerce shall, in consultation with the Secretary of Labor, conduct a study and report to the Congress on ways to improve the timeliness and coverage of data on trade in services, including methods to identify increased imports due to the relocation of United States firms to foreign countries, and increased imports due to United States firms obtaining services from firms in foreign countries."

SEC. 515. ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE.

IN GENERAL.—Section 246(a)(3) of the Trade Act of 1974 (19 U.S.C. 2318(a)(3)) is amended to read as follows:

"(3) ELIGIBILITY.—A worker in the group that the Secretary has certified as eligible for the alternative trade adjustment assistance program may elect to receive benefits under the alternative trade adjustment assistance program if the worker—

"(A) is covered by a certification under subchapter A of this chapter;

"(B) obtains reemployment not more than 26 weeks after the date of separation from the adversely affected employment;

"(C) is at least 40 years of age;

"(D) earns not more than \$50,000 a year in wages from reemployment;

"(E) is employed on a full-time basis as defined by State law in the State in which the worker is employed; and

"(F) does not return to the employment from which the worker was separated."

(b) CONFORMING AMENDMENTS.—(1) Subparagraphs (A) and (B) of section 246(a)(2) of the Trade Act of 1974 (19 U.S.C. 2318(a)(2)) (A) and (B) are amended by striking "paragraph (3)(B)" and inserting "paragraph (3)" each place it appears.

(2) Section 246(b)(2) of such Act is amended by striking "subsection (a)(3)(B)" and inserting "subsection (a)(3)".

SEC. 516. CLARIFICATION OF MARKETING YEAR.

Section 291(5) of the Trade Act of 1974 (19 U.S.C. 2401(5)) is amended by inserting before the end period the following: "or in the case of an agricultural commodity that has no marketing year, in a 12-month period for which the petitioner provides written justification".

SEC. 517. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this subtitle shall take effect on October 1, 2004.

(b) SPECIAL RULE FOR CERTAIN SERVICE WORKERS.—A group of workers in a service sector firm, or subdivision of a service sector firm, or public agency (as defined in section 247 (7) and (8) of the Trade Act of 1974, as added by section 512(d) of this Act) who—

(1) would have been certified eligible to apply for adjustment assistance under chapter 2 of title II of the Trade Act of 1974 if the amendments made by this Act had been in effect on November 4, 2002, and

(2) file a petition pursuant to section 221 of such Act within 6 months after the date of enactment of this Act,

shall be eligible for certification under section 223 of the Trade Act of 1974 if the workers' last total or partial separation from the firm or subdivision of the firm or public agency occurred on or after November 4, 2002 and before October 1, 2004.

(c) SPECIAL RULE FOR TACONITE.—A group of workers in a firm, or subdivision of a firm, engaged in the production of taconite pellets who—

(1) would have been certified eligible to apply for adjustment assistance under chapter 2 of title II of the Trade Act of 1974 if the amendments made by this Act had been in effect on November 4, 2002, and

(2) file a petition pursuant to section 221 of such Act within 6 months after the date of enactment of this Act,

shall be eligible for certification under section 223 of the Trade Act of 1974 if the workers' last total or partial separation from the firm or subdivision of the firm occurred on or after November 4, 2002 and before October 1, 2004.

Subtitle B—Data Collection

SEC. 521. SHORT TITLE.

This subtitle may be cited as the "Trade Adjustment Assistance Accountability Act".

SEC. 522. DATA COLLECTION; STUDY; INFORMATION TO WORKERS.

(a) DATA COLLECTION; EVALUATIONS.—Subchapter C of chapter 2 of title II of the Trade Act of 1974 is amended by inserting after section 249, the following new section:

"SEC. 250. DATA COLLECTION; EVALUATIONS; REPORTS.

"(a) DATA COLLECTION.—The Secretary shall, pursuant to regulations prescribed by the Secretary, collect any data necessary to meet the requirements of this chapter.

"(b) PERFORMANCE EVALUATIONS.—The Secretary shall establish an effective performance measuring system to evaluate the following:

"(1) PROGRAM PERFORMANCE.—A comparison of the trade adjustment assistance program before and after the effective date of the Trade Adjustment Assistance Reform Act of 2002 with respect to—

"(A) the number of workers certified and the number of workers actually participating in the trade adjustment assistance program;

"(B) the time for processing petitions;

"(C) the number of training waivers granted;

"(D) the coordination of programs under this chapter with programs under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

"(E) the effectiveness of individual training providers in providing appropriate information and training;

"(F) the extent to which States have designed and implemented health care coverage options under title II of the Trade Act of 2002, including any difficulties States have encountered in carrying out the provisions of title II;

"(G) how Federal, State, and local officials are implementing the trade adjustment assistance program to ensure that all eligible individuals receive benefits, including providing outreach, rapid response, and other activities; and

"(H) any other data necessary to evaluate how individual States are implementing the requirements of this chapter.

"(2) PROGRAM PARTICIPATION.—The effectiveness of the program relating to—

"(A) the number of workers receiving benefits and the type of benefits being received both before and after the effective date of the Trade Adjustment Assistance Reform Act of 2002;

"(B) the number of workers enrolled in, and the duration of, training by major types of training both before and after the effective date of the Trade Adjustment Assistance Reform Act of 2002;

"(C) earnings history of workers that reflects wages before separation and wages in any job obtained after receiving benefits under this Act;

"(D) reemployment rates and sectors in which dislocated workers have been employed;

"(E) the cause of dislocation identified in each petition that resulted in a certification under this chapter; and

"(F) the number of petitions filed and workers certified in each congressional district of the United States.

"(c) STATE PARTICIPATION.—The Secretary shall ensure, to the extent practicable, through oversight and effective internal control measures the following:

"(1) STATE PARTICIPATION.—Participation by each State in the performance measurement system established under subsection (b).

"(2) MONITORING.—Monitoring by each State of internal control measures with respect to performance measurement data collected by each State.

"(3) RESPONSE.—The quality and speed of the rapid response provided by each State under section 134(a)(2)(A) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(a)(2)(A)).

"(d) REPORTS.—

"(1) REPORTS BY THE SECRETARY.—

"(A) INITIAL REPORT.—Not later than 6 months after the date of enactment of the Trade Adjustment Assistance Accountability Act, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that—

"(i) describes the performance measurement system established under subsection (b);

"(ii) includes analysis of data collected through the system established under subsection (b); and

"(iii) provides recommendations for program improvements.

"(B) ANNUAL REPORT.—Not later than 1 year after the date the report is submitted under subparagraph (A), and annually thereafter, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that includes the information collected under clause (ii) of subparagraph (A).

"(2) STATE REPORTS.—Pursuant to regulations prescribed by the Secretary, each State

shall submit to the Secretary a report that details its participation in the programs established under this chapter, and that contains the data necessary to allow the Secretary to submit the report required under paragraph (1).

“(3) PUBLICATION.—The Secretary shall make available to each State, and other public and private organizations as determined by the Secretary, the data gathered and evaluated through the performance measurement system established under subsection (b).”.

(b) CONFORMING AMENDMENTS.—

(1) COORDINATION.—Section 281 of the Trade Act of 1974 (19 U.S.C. 2392) is amended by striking “Departments of Labor and Commerce” and inserting “Departments of Labor, Commerce, and Agriculture”.

(2) TRADE MONITORING SYSTEM.—Section 282 of the Trade Act of 1974 (19 U.S.C. 2393) is amended by striking “The Secretary of Commerce and the Secretary of Labor” and inserting “The Secretaries of Commerce, Labor, and Agriculture”.

(3) TABLE OF CONTENTS.—The table of contents for title II of the Trade Act of 1974 is amended by inserting after the item relating to section 249, the following new item:

“Sec. 250. Data collection; evaluations; reports.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

Subtitle C—Trade Adjustment Assistance for Communities

SEC. 531. SHORT TITLE.

This subtitle may be cited as the “Trade Adjustment Assistance for Communities Act of 2004”.

SEC. 532. PURPOSE.

The purpose of this subtitle is to assist communities negatively impacted by trade with economic adjustment through the integration of political and economic organizations, the coordination of Federal, State, and local resources, the creation of community-based development strategies, and the provision of economic transition assistance.

SEC. 533. TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES.

Chapter 4 of title II of the Trade Act of 1974 (19 U.S.C. 2371 et seq.) is amended to read as follows:

“CHAPTER 4—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

“SEC. 271. DEFINITIONS.

“In this chapter:

“(1) AFFECTED DOMESTIC PRODUCER.—The term ‘affected domestic producer’ means any manufacturer, producer, service provider, farmer, rancher, fisherman or worker representative (including associations of such persons) that was affected by a finding under the Antidumping Act of 1921, or by an antidumping or countervailing duty order issued under title VII of the Tariff Act of 1930.

“(2) AGRICULTURAL COMMODITY PRODUCER.—The term ‘agricultural commodity producer’ has the same meaning as the term ‘person’ as prescribed by regulations promulgated under section 1001(5) of the Food Security Act of 1985 (7 U.S.C. 1308(5)).

“(3) COMMUNITY.—The term ‘community’ means a city, county, or other political subdivision of a State or a consortium of political subdivisions of a State that the Secretary certifies as being negatively impacted by trade.

“(4) COMMUNITY NEGATIVELY IMPACTED BY TRADE.—A community negatively impacted by trade means a community with respect to which a determination has been made under section 273.

“(5) ELIGIBLE COMMUNITY.—The term ‘eligible community’ means a community cer-

tified under section 273 for assistance under this chapter.

“(6) FISHERMAN.—

“(A) IN GENERAL.—The term ‘fisherman’ means any person who—

“(i) is engaged in commercial fishing; or

“(ii) is a United States fish processor.

“(B) COMMERCIAL FISHING, FISH, FISHERY, FISHING, FISHING VESSEL, PERSON, AND UNITED STATES FISH PROCESSOR.—The terms ‘commercial fishing’, ‘fish’, ‘fishery’, ‘fishing’, ‘fishing vessel’, ‘person’, and ‘United States fish processor’ have the same meanings as such terms have in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

“(7) JOB LOSS.—The term ‘job loss’ means the total or partial separation of an individual, as those terms are defined in section 247.

“(8) SECRETARY.—The term ‘Secretary’ means the Secretary of Commerce.

“SEC. 272. COMMUNITY TRADE ADJUSTMENT ASSISTANCE PROGRAM.

“(a) ESTABLISHMENT.—Within 6 months after the date of enactment of the Trade Adjustment Assistance for Communities Act of 2004, the Secretary shall establish a Trade Adjustment Assistance for Communities Program at the Department of Commerce.

“(b) PERSONNEL.—The Secretary shall designate such staff as may be necessary to carry out the responsibilities described in this chapter.

“(c) COORDINATION OF FEDERAL RESPONSE.—The Secretary shall—

“(1) provide leadership, support, and coordination for a comprehensive management program to address economic dislocation in eligible communities;

“(2) coordinate the Federal response to an eligible community—

“(A) by identifying all Federal, State, and local resources that are available to assist the eligible community in recovering from economic distress;

“(B) by ensuring that all Federal agencies offering assistance to an eligible community do so in a targeted, integrated manner that ensures that an eligible community has access to all available Federal assistance;

“(C) by assuring timely consultation and cooperation between Federal, State, and regional officials concerning economic adjustment for an eligible community; and

“(D) by identifying and strengthening existing agency mechanisms designed to assist eligible communities in their efforts to achieve economic adjustment and workforce reemployment;

“(3) provide comprehensive technical assistance to any eligible community in the efforts of that community to—

“(A) identify serious economic problems in the community that are the result of negative impacts from trade;

“(B) integrate the major groups and organizations significantly affected by the economic adjustment;

“(C) access Federal, State, and local resources designed to assist in economic development and trade adjustment assistance;

“(D) diversify and strengthen the community economy; and

“(E) develop a community-based strategic plan to address economic development and workforce dislocation, including unemployment among agricultural commodity producers, and fishermen;

“(4) establish specific criteria for submission and evaluation of a strategic plan submitted under section 274(d);

“(5) establish specific criteria for submitting and evaluating applications for grants under section 275;

“(6) administer the grant programs established under sections 274 and 275; and

“(7) establish an interagency Trade Adjustment Assistance for Communities Working Group, consisting of the representatives of any Federal department or agency with responsibility for economic adjustment assistance, including the Department of Agriculture, the Department of Education, the Department of Labor, the Department of Housing and Urban Development, the Department of Health and Human Services, the Small Business Administration, the Department of the Treasury, the Department of Commerce, and any other Federal, State, or regional department or agency the Secretary determines necessary or appropriate.

“SEC. 273. CERTIFICATION AND NOTIFICATION.

“(a) CERTIFICATION.—Not later than 45 days after an event described in subsection (c)(1), the Secretary of Commerce shall determine if a community described in subsection (b)(1) is negatively impacted by trade, and if a positive determination is made, shall certify the community for assistance under this chapter.

“(b) DETERMINATION THAT COMMUNITY IS ELIGIBLE.—

“(1) COMMUNITY DESCRIBED.—A community described in this paragraph means a community with respect to which on or after October 1, 2004—

“(A) the Secretary of Labor certifies a group of workers (or their authorized representative) in the community as eligible for assistance pursuant to section 223;

“(B) the Secretary of Commerce certifies a firm located in the community as eligible for adjustment assistance under section 251;

“(C) the Secretary of Agriculture certifies a group of agricultural commodity producers (or their authorized representative) in the community as eligible for adjustment assistance under section 293;

“(D) an affected domestic producer is located in the community; or

“(E) the Secretary determines that a significant number of fishermen in the community is negatively impacted by trade.

“(2) NEGATIVELY IMPACTED BY TRADE.—The Secretary shall determine that a community is negatively impacted by trade, after taking into consideration—

“(A) the number of jobs affected compared to the size of workforce in the community;

“(B) the severity of the rates of unemployment in the community and the duration of the unemployment in the community;

“(C) the income levels and the extent of underemployment in the community;

“(D) the outmigration of population from the community and the extent to which the outmigration is causing economic injury in the community; and

“(E) the unique problems and needs of the community.

“(c) DEFINITION AND SPECIAL RULES.—

“(1) EVENT DESCRIBED.—An event described in this paragraph means one of the following:

“(A) A notification described in paragraph (2).

“(B) A certification of a firm under section 251.

“(C) A finding under the Antidumping Act of 1921, or an antidumping or countervailing duty order issued under title VII of the Tariff Act of 1930.

“(D) A determination by the Secretary that a significant number of fishermen in a community have been negatively impacted by trade.

“(2) NOTIFICATION.—The Secretary of Labor, immediately upon making a determination that a group of workers is eligible for trade adjustment assistance under section 223, (or the Secretary of Agriculture, immediately upon making a determination that a group of agricultural commodity producers is eligible for adjustment assistance

under section 293, as the case may be) shall notify the Secretary of Commerce of the determination.

“(d) NOTIFICATION TO ELIGIBLE COMMUNITIES.—Immediately upon certification by the Secretary of Commerce that a community is eligible for assistance under subsection (b), the Secretary shall notify the community—

“(1) of the determination under subsection (b);

“(2) of the provisions of this chapter;

“(3) how to access the clearinghouse established by the Department of Commerce regarding available economic assistance;

“(4) how to obtain technical assistance provided under section 272(c)(3); and

“(5) how to obtain grants, tax credits, low income loans, and other appropriate economic assistance.

“SEC. 274. STRATEGIC PLANS.

“(a) IN GENERAL.—An eligible community may develop a strategic plan for community economic adjustment and diversification.

“(b) REQUIREMENTS FOR STRATEGIC PLAN.—A strategic plan shall contain, at a minimum, the following:

“(1) A description and justification of the capacity for economic adjustment, including the method of financing to be used.

“(2) A description of the commitment of the community to the strategic plan over the long term and the participation and input of groups affected by economic dislocation.

“(3) A description of the projects to be undertaken by the eligible community.

“(4) A description of how the plan and the projects to be undertaken by the eligible community will lead to job creation and job retention in the community.

“(5) A description of how the plan will achieve economic adjustment and diversification.

“(6) A description of how the plan and the projects will contribute to establishing or maintaining a level of public services necessary to attract and retain economic investment.

“(7) A description and justification for the cost and timing of proposed basic and advanced infrastructure improvements in the eligible community.

“(8) A description of how the plan will address the occupational and workforce conditions in the eligible community.

“(9) A description of the educational programs available for workforce training and future employment needs.

“(10) A description of how the plan will adapt to changing markets and business cycles.

“(11) A description and justification for the cost and timing of the total funds required by the community for economic assistance.

“(12) A graduation strategy through which the eligible community demonstrates that the community will terminate the need for Federal assistance.

“(c) GRANTS TO DEVELOP STRATEGIC PLANS.—The Secretary, upon receipt of an application from an eligible community, may award a grant to that community to be used to develop the strategic plan.

“(d) SUBMISSION OF PLAN.—A strategic plan developed under subsection (a) shall be submitted to the Secretary for evaluation and approval.

“SEC. 275. GRANTS FOR ECONOMIC DEVELOPMENT.

“(a) IN GENERAL.—The Secretary, upon approval of a strategic plan from an eligible community, may award a grant to that community to carry out any project or program that is certified by the Secretary to be included in the strategic plan approved under section 274(d), or consistent with that plan.

“(b) ADDITIONAL GRANTS.—

“(1) IN GENERAL.—Subject to paragraph (2), in order to assist eligible communities to obtain funds under Federal grant programs, other than the grants provided for in section 274(c) or subsection (a), the Secretary may, on the application of an eligible community, make a supplemental grant to the community if—

“(A) the purpose of the grant program from which the grant is made is to provide technical or other assistance for planning, constructing, or equipping public works facilities or to provide assistance for public service projects; and

“(B) the grant is 1 for which the community is eligible except for the community's inability to meet the non-Federal share requirements of the grant program.

“(2) USE AS NON-FEDERAL SHARE.—A supplemental grant made under this subsection may be used to provide the non-Federal share of a project, unless the total Federal contribution to the project for which the grant is being made exceeds 80 percent and that excess is not permitted by law.

“(c) RURAL COMMUNITY PREFERENCE.—The Secretary shall develop guidelines to ensure that rural communities receive preference in the allocation of resources.

“SEC. 276. GENERAL PROVISIONS.

“(a) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this chapter. Before implementing any regulation or guideline proposed by the Secretary with respect to this chapter, the Secretary shall submit the regulation or guideline to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives for approval.

“(b) SUPPLEMENT NOT SUPPLANT.—Funds appropriated under this chapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide economic development assistance for communities.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary \$100,000,000 for each of fiscal years 2005 through 2008, to carry out this chapter. Amounts appropriated pursuant to this subsection shall remain available until expended.”

SEC. 534. CONFORMING AMENDMENTS.

(a) TERMINATION.—Section 285(b) of the Trade Act of 1974 (19 U.S.C. 2271 note) is amended by adding at the end the following new paragraph:

“(3) ASSISTANCE FOR COMMUNITIES.—Technical assistance and other payments may not be provided under chapter 4 after September 30, 2008.”

(b) TABLE OF CONTENTS.—The table of contents for title II of the Trade Act of 1974 is amended by striking the items relating to chapter 4 of title II and inserting after the items relating to chapter 3 the following new items:

“CHAPTER 4—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

“Sec. 271. Definitions.

“Sec. 272. Community Trade Adjustment Assistance Program.

“Sec. 273. Certification and notification.

“Sec. 274. Strategic plans.

“Sec. 275. Grants for economic development.

“Sec. 276. General provisions.”

(c) JUDICIAL REVIEW.—Section 284(a) of the Trade Act of 1974 (19 U.S.C. 2395(a)) is amended by striking “section 271” and inserting “section 273”.

SEC. 535. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect on October 1, 2004.

Subtitle D—Office of Trade Adjustment Assistance

SEC. 541. SHORT TITLE.

This subtitle may be cited as the “Trade Adjustment Assistance for Firms Reorganization Act”.

SEC. 542. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

(a) IN GENERAL.—Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.) is amended by inserting after section 255 the following new section:

“SEC. 255A. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

“(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Trade Adjustment Assistance for Firms Reorganization Act, there shall be established in the International Trade Administration of the Department of Commerce an Office of Trade Adjustment Assistance.

“(b) PERSONNEL.—The Office shall be headed by a Director, and shall have such staff as may be necessary to carry out the responsibilities of the Secretary of Commerce described in this chapter.

“(c) FUNCTIONS.—The Office shall assist the Secretary of Commerce in carrying out the Secretary's responsibilities under this chapter.”

(b) CONFORMING AMENDMENT.—The table of contents for the Trade Act of 1974 is amended by inserting after the item relating to section 255, the following new item:

“Sec. 255A. Office of Trade Adjustment Assistance.”

SEC. 543. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect on the earlier of—

(1) the date of the enactment of this Act; or

(2) October 1, 2004.

TITLE VI—IMPROVEMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS

SEC. 601. CLARIFICATION OF 3-MONTH REQUIREMENT OF EXISTING COVERAGE.

(a) IN GENERAL.—Clause (i) of section 35(e)(2)(B) of the Internal Revenue Code of 1986 (defining qualifying individual) is amended by inserting “(prior to the employment separation necessary to attain the status of an eligible individual)” after “9801(c)”.

(b) CONFORMING AMENDMENT.—Section 173(f)(2)(B)(ii)(I) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(2)(B)(ii)(I)) is amended by inserting “(prior to the employment separation necessary to attain the status of an eligible individual)” after “1986”.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act.

SEC. 602. DISREGARD OF TAA PRE-CERTIFICATION PERIOD FOR PURPOSES OF DETERMINING WHETHER THERE IS A 63-DAY LAPSE IN CREDITABLE COVERAGE.

(a) ERISA AMENDMENT.—Section 701(c)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181(c)(2)) is amended by adding at the end the following:

“(C) TAA-ELIGIBLE INDIVIDUALS.—

“(i) DISREGARD OF PRE-CERTIFICATION PERIOD.—In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date the individual is certified by the Secretary (or by any person or entity designated by the Secretary) as being eligible for a qualified health insurance costs credit eligibility certificate for purposes of section 7527 of the Internal Revenue Code of 1986 shall not be taken into account in determining the continuous period under subparagraph (A).

“(ii) DEFINITIONS.—The terms ‘TAA-eligible individual’, and ‘TAA-related loss of coverage’ have the meanings given such terms in section 605(b)(4)(C).”

(b) PHSA AMENDMENT.—Section 2701(c)(2) of the Public Health Service Act (42 U.S.C. 300gg(c)(2)) is amended by adding at the end the following:

“(C) TAA-ELIGIBLE INDIVIDUALS.—

“(i) DISREGARD OF PRE-CERTIFICATION PERIOD.—In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date the individual is certified by the Secretary (or by any person or entity designated by the Secretary) as being eligible for a qualified health insurance costs credit eligibility certificate for purposes of section 7527 of the Internal Revenue Code of 1986 shall not be taken into account in determining the continuous period under subparagraph (A).

“(ii) DEFINITIONS.—The terms ‘TAA-eligible individual’, and ‘TAA-related loss of coverage’ have the meanings given such terms in section 2205(b)(4)(C).”.

(c) IRC AMENDMENT.—Section 9801(c)(2) of the Internal Revenue Code of 1986 (relating to not counting periods before significant breaks in creditable coverage) is amended by adding at the end the following:

“(D) TAA-ELIGIBLE INDIVIDUALS.—

“(i) DISREGARD OF PRE-CERTIFICATION PERIOD.—In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date the individual is certified by the Secretary of Labor (or by any person or entity designated by the Secretary of Labor) as being eligible for a qualified health insurance costs credit eligibility certificate for purposes of section 7527 shall not be taken into account in determining the continuous period under subparagraph (A).

“(ii) DEFINITIONS.—The terms ‘TAA-eligible individual’, and ‘TAA-related loss of coverage’ have the meanings given such terms in section 4980B(f)(5)(C)(iv).”.

(d) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act.

SEC. 603. IMPROVEMENT OF THE AFFORDABILITY OF THE CREDIT.

(a) IN GENERAL.—Section 35(a) of the Internal Revenue Code of 1986 (relating to credit for health insurance costs of eligible individuals) is amended by striking “65” and inserting “75”.

(b) CONFORMING AMENDMENT.—Section 7527(b) of such Code (relating to advance payment of credit for health insurance costs of eligible individuals) is amended by striking “65” and inserting “75”.

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 2004.

SEC. 604. EXPEDITED REFUND OF CREDIT FOR PRORATED FIRST MONTHLY PREMIUM.

(a) IN GENERAL.—Section 7527 of the Internal Revenue Code of 1986 (relating to advance payment of credit for health insurance costs of eligible individuals) is amended by adding at the end the following:

“(e) EXPEDITED PAYMENT OF PRORATED FIRST MONTHLY PREMIUM.—The program established under subsection (a) shall provide for payment to a certified individual of an amount equal to the applicable percentage (as defined in section 35(a)(2)) of the prorated first monthly premium for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months upon receipt by the Secretary of evidence of payment of such premium by the certified individual.”.

(b) EFFECTIVE DATE.—The amendment made by this section takes effect on the date of enactment of this Act.

SA 2917. Mr. FEINGOLD submitted an amendment intended to be proposed

by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE V—BUY AMERICAN ACT IMPROVEMENTS

SEC. 501. SHORT TITLE.

This title may be cited as the “Buy American Improvement Act of 2004”.

SEC. 502. REQUIREMENTS FOR WAIVERS.

(a) IN GENERAL.—Section 2 of the Buy American Act (41 U.S.C. 10a) is amended—

(1) by striking “Notwithstanding” and inserting the following:

“(a) IN GENERAL.—Notwithstanding”; and

(2) by adding at the end the following:

“(b) SPECIAL RULES.—The following rules shall apply in carrying out the provisions of subsection (a):

“(1) PUBLIC INTEREST WAIVER.—A determination that it is not in the public interest to enter into a contract in accordance with this Act may not be made after a notice of solicitation of offers for the contract is published in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

“(2) DOMESTIC BIDDER.—A Federal agency entering into a contract shall give preference to a company submitting an offer on the contract that manufactures in the United States the article, material, or supply for which the offer is solicited, if—

“(A) that company’s offer is substantially the same as an offer made by a company that does not manufacture the article, material, or supply in the United States; or

“(B) that company is the only company that manufactures in the United States the article, material, or supply for which the offer is solicited.

“(3) USE OUTSIDE THE UNITED STATES.—

“(A) IN GENERAL.—Subsection (a) shall apply without regard to whether the articles, materials, or supplies to be acquired are for use outside the United States if the articles, materials, or supplies are not needed on an urgent basis or if they are acquired on a regular basis.

“(B) COST ANALYSIS.—In any case where the articles, materials, or supplies are to be acquired for use outside the United States and are not needed on an urgent basis, before entering into a contract an analysis shall be made of the difference in the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies in the United States (including the cost of shipping) and the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies outside the United States (including the cost of shipping).

“(4) DOMESTIC AVAILABILITY.—The head of a Federal agency may not make a determination under subsection (a) that an article, material, or supply is not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory quality, unless the head of the agency has conducted a study and, on the basis of such study, determined that—

“(A) domestic production cannot be initiated to meet the procurement needs; and

“(B) a comparable article, material, or supply is not available from a company in the United States.

“(c) REPORTS.—

“(1) IN GENERAL.—Not later than 60 days after the end of each fiscal year, the head of each Federal agency shall submit to Congress a report on the acquisitions that were made of articles, materials, or supplies by the agency in that fiscal year from entities that manufacture the articles, materials, or supplies outside the United States.

“(2) CONTENT OF REPORT.—The report for a fiscal year under paragraph (1) shall separately indicate the following information:

“(A) The dollar value of any articles, materials, or supplies that were manufactured outside the United States.

“(B) An itemized list of all waivers granted with respect to such articles, materials, or supplies under this Act.

“(C) A summary of—

“(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

“(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

“(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available by posting on an Internet website.”.

(b) DEFINITIONS.—Section 1 of the Buy American Act (41 U.S.C. 10c) is amended by striking subsection (c) and inserting the following:

“(c) FEDERAL AGENCY.—The term ‘Federal agency’ means any executive agency (as defined in section 4(1) of the Federal Procurement Policy Act (41 U.S.C. 403(1))) or any establishment in the legislative or judicial branch of the Government.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 2 of the Buy American Act (41 U.S.C. 10a) is amended by striking “department or independent establishment” and inserting “Federal agency”.

(2) Section 3 of such Act (41 U.S.C. 10b) is amended—

(A) by striking “department or independent establishment” in subsection (a), and inserting “Federal agency”; and

(B) by striking “department, bureau, agency, or independent establishment” in subsection (b) and inserting “Federal agency”.

(3) Section 633 of the National Military Establishment Appropriations Act, 1950 (41 U.S.C. 10d) is amended by striking “department or independent establishment” and inserting “Federal agency”.

SEC. 503. GAO REPORT AND RECOMMENDATIONS.

(a) REQUIREMENT FOR REPORT.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall report to Congress recommendations for determining, for purposes of applying the waiver provision of section 2(a) of the Buy American Act—

(A) unreasonable cost; and

(B) inconsistent with the public interest.

(2) REPORT TO INCLUDE RECOMMENDED DEFINITIONS.—The report shall include recommendations for a statutory definition of unreasonable cost and standards for determining inconsistency with the public interest.

(b) WAIVER PROCEDURES.—The report described in subsection (a) shall also include recommendations for establishing procedures for applying the waiver provisions of the Buy American Act that can be consistently applied.

SEC. 504. DUAL-USE TECHNOLOGIES.

The head of a Federal agency (as defined in section 1(c) of the Buy American Act (as amended by section 502)) may not enter into a contract, nor permit a subcontract under a contract of the Federal agency, with a foreign entity that involves giving the foreign

entity plans, manuals, or other information that would facilitate the manufacture of a dual-use item on the Commerce Control List unless approval for providing such plans, manuals, or information has been obtained in accordance with the provisions of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and the Export Administration Regulations (15 C.F.R. part 730 et seq.).

SA 2918. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . TRANSMISSION OF PERSONALLY IDENTIFIABLE INFORMATION TO FOREIGN AFFILIATES OR SUBCONTRACTORS.

(a) **DEFINITIONS.**—As used in this section, the following definitions shall apply:

(1) **BUSINESS ENTERPRISE.**—The term “business enterprise” means any organization, association, or venture established to make a profit.

(2) **COUNTRY WITH ADEQUATE PRIVACY PROTECTION.**—The term “country with adequate privacy protection” means a country that has been certified by the Federal Trade Commission as having a legal system that provides adequate privacy protection for personally identifiable information.

(3) **HEALTH CARE BUSINESS.**—The term “health care business” means any business enterprise or private, nonprofit organization that collects or retains personally identifiable information about consumers in relation to medical care, including—

- (A) hospitals;
- (B) health maintenance organizations;
- (C) medical partnerships;
- (D) emergency medical transportation companies;
- (E) medical transcription companies; and
- (F) subcontractors, or potential subcontractors, of the entities described in subparagraphs (A) through (E).

(4) **PERSONALLY IDENTIFIABLE INFORMATION.**—The term “personally identifiable information” includes—

- (A) name;
- (B) bank account information;
- (C) social security number;
- (D) address;
- (E) telephone number;
- (F) passwords;
- (G) mother's maiden name; and
- (H) age.

(b) **TRANSMISSION OF INFORMATION.**—

(1) **IN GENERAL.**—A business enterprise may transmit personally identifiable information regarding a citizen of the United States to any foreign affiliate or subcontractor located in a country that is a country with adequate privacy protection.

(2) **CONSENT REQUIRED.**—A business enterprise may not transmit personally identifiable information regarding a citizen of the United States to any foreign affiliate or subcontractor located outside of the United States unless—

(A) the business enterprise discloses to the citizen whether the country to which the information will be transmitted has been certified under subsection (d);

(B) the business enterprise obtains consent from the citizen, before a consumer relation-

ship is established or before the effective date of this section, to transmit such information to such foreign affiliate or subcontractor; and

(C) the consent referred to in subparagraph (B) is renewed by the citizen within 1 year before such information is transmitted.

(3) **LIABILITY.**—A business enterprise shall be liable for any damages arising from the improper storage, duplication, sharing, or other misuse of personally identifiable information by the business enterprise or by any of its foreign affiliates or subcontractors that received such information from the business enterprise.

(4) **RULEMAKING.**—The Chairman of the Federal Trade Commission shall promulgate regulations through which the Chairman may enforce the provisions of this subsection and impose a fine for a violation of this subsection.

(c) **HEALTH CARE INFORMATION.**—

(1) **IN GENERAL.**—A health care business shall be liable for any damages arising from the improper storage, duplication, sharing, or other misuse of personally identifiable information by the business enterprise or by any of its foreign affiliates or subcontractors that received such information from the business enterprise.

(2) **NO OPT OUT PROVISION.**—A health care business may not terminate an existing relationship with a consumer of health care services to avoid the consent requirement under subsection (b)(2).

(3) **RULEMAKING.**—The Secretary of Health and Human Services shall promulgate regulations through which the Secretary may enforce the provisions of this subsection and impose a fine for the violation of this subsection.

(d) **CERTIFICATION.**—Not later than 6 months after the date of enactment of this Act, the Federal Trade Commission shall—

(1) certify those countries that have legal systems that provide adequate privacy protection for personally identifiable information; and

(2) make the list of countries certified under paragraph (1) available to the general public.

(e) **EFFECTIVE DATE.**—This section shall take effect on the date which is 90 days after the date of enactment of this Act.

SA 2919. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end add the following:

SEC. ____ . REFUNDABLE CREDIT FOR ACTIVATED MILITARY RESERVISTS.

(a) **IN GENERAL.**—Subpart C of part IV of subchapter A of chapter 1 is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

“SEC. 36. WAGE DIFFERENTIAL FOR ACTIVATED RESERVISTS.

“(a) **IN GENERAL.**—In the case of a qualified reservist, there shall be allowed as a credit against the tax imposed by this subtitle an amount equal to the qualified active duty wage differential of such qualified reservist for the taxable year.

“(b) **QUALIFIED ACTIVE DUTY WAGE DIFFERENTIAL.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘qualified active duty wage differential’ means the daily

wage differential of the qualified active duty reservist multiplied by the number of days such qualified reservist participates in qualified reserve component duty during the taxable year, including time spent in a travel status.

“(2) **DAILY WAGE DIFFERENTIAL.**—The daily wage differential is an amount equal to the lesser of—

“(A) the excess of—

“(i) the qualified reservist's average daily qualified compensation, over

“(ii) the qualified reservist's average daily military pay while participating in qualified reserve component duty to the exclusion of the qualified reservist's normal employment duties, or

“(B) \$54.80.

“(3) **AVERAGE DAILY QUALIFIED COMPENSATION.**—

“(A) **IN GENERAL.**—The term ‘average daily qualified compensation’ means—

“(i) the qualified compensation of the qualified reservist for the one-year period ending on the day before the date the qualified reservist begins qualified reserve component duty, divided by

“(ii) 365.

“(B) **QUALIFIED COMPENSATION.**—The term ‘qualified compensation’ means—

“(i) compensation which is normally contingent on the qualified reservist's presence for work and which would be includible in gross income, and

“(ii) compensation which is not characterized by the qualified reservist's employer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a non-specific leave of absence.

“(4) **AVERAGE DAILY MILITARY PAY AND ALLOWANCES.**—

“(A) **IN GENERAL.**—The term ‘average daily military pay and allowances’ means—

“(i) the amount paid to the qualified reservist during the taxable year as military pay and allowances on account of the qualified reservist's participation in qualified reserve component duty, determined as of the date the qualified reservists begins qualified reserve component duty, divided by

“(ii) the total number of days the qualified reservist participates in qualified reserve component duty during the taxable year, including time spent in travel status.

“(B) **MILITARY PAY AND ALLOWANCES.**—The term ‘military pay’ means pay as that term is defined in section 101(21) of title 37, United States Code, and the term ‘allowances’ means the allowances payable to a member of the Armed Forces of the United States under chapter 7 of that title.

“(5) **QUALIFIED RESERVE COMPONENT DUTY.**—The term ‘qualified reserve component duty’ means—

“(A) active duty performed, as designated in the reservist's military orders, in support of a contingency operation as defined in section 101(a)(13) of title 10, United States Code, or

“(B) full-time National Guard duty (as defined in section 101(19) of title 32, United States Code) which is ordered pursuant to a request by the President, for a period under 1 or more orders described in subparagraph (A) or (B) of more than 90 consecutive days.

“(C) **QUALIFIED RESERVIST.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘qualified reservist’ means an individual who is engaged in normal employment and is a member of—

“(A) the National Guard (as defined by section 101(c)(1) of title 10, United States Code), or

“(B) the Ready Reserve (as defined by section 10142 of title 10, United States Code).

“(2) NORMAL EMPLOYMENT.—The term ‘normal employment duties’ includes self-employment.

“(d) DISALLOWANCE WITH RESPECT TO PERSONS ORDERED TO ACTIVE DUTY FOR TRAINING.—No credit shall be allowed under subsection (a) to a qualified reservist who is called or ordered to active duty for any of the following types of duty:

“(1) Active duty for training under any provision of title 10, United States Code.

“(2) Training at encampments, maneuvers, outdoor target practice, or other exercises under chapter 5 of title 32, United States Code.

“(3) Full-time National Guard duty, as defined in section 101(d)(5) of title 10, United States Code.

“(e) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed the taxpayer under this section.”.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period “, or from section 36 of such Code”.

(2) The table of sections for subpart C of part IV of chapter 1 is amended by striking the last item and inserting the following new items:

“Sec. 36. Wage differential for activated reservists.

“Sec. 37. Overpayments of tax.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SA 2920. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end add the following:

SEC. ____ ADDITIONAL 2-YEAR EXTENSION OF WIND ENERGY PRODUCTION CREDIT.

(a) IN GENERAL.—Section 45(c)(3)(a) (relating to wind facility), as amended by this Act, is amended by striking “January 1, 2005” and inserting “January 1, 2007”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after December 31, 2003, in taxable years ending after such date.

SA 2921. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, add the following:

SEC. ____ MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.

(a) IN GENERAL.—Section 45D(e) (relating to low-income community) is amended by adding at the end the following new paragraph:

“(4) MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.—

“(A) IN GENERAL.—In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting ‘85 percent’ for ‘80 percent’.

“(B) HIGH MIGRATION RURAL COUNTY.—For purposes of this paragraph, the term ‘high migration rural county’ means any county which, during the 20-year period ending on December 31, 2000, has a net out-migration of inhabitants from the county of at least 10-percent of the population of the county at the beginning of such period.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000.

SA 2922. Mr. DORGAN (for himself, Ms. MIKULSKI, Mr. KOHL, Mr. KENNEDY, Mr. EDWARDS, Mr. FEINGOLD, and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 330, between lines 6 and 7, insert the following:

SEC. ____ TAXATION OF INCOME OF CONTROLLED FOREIGN CORPORATIONS ATTRIBUTABLE TO IMPORTED PROPERTY.

(a) GENERAL RULE.—Subsection (a) of section 954 (defining foreign base company income) is amended by striking “and” at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting “, and”, and by adding at the end the following new paragraph:

“(6) imported property income for the taxable year (determined under subsection (j) and reduced as provided in subsection (b)(5)).”

(b) DEFINITION OF IMPORTED PROPERTY INCOME.—Section 954 is amended by adding at the end the following new subsection:

“(j) IMPORTED PROPERTY INCOME.—

“(1) IN GENERAL.—For purposes of subsection (a)(6), the term ‘imported property income’ means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

“(A) manufacturing, producing, growing, or extracting imported property,

“(B) the sale, exchange, or other disposition of imported property, or

“(C) the lease, rental, or licensing of imported property.

Such term shall not include any foreign oil and gas extraction income (within the meaning of section 907(c)) or any foreign oil related income (within the meaning of section 907(c)).

“(2) IMPORTED PROPERTY.—For purposes of this subsection—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term ‘imported property’ means property which is imported into the United States by the controlled foreign corporation or a related person.

“(B) IMPORTED PROPERTY INCLUDES CERTAIN PROPERTY IMPORTED BY UNRELATED PERSONS.—The term ‘imported property’ includes any property imported into the United States by an unrelated person if,

when such property was sold to the unrelated person by the controlled foreign corporation (or a related person), it was reasonable to expect that—

“(i) such property would be imported into the United States, or

“(ii) such property would be used as a component in other property which would be imported into the United States.

“(C) EXCEPTION FOR PROPERTY SUBSEQUENTLY EXPORTED.—The term ‘imported property’ does not include any property which is imported into the United States and which—

“(i) before substantial use in the United States, is sold, leased, or rented by the controlled foreign corporation or a related person for direct use, consumption, or disposition outside the United States, or

“(ii) is used by the controlled foreign corporation or a related person as a component in other property which is so sold, leased, or rented.

“(3) DEFINITIONS AND SPECIAL RULES.—

“(A) IMPORT.—For purposes of this subsection, the term ‘import’ means entering, or withdrawal from warehouse, for consumption or use. Such term includes any grant of the right to use intangible property (as defined in section 936(h)(3)(B)) in the United States.

“(B) UNRELATED PERSON.—For purposes of this subsection, the term ‘unrelated person’ means any person who is not a related person with respect to the controlled foreign corporation.

“(C) COORDINATION WITH FOREIGN BASE COMPANY SALES INCOME.—For purposes of this section, the term ‘foreign base company sales income’ shall not include any imported property income.”

(c) SEPARATE APPLICATION OF LIMITATIONS ON FOREIGN TAX CREDIT FOR IMPORTED PROPERTY INCOME.—

(1) IN GENERAL.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income) is amended by striking “and” at the end of subparagraph (H), by redesignating subparagraph (I) as subparagraph (J), and by inserting after subparagraph (H) the following new subparagraph:

“(I) imported property income, and”.

(2) IMPORTED PROPERTY INCOME DEFINED.—Paragraph (2) of section 904(d) is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

“(H) IMPORTED PROPERTY INCOME.—The term ‘imported property income’ means any income received or accrued by any person which is of a kind which would be imported property income (as defined in section 954(j)).”

(3) LOOK-THRU RULES TO APPLY.—Subparagraph (F) of section 904(d)(3) is amended by striking “or (E)” and inserting “(E), or (I)”.

(d) TECHNICAL AMENDMENTS.—

(1) Clause (iii) of section 952(c)(1)(B) (relating to certain prior year deficits may be taken into account) is amended—

(A) by redesignating subclauses (III), (IV), (V), and (VI) as subclauses (IV), (V), (VI), and (VII), and

(B) by inserting after subclause (II) the following new subclause:

“(III) imported property income.”.

(2) Paragraph (5) of section 954(b) (relating to deductions to be taken into account) is amended by striking “and the foreign base company oil related income” and inserting “the foreign base company oil related income, and the imported property income”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of foreign corporations beginning after the date of

the enactment of this Act, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall apply to taxable years beginning after such date of enactment.

(f) SENSE OF THE SENATE.—It is the sense of the Senate that any increase in revenues in the Treasury resulting from the amendments made by this section should be applied to reduce the phase-in of the deduction relating to income attributable to domestic production activities under section 199 of the Internal Revenue Code of 1986 (as added by section 102 of this Act).

SA 2923. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, add the following:

SEC. ____ . TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) IN GENERAL.—Subsection (d) of section 408 (relating to individual retirement accounts) is amended by adding at the end the following new paragraph:

“(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

“(A) IN GENERAL.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

“(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the term ‘qualified charitable distribution’ means any distribution from an individual retirement account—

“(i) which is made directly by the trustee—

“(I) to an organization described in section 170(c), or

“(II) to a split-interest entity, and

“(ii) which is made on or after—

“(I) in the case of any distribution described in clause (i)(I), the date that the individual for whose benefit the account is maintained has attained age 70½, and

“(II) in the case of any distribution described in clause (i)(II), the date that such individual has attained age 59½.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such account is maintained, the spouse of such individual, or any organization described in section 170(c).

“(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE.—For purposes of this paragraph—

“(i) DIRECT CONTRIBUTIONS.—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

“(ii) SPLIT-INTEREST GIFTS.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest

in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

“(D) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts were distributed from all individual retirement accounts treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion on such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

“(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES.—

“(i) CHARITABLE REMAINDER TRUSTS.—Notwithstanding section 664(b), distributions made from a trust described in subparagraph (G)(i) shall be treated as ordinary income in the hands of the beneficiary to whom is paid the annuity described in section 664(d)(1)(A) or the payment described in section 664(d)(2)(A).

“(ii) POOLED INCOME FUNDS.—No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)) by reason of a qualified charitable distribution to such fund, and all distributions from the fund which are attributable to qualified charitable distributions shall be treated as ordinary income to the beneficiary.

“(iii) CHARITABLE GIFT ANNUITIES.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

“(F) DENIAL OF DEDUCTION.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

“(G) SPLIT-INTEREST ENTITY DEFINED.—For purposes of this paragraph, the term ‘split-interest entity’ means—

“(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)) which must be funded exclusively by qualified charitable distributions,

“(ii) a pooled income fund (as defined in section 642(c)(5)), but only if the fund accounts separately for amounts attributable to qualified charitable distributions, and

“(iii) a charitable gift annuity (as defined in section 501(m)(5)).”

(b) MODIFICATIONS RELATING TO INFORMATION RETURNS BY CERTAIN TRUSTS.—

(1) RETURNS.—Section 6034 (relating to returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)) is amended to read as follows:

“SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

“(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

“(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION UNDER SECTION 642(c).—

“(1) IN GENERAL.—Every trust not required to file a return under subsection (a) but claiming a deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including—

“(A) the amount of the deduction taken under section 642(c) within such year,

“(B) the amount paid out within such year which represents amounts for which deductions under section 642(c) have been taken in prior years,

“(C) the amount for which such deductions have been taken in prior years but which has not been paid out at the beginning of such year,

“(D) the amount paid out of principal in the current and prior years for the purposes described in section 642(c),

“(E) the total income of the trust within such year and the expenses attributable thereto, and

“(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to a trust for any taxable year if—

“(A) all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries, or

“(B) the trust is described in section 4947(a)(1).”

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS.—Paragraph (2) of section 6652(c) (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

“(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

“(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

“(ii) in the case of any trust with gross income in excess of \$250,000, the first sentence of paragraph (1)(A) shall be applied by substituting ‘\$100’ for ‘\$20’, and the second sentence thereof shall be applied by substituting ‘\$50,000’ for ‘\$10,000’, and

“(iii) the third sentence of paragraph (1)(A) shall be disregarded.

In addition to any penalty imposed on the trust pursuant to this subparagraph, if the person required to file such return knowingly fails to file the return, such penalty shall also be imposed on such person who shall be personally liable for such penalty.”

(3) CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES.—Subsection (b) of section 6104 (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: “In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).”

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to distributions—

(A) described in section 408(d)(8)(B)(i)(I) of the Internal Revenue Code of 1986, as added by this section, made after the date of the enactment of this Act, and

(B) described in section 408(d)(8)(B)(i)(II) of such Code, as so added, made after December 31, 2003.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2003.

SA 2924. Mr. DORGAN (for himself, Mr. COLEMAN, Mrs. CANTWELL, Mrs. MURRAY, Mr. BINGAMAN, and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed by him

to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end add the following:

SEC. ____ . EXTENSION AND EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) EXPANSION OF QUALIFIED ENERGY RESOURCES.—Subsection (c) of section 45 (relating to electricity produced from certain renewable resources) is amended to read as follows:

“(c) QUALIFIED ENERGY RESOURCES.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified energy resources’ means—

- “(A) wind,
- “(B) closed-loop biomass,
- “(C) open-loop biomass,
- “(D) geothermal energy,
- “(E) solar energy,
- “(F) small irrigation power, and
- “(G) municipal solid waste.

“(2) CLOSED-LOOP BIOMASS.—The term ‘closed-loop biomass’ means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

“(3) OPEN-LOOP BIOMASS.—

“(A) IN GENERAL.—The term ‘open-loop biomass’ means—

- “(i) any agricultural livestock waste nutrients, or
- “(ii) any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

“(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,

“(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

“(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass.

“(B) AGRICULTURAL LIVESTOCK WASTE NUTRIENTS.—

“(i) IN GENERAL.—The term ‘agricultural livestock waste nutrients’ means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

“(ii) AGRICULTURAL LIVESTOCK.—The term ‘agricultural livestock’ includes bovine, swine, poultry, and sheep.

“(4) GEOTHERMAL ENERGY.—The term ‘geothermal energy’ means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

“(5) SMALL IRRIGATION POWER.—The term ‘small irrigation power’ means power—

“(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

“(B) the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.

“(6) MUNICIPAL SOLID WASTE.—The term ‘municipal solid waste’ has the meaning given the term ‘solid waste’ under section 2(27) of the Solid Waste Disposal Act (42 U.S.C. 6903).”.

(b) EXTENSION AND EXPANSION OF QUALIFIED FACILITIES.—

(1) IN GENERAL.—Section 45 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

“(d) QUALIFIED FACILITIES.—For purposes of this section—

“(1) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2007.

“(2) CLOSED-LOOP BIOMASS FACILITY.—

“(A) IN GENERAL.—In the case of a facility using closed-loop biomass to produce electricity, the term ‘qualified facility’ means any facility—

“(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2007, or

“(ii) owned by the taxpayer which before January 1, 2007, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

“(B) SPECIAL RULES.—In the case of a qualified facility described in subparagraph (A)(ii)—

“(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than January 1, 2004,

“(ii) the amount of the credit determined under subsection (a) with respect to the facility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and

“(iii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

“(3) OPEN-LOOP BIOMASS FACILITIES.—

“(A) IN GENERAL.—In the case of a facility using open-loop biomass to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which—

“(i) in the case of a facility using agricultural livestock waste nutrients—

“(I) is originally placed in service after December 31, 2003, and before January 1, 2007, and

“(II) the nameplate capacity rating of which is not less than 150 kilowatts, and

“(ii) in the case of any other facility, is originally placed in service before January 1, 2007.

“(B) CREDIT ELIGIBILITY.—In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

“(4) GEOTHERMAL OR SOLAR ENERGY FACILITY.—In the case of a facility using geothermal or solar energy to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after December 31, 2003, and before January 1, 2007. Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

“(5) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after December 31, 2003, and before January 1, 2007.

“(6) LANDFILL GAS FACILITIES.—In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after December 31, 2003, and before January 1, 2007.

“(7) TRASH COMBUSTION FACILITIES.—In the case of a facility which burns municipal solid waste to produce electricity, the term ‘qualified facility’ means any facility or unit owned by the taxpayer which is originally placed in service after December 31, 2003, and before January 1, 2007.”.

(2) CONFORMING AMENDMENT.—Section 45(e) of such Code, as so redesignated, is amended by striking “subsection (c)(3)(A)” in paragraph (7)(A)(i) and inserting “subsection (d)(1)”.

(c) SPECIAL CREDIT RATE AND PERIOD FOR ELECTRICITY PRODUCED AND SOLD AFTER ENACTMENT DATE.—Section 45(b) is amended by adding at the end the following new paragraph:

“(4) CREDIT RATE AND PERIOD FOR ELECTRICITY PRODUCED AND SOLD FROM CERTAIN FACILITIES.—

“(A) CREDIT RATE.—In the case of electricity produced and sold after the date of the enactment of this paragraph at any qualified facility described in paragraph (3), (5), (6), or (7) of subsection (d), the amount in effect under subsection (a)(1) for any calendar year beginning with the calendar year in which such date occurs (determined before the application of the last sentence of paragraph (2) of this subsection) shall be reduced by one-third.

“(B) CREDIT PERIOD.—

“(i) IN GENERAL.—Except as provided in clause (ii), in the case of any facility described in paragraph (3), (4), (5), (6), or (7) of subsection (d), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

“(ii) CERTAIN OPEN-LOOP BIOMASS FACILITIES.—In the case of any facility described in subsection (d)(3)(A)(ii) placed in service before January 1, 2004, the 5-year period beginning on January 1, 2004, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).”.

(d) COORDINATION WITH SECTION 48.—Section 48(a)(3) (relating to defining energy property) is amended by adding at the end the following new sentence: “Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.”.

(e) CREDIT ALLOWED AGAINST REGULAR AND MINIMUM TAX.—

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

“(4) SPECIAL RULES FOR SECTION 45 CREDIT.—

“(A) IN GENERAL.—In the case of any section 45 credit—

“(i) this section and section 39 shall be applied separately with respect to such credit, and

“(ii) in applying paragraph (1) to such credit—

“(I) the tentative minimum tax shall be treated as being zero, and

“(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for

the taxable year (other than the section 45 credit).

“(B) SECTION 45 CREDIT.—For purposes of this subsection, the term ‘section 45 credit’ means the credit determined under section 45 to the extent that such credit is attributable to electricity produced—

“(i) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

“(ii) during the 4-year period beginning on the date that such facility was originally placed in service.”.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (2)(A)(i)(II) of section 38(c) of such Code is amended by striking “or” and inserting a comma and by inserting “, and the section 45 credit” after “employee credit”.

(B) Paragraph (3)(A)(ii)(II) of section 38(c) of such Code is amended by inserting “and the section 45 credit” after “employee credit”.

(f) ELIMINATION OF CERTAIN CREDIT REDUCTIONS.—Section 45(b)(3)(A) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by striking clause (ii),

(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii),

(3) by inserting “(other than proceeds of an issue of State or local government obligations the interest on which is exempt from tax under section 103, or any loan, debt, or other obligation incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003)” after “project” in clause (ii) (as so redesignated),

(4) by adding at the end the following new sentence: “This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).”, and

(5) by striking “TAX-EXEMPT BONDS,” in the heading and inserting “CERTAIN”.

(g) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—Section 45(e) (relating to definitions and special rules), as redesignated by subsection (b)(1), is amended by adding at the end the following new paragraph:

“(8) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

“(A) ALLOWANCE OF CREDIT.—

“(i) IN GENERAL.—Except as otherwise provided in this subsection—

“(I) any credit allowable under subsection (a) with respect to a qualified facility owned by a person described in clause (ii) may be transferred or used as provided in this paragraph, and

“(II) the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

“(ii) PERSONS DESCRIBED.—A person is described in this clause if the person is—

“(I) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

“(II) an organization described in section 1381(a)(2)(C),

“(III) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

“(IV) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

“(V) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof.

“(B) TRANSFER OF CREDIT.—

“(i) IN GENERAL.—A person described in subparagraph (A)(ii) may transfer any credit to which subparagraph (A)(i) applies through

an assignment to any other person not described in subparagraph (A)(ii). Such transfer may be revoked only with the consent of the Secretary.

“(ii) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in clause (i) is assigned once and not reassigned by such other person.

“(iii) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in subclause (III), (IV), or (V) of subparagraph (A)(ii) from the transfer of any credit under clause (i) shall be treated as arising from the exercise of an essential government function.

“(C) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in subclause (I), (II), or (V) of subparagraph (A)(ii), any credit to which subparagraph (A)(i) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act.

“(D) CREDIT NOT INCOME.—Any transfer under subparagraph (B) or use under subparagraph (C) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

“(E) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales of electricity among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.”.

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to electricity produced and sold after December 31, 2003, in taxable years ending after such date.

(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before January 1, 2004, the amendments made by this section shall apply to electricity produced and sold after December 31, 2003, in taxable years ending after such date.

(3) CREDIT RATE AND PERIOD FOR NEW FACILITIES.—The amendments made by subsection (c) shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on the day before the date of the enactment of this Act) placed in service before January 1, 2004.

(5) CREDIT ALLOWED AGAINST REGULAR AND MINIMUM TAX.—The amendments made by subsection (e) shall apply to taxable years ending after the date of the enactment of this Act.

(i) GAO STUDY.—The Comptroller General of the United States shall conduct a study on the market viability of producing electricity from resources with respect to which credit is allowed under section 45 of the Internal Revenue Code of 1986 but without such credit. In the case of open-loop biomass and municipal solid waste resources, the study should take into account savings associated with not having to dispose of such resources. In conducting such study, the Comptroller shall estimate the dollar value of the environmental impact of producing electricity from such resources relative to producing

electricity from fossil fuels using the latest generation of technology. Not later than June 30, 2006, the Comptroller shall report on such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on March 23, 2004, at 9:30 a.m., in open session to receive testimony on the Atomic Energy Defense activities of the Department of Energy, in review of the Defense authorization request for fiscal year 2005.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, March 23, 2004, at 10:00 a.m. to conduct a hearing on “Review of Current Investigations and Regulatory Actions Regarding the Mutual Fund Industry.”

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, March 23, 2004, at 10 a.m., on Passenger and Freight Rail Safety.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Tuesday, March 23rd at 2:00 p.m. to conduct an oversight hearing to examine the “United Nations Convention on the Law of the Sea”.

The meeting will be held in SD 406.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 23, 2004 at 9:30 a.m. to hold a hearing on U.S. & Mexico: Immigration Policy and the Bilateral Relationship.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Tuesday, March 23, 2004, at 2:30 p.m. for a joint hearing with the House Committee on Government Reform, titled “The Postal Service in Crisis: A Joint Senate-House