

108TH CONGRESS
2D SESSION

H. R. 4520

To amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad.

IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 2004

Mr. THOMAS (for himself, Mr. CRANE, Mr. SHAW, Mrs. JOHNSON of Connecticut, Mr. HOUGHTON, Mr. HERGER, Mr. MCCRERY, Mr. CAMP, Mr. RAMSTAD, Mr. SAM JOHNSON of Texas, Ms. DUNN, Mr. COLLINS, Mr. PORTMAN, Mr. ENGLISH, Mr. HAYWORTH, Mr. HULSHOF, Mr. MCINNIS, Mr. LEWIS of Kentucky, Mr. FOLEY, Mr. BRADY of Texas, and Mr. RYAN of Wisconsin) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad.

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

1 **SECTION 1. SHORT TITLE; ETC.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “American Jobs Creation Act of 2004”.

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

10 (c) **TABLE OF CONTENTS.**—The table of contents of
11 this Act is as follows:

Sec. 1. Short title; etc.

**TITLE I—END SANCTIONS AND REDUCE CORPORATE TAX RATES
FOR DOMESTIC MANUFACTURING AND SMALL CORPORATIONS**

Sec. 101. Repeal of exclusion for extraterritorial income.

Sec. 102. Reduced corporate income tax rate for domestic production activities
income.

Sec. 103. Reduced corporate income tax rate for small corporations.

**TITLE II—JOB CREATION TAX INCENTIVES FOR
MANUFACTURERS, SMALL BUSINESSES, AND FARMERS**

Subtitle A—Small Business Expensing

Sec. 201. 2-year extension of increased expensing for small business.

Subtitle B—Depreciation

Sec. 211. Recovery period for depreciation of certain leasehold improvements
and restaurant property.

Sec. 212. Modification of depreciation allowance for aircraft.

Sec. 213. Modification of placed in service rule for bonus depreciation property.

Subtitle C—S Corporation Reform and Simplification

Sec. 221. Members of family treated as 1 shareholder.

Sec. 222. Increase in number of eligible shareholders to 100.

Sec. 223. Expansion of bank S corporation eligible shareholders to include
IRAs.

Sec. 224. Disregard of unexercised powers of appointment in determining po-
tential current beneficiaries of ESBT.

Sec. 225. Transfer of suspended losses incident to divorce, etc.

- Sec. 226. Use of passive activity loss and at-risk amounts by qualified subchapter S trust income beneficiaries.
- Sec. 227. Exclusion of investment securities income from passive income test for bank S corporations.
- Sec. 228. Treatment of bank director shares.
- Sec. 229. Relief from inadvertently invalid qualified subchapter S subsidiary elections and terminations.
- Sec. 230. Information returns for qualified subchapter S subsidiaries.
- Sec. 231. Repayment of loans for qualifying employer securities.

Subtitle D—Alternative Minimum Tax Relief

- Sec. 241. Foreign tax credit under alternative minimum tax.
- Sec. 242. Expansion of exemption from alternative minimum tax for small corporations.
- Sec. 243. Income averaging for farmers not to increase alternative minimum tax.

Subtitle E—Restructuring of Incentives for Alcohol Fuels, Etc.

- Sec. 251. Reduced rates of tax on gasohol replaced with excise tax credit; repeal of other alcohol-based fuel incentives; etc.
- Sec. 252. Alcohol fuel subsidies borne by general fund.

Subtitle F—Stock Options and Employee Stock Purchase Plan Stock Options

- Sec. 261. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.

Subtitle G—Incentives to Reinvest Foreign Earnings in United States

- Sec. 271. Incentives to reinvest foreign earnings in United States.

Subtitle H—Other Incentive Provisions

- Sec. 281. Special rules for livestock sold on account of weather-related conditions.
- Sec. 282. Payment of dividends on stock of cooperatives without reducing patronage dividends.
- Sec. 283. Capital gain treatment under section 631(b) to apply to outright sales by landowners.
- Sec. 284. Distributions from publicly traded partnerships treated as qualifying income of regulated investment companies.
- Sec. 285. Improvements related to real estate investment trusts.
- Sec. 286. Treatment of certain dividends of regulated investment companies.
- Sec. 287. Taxation of certain settlement funds.
- Sec. 288. Expansion of human clinical trials qualifying for orphan drug credit.
- Sec. 289. Simplification of excise tax imposed on bows and arrows.
- Sec. 290. Repeal of excise tax on fishing tackle boxes.
- Sec. 291. Sonar devices suitable for finding fish.
- Sec. 292. Income tax credit to distilled spirits wholesalers for cost of carrying Federal excise taxes on bottled distilled spirits.
- Sec. 293. Suspension of occupational taxes relating to distilled spirits, wine, and beer.

TITLE III—TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

- Sec. 301. Interest expense allocation rules.
- Sec. 302. Recharacterization of overall domestic loss.
- Sec. 303. Reduction to 2 foreign tax credit baskets.
- Sec. 304. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.
- Sec. 305. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.
- Sec. 306. Clarification of treatment of certain transfers of intangible property.
- Sec. 307. United States property not to include certain assets of controlled foreign corporation.
- Sec. 308. Election not to use average exchange rate for foreign tax paid other than in functional currency.
- Sec. 309. Repeal of withholding tax on dividends from certain foreign corporations.
- Sec. 310. Provide equal treatment for interest paid by foreign partnerships and foreign corporations.
- Sec. 311. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company income rules.
- Sec. 312. Look-thru treatment for sales of partnership interests.
- Sec. 313. Repeal of foreign personal holding company rules and foreign investment company rules.
- Sec. 314. Determination of foreign personal holding company income with respect to transactions in commodities.
- Sec. 315. Modifications to treatment of aircraft leasing and shipping income.
- Sec. 316. Modification of exceptions under subpart F for active financing.

TITLE IV—EXTENSION OF CERTAIN EXPIRING PROVISIONS

- Sec. 401. Allowance of nonrefundable personal credits against regular and minimum tax liability.
- Sec. 402. Extension of research credit.
- Sec. 403. Extension of credit for electricity produced from certain renewable resources.
- Sec. 404. Indian employment tax credit.
- Sec. 405. Work opportunity credit.
- Sec. 406. Welfare-to-work credit.
- Sec. 407. Certain expenses of elementary and secondary school teachers.
- Sec. 408. Extension of accelerated depreciation benefit for property on Indian reservations.
- Sec. 409. Charitable contributions of computer technology and equipment used for educational purposes.
- Sec. 410. Expensing of environmental remediation costs.
- Sec. 411. Availability of medical savings accounts.
- Sec. 412. Taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.
- Sec. 413. Qualified zone academy bonds.
- Sec. 414. District of Columbia.
- Sec. 415. Extension of certain New York Liberty Zone bond financing.
- Sec. 416. Disclosures relating to terrorist activities.
- Sec. 417. Disclosure of return information relating to student loans.
- Sec. 418. Cover over of tax on distilled spirits.
- Sec. 419. Joint review of strategic plans and budget for the Internal Revenue Service.
- Sec. 420. Parity in the application of certain limits to mental health benefits.

- Sec. 421. Combined employment tax reporting project.
- Sec. 422. Clean-fuel vehicles.

TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

- Sec. 501. Deduction of State and local general sales taxes in lieu of State and local income taxes.

TITLE VI—REVENUE PROVISIONS

Subtitle A—Provisions to Reduce Tax Avoidance Through Individual and Corporate Expatriation

- Sec. 601. Tax treatment of expatriated entities and their foreign parents.
- Sec. 602. Excise tax on stock compensation of insiders in expatriated corporations.
- Sec. 603. Reinsurance of United States risks in foreign jurisdictions.
- Sec. 604. Revision of tax rules on expatriation of individuals.
- Sec. 605. Reporting of taxable mergers and acquisitions.
- Sec. 606. Studies.

Subtitle B—Provisions Relating to Tax Shelters

PART I—TAXPAYER-RELATED PROVISIONS

- Sec. 611. Penalty for failing to disclose reportable transactions.
- Sec. 612. Accuracy-related penalty for listed transactions, other reportable transactions having a significant tax avoidance purpose, etc.
- Sec. 613. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
- Sec. 614. Statute of limitations for taxable years for which required listed transactions not reported.
- Sec. 615. Disclosure of reportable transactions.
- Sec. 616. Failure to furnish information regarding reportable transactions.
- Sec. 617. Modification of penalty for failure to maintain lists of investors.
- Sec. 618. Penalty on promoters of tax shelters.
- Sec. 619. Modifications of substantial understatement penalty for nonreportable transactions.
- Sec. 620. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
- Sec. 621. Penalty on failure to report interests in foreign financial accounts.
- Sec. 622. Regulation of individuals practicing before the Department of the Treasury.

PART II—OTHER PROVISIONS

- Sec. 631. Treatment of stripped interests in bond and preferred stock funds, etc.
- Sec. 632. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.
- Sec. 633. Disallowance of certain partnership loss transfers.
- Sec. 634. No reduction of basis under section 734 in stock held by partnership in corporate partner.
- Sec. 635. Repeal of special rules for FASITs.
- Sec. 636. Limitation on transfer of built-in losses on REMIC residuals.

- Sec. 637. Clarification of banking business for purposes of determining investment of earnings in United States property.
- Sec. 638. Alternative tax for certain small insurance companies.
- Sec. 639. Denial of deduction for interest on underpayments attributable to nondisclosed reportable transactions.
- Sec. 640. Clarification of rules for payment of estimated tax for certain deemed asset sales.
- Sec. 641. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale.
- Sec. 642. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.
- Sec. 643. Exclusion from gross income for interest on overpayments of income tax by individuals.
- Sec. 644. Deposits made to suspend running of interest on potential underpayments.
- Sec. 645. Partial payment of tax liability in installment agreements.
- Sec. 646. Affirmation of consolidated return regulation authority.

PART III—LEASING

- Sec. 647. Reform of tax treatment of certain leasing arrangements.
- Sec. 648. Limitation on deductions allocable to property used by governments or other tax-exempt entities.
- Sec. 649. Effective date.

Subtitle C—Reduction of Fuel Tax Evasion

- Sec. 651. Exemption from certain excise taxes for mobile machinery.
- Sec. 652. Taxation of aviation-grade kerosene.
- Sec. 653. Dye injection equipment.
- Sec. 654. Authority to inspect on-site records.
- Sec. 655. Registration of pipeline or vessel operators required for exemption of bulk transfers to registered terminals or refineries.
- Sec. 656. Display of registration.
- Sec. 657. Penalties for failure to register and failure to report.
- Sec. 658. Collection from customs bond where importer not registered.
- Sec. 659. Modifications of tax on use of certain vehicles.
- Sec. 660. Modification of ultimate vendor refund claims with respect to farming.
- Sec. 661. Dedication of revenues from certain penalties to the Highway Trust Fund.
- Sec. 662. Taxable fuel refunds for certain ultimate vendors.
- Sec. 663. Two-party exchanges.
- Sec. 664. Simplification of tax on tires.

Subtitle D—Nonqualified Deferred Compensation Plans

- Sec. 671. Treatment of nonqualified deferred compensation plans.

Subtitle E—Other Revenue Provisions

- Sec. 681. Qualified tax collection contracts.
- Sec. 682. Treatment of charitable contributions of patents and similar property.
- Sec. 683. Increased reporting for noncash charitable contributions.
- Sec. 684. Donations of motor vehicles, boats, and aircraft.
- Sec. 685. Extension of amortization of intangibles to sports franchises.

- Sec. 686. Modification of continuing levy on payments to Federal vendors.
- Sec. 687. Modification of straddle rules.
- Sec. 688. Addition of vaccines against hepatitis A to list of taxable vaccines.
- Sec. 689. Addition of vaccines against influenza to list of taxable vaccines.
- Sec. 690. Extension of IRS user fees.
- Sec. 691. COBRA fees.
- Sec. 692. Safe harbor for churches.

TITLE VII—MARKET REFORM FOR TOBACCO GROWERS

- Sec. 701. Short title.
- Sec. 702. Effective date.

Subtitle A—Termination of Federal Tobacco Quota and Price Support Programs

- Sec. 711. Termination of tobacco quota program and related provisions.
- Sec. 712. Termination of tobacco price support program and related provisions.
- Sec. 713. Liability.

Subtitle B—Transitional Payments to Tobacco Quota Holders and Active Producers of Tobacco

- Sec. 721. Definitions of active tobacco producer and quota holder.
- Sec. 722. Payments to tobacco quota holders.
- Sec. 723. Transition payments for active producers of quota tobacco.
- Sec. 724. Resolution of disputes.
- Sec. 725. Source of funds for payments.

1 **TITLE I—END SANCTIONS AND** 2 **REDUCE CORPORATE TAX** 3 **RATES FOR DOMESTIC MANU-** 4 **FACTURING AND SMALL COR-** 5 **PORATIONS**

6 **SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL** 7 **INCOME.**

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

9 (b) CONFORMING AMENDMENTS.—

10 (1) Subpart E of part III of subchapter N of
 11 chapter 1 (relating to qualifying foreign trade in-
 12 come) is hereby repealed.

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

3 (3) The table of sections for part III of sub-
4 chapter B of chapter 1 is amended by striking the
5 item relating to section 114.

6 (4) The second sentence of section
7 56(g)(4)(B)(i) is amended by striking “114 or”.

8 (5) Section 275(a) is amended—

9 (A) by inserting “or” at the end of para-
10 graph (4)(A), by striking “or” at the end of
11 paragraph (4)(B) and inserting a period, and
12 by striking subparagraph (C), and

13 (B) by striking the last sentence.

14 (6) Paragraph (3) of section 864(e) is amend-
15 ed—

16 (A) by striking:

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

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

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

23 (B) by striking subparagraph (B).

24 (7) Section 903 is amended by striking “114,
25 164(a),” and inserting “164(a)”.

1 (8) Section 999(e)(1) is amended by striking
2 “941(a)(5),”.

3 (c) EFFECTIVE DATE.—Except as provided in sub-
4 section (d), the amendments made by this section shall
5 apply to transactions after December 31, 2004.

6 (d) TRANSITIONAL RULE FOR 2005 AND 2006.—

7 (1) IN GENERAL.—In the case of transactions
8 during 2005 or 2006, the amount includible in gross
9 income by reason of the amendments made by this
10 section shall not exceed the applicable percentage of
11 the amount which would have been so included but
12 for this subsection.

13 (2) APPLICABLE PERCENTAGE.—For purposes
14 of paragraph (1), the applicable percentage shall be
15 as follows:

16 (A) For 2005, the applicable percentage
17 shall be 20 percent.

18 (B) For 2006, the applicable percentage
19 shall be 40 percent.

20 (e) REVOCATION OF ELECTION TO BE TREATED AS
21 DOMESTIC CORPORATION.—If, during the 1-year period
22 beginning on the date of the enactment of this Act, a cor-
23 poration for which an election is in effect under section
24 943(e) of the Internal Revenue Code of 1986 revokes such
25 election, no gain or loss shall be recognized with respect

1 to property treated as transferred under clause (ii) of sec-
2 tion 943(e)(4)(B) of such Code to the extent such prop-
3 erty—

4 (1) was treated as transferred under clause (i)
5 thereof, or

6 (2) was acquired during a taxable year to which
7 such election applies and before May 1, 2003, in the
8 ordinary course of its trade or business.

9 The Secretary of the Treasury (or such Secretary's dele-
10 gate) may prescribe such regulations as may be necessary
11 to prevent the abuse of the purposes of this subsection.

12 (f) BINDING CONTRACTS.—The amendments made
13 by this section shall not apply to any transaction in the
14 ordinary course of a trade or business which occurs pursu-
15 ant to a binding contract—

16 (1) which is between the taxpayer and a person
17 who is not a related person (as defined in section
18 943(b)(3) of such Code, as in effect on the day be-
19 fore the date of the enactment of this Act), and

20 (2) which is in effect on January 14, 2002, and
21 at all times thereafter.

22 For purposes of this subsection, a binding contract shall
23 include a purchase option, renewal option, or replacement
24 option which is included in such contract and which is en-
25 forceable against the seller or lessor.

1 **SEC. 102. REDUCED CORPORATE INCOME TAX RATE FOR**
2 **DOMESTIC PRODUCTION ACTIVITIES IN-**
3 **COME.**

4 (a) LIMITATION ON TAX ON QUALIFIED PRODUCTION
5 ACTIVITIES INCOME.—Section 11 is amended by redesi-
6 gnating subsections (c) and (d) as subsections (d) and (e),
7 respectively, and by inserting after subsection (b) the fol-
8 lowing new subsection:

9 “(c) LIMITATION ON TAX ON QUALIFIED PRODUC-
10 TION ACTIVITIES INCOME.—

11 “(1) IN GENERAL.—If a corporation has quali-
12 fied production activities income for any taxable
13 year, the tax imposed by this section shall not exceed
14 the sum of—

15 “(A) a tax computed at the rates and in
16 the manner as if this subsection had not been
17 enacted on the taxable income reduced by the
18 amount of qualified production activities in-
19 come, plus

20 “(B) a tax equal to 32 percent (34 percent
21 in the case of taxable years beginning before
22 January 1, 2007) of the qualified production
23 activities income (or, if less, taxable income).

24 “(2) QUALIFIED PRODUCTION ACTIVITIES IN-
25 COME.—

1 “(A) IN GENERAL.—The term ‘qualified
2 production activities income’ for any taxable
3 year means an amount equal to the excess (if
4 any) of—

5 “(i) the taxpayer’s domestic produc-
6 tion gross receipts for such taxable year,
7 over

8 “(ii) the sum of—

9 “(I) the cost of goods sold that
10 are allocable to such receipts,

11 “(II) other deductions, expenses,
12 or losses directly allocable to such re-
13 ceipts, and

14 “(III) a ratable portion of other
15 deductions, expenses, and losses that
16 are not directly allocable to such re-
17 ceipts or another class of income.

18 “(B) ALLOCATION METHOD.—The Sec-
19 retary shall prescribe rules for the proper allo-
20 cation of items of income, deduction, expense,
21 and loss for purposes of determining income at-
22 tributable to domestic production activities.

23 “(3) DOMESTIC PRODUCTION GROSS RE-
24 CEIPTS.—For purposes of this subsection, the term

1 ‘domestic production gross receipts’ means the gross
2 receipts of the taxpayer which are derived from—

3 “(A) any lease, rental, license, sale, ex-
4 change, or other disposition of—

5 “(i) qualifying production property
6 which was manufactured, produced, grown,
7 or extracted in whole or in significant part
8 by the taxpayer within the United States,
9 or

10 “(ii) any qualified film produced by
11 the taxpayer, or

12 “(B) construction, engineering, or architec-
13 tural services performed in the United States
14 for construction projects in the United States.

15 “(4) QUALIFYING PRODUCTION PROPERTY.—

16 For purposes of this subsection, the term ‘qualifying
17 production property’ means—

18 “(A) tangible personal property,

19 “(B) any computer software, and

20 “(C) any property described in section
21 168(f)(4).

22 “(5) QUALIFIED FILM.—For purposes of this
23 subsection—

24 “(A) IN GENERAL.—The term ‘qualified
25 film’ means any property described in section

1 168(f)(3) if not less than 50 percent of the
2 total compensation relating to the production of
3 such property is compensation for services per-
4 formed in the United States by actors, produc-
5 tion personnel, directors, and producers.

6 “(B) EXCEPTION.—Such term does not in-
7 clude property with respect to which records are
8 required to be maintained under section 2257
9 of title 18, United States Code.

10 “(6) RELATED PERSONS.—For purposes of this
11 subsection—

12 “(A) IN GENERAL.—The term ‘domestic
13 production gross receipts’ shall not include any
14 gross receipts of the taxpayer derived from
15 property leased, licensed, or rented by the tax-
16 payer for use by any related person.

17 “(B) RELATED PERSON.—For purposes of
18 subparagraph (A), a person shall be treated as
19 related to another person if such persons are
20 treated as a single employer under subsection
21 (a) or (b) of section 52 or subsection (m) or (o)
22 of section 414, except that determinations
23 under subsections (a) and (b) of section 52
24 shall be made without regard to section
25 1563(b).”.

1 (b) SPECIAL RULE RELATING TO ELECTION TO
2 TREAT CUTTING OF TIMBER AS A SALE OR EXCHANGE.—
3 In the case of a corporation, any election under section
4 631(a) of the Internal Revenue Code of 1986 made for
5 a taxable year ending on or before the date of the enact-
6 ment of this Act may be revoked by the taxpayer for any
7 taxable year ending after such date. For purposes of deter-
8 mining whether such taxpayer may make a further elec-
9 tion under such section, such election (and any revocation
10 under this section) shall not be taken into account.

11 (c) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to taxable years beginning after
13 December 31, 2004.

14 **SEC. 103. REDUCED CORPORATE INCOME TAX RATE FOR**
15 **SMALL CORPORATIONS.**

16 (a) IN GENERAL.—Subsection (b) of section 11 (re-
17 lating to tax imposed on corporations) is amended by re-
18 designating paragraph (2) as paragraph (6) and by strik-
19 ing paragraph (1) and inserting the following new para-
20 graphs:

21 “(1) FOR TAXABLE YEARS BEGINNING AFTER
22 2012.—In the case of taxable years beginning after
23 2012, the amount of the tax imposed by subsection
24 (a) shall be determined in accordance with the fol-
25 lowing 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 \$20,000,000.	\$13,750, plus 32% of the excess over \$75,000.
Over \$20,000,000	\$6,389,750, plus 35% of the excess over \$20,000,000.

1 “(2) FOR TAXABLE YEARS BEGINNING IN 2011
2 OR 2012.—In the case of taxable years beginning in
3 2011 or 2012, the amount of the tax imposed by
4 subsection (a) shall be determined in accordance
5 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 \$5,000,000.	\$13,750, plus 32% of the excess over \$75,000.
Over \$5,000,000 but not over \$10,000,000.	\$1,589,750, plus 34% of the excess over \$5,000,000.
Over \$10,000,000	\$3,289,750, plus 35% of the excess over \$10,000,000.

6 “(3) FOR TAXABLE YEARS BEGINNING IN 2008,
7 2009, OR 2010.—In the case of taxable years begin-
8 ning in 2008, 2009, or 2010, the amount of the tax
9 imposed by subsection (a) shall be determined in ac-
10 cordance 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 \$1,000,000.	\$13,750, plus 32% of the excess over \$75,000.
Over \$1,000,000 but not over \$10,000,000.	\$309,750, plus 34% of the excess over \$1,000,000.
Over \$10,000,000	\$3,369,750, plus 35% of the excess over \$10,000,000.

1 “(4) FOR TAXABLE YEARS BEGINNING IN 2005,
 2 2006, OR 2007.—In the case of taxable years begin-
 3 ning in 2005, 2006, or 2007, the amount of the tax
 4 imposed by subsection (a) shall be determined in ac-
 5 cordance 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 \$1,000,000.	\$13,750, plus 33% of the excess over \$75,000.
Over \$1,000,000 but not over \$10,000,000.	\$319,000, plus 34% of the excess over \$1,000,000.
Over \$10,000,000	\$3,379,000, plus 35% of the excess over \$10,000,000.

6 “(5) PHASEOUT OF LOWER RATES FOR CER-
 7 TAIN TAXPAYERS.—

8 “(A) GENERAL RULE FOR YEARS BEFORE
 9 2013.—

10 “(i) IN GENERAL.—In the case of tax-
 11 able years beginning before 2013 with re-
 12 spect to a corporation which has taxable
 13 income in excess of the applicable amount
 14 for any taxable year, the amount of tax de-
 15 termined under paragraph (1), (2), (3) or
 16 (4) for such taxable year shall be increased
 17 by the lesser of (I) 5 percent of such ex-
 18 cess, or (II) the maximum increase
 19 amount.

1 “(ii) MAXIMUM INCREASE AMOUNT.—

2 For purposes of clause (i)—

“In the case of any taxable year beginning during:	The applicable amount is:	The maximum increase amount is:
2005, 2006, or 2007	\$1,000,000	\$21,000
2008, 2009, or 2010	\$1,000,000	\$30,250
2011 or 2012	\$5,000,000	\$110,250.

3 “(B) HIGHER INCOME CORPORATIONS.—In
4 the case of a corporation which has taxable in-
5 come in excess of \$20,000,000 (\$15,000,000 in
6 the case of taxable years beginning before
7 2013), the amount of the tax determined under
8 the foregoing provisions of this subsection shall
9 be increased by an additional amount equal to
10 the lesser of (i) 3 percent of such excess, or (ii)
11 \$610,250 (\$100,000 in the case of taxable
12 years beginning before 2013).”.

13 (b) CONFORMING AMENDMENTS.—

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

16 “(ii) in the case of a corporation, sec-
17 tion 1201(a) applies to such taxable
18 year.”.

19 (2) Section 1201(a) is amended by striking
20 “the last 2 sentences of section 11(b)(1)” and in-
21 serting “section 11(b)(5)”.

22 (3) Section 1561(a) is amended—

1 (A) by striking “the last 2 sentences of
2 section 11(b)(1)” and inserting “section
3 11(b)(5)”, and

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

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

9 **TITLE II—JOB CREATION TAX IN-**
10 **CENTIVES FOR MANUFAC-**
11 **TURERS, SMALL BUSINESSES,**
12 **AND FARMERS**

13 **Subtitle A—Small Business**
14 **Expensing**

15 **SEC. 201. 2-YEAR EXTENSION OF INCREASED EXPENSING**
16 **FOR SMALL BUSINESS.**

17 Subsections (b), (c), and (d) of section 179 are each
18 amended by striking “2006” each place it appears and
19 inserting “2008”.

20 **Subtitle B—Depreciation**

21 **SEC. 211. RECOVERY PERIOD FOR DEPRECIATION OF CER-**
22 **TAIN LEASEHOLD IMPROVEMENTS AND RES-**
23 **TAURANT PROPERTY.**

24 (a) 15-YEAR RECOVERY PERIOD.—Subparagraph
25 (E) of section 168(e)(3) (relating to classification of cer-

tain property) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting a comma, and by adding at the end the following new clauses:

“(iv) any qualified leasehold improvement property placed in service before January 1, 2006, and

“(v) any qualified restaurant property placed in service before January 1, 2006.”

(b) QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY.—Subsection (e) of section 168 is amended by adding at the end the following new paragraph:

“(6) QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY.—The term ‘qualified leasehold improvement property’ has the meaning given such term in section 168(k)(3) except that the following special rules shall apply:

“(A) IMPROVEMENTS MADE BY LESSOR.—
In the case of an improvement made by the person who was the lessor of such improvement when such improvement was placed in service, such improvement shall be qualified leasehold improvement property (if at all) only so long as such improvement is held by such person.

1 “(B) EXCEPTION FOR CHANGES IN FORM
2 OF BUSINESS.—Property shall not cease to be
3 qualified leasehold improvement property under
4 subparagraph (A) by reason of—

5 “(i) death,

6 “(ii) a transaction to which section
7 381(a) applies,

8 “(iii) a mere change in the form of
9 conducting the trade or business so long as
10 the property is retained in such trade or
11 business as qualified leasehold improve-
12 ment property and the taxpayer retains a
13 substantial interest in such trade or busi-
14 ness,

15 “(iv) the acquisition of such property
16 in an exchange described in section 1031,
17 1033, or 1038 to the extent that the basis
18 of such property includes an amount rep-
19 resenting the adjusted basis of other prop-
20 erty owned by the taxpayer or a related
21 person, or

22 “(v) the acquisition of such property
23 by the taxpayer in a transaction described
24 in section 332, 351, 361, 721, or 731 (or
25 the acquisition of such property by the tax-

1 payer from the transferee or acquiring cor-
2 poration in a transaction described in such
3 section), to the extent that the basis of the
4 property in the hands of the taxpayer is
5 determined by reference to its basis in the
6 hands of the transferor or distributor.”.

7 (c) QUALIFIED RESTAURANT PROPERTY.—Sub-
8 section (e) of section 168 (as amended by subsection (b))
9 is further amended by adding at the end the following new
10 paragraph:

11 “(7) QUALIFIED RESTAURANT PROPERTY.—The
12 term ‘qualified restaurant property’ means any sec-
13 tion 1250 property which is an improvement to a
14 building if—

15 “(A) such improvement is placed in service
16 more than 3 years after the date such building
17 was first placed in service, and

18 “(B) more than 50 percent of the build-
19 ing’s square footage is devoted to preparation
20 of, and seating for on-premises consumption of,
21 prepared meals.”.

22 (d) REQUIREMENT TO USE STRAIGHT LINE METH-
23 OD.—

1 (1) Paragraph (3) of section 168(b) is amended
 2 by adding at the end the following new subpara-
 3 graphs:

4 “(G) Qualified leasehold improvement
 5 property described in subsection (e)(6).

6 “(H) Qualified restaurant property de-
 7 scribed in subsection (e)(7).”.

8 (2) Subparagraph (A) of section 168(b)(2) is
 9 amended by inserting before the comma “not re-
 10 ferred to in paragraph (3)”.

11 (e) ALTERNATIVE SYSTEM.—The table contained in
 12 section 168(g)(3)(B) is amended by adding at the end the
 13 following new items:

“(E)(iv)	39
“(E)(v)	39”.

14 (f) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to property placed in service after
 16 the date of the enactment of this Act.

17 **SEC. 212. MODIFICATION OF DEPRECIATION ALLOWANCE**
 18 **FOR AIRCRAFT.**

19 (a) AIRCRAFT TREATED AS QUALIFIED PROP-
 20 erty.—

21 (1) IN GENERAL.—Paragraph (2) of section
 22 168(k) is amended by redesignating subparagraphs
 23 (C) through (F) as subparagraphs (D) through (G),

1 respectively, and by inserting after subparagraph
2 (B) the following new subparagraph:

3 “(C) CERTAIN AIRCRAFT.—The term
4 ‘qualified property’ includes property—

5 “(i) which meets the requirements of
6 clauses (ii) and (iii) of subparagraph (A),

7 “(ii) which is an aircraft which is not
8 a transportation property (as defined in
9 subparagraph (B)(iii)) other than for agri-
10 cultural or firefighting purposes,

11 “(iii) which is purchased and on which
12 such purchaser, at the time of the contract
13 for purchase, has made a nonrefundable
14 deposit of the lesser of—

15 “(I) 10 percent of the cost, or

16 “(II) \$100,000, and

17 “(iv) which has—

18 “(I) an estimated production pe-
19 riod exceeding 4 months, and

20 “(II) a cost exceeding
21 \$200,000.”.

22 (2) PLACED IN SERVICE DATE.—Clause (iv) of
23 section 168(k)(2)(A) is amended by striking “sub-
24 paragraph (B)” and inserting “subparagraphs (B)
25 and (C)”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 168(k)(2)(B) is amended by adding
3 at the end the following new clause:

4 “(iv) APPLICATION OF SUBPARA-
5 GRAPH.—This subparagraph shall not
6 apply to any property which is described in
7 subparagraph (C).”.

8 (2) Section 168(k)(4)(A)(ii) is amended by
9 striking “paragraph (2)(C)” and inserting “para-
10 graph (2)(D)”.

11 (3) Section 168(k)(4)(B)(iii) is amended by in-
12 serting “and paragraph (2)(C)” after “of this para-
13 graph)”.

14 (4) Section 168(k)(4)(C) is amended by striking
15 “subparagraphs (B) and (D)” and inserting “sub-
16 paragraphs (B), (C), and (E)”.

17 (5) Section 168(k)(4)(D) is amended by strik-
18 ing “Paragraph (2)(E)” and inserting “Paragraph
19 (2)(F)”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect as if included in the amend-
22 ments made by section 101 of the Job Creation and Work-
23 er Assistance Act of 2002.

1 **SEC. 213. MODIFICATION OF PLACED IN SERVICE RULE**
2 **FOR BONUS DEPRECIATION PROPERTY.**

3 (a) IN GENERAL.—Section 168(k)(2)(D) (relating to
4 special rules) is amended by adding at the end the fol-
5 lowing new clause:

6 “(iii) SYNDICATION.—For purposes of
7 subparagraph (A)(ii), if—

8 “(I) property is originally placed
9 in service after September 10, 2001,
10 by the lessor of such property,

11 “(II) such property is sold by
12 such lessor or any subsequent pur-
13 chaser within 3 months after the date
14 so placed in service (or, in the case of
15 multiple units of property subject to
16 the same lease, within 3 months after
17 the date the final unit is placed in
18 service, so long as the period between
19 the time the first unit is placed in
20 service and the time the last unit is
21 placed in service does not exceed 12
22 months), and

23 “(III) the user of such property
24 after the last sale during such 3-
25 month period remains the same as

1 “(A) IN GENERAL.—For purpose of sub-
2 section (b)(1)(A)—

3 “(i) except as provided in clause (ii),
4 a husband and wife (and their estates)
5 shall be treated as 1 shareholder, and

6 “(ii) in the case of a family with re-
7 spect to which an election is in effect
8 under subparagraph (D), all members of
9 the family shall be treated as 1 share-
10 holder.

11 “(B) MEMBERS OF THE FAMILY.—For
12 purpose of subparagraph (A)(ii)—

13 “(i) IN GENERAL.—The term ‘mem-
14 bers of the family’ means the common an-
15 cestor, lineal descendants of the common
16 ancestor, and the spouses (or former
17 spouses) of such lineal descendants or com-
18 mon ancestor.

19 “(ii) COMMON ANCESTOR.—For pur-
20 poses of this paragraph, an individual shall
21 not be considered a common ancestor if, as
22 of the later of the effective date of this
23 paragraph or the time the election under
24 section 1362(a) is made, the individual is
25 more than 3 generations removed from the

1 youngest generation of shareholders who
2 would (but for this clause) be members of
3 the family. For purposes of the preceding
4 sentence, a spouse (or former spouse) shall
5 be treated as being of the same generation
6 as the individual to which such spouse is
7 (or was) married.

8 “(C) EFFECT OF ADOPTION, ETC.—In de-
9 termining whether any relationship specified in
10 subparagraph (B) exists, the rules of section
11 152(b)(2) shall apply.

12 “(D) ELECTION.—An election under sub-
13 paragraph (A)(ii)—

14 “(i) may, except as otherwise provided
15 in regulations prescribed by the Secretary,
16 be made by any member of the family, and

17 “(ii) shall remain in effect until termi-
18 nated as provided in regulations prescribed
19 by the Secretary.”.

20 (b) RELIEF FROM INADVERTENT INVALID ELECTION
21 OR TERMINATION.—Section 1362(f) (relating to inad-
22 vertent invalid elections or terminations), as amended by
23 section 229, is amended—

1 (1) by inserting “or section 1361(c)(1)(A)(ii)”
 2 after “section 1361(b)(3)(B)(ii),” in paragraph (1),
 3 and

4 (2) by inserting “or section 1361(c)(1)(D)(iii)”
 5 after “section 1361(b)(3)(C),” in paragraph (1)(B).

6 (c) EFFECTIVE DATES.—

7 (1) SUBSECTION (a).—The amendment made
 8 by subsection (a) shall apply to taxable years begin-
 9 ning after December 31, 2004.

10 (2) SUBSECTION (b).—The amendments made
 11 by subsection (b) shall apply to elections and termi-
 12 nations made after December 31, 2004.

13 **SEC. 222. INCREASE IN NUMBER OF ELIGIBLE SHARE-**
 14 **HOLDERS TO 100.**

15 (a) IN GENERAL.—Section 1361(b)(1)(A) (defining
 16 small business corporation) is amended by striking “75”
 17 and inserting “100”.

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

21 **SEC. 223. EXPANSION OF BANK S CORPORATION ELIGIBLE**
 22 **SHAREHOLDERS TO INCLUDE IRAS.**

23 (a) IN GENERAL.—Section 1361(c)(2)(A) (relating to
 24 certain trusts permitted as shareholders) is amended by
 25 inserting after clause (v) the following new clause:

1 “(vi) In the case of a corporation
2 which is a bank (as defined in section
3 581), a trust which constitutes an indi-
4 vidual retirement account under section
5 408(a), including one designated as a Roth
6 IRA under section 408A, but only to the
7 extent of the stock held by such trust in
8 such bank as of the date of the enactment
9 of this clause.”.

10 (b) TREATMENT AS SHAREHOLDER.—Section
11 1361(c)(2)(B) (relating to treatment as shareholders) is
12 amended by adding at the end the following new clause:

13 “(vi) In the case of a trust described
14 in clause (vi) of subparagraph (A), the in-
15 dividual for whose benefit the trust was
16 created shall be treated as a shareholder.”.

17 (c) SALE OF BANK STOCK IN IRA RELATING TO S
18 CORPORATION ELECTION EXEMPT FROM PROHIBITED
19 TRANSACTION RULES.—Section 4975(d) (relating to ex-
20 emptions) is amended by striking “or” at the end of para-
21 graph (14), by striking the period at the end of paragraph
22 (15) and inserting “; or”, and by adding at the end the
23 following new paragraph:

24 “(16) a sale of stock held by a trust which con-
25 stitutes an individual retirement account under sec-

1 tion 408(a) to the individual for whose benefit such
2 account is established if—

3 “(A) such stock is in a bank (as defined in
4 section 581),

5 “(B) such stock is held by such trust as of
6 the date of the enactment of this paragraph,

7 “(C) such sale is pursuant to an election
8 under section 1362(a) by such bank,

9 “(D) such sale is for fair market value at
10 the time of sale (as established by an inde-
11 pendent appraiser) and the terms of the sale
12 are otherwise at least as favorable to such trust
13 as the terms that would apply on a sale to an
14 unrelated party,

15 “(E) such trust does not pay any commis-
16 sions, costs, or other expenses in connection
17 with the sale, and

18 “(F) the stock is sold in a single trans-
19 action for cash not later than 120 days after
20 the S corporation election is made.”.

21 (d) CONFORMING AMENDMENT.—Section 512(e)(1)
22 is amended by inserting “1361(c)(2)(A)(vi) or” before
23 “1361(c)(6)”.

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

4 **SEC. 224. DISREGARD OF UNEXERCISED POWERS OF AP-**
5 **POINTMENT IN DETERMINING POTENTIAL**
6 **CURRENT BENEFICIARIES OF ESBT.**

7 (a) IN GENERAL.—Section 1361(e)(2) (defining po-
8 tential current beneficiary) is amended—

9 (1) by inserting “(determined without regard to
10 any power of appointment to the extent such power
11 remains unexercised at the end of such period)”
12 after “of the trust” in the first sentence, and

13 (2) by striking “60-day” in the second sentence
14 and inserting “1-year”.

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

18 **SEC. 225. TRANSFER OF SUSPENDED LOSSES INCIDENT TO**
19 **DIVORCE, ETC.**

20 (a) IN GENERAL.—Section 1366(d)(2) (relating to
21 indefinite carryover of disallowed losses and deductions)
22 is amended to read as follows:

23 “(2) INDEFINITE CARRYOVER OF DISALLOWED
24 LOSSES AND DEDUCTIONS.—

1 (2) by striking the period at the end of sub-
2 paragraph (B) and inserting “, and”, and

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

5 “(C) for purposes of applying sections 465
6 and 469 to the beneficiary of the trust, the dis-
7 position of the S corporation stock by the trust
8 shall be treated as a disposition by such bene-
9 ficiary.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to transfers made after December
12 31, 2004.

13 **SEC. 227. EXCLUSION OF INVESTMENT SECURITIES INCOME**
14 **FROM PASSIVE INCOME TEST FOR BANK S**
15 **CORPORATIONS.**

16 (a) IN GENERAL.—Section 1362(d)(3) (relating to
17 where passive investment income exceeds 25 percent of
18 gross receipts for 3 consecutive taxable years and corpora-
19 tion has accumulated earnings and profits) is amended by
20 adding at the end the following new subparagraph:

21 “(F) EXCEPTION FOR BANKS; ETC.—In
22 the case of a bank (as defined in section 581),
23 a bank holding company (within the meaning of
24 section 2(a) of the Bank Holding Company Act
25 of 1956 (12 U.S.C. 1841(a))), or a financial

1 holding company (within the meaning of section
2 2(p) of such Act), the term ‘passive investment
3 income’ shall not include—

4 “(i) interest income earned by such
5 bank or company, or

6 “(ii) dividends on assets required to
7 be held by such bank or company, includ-
8 ing stock in the Federal Reserve Bank, the
9 Federal Home Loan Bank, or the Federal
10 Agricultural Mortgage Bank or participa-
11 tion certificates issued by a Federal Inter-
12 mediate Credit Bank.”.

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

16 **SEC. 228. TREATMENT OF BANK DIRECTOR SHARES.**

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

20 “(f) RESTRICTED BANK DIRECTOR STOCK.—

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

1 “(2) RESTRICTED BANK DIRECTOR STOCK.—
2 For purposes of this subsection, the term ‘restricted
3 bank director stock’ means stock in a bank (as de-
4 fined in section 581), a bank holding company (with-
5 in the meaning of section 2(a) of the Bank Holding
6 Company Act of 1956 (12 U.S.C. 1841(a))), or a fi-
7 nancial holding company (within the meaning of sec-
8 tion 2(p) of such Act), registered with the Federal
9 Reserve System if such stock—

10 “(A) is required to be held by an individual
11 under applicable Federal or State law in order
12 to permit such individual to serve as a director,
13 and

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

1 “(3) CROSS REFERENCE.—

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

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

5 “(f) RESTRICTED BANK DIRECTOR STOCK.—If a di-
6 rector receives a distribution (not in part or full payment
7 in exchange for stock) from an S corporation with respect
8 to any restricted bank director stock (as defined in section
9 1361(f)), the amount of such distribution—

10 “(1) shall be includible in gross income of the
11 director, and

12 “(2) shall be deductible by the corporation for
13 the taxable year of such corporation in which or with
14 which ends the taxable year in which such amount
15 in included in the gross income of the director.”.

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

19 **SEC. 229. RELIEF FROM INADVERTENTLY INVALID QUALI-**
20 **FIED SUBCHAPTER S SUBSIDIARY ELECTIONS**
21 **AND TERMINATIONS.**

22 (a) IN GENERAL.—Section 1362(f) (relating to inad-
23 vertent invalid elections or terminations) is amended—

1 (1) by inserting “, section 1361(b)(3)(B)(ii),”
2 after “subsection (a)” in paragraph (1),

3 (2) by inserting “, section 1361(b)(3)(C),” after
4 “subsection (d)” in paragraph (1)(B),

5 (3) by amending paragraph (3)(A) to read as
6 follows:

7 “(A) so that the corporation for which the
8 election was made is a small business corpora-
9 tion or a qualified subchapter S subsidiary, as
10 the case may be, or”,

11 (4) by amending paragraph (4) to read as fol-
12 lows:

13 “(4) the corporation for which the election was
14 made, and each person who was a shareholder in
15 such corporation at any time during the period spec-
16 ified pursuant to this subsection, agrees to make
17 such adjustments (consistent with the treatment of
18 such corporation as an S corporation or a qualified
19 subchapter S subsidiary, as the case may be) as may
20 be required by the Secretary with respect to such pe-
21 riod,” and

22 (5) by inserting “or a qualified subchapter S
23 subsidiary, as the case may be” after “S corpora-
24 tion” in the matter following paragraph (4).

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

4 **SEC. 230. INFORMATION RETURNS FOR QUALIFIED SUB-**
5 **CHAPTER S SUBSIDIARIES.**

6 (a) IN GENERAL.—Section 1361(b)(3)(A) (relating
7 to treatment of certain wholly owned subsidiaries) is
8 amended by inserting “and in the case of information re-
9 turns required under part III of subchapter A of chapter
10 61” after “Secretary”.

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

14 **SEC. 231. REPAYMENT OF LOANS FOR QUALIFYING EM-**
15 **PLOYER SECURITIES.**

16 (a) IN GENERAL.—Subsection (f) of section 4975 (re-
17 lating to other definitions and special rules) is amended
18 by adding at the end the following new paragraph:

19 “(7) S CORPORATION REPAYMENT OF LOANS
20 FOR QUALIFYING EMPLOYER SECURITIES.—A plan
21 shall not be treated as violating the requirements of
22 section 401 or 409 or subsection (e)(7), or as engag-
23 ing in a prohibited transaction for purposes of sub-
24 section (d)(3), merely by reason of any distribution
25 (as described in section 1368(a)) with respect to S

1 corporation stock that constitutes qualifying em-
2 ployer securities, which in accordance with the plan
3 provisions is used to make payments on a loan de-
4 scribed in subsection (d)(3) the proceeds of which
5 were used to acquire such qualifying employer secu-
6 rities (whether or not allocated to participants). The
7 preceding sentence shall not apply in the case of a
8 distribution which is paid with respect to any em-
9 ployer security which is allocated to a participant
10 unless the plan provides that employer securities
11 with a fair market value of not less than the amount
12 of such distribution are allocated to such participant
13 for the year which (but for the preceding sentence)
14 such distribution would have been allocated to such
15 participant.”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to distributions with respect to S
18 corporation stock made after December 31, 2004.

19 **Subtitle D—Alternative Minimum**
20 **Tax Relief**

21 **SEC. 241. FOREIGN TAX CREDIT UNDER ALTERNATIVE MIN-**
22 **IMUM TAX.**

23 (a) IN GENERAL.—

24 (1) Subsection (a) of section 59 is amended by
25 striking paragraph (2) and by redesignating para-

1 graphs (3) and (4) as paragraphs (2) and (3), re-
2 spectively.

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

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

8 **SEC. 242. EXPANSION OF EXEMPTION FROM ALTERNATIVE**
9 **MINIMUM TAX FOR SMALL CORPORATIONS.**

10 (a) IN GENERAL.—Subparagraphs (A) and (B) of
11 section 55(e)(1) are each amended by striking
12 “\$7,500,000” each place it appears and inserting
13 “\$20,000,000”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to taxable years beginning after
16 December 31, 2005.

17 **SEC. 243. INCOME AVERAGING FOR FARMERS NOT TO IN-**
18 **CREASE ALTERNATIVE MINIMUM TAX.**

19 (a) IN GENERAL.—Subsection (c) of section 55 (de-
20 fining regular tax) is amended by redesignating paragraph
21 (2) as paragraph (3) and by inserting after paragraph (1)
22 the following new paragraph:

23 “(2) COORDINATION WITH INCOME AVERAGING
24 FOR FARMERS.—Solely for purposes of this section,
25 section 1301 (relating to averaging of farm income)

1 shall not apply in computing the regular tax liabil-
 2 ity.”.

3 (b) EFFECTIVE DATE.—The amendment made by
 4 subsection (a) shall apply to taxable years beginning after
 5 December 31, 2003.

6 **Subtitle E—Restructuring of**
 7 **Incentives for Alcohol Fuels, Etc.**

8 **SEC. 251. REDUCED RATES OF TAX ON GASOHOL REPLACED**
 9 **WITH EXCISE TAX CREDIT; REPEAL OF**
 10 **OTHER ALCOHOL-BASED FUEL INCENTIVES;**
 11 **ETC.**

12 (a) EXCISE TAX CREDIT FOR ALCOHOL FUEL MIX-
 13 TURES.—

14 (1) IN GENERAL.—Subsection (f) of section
 15 6427 is amended to read as follows:

16 “(f) ALCOHOL FUEL MIXTURES.—

17 “(1) IN GENERAL.—The amount of credit
 18 which would (but for section 40(c)) be determined
 19 under section 40(a)(1) for any period—

20 “(A) shall, with respect to taxable events
 21 occurring during such period, be treated—

22 “(i) as a payment of the taxpayer’s li-
 23 ability for tax imposed by section 4081,
 24 and

1 “(ii) as received at the time of the
2 taxable event, and

3 “(B) to the extent such amount of credit
4 exceeds such liability for such period, shall (ex-
5 cept as provided in subsection (k)) be paid sub-
6 ject to subsection (i)(3) by the Secretary with-
7 out interest.

8 “(2) SPECIAL RULES.—

9 “(A) ONLY CERTAIN ALCOHOL TAKEN
10 INTO ACCOUNT.—For purposes of paragraph
11 (1), section 40 shall be applied—

12 “(i) by not taking into account alcohol
13 with a proof of less than 190, and

14 “(ii) by treating as alcohol the alcohol
15 gallon equivalent of ethyl tertiary butyl
16 ether or other ethers produced from such
17 alcohol.

18 “(B) TREATMENT OF REFINERS.—For
19 purposes of paragraph (1), in the case of a mix-
20 ture—

21 “(i) the alcohol in which is described
22 in subparagraph (A)(ii), and

23 “(ii) which is produced by any person
24 at a refinery prior to any taxable event,

1 section 40 shall be applied by treating such per-
2 son as having sold such mixture at the time of
3 its removal from the refinery (and only at such
4 time) to another person for use as a fuel.

5 “(3) MIXTURES NOT USED AS FUEL.—Rules
6 similar to the rules of subparagraphs (A) and (D)
7 of section 40(d)(3) shall apply for purposes of this
8 subsection.

9 “(4) TERMINATION.—This section shall apply
10 only to periods to which section 40 applies, deter-
11 mined by substituting in section 40(e)—

12 “(A) ‘December 31, 2010’ for ‘December
13 31, 2007’, and

14 “(B) ‘January 1, 2011’ for ‘January 1,
15 2008’.”

16 (2) REVISION OF RULES FOR PAYMENT OF
17 CREDIT.—Paragraph (3) of section 6427(i) is
18 amended to read as follows:

19 “(3) SPECIAL RULE FOR ALCOHOL MIXTURE
20 CREDIT.—

21 “(A) IN GENERAL.—A claim may be filed
22 under subsection (f)(1)(B) by any person for
23 any period—

24 “(i) for which \$200 or more is pay-
25 able under such subsection (f)(1)(B), and

1 “(ii) which is not less than 1 week.

2 In the case of an electronic claim, this subpara-
3 graph shall be applied without regard to clause
4 (i).

5 “(B) PAYMENT OF CLAIM.—Notwith-
6 standing subsection (f)(1)(B), if the Secretary
7 has not paid pursuant to a claim filed under
8 this section within 45 days of the date of the
9 filing of such claim (20 days in the case of an
10 electronic claim), the claim shall be paid with
11 interest from such date determined by using the
12 overpayment rate and method under section
13 6621.

14 “(C) TIME FOR FILING CLAIM.—No claim
15 filed under this paragraph shall be allowed un-
16 less filed on or before the last day of the first
17 quarter following the earliest quarter included
18 in the claim.”

19 (b) REPEAL OF OTHER INCENTIVES FOR FUEL MIX-
20 TURES.—

21 (1) Subsection (b) of section 4041 is amended
22 to read as follows:

23 “(b) EXEMPTION FOR OFF-HIGHWAY BUSINESS
24 USE.—

1 “(1) IN GENERAL.—No tax shall be imposed by
2 subsection (a) or (d)(1) on liquids sold for use or
3 used in an off-highway business use.

4 “(2) TAX WHERE OTHER USE.—If a liquid on
5 which no tax was imposed by reason of paragraph
6 (1) is used otherwise than in an off-highway busi-
7 ness use, a tax shall be imposed by paragraph
8 (1)(B), (2)(B), or (3)(A)(ii) of subsection (a)
9 (whichever is appropriate) and by the corresponding
10 provision of subsection (d)(1) (if any).

11 “(3) OFF-HIGHWAY BUSINESS USE DEFINED.—
12 For purposes of this subsection, the term ‘off-high-
13 way business use’ has the meaning given to such
14 term by section 6421(e)(2); except that such term
15 shall not, for purposes of subsection (a)(1), include
16 use in a diesel-powered train.”

17 (2) Section 4041(k) is hereby repealed.

18 (3) Section 4081(c) is hereby repealed.

19 (4) Section 4091(c) is hereby repealed.

20 (c) TRANSFERS TO HIGHWAY TRUST FUND.—Para-
21 graph (4) of section 9503(b) is amended by adding “or”
22 at the end of subparagraph (B), by striking the comma
23 at the end of subparagraph (C) and inserting a period,
24 and by striking subparagraphs (D), (E), and (F).

25 (d) CONFORMING AMENDMENTS.—

1 “For purposes of this paragraph, the amount of
2 taxes received under section 4081 shall include any
3 amount treated as a payment under section
4 6427(f)(1)(A) and shall not be reduced by the
5 amount paid under section 6427(f)(1)(B).”

6 (b) TRANSFERS FROM FUND.—Subparagraph (A) of
7 section 9503(c)(2) is amended by adding at the end the
8 following new sentence: “Clauses (i)(III) and (ii) shall not
9 apply to claims under section 6427(f)(1)(B).”

10 (c) EFFECTIVE DATE.—

11 (1) SUBSECTION (a).—The amendment made by
12 subsection (a) shall apply to taxes received after
13 September 30, 2004.

14 (2) SUBSECTION (b).—The amendment made by
15 subsection (b) shall apply to amounts paid after
16 September 30, 2004, and (to the extent related to
17 section 34 of the Internal Revenue Code of 1986) to
18 fuel used after such date.

19 **Subtitle F—Stock Options and Em-**
20 **ployee Stock Purchase Plan**
21 **Stock Options**

22 **SEC. 261. EXCLUSION OF INCENTIVE STOCK OPTIONS AND**
23 **EMPLOYEE STOCK PURCHASE PLAN STOCK**
24 **OPTIONS FROM WAGES.**

25 (a) EXCLUSION FROM EMPLOYMENT TAXES.—

1 (1) SOCIAL SECURITY TAXES.—

2 (A) Section 3121(a) (relating to definition
3 of wages) is amended by striking “or” at the
4 end of paragraph (20), by striking the period at
5 the end of paragraph (21) and inserting “; or”,
6 and by inserting after paragraph (21) the fol-
7 lowing new paragraph:

8 “(22) remuneration on account of—

9 “(A) a transfer of a share of stock to any
10 individual pursuant to an exercise of an incen-
11 tive stock option (as defined in section 422(b))
12 or under an employee stock purchase plan (as
13 defined in section 423(b)), or

14 “(B) any disposition by the individual of
15 such stock.”.

16 (B) Section 209(a) of the Social Security
17 Act is amended by striking “or” at the end of
18 paragraph (17), by striking the period at the
19 end of paragraph (18) and inserting “; or”, and
20 by inserting after paragraph (18) the following
21 new paragraph:

22 “(19) Remuneration on account of—

23 “(A) a transfer of a share of stock to any
24 individual pursuant to an exercise of an incen-
25 tive stock option (as defined in section 422(b))

1 of the Internal Revenue Code of 1986) or under
2 an employee stock purchase plan (as defined in
3 section 423(b) of such Code), or

4 “(B) any disposition by the individual of
5 such stock.”.

6 (2) RAILROAD RETIREMENT TAXES.—Sub-
7 section (e) of section 3231 is amended by adding at
8 the end the following new paragraph:

9 “(12) QUALIFIED STOCK OPTIONS.—The term
10 ‘compensation’ shall not include any remuneration
11 on account of—

12 “(A) a transfer of a share of stock to any
13 individual pursuant to an exercise of an incen-
14 tive stock option (as defined in section 422(b))
15 or under an employee stock purchase plan (as
16 defined in section 423(b)), or

17 “(B) any disposition by the individual of
18 such stock.”.

19 (3) UNEMPLOYMENT TAXES.—Section 3306(b)
20 (relating to definition of wages) is amended by strik-
21 ing “or” at the end of paragraph (17), by striking
22 the period at the end of paragraph (18) and insert-
23 ing “; or”, and by inserting after paragraph (18) the
24 following new paragraph:

25 “(19) remuneration on account of—

1 “(A) a transfer of a share of stock to any
2 individual pursuant to an exercise of an incen-
3 tive stock option (as defined in section 422(b))
4 or under an employee stock purchase plan (as
5 defined in section 423(b)), or

6 “(B) any disposition by the individual of
7 such stock.”.

8 (b) WAGE WITHHOLDING NOT REQUIRED ON DIS-
9 QUALIFYING DISPOSITIONS.—Section 421(b) (relating to
10 effect of disqualifying dispositions) is amended by adding
11 at the end the following new sentence: “No amount shall
12 be required to be deducted and withheld under chapter
13 24 with respect to any increase in income attributable to
14 a disposition described in the preceding sentence.”.

15 (c) WAGE WITHHOLDING NOT REQUIRED ON COM-
16 PENSATION WHERE OPTION PRICE IS BETWEEN 85 PER-
17 CENT AND 100 PERCENT OF VALUE OF STOCK.—Section
18 423(c) (relating to special rule where option price is be-
19 tween 85 percent and 100 percent of value of stock) is
20 amended by adding at the end the following new sentence:
21 “No amount shall be required to be deducted and withheld
22 under chapter 24 with respect to any amount treated as
23 compensation under this subsection.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to stock acquired pursuant to op-
3 tions exercised after the date of the enactment of this Act.

4 **Subtitle G—Incentives to Reinvest**
5 **Foreign Earnings in United States**

6 **SEC. 271. INCENTIVES TO REINVEST FOREIGN EARNINGS IN**
7 **UNITED STATES.**

8 (a) IN GENERAL.—Subpart F of part III of sub-
9 chapter N of chapter 1 (relating to controlled foreign cor-
10 porations) is amended by adding at the end the following
11 new section:

12 **“SEC. 965. TEMPORARY DIVIDENDS RECEIVED DEDUCTION.**

13 **“(a) DEDUCTION.—**

14 **“(1) IN GENERAL.—**In the case of a corpora-
15 tion which is a United States shareholder, there
16 shall be allowed as a deduction an amount equal to
17 85 percent of the dividends which are received by
18 such shareholder from controlled foreign corpora-
19 tions during the election period.

20 **“(2) DIVIDENDS PAID INDIRECTLY FROM CON-**
21 **TROLLED FOREIGN CORPORATIONS.—**If, within the
22 election period, a United States shareholder receives
23 a distribution from a controlled foreign corporation
24 which is excluded from gross income under section
25 959(a), such distribution shall be treated for pur-

1 poses of this section as a dividend to the extent of
2 any amount included in income by such United
3 States shareholder under section 951(a)(1)(A) as a
4 result of any dividend paid during the election period
5 to—

6 “(A) such controlled foreign corporation
7 from another controlled foreign corporation that
8 is in a chain of ownership described in section
9 958(a), or

10 “(B) any other controlled foreign corpora-
11 tion in such chain of ownership, but only to the
12 extent of distributions described in section
13 959(b) which are made during the election pe-
14 riod to the controlled foreign corporation from
15 which such United States shareholder received
16 such distribution.

17 “(b) LIMITATIONS.—

18 “(1) IN GENERAL.—The amount of dividends
19 taken into account under subsection (a) shall not ex-
20 ceed the greater of—

21 “(A) \$500,000,000,

22 “(B) the amount shown on the applicable
23 financial statement as earnings permanently re-
24 invested outside the United States, or

1 “(C) in the case of an applicable financial
2 statement which fails to show a specific amount
3 of earnings permanently reinvested outside the
4 United States and which shows a specific
5 amount of tax liability attributable to such
6 earnings, the amount of such earnings deter-
7 mined in such manner as the Secretary may
8 prescribe.

9 Except as provided in subparagraph (C), if there is
10 no statement or such statement fails to show a spe-
11 cific amount of such earnings or liability, such
12 amount shall be treated as being zero for purposes
13 of this paragraph.

14 “(2) DIVIDENDS MUST BE EXTRAORDINARY.—
15 The amount of dividends taken into account under
16 subsection (a) shall not exceed the excess (if any)
17 of—

18 “(A) the dividends received during the tax-
19 able year by such shareholder from controlled
20 foreign corporations, over

21 “(B) the annual average for the base pe-
22 riod years of—

23 “(i) the dividends received during
24 each base period year by such shareholder
25 from such corporations,

1 “(ii) the amounts includible in such
2 shareholder’s gross income for each base
3 period year under section 951(a)(1)(B)
4 with respect to such corporations, and

5 “(iii) the amounts that would have
6 been included for each base period year
7 but for section 959(a) with respect to such
8 corporations.

9 The amount taken into account under clause
10 (iii) for any base period year shall not include
11 any amount which is not includible in gross in-
12 come by reason of an amount described in
13 clause (ii) with respect to a prior taxable year.

14 “(3) REQUIREMENT TO INVEST IN UNITED
15 STATES.—Subsection (a) shall not apply to any divi-
16 dend received by a United States shareholder unless
17 the amount of the dividend is invested in the United
18 States pursuant to a plan describing the expendi-
19 tures to be made with such amount—

20 “(A) which, before the dividend is received,
21 is approved by the president or chief executive
22 officer of such shareholder, and

23 “(B) which is approved by the Board of
24 Directors (or management committee) of such

1 shareholder no later than its first meeting on or
2 after the date the dividend is received.

3 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
4 poses of this section—

5 “(1) ELECTION PERIOD.—The term ‘election
6 period’ means—

7 “(A) if this section applies to the tax-
8 payer’s last taxable year beginning before the
9 date of the enactment of this section, any 6-
10 month or shorter period during such year which
11 is after the date of the enactment of this sec-
12 tion and which is selected by the taxpayer, and

13 “(B) if this section applies to the tax-
14 payer’s first taxable year beginning on or after
15 such date, the 1st 6 months of such taxable
16 year.

17 “(2) APPLICABLE FINANCIAL STATEMENT.—
18 The term ‘applicable financial statement’ means the
19 most recently audited financial statement (including
20 notes and other documents which accompany such
21 statement)—

22 “(A) which is certified on or before March
23 31, 2003, as being prepared in accordance with
24 generally accepted accounting principles, and

1 “(B) which is used for the purposes of a
2 statement or report—

3 “(i) to creditors,

4 “(ii) to shareholders, or

5 “(iii) for any other substantial nontax
6 purpose.

7 In the case of a corporation required to file a finan-
8 cial statement with the Securities and Exchange
9 Commission, such term means the most recent such
10 statement filed on or before March 31, 2003.

11 “(3) BASE PERIOD YEARS.—The base period
12 years are the 3 taxable years—

13 “(A) which are among the 5 most recent
14 taxable years ending on or before March 31,
15 2003, and

16 “(B) which are determined by dis-
17 regarding—

18 “(i) 1 taxable year for which the sum
19 of the amounts described in clauses (i),
20 (ii), and (iii) of subsection (b)(2)(B) is the
21 largest, and

22 “(ii) 1 taxable year for which such
23 sum is the smallest.

1 Rules similar to the rules of subparagraphs (A) and
2 (B) of section 41(f)(3) shall apply for purposes of
3 this paragraph.

4 “(4) COORDINATION WITH DIVIDENDS RE-
5 CEIVED DEDUCTION.—No deduction shall be allowed
6 under section 243 or 245 for any dividend for which
7 a deduction is allowed under this section.

8 “(d) DENIAL OF FOREIGN TAX CREDIT.—

9 “(1) IN GENERAL.—No credit shall be allowed
10 under section 901 for any taxes paid or accrued (or
11 treated as paid or accrued) with respect to the de-
12 ductible portion of any dividend or of any amount
13 described in subsection (a)(2). No deduction shall be
14 allowed under this chapter for any tax for which
15 credit is not allowable by reason of the preceding
16 sentence.

17 “(2) DEDUCTIBLE PORTION.—For purposes of
18 paragraph (1), unless the taxpayer otherwise speci-
19 fies, the deductible portion of any dividend is the
20 amount which bears the same ratio to the amount
21 of such dividend as the amount allowed as a deduc-
22 tion under subsection (a) for the taxable year bears
23 to the amount described in subsection (b)(2)(A) for
24 such year.

1 “(e) INCREASE IN TAX ON INCLUDED AMOUNTS NOT
2 REDUCED BY CREDITS, ETC.—

3 “(1) IN GENERAL.—Any tax under this chapter
4 by reason of nondeductible CFC dividends shall not
5 be treated as tax imposed by this chapter for pur-
6 poses of determining—

7 “(A) the amount of any credit allowable
8 under this chapter, or

9 “(B) the amount of the tax imposed by
10 section 55.

11 Subparagraph (A) shall not apply to the credit
12 under section 53 or to the credit under section 27(a)
13 with respect to taxes attributable to such dividends.

14 “(2) INCLUSIONS MAY NOT BE OFFSET BY NET
15 OPERATING LOSSES.—

16 “(A) IN GENERAL.—The taxable income of
17 any United States shareholder for any taxable
18 year shall in no event be less than the amount
19 of nondeductible CFC dividends received during
20 such year.

21 “(B) COORDINATION WITH SECTION 172.—
22 The nondeductible CFC dividends for any tax-
23 able year shall not be taken into account—

1 “(i) in determining under section 172
2 the amount of any net operating loss for
3 such taxable year, and

4 “(ii) in determining taxable income
5 for such taxable year for purposes of the
6 2nd sentence of section 172(b)(2).

7 “(3) NONDEDUCTIBLE CFC DIVIDENDS.—For
8 purposes of this subsection, the term ‘nondeductible
9 CFC dividends’ means the excess of the amount of
10 dividends taken into account under subsection (a)
11 over the deduction allowed under subsection (a) for
12 such dividends.

13 “(f) ELECTION.—This section shall apply for the tax-
14 payer’s first taxable year beginning on or after the date
15 of the enactment of this section if the taxpayer elects its
16 application for such taxable year. The taxpayer may elect
17 to apply this section to the taxpayer’s last taxable year
18 beginning before the date of the enactment of this section
19 in lieu of such first taxable year.”

20 (b) ALTERNATIVE MINIMUM TAX.—Subparagraph
21 (C) of section 56(g)(4) is amended by adding at the end
22 the following new clause:

23 “(v) SPECIAL RULE FOR CERTAIN DIS-
24 TRIBUTIONS FROM CONTROLLED FOREIGN
25 CORPORATIONS.—Clause (i) shall not apply

1 to any deduction allowable under section
2 965.”.

3 (c) CLERICAL AMENDMENT.—The table of sections
4 for subpart F of part III of subchapter N of chapter 1
5 is amended by adding at the end the following new item:

“Sec. 965. Temporary dividends received deduction.”.

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

9 **Subtitle H—Other Incentive**
10 **Provisions**

11 **SEC. 281. SPECIAL RULES FOR LIVESTOCK SOLD ON AC-**
12 **COUNT OF WEATHER-RELATED CONDITIONS.**

13 (a) RULES FOR REPLACEMENT OF INVOLUNTARILY
14 CONVERTED LIVESTOCK.—Subsection (e) of section 1033
15 (relating to involuntary conversions) is amended—

16 (1) by striking “CONDITIONS.—For purposes”
17 and inserting “CONDITIONS.—

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

19 (2) by adding at the end the following new
20 paragraph:

21 “(2) EXTENSION OF REPLACEMENT PERIOD.—

22 “(A) IN GENERAL.—In the case of
23 drought, flood, or other weather-related condi-
24 tions described in paragraph (1) which result in
25 the area being designated as eligible for assist-

1 ance by the Federal Government, subsection
2 (a)(2)(B) shall be applied with respect to any
3 converted property by substituting ‘4 years’ for
4 ‘2 years’.

5 “(B) FURTHER EXTENSION BY SEC-
6 RETARY.—The Secretary may extend on a re-
7 gional basis the period for replacement under
8 this section (after the application of subpara-
9 graph (A)) for such additional time as the Sec-
10 retary determines appropriate if the weather-re-
11 lated conditions which resulted in such applica-
12 tion continue for more than 3 years.”.

13 (b) INCOME INCLUSION RULES.—Subsection (e) of
14 section 451 (relating to special rule for proceeds from live-
15 stock sold on account of drought, flood, or other weather-
16 related conditions) is amended by adding at the end the
17 following new paragraph:

18 “(3) SPECIAL ELECTION RULES.—If section
19 1033(e)(2) applies to a sale or exchange of livestock
20 described in paragraph (1), the election under para-
21 graph (1) shall be deemed valid if made during the
22 replacement period described in such section.”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to any taxable year with respect

1 to which the due date (without regard to extensions) for
2 the return is after December 31, 2002.

3 **SEC. 282. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**
4 **TIVES WITHOUT REDUCING PATRONAGE**
5 **DIVIDENDS.**

6 (a) IN GENERAL.—Subsection (a) of section 1388
7 (relating to patronage dividend defined) is amended by
8 adding at the end the following: “For purposes of para-
9 graph (3), net earnings shall not be reduced by amounts
10 paid during the year as dividends on capital stock or other
11 proprietary capital interests of the organization to the ex-
12 tent that the articles of incorporation or bylaws of such
13 organization or other contract with patrons provide that
14 such dividends are in addition to amounts otherwise pay-
15 able to patrons which are derived from business done with
16 or for patrons during the taxable year.”.

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

20 **SEC. 283. CAPITAL GAIN TREATMENT UNDER SECTION**
21 **631(b) TO APPLY TO OUTRIGHT SALES BY**
22 **LANDOWNERS.**

23 (a) IN GENERAL.—The first sentence of section
24 631(b) (relating to disposal of timber with a retained eco-
25 nomic interest) is amended by striking “retains an eco-

1 nomic interest in such timber” and inserting “either re-
2 tains an economic interest in such timber or makes an
3 outright sale of such timber”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) The third sentence of section 631(b) is
6 amended by striking “The date of disposal” and in-
7 serting “In the case of disposal of timber with a re-
8 tained economic interest, the date of disposal”.

9 (2) The heading for section 631(b) is amended
10 by striking “WITH A RETAINED ECONOMIC INTER-
11 EST”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to sales after December 31, 2004.

14 **SEC. 284. DISTRIBUTIONS FROM PUBLICLY TRADED PART-**
15 **NERSHIPS TREATED AS QUALIFYING INCOME**
16 **OF REGULATED INVESTMENT COMPANIES.**

17 (a) IN GENERAL.—Paragraph (2) of section 851(b)
18 (defining regulated investment company) is amended to
19 read as follows:

20 “(2) at least 90 percent of its gross income is
21 derived from—

22 “(A) dividends, interest, payments with re-
23 spect to securities loans (as defined in section
24 512(a)(5)), and gains from the sale or other
25 disposition of stock or securities (as defined in

1 section 2(a)(36) of the Investment Company
2 Act of 1940, as amended) or foreign currencies,
3 or other income (including but not limited to
4 gains from options, futures or forward con-
5 tracts) derived with respect to its business of
6 investing in such stock, securities, or currencies,
7 and

8 “(B) distributions or other income derived
9 from an interest in a qualified publicly traded
10 partnership (as defined in subsection (h));
11 and”.

12 (b) SOURCE FLOW-THROUGH RULE NOT TO
13 APPLY.—The last sentence of section 851(b) is amended
14 by inserting “(other than a qualified publicly traded part-
15 nership as defined in subsection (h))” after “derived from
16 a partnership”.

17 (c) LIMITATION ON OWNERSHIP.—Subsection (c) of
18 section 851 is amended by redesignating paragraph (5)
19 as paragraph (6) and inserting after paragraph (4) the
20 following new paragraph:

21 “(5) The term ‘outstanding voting securities of
22 such issuer’ shall include the equity securities of a
23 qualified publicly traded partnership (as defined in
24 subsection (h)).”.

1 (d) DEFINITION OF QUALIFIED PUBLICLY TRADED
2 PARTNERSHIP.—Section 851 is amended by adding at the
3 end the following new subsection:

4 “(h) QUALIFIED PUBLICLY TRADED PARTNER-
5 SHIP.—For purposes of this section, the term ‘qualified
6 publicly traded partnership’ means a publicly traded part-
7 nership described in section 7704(b) other than a partner-
8 ship which would satisfy the gross income requirements
9 of section 7704(c)(2) if qualifying income included only
10 income described in subsection (b)(2)(A).”.

11 (e) DEFINITION OF QUALIFYING INCOME.—Section
12 7704(d)(4) is amended by striking “section 851(b)(2)”
13 and inserting “section 851(b)(2)(A)”.

14 (f) LIMITATION ON COMPOSITION OF ASSETS.—Sub-
15 paragraph (B) of section 851(b)(3) is amended to read
16 as follows:

17 “(B) not more than 25 percent of the
18 value of its total assets is invested in—

19 “(i) the securities (other than Govern-
20 ment securities or the securities of other
21 regulated investment companies) of any
22 one issuer,

23 “(ii) the securities (other than the se-
24 curities of other regulated investment com-
25 panies) of two or more issuers which the

1 taxpayer controls and which are deter-
2 mined, under regulations prescribed by the
3 Secretary, to be engaged in the same or
4 similar trades or businesses or related
5 trades or businesses, or

6 “(iii) the securities of one or more
7 qualified publicly traded partnerships (as
8 defined in subsection (h)).”.

9 (g) APPLICATION OF SPECIAL PASSIVE ACTIVITY
10 RULE TO REGULATED INVESTMENT COMPANIES.—Sub-
11 section (k) of section 469 (relating to separate application
12 of section in case of publicly traded partnerships) is
13 amended by adding at the end the following new para-
14 graph:

15 “(4) APPLICATION TO REGULATED INVEST-
16 MENT COMPANIES.—For purposes of this section, a
17 regulated investment company (as defined in section
18 851) holding an interest in a qualified publicly trad-
19 ed partnership (as defined in section 851(h)) shall
20 be treated as a taxpayer described in subsection
21 (a)(2) with respect to items attributable to such in-
22 terest.”.

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

1 **SEC. 285. IMPROVEMENTS RELATED TO REAL ESTATE IN-**
2 **VESTMENT TRUSTS.**

3 (a) EXPANSION OF STRAIGHT DEBT SAFE HAR-
4 BOR.—Section 856 (defining real estate investment trust)
5 is amended—

6 (1) in subsection (c) by striking paragraph (7),
7 and

8 (2) by adding at the end the following new sub-
9 section:

10 “(m) SAFE HARBOR IN APPLYING SUBSECTION
11 (c)(4).—

12 “(1) IN GENERAL.—In applying subclause (III)
13 of subsection (c)(4)(B)(iii), except as otherwise de-
14 termined by the Secretary in regulations, the fol-
15 lowing shall not be considered securities held by the
16 trust:

17 “(A) Straight debt securities of an issuer
18 which meet the requirements of paragraph (2).

19 “(B) Any loan to an individual or an es-
20 tate.

21 “(C) Any section 467 rental agreement (as
22 defined in section 467(d)), other than with a
23 person described in subsection (d)(2)(B).

24 “(D) Any obligation to pay rents from real
25 property (as defined in subsection (d)(1)).

1 “(E) Any security issued by a State or any
2 political subdivision thereof, the District of Co-
3 lumbia, a foreign government or any political
4 subdivision thereof, or the Commonwealth of
5 Puerto Rico, but only if the determination of
6 any payment received or accrued under such se-
7 curity does not depend in whole or in part on
8 the profits of any entity not described in this
9 subparagraph or payments on any obligation
10 issued by such an entity,

11 “(F) Any security issued by a real estate
12 investment trust.

13 “(G) Any other arrangement as deter-
14 mined by the Secretary.

15 “(2) SPECIAL RULES RELATING TO STRAIGHT
16 DEBT SECURITIES.—

17 “(A) IN GENERAL.—For purposes of para-
18 graph (1)(A), securities meet the requirements
19 of this paragraph if such securities are straight
20 debt, as defined in section 1361(c)(5) (without
21 regard to subparagraph (B)(iii) thereof).

22 “(B) SPECIAL RULES RELATING TO CER-
23 TAIN CONTINGENCIES.—For purposes of sub-
24 paragraph (A), any interest or principal shall
25 not be treated as failing to satisfy section

1 1361(c)(5)(B)(i) solely by reason of the fact
2 that—

3 “(i) the time of payment of such in-
4 terest or principal is subject to a contin-
5 gency, but only if—

6 “(I) any such contingency does
7 not have the effect of changing the ef-
8 fective yield to maturity, as deter-
9 mined under section 1272, other than
10 a change in the annual yield to matu-
11 rity which does not exceed the greater
12 of $\frac{1}{4}$ of 1 percent or 5 percent of the
13 annual yield to maturity, or

14 “(II) neither the aggregate issue price
15 nor the aggregate face amount of the
16 issuer’s debt instruments held by the trust
17 exceeds \$1,000,000 and not more than 12
18 months of unaccrued interest can be re-
19 quired to be prepaid thereunder, or

20 “(ii) the time or amount of payment
21 is subject to a contingency upon a default
22 or the exercise of a prepayment right by
23 the issuer of the debt, but only if such con-
24 tingency is consistent with customary com-
25 mercial practice.

1 “(C) SPECIAL RULES RELATING TO COR-
2 PORATE OR PARTNERSHIP ISSUERS.—In the
3 case of an issuer which is a corporation or a
4 partnership, securities that otherwise would be
5 described in paragraph (1)(A) shall be consid-
6 ered not to be so described if the trust holding
7 such securities and any of its controlled taxable
8 REIT subsidiaries (as defined in subsection
9 (d)(8)(A)(iv)) hold any securities of the issuer
10 which—

11 “(i) are not described in paragraph
12 (1) (prior to the application of this sub-
13 paragraph), and

14 “(ii) have an aggregate value greater
15 than 1 percent of the issuer’s outstanding
16 securities determined without regard to
17 paragraph (3)(A)(i).

18 “(3) LOOK-THROUGH RULE FOR PARTNERSHIP
19 SECURITIES.—

20 “(A) IN GENERAL.—For purposes of ap-
21 plying subclause (III) of subsection
22 (c)(4)(B)(iii)—

23 “(i) a trust’s interest as a partner in
24 a partnership (as defined in section

1 7701(a)(2)) shall not be considered a secu-
2 rity, and

3 “(ii) the trust shall be deemed to own
4 its proportionate share of each of the as-
5 sets of the partnership.

6 “(B) DETERMINATION OF TRUST’S INTER-
7 EST IN PARTNERSHIP ASSETS.—For purposes
8 of subparagraph (A), with respect to any tax-
9 able year beginning after the date of the enact-
10 ment of this subparagraph—

11 “(i) the trust’s interest in the partner-
12 ship assets shall be the trust’s propor-
13 tionate interest in any securities issued by
14 the partnership (determined without re-
15 gard to subparagraph (A)(i) and para-
16 graph (4), but not including securities de-
17 scribed in paragraph (1)), and

18 “(ii) the value of any debt instrument
19 shall be the adjusted issue price thereof, as
20 defined in section 1272(a)(4).

21 “(4) CERTAIN PARTNERSHIP DEBT INSTRU-
22 MENTS NOT TREATED AS A SECURITY.—For pur-
23 poses of applying subclause (III) of subsection
24 (c)(4)(B)(iii)—

1 “(A) any debt instrument issued by a part-
2 nership and not described in paragraph (1)
3 shall not be considered a security to the extent
4 of the trust’s interest as a partner in the part-
5 nership, and

6 “(B) any debt instrument issued by a part-
7 nership and not described in paragraph (1)
8 shall not be considered a security if at least 75
9 percent of the partnership’s gross income (ex-
10 cluding gross income from prohibited trans-
11 actions) is derived from sources referred to in
12 subsection (c)(3).

13 “(5) SECRETARIAL GUIDANCE.—The Secretary
14 is authorized to provide guidance (including through
15 the issuance of a written determination, as defined
16 in section 6110(b)) that an arrangement shall not be
17 considered a security held by the trust for purposes
18 of applying subclause (III) of subsection
19 (c)(4)(B)(iii) notwithstanding that such arrangement
20 otherwise could be considered a security under sub-
21 paragraph (F) of subsection (c)(5).”.

22 (b) CLARIFICATION OF APPLICATION OF LIMITED
23 RENTAL EXCEPTION.—Subparagraph (A) of section
24 856(d)(8) (relating to special rules for taxable REIT sub-
25 sidiaries) is amended to read as follows:

1 “(A) LIMITED RENTAL EXCEPTION.—

2 “(i) IN GENERAL.—The requirements
3 of this subparagraph are met with respect
4 to any property if at least 90 percent of
5 the leased space of the property is rented
6 to persons other than taxable REIT sub-
7 sidiaries of such trust and other than per-
8 sons described in paragraph (2)(B).

9 “(ii) RENTS MUST BE SUBSTANTIALLY
10 COMPARABLE.—Clause (i) shall apply only
11 to the extent that the amounts paid to the
12 trust as rents from real property (as de-
13 fined in paragraph (1) without regard to
14 paragraph (2)(B)) from such property are
15 substantially comparable to such rents paid
16 by the other tenants of the trust’s property
17 for comparable space.

18 “(iii) TIMES FOR TESTING RENT COM-
19 PARABILITY.—The substantial com-
20 parability requirement of clause (ii) shall
21 be treated as met with respect to a lease
22 to a taxable REIT subsidiary of the trust
23 if such requirement is met under the terms
24 of the lease—

1 “(I) at the time such lease is en-
2 tered into,

3 “(II) at the time of each exten-
4 sion of the lease, including a failure to
5 exercise a right to terminate, and

6 “(III) at the time of any modi-
7 fication of the lease between the trust
8 and the taxable REIT subsidiary if
9 the rent under such lease is effectively
10 increased pursuant to such modifica-
11 tion.

12 With respect to subclause (III), if the tax-
13 able REIT subsidiary of the trust is a con-
14 trolled taxable REIT subsidiary of the
15 trust, the term ‘rents from real property’
16 shall not in any event include rent under
17 such lease to the extent of the increase in
18 such rent on account of such modification.

19 “(iv) CONTROLLED TAXABLE REIT
20 SUBSIDIARY.—For purposes of clause (iii),
21 the term ‘controlled taxable REIT sub-
22 sidiary’ means, with respect to any real es-
23 tate investment trust, any taxable REIT
24 subsidiary of such trust if such trust owns
25 directly or indirectly—

1 “(I) stock possessing more than
2 50 percent of the total voting power
3 of the outstanding stock of such sub-
4 sidiary, or

5 “(II) stock having a value of
6 more than 50 percent of the total
7 value of the outstanding stock of such
8 subsidiary.

9 “(v) CONTINUING QUALIFICATION
10 BASED ON THIRD PARTY ACTIONS.—If the
11 requirements of clause (i) are met at a
12 time referred to in clause (iii), such re-
13 quirements shall continue to be treated as
14 met so long as there is no increase in the
15 space leased to any taxable REIT sub-
16 sidiary of such trust or to any person de-
17 scribed in paragraph (2)(B).

18 “(vi) CORRECTION PERIOD.—If there
19 is an increase referred to in clause (v) dur-
20 ing any calendar quarter with respect to
21 any property, the requirements of clause
22 (iii) shall be treated as met during the
23 quarter and the succeeding quarter if such
24 requirements are met at the close of such
25 succeeding quarter.”.

1 (c) DELETION OF CUSTOMARY SERVICES EXCEP-
2 TION.—Subparagraph (B) of section 857(b)(7) (relating
3 to redetermined rents) is amended by striking clause (ii)
4 and by redesignating clauses (iii), (iv), (v), (vi), and (vii)
5 as clauses (ii), (iii), (iv), (v), and (vi), respectively.

6 (d) CONFORMITY WITH GENERAL HEDGING DEFINI-
7 TION.—Subparagraph (G) of section 856(c)(5) (relating
8 to treatment of certain hedging instruments) is amended
9 to read as follows:

10 “(G) TREATMENT OF CERTAIN HEDGING
11 INSTRUMENTS.—Except to the extent provided
12 by regulations, any income of a real estate in-
13 vestment trust from a hedging transaction (as
14 defined in clause (ii) or (iii) of section
15 1221(b)(2)(A)) which is clearly identified pur-
16 suant to section 1221(a)(7), including gain
17 from the sale or disposition of such a trans-
18 action, shall not constitute gross income under
19 paragraph (2) to the extent that the transaction
20 hedges any indebtedness incurred or to be in-
21 curred by the trust to acquire or carry real es-
22 tate assets.”.

23 (e) CONFORMITY WITH REGULATED INVESTMENT
24 COMPANY RULES.—Clause (i) of section 857(b)(5)(A) (re-
25 lating to imposition of tax in case of failure to meet certain

1 requirements) is amended by striking “90 percent” and
2 inserting “95 percent”.

3 (f) SAVINGS PROVISIONS.—

4 (1) RULES OF APPLICATION FOR FAILURE TO
5 SATISFY SECTION 856(c)(4).—Section 856(c) (relat-
6 ing to definition of real estate investment trust) is
7 amended by inserting after paragraph (6) the fol-
8 lowing new paragraph:

9 “(7) RULES OF APPLICATION FOR FAILURE TO
10 SATISFY PARAGRAPH (4).—

11 “(A) DE MINIMIS FAILURE.—A corpora-
12 tion, trust, or association that fails to meet the
13 requirements of paragraph (4)(B)(iii) for a par-
14 ticular quarter shall nevertheless be considered
15 to have satisfied the requirements of such para-
16 graph for such quarter if—

17 “(i) such failure is due to the owner-
18 ship of assets the total value of which does
19 not exceed the lesser of—

20 “(I) 1 percent of the total value
21 of the trust’s assets at the end of the
22 quarter for which such measurement
23 is done, and

24 “(II) \$10,000,000, and

1 “(ii)(I) the corporation, trust, or asso-
2 ciation, following the identification of such
3 failure, disposes of assets in order to meet
4 the requirements of such paragraph within
5 6 months after the last day of the quarter
6 in which the corporation, trust or associa-
7 tion’s identification of the failure to satisfy
8 the requirements of such paragraph oc-
9 curred or such other time period prescribed
10 by the Secretary and in the manner pre-
11 scribed by the Secretary, or

12 “(II) the requirements of such para-
13 graph are otherwise met within the time
14 period specified in subclause (I).

15 “(B) FAILURES EXCEEDING DE MINIMIS
16 AMOUNT.—A corporation, trust, or association
17 that fails to meet the requirements of para-
18 graph (4) for a particular quarter shall never-
19 theless be considered to have satisfied the re-
20 quirements of such paragraph for such quarter
21 if—

22 “(i) such failure involves the owner-
23 ship of assets the total value of which ex-
24 ceeds the de minimis standard described in
25 subparagraph (A)(i) at the end of the

1 quarter for which such measurement is
2 done,

3 “(ii) following the corporation, trust,
4 or association’s identification of the failure
5 to satisfy the requirements of such para-
6 graph for a particular quarter, a descrip-
7 tion of each asset that causes the corpora-
8 tion, trust, or association to fail to satisfy
9 the requirements of such paragraph at the
10 close of such quarter of any taxable year is
11 set forth in a schedule for such quarter
12 filed in accordance with regulations pre-
13 scribed by the Secretary,

14 “(iii) the failure to meet the require-
15 ments of such paragraph for a particular
16 quarter is due to reasonable cause and not
17 due to willful neglect,

18 “(iv) the corporation, trust, or asso-
19 ciation pays a tax computed under sub-
20 paragraph (C), and

21 “(v)(I) the corporation, trust, or asso-
22 ciation disposes of the assets set forth on
23 the schedule specified in clause (ii) within
24 6 months after the last day of the quarter
25 in which the corporation, trust or associa-

1 tion’s identification of the failure to satisfy
2 the requirements of such paragraph oc-
3 curred or such other time period prescribed
4 by the Secretary and in the manner pre-
5 scribed by the Secretary, or

6 “(II) the requirements of such para-
7 graph are otherwise met within the time
8 period specified in subclause (I).

9 “(C) TAX.—For purposes of subparagraph
10 (B)(iv)—

11 “(i) TAX IMPOSED.—If a corporation,
12 trust, or association elects the application
13 of this subparagraph, there is hereby im-
14 posed a tax on the failure described in sub-
15 paragraph (B) of such corporation, trust,
16 or association. Such tax shall be paid by
17 the corporation, trust, or association.

18 “(ii) TAX COMPUTED.—The amount
19 of the tax imposed by clause (i) shall be
20 the greater of—

21 “(I) \$50,000, or

22 “(II) the amount determined
23 (pursuant to regulations promulgated
24 by the Secretary) by multiplying the
25 net income generated by the assets

1 described in the schedule specified in
2 subparagraph (B)(ii) for the period
3 specified in clause (iii) by the highest
4 rate of tax specified in section 11.

5 “(iii) PERIOD.—For purposes of
6 clause (ii)(II), the period described in this
7 clause is the period beginning on the first
8 date that the failure to satisfy the require-
9 ments of such paragraph (4) occurs as a
10 result of the ownership of such assets and
11 ending on the earlier of the date on which
12 the trust disposes of such assets or the end
13 of the first quarter when there is no longer
14 a failure to satisfy such paragraph (4).

15 “(iv) ADMINISTRATIVE PROVISIONS.—
16 For purposes of subtitle F, the taxes im-
17 posed by this subparagraph shall be treat-
18 ed as excise taxes with respect to which the
19 deficiency procedures of such subtitle
20 apply.”.

21 (2) MODIFICATION OF RULES OF APPLICATION
22 FOR FAILURE TO SATISFY SECTIONS 856(c)(2) OR
23 856(c)(3).—Paragraph (6) of section 856(c) (relat-
24 ing to definition of real estate investment trust) is
25 amended by striking subparagraphs (A) and (B), by

1 redesignating subparagraph (C) as subparagraph
2 (B), and by inserting before subparagraph (B) (as
3 so redesignated) the following new subparagraph:

4 “(A) following the corporation, trust, or
5 association’s identification of the failure to meet
6 the requirements of paragraph (2) or (3), or of
7 both such paragraphs, for any taxable year, a
8 description of each item of its gross income de-
9 scribed in such paragraphs is set forth in a
10 schedule for such taxable year filed in accord-
11 ance with regulations prescribed by the Sec-
12 retary, and”.

13 (3) REASONABLE CAUSE EXCEPTION TO LOSS
14 OF REIT STATUS IF FAILURE TO SATISFY REQUIRE-
15 MENTS.—Subsection (g) of section 856 (relating to
16 termination of election) is amended—

17 (A) in paragraph (1) by inserting before
18 the period at the end of the first sentence the
19 following: “unless paragraph (5) applies”, and

20 (B) by adding at the end the following new
21 paragraph:

22 “(5) ENTITIES TO WHICH PARAGRAPH AP-
23 PLIES.—This paragraph applies to a corporation,
24 trust, or association—

1 “(A) which is not a real estate investment
2 trust to which the provisions of this part apply
3 for the taxable year due to one or more failures
4 to comply with one or more of the provisions of
5 this part (other than subsection (c)(6) or (c)(7)
6 of section 856),

7 “(B) such failures are due to reasonable
8 cause and not due to willful neglect, and

9 “(C) if such corporation, trust, or associa-
10 tion pays (as prescribed by the Secretary in
11 regulations and in the same manner as tax) a
12 penalty of \$50,000 for each failure to satisfy a
13 provision of this part due to reasonable cause
14 and not willful neglect.”.

15 (4) DEDUCTION OF TAX PAID FROM AMOUNT
16 REQUIRED TO BE DISTRIBUTED.—Subparagraph (E)
17 of section 857(b)(2) is amended by striking “(7)”
18 and inserting “(7) of this subsection, section
19 856(c)(7)(B)(iii), and section 856(g)(1).”.

20 (5) EXPANSION OF DEFICIENCY DIVIDEND PRO-
21 CEDURE.—Subsection (e) of section 860 is amended
22 by striking “or” at the end of paragraph (2), by
23 striking the period at the end of paragraph (3) and
24 inserting “; or”, and by adding at the end the fol-
25 lowing new paragraph:

1 “(4) a statement by the taxpayer attached to its
2 amendment or supplement to a return of tax for the
3 relevant tax year.”.

4 (g) EFFECTIVE DATES.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), the amendments made by this section
7 shall apply to taxable years beginning after Decem-
8 ber 31, 2000.

9 (2) SUBPARAGRAPHS (c) THROUGH (f).—The
10 amendments made by subsections (c), (d), (e), and
11 (f) shall apply to taxable years beginning after the
12 date of the enactment of this Act.

13 **SEC. 286. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**
14 **LATED INVESTMENT COMPANIES.**

15 (a) TREATMENT OF CERTAIN DIVIDENDS.—

16 (1) NONRESIDENT ALIEN INDIVIDUALS.—Sec-
17 tion 871 (relating to tax on nonresident alien indi-
18 viduals) is amended by redesignating subsection (k)
19 as subsection (l) and by inserting after subsection (j)
20 the following new subsection:

21 “(k) EXEMPTION FOR CERTAIN DIVIDENDS OF REG-
22 ULATED INVESTMENT COMPANIES.—

23 “(1) INTEREST-RELATED DIVIDENDS.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), no tax shall be imposed

1 under paragraph (1)(A) of subsection (a) on
2 any interest-related dividend received from a
3 regulated investment company.

4 “(B) EXCEPTIONS.—Subparagraph (A)
5 shall not apply—

6 “(i) to any interest-related dividend
7 received from a regulated investment com-
8 pany by a person to the extent such divi-
9 dend is attributable to interest (other than
10 interest described in subparagraph (E) (i)
11 or (iii)) received by such company on in-
12 debtedness issued by such person or by any
13 corporation or partnership with respect to
14 which such person is a 10-percent share-
15 holder,

16 “(ii) to any interest-related dividend
17 with respect to stock of a regulated invest-
18 ment company unless the person who
19 would otherwise be required to deduct and
20 withhold tax from such dividend under
21 chapter 3 receives a statement (which
22 meets requirements similar to the require-
23 ments of subsection (h)(5)) that the bene-
24 ficial owner of such stock is not a United
25 States person, and

1 “(iii) to any interest-related dividend
2 paid to any person within a foreign coun-
3 try (or any interest-related dividend pay-
4 ment addressed to, or for the account of,
5 persons within such foreign country) dur-
6 ing any period described in subsection
7 (h)(6) with respect to such country.

8 Clause (iii) shall not apply to any dividend with
9 respect to any stock which was acquired on or
10 before the date of the publication of the Sec-
11 retary’s determination under subsection (h)(6).

12 “(C) INTEREST-RELATED DIVIDEND.—For
13 purposes of this paragraph, an interest-related
14 dividend is any dividend (or part thereof) which
15 is designated by the regulated investment com-
16 pany as an interest-related dividend in a writ-
17 ten notice mailed to its shareholders not later
18 than 60 days after the close of its taxable year.
19 If the aggregate amount so designated with re-
20 spect to a taxable year of the company (includ-
21 ing amounts so designated with respect to divi-
22 dends paid after the close of the taxable year
23 described in section 855) is greater than the
24 qualified net interest income of the company for
25 such taxable year, the portion of each distribu-

1 tion which shall be an interest-related dividend
2 shall be only that portion of the amounts so
3 designated which such qualified net interest in-
4 come bears to the aggregate amount so des-
5 ignated.

6 “(D) QUALIFIED NET INTEREST IN-
7 COME.—For purposes of subparagraph (C), the
8 term ‘qualified net interest income’ means the
9 qualified interest income of the regulated in-
10 vestment company reduced by the deductions
11 properly allocable to such income.

12 “(E) QUALIFIED INTEREST INCOME.—For
13 purposes of subparagraph (D), the term ‘quali-
14 fied interest income’ means the sum of the fol-
15 lowing amounts derived by the regulated invest-
16 ment company from sources within the United
17 States:

18 “(i) Any amount includible in gross
19 income as original issue discount (within
20 the meaning of section 1273) on an obliga-
21 tion payable 183 days or less from the date
22 of original issue (without regard to the pe-
23 riod held by the company).

24 “(ii) Any interest includible in gross
25 income (including amounts recognized as

1 ordinary income in respect of original issue
2 discount or market discount or acquisition
3 discount under part V of subchapter P and
4 such other amounts as regulations may
5 provide) on an obligation which is in reg-
6 istered form; except that this clause shall
7 not apply to—

8 “(I) any interest on an obligation
9 issued by a corporation or partnership
10 if the regulated investment company
11 is a 10-percent shareholder in such
12 corporation or partnership, and

13 “(II) any interest which is treat-
14 ed as not being portfolio interest
15 under the rules of subsection (h)(4).

16 “(iii) Any interest referred to in sub-
17 section (i)(2)(A) (without regard to the
18 trade or business of the regulated invest-
19 ment company).

20 “(iv) Any interest-related dividend in-
21 cludable in gross income with respect to
22 stock of another regulated investment com-
23 pany.

24 “(F) 10-PERCENT SHAREHOLDER.—For
25 purposes of this paragraph, the term ‘10-per-

1 cent shareholder' has the meaning given such
2 term by subsection (h)(3)(B).

3 “(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), no tax shall be imposed
6 under paragraph (1)(A) of subsection (a) on
7 any short-term capital gain dividend received
8 from a regulated investment company.

9 “(B) EXCEPTION FOR ALIENS TAXABLE
10 UNDER SUBSECTION (a)(2).—Subparagraph (A)
11 shall not apply in the case of any nonresident
12 alien individual subject to tax under subsection
13 (a)(2).

14 “(C) SHORT-TERM CAPITAL GAIN DIVI-
15 DEND.—For purposes of this paragraph, a
16 short-term capital gain dividend is any dividend
17 (or part thereof) which is designated by the reg-
18 ulated investment company as a short-term cap-
19 ital gain dividend in a written notice mailed to
20 its shareholders not later than 60 days after the
21 close of its taxable year. If the aggregate
22 amount so designated with respect to a taxable
23 year of the company (including amounts so des-
24 ignated with respect to dividends paid after the
25 close of the taxable year described in section

1 855) is greater than the qualified short-term
2 gain of the company for such taxable year, the
3 portion of each distribution which shall be a
4 short-term capital gain dividend shall be only
5 that portion of the amounts so designated
6 which such qualified short-term gain bears to
7 the aggregate amount so designated.

8 “(D) QUALIFIED SHORT-TERM GAIN.—For
9 purposes of subparagraph (C), the term ‘quali-
10 fied short-term gain’ means the excess of the
11 net short-term capital gain of the regulated in-
12 vestment company for the taxable year over the
13 net long-term capital loss (if any) of such com-
14 pany for such taxable year. For purposes of this
15 subparagraph—

16 “(i) the net short-term capital gain of
17 the regulated investment company shall be
18 computed by treating any short-term cap-
19 ital gain dividend includible in gross in-
20 come with respect to stock of another regu-
21 lated investment company as a short-term
22 capital gain, and

23 “(ii) the excess of the net short-term
24 capital gain for a taxable year over the net
25 long-term capital loss for a taxable year (to

1 which an election under section 4982(e)(4)
2 does not apply) shall be determined with-
3 out regard to any net capital loss or net
4 short-term capital loss attributable to
5 transactions after October 31 of such year,
6 and any such net capital loss or net short-
7 term capital loss shall be treated as arising
8 on the 1st day of the next taxable year.

9 To the extent provided in regulations, clause
10 (ii) shall apply also for purposes of computing
11 the taxable income of the regulated investment
12 company.”

13 (2) FOREIGN CORPORATIONS.—Section 881 (re-
14 lating to tax on income of foreign corporations not
15 connected with United States business) is amended
16 by redesignating subsection (e) as subsection (f) and
17 by inserting after subsection (d) the following new
18 subsection:

19 “(e) TAX NOT TO APPLY TO CERTAIN DIVIDENDS
20 OF REGULATED INVESTMENT COMPANIES.—

21 “(1) INTEREST-RELATED DIVIDENDS.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), no tax shall be imposed
24 under paragraph (1) of subsection (a) on any
25 interest-related dividend (as defined in section

1 871(k)(1)) received from a regulated investment
2 company.

3 “(B) EXCEPTION.—Subparagraph (A)
4 shall not apply—

5 “(i) to any dividend referred to in sec-
6 tion 871(k)(1)(B), and

7 “(ii) to any interest-related dividend
8 received by a controlled foreign corporation
9 (within the meaning of section 957(a)) to
10 the extent such dividend is attributable to
11 interest received by the regulated invest-
12 ment company from a person who is a re-
13 lated person (within the meaning of section
14 864(d)(4)) with respect to such controlled
15 foreign corporation.

16 “(C) TREATMENT OF DIVIDENDS RE-
17 CEIVED BY CONTROLLED FOREIGN CORPORA-
18 TIONS.—The rules of subsection (c)(5)(A) shall
19 apply to any interest-related dividend received
20 by a controlled foreign corporation (within the
21 meaning of section 957(a)) to the extent such
22 dividend is attributable to interest received by
23 the regulated investment company which is de-
24 scribed in clause (ii) of section 871(k)(1)(E)

1 (and not described in clause (i) or (iii) of such
2 section).

3 “(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—
4 No tax shall be imposed under paragraph (1) of sub-
5 section (a) on any short-term capital gain dividend
6 (as defined in section 871(k)(2)) received from a
7 regulated investment company.”.

8 (3) WITHHOLDING TAXES.—

9 (A) Section 1441(c) (relating to excep-
10 tions) is amended by adding at the end the fol-
11 lowing new paragraph:

12 “(12) CERTAIN DIVIDENDS RECEIVED FROM
13 REGULATED INVESTMENT COMPANIES.—

14 “(A) IN GENERAL.—No tax shall be re-
15 quired to be deducted and withheld under sub-
16 section (a) from any amount exempt from the
17 tax imposed by section 871(a)(1)(A) by reason
18 of section 871(k).

19 “(B) SPECIAL RULE.—For purposes of
20 subparagraph (A), clause (i) of section
21 871(k)(1)(B) shall not apply to any dividend
22 unless the regulated investment company knows
23 that such dividend is a dividend referred to in
24 such clause. A similar rule shall apply with re-

1 spect to the exception contained in section
2 871(k)(2)(B).”.

3 (B) Section 1442(a) (relating to with-
4 holding of tax on foreign corporations) is
5 amended—

6 (i) by striking “and the reference in
7 section 1441(c)(10)” and inserting “the
8 reference in section 1441(c)(10)”, and

9 (ii) by inserting before the period at
10 the end the following: “, and the references
11 in section 1441(c)(12) to sections 871(a)
12 and 871(k) shall be treated as referring to
13 sections 881(a) and 881(e) (except that for
14 purposes of applying subparagraph (A) of
15 section 1441(c)(12), as so modified, clause
16 (ii) of section 881(e)(1)(B) shall not apply
17 to any dividend unless the regulated invest-
18 ment company knows that such dividend is
19 a dividend referred to in such clause)”.

20 (b) ESTATE TAX TREATMENT OF INTEREST IN CER-
21 TAIN REGULATED INVESTMENT COMPANIES.—Section
22 2105 (relating to property without the United States for
23 estate tax purposes) is amended by adding at the end the
24 following new subsection:

25 “(d) STOCK IN A RIC.—

1 “(1) IN GENERAL.—For purposes of this sub-
2 chapter, stock in a regulated investment company
3 (as defined in section 851) owned by a nonresident
4 not a citizen of the United States shall not be
5 deemed property within the United States in the
6 proportion that, at the end of the quarter of such in-
7 vestment company’s taxable year immediately pre-
8 ceding a decedent’s date of death (or at such other
9 time as the Secretary may designate in regulations),
10 the assets of the investment company that were
11 qualifying assets with respect to the decedent bore
12 to the total assets of the investment company.

13 “(2) QUALIFYING ASSETS.—For purposes of
14 this subsection, qualifying assets with respect to a
15 decedent are assets that, if owned directly by the de-
16 cedent, would have been—

17 “(A) amounts, deposits, or debt obligations
18 described in subsection (b) of this section,

19 “(B) debt obligations described in the last
20 sentence of section 2104(c), or

21 “(C) other property not within the United
22 States.”

23 (c) TREATMENT OF REGULATED INVESTMENT COM-
24 PANIES UNDER SECTION 897.—

1 (1) Paragraph (1) of section 897(h) is amended
2 by striking “REIT” each place it appears and in-
3 serting “qualified investment entity”.

4 (2) Paragraphs (2) and (3) of section 897(h)
5 are amended to read as follows:

6 “(2) SALE OF STOCK IN DOMESTICALLY CON-
7 TROLLED ENTITY NOT TAXED.—The term ‘United
8 States real property interest’ does not include any
9 interest in a domestically controlled qualified invest-
10 ment entity.

11 “(3) DISTRIBUTIONS BY DOMESTICALLY CON-
12 TROLLED QUALIFIED INVESTMENT ENTITIES.—In
13 the case of a domestically controlled qualified invest-
14 ment entity, rules similar to the rules of subsection
15 (d) shall apply to the foreign ownership percentage
16 of any gain.”

17 (3) Subparagraphs (A) and (B) of section
18 897(h)(4) are amended to read as follows:

19 “(A) QUALIFIED INVESTMENT ENTITY.—
20 The term ‘qualified investment entity’ means
21 any real estate investment trust and any regu-
22 lated investment company.

23 “(B) DOMESTICALLY CONTROLLED.—The
24 term ‘domestically controlled qualified invest-
25 ment entity’ means any qualified investment en-

1 tity in which at all times during the testing pe-
2 riod less than 50 percent in value of the stock
3 was held directly or indirectly by foreign per-
4 sons.”

5 (4) Subparagraphs (C) and (D) of section
6 897(h)(4) are each amended by striking “REIT”
7 and inserting “qualified investment entity”.

8 (5) The subsection heading for subsection (h) of
9 section 897 is amended by striking “REITS” and
10 inserting “CERTAIN INVESTMENT ENTITIES”.

11 (d) EFFECTIVE DATE.—

12 (1) IN GENERAL.—Except as otherwise pro-
13 vided in this subsection, the amendments made by
14 this section shall apply to dividends with respect to
15 taxable years of regulated investment companies be-
16 ginning after December 31, 2004.

17 (2) ESTATE TAX TREATMENT.—The amend-
18 ment made by subsection (b) shall apply to estates
19 of decedents dying after December 31, 2004.

20 (3) CERTAIN OTHER PROVISIONS.—The amend-
21 ments made by subsection (c) (other than paragraph
22 (1) thereof) shall take effect after December 31,
23 2004.

1 **SEC. 287. TAXATION OF CERTAIN SETTLEMENT FUNDS.**

2 (a) IN GENERAL.—Subsection (g) of section 468B
3 (relating to clarification of taxation of certain funds) is
4 amended to read as follows:

5 “(g) CLARIFICATION OF TAXATION OF CERTAIN
6 FUNDS.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), nothing in any provision of law shall be
9 construed as providing that an escrow account, set-
10 tlement fund, or similar fund is not subject to cur-
11 rent income tax. The Secretary shall prescribe regu-
12 lations providing for the taxation of any such ac-
13 count or fund whether as a grantor trust or other-
14 wise.

15 “(2) EXEMPTION FROM TAX FOR CERTAIN SET-
16 TLEMENT FUNDS.—An escrow account, settlement
17 fund, or similar fund shall be treated as beneficially
18 owned by the United States and shall be exempt
19 from taxation under this subtitle if—

20 “(A) it is established pursuant to a con-
21 sent decree entered by a judge of a United
22 States District Court,

23 “(B) it is created for the receipt of settle-
24 ment payments as directed by a government en-
25 tity for the sole purpose of resolving or satis-
26 fying one or more claims asserting liability

1 under the Comprehensive Environmental Re-
2 sponse, Compensation, and Liability Act of
3 1980,

4 “(C) the authority and control over the ex-
5 penditure of funds therein (including the ex-
6 penditure of contributions thereto and any net
7 earnings thereon) is with such government enti-
8 ty, and

9 “(D) upon termination, any remaining
10 funds will be disbursed upon instructions by
11 such government entity in accordance with ap-
12 plicable law.

13 For purposes of this paragraph, the term ‘govern-
14 ment entity’ means the United States, any State or
15 political subdivision thereof, the District of Colum-
16 bia, any possession of the United States, and any
17 agency or instrumentality of any of the foregoing.”.

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

21 **SEC. 288. EXPANSION OF HUMAN CLINICAL TRIALS QUALI-**
22 **FYING FOR ORPHAN DRUG CREDIT.**

23 (a) IN GENERAL.—Paragraph (2) of section 45C(b)
24 (relating to qualified clinical testing expenses) is amended
25 by adding at the end the following new subparagraph:

1 “(C) TREATMENT OF CERTAIN EXPENSES
2 INCURRED BEFORE DESIGNATION.—For pur-
3 poses of subparagraph (A)(ii)(I), if a drug is
4 designated under section 526 of the Federal
5 Food, Drug, and Cosmetic Act not later than
6 the due date (including extensions) for filing
7 the return of tax under this subtitle for the tax-
8 able year in which the application for such des-
9 ignation of such drug was filed, such drug shall
10 be treated as having been designated on the
11 date that such application was filed.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall apply to expenses incurred after the
14 date of the enactment of this Act.

15 **SEC. 289. SIMPLIFICATION OF EXCISE TAX IMPOSED ON**
16 **BOWS AND ARROWS.**

17 (a) BOWS.—Paragraph (1) of section 4161(b) (relat-
18 ing to bows) is amended to read as follows:

19 “(1) BOWS.—

20 “(A) IN GENERAL.—There is hereby im-
21 posed on the sale by the manufacturer, pro-
22 ducer, or importer of any bow which has a peak
23 draw weight of 30 pounds or more, a tax equal
24 to 11 percent of the price for which so sold.

1 “(B) ARCHERY EQUIPMENT.—There is
2 hereby imposed on the sale by the manufac-
3 turer, producer, or importer—

4 “(i) of any part or accessory suitable
5 for inclusion in or attachment to a bow de-
6 scribed in subparagraph (A), and

7 “(ii) of any quiver or broadhead suit-
8 able for use with an arrow described in
9 paragraph (2),

10 a tax equal to 11 percent of the price for which
11 so sold.”.

12 (b) ARROWS.—Subsection (b) of section 4161 (relat-
13 ing to bows and arrows, etc.) is amended by redesignating
14 paragraph (3) as paragraph (4) and inserting after para-
15 graph (2) the following:

16 “(3) ARROWS.—

17 “(A) IN GENERAL.—There is hereby im-
18 posed on the sale by the manufacturer, pro-
19 ducer, or importer of any arrow, a tax equal to
20 12 percent of the price for which so sold.

21 “(B) EXCEPTION.—In the case of any
22 arrow of which the shaft or any other compo-
23 nent has been previously taxed under paragraph
24 (1) or (2)—

1 “(i) section 6416(b)(3) shall not
2 apply, and

3 “(ii) the tax imposed by subparagraph
4 (A) shall be an amount equal to the excess
5 (if any) of—

6 “(I) the amount of tax imposed
7 by this paragraph (determined with-
8 out regard to this subparagraph), over

9 “(II) the amount of tax paid with
10 respect to the tax imposed under
11 paragraph (1) or (2) on such shaft or
12 component.

13 “(C) ARROW.—For purposes of this para-
14 graph, the term ‘arrow’ means any shaft de-
15 scribed in paragraph (2) to which additional
16 components are attached.”.

17 (c) CONFORMING AMENDMENTS.—Section
18 4161(b)(2) is amended—

19 (1) by inserting “(other than broadheads)”
20 after “point”, and

21 (2) by striking “ARROWS.—” in the heading
22 and inserting “ARROW COMPONENTS.—”.

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to articles sold by the manufac-
25 turer, producer, or importer after December 31, 2004.

1 **SEC. 290. REPEAL OF EXCISE TAX ON FISHING TACKLE**
2 **BOXES.**

3 (a) REPEAL.—Paragraph (6) of section 4162(a) (de-
4 fining sport fishing equipment) is amended by striking
5 subparagraph (C) and by redesignating subparagraphs
6 (D) through (J) as subparagraphs (C) through (I), respec-
7 tively.

8 (b) EFFECTIVE DATE.—The amendments made this
9 section shall apply to articles sold by the manufacturer,
10 producer, or importer after December 31, 2004.

11 **SEC. 291. SONAR DEVICES SUITABLE FOR FINDING FISH.**

12 (a) NOT TREATED AS SPORT FISHING EQUIP-
13 MENT.—Subsection (a) of section 4162 (relating to sport
14 fishing equipment defined) is amended by inserting “and”
15 at the end of paragraph (8), by striking “, and” at the
16 end of paragraph (9) and inserting a period, and by strik-
17 ing paragraph (10).

18 (b) CONFORMING AMENDMENT.—Section 4162 is
19 amended by striking subsection (b) and by redesignating
20 subsection (c) as subsection (b).

21 (c) EFFECTIVE DATE.—The amendments made this
22 section shall apply to articles sold by the manufacturer,
23 producer, or importer after December 31, 2004.

1 who holds a permit under the Federal Alcohol Administra-
2 tion Act as a wholesaler of distilled spirits.

3 “(c) AVERAGE TAX-FINANCING COST.—

4 “(1) IN GENERAL.—For purposes of this sec-
5 tion, the average tax-financing cost per case for any
6 calendar year is the amount of interest which would
7 accrue at the deemed financing rate during a 60-day
8 period on an amount equal to the deemed Federal
9 excise per case.

10 “(2) DEEMED FINANCING RATE.—For purposes
11 of paragraph (1), the deemed financing rate for any
12 calendar year is the average of the corporate over-
13 payment rates under paragraph (1) of section
14 6621(a) (determined without regard to the last sen-
15 tence of such paragraph) for calendar quarters of
16 such year.

17 “(3) DEEMED FEDERAL EXCISE TAX BASED ON
18 CASE.—For purposes of paragraph (1), the deemed
19 Federal excise tax per case of 12 80-proof 750ml
20 bottles is \$22.83.

21 “(4) NUMBER OF CASES IN LOT.—For purposes
22 of this section, the number of cases in any lot of dis-
23 tilled spirits shall be determined by dividing the
24 number of liters in such lot by 9.”

25 (b) CONFORMING AMENDMENTS.—

1 (1) Subsection (b) of section 38 is amended by
2 striking “plus” at the end of paragraph (14), by
3 striking the period at the end of paragraph (15) and
4 inserting “, plus”, and by adding at the end the fol-
5 lowing new paragraph:

6 “(16) in the case of an eligible wholesaler (as
7 defined in section 5011(b)), the distilled spirits
8 wholesalers credit determined under section
9 5011(a).”

10 (2) Subsection (d) of section 39 (relating to
11 carryback and carryforward of unused credits) is
12 amended by adding at the end the following new
13 paragraph:

14 “(11) NO CARRYBACK OF SECTION 5011 CREDIT
15 BEFORE JANUARY 1, 2005.—No portion of the un-
16 used business credit for any taxable year which is
17 attributable to the credit determined under section
18 5011(a) may be carried back to a taxable year be-
19 ginning before January 1, 2005.”.

20 (3) The table of sections for subpart A of part
21 I of subchapter A of chapter 51 is amended by add-
22 ing at the end the following new item:

 “Sec. 5011. Income tax credit for wholesaler’s average cost of car-
 rying excise tax.”.

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

4 **SEC. 293. SUSPENSION OF OCCUPATIONAL TAXES RELAT-**
5 **ING TO DISTILLED SPIRITS, WINE, AND BEER.**

6 (a) IN GENERAL.—Subpart G of part II of sub-
7 chapter A of chapter 51 is amended by redesignating sec-
8 tion 5148 as section 5149 and by inserting after section
9 5147 the following new section:

10 **“SEC. 5148. SUSPENSION OF OCCUPATIONAL TAX.**

11 “(a) IN GENERAL.—Notwithstanding sections 5081,
12 5091, 5111, 5121, and 5131, the rate of tax imposed
13 under such sections for the suspension period shall be
14 zero. During such period, persons engaged in or carrying
15 on a trade or business covered by such sections shall reg-
16 ister under section 5141 and shall comply with the record-
17 keeping requirements under this part.

18 “(b) SUSPENSION PERIOD.—For purposes of sub-
19 section (a), the suspension period is the period beginning
20 on July 1, 2004, and ending on June 30, 2007.”.

21 (b) CONFORMING AMENDMENT.—Section 5117 is
22 amended by adding at the end the following new sub-
23 section:

24 “(d) SPECIAL RULE DURING SUSPENSION PE-
25 RIOD.—Except as provided by the Secretary, during the

1 suspension period (as defined in section 5148) it shall be
 2 unlawful for any dealer to purchase distilled spirits for re-
 3 sale from any person other than a wholesale dealer in liq-
 4 uors who is required to keep records under section 5114.”.

5 (c) CLERICAL AMENDMENT.—The table of sections
 6 for subpart G of part II of subchapter A of chapter 51
 7 is amended by striking the last item and inserting the fol-
 8 lowing new items:

“Sec. 5148. Suspension of occupational tax.
 “Sec. 5149. Cross references.”.

9 (d) EFFECTIVE DATE.—The amendments made by
 10 this section shall take effect on the date of the enactment
 11 of this Act.

12 **TITLE III—TAX REFORM AND**
 13 **SIMPLIFICATION FOR UNITED**
 14 **STATES BUSINESSES**

15 **SEC. 301. INTEREST EXPENSE ALLOCATION RULES.**

16 (a) ELECTION TO ALLOCATE ON WORLDWIDE
 17 BASIS.—Section 864 is amended by redesignating sub-
 18 section (f) as subsection (g) and by inserting after sub-
 19 section (e) the following new subsection:

20 “(f) ELECTION TO ALLOCATE INTEREST, ETC. ON
 21 WORLDWIDE BASIS.—For purposes of this subchapter, at
 22 the election of the worldwide affiliated group—

23 “(1) ALLOCATION AND APPORTIONMENT OF IN-
 24 TEREST EXPENSE.—

1 “(A) IN GENERAL.—The taxable income of
2 each domestic corporation which is a member of
3 a worldwide affiliated group shall be determined
4 by allocating and apportioning interest expense
5 of each member as if all members of such group
6 were a single corporation.

7 “(B) TREATMENT OF WORLDWIDE AFFILI-
8 ATED GROUP.—The taxable income of the do-
9 mestic members of a worldwide affiliated group
10 from sources outside the United States shall be
11 determined by allocating and apportioning the
12 interest expense of such domestic members to
13 such income in an amount equal to the excess
14 (if any) of—

15 “(i) the total interest expense of the
16 worldwide affiliated group multiplied by
17 the ratio which the foreign assets of the
18 worldwide affiliated group bears to all the
19 assets of the worldwide affiliated group,
20 over

21 “(ii) the interest expense of all foreign
22 corporations which are members of the
23 worldwide affiliated group to the extent
24 such interest expense of such foreign cor-
25 porations would have been allocated and

1 apportioned to foreign source income if
2 this subsection were applied to a group
3 consisting of all the foreign corporations in
4 such worldwide affiliated group.

5 “(C) WORLDWIDE AFFILIATED GROUP.—

6 For purposes of this paragraph, the term
7 ‘worldwide affiliated group’ means a group con-
8 sisting of—

9 “(i) the includible members of an af-
10 filiated group (as defined in section
11 1504(a), determined without regard to
12 paragraphs (2) and (4) of section
13 1504(b)), and

14 “(ii) all controlled foreign corpora-
15 tions in which such members in the aggre-
16 gate meet the ownership requirements of
17 section 1504(a)(2) either directly or indi-
18 rectly through applying paragraph (2) of
19 section 958(a) or through applying rules
20 similar to the rules of such paragraph to
21 stock owned directly or indirectly by do-
22 mestic partnerships, trusts, or estates.

23 “(2) ALLOCATION AND APPORTIONMENT OF
24 OTHER EXPENSES.—Expenses other than interest
25 which are not directly allocable or apportioned to

1 any specific income producing activity shall be allo-
2 cated and apportioned as if all members of the affili-
3 ated group were a single corporation. For purposes
4 of the preceding sentence, the term ‘affiliated group’
5 has the meaning given such term by section 1504
6 (determined without regard to paragraph (4) of sec-
7 tion 1504(b)).

8 “(3) TREATMENT OF TAX-EXEMPT ASSETS;
9 BASIS OF STOCK IN NONAFFILIATED 10-PERCENT
10 OWNED CORPORATIONS.—The rules of paragraphs
11 (3) and (4) of subsection (e) shall apply for purposes
12 of this subsection, except that paragraph (4) shall be
13 applied on a worldwide affiliated group basis.

14 “(4) TREATMENT OF CERTAIN FINANCIAL IN-
15 STITUTIONS.—

16 “(A) IN GENERAL.—For purposes of para-
17 graph (1), any corporation described in sub-
18 paragraph (B) shall be treated as an includible
19 corporation for purposes of section 1504 only
20 for purposes of applying this subsection sepa-
21 rately to corporations so described.

22 “(B) DESCRIPTION.—A corporation is de-
23 scribed in this subparagraph if—

24 “(i) such corporation is a financial in-
25 stitution described in section 581 or 591,

1 “(ii) the business of such financial in-
2 stitution is predominantly with persons
3 other than related persons (within the
4 meaning of subsection (d)(4)) or their cus-
5 tomers, and

6 “(iii) such financial institution is re-
7 quired by State or Federal law to be oper-
8 ated separately from any other entity
9 which is not such an institution.

10 “(C) TREATMENT OF BANK AND FINAN-
11 CIAL HOLDING COMPANIES.—To the extent pro-
12 vided in regulations—

13 “(i) a bank holding company (within
14 the meaning of section 2(a) of the Bank
15 Holding Company Act of 1956 (12 U.S.C.
16 1841(a)),

17 “(ii) a financial holding company
18 (within the meaning of section 2(p) of the
19 Bank Holding Company Act of 1956 (12
20 U.S.C. 1841(p)), and

21 “(iii) any subsidiary of a financial in-
22 stitution described in section 581 or 591,
23 or of any such bank or financial holding
24 company, if such subsidiary is predomi-
25 nantly engaged (directly or indirectly) in

1 the active conduct of a banking, financing,
2 or similar business,
3 shall be treated as a corporation described in
4 subparagraph (B).

5 “(5) ELECTION TO EXPAND FINANCIAL INSTI-
6 TUTION GROUP OF WORLDWIDE GROUP.—

7 “(A) IN GENERAL.—If a worldwide affili-
8 ated group elects the application of this sub-
9 section, all financial corporations which—

10 “(i) are members of such worldwide
11 affiliated group, but

12 “(ii) are not corporations described in
13 paragraph (4)(B),

14 shall be treated as described in paragraph
15 (4)(B) for purposes of applying paragraph
16 (4)(A). This subsection (other than this para-
17 graph) shall apply to any such group in the
18 same manner as this subsection (other than this
19 paragraph) applies to the pre-election worldwide
20 affiliated group of which such group is a part.

21 “(B) FINANCIAL CORPORATION.—For pur-
22 poses of this paragraph, the term ‘financial cor-
23 poration’ means any corporation if at least 80
24 percent of its gross income is income described
25 in section 904(d)(2)(C)(ii) and the regulations

1 thereunder which is derived from transactions
2 with persons who are not related (within the
3 meaning of section 267(b) or 707(b)(1)) to the
4 corporation. For purposes of the preceding sen-
5 tence, there shall be disregarded any item of in-
6 come or gain from a transaction or series of
7 transactions a principal purpose of which is the
8 qualification of any corporation as a financial
9 corporation.

10 “(C) ANTIABUSE RULES.—In the case of a
11 corporation which is a member of an electing fi-
12 nancial institution group, to the extent that
13 such corporation—

14 “(i) distributes dividends or makes
15 other distributions with respect to its stock
16 after the date of the enactment of this
17 paragraph to any member of the pre-elec-
18 tion worldwide affiliated group (other than
19 to a member of the electing financial insti-
20 tution group) in excess of the greater of—

21 “(I) its average annual dividend
22 (expressed as a percentage of current
23 earnings and profits) during the 5-
24 taxable-year period ending with the

1 taxable year preceding the taxable
2 year, or

3 “(II) 25 percent of its average
4 annual earnings and profits for such
5 5-taxable-year period, or

6 “(ii) deals with any person in any
7 manner not clearly reflecting the income of
8 the corporation (as determined under prin-
9 ciples similar to the principles of section
10 482),

11 an amount of indebtedness of the electing fi-
12 nancial institution group equal to the excess
13 distribution or the understatement or overstate-
14 ment of income, as the case may be, shall be re-
15 characterized (for the taxable year and subse-
16 quent taxable years) for purposes of this para-
17 graph as indebtedness of the worldwide affili-
18 ated group (excluding the electing financial in-
19 stitution group). If a corporation has not been
20 in existence for 5 taxable years, this subpara-
21 graph shall be applied with respect to the pe-
22 riod it was in existence.

23 “(D) ELECTION.—An election under this
24 paragraph with respect to any financial institu-
25 tion group may be made only by the common

1 parent of the pre-election worldwide affiliated
2 group and may be made only for the first tax-
3 able year beginning after December 31, 2008,
4 in which such affiliated group includes 1 or
5 more financial corporations. Such an election,
6 once made, shall apply to all financial corpora-
7 tions which are members of the electing finan-
8 cial institution group for such taxable year and
9 all subsequent years unless revoked with the
10 consent of the Secretary.

11 “(E) DEFINITIONS RELATING TO
12 GROUPS.—For purposes of this paragraph—

13 “(i) PRE-ELECTION WORLDWIDE AF-
14 FILLATED GROUP.—The term ‘pre-election
15 worldwide affiliated group’ means, with re-
16 spect to a corporation, the worldwide affili-
17 ated group of which such corporation
18 would (but for an election under this para-
19 graph) be a member for purposes of apply-
20 ing paragraph (1).

21 “(ii) ELECTING FINANCIAL INSTITU-
22 TION GROUP.—The term ‘electing financial
23 institution group’ means the group of cor-
24 porations to which this subsection applies
25 separately by reason of the application of

1 paragraph (4)(A) and which includes fi-
2 nancial corporations by reason of an elec-
3 tion under subparagraph (A).

4 “(F) REGULATIONS.—The Secretary shall
5 prescribe such regulations as may be appro-
6 priate to carry out this subsection, including
7 regulations—

8 “(i) providing for the direct allocation
9 of interest expense in other circumstances
10 where such allocation would be appropriate
11 to carry out the purposes of this sub-
12 section,

13 “(ii) preventing assets or interest ex-
14 pense from being taken into account more
15 than once, and

16 “(iii) dealing with changes in mem-
17 bers of any group (through acquisitions or
18 otherwise) treated under this paragraph as
19 an affiliated group for purposes of this
20 subsection.

21 “(6) ELECTION.—An election to have this sub-
22 section apply with respect to any worldwide affiliated
23 group may be made only by the common parent of
24 the domestic affiliated group referred to in para-
25 graph (1)(C) and may be made only for the first

1 taxable year beginning after December 31, 2008, in
2 which a worldwide affiliated group exists which in-
3 cludes such affiliated group and at least 1 foreign
4 corporation. Such an election, once made, shall apply
5 to such common parent and all other corporations
6 which are members of such worldwide affiliated
7 group for such taxable year and all subsequent years
8 unless revoked with the consent of the Secretary.”.

9 (b) EXPANSION OF REGULATORY AUTHORITY.—

10 Paragraph (7) of section 864(e) is amended—

11 (1) by inserting before the comma at the end of
12 subparagraph (B) “and in other circumstances
13 where such allocation would be appropriate to carry
14 out the purposes of this subsection”, and

15 (2) by striking “and” at the end of subpara-
16 graph (E), by redesignating subparagraph (F) as
17 subparagraph (G), and by inserting after subpara-
18 graph (E) the following new subparagraph:

19 “(F) preventing assets or interest expense
20 from being taken into account more than once,
21 and”.

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

1 **SEC. 302. RECHARACTERIZATION OF OVERALL DOMESTIC**
2 **LOSS.**

3 (a) GENERAL RULE.—Section 904 is amended by re-
4 designating subsections (g), (h), (i), (j), and (k) as sub-
5 sections (h), (i), (j), (k), and (l) respectively, and by in-
6 serting after subsection (f) the following new subsection:

7 “(g) RECHARACTERIZATION OF OVERALL DOMESTIC
8 LOSS.—

9 “(1) GENERAL RULE.—For purposes of this
10 subpart and section 936, in the case of any taxpayer
11 who sustains an overall domestic loss for any taxable
12 year beginning after December 31, 2006, that por-
13 tion of the taxpayer’s taxable income from sources
14 within the United States for each succeeding taxable
15 year which is equal to the lesser of—

16 “(A) the amount of such loss (to the extent
17 not used under this paragraph in prior taxable
18 years), or

19 “(B) 50 percent of the taxpayer’s taxable
20 income from sources within the United States
21 for such succeeding taxable year,
22 shall be treated as income from sources without the
23 United States (and not as income from sources with-
24 in the United States).

25 “(2) OVERALL DOMESTIC LOSS DEFINED.—For
26 purposes of this subsection—

1 “(A) IN GENERAL.—The term ‘overall do-
2 mestic loss’ means any domestic loss to the ex-
3 tent such loss offsets taxable income from
4 sources without the United States for the tax-
5 able year or for any preceding taxable year by
6 reason of a carryback. For purposes of the pre-
7 ceding sentence, the term ‘domestic loss’ means
8 the amount by which the gross income for the
9 taxable year from sources within the United
10 States is exceeded by the sum of the deductions
11 properly apportioned or allocated thereto (deter-
12 mined without regard to any carryback from a
13 subsequent taxable year).

14 “(B) TAXPAYER MUST HAVE ELECTED
15 FOREIGN TAX CREDIT FOR YEAR OF LOSS.—
16 The term ‘overall domestic loss’ shall not in-
17 clude any loss for any taxable year unless the
18 taxpayer chose the benefits of this subpart for
19 such taxable year.

20 “(3) CHARACTERIZATION OF SUBSEQUENT IN-
21 COME.—

22 “(A) IN GENERAL.—Any income from
23 sources within the United States that is treated
24 as income from sources without the United
25 States under paragraph (1) shall be allocated

1 among and increase the income categories in
2 proportion to the loss from sources within the
3 United States previously allocated to those in-
4 come categories.

5 “(B) INCOME CATEGORY.—For purposes of
6 this paragraph, the term ‘income category’ has
7 the meaning given such term by subsection
8 (f)(5)(E)(i).

9 “(4) COORDINATION WITH SUBSECTION (f).—
10 The Secretary shall prescribe such regulations as
11 may be necessary to coordinate the provisions of this
12 subsection with the provisions of subsection (f).”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 535(d)(2) is amended by striking
15 “section 904(g)(6)” and inserting “section
16 904(h)(6)”.

17 (2) Subparagraph (A) of section 936(a)(2) is
18 amended by striking “section 904(f)” and inserting
19 “subsections (f) and (g) of section 904”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to losses for taxable years begin-
22 ning after December 31, 2006.

23 **SEC. 303. REDUCTION TO 2 FOREIGN TAX CREDIT BASKETS.**

24 (a) IN GENERAL.—Paragraph (1) of section 904(d)
25 (relating to separate application of section with respect to

1 certain categories of income) is amended to read as fol-
2 lows:

3 “(1) IN GENERAL.—The provisions of sub-
4 sections (a), (b), and (c) and sections 902, 907, and
5 960 shall be applied separately with respect to—

6 “(A) passive category income, and

7 “(B) general category income.”

8 (b) CATEGORIES.—Paragraph (2) of section 904(d)
9 is amended by striking subparagraph (B), by redesignig-
10 nating subparagraph (A) as subparagraph (B), and by in-
11 serting before subparagraph (B) (as so redesignated) the
12 following new subparagraph:

13 “(A) CATEGORIES.—

14 “(i) PASSIVE CATEGORY INCOME.—

15 The term ‘passive category income’ means
16 passive income and specified passive cat-
17 egory income.

18 “(ii) GENERAL CATEGORY INCOME.—

19 The term ‘general category income’ means
20 income other than passive category in-
21 come.”

22 (c) SPECIFIED PASSIVE CATEGORY INCOME.—Sub-
23 paragraph (B) of section 904(d)(2), as so redesignated,
24 is amended by adding at the end the following new clause:

1 “(v) SPECIFIED PASSIVE CATEGORY
2 INCOME.—The term ‘specified passive cat-
3 egory income’ means—

4 “(I) dividends from a DISC or
5 former DISC (as defined in section
6 992(a)) to the extent such dividends
7 are treated as income from sources
8 without the United States,

9 “(II) taxable income attributable
10 to foreign trade income (within the
11 meaning of section 923(b)), and

12 “(III) distributions from a FSC
13 (or a former FSC) out of earnings
14 and profits attributable to foreign
15 trade income (within the meaning of
16 section 923(b)) or interest or carrying
17 charges (as defined in section
18 927(d)(1)) derived from a transaction
19 which results in foreign trade income
20 (as defined in section 923(b)).”

21 (d) TREATMENT OF FINANCIAL SERVICES.—Para-
22 graph (2) of section 904(d) is amended by striking sub-
23 paragraph (D), by redesignating subparagraph (C) as sub-
24 paragraph (D), and by inserting before subparagraph (D)
25 (as so redesignated) the following new subparagraph:

1 “(C) TREATMENT OF FINANCIAL SERVICES
2 INCOME AND COMPANIES.—

3 “(i) IN GENERAL.—Financial services
4 income shall be treated as general category
5 income in the case of—

6 “(I) a member of a financial
7 services group, and

8 “(II) any other person if such
9 person is predominantly engaged in
10 the active conduct of a banking, insur-
11 ance, financing, or similar business.

12 “(ii) FINANCIAL SERVICES GROUP.—
13 The term ‘financial services group’ means
14 any affiliated group (as defined in section
15 1504(a) without regard to paragraphs (2)
16 and (3) of section 1504(b)) which is pre-
17 dominantly engaged in the active conduct
18 of a banking, insurance, financing, or simi-
19 lar business. In determining whether such
20 a group is so engaged, there shall be taken
21 into account only the income of members
22 of the group that are—

23 “(I) United States corporations,
24 or

1 “(II) controlled foreign corpora-
2 tions in which such United States cor-
3 porations own, directly or indirectly,
4 at least 80 percent of the total voting
5 power and value of the stock.

6 “(iii) PASS-THRU ENTITIES.—The
7 Secretary shall by regulation specify for
8 purposes of this subparagraph the treat-
9 ment of financial services income received
10 or accrued by partnerships and by other
11 pass-thru entities which are not members
12 of a financial services group.”

13 (e) CONFORMING AMENDMENTS.—

14 (1) Clause (iii) of section 904(d)(2)(B) (relating
15 to exceptions from passive income), as so redesign-
16 ated, is amended by striking subclause (I) and by
17 redesignating subclauses (II) and (III) as subclauses
18 (I) and (II), respectively.

19 (2) Clause (i) of section 904(d)(2)(D) (defining
20 financial services income), as so redesignated, is
21 amended by adding “or” at the end of subclause (I)
22 and by striking subclauses (II) and (III) and insert-
23 ing the following new subclause:

1 “(II) passive income (determined
2 without regard to subparagraph
3 (B)(iii)(II)).”

4 (3) Section 904(d)(2)(D) (defining financial
5 services income), as so redesignated, is amended by
6 striking clause (iii).

7 (4) Paragraph (3) of section 904(d) is amended
8 to read as follows:

9 “(3) LOOK-THRU IN CASE OF CONTROLLED
10 FOREIGN CORPORATIONS.—

11 “(A) IN GENERAL.—Except as otherwise
12 provided in this paragraph, dividends, interest,
13 rents, and royalties received or accrued by the
14 taxpayer from a controlled foreign corporation
15 in which the taxpayer is a United States share-
16 holder shall not be treated as passive category
17 income.

18 “(B) SUBPART F INCLUSIONS.—Any
19 amount included in gross income under section
20 951(a)(1)(A) shall be treated as passive cat-
21 egory income to the extent the amount so in-
22 cluded is attributable to passive category in-
23 come.

24 “(C) INTEREST, RENTS, AND ROYAL-
25 TIES.—Any interest, rent, or royalty which is

1 received or accrued from a controlled foreign
2 corporation in which the taxpayer is a United
3 States shareholder shall be treated as passive
4 category income to the extent it is properly allo-
5 cable (under regulations prescribed by the Sec-
6 retary) to passive category income of the con-
7 trolled foreign corporation.

8 “(D) DIVIDENDS.—Any dividend paid out
9 of the earnings and profits of any controlled
10 foreign corporation in which the taxpayer is a
11 United States shareholder shall be treated as
12 passive category income in proportion to the
13 ratio of—

14 “(i) the portion of the earnings and
15 profits attributable to passive category in-
16 come, to

17 “(ii) the total amount of earnings and
18 profits.

19 “(E) LOOK-THRU APPLIES ONLY WHERE
20 SUBPART F APPLIES.—If a controlled foreign
21 corporation meets the requirements of section
22 954(b)(3)(A) (relating to de minimis rule) for
23 any taxable year, for purposes of this para-
24 graph, none of its foreign base company income
25 (as defined in section 954(a) without regard to

1 section 954(b)(5)) and none of its gross insur-
2 ance income (as defined in section
3 954(b)(3)(C)) for such taxable year shall be
4 treated as passive category income, except that
5 this sentence shall not apply to any income
6 which (without regard to this sentence) would
7 be treated as financial services income. Solely
8 for purposes of applying subparagraph (D),
9 passive income of a controlled foreign corpora-
10 tion shall not be treated as passive category in-
11 come if the requirements of section 954(b)(4)
12 are met with respect to such income.

13 “(F) COORDINATION WITH HIGH-TAXED
14 INCOME PROVISIONS.—

15 “(i) In determining whether any in-
16 come of a controlled foreign corporation is
17 passive category income, subclause (II) of
18 paragraph (2)(B)(iii) shall not apply.

19 “(ii) Any income of the taxpayer
20 which is treated as passive category income
21 under this paragraph shall be so treated
22 notwithstanding any provision of para-
23 graph (2); except that the determination of
24 whether any amount is high-taxed income

1 shall be made after the application of this
2 paragraph.

3 “(G) DIVIDEND.—For purposes of this
4 paragraph, the term ‘dividend’ includes any
5 amount included in gross income in section
6 951(a)(1)(B). Any amount included in gross in-
7 come under section 78 to the extent attrib-
8 utable to amounts included in gross income in
9 section 951(a)(1)(A) shall not be treated as a
10 dividend but shall be treated as included in
11 gross income under section 951(a)(1)(A).

12 “(H) LOOK-THRU APPLIES TO PASSIVE
13 FOREIGN INVESTMENT COMPANY INCLUSION.—
14 If—

15 “(i) a passive foreign investment com-
16 pany is a controlled foreign corporation,
17 and

18 “(ii) the taxpayer is a United States
19 shareholder in such controlled foreign cor-
20 poration,

21 any amount included in gross income under sec-
22 tion 1293 shall be treated as income in a sepa-
23 rate category to the extent such amount is at-
24 tributable to income in such category.”

1 (5) TREATMENT OF INCOME TAX BASE DIF-
2 FERENCES.—Paragraph (2) of section 904(d) is
3 amended by redesignating subparagraphs (H) and
4 (I) as subparagraphs (I) and (J), respectively, and
5 by inserting after subparagraph (G) the following
6 new subparagraph:

7 “(H) TREATMENT OF INCOME TAX BASE
8 DIFFERENCES.—Tax imposed under the law of
9 a foreign country or possession of the United
10 States on an amount which does not constitute
11 income under United States tax principles shall
12 be treated as imposed on income described in
13 paragraph (1)(B).”

14 (6) Paragraph (2) of section 904(d) is amended
15 by adding at the end the following new subpara-
16 graph:

17 “(K) TRANSITIONAL RULES FOR 2007
18 CHANGES.—For purposes of paragraph (1)—

19 “(i) taxes carried from any taxable
20 year beginning before January 1, 2007, to
21 any taxable year beginning on or after
22 such date, with respect to any item of in-
23 come, shall be treated as described in the
24 subparagraph of paragraph (1) in which
25 such income would be described were such

1 taxes paid or accrued in a taxable year be-
2 ginning on or after such date, and

3 “(ii) the Secretary may by regulations
4 provide for the allocation of any carryback
5 of taxes with respect to income to such a
6 taxable year for purposes of allocating such
7 income among the separate categories in
8 effect for such taxable year.”.

9 (7) Section 904(j)(3)(A)(i) is amended by strik-
10 ing “subsection (d)(2)(A)” and inserting “subsection
11 (d)(2)(B)”.

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

15 **SEC. 304. LOOK-THRU RULES TO APPLY TO DIVIDENDS**
16 **FROM NONCONTROLLED SECTION 902 COR-**
17 **PORATIONS.**

18 (a) IN GENERAL.—Section 904(d)(4) (relating to
19 look-thru rules apply to dividends from noncontrolled sec-
20 tion 902 corporations) is amended to read as follows:

21 “(4) LOOK-THRU APPLIES TO DIVIDENDS FROM
22 NONCONTROLLED SECTION 902 CORPORATIONS.—

23 “(A) IN GENERAL.—For purposes of this
24 subsection, any dividend from a noncontrolled
25 section 902 corporation with respect to the tax-

1 payer shall be treated as income described in a
2 subparagraph of paragraph (1) in proportion to
3 the ratio of—

4 “(i) the portion of earnings and prof-
5 its attributable to income described in such
6 subparagraph, to

7 “(ii) the total amount of earnings and
8 profits.

9 “(B) EARNINGS AND PROFITS OF CON-
10 TROLLED FOREIGN CORPORATIONS.—In the
11 case of any distribution from a controlled for-
12 eign corporation to a United States share-
13 holder, rules similar to the rules of subpara-
14 graph (A) shall apply in determining the extent
15 to which earnings and profits of the controlled
16 foreign corporation which are attributable to
17 dividends received from a noncontrolled section
18 902 corporation may be treated as income in a
19 separate category.

20 “(C) SPECIAL RULES.—For purposes of
21 this paragraph—

22 “(i) EARNINGS AND PROFITS.—

23 “(I) IN GENERAL.—The rules of
24 section 316 shall apply.

1 “(II) REGULATIONS.—The Sec-
2 retary may prescribe regulations re-
3 garding the treatment of distributions
4 out of earnings and profits for periods
5 before the taxpayer’s acquisition of
6 the stock to which the distributions
7 relate.

8 “(ii) INADEQUATE SUBSTAN-
9 TIATION.—If the Secretary determines that
10 the proper subparagraph of paragraph (1)
11 in which a dividend is described has not
12 been substantiated, such dividend shall be
13 treated as income described in paragraph
14 (1)(A).

15 “(iii) COORDINATION WITH HIGH-
16 TAXED INCOME PROVISIONS.—Rules simi-
17 lar to the rules of paragraph (3)(F) shall
18 apply for purposes of this paragraph.

19 “(iv) LOOK-THRU WITH RESPECT TO
20 CARRYOVER OF CREDIT.—Rules similar to
21 subparagraph (A) also shall apply to any
22 carryforward under subsection (c) from a
23 taxable year beginning before January 1,
24 2003, of tax allocable to a dividend from a
25 noncontrolled section 902 corporation with

1 respect to the taxpayer. The Secretary may
2 by regulations provide for the allocation of
3 any carryback of tax allocable to a divi-
4 dend from a noncontrolled section 902 cor-
5 poration to such a taxable year for pur-
6 poses of allocating such dividend among
7 the separate categories in effect for such
8 taxable year.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Subparagraph (E) of section 904(d)(1) is
11 hereby repealed.

12 (2) Section 904(d)(2)(C)(iii) is amended by
13 adding “and” at the end of subclause (I), by striking
14 subclause (II), and by redesignating subclause (III)
15 as subclause (II).

16 (3) The last sentence of section 904(d)(2)(D) is
17 amended to read as follows: “Such term does not in-
18 clude any financial services income.”.

19 (4) Section 904(d)(2)(E) is amended—

20 (A) by inserting “or (4)” after “paragraph
21 (3)” in clause (i), and

22 (B) by striking clauses (ii) and (iv) and by
23 redesignating clause (iii) as clause (ii).

24 (5) Section 904(d)(3)(F) is amended by strik-
25 ing “(D), or (E)” and inserting “or (D)”.

1 (6) Section 864(d)(5)(A)(i) is amended by
2 striking “(C)(iii)(III)” and inserting “(C)(iii)(II)”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2002.

6 **SEC. 305. ATTRIBUTION OF STOCK OWNERSHIP THROUGH**
7 **PARTNERSHIPS TO APPLY IN DETERMINING**
8 **SECTION 902 AND 960 CREDITS.**

9 (a) IN GENERAL.—Subsection (c) of section 902 is
10 amended by redesignating paragraph (7) as paragraph (8)
11 and by inserting after paragraph (6) the following new
12 paragraph:

13 “(7) CONSTRUCTIVE OWNERSHIP THROUGH
14 PARTNERSHIPS.—Stock owned, directly or indirectly,
15 by or for a partnership shall be considered as being
16 owned proportionately by its partners. Stock consid-
17 ered to be owned by a person by reason of the pre-
18 ceding sentence shall, for purposes of applying such
19 sentence, be treated as actually owned by such per-
20 son. The Secretary may prescribe such regulations
21 as may be necessary to carry out the purposes of
22 this paragraph, including rules to account for special
23 partnership allocations of dividends, credits, and
24 other incidents of ownership of stock in determining
25 proportionate ownership.”.

1 (b) CLARIFICATION OF COMPARABLE ATTRIBUTION
2 UNDER SECTION 901(b)(5).—Paragraph (5) of section
3 901(b) is amended by striking “any individual” and in-
4 serting “any person”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to taxes of foreign corporations
7 for taxable years of such corporations beginning after the
8 date of the enactment of this Act.

9 **SEC. 306. CLARIFICATION OF TREATMENT OF CERTAIN**
10 **TRANSFERS OF INTANGIBLE PROPERTY.**

11 (a) IN GENERAL.—Subparagraph (C) of section
12 367(d)(2) is amended by adding at the end the following
13 new sentence: “For purposes of applying section 904(d),
14 any such amount shall be treated in the same manner as
15 if such amount were a royalty.”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to amounts treated as received pur-
18 suant to section 367(d)(2) of the Internal Revenue Code
19 of 1986 on or after August 5, 1997.

20 **SEC. 307. UNITED STATES PROPERTY NOT TO INCLUDE**
21 **CERTAIN ASSETS OF CONTROLLED FOREIGN**
22 **CORPORATION.**

23 (a) IN GENERAL.—Section 956(c)(2) (relating to ex-
24 ceptions from property treated as United States property)
25 is amended by striking “and” at the end of subparagraph

1 (J), by striking the period at the end of subparagraph (K)
2 and inserting a semicolon, and by adding at the end the
3 following new subparagraphs:

4 “(L) securities acquired and held by a con-
5 trolled foreign corporation in the ordinary
6 course of its business as a dealer in securities
7 if—

8 “(i) the dealer accounts for the securi-
9 ties as securities held primarily for sale to
10 customers in the ordinary course of busi-
11 ness, and

12 “(ii) the dealer disposes of the securi-
13 ties (or such securities mature while held
14 by the dealer) within a period consistent
15 with the holding of securities for sale to
16 customers in the ordinary course of busi-
17 ness; and

18 “(M) an obligation of a United States per-
19 son which—

20 “(i) is not a domestic corporation, and

21 “(ii) is not—

22 “(I) a United States shareholder
23 (as defined in section 951(b)) of the
24 controlled foreign corporation, or

1 “(II) a partnership, estate, or
2 trust in which the controlled foreign
3 corporation, or any related person (as
4 defined in section 954(d)(3)), is a
5 partner, beneficiary, or trustee imme-
6 diately after the acquisition of any ob-
7 ligation of such partnership, estate, or
8 trust by the controlled foreign cor-
9 poration.”.

10 (b) CONFORMING AMENDMENT.—Section 956(e)(2)
11 is amended by striking “and (K)” in the last sentence and
12 inserting “, (K), and (L)”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years of foreign corpora-
15 tions beginning after December 31, 2004, and to taxable
16 years of United States shareholders with or within which
17 such taxable years of foreign corporations end.

18 **SEC. 308. ELECTION NOT TO USE AVERAGE EXCHANGE**
19 **RATE FOR FOREIGN TAX PAID OTHER THAN**
20 **IN FUNCTIONAL CURRENCY.**

21 (a) IN GENERAL.—Paragraph (1) of section 986(a)
22 (relating to determination of foreign taxes and foreign cor-
23 poration’s earnings and profits) is amended by redesign-
24 nating subparagraph (D) as subparagraph (E) and by in-

1 serting after subparagraph (C) the following new subpara-
2 graph:

3 “(D) ELECTIVE EXCEPTION FOR TAXES
4 PAID OTHER THAN IN FUNCTIONAL CUR-
5 RENCY.—

6 “(i) IN GENERAL.—At the election of
7 the taxpayer, subparagraph (A) shall not
8 apply to any foreign income taxes the li-
9 ability for which is denominated in any
10 currency other than in the taxpayer’s func-
11 tional currency.

12 “(ii) APPLICATION TO QUALIFIED
13 BUSINESS UNITS.—An election under this
14 subparagraph may apply to foreign income
15 taxes attributable to a qualified business
16 unit in accordance with regulations pre-
17 scribed by the Secretary.

18 “(iii) ELECTION.—Any such election
19 shall apply to the taxable year for which
20 made and all subsequent taxable years un-
21 less revoked with the consent of the Sec-
22 retary.”.

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

1 **SEC. 309. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**
2 **FROM CERTAIN FOREIGN CORPORATIONS.**

3 (a) IN GENERAL.—Paragraph (2) of section 871(i)
4 (relating to tax not to apply to certain interest and divi-
5 dends) is amended by adding at the end the following new
6 subparagraph:

7 “(D) Dividends paid by a foreign corpora-
8 tion which are treated under section
9 861(a)(2)(B) as income from sources within the
10 United States.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to payments made after December
13 31, 2004.

14 **SEC. 310. PROVIDE EQUAL TREATMENT FOR INTEREST**
15 **PAID BY FOREIGN PARTNERSHIPS AND FOR-**
16 **EIGN CORPORATIONS.**

17 (a) IN GENERAL.—Paragraph (1) of section 861(a)
18 is amended by striking “and” at the end of subparagraph
19 (A), by striking the period at the end of subparagraph
20 (B) and inserting “, and”, and by adding at the end the
21 following new subparagraph:

22 “(C) in the case of a foreign partnership,
23 which is predominantly engaged in the active
24 conduct of a trade or business outside the
25 United States, any interest not paid by a trade
26 or business engaged in by the partnership in

1 the United States and not allocable to income
2 which is effectively connected (or treated as ef-
3 fectively connected) with the conduct of a trade
4 or business in the United States.”.

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

8 **SEC. 311. LOOK-THRU TREATMENT OF PAYMENTS BE-**
9 **TWEEN RELATED CONTROLLED FOREIGN**
10 **CORPORATIONS UNDER FOREIGN PERSONAL**
11 **HOLDING COMPANY INCOME RULES.**

12 (a) IN GENERAL.—Subsection (c) of section 954, as
13 amended by this Act, is amended by adding after para-
14 graph (4) the following new paragraph:

15 “(5) LOOK-THRU IN THE CASE OF RELATED
16 CONTROLLED FOREIGN CORPORATIONS.—For pur-
17 poses of this subsection, dividends, interest, rents,
18 and royalties received or accrued from a controlled
19 foreign corporation which is a related person (as de-
20 fined in subsection (b)(9)) shall not be treated as
21 foreign personal holding company income to the ex-
22 tent attributable or properly allocable (determined
23 under rules similar to the rules of subparagraphs
24 (C) and (D) of section 904(d)(3)) to income of the
25 related person which is not subpart F income (as de-

1 fined in section 952). For purposes of this para-
2 graph, interest shall include factoring income which
3 is treated as income equivalent to interest for pur-
4 poses of paragraph (1)(E). The Secretary shall pre-
5 scribe such regulations as may be appropriate to
6 prevent the abuse of the purposes of this para-
7 graph.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to taxable years of foreign corpora-
10 tions beginning after December 31, 2004, and to taxable
11 years of United States shareholders with or within which
12 such taxable years of foreign corporations end.

13 **SEC. 312. LOOK-THRU TREATMENT FOR SALES OF PART-**
14 **nership INTERESTS.**

15 (a) IN GENERAL.—Section 954(c) (defining foreign
16 personal holding company income), as amended by this
17 Act, is amended by adding after paragraph (5) the fol-
18 lowing new paragraph:

19 “(6) LOOK-THRU RULE FOR CERTAIN PARTNER-
20 SHIP SALES.—

21 “(A) IN GENERAL.—In the case of any
22 sale by a controlled foreign corporation of an
23 interest in a partnership with respect to which
24 such corporation is a 25-percent owner, such
25 corporation shall be treated for purposes of this

1 subsection as selling the proportionate share of
2 the assets of the partnership attributable to
3 such interest. The Secretary shall prescribe
4 such regulations as may be appropriate to pre-
5 vent abuse of the purposes of this paragraph,
6 including regulations providing for coordination
7 of this paragraph with the provisions of sub-
8 chapter K.

9 “(B) 25-PERCENT OWNER.—For purposes
10 of this paragraph, the term ‘25-percent owner’
11 means a controlled foreign corporation which
12 owns directly 25 percent or more of the capital
13 or profits interest in a partnership. For pur-
14 poses of the preceding sentence, if a controlled
15 foreign corporation is a shareholder or partner
16 of a corporation or partnership, the controlled
17 foreign corporation shall be treated as owning
18 directly its proportionate share of any such cap-
19 ital or profits interest held directly or indirectly
20 by such corporation or partnership”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to taxable years of foreign corpora-
23 tions beginning after December 31, 2004, and to taxable
24 years of United States shareholders with or within which
25 such taxable years of foreign corporations end.

1 **SEC. 313. REPEAL OF FOREIGN PERSONAL HOLDING COM-**
2 **PANY RULES AND FOREIGN INVESTMENT**
3 **COMPANY RULES.**

4 (a) **GENERAL RULE.**—The following provisions are
5 hereby repealed:

6 (1) Part III of subchapter G of chapter 1 (re-
7 lating to foreign personal holding companies).

8 (2) Section 1246 (relating to gain on foreign in-
9 vestment company stock).

10 (3) Section 1247 (relating to election by foreign
11 investment companies to distribute income cur-
12 rently).

13 (b) **EXEMPTION OF FOREIGN CORPORATIONS FROM**
14 **PERSONAL HOLDING COMPANY RULES.**—

15 (1) **IN GENERAL.**—Subsection (c) of section
16 542 (relating to exceptions) is amended—

17 (A) by striking paragraph (5) and insert-
18 ing the following:

19 “(5) a foreign corporation,”

20 (B) by striking paragraphs (7) and (10)
21 and by redesignating paragraphs (8) and (9) as
22 paragraphs (7) and (8), respectively,

23 (C) by inserting “and” at the end of para-
24 graph (7) (as so redesignated), and

1 (D) by striking “; and” at the end of para-
2 graph (8) (as so redesignated) and inserting a
3 period.

4 (2) TREATMENT OF INCOME FROM PERSONAL
5 SERVICE CONTRACTS.—Paragraph (1) of section
6 954(c) is amended by adding at the end the fol-
7 lowing new subparagraph:

8 “(I) PERSONAL SERVICE CONTRACTS.—

9 “(i) Amounts received under a con-
10 tract under which the corporation is to fur-
11 nish personal services if—

12 “(I) some person other than the
13 corporation has the right to designate
14 (by name or by description) the indi-
15 vidual who is to perform the services,
16 or

17 “(II) the individual who is to per-
18 form the services is designated (by
19 name or by description) in the con-
20 tract, and

21 “(ii) amounts received from the sale
22 or other disposition of such a contract.

23 This subparagraph shall apply with respect to
24 amounts received for services under a particular
25 contract only if at some time during the taxable

1 year 25 percent or more in value of the out-
2 standing stock of the corporation is owned, di-
3 rectly or indirectly, by or for the individual who
4 has performed, is to perform, or may be des-
5 ignated (by name or by description) as the one
6 to perform, such services.”.

7 (c) CONFORMING AMENDMENTS.—

8 (1) Section 1(h) is amended—

9 (A) in paragraph (10), by inserting “and”
10 at the end of subparagraph (F), by striking
11 subparagraph (G), and by redesignating sub-
12 paragraph (H) as subparagraph (G), and

13 (B) by striking “a foreign personal holding
14 company (as defined in section 552), a foreign
15 investment company (as defined in section
16 1246(b)), or” in paragraph (11)(C)(iii).

17 (2) Section 163(e)(3)(B), as amended by sec-
18 tion 642(a) of this Act, is amended by striking
19 “which is a foreign personal holding company (as
20 defined in section 552), a controlled foreign corpora-
21 tion (as defined in section 957), or” and inserting
22 “which is a controlled foreign corporation (as de-
23 fined in section 957) or”.

24 (3) Paragraph (2) of section 171(c) is amend-
25 ed—

1 (A) by striking “, or by a foreign personal
2 holding company, as defined in section 552”,
3 and

4 (B) by striking “, or foreign personal hold-
5 ing company”.

6 (4) Paragraph (2) of section 245(a) is amended
7 by striking “foreign personal holding company or”.

8 (5) Section 267(a)(3)(B), as amended by sec-
9 tion 642(b) of this Act, is amended by striking “to
10 a foreign personal holding company (as defined in
11 section 552), a controlled foreign corporation (as de-
12 fined in section 957), or” and inserting “to a con-
13 trolled foreign corporation (as defined in section
14 957) or”.

15 (6) Section 312 is amended by striking sub-
16 section (j).

17 (7) Subsection (m) of section 312 is amended
18 by striking “, a foreign investment company (within
19 the meaning of section 1246(b)), or a foreign per-
20 sonal holding company (within the meaning of sec-
21 tion 552)”.

22 (8) Subsection (e) of section 443 is amended by
23 striking paragraph (3) and by redesignating para-
24 graphs (4) and (5) as paragraphs (3) and (4), re-
25 spectively.

1 (9) Subparagraph (B) of section 465(c)(7) is
2 amended by adding “or” at the end of clause (i), by
3 striking clause (ii), and by redesignating clause (iii)
4 as clause (ii).

5 (10) Paragraph (1) of section 543(b) is amend-
6 ed by inserting “and” at the end of subparagraph
7 (A), by striking “, and” at the end of subparagraph
8 (B) and inserting a period, and by striking subpara-
9 graph (C).

10 (11) Paragraph (1) of section 562(b) is amend-
11 ed by striking “or a foreign personal holding com-
12 pany described in section 552”.

13 (12) Section 563 is amended—

14 (A) by striking subsection (c),

15 (B) by redesignating subsection (d) as sub-
16 section (c), and

17 (C) by striking “subsection (a), (b), or (c)”
18 in subsection (c) (as so redesignated) and in-
19 serting “subsection (a) or (b)”.

20 (13) Subsection (d) of section 751 is amended
21 by adding “and” at the end of paragraph (2), by
22 striking paragraph (3), by redesignating paragraph
23 (4) as paragraph (3), and by striking “paragraph
24 (1), (2), or (3)” in paragraph (3) (as so redesign-
25 ated) and inserting “paragraph (1) or (2)”.

1 (14) Paragraph (2) of section 864(d) is amend-
2 ed by striking subparagraph (A) and by redesignig-
3 nating subparagraphs (B) and (C) as subparagraphs
4 (A) and (B), respectively.

5 (15)(A) Subparagraph (A) of section 898(b)(1)
6 is amended to read as follows:

7 “(A) which is treated as a controlled for-
8 eign corporation for any purpose under subpart
9 F of part III of this subchapter, and”.

10 (B) Subparagraph (B) of section 898(b)(2) is
11 amended by striking “and sections 551(f) and 554,
12 whichever are applicable,”.

13 (C) Paragraph (3) of section 898(b) is amended
14 to read as follows:

15 “(3) UNITED STATES SHAREHOLDER.—The
16 term ‘United States shareholder’ has the meaning
17 given to such term by section 951(b), except that, in
18 the case of a foreign corporation having related per-
19 son insurance income (as defined in section
20 953(c)(2)), the Secretary may treat any person as a
21 United States shareholder for purposes of this sec-
22 tion if such person is treated as a United States
23 shareholder under section 953(c)(1).”.

24 (D) Subsection (c) of section 898 is amended to
25 read as follows:

1 “(c) DETERMINATION OF REQUIRED YEAR.—

2 “(1) IN GENERAL.—The required year is—

3 “(A) the majority U.S. shareholder year,

4 or

5 “(B) if there is no majority U.S. share-
6 holder year, the taxable year prescribed under
7 regulations.

8 “(2) 1-MONTH DEFERRAL ALLOWED.—A speci-
9 fied foreign corporation may elect, in lieu of the tax-
10 able year under paragraph (1)(A), a taxable year be-
11 ginning 1 month earlier than the majority U.S.
12 shareholder year.

13 “(3) MAJORITY U.S. SHAREHOLDER YEAR.—

14 “(A) IN GENERAL.—For purposes of this
15 subsection, the term ‘majority U.S. shareholder
16 year’ means the taxable year (if any) which, on
17 each testing day, constituted the taxable year
18 of—

19 “(i) each United States shareholder
20 described in subsection (b)(2)(A), and

21 “(ii) each United States shareholder
22 not described in clause (i) whose stock was
23 treated as owned under subsection
24 (b)(2)(B) by any shareholder described in
25 such clause.

1 “(B) TESTING DAY.—The testing days
2 shall be—

3 “(i) the first day of the corporation’s
4 taxable year (determined without regard to
5 this section), or

6 “(ii) the days during such representa-
7 tive period as the Secretary may pre-
8 scribe.”.

9 (16) Clause (ii) of section 904(d)(2)(A) is
10 amended to read as follows:

11 “(ii) CERTAIN AMOUNTS INCLUDED.—
12 Except as provided in clause (iii), the term
13 ‘passive income’ includes, except as pro-
14 vided in subparagraph (E)(iii) or para-
15 graph (3)(I), any amount includible in
16 gross income under section 1293 (relating
17 to certain passive foreign investment com-
18 panies).”.

19 (17)(A) Subparagraph (A) of section 904(h)(1),
20 as redesignated by section 302, is amended by add-
21 ing “or” at the end of clause (i), by striking clause
22 (ii), and by redesignating clause (iii) as clause (ii).

23 (B) The paragraph heading of paragraph (2) of
24 section 904(h), as so redesignated, is amended by
25 striking “FOREIGN PERSONAL HOLDING OR”.

1 (18) Section 951 is amended by striking sub-
2 sections (c) and (d) and by redesignating subsections
3 (e) and (f) as subsections (c) and (d), respectively.

4 (19) Paragraph (3) of section 989(b) is amend-
5 ed by striking “, 551(a),”.

6 (20) Paragraph (5) of section 1014(b) is
7 amended by inserting “and before January 1,
8 2005,” after “August 26, 1937,”.

9 (21) Subsection (a) of section 1016 is amended
10 by striking paragraph (13).

11 (22)(A) Paragraph (3) of section 1212(a) is
12 amended to read as follows:

13 “(3) SPECIAL RULES ON CARRYBACKS.—A net
14 capital loss of a corporation shall not be carried
15 back under paragraph (1)(A) to a taxable year—

16 “(A) for which it is a regulated investment
17 company (as defined in section 851), or

18 “(B) for which it is a real estate invest-
19 ment trust (as defined in section 856).”.

20 (B) The amendment made by subparagraph (A)
21 shall apply to taxable years beginning after Decem-
22 ber 31, 2004.

23 (23) Section 1223 is amended by striking para-
24 graph (10) and by redesignating the following para-
25 graphs accordingly.

1 (24) Subsection (d) of section 1248 is amended
2 by striking paragraph (5) and by redesignating
3 paragraphs (6) and (7) as paragraphs (5) and (6),
4 respectively.

5 (25) Paragraph (2) of section 1260(c) is
6 amended by striking subparagraphs (H) and (I) and
7 by redesignating subparagraph (J) as subparagraph
8 (H).

9 (26)(A) Subparagraph (F) of section
10 1291(b)(3) is amended by striking “551(d), 959(a),”
11 and inserting “959(a)”.

12 (B) Subsection (e) of section 1291 is amended
13 by inserting “(as in effect on the day before the date
14 of the enactment of the American Jobs Creation Act
15 of 2004)” after “section 1246”.

16 (27) Paragraph (2) of section 1294(a) is
17 amended to read as follows:

18 “(2) ELECTION NOT PERMITTED WHERE
19 AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION
20 951.—The taxpayer may not make an election under
21 paragraph (1) with respect to the undistributed
22 PFIC earnings tax liability attributable to a quali-
23 fied electing fund for the taxable year if any amount
24 is includible in the gross income of the taxpayer

1 under section 951 with respect to such fund for such
2 taxable year.”.

3 (28) Section 6035 is hereby repealed.

4 (29) Subparagraph (D) of section 6103(e)(1) is
5 amended by striking clause (iv) and redesignating
6 clauses (v) and (vi) as clauses (iv) and (v), respec-
7 tively.

8 (30) Subparagraph (B) of section 6501(e)(1) is
9 amended to read as follows:

10 “(B) CONSTRUCTIVE DIVIDENDS.—If the
11 taxpayer omits from gross income an amount
12 properly includible therein under section
13 951(a), the tax may be assessed, or a pro-
14 ceeding in court for the collection of such tax
15 may be done without assessing, at any time
16 within 6 years after the return was filed.”.

17 (31) Subsection (a) of section 6679 is amend-
18 ed—

19 (A) by striking “6035, 6046, and 6046A”
20 in paragraph (1) and inserting “6046 and
21 6046A”, and

22 (B) by striking paragraph (3).

23 (32) Sections 170(f)(10)(A), 508(d), 4947, and
24 4948(c)(4) are each amended by striking
25 “556(b)(2),” each place it appears.

1 (33) The table of parts for subchapter G of
2 chapter 1 is amended by striking the item relating
3 to part III.

4 (34) The table of sections for part IV of sub-
5 chapter P of chapter 1 is amended by striking the
6 items relating to sections 1246 and 1247.

7 (35) The table of sections for subpart A of part
8 III of subchapter A of chapter 61 is amended by
9 striking the item relating to section 6035.

10 (d) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by this section
13 shall apply to taxable years of foreign corporations
14 beginning after December 31, 2004, and to taxable
15 years of United States shareholders with or within
16 which such taxable years of foreign corporations
17 end.

18 (2) SUBSECTION (c)(29).—The amendments
19 made by subsection (c)(29) shall apply to disclosures
20 of return or return information with respect to tax-
21 able years beginning after December 31, 2004.

1 **SEC. 314. DETERMINATION OF FOREIGN PERSONAL HOLD-**
2 **ING COMPANY INCOME WITH RESPECT TO**
3 **TRANSACTIONS IN COMMODITIES.**

4 (a) IN GENERAL.—Clauses (i) and (ii) of section
5 954(e)(1)(C) (relating to commodity transactions) are
6 amended to read as follows:

7 “(i) arise out of commodity hedging
8 transactions (as defined in paragraph
9 (4)(A)),

10 “(ii) are active business gains or
11 losses from the sale of commodities, but
12 only if substantially all of the controlled
13 foreign corporation’s commodities are
14 property described in paragraph (1), (2),
15 or (8) of section 1221(a), or”.

16 (b) DEFINITION AND SPECIAL RULES.—Subsection
17 (c) of section 954 is amended by adding after paragraph
18 (3) the following new paragraph:

19 “(4) DEFINITION AND SPECIAL RULES RELAT-
20 ING TO COMMODITY TRANSACTIONS.—

21 “(A) COMMODITY HEDGING TRANS-
22 ACTIONS.—For purposes of paragraph
23 (1)(C)(i), the term ‘commodity hedging trans-
24 action’ means any transaction with respect to a
25 commodity if such transaction—

1 “(i) is a hedging transaction as de-
2 fined in section 1221(b)(2), determined—

3 “(I) without regard to subpara-
4 graph (A)(ii) thereof,

5 “(II) by applying subparagraph
6 (A)(i) thereof by substituting ‘ordi-
7 nary property or property described in
8 section 1231(b)’ for ‘ordinary prop-
9 erty’, and

10 “(III) by substituting ‘controlled
11 foreign corporation’ for ‘taxpayer’
12 each place it appears, and

13 “(ii) is clearly identified as such in ac-
14 cordance with section 1221(a)(7).

15 “(B) TREATMENT OF DEALER ACTIVITIES
16 UNDER PARAGRAPH (1)(C).—Commodities with
17 respect to which gains and losses are not taken
18 into account under paragraph (2)(C) in com-
19 puting a controlled foreign corporation’s foreign
20 personal holding company income shall not be
21 taken into account in applying the substantially
22 all test under paragraph (1)(C)(ii) to such cor-
23 poration.

24 “(C) REGULATIONS.—The Secretary shall
25 prescribe such regulations as are appropriate to

1 carry out the purposes of paragraph (1)(C) in
2 the case of transactions involving related par-
3 ties.”.

4 (c) **MODIFICATION OF EXCEPTION FOR DEALERS.**—
5 Clause (i) of section 954(c)(2)(C) is amended by inserting
6 “and transactions involving physical settlement” after
7 “(including hedging transactions”.

8 (d) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to transactions entered into after
10 December 31, 2004.

11 **SEC. 315. MODIFICATIONS TO TREATMENT OF AIRCRAFT**
12 **LEASING AND SHIPPING INCOME.**

13 (a) **ELIMINATION OF FOREIGN BASE COMPANY SHIP-**
14 **PING INCOME.**—Section 954 (relating to foreign base com-
15 pany income) is amended—

16 (1) by striking paragraph (4) of subsection (a)
17 (relating to foreign base company shipping income),
18 and

19 (2) by striking subsection (f) (relating to for-
20 eign base company shipping income).

21 (b) **SAFE HARBOR FOR CERTAIN LEASING ACTIVI-**
22 **TIES.**—Subparagraph (A) of section 954(c)(2) is amended
23 by adding at the end the following new sentence: “For
24 purposes of the preceding sentence, rents derived from
25 leasing an aircraft or vessel in foreign commerce shall not

1 fail to be treated as derived in the active conduct of a
2 trade or business if, as determined under regulations pre-
3 scribed by the Secretary, the active leasing expenses are
4 not less than 10 percent of the profit on the lease.”

5 (c) CONFORMING AMENDMENTS.—

6 (1) Section 952(c)(1)(B)(iii) is amended by
7 striking subclause (I) and redesignating subclauses
8 (II) through (VI) as subclauses (I) through (V), re-
9 spectively.

10 (2) Subsection (b) of section 954 is amended—

11 (A) by striking “the foreign base company
12 shipping income,” in paragraph (5),

13 (B) by striking paragraphs (6) and (7),
14 and

15 (C) by redesignating paragraph (8) as
16 paragraph (6).

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years of foreign corpora-
19 tions beginning after December 31, 2004, and to taxable
20 years of United States shareholders with or within which
21 such taxable years of foreign corporations end.

22 **SEC. 316. MODIFICATION OF EXCEPTIONS UNDER SUBPART**
23 **F FOR ACTIVE FINANCING.**

24 (a) IN GENERAL.—Section 954(h)(3) is amended by
25 adding at the end the following:

1 “(E) DIRECT CONDUCT OF ACTIVITIES.—
2 For purposes of subparagraph (A)(ii)(II), an
3 activity shall be treated as conducted directly by
4 an eligible controlled foreign corporation or
5 qualified business unit in its home country if
6 the activity is performed by employees of a re-
7 lated person and—

8 “(i) the related person is an eligible
9 controlled foreign corporation the home
10 country of which is the same as the home
11 country of the corporation or unit to which
12 subparagraph (A)(ii)(II) is being applied,

13 “(ii) the activity is performed in the
14 home country of the related person, and

15 “(iii) the related person is com-
16 pensated on an arm’s-length basis for the
17 performance of the activity by its employ-
18 ees and such compensation is treated as
19 earned by such person in its home country
20 for purposes of the home country’s tax
21 laws.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to taxable years of such foreign
24 corporations beginning after December 31, 2004, and to

1 taxable years of United States shareholders with or within
2 which such taxable years of such foreign corporations end.

3 **TITLE IV—EXTENSION OF**
4 **CERTAIN EXPIRING PROVISIONS**

5 **SEC. 401. ALLOWANCE OF NONREFUNDABLE PERSONAL**
6 **CREDITS AGAINST REGULAR AND MINIMUM**
7 **TAX LIABILITY.**

8 (a) IN GENERAL.—Paragraph (2) of section 26(a) is
9 amended—

10 (1) by striking “RULE FOR 2000, 2001, 2002, AND
11 2003.—” and inserting “RULE FOR TAXABLE YEARS
12 2000 THROUGH 2005.—”, and

13 (2) by striking “or 2003,” and inserting “2003,
14 2004, or 2005,”.

15 (b) CONFORMING PROVISIONS.—

16 (1) Section 904(h) is amended by striking “or
17 2003” and inserting “2003, 2004, or 2005”.

18 (2) The amendments made by sections 201(b),
19 202(f), and 618(b) of the Economic Growth and Tax
20 Relief Reconciliation Act of 2001 shall not apply to
21 taxable years beginning during 2004 or 2005.

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

1 **SEC. 402. EXTENSION OF RESEARCH CREDIT.**

2 (a) EXTENSION.—

3 (1) IN GENERAL.—Section 41(h)(1)(B) (relat-
4 ing to termination) is amended by striking “June
5 30, 2004” and inserting “December 31, 2005”.

6 (2) CONFORMING AMENDMENT.—Section
7 45C(b)(1)(D) is amended by striking “June 30,
8 2004” and inserting “December 31, 2005”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall apply to amounts paid or incurred
11 after the date of the enactment of this Act.

12 **SEC. 403. EXTENSION OF CREDIT FOR ELECTRICITY PRO-**
13 **DUCE** **FROM CERTAIN RENEWABLE RE-**
14 **SOURCES.**

15 (a) IN GENERAL.—Subparagraphs (A) and (B) of
16 section 45(c)(3) (defining qualified facility) are both
17 amended by striking “2004” and inserting “2006”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to electricity produced and sold
20 after December 31, 2003.

21 **SEC. 404. INDIAN EMPLOYMENT TAX CREDIT.**

22 Section 45A(f) (relating to termination) is amended
23 by striking “December 31, 2004” and inserting “Decem-
24 ber 31, 2005”.

1 **SEC. 405. WORK OPPORTUNITY CREDIT.**

2 (a) IN GENERAL.—Subparagraph (B) of section
3 51(c)(4) is amended by striking “December 31, 2003” and
4 inserting “December 31, 2005”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall apply to individuals who begin work
7 for the employer after December 31, 2003.

8 **SEC. 406. WELFARE-TO-WORK CREDIT.**

9 (a) IN GENERAL.—Subsection (f) of section 51A is
10 amended by striking “December 31, 2003” and inserting
11 “December 31, 2005”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall apply to individuals who begin work
14 for the employer after December 31, 2003.

15 **SEC. 407. CERTAIN EXPENSES OF ELEMENTARY AND SEC-**
16 **ONDARY SCHOOL TEACHERS.**

17 (a) IN GENERAL.—Subparagraph (D) of section
18 62(a)(2) (relating to certain trade and business deductions
19 of employees) is amended by striking “or 2003” and in-
20 serting “, 2003, 2004, or 2005”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall apply to taxable years beginning after
23 December 31, 2003.

1 **SEC. 408. EXTENSION OF ACCELERATED DEPRECIATION**
2 **BENEFIT FOR PROPERTY ON INDIAN RES-**
3 **ERVATIONS.**

4 Paragraph (8) of section 168(j) (relating to termi-
5 nation) is amended by striking “December 31, 2004” and
6 inserting “December 31, 2005”.

7 **SEC. 409. CHARITABLE CONTRIBUTIONS OF COMPUTER**
8 **TECHNOLOGY AND EQUIPMENT USED FOR**
9 **EDUCATIONAL PURPOSES.**

10 (a) **IN GENERAL.**—Subparagraph (G) of section
11 170(e)(6) (relating to special rule for contributions of
12 computer technology and equipment for educational pur-
13 poses) is amended by striking “December 31, 2003” and
14 inserting “December 31, 2005”.

15 (b) **EFFECTIVE DATE.**—The amendment made by
16 subsection (a) shall apply to taxable years beginning after
17 December 31, 2003.

18 **SEC. 410. EXPENSING OF ENVIRONMENTAL REMEDIATION**
19 **COSTS.**

20 (a) **IN GENERAL.**—Subsection (h) of section 198 (re-
21 lating to termination) is amended by striking “December
22 31, 2003” and inserting “December 31, 2005”.

23 (b) **EFFECTIVE DATE.**—The amendments made by
24 subsection (a) shall apply to expenditures paid or incurred
25 after December 31, 2003.

1 **SEC. 411. AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.**

2 (a) **IN GENERAL.**—Paragraphs (2) and (3)(B) of sec-
3 tion 220(i) (defining cut-off year) are each amended by
4 striking “2003” each place it appears in the text and
5 headings and inserting “2004”.

6 (b) **CONFORMING AMENDMENTS.**—

7 (1) Subparagraph (A) of section 220(j)(4) is
8 amended by striking “and 2002” and inserting
9 “2002, and 2004”.

10 (2) Subparagraph (C) of section 220(j)(2) is
11 amended to read as follows:

12 “(C) **NO LIMITATION FOR 2000 OR 2003.**—

13 The numerical limitation shall not apply for
14 2000 or 2003.”.

15 (c) **EFFECTIVE DATE.**—The amendments made by
16 this section shall take effect on January 1, 2004.

17 (d) **TIME FOR FILING REPORTS.**—The report re-
18 quired by section 220(j)(4) of the Internal Revenue Code
19 of 1986 to be made on August 1, 2004, shall be treated
20 as timely if made before the close of the 90-day period
21 beginning on the date of the enactment of this Act.

1 **SEC. 412. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLE-**
2 **TION FOR OIL AND NATURAL GAS PRODUCED**
3 **FROM MARGINAL PROPERTIES.**

4 (a) IN GENERAL.—Subparagraph (H) of section
5 613A(c)(6) is amended by striking “January 1, 2004” and
6 inserting “January 1, 2006”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply to taxable years beginning after
9 December 31, 2003.

10 **SEC. 413. QUALIFIED ZONE ACADEMY BONDS.**

11 (a) IN GENERAL.—Paragraph (1) of section
12 1397E(e) is amended by striking “and 2003” and insert-
13 ing “2003, 2004, and 2005”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 subsection (a) shall apply to obligations issued after the
16 date of the enactment of this Act.

17 **SEC. 414. DISTRICT OF COLUMBIA.**

18 (a) DISTRICT OF COLUMBIA ENTERPRISE ZONE.—
19 Subsection (f) of section 1400 is amended by striking
20 “December 31, 2003” both places it appears and inserting
21 “December 31, 2005”.

22 (b) TAX-EXEMPT ECONOMIC DEVELOPMENT
23 BONDS.—Subsection (b) of section 1400A is amended by
24 striking “December 31, 2003” and inserting “December
25 31, 2005”.

26 (c) ZERO PERCENT CAPITAL GAINS RATE.—

1 (1) Section 1400B is amended by striking
2 “January 1, 2004” each place it appears and insert-
3 ing “January 1, 2006”.

4 (2) Subsections (e)(2) and (g)(2) of section
5 1400B are each amended by striking “2008” each
6 place it appears in the headings and text and insert-
7 ing “2010”.

8 (3) Subsection (d) of section 1400F is amended
9 by striking “December 31, 2008” and inserting
10 “December 31, 2010”.

11 (d) **FIRST-TIME HOMEBUYER CREDIT.**—Subsection
12 (i) of section 1400C is amended by striking “January 1,
13 2004” and inserting “January 1, 2006”.

14 (e) **EFFECTIVE DATES.**—

15 (1) **IN GENERAL.**—Except as otherwise pro-
16 vided in this subsection, the amendments made by
17 this section shall take effect on the date of the en-
18 actment of this Act.

19 (2) **TAX-EXEMPT ECONOMIC DEVELOPMENT**
20 **BONDS.**—The amendment made by subsection (b)
21 shall apply to obligations issued after December 31,
22 2003.

1 **SEC. 415. EXTENSION OF CERTAIN NEW YORK LIBERTY**
2 **ZONE BOND FINANCING.**

3 Subparagraph (D) of section 1400L(d)(2) is amend-
4 ed by striking “2005” and inserting “2009”.

5 **SEC. 416. DISCLOSURES RELATING TO TERRORIST ACTIVI-**
6 **TIES.**

7 (a) **IN GENERAL.**—Clause (iv) of section
8 6103(i)(3)(C) and subparagraph (E) of section 6103(i)(7)
9 are both amended by striking “December 31, 2003” and
10 inserting “December 31, 2005”.

11 (b) **DISCLOSURE OF TAXPAYER IDENTITY TO LAW**
12 **ENFORCEMENT AGENCIES INVESTIGATING TERRORISM.**—
13 Subparagraph (A) of section 6103(i)(7) is amended by
14 adding at the end the following new clause:

15 “(v) **TAXPAYER IDENTITY.**—For pur-
16 poses of this subparagraph, a taxpayer’s
17 identity shall not be treated as taxpayer
18 return information.”.

19 (c) **EFFECTIVE DATES.**—

20 (1) **IN GENERAL.**—The amendments made by
21 subsection (a) shall apply to disclosures on or after
22 the date of the enactment of this Act.

23 (2) **SUBSECTION (b).**—The amendment made
24 by subsection (b) shall take effect as if included in
25 section 201 of the Victims of Terrorism Tax Relief
26 Act of 2001.

1 **SEC. 417. DISCLOSURE OF RETURN INFORMATION RELAT-**
2 **ING TO STUDENT LOANS.**

3 Section 6103(l)(13)(D) (relating to termination) is
4 amended by striking “December 31, 2004” and inserting
5 “December 31, 2005”.

6 **SEC. 418. COVER OVER OF TAX ON DISTILLED SPIRITS.**

7 (a) **IN GENERAL.**—Paragraph (1) of section 7652(f)
8 is amended by striking “January 1, 2004” and inserting
9 “January 1, 2006”.

10 (b) **EFFECTIVE DATE.**—The amendment made by
11 subsection (a) shall apply to articles brought into the
12 United States after December 31, 2003.

13 **SEC. 419. JOINT REVIEW OF STRATEGIC PLANS AND BUDG-**
14 **ET FOR THE INTERNAL REVENUE SERVICE.**

15 (a) **IN GENERAL.**—Paragraph (2) of section 8021(f)
16 (relating to joint reviews) is amended by striking “2004”
17 and inserting “2005”.

18 (b) **REPORT.**—Subparagraph (C) of section 8022(3)
19 (regarding reports) is amended—

20 (1) by striking “2004” and inserting “2005”,
21 and

22 (2) by striking “with respect to—” and all that
23 follows and inserting “with respect to the matters
24 addressed in the joint review referred to in section
25 8021(f)(2).”.

1 (c) TIME FOR JOINT REVIEW.—The joint review re-
2 quired by section 8021(f)(2) of the Internal Revenue Code
3 of 1986 to be made before June 1, 2004, shall be treated
4 as timely if made before June 1, 2005.

5 **SEC. 420. PARITY IN THE APPLICATION OF CERTAIN LIMITS**
6 **TO MENTAL HEALTH BENEFITS.**

7 (a) IN GENERAL.—Subsection (f) of section 9812 is
8 amended by striking “and” at the end of paragraph (1),
9 by striking paragraph (2), and by inserting after para-
10 graph (1) the following new paragraphs:

11 “(2) on or after January 1, 2004, and before
12 the date of the enactment of American Jobs Cre-
13 ation Act of 2004, and

14 “(3) after December 31, 2005.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to benefits for services furnished
17 on or after December 31, 2003.

18 **SEC. 421. COMBINED EMPLOYMENT TAX REPORTING**
19 **PROJECT.**

20 (a) IN GENERAL.—Paragraph (1) of section 976(b)
21 of the Taxpayer Relief Act of 1997 (111 Stat. 898) is
22 amended by striking “for a period ending with the date
23 which is 5 years after the date of the enactment of this
24 Act” and inserting “during the period ending on Decem-
25 ber 31, 2005”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to disclosures on or after the
3 date of the enactment of this Act.

4 **SEC. 422. CLEAN-FUEL VEHICLES.**

5 (a) CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—
6 Paragraph (2) of section 30(b) (relating to phaseout) is
7 amended to read as follows:

8 “(2) PHASEOUT.—In the case of any qualified
9 electric vehicle placed in service after December 31,
10 2005, the credit otherwise allowable under sub-
11 section (a) (determined after the application of para-
12 graph (1)) shall be reduced by 75 percent.”.

13 (b) DEDUCTION FOR QUALIFIED CLEAN-FUEL VEHI-
14 CLE PROPERTY.—Subparagraph (B) of section
15 179A(b)(1) (relating to phaseout) is amended to read as
16 follows:

17 “(B) PHASEOUT.—In the case of any
18 qualified clean-fuel vehicle property placed in
19 service after December 31, 2005, the limit oth-
20 erwise applicable under subparagraph (A) shall
21 be reduced by 75 percent.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to property placed in service after
24 December 31, 2003.

1 **TITLE V—DEDUCTION OF STATE**
2 **AND LOCAL GENERAL SALES**
3 **TAXES**

4 **SEC. 501. DEDUCTION OF STATE AND LOCAL GENERAL**
5 **SALES TAXES IN LIEU OF STATE AND LOCAL**
6 **INCOME TAXES.**

7 (a) IN GENERAL.—Subsection (b) of section 164 (re-
8 lating to definitions and special rules) is amended by add-
9 ing at the end the following:

10 “(5) GENERAL SALES TAXES.—For purposes of
11 subsection (a)—

12 “(A) ELECTION TO DEDUCT STATE AND
13 LOCAL SALES TAXES IN LIEU OF STATE AND
14 LOCAL INCOME TAXES.—

15 “(i) IN GENERAL.—At the election of
16 the taxpayer for the taxable year, sub-
17 section (a) shall be applied—

18 “(I) without regard to the ref-
19 erence to State and local income
20 taxes, and

21 “(II) as if State and local general
22 sales taxes were referred to in a para-
23 graph thereof.

24 “(B) DEFINITION OF GENERAL SALES
25 TAX.—The term ‘general sales tax’ means a tax

1 imposed at one rate with respect to the sale at
2 retail of a broad range of classes of items.

3 “(C) SPECIAL RULES FOR FOOD, ETC.—In
4 the case of items of food, clothing, medical sup-
5 plies, and motor vehicles—

6 “(i) the fact that the tax does not
7 apply with respect to some or all of such
8 items shall not be taken into account in
9 determining whether the tax applies with
10 respect to a broad range of classes of
11 items, and

12 “(ii) the fact that the rate of tax ap-
13 plicable with respect to some or all of such
14 items is lower than the general rate of tax
15 shall not be taken into account in deter-
16 mining whether the tax is imposed at one
17 rate.

18 “(D) ITEMS TAXED AT DIFFERENT
19 RATES.—Except in the case of a lower rate of
20 tax applicable with respect to an item described
21 in subparagraph (C), no deduction shall be al-
22 lowed under this paragraph for any general
23 sales tax imposed with respect to an item at a
24 rate other than the general rate of tax.

1 “(E) COMPENSATING USE TAXES.—A com-
2 pensating use tax with respect to an item shall
3 be treated as a general sales tax. For purposes
4 of the preceding sentence, the term ‘compen-
5 sating use tax’ means, with respect to any item,
6 a tax which—

7 “(i) is imposed on the use, storage, or
8 consumption of such item, and

9 “(ii) is complementary to a general
10 sales tax, but only if a deduction is allow-
11 able under this paragraph with respect to
12 items sold at retail in the taxing jurisdic-
13 tion which are similar to such item.

14 “(F) SPECIAL RULE FOR MOTOR VEHI-
15 CLES.—In the case of motor vehicles, if the rate
16 of tax exceeds the general rate, such excess
17 shall be disregarded and the general rate shall
18 be treated as the rate of tax.

19 “(G) SEPARATELY STATED GENERAL
20 SALES TAXES.—If the amount of any general
21 sales tax is separately stated, then, to the ex-
22 tent that the amount so stated is paid by the
23 consumer (other than in connection with the
24 consumer’s trade or business) to the seller, such

1 amount shall be treated as a tax imposed on,
2 and paid by, such consumer.

3 “(H) AMOUNT OF DEDUCTION TO BE DE-
4 TERMINED UNDER TABLES.—

5 “(i) IN GENERAL.—The amount of
6 the deduction allowed under this para-
7 graph shall be determined under tables
8 prescribed by the Secretary.

9 “(ii) REQUIREMENTS FOR TABLES.—
10 The tables prescribed under clause (i)—

11 “(I) shall reflect the provisions of
12 this paragraph,

13 “(II) shall be based on the aver-
14 age consumption by taxpayers on a
15 State-by-State basis, as determined by
16 the Secretary, taking into account fil-
17 ing status, number of dependents, ad-
18 justed gross income, and rates of
19 State and local general sales taxation,
20 and

21 “(III) need only be determined
22 with respect to adjusted gross incomes
23 up to the applicable amount (as deter-
24 mined under section 68(b)).

1 “(I) APPLICATION OF PARAGRAPH.—This
2 paragraph shall apply to taxable years begin-
3 ning after December 31, 2003, and before Jan-
4 uary 1, 2006.”.

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

8 **TITLE VI—REVENUE**
9 **PROVISIONS**
10 **Subtitle A—Provisions to Reduce**
11 **Tax Avoidance Through Indi-**
12 **vidual and Corporate Expatria-**
13 **tion**

14 **SEC. 601. TAX TREATMENT OF EXPATRIATED ENTITIES AND**
15 **THEIR FOREIGN PARENTS.**

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

19 **“SEC. 7874. RULES RELATING TO EXPATRIATED ENTITIES**
20 **AND THEIR FOREIGN PARENTS.**

21 “(a) TAX ON INVERSION GAIN OF EXPATRIATED EN-
22 TITIES.—

23 “(1) IN GENERAL.—The taxable income of an
24 expatriated entity for any taxable year which in-
25 cludes any portion of the applicable period shall in

1 no event be less than the inversion gain of the entity
2 for the taxable year.

3 “(2) EXPATRIATED ENTITY.—For purposes of
4 this subsection—

5 “(A) IN GENERAL.—The term ‘expatriated
6 entity’ means—

7 “(i) the domestic corporation or part-
8 nership referred to in subparagraph (B)(i)
9 with respect to which a foreign corporation
10 is a surrogate foreign corporation, and

11 “(ii) any United States person who is
12 related (within the meaning of section
13 267(b) or 707(b)(1)) to a domestic cor-
14 poration or partnership described in clause
15 (i).

16 “(B) SURROGATE FOREIGN CORPORA-
17 TION.—A foreign corporation shall be treated
18 as a surrogate foreign corporation if, pursuant
19 to a plan (or a series of related transactions)—

20 “(i) the entity completes after March
21 4, 2003, the direct or indirect acquisition
22 of substantially all of the properties held
23 directly or indirectly by a domestic cor-
24 poration or substantially all of the prop-

1 erties constituting a trade or business of a
2 domestic partnership,

3 “*(ii)* after the acquisition at least 60
4 percent of the stock (by vote or value) of
5 the entity is held—

6 “*(I)* in the case of an acquisition
7 with respect to a domestic corpora-
8 tion, by former shareholders of the
9 domestic corporation by reason of
10 holding stock in the domestic corpora-
11 tion, or

12 “*(II)* in the case of an acquisition
13 with respect to a domestic partner-
14 ship, by former partners of the do-
15 mestic partnership by reason of hold-
16 ing a capital or profits interest in the
17 domestic partnership, and

18 “*(iii)* after the acquisition the ex-
19 panded affiliated group which includes the
20 entity does not have substantial business
21 activities in the foreign country in which,
22 or under the law of which, the entity is
23 created or organized, when compared to
24 the total business activities of such ex-
25 panded affiliated group.

1 An entity otherwise described in clause (i) with
2 respect to any domestic corporation or partner-
3 ship trade or business shall be treated as not so
4 described if, on or before March 4, 2003, such
5 entity acquired directly or indirectly more than
6 half of the properties held directly or indirectly
7 by such corporation or more than half of the
8 properties constituting such partnership trade
9 or business, as the case may be.

10 “(b) DEFINITIONS AND SPECIAL RULES.—

11 “(1) EXPANDED AFFILIATED GROUP.—The
12 term ‘expanded affiliated group’ means an affiliated
13 group as defined in section 1504(a) but without re-
14 gard to section 1504(b)(3), except that section
15 1504(a) shall be applied by substituting ‘more than
16 50 percent’ for ‘at least 80 percent’ each place it ap-
17 pears.

18 “(2) CERTAIN STOCK DISREGARDED.—There
19 shall not be taken into account in determining own-
20 ership under subsection (a)(2)(B)(ii)—

21 “(A) stock held by members of the ex-
22 panded affiliated group which includes the for-
23 eign corporation, or

1 “(B) stock of such foreign corporation
2 which is sold in a public offering related to the
3 acquisition described in subsection (a)(2)(B)(i).

4 “(3) PLAN DEEMED IN CERTAIN CASES.—If a
5 foreign corporation acquires directly or indirectly
6 substantially all of the properties of a domestic cor-
7 poration or partnership during the 4-year period be-
8 ginning on the date which is 2 years before the own-
9 ership requirements of subsection (a)(2)(B)(ii) are
10 met, such actions shall be treated as pursuant to a
11 plan.

12 “(4) CERTAIN TRANSFERS DISREGARDED.—The
13 transfer of properties or liabilities (including by con-
14 tribution or distribution) shall be disregarded if such
15 transfers are part of a plan a principal purpose of
16 which is to avoid the purposes of this section.

17 “(5) SPECIAL RULE FOR RELATED PARTNER-
18 SHIPS.—For purposes of applying subsection
19 (a)(2)(B)(ii) to the acquisition of a trade or business
20 of a domestic partnership, except as provided in reg-
21 ulations, all partnerships which are under common
22 control (within the meaning of section 482) shall be
23 treated as 1 partnership.

24 “(6) REGULATIONS.—The Secretary shall pre-
25 scribe such regulations as may be appropriate to de-

1 termine whether a corporation is a surrogate foreign
2 corporation, including regulations—

3 “(A) to treat warrants, options, contracts
4 to acquire stock, convertible debt interests, and
5 other similar interests as stock, and

6 “(B) to treat stock as not stock.

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

9 “(1) APPLICABLE PERIOD.—The term ‘applica-
10 ble period’ means the period—

11 “(A) beginning on the first date properties
12 are acquired as part of the acquisition described
13 in subsection (a)(2)(B)(i), and

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

17 “(2) INVERSION GAIN.—The term ‘inversion
18 gain’ means the income or gain recognized by reason
19 of the transfer during the applicable period of stock
20 or other properties by an expatriated entity, and any
21 income received or accrued during the applicable pe-
22 riod by reason of a license of any property by an ex-
23 patriated entity—

24 “(A) as part of the acquisition described in
25 subsection (a)(2)(B)(i), or

1 “(B) after such acquisition if the transfer
2 or license is to a foreign related person.

3 Subparagraph (B) shall not apply to property de-
4 scribed in section 1221(a)(1) in the hands of the ex-
5 patriated entity.

6 “(3) FOREIGN RELATED PERSON.—The term
7 ‘foreign related person’ means, with respect to any
8 expatriated entity, a foreign person which—

9 “(A) is related (within the meaning of sec-
10 tion 267(b) or 707(b)(1)) to such entity, or

11 “(B) is under the same common control
12 (within the meaning of section 482) as such en-
13 tity.

14 “(d) SPECIAL RULES.—

15 “(1) CREDITS NOT ALLOWED AGAINST TAX ON
16 INVERSION GAIN.—Credits (other than the credit al-
17 lowed by section 901) shall be allowed against the
18 tax imposed by this chapter on an expatriated entity
19 for any taxable year described in subsection (a) only
20 to the extent such tax exceeds the product of—

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

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

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

4 “(2) SPECIAL RULES FOR PARTNERSHIPS.—In
5 the case of an expatriated entity which is a partner-
6 ship—

7 “(A) subsection (a)(1) shall apply at the
8 partner rather than the partnership level,

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

11 “(i) the partner’s distributive share of
12 inversion gain of the partnership for such
13 taxable year, plus

14 “(ii) gain recognized for the taxable
15 year by the partner by reason of the trans-
16 fer during the applicable period of any
17 partnership interest of the partner in such
18 partnership to the surrogate foreign cor-
19 poration, and

20 “(C) the highest rate of tax specified in
21 the rate schedule applicable to the partner
22 under this chapter shall be substituted for the
23 rate of tax referred to in paragraph (1).

24 “(3) COORDINATION WITH SECTION 172 AND
25 MINIMUM TAX.—Rules similar to the rules of para-

1 graphs (3) and (4) of section 860E(a) shall apply
2 for purposes of subsection (a).

3 “(4) STATUTE OF LIMITATIONS.—

4 “(A) IN GENERAL.—The statutory period
5 for the assessment of any deficiency attrib-
6 utable to the inversion gain of any taxpayer for
7 any pre-inversion year shall not expire before
8 the expiration of 3 years from the date the Sec-
9 retary is notified by the taxpayer (in such man-
10 ner as the Secretary may prescribe) of the ac-
11 quisition described in subsection (a)(2)(B)(i) to
12 which such gain relates and such deficiency
13 may be assessed before the expiration of such
14 3-year period notwithstanding the provisions of
15 any other law or rule of law which would other-
16 wise prevent such assessment.

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

20 “(i) any portion of the applicable pe-
21 riod is included in such taxable year, and

22 “(ii) such year ends before the taxable
23 year in which the acquisition described in
24 subsection (a)(2)(B)(i) is completed.

1 “(e) SPECIAL RULE FOR TREATIES.—Nothing in sec-
2 tion 894 or 7852(d) or in any other provision of law shall
3 be construed as permitting an exemption, by reason of any
4 treaty obligation of the United States heretofore or here-
5 after entered into, from the provisions of this section.

6 “(f) REGULATIONS.—The Secretary shall provide
7 such regulations as are necessary to carry out this section,
8 including regulations providing for such adjustments to
9 the application of this section as are necessary to prevent
10 the avoidance of the purposes of this section, including the
11 avoidance of such purposes through—

12 “(1) the use of related persons, pass-through or
13 other noncorporate entities, or other intermediaries,
14 or

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

18 (b) CONFORMING AMENDMENT.—The table of sec-
19 tions for subchapter C of chapter 80 is amended by adding
20 at the end the following new item:

“Sec. 7874. Rules relating to expatriated entities and their for-
 eign parents.”

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years ending after
23 March 4, 2003.

1 **SEC. 602. EXCISE TAX ON STOCK COMPENSATION OF INSID-**
 2 **ERS IN EXPATRIATED CORPORATIONS.**

3 (a) IN GENERAL.—Subtitle D is amended by insert-
 4 ing after chapter 44 end the following new chapter:

5 **“CHAPTER 45—PROVISIONS RELATING TO**
 6 **EXPATRIATED ENTITIES**

“Sec. 4985. Stock compensation of insiders in expatriated cor-
 porations.

7 **“SEC. 4985. STOCK COMPENSATION OF INSIDERS IN EXPA-**
 8 **TRIATED CORPORATIONS.**

9 “(a) IMPOSITION OF TAX.—In the case of an indi-
 10 vidual who is a disqualified individual with respect to any
 11 expatriated corporation, there is hereby imposed on such
 12 person a tax equal to 15 percent of the value (determined
 13 under subsection (b)) of the specified stock compensation
 14 held (directly or indirectly) by or for the benefit of such
 15 individual or a member of such individual’s family (as de-
 16 fined in section 267) at any time during the 12-month
 17 period beginning on the date which is 6 months before
 18 the expatriation date.

19 “(b) VALUE.—For purposes of subsection (a)—

20 “(1) IN GENERAL.—The value of specified stock
 21 compensation shall be—

22 “(A) in the case of a stock option (or other
 23 similar right) or a stock appreciation right, the
 24 fair value of such option or right, and

1 “(B) in any other case, the fair market
2 value of such compensation.

3 “(2) DATE FOR DETERMINING VALUE.—The
4 determination of value shall be made—

5 “(A) in the case of specified stock com-
6 pensation held on the expatriation date, on such
7 date,

8 “(B) in the case of such compensation
9 which is canceled during the 6 months before
10 the expatriation date, on the day before such
11 cancellation, and

12 “(C) in the case of such compensation
13 which is granted after the expatriation date, on
14 the date such compensation is granted.

15 “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN
16 RECOGNIZED.—Subsection (a) shall apply to any disquali-
17 fied individual with respect to an expatriated corporation
18 only if gain (if any) on any stock in such corporation is
19 recognized in whole or part by any shareholder by reason
20 of the acquisition referred to in section 7874(a)(2)(B)(i)
21 with respect to such corporation.

22 “(d) EXCEPTION WHERE GAIN RECOGNIZED ON
23 COMPENSATION.—Subsection (a) shall not apply to—

24 “(1) any stock option which is exercised on the
25 expatriation date or during the 6-month period be-

1 fore such date and to the stock acquired in such ex-
2 ercise, if income is recognized under section 83 on
3 or before the expatriation date with respect to the
4 stock acquired pursuant to such exercise, and

5 “(2) any other specified stock compensation
6 which is exercised, sold, exchanged, distributed,
7 cashed-out, or otherwise paid during such period in
8 a transaction in which income, gain, or loss is recog-
9 nized in full.

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

11 “(1) DISQUALIFIED INDIVIDUAL.—The term
12 ‘disqualified individual’ means, with respect to a cor-
13 poration, any individual who, at any time during the
14 12-month period beginning on the date which is 6
15 months before the expatriation date—

16 “(A) is subject to the requirements of sec-
17 tion 16(a) of the Securities Exchange Act of
18 1934 with respect to such corporation or any
19 member of the expanded affiliated group which
20 includes such corporation, or

21 “(B) would be subject to such require-
22 ments if such corporation or member were an
23 issuer of equity securities referred to in such
24 section.

1 “(2) EXPATRIATED CORPORATION; EXPATRIA-
2 TION DATE.—

3 “(A) EXPATRIATED CORPORATION.—The
4 term ‘expatriated corporation’ means any cor-
5 poration which is an expatriated entity (as de-
6 fined in section 7874(a)(2)). Such term in-
7 cludes any predecessor or successor of such a
8 corporation.

9 “(B) EXPATRIATION DATE.—The term ‘ex-
10 patriation date’ means, with respect to a cor-
11 poration, the date on which the corporation
12 first becomes an expatriated corporation.

13 “(3) SPECIFIED STOCK COMPENSATION.—

14 “(A) IN GENERAL.—The term ‘specified
15 stock compensation’ means payment (or right
16 to payment) granted by the expatriated cor-
17 poration (or by any member of the expanded af-
18 filiated group which includes such corporation)
19 to any person in connection with the perform-
20 ance of services by a disqualified individual for
21 such corporation or member if the value of such
22 payment or right is based on (or determined by
23 reference to) the value (or change in value) of
24 stock in such corporation (or any such mem-
25 ber).

1 “(B) EXCEPTIONS.—Such term shall not
2 include—

3 “(i) any option to which part II of
4 subchapter D of chapter 1 applies, or

5 “(ii) any payment or right to payment
6 from a plan referred to in section
7 280G(b)(6).

8 “(4) EXPANDED AFFILIATED GROUP.—The
9 term ‘expanded affiliated group’ means an affiliated
10 group (as defined in section 1504(a) without regard
11 to section 1504(b)(3)); except that section 1504(a)
12 shall be applied by substituting ‘more than 50 per-
13 cent’ for ‘at least 80 percent’ each place it appears.

14 “(f) SPECIAL RULES.—For purposes of this sec-
15 tion—

16 “(1) CANCELLATION OF RESTRICTION.—The
17 cancellation of a restriction which by its terms will
18 never lapse shall be treated as a grant.

19 “(2) PAYMENT OR REIMBURSEMENT OF TAX BY
20 CORPORATION TREATED AS SPECIFIED STOCK COM-
21 PENSATION.—Any payment of the tax imposed by
22 this section directly or indirectly by the expatriated
23 corporation or by any member of the expanded affili-
24 ated group which includes such corporation—

1 “(A) shall be treated as specified stock
2 compensation, and

3 “(B) shall not be allowed as a deduction
4 under any provision of chapter 1.

5 “(3) CERTAIN RESTRICTIONS IGNORED.—
6 Whether there is specified stock compensation, and
7 the value thereof, shall be determined without regard
8 to any restriction other than a restriction which by
9 its terms will never lapse.

10 “(4) PROPERTY TRANSFERS.—Any transfer of
11 property shall be treated as a payment and any right
12 to a transfer of property shall be treated as a right
13 to a payment.

14 “(5) OTHER ADMINISTRATIVE PROVISIONS.—
15 For purposes of subtitle F, any tax imposed by this
16 section shall be treated as a tax imposed by subtitle
17 A.

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

21 (b) DENIAL OF DEDUCTION.—

22 (1) IN GENERAL.—Paragraph (6) of section
23 275(a) is amended by inserting “45,” before “46,”.

24 (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-
25 PENSATION REDUCED BY PAYMENT OF EXCISE TAX

1 ON SPECIFIED STOCK COMPENSATION.—Paragraph
2 (4) of section 162(m) is amended by adding at the
3 end the following new subparagraph:

4 “(G) COORDINATION WITH EXCISE TAX ON
5 SPECIFIED STOCK COMPENSATION.—The dollar
6 limitation contained in paragraph (1) with re-
7 spect to any covered employee shall be reduced
8 (but not below zero) by the amount of any pay-
9 ment (with respect to such employee) of the tax
10 imposed by section 4985 directly or indirectly
11 by the expatriated corporation (as defined in
12 such section) or by any member of the ex-
13 panded affiliated group (as defined in such sec-
14 tion) which includes such corporation.”

15 (c) CONFORMING AMENDMENTS.—

16 (1) The last sentence of section 3121(v)(2)(A)
17 is amended by inserting before the period “or to any
18 specified stock compensation (as defined in section
19 4985) on which tax is imposed by section 4985”.

20 (2) The table of chapters for subtitle D is
21 amended by inserting after the item relating to
22 chapter 44 the following new item:

“Chapter 45. Provisions relating to expatriated entities.”

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on March 4, 2003; except that
25 periods before such date shall not be taken into account

1 in applying the periods in subsections (a) and (e)(1) of
2 section 4985 of the Internal Revenue Code of 1986, as
3 added by this section.

4 **SEC. 603. REINSURANCE OF UNITED STATES RISKS IN FOR-**
5 **EIGN JURISDICTIONS.**

6 (a) IN GENERAL.—Section 845(a) (relating to alloca-
7 tion in case of reinsurance agreement involving tax avoid-
8 ance or evasion) is amended by striking “source and char-
9 acter” and inserting “amount, source, or character”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to any risk reinsured after the date
12 of the enactment of this Act.

13 **SEC. 604. REVISION OF TAX RULES ON EXPATRIATION OF**
14 **INDIVIDUALS.**

15 (a) EXPATRIATION TO AVOID TAX.—

16 (1) IN GENERAL.—Subsection (a) of section
17 877 (relating to treatment of expatriates) is amend-
18 ed to read as follows:

19 “(a) TREATMENT OF EXPATRIATES.—

20 “(1) IN GENERAL.—Every nonresident alien in-
21 dividual to whom this section applies and who, with-
22 in the 10-year period immediately preceding the
23 close of the taxable year, lost United States citizen-
24 ship shall be taxable for such taxable year in the
25 manner provided in subsection (b) if the tax imposed

1 pursuant to such subsection (after any reduction in
2 such tax under the last sentence of such subsection)
3 exceeds the tax which, without regard to this section,
4 is imposed pursuant to section 871.

5 “(2) INDIVIDUALS SUBJECT TO THIS SEC-
6 TION.—This section shall apply to any individual
7 if—

8 “(A) the average annual net income tax
9 (as defined in section 38(c)(1)) of such indi-
10 vidual for the period of 5 taxable years ending
11 before the date of the loss of United States citi-
12 zenship is greater than \$124,000,

13 “(B) the net worth of the individual as of
14 such date is \$2,000,000 or more, or

15 “(C) such individual fails to certify under
16 penalty of perjury that he has met the require-
17 ments of this title for the 5 preceding taxable
18 years or fails to submit such evidence of such
19 compliance as the Secretary may require.

20 In the case of the loss of United States citizenship
21 in any calendar year after 2004, such \$124,000
22 amount shall be increased by an amount equal to
23 such dollar amount multiplied by the cost-of-living
24 adjustment determined under section 1(f)(3) for
25 such calendar year by substituting ‘2003’ for ‘1992’

1 in subparagraph (B) thereof. Any increase under the
2 preceding sentence shall be rounded to the nearest
3 multiple of \$1,000.”.

4 (2) REVISION OF EXCEPTIONS FROM ALTER-
5 NATIVE TAX.—Subsection (c) of section 877 (relat-
6 ing to tax avoidance not presumed in certain cases)
7 is amended to read as follows:

8 “(c) EXCEPTIONS.—

9 “(1) IN GENERAL.—Subparagraphs (A) and
10 (B) of subsection (a)(2) shall not apply to an indi-
11 vidual described in paragraph (2) or (3).

12 “(2) DUAL CITIZENS.—

13 “(A) IN GENERAL.—An individual is de-
14 scribed in this paragraph if—

15 “(i) the individual became at birth a
16 citizen of the United States and a citizen
17 of another country and continues to be a
18 citizen of such other country, and

19 “(ii) the individual has had no sub-
20 stantial contacts with the United States.

21 “(B) SUBSTANTIAL CONTACTS.—An indi-
22 vidual shall be treated as having no substantial
23 contacts with the United States only if the indi-
24 vidual—

1 “(i) was never a resident of the
2 United States (as defined in section
3 7701(b)),

4 “(ii) has never held a United States
5 passport, and

6 “(iii) was not present in the United
7 States for more than 30 days during any
8 calendar year which is 1 of the 10 calendar
9 years preceding the individual’s loss of
10 United States citizenship.

11 “(3) CERTAIN MINORS.—An individual is de-
12 scribed in this paragraph if—

13 “(A) the individual became at birth a cit-
14 izen of the United States,

15 “(B) neither parent of such individual was
16 a citizen of the United States at the time of
17 such birth,

18 “(C) the individual’s loss of United States
19 citizenship occurs before such individual attains
20 age 18½, and

21 “(D) the individual was not present in the
22 United States for more than 30 days during
23 any calendar year which is 1 of the 10 calendar
24 years preceding the individual’s loss of United
25 States citizenship.”.

1 (3) CONFORMING AMENDMENT.—Section
2 2107(a) is amended to read as follows:

3 “(a) TREATMENT OF EXPATRIATES.—A tax com-
4 puted in accordance with the table contained in section
5 2001 is hereby imposed on the transfer of the taxable es-
6 tate, determined as provided in section 2106, of every de-
7 cedent nonresident not a citizen of the United States if
8 the date of death occurs during a taxable year with respect
9 to which the decedent is subject to tax under section
10 877(b).”.

11 (b) SPECIAL RULES FOR DETERMINING WHEN AN
12 INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN
13 OR LONG-TERM RESIDENT.—Section 7701 (relating to
14 definitions) is amended by redesignating subsection (n) as
15 subsection (o) and by inserting after subsection (m) the
16 following new subsection:

17 “(n) SPECIAL RULES FOR DETERMINING WHEN AN
18 INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN
19 OR LONG-TERM RESIDENT.—An individual who would
20 (but for this subsection) cease to be treated as a citizen
21 or resident of the United States shall continue to be treat-
22 ed as a citizen or resident of the United States, as the
23 case may be, until such individual—

24 “(1) gives notice of an expatriating act or ter-
25 mination of residency (with the requisite intent to

1 relinquish citizenship or terminate residency) to the
2 Secretary of State or the Secretary of Homeland Se-
3 curity, and

4 “(2) provides a statement in accordance with
5 section 6039G.”.

6 (c) PHYSICAL PRESENCE IN THE UNITED STATES
7 FOR MORE THAN 30 DAYS.—Section 877 (relating to ex-
8 patriation to avoid tax) is amended by adding at the end
9 the following new subsection:

10 “(g) PHYSICAL PRESENCE.—

11 “(1) IN GENERAL.—This section shall not apply
12 to any individual to whom this section would other-
13 wise apply for any taxable year during the 10-year
14 period referred to in subsection (a) in which such in-
15 dividual is physically present in the United States at
16 any time on more than 30 days in the calendar year
17 ending in such taxable year, and such individual
18 shall be treated for purposes of this title as a citizen
19 or resident of the United States, as the case may be,
20 for such taxable year.

21 “(2) EXCEPTION.—

22 “(A) IN GENERAL.—In the case of an indi-
23 vidual described in any of the following sub-
24 paragraphs of this paragraph, a day of physical
25 presence in the United States shall be dis-

1 regarded if the individual is performing services
2 in the United States on such day for an em-
3 ployer. The preceding sentence shall not apply
4 if—

5 “(i) such employer is related (within
6 the meaning of section 267 and 707) to
7 such individual, or

8 “(ii) such employer fails to meet such
9 requirements as the Secretary may pre-
10 scribe by regulations to prevent the avoid-
11 ance of the purposes of this paragraph.

12 Not more than 30 days during any calendar
13 year may be disregarded under this subpara-
14 graph.

15 “(B) INDIVIDUALS WITH TIES TO OTHER
16 COUNTRIES.—An individual is described in this
17 subparagraph if—

18 “(i) the individual becomes (not later
19 than the close of a reasonable period after
20 loss of United States citizenship or termi-
21 nation of residency) a citizen or resident of
22 the country in which—

23 “(I) such individual was born,

1 “(II) if such individual is mar-
2 ried, such individual’s spouse was
3 born, or

4 “(III) either of such individual’s
5 parents were born, and

6 “(ii) the individual becomes fully lia-
7 ble for income tax in such country.

8 “(C) MINIMAL PRIOR PHYSICAL PRESENCE
9 IN THE UNITED STATES.—An individual is de-
10 scribed in this subparagraph if, for each year in
11 the 10-year period ending on the date of loss of
12 United States citizenship or termination of resi-
13 dency, the individual was physically present in
14 the United States for 30 days or less. The rule
15 of section 7701(b)(3)(D)(ii) shall apply for pur-
16 poses of this subparagraph.”.

17 (d) TRANSFERS SUBJECT TO GIFT TAX.—

18 (1) IN GENERAL.—Subsection (a) of section
19 2501 (relating to taxable transfers) is amended by
20 striking paragraph (4), by redesignating paragraph
21 (5) as paragraph (4), and by striking paragraph (3)
22 and inserting the following new paragraph:

23 “(3) EXCEPTION.—

24 “(A) CERTAIN INDIVIDUALS.—Paragraph
25 (2) shall not apply in the case of a donor to

1 whom section 877(b) applies for the taxable
2 year which includes the date of the transfer.

3 “(B) CREDIT FOR FOREIGN GIFT TAXES.—
4 The tax imposed by this section solely by reason
5 of this paragraph shall be credited with the
6 amount of any gift tax actually paid to any for-
7 eign country in respect of any gift which is tax-
8 able under this section solely by reason of this
9 paragraph.”

10 (2) TRANSFERS OF CERTAIN STOCK.—Sub-
11 section (a) of section 2501 is amended by adding at
12 the end the following new paragraph:

13 “(5) TRANSFERS OF CERTAIN STOCK.—

14 “(A) IN GENERAL.—In the case of a trans-
15 fer of stock in a foreign corporation described
16 in subparagraph (B) by a donor to whom sec-
17 tion 877(b) applies for the taxable year which
18 includes the date of the transfer—

19 “(i) section 2511(a) shall be applied
20 without regard to whether such stock is
21 situated within the United States, and

22 “(ii) the value of such stock for pur-
23 poses of this chapter shall be its U.S.-asset
24 value determined under subparagraph (C).

1 “(B) FOREIGN CORPORATION DE-
2 SCRIBED.—A foreign corporation is described in
3 this subparagraph with respect to a donor if—

4 “(i) the donor owned (within the
5 meaning of section 958(a)) at the time of
6 such transfer 10 percent or more of the
7 total combined voting power of all classes
8 of stock entitled to vote of the foreign cor-
9 poration, and

10 “(ii) such donor owned (within the
11 meaning of section 958(a)), or is consid-
12 ered to have owned (by applying the own-
13 ership rules of section 958(b)), at the time
14 of such transfer, more than 50 percent
15 of—

16 “(I) the total combined voting
17 power of all classes of stock entitled
18 to vote of such corporation, or

19 “(II) the total value of the stock
20 of such corporation.

21 “(C) U.S.-ASSET VALUE.—For purposes of
22 subparagraph (A), the U.S.-asset value of stock
23 shall be the amount which bears the same ratio
24 to the fair market value of such stock at the
25 time of transfer as—

1 “(i) the fair market value (at such
2 time) of the assets owned by such foreign
3 corporation and situated in the United
4 States, bears to

5 “(ii) the total fair market value (at
6 such time) of all assets owned by such for-
7 eign corporation.”

8 (e) ENHANCED INFORMATION REPORTING FROM IN-
9 DIVIDUALS LOSING UNITED STATES CITIZENSHIP.—

10 (1) IN GENERAL.—Subsection (a) of section
11 6039G is amended to read as follows:

12 “(a) IN GENERAL.—Notwithstanding any other pro-
13 vision of law, any individual to whom section 877(b) ap-
14 plies for any taxable year shall provide a statement for
15 such taxable year which includes the information described
16 in subsection (b).”.

17 (2) INFORMATION TO BE PROVIDED.—Sub-
18 section (b) of section 6039G is amended to read as
19 follows:

20 “(b) INFORMATION TO BE PROVIDED.—Information
21 required under subsection (a) shall include—

22 “(1) the taxpayer’s TIN,

23 “(2) the mailing address of such individual’s
24 principal foreign residence,

1 “(3) the foreign country in which such indi-
2 vidual is residing,

3 “(4) the foreign country of which such indi-
4 vidual is a citizen,

5 “(5) information detailing the income, assets,
6 and liabilities of such individual,

7 “(6) the number of days during any portion of
8 which that the individual was physically present in
9 the United States during the taxable year, and

10 “(7) such other information as the Secretary
11 may prescribe.”.

12 (3) INCREASE IN PENALTY.—Subsection (d) of
13 section 6039G is amended to read as follows:

14 “(d) PENALTY.—If—

15 “(1) an individual is required to file a state-
16 ment under subsection (a) for any taxable year, and

17 “(2) fails to file such a statement with the Sec-
18 retary on or before the date such statement is re-
19 quired to be filed or fails to include all the informa-
20 tion required to be shown on the statement or in-
21 cludes incorrect information,

22 such individual shall pay a penalty of \$10,000 unless it
23 is shown that such failure is due to reasonable cause and
24 not to willful neglect.”.

1 “(4) such other information as the Secretary
2 may prescribe.

3 To the extent provided by the Secretary, the requirements
4 of this section applicable to the acquiring corporation shall
5 be applicable to the acquired corporation and not to the
6 acquiring corporation.

7 “(b) NOMINEES.—According to the forms or regula-
8 tions prescribed by the Secretary—

9 “(1) REPORTING.—Any person who holds stock
10 as a nominee for another person shall furnish in the
11 manner prescribed by the Secretary to such other
12 person the information provided by the corporation
13 under subsection (d).

14 “(2) REPORTING TO NOMINEES.—In the case of
15 stock held by any person as a nominee, references in
16 this section (other than in subsection (c)) to a share-
17 holder shall be treated as a reference to the nomi-
18 nee.

19 “(c) TAXABLE ACQUISITION.—For purposes of this
20 section, the term ‘taxable acquisition’ means any acquisi-
21 tion by a corporation of stock in or property of another
22 corporation if any shareholder of the acquired corporation
23 is required to recognize gain (if any) as a result of such
24 acquisition.

1 “(d) STATEMENTS TO BE FURNISHED TO SHARE-
2 HOLDERS.—According to the forms or regulations pre-
3 scribed by the Secretary, every person required to make
4 a return under subsection (a) shall furnish to each share-
5 holder whose name is required to be set forth in such re-
6 turn a written statement showing—

7 “(1) the name, address, and phone number of
8 the information contact of the person required to
9 make such return,

10 “(2) the information required to be shown on
11 such return with respect to such shareholder, and

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

14 The written statement required under the preceding sen-
15 tence shall be furnished to the shareholder on or before
16 January 31 of the year following the calendar year during
17 which the taxable acquisition occurred.”

18 (b) ASSESSABLE PENALTIES.—

19 (1) Subparagraph (B) of section 6724(d)(1)
20 (relating to definitions) is amended by redesignating
21 clauses (ii) through (xviii) as clauses (iii) through
22 (xix), respectively, and by inserting after clause (i)
23 the following new clause:

1 “(ii) section 6043A(a) (relating to re-
2 turns relating to taxable mergers and ac-
3 quisitions),”.

4 (2) Paragraph (2) of section 6724(d) is amend-
5 ed by redesignating subparagraphs (F) through
6 (BB) as subparagraphs (G) through (CC), respec-
7 tively, and by inserting after subparagraph (E) the
8 following new subparagraph:

9 “(F) subsections (b) and (d) of section
10 6043A (relating to returns relating to taxable
11 mergers and acquisitions).”.

12 (c) CLERICAL AMENDMENT.—The table of sections
13 for subpart B of part III of subchapter A of chapter 61
14 is amended by inserting after the item relating to section
15 6043 the following new item:

 “Sec. 6043A. Returns relating to taxable mergers and acqui-
 sitions.”.

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

19 **SEC. 606. STUDIES.**

20 (a) TRANSFER PRICING RULES.—The Secretary of
21 the Treasury or the Secretary’s delegate shall conduct a
22 study regarding the effectiveness of current transfer pric-
23 ing rules and compliance efforts in ensuring that cross-
24 border transfers and other related-party transactions, par-

1 ticularly transactions involving intangible assets, service
2 contracts, or leases cannot be used improperly to shift in-
3 come out of the United States. The study shall include
4 a review of the contemporaneous documentation and pen-
5 alty rules under section 6662 of the Internal Revenue
6 Code of 1986, a review of the regulatory and administra-
7 tive guidance implementing the principles of section 482
8 of such Code to transactions involving intangible property
9 and services and to cost-sharing arrangements, and an ex-
10 amination of whether increased disclosure of cross-border
11 transactions should be required. The study shall set forth
12 specific recommendations to address all abuses identified
13 in the study. Not later than June 30, 2005, such Sec-
14 retary or delegate shall submit to the Congress a report
15 of such study.

16 (b) INCOME TAX TREATIES.—The Secretary of the
17 Treasury or the Secretary’s delegate shall conduct a study
18 of United States income tax treaties to identify any inap-
19 propriate reductions in United States withholding tax that
20 provide opportunities for shifting income out of the United
21 States, and to evaluate whether existing anti-abuse mecha-
22 nisms are operating properly. The study shall include spe-
23 cific recommendations to address all inappropriate uses of
24 tax treaties. Not later than June 30, 2005, such Secretary

1 or delegate shall submit to the Congress a report of such
2 study.

3 (c) **IMPACT OF CORPORATE EXPATRIATION PROVI-**
4 **SIONS.**—The Secretary of the Treasury or the Secretary’s
5 delegate shall conduct a study of the impact of the provi-
6 sions of this title on corporate expatriation. The study
7 shall include such recommendations as such Secretary or
8 delegate may have to improve the impact of such provi-
9 sions in carrying out the purposes of this title. Not later
10 than December 31, 2005, such Secretary or delegate shall
11 submit to the Congress a report of such study.

12 **Subtitle B—Provisions Relating to** 13 **Tax Shelters**

14 **Part I—Taxpayer-Related Provisions**

15 **SEC. 611. PENALTY FOR FAILING TO DISCLOSE REPORT-** 16 **ABLE TRANSACTIONS.**

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

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

23 “(a) **IMPOSITION OF PENALTY.**—Any person who
24 fails to include on any return or statement any informa-
25 tion with respect to a reportable transaction which is re-

1 quired under section 6011 to be included with such return
2 or statement shall pay a penalty in the amount determined
3 under subsection (b).

4 “(b) AMOUNT OF PENALTY.—

5 “(1) IN GENERAL.—Except as provided in para-
6 graph (2), the amount of the penalty under sub-
7 section (a) shall be—

8 “(A) \$10,000 in the case of a natural per-
9 son, and

10 “(B) \$50,000 in any other case.

11 “(2) LISTED TRANSACTION.—The amount of
12 the penalty under subsection (a) with respect to a
13 listed transaction shall be—

14 “(A) \$100,000 in the case of a natural
15 person, and

16 “(B) \$200,000 in any other case.

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

18 “(1) REPORTABLE TRANSACTION.—The term
19 ‘reportable transaction’ means any transaction with
20 respect to which information is required to be in-
21 cluded with a return or statement because, as deter-
22 mined under regulations prescribed under section
23 6011, such transaction is of a type which the Sec-
24 retary determines as having a potential for tax
25 avoidance or evasion.

1 “(2) LISTED TRANSACTION.—The term ‘listed
2 transaction’ means a reportable transaction which is
3 the same as, or substantially similar to, a trans-
4 action specifically identified by the Secretary as a
5 tax avoidance transaction for purposes of section
6 6011.

7 “(d) AUTHORITY TO RESCIND PENALTY.—

8 “(1) IN GENERAL.—The Commissioner of In-
9 ternal Revenue may rescind all or any portion of any
10 penalty imposed by this section with respect to any
11 violation if—

12 “(A) the violation is with respect to a re-
13 portable transaction other than a listed trans-
14 action, and

15 “(B) rescinding the penalty would promote
16 compliance with the requirements of this title
17 and effective tax administration.

18 “(2) NO JUDICIAL APPEAL.—Notwithstanding
19 any other provision of law, any determination under
20 this subsection may not be reviewed in any judicial
21 proceeding.

22 “(3) RECORDS.—If a penalty is rescinded under
23 paragraph (1), the Commissioner shall place in the
24 file in the Office of the Commissioner the opinion of
25 the Commissioner or the head of the Office of Tax

1 Shelter Analysis with respect to the determination,
2 including—

3 “(A) a statement of the facts and cir-
4 cumstances relating to the violation,

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

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

7 “(e) COORDINATION WITH OTHER PENALTIES.—The
8 penalty imposed by this section shall be in addition to any
9 other penalty imposed by this title.”

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

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

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

18 (d) REPORT.—The Commissioner of Internal Rev-
19 enue shall annually report to the Committee on Ways and
20 Means of the House of Representatives and the Committee
21 on Finance of the Senate—

22 (1) a summary of the total number and aggre-
23 gate amount of penalties imposed, and rescinded,

1 under section 6707A of the Internal Revenue Code
2 of 1986, and

3 (2) a description of each penalty rescinded
4 under section 6707(c) of such Code and the reasons
5 therefor.

6 **SEC. 612. ACCURACY-RELATED PENALTY FOR LISTED**
7 **TRANSACTIONS, OTHER REPORTABLE TRANS-**
8 **ACTIONS HAVING A SIGNIFICANT TAX AVOID-**
9 **ANCE PURPOSE, ETC.**

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

13 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**
14 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
15 **TO REPORTABLE TRANSACTIONS.**

16 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
17 reportable transaction understatement for any taxable
18 year, there shall be added to the tax an amount equal to
19 20 percent of the amount of such understatement.

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

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

24 “(A) the product of—

1 “(i) the amount of the increase (if
2 any) in taxable income which results from
3 a difference between the proper tax treat-
4 ment of an item to which this section ap-
5 plies and the taxpayer’s treatment of such
6 item (as shown on the taxpayer’s return of
7 tax), and

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

11 “(B) the amount of the decrease (if any)
12 in the aggregate amount of credits determined
13 under subtitle A which results from a difference
14 between the taxpayer’s treatment of an item to
15 which this section applies (as shown on the tax-
16 payer’s return of tax) and the proper tax treat-
17 ment of such item.

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

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

4 “(A) any listed transaction, and

5 “(B) any reportable transaction (other
6 than a listed transaction) if a significant pur-
7 pose of such transaction is the avoidance or
8 evasion of Federal income tax.

9 “(c) HIGHER PENALTY FOR NONDISCLOSED TRANS-
10 ACTIONS.—Subsection (a) shall be applied by substituting
11 ‘30 percent’ for ‘20 percent’ with respect to the portion
12 of any reportable transaction understatement with respect
13 to which the requirement of section 6664(d)(2)(A) is not
14 met.

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

20 “(e) SPECIAL RULES.—

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

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

1 shall be increased by the aggregate amount of
2 reportable transaction understatements for pur-
3 poses of determining whether such understatement
4 is a substantial understatement under
5 section 6662(d)(1), and

6 “(B) the addition to tax under section
7 6662(a) shall apply only to the excess of the
8 amount of the substantial understatement (if
9 any) after the application of subparagraph (A)
10 over the aggregate amount of reportable trans-
11 action understatements.

12 “(2) COORDINATION WITH OTHER PEN-
13 ALTIES.—

14 “(A) APPLICATION OF FRAUD PENALTY.—
15 References to an underpayment in section 6663
16 shall be treated as including references to a re-
17 portable transaction understatement.

18 “(B) NO DOUBLE PENALTY.—This section
19 shall not apply to any portion of an understatement
20 on which a penalty is imposed under section
21 6663.

22 “(3) SPECIAL RULE FOR AMENDED RE-
23 TURNS.—Except as provided in regulations, in no
24 event shall any tax treatment included with an
25 amendment or supplement to a return of tax be

1 taken into account in determining the amount of any
2 reportable transaction understatement if the amend-
3 ment or supplement is filed after the earlier of the
4 date the taxpayer is first contacted by the Secretary
5 regarding the examination of the return or such
6 other date as is specified by the Secretary.”

7 (b) DETERMINATION OF OTHER UNDERSTATE-
8 MENTS.—Subparagraph (A) of section 6662(d)(2) is
9 amended by adding at the end the following flush sen-
10 tence:

11 “The excess under the preceding sentence shall
12 be determined without regard to items to which
13 section 6662A applies.”

14 (c) REASONABLE CAUSE EXCEPTION.—

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

17 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-
18 ABLE TRANSACTION UNDERSTATEMENTS.—

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

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

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

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

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

13 A taxpayer failing to adequately disclose in accord-
14 ance with section 6011 shall be treated as meeting
15 the requirements of subparagraph (A) if the penalty
16 for such failure was rescinded under section
17 6707A(d).

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

20 “(A) IN GENERAL.—A taxpayer shall be
21 treated as having a reasonable belief with re-
22 spect to the tax treatment of an item only if
23 such belief—

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

4 “(ii) relates solely to the taxpayer’s
5 chances of success on the merits of such
6 treatment and does not take into account
7 the possibility that a return will not be au-
8 dited, such treatment will not be raised on
9 audit, or such treatment will be resolved
10 through settlement if it is raised.

11 “(B) CERTAIN OPINIONS MAY NOT BE RE-
12 LIED UPON.—

13 “(i) IN GENERAL.—An opinion of a
14 tax advisor may not be relied upon to es-
15 tablish the reasonable belief of a taxpayer
16 if—

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

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

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

24 “(I) is a material advisor (within
25 the meaning of section 6111(b)(1))

1 and participates in the organization,
2 management, promotion, or sale of
3 the transaction or is related (within
4 the meaning of section 267(b) or
5 707(b)(1)) to any person who so par-
6 ticipates,

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

10 “(III) has a fee arrangement
11 with respect to the transaction which
12 is contingent on all or part of the in-
13 tended tax benefits from the trans-
14 action being sustained, or

15 “(IV) as determined under regu-
16 lations prescribed by the Secretary,
17 has a disqualifying financial interest
18 with respect to the transaction.

19 “(iii) DISQUALIFIED OPINIONS.—For
20 purposes of clause (i), an opinion is dis-
21 qualified if the opinion—

22 “(I) is based on unreasonable
23 factual or legal assumptions (includ-
24 ing assumptions as to future events),

1 “(II) unreasonably relies on rep-
2 resentations, statements, findings, or
3 agreements of the taxpayer or any
4 other person,

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

7 “(IV) fails to meet any other re-
8 quirement as the Secretary may pre-
9 scribe.”

10 (2) CONFORMING AMENDMENTS.—

11 (A) Paragraph (1) of section 6664(c) is
12 amended by striking “this part” and inserting
13 “section 6662 or 6663”.

14 (B) The heading for subsection (c) of sec-
15 tion 6664 is amended by inserting “FOR UN-
16 DERPAYMENTS” after “EXCEPTION”.

17 (d) REDUCTION IN PENALTY FOR SUBSTANTIAL UN-
18 DERSTATEMENT OF INCOME TAX NOT TO APPLY TO TAX
19 SHELTERS.—Subparagraph (C) of section 6662(d)(2) (re-
20 lating to substantial understatement of income tax) is
21 amended to read as follows:

22 “(C) REDUCTION NOT TO APPLY TO TAX
23 SHELTERS.—

1 “(i) IN GENERAL.—Subparagraph (B)
2 shall not apply to any item attributable to
3 a tax shelter.

4 “(ii) TAX SHELTER.—For purposes of
5 clause (i), the term ‘tax shelter’ means—

6 “(I) a partnership or other enti-
7 ty,

8 “(II) any investment plan or ar-
9 rangement, or

10 “(III) any other plan or arrange-
11 ment,

12 if a significant purpose of such partner-
13 ship, entity, plan, or arrangement is the
14 avoidance or evasion of Federal income
15 tax.”

16 (e) CONFORMING AMENDMENTS.—

17 (1) Sections 461(i)(3)(C), 1274(b)(3), and
18 7525(b) are each amended by striking “section
19 6662(d)(2)(C)(iii)” and inserting “section
20 6662(d)(2)(C)(ii)”.

21 (2) The heading for section 6662 is amended to
22 read as follows:

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

3 (3) The table of sections for part II of sub-
4 chapter A of chapter 68 is amended by striking the
5 item relating to section 6662 and inserting the fol-
6 lowing new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpay-
ments.

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

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

10 **SEC. 613. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
11 **PRIVILEGES RELATING TO TAXPAYER COM-**
12 **MUNICATIONS.**

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

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

20 “(1) between a federally authorized tax practi-
21 tioner and—

22 “(A) any person,

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

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

5 “(2) in connection with the promotion of the di-
6 rect or indirect participation of the person in any
7 tax shelter (as defined in section
8 6662(d)(2)(C)(ii)).”

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

12 **SEC. 614. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**
13 **FOR WHICH REQUIRED LISTED TRANS-**
14 **ACTIONS NOT REPORTED.**

15 (a) IN GENERAL.—Section 6501(c) (relating to ex-
16 ceptions) is amended by adding at the end the following
17 new paragraph:

18 “(10) LISTED TRANSACTIONS.—If a taxpayer
19 fails to include on any return or statement for any
20 taxable year any information with respect to a listed
21 transaction (as defined in section 6707A(c)(2))
22 which is required under section 6011 to be included
23 with such return or statement, the time for assess-
24 ment of any tax imposed by this title with respect

1 to such transaction shall not expire before the date
2 which is 1 year after the earlier of—

3 “(A) the date on which the Secretary is
4 furnished the information so required, or

5 “(B) the date that a material advisor (as
6 defined in section 6111) meets the requirements
7 of section 6112 with respect to a request by the
8 Secretary under section 6112(b) relating to
9 such transaction with respect to such tax-
10 payer.”

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

15 **SEC. 615. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

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

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

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

23 “(1) information identifying and describing the
24 transaction,

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

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

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

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

8 “(1) MATERIAL ADVISOR.—

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

11 “(i) who provides any material aid,
12 assistance, or advice with respect to orga-
13 nizing, managing, promoting, selling, im-
14 plementing, or carrying out any reportable
15 transaction, and

16 “(ii) who directly or indirectly derives
17 gross income in excess of the threshold
18 amount (or such other amount as may be
19 prescribed by the Secretary) for such ad-
20 vice or assistance.

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

23 “(i) \$50,000 in the case of a report-
24 able transaction substantially all of the tax

1 benefits from which are provided to nat-
2 ural persons, and

3 “(ii) \$250,000 in any other case.

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

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

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

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

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

17 (b) CONFORMING AMENDMENTS.—

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

 “Sec. 6111. Disclosure of reportable transactions.”

21 (2) So much of section 6112 as precedes sub-
22 section (c) thereof is amended to read as follows:

1 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
2 **ACTIONS MUST KEEP LISTS OF ADVISEES,**
3 **ETC.**

4 “(a) IN GENERAL.—Each material advisor (as de-
5 fined in section 6111) with respect to any reportable
6 transaction (as defined in section 6707A(c)) shall (wheth-
7 er or not required to file a return under section 6111 with
8 respect to such transaction) maintain (in such manner as
9 the Secretary may by regulations prescribe) a list—

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

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

15 (3) Section 6112 is amended—

16 (A) by redesignating subsection (c) as sub-
17 section (b),

18 (B) by inserting “written” before “re-
19 quest” in subsection (b)(1) (as so redesign-
20 nated), and

21 (C) by striking “shall prescribe” in sub-
22 section (b)(2) (as so redesignated) and inserting
23 “may prescribe”.

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

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

1 (5)(A) The heading for section 6708 is amend-
2 ed to read as follows:

3 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
4 **WITH RESPECT TO REPORTABLE TRANS-**
5 **ACTIONS.”**

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

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

9 (c) **REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM**
10 **OF CONFIDENTIALITY.**—Paragraph (1) of section
11 6112(b), as redesignated by subsection (b), is amended by
12 adding at the end the following new flush sentence:

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

15 (d) **EFFECTIVE DATE.**—

16 (1) **IN GENERAL.**—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall apply to transactions with respect to which ma-
19 terial aid, assistance, or advice referred to in section
20 6111(b)(1)(A)(i) of the Internal Revenue Code of
21 1986 (as added by this section) is provided after the
22 date of the enactment of this Act.

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

6 **SEC. 616. FAILURE TO FURNISH INFORMATION REGARDING**
7 **REPORTABLE TRANSACTIONS.**

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

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

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

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

18 “(2) files false or incomplete information with
19 the Secretary with respect to such transaction,
20 such person shall pay a penalty with respect to such return
21 in the amount determined under subsection (b).

22 “(b) AMOUNT OF PENALTY.—

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

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

5 “(A) \$200,000, or

6 “(B) 50 percent of the gross income de-
7 rived by such person with respect to aid, assist-
8 ance, or advice which is provided with respect
9 to the listed transaction before the date the re-
10 turn is filed under section 6111.

11 Subparagraph (B) shall be applied by substituting
12 ‘75 percent’ for ‘50 percent’ in the case of an inten-
13 tional failure or act described in subsection (a).

14 “(c) RESCISSION AUTHORITY.—The provisions of
15 section 6707A(d) (relating to authority of Commissioner
16 to rescind penalty) shall apply to any penalty imposed
17 under this section.

18 “(d) REPORTABLE AND LISTED TRANSACTIONS.—
19 For purposes of this section, the terms ‘reportable trans-
20 action’ and ‘listed transaction’ have the respective mean-
21 ings given to such terms by section 6707A(c).”

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

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

4 **SEC. 617. MODIFICATION OF PENALTY FOR FAILURE TO**
5 **MAINTAIN LISTS OF INVESTORS.**

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

8 “(a) IMPOSITION OF PENALTY.—

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

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

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

23 **SEC. 618. PENALTY ON PROMOTERS OF TAX SHELTERS.**

24 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-
25 TERS.—Section 6700(a) is amended by adding at the end

1 the following new sentence: “Notwithstanding the first
2 sentence, if an activity with respect to which a penalty
3 imposed under this subsection involves a statement de-
4 scribed in paragraph (2)(A), the amount of the penalty
5 shall be equal to 50 percent of the gross income derived
6 (or to be derived) from such activity by the person on
7 which the penalty is imposed.”

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

11 **SEC. 619. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**
12 **MENT PENALTY FOR NONREPORTABLE**
13 **TRANSACTIONS.**

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

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

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

4 “(ii) \$10,000,000.”

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

8 **SEC. 620. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
9 **CONDUCT RELATED TO TAX SHELTERS AND**
10 **REPORTABLE TRANSACTIONS.**

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

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

1 apart from any other action brought by the United States
2 against such person.

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

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

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

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

12 “(c) SPECIFIED CONDUCT.—For purposes of this
13 section, the term ‘specified conduct’ means any action, or
14 failure to take action, subject to penalty under section
15 6700, 6701, 6707, or 6708.”

16 (b) CONFORMING AMENDMENTS.—

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

19 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
20 **LATED TO TAX SHELTERS AND REPORTABLE**
21 **TRANSACTIONS.”**

22 (2) The table of sections for subchapter A of
23 chapter 76 is amended by striking the item relating
24 to section 7408 and inserting the following new
25 item:

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

3 “(II) the amount of the trans-
4 action or the balance in the account
5 at the time of the transaction was
6 properly reported.

7 “(C) WILLFUL VIOLATIONS.—In the case
8 of any person willfully violating, or willfully
9 causing any violation of, any provision of sec-
10 tion 5314—

11 “(i) the maximum penalty under sub-
12 paragraph (B)(i) shall be increased to the
13 greater of—

14 “(I) \$25,000, or

15 “(II) the amount (not exceeding
16 \$100,000) determined under subpara-
17 graph (D), and

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

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

22 “(i) in the case of a violation involving
23 a transaction, the amount of the trans-
24 action, or

1 “(ii) in the case of a violation involv-
2 ing a failure to report the existence of an
3 account or any identifying information re-
4 quired to be provided with respect to an
5 account, the balance in the account at the
6 time of the violation.”

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

10 **SEC. 622. REGULATION OF INDIVIDUALS PRACTICING BE-**
11 **FORE THE DEPARTMENT OF THE TREASURY.**

12 (a) CENSURE; IMPOSITION OF PENALTY.—

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

15 (A) by inserting “, or censure,” after “De-
16 partment”, and

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

19 “The Secretary may impose a monetary penalty on any
20 representative described in the preceding sentence. If the
21 representative was acting on behalf of an employer or any
22 firm or other entity in connection with the conduct giving
23 rise to such penalty, the Secretary may impose a monetary
24 penalty on such employer, firm, or entity if it knew, or
25 reasonably should have known, of such conduct. Such pen-

1 alty shall not exceed the gross income derived (or to be
2 derived) from the conduct giving rise to the penalty. Any
3 such penalty imposed on an individual may be in addition
4 to, or in lieu of, any suspension, disbarment, or censure
5 of such individual.”

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

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

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

19 **Part II—Other Provisions**

20 **SEC. 631. TREATMENT OF STRIPPED INTERESTS IN BOND**
21 **AND PREFERRED STOCK FUNDS, ETC.**

22 (a) IN GENERAL.—Section 1286 (relating to tax
23 treatment of stripped bonds) is amended by redesignating
24 subsection (f) as subsection (g) and by inserting after sub-
25 section (e) the following new subsection:

1 “(f) TREATMENT OF STRIPPED INTERESTS IN BOND
2 AND PREFERRED STOCK FUNDS, ETC.—In the case of an
3 account or entity substantially all of the assets of which
4 consist of bonds, preferred stock, or a combination thereof,
5 the Secretary may by regulations provide that rules simi-
6 lar to the rules of this section and 305(e), as appropriate,
7 shall apply to interests in such account or entity to which
8 (but for this subsection) this section or section 305(e), as
9 the case may be, would not apply.”

10 (b) CROSS REFERENCE.—Subsection (e) of section
11 305 is amended by adding at the end the following new
12 paragraph:

13 “(7) CROSS REFERENCE.—

**“For treatment of stripped interests in certain ac-
counts or entities holding preferred stock, see sec-
tion 1286(f).”**

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to purchases and dispositions after
16 the date of the enactment of this Act.

17 **SEC. 632. MINIMUM HOLDING PERIOD FOR FOREIGN TAX**

18 **CREDIT ON WITHHOLDING TAXES ON INCOME**

19 **OTHER THAN DIVIDENDS.**

20 (a) IN GENERAL.—Section 901 is amended by redес-
21 ignating subsection (l) as subsection (m) and by inserting
22 after subsection (k) the following new subsection:

1 “(1) MINIMUM HOLDING PERIOD FOR WITHHOLDING
2 TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS
3 ETC.—

4 “(1) IN GENERAL.—In no event shall a credit
5 be allowed under subsection (a) for any withholding
6 tax (as defined in subsection (k)) on any item of in-
7 come or gain with respect to any property if—

8 “(A) such property is held by the recipient
9 of the item for 15 days or less during the 30-
10 day period beginning on the date which is 15
11 days before the date on which the right to re-
12 ceive payment of such item arises, or

13 “(B) to the extent that the recipient of the
14 item is under an obligation (whether pursuant
15 to a short sale or otherwise) to make related
16 payments with respect to positions in substan-
17 tially similar or related property.

18 This paragraph shall not apply to any dividend to
19 which subsection (k) applies.

20 “(2) EXCEPTION FOR TAXES PAID BY DEAL-
21 ERS.—

22 “(A) IN GENERAL.—Paragraph (1) shall
23 not apply to any qualified tax with respect to
24 any property held in the active conduct in a for-

1 eign country of a business as a dealer in such
2 property.

3 “(B) QUALIFIED TAX.—For purposes of
4 subparagraph (A), the term ‘qualified tax’
5 means a tax paid to a foreign country (other
6 than the foreign country referred to in subpara-
7 graph (A)) if—

8 “(i) the item to which such tax is at-
9 tributable is subject to taxation on a net
10 basis by the country referred to in sub-
11 paragraph (A), and

12 “(ii) such country allows a credit
13 against its net basis tax for the full
14 amount of the tax paid to such other for-
15 eign country.

16 “(C) DEALER.—For purposes of subpara-
17 graph (A), the term ‘dealer’ means—

18 “(i) with respect to a security, any
19 person to whom paragraphs (1) and (2) of
20 subsection (k) would not apply by reason
21 of paragraph (4) thereof if such security
22 were stock, and

23 “(ii) with respect to any other prop-
24 erty, any person with respect to whom

1 such property is described in section
2 1221(a)(1).

3 “(D) REGULATIONS.—The Secretary may
4 prescribe such regulations as may be appro-
5 priate to carry out this paragraph, including
6 regulations to prevent the abuse of the excep-
7 tion provided by this paragraph and to treat
8 other taxes as qualified taxes.

9 “(3) EXCEPTIONS.—The Secretary may by reg-
10 ulation provide that paragraph (1) shall not apply to
11 property where the Secretary determines that the
12 application of paragraph (1) to such property is not
13 necessary to carry out the purposes of this sub-
14 section.

15 “(4) CERTAIN RULES TO APPLY.—Rules similar
16 to the rules of paragraphs (5), (6), and (7) of sub-
17 section (k) shall apply for purposes of this sub-
18 section.

19 “(5) DETERMINATION OF HOLDING PERIOD.—
20 Holding periods shall be determined for purposes of
21 this subsection without regard to section 1235 or
22 any similar rule.”

23 (b) CONFORMING AMENDMENT.—The heading of
24 subsection (k) of section 901 is amended by inserting “ON
25 DIVIDENDS” after “TAXES”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid or accrued more
3 than 30 days after the date of the enactment of this Act.

4 **SEC. 633. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS**
5 **TRANSFERS.**

6 (a) TREATMENT OF CONTRIBUTED PROPERTY WITH
7 BUILT-IN LOSS.—Paragraph (1) of section 704(c) is
8 amended by striking “and” at the end of subparagraph
9 (A), by striking the period at the end of subparagraph
10 (B) and inserting “, and”, and by adding at the end the
11 following:

12 “(C) if any property so contributed has a
13 built-in loss—

14 “(i) such built-in loss shall be taken
15 into account only in determining the
16 amount of items allocated to the contrib-
17 uting partner, and

18 “(ii) except as provided in regulations,
19 in determining the amount of items allo-
20 cated to other partners, the basis of the
21 contributed property in the hands of the
22 partnership shall be treated as being equal
23 to its fair market value at the time of con-
24 tribution.

1 For purposes of subparagraph (C), the term ‘built-
2 in loss’ means the excess of the adjusted basis of the
3 property (determined without regard to subpara-
4 graph (C)(ii)) over its fair market value at the time
5 of contribution.”

6 (b) SPECIAL RULES FOR TRANSFERS OF PARTNER-
7 SHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN
8 LOSS.—

9 (1) ADJUSTMENT OF PARTNERSHIP BASIS RE-
10 QUIRED.—Subsection (a) of section 743 (relating to
11 optional adjustment to basis of partnership prop-
12 erty) is amended by inserting before the period “or
13 unless the partnership has a substantial built-in loss
14 immediately after such transfer”.

15 (2) ADJUSTMENT.—Subsection (b) of section
16 743 is amended by inserting “or with respect to
17 which there is a substantial built-in loss immediately
18 after such transfer” after “section 754 is in effect”.

19 (3) SUBSTANTIAL BUILT-IN LOSS.—Section 743
20 is amended by adding at the end the following new
21 subsection:

22 “(d) SUBSTANTIAL BUILT-IN LOSS.—

23 “(1) IN GENERAL.—For purposes of this sec-
24 tion, a partnership has a substantial built-in loss
25 with respect to a transfer of an interest in a part-

1 nership if the partnership's adjusted basis in the
2 partnership property exceeds by more than \$250,000
3 the fair market value of such property.

4 “(2) REGULATIONS.—The Secretary shall pre-
5 scribe such regulations as may be appropriate to
6 carry out the purposes of paragraph (1) and section
7 734(d), including regulations aggregating related
8 partnerships and disregarding property acquired by
9 the partnership in an attempt to avoid such pur-
10 poses.”

11 (4) ALTERNATIVE RULES FOR ELECTING IN-
12 VESTMENT PARTNERSHIPS.—

13 (A) IN GENERAL.—Section 743 is amended
14 by adding at the end the following new sub-
15 section:

16 “(e) ALTERNATIVE RULES FOR ELECTING INVEST-
17 MENT PARTNERSHIPS.—

18 “(1) NO ADJUSTMENT OF PARTNERSHIP
19 BASIS.—For purposes of this section, an electing in-
20 vestment partnership shall not be treated as having
21 a substantial built-in loss with respect to any trans-
22 fer occurring while the election under paragraph
23 (6)(A) is in effect.

24 “(2) LOSS DEFERRAL FOR TRANSFEREE PART-
25 NER.—In the case of a transfer of an interest in an

1 electing investment partnership, the transferee part-
2 ner's distributive share of losses (without regard to
3 gains) from the sale or exchange of partnership
4 property shall not be allowed except to the extent
5 that it is established that such losses exceed the loss
6 (if any) recognized by the transferor (or any prior
7 transferor to the extent not fully offset by a prior
8 disallowance under this paragraph) on the transfer
9 of the partnership interest.

10 “(3) NO REDUCTION IN PARTNERSHIP BASIS.—
11 Losses disallowed under paragraph (2) shall not de-
12 crease the transferee partner's basis in the partner-
13 ship interest.

14 “(4) EFFECT OF TERMINATION OF PARTNER-
15 SHIP.—This subsection shall be applied without re-
16 gard to any termination of a partnership under sec-
17 tion 708(b)(1)(B).

18 “(5) CERTAIN BASIS REDUCTIONS TREATED AS
19 LOSSES.—In the case of a transferee partner whose
20 basis in property distributed by the partnership is
21 reduced under section 732(a)(2), the amount of the
22 loss recognized by the transferor on the transfer of
23 the partnership interest which is taken into account
24 under paragraph (2) shall be reduced by the amount
25 of such basis reduction.

1 “(6) ELECTING INVESTMENT PARTNERSHIP.—

2 For purposes of this subsection, the term ‘electing
3 investment partnership’ means any partnership if—

4 “(A) the partnership makes an election to
5 have this subsection apply,

6 “(B) the partnership would be an invest-
7 ment company under section 3(a)(1)(A) of the
8 Investment Company Act of 1940 but for an
9 exemption under paragraph (1) or (7) of section
10 3(e) of such Act,

11 “(C) such partnership has never been en-
12 gaged in a trade or business,

13 “(D) substantially all of the assets of such
14 partnership are held for investment,

15 “(E) at least 95 percent of the assets con-
16 tributed to such partnership consist of money,

17 “(F) no assets contributed to such part-
18 nership had an adjusted basis in excess of fair
19 market value at the time of contribution,

20 “(G) all partnership interests of such part-
21 nership are issued by such partnership pursu-
22 ant to a private offering and during the 24-
23 month period beginning on the date of the first
24 capital contribution to such partnership,

1 “(H) the partnership agreement of such
2 partnership has substantive restrictions on each
3 partner’s ability to cause a redemption of the
4 partner’s interest, and

5 “(I) the partnership agreement of such
6 partnership provides for a term that is not in
7 excess of 15 years.

8 The election described in subparagraph (A), once
9 made, shall be irrevocable except with the consent of
10 the Secretary.

11 “(7) REGULATIONS.—The Secretary shall pre-
12 scribe such regulations as may be appropriate to
13 carry out the purposes of this subsection, including
14 regulations for applying this subsection to tiered
15 partnerships.”.

16 (B) INFORMATION REPORTING.—Section
17 6031 is amended by adding at the end the fol-
18 lowing new subsection:

19 “(f) ELECTING INVESTMENT PARTNERSHIPS.—In
20 the case of any electing investment partnership (as defined
21 in section 743(e)(6)), the information required under sub-
22 section (b) to be furnished to any partner to whom section
23 743(e)(2) applies shall include such information as is nec-
24 essary to enable the partner to compute the amount of
25 losses disallowed under section 743(e).”.

1 (5) CLERICAL AMENDMENTS.—

2 (A) The section heading for section 743 is
3 amended to read as follows:

4 **“SEC. 743. SPECIAL RULES WHERE SECTION 754 ELECTION**
5 **OR SUBSTANTIAL BUILT-IN LOSS.”**

6 (B) The table of sections for subpart C of
7 part II of subchapter K of chapter 1 is amend-
8 ed by striking the item relating to section 743
9 and inserting the following new item:

“Sec. 743. Special rules where section 754 election or substantial
built-in loss.”

10 (c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED
11 PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL
12 BASIS REDUCTION.—

13 (1) ADJUSTMENT REQUIRED.—Subsection (a)
14 of section 734 (relating to optional adjustment to
15 basis of undistributed partnership property) is
16 amended by inserting before the period “or unless
17 there is a substantial basis reduction”.

18 (2) ADJUSTMENT.—Subsection (b) of section
19 734 is amended by inserting “or unless there is a
20 substantial basis reduction” after “section 754 is in
21 effect”.

22 (3) SUBSTANTIAL BASIS REDUCTION.—Section
23 734 is amended by adding at the end the following
24 new subsection:

1 “(d) SUBSTANTIAL BASIS REDUCTION.—

2 “(1) IN GENERAL.—For purposes of this sec-
3 tion, there is a substantial basis reduction with re-
4 spect to a distribution if the sum of the amounts de-
5 scribed in subparagraphs (A) and (B) of subsection
6 (b)(2) exceeds \$250,000.

7 “(2) REGULATIONS.—

“For regulations to carry out this subsection, see
section 743(d)(2).”

8 (4) CLERICAL AMENDMENTS.—

9 (A) The section heading for section 734 is
10 amended to read as follows:

11 **“SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED**
12 **PARTNERSHIP PROPERTY WHERE SECTION**
13 **754 ELECTION OR SUBSTANTIAL BASIS RE-**
14 **DUCTION.”**

15 (B) The table of sections for subpart B of
16 part II of subchapter K of chapter 1 is amend-
17 ed by striking the item relating to section 734
18 and inserting the following new item:

“Sec. 734. Adjustment to basis of undistributed partnership prop-
erty where section 754 election or substantial basis
reduction.”

19 (d) EFFECTIVE DATES.—

20 (1) SUBSECTION (a).—The amendment made
21 by subsection (a) shall apply to contributions made
22 after the date of the enactment of this Act.

1 (2) SUBSECTION (b).—

2 (A) IN GENERAL.—Except as provided in
3 subparagraph (B), the amendments made by
4 subsection (b) shall apply to transfers after the
5 date of the enactment of this Act.

6 (B) TRANSITION RULE.—In the case of an
7 electing investment partnership which is in ex-
8 istence on June 4, 2004, section 743(e)(6)(H)
9 of the Internal Revenue Code of 1986, as added
10 by this section, shall not apply to such partner-
11 ship and section 743(e)(6)(I) of such Code, as
12 so added, shall be applied by substituting “20
13 years” for “15 years”.

14 (3) SUBSECTION (c).—The amendments made
15 by subsection (c) shall apply to distributions after
16 the date of the enactment of this Act.

17 **SEC. 634. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
18 **STOCK HELD BY PARTNERSHIP IN COR-**
19 **PORATE PARTNER.**

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

22 “(c) NO ALLOCATION OF BASIS DECREASE TO
23 STOCK OF CORPORATE PARTNER.—In making an alloca-
24 tion under subsection (a) of any decrease in the adjusted
25 basis of partnership property under section 734(b)—

1 “(1) no allocation may be made to stock in a
2 corporation (or any person related (within the mean-
3 ing of sections 267(b) and 707(b)(1)) to such cor-
4 poration) which is a partner in the partnership, and

5 “(2) any amount not allocable to stock by rea-
6 son of paragraph (1) shall be allocated under sub-
7 section (a) to other partnership property.

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

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

16 **SEC. 635. REPEAL OF SPECIAL RULES FOR FASITS.**

17 (a) IN GENERAL.—Part V of subchapter M of chap-
18 ter 1 (relating to financial asset securitization investment
19 trusts) is hereby repealed.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Paragraph (6) of section 56(g) is amended
22 by striking “REMIC, or FASIT” and inserting “or
23 REMIC”.

24 (2) Clause (ii) of section 382(l)(4)(B) is amend-
25 ed by striking “a REMIC to which part IV of sub-

1 chapter M applies, or a FASIT to which part V of
2 subchapter M applies,” and inserting “or a REMIC
3 to which part IV of subchapter M applies,”.

4 (3) Paragraph (1) of section 582(c) is amended
5 by striking “, and any regular interest in a
6 FASIT,”.

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

9 (5)(A) Section 860G(a)(1) is amended by add-
10 ing at the end the following new sentence: “An inter-
11 est shall not fail to qualify as a regular interest sole-
12 ly because the specified principal amount of the reg-
13 ular interest (or the amount of interest accrued on
14 the regular interest) can be reduced as a result of
15 the nonoccurrence of 1 or more contingent payments
16 with respect to any reverse mortgage loan held by
17 the REMIC if, on the startup day for the REMIC,
18 the sponsor reasonably believes that all principal and
19 interest due under the regular interest will be paid
20 at or prior to the liquidation of the REMIC.”.

21 (B) The last sentence of section 860G(a)(3) is
22 amended by inserting “, and any reverse mortgage
23 loan (and each balance increase on such loan meet-
24 ing the requirements of subparagraph (A)(iii)) shall

1 be treated as an obligation secured by an interest in
2 real property” before the period at the end.

3 (6) Paragraph (3) of section 860G(a) is amend-
4 ed by adding “and” at the end of subparagraph (B),
5 by striking “, and” at the end of subparagraph (C)
6 and inserting a period, and by striking subparagraph
7 (D).

8 (7) Section 860G(a)(3), as amended by para-
9 graph (6), is amended by adding at the end the fol-
10 lowing new sentence: “For purposes of subparagraph
11 (A), if more than 50 percent of the obligations
12 transferred to, or purchased by, the REMIC are
13 originated by the United States or any State (or any
14 political subdivision, agency, or instrumentality of
15 the United States or any State) and are principally
16 secured by an interest in real property, then each
17 obligation transferred to, or purchased by, the
18 REMIC shall be treated as secured by an interest in
19 real property.”.

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

24 “(iii) represents an increase in the
25 principal amount under the original terms

1 of an obligation described in clause (i) or
2 (ii) if such increase—

3 “(I) is attributable to an advance
4 made to the obligor pursuant to the
5 original terms of the obligation,

6 “(II) occurs after the startup
7 day, and

8 “(III) is purchased by the
9 REMIC pursuant to a fixed price con-
10 tract in effect on the startup day.”.

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

13 “(B) QUALIFIED RESERVE FUND.—For
14 purposes of subparagraph (A), the term ‘quali-
15 fied reserve fund’ means any reasonably re-
16 quired reserve to—

17 “(i) provide for full payment of ex-
18 penses of the REMIC or amounts due on
19 regular interests in the event of defaults on
20 qualified mortgages or lower than expected
21 returns on cash flow investments, or

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

1 The aggregate fair market value of the assets
2 held in any such reserve shall not exceed 50
3 percent of the aggregate fair market value of all
4 of the assets of the REMIC on the startup day,
5 and the amount of any such reserve shall be
6 promptly and appropriately reduced to the ex-
7 tent the amount held in such reserve is no
8 longer reasonably required for purposes speci-
9 fied in clause (i) or (ii) of this subparagraph.”.

10 (9) Subparagraph (C) of section 1202(e)(4) is
11 amended by striking “REMIC, or FASIT” and in-
12 serting “or REMIC”.

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

15 (A) by striking “and any regular interest
16 in a FASIT,” and

17 (B) by striking “or FASIT” each place it
18 appears.

19 (11) Subparagraph (A) of section 7701(i)(2) is
20 amended by striking “or a FASIT”.

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

24 (c) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall take effect on January 1, 2005.

4 (2) EXCEPTION FOR EXISTING FASITS.—Para-
5 graph (1) shall not apply to any FASIT in existence
6 on the date of the enactment of this Act to the ex-
7 tent that regular interests issued by the FASIT be-
8 fore such date continue to remain outstanding in ac-
9 cordance with the original terms of issuance.

10 **SEC. 636. LIMITATION ON TRANSFER OF BUILT-IN LOSSES**
11 **ON REMIC RESIDUALS.**

12 (a) IN GENERAL.—Section 362 (relating to basis to
13 corporations) is amended by adding at the end the fol-
14 lowing new subsection:

15 “(e) LIMITATION ON TRANSFER OF BUILT-IN
16 LOSSES ON REMIC RESIDUALS IN SECTION 351 TRANS-
17 ACTIONS.—If—

18 “(1) a residual interest (as defined in section
19 860G(a)(2)) in a REMIC is transferred in any
20 transaction which is described in subsection (a), and

21 “(2) the transferee’s adjusted basis in such re-
22 sidual interest would (but for this paragraph) exceed
23 its fair market value immediately after such trans-
24 action,

1 then, notwithstanding subsection (a), the transferee's ad-
2 justed basis in such residual interest shall not exceed its
3 fair market value (whether or not greater than zero) im-
4 mediately after such transaction.”

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

8 **SEC. 637. CLARIFICATION OF BANKING BUSINESS FOR PUR-**
9 **POSES OF DETERMINING INVESTMENT OF**
10 **EARNINGS IN UNITED STATES PROPERTY.**

11 (a) IN GENERAL.—Subparagraph (A) of section
12 956(c)(2) is amended to read as follows:

13 “(A) obligations of the United States,
14 money, or deposits with persons described in
15 paragraph (4);”.

16 (b) ELIGIBLE PERSONS.—Section 956(c) (relating to
17 exceptions to definition of United States property) is
18 amended by adding at the end the following new para-
19 graph:

20 “(4) FINANCIAL SERVICES PROVIDERS.—

21 “(A) IN GENERAL.—For purposes of para-
22 graph (2)(A), a person is described in this para-
23 graph if at least 80 percent of the person's in-
24 come is from the active conduct of a banking

1 business which is derived from persons who are
2 not related persons.

3 “(B) SPECIAL RULES.—For purposes of
4 subparagraph (A) all related persons shall be
5 treated as 1 person in applying the 80-percent
6 test.

7 “(C) RELATED PERSON.—For purposes of
8 this paragraph, a person is a related person to
9 another person if—

10 “(i) the related person bears a rela-
11 tionship to such person specified in section
12 267(b) or 707(b)(1), or

13 “(ii) such persons are members of the
14 same controlled group of corporations (as
15 defined in section 1563(a), except that
16 ‘more than 50 percent’ shall be substituted
17 for ‘at least 80 percent’ each place it ap-
18 pears therein).”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall take effect on the date of the enactment
21 of this Act.

1 **SEC. 638. ALTERNATIVE TAX FOR CERTAIN SMALL INSUR-**
2 **ANCE COMPANIES.**

3 (a) IN GENERAL.—Clause (i) of section 831(b)(2)(A)
4 is amended by striking “\$1,200,000” and inserting
5 “\$1,890,000”.

6 (b) INFLATION ADJUSTMENT.—Paragraph (2) of sec-
7 tion 831(b) is amended by adding at the end the following
8 new subparagraph:

9 “(C) INFLATION ADJUSTMENT.—In the
10 case of any taxable year beginning in a calendar
11 year after 2004, the \$1,890,000 amount in sub-
12 paragraph (A) shall be increased by an amount
13 equal to—

14 “(i) \$1,890,000, multiplied by
15 “(ii) the cost-of-living adjustment de-
16 termined under section 1(f)(3) for such
17 calendar year by substituting ‘calendar
18 year 2003’ for ‘calendar year 1992’ in sub-
19 paragraph (B) thereof.

20 If the amount as adjusted under the preceding
21 sentence is not a multiple of \$1,000, such
22 amount shall be rounded to the next lowest
23 multiple of \$1,000.”.

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

1 **SEC. 639. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
2 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**
3 **CLOSED REPORTABLE TRANSACTIONS.**

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

8 “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE
9 TO NONDISCLOSED REPORTABLE TRANSACTIONS.—No
10 deduction shall be allowed under this chapter for any in-
11 terest paid or accrued under section 6601 on any under-
12 payment of tax which is attributable to the portion of any
13 reportable transaction understatement (as defined in sec-
14 tion 6662A(b)) with respect to which the requirement of
15 section 6664(d)(2)(A) is not met.”.

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

19 **SEC. 640. CLARIFICATION OF RULES FOR PAYMENT OF ES-**
20 **TIMATED TAX FOR CERTAIN DEEMED ASSET**
21 **SALES.**

22 (a) IN GENERAL.—Paragraph (13) of section 338(h)
23 (relating to tax on deemed sale not taken into account for
24 estimated tax purposes) is amended by adding at the end
25 the following: “The preceding sentence shall not apply

1 with respect to a qualified stock purchase for which an
2 election is made under paragraph (10).”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply to transactions occurring after
5 the date of the enactment of this Act.

6 **SEC. 641. RECOGNITION OF GAIN FROM THE SALE OF A**
7 **PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-**
8 **KIND EXCHANGE WITHIN 5 YEARS OF SALE.**

9 (a) IN GENERAL.—Section 121(d) (relating to special
10 rules for exclusion of gain from sale of principal residence)
11 is amended by adding at the end the following new para-
12 graph:

13 “(10) PROPERTY ACQUIRED IN LIKE-KIND EX-
14 CHANGE.—If a taxpayer acquired property in an ex-
15 change to which section 1031 applied, subsection (a)
16 shall not apply to the sale or exchange of such prop-
17 erty if it occurs during the 5-year period beginning
18 with the date of the acquisition of such property.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to sales or exchanges after the date
21 of the enactment of this Act.

1 **SEC. 642. PREVENTION OF MISMATCHING OF INTEREST**
2 **AND ORIGINAL ISSUE DISCOUNT DEDUC-**
3 **TIONS AND INCOME INCLUSIONS IN TRANS-**
4 **ACTIONS WITH RELATED FOREIGN PERSONS.**

5 (a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3)
6 (relating to special rule for original issue discount on obli-
7 gation held by related foreign person) is amended by re-
8 designating subparagraph (B) as subparagraph (C) and
9 by inserting after subparagraph (A) the following new sub-
10 paragraph:

11 “(B) SPECIAL RULE FOR CERTAIN FOR-
12 EIGN ENTITIES.—

13 “(i) IN GENERAL.—In the case of any
14 debt instrument having original issue dis-
15 count which is held by a related foreign
16 person which is a foreign personal holding
17 company (as defined in section 552), a
18 controlled foreign corporation (as defined
19 in section 957), or a passive foreign invest-
20 ment company (as defined in section
21 1297), a deduction shall be allowable to
22 the issuer with respect to such original
23 issue discount for any taxable year before
24 the taxable year in which paid only to the
25 extent such original issue discount (re-
26 duced by properly allowable deductions and

1 qualified deficits under section
2 952(c)(1)(B)) is includible during such
3 prior taxable year in the gross income of a
4 United States person who owns (within the
5 meaning of section 958(a)) stock in such
6 corporation.

7 “(ii) SECRETARIAL AUTHORITY.—The
8 Secretary may by regulation exempt trans-
9 actions from the application of clause (i),
10 including any transaction which is entered
11 into by a payor in the ordinary course of
12 a trade or business in which the payor is
13 predominantly engaged.”.

14 (b) INTEREST AND OTHER DEDUCTIBLE
15 AMOUNTS.—Section 267(a)(3) is amended—

16 (1) by striking “The Secretary” and inserting:

17 “(A) IN GENERAL.—The Secretary”, and

18 (2) by adding at the end the following new sub-
19 paragraph:

20 “(B) SPECIAL RULE FOR CERTAIN FOR-
21 EIGN ENTITIES.—

22 “(i) IN GENERAL.—Notwithstanding
23 subparagraph (A), in the case of any item
24 payable to a foreign personal holding com-
25 pany (as defined in section 552), a con-

1 trolled foreign corporation (as defined in
2 section 957), or a passive foreign invest-
3 ment company (as defined in section
4 1297), a deduction shall be allowable to
5 the payor with respect to such amount for
6 any taxable year before the taxable year in
7 which paid only to the extent that an
8 amount attributable to such item (reduced
9 by properly allowable deductions and quali-
10 fied deficits under section 952(c)(1)(B)) is
11 includible during such prior taxable year in
12 the gross income of a United States person
13 who owns (within the meaning of section
14 958(a)) stock in such corporation.

15 “(ii) SECRETARIAL AUTHORITY.—The
16 Secretary may by regulation exempt trans-
17 actions from the application of clause (i),
18 including any transaction which is entered
19 into by a payor in the ordinary course of
20 a trade or business in which the payor is
21 predominantly engaged and in which the
22 payment of the accrued amounts occurs
23 within 8½ months after accrual or within
24 such other period as the Secretary may
25 prescribe.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to payments accrued on or after
3 the date of the enactment of this Act.

4 **SEC. 643. EXCLUSION FROM GROSS INCOME FOR INTEREST**
5 **ON OVERPAYMENTS OF INCOME TAX BY INDI-**
6 **VIDUALS.**

7 (a) IN GENERAL.—Part III of subchapter B of chap-
8 ter 1 (relating to items specifically excluded from gross
9 income) is amended by inserting after section 139A the
10 following new section:

11 **“SEC. 139B. EXCLUSION FROM GROSS INCOME FOR INTER-**
12 **EST ON OVERPAYMENTS OF INCOME TAX BY**
13 **INDIVIDUALS.**

14 “(a) IN GENERAL.—In the case of an individual,
15 gross income shall not include interest paid under section
16 6611 on any overpayment of tax imposed by this subtitle.

17 “(b) EXCEPTION.—Subsection (a) shall not apply in
18 the case of a failure to claim items resulting in the over-
19 payment on the original return if the Secretary determines
20 that the principal purpose of such failure is to take advan-
21 tage of subsection (a).

22 “(c) SPECIAL RULE FOR DETERMINING MODIFIED
23 ADJUSTED GROSS INCOME.—For purposes of this title,
24 interest not included in gross income under subsection (a)
25 shall not be treated as interest which is exempt from tax

1 for purposes of sections 32(i)(2)(B) and 6012(d) or any
2 computation in which interest exempt from tax under this
3 title is added to adjusted gross income.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for part III of subchapter B of chapter 1 is amended by
6 inserting after the item relating to section 139A the fol-
7 lowing new item:

“Sec. 139B. Exclusion from gross income for interest on over-
payments of income tax by individuals.”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to interest received in calendar
10 years beginning after the date of the enactment of this
11 Act.

12 **SEC. 644. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
13 **TEREST ON POTENTIAL UNDERPAYMENTS.**

14 (a) IN GENERAL.—Subchapter A of chapter 67 (re-
15 lating to interest on underpayments) is amended by add-
16 ing at the end the following new section:

17 **“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**
18 **TEREST ON POTENTIAL UNDERPAYMENTS,**
19 **ETC.**

20 “(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN
21 AS PAYMENT OF TAX.—A taxpayer may make a cash de-
22 posit with the Secretary which may be used by the Sec-
23 retary to pay any tax imposed under subtitle A or B or
24 chapter 41, 42, 43, or 44 which has not been assessed

1 at the time of the deposit. Such a deposit shall be made
2 in such manner as the Secretary shall prescribe.

3 “(b) NO INTEREST IMPOSED.—To the extent that
4 such deposit is used by the Secretary to pay tax, for pur-
5 poses of section 6601 (relating to interest on underpay-
6 ments), the tax shall be treated as paid when the deposit
7 is made.

8 “(c) RETURN OF DEPOSIT.—Except in a case where
9 the Secretary determines that collection of tax is in jeop-
10 ardy, the Secretary shall return to the taxpayer any
11 amount of the deposit (to the extent not used for a pay-
12 ment of tax) which the taxpayer requests in writing.

13 “(d) PAYMENT OF INTEREST.—

14 “(1) IN GENERAL.—For purposes of section
15 6611 (relating to interest on overpayments), a de-
16 posit which is returned to a taxpayer shall be treated
17 as a payment of tax for any period to the extent
18 (and only to the extent) attributable to a disputable
19 tax for such period. Under regulations prescribed by
20 the Secretary, rules similar to the rules of section
21 6611(b)(2) shall apply.

22 “(2) DISPUTABLE TAX.—

23 “(A) IN GENERAL.—For purposes of this
24 section, the term ‘disputable tax’ means the
25 amount of tax specified at the time of the de-

1 posit as the taxpayer’s reasonable estimate of
2 the maximum amount of any tax attributable to
3 disputable items.

4 “(B) SAFE HARBOR BASED ON 30-DAY
5 LETTER.—In the case of a taxpayer who has
6 been issued a 30-day letter, the maximum
7 amount of tax under subparagraph (A) shall
8 not be less than the amount of the proposed de-
9 ficiency specified in such letter.

10 “(3) OTHER DEFINITIONS.—For purposes of
11 paragraph (2)—

12 “(A) DISPUTABLE ITEM.—The term ‘dis-
13 putable item’ means any item of income, gain,
14 loss, deduction, or credit if the taxpayer—

15 “(i) has a reasonable basis for its
16 treatment of such item, and

17 “(ii) reasonably believes that the Sec-
18 retary also has a reasonable basis for dis-
19 allowing the taxpayer’s treatment of such
20 item.

21 “(B) 30-DAY LETTER.—The term ‘30-day
22 letter’ means the first letter of proposed defi-
23 ciency which allows the taxpayer an opportunity
24 for administrative review in the Internal Rev-
25 enue Service Office of Appeals.

1 “(4) RATE OF INTEREST.—The rate of interest
2 allowable under this subsection shall be the Federal
3 short-term rate determined under section 6621(b),
4 compounded daily.

5 “(e) USE OF DEPOSITS.—

6 “(1) PAYMENT OF TAX.—Except as otherwise
7 provided by the taxpayer, deposits shall be treated
8 as used for the payment of tax in the order depos-
9 ited.

10 “(2) RETURNS OF DEPOSITS.—Deposits shall
11 be treated as returned to the taxpayer on a last-in,
12 first-out basis.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 for subchapter A of chapter 67 is amended by adding at
15 the end the following new item:

 “Sec. 6603. Deposits made to suspend running of interest on po-
 tential underpayments, etc.”.

16 (c) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall apply to deposits made after the
19 date of the enactment of this Act.

20 (2) COORDINATION WITH DEPOSITS MADE
21 UNDER REVENUE PROCEDURE 84–58.—In the case of
22 an amount held by the Secretary of the Treasury or
23 his delegate on the date of the enactment of this Act
24 as a deposit in the nature of a cash bond deposit

1 (c) EFFECTIVE DATE.—This section, and the amend-
2 ment made by this section, shall apply to taxable years
3 beginning before, on, or after the date of the enactment
4 of this Act.

5 **Part III—Leasing**

6 **SEC. 647. REFORM OF TAX TREATMENT OF CERTAIN LEAS-**
7 **ING ARRANGEMENTS.**

8 (a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-
9 EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subpara-
10 graph (A) of section 168(g)(3) (relating to special rules
11 for determining class life) is amended by inserting “(not-
12 withstanding any other subparagraph of this paragraph)”
13 after “shall”.

14 (b) LIMITATION ON DEPRECIATION PERIOD FOR
15 SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Para-
16 graph (1) of section 167(f) is amended by adding at the
17 end the following new subparagraph:

18 “(C) TAX-EXEMPT USE PROPERTY SUB-
19 JECT TO LEASE.—In the case of computer soft-
20 ware which would be tax-exempt use property
21 as defined in subsection (h) of section 168 if
22 such section applied to computer software, the
23 useful life under subparagraph (A) shall not be
24 less than 125 percent of the lease term (within
25 the meaning of section 168(i)(3)).”.

1 (c) LEASE TERM TO INCLUDE RELATED SERVICE
2 CONTRACTS.—Subparagraph (A) of section 168(i)(3) (re-
3 lating to lease term) is amended by striking “and” at the
4 end of clause (i), by redesignating clause (ii) as clause
5 (iii), and by inserting after clause (i) the following new
6 clause:

7 “(ii) the term of a lease shall include
8 the term of any service contract or similar
9 arrangement (whether or not treated as a
10 lease under section 7701(e))—

11 “(I) which is part of the same
12 transaction (or series of related trans-
13 actions) which includes the lease, and

14 “(II) which is with respect to the
15 property subject to the lease or sub-
16 stantially similar property, and”.

17 (d) EXPANSION OF SHORT-TERM LEASE EXEMPTION
18 FOR QUALIFIED TECHNOLOGICAL EQUIPMENT.—Sub-
19 paragraph (A) of section 168(h)(3) is amended by adding
20 at the end the following new sentence: “Notwithstanding
21 subsection (i)(3)(A)(i), in determining a lease term for
22 purposes of the preceding sentence, there shall not be
23 taken into account any option of the lessee to renew at
24 the fair market value rent determined at the time of re-
25 newal; except that the aggregate period not taken into ac-

1 count by reason of this sentence shall not exceed 24
2 months.”

3 **SEC. 648. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
4 **PROPERTY USED BY GOVERNMENTS OR**
5 **OTHER TAX-EXEMPT ENTITIES.**

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

10 **“SEC. 470. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
11 **PROPERTY USED BY GOVERNMENTS OR**
12 **OTHER TAX-EXEMPT ENTITIES.**

13 “(a) LIMITATION ON LOSSES.—Except as otherwise
14 provided in this section, a tax-exempt use loss for any tax-
15 able year shall not be allowed.

16 “(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—
17 Any tax-exempt use loss with respect to any tax-exempt
18 use property which is disallowed under subsection (a) for
19 any taxable year shall be treated as a deduction with re-
20 spect to such property in the next taxable year.

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

22 “(1) TAX-EXEMPT USE LOSS.—The term ‘tax-
23 exempt use loss’ means, with respect to any taxable
24 year, the amount (if any) by which—

25 “(A) the sum of—

1 “(i) the aggregate deductions (other
2 than interest) directly allocable to a tax-ex-
3 empt use property, plus

4 “(ii) the aggregate deductions for in-
5 terest properly allocable to such property,
6 exceed

7 “(B) the aggregate income from such
8 property.

9 “(2) TAX-EXEMPT USE PROPERTY.—The term
10 ‘tax-exempt use property’ has the meaning given to
11 such term by section 168(h) (without regard to
12 paragraphs (1)(C) and (3) thereof and determined
13 as if property described in section 167(f)(1)(B) were
14 tangible property). Such term shall not include prop-
15 erty which would (but for this sentence) be tax-ex-
16 empt use property solely by reason of section
17 168(h)(6) if any credit is allowable under section 42
18 or 47 with respect to such property.

19 “(d) EXCEPTION FOR CERTAIN LEASES.—This sec-
20 tion shall not apply to any lease of property which meets
21 the requirements of all of the following paragraphs:

22 “(1) AVAILABILITY OF FUNDS.—

23 “(A) IN GENERAL.—A lease of property
24 meets the requirements of this paragraph if (at

1 all times during the lease term) not more than
2 an allowable amount of funds are—

3 “(i) subject to any arrangement re-
4 ferred to in subparagraph (B), or

5 “(ii) set aside or expected to be set
6 aside,

7 to or for the benefit of the lessor or any lender,
8 or to or for the benefit of the lessee to satisfy
9 the lessee’s obligations or options under the
10 lease. For purposes of clause (ii), funds shall be
11 treated as set aside or expected to be set aside
12 only if a reasonable person would conclude,
13 based on the facts and circumstances, that such
14 funds are set aside or expected to be set aside.

15 “(B) ARRANGEMENTS.—The arrangements
16 referred to in this subparagraph include a de-
17 feasance arrangement, a loan by the lessee to
18 the lessor or any lender, a deposit arrangement,
19 a letter of credit collateralized with cash or cash
20 equivalents, a payment undertaking agreement,
21 prepaid rent (within the meaning of the regula-
22 tions under section 467), a sinking fund ar-
23 rangement, a guaranteed investment contract,
24 financial guaranty insurance, and any similar

1 arrangement (whether or not such arrangement
2 provides credit support).

3 “(C) ALLOWABLE AMOUNT.—

4 “(i) IN GENERAL.—Except as other-
5 wise provided in this subparagraph, the
6 term ‘allowable amount’ means an amount
7 equal to 20 percent of the lessor’s adjusted
8 basis in the property at the time the lease
9 is entered into.

10 “(ii) HIGHER AMOUNT PERMITTED IN
11 CERTAIN CASES.—To the extent provided
12 in regulations, a higher percentage shall be
13 permitted under clause (i) where necessary
14 because of the credit-worthiness of the les-
15 see. In no event may such regulations per-
16 mit a percentage of more than 50 percent.

17 “(iii) OPTION TO PURCHASE OTHER
18 THAN AT FAIR MARKET VALUE.—If under
19 the lease the lessee has the option to pur-
20 chase the property for a fixed price or for
21 other than the fair market value of the
22 property (determined at the time of exer-
23 cise), the allowable amount at the time
24 such option may be exercised may not ex-

1 ceed 50 percent of the price at which such
2 option may be exercised.

3 “(iv) NO ALLOWABLE AMOUNT FOR
4 CERTAIN ARRANGEMENTS.—The allowable
5 amount shall be zero with respect to any
6 arrangement which involves—

7 “(I) a loan from the lessee to the
8 lessor or a lender,

9 “(II) any deposit received, letter
10 of credit issued, or payment under-
11 taking agreement entered into by a
12 lender otherwise involved in the trans-
13 action, or

14 “(III) in the case of a trans-
15 action which involves a lender, any
16 credit support made available to the
17 lessor in which any such lender does
18 not have a claim that is senior to the
19 lessor.

20 For purposes of subclause (I), the term
21 ‘loan’ shall not include any amount treated
22 as a loan under section 467 with respect to
23 a section 467 rental agreement.

1 “(2) LESSOR MUST MAKE SUBSTANTIAL EQUITY
2 INVESTMENT.—A lease of property meets the re-
3 quirements of this paragraph if—

4 “(A) the lessor—

5 “(i) has at the time the lease is en-
6 tered into an unconditional at-risk equity
7 investment (as determined by the Sec-
8 retary) in the property of at least 20 per-
9 cent of the lessor’s adjusted basis in the
10 property as of that time, and

11 “(ii) maintains such investment
12 throughout the term of the lease, and

13 “(B) the fair market value of the property
14 at the end of the lease term is reasonably ex-
15 pected to be equal to at least 20 percent of such
16 basis.

17 Subparagraphs (A)(ii) and (B) shall not apply to
18 any lease with a lease term of 5 years or less. For
19 purposes of subparagraph (B), the fair market value
20 at the end of the lease term shall be reduced to the
21 extent that a person other than the lessor bears a
22 risk of loss in the value of the property.

23 “(3) LESSEE MAY NOT BEAR MORE THAN MINI-
24 MAL RISK OF LOSS.—

1 “(A) IN GENERAL.—A lease of property
2 meets the requirements of this paragraph if
3 there is no arrangement under which the lessee
4 bears—

5 “(i) any portion of the loss that would
6 occur if the fair market value of the leased
7 property were 25 percent less than its rea-
8 sonably expected fair market value at the
9 time the lease is terminated, or

10 “(ii) more than 50 percent of the loss
11 that would occur if the fair market value
12 of the leased property at the time the lease
13 is terminated were zero.

14 “(B) EXCEPTION.—The Secretary may by
15 regulations provide that the requirements of
16 this paragraph are not met where the lessee
17 bears more than a minimal risk of loss.

18 “(C) PARAGRAPH NOT TO APPLY TO
19 SHORT-TERM LEASES.—This paragraph shall
20 not apply to any lease with a lease term of 5
21 years or less.

22 “(e) SPECIAL RULES.—

23 “(1) TREATMENT OF FORMER TAX-EXEMPT
24 USE PROPERTY.—

1 “(A) IN GENERAL.—In the case of any
2 former tax-exempt use property—

3 “(i) any deduction allowable under
4 subsection (b) with respect to such prop-
5 erty for any taxable year shall be allowed
6 only to the extent of any net income (with-
7 out regard to such deduction) from such
8 property for such taxable year, and

9 “(ii) any portion of such unused de-
10 duction remaining after application of
11 clause (i) shall be treated as a deduction
12 allowable under subsection (b) with respect
13 to such property in the next taxable year.

14 “(B) FORMER TAX-EXEMPT USE PROP-
15 erty.—For purposes of this subsection, the
16 term ‘former tax-exempt use property’ means
17 any property which—

18 “(i) is not tax-exempt use property for
19 the taxable year, but

20 “(ii) was tax-exempt use property for
21 any prior taxable year.

22 “(2) DISPOSITION OF ENTIRE INTEREST IN
23 PROPERTY.—If during the taxable year a taxpayer
24 disposes of the taxpayer’s entire interest in tax-ex-
25 empt use property (or former tax-exempt use prop-

1 erty), rules similar to the rules of section 469(g)
2 shall apply for purposes of this section.

3 “(3) COORDINATION WITH SECTION 469.—This
4 section shall be applied before the application of sec-
5 tion 469.

6 “(4) COORDINATION WITH SECTIONS 1031 AND
7 1033.—

8 “(A) IN GENERAL.—Sections 1031(a) and
9 1033(a) shall not apply if—

10 “(i) the exchanged or converted prop-
11 erty is tax-exempt use property subject to
12 a lease which was entered into before
13 March 13, 2004, and which would not have
14 met the requirements of subsection (d) had
15 such requirements been in effect when the
16 lease was entered into, or

17 “(ii) the replacement property is tax-
18 exempt use property subject to a lease
19 which does not meet the requirements of
20 subsection (d).

21 “(B) ADJUSTED BASIS.—In the case of
22 property acquired by the lessor in a transaction
23 to which section 1031 or 1033 applies, the ad-
24 justed basis of such property for purposes of
25 this section shall not exceed the lesser of—

1 “(i) the fair market value of the prop-
2 erty as of the beginning of the lease term,
3 or

4 “(ii) the amount which would be the
5 lessor’s adjusted basis if such sections did
6 not apply to such transaction.

7 “(f) OTHER DEFINITIONS.—For purposes of this sec-
8 tion—

9 “(1) RELATED PARTIES.—The terms ‘lessor’,
10 ‘lessee’, and ‘lender’ each include any related party
11 (within the meaning of section 197(f)(9)(C)(i)).

12 “(2) LEASE TERM.—The term ‘lease term’ has
13 the meaning given to such term by section 168(i)(3).

14 “(3) LENDER.—The term ‘lender’ means, with
15 respect to any lease, a person that makes a loan to
16 the lessor which is secured (or economically similar
17 to being secured) by the lease or the leased property.

18 “(4) LOAN.—The term ‘loan’ includes any simi-
19 lar arrangement.

20 “(g) REGULATIONS.—The Secretary shall prescribe
21 such regulations as may be necessary or appropriate to
22 carry out the provisions of this section, including regula-
23 tions which—

24 “(1) allow in appropriate cases the aggregation
25 of property subject to the same lease, and

1 (B) is approved by the Federal Transit Ad-
2 ministration before January 1, 2005, and

3 (C) includes a description of such property
4 and the value of such property.

5 (3) EXCHANGES AND CONVERSION OF TAX-EX-
6 EMPT USE PROPERTY.—Section 470(e)(4) of the In-
7 ternal Revenue Code of 1986, as added by this sec-
8 tion, shall apply to property exchanged or converted
9 after the date of the enactment of this Act.

10 **Subtitle C—Reduction of Fuel Tax** 11 **Evasion**

12 **SEC. 651. EXEMPTION FROM CERTAIN EXCISE TAXES FOR** 13 **MOBILE MACHINERY.**

14 (a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND
15 TRAILERS SOLD AT RETAIL.—

16 (1) IN GENERAL.—Section 4053 (relating to ex-
17 emptions) is amended by adding at the end the fol-
18 lowing new paragraph:

19 “(8) MOBILE MACHINERY.—Any vehicle which
20 consists of a chassis—

21 “(A) to which there has been permanently
22 mounted (by welding, bolting, riveting, or other
23 means) machinery or equipment to perform a
24 construction, manufacturing, processing, farm-
25 ing, mining, drilling, timbering, or similar oper-

1 ation if the operation of the machinery or
2 equipment is unrelated to transportation on or
3 off the public highways,

4 “(B) which has been specially designed to
5 serve only as a mobile carriage and mount (and
6 a power source, where applicable) for the par-
7 ticular machinery or equipment involved, wheth-
8 er or not such machinery or equipment is in op-
9 eration, and

10 “(C) which, by reason of such special de-
11 sign, could not, without substantial structural
12 modification, be used as a component of a vehi-
13 cle designed to perform a function of trans-
14 porting any load other than that particular ma-
15 chinery or equipment or similar machinery or
16 equipment requiring such a specially designed
17 chassis.”.

18 (2) EFFECTIVE DATE.—The amendment made
19 by this subsection shall take effect on the day after
20 the date of the enactment of this Act.

21 (b) EXEMPTION FROM TAX ON USE OF CERTAIN VE-
22 HICLES.—

23 (1) IN GENERAL.—Section 4483 (relating to ex-
24 emptions) is amended by redesignating subsection

1 (g) as subsection (h) and by inserting after sub-
2 section (f) the following new subsection:

3 “(g) EXEMPTION FOR MOBILE MACHINERY.—No tax
4 shall be imposed by section 4481 on the use of any vehicle
5 described in section 4053(8).”.

6 (2) EFFECTIVE DATE.—The amendments made
7 by this subsection shall take effect on the day after
8 the date of the enactment of this Act.

9 (c) EXEMPTION FROM TAX ON TIRES.—

10 (1) IN GENERAL.—Section 4072(b)(2) is
11 amended by adding at the end the following flush
12 sentence: “Such term shall not include tires of a
13 type used exclusively on vehicles described in section
14 4053(8).”.

15 (2) EFFECTIVE DATE.—The amendment made
16 by this subsection shall take effect on the day after
17 the date of the enactment of this Act.

18 (d) REFUND OF FUEL TAXES.—

19 (1) IN GENERAL.—Section 6421(e)(2) (defining
20 off-highway business use) is amended by adding at
21 the end the following new subparagraph:

22 “(C) USES IN MOBILE MACHINERY.—

23 “(i) IN GENERAL.—The term ‘off-
24 highway business use’ shall include any use

1 in a vehicle which meets the requirements
2 described in clause (ii).

3 “(ii) REQUIREMENTS FOR MOBILE
4 MACHINERY.—The requirements described
5 in this clause are—

6 “(I) the design-based test, and

7 “(II) the use-based test.

8 “(iii) DESIGN-BASED TEST.—For pur-
9 poses of clause (ii)(I), the design-based
10 test is met if the vehicle consists of a chas-
11 sis—

12 “(I) to which there has been per-
13 manently mounted (by welding, bolt-
14 ing, riveting, or other means) machin-
15 ery or equipment to perform a con-
16 struction, manufacturing, processing,
17 farming, mining, drilling, timbering,
18 or similar operation if the operation of
19 the machinery or equipment is unre-
20 lated to transportation on or off the
21 public highways,

22 “(II) which has been specially de-
23 signed to serve only as a mobile car-
24 riage and mount (and a power source,
25 where applicable) for the particular

1 machinery or equipment involved,
2 whether or not such machinery or
3 equipment is in operation, and

4 “(III) which, by reason of such
5 special design, could not, without sub-
6 stantial structural modification, be
7 used as a component of a vehicle de-
8 signed to perform a function of trans-
9 porting any load other than that par-
10 ticular machinery or equipment or
11 similar machinery or equipment re-
12 quiring such a specially designed chas-
13 sis.

14 “(iv) USE-BASED TEST.—For pur-
15 poses of clause (ii)(II), the use-based test
16 is met if the use of the vehicle on public
17 highways was less than 7,500 miles during
18 the taxpayer’s taxable year.”.

19 (2) NO TAX-FREE SALES.—Subsection (b) of
20 section 4082, as amended by section 652, is amend-
21 ed by inserting before the period at the end “and
22 such term shall not include any use described in sec-
23 tion 6421(e)(2)(C)”.

1 (3) ANNUAL REFUND OF TAX PAID.—Section
2 6427(i)(2) (relating to exceptions) is amended by
3 adding at the end the following new subparagraph:

4 “(C) NONAPPLICATION OF PARAGRAPH.—

5 This paragraph shall not apply to any fuel used
6 solely in any off-highway business use described
7 in section 6421(e)(2)(C).”.

8 (4) EFFECTIVE DATE.—The amendments made
9 by this subsection shall apply to taxable years begin-
10 ning after the date of the enactment of this Act.

11 **SEC. 652. TAXATION OF AVIATION-GRADE KEROSENE.**

12 (a) RATE OF TAX.—

13 (1) IN GENERAL.—Subparagraph (A) of section
14 4081(a)(2) is amended by striking “and” at the end
15 of clause (ii), by striking the period at the end of
16 clause (iii) and inserting “, and”, and by adding at
17 the end the following new clause:

18 “(iv) in the case of aviation-grade ker-
19 osene, 21.8 cents per gallon.”.

20 (2) COMMERCIAL AVIATION.—Paragraph (2) of
21 section 4081(a) is amended by adding at the end the
22 following new subparagraph:

23 “(C) TAXES IMPOSED ON FUEL USED IN

24 COMMERCIAL AVIATION.—In the case of avia-
25 tion-grade kerosene which is removed from any

1 refinery or terminal directly into the fuel tank
2 of an aircraft for use in commercial aviation,
3 the rate of tax under subparagraph (A)(iv) shall
4 be 4.3 cents per gallon.”.

5 (3) CERTAIN REFUELER TRUCKS, TANKERS,
6 AND TANK WAGONS TREATED AS TERMINAL.—Sub-
7 section (a) of section 4081 is amended by adding at
8 the end the following new paragraph:

9 “(3) CERTAIN REFUELER TRUCKS, TANKERS,
10 AND TANK WAGONS TREATED AS TERMINAL.—

11 “(A) IN GENERAL.—In the case of avia-
12 tion-grade kerosene which is removed from any
13 terminal directly into the fuel tank of an air-
14 craft (determined without regard to any re-
15 fueler truck, tanker, or tank wagon which meets
16 the requirements of subparagraph (B)), a re-
17 fueler truck, tanker, or tank wagon shall be
18 treated as part of such terminal if—

19 “(i) such truck, tanker, or wagon
20 meets the requirements of subparagraph
21 (B) with respect to an airport, and

22 “(ii) except in the case of exigent cir-
23 cumstances identified by the Secretary in
24 regulations, no vehicle registered for high-

1 way use is loaded with aviation-grade ker-
2 osene at such terminal.

3 “(B) REQUIREMENTS.—A refueler truck,
4 tanker, or tank wagon meets the requirements
5 of this subparagraph with respect to an airport
6 if such truck, tanker, or wagon—

7 “(i) is loaded with aviation-grade ker-
8 osene at such terminal located within such
9 airport and delivers such kerosene only
10 into aircraft at such airport,

11 “(ii) has storage tanks, hose, and cou-
12 pling equipment designed and used for the
13 purposes of fueling aircraft,

14 “(iii) is not registered for highway
15 use, and

16 “(iv) is operated by—

17 “(I) the terminal operator of
18 such terminal, or

19 “(II) a person that makes a daily
20 accounting to such terminal operator
21 of each delivery of fuel from such
22 truck, tanker, or wagon.

23 “(C) REPORTING.—The Secretary shall re-
24 quire under section 4101(d) reporting by such
25 terminal operator of—

1 “(i) any information obtained under
2 subparagraph (B)(iv)(II), and

3 “(ii) any similar information main-
4 tained by such terminal operator with re-
5 spect to deliveries of fuel made by trucks,
6 tankers, or wagons operated by such ter-
7 minal operator.”.

8 (4) LIABILITY FOR TAX ON AVIATION-GRADE
9 KEROSENE USED IN COMMERCIAL AVIATION.—Sub-
10 section (a) of section 4081 is amended by adding at
11 the end the following new paragraph:

12 “(4) LIABILITY FOR TAX ON AVIATION-GRADE
13 KEROSENE USED IN COMMERCIAL AVIATION.—For
14 purposes of paragraph (2)(C), the person who uses
15 the fuel for commercial aviation shall pay the tax
16 imposed under such paragraph. For purposes of the
17 preceding sentence, fuel shall be treated as used
18 when such fuel is removed into the fuel tank.”.

19 (5) NONTAXABLE USES.—

20 (A) IN GENERAL.—Section 4082 is amend-
21 ed by redesignating subsections (e) and (f) as
22 subsections (f) and (g), respectively, and by in-
23 serting after subsection (d) the following new
24 subsection:

1 “(e) AVIATION-GRADE KEROSENE.—In the case of
2 aviation-grade kerosene which is exempt from the tax im-
3 posed by section 4041(c) (other than by reason of a prior
4 imposition of tax) and which is removed from any refinery
5 or terminal directly into the fuel tank of an aircraft, the
6 rate of tax under section 4081(a)(2)(A)(iv) shall be zero.”.

7 (B) CONFORMING AMENDMENTS.—

8 (i) Subsection (b) of section 4082 is
9 amended by adding at the end the fol-
10 lowing new flush sentence:

11 “The term ‘nontaxable use’ does not include the use of
12 aviation-grade kerosene in an aircraft.”.

13 (ii) Section 4082(d) is amended by
14 striking paragraph (1) and by redesign-
15 ating paragraphs (2) and (3) as para-
16 graphs (1) and (2), respectively.

17 (6) NONAIRCRAFT USE OF AVIATION-GRADE
18 KEROSENE.—

19 (A) IN GENERAL.—Subparagraph (B) of
20 section 4041(a)(1) is amended by adding at the
21 end the following new sentence: “This subpara-
22 graph shall not apply to aviation-grade ker-
23 osene.”.

24 (B) CONFORMING AMENDMENT.—The
25 heading for paragraph (1) of section 4041(a) is

1 amended by inserting “AND KEROSENE” after
2 “DIESEL FUEL”.

3 (b) COMMERCIAL AVIATION.—Section 4083 is
4 amended by redesignating subsections (b) and (c) as sub-
5 sections (c) and (d), respectively, and by inserting after
6 subsection (a) the following new subsection:

7 “(b) COMMERCIAL AVIATION.—For purposes of this
8 subpart, the term ‘commercial aviation’ means any use of
9 an aircraft in a business of transporting persons or prop-
10 erty for compensation or hire by air, unless properly allo-
11 cable to any transportation exempt from the taxes imposed
12 by sections 4261 and 4271 by reason of section 4281 or
13 4282 or by reason of section 4261(h).”.

14 (c) REFUNDS.—

15 (1) IN GENERAL.—Paragraph (4) of section
16 6427(l) is amended to read as follows:

17 “(4) REFUNDS FOR AVIATION-GRADE KER-
18 OSENE.—

19 “(A) NO REFUND OF CERTAIN TAXES ON
20 FUEL USED IN COMMERCIAL AVIATION.—In the
21 case of aviation-grade kerosene used in com-
22 mercial aviation (as defined in section 4083(b))
23 (other than supplies for vessels or aircraft with-
24 in the meaning of section 4221(d)(3)), para-

1 graph (1) shall not apply to so much of the tax
2 imposed by section 4081 as is attributable to—

3 “(i) the Leaking Underground Stor-
4 age Tank Trust Fund financing rate im-
5 posed by such section, and

6 “(ii) so much of the rate of tax speci-
7 fied in section 4081(a)(2)(A)(iv) as does
8 not exceed 4.3 cents per gallon.

9 “(B) PAYMENT TO ULTIMATE, REG-
10 ISTERED VENDOR.—With respect to aviation-
11 grade kerosene, if the ultimate purchaser of
12 such kerosene waives (at such time and in such
13 form and manner as the Secretary shall pre-
14 scribe) the right to payment under paragraph
15 (1) and assigns such right to the ultimate ven-
16 dor, then the Secretary shall pay the amount
17 which would be paid under paragraph (1) to
18 such ultimate vendor, but only if such ultimate
19 vendor—

20 “(i) is registered under section 4101,

21 and

22 “(ii) meets the requirements of sub-
23 paragraph (A), (B), or (D) of section
24 6416(a)(1).”.

1 (2) TIME FOR FILING CLAIMS.—Subparagraph
2 (A) of section 6427(i)(4) is amended—

3 (A) by striking “subsection (l)(5)” both
4 places it appears and inserting “paragraph
5 (4)(B) or (5) of subsection (l)”, and

6 (B) by striking “the preceding sentence”
7 and inserting “subsection (l)(5)”.

8 (3) CONFORMING AMENDMENT.—Subparagraph
9 (B) of section 6427(l)(2) is amended to read as fol-
10 lows:

11 “(B) in the case of aviation-grade ker-
12 osene—

13 “(i) any use which is exempt from the
14 tax imposed by section 4041(c) other than
15 by reason of a prior imposition of tax, or

16 “(ii) any use in commercial aviation
17 (within the meaning of section 4083(b)).”.

18 (d) REPEAL OF PRIOR TAXATION OF AVIATION
19 FUEL.—

20 (1) IN GENERAL.—Part III of subchapter A of
21 chapter 32 is amended by striking subpart B and by
22 redesignating subpart C as subpart B.

23 (2) CONFORMING AMENDMENTS.—

24 (A) Section 4041(c) is amended to read as
25 follows:

1 “(c) AVIATION-GRADE KEROSENE.—

2 “(1) IN GENERAL.—There is hereby imposed a
3 tax upon aviation-grade kerosene—

4 “(A) sold by any person to an owner, les-
5 see, or other operator of an aircraft for use in
6 such aircraft, or

7 “(B) used by any person in an aircraft un-
8 less there was a taxable sale of such fuel under
9 subparagraph (A).

10 “(2) EXEMPTION FOR PREVIOUSLY TAXED
11 FUEL.—No tax shall be imposed by this subsection
12 on the sale or use of any aviation-grade kerosene if
13 tax was imposed on such liquid under section 4081
14 and the tax thereon was not credited or refunded.

15 “(3) RATE OF TAX.—The rate of tax imposed
16 by this subsection shall be the rate of tax specified
17 in section 4081(a)(2)(A)(iv) which is in effect at the
18 time of such sale or use.”.

19 (B) Section 4041(d)(2) is amended by
20 striking “section 4091” and inserting “section
21 4081”.

22 (C) Section 4041 is amended by striking
23 subsection (e).

24 (D) Section 4041 is amended by striking
25 subsection (i).

1 (E) Sections 4101(a), 4103, 4221(a), and
2 6206 are each amended by striking “, 4081, or
3 4091” and inserting “or 4081”.

4 (F) Section 6416(b)(2) is amended by
5 striking “4091 or”.

6 (G) Section 6416(b)(3) is amended by
7 striking “or 4091” each place it appears.

8 (H) Section 6416(d) is amended by strik-
9 ing “or to the tax imposed by section 4091 in
10 the case of refunds described in section
11 4091(d)”.

12 (I) Section 6427(j)(1) is amended by strik-
13 ing “, 4081, and 4091” and inserting “and
14 4081”.

15 (J)(i) Section 6427(l)(1) is amended to
16 read as follows:

17 “(1) IN GENERAL.—Except as otherwise pro-
18 vided in this subsection and in subsection (k), if any
19 diesel fuel or kerosene on which tax has been im-
20 posed by section 4041 or 4081 is used by any person
21 in a nontaxable use, the Secretary shall pay (without
22 interest) to the ultimate purchaser of such fuel an
23 amount equal to the aggregate amount of tax im-
24 posed on such fuel under section 4041 or 4081, as

1 the case may be, reduced by any payment made to
2 the ultimate vendor under paragraph (4)(B).”.

3 (ii) Paragraph (5)(B) of section 6427(l) is
4 amended by striking “Paragraph (1)(A) shall
5 not apply to kerosene” and inserting “Para-
6 graph (1) shall not apply to kerosene (other
7 than aviation-grade kerosene)”.

8 (K) Subparagraph (B) of section
9 6724(d)(1) is amended by striking clause (xv)
10 and by redesignating the succeeding clauses ac-
11 cordingly.

12 (L) Paragraph (2) of section 6724(d) is
13 amended by striking subparagraph (W) and by
14 redesignating the succeeding subparagraphs ac-
15 cordingly.

16 (M) Paragraph (1) of section 9502(b) is
17 amended by adding “and” at the end of sub-
18 paragraph (B) and by striking subparagraphs
19 (C) and (D) and inserting the following new
20 subparagraph:

21 “(C) section 4081 with respect to aviation
22 gasoline and aviation-grade kerosene, and”.

23 (N) The last sentence of section 9502(b) is
24 amended to read as follows:

1 “There shall not be taken into account under paragraph
2 (1) so much of the taxes imposed by section 4081 as are
3 determined at the rate specified in section
4 4081(a)(2)(B).”.

5 (O) Subsection (b) of section 9508 is
6 amended by striking paragraph (3) and by re-
7 designating paragraphs (4) and (5) as para-
8 graphs (3) and (4), respectively.

9 (P) Section 9508(c)(2)(A) is amended by
10 striking “sections 4081 and 4091” and insert-
11 ing “section 4081”.

12 (Q) The table of subparts for part III of
13 subchapter A of chapter 32 is amended to read
14 as follows:

“Subpart A. Motor and aviation fuels.

“Subpart B. Special provisions applicable to fuels tax.”.

15 (R) The heading for subpart A of part III
16 of subchapter A of chapter 32 is amended to
17 read as follows:

18 **“Subpart A—Motor and Aviation Fuels”.**

19 (S) The heading for subpart B of part III
20 of subchapter A of chapter 32, as redesignated
21 by paragraph (1), is amended to read as fol-
22 lows:

1 retary of the Treasury (or the Secretary's dele-
2 gate) shall prescribe, including the nonapplica-
3 tion of such tax on de minimis amounts of ker-
4 osene.

5 (3) TRANSFER OF FLOOR STOCK TAX REVE-
6 NUES TO TRUST FUNDS.—For purposes of deter-
7 mining the amount transferred to any trust fund,
8 the tax imposed by this subsection shall be treated
9 as imposed by section 4081 of the Internal Revenue
10 Code of 1986—

11 (A) at the Leaking Underground Storage
12 Tank Trust Fund financing rate under such
13 section to the extent of 0.1 cents per gallon,
14 and

15 (B) at the rate under section
16 4081(a)(2)(A)(iv) to the extent of the remain-
17 der.

18 (4) HELD BY A PERSON.—For purposes of this
19 section, kerosene shall be considered as held by a
20 person if title thereto has passed to such person
21 (whether or not delivery to the person has been
22 made).

23 (5) OTHER LAWS APPLICABLE.—All provisions
24 of law, including penalties, applicable with respect to
25 the tax imposed by section 4081 of such Code shall,

1 insofar as applicable and not inconsistent with the
2 provisions of this subsection, apply with respect to
3 the floor stock tax imposed by paragraph (1) to the
4 same extent as if such tax were imposed by such
5 section.

6 **SEC. 653. DYE INJECTION EQUIPMENT.**

7 (a) IN GENERAL.—Section 4082(a)(2) (relating to
8 exemptions for diesel fuel and kerosene) is amended by
9 inserting “by mechanical injection” after “indelibly dyed”.

10 (b) DYE INJECTOR SECURITY.—Not later than 180
11 days after the date of the enactment of this Act, the Sec-
12 retary of the Treasury shall issue regulations regarding
13 mechanical dye injection systems described in the amend-
14 ment made by subsection (a), and such regulations shall
15 include standards for making such systems tamper resist-
16 ant.

17 (c) PENALTY FOR TAMPERING WITH OR FAILING TO
18 MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL
19 DYE INJECTION SYSTEMS.—

20 (1) IN GENERAL.—Part I of subchapter B of
21 chapter 68 (relating to assessable penalties) is
22 amended by adding after section 6715 the following
23 new section:

1 **“SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN**
2 **SECURITY REQUIREMENTS FOR MECHAN-**
3 **ICAL DYE INJECTION SYSTEMS.**

4 “(a) IMPOSITION OF PENALTY—

5 “(1) TAMPERING.—If any person tampers with
6 a mechanical dye injection system used to indelibly
7 dye fuel for purposes of section 4082, such person
8 shall pay a penalty in addition to the tax (if any).

9 “(2) FAILURE TO MAINTAIN SECURITY RE-
10 QUIREMENTS.—If any operator of a mechanical dye
11 injection system used to indelibly dye fuel for pur-
12 poses of section 4082 fails to maintain the security
13 standards for such system as established by the Sec-
14 retary, then such operator shall pay a penalty in ad-
15 dition to the tax (if any).

16 “(b) AMOUNT OF PENALTY.—The amount of the
17 penalty under subsection (a) shall be—

18 “(1) for each violation described in paragraph
19 (1), the greater of—

20 “(A) \$25,000, or

21 “(B) \$10 for each gallon of fuel involved,
22 and

23 “(2) for each—

24 “(A) failure to maintain security standards
25 described in paragraph (2), \$1,000, and

1 after the date on which the Secretary issues the regula-
2 tions described in subsection (b).

3 **SEC. 654. AUTHORITY TO INSPECT ON-SITE RECORDS.**

4 (a) IN GENERAL.—Section 4083(d)(1)(A) (relating
5 to administrative authority), as previously amended by
6 this Act, is amended by striking “and” at the end of clause
7 (i) and by inserting after clause (ii) the following new
8 clause:

9 “(iii) inspecting any books and
10 records and any shipping papers pertaining
11 to such fuel, and”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on the date of the enactment
14 of this Act.

15 **SEC. 655. REGISTRATION OF PIPELINE OR VESSEL OPERA-**
16 **TORS REQUIRED FOR EXEMPTION OF BULK**
17 **TRANSFERS TO REGISTERED TERMINALS OR**
18 **REFINERIES.**

19 (a) IN GENERAL.—Section 4081(a)(1)(B) (relating
20 to exemption for bulk transfers to registered terminals or
21 refineries) is amended—

22 (1) by inserting “by pipeline or vessel” after
23 “transferred in bulk”, and

24 (2) by inserting “, the operator of such pipeline
25 or vessel,” after “the taxable fuel”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on October 1, 2004.

3 (c) PUBLICATION OF REGISTERED PERSONS.—Be-
4 ginning on July 1, 2004, the Secretary of the Treasury
5 (or the Secretary’s delegate) shall periodically publish a
6 current list of persons registered under section 4101 of
7 the Internal Revenue Code of 1986 who are required to
8 register under such section.

9 **SEC. 656. DISPLAY OF REGISTRATION.**

10 (a) IN GENERAL.—Subsection (a) of section 4101
11 (relating to registration) is amended—

12 (1) by striking “Every” and inserting the fol-
13 lowing:

14 “(1) IN GENERAL.—Every”, and

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

17 “(2) DISPLAY OF REGISTRATION.—Every oper-
18 ator of a vessel required by the Secretary to register
19 under this section shall display proof of registration
20 through an electronic identification device prescribed
21 by the Secretary on each vessel used by such oper-
22 ator to transport any taxable fuel.”.

23 (b) CIVIL PENALTY FOR FAILURE TO DISPLAY REG-
24 ISTRATION.—

1 (1) IN GENERAL.—Part I of subchapter B of
2 chapter 68 (relating to assessable penalties) is
3 amended by inserting after section 6716 the fol-
4 lowing new section:

5 **“SEC. 6717. FAILURE TO DISPLAY TAX REGISTRATION ON**
6 **VESSELS.**

7 “(a) FAILURE TO DISPLAY REGISTRATION.—Every
8 operator of a vessel who fails to display proof of registra-
9 tion pursuant to section 4101(a)(2) shall pay a penalty
10 of \$500 for each such failure. With respect to any vessel,
11 only one penalty shall be imposed by this section during
12 any calendar month.

13 “(b) MULTIPLE VIOLATIONS.—In determining the
14 penalty under subsection (a) on any person, subsection (a)
15 shall be applied by increasing the amount in subsection
16 (a) by the product of such amount and the aggregate num-
17 ber of penalties (if any) imposed with respect to prior
18 months by this section on such person (or a related person
19 or any predecessor of such person or related person).

20 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
21 shall be imposed under this section with respect to any
22 failure if it is shown that such failure is due to reasonable
23 cause.”.

24 (2) CLERICAL AMENDMENT.—The table of sec-
25 tions for part I of subchapter B of chapter 68 is

1 amended by inserting after the item relating to sec-
2 tion 6716 the following new item:

“Sec. 6717. Failure to display tax registration on vessels.”.

3 (c) EFFECTIVE DATES.—

4 (1) SUBSECTION (a).—The amendments made
5 by subsection (a) shall take effect on October 1,
6 2004.

7 (2) SUBSECTION (b).—The amendments made
8 by subsection (b) shall apply to penalties imposed
9 after September 30, 2004.

10 **SEC. 657. PENALTIES FOR FAILURE TO REGISTER AND**
11 **FAILURE TO REPORT.**

12 (a) INCREASED PENALTY.—Subsection (a) of section
13 7272 (relating to penalty for failure to register) is amend-
14 ed by inserting “(\$10,000 in the case of a failure to reg-
15 ister under section 4101)” after “\$50”.

16 (b) INCREASED CRIMINAL PENALTY.—Section 7232
17 (relating to failure to register under section 4101, false
18 representations of registration status, etc.) is amended by
19 striking “\$5,000” and inserting “\$10,000”.

20 (c) ASSESSABLE PENALTY FOR FAILURE TO REG-
21 ISTER.—

22 (1) IN GENERAL.—Part I of subchapter B of
23 chapter 68 (relating to assessable penalties) is
24 amended by inserting after section 6717 the fol-
25 lowing new section:

1 **“SEC. 6718. FAILURE TO REGISTER.**

2 “(a) **FAILURE TO REGISTER.**—Every person who is
3 required to register under section 4101 and fails to do
4 so shall pay a penalty in addition to the tax (if any).

5 “(b) **AMOUNT OF PENALTY.**—The amount of the
6 penalty under subsection (a) shall be—

7 “(1) \$10,000 for each initial failure to register,
8 and

9 “(2) \$1,000 for each day thereafter such person
10 fails to register.

11 “(c) **REASONABLE CAUSE EXCEPTION.**—No penalty
12 shall be imposed under this section with respect to any
13 failure if it is shown that such failure is due to reasonable
14 cause.”.

15 (2) **CLERICAL AMENDMENT.**—The table of sec-
16 tions for part I of subchapter B of chapter 68 is
17 amended by inserting after the item relating to sec-
18 tion 6717 the following new item:

 “Sec. 6718. Failure to register.”.

19 (d) **ASSESSABLE PENALTY FOR FAILURE TO RE-**
20 **PORT.**—

21 (1) **IN GENERAL.**—Part II of subchapter B of
22 chapter 68 (relating to assessable penalties) is
23 amended by adding at the end the following new sec-
24 tion:

1 **“SEC. 6725. FAILURE TO REPORT INFORMATION UNDER**
2 **SECTION 4101.**

3 “(a) IN GENERAL.—In the case of each failure de-
4 scribed in subsection (b) by any person with respect to
5 a vessel or facility, such person shall pay a penalty of
6 \$10,000 in addition to the tax (if any).

7 “(b) FAILURES SUBJECT TO PENALTY.—For pur-
8 poses of subsection (a), the failures described in this sub-
9 section are—

10 “(1) any failure to make a report under section
11 4101(d) on or before the date prescribed therefor,
12 and

13 “(2) any failure to include all of the informa-
14 tion required to be shown on such report or the in-
15 clusion of incorrect information.

16 “(c) REASONABLE CAUSE EXCEPTION.—No penalty
17 shall be imposed under this section with respect to any
18 failure if it is shown that such failure is due to reasonable
19 cause.”.

20 (2) CLERICAL AMENDMENT.—The table of sec-
21 tions for part II of subchapter B of chapter 68 is
22 amended by adding at the end the following new
23 item:

“Sec. 6725. Failure to report information under section 4101.”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to penalties imposed after Sep-
3 tember 30, 2004.

4 **SEC. 658. COLLECTION FROM CUSTOMS BOND WHERE IM-
5 PORTER NOT REGISTERED.**

6 (a) TAX AT POINT OF ENTRY WHERE IMPORTER
7 NOT REGISTERED.—Subpart B of part III of subchapter
8 A of chapter 32, as redesignated by section 652(d), is
9 amended by adding after section 4103 the following new
10 section:

11 **“SEC. 4104. COLLECTION FROM CUSTOMS BOND WHERE IM-
12 PORTER NOT REGISTERED.**

13 “(a) IN GENERAL.—The importer of record shall be
14 jointly and severally liable for the tax imposed by section
15 4081(a)(1)(A)(iii) if, under regulations prescribed by the
16 Secretary, any other person that is not a person who is
17 registered under section 4101 is liable for such tax.

18 “(b) COLLECTION FROM CUSTOMS BOND.—If any
19 tax for which any importer of record is liable under sub-
20 section (a), or for which any importer of record that is
21 not a person registered under section 4101 is otherwise
22 liable, is not paid on or before the last date prescribed
23 for payment, the Secretary may collect such tax from the
24 Customs bond posted with respect to the importation of
25 the taxable fuel to which the tax relates. For purposes of

1 determining the jurisdiction of any court of the United
2 States or any agency of the United States, any action by
3 the Secretary described in the preceding sentence shall be
4 treated as an action to collect the tax from a bond de-
5 scribed in section 4101(b)(1) and not as an action to col-
6 lect from a bond relating to the importation of merchan-
7 dise.”.

8 (b) CONFORMING AMENDMENT.—The table of sec-
9 tions for subpart B of part III of subchapter A of chapter
10 32, as redesignated by section 652(d), is amended by add-
11 ing after the item related to section 4103 the following
12 new item:

“Sec. 4104. Collection from Customs bond where importer not
registered.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply with respect to fuel entered after
15 September 30, 2004.

16 **SEC. 659. MODIFICATIONS OF TAX ON USE OF CERTAIN VE-**
17 **HICLES.**

18 (a) PRORATION OF TAX WHERE VEHICLE SOLD.—

19 (1) IN GENERAL.—Subparagraph (A) of section
20 4481(e)(2) (relating to where vehicle destroyed or
21 stolen) is amended by striking “destroyed or stolen”
22 both places it appears and inserting “sold, de-
23 stroyed, or stolen”.

1 (2) CONFORMING AMENDMENT.—The heading
2 for section 4481(c)(2) is amended by striking “DE-
3 STROYED OR STOLEN” and inserting “SOLD, DE-
4 STROYED, OR STOLEN”.

5 (b) REPEAL OF INSTALLMENT PAYMENT.—

6 (1) Section 6156 (relating to installment pay-
7 ment of tax on use of highway motor vehicles) is re-
8 pealed.

9 (2) The table of sections for subchapter A of
10 chapter 62 is amended by striking the item relating
11 to section 6156.

12 (c) ELECTRONIC FILING.—Section 4481 is amended
13 by redesignating subsection (e) as subsection (f) and by
14 inserting after subsection (d) the following new subsection:

15 “(e) ELECTRONIC FILING.—Any taxpayer who files
16 a return under this section with respect to 25 or more
17 vehicles for any taxable period shall file such return elec-
18 tronically.”.

19 (d) REPEAL OF REDUCTION IN TAX FOR CERTAIN
20 TRUCKS.—Section 4483 is amended by striking subsection
21 (f).

22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable periods beginning after
24 the date of the enactment of this Act.

1 **SEC. 660. MODIFICATION OF ULTIMATE VENDOR REFUND**
2 **CLAIMS WITH RESPECT TO FARMING.**

3 (a) IN GENERAL.—

4 (1) REFUNDS.—Section 6427(l) is amended by
5 adding at the end the following new paragraph:

6 “(6) REGISTERED VENDORS PERMITTED TO AD-
7 MINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL
8 FUEL AND KEROSENE SOLD TO FARMERS.—

9 “(A) IN GENERAL.—In the case of diesel
10 fuel or kerosene used on a farm for farming
11 purposes (within the meaning of section
12 6420(c)), paragraph (1) shall not apply to the
13 aggregate amount of such diesel fuel or ker-
14 osene if such amount does not exceed 250 gal-
15 lons (as determined under subsection
16 (i)(5)(A)(iii)).

17 “(B) PAYMENT TO ULTIMATE VENDOR.—
18 The amount which would (but for subparagraph
19 (A)) have been paid under paragraph (1) with
20 respect to any fuel shall be paid to the ultimate
21 vendor of such fuel, if such vendor—

22 “(i) is registered under section 4101,
23 and

24 “(ii) meets the requirements of sub-
25 paragraph (A), (B), or (D) of section
26 6416(a)(1).”.

1 (2) FILING OF CLAIMS.—Section 6427(i) is
2 amended by inserting at the end the following new
3 paragraph:

4 “(5) SPECIAL RULE FOR VENDOR REFUNDS
5 WITH RESPECT TO FARMERS.—

6 “(A) IN GENERAL.—A claim may be filed
7 under subsection (l)(6) by any person with re-
8 spect to fuel sold by such person for any pe-
9 riod—

10 “(i) for which \$200 or more (\$100 or
11 more in the case of kerosene) is payable
12 under subsection (l)(6),

13 “(ii) which is not less than 1 week,
14 and

15 “(iii) which is for not more than 250
16 gallons for each farmer for which there is
17 a claim.

18 Notwithstanding subsection (l)(1), paragraph
19 (3)(B) shall apply to claims filed under the pre-
20 ceding sentence.

21 “(B) TIME FOR FILING CLAIM.—No claim
22 filed under this paragraph shall be allowed un-
23 less filed on or before the last day of the first
24 quarter following the earliest quarter included
25 in the claim.”.

1 (3) CONFORMING AMENDMENTS.—

2 (A) Section 6427(l)(5)(A) is amended to
3 read as follows:

4 “(A) IN GENERAL.—Paragraph (1) shall
5 not apply to diesel fuel or kerosene used by a
6 State or local government.”.

7 (B) The heading for section 6427(l)(5) is
8 amended by striking “FARMERS AND”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to fuels sold for nontaxable use
11 after the date of the enactment of this Act.

12 **SEC. 661. DEDICATION OF REVENUES FROM CERTAIN PEN-**
13 **ALTIES TO THE HIGHWAY TRUST FUND.**

14 (a) IN GENERAL.—Subsection (b) of section 9503
15 (relating to transfer to Highway Trust Fund of amounts
16 equivalent to certain taxes) is amended by redesignating
17 paragraph (5) as paragraph (6) and inserting after para-
18 graph (4) the following new paragraph:

19 “(5) CERTAIN PENALTIES.—There are hereby
20 appropriated to the Highway Trust Fund amounts
21 equivalent to the penalties paid under sections 6715,
22 6715A, 6717, 6718, 6725, 7232, and 7272 (but only
23 with regard to penalties under such section related
24 to failure to register under section 4101).”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) The heading of subsection (b) of section
2 9503 is amended by inserting “AND PENALTIES”
3 after “TAXES”.

4 (2) The heading of paragraph (1) of section
5 9503(b) is amended by striking “IN GENERAL” and
6 inserting “CERTAIN TAXES”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to penalties assessed after October
9 1, 2004.

10 **SEC. 662. TAXABLE FUEL REFUNDS FOR CERTAIN ULTI-**
11 **MATE VENDORS.**

12 (a) IN GENERAL.—Paragraph (4) of section 6416(a)
13 (relating to abatements, credits, and refunds) is amended
14 to read as follows:

15 “(4) REGISTERED ULTIMATE VENDOR TO AD-
16 MINISTER CREDITS AND REFUNDS OF GASOLINE
17 TAX.—

18 “(A) IN GENERAL.—For purposes of this
19 subsection, if an ultimate vendor purchases any
20 gasoline on which tax imposed by section 4081
21 has been paid and sells such gasoline to an ulti-
22 mate purchaser described in subparagraph (C)
23 or (D) of subsection (b)(2) (and such gasoline
24 is for a use described in such subparagraph),
25 such ultimate vendor shall be treated as the

1 person (and the only person) who paid such tax,
2 but only if such ultimate vendor is registered
3 under section 4101. For purposes of this sub-
4 paragraph, if the sale of gasoline is made by
5 means of a credit card, the person extending
6 the credit to the ultimate purchaser shall be
7 deemed to be the ultimate vendor.

8 “(B) TIMING OF CLAIMS.—The procedure
9 and timing of any claim under subparagraph
10 (A) shall be the same as for claims under sec-
11 tion 6427(i)(4), except that the rules of section
12 6427(i)(3)(B) regarding electronic claims shall
13 not apply unless the ultimate vendor has cer-
14 tified to the Secretary for the most recent quar-
15 ter of the taxable year that all ultimate pur-
16 chasers of the vendor covered by such claim are
17 certified and entitled to a refund under sub-
18 paragraph (C) or (D) of subsection (b)(2).”.

19 (b) CREDIT CARD PURCHASES OF DIESEL FUEL OR
20 KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Sec-
21 tion 6427(l)(5)(C) (relating to nontaxable uses of diesel
22 fuel, kerosene, and aviation fuel) is amended by adding
23 at the end the following new flush sentence: “For purposes
24 of this subparagraph, if the sale of diesel fuel or kerosene
25 is made by means of a credit card, the person extending

1 the credit to the ultimate purchaser shall be deemed to
2 be the ultimate vendor.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on October 1, 2004.

5 **SEC. 663. TWO-PARTY EXCHANGES.**

6 (a) IN GENERAL.—Subpart B of part III of sub-
7 chapter A of chapter 32, as amended by this Act, is
8 amended by adding after section 4104 the following new
9 section:

10 **“SEC. 4105. TWO-PARTY EXCHANGES.**

11 “(a) IN GENERAL.—In a two-party exchange, the de-
12 livering person shall not be liable for the tax imposed
13 under section 4081(a)(1)(A)(ii).

14 “(b) TWO-PARTY EXCHANGE.—The term ‘two-party
15 exchange’ means a transaction, other than a sale, in which
16 taxable fuel is transferred from a delivering person reg-
17 istered under section 4101 as a taxable fuel registrant fuel
18 to a receiving person who is so registered where all of the
19 following occur:

20 “(1) The transaction includes a transfer from
21 the delivering person, who holds the inventory posi-
22 tion for taxable fuel in the terminal as reflected in
23 the records of the terminal operator.

1 “(2) The exchange transaction occurs before or
2 contemporaneous with completion of removal across
3 the rack from the terminal by the receiving person.

4 “(3) The terminal operator in its books and
5 records treats the receiving person as the person
6 that removes the taxable fuel across the terminal
7 rack for purposes of reporting the transaction to the
8 Secretary.

9 “(4) The transaction is the subject of a written
10 contract.”.

11 (b) CONFORMING AMENDMENT.—The table of sec-
12 tions for subpart B of part III of subchapter A of chapter
13 32, as amended by this Act, is amended by adding after
14 the item relating to section 4104 the following new item:

 “Sec. 4105. Two-party exchanges.”.

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

18 **SEC. 664. SIMPLIFICATION OF TAX ON TIRES.**

19 (a) IN GENERAL.—Subsection (a) of section 4071 is
20 amended to read as follows:

21 “(a) IMPOSITION AND RATE OF TAX.—There is here-
22 by imposed on taxable tires sold by the manufacturer, pro-
23 ducer, or importer thereof a tax at the rate of 9.4 cents
24 (4.7 cents in the case of a biasply tire) for each 10 pounds

1 so much of the maximum rated load capacity thereof as
2 exceeds 3,500 pounds.”

3 (b) TAXABLE TIRE.—Section 4072 is amended by re-
4 designating subsections (a) and (b) as subsections (b) and
5 (c), respectively, and by inserting before subsection (b) (as
6 so redesignated) the following new subsection:

7 “(a) TAXABLE TIRE.—For purposes of this chapter,
8 the term ‘taxable tire’ means any tire of the type used
9 on highway vehicles if wholly or in part made of rubber
10 and if marked pursuant to Federal regulations for high-
11 way use.”

12 (c) EXEMPTION FOR TIRES SOLD TO DEPARTMENT
13 OF DEFENSE.—Section 4073 is amended to read as fol-
14 lows:

15 **“SEC. 4073. EXEMPTIONS.**

16 “The tax imposed by section 4071 shall not apply to
17 tires sold for the exclusive use of the Department of De-
18 fense or the Coast Guard.”

19 (d) CONFORMING AMENDMENTS.—

20 (1) Section 4071 is amended by striking sub-
21 section (c) and by moving subsection (e) after sub-
22 section (b) and redesignating subsection (e) as sub-
23 section (c).

1 (2) The item relating to section 4073 in the
2 table of sections for part II of subchapter A of chap-
3 ter 32 is amended to read as follows:

“Sec. 4073. Exemptions.”

4 (e) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to sales in calendar years begin-
6 ning more than 30 days after the date of the enactment
7 of this Act.

8 **Subtitle D—Nonqualified Deferred** 9 **Compensation Plans**

10 **SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COM-** 11 **PENSATION PLANS.**

12 (a) IN GENERAL.—Subpart A of part I of subchapter
13 D of chapter 1 is amended by adding at the end the fol-
14 lowing new section:

15 **“SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED** 16 **COMPENSATION UNDER NONQUALIFIED DE-** 17 **FERRED COMPENSATION PLANS.**

18 “(a) RULES RELATING TO CONSTRUCTIVE RE-
19 CEIPT.—

20 “(1) IN GENERAL.—

21 “(A) GROSS INCOME INCLUSION.—In the
22 case of a nonqualified deferred compensation
23 plan, all compensation deferred under the plan
24 for all taxable years (to the extent not subject
25 to a substantial risk of forfeiture and not pre-

1 viously included in gross income) shall be in-
2 cludible in gross income for the taxable year
3 unless at all times during the taxable year the
4 plan meets the requirements of paragraphs (2),
5 (3), and (4) and is operated in accordance with
6 such requirements.

7 “(B) INTEREST ON TAX LIABILITY PAY-
8 ABLE WITH RESPECT TO PREVIOUSLY DE-
9 FERRED COMPENSATION.—

10 “(i) IN GENERAL.—If compensation is
11 required to be included in gross income
12 under subparagraph (A) for a taxable year,
13 the tax imposed by this chapter for such
14 taxable year shall be increased by the
15 amount of interest determined under
16 clause (ii).

17 “(ii) INTEREST.—For purposes of
18 clause (i), the interest determined under
19 this clause for any taxable year is the
20 amount of interest at the underpayment
21 rate plus 1 percentage point on the under-
22 payments that would have occurred had
23 the deferred compensation been includible
24 in gross income for the taxable year in
25 which first deferred or, if later, the first

1 taxable year in which such deferred com-
2 pensation is not subject to a substantial
3 risk of forfeiture.

4 “(2) DISTRIBUTIONS.—

5 “(A) IN GENERAL.—The requirements of
6 this paragraph are met if the plan provides that
7 compensation deferred under the plan may not
8 be distributed earlier than—

9 “(i) separation from service as deter-
10 mined by the Secretary (except as provided
11 in subparagraph (B)(i)),

12 “(ii) the date the participant becomes
13 disabled (within the meaning of subpara-
14 graph (C)),

15 “(iii) death,

16 “(iv) a specified time (or pursuant to
17 a fixed schedule) specified under the plan
18 at the date of the deferral of such com-
19 pensation,

20 “(v) to the extent provided by the
21 Secretary, a change in the ownership or ef-
22 fective control of the corporation, or in the
23 ownership of a substantial portion of the
24 assets of the corporation, or

1 “(vi) the occurrence of an unforesee-
2 able emergency.

3 “(B) SPECIAL RULES.—

4 “(i) SPECIFIED EMPLOYEES.—In the
5 case of specified employees, the require-
6 ment of subparagraph (A)(i) is met only if
7 distributions may not be made earlier than
8 6 months after the date of separation from
9 service. For purposes of the preceding sen-
10 tence, a specified employee is a key em-
11 ployee (as defined in section 416(i)) of a
12 corporation the stock in which is publicly
13 traded on an established securities market
14 or otherwise.

15 “(ii) UNFORESEEABLE EMER-
16 GENCY.—For purposes of subparagraph
17 (A)(vi)—

18 “(I) IN GENERAL.—The term
19 ‘unforeseeable emergency’ means a se-
20 vere financial hardship to the partici-
21 pant resulting from a sudden and un-
22 expected illness or accident of the par-
23 ticipant, the participant’s spouse, or a
24 dependent (as defined in section
25 152(a)) of the participant, loss of the

1 participant's property due to casualty,
2 or other similar extraordinary and un-
3 foreseeable circumstances arising as a
4 result of events beyond the control of
5 the participant.

6 “(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subpara-
7 graph (A)(vi) is met only if, as deter-
8 mined under regulations of the Sec-
9 retary, the amounts distributed with
10 respect to an emergency do not exceed
11 the amounts necessary to satisfy such
12 emergency plus amounts necessary to
13 pay taxes reasonably anticipated as a
14 result of the distribution, after taking
15 into account the extent to which such
16 hardship is or may be relieved
17 through reimbursement or compensa-
18 tion by insurance or otherwise or by
19 liquidation of the participant's assets
20 (to the extent the liquidation of such
21 assets would not itself cause severe fi-
22 nancial hardship).
23

1 “(C) DISABLED.—For purposes of sub-
2 paragraph (A)(ii), a participant shall be consid-
3 ered disabled if the participant—

4 “(i) is unable to engage in any sub-
5 stantial gainful activity by reason of any
6 medically determinable physical or mental
7 impairment which can be expected to result
8 in death or can be expected to last for a
9 continuous period of not less than 12
10 months, or

11 “(ii) is, by reason of any medically de-
12 terminable physical or mental impairment
13 which can be expected to result in death or
14 can be expected to last for a continuous
15 period of not less than 12 months, receiv-
16 ing income replacement benefits for a pe-
17 riod of not less than 3 months under an
18 accident and health plan covering employ-
19 ees of the participant’s employer.

20 “(3) ACCELERATION OF BENEFITS.—The re-
21 quirements of this paragraph are met if the plan
22 does not permit the acceleration of the time or
23 schedule of any payment under the plan, except as
24 provided in regulations by the Secretary.

25 “(4) ELECTIONS.—

1 “(A) IN GENERAL.—The requirements of
2 this paragraph are met if the requirements of
3 subparagraphs (B) and (C) are met.

4 “(B) INITIAL DEFERRAL DECISION.—The
5 requirements of this subparagraph are met if
6 the plan provides that compensation for services
7 performed during a taxable year may be de-
8 ferred at the participant’s election only if the
9 election to defer such compensation is made not
10 later than the close of the preceding taxable
11 year or at such other time as provided in regu-
12 lations. In the case of the first year in which a
13 participant becomes eligible to participate in the
14 plan, such election may be made with respect to
15 services to be performed subsequent to the elec-
16 tion within 30 days after the date the partici-
17 pant becomes eligible to participate in such
18 plan.

19 “(C) CHANGES IN TIME AND FORM OF DIS-
20 TRIBUTION.—The requirements of this subpara-
21 graph are met if, in the case of a plan which
22 permits under a subsequent election a delay in
23 a payment or a change in the form of pay-
24 ment—

1 “(i) the plan requires that such elec-
2 tion may not take effect until at least 12
3 months after the date on which the elec-
4 tion is made,

5 “(ii) in the case an election related to
6 a payment not described in clause (ii), (iii),
7 or (vi) of paragraph (2)(A), the plan re-
8 quires that the first payment with respect
9 to which such election is made be deferred
10 for a period of not less than 5 years from
11 the date such payment would otherwise
12 have been made, and

13 “(iii) the plan requires that any elec-
14 tion related to a payment described in
15 paragraph (2)(A)(iv) may not be made less
16 than 12 months prior to the date of the
17 first scheduled payment under such para-
18 graph.

19 “(b) RULES RELATING TO FUNDING.—

20 “(1) OFFSHORE PROPERTY IN A TRUST.—In
21 the case of assets set aside (directly or indirectly) in
22 a trust (or other arrangement determined by the
23 Secretary) for purposes of paying deferred com-
24 pensation under a nonqualified deferred compensa-
25 tion plan, for purposes of section 83 such assets

1 shall be treated as property transferred in connec-
2 tion with the performance of services whether or not
3 such assets are available to satisfy claims of general
4 creditors—

5 “(A) at the time set aside if such assets
6 are located outside of the United States, or

7 “(B) at the time transferred if such assets
8 are subsequently transferred outside of the
9 United States.

10 “(2) EMPLOYER’S FINANCIAL HEALTH.—In the
11 case of compensation deferred under a nonqualified
12 deferred compensation plan, there is a transfer of
13 property within the meaning of section 83 with re-
14 spect to such compensation as of the earlier of—

15 “(A) the date on which the plan first pro-
16 vides that assets will become restricted to the
17 provision of benefits under the plan in connec-
18 tion with a change in the employer’s financial
19 health, or

20 “(B) the date on which assets are so re-
21 stricted.

22 “(3) INCOME INCLUSION FOR OFFSHORE
23 TRUSTS AND EMPLOYER’S FINANCIAL HEALTH.—For
24 each taxable year that assets treated as transferred
25 under this subsection remain set aside in a trust or

1 other arrangement subject to paragraph (1) or (2),
2 any increase in value in, or earnings with respect to,
3 such assets shall be treated as an additional transfer
4 of property under this subsection (to the extent not
5 previously included in income).

6 “(4) INTEREST ON TAX LIABILITY PAYABLE
7 WITH RESPECT TO TRANSFERRED PROPERTY.—

8 “(A) IN GENERAL.—If amounts are re-
9 quired to be included in gross income by reason
10 of paragraph (1) or (2) for a taxable year, the
11 tax imposed by this chapter for such taxable
12 year shall be increased by the amount of inter-
13 est determined under subparagraph (B).

14 “(B) INTEREST.—The interest determined
15 under this subparagraph for any taxable year is
16 the amount of interest at the underpayment
17 rate plus 1 percentage point on the underpay-
18 ments that would have occurred had the
19 amounts so required to be included in gross in-
20 come by paragraph (1) or (2) been includible in
21 gross income for the taxable year in which first
22 deferred or, if later, the first taxable year in
23 which such deferred compensation is not subject
24 to a substantial risk of forfeiture.

1 “(c) NO INFERENCE ON EARLIER INCOME INCLU-
2 SION OR REQUIREMENT OF LATER INCLUSION.—Nothing
3 in this section shall be construed to prevent the inclusion
4 of amounts in gross income under any other provision of
5 this chapter or any other rule of law earlier than the time
6 provided in this section. Any amount included in gross in-
7 come under this section shall not be required to be in-
8 cluded in gross income under any other provision of this
9 chapter or any other rule of law later than the time pro-
10 vided in this section.

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

13 “(1) NONQUALIFIED DEFERRED COMPENSA-
14 TION PLAN.—The term ‘nonqualified deferred com-
15 pensation plan’ means any plan that provides for the
16 deferral of compensation, other than—

17 “(A) a qualified employer plan, and

18 “(B) any bona fide vacation leave, sick
19 leave, compensatory time, disability pay, or
20 death benefit plan.

21 “(2) QUALIFIED EMPLOYER PLAN.—The term
22 ‘qualified employer plan’ means—

23 “(A) any plan, contract, pension, account,
24 or trust described in subparagraph (A) or (B)
25 of section 219(g)(5), and

1 “(B) any eligible deferred compensation
2 plan (within the meaning of section 457(b)) of
3 an employer described in section 457(e)(1)(A).

4 “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—
5 The term ‘plan’ includes any agreement or arrange-
6 ment, including an agreement or arrangement that
7 includes one person.

8 “(4) SUBSTANTIAL RISK OF FORFEITURE.—The
9 rights of a person to compensation are subject to a
10 substantial risk of forfeiture if such person’s rights
11 to such compensation are conditioned upon the fu-
12 ture performance of substantial services by any indi-
13 vidual.

14 “(5) TREATMENT OF EARNINGS.—References to
15 deferred compensation shall be treated as including
16 references to income (whether actual or notional) at-
17 tributable to such compensation or such income.

18 “(e) REGULATIONS.—The Secretary shall prescribe
19 such regulations as may be necessary or appropriate to
20 carry out the purposes of this section, including regula-
21 tions—

22 “(1) providing for the determination of
23 amounts of deferral in the case of a nonqualified de-
24 ferred compensation plan which is a defined benefit
25 plan,

1 “(2) relating to changes in the ownership and
2 control of a corporation or assets of a corporation
3 for purposes of subsection (a)(2)(A)(v),

4 “(3) exempting arrangements from the applica-
5 tion of subsection (b) if such arrangements will not
6 result in an improper deferral of United States tax
7 and will not result in assets being effectively beyond
8 the reach of creditors,

9 “(4) defining financial health for purposes of
10 subsection (b)(2), and

11 “(5) disregarding a substantial risk of for-
12 feiture in cases where necessary to carry out the
13 purposes of this section.”.

14 (b) W-2 FORMS.—

15 (1) IN GENERAL.—Subsection (a) of section
16 6051 (relating to receipts for employees) is amended
17 by striking “and” at the end of paragraph (11), by
18 striking the period at the end of paragraph (12) and
19 inserting “, and”, and by inserting after paragraph
20 (12) the following new paragraph:

21 “(13) the total amount of deferrals under a
22 nonqualified deferred compensation plan (within the
23 meaning of section 409A(d)).”.

24 (2) THRESHOLD.—Subsection (a) of section
25 6051 is amended by adding at the end the following:

1 “In the case of the amounts required to be shown
2 by paragraph (13), the Secretary (by regulation)
3 may establish a minimum amount of deferrals below
4 which paragraph (13) does not apply and may pro-
5 vide that paragraph (13) does not apply with respect
6 to amounts of deferrals which are not reasonably as-
7 certainable.”.

8 (c) CONFORMING AND CLERICAL AMENDMENTS.—

9 (1) Section 414(b) is amended by inserting
10 “409A,” after “408(p),”.

11 (2) Section 414(c) is amended by inserting
12 “409A,” after “408(p),”.

13 (3) The table of sections for such subpart A of
14 part I of subchapter D of chapter 1 is amended by
15 adding at the end the following new item:

“Sec. 409A. Inclusion in gross income of deferred compensation
under nonqualified deferred compensation plans.”.

16 (d) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall apply to amounts deferred after
19 June 3, 2004.

20 (2) CERTAIN AMOUNTS DEFERRED IN 2004
21 UNDER CERTAIN IRREVOCABLE ELECTIONS AND
22 BINDING ARRANGEMENTS.—The amendments made
23 by this section shall not apply to amounts deferred
24 after June 3, 2004, and before January 1, 2005,

1 pursuant to an irrevocable election or binding ar-
2 rangement made before June 4, 2004.

3 (3) EARNINGS ATTRIBUTABLE TO AMOUNT PRE-
4 VIOUSLY DEFERRED.—The amendments made by
5 this section shall apply to earnings on deferred com-
6 pensation only to the extent that such amendments
7 apply to such compensation.

8 (e) GUIDANCE RELATING TO CHANGE OF OWNER-
9 SHIP OR CONTROL.—Not later than 90 days after the date
10 of the enactment of this Act, the Secretary of the Treasury
11 shall issue guidance on what constitutes a change in own-
12 ership or effective control for purposes of section 409A
13 of the Internal Revenue Code of 1986, as added by this
14 section.

15 (f) GUIDANCE RELATING TO TERMINATION OF CER-
16 TAIN EXISTING ARRANGEMENTS.—Not later than 90 days
17 after the date of the enactment of this Act, the Secretary
18 of the Treasury shall issue guidance providing a limited
19 period during which an individual participating in a non-
20 qualified deferred compensation plan adopted before June
21 4, 2004, may, without violating the requirements of para-
22 graphs (2), (3), and (4) of section 409A(a)(2) of the Inter-
23 nal Revenue Code of 1986 (as added by this section), ter-
24 minate participation or cancel an outstanding deferral

1 election with regard to amounts earned after June 3,
2 2004, if such amounts are includible in income as earned.

3 **Subtitle E—Other Revenue** 4 **Provisions**

5 **SEC. 681. QUALIFIED TAX COLLECTION CONTRACTS.**

6 (a) CONTRACT REQUIREMENTS.—

7 (1) IN GENERAL.—Subchapter A of chapter 64
8 (relating to collection) is amended by adding at the
9 end the following new section:

10 **“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.**

11 “(a) IN GENERAL.—Nothing in any provision of law
12 shall be construed to prevent the Secretary from entering
13 into a qualified tax collection contract.

14 “(b) QUALIFIED TAX COLLECTION CONTRACT.—For
15 purposes of this section, the term ‘qualified tax collection
16 contract’ means any contract which—

17 “(1) is for the services of any person (other
18 than an officer or employee of the Treasury Depart-
19 ment)—

20 “(A) to locate and contact any taxpayer
21 specified by the Secretary,

22 “(B) to request full payment from such
23 taxpayer of an amount of Federal tax specified
24 by the Secretary and, if such request cannot be
25 met by the taxpayer, to offer the taxpayer an

1 installment agreement providing for full pay-
2 ment of such amount during a period not to ex-
3 ceed 5 years, and

4 “(C) to obtain financial information speci-
5 fied by the Secretary with respect to such tax-
6 payer,

7 “(2) prohibits each person providing such serv-
8 ices under such contract from committing any act or
9 omission which employees of the Internal Revenue
10 Service are prohibited from committing in the per-
11 formance of similar services,

12 “(3) prohibits subcontractors from—

13 “(A) having contacts with taxpayers,

14 “(B) providing quality assurance services,

15 and

16 “(C) composing debt collection notices, and

17 “(4) permits subcontractors to perform other
18 services only with the approval of the Secretary.

19 “(c) FEES.—The Secretary may retain and use an
20 amount not in excess of 25 percent of the amount collected
21 under any qualified tax collection contract for the costs
22 of services performed under such contract. The Secretary
23 shall keep adequate records regarding amounts so retained
24 and used. The amount credited as paid by any taxpayer
25 shall be determined without regard to this subsection.

1 “(d) NO FEDERAL LIABILITY.—The United States
2 shall not be liable for any act or omission of any person
3 performing services under a qualified tax collection con-
4 tract.

5 “(e) APPLICATION OF FAIR DEBT COLLECTION
6 PRACTICES ACT.—The provisions of the Fair Debt Collec-
7 tion Practices Act (15 U.S.C. 1692 et seq.) shall apply
8 to any qualified tax collection contract, except to the ex-
9 tent superseded by section 6304, section 7602(c), or by
10 any other provision of this title.

11 “(f) CROSS REFERENCES.—

12 “(1) For damages for certain unauthorized col-
13 lection actions by persons performing services under
14 a qualified tax collection contract, see section
15 7433A.

16 “(2) For application of Taxpayer Assistance
17 Orders to persons performing services under a quali-
18 fied tax collection contract, see section 7811(a)(4).”.

19 (2) CONFORMING AMENDMENTS.—

20 (A) Section 7809(a) is amended by insert-
21 ing “6306,” before “7651”.

22 (B) The table of sections for subchapter A
23 of chapter 64 is amended by adding at the end
24 the following new item:

“Sec. 6306. Qualified Tax Collection Contracts.”.

1 (b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED
2 COLLECTION ACTIONS BY PERSONS PERFORMING SERV-
3 ICES UNDER QUALIFIED TAX COLLECTION CON-
4 TRACTS.—

5 (1) In general.—Subchapter B of chapter 76
6 (relating to proceedings by taxpayers and third par-
7 ties) is amended by inserting after section 7433 the
8 following new section:

9 **“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHOR-**
10 **IZED COLLECTION ACTIONS BY PERSONS**
11 **PERFORMING SERVICES UNDER QUALIFIED**
12 **TAX COLLECTION CONTRACTS.**

13 “(a) IN GENERAL.—Subject to the modifications pro-
14 vided by subsection (b), section 7433 shall apply to the
15 acts and omissions of any person performing services
16 under a qualified tax collection contract (as defined in sec-
17 tion 6306(b)) to the same extent and in the same manner
18 as if such person were an employee of the Internal Rev-
19 enue Service.

20 “(b) MODIFICATIONS.—For purposes of subsection
21 (a)—

22 “(1) Any civil action brought under section
23 7433 by reason of this section shall be brought
24 against the person who entered into the qualified tax

1 collection contract with the Secretary and shall not
2 be brought against the United States.

3 “(2) Such person and not the United States
4 shall be liable for any damages and costs determined
5 in such civil action.

6 “(3) Such civil action shall not be an exclusive
7 remedy with respect to such person.

8 “(4) Subsections (c), (d)(1), and (e) of section
9 7433 shall not apply.”.

10 (2) CLERICAL AMENDMENT.—The table of sec-
11 tions for subchapter B of chapter 76 is amended by
12 inserting after the item relating to section 7433 the
13 following new item:

“Sec. 7433A. Civil damages for certain unauthorized collection ac-
tions by persons performing services under a quali-
fied tax collection contract.”.

14 (c) APPLICATION OF TAXPAYER ASSISTANCE OR-
15 DERS TO PERSONS PERFORMING SERVICES UNDER A
16 QUALIFIED TAX COLLECTION CONTRACT.—Section 7811
17 (relating to taxpayer assistance orders) is amended by
18 adding at the end the following new subsection:

19 “(g) APPLICATION TO PERSONS PERFORMING SERV-
20 ICES UNDER A QUALIFIED TAX COLLECTION CON-
21 TRACT.—Any order issued or action taken by the National
22 Taxpayer Advocate pursuant to this section shall apply to
23 persons performing services under a qualified tax collec-
24 tion contract (as defined in section 6306(b)) to the same

1 extent and in the same manner as such order or action
2 applies to the Secretary.”.

3 (d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT
4 MISCONDUCT TO PERFORM UNDER CONTRACT.—Section
5 1203 of the Internal Revenue Service Restructuring Act
6 of 1998 (relating to termination of employment for mis-
7 conduct) is amended by adding at the end the following
8 new subsection:

9 “(e) INDIVIDUALS PERFORMING SERVICES UNDER A
10 QUALIFIED TAX COLLECTION CONTRACT.—An individual
11 shall cease to be permitted to perform any services under
12 any qualified tax collection contract (as defined in section
13 6306(b) of the Internal Revenue Code of 1986) if there
14 is a final determination by the Secretary of the Treasury
15 under such contract that such individual committed any
16 act or omission described under subsection (b) in connec-
17 tion with the performance of such services.”.

18 (e) EFFECTIVE DATE.—The amendments made to
19 this section shall take effect on the date of the enactment
20 of this Act.

21 **SEC. 682. TREATMENT OF CHARITABLE CONTRIBUTIONS OF**
22 **PATENTS AND SIMILAR PROPERTY.**

23 (a) IN GENERAL.—Subparagraph (B) of section
24 170(e)(1) is amended by striking “or” at the end of clause

1 (i), by adding “or” at the end of clause (ii), and by insert-
2 ing after clause (ii) the following new clause:

3 “(iii) of any patent, copyright (other
4 than a copyright described in section
5 1221(a)(3) or 1231(b)(1)(C)), trademark,
6 trade name, trade secret, know-how, soft-
7 ware (other than software described in sec-
8 tion 197(e)(3)(A)(i)), or similar property,
9 or applications or registrations of such
10 property.”

11 (b) CERTAIN DONEE INCOME FROM INTELLECTUAL
12 PROPERTY TREATED AS AN ADDITIONAL CHARITABLE
13 CONTRIBUTION.—Section 170 is amended by redesignig-
14 nating subsection (m) as subsection (n) and by inserting
15 after subsection (l) the following new subsection:

16 “(m) CERTAIN DONEE INCOME FROM INTELLEC-
17 TUAL PROPERTY TREATED AS AN ADDITIONAL CHARI-
18 TABLE CONTRIBUTION.—

19 “(1) TREATMENT AS ADDITIONAL CONTRIBU-
20 TION.—In the case of a taxpayer who makes a quali-
21 fied intellectual property contribution, the deduction
22 allowed under subsection (a) for each taxable year of
23 the taxpayer ending on or after the date of such con-
24 tribution shall be increased (subject to the limita-
25 tions under subsection (b)) by the applicable per-

1 centage of qualified donee income with respect to
2 such contribution which is properly allocable to such
3 year under this subsection.

4 “(2) REDUCTION IN ADDITIONAL DEDUCTIONS
5 TO EXTENT OF INITIAL DEDUCTION.—With respect
6 to any qualified intellectual property contribution,
7 the deduction allowed under subsection (a) shall be
8 increased under paragraph (1) only to the extent
9 that the aggregate amount of such increases with re-
10 spect to such contribution exceed the amount al-
11 lowed as a deduction under subsection (a) with re-
12 spect to such contribution determined without re-
13 gard to this subsection.

14 “(3) QUALIFIED DONEE INCOME.—For pur-
15 poses of this subsection, the term ‘qualified donee
16 income’ means any net income received by or ac-
17 crued to the donee which is properly allocable to the
18 qualified intellectual property.

19 “(4) ALLOCATION OF QUALIFIED DONEE IN-
20 COME TO TAXABLE YEARS OF DONOR.—For pur-
21 poses of this subsection, qualified donee income shall
22 be treated as properly allocable to a taxable year of
23 the donor if such income is received by or accrued
24 to the donee for the taxable year of the donee which
25 ends within or with such taxable year of the donor.

1 “(5) 10-YEAR LIMITATION.—Income shall not
 2 be treated as properly allocable to qualified intellec-
 3 tual property for purposes of this subsection if such
 4 income is received by or accrued to the donee after
 5 the 10-year period beginning on the date of the con-
 6 tribution of such property.

7 “(6) BENEFIT LIMITED TO LIFE OF INTELLEC-
 8 TUAL PROPERTY.—Income shall not be treated as
 9 properly allocable to qualified intellectual property
 10 for purposes of this subsection if such income is re-
 11 ceived by or accrued to the donee after the expira-
 12 tion of the legal life of such property.

13 “(7) APPLICABLE PERCENTAGE.—For purposes
 14 of this subsection, the term ‘applicable percentage’
 15 means the percentage determined under the fol-
 16 lowing table which corresponds to a taxable year of
 17 the donor ending on or after the date of the quali-
 18 fied intellectual property contribution:

“Taxable Year of Donor Ending on or After Date of Contribution:	Applicable Percentage:
1st	100
2nd	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th	10
12th	10.

1 “(8) QUALIFIED INTELLECTUAL PROPERTY
2 CONTRIBUTION.—For purposes of this subsection,
3 the term ‘qualified intellectual property contribution’
4 means any charitable contribution of qualified intel-
5 lectual property—

6 “(A) the amount of which taken into ac-
7 count under this section is reduced by reason of
8 subsection (e)(1), and

9 “(B) with respect to which the donor in-
10 forms the donee at the time of such contribu-
11 tion that the donor intends to treat such con-
12 tribution as a qualified intellectual property
13 contribution for purposes of this subsection and
14 section 6050L.

15 “(9) QUALIFIED INTELLECTUAL PROPERTY.—
16 For purposes of this subsection, the term ‘qualified
17 intellectual property’ means property described in
18 subsection (e)(1)(B)(iii) (other than property con-
19 tributed to or for the use of an organization de-
20 scribed in subsection (e)(1)(B)(ii)).

21 “(10) OTHER SPECIAL RULES.—

22 “(A) APPLICATION OF LIMITATIONS ON
23 CHARITABLE CONTRIBUTIONS.—Any increase
24 under this subsection of the deduction provided
25 under subsection (a) shall be treated for pur-

1 poses of subsection (b) as a deduction which is
2 attributable to a charitable contribution to the
3 donee to which such increase relates.

4 “(B) NET INCOME DETERMINED BY
5 DONEE.—The net income taken into account
6 under paragraph (3) shall not exceed the
7 amount of such income reported under section
8 6050L(b)(1).

9 “(C) DEDUCTION LIMITED TO 12 TAXABLE
10 YEARS.—Except as may be provided under sub-
11 paragraph (D)(i), this subsection shall not
12 apply with respect to any qualified intellectual
13 property contribution for any taxable year of
14 the donor after the 12th taxable year of the
15 donor which ends on or after the date of such
16 contribution.

17 “(D) REGULATIONS.—The Secretary may
18 issue regulations or other guidance to carry out
19 the purposes of this subsection, including regu-
20 lations or guidance—

21 “(i) modifying the application of this
22 subsection in the case of a donor or donee
23 with a short taxable year, and

24 “(ii) providing for the determination
25 of an amount to be treated as net income

1 of the donee which is properly allocable to
2 qualified intellectual property in the case
3 of a donee who uses such property to fur-
4 ther a purpose or function constituting the
5 basis of the donee's exemption under sec-
6 tion 501 (or, in the case of a governmental
7 unit, any purpose described in section
8 170(e)) and does not possess a right to re-
9 ceive any payment from a third party with
10 respect to such property.”.

11 (c) REPORTING REQUIREMENTS.—

12 (1) IN GENERAL.—Section 6050L (relating to
13 returns relating to certain dispositions of donated
14 property) is amended to read as follows:

15 **“SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED**
16 **PROPERTY.**

17 **“(a) DISPOSITIONS OF DONATED PROPERTY.—**

18 **“(1) IN GENERAL.—**If the donee of any chari-
19 table deduction property sells, exchanges, or other-
20 wise disposes of such property within 2 years after
21 its receipt, the donee shall make a return (in accord-
22 ance with forms and regulations prescribed by the
23 Secretary) showing—

24 **“(A) the name, address, and TIN of the**
25 donor,

1 “(B) a description of the property,

2 “(C) the date of the contribution,

3 “(D) the amount received on the disposi-
4 tion, and

5 “(E) the date of such disposition.

6 “(2) DEFINITIONS.—For purposes of this sub-
7 section—

8 “(A) CHARITABLE DEDUCTION PROP-
9 ERTY.—The term ‘charitable deduction prop-
10 erty’ means any property (other than publicly
11 traded securities) contributed in a contribution
12 for which a deduction was claimed under sec-
13 tion 170 if the claimed value of such property
14 (plus the claimed value of all similar items of
15 property donated by the donor to 1 or more
16 donees) exceeds \$5,000.

17 “(B) PUBLICLY TRADED SECURITIES.—
18 The term ‘publicly traded securities’ means se-
19 curities for which (as of the date of the con-
20 tribution) market quotations are readily avail-
21 able on an established securities market.

22 “(b) QUALIFIED INTELLECTUAL PROPERTY CON-
23 TRIBUTIONS.—

24 “(1) IN GENERAL.—Each donee with respect to
25 a qualified intellectual property contribution shall

1 make a return (at such time and in such form and
2 manner as the Secretary may by regulations pre-
3 scribe) with respect to each specified taxable year of
4 the donee showing—

5 “(A) the name, address, and TIN of the
6 donor,

7 “(B) a description of the qualified intellec-
8 tual property contributed,

9 “(C) the date of the contribution, and

10 “(D) the amount of net income of the
11 donee for the taxable year which is properly al-
12 locable to the qualified intellectual property (de-
13 termined without regard to paragraph (10)(B)
14 of section 170(m) and with the modifications
15 described in paragraphs (5) and (6) of such
16 section).

17 “(2) DEFINITIONS.—For purposes of this sub-
18 section—

19 “(A) IN GENERAL.—Terms used in this
20 subsection which are also used in section
21 170(m) have the respective meanings given
22 such terms in such section.

23 “(B) SPECIFIED TAXABLE YEAR.—The
24 term ‘specified taxable year’ means, with re-
25 spect to any qualified intellectual property con-

1 tribution, any taxable year of the donee any
2 portion of which is part of the 10-year period
3 beginning on the date of such contribution.

4 “(c) STATEMENT TO BE FURNISHED TO DONORS.—
5 Every person making a return under subsection (a) or (b)
6 shall furnish a copy of such return to the donor at such
7 time and in such manner as the Secretary may by regula-
8 tions prescribe.”.

9 (d) COORDINATION WITH APPRAISAL REQUIRE-
10 MENTS.—Subclause (I) of section 170(f)(11)(A)(ii), as
11 added by section 683, is amended by inserting “subsection
12 (e)(1)(B)(iii) or” before “section 1221(a)(1)”.

13 (e) ANTI-ABUSE RULES.—The Secretary of the
14 Treasury may prescribe such regulations or other guid-
15 ance as may be necessary or appropriate to prevent the
16 avoidance of the purposes of section 170(e)(1)(B)(iii) of
17 the Internal Revenue Code of 1986 (as added by sub-
18 section (a)), including preventing—

19 (1) the circumvention of the reduction of the
20 charitable deduction by embedding or bundling the
21 patent or similar property as part of a charitable
22 contribution of property that includes the patent or
23 similar property,

24 (2) the manipulation of the basis of the prop-
25 erty to increase the amount of the charitable deduc-

1 tion through the use of related persons, pass-thru
2 entities, or other intermediaries, or through the use
3 of any provision of law or regulation (including the
4 consolidated return regulations), and

5 (3) a donor from changing the form of the pat-
6 ent or similar property to property of a form for
7 which different deduction rules would apply.

8 (f) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to contributions made after June
10 3, 2004.

11 **SEC. 683. INCREASED REPORTING FOR NONCASH CHARI-**
12 **TABLE CONTRIBUTIONS.**

13 (a) IN GENERAL.—Subsection (f) of section 170 (re-
14 lating to disallowance of deduction in certain cases and
15 special rules) is amended by adding after paragraph (10)
16 the following new paragraph:

17 “(11) QUALIFIED APPRAISAL AND OTHER DOC-
18 UMENTATION FOR CERTAIN CONTRIBUTIONS.—

19 “(A) IN GENERAL.—

20 “(i) DENIAL OF DEDUCTION.—In the
21 case of an individual, partnership, or cor-
22 poration, no deduction shall be allowed
23 under subsection (a) for any contribution
24 of property for which a deduction of more
25 than \$500 is claimed unless such person

1 meets the requirements of subparagraphs
2 (B), (C), and (D), as the case may be,
3 with respect to such contribution.

4 “(ii) EXCEPTIONS.—

5 “(I) READILY VALUED PROP-
6 ERTY.—Subparagraphs (C) and (D)
7 shall not apply to cash, property de-
8 scribed in section 1221(a)(1), and
9 publicly traded securities (as defined
10 in section 6050L(a)(2)(B)).

11 “(II) REASONABLE CAUSE.—

12 Clause (i) shall not apply if it is
13 shown that the failure to meet such
14 requirements is due to reasonable
15 cause and not to willful neglect.

16 “(B) PROPERTY DESCRIPTION FOR CON-
17 TRIBUTIONS OF MORE THAN \$500.—In the case
18 of contributions of property for which a deduc-
19 tion of more than \$500 is claimed, the require-
20 ments of this subparagraph are met if the indi-
21 vidual, partnership or corporation includes with
22 the return for the taxable year in which the
23 contribution is made a description of such prop-
24 erty and such other information as the Sec-
25 retary may require. The requirements of this

1 subparagraph shall not apply to a C corporation
2 which is not a personal service corporation or a
3 closely held C corporation.

4 “(C) QUALIFIED APPRAISAL FOR CON-
5 TRIBUTIONS OF MORE THAN \$5,000.—In the
6 case of contributions of property for which a
7 deduction of more than \$5,000 is claimed, the
8 requirements of this subparagraph are met if
9 the individual, partnership, or corporation ob-
10 tains a qualified appraisal of such property and
11 attaches to the return for the taxable year in
12 which such contribution is made such informa-
13 tion regarding such property and such appraisal
14 as the Secretary may require.

15 “(D) SUBSTANTIATION FOR CONTRIBU-
16 TIONS OF MORE THAN \$500,000.—In the case of
17 contributions of property for which a deduction
18 of more than \$500,000 is claimed, the require-
19 ments of this subparagraph are met if the indi-
20 vidual, partnership, or corporation attaches to
21 the return for the taxable year a qualified ap-
22 praisal of such property.

23 “(E) QUALIFIED APPRAISAL.—For pur-
24 poses of this paragraph, the term ‘qualified ap-
25 praisal’ means, with respect to any property, an

1 appraisal of such property which is treated for
2 purposes of this paragraph as a qualified ap-
3 praisal under regulations or other guidance pre-
4 scribed by the Secretary.

5 “(F) AGGREGATION OF SIMILAR ITEMS OF
6 PROPERTY.—For purposes of determining
7 thresholds under this paragraph, property and
8 all similar items of property donated to 1 or
9 more donees shall be treated as 1 property.

10 “(G) SPECIAL RULE FOR PASS-THRU ENTI-
11 TIES.—In the case of a partnership or S cor-
12 poration, this paragraph shall be applied at the
13 entity level, except that the deduction shall be
14 denied at the partner or shareholder level.

15 “(H) REGULATIONS.—The Secretary may
16 prescribe such regulations as may be necessary
17 or appropriate to carry out the purposes of this
18 paragraph, including regulations that may pro-
19 vide that some or all of the requirements of this
20 paragraph do not apply in appropriate cases.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to contributions made after June
23 3, 2004.

1 **SEC. 684. DONATIONS OF MOTOR VEHICLES, BOATS, AND**
2 **AIRCRAFT.**

3 (a) IN GENERAL.—Subsection (f) of section 170 (re-
4 lating to disallowance of deduction in certain cases and
5 special rules) is amended by adding after paragraph (11)
6 the following new paragraph:

7 “(12) CONTRIBUTIONS OF MOTOR VEHICLES,
8 BOATS, AND AIRCRAFT.—

9 “(A) IN GENERAL.—Except as provided in
10 regulations or other guidance, in the case of a
11 contribution of a specified vehicle to which
12 paragraph (8) applies, no deduction shall be al-
13 lowed under subsection (a) for such contribu-
14 tion unless the taxpayer obtains a qualified ap-
15 praisal of the specified vehicle on or before the
16 date of such contribution.

17 “(B) EXCEPTION FOR INVENTORY PROP-
18 erty.—Subparagraph (A) shall not apply to
19 property which is described in section
20 1221(a)(1).

21 “(C) SPECIFIED VEHICLE.—For purposes
22 of this paragraph, the term ‘specified vehicle’
23 means any—

24 “(i) motor vehicle manufactured pri-
25 marily for use on public streets, roads, and
26 highways,

1 “(ii) boat, or

2 “(iii) aircraft.

3 “(D) QUALIFIED APPRAISAL.—For pur-
4 poses of this paragraph, the term ‘qualified ap-
5 praisal’ means any appraisal which is treated
6 for purposes of this paragraph as a qualified
7 appraisal under regulations or other guidance
8 prescribed by the Secretary.

9 “(E) REGULATIONS OR OTHER GUID-
10 ANCE.—The Secretary shall prescribe such reg-
11 ulations or other guidance as may be necessary
12 to carry out the purposes of this paragraph.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall apply to contributions made after
15 June 3, 2004.

16 **SEC. 685. EXTENSION OF AMORTIZATION OF INTANGIBLES**
17 **TO SPORTS FRANCHISES.**

18 (a) IN GENERAL.—Section 197(e) (relating to excep-
19 tions to definition of section 197 intangible) is amended
20 by striking paragraph (6) and by redesignating para-
21 graphs (7) and (8) as paragraphs (6) and (7), respectively.

22 (b) CONFORMING AMENDMENTS.—

23 (1)(A) Section 1056 (relating to basis limitation
24 for player contracts transferred in connection with
25 the sale of a franchise) is repealed.

1 (B) The table of sections for part IV of sub-
2 chapter O of chapter 1 is amended by striking the
3 item relating to section 1056.

4 (2) Section 1245(a) (relating to gain from dis-
5 position of certain depreciable property) is amended
6 by striking paragraph (4).

7 (3) Section 1253 (relating to transfers of fran-
8 chises, trademarks, and trade names) is amended by
9 striking subsection (e).

10 (c) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by this section
13 shall apply to property acquired after the date of the
14 enactment of this Act.

15 (2) SECTION 1245.—The amendment made by
16 subsection (b)(2) shall apply to franchises acquired
17 after the date of the enactment of this Act.

18 **SEC. 686. MODIFICATION OF CONTINUING LEVY ON PAY-**
19 **MENTS TO FEDERAL VENDERS.**

20 (a) IN GENERAL.—Section 6331(h) (relating to con-
21 tinuing levy on certain payments) is amended by adding
22 at the end the following new paragraph:

23 “(3) INCREASE IN LEVY FOR CERTAIN PAY-
24 MENTS.—Paragraph (1) shall be applied by sub-
25 stituting ‘100 percent’ for ‘15 percent’ in the case

1 of any specified payment due to a vendor of goods
2 or services sold or leased to the Federal Govern-
3 ment.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall take effect on the date of the enactment
6 of this Act.

7 **SEC. 687. MODIFICATION OF STRADDLE RULES.**

8 (a) RULES RELATING TO IDENTIFIED STRADDLES.—

9 (1) IN GENERAL.—Subparagraph (A) of section
10 1092(a)(2) (relating to special rule for identified
11 straddles) is amended to read as follows:

12 “(A) IN GENERAL.—In the case of any
13 straddle which is an identified straddle—

14 “(i) paragraph (1) shall not apply
15 with respect to identified positions com-
16 prising the identified straddle,

17 “(ii) if there is any loss with respect
18 to any identified position of the identified
19 straddle, the basis of each of the identified
20 offsetting positions in the identified strad-
21 dle shall be increased by an amount which
22 bears the same ratio to the loss as the un-
23 recognized gain with respect to such offset-
24 ting position bears to the aggregate unrec-

1 ognized gain with respect to all such off-
2 setting positions, and

3 “(iii) any loss described in clause (ii)
4 shall not otherwise be taken into account
5 for purposes of this title.”.

6 (2) IDENTIFIED STRADDLE.—Section
7 1092(a)(2)(B) (defining identified straddle) is
8 amended—

9 (A) by striking clause (ii) and inserting the
10 following:

11 “(ii) to the extent provided by regula-
12 tions, the value of each position of which
13 (in the hands of the taxpayer immediately
14 before the creation of the straddle) is not
15 less than the basis of such position in the
16 hands of the taxpayer at the time the
17 straddle is created, and”, and

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

20 “The Secretary shall prescribe regulations
21 which specify the proper methods for clearly
22 identifying a straddle as an identified straddle
23 (and the positions comprising such straddle),
24 which specify the rules for the application of
25 this section for a taxpayer which fails to prop-

1 erly identify the positions of an identified strad-
2 dle, and which specify the ordering rules in
3 cases where a taxpayer disposes of less than an
4 entire position which is part of an identified
5 straddle.”.

6 (3) UNRECOGNIZED GAIN.—Section 1092(a)(3)
7 (defining unrecognized gain) is amended by redesignig-
8 nating subparagraph (B) as subparagraph (C) and
9 by inserting after subparagraph (A) the following
10 new subparagraph:

11 “(B) SPECIAL RULE FOR IDENTIFIED
12 STRADDLES.—For purposes of paragraph
13 (2)(A)(ii), the unrecognized gain with respect to
14 any identified offsetting position shall be the ex-
15 cess of the fair market value of the position at
16 the time of the determination over the fair mar-
17 ket value of the position at the time the tax-
18 payer identified the position as a position in an
19 identified straddle.”.

20 (4) CONFORMING AMENDMENT.—Section
21 1092(c)(2) is amended by striking subparagraph (B)
22 and by redesignating subparagraph (C) as subpara-
23 graph (B).

24 (b) PHYSICALLY SETTLED POSITIONS.—Section
25 1092(d) (relating to definitions and special rules) is

1 amended by adding at the end the following new para-
2 graph:

3 “(8) SPECIAL RULES FOR PHYSICALLY SET-
4 TLED POSITIONS.—For purposes of subsection (a), if
5 a taxpayer settles a position which is part of a strad-
6 dle by delivering property to which the position re-
7 lates (and such position, if terminated, would result
8 in a realization of a loss), then such taxpayer shall
9 be treated as if such taxpayer—

10 “(A) terminated the position for its fair
11 market value immediately before the settlement,
12 and

13 “(B) sold the property so delivered by the
14 taxpayer at its fair market value.”.

15 (c) REPEAL OF STOCK EXCEPTION.—

16 (1) IN GENERAL.—Paragraph (3) of section
17 1092(d) (relating to definitions and special rules) is
18 amended to read as follows:

19 “(3) SPECIAL RULES FOR STOCK.—For pur-
20 poses of paragraph (1)—

21 “(A) IN GENERAL.—The term ‘personal
22 property’ includes—

23 “(i) any stock which is a part of a
24 straddle at least 1 of the offsetting posi-
25 tions of which is a position with respect to

1 such stock or substantially similar or re-
2 lated property, or

3 “(ii) any stock of a corporation
4 formed or availed of to take positions in
5 personal property which offset positions
6 taken by any shareholder.

7 “(B) RULE FOR APPLICATION.—For pur-
8 poses of determining whether subsection (e) ap-
9 plies to any transaction with respect to stock
10 described in subparagraph (A)(ii), all includible
11 corporations of an affiliated group (within the
12 meaning of section 1504(a)) shall be treated as
13 1 taxpayer.”.

14 (2) CONFORMING AMENDMENT.—Section
15 1258(d)(1) is amended by striking “; except that the
16 term ‘personal property’ shall include stock”.

17 (d) HOLDING PERIOD FOR DIVIDEND EXCLUSION.—
18 The last sentence of section 246(c) is amended by insert-
19 ing: “, other than a qualified covered call option to which
20 section 1092(f) applies” before the period at the end.

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to positions established on or after
23 the date of the enactment of this Act.

1 **SEC. 688. ADDITION OF VACCINES AGAINST HEPATITIS A**
2 **TO LIST OF TAXABLE VACCINES.**

3 (a) IN GENERAL.—Paragraph (1) of section 4132(a)
4 (defining taxable vaccine) is amended by redesignating
5 subparagraphs (I), (J), (K), and (L) as subparagraphs
6 (J), (K), (L), and (M), respectively, and by inserting after
7 subparagraph (H) the following new subparagraph:

8 “(I) Any vaccine against hepatitis A.”

9 (b) EFFECTIVE DATE.—

10 (1) SALES, ETC.—The amendments made by
11 subsection (a) shall apply to sales and uses on or
12 after the first day of the first month which begins
13 more than 4 weeks after the date of the enactment
14 of this Act.

15 (2) DELIVERIES.—For purposes of paragraph
16 (1) and section 4131 of the Internal Revenue Code
17 of 1986, in the case of sales on or before the effec-
18 tive date described in such paragraph for which de-
19 livery is made after such date, the delivery date shall
20 be considered the sale date.

21 **SEC. 689. ADDITION OF VACCINES AGAINST INFLUENZA TO**
22 **LIST OF TAXABLE VACCINES.**

23 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-
24 able vaccine), as amended by this Act, is amended by add-
25 ing at the end the following new subparagraph:

1 “(N) Any trivalent vaccine against influ-
2 enza.”.

3 (b) EFFECTIVE DATE.—

4 (1) SALES, ETC.—The amendment made by this
5 section shall apply to sales and uses on or after the
6 later of—

7 (A) the first day of the first month which
8 begins more than 4 weeks after the date of the
9 enactment of this Act, or

10 (B) the date on which the Secretary of
11 Health and Human Services lists any vaccine
12 against influenza for purposes of compensation
13 for any vaccine-related injury or death through
14 the Vaccine Injury Compensation Trust Fund.

15 (2) DELIVERIES.—For purposes of paragraph
16 (1) and section 4131 of the Internal Revenue Code
17 of 1986, in the case of sales on or before the effec-
18 tive date described in such paragraph for which de-
19 livery is made after such date, the delivery date shall
20 be considered the sale date.

21 **SEC. 690. EXTENSION OF IRS USER FEES.**

22 (a) IN GENERAL.—Section 7528(c) (relating to ter-
23 mination) is amended by striking “December 31, 2004”
24 and inserting “September 30, 2014”.

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

4 **SEC. 691. COBRA FEES.**

5 (a) USE OF MERCHANDISE PROCESSING FEE.—Sec-
6 tion 13031(f) of the Consolidated Omnibus Budget Rec-
7 onciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

8 (1) in paragraph (1), by aligning subparagraph
9 (B) with subparagraph (A); and

10 (2) in paragraph (2), by striking “commercial
11 operations” and all that follows through “proc-
12 essing.” and inserting “customs revenue functions as
13 defined in section 415 of the Homeland Security Act
14 of 2002 (other than functions performed by the Of-
15 fice of International Affairs referred to in section
16 415(8) of that Act), and for automation (including
17 the Automation Commercial Environment computer
18 system), and for no other purpose. To the extent
19 that funds in the Customs User Fee Account are in-
20 sufficient to pay the costs of such customs revenue
21 functions, customs duties in an amount equal to the
22 amount of such insufficiency shall be available, to
23 the extent provided for in appropriations Acts, to
24 pay the costs of such customs revenue functions in
25 the amount of such insufficiency, and shall be avail-

1 able for no other purpose. The provisions of the first
2 and second sentences of this paragraph specifying
3 the purposes for which amounts in the Customs
4 User Fee Account may be made available shall not
5 be superseded except by a provision of law which
6 specifically modifies or supersedes such provisions.”.

7 (b) REIMBURSEMENT OF APPROPRIATIONS FROM
8 COBRA FEES.—Section 13031(f)(3) of the Consolidated
9 Omnibus Budget Reconciliation Act of 1985 (19 U.S.C.
10 58c(f)(3)) is amended by adding at the end the following:

11 “(E) Nothing in this paragraph shall be construed
12 to preclude the use of appropriated funds, from sources
13 other than the fees collected under subsection (a), to pay
14 the costs set forth in clauses (i), (ii), and (iii) of subpara-
15 graph (A).”.

16 (c) SENSE OF CONGRESS; EFFECTIVE PERIOD FOR
17 COLLECTING FEES; STANDARD FOR SETTING FEES.—

18 (1) SENSE OF CONGRESS.—The Congress finds
19 that—

20 (A) the fees set forth in paragraphs (1)
21 through (8) of subsection (a) of section 13031
22 of the Consolidated Omnibus Budget Reconcili-
23 ation Act of 1985 have been reasonably related
24 to the costs of providing customs services in
25 connection with the activities or items for which

1 the fees have been charged under such para-
2 graphs; and

3 (B) the fees collected under such para-
4 graphs have not exceeded, in the aggregate, the
5 amounts paid for the costs described in sub-
6 section (f)(3)(A) incurred in providing customs
7 services in connection with the activities or
8 items for which the fees were charged under
9 such paragraphs.

10 (2) EFFECTIVE PERIOD; STANDARD FOR SET-
11 TING FEES.—Section 13031(j)(3) of the Consoli-
12 dated Omnibus Budget Reconciliation Act of 1985 is
13 amended to read as follows:

14 “(3)(A) Fees may not be charged under paragraphs
15 (9) and (10) of subsection (a) after September 30, 2014.

16 “(B)(i) Subject to clause (ii), Fees may not be
17 charged under paragraphs (1) through (8) of subsection
18 (a) after September 30, 2014.

19 “(ii) In fiscal year 2006 and in each succeeding fiscal
20 year for which fees under paragraphs (1) through (8) of
21 subsection (a) are authorized—

22 “(I) the Secretary of the Treasury shall charge
23 fees under each such paragraph in amounts that are
24 reasonably related to the costs of providing customs
25 services in connection with the activity or item for

1 which the fee is charged under such paragraph, ex-
2 cept that in no case may the fee charged under any
3 such paragraph exceed by more than 10 percent the
4 amount otherwise prescribed by such paragraph;

5 “(II) the amount of fees collected under such
6 paragraphs may not exceed, in the aggregate, the
7 amounts paid in that fiscal year for the costs de-
8 scribed in subsection (f)(3)(A) incurred in providing
9 customs services in connection with the activity or
10 item for which the fees are charged under such
11 paragraphs;

12 “(III) a fee may not be collected under any
13 such paragraph except to the extent such fee will be
14 expended to pay the costs described in subsection
15 (f)(3)(A) incurred in providing customs services in
16 connection with the activity or item for which the fee
17 is charged under such paragraph; and

18 “(IV) any fee collected under any such para-
19 graph shall be available for expenditure only to pay
20 the costs described in subsection (f)(3)(A) incurred
21 in providing customs services in connection with the
22 activity or item for which the fee is charged under
23 such paragraph.”.

1 (d) CLERICAL AMENDMENTS.—Section 13031 of the
2 Consolidated Omnibus Budget Reconciliation Act of 1985
3 is amended—

4 (1) in subsection (a)(5)(B), by striking “\$1.75”
5 and inserting “\$1.75.”;

6 (2) in subsection (b)—

7 (A) in paragraph (1)(A), by aligning clause
8 (iii) with clause (ii);

9 (B) in paragraph (7), by striking “para-
10 graphs” and inserting “paragraph”; and

11 (C) in paragraph (9), by aligning subpara-
12 graph (B) with subparagraph (A); and

13 (3) in subsection (e)(2), by aligning subpara-
14 graph (B) with subparagraph (A).

15 (e) STUDY OF ALL FEES COLLECTED BY DEPART-
16 MENT OF HOMELAND SECURITY.—The Secretary of the
17 Treasury shall conduct a study of all the fees collected
18 by the Department of Homeland Security, and shall sub-
19 mit to the Congress, not later than September 30, 2005,
20 a report containing the recommendations of the Secretary
21 on—

22 (1) what fees should be eliminated;

23 (2) what the rate of fees retained should be;

24 and

1 (3) any other recommendations with respect to
2 the fees that the Secretary considers appropriate.

3 **SEC. 692. SAFE HARBOR FOR CHURCHES.**

4 (a) IN GENERAL.—Section 501 is amended by redese-
5 ignating subsection (q) as subsection (r) and by inserting
6 after subsection (p) the following new subsection:

7 “(q) SAFE HARBOR FOR CHURCHES.—

8 “(1) STATEMENTS BY RELIGIOUS LEADERS AS
9 PRIVATE CITIZENS.—An organization described in
10 section 508(c)(1)(A) (relating to churches) shall not
11 fail to be treated as organized and operated exclu-
12 sively for a religious purpose, or be treated as having
13 participated in, or intervened in any political cam-
14 paign on behalf of (or in opposition to) any can-
15 didate for public office, for purposes of subsection
16 (c)(3), or section 170(c)(2) (relating to charitable
17 contributions), 4955, or 4956 solely by reason of a
18 statement by a religious leader of such organization
19 which is clearly identified as a statement made as a
20 private citizen and not made on behalf of or in rep-
21 resentation of such organization. A statement shall
22 not be treated as clearly identified for purposes of
23 this paragraph if such statement is made in an offi-
24 cial publication of such organization, at an official

1 function of such organization, or if such statement
2 is paid for in whole or part by such organization.

3 “(2) UNINTENTIONAL VIOLATIONS.—An organi-
4 zation described in section 508(c)(1)(A) (relating to
5 churches) shall not fail to be treated as organized
6 and operated exclusively for a religious purpose, or
7 be treated as having participated in, or intervened in
8 any political campaign on behalf of (or in opposition
9 to) any candidate for public office, for purposes of
10 subsection (c)(3), or section 170(c)(2) (relating to
11 charitable contributions) unless such organization or
12 any of its religious leaders so participates or inter-
13 venes on more than 3 separate occasions during any
14 calendar year. This paragraph shall not apply with
15 respect to any such participation or intervention
16 which constitutes an intentional disregard by such
17 organization or any of its religious leaders of the
18 prohibition of such activity under subsection (c)(3)
19 or section 170(c)(2).

20 “(3) CROSS REFERENCE.—

“**For tax imposed on churches for impermissible
activities, see section 4956.**”.

21 (b) IMPOSITION OF TAX ON IMPERMISSIBLE ACTIVI-
22 TIES.—

1 (1) IN GENERAL.—Subchapter C of chapter 42
2 is amended by inserting after section 4955 the fol-
3 lowing new section:

4 **“SEC. 4956. TAX ON IMPERMISSIBLE ACTIVITIES BY**
5 **CHURCHES.**

6 “(a) IMPOSITION OF TAX.—There is hereby imposed
7 on each organization described in section 508(c)(1)(A)
8 which is an organization exempt from tax under section
9 501(a) by reason of section 501(q)(2), a tax equal to—

10 “(1) the highest rate of tax specified by section
11 11(b), multiplied by

12 “(2) the gross income of such organization for
13 such calendar year.

14 The tax imposed by this subsection shall be paid by the
15 organization.

16 “(b) REDUCTION FOR LESS THAN 3 VIOLATIONS.—

17 In the case of an organization described in subsection (a)
18 which committed not more than 2 acts of participation in,
19 or intervention in a political campaign on behalf of (or
20 in opposition to) any candidate for public office during
21 such calendar year, the amount taken into account under
22 subsection (a)(2) shall be the amount which would have
23 been taken into account under subsection (a)(2) (but for
24 this subsection) divided by—

1 “(1) 52 in the case of one such act during such
2 calendar year, or

3 “(2) 2 in the case of 2 such acts during such
4 calendar year.

5 “(c) COORDINATION WITH SECTION 4955.—The tax
6 imposed under this section with respect to any act shall
7 be reduced by the amount of any tax imposed under sec-
8 tion 4955 with respect to such act.”.

9 (2) CLERICAL AMENDMENTS.—

10 (A) The table of section for subchapter C
11 of chapter 42 is amended by adding at the end
12 the following new item:

 “Sec. 4956. Tax on impermissible activities by churches.”.

13 (B) The heading for subchapter C of chap-
14 ter 42 is amended by striking “EXPENDI-
15 TURES” and inserting “ACTIVITIES”.

16 (c) REPORTING.—

17 (1) REQUIREMENT.—Subsection (a) of section
18 6012 is amended by adding at the end the following
19 new paragraph:

20 “(10) Every organization described in section
21 508(c)(1)(A) with respect to which tax is imposed
22 under section 4956.”.

23 (2) FORM AND MANNER.—Section 6033 is
24 amended by redesignating subsection (h) as sub-

1 section (i) and by inserting after subsection (g) the
2 following new subsection:

3 “(h) RETURNS REQUIRED BY CHURCHES PARTICI-
4 PATING IN CERTAIN ACTIVITIES.—Any organization on
5 which tax is imposed under section 4956 shall file a return
6 at such time, in such manner, and including such informa-
7 tion as the Secretary may prescribe.”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to acts occurring after the date
10 of the enactment of this Act.

11 **TITLE VII—MARKET REFORM** 12 **FOR TOBACCO GROWERS**

13 **SEC. 701. SHORT TITLE.**

14 This title may be cited as the “Fair and Equitable
15 Tobacco Reform Act of 2004”.

16 **SEC. 702. EFFECTIVE DATE.**

17 This title and the amendments made by this title
18 shall apply beginning with the 2005 marketing year of
19 each kind of tobacco.

1 **Subtitle A—Termination of Federal**
2 **Tobacco Quota and Price Sup-**
3 **port Programs**

4 **SEC. 711. TERMINATION OF TOBACCO QUOTA PROGRAM**
5 **AND RELATED PROVISIONS.**

6 (a) **MARKETING QUOTAS.**—Part I of subtitle B of
7 title III of the Agricultural Adjustment Act of 1938 (7
8 U.S.C. 1311 et seq.) is repealed.

9 (b) **PROCESSING.**—Section 9(b) of the Agricultural
10 Adjustment Act (7 U.S.C. 609(b)), reenacted with amend-
11 ments by the Agricultural Marketing Agreement Act of
12 1937, is amended—

13 (1) in paragraph (2), by striking “tobacco,”;
14 and

15 (2) in paragraph (6)(B)(i), by striking “, or, in
16 the case of tobacco, is less than the fair exchange
17 value by not more than 10 per centum,”.

18 (c) **DECLARATION OF POLICY.**—Section 2 of the Ag-
19 ricultural Adjustment Act of 1938 (7 U.S.C. 1282) is
20 amended by striking “tobacco,”.

21 (d) **DEFINITIONS.**—Section 301(b) of the Agricul-
22 tural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is
23 amended—

24 (1) in paragraph (3)—

25 (A) by striking subparagraph (C); and

1 (B) by redesignating subparagraph (D) as
2 subparagraph (C);
3 (2) in paragraph (6)(A), by striking “tobacco,”;
4 (3) in paragraph (10)—
5 (A) by striking subparagraph (B); and
6 (B) by redesignating subparagraph (C) as
7 subparagraph (B);
8 (4) in paragraph (11)(B), by striking “and to-
9 bacco”;
10 (5) in paragraph (12), by striking “tobacco,”;
11 (6) in paragraph (14)—
12 (A) in subparagraph (A), by striking
13 “(A)”; and
14 (B) by striking subparagraphs (B), (C),
15 and (D);
16 (7) by striking paragraph (15);
17 (8) in paragraph (16)—
18 (A) by striking subparagraph (B); and
19 (B) by redesignating subparagraph (C) as
20 subparagraph (B);
21 (9) by striking paragraph (17); and
22 (10) by redesignating paragraph (16) as para-
23 graph (15).
24 (e) PARITY PAYMENTS.—Section 303 of the Agricul-
25 tural Adjustment Act of 1938 (7 U.S.C. 1303) is amended

1 in the first sentence by striking “rice, or tobacco,” and
2 inserting “or rice,”.

3 (f) ADMINISTRATIVE PROVISIONS.—Section 361 of
4 the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361)
5 is amended by striking “tobacco,”.

6 (g) ADJUSTMENT OF QUOTAS.—Section 371 of the
7 Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is
8 amended—

9 (1) in the first sentence of subsection (a), by
10 striking “rice, or tobacco” and inserting “or rice”;
11 and

12 (2) in the first sentence of subsection (b), by
13 striking “rice, or tobacco” and inserting “or rice”.

14 (h) REGULATIONS.—Section 375 of the Agricultural
15 Adjustment Act of 1938 (7 U.S.C. 1375) is amended—

16 (1) in subsection (a), by striking “peanuts, or
17 tobacco” and inserting “or peanuts”; and

18 (2) by striking subsection (c).

19 (i) EMINENT DOMAIN.—Section 378 of the Agricul-
20 tural Adjustment Act of 1938 (7 U.S.C. 1378) is amend-
21 ed—

22 (1) in the first sentence of subsection (c), by
23 striking “cotton, and tobacco” and inserting “and
24 cotton”; and

25 (2) by striking subsections (d), (e), and (f).

1 (j) BURLEY TOBACCO FARM RECONSTITUTION.—
2 Section 379 of the Agricultural Adjustment Act of 1938
3 (7 U.S.C. 1379) is amended—

4 (1) in subsection (a)—

5 (A) by striking “(a)”; and

6 (B) in paragraph (6), by striking “, but
7 this clause (6) shall not be applicable in the
8 case of burley tobacco”; and

9 (2) by striking subsections (b) and (c).

10 (k) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the
11 Act of April 16, 1955 (Public Law 89–12; 7 U.S.C. 1314c
12 note), is repealed.

13 (l) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The
14 Act of July 12, 1952 (7 U.S.C. 1315), is repealed.

15 (m) TRANSFER OF ALLOTMENTS.—Section 703 of
16 the Food and Agriculture Act of 1965 (7 U.S.C. 1316)
17 is repealed.

18 (n) ADVANCE RECOURSE LOANS.—Section
19 13(a)(2)(B) of the Food Security Improvements Act of
20 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking
21 “tobacco and”.

22 (o) TOBACCO FIELD MEASUREMENT.—Section 1112
23 of the Omnibus Budget Reconciliation Act of 1987 (Public
24 Law 100–203) is amended by striking subsection (c).

1 **SEC. 712. TERMINATION OF TOBACCO PRICE SUPPORT**
2 **PROGRAM AND RELATED PROVISIONS.**

3 (a) **TERMINATION OF TOBACCO PRICE SUPPORT AND**
4 **NO NET COST PROVISIONS.**—Sections 106, 106A, and
5 106B of the Agricultural Act of 1949 (7 U.S.C. 1445,
6 1445–1, 1445–2) are repealed.

7 (b) **PARITY PRICE SUPPORT.**—Section 101 of the Ag-
8 ricultural Act of 1949 (7 U.S.C. 1441) is amended—

9 (1) in the first sentence of subsection (a), by
10 striking “tobacco (except as otherwise provided here-
11 in), corn,” and inserting “corn”;

12 (2) by striking subsections (c), (g), (h), and (i);

13 (3) in subsection (d)(3)—

14 (A) by striking “, except tobacco,”; and

15 (B) by striking “and no price support shall
16 be made available for any crop of tobacco for
17 which marketing quotas have been disapproved
18 by producers;” and

19 (4) by redesignating subsections (d) and (e) as
20 subsections (c) and (d), respectively.

21 (c) **DEFINITION OF BASIC AGRICULTURAL COM-**
22 **MODITY.**—Section 408(c) of the Agricultural Act of 1949
23 (7 U.S.C. 1428(c)) is amended by striking “tobacco,”.

24 (d) **POWERS OF COMMODITY CREDIT CORPORA-**
25 **TION.**—Section 5 of the Commodity Credit Corporation
26 Charter Act (15 U.S.C. 714c) is amended by inserting

1 “(other than tobacco)” after “agricultural commodities”
2 each place it appears.

3 **SEC. 713. LIABILITY.**

4 The amendments made by this subtitle shall not af-
5 fect the liability of any person under any provision of law
6 so amended with respect to any crop of tobacco planted
7 before the effective date of this Act.

8 **Subtitle B—Transitional Payments**
9 **to Tobacco Quota Holders and**
10 **Active Producers of Tobacco**

11 **SEC. 721. DEFINITIONS OF ACTIVE TOBACCO PRODUCER**
12 **AND QUOTA HOLDER.**

13 In this subtitle:

14 (1) **ACTIVE TOBACCO PRODUCER.**—The term
15 “active tobacco producer” means an owner, oper-
16 ator, landlord, tenant, or sharecropper who—

17 (A) shared in the risk of producing tobacco
18 on a farm where tobacco was produced or con-
19 sidered planted pursuant to a tobacco farm
20 marketing quota or farm acreage allotment es-
21 tablished under part I of subtitle B of title III
22 of the Agricultural Adjustment Act of 1938 (7
23 U.S.C. 1311 et seq.) for the 2004 marketing
24 year; and

25 (B) was actively engaged on that farm.

1 (2) CONSIDERED PLANTED.—The term “con-
2 sidered planted” means tobacco that was planted,
3 but failed to be produced as a result of a natural
4 disaster, as determined by the Secretary.

5 (3) TOBACCO QUOTA HOLDER.—The term “to-
6 bacco quota holder” means a person that was an
7 owner of a farm, as of July 1, 2004, for which a
8 basic tobacco farm marketing quota or farm acreage
9 allotment for quota tobacco was established for the
10 2004 tobacco marketing year.

11 (4) SECRETARY.—The term “Secretary” means
12 the Secretary of Agriculture.

13 **SEC. 722. PAYMENTS TO TOBACCO QUOTA HOLDERS.**

14 (a) PAYMENT REQUIRED.—The Secretary shall make
15 payments to each eligible tobacco quota holder for the ter-
16 mination of tobacco marketing quotas and related price
17 support under subtitle A, which shall constitute full and
18 fair compensation for any losses relating to such termi-
19 nation.

20 (b) ELIGIBILITY.—To be eligible to receive a payment
21 under this section, a person shall submit to the Secretary
22 an application containing such information as the Sec-
23 retary may require to demonstrate to the satisfaction of
24 the Secretary that the person satisfies the definition of
25 tobacco quota holder. The application shall be submitted

1 within such time, in such form, and in such manner as
2 the Secretary may require.

3 (c) INDIVIDUAL BASE QUOTA LEVEL.—

4 (1) IN GENERAL.—The Secretary shall establish
5 a base quota level applicable to each eligible tobacco
6 quota holder identified under subsection (b).

7 (2) POUNDAGE QUOTAS.—Subject to adjust-
8 ment under subsection (d), for each kind of tobacco
9 for which the marketing quota is expressed in
10 pounds, the base quota level for each tobacco quota
11 holder shall be equal to the basic tobacco marketing
12 quota under the Agriculture Adjustment Act of 1938
13 for the marketing year in effect on the date of the
14 enactment of this Act for quota tobacco on the farm
15 owned by the tobacco quota holder.

16 (3) MARKETING QUOTAS OTHER THAN POUND-
17 AGE QUOTAS.—Subject to adjustment under sub-
18 section (d), for each kind of tobacco for which there
19 is marketing quota or allotment on an acreage basis,
20 the base quota level for each tobacco quota holder
21 shall be the amount equal to the product obtained
22 by multiplying—

23 (A) the basic tobacco farm marketing
24 quota or allotment for the marketing year in ef-
25 fect on the date of the enactment of this Act,

1 as established by the Secretary for quota to-
2 bacco on the farm owned by the tobacco quota
3 holder; by

4 (B) the average county production yield
5 per acre for the county in which the farm is lo-
6 cated for the kind of tobacco for that marketing
7 year.

8 (d) TREATMENT OF CERTAIN CONTRACTS AND
9 AGREEMENTS.—

10 (1) EFFECT OF PURCHASE CONTRACT.—If
11 there was an agreement for the purchase of all or
12 part of a farm described in subsection (c) as of the
13 date of the enactment of this Act, and the parties
14 to the sale are unable to agree to the disposition of
15 eligibility for payments under this section, the Sec-
16 retary, taking into account any transfer of quota
17 that has been agreed to, shall provide for the equi-
18 table division of the payments among the parties by
19 adjusting the determination of who is the tobacco
20 quota holder with respect to particular pounds of the
21 quota.

22 (2) EFFECT OF AGREEMENT FOR PERMANENT
23 QUOTA TRANSFER.—If the Secretary determines
24 that there was in existence, as of the day before the
25 date of the enactment of this Act, an agreement for

1 the permanent transfer of quota, but that the trans-
2 fer was not completed by that date, the Secretary
3 shall consider the tobacco quota holder to be the
4 party to the agreement that, as of that date, was the
5 owner of the farm to which the quota was to be
6 transferred.

7 (e) TOTAL PAYMENT AMOUNTS BASED ON 2002
8 MARKETING YEAR.—

9 (1) CALCULATION OF ANNUAL PAYMENT
10 AMOUNT.—During fiscal years 2005 through 2009,
11 the Secretary shall make payments to all eligible to-
12 bacco quota holders identified under subsection (b)
13 in an annual amount equal to the product obtained
14 by multiplying, for each kind of tobacco—

15 (A) \$1.40 per pound; by

16 (B) the total national basic marketing
17 quota established under the Agriculture Adjust-
18 ment Act of 1938 for the 2002 marketing year
19 for that kind of tobacco.

20 (2) MARKETING QUOTAS OTHER THAN POUND-
21 AGE QUOTAS.—For each kind of tobacco for which
22 there is a marketing quota or allotment on an acre-
23 age basis, the Secretary shall convert the tobacco
24 farm marketing quotas or allotments established
25 under the Agriculture Adjustment Act of 1938 for

1 the 2002 marketing year for that kind of tobacco as
2 the Secretary considers appropriate.

3 (f) INDIVIDUAL PAYMENT AMOUNTS.—The annual
4 payment amount for each eligible tobacco quota holder
5 with respect to a kind of tobacco under this section shall
6 bear the same ratio to the amount determined by the Sec-
7 retary under subsection (e) with respect to that kind of
8 tobacco as the individual base quota level of that eligible
9 tobacco quota holder under subsection (c) with respect to
10 that kind of tobacco bears to the total base quota levels
11 of all eligible tobacco quota holders with respect to that
12 kind of tobacco.

13 (g) DEATH OF TOBACCO QUOTA HOLDER.—If a to-
14 bacco quota holder who is entitled to payments under this
15 section dies and is survived by a spouse or one or more
16 dependents, the right to receive the payments shall trans-
17 fer to the surviving spouse or, if there is no surviving
18 spouse, to the estate of the tobacco quota holder.

19 **SEC. 723. TRANSITION PAYMENTS FOR ACTIVE PRODUCERS**
20 **OF QUOTA TOBACCO.**

21 (a) TRANSITION PAYMENTS REQUIRED.—The Sec-
22 retary shall make transition payments under this section
23 to eligible active producers of quota tobacco.

24 (b) ELIGIBILITY.—To be eligible to receive a transi-
25 tion payment under this section, a person shall submit to

1 the Secretary an application containing such information
2 as the Secretary may require to demonstrate to the satis-
3 faction of the Secretary that the person satisfies the defi-
4 nition of active producer of quota tobacco. The application
5 shall be submitted within such time, in such form, and
6 in such manner as the Secretary may require.

7 (c) CURRENT PRODUCTION BASE.—The Secretary
8 shall establish a production base applicable to each eligible
9 active producer of quota tobacco identified under sub-
10 section (b). A producer's production base shall be equal
11 to the quantity, in pounds, of quota tobacco subject to the
12 basic marketing quota marketed or considered planted by
13 the producer under the Agriculture Adjustment Act of
14 1938 for the marketing year in effect on the date of the
15 enactment of this Act.

16 (d) TOTAL PAYMENT AMOUNTS BASED ON 2002
17 MARKETING YEAR.—

18 (1) CALCULATION OF ANNUAL PAYMENT
19 AMOUNT.—During fiscal years 2005 through 2009,
20 the Secretary shall make payments to all eligible ac-
21 tive producers of quota tobacco identified under sub-
22 section (b) in an annual amount equal to the prod-
23 uct obtained by multiplying, for each kind of to-
24 bacco—

25 (A) \$0.60 per pound; by

1 (B) the total national effective marketing
2 quota established under the Agriculture Adjust-
3 ment Act of 1938 for the 2002 marketing year
4 for that kind of tobacco.

5 (2) **MARKETING QUOTAS OTHER THAN POUND-**
6 **AGE QUOTAS.**—For each kind of tobacco for which
7 there is a marketing quota or allotment on an acre-
8 age basis, the Secretary shall convert the tobacco
9 farm marketing quotas or allotments established
10 under the Agriculture Adjustment Act of 1938 for
11 the 2002 marketing year for that kind of tobacco to
12 a poundage basis before executing the mathematical
13 equation specified in paragraph (1).

14 (e) **INDIVIDUAL PAYMENT AMOUNTS.**—The annual
15 payment amount for each eligible active producer of quota
16 tobacco identified under subsection (b) with respect to a
17 kind of tobacco under this section shall bear the same
18 ratio to the amount determined by the Secretary under
19 subsection (d) with respect to that kind of tobacco as the
20 individual production base of that eligible active producer
21 under subsection (c) with respect to that kind of tobacco
22 bears to the total production bases determined under that
23 subsection for all eligible active producers of that kind of
24 tobacco.

1 (f) DEATH OF TOBACCO PRODUCER.—If a tobacco
2 producer who is entitled to payments under this section
3 dies and is survived by a spouse or one or more depend-
4 ents, the right to receive the payments shall transfer to
5 the surviving spouse or, if there is no surviving spouse,
6 to the estate of the tobacco producer.

7 **SEC. 724. RESOLUTION OF DISPUTES.**

8 Any dispute regarding the eligibility of a person to
9 receive a payment under this subtitle, or the amount of
10 the payment, shall be resolved by the county committee
11 established under section 8 of the Soil Conservation and
12 Domestic Allotment Act (16 U.S.C. 590h) for the county
13 or other area in which the farming operation of the person
14 is located.

15 **SEC. 725. SOURCE OF FUNDS FOR PAYMENTS.**

16 There is hereby appropriated to the Secretary, from
17 amounts in the general fund of the Treasury, such
18 amounts as the Secretary needs in order to make the pay-
19 ments required by sections 722 and 723, except that such
20 amounts shall not exceed the lesser of—

21 (1) amounts received in the Treasury under
22 chapter 52 of the Internal Revenue Code of 1986
23 (relating to tobacco products and cigarette papers
24 and tubes), or

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1 (2) \$9,600,000,000.

○